BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport	)	CC Docket No. 94-97, Phase II

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COMMENTS ON DIRECT CASES

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SUMMARY

Virtual collocation offers incumbent LECs many opportunities to disadvantage new entrants. Not surprisingly, the LECs have attempted to take advantage of virtually every such opportunity by including provisions in their virtual collocation tariffs that prevent interconnectors such as TWComm from establishing themselves as viable competitors in the local market. Moreover, of all of the LECs, Southwestern Bell is by far the most egregious violator of the collocation rules established by the Commission.

In particular, SWBT has, alone among the LECs, sought to implement "maintenance and operations management" requirements that will add significant costs to the virtual collocation service TWComm receives, degrade the service TWComm can offer to its subscribers, deny TWComm the ability to monitor its own network, and enable Southwestern Bell to gain access to TWComm's proprietary information. TWComm asks the Commission to address this issue promptly.

TWComm also asks the Commission to remedy the numerous other anticompetitive aspects of the LEC tariffs and Direct Cases. The most egregious of these include Southwestern Bell's attempt to raise the cost of interconnector designated equipment by refusing to permit $1 sale and repurchase agreements and to ask vendors to charge the LEC a higher price for interconnector equipment than it pays for identical equipment to be used in its own network. Southwestern Bell makes interconnection that much less viable by

trying to overcharge for (1) installation and maintenance services (2) riser tail and cable splicing service, as well as for (3) power and floor space.

Southwestern Bell and other LECs have also sought to establish insurmountable barriers to entry in their virtual collocation tariff rate structures and terms and conditions. For example, Southwestern Bell and others propose to establish non-recurring charges for interconnector equipment. Some LECs, again including Southwestern Bell, have also sought to wrest control of the choice of equipment and outside contractors from interconnectors.

TWComm asks that the Commission reject these and other anticompetitive aspects of the Direct Cases. But TWComm also asks that the Commission recognize the unmistakable lesson of this proceeding: the LECs, and especially Southwestern Bell, will resist the implementation of the virtual collocation regime at every step in the process and in any way possible. The appropriate regulatory response to this is obvious. The Commission must make it clear from the outset that it will play a highly interventionist role in overseeing virtual collocation and that it will in no case tolerate the kind of anticompetitive activity engaged in by Southwestern Bell.

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COMMENTS ON DIRECT CASES

Time Warner Communications Holdings, Inc. ("TWComm"), by its attorneys, hereby files its comments in response to the LEC Direct Cases filed pursuant to the Bureau's Order Designating Issues for Investigation in Phase II of the above-captioned proceeding.[1]

INTRODUCTION

As the Commission has recognized, implementation of an expanded interconnection regime which relies on mandated LEC virtual collocation services as a means of facilitating competition in the provision of local telecommunications services inherently affords the incumbent LECs considerable opportunity for anticompetitive behavior. The Commission initially chose to require physical collocation because it reduced, to some extent,

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[1] See Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase II, Order Designating Issues for Investigation (released September 19, 1995) ("Designation Order").

the potential for such behavior.[2] The Commission has subsequently accepted virtual collocation only as a second-best approach to expanded interconnection, while again recognizing the potential for anticompetitive abuse inherent in that regime.[3]

Although there are manifold opportunities for LECs to disadvantage would-be competitors, who must utilize the incumbent monopolist's virtual expanded interconnection service ("VEIS") in order to establish themselves in the marketplace, there are two forms of abuse that are especially important in the context of the instant review of LEC VEIS tariffs. First, through their tariffed VEIS offerings, several LECs have sought to establish, or at the very least influence, the price of interconnector-designated equipment ("IDE"), the most important single cost in VEIS. The effect of the rate levels and structure established by Southwestern Bell ("SWBT") in particular has been to impose excessive, unjustified costs on interconnector-competitors. Second, through their VEIS tariffs, the incumbent LECs have the opportunity to establish terms and conditions for the installation, maintenance and repair of IDE which allow them to raise their potential rivals' costs and in other ways impede the development of competition in the local loop.

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[2] See Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 F.C.C.R. 7369, 7391 (1993).

[3] See Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, 9 F.C.C.R. 5154 (1994) ("Virtual Collocation Order").

