

and medium-sized businesses."³⁶ Locations served include Greenway Plaza, the Galleria area, Intercontinental Airport, and Clear Lake.³⁷ The network links to at least 20 interexchange carrier POPs. TCG also operates in Houston. In 1990, its network was only 7 route miles;³⁸ today it spans 275 and serves over 100 buildings.³⁹ MCI Metro is also planning to build a CAP network in Houston.⁴⁰ Time Warner, Houston's franchised cable provider, is also constructing a CAP network and has filed interstate tariffs with the FCC to provide dedicated and switched access services.⁴¹ Phonoscope, a cable TV company that aggressively competes for customers in apartment complexes and office buildings in the Houston metropolitan area, has approximately 400 route miles of fiber

³⁶MFS, MFS Network, company promotional material, Winter 1994, at 1.

³⁷Martin Zimmerman, "Phone Firm Seeking Local Service"; MFS Intelenet Looks At Largest Texas Cities, The Dallas Morning News, July 30, 1994, at 1F.

³⁸Teleport Communications, Teleport Communications Group Fact Sheet, May, 1994, at 3.

³⁹Local Competition at VII-104.

⁴⁰Edmund L. Andrews, "MCI Will Compete in Local Phone Service", New York Times, Mar. 6, 1995, at D1.

⁴¹Houston Common Carrier Week, Apr. 11, 1994.

and leases its excess capacity to other companies, including TCG.⁴²

21. Dallas/Fort Worth: TCG operates a 235 mile network throughout the Dallas/Fort Worth metroplex that reaches over 90 buildings.⁴³ TCG has been operating a system in downtown Dallas since 1991, and has formed a joint venture with TCI, the incumbent cable operator, to increase its system's fiber capacity by co-building on TCI's existing fiber network.⁴⁴ MFS has provided CAP services in Dallas since 1991. Its network now extends approximately 120 route miles and serves about 100 buildings.⁴⁵ In addition, MFS has plans to extend its network to Fort Worth in 1996.⁴⁶ Dallas is also listed by MCI Metro as

⁴²Houston Post, "Tiny Company Has Vast Role In Communications", Oct. 26, 1992 at E7; Faulkner Information Services, "Telecommunications Strategies", TCS02.70.775, at 1; Yankeevision Consumer Communications, "Cable Strategies for Competitive Telephony: Assessing the Sprint/Cable Alliance", Vol. 11, No. 15, at 16.

⁴³Teleport Communications, Teleport Communications Group Fact Sheet, May, 1994, at 3.

⁴⁴Local Competition at VII-104.

⁴⁵Local Competition at VII-69.

⁴⁶"Five States Tackle Local Competition Policy Actions and Issues", State Telephone Regulation Report, Aug. 11, 1994; Tom Steinert-Threikeld, "Sammons, Teleport to Link Networks", Dallas Morning News, Mar. 7, 1994, at 1D.

one of the first cities in which they intend to build a CAP network. Earlier this year, MCI Metro announced its CAP services were available in Dallas.⁴⁷

In addition to TCG, the Fort Worth area has two additional CAPs with operational networks, ACSI and Metro Access. Metro Access, which won franchise rights last year to build an 80 route mile fiber network linking 40 buildings in Fort Worth, Arlington, and Dallas, has signed multi-year contracts with at least two companies in Tarrant County.⁴⁸ ACSI, which operates a fiber network primarily in downtown Fort Worth, has also signed contracts with multiple customers.⁴⁹

22. San Antonio: FIBRCOM operates a 248 mile fiber network in San Antonio. FIBRCOM began CAP service in 1992, and now its "San Antonio Net" network connects 64 buildings and ten different interexchange carriers.⁵⁰ FIBRCOM is in the process

⁴⁷MCI Insider Liaison Conference Call Transcript, Feb. 1995, at 5.

⁴⁸Local Competition at VII-63.

⁴⁹Fort Worth Star-Telegram, "Firms providing fiber optics sign customers", Business Section, Apr. 27, 1994, at 8.

