RECEIVED

FEB 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE OR LATE FILED

Southwestern Bell

FEB 14 1997

February 14, 1997

EX PARTE

Robert J. Gryzmala
Attorney

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.,
Washington, D.C. 20554

Re: Alarm Monitoring Services -- Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for Security Service Plan (CC Docket Nos. 85-229, 90-623 and 95-20); Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing and Alarm Monitoring Services (CC Docket No. 96-152)

Dear Chairman Hundt:

There is an old expression. "When you have the facts, pound the facts. When you have the law, pound the law. When you have neither, pound the table." The Alarm Industry Communications Committee's ("AICC's") January 31, 1997, letter to you regarding Southwestern Bell Telephone Company's ("SWBT's") Security Service Comparably Efficient Interconnection ("CEI") Plan merely "pounds the table."

Although AICC continues to distort key facts and omit others, SWBT detailed over six months ago exactly what its modified plan proposed. See Ex Parte Letter to William F.Caton, Acting Secretary, Federal Communications Commission from Todd F. Silbergeld, Director-Federal Regulatory, dated July 18, 1996 (attached). Since then, the facts have not changed. Indeed, on the same day that AICC submitted its letter to you, January 31, SWBT repeated these same long established facts to Commissioner Ness and Jim Casserly in the presence of AICC's legal counsel. AICC still has the facts wrong.

AICC also has the law wrong. During the discussion on January 31, we provided citations to cases that confirm that payment of commissions on a recurring, monthly basis is not inconsistent with an agency relationship. See Callahan v. Prince Albert Pulp Co. Ltd., 581 F.2d 314 (2d Cir. 1978); Select Creations, Inc. v. Paliafito America, Inc. 911 F. Supp. 1130 (E.D. Wis. 1995). Each case involved payment of a recurring, monthly commission to an agent. Moreover, SWBT noted then that such recurring compensation is customary in the telecommunications industry (e.g., telephone company and cellular sales agents) and elsewhere (e.g., the insurance industry).

One Bell Center
Room 3532
St. Louis, Missouri 63101

Phone 314 235-2515

Even if, as AICC claims in its letter (without record basis), SWBT were to receive a percentage of the unaffiliated alarm monitoring provider's revenues, it would have no legal significance. Our January 31 ex parte meeting brought the attendees' attention to the principle that an agreement to pay an agent compensation as determined by the amount of revenues generated by a new customer is not inconsistent with an agency relationship; rather, the revenues are not received as such (i.e., sharing), but are merely a basis of compensation. See 3 Am Jur 2d, Agency § 4. In addition, the agents in both Callahan and Select Creations received percentage commissions.

AICC's concerns about the alleged incentives for cross-subsidization and discrimination are fully addressed by SWBT's stated commitments to abide by the Commission's nine CEI plan parameters. AICC has not challenged any of these commitments.

Finally, AICC continues to try to re-write portions of the Telecommunications Act of 1996. In a related proceeding, the Commission declined to adopt a rule that AICC had proposed, because the Commission recognized that the proffered rule "would [have] extend[ed] beyond the statutory prohibitions of Section 275(d)." Telecommunications Carriers' Use of CPNI; Use of Data Regarding Alarm Monitoring Services Providers, CC Docket No. 96-115, Report and Order, released August 7, 1996, at para. 11 (emphasis added). AICC's proposal here would even more egregiously extend beyond the words of Section 275(a)(1). The Commission should again strongly reject AICC's attempts to re-write the 1996 Act and quickly approve SWBT's CEI Plan for Security Service.

Sincerely,

Robert J. Gryzmala /TPS

Robert J. Gryzmala
Attorney

Attachment

cc: Mr. William F. Caton
Commissioner James H. Quello
Commissioner Susan Ness
Commissioner Rachelle B. Chong
Ms. Regina M. Keeney
Mr. Thomas Boasberg
Mr. James Coltharp
Mr. James Casserly
Mr. Dan Gonzalez
Mr. A. Richard Metzger, Jr.