While significant potential for abuse in these and other areas is present in any collocation scheme, it is clear that the adoption of VEIS has made it more critical than ever that the Commission scrutinize closely the rates, rate structures and the terms and conditions of the LECs' VEIS tariffs. Without a strong and decisive regulatory presence, the incumbent LECs will simply continue to erect insurmountable barriers to entry into local access markets.

Not surprisingly, TWComm's review of the LECs' Phase II Direct Cases reveals that the incumbent telephone companies have attempted to take advantage of any and every opportunity to impair the ability of new entrants to establish themselves as viable competitors in the provision of local access services. Some of these attempts are deftly disguised while others are overtly anticompetitive. The instant comments focus on the most egregious examples of abuse and the most blatantly obstructionist of the LECs.

In particular, TWComm has focused on SWBT's attempts to undermine the Commission's VEIS regime as the most outrageous and damaging. At every turn, SWBT has openly flouted the Commission's established VEIS regulatory regime. SWBT's most damaging anticompetitive act is also its most obvious:

- SWBT, alone among the LECs, has sought to implement "maintenance and operations management" requirements that will add significant costs to VEIS, degrade the interconnector's service, deny it the ability to monitor and control its own network and, perhaps most importantly, enable SWBT to gain access to the interconnector's proprietary information.

In addition, the list of direct costs SWBT has overstated is virtually all-inclusive:

- SWBT has attempted to ensure that interconnectors pay an exorbitant price for IDE, by refusing to permit $1 sale and repurchase agreements and by asking vendors to charge SWBT a higher price for IDE than that which SWBT pays for identical equipment designated for use in its own network.

- SWBT has tried to further increase interconnector costs by overcharging for installation and maintenance.

- The company has similarly overpriced riser tail and cable splicing services at 300% above cost.

- It has also proposed an inherently unjust method for recovering the costs of power for IDE.

Similarly, SWBT's rate structure and other terms and conditions of its VEIS tariff reflect a conscious effort to deter or impede competition. The more anticompetitive features of the SWBT tariff include the following:

- SWBT has proposed to recover the purchase of IDE through high non-recurring charges, thus establishing a further barrier to entry into the access market. In an effort to justify its action, SWBT falsely asserts that a nonrecurring charge somehow replicates physical collocation and maintains that SWBT will never reuse IDE, an assertion which TWComm has learned is also not true.

- SWBT has attempted to inflate training costs by denying interconnectors full disclosure regarding the types of equipment for which its technicians are trained.

- SWBT has attempted to wrest control of the choice of IDE from interconnectors, thus defying the Commission's rule that LECs must accept any IDE that does not threaten the network.

Collectively, the rates, terms, and conditions established in SWBT's VEIS tariff will prevent the development of any

meaningful competition in local services within SWBT's region. Other LECs have similarly proposed terms and conditions that fall far short of the requirements of the Commission's VEIS regime. The Commission must respond decisively to these tactics. This round of Direct Cases is now the third opportunity LECs have had in which to demonstrate that they intend to comply with the VEIS regulations, and each time they have refused.[4] To ensure the development of at least some measure of competition, the Commission must reject the offending aspects of SWBT's tariff and Direct Case, as well as the aspects of other LECs' VEIS tariffs and Direct Cases that are anticompetitive in nature. In particular, the Commission should,

- Reject SWBT's maintenance and operations management requirements as a clear violation of the Commission's VEIS regime.
- Require all LECs to offer $1 sale and repurchase arrangements for IDE. In the alternative, the Commission should ensure that interconnectors pay rates for IDE based on the lower of (1) the discounted price that the LEC receives from vendors for equipment deployed in its own network, or (2) the price at which the interconnector is willing to sell the equipment to the LEC.
- Reject the attempts by SWBT as well as other LECs to inflate the cost of using outside contractors and to eliminate interconnectors' ability to determine for what purpose those contractors will be employed.
- Reject SWBT's outrageously high Riser Tail and Cable Splice charges, and also reject CBT's charges for Cable Riser Space.
- Require LECs to justify their seemingly excessive provisioning charges.

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[4] The other two opportunities were the initial tariffs and the Phase I Direct Cases.

- Require LECs to determine charges for power and floor space using the same loading factor methodology used by LECs to estimate these costs for their DS1/DS3 services.