⁵⁰Local Competition at VII-34.

of being acquired by Time Warner.⁵¹ Metro Access has also announced plans to construct a CAP network in San Antonio.⁵²

23. Austin: Time Warner Communications (TWC) and Metro Access both have networks operational in Austin.⁵³ When completed, TWC's 120 mile network will serve buildings throughout Austin,⁵⁴ and Metro Access' 40 mile network, which the company estimates will be operational in 1995, will serve 28 buildings.⁵⁵

24. El Paso: El Paso is yet another Texas city being targeted by CAPs. ACSI is targeting second tier southern cities as far west as El Paso.⁵⁶ Metro Access is also

⁵¹San Antonio Express News, "Paragon Gets New Parent Firm", Jan. 28, 1995, at E1.

⁵²Dallas Business Journal, "Century Telephone Beefs Up Texas Holdings With Buyout", Dec. 2, 1995.

⁵³Austin American Statesman, "Austin Phone Access Heating Up", Feb. 8, 1995; Time Warner operates the cable franchise in Austin, offering 57 channels to 178,000 subscribers.

⁵⁴Austin American Statesman, "Company hopes to hold onto cable strength while expanding into telephone business", Dec. 5, 1993.

⁵⁵Local Competition at VII-63.

⁵⁶Telco Competition Report , "New CAP American Communications Services Targets Southern Cities", Mar. 4, 1994 at 2.

considering applying for a franchise in El Paso.⁵⁷ Time Warner is upgrading its CATV system with fiber⁵⁸ and is likely to expand its CAP operation to El Paso.⁵⁹ GST Telecom is also planning to construct a CAP network in El Paso within the next several years.⁶⁰

25. Other Texas Cities: Central & South West's CAP subsidiary, CSW Communications, is currently constructing a 185 mile network that will connect Corpus Christi, Harlingen and McAllen.⁶¹

⁵⁷Dallas Business Journal, "Century Telephone Beefs Up Texas Holdings With Buyout", Dec. 2, 1994.

⁵⁸El Paso Times, "Paragon To Add Channels", Mar. 11, 1995, at 8E.

⁵⁹Faulkner Information Services, "Telecommunications Strategies - Converging Technologies and Trends", TCS02.70.900, Mar. 1995, at 3.

⁶⁰Faulkner Information Services, "Telecommunications Strategies - Converging Technologies and Trends", TCS02.70.370, Jan. 1995, at 7.

⁶¹Local Competition at VII-21. Central & South West will spend \$25 million to buy existing fiber optic systems from its other subsidiaries. "Boucher Proposal Stirs Questions in House Energy Committee", Energy Report, Feb. 21, 1994. Another Central & South West subsidiary, Central Power and Light Co., will use the network on a daily basis, and CSW also plans to lease the system's reserve capacity. "CSW Leasing Reserve On Fiber Optic System", Electric Light & Power, Sept. 1994, at 32.

B. CAP Services

26. In SWBT's region, CAPs offer a wide variety of services to their customers, ranging from high-capacity special access to local point-to-point services, as well as long distance services. MFS, for example, announced that it was establishing a nationwide data network based on "asynchronous transfer mode" (ATM) technology.⁶² Dallas and Houston are both currently served by the ATM network, and St. Louis is soon to be added. The vast majority of CAP service offerings are tailored for high-volume customers. But as they expand their networks, CAPs are increasingly finding it profitable to serve smaller customers and are tailoring services to meet their needs.

27. Special Access Services: CAPs compete directly with SWBT in providing customers with access to interexchange carriers. The special access circuits that CAPs provide are used to connect end-users directly to a long distance carrier POP. The access provided can be used for dedicated WATS, 800, or other long distance voice or data services. CAP special access service offerings vary greatly in terms of circuit

⁶²ATM is a high bandwidth, low-delay, packet-like switching and multiplexing technique.

capacity and speed, but the vast majority of service is T-1 or DS-1 capacity. Special access is provided and priced on a per-circuit basis.

