BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., BROOKS FIBER COMMUNICATIONS OF TULSA, INC. COX OKLAHOMA TELECOM, INC. MCI TELECOMMUNICATIONS CORPORATION, AND SPRINT COMMUNICATIONS, L.P. TO EXPLORE SOUTHWESTERN BELL TELEPHONE COMPANY'S COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996	)	CAUSE NO. PUD970000560

COMMENTS OF WORLDCOM

COMES NOW, WorldCom ("WCOM") who files these comments regarding Southwestern Bell Telephone Company's ("SWBT") compliance with section 271 of the Federal Telecommunications Act of 1996 ("FTA") and respectfully states the following:

-I-

OSS

WCOM's comments in this section will address the Telecordia report submitted to the Public Utility Commission of Texas, the Federal Communications Commission's order on SWBT's Texas 271 application, and various issues regarding SWBT's OSS, as described in the affidavits of SWBT witnesses Ham and Dysart.

A. Backdrop

As a threshold matter it is important to note that the Telecordia report was produced at the direction of the Texas PUC to test SWBT's OSS with Texas CLECs. SWBT seeks to "export" the Telecordia report to Oklahoma and other states; however, due to the limiting conditions contained in that report, its validity outside of Texas is dubious at best. The Telecordia report specifically states:

> This Final Report and its individual sections have been prepared solely for the T[exas]PUC's regulatory purposes, and should not be used for any other purpose.

(Ham Affidavit, Tab A, Telecordia Final Report, pg. 6)

WCOM (and other parties) have asserted before the FCC and the Texas PUC that the Telecordia test was flawed in many respects. *See, e.g.*, Joint Declaration of Terri McMillon and John Sivori on Behalf of MCI WorldCom, Inc.; Joint Declaration of Ronald J. McMurtrie, Terence Macko, and Sherry Lichtenberg on Behalf of MCI WorldCom, Inc., FCC Docket No. 00-4 (SWBT's first Texas 271 application). It is significant that the FCC found that the presence of commercial volumes of usage in Texas mitigated the shortcomings of the Telecordia report. The FCC specifically noted the following:

> The findings of a third party tester may be necessary to assess whether a BOC is providing nondiscriminatory access to its OSS, particularly if other evidence, such as data reflecting actual commercial usage, is not presented by the applicant. As we have stated previously, however, we consider actual commercial usage to be the most probative evidence that a BOC is providing nondiscriminatory access to its OSS. We thus first examine actual commercial usage in making our determination in this matter
>
> We find that the third party test conducted by Telecordia provides evidence of the functionality and capacity of SWBT's OSS in several important areas. At the same time, however, we agree with several

> commenters and the Department of Justice that the Telecordia test was limited in scope and depth. This is not to say, as some commenters contend, that SWBT's application is inadequate. Rather, this finding simply means that, in those substantive areas not covered by the Telecordia test, we will rely instead on other evidence, such as actual commercial usage, to assess whether SWBT provides nondiscriminatory access to its OSS.[1]

The FCC further stated:

> AT&T and WorldCom suggest that Telecordia's test is unreliable because it did not involve the actual submission of orders, and did not appear to test a broad range of address scenarios. While this type of additional testing would certainly have bolstered Telecordia's conclusion, and in fact may be critical to another BOC's section 271 application, we note that Telecordia's test does not stand alone in this instance and supplements evidence of integration in a commercial setting.[2]

It is with this backdrop—the limiting conditions contained in the Telecordia report and the FCC's Texas 271 order relying on commercial usage as the primary determinant of whether SWBT is providing nondiscriminatory access to its OSS—that cause WCOM to question many of the assertions contained in SWBT's affidavits in its Oklahoma application.

B. Oklahoma-Specific OSS Testing

SWBT is not generating commercial volumes of orders in Oklahoma. SWBT witness Ham states with respect to EDI that "16 CLECs are currently in production using SWBT's EDI. At least one of the CLECs has, in fact, submitted service requests for the state of Oklahoma." (Ham Affidavit, pg. 20) Ms. Ham further states that "[t]hese companies indicate that they eventually plan to use EDI to submit commercial volumes of requests for Loop, Loop with Number Portability, Number Portability, Resale, Port,

[1] *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (June 30, 2000) ¶¶102-03.

and Loop with Port service." (Ham Affidavit, pg. 64) These statements indicate that commercial use of EDI is still in its infancy in Oklahoma.

SWBT attempts to bootstrap its success in Texas by liberally referring to performance figures of its various systems; however, SWBT's figures are mostly region-wide—they are not specific to Oklahoma. *See, e.g.*, Ham Affidavit pg. 51 (DataGate processed over 900,000 pre-order transactions); *id.* at 51 (from September 1997 to April 2000 DataGate has processed more than 5,521,000 pre-order transactions.) Ms. Ham then states, "five CLECs have access to DataGate, including one CLEC that has submitted service requests in Oklahoma." (Ham Affidavit, pg. 51)

SWBT makes similar claims for its other systems, employing region-wide figures rather than Oklahoma-specific figures. *See, e.g.,* Ham Affidavit, pg. 60 (CLECs have submitted over 1,516,000 service orders via EASE); *id* at 63 (520,000 service orders via LEX); *id.* at 65 (over 158,000 service orders via EDI Gateway); *id.* at 124 (12,700 transactions for xDSL pre-qualification function); *id.* at 131 (18,900 transactions to test lines using Tool Bar Trouble Administration); *id.* at 133 (EBTA processed 37,023 trouble reports).

The affidavit of SWBT witness Dysart illustrates the paucity of Oklahoma-specific data, perhaps demonstrating why SWBT would want to present the Commission with region-wide figures rather then Oklahoma-specific figures. Mr. Dysart states the following:

> Several performance measures discussed in this section are characterized by monthly sample sizes of fewer than 10 data points. Although such small sample sizes render statistical tests of parity unreliable, the available information for these particular measures (albeit perhaps somewhat

[2] *Id.* at ¶159.

> sketchy) nevertheless contributes to an assessment of SWBT's overall compliance with the checklist items.

Dysart Affidavit, pgs. 29-30.

Despite the nascent competition among CLECs for business customers, commercial volumes of orders simply do not exist in Oklahoma.[3] The Oklahoma Corporation Commission ("Commission" or "OCC") should assure itself that SWBT's OSS has the ability to handle the volume of orders for Oklahoma rather than rely on a report that was designed for the Texas market. The bottom line is that the Commission would be ill advised to rely on the Telecordia report as a substitute for commercial activity in Oklahoma

SWBT's responses to various Data Requests further underscore the fundamental flaw of "exporting" the Telecordia test beyond Texas. First, SWBT states that it has two data centers: one in St. Louis and one in Dallas. SWBT further states that Texas orders are processed in the Dallas center whereas the MOKA (Missouri, Oklahoma, Kansas, and Arkansas) orders are processed in the St. Louis center. SWBT Response to WorldCom D.R. No. 1-III.D(13). Secondly, SWBT states that only the Dallas center was used in the Telecordia test. SWBT Response to Sprint D.R. No. 1. The center used to process Oklahoma CLEC orders was not part of the Telecordia test!

SWBT witness Ham stated that some of its CLEC customers "that began using SWBT's EASE system for resale ordering in one state" needed "'brush up' coursework when their operations expanded into additional SWBT states." Ham Affidavit, pg. 34. With respect to trouble administration, SWBT witness Ham states "the LOC will also

[3] In response to a data request of the Attorney General, SWBT states that there have been over 439,900 orders in Oklahoma compared to over 5,183,400 orders in Texas. Both Missouri and Kansas have processed more orders than Oklahoma. SWBT Response to Attorney General D.R. No. 1-AG-1-22, pg. 2.

contact the applicable center that will then build the line record manually so that TBTA can be utilized in the future." Ham Affidavit, pg. 130 (suggesting there are multiple systems and locations involved in SWBT's OSS process).

These statements run counter to SWBT's assertions that its OSS is the same region-wide, thus triggering the question whether work from all of SWBT's five states is processed in the **same** physical processing location on the **same** backend systems. For example, if EASE is the same system and databases region-wide, why is a 'brush up' course necessary if a CLEC expands from one state to another? How do the systems differ from state to state? Do the software releases provide the same levels of functionality in each state across SWBT's five state region? Are the databases the same across all five states? In sum, are all five states using the same systems or are the systems the same in all five states? Based on SWBT's responses to the DRs, the answer is "the systems are the same." The Commission should conduct its own independent test of the OSS that processes Oklahoma CLEC orders. The Texas PUC independently verified many aspects of SWBT's OSS before sending a favorable report to the FCC. Likewise, the OCC should independently verify that the systems are, in fact, the same before submitting its report to the FCC.

C. Ham Testimony

WCOM has concerns about the following from the testimony of Elizabeth Ham. Because WCOM has launched service in the Texas market, many of our comments are based on commercial experience in Texas.

Ms. Ham states in paragraph 236 of her testimony that "there are two possible scenarios in which the chances of a due date being modified [or]are increased." The two

possible scenarios listed in the testimony point to the CLEC as the cause of the change. WCOM, however, has also experienced a third scenario caused as a result of manual handling of orders when SWBT's LSC does not type a service order accurately or there is some other type of delay in the timely processing of the LSR on SWBT's part. WCOM has done extensive collaboration with the SWBT LSC in order to address a growing number of missing Service Order Completion (SOC) responses. Experiences have shown that a significant number of these missing responses are attributed to errors (ESOI errors) that occur in SWBT's back end systems both before provisioning takes place as well as after the customer is supposed to be migrated. If the error occurs after the order is migrated, the posting is delayed and WCOM does not receive an SOC. This causes the billing of the customer to be delayed resulting in the necessity for WCOM to back-bill to the completion date once the late SOC is received. If the error occurs before the migration takes place, the LSC must correct the error and it becomes necessary for SBC to send a jeopardy notification that changes the due date. These jeopardy notifications, which WCOM assumes to be missing SOCs, are sent to WCOM well after the original FOC due date provided by SWBT. This, of course, causes the customer to be adversely impacted because the migration is not worked in a timely manner and the customer thinks he is a WCOM customer when in reality, due to SWBT's delay in processing the order and the subsequent jeopardy, the customer is still SWBT's. WCOM continues to work these issues with the LSC and has serious concerns about the manual processing and fall out that is a direct result of SWBT LSC Representative-caused errors.

Ms. Ham also discusses the so-called multiple service order process in paragraph 244 of her affidavit. As a result of problems associated with the multiple service order

process, the Texas PUC has called for a workshop to be held in September to discuss these issues. WCOM has experienced problems associated with D,N, and C orders not being identified and related with the RRSO FIDs. These have resulted in customer impacting problems. In addition WCOM has experienced problems with the LSC incorrectly typing the separate orders causing them to fall into error status in the SWBT back end systems. This is not an area that the CLEC can control or correct. It is difficult even to track what is happening with this multiple order process in the provisioning order status and order status applications. Multiple iterations of the individual orders can be generated when mistakes are made by representatives manually inputting the service orders into the SWBT system. In addition, because SWBT reuses order numbers every 30 days it is often difficult to obtain help from the LSC. If there is a problem with the customer line requiring the CLEC to call the LSC for service, help may be denied because the LSC shows the order number no longer belongs to the CLEC calling but instead has been assigned to another order that may belong to another customer or another CLEC.

-II-

THE O2A INTERCONNECTION AGREEMENT

A. General Concerns

WCOM has two general concerns with the structure of the O2A. SWBT states that it will revoke its commitments set out in the proposed O2A after one year if the FCC fails to approve SWBT's Oklahoma 271 application by a date certain (but as yet to be determined). If the OCC were to approve this condition, it would effectively impose an

arbitrary deadline on the FCC that would be particularly unreasonable if SWBT fails to obtain Section 271 approval based on its failure to comply with the section 271 checklist. SWBT must prove that it has opened its local markets to competition as a prerequisite to Section 271 approval, not vice versa. The O2A also requires parties to begin renegotiations 180 days prior to the expiration of the O2A. Thus, if the O2A were to expire in one year as a result of SWBT's failure to obtain in-region interLATA authority, the parties to the O2A would have about six months before they would have to commence renegotiations.

Secondly, if the Commission were to approve the O2A, it should do so with the understanding that the O2A is not the "end game" in interconnection agreements. That is, while the O2A is an improvement over SWBT's standard, boilerplate interconnection agreement, the Commission needs to realize that various CLECs may have business needs requiring terms different from those contained in the O2A. With respect to its Texas CLECs, WCOM has experienced SWBT's recalcitrance—*i.e.* "accept the T2A or else you will have to arbitrate"--in renegotiating expired or soon-to-be-expired interconnection agreements. WCOM has had to arbitrate various issues before the Texas PUC because the T2A was insufficient to meet the business needs of its CLEC subsidiaries.

B. General Terms and Conditions

Because this is to be a SWBT/CLEC interconnection agreement for the state of Oklahoma, any references to other SBC entities should be removed from the agreement. SWBT wishes to impose language from its 13-State Generic Agreement that includes

requirements for PacBell, Ameritech and SNET. These references are not applicable to this agreement and only serve to create confusion.