- Require LECs that *choose* not to employ the $1 repurchase agreement approach to recover the cost of IDE over the depreciable life of the equipment through a recurring rate structure unless the IDE is *truly* "non-standard."

- Order SWBT to refund TWComm the $76,000 TWComm has paid for training SWBT technicians for AT&T equipment and prohibit SWBT from charging TWComm for any further training on AT&T equipment. The Commission should also institute a more general requirement that LECs provide interconnectors with a list of all of the equipment *for which their technicians have been trained.* The Commission should also reject CBT's attempt to charge for training on a network-wide basis.

Finally, beyond these more specific measures, the Commission should recognize the broader significance of SWBT's open opposition to the Commission's VEIS policies. SWBT has been, and will no doubt continue to be, even bolder "in the field," where transgressions are more difficult to document, particularly if the Commission allows SWBT's anticompetitive tariff provisions to remain in place. Accordingly, the Commission must make an open commitment to play an active role, to the full extent of its jurisdiction, in policing LEC tariffs and practices throughout implementation of the VEIS regime. Without such a commitment by the Commission, other LECs will only be encouraged to follow SWBT's lead and adopt an even more anticompetitive, obstructionist approach in their dealings with would-be interconnectors.

DISCUSSION

I. SWBT's MAINTENANCE AND OPERATIONS MANAGEMENT REQUIREMENTS ARE ANTICOMPETITIVE.

At the outset of this discussion TWComm wishes to bring to the Commission's attention a matter of critical competitive importance: the maintenance and operations management requirements imposed by SWBT. Stated in the simplest terms, SWBT's these terms and conditions (found in Tariff No. 73, Section 25.2.6) prevent TWComm from electronically monitoring and controlling its own network. Incredibly, SWBT contends that it should perform that function; that its technicians must monitor the TWComm Network; and that TWComm should willingly pay SWBT for facilities required to permit SWBT to inform TWComm when an alarm is indicated somewhere in the TWComm network. Among the LEC'S, only SWBT has advanced the notion that it should have primary access to monitoring functions. If SWBT is permitted to maintain this requirement, it will not only control that element of the TWComm network, but the quality of TWComm service as well.

The Commission has stated clearly that virtual collocation offerings must allow interconnectors the ability to perform remote monitoring and control functions.[5] The SWBT tariff falls woefully short of that mark.

TWComm has designed its network to assure instantaneous alarm detection and rapid isolation of trouble causes. It has marketed its service on that basis and has secured customers on

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[5] See Virtual Collocation Order, 9 F.C.C.R. at 5169-5170.

that basis. SWBT is aware of the differentiating characteristics of the TWComm network and its electronic surveillance and provisioning systems. SWBT's tariff terms and conditions are clearly calculated to eliminate the quality of service differentiation. In so doing, it not only thwarts competition, but also makes a mockery of virtual collocation as an approach to expanded interconnection.

A. SWBT's Mandatory Alarm Collection Device (ACD) Element Unnecessarily Inflates the Cost of Expanded Interconnection

SWBT introduced the ACD tariff element in March 1995 in Transmittal No. 2440, followed by Transmittal No. 2499, which established an ACD Access Link. Although SWBT's tariff does not expressly require the ACD, as a matter of practice SWBT claims that each interconnector must purchase ACD. In this regard, the would-be interconnector can either purchase a separate, dedicated ACD for each expanded interconnection arrangement, or use SWBT's ACD Access Link to connect multiple expanded interconnection arrangements in different local serving offices to a single ACD dedicated to a particular interconnector's use.

SWBT's purported basis for the ACD requirement is to allow it to "act diligently in complying with the requirement that IDE be maintained and repaired under the same time intervals and with the same failure rates . . . [as] for other comparable SWBT equipment.[6] Unfortunately, SWBT's reasoning is a sham that makes a mockery of the Commission's expanded interconnection policies.

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[6] Direct Case of SWBT at 34.

SWBT is attempting to use the Commission's own words as a thinly-veiled excuse to justify imposing significant additional costs on its competitors and to degrade the quality of competitors' services. IDE located at SWBT's central offices is an integral part of the TWComm SONET ring, and as such, TWComm has full capability (absent SWBT's preemption of this capability) to monitor its network and report any detected alarms generated by the IDE to SWBT. SWBT's ACD, however, unnecessarily supplants TWComm's monitoring and control functions.