28. Through the special access provided by CAPs, customers may access the high capacity services of interexchange carriers, such as AT&T's Megacom and Uniplan, Sprint's Ultra WATS and Clarity, and MCI's Prism I and Vision.⁶³

Each of these plans offers customized inbound and outbound rates for switched and dedicated services. The customer is guaranteed a certain percentage off the carrier's current tariff rates, so that as tariff rates change, so do the customer's.⁶⁴ Based on the customer's total volume usage, a different discount is applied to incoming, outgoing, calling card, intrastate and international calls.⁶⁵ High volume usage customers can also order virtual networks, like AT&T's OneNet, MCI's WorldNet, and Sprint's VPN Premiere.

⁶³AT&T's Uniplan, MCI's Vision and Sprint's Clarity have largely superseded their older plans -- AT&T's Megacom, MCI's Prism I, Sprint's Ultra WATS. See Michael T. Hills, Carrier Pricing Increases Continue, Business Communications Review, Feb. 1995, at 32.

⁶⁴Id. at 32-33.

⁶⁵Id. at 14.

29. Point-to-Point: The same facilities used to route end-users' traffic to interexchange carrier POPs are also used to carry traffic between two different points on a single CAP network. Companies with more than one location in a metropolitan area can use CAPs for point-to-point links between their multiple sites.

30. Switched Services: Several CAPs in SWBT's region -- notably MFS and TCG -- could soon be offering switched local exchange services (including Centrex service and PBX trunks). Like special access, switched services can be used to connect an end-user to an interexchange carrier's POP, or to other customers in the serving area.

31. MFS Intelenet (MFSI), a subsidiary of MFS, recently announced acquisition agreements with Centex Telemanagement, a Centrex reseller, and RealCom, a shared tenant services (STS) provider. With these agreements and the ability to offer long distance services, MFSI has an established customer base to offer local exchange services as an STS provider⁶⁶ or long distance provider. TCG and MFSI recently installed their own

⁶⁶Only RealCom has STS properties in SWBT's region.

switches in Houston and Dallas to eventually offer Centrex and other local switched services. TCG has already conducted open houses in Dallas and Houston to pre-market its switched services.

32. Long Distance Services: While the vast majority of CAP revenue comes from the provision of access services, and to a lesser degree point-to-point services, CAPs are also entering the long distance market. MFS Intelenet, in Texas, Missouri, Arkansas and Kansas, offers long distance services, including MTS, WATS, 800 and resold operator services.⁶⁷ In a recent proceeding before the Public Utility Commission of Texas, MFS Intelenet described the services it provides as follows:

We are currently providing a full platform of long distance services in both Dallas and Houston which includes switched, outbound long distance, dedicated outbound long distance, switched inbound 800 service, dedicated inbound 800 service, calling cards and voice mail.⁶⁸

MFS Intelenet also advertises that, unlike the BOCs, it "can offer both local and long distance service through one carrier

⁶⁷In states where MFSI has received authority to offer local service, it can bundle its long distance services with its local services.

⁶⁸MFS Intelenet, Inc., Public Utility Commission of Texas, Docket No. 13282 , Dec. 7, 1994.

providing the customer with a single source for answers to all their telecommunications questions."⁶⁹

33. Brooks Fiber Corporation, which operates CAP networks in Oklahoma City and Little Rock, also operates as a long distance fiber reseller, an operation it acquired from another CAP (Phoenix Fiberlink) in late 1994.⁷⁰

34. KINNET advertises a "recently installed switching center [that] provides new and enhanced features to your existing communications." "Using a Northern Telecom DMS 100/200 switching platform," KINNET offers the end-user "1+, 800, calling and debit cards and operator services."⁷¹

II. CAP NETWORK EXPANSION

35. A customer in a building already on a CAP network can connect up to the CAP directly, in much the same way as the customer would link to SWBT's facilities. CAPs are generally

⁶⁹MFS Intelenet, Inc. Q&A, company promotional material (no date provided).