Todd F. Silbergeld
Director-
Federal Regulatory

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 326-8888
Fax 202 408-4806

July 18, 1996

Ex Parte

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Southwestern Bell Telephone Company's CEI Plan for Security Service, CC Docket Nos. 85-229, 90-623, 95-20

Dear Mr. Caton:

In accordance with the Commission's rules regarding ex parte presentations, please be advised that today, Steven Dimmitt, Michael Zpevak, Anthony Conroy, Kevin Haberberger and I representing Southwestern Bell Telephone Company (SWBT) met with Carol Mattey, Deputy Chief and Claudia Pabo, Legal Assistant to the Chief, Policy and Program Policy Division, Common Carrier Bureau, to discuss SWBT's pending Comparably Efficient Interconnection Plan for Security Service.

Written materials, which were used during our discussion, are attached to this letter to be included in the official record.

Should you have any questions regarding this subject matter, please don't hesitate to contact me.

Sincerely,

Todd F. Silbergeld

Attachments

cc: Ms. Carol Mattey
Ms. Claudia Pabo

I. OUTLINE OF SOUTHWESTERN BELL TELEPHONE COMPANY'S (SWBT'S) PROPOSED SECURITY SERVICE COMPARABLY EFFICIENT INTERCONNECTION (CEI) PLAN

SWBT's proposal contemplates the following:

A) **SWBT would undertake three distinct activities.**
   * Provide, install and maintain Customer Premises Equipment (CPE) purchased by the customer.
   * Provide billing and collections (B&C) services to the alarm monitoring service provider.
   * Act as a sales agent for the alarm monitoring service provider.

B) **Customers remain free to select the security service arrangement best suited to their needs.**
   * CPE only or CPE plus Monitoring - SWBT's proposal would allow customers to purchase alarm monitoring equipment from SWBT. Customers remain free, however, to purchase the equipment elsewhere. Customers who choose to purchase equipment offered by SWBT may, but need not, subscribe to the alarm monitoring service which SWBT would offer as a sales agent. They remain free to subscribe to any other alarm monitoring service, or to not subscribe to any monitoring service at all.

C) **The alarm monitoring service customer maintains a direct customer-provider relationship with the unaffiliated alarm monitoring service provider.**
   * **Contracts** - The customer will enter into a written contract with the alarm monitoring service provider, detailing the obligations and liabilities of each party. The contract alone controls the terms, conditions and price of the alarm monitoring service rendered.

   * **Billing** - Two separate and distinct charges will be prominently displayed on SWBT's bill:
     - The alarm monitoring service provider's service name will be clearly identified along with its associated charges.
     - A separate charge consisting of SWBT's associated CPE charge will also appear, when applicable.

     Telephone service will not be disconnected by any customer's failure to pay for the monitoring service and/or CPE charges.

   * **Charges** - The contract between the customer and the provider of alarm monitoring services will control/set the charges the customer agrees to pay for these services.

* <u>Customer Collateral</u> - All sales and other contacts with customers will identify the alarm monitoring service provider. All promotional and other informational material (e.g., sales brochures), yard signs, window stickers and the like will identify the alarm monitoring service provider.

* <u>Customer Inquiries</u> - Inquiries about the alarm monitoring service (as opposed to equipment or billing inquiries) will be referred to the unaffiliated alarm monitoring service provider.

D) **SWBT will not share in the revenues earned by the alarm monitoring service provider.**
   * SWBT will collect customer payments, and will deduct
     (1) billing and collections charges payable by the provider, and
     (2) sales commissions payable by the provider. SWBT will remit the net balance to the provider.

E) **SWBT will not alter or exert control over the customer-provider relationship:**
   * Changes to or termination of the SWBT/alarm monitoring service provider sales relationship will not affect the customer's contract with the monitoring entity or the relationship between the two.
   * SWBT does not have the right to exercise any control over the customer accounts for the duration of the alarm monitoring prohibition.