There is simply no good reason for SWBT to duplicate this function and require interconnectors to purchase costly ACD equipment to allow SWBT to not only monitor IDE at its central offices, but the entire *TWComm Sonet Ring,* as well. As shown by MFS in its petition to reject or suspend the LEC tariffs under review in this proceeding, ACD facilities are "duplicative and serve no legitimate technical function."[7] In fact no LEC with virtual collocation tariffs, apart from SWBT, has insisted upon the placement of Alarm Collection Devices to monitor the interconnector's network. Significantly, SWBT control of that equipment also deprives TWComm of the necessary functionality for TWComm to perform remote monitoring and control of its own SONET ring. SWBT has not justified such outrageous terms and conditions in its Description and Justification accompanying the

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[7] Petition to Reject, or in the Alternative, Suspend and Investigate Proposed Tariff Revisions, filed by MFS in response to SWBT Transmittal No. 2499, September 28, 1995, at 3.

ACD tariff filings, nor has it justified them in the instant Direct Case.

Accordingly, the Commission should reject such requirements as duplicative and not technically necessary to SWBT to meet its IDE maintenance obligations under the Commission's virtual collocation order. The basis for this conclusion is all the more compelling since to comply with the SWBT tariff, TWComm would be required to relinquish control of its network monitoring function to its competitor, as detailed below.

B. SWBT's Requirements Violate Commission's Order by Denying TWComm Its Right to Remotely Monitor and Control Its Own Network

1. Operational Issues

Since April 1995, TWComm has been negotiating with SWBT regarding the monitoring provisions of its expanded interconnection tariff. SWBT has steadfastly maintained that it must have an X.25 Gateway Network Element (GNE) interface to the IDE multiplexers at their local serving offices, in order to determine whether technical problems in the TWComm ring are caused by TWComm's own equipment or the IDE specified by TWComm for installation in SWBT's local serving office. The technology of the SONET ring configuration does permit SWBT to access alarm information upon connection to the ring without the GNE. TWComm has a national contract for AT&T equipment which currently contains only a single GNE. This means that only one party can

access TWComm's network for remote monitoring and control.[8] At present, SWBT is demanding from TWComm complete access to the TWComm ring through the GNE to isolate troubles. This means that TWComm must relinquish its ability to control, maintain, and provision its own network.[9]

SWBT has recognized that certain IDE equipment cannot accommodate dual GNE and has tariffed an arrangement (see Section 25.2.6 of Tariff FCC No. 73) whereby an interconnector can purchase a T1 facility from a simplex (one-way) GNE port and associated DSU/CSU equipment to access the Alarm Collection Device. In effect, TWComm must pay SWBT to *access its own network* for monitoring and control purposes at a cost that TWComm estimates to be approximately $18,000 initially, with an annual recurring cost of over $20,000.[10]

Moreover, the information TWComm can glean from the SWBT arrangement is minimal and comes nowhere near the standards for remote monitoring and control envisioned by the Commission in its Virtual Collocation Order. In essence, TWComm would become

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[8] Once a dual GNE becomes available and operational, it will be possible for both TWComm and SWBT to have GNE monitoring on a single SONET ring. An operational dual GNE is not expected until the latter part of 1996. Even then, however, TWComm is hard pressed to see how it is reasonable to condition expanded interconnection upon its local competitor's right to monitor each and every element of TWComm's network.

[9] Access to the GNE and SONET ring of TWComm also creates an unacceptable security risk, as discussed below.

[10] In addition, TWComm would need to increase its work force to perform manual provisioning and maintenance functions in place of utilizing the network's mechanized capabilities.

hostage to SWBT's diligence in performing query functions. In addition, TWComm would only be able to "see" answers to the queries which SWBT performs on the ring.

Without SWBT assistance TWComm would not even have a way of verifying that the connection was working. A TWComm technician would receive only a basic alarm message indicating a problem somewhere in the fiber ring, and then would need to remotely log into the GNE at SWBT to diagnose the problem. This process cripples TWComm maintenance, injects delay into TWComm trouble-shooting, and emasculates TWComm as a competitor. Provisioning would work in a similar manner, and would preclude the "flow-through" provisioning process expected by customers.