⁷⁰Brooks Fiber Communications, "Solutions - Quite A Year", Vol. 1, Issue 1, Feb. 1995.

⁷¹Kinnet & Fiber Optic Communications, Vision, company promotional material, at 12 (no date provided).

willing to serve any customer requesting their service, and routinely extend their networks to add new customers to their network.⁷² CAPs will determine whether it is economical for them to physically build their network out, lease facilities from third parties, or use alternative technologies to reach a new customer.

36. Nationwide, CAPs frequently advertise their willingness to extend their networks to serve individual customer locations and commercial buildings:

- "Our store [Brooks Brothers] was not on MFS Telecom's fiber network, but the company was willing to go the extra mile to assist us with our telecommunications needs by extending the network to our site."⁷³
- TCG extended its network approximately 15 miles to add J.C. Penney's headquarters location on Legacy Park in Plano.⁷⁴

⁷²See TCG Provisioning Policy Corporate Standards at 8-10. TCG Provisioning Center (TPC) is responsible for determining whether network capacity exists for completing the customer order. If network capacity does not exist, it will determine if TCG can successfully build new or augment the existing capacity to meet the customer's requested due date.

⁷³MFS -- A Suitable Choice For Brooks Brothers, MFS Network, company promotional material, Spring 1993 at 5.

⁷⁴TCG News Release, "TCG Delivers High Capacity Link For J.C. Penney In Texas", Sept. 14, 1992.

- "We will bring our digital network to your door -- to connect you with local, long-distance, and satellite carriers."⁷⁵
- "We go out and find a customer and then we figure how to build the system out to that customer."⁷⁶
- When Kansas City FiberNet completed its network in Kansas City, the company announced it would "reach every building downtown either through its network or an easy expansion."⁷⁷
- PSO/MetroLink notes that "[d]ependent upon the customer's service needs, and its proximity to the MetroLink System, a variety of options will be offered. After learning more about the business need of the potential customer, we can provide a design that will fit the requirements."
- "BFP's Oklahoma City network will span 33 route miles and will connect to more than 50 buildings when completed, with expansion into other areas of Oklahoma City as customer demand dictates, such as the growing West Reno business corridor and the airport areas."⁷⁸
- "Obviously we are not terminated into every building in the Kansas City area. We provide DS-1, DS-3 and dark-fiber services to those buildings on and near our network FiberNet stands ready to design and operate

⁷⁵Bay Area Teleport, "Your Best Business Connection", company promotional material (1994).

⁷⁶Gary Kim, "Carriers Prepare for Battle", Lightwave, June 1991, at 37, attached to Electric Lightwave, Here's some news for you . . . Let's Talk Rings . . . and Things, Promotional Brochure (1991) (quoting John Warta, President and CEO of Electric Lightwave Inc.).

⁷⁷Martin Rosenberg, "FiberNet Completes Its Downtown Expansion", Kansas City Star, Nov. 16, 1994.

⁷⁸Press Release, "Brooks Fiber Properties, Inc. To Build Network in Oklahoma City", company promotional material, June 24, 1994, at 2.

sophisticated, custom private networks for telecom-intensive customers that will meet their needs for today - and tomorrow."⁷⁹

37. ACSI is perhaps the biggest promoter of its flexibility: "To ensure that it provides the services that best serve the customers in each local market, ACSI first researches the long distance carriers, corporations and government agencies which would benefit from an alternative local telecommunications company. We then tailor our fiber optic network to their needs."⁸⁰

38. ACSI also notes that "[t]o serve customers in buildings on or near its backbone network, ACSI extends 'distribution rings.' Through its ability to use and resell local telephone network services, ACSI is also able to provide special access services to virtually any company in the metropolitan area."⁸¹

⁷⁹Letter from Quentin Hoover, Kansas City FiberNet, to Alisa Evans, Management Information Corp., company promotional material, June 23, 1992.