Section 3 -- Deposits

WCOM objects to SWBT's proposed deposit requirements. First, deposit requirements were not included in the Texas 271 Agreement and should not be included here. Second, this language is not appropriate or necessary. The agreement should set forth the general terms and conditions pertaining to resale, interconnection and access to unbundled network elements and should therefore focus on the general rule rather than the exception. SWBT's Joint Affidavit of Rebecca L. Sparks notes at page 6, paragraph 9 that "a few CLECs" have discontinued providing service without clearing the amounts due to SWBT. It would seem that "a few CLECs" should not necessitate a deposit requirement where the majority of CLECs appear to be meeting their obligations. Finally, if a billing dispute does occur, SWBT has other methods available via the agreement for settling such claims such as those provided for in the dispute resolution provisions of Section 9.0 For these reasons, WCOM proposes that the entire Section 3.0 be removed.

Section 4 – Term of Agreement

SWBT's proposed language provides that "not later than 180 days" prior to the expiration of the agreement, either party may provide notice of its desire to begin re-negotiations of a successor agreement. WCOM proposes that the 180-day requirement be shortened to a more reasonable time frame. WCOM proposes that no earlier than *120 days* before the expiration of the Initial Term, either Party may request that the Parties commence negotiations to replace this Agreement with a superseding agreement.

Section 4.2

SWBT's proposed language in the O2A provides that the terms, conditions, and prices of this Agreement will remain in effect for a maximum of 135 days after expiration of the Agreement. WCOM objects to using a specified number of days for which the agreement remains effective. The Agreement should simply state that the agreement will remain in effect until the parties negotiate and/or arbitrate a successor agreement.

Section 5 -- Assignment

SWBT's proposed O2A language in Section 5.1 provides that only SWBT may assign its rights, benefits, duties and obligations to an affiliate. WCOM proposed that both parties to the agreement should be able to assign their rights and obligations to an affiliate. Neither party would be at risk by allowing the other party to assign the Agreement to affiliates. SWBT should not be permitted to make a unilateral assignment. WCOM therefore proposes that Section 5.1 be revised as follows:

> *Any assignment or delegation by either Party to any non-Affiliate entity of any right, obligation or duty, or of any other interest under this Agreement, in whole or in part, without the prior written consent of the other Party will be void. A Party assigning or delegating this Agreement or any right, obligation, duty or other interest under this Agreement to an Affiliate shall provide written notice to the other Party. All obligations and duties of any Party under this Agreement will be binding on all successors in interest and assigns of that Party. No assignment or delegation of this Agreement (in whole or part) will relieve the assignor of its obligations under this Agreement.*

SWBT proposes that there should be nothing in Section 5.0 should impair the right of either party to utilize subcontractors. WCOM proposes that SWBT's use of subcontractors should be subject to CLEC consent. In almost every instance SWBT is the only provider of services under the interconnection agreement. SWBT should not be

permitted a unilateral option to use a subcontractor to perform its services. WCOM therefore proposes that Section 5.1 be revised as follows:

> *5.1 SWBT may not subcontract the performance of any obligation under this Agreement without WCOM's prior written consent. SWBT remains fully responsible for the performance of this Agreement in accordance with its terms if any obligation is performed by a subcontractor or an Affiliate.*

Section 7.1 -- Limitation of Liabilities

Section 7.1.1

Liquidated damages should not be the exclusive remedy available to CLECs. Therefore, WCOM proposes to delete the language of Section 7.1.1 of the O2A that would limit WCOM's recovery of monies to the total of any amounts due a CLEC under the Performance Remedies provisions of the O2A plus the amounts charged the CLEC by SWBT under the interconnection agreement. First, the cap in Section 7.1.1 is unreasonably low. It is calculated by adding amounts due to CLEC under the Performance Remedies together with the amounts charged to CLEC for services purchased during the course of the contract year in which the cause arises. This limitation on SWBT's liability amounts to not much more than SWBT having to give CLEC its money back for the services bought, and in effect, converts the amounts paid under the Performance Remedies into the equivalent of liquidated damages. Under the O2A's language a CLEC would be unable to recover anything more than these two amounts. Furthermore, in order to recover even these amounts, the CLEC would have to incur legal expenses that could easily make the remedy available worthless in light of the legal cost of pursuing the remedy. Because for the foreseeable future, SWBT will continue to be the sole provider of UNEs and interconnection, the Commission should not give SWBT

more protection from liability than is warranted under the circumstances of this Agreement.

Section 7.3.2

SWBT proposes that the CLEC is responsible for obtaining any license or right to use agreement associated with a Network Element purchased from SWBT. This requirement is in violation of the April 27, 2000 FCC Order that ruled that incumbent local exchange carriers are to use their best efforts to provide all features and functionalities of each unbundled network element they provide, including any associated intellectual property rights that are necessary for the requesting carrier to use the network element in the same manner as the incumbent LEC. *See Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, FCC Docket No. 96-98, CCBPol. 97-4 Rel. April 27, 2000. Sections 7.3.2 through 7.3.4 should therefore be revised to be consistent with the FCC's Order.

Section 8.0 -- Payment of Rates and Charges

WCOM objects to SWBT's inclusion of late payment charges. By SWBT's own admission, these provisions were not included in the T2A and should not be included in the O2A.

Section 10 -- Termination of Service to CLEC

The language should be changed to reflect that SWBT should not be permitted to terminate the Agreement for late or withheld payments if a CLEC disputes

the validity of such charges. SWBT has the right to collect interest on late payments under Section 8 above, which is sufficient to prevent harm to SWBT. WCOM proposes that the language of Section 10.1 be modified as followed:

> *10.1 Failure of CLEC to pay **undisputed** charges may be grounds for termination of this Agreement. If CLEC fails to pay when due, any and all **undisputed** charges billed to them under this Agreement, (Unpaid Charges), and any portion of such charges remain unpaid more than fifteen (15) calendar days after the due date of such Unpaid Charges, SWBT will notify CLEC in writing that in order to avoid having service disconnected, CLEC must remit all Unpaid Charges, to SWBT within fifteen (15) calendar days after receipt of said notice. Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 9 of this Agreement.*

Sections 18.2 and 18.3

SWBT proposes that CLECs opting into the O2A are required to give up their judicial remedies. No party should be contractually restricted in such a manner. To the extent the Commission enters an award, *i.e.*, arbitrates the issue, then a CLEC has the right under federal law to challenge that award. This language should not be included in the final agreement.

Section 40.3 -- Managing Disturbed Materials and Media

To the extent that removal, excavation, and extraction of manmade materials and contaminated soil, etc. represents an improvement to existing SWBT facilities, and to the extent that these contaminates should be removed to meet standard employee safety requirements SWBC should bear the burden of the cost. Otherwise, the CLEC will in essence be funding long-term improvements that increase capital value of SWBT property, with no residual credit returned and/or depreciation value from the capital expenditure to the CLEC upon termination of the O2A. As SWBT owns and operates the facility, it is its sole responsibility to build and maintain it to safety standards.

Section 49 -- Branding

CLECs should have the option of no branding. The following language should be added as Section 49.2:

> *49.2 Whenever SWBT has control over handling of the services that CLEC may provide to third parties using services provided by SWBT under this Agreement, SWBT shall, at CLEC's request, brand any and all services at all points of customer contact exclusively as CLEC services, or otherwise as CLEC may specify, or be provided with no brand at all, as CLEC may determine.*

Section 51 -- Disclaimer of Warranties

A broad disclaimer of warranties by SWBT, including implied warranties of merchantability and fitness for a particular purpose, is inappropriate for this Agreement. It amounts to a statement that if the services provided under this Agreement are not fit for local service or resale, SWBT is not responsible. To the contrary, CLECs plan and expect to use SWBT's services in order to provide telecommunications services to Oklahoma subscribers. CLECs also expect the services to be fit for the particular purpose of providing telecommunications services, including local service and for exchanging traffic. If, for example, the services provide dial tone for a SWBT customer, those services should also provide dial tone when that customer chooses a CLEC to be its provider. The typical circumstance under which SWBT might want to disclaim these implied warranties is if a CLEC asks SWBT to develop a new and untested product for which the CLEC has provided the specifications. If in this instance the CLEC wishes to assert implied warranties, it would have to prove that they exist.

With regard to express warranties, SWBT is already required by the FTA to provide CLECs with nondiscriminatory service. However, WCOM submits that the Commission should consider requiring SWBT to warrant that it is providing its services

to CLECs at parity. SWBT's recent behavior discovered in the Texas COVAD and ACI DSL arbitrations illustrate the importance of this position.[4] It is clear from those proceedings that SWBT had a difficult time providing nondiscriminatory service to its competitors. Therefore, the added protection of contractual warranties is appropriate. WCOM proposes the following revisions of section 51.1 and new sections 51.2 through 51.11:

51.0 Disclaimer of Warranties

[4] Docket No. 20226, *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Arbitration Award. Excerpts from pages 13-14 of that award are as follows:

> The Arbitrators are not persuaded by SWBT's argument that various types of xDSL services cannot work on the same basic copper loop. SWBT's argument focuses instead on the categorization of services provided on these loops in order to manage spectrum and conditioning. Further, SWBT's categorization proposal is inefficient and unnecessary, and could lead to delays in and barriers to CLEC deployment of xDSL. Requiring Petitioners to order from seven different loop types as determined by SWBT has the potential to cause delay in the wholesale ordering and provisioning process.
>
> The Arbitrators are concerned that SWBT has shown a clear tendency to oppose provision of multiple xDSL technologies provided by CLECs on SWBT's unbundled facilities. As an example, the following communication took place between SBC employees on March 16, 1998:
>
> > Message from C. Yackle to M. Russell, J. Thurwalker (Mar. 16, 1998, 10:58 a.m.): *Mark – Once again we may need some guidelines. We can't manage a million different technologies. We must unbundle what we offer not everything that anyone can think up. Today we use ISDN, HDSL and ADSL. We need guidelines for these. Jim – Can we maintain a position that we don't provide unbundled loops for technologies that we do not use?*
> >
> > *Response from J. Thurwalker (March 16, 1998, 1:03 p.m.):* Cliff – Generally speaking, we've successfully defended our position of not providing unbundled loops for services which we did not provide under the argument that the technology issues have not been addressed, and as such we don't know what it will do to our network fabric.
> >
> > *Response from C. Yackle (March 16, 1998, 1:07 p.m.):* I suspect that we should begin to seriously consider how we are going to react as different CLECs want to utilize different technologies in our cable plant. I know that we are all fixing to get very busy but a consistent well thought out approach could avoid another problem like we face with Covad and others in California.[footnote omitted]
>
> Another example of SWBT's desire to limit CLEC services can be found in the July 21, 1998 minutes of the Network Evolution for Data Services (NERDS) committee. *See* Confidential Attachment B, Paragraph A.

51.1 *UNLESS IN*CONSISTENT WITH ITS OBLIGATIONS UNDER THE ACT, *AND EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 51,* SWBT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER.

51.2 Except as otherwise provided in this Agreement, SWBT shall perform its obligations under this Agreement at a performance level no less than the highest level which it uses for itself, its customers, subsidiaries or Affiliates, or any third party.

51.3 SWBT warrants that it will provide Interconnection to CLEC at any technically feasible point within its network at CLEC's request, and that the Interconnection will contain all the same features, functions and capabilities, and be at least equal in quality to the highest level provided by SWBT to itself, its customers, subsidiaries or Affiliates or any third party.

51.4 SWBT warrants that it will provide to CLEC on a nondiscriminatory basis each and every Network Element and ancillary service described in Attachments III, VIII and IX, including, but not limited to, Loops, Local Switching, Tandem Switching, Transit, NIDs, Advance Services, Transport (Shared and Dedicated), data switching, Dark Fiber, intelligent network and AIN, Operator Service, Directory Assistance, Directory Listings, E911/911, white pages, Operations Support Systems, signaling and call related databases, and all the features, functions and capabilities associated directly and indirectly with these Network Elements and ancillary services. SWBT further warrants that these Network Elements and ancillary services will contain all the same features, functions and capabilities, and be provided at a level of quality at least equal to the highest level, that SWBT provides to itself, its customers, subsidiaries or Affiliates, or any third party.

51.5 SWBT warrants that it will provide to CLEC nondiscriminatory access to poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights of way, and other pathways owned or controlled by SWBT, using capacity currently available or that can be made available.

51.6 SWBT warrants that it will provide CLEC nondiscriminatory access to all the features, functions and capabilities of SWBT's

Operations Support Systems (OSS) at a level of quality that is at least equal to the highest level that SWBT provides to itself, its customers, subsidiaries or Affiliates, or any third party.

51.7 SWBT warrants that it will provide CLEC nondiscriminatory access to telephone numbers.

51.8 SWBT warrants that it will provide CLEC, in a competitively neutral fashion, INP and LNP with the same features, functions, and capabilities that SWBT provides to its customers, subsidiaries or Affiliates, or any third party. SWBT further warrants that it will provide CLEC with INP and LNP with as little impairment of functionality, quality, reliability, and convenience as possible.

51.9 SWBT warrants that it will provide to CLEC, in a competitively neutral fashion, dialing parity for local exchange service and interexchange service and all other forms of traffic, with the same features, functions and capabilities that SWBT provides to itself, its customers, subsidiaries or Affiliates, or any third party, so that CLEC's Customers experience no greater post-dial delay than SWBT's Customers, and are not required to dial any greater number of digits than similarly situated SWBT Customers.