TWComm has proposed to SWBT that TWComm control the Gateway Network Element for the SONET ring. Consistent with arrangements with other LECS, TWComm would be solely responsible for monitoring the ring with the understanding that TWComm would notify SWBT if there were a problem with their equipment. if TWComm were to cause SWBT repair technicians to be dispatched in error, then TWComm would be responsible for any time and material costs incurred. TWComm also has offered to reverse the SWBT tariff procedure and keep control of the GNE while providing SWBT access through an Alarm Collection Device.

However, both of these proposed solutions were rejected out of hand by SWBT. The alternative solutions which SWBT has offered fall far short of providing the type of quality maintenance and provisioning which customers in the access market

have come to expect. As a result, TWComm is placed at a significant disadvantage relative to SWBT. SWBT's tariff requirements and related practices have effectively eliminated the superior provisioning and surveillance capabilities TWComm built into its network and marketed to its customers. The Commission can only view this as SWBT's deliberate attempt to undermine TWComm's competitive position in the market to its own advantage.

If TWComm were to go forward under the current SWBT arrangements, the perception of quality on the part of access customers could permanently damage its market acceptance. Indeed, SWBT's tariff terms and practices operate to ensure that TWComm cannot meet critical components of its customers' established quality expectations.[11]

SWBT's unnecessary and anticompetitive terms and conditions directly violate the Commission's Virtual Collocation Order[12] and unquestionably diminish TWComm's business opportunity. To ensure that the pro-competitive purposes of its expanded interconnection policy are not thwarted by SWBT, the Commission must affirm that an interconnector has the primary right to access its own network and fully utilize its capabilities for remote monitoring and

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[11] In particular, TWComm's current Direct Measure of Quality requires a two hour response time that cannot be met under the scenario proposed by SWBT.

[12] See Virtual Collocation Order, 9 F.C.C.R. at 1569-1570. ("Interconnectors will be entitled to monitor and control [IDE] equipment remotely"). SWBT's current tariff provisions and practices effectively deny TWComm the benefits of this essential element of the Commission's expanded interconnection policy.

control purposes and reject any and all LEC tariff terms and conditions or practices that operate to negate this right.

2. Security Issues

Allowing SWBT, a competitor, access to the TWComm network poses an unacceptable security risk in that it provides SWBT with proprietary information regarding TWComm's network and traffic. Moreover, as TWComm's network evolves, SWBT would be able to gain greater and greater access to other facilities and equipment in TWComm's network. New upgrades to TWComm's IDE will establish an optical interface between the local SONET ring in SWBT territory and a digital cross connect machine which, through the TWComm data communications network, *will essentially give SWBT access to* the all of TWComm's optical interface which could extend beyond the local SONET ring. While access to proprietary databases would be password-protected, such protection can generally be overcome with relative ease.

Put simply, it is bad public policy to allow an incumbent LEC access to the highly proprietary network data of its competitors as a condition of service. No other industry would tolerate such a requirement.

Indeed, in speaking of the need for security in its own network, SWBT acknowledges the validity of this concern in its Technical Publication for virtual collocation. Section 5.b.1.5 states, "Due to network security reasons, SWBT cannot share an ACD with an interconnector or allow interconnectors to share an

ACD with each other."[13] Apparently SWBT's concern over network security is limited to competitors' access to SWBT's network and competitors' access to each other's network, and does not extend to SWBT access to its competitors' network.

This obviously self-serving, anticompetitive policy cannot be tolerated by the Commission and should not be allowed to continue. Again, the fact that SWBT is the *only LEC with such a requirement* demonstrates that SWBT's purported need to monitor interconnectors' networks to fulfill their maintenance obligations under the Virtual Collocation Order is hollow and baseless.

If the Commission permits SWBT to maintain tariff provisions and practices which significantly affect the quality of the access product which TWComm can deliver to the market and which jeopardize TWComm's national network security to continue unabated, the bottom line result will be that the Commission will have allowed SWBT to successfully thwart entry by a potential facilities-based competitor. Clearly such a result would be wholly inconsistent with the letter and intent of the Commission's expanded interconnection policies. To avoid this outcome, the Commission should make it clear that the tariff provisions and practices adopted by SWBT will not be tolerated.