⁸⁰ACSI, company promotional material (no date provided).

⁸¹ Id.

39. Attached as Exhibit 5 of my affidavit are examples of customers served by CAPs, including their distance from the CAP's main fiber ring. Some of these buildings are more than a quarter-mile from the main fiber ring, and at least one building is more than a half-mile from the main fiber ring. Distances between customer locations and CAP fiber were measured on foot by SWBT personnel.

40. Often, customers need not even wait for fiber to be laid before utilizing CAP services. TCG advertises that "[a] Boston customer . . . didn't have time to wait for us to reach him with fiber. So we connected his office to our network through a microwave facility until the fiber loop was installed."⁸² Similarly, WinStar Communications, Inc. connects long distance companies with CAPs. In March 1995, WinStar announced the creation of a wireless fiber service in 30 licensed areas,⁸³ offering the last mile link to subscribers by microwave shots rather than terrestrial facilities. The

⁸²TCG, The people behind a decade of vision in local telecommunications: 1984-1994 (1994).

⁸³Areas served in SWBT's region include Dallas, Houston, St. Louis, and Kansas City.

company is currently marketing its services to CAPs, IXC's, and cellular companies needing a wireless fiber solution.⁸⁴

III. CAP CUSTOMERS

41. CAPs link interexchange carriers with high-volume end-users. Interexchange carriers routinely purchase access from CAPs at bulk rates and re-sell those CAP services to end-users. Many large volume end-users, however, purchase CAP services directly. Today, CAP users include not only Fortune 500 companies, universities and hospitals, but many small and medium-sized businesses as well. These same customers account for a significant percentage of SWBT's revenues.

42. For example:

- Computer-maker Gateway 2000 recently opened a 250-person satellite office in the Town Pavilion building in downtown Kansas City. Soon after opening its office the company signed up with Kansas City FiberNet, the 200-mile CAP network owned by Time Warner Corp., to receive high-speed dedicated access and private line transport. Gateway estimates that it will spend "thousands of dollars a month" for its telecommunications needs.⁸⁵

- In Houston, MFS has announced that its 260-mile fiber network is capable of serving "hundreds of small and medium-sized businesses" in the downtown area, Greenway

⁸⁴WinStar Communications, Inc., Press Release, Mar. 14, 1995.

⁸⁵Martin Rosenberg, "FiberNet Completes Its Downtown Expansion", Kansas City Star, Nov. 16, 1994.

Plaza, the Galleria area, the Intercontinental Airport area and the Clear Lake area.⁸⁶

- In Dallas, Teleport has maintained J.C. Penney as a customer since 1992. When it "turned-up high capacity DS-3 circuitry between J.C. Penney's new Legacy Park home office in Plano and its Park Central office," Teleport declared that "adding J.C. Penney as a customer sends yet another signal to the Texas business community about the benefits of a competitive local telecommunications marketplace."⁸⁷

- Kansas City FiberNet boasts that "all the long-distance carriers in Kansas City, as well as major corporations and government agencies, rely on FiberNet . . . Businesses with multiple offices or facilities throughout the Kansas City metropolitan area use private network links . . . Many of Kansas City's major corporations and heaviest telecommunications users opt for direct fiber access to their long-distance carriers."

43. In addition to the above examples, I have attached as Exhibit 6 to my affidavit a partial list of Dallas and Houston companies that use CAPs. Customers on this list range from financial institutions to a cosmetic company. This list was developed by Quality Strategies, Inc. in December 1994, under my direction. Quality Strategies personally contacted these companies to confirm their CAP use.

⁸⁶Martin Zimmerman, "Phone Firm Seeking Local Service; MFS Intelenet Looks At Largest Texas Cities", The Dallas Morning News, July 30, 1994, at 1F.

⁸⁷TCG News Release, "TCG Delivers High Capacity Link for J.C. Penney in Texas", Sept. 14, 1992.