F) **SWBT will continue to comply with any/all requirements or regulations designed to ensure a level playing field for all, including;**
   * Comparably Efficient Interconnection (CEI) requirements
   * Open Network Architecture (ONA) Plan requirements
   * Cost Allocation Manual (CAM) guidelines
   * Customer Proprietary Network Information (CPNI) restrictions
   * Billing/Collections Generic Contract provisions

G) **Complaint process is in place to ensure recourse in matters of dispute.**

H) **If CEI Plan is not required for sales agency relationships associated with enhanced services, SWBT will withdraw Security System CEI Plan filing.**

II. SWBT'S PROPOSED ACTIVITIES, INCLUDING ITS LIMITED ROLE AS A SALES AGENT FOR AN UNAFFILIATED ALARM MONITORING SERVICE PROVIDER, DO NOT CONSTITUTE BEING ENGAGED IN THE PROVISION OF ALARM MONITORING SERVICES UNDER APPLICABLE LEGAL PRECEDENT

A) There is no substantial dispute that SWBT may perform non-sales agency related activities in support of alarm monitoring services.

* SWBT may lawfully provide billing and collection (B&C) services to alarm monitoring service providers. The Alarm Industry Communications Committee (AICC) has no objection to SWBT being compensated for its billing and collection services. AICC Comments, p. 13, n. 17. SWBT currently provides B&C services related to alarm monitoring service providers' charges.

* SWBT may lawfully provide CPE to customers of alarm monitoring service providers. AICC agrees that SWBT may "provide sales, installation and maintenance of alarm monitoring CPE." AICC Comments, p. 3, n. 6. Ameritech acknowledges that SWBT would sell, install and service CPE, and does not object to it. Ameritech, p.2.

* Neither the providing of these B&C services nor this CPE constitutes being engaged in the provision of alarm monitoring services.

B) Acting as a sales agent for one who provides a service does not mean that the agent is engaged in the provision of the service.

* **CPE Sales Agents**: CPE vendors who act as sales agents within the various BOCs' CPE Sales Agency Plan programs do not engage in the provision of network services as a result. Rather, these agents sell "telephone company-provided" intrastate network services. Sales Agency Order, 98 FCC 2d 943 (1984), para. 23. AICC's attempt to distinguish this Order as authorizing items the BOCs already had been allowed to provide is unavailing. AICC, June 20, 1996 ex parte, at p. 7.
  * *First*, AICC's claim that SWBT is attempting to do indirectly what it is prohibited from doing directly only begs the question of whether SWBT's Sales Agency arrangement is tantamount to "provision."
  * *Second*, the Sales Agency Order allowed BOCs' affiliates to do what the BOCs could not themselves do - market CPE/enhanced services jointly with network services. AICC is wrong in claiming that the BOCs were allowed to provide both, for under Computer II the BOCs could not provide CPE/enhanced services themselves.

The Sales Agency Order did not refuse to authorize commission sales of interstate services. It authorized some such sales, and indicated that the record before it was insufficient to allow the Commission to consider the ramifications of authorizing others. Sales Agency Order, para. 19; Reconsideration Order, FCC 85-582, para. 33.

* **Cellular Agents:** Cellular carriers routinely use authorized use sales agents to sell their telecommunications services. In such instances, courts regard the cellular carrier, not its authorized agent, as the "provider" of cellular service. SWBT Comments, p.9, n.15.

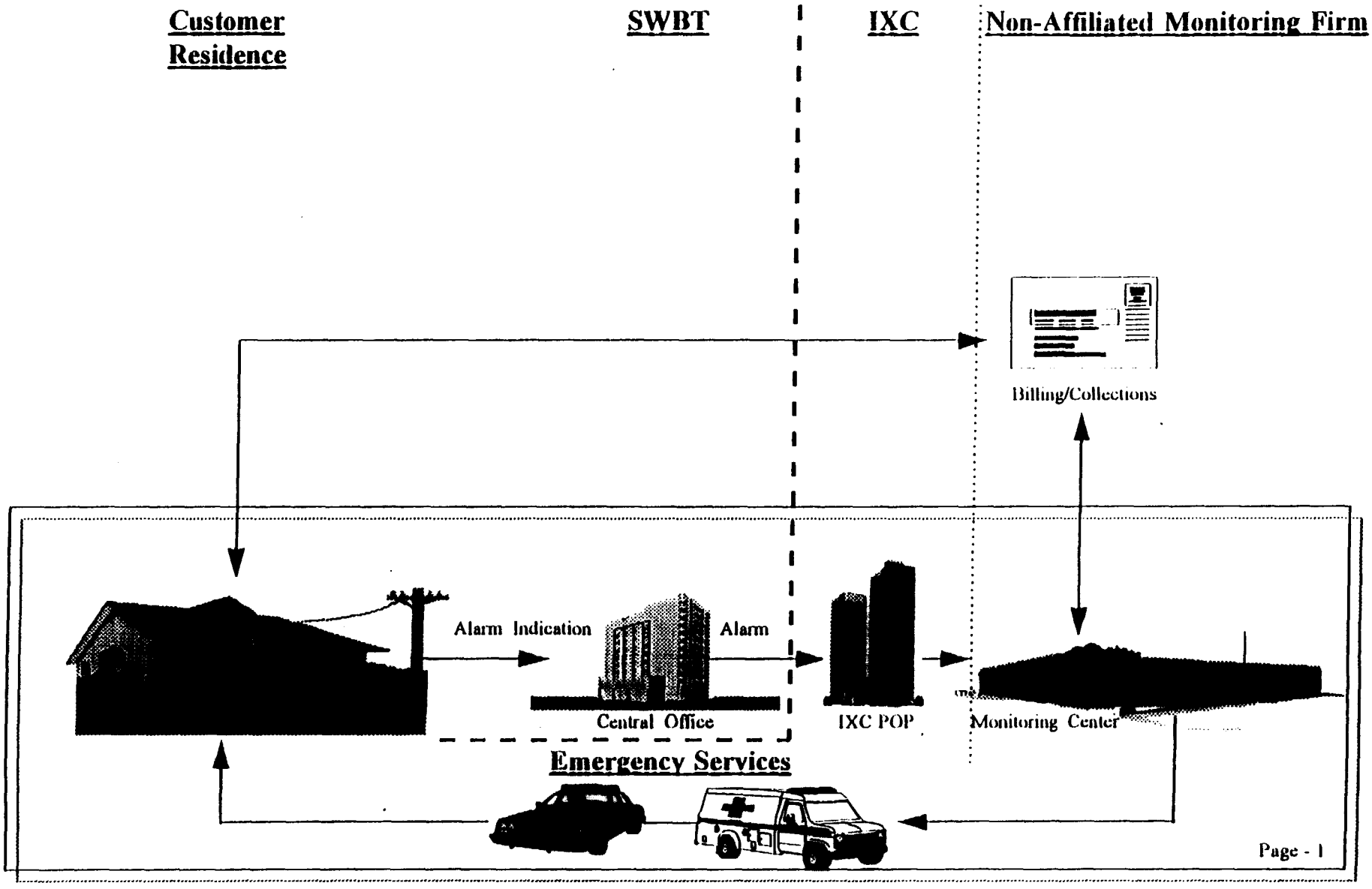
* **Conclusion:**
As in the case of CPE Sales Agency Plan agents and cellular agents, none of whom are engaged in the provision of telecommunications services, SWBT's role as a sales agent for an alarm monitoring service provider does not constitute its being engaged in the provision of alarm monitoring services. SWBT's additional activities of providing B&C services to a provider and of providing CPE to customers, who remain free to choose from a wide variety of providers, are likewise lawful and do not implicate Section 275(a)(1).

III. AICC'S CLAIM THAT THE BUREAU MUST DETERMINE WHETHER SWBT'S ACTIVITIES WOULD VIOLATE SECTION 275 IS MISPLACED