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[13] SWBT Technical Publication for Virtual Collocation, Issue 2, August 1995.

II. THE DIRECT COST COMPONENTS OF VEIS TARIFFS

As the Bureau correctly points out, both the LECs' reported direct costs of providing virtual collocation services and the level of overhead loadings applied to these costs are "key factors" in the determination of the rates for virtual collocation. In order for the Commission's stated goal of making expanded access interconnection available through virtual collocation to be met, it is essential that appropriate rates for VEIS be established. If the LECs are successful in the manipulation of either of these key factors in the rate development process, they will be able to forestall meaningful competition by would-be interconnectors, who may be equally efficient or more efficient than the incumbent LEC. For example, even if appropriate overhead loadings are applied, a LEC can successfully engage in an anticompetitive price squeeze by basing its rates for VEIS on an acquisition cost for IDE which is higher than the cost for an identical piece of equipment used by the LEC to establish rates for comparable DS1 and DS3 services.[14]

The instant investigation of the direct cost components of both VEIS and the LECs' comparable DS1 and DS3 services is critical, therefore, if the Commission is to ensure that LECs do not use the cost development process to create artificial competitive advantages.

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[14] Each of the individual direct cost components identified in Issue A represent a similar opportunity for the LECs to use inflated VEIS direct costs to create a price squeeze.

Issue A.1: Charges for Provision of Interconnector-Designated Equipment.

In its Phase II Designation Order, the Bureau again noted the importance of this issue to the development of effective competition for access services, and reiterated the following requirements, established by the Commission in its Virtual Collocation Order:

> 1) For the purpose of obtaining interconnection through virtual collocation, interconnectors have the right to select the type of central office equipment dedicated to their use.
>
> 2) The Commission has observed that the purchase prices of this equipment would be an important factor in computing the LECs' cost-based rates for virtual collocation services.
>
> 3) The Commission has therefore decided that it is appropriate to require the LECs *to base the direct costs of providing interconnector-designated equipment on the lowest purchase price available to them to serve an interconnector.*[15]

There is broad industry consensus that the most effective, direct, and administratively simple means of ensuring this outcome is the adoption of the so-called "$1 sale and repurchase arrangement." Such an arrangement protects interconnectors by permitting them to predict their costs of interconnection through virtual collocation and, perhaps more importantly, removing from the control of a direct competitor a significant component of an interconnector's cost of providing service to its customers. Such an arrangement also benefits the LECs by eliminating any possible financial exposure that may exist relating to equipment that: (1) is purchased for use by an interconnector, (2) is not

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[15] See Designation Order at ¶ 15 citing Virtual Collocation Order, 9 F.C.C.R. at 5164, 5170, 5188.

in use by the interconnector (or other interconnectors) for its full depreciable life, and (3) is not reusable by the LEC.[16]

As a result, each of the LECs except SWBT, US West, and CBT included such a $1 sale and repurchase agreement in their original September 1, 1994 tariffs for virtual collocation. US West subsequently amended its tariff to make a $1 sale and repurchase provision available, leaving only CBT and SWBT with tariffs that do not include this option. A primary objective of the immediate investigation is to determine whether the method used by SWBT and CBT to determine the cost of IDE creates the opportunity for the creation of a price squeeze or the successful implementation of other anti-competitive pricing strategies.

CBT has clarified its position by stating that it will not enter into repurchase agreements with interconnectors, but is not opposed to purchasing IDE directly from an interconnector. While TWComm would prefer that CBT comply with the broad industry consensus and offer a $1 sale and repurchase option, CBT has offered a second-best alternative that -- if fully and properly implemented -- may be an effective means of assuring that the "lowest reasonably available purchase price" for IDE is used to determine rates. Specifically, CBT's proposed procedure is as follows:

> First, CBT will ask the interconnector whether and at what price the interconnector will sell the equipment to CBT. Secondly, if the

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[16] As we will explain in response to Issue B.1, this theoretical risk does not exist in reality for SWBT, and may not exist for CBT.