IV. SWBT HAS LOST SIGNIFICANT MARKET SHARE

44. In Dallas, SWBT's share of DS-1-equivalent (high capacity) special access circuits has fallen sharply. By the fourth quarter of 1994, CAPs in Dallas had captured approximately 41 percent of the special access market.⁸⁸ MFS alone had 29 percent of the market, while TCG had just over 12 percent.⁸⁹ Approximately 17 percent of the point-to-point market in Dallas was also captured by CAPs.⁹⁰

45. By year-end 1994, CAPs in Houston had captured approximately 32 percent of the special access market and approximately 28 percent of the point-to-point market.⁹¹ MFS

⁸⁸Quality Strategies, High Capacity Service Losses: Fourth Quarter, 1994, at 5. Quality Strategies used the following methodology to calculate market share losses. First, it obtained lists of businesses in metropolitan areas from list brokers, and drew samples from these lists. It then conducted surveys based on random samples derived from these customer lists. Surveys were conducted using random number generation (RAND) algorithms for large business accounts (over 25 lines) in each metropolitan area surveyed. Quality Strategies' standard high capacity survey questionnaire includes more than 200 itemized questions regarding services in use, provider(s), quantity, pricing and decision making criteria. Sample sizes are designed to provide statistical validity based on a 95 percent confidence interval, with +/- 5 percent margin of error for each metropolitan area surveyed.

⁸⁹Id. at 17.

⁹⁰Id. at 5.

⁹¹Id. at 5.

had captured 23 percent of the special access market; TCG approximately 9 percent.⁹²

46. These market share losses understate the competitive significance of CAPs. CAP networks specifically target high concentrations of large customers. In Houston and Oklahoma City, for example, 24 percent of all local sales revenues within the Houston MSA⁹³ and the Oklahoma City MSA, are generated within 1000 feet of a CAP network. In Kansas City the corresponding figure is 29 percent; in St. Louis, 34 percent.⁹⁴ Exhibit 3 illustrates the local sales revenues generated by businesses within 1000 feet of CAP networks in several SWBT cities.

47. The percentages are even higher when one focuses on the most profitable business customers -- those with revenues

⁹²Id. at 21.

⁹³The United States is divided into 306 metropolitan statistical areas (MSAs).

⁹⁴Information from the Claritas American Business Information database was used to map locations of all businesses in SWBT's region using mapping software. Those businesses falling within 1000 feet of a CAP network were identified by the software. The local annual sales revenues of the businesses identified were then added together.

of \$10 million or more. For the special access traffic of those businesses, CAPs are potential competitors for 25 percent of the market in Houston, 27 percent in Oklahoma City, 31 percent in Kansas City, and 38 percent in St. Louis.

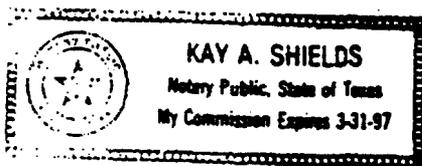
V. CONCLUSION

48. SWBT has seen a significant growth of CAP activity in its region over the past several years. In 1994 alone, eight new CAPs entered the region, while existing companies continued to expand their networks. Every major metropolitan city in SWBT's five state region is currently served by at least one CAP. Many second tier cities are currently served or planned to be served by CAPs as well. CAPs are making significant inroads into SWBT's high capacity market share in the CAP-served areas and are offering customers alternative choices to SWBT's high capacity access services.