51.10 SWBT warrants that it will provide CLEC with Local Resale, and with respect to Local Resale, will provide Preorder, access to databases, order entry, provisioning, installation, trouble resolution, maintenance, Customer care, maintenance of databases, billing, and service quality, that is at least at a level of quality that SWBT provides for itself, its Customers, subsidiaries or Affiliates, or any third party. SWBT warrants further that it will impose no restrictions on CLEC's resale of these services unless specifically sanctioned by Applicable Law

SBC/Ameritech Merger Conditions

A specific provision memorializing SWBT's obligation to comply with the terms of the SBC/Ameritech merger order should be included in the General Terms and Conditions section of the O2A. WCOM's proposed language is as follows, and would be a new section number:

SWBT will comply with the FCC's determinations in In re Applications of AMERITECH CORP., Transferor, AND SBC COMMUNICATIONS INC., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order, FCC 99-279, CC Dkt. No. 98-141 (rel. Oct. 8, 1999) (the "Merger Conditions Order"). Any reference to SWBT's compliance with the Merger Conditions Order means that SWBT will comply with the Merger Conditions Order, as interpreted by the FCC and any applicable court of competent jurisdiction. To the extent the Commission imposes more rigorous standards, SWBT will comply with the highest standards required.

C. Appendix Customized Routing -- Resale

Section 1.12 requires that SWBT provide to the CLEC the emergency public agency telephone numbers used by SWBT for each NPA-NXX. It is not reasonable for the CLEC to indemnify SWBT for claims arising from SWBT's failure to provision information over which the CLEC has no control. Given its historically close relationship to the 911 system, SWBT, not the CLEC, has greater control over the accuracy of these numbers.

D. Appendix DA -- Resale

These rates should be subject to true up upon Commission determination in a subsequent proceeding where time allows the evaluation of SWBT's costs to perform this function.

E. Appendix OS -- Resale

These rates should be subject to true up upon Commission determination in a subsequent proceeding where time allows the evaluation of SWBT's costs to perform this function.

F. Attachment 6 -- UNE

Section 2.22 – Special Request

WCOM proposes that the term "Special Request" be changed to "Bona Fide Request." BFR is the term that SWBT uses in other CLEC information; therefore, the term "Special Request" should be changed to reflect SWBT's current processes. Finally WCOM respectfully requests a list of the ancillary equipment necessary for CLECs to provide UNE-P, so that the Special Request/BFR process is not required for elements where the work had already been done.

Section 3 -- Network Interface Device

WCOM recommends the inclusion of the term 'device' to further clarify the term NID as an object device and to be consistent with the FCC's *Local Competition First Report and Order* and the FCC's *UNE Remand Order*. Additionally, WCOM objects to the term "fundamental" in the context of NID function, as it is unnecessary and limiting qualifier for the function of the NID. WCOM proposes the language to be:

> *3.1 The Network Interface Device (NID) is a cross-connect* ***device*** *used to connect loop facilities to inside wiring. The* ~~*fundamental*~~ *function of the NID is to establish the official network demarcation point between a carrier and its end user customer. The NID contains the appropriate and accessible connection points or posts to which the service provider and the end user customer each make its connections.*

Section 4.1 -- Local Loop

WCOM proposes that the loop definition be updated to be consistent with the FCC's *UNE Remand Order.* There is a growing demand for bandwidth. To help meet this demand, CLECs must have high capacity loops in order to serve their customers. New technology has provided end user customers with the ability to send and receive

large capacities of data traffic. DS3 is now, in some cases, too small a capacity for large end users. While many circuit switches can only deal with up to DS3 connections, on a point-to-point basis, large end users require higher optical bandwidth. The new loop definition includes high capacity loops such as optical level loops and should be reflected in the O2A. WCOM proposed language change is as follows:

> 4.1 *Definition: A local loop unbundled network element is a dedicated transmission facility between a distribution frame (or its equivalent) in a SWBT central office and the loop demarcation point at an end user customer premises. Where applicable, the local loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to customer premises wiring, provided such wire is owned and controlled by SWBT. The local loop network element includes all features, functions and capabilities of the transmission facility, including dark fiber and attached electronics (except those electronics used for the provision of advanced services, such a Digital Subscriber Line Access Multiplexers), and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.*

Section 4.3 Because high capacity loops such as optical level loops are now included in the new FCC loop definition, WCOM proposes that Section 4.3 is no longer necessary and, accordingly, should be deleted.

Section 4.7 -- Coordinated Loop Cutovers

SWBT should be required to perform coordinated cutovers for loop customers. Coordinating the process of transferring a customer from a SWBT provisioned loop to a WCOM provided loop minimizes the number of service outages, which are customer impacting. The language proposed below includes incentives for both parties, not just SWBT, to work together to accomplish the loop cutover. WCOM proposes that the following language be added to Section 4.7:

4.7 Coordinated Cutover

4.7.1 on each Loop order in a Wire Center, CLEC will contact SWBT and the Parties will agree on a cutover time at least two (2) business days before the due date. The cutover time will be defined as a half (1/2) hour, within which both CLEC and SWBT personnel will make telephone contact to begin the cutover activity. Cutover activity which is requested to take place outside of normal business hours (8 a.m. to 5 p.m. Monday through Friday) will be billed as time and material described in SWBT's Network and Exchange Services Tariff.

4.7.2 Within the appointed half-hour cutover time, CLEC will call SWBT's Local Operations Center ("LOC"), and when the LOC is reached in that interval, such work will begin. If CLEC fails to call or is not ready within the appointed interval, and if CLEC had not called to reschedule the work at least two (2) business hours prior to the start of the interval, CLEC and SWBT will reschedule the work order on a mutually negotiated basis.

4.7.3 If either CLEC or SWBT cannot comply with the schedule, that party will timely notify the other. If CLEC's notice is not at least 2 business hours prior to the start of the scheduled interval of the coordinated cut, the CLEC will pay SWBT the applicable Non-Recurring Charge (NRC). In addition, non-recurring charges for the rescheduled appointment will apply. If SWBT's notice is not at least 2 business hours prior to the start of the scheduled interval of the coordinated cut, SWBT will waive any applicable NRC. If SWBT's LOC is not available or ready when CLEC calls during the half (1/2) hour interval, SWBT will not bill the change order charge for the due date change for the Loop or Loops scheduled for that interval and will reschedule the installation time on a mutually negotiated basis.

Section 5.0 -- Local Switching

WCOM objects to the elimination of language in section 5.1 of the O2A from the T2A. One way extended area line class codes, as part of the switching element, are necessary elements in the provision of local service through unbundled loops, and should be provided for combination as unbundled local loops such as SWBT provides for it’s customers. By deleting one way extended area line class codes, SWBT is putting forth a more limited, and less UNE remand compliant offering than was provided for in Texas, and than what is currently required by law.

Section 5.2.4.8

This section requires that SWBT provide to CLECs the emergency public agency telephone numbers used by SWBT for each NPA-NXX. It is not reasonable for a CLEC to indemnify SWBT for claims arising from SWBT's failure to provision information over which the CLEC has no control. This language should be removed.

Section 5.29 – Call Trace/Trap

Section 5.2.9 of Attachment 6 (UNE) provides that SWBT will perform manual traps and call traces and states that CLEC is to obtain "all necessary legal authorization for the call trace." With regard to release of trap/trace information, WCOM needs to receive trap/trace information directly from SWBT. It is unclear in Section 11 of Attachment 1: Appendix Services/Pricing or Section 3 of Attachment 16 if the CLEC is to obtain the trap/trace information from SWBT or from the law enforcement agency. This is a very time consuming process if WCOM is required to obtain this information from the law enforcement agency. Due to the extra time involved in retrieving the information from law enforcement, it would not be possible for WCOM to provide its customers with the same level of service that SWBT can provide to its customers.

With regard to Call Trace (or *57), this feature is supposed to allow WCOM's customer to automatically trace a harassing call. Currently, when a WCOM customer in Pacific Bell's territory receives a harassing call and dials *57, the customer is told to contact their local phone company. However, WCOM is unable to assist its customers because Pacific Bell will not provide WCOM with any of the necessary information. If SWBT follows the same internal procedures as its sister company, WCOM needs detailed procedures for addressing customers' needs involving harassing calls to prevent these problems in the future.

Section 8.2.2 – Interoffice Dark Fiber

The efficient use of Dark Fiber is important to competition in the local market; however, WCOM objects to section 8.2.2.1, as it provides SWBT the opportunity to revoke the dark fiber lease from the CLEC unilaterally. Section 8.2.2.1 only contemplates SWBT's growth needs through dark fiber, and does not provide a CLEC the same or similar opportunity to claim unused/inefficiently used dark fiber from SWBT. Therefore, imposing restrictions only on CLECs for how and when they utilize the dark fiber, which are not applied to SWBT, is patently unfair. WCOM recommends language be developed to identify a process where parties can jointly cooperate in resolving dark fiber capacity and reporting issues for the most efficient use of this resource.

Section 9.4 – LIDB

Unlike every other Bell Operating Company, SWBT does not allow CLECs to update its Line Information Database ("LIDB") by submitting a Local Service Request ("LSR"). As a result, it is significantly more difficult for CLECs to change a customer=s Primary Interexchange Carrier (PIC). In addition, SWBT=s new process for updating LIDB on initial CLEC orders has not yet been proven to work.

LIDB is the database that includes the information enabling a customer to receive collect calls and make credit card calls. It also contains the customer=s PIC designation and the information that triggers the branding on a customer=s directory assistance and operator calls. When a customer migrates service to a CLEC, LIDB must be updated. LIDB must also be updated whenever a customer changes his or her PIC, a frequent occurrence in today's highly competitive market for long distance services.

Until January 15, 2000, when a CLEC submitted an LSR to migrate a customer, that LSR did not trigger an update of LIDB. Instead, SWBT required the CLEC to fill out a separate order for a LIDB update and to submit that order via fax, via a GUI, or via a batch process the CLEC was required to develop for just this purpose. *See* Joint Declaration of Terri McMillon and John Sivori, *In the Matter of Application by SBC Communications, Inc. et. al for Provision of In-Region, InterLATA Services in Texas*, Federal Communications Commission, CC Docket No. 00-4 (January 31, 2000) ¶¶ 82-83. This was extremely inefficient. *Id.* & 83. In addition, using these processes, a CLEC could not update LIDB until SWBT had issued a service order completion on the LSR, a process that takes time. *Id.* Until then, customers would be unable to receive collect calls, would receive SWBT branding on operator or directory assistance calls (which would in turn likely prompt confused calls from customers to the CLEC), and would retain their prior PICs even if they had asked for PIC changes as part of their orders. *Id.* Moreover, when the CLEC did submit a separate LIDB order, it would not receive any notification back from SWBT informing it of the status of that order. *Id.* If customers called to complain that they could not receive collect calls or that they were receiving SWBT branding, the CLEC would have no visibility into the status of the LIDB updates. *Id.*

The January 15 systems change with respect to LIDB was designed to eliminate these problems only with respect to initial CLEC orders. As of that time, SWBT began allowing SWBT to update LIDB on initial orders by submitting an LSR. However, the effectiveness of that systems change has not been proven. WCOM tested a few orders with SWBT prior to implementation of the LIDB change but SWBT processed these

orders somewhat differently than it will process live orders. *Id.* & 85. There has not yet been any significant commercial experience with the new process. The likelihood that the process will work as intended is very much in doubt. In response to a series of WCOM questions about the new process, SWBT explained that Aunder normal no error conditions and no down time at the LRAF, the order may be completed within 24 to 48 hours≅ and that Aa migrated TN will have the potential for reflecting the new owner=s brand when LIDB is updated by the migration order.≅ Id. & 86, att. 7 (emphasis added). SWBT=s noncommittal and vague answers to WCOM questions about the change do not leave WCOM with any confidence that the process will work as it should.

More fundamentally, the new LIDB process cannot be used for LIDB updates requested by CLECs subsequent to an initial order. *Id.* & 88. When, for example, customers who have already migrated to a CLEC request a change in their PICs, the CLEC cannot place an order for the PIC changes through the LSR process. *Id.* & 89. The CLEC will instead have to use one of the means discussed above B a fax process, a GUI, or a separately developed batch process. *Id.* Using any of these processes, a CLEC will be unable to transmit a PIC change request from a customer until it has received a completion notice on the initial order, creating potentially significant delays for the customer. *Id.* & 90. When the CLEC does submit the PIC change request, it will have to enter the information both into its own systems and into the GUI, fax, or batch process, adding to CLEC costs and increasing the chance of errors. *Id.* & 92. Moreover, after transmitting a request, the CLEC will not receive any response from SWBT informing it that the request has been received or that it has been completed. *Id.* & 91. The only way

CLECs will know that a PIC change request was not processed is when a customer calls to complain. *Id.*

In New York, WCOM receives approximately 1,500 PIC change requests a month from its local customers. *Id.* & 89. Likewise, WCOM fully expects that it would have the same number of PIC change requests in Texas when it has the same number of local customers. Until SWBT implements an LSR process for PIC changes, it would be a poor business practice for CLECs to ramp up to true commercial volumes. SWBT claims to use the same systems in Texas as it uses in Oklahoma; accordingly, the OCC should find WCOM's experience in Texas instructive and helpful in understanding the LIDB problems facing CLECs.

Section 9.4.2.6.2 – SWBT proposes striking the language from this section of the O2A, even though that language is currently in the T2A and such language is in compliance with the FCC's UNE remand order. The T2A language should stay.