> interconnector-designated equipment is the same type of equipment used in CBT's network, then CBT will determine the price from its usual source (including any applicable discounts). If the interconnector-designated equipment is not used in CBT's network, then CBT will obtain a price quote from the manufacturer. *The lower of the interconnector's price and the manufacturer's price (including any applicable discounts) will be the value used to calculate CBT's nonrecurring equipment charge.*[17]

Such a process for determining the "lowest reasonably available purchase price" for IDE, while more complex than the $1 sale and repurchase agreement, appears to comply with both the letter and the intent of the Commission's stated standard for determining IDE costs, including the explanation "that it would find probative the price at which an interconnector may offer to sell the desired equipment to the LEC."[18] This approach, however, continues to suffer from the inclusion of excessive overheads in rates, a problem the $1 sale and repurchase approach avoids.

In contrast to the approach taken by each of the other LECs, however, SWBT continues to engage in IDE pricing practices which are clearly designed to prevent the meaningful introduction of expanded interconnection within its operating region. Based on all currently-available information, it seems clear that SWBT is

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[17] Direct Case of CBT at 1 (emphasis added).

[18] Designation Order at ¶ 15.

attempting, as it has in the past,[19] to circumvent the Commission's requirements regarding the acquisition of IDE at the "lowest reasonably available purchase price."

In its Direct Case, SWBT has indicated that it will determine the lowest available price for IDE through the following process:

> Upon receipt of a request from an interconnector to tariff a rate for a specific piece of equipment, SWBT contacts the manufacturer/vendor to obtain the best prices for the required equipment, engineering, and installation labor. In cases where Southwestern Bell already has a contract with the manufacturer/vendor, the interconnector gets the benefit of SWBT's negotiated best price.[20]

SWBT's assurance that it will develop its rates based on the "current best prices" for IDE is meaningless if SWBT has successfully sought to have the vendors charge SWBT a higher price for the equipment when purchased as IDE for an interconnector than SWBT is required to pay for an identical piece of equipment provided for use by SWBT for any other purpose. For example, if SWBT pays a discounted, contract negotiated price for the equipment used for any purpose other than as IDE, and can convince the manufacturers/vendors of this

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[19] SWBT first attempted to circumvent the Commission's rules when it required interconnectors who wished to control their IDE costs by selling the designated equipment to SWBT to sell as many units of the equipment as SWBT requested. Based on its review, the Bureau rejected this provision in SWBT's VEIS tariff, concluding that it was patently unlawful and "violated the Commission's pricing rules regarding interconnector-designated equipment and constituted an unreasonable practice under Section 201(b) of the Act." Designation Order at ¶ 8.

[20] Direct Case of SWBT at 5.

equipment to charge it the full non-discounted price when the equipment is purchased as IDE (and VEIS rates are based on this higher cost), a successful price squeeze can be created.[21]

Documents produced in the Texas state VEIS proceeding[22] indicate that SWBT has in fact engaged in such a strategy: SWBT has written to each of the manufacturers/vendors that provide its currently tariffed IDE *requesting* that these vendors charge it non-discounted, or "list," prices when selling equipment as IDE, while continuing to charge SWBT the substantially discounted contract price for identical equipment to be used for other purposes.[23] Responsive letters from vendors indicate that, with a single exception,[24] the manufacturer/vendors of the equipment

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[21] While the discounts offered by each of the respective vendors of this equipment were not revealed, a proprietary data request response provided by SWBT in the Texas Investigation (see discussion below) indicates that, in the aggregate, these discounts constitute a substantial percentage (at least 30%) of the list price of the equipment. See Rebuttal Testimony of SWBT Witness Michael Auinbauh, Schedule 2, pages 3-4, attached as Appendix A to these comments.

[22] Docket No. 12879 of the Public Utility Commission of Texas ("Texas Investigation") is an investigation into SWBT's proposed intrastate tariff for expanded interconnection through virtual collocation. Time Warner Communications of Austin, L. P., participated fully in the investigation as an intervenor.

[23] These letters were placed in the public record by SWBT during the Texas Investigation, in response to a data request and subsequently as an attachment to the Rebuttal testimony of SWBT witness Michael C. Auinbauh. They are attached as Appendix B to these comments.

[24] The 5/16/95 letter from G. T. Bay, Contract Management, AT&T Network Systems, to Larry M. Exier, Contract Manager, Southwestern Bell Telephone Company indicates that, after taking the issue under advisement, AT&T has decided to decline SWBT's request to be charged higher rates for IDE, and has instead

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