I hereby swear, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Gilbert Rojas

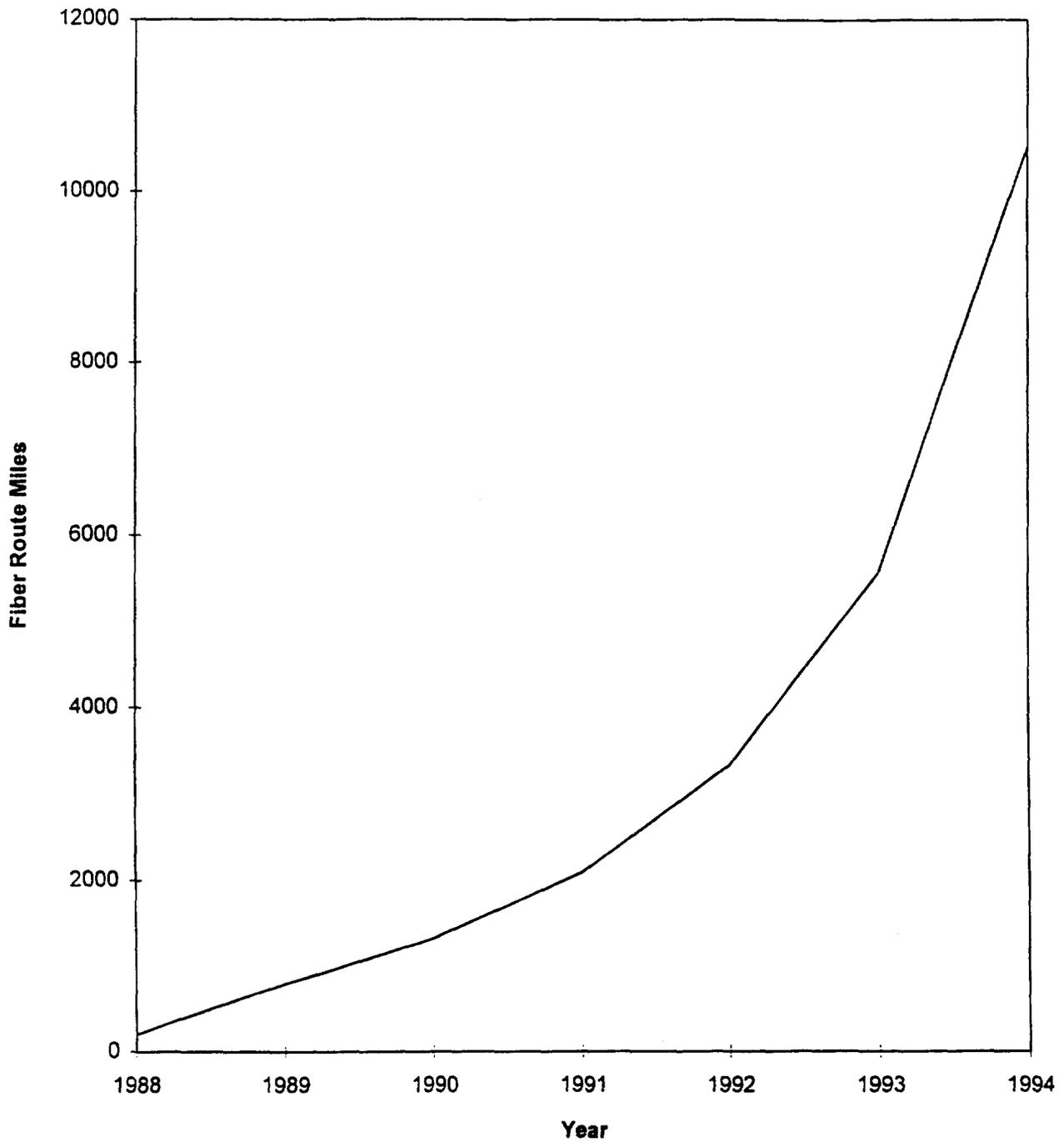
Sworn and subscribed this 28 day of April, 1995



Kay A. Shields

EXHIBIT 1

Nationwide CAP Growth



Source: Data for 1988-1993 from Kraushaar, Jonathan M., Industry Analysis Division, FCC, Fiber Deployment Update, End of Year 1993 at Table 14 (May 1994). 1994 data from Connecticut Research, 1994 Local Telecommunications Competition at II-1 (1994).