Section 9.4.5 -- Nowhere in this section (pertaining to audits) is there any provision for CLECs who use the service order interface process. CLECs should not have to correct any discrepancies found in the LIDB audit and/or billing system audit within the time period specified in sections 9.4.5.1.4 and 9.4.5.2.3. According to these two sections, CLECs are required to correct any discrepancies using the LVAS interface. However, for those CLECs that utilize the service order interface, the LVAS GUI will not allow access to the LIDB records needing correction. In these instances, correction can only be done by SWBT. SWBT and the CLECs will have to collaborate on a process and negotiate an interval to manage the audit and correction of these types of record discrepancies.

Section 9.5 – CNAM Service Query

CLECs should be able to obtain the entire contents of the database, rather than being restricted to only have access to it on a per-dip basis. Just as in the case of Directory Assistance Data, a competitive carrier may wish to obtain the full database in order to avoid the requirement to "dip" the SWBT database for each and every query. This alternative should be made available for several reasons.

First, for some CLECs, the cost of obtaining the full contents of the database (as an Unbundled Network Element at TELRIC prices) and maintaining their own database may be more economical than requiring them to pay SWBT on a per-dip basis for every query. The SWBT proposed O2A sets this price at just over 1.5 cents per dip. Providing the alternative of bulk data provides a potential cost to CLECs and provides an incentive to SWBT to avoid setting their database query price too high.

Second, a CLEC who does operate such a database to support services for their own end users may also develop the capability to offer CNAM database service to other carriers. This situation would have similar public policy benefits to those provided by resale requirements.

Finally, CLECs who operate their own CNAM database are not restricted to the exact same service and process methods as offered or used by SWBT, thus allowing the potential for development of innovative services.

Section 9.5.3.4 -- This section should be applied reciprocally for all CLEC information stored in LIDB. The same restrictions should be applied to SWBT, prohibiting them from coping storing, maintaining, or creating any table database of any kind be created that is a based on a response to a query.

Section 9.0; 9.81 -- DA Database

SWBT proposes to eliminate its obligation under the FTA to provide certain UNEs by striking language pertaining to directory assistance database information. Section 9 of Attachment 6, specifically, Sections 9.0 and 9.8.1 have been removed from what is currently in the T2A. These sections cover directory assistance databases. SWBT is apparently confusing the availability of DA and OS, which were addressed by the FCC in its UNE Remand Order (FCC ruled DA and OS were not UNEs in certain situations), with the DA *database*, a UNE that was not eliminated by the FCC.

SWBT does propose in Attachment 18 to allow CLECs to gain access to its DA database. However, that proposal is significantly flawed. First, SWBT proposes to charge something other than a TELRIC price for such access (*i.e.* parties negotiate the rate). Secondly, SWBT has language limiting the use to which a CLEC may make of the database. Such a use restriction is patently unreasonable.

Enhanced Extended Loop (EEL)

While WCOM applauds the general inclusion of EEL in the O2A, WCOM has several concerns with Sections 14.7 through 14.9 of Attachment 6: UNE related to the restrictions imposed by SWBT.

1. Omission of Four Wire Digital Loops

Section 14.7.1 of the O2A omits four wire digital loops from the list of loops that are eligible for EEL, if the CLEC does not have the end-use customer. Oklahoma consumers deserve competition for all services, including access to high-speed data, and

SWBT should not be allowed to maintain its bottleneck on the last mile for high-speed data delivery through this omission.

2. Limits on Use of Transport

Section 14.7.2 of the O2A requires the dedicated transport facility to extend from the CLEC's customers' serving wire centers to either the CLEC's collocation cage or to the dedicated transport entrance. WCOM respectfully urges the Commission to also provide the CLEC the option of leasing entrance facilities from SWBT and purchasing transport from the customer's serving wire center to the CLEC's serving wire center for SWBT's cross-connect onto the dedicated entrance facility leased from SWBT. The whole idea of EEL (i.e., DS1 loop/transport and 2/4 wire loop extension) was to limit the need for collocation to pick up the loops irrespective of whether they are analog or digital loops. SWBT's proposal defeats this purpose.

WCOM objects to the language in 14.7.2 "CLECs must order the dedicated transport facility, with any necessary multiplexing, from CLEC's collocation cage or CLEC's switch location to the wire center serving CLEC's end user customer." WCOM urges the Commission to provide the CLEC the option of leasing entrance facilities from SWBT and purchasing transport from the customer's serving wire center to the CLEC's serving wire center for SWBT's cross-connect onto the dedicated entrance facility leased from SWBT. WCOM's primary objection to this section is that EELs (i.e., DS1 loop/transport and 2/4 wire loop extension) eliminate to need for collocation to gain access to loops. SWBT's proposal defeats this purpose.

From a technical standpoint, WCOM objects with the only two options for ordering due to the physical location of the switch. It is technically feasible that a CLEC

switch may physically be in a different rate center, and interconnection at the Interconnection Point would be closer, and hence, more efficient and cost effective. In the best interest of promoting competition, this section should allow additional alternatives for ordering.

3. External Cross-Connect Requirement

Section 14.7.3 of the O2A, SWBT's alternative proposal for EEL, is simply the establishment of a POT bay. SWBT requires that the CLEC forecast one year's growth to provide the tie cable. It would appear that SWBT is doing nothing more than pre-wiring to another point on its frame rather than cross connecting to the single point. The external cross connect alternative is nothing more than a POT bay, a requirement the FCC has already rejected. Conversely, if this is not what SWBT is proposing, WCOM objects to Section 14.7.3 in its entirety and requests it be stricken until such time as SWBT can communicate clearly the provisions put forth in it. The language is so unclear as to deny the CLEC understanding of the provisions contained therein. Finally, WCOM has a specific objection in regard to the temporary connections and half tapping services described therein. Half tapping and temporary connections lead to service interruptions and outages, therefore making these options an unsuitable solution for the CLEC's business needs.

4. MFN Restrictions

MCIW has concerns with Section 14.8 regarding the MFN restrictions. SWBT is proposing that the Commission approve an agreement that requires CLECs to waive their MFN rights under section 252(i) of the Federal Telecommunications Act. The burden is

on SWBT to demonstrate to the Commission that ALL of the provisions of the UNE section are "legitimately related." Rather than make that showing, SWBT would simply have the CLECs waive their rights under the Act.

5. Binding the OCC

Section 14.7.3.1 contains language that binds the Commission to act within 60 days. WCOM argues that this agreement should not be dependent upon the Commission, or any other third party action in this manner. Similarly, this provision has no remedy should the Commission fail to act within 60 days. WCOM requests either further consideration by the Commission of this language, with an assurance that it is appropriate in the context of this agreement, or new language be cooperatively be developed to ensure proper resolution of disagreement.

Section 14 – UNE-P

WCOM has several major concerns with SWBT's UNE-P commitments in the O2A.

1. Three Year Residential Commitment

SWBT's commitment (qualified on FCC approval) to provide UNE-P only lasts three years for residential customers. These time frames do not realistically allow CLECs to execute an effective and irreversible business plan based initially on UNE-P. A CLEC that would consider developing a UNE-P based residential product would have to rethink its entry strategy based on the significant potential financial impact of twenty percent annual input price increases for years four and five. Despite the fact that changes are occurring in the telecommunications industry at a rapid rate, most CLECs' planning horizon very likely goes well beyond three years. The Commission should not forget that

it has been about four years since Brooks' and other CLECs' contracts have been in effect and Oklahoma is no further along in having robust local residential competition than it was in 1996, when the Federal Telecommunications Act of 1996 was enacted. Finally, WCOM requests clarification regarding new UNE-P combinations. Presumably SWBT will honor requests for UNE-P combinations for new customers as well as for existing customers, albeit at a higher price, per Section 14.2.

2. UNE Price Increases

Until SWBT can demonstrate that it is as dependent on CLECs for a UNE as CLECs will be on SWBT's UNEs to provide local services, the Commission must continue to play a role in establishing the prices SWBT is allowed to charge for any UNEs determined to be outside the parameters of Section 251(c)(3) of the FTA 96. Section 14.4.1 of Attachment 6 (UNE) unreasonably limits the Commission's role on this issue.

3. Effect of Modification of TELRIC

Section 14.4.2 of Attachment 6 (UNE) of the O2A outlines SWBT's proposal to allow for renegotiation of UNE prices if the "FCC or a court modifies (after this Agreement is executed by the Parties) the TELRIC" method of setting prices. WCOM proposes to limit this provision to a court that has actually reviewed the TELRIC method approved and implemented by this Commission and which forms the basis for most of the UNE prices in WCOM's CLEC's Interconnection Agreements. Otherwise, a court's review of some other TELRIC method having no relevance to the method adopted by the Commission and adopted by some other state would result in the renegotiation of the prices established by the Commission.

4. Two Year Business Commitment

In Section 14.3 of Attachment 6 (UNE), SWBT proposes a two-year guarantee to provide UNE-P service to business customers. This two-year period is far too short a timeframe to get into business before the market sets prices. For this reason, WCOM is recommending that the Commission approve the price for UNEs found to be outside the parameters of Section 251(c)(3). As noted above, a CLEC's planning horizon would likely extend beyond three years, much less two years.

5. POT Bay Requirement

Section 14.3.3 of Attachment 6 (UNE) states that in "those SWBT central offices where there are four or more CLECs," SWBT may elect to not combine UNEs, CLECs must provide a one-year forecast, and SWBT will establish an external cross-connect cabinet. What SWBT is in effect proposing in this paragraph is a POT bay; a concept the FCC has said is not and should not be required. SWBT should not be allowed to require CLECs with new UNE-P customers to follow this process, under the guise that new customers will use UNEs that are not combined in the network.[5]

Furthermore, Section 14.3.3 outlines SWBT's proposal to build a separate "secured frame room" in its central offices. WCOM suggests that a CLEC continue to be allowed in those circumstances described by SWBT (i.e., where SWBT proposes to be allowed to elect to not combine UNEs not already combined in that central office) to combine its UNEs at the main distribution frame. If SWBT's commitment to combine UNEs evaporates, so should the CLEC's commitment to not seek unfettered access to

[5] SWBT could assert that a new UNE-P customer is using unbundled elements that are not combined, thus forcing a CLEC to employ SWBT's pot bay scheme. In order to avoid using SWBT's pot bay, a CLEC could tell its prospective customer to sign up with SWBT for local service and then migrate the existing

SWBT's premises for the purposes of combining uncombined UNEs.

6. Twenty Percent Annual Increases

Section 14.4.1 of Attachment 6 (UNE) states that SWBT will not increase the price of residential UNE-P by more than twenty percent per year. WCOM notes the twenty percent figure has no objective basis. Any increase in costs be either limited to the rate of inflation, or that the Commission approve any increases in prices for the UNE-P.

G. Attachment 7 – Ordering and Provisioning – UNE

Section 3.4 – WCOM is unclear what SWBT is being replaced and what SWBT is proposing to replace it with.

Section 3.5.1 – This section needs to specify that the hours discussed are for orders where SWBT manual intervention is required.

Section 3.6 – There should be a reference to the Uniform OSS Plan of Record and the specific obligation agreed to in that proceeding. The hours of operation in this section do not agree with the negotiated hours contained in the OSS POR (*i.e.* the hours in the O2A are more restrictive than the hours contained in the OSS POR). At a minimum, the O2A should state that the provisions of the SBC/Ameritech plan of record may affect the OSS sections of the O2A.

Section 4.1 – This section is too restrictive in imposing a "single point of contact for the transmission of such data from CLEC to SWBT." WCOM, for example, currently has and will continue to need multiple EDI interfaces with the SWBT system.

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customer to the CLEC. Either approach is patently absurd but the latter may be necessary in order for a CLEC to work around the scheme orchestrated by SWBT in its O2A.

Section 6.7 – WCOM requires that Jeopardy Notifications be returned electronically in the same way that the order is generated to SWBT (*i.e.* an EDI order should receive a Jeopardy notification over EDI).

H. Attachment 8 – Maintenance -- UNE

Section 9.1 – This section should specify where SWBT's LOC POTS Escalation/Expedite Maintenance Procedures document can be found as a reference.

I. Attachment 10 – Provision of Customer Usage Data -- UNE

Sections 4 and 5 – The references to the Exchange Message Record (EMR) should be changed to Exchange Message Interface (EMI).

Section 7 – SWBT is increasing the cost of sending a CARE record from $0.003 as set out in the T2A to $0.10 apparently with no justification. The price should remain at $0.003.

J. Attachment 11 – Appendix Network Interconnection Methods (NIM)

Section 1 – Mid Span Fiber Interconnection (MSFI)

WCOM proposes that a new section regarding facilities for ancillary trunking be added to section 1.0. Ancillary trunking for 911, mass calling, OS/DA should be provisioned over the Mid-Span Fiber Meet. Combining trunking for ancillary services over the same facilities that local and IntraLATA traffic ride is an efficient use of network resources. SWBT and WCOM will have already established the facility -- i.e., the Mid-Span Fiber Meet, which can be used to interconnect the two companies' networks. For SWBT to require that separate facilities must be placed for ancillary traffic adversely impacts the MICW network architecture in several ways. First, it requires the construction or lease of additional facilities to other points in SWBT's

network without any showing of technical infeasibility for the type of interconnection WCOM prefers to utilize. Second, because the Mid-Span Fiber Meet is a fully diverse and redundant facility, it represents the best possible architecture for ensuring available circuits for WCOM's customers' 911, mass calling, and OS/DA calls, as it can "self heal" in case of problems on a portion of the fiber ring. Finally, SWBT's proposal eliminates the engineering efficiencies that can result from full utilization of the Mid-Span Fiber Meet.

WCOM proposes the following new language to Section 1.0 of Appendix NIM:

> *Where Fiber Meet Interconnection is employed, these facilities are for the provisioning of local/IntraLATA and InterLATA interconnection trunks, as well as ancillary trunks such as 911, Mass Calling, and OS/DA trunks, where appropriate, as described in Appendix ITR.*

WCOM proposes that the two design options currently proposed by SWBT in sections 1.1.1 and 1.1.2 be updated and that additional design options be added. With each proposed design option each party is responsible for providing its own fiber optic terminal at its respective end. WCOM's proposed language provides the parties greater flexibility in designing their networks:

There are four basic Fiber Meet design options. The option selected must be mutually agreeable to both Parties. Additional arrangements may be mutually developed and agreed to by the Parties pursuant to the requirements of this section.

> *Design One: CLEC's fiber cable (four fibers) and SWBT's fiber cable (four fibers) are connected at an economically and technically feasible point between the CLEC and SWBT locations. This interconnection point would be at a mutually agreeable location approximately midway between the two. The Parties' fiber cables would be terminated and then cross-connected on a fiber termination panel as discussed below under the Fiber Termination Point options section. Each Party would supply a fiber optic terminal at their respective end. Either party may lease fiber from the other party, or from a third party, to fulfill its obligation to share the investment in the fiber. The POI would be at the fiber termination panel at the mid-point*

meet.

Design Two: CLEC will provide fiber cable to the last entrance (or SWBT designated) manhole at the SWBT tandem or End Office Switch. SWBT shall make all necessary preparations to receive and to allow and enable CLEC to deliver fiber optic facilities into that manhole. CLEC will provide a sufficient length of Optical Fire Resistant (OFR) cable for SWBT to pull the fiber cable through the SWBT cable vault and terminate on the SWBT fiber distribution frame (FDF) in SWBT's office. CLEC shall deliver and maintain such strands wholly at its own expense up to the POI. SWBT shall take the fiber from the manhole and terminate it inside SWBT's office on the FDF at SWBT's expense. Each Party will supply a fiber optic terminal at its respective end. The Parties will agree what remuneration, if any, CLEC will receive for providing the majority of the fiber optic cable. In this case the POI shall be at the SWBT designated manhole location.

Design Three: SWBT will provide fiber cable to the last entrance (or CLEC designated) manhole at the CLEC location. CLEC shall make all necessary preparations to receive and to allow and enable SWBT to deliver fiber optic facilities into that manhole. SWBT will provide a sufficient length of Optical Fire Resistant (OFR) cable for CLEC to run the fiber cable from the manhole and terminate on the CLEC fiber distribution frame (FDF) in CLEC's location. SWBT shall deliver and maintain such strands wholly at its own expense up to the POI. CLEC shall take the fiber from the manhole and terminate it inside CLEC's office on the FDF at CLEC's expense. Each Party will supply a fiber optic terminal at its respective end. The Parties will agree what remuneration, if any, SWBT will receive for providing the majority of the fiber optic cable. In this case the POI shall be at the CLEC designated manhole location.

Design Four: Both CLEC and SWBT each provide two fibers between their locations This design may be considered where existing fibers are available or near each Parties' location. Both CLEC and SWBT will provide fiber cable to the last entrance manhole (unless both parties designate otherwise) at the other's respective locations. Both CLEC and SWBT will provide a sufficient length of Optical Fire Resistant (OFR) cable for the other to run the fiber cable from the manhole and terminate on each parties respective fiber distribution frame (FDF) in each parties respective location. Each party shall deliver and maintain such strands wholly at its own expense up to the POI. Each party shall take the fiber from the manhole and terminate it inside each party's respective office on the FDF at each party's respective expense. Both parties will work cooperatively to terminate each other's fiber in order to provision this joint point-to-point SONET system. Both parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. Each Party will supply a fiber optic terminal at its respective end. Either party may lease fiber from the other, or from a third party, to fulfill

its obligation to share the investment in the fiber. The Parties will mutually agree upon the POI. The parties agree that Design Option #4 is the target architecture except where is not feasible or the parties otherwise agree.

Section 3 – Joint Facility Planning -- OC-3 is too small for networks in the dynamic telecommunications market we face today. The smallest size WCOM would want today is OC-48.

Section 3.3.1 -- The process to add capacity to facilities can be a lengthy one. This is because with facilities, the issue is adding additional equipment or adding additional fiber. With this in mind, WCOM proposes that the percentage to trigger increasing capacity should be 50%.

Sections 3.3.2 and 3.3.6 -- Augmenting a trunk group requires a shorter implementation cycle that adding capacity on facilities. WCOM therefore proposes that the percentage be 75%.

Section 3.3.4 -- Using a forecast based on history to justify provisioning a larger facility network is problematic. For voice traffic, past history was a good indicator for future growth. For internet traffic, where growth is exponential, past history has lead to the provisioning of an insufficient network by SWBT.

Sections 4 and 5 -- Virtual and physical collocation interconnection and SONET-based interconnection should be described in the PIA, not in tariffs -- i.e., SWBT's F.C.C. No. 73, its access tariffs -- which have not been subject to rigorous review (particularly when compared to the collocation tariff proceeding currently before the Commission).

Section 7 – Leasing of Facilities

In order to provide further explanation regarding leasing of facilities, Section should be revised to include the following process information:

Leasing of facilities for purposes of Attachment 11: Network Interconnection Architecture will be subject to the mutual agreement of the Parties.

CLEC will have the option to lease interconnection facilities at the rates found in Appendix Pricing UNE - Schedule of Prices.

The Requesting Party will provide a written leased facility request that will specify the A- and Z-ends (CLLI codes, where known), equipment and multiplexing required and provide quantities requested. Requests for leasing of facilities for the purposes of interconnection and any future augmentations are subject to facility availability at the time of the request.

Any request by either Party for leased facilities where facilities, equipment, or riser cable do not exist will be considered and the Requested Party may agree to provide under a Leased Facilities Bona Fide Request (BFR) Process as defined below:

A Leased Facilities BFR will be submitted by the Requesting Party in writing and will include a description of the facilities needed including the quantity, size (DS1 or DS3), A- and Z-end of the facilities, equipment and multiplexing requirements, and date needed.

The Requesting Party may cancel a Leased Facilities BFR at any time, but will pay the Requested Party any reasonable and demonstrable costs of processing and/or implementing the Leased BFR up to the date of cancellation.

Within ten (10) business days of its receipt, The Requested Party will acknowledge receipt of the Leased Facilities BFR.

Except under extraordinary circumstances, within thirty (30) business days of its receipt of a Leased Facilities BFR, Requested Party will provide to the Requesting Party a written response to the request. The response will confirm whether the leased facilities will be offered or not. If the leased facilities will be offered, the Requested Party will provide the Requesting Party a Leased Facilities BFR quote that will include the applicable recurring rates and installation intervals.

Within 65 calendar days of its receipt of the Leased Facilities BFR quote, the Requesting Party must confirm its order. If not confirmed within 65 calendar days, the Requested Party reserves the right to modify or withdraw its Leased Facilities BFR quote.

K. Attachment 11 – Appendix Interconnection Trunking Requirements (ITR)

WCOM has several additional modifications that update Attachment 11 to reflect regulatory and industry developments:[6]

Section 1.1 -- The phrase "as long as CLEC does not combine traffic in order to avoid payment of access charges for intraLATA and interLATA traffic originating by or terminating to a customer who is not an CLEC local exchange customer" of Section 1.1 should be stricken. The same issue arises in Section 1.3 of the main Attachment NIA. The Texas PUC's decision in the Waller Creek[7] arbitration is instructive.

In Waller Creek, the Texas PUC ruled that Waller Creek Communications, Inc. ("WCC") "can use UNE dark fiber (or other UNEs) to carry traffic for any other telecommunications provider regardless of who is serving the retail, local end use customer." Waller Creek at 1. The Texas PUC did require SWBT to collect a residual interconnection charge—a charge inapplicable in Oklahoma.[8] The PUC further stated "[o]ne way to keep SWBT whole as to RIC revenues that it would otherwise collect in accordance with its current retail tariffs would be to bar WCC from providing wholesale access services to non-CLEC IXCs. With such a blanket restriction in place, however, WCC would be precluded from offering what may be a valuable and competition-

[6] Trunking is a dynamic area that has caused problems between CLECs and SWBT in the recent past. Furthermore, the growth of the Internet is changing many of the networking rules over a short period time. Accordingly, in order for the Commission and Staff to have as much information as possible on this important issue, WCOM is providing fairly detailed comments on its trunking/network requirements in this section.

[7] Docket No. 17922, *Petition of Waller Creek for Arbitration with Southwestern Bell Telephone Company*, Public Utility Commission of Texas, Second Order on Appeal of Order Nos. 9 and 2 (April 22, 1999) ("Waller Creek")

[8] The RIC was to be removed as part of the Texas PUC's universal service docket; however, SWBT was entitled to the RIC in the mean time.

enhancing service to non-CLEC IXCs, and the non-CLEC IXCs would be, as a class, precluded from acquiring dark fiber from WCC." Waller Creek at 9-10.

Section 1.3 -- There are instances when CLECs will change their network, *e.g.*, adding a switch, that does not necessarily trigger the need for SWBT to adjust its network. The language of the first sentence of this paragraph should be changed to:

> If either Party changes the methods by which it trunks and routes traffic within its network, it will afford the other Party the opportunity to examine the possibility of trunking and routing its traffic in the same manner for purposes of interconnection.

Section 1.4 -- This section includes language that is dated and unnecessary. WCOM suggests the following replacement language:[9]

> SWBT will allow CLEC to use the same physical facilities (e.g., dedicated transport access facilities, dedicated transport UNE facilities) to provision one-way or two-way trunk groups that carry Local, intraLATA and interLATA traffic originated by a CLEC customer or terminated to a CLEC customer or a customer who is not a CLEC local exchange service customer.

Section 2.1.1 -- During the collaborative sessions before the Texas PUC and associated trunking forums, there was discussion of SWBT's trunking practices that revealed that SWBT often used trunking practices that were different from the trunking that is offered to CLECs. WCOM suggests the following addition to this section: "SWBT will not impose any restrictions on a CLEC that are not imposed on its own traffic with respect to trunking and routing options afforded the CLEC."

Finally, SWBT is requiring CLEC's to trunk to each tandem in an Exchange Area. CLECs should not be responsible for paying for the facilities underlying these trunk groups. CLECs should pay for their side of the network but SWBT should pay for its side of the network as demarcated by the point of interconnection (POI). CLECs may be

willing to trunk if traffic exceeds a certain level (e.g., one DS1's worth of traffic). Requiring trunking to every tandem when CLECs do not have a sufficient level of traffic would inefficiently utilize both parties' switch ports. The same issue arises in Section 2.1.1 of the main Attachment NIA.

Section 2.1.2 -- WCOM requests local/intraLATA trunk groups separate from the interLATA trunk group (i.e., a Meet Point Billing trunk). The O2A language would force WCOM to reconfigure its networks and force WCOM to use "percent local usage" (PLU) to bill for the traffic that is not what WCOM requires from either a network or billing perspective. Also, the language that the trunk group will be provisioned as two-way but used as one-way is problematic. WCOM is currently converting its two-way trunks that are routed as one way to two-way trunks routed as two-way. The same issue arises in Section 2.1.2 of the main Attachment NIA.

Section 2.3 -- A *dedicated* trunk group is preferable since it specifies that no other traffic is allowed on the same trunk group with the 911 traffic. The term "segregated" may mean that other traffic is allowed on the same trunk group and required for each NPA. WCOM will route its traffic to the appropriate 911 tandem. SWBT should be able to further segregate the traffic, if necessary, to each NPA.

Section 2.5 -- The section states that SWBT will establish reciprocal mass calling trunks when CLEC establishes Choke NXX's and tandem. Many CLECs do not have tandems as traditionally defined by SWBT (instead, using next generation switch/tandems) and this section could arguably imply that SWBT would not be required

[9] Everything after the first sentence is dated and has been deleted. Clarifying language to the first sentence is highlighted.

to provide reciprocal choke trunk groups. Clarification to the contrary is respectfully requested.

Section 2.6 – Operator Services

Additional language regarding Operator Services should be added to the agreement.

Operator Services/Directory Assistance Trunk Group(s)

Inward Operator Assistance (Call Code 121) - CLEC may choose from two interconnection options for Inward Operator Assistance.

Option 1 - Interexchange Carrier (IXC)

CLEC may utilize the Interexchange Carrier Network. CLEC will route its calls requiring inward operator assistance through its designated IXC POP to SWBT's TOPS tandem. SWBT will route its calls requiring inward operator assistance to CLEC's Designated Operator Switch (TTC) through the designated IXC POP.

CLEC will use the same OSPS platform to provide local and IXC operator services. Where appropriate, CLEC will utilize existing trunks to the SWBT TOPS platform that are currently used for existing IXC inward operator services.

Option 2 - CLEC Operator Switch

CLEC will identify a switch as the Designated Operator Switch (TTC) for its NPA-NXXs. SWBT will route CLEC's calls requiring inward operator assistance to this switch. This option requires a segregated one-way (with MF signaling) trunk group from SWBT's Access Tandem to the CLEC switch. CLEC calls requiring inward operator assistance will be routed to SWBT's operator over an IXC network.

If SWBT agrees through a separate appendix of contract to provide Operator Services and/or Directory Assistance for CLEC, the following trunks groups are required:

Directory Assistance ("DA")

CLEC may contract for DA services only. Directory Assistance calls shall be sent over Local Interconnection Trunk Groups using NPA and 555-1212. This trunk group is set up as one-way outgoing only and utilizes Modified

Operator Services Signaling (2 Digit Automatic Number Identification (ANI)). CLEC will have administrative control for the purpose of issuing ASR's on this one-way trunk group.

Directory Assistance Call Completion (DACC)

CLEC contracting for DA services may also contract for DACC. This requires a segregated one-way trunk group to SWBT's TOPS tandem. This trunk group is set up as one-way outgoing only and utilizes MF signaling. The CLEC will have administrative control for purposes of issuing ASR's on this one-way trunk group.

Busy Line Verification/Emergency Interrupt (BLV/EI)

When SWBT's operator is under contract to verify the busy status of the CLEC's End User loop, SWBT will utilize a segregated one-way trunk group with MF signaling from SWBT's Access Tandem to CLEC switch. The CLEC will have administrative control for purposes of issuing ASR's on this one-way trunk group.

Operator Assistance (0+, 0-)

This service requires a one-way trunk group from CLEC's switch to SWBT's TOPS tandem. This trunk group may carry DACC calls in addition to OA calls. MF and Operator Services signaling will be required on the trunk group. CLEC will have administrative control for the purpose of issuing ASR's on this one-way trunk group.

10 Digit-Exchange Access Operator Services Signaling:

CLEC will employ Exchange Access Operator Services Signaling (EAOSS) from the equal access end offices (EAEO) to the TOPS switch that are equipped to accept 10 Digit Signaling for Automatic Number Identification (ANI).

Operator Services (OS) Questionnaire

If CLEC chooses SWBT to provide either OS and/or DA, then CLC agrees to accurately complete the OS Questionnaire prior to submitting ASRs for OS and DA trunks.

Section 3.0 -- For CLECs with internet intensive traffic, sizing trunk groups based on 2% blockage at the season busy hour is not sufficient. Such "next-generation" traffic requires 1% at the (daily) busy hour. Also, these "next-generation" networks should not be based on voice standards such as Neil Wilkinson.

L. Attachment 12 -- Compensation

WCOM also has several concerns with Attachment 12 (Compensation) of the O2A.

Section 1

By deleting substantial parts of Section 1, SWBT is attempting to write out its obligation to pay reciprocal compensation on all local traffic, including internet traffic, despite the fact that (1) the Commission has approved such compensation arrangements, such as in the AT&T/SWBT interconnection agreement (which contains virtually the same language as the earlier Brooks/SWBT interconnection agreement) and (2) the Circuit Court of Appeals recently overturned the FCC's order that internet traffic is not local exchange traffic. Not surprisingly, SWBT proposes to strike the language in Section 1 that references the Texas AT&T agreement on this subject. Under SWBT's proposal, CLECs are left with the "Bill and Keep" option or the "Negotiate/Arbitrate" option, neither of which provides for compensation for all local exchange traffic.

Section 2.3 -- This paragraph appears to be redundant to Attachment 11 (Network Interconnection Architecture).

Section 2.4 -- As a point of clarification, do the provisions of Section 7.5 also address this issue?

Section 3 -- SWBT is writing out its obligation to pay reciprocal compensation for all traffic, including internet traffic. WCOM also wants to ensure that SWBT and CLECs receive symmetrical treatment for reciprocal compensation. The fact that a CLEC engineers and configures its network in a more efficient manner than SWBT should not work against the CLEC.

Section 4.1 -- As a point of clarification, what happens with more than three parties?

Section 5.2 -- The references to the Carrier Common Line (CCL) charge should be stricken. The last clause in the paragraph: " … as set forth in each Party's intrastate access service tariff" is sufficient to address the issue. As the industry moves away from CCL, all carriers will delete it appropriately from their tariffs.

Section 6 – MBP Billing – Lost Data

MBP Billing – lost data

It is important to have provisions for lost data in the MPB environment so each company may bill the IXC for traffic originated or terminated via the jointly provided switched access service. The first notice of error should be sent as soon as it is detected, so either company may have an opportunity to correct the error before more data is lost. Additionally, there is an industry standard record exchange required for MPB, where in some cases the originating end office is required to cut the originating record, or the tandem office is required to cut the terminating record. If either company were to lose these records, both companies would not be able to bill the IXC for this traffic and hence lose revenue. The provision for lost data would allow for the companies to work together for recovery, or estimates should these records be lost, and as a last resort, bill the

company that lost the records for the lost revenue. Prudent parties in a contractual arrangement would include such provisions for lost data.

WCOM proposes that the following language be added to Section 6.0:

6.7 Errors may be discovered by CLEC, the IXC or SWBT. Both SWBT and CLEC agree to provide the other Party with notification of any discovered errors within two (2) days of discovery.

6.8 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within sixty (60) days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data. This estimate may be based on several methodologies, such as an estimate of the volume of lost messages and associated revenue based on information available concerning the average revenue per minute for the average interstate and/or intrastate call or based upon at least three (3), but no more than twelve (12) months of prior usage data, if available.

6.9 If switched access detail usage data is not submitted by SWBT in a timely fashion, both companies will cooperatively work together to estimate the billing to the IXCs in accordance with either the CLEC or SWBT access tariff, as mutually agreed, for estimating usage. One methodology could be to review the total minutes of used on the IXC subtending trunk group and distribute the traffic by IXC based on the percentage of traffic that IXC has in the LATA. This estimate will be billed to the IXCs. If the IXCs do not pay the bills, as a last order of recourse, SWBT shall be liable to CLEC for the amount of lost revenue.

6.10 If switched access summary usage data is not submitted by CLEC in a timely fashion, both Companies will cooperatively work together to estimate the billing to the IXCs in accordance with the either the CLEC or SWBT access tariff, as mutually agreed for estimating usage. One methodology could be to review the total minutes of use on the IXC subtending trunk group and distribute the traffic by IXC based on the percentage of traffic that IXC has in the LATA. This estimate will be billed to the IXCs. If the IXCs do not pay the bills, as a last order of recourse, CLEC shall be liable to SWBT for the amount of lost revenue.

92-type record process

WCOM proposes that SWBT's use of the 92 originating records process be abolished. Under the existing process, if either an ILEC or a facilities-based CLEC routes a call over SWBT facilities, billing is processed using the 92 originating records process. This process measures the point as which the call enters or originated on the

network and identifies the company receiving the call. The originating company then provides the records to the terminating company, which verifies and uses the records to bill the originating company for reciprocal compensation.

The primary objection to the 92 originating records process is that the use of originating records turns the entire records process on its head. With the 92 originating records process, the terminating carrier, the party seeking payment, relies on information from the originating carrier, the party paying the bill, to generate the bill. WCOM's position is that the terminating carrier should be responsible to making the necessary network recordings on which the terminating billing would be based.

WCOM proposes that Category 11 terminating records be used to bill for reciprocal compensation. With Category 11 records, the carrier terminating the call collects the call records. The Texas Public Utilities Commission ("TPUC") has ruled that the use of terminating records is a more efficient and less burdensome method to track the exchange of traffic. The TPUC also found that terminating records impose less cost upon the terminating carriers than the 92 originating record process. Finally, the TPUC has concluded that where technically feasible, terminating records shall be used to bill originating carriers.

Section 7.3 -- As a point of clarification, Minutes of Use should be measured in "actual conversation seconds."

Section 7.5 -- Switched access rates are the appropriate charge for calls passed without CPN. As to the language referring to intraLATA toll rates, WCOM asserts that the CLEC is entitled to receive intraLATA toll when it has the end use customer.

M. Attachment 15 – E911

In order to ensure the accuracy of WCOM's end user data, WCOM proposes that the parties work together to ensure that accuracy of the data transfer by verifying it against the MSAG. The following language should be included to section 2.4:

> *2.4 In addition, SWBT will provide CLEC with a statistical report in a timely fashion and in accordance with the methods and procedures described in the above-mentioned document for each file downloaded by CLEC to SWBT's DBMS, ~~so that CLEC may ensure the accuracy of the end user records.~~* ***SWBT shall work cooperatively with CLEC to ensure that accuracy of the CLEC's end user data by verifying it against the MSAG.***

At times there are errors between the DBMS, selective router, and ALI databases. WCOM has no control over these three databases. WCOM therefore proposes that there be an affirmative duty upon SWBT to correct any such processing errors by adding the following language be included as section 2.9:

> *2.9 SWBT agrees to work expeditiously to correct any internal processing errors between the DBMS, selective router and ALI databases.*

Section 6.1 -- WCOM objects to the broad 30 day language in the context of E911, as it is by default tied to section 10.1 in the O2A General Terms & Conditions. Section 10.1 provides SWBT the ability to terminate service for late payments (past 30 days). Termination of E911 service poses an immediate danger to CLEC customers, and public interest as a whole. Additionally, termination poses an extreme liability to the CLEC; a liability that far exceeds what exposure should be for a late payment. WCOM proposes a modification of the General Terms & Conditions section 10.1, as well as the language in E911 section 6.1 to curtail SWBT's ability to terminate service.

N. Attachment 18 – Mutual Exchange of Directory Listing Information

Section 3 -- WCOM should not be restricted to use the subscriber list information solely for providing DA services. WCOM proposes to strike any language in Attachment DLI that restricts its use of SWBT's subscriber listings to solely for the purpose of providing DA services.

Section 4 -- WCOM and SWBT should not be restricted from selling or transferring subscriber listing information. Section 222(e) of the FTA of 1996 requires telecommunications carriers that provide telephone exchange services to provide subscriber list information in a nondiscriminatory manner. Subscriber listing information is by its definition public information available for publication. SWBT's attempt to maintain control over this public information impedes competition because it limits the transfer of information to competing carriers.

Section 6 -- The obligation to exchange directory listings should be governed by the term of the interconnection agreement. There should not be a separate term for Attachment DLI. Otherwise, there will be different expiration dates for the various attachments to the agreement. All the terms and conditions of the agreement should expire at the same time for purposes of contract administration.

O. Attachment 19 – White Pages -- Other

Section 2 -- It is in the best interests of both parties to have accurate forecasts. Since forecasting for local customers is a relatively new process for WCOM, working cooperatively with SWBT to ensure that forecasts are as accurate as possible is a reasonable and desirable request.

WCOM proposes the following language be added to section 2.7:

2.7 During the first year of the term of this agreement, the Parties will work cooperatively to establish a forecasting process for CLEC's use.

WCOM respectfully requests the ability to order additional copies of the white pages, beyond the delivery dates that are outlined in Section 2.7. SWBT should deliver telephone directories to WCOM's new customers who did not receive directories during the annual mass delivery and to WCOM customers who request additional directories after the annual mass delivery.

Section 6 -- The obligation to exchange directory listings should be governed by the term of the interconnection agreement and should not have a separate term for Attachment WO-O.

P. Attachment 21 -- Numbering

Section 2.1 – This section, which requires an NXX for each exchange and shared mandatory calling scope, results in a gross misuse of numbering resources. Also, for Section 3.1, $7500 plus the party's costs is more appropriate, as reflected in the T2A

Q. Attachment 22 – Directory Assistance

Section 1.4 -- WCOM objects to the language in 1.4 that both requires CLEC to warrant non-interference of this provision, as well as indemnify SWBT from "any and all causes of action which may be brought by an alternate operator services provider…" Such a warrant and indemnification as it is outlined in section 1.4 is too broad, and may coerce an indemnification from the CLEC that is anti-competitive by nature. Furthermore, as a general offering by SWBT, the O2A necessarily should be a competitive offering and not a shield against causes of action brought by third parties to the agreement. WCOM requests this paragraph be stricken.

Section 3.2.1 -- WCOM objects to section 3.2.1 that provides SWBT the opportunity to brand CLEC services as SWBT's if CLEC is unable to furnish branding information within 30 days of Service Commencement. CLEC should not be forced to relinquish corporate identity in favor of a competitor for failure to provide branding information. Rather, the service should go unbranded. Additionally, SWBT should not gain the benefit of branded advertising in DA merely by default from the CLEC. Therefore, unbranded phrasing should be the favorable alternative when CLEC fails to supply branding information on time.

Section 3.3 – WCOM questions whether SWBT has completed the call branding implementation process in all SWBT Operator and Directory Assistance platforms so that this requirement should be updated.

In any event, at all times, un-branding of OS/DA calls should be available to CLECs. Moreover, the stipulation that CLEC will not request interim un-branding for calls that are branded by automated systems is unreasonable and anticompetitive. This lengthy interim period, pared with the added value SWBT receives by not un-branding CLEC purchased OS/DA services provides no incentive for SWBT to act with any immediacy in the un-branding process. WCOM suggests section 3.3 acts as a deterrent to CLECs requesting un-branding services, rather than a competitive offering from SWBT.

Section 6.4 -- The requirement that SWBT will be the sole provider of DA for one year is overly restrictive and should be removed.

Section 7.4.4.1 -- WCOM requests cost justification for the prices identified in 7.4.4.1. WCOM also objects to the stipulation that there will be no true-up for prices. This seems to indicate the SWBT also agrees the prices are excessive and not cost based.

By not permitting prices to be trued-up upon final Commission determination, SWBT is imposing anticompetitive pricing language.

R. Attachment 17 -- Performance Remedy Plan

Section 4.1 – WCOM believes that the permutation test should be used in instances where there are less than 30 data points. For 30-plus data points, the modified z-test should be used.

Section 6.5 – It is arbitrary and imprudent to agree to reduce the performance measurements by 50%. Performance measurements should only be reduced in the event there is a concise set which truly captures all of the issues.

Sections 7.3 and 7.3.1 – If SWBT reaches the yearly amount of penalty caps and non-compliance continues, the OCC should review SWBT's performance and determine whether additional dollar amounts are necessary to ensure compliance.

Sections 8.1 and 8.2 – WCOM opposes the use of a k-value table. This extra forgiveness is not necessary given the high degree of confidence utilized in the critical z-factor.

Section 8.3 – WCOM opposes the addition of this paragraph because it would appear to shield SWBT from penalties for noncompliance.

Section 9.3 – It is unclear whether SWBT is using the k-values for Tier-2 assessments. WCOM opposes utilizing any k-value tables because the k-value results in extra forgiveness for SWBT.

Section 10.1 – WCOM opposes SWBT's reduction of the "no reports filed" and "incomplete reports filed" penalties.

Section 10.3 – WCOM opposes SWBT's reduction of past due assessment penalties.

Section 10.4 – WCOM opposes SWBT's reduction in the dollar amount of procedural threshold provisions allowing for escrow of damages obligations.

Section 13 – WCOM supports the original Section 13 (December 16, 1999 Amendments) which SWBT has deleted for the O2A. This section should be added back into Attachment 17 of the O2A.

S. Attachment 25 -- xDSL

This attachment proposed by SWBT in its O2A is the original DSL language from the T2A agreement. This language has since been revised based upon the November, 1999 Rhythms/Covad DSL arbitration award in Texas. The DSL language in Attachment 25 of the O2A should also reflect the results of the Rhythms/Covad arbitration.

The Texas PUC has proposed interim rates for xDSL analog and digital loops, conditioning charges, and loop makeup information. These interim rates will apply until the Texas commission approves new cost studies (that have recently been filed by SWBT). WCOM proposes that the OCC consider these Texas interim rates for use in the O2A. The interim rates SWBT proposes in the O2A are astronomically higher than the interim rates used in Texas and, thus, serve only as an anticompetitive barrier to CLEC entry into the DSL market in Oklahoma. For example, the interim nonrecurring conditioning charges in Texas for loops 12,000 feet in length but less than 18,000 feet in length are between $10.82 and $35.06. In the O2A, for loops up to 17,500 feet the same conditioning charge ranges from $392.88 to $1,079.21.

-III-

PERFORMANCE REMEDY PLAN

A. SWBT's Performance Remedy Plan is Inadequate to Prevent Backsliding

A strong performance plan is important today and will become even more critical after SWBT takes the final steps necessary to complete the opening of its local markets to competition. Although there is some facilities-based competition in parts of Oklahoma, that method of entry works primarily for large and medium-sized business customers in high-density geographic areas, and CLECs cannot rely exclusively on their own facilities to serve residential and small business customers in most geographic areas. That is why it is still true in Oklahoma that "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market." MI Order[10] ¶ 332; *see* NY Order[11] ¶ 81.

Until facilities-based competition has grown to the point where CLECs have other options for connecting to their customers if they encounter discrimination from SWBT, the OCC cannot rely solely on the market to protect against backsliding. The FCC has recognized the importance of performance remedy plans with consequences sufficiently severe to deter backsliding by BOCs after they enter the long-distance market, without the need for lengthy regulatory proceedings. *See* NY Order ¶¶ 435-37, 441; MI Order ¶

[10] *In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997) (the "MI Order")

[11] *In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC No. 99-404 (rel. December 22, 1999) (the "NY Order").

394. The performance plan that SWBT has proposed is inadequate to provide a sufficient deterrent to discriminatory conduct.

There are at least three critical components to an effective performance remedy plan: First, the plan must set standards that, when met, will ensure effective local competition. Second, the plan must require reliable and effective measurement and reporting of all competition-affecting functions to determine if the BOC has met the standards. Third, the plan must provide for remedies that are sufficiently severe and self-executing to give a BOC an incentive it does not otherwise have -- to cooperate with competitors who seek to take away its market share. *See* NY Order ¶ 433. SWBT's performance plan includes reporting requirements and standards for many of the key local service functions that are measured. However, there are a few critical areas not measured at all and not subject to standards or remedies (most notably all aspects of change management), and the remedies are far too trivial and watered down to provide the appropriate incentives to SWBT.

B. Description of the O2A Performance Plan

The O2A plan establishes performance metrics for specified functions and divides them into two tiers: Tier I, which are described as "individual customer" (*i.e.* end user affecting) measures and Tier II, described as "competition affecting."[12] Monetary payments are made to individual CLECs if SWBT fails to provide parity or meet a benchmark (a metric with no retail analog) for the set of metrics included in Tier I. The

[12] WCOM does not agree with the claimed distinction between Aend user affecting≅ and Acompetition affecting≅ measures. If poor performance by SWBT for a given function can adversely impact a local customer of a CLEC (*i.e.*, Aend user affecting≅ functions such as loop installation and restoration), that function necessarily is competition-affecting. Similarly, SWBT conduct that harms CLECs ultimately harms consumers, whether directly or indirectly. Local competition will not succeed when Aend users≅ are adversely affected by SWBT=s poor performance.

determination whether parity or a benchmark was not satisfied is based on a statistical methodology described in the plan and discussed below. Payments for violations of Tier II metrics (as defined by the plan) are made to the Oklahoma State Treasury, but only if SWBT misses the standards for three consecutive months. Within each tier the measures are divided into categories of high, medium, or low, purportedly based on the importance of each measure. Each class has different payout amounts. In Tier I, the remedy payments range from a low of $25 per month for each occurrence to a high of $800 per month B and even this supposedly "high" payment applies only if SWBT misses the most important type of standard for six months in a row.

C. The level of remedies is trivial

1. Inadequacy of low per-occurrence payments

The primary defect with the O2A plan is that the base remedy amounts are simply too low to give SWBT the appropriate incentive to cooperate with its competitors in the local market. The core remedy provisions of the plan, in Tier I, call for remedy amounts of only $25, $75, and $150 per occurrence. The notion that these amounts would have an impact on a company the size of SBC is nothing short of comical.

Assume, for example, that after weeks of competitive bids WCOM wins the business of five key business customers. All five experience extended, unplanned service outages because SWBT botches the cutovers. SWBT applies all the statistical tests it includes in the O2A plan and confirms that it violated the cutover standard for WCOM customers that month. The impact on WCOM would likely be that some of the customers would discontinue their relationship with WCOM for local service, and others may discontinue using WCOM for long distance and other services because of the

outages. Indeed, WCOM's prospects for new customers could be significantly impaired because word would get out that customers are losing dial tone when they switch to WCOM, or WCOM will have to advise prospective customers that it cannot guarantee the customer will not lose dial tone for significant and unplanned periods. Weighed against all this harm to WCOM, SWBT would pay Tier I remedies of a few hundred or a few thousand dollars as its market share became even more entrenched.

There is no need to speculate as to the theoretical results, however, as the Texas PUC staff analyzed SWBT's performance, and the applicable remedy amounts, from June 1999 to August 1999. *See* PUC Staff Three-Month Performance Evaluation for SWBT.[13] The results are telling. During that period SWBT performed poorly in many critical areas, but the remedies staff calculated based on the T2A plan were trivial. For example, the Tier II assessments included:

- X $13,167 payment by SWBT for missing significantly more repair appointments for CLECs than for its own customers, three months in a row (PM 3805; DF);

- X $1,667 payment by SWBT for missing the standard for loop installation within the required time period, three months in a row (PM 5601) (for standard of 95% on time, SWBT installed only 83% of loops on time for CLECs);

- X $3,667 payment by SWBT for significantly and repeatedly discriminating against CLECs by missing due dates for loops (e.g., missing 9% of due dates for CLECs in July, 1999, and 1/2 of 1% of due dates for its own customers the same month) (PM 5804).

See SWBT Texas 271 App. C, Tab 1845, att. 2 (PUC staff chart titled "Trouble Spots B Tier 2 Measures That Do Not Comply With Standards for Two Out of Three Months").

[13] The staff memorandum can be found in SWBT Appendix C, Tab 1849 of its Texas 271 application filed with the FCC. The appendices to the same memorandum are separately filed in SWBT Appendix C, Tab 1845.

Similarly, the Texas PUC staff calculated potential damage amounts for Tier I misses. The paltry amounts that were triggered, in many cases for substantially poor performance, are reported in Attachment 9 to the staff's analysis (SWBT Texas 271 App. C, Tab 1845).

Although the Texas PUC staff has apparently not performed similar calculations for the past three months, SWBT recently released information on its website showing the amount of remedies it paid for both Tier I and Tier II payments in November. In that month SWBT paid a grand total of $2,050 in Tier I remedies, and $0 for Tier II.[14] SWBT paid this amount despite missing numerous performance standards, and many by a wide margin.

The Common Carrier Bureau has noted its concern with per-occurrence payments, focusing on the calculation of such payments for low-volume services.[15] As the examples above illustrate, per-occurrence remedies result in woefully insignificant remedies even for higher volume services and order types.

SWBT trumpets the Tier II remedy payments payable to the Oklahoma State Treasury, but these payments are not triggered unless SWBT has discriminated against the entire CLEC community for three consecutive months. The problem is that even one month of poor performance, such as during a CLEC's ramp-up before it has established a reputation in the local market, can seriously erode prospects for local competition. And it is difficult to imagine that even SWBT believes two consecutive months of poor performance would not gravely impact any CLEC at any stage of market entry. Yet all

[14] *See* https://clec.sbc.com/clechb/restr/pm/pm.cfm.

[15] *See* Letter from Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, to Priscilla Hill-Ardoin, Senior Vice President, SBC (Sept. 28, 1999).

SWBT need do is choose particular months to meet the standards in order to render the Tier II payments useless. SWBT can easily target CLECs during any given month without fear of invoking Tier II remedy payments. Indeed, the Tier II scheme allows SWBT to target a particular CLEC for poor performance (such as during a key ramp up or marketing campaign), but avoid any payments by aggregating that performance with adequate performance to other CLECs. In short, the Tier II system will rarely, if ever, be triggered, leaving SWBT with only a prospect of a slap on the wrist from the clearly inadequate remedy amounts in Tier I.

2. Caps on remedy amounts further weaken plan

The SWBT plan is further weakened by the imposition of caps on the per-occurrence payments (in addition to the overall plan cap). To the extent that per-occurrence payments could ever amount to an appreciable amount (possibly by an extended shut-down of all services for all CLECs), they would be reduced by the per-measurement caps to ensure that SWBT never pays a remedy with any teeth. CLECs need assurances that the local market will be open for the long term.

3. Remedies do not increase for more severe violations, and increase insignificantly for repeated violations

In addition, the O2A plan is ineffective because it does not adequately (or in most cases, does not at all) take into account the magnitude and the duration of poor performance by SWBT. SWBT will not be encouraged to provide quality service to CLECs, let alone to improve poor performance, when it is faced with the same trivial amount for missing a deadline by 500 hours as it is for a half-hour delay, and when it pays the same amount for providing timely order status notices 5% of the time as it does

for compliance 85% of the time. Neither Tier I nor Tier II of the plan provides for increased remedies based on the severity of the violations.

Moreover, under Tier II SWBT pays the same amount of remedies each month even if it fails to correct a severe problem for months on end. Under Tier I, the remedy amounts payable to CLECs increase, but insignificantly, for repeated violations. For Tier I "medium importance" standards, the remedy amount is a paltry $75 per occurrence for the first month, increasing to only $400 for four consecutive months of poor performance, and only $600 per occurrence for six months or more of repeatedly bad performance. For standards SWBT recognizes as the most significant (the "high" category), the per-occurrence payments begin at only $150, increase to $600 for four months of unimproved performance, and only $800 for six months or more of repeatedly inadequate performance.

Basic common sense dictates that a plan that is supposed to discourage backsliding should require increasing amounts based on both the magnitude of the poor performance (how far off the required standard SWBT performs) and the duration of the miss (how many months SWBT's performance remains out of compliance). SWBT's remedy plan does not provide for greater payments for more severe misses, and only the Tier I payments (which SWBT describes as not impacting competition) increase -- albeit minimally -- after repeated violations.

D. Misguided statistical loopholes lessen SWBT's obligations

The excessive statistical loopholes exacerbate the problem of the woefully insufficient remedy amounts in the remedy plan. For example, SWBT misuses a statistical test to artificially and irrationally lower all the benchmark standards (a standard

set at an absolute level because there purportedly is no retail analogue in SWBT's service to its own customers). The effect of this mistake is that the benchmark standards, which already include "forgiveness" for SWBT by not requiring 100% adequate performance, are watered down for no reason at all. The OCC should not be misled by this obvious flaw in the SWBT plan -- a flaw that SWBT inserted to further lessen its obligations. This loophole has absolutely no basis in accepted statistical principles. In other words, WCOM believes SWBT either meets or doesn't meet the benchmark, plain and simple. Another statistical application should not be added. In Texas, SWBT has agreed to eliminate the z-test on benchmarks!

Second, what SWBT calls its "k value" methodology is another statistical technique misapplied to achieve the effect of removing standards from the required list. Using the "k value exclusion," SWBT can excuse itself from violating a substantial number of standards in any given month. SWBT's justification for this practice is that it supposedly is necessary to account for random results showing false reports of disparity. The O2A plan already takes into account the possibility of randomness and, indeed, is already tilted in SWBT's favor by requiring a 95% confidence level. The additional level of "k value" forgiveness is unwarranted and further dilutes an already ineffective plan.

Third, through a different use of the "z value" than what Bell Atlantic employs in its performance plan, SWBT lessens its obligations to provide nondiscriminatory service even further by giving itself a passing grade for repeatedly marginal performance. The z value is used to determine the level of confidence that disparate performance data in fact show discriminatory conduct. Greater z values mean a greater chance that reports of disparate treatment to CLECs equate to discrimination. Z values greater than 1.645

trigger remedies under both the Bell Atlantic and SWBT plans. Because it is not as likely that a z score between 0.8225 and 1.644 indicates discrimination, neither the New York nor the Oklahoma plan requires remedy payments if the score in one particular month falls in that range. However, when there are recurring scores in that marginal range, statistically there is confidence that discrimination is occurring. Thus, for repeated scores in that range, the New York plan appropriately requires remedy payments (for scores between 0.8225 and 1.645). The Oklahoma plan does not, even if SWBT's performance continues at that unacceptable range for several months on end.

E. Important functions are not subject to standards

In addition to the problem of trivial remedy amounts for the standards covered by the plan, some vital local service functions are not covered by any standards in Oklahoma. For these, there are no self-executing remedies regardless how badly SWBT performs or discriminates. The most significant omission in the plan is change management, an area the FCC has recognized as vital to local competition. NY Order ¶¶ 102-103, 439 & n.1341. When an ILEC fails to adhere to change management notice requirements, it prevents CLECs from developing to the systems changes, which can delay entry or stop the operation of existing OSS interfaces. For example, change management rules require sufficient notice of SWBT software upgrades and testing to ensure that the new software does not shut down CLEC systems. But without performance standards for these critical areas, SWBT can violate the change management requirements at will, leaving CLECs with only the time consuming and expensive process of filing complaints before regulatory bodies -- after the violation has shut down

the CLECs' systems. An effective remedy plan would discourage SWBT from violating change management requirements in the first instance.

Notably, the Bell Atlantic performance plan includes several change management standards, including those relating to notification of system changes, software validation, resolution of problems discovered in Bell Atlantic's systems, and change management timeliness. *See generally* NY Order ¶ 439 n.1341 (complimenting New York PSC and Bell Atlantic for instituting performance standards for change management). All of these should be added to the Oklahoma plan.

F. **The Performance Remedy Plan Will Not Serve Its Intended Purpose to Prevent Backsliding**

The insignificant remedy amounts in SWBT's performance plan do not come close to counteracting the gain to SWBT from providing poor performance to its would-be competitors. SWBT benefits enormously from discriminating against CLECs, including (i) the benefit of retaining a customer's business, potentially for many years, when the customer loses confidence in a CLEC; (ii) the gain to SWBT from deterring further competitive entry by CLECs, including deterring CLECs from "ramping up" from low volumes used in initial entry; and (iii) SWBT's gain in market share as a source for "one stop shopping" due to customers' dissatisfaction with a competitor's service. The insignificant remedies in the performance plan, coupled with loopholes that will prevent the higher amounts from ever being triggered, do not come close to offsetting these long-term gains to SWBT from providing poor service to CLEC competitors.

The solution to this problem is not to make cosmetic fixes to the remedy plan as SWBT has done recently (e.g., raising a few sub-caps and eliminating some "k" value exclusions, but only until SWBT provides three months of nondiscriminatory

performance), but to do away entirely with the methodology of low per-occurrence remedies. Instead, remedy payments should be based on per-measurement amounts -- or significantly greater per-occurrence amounts -- that are high enough to affect SWBT's conduct, such as per-measurement amounts of $25,000 or more that increase based on the magnitude and duration of the poor performance.

The cap of $44 million will never be approached unless SWBT shut down or disconnected every actual or potential CLEC customer in Oklahoma. Thus, even assuming $44 million represented an appropriate incentive despite the far greater gains to SWBT from preserving its monopoly position and harming the reputation of competitors providing local, long-distance and bundled services, that cap has no relation to potential remedies, since even sustained, significant failures result in remedies of only a few thousand dollars. A cap that by definition will never be approached has no deterrent effect and is simply a distraction from the real issues. As the FCC has recognized, the question is not simply the amount of the overall cap, but whether liability "would actually accrue at meaningful and significant levels when performance standards are missed." NY Order ¶ 437 (emphasis added). The FCC properly concluded that "an overall liability amount would be meaningless if there is no likelihood that payments would approach this amount, even in instances of widespread performance failure." *Id.* That is precisely the case with the O2A plan.

The O2A plan must be recognized for what it is -- a gentle slap on the wrist that will have no impact on a company the size of SBC with so much to gain from preserving its local monopoly and impeding competition for "one stop shopping." The plan can be strengthened if the Commission acknowledges its obvious flaws.

G. Other Incentives Are Insufficient to Level the Playing Field

SWBT claims that it does not matter whether its remedy plan is itself effective in deterring discrimination because SWBT has other reasons to cooperate with competitors, including the performance conditions in the Order governing SBC's merger with Ameritech; the risk that the FCC will suspend SWBT's long distance authority; the threat of antitrust actions; the threat of payments from interconnection agreement remedy provisions; and the incentive SBC has to provide good performance in order to gain section 271 authority in its remaining states. *See* SWBT Brief at 48-53; NY Order ¶ 430.

The problem with all of these suggestions is that they are slow, uncertain, require extensive expenditure of resources by CLECs, and ultimately are ineffective at curbing the cumulative effect of "death by a thousand cuts" -- the day-to-day discrimination that has the cumulative impact of impeding or destroying competition. WCOM addresses the insufficiency of each of these alternatives in turn:

First, after-the-fact regulatory enforcement efforts -- particularly with technical issues, complex and disputed facts, and unspecified standards -- are at best a poor substitute for self-enforcing remedies based on failure to meet objective standards regardless of cause and proof. SWBT will always have the advantage of superior access to relevant information, and discovery in regulatory proceedings is limited, difficult, and time-consuming. Affected CLECs and regulators would have to spend an enormous amount of time and money to prosecute enforcement claims based on poor performance, both in regulatory proceedings and in subsequent review by the courts. A CLEC deciding whether to expend the resources to litigate an enforcement claim will have to weigh the great uncertainty in whether the desired result will be achieved. In addition,

CLECs do not know how deliberate, widespread and persistent performance failures must be before a regulator would be willing to withdraw SWBT's section 271 authority or impose other severe sanctions (such as a refusal to grant additional section 271 applications even if SWBT or other SBC ILECs have otherwise satisfied the checklist in another state).

Moreover, SWBT's current desire to obtain section 271 authority in additional states does not solve the problem because this incentive will at most last until SBC obtains section 271 authority in other key states in its region. SBC has the ability to obtain section 271 authority in these states reasonably promptly (and routinely contends that it has already met all the requirements of section 271 in all of its states). Decisions by CLECs to make major investments and long-term commitments needed for a meaningful launch of local service depend on some level of confidence that BOC performance will be acceptable over the long term, not just for a limited time until it is no longer in the BOC's interest to cooperate.

The Commission's assessment of any performance remedy plan must be based on what is needed to prevent post-entry backsliding in the long term. It would be difficult, if not impossible, for the Commission to raise or lower the bar for an effective remedy plan based on a fluid notion of just how much incentive a BOC has at any given time. The Commission should not set one standard today for SBC based on the premise that SBC will "behave" at least until it gains entry in its other states, only to increase the standard needed for an effective remedy plan after SBC gains entry in those states. It would be difficult at best to calibrate such a variable remedy plan.

As a result of these factors, the theoretical prospect of additional regulatory consequences that might be imposed at some unknown (but likely distant) point in time will have little practical impact on SWBT's conduct. These inherent problems with after-the-fact regulatory proceedings mean that efforts by even well intentioned and well-funded regulators have limited practical value.

Second, antitrust remedies are even more uncertain and resource intensive and therefore cannot significantly increase the incentive for nondiscriminatory, reasonable performance to CLECs provided by self-executing performance plans with solid standards and meaningful remedies. At a minimum, antitrust action would force CLECs to engage in protracted litigation about the reasonableness of the BOC's performance (apart from any remedy plan) and the causes of the poor performance. All of the factors that make regulatory litigation difficult, expensive and uncertain also apply to private antitrust actions. The delay and uncertainty in any final resolution of the case substantially decreases any deterrent effect.

Third, the performance conditions in the SBC/Ameritech Merger Order[16] do not make up for the deficiencies in the O2A plan. Those conditions are not even intended to serve the "anti-backsliding" purpose of a section 271 remedy plan. Indeed, the FCC emphasized in the Merger Order that it found only that the federal performance plan is sufficient to offset or prevent some of the potential harmful effects of the merger, but that the Merger Order performance plan is "not designed or intended as anti-backsliding measures for purposes of section 271." Merger Order ¶ 380. In contrast to the performance plan incorporated in the Merger Order, "performance programs that are

being developed by state commissions in the context of section 271 proceedings serve a different purpose and may be designed to cover more facets of local competition and to prevent a BOC from backsliding on section 271 obligations." *Id.* ¶ 481. Moreover, the Merger Order performance plan not only suffers from the defects identified above in the O2A plan, it actually contains a smaller subset of measures than are contained in the O2A, and no payments of any kind are triggered unless SWBT misses the standards for three consecutive months. In addition, any payments due under the Merger Order are offset by payments made under state performance plans. Thus, the Merger Order plan will have no appreciable "anti-backsliding" effect.

Finally, the prospect of SWBT facing additional liability under negotiated interconnection agreements with more strict remedy provisions ignores reality. The T2A plan, upon which the O2A is based, represents the most the Texas PUC was willing to impose on SWBT. It was precisely because of the inadequacies with remedy plans SWBT was willing to negotiate that CLECs complained; the Texas PUC rejected SWBT's approach and established a docket that led to the performance plan contained in the T2A. As the O2A is the most CLECs could attain for a performance remedy plan, it is no wonder that SWBT does not in this application point to a single interconnection agreement that contains a more effective remedy plan, including remedies more severe than those in the O2A. In the case of WCOM in Texas, while it was able to negotiate in its interconnection agreement a few provisions that are more effective than the T2A, the overall remedy scheme SWBT would agree to is far inferior to that in the T2A.

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[16] *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee,* CC Docket No. 98-141, Memorandum Opinion and Order, FCC No. 99-279 (rel. October 8, 1999) (the "Merger Order")

For example, the plan SWBT insisted on in negotiations allows SWBT to accumulate credits for "good behavior." That is, SWBT can deliberately discriminate against WCOM for key local service functions, but avoid any remedy payments by providing above-par performance for different and less important functions. This was one of the primary criticisms WCOM and other CLECs raised before the Texas PUC, and the result was the PUC forced SWBT to abandon that methodology in the T2A. In addition, SWBT refused in negotiation to include numerous important metrics in its interconnection agreements (many additional metrics were added to the T2A at the insistence of the PUC). Thus, the T2A remedy plan, and, hence, the O2A, as flawed as it is, represents the most CLECs were able to obtain after vigorous advocacy before the Texas PUC. The interconnection agreements are less effective and thus add little or no additional incentive for SWBT to provide reasonable, nondiscriminatory service to CLECs.

In sum, the O2A plan must by itself provide an adequate incentive for SWBT to provide reasonable, nondiscriminatory performance to CLECs on a day-to-day basis. Other possible remedies are too limited, too uncertain, and too costly to provide significant additional incentives. A plan that provides sufficiently severe self-executing remedies for failure to meet performance standards for all key local service functions is far and away the best means of encouraging SWBT to continue to provide interconnection and UNEs to CLECs on nondiscriminatory and reasonable terms. The gross inadequacies of the O2A plan described above are not offset by the theoretical possibility of other types of remedies.

-IV-

PERFORMANCE MEASURES

As the Commission is aware, many of the parties to this proceeding are participating in PUD 99-131, the performance standard docket. While SWBT is apparently pressing forward with its Oklahoma—271 application using version 1.6 of the Texas performance measures, many, if not most, of the intervenors, including WCOM, have urged the Commssion to conclude that proceeding prior to considering SWBT's 271 application.

There have been many changes to version 1.6 of the performance measures upon which SWBT is relying as a result of the Texas PUC's six-month review. Additionally, WCOM has submitted its suggested changes to version 1.6 in PUD 99-131. After careful consideration of the parties' positions and testimony in PUD 99-131, the ALJ has issued his order regarding the set of performance measures that should be deployed in Oklahoma. WCOM continues to urge the Commission to review SWBT's performance under the measures recommended by the ALJ, using three months of data before determining whether SWBT is providing service at parity or meeting the prescribed benchmark standards.