EXHIBIT 2

Emergence of CAPs in SWBT's Region

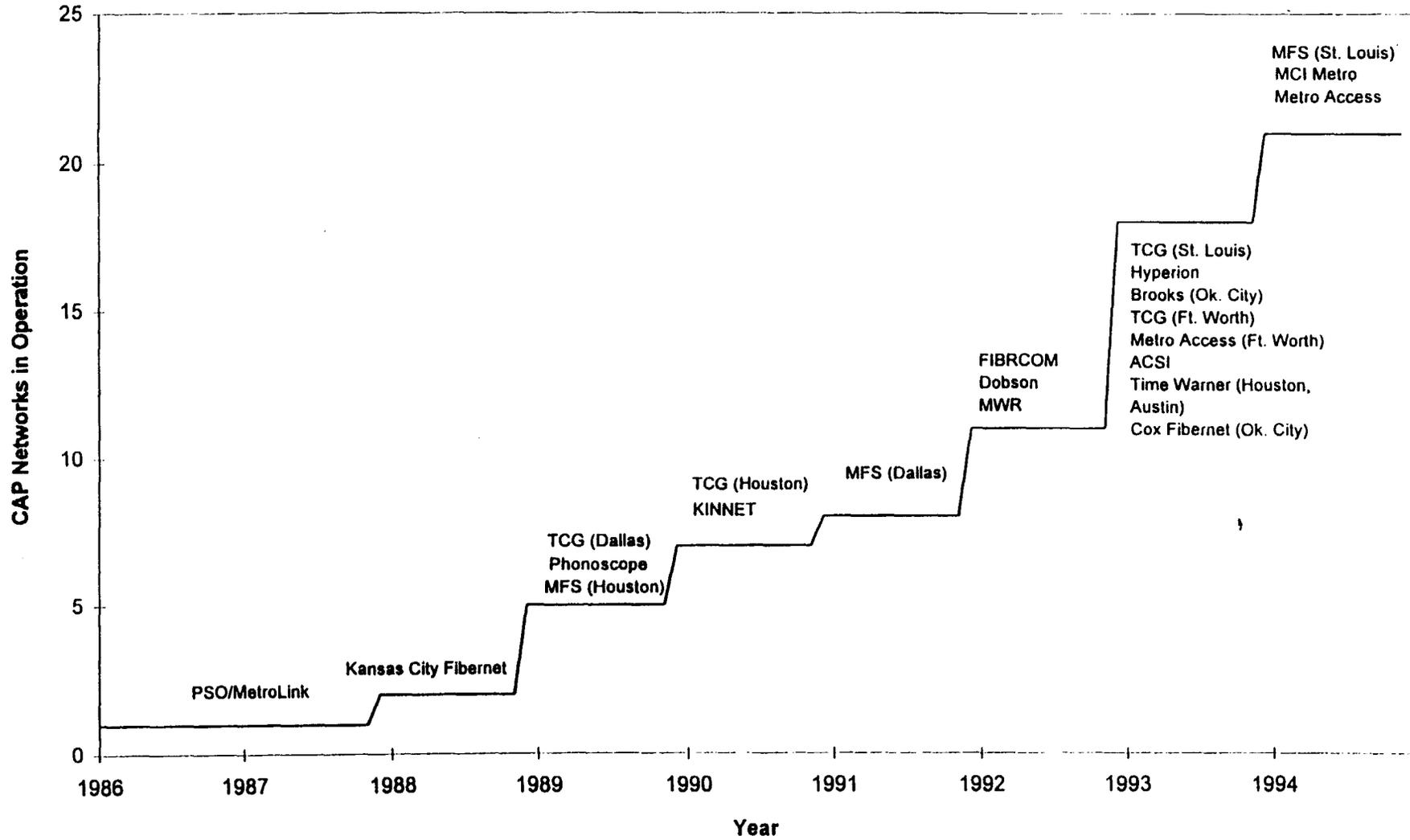


EXHIBIT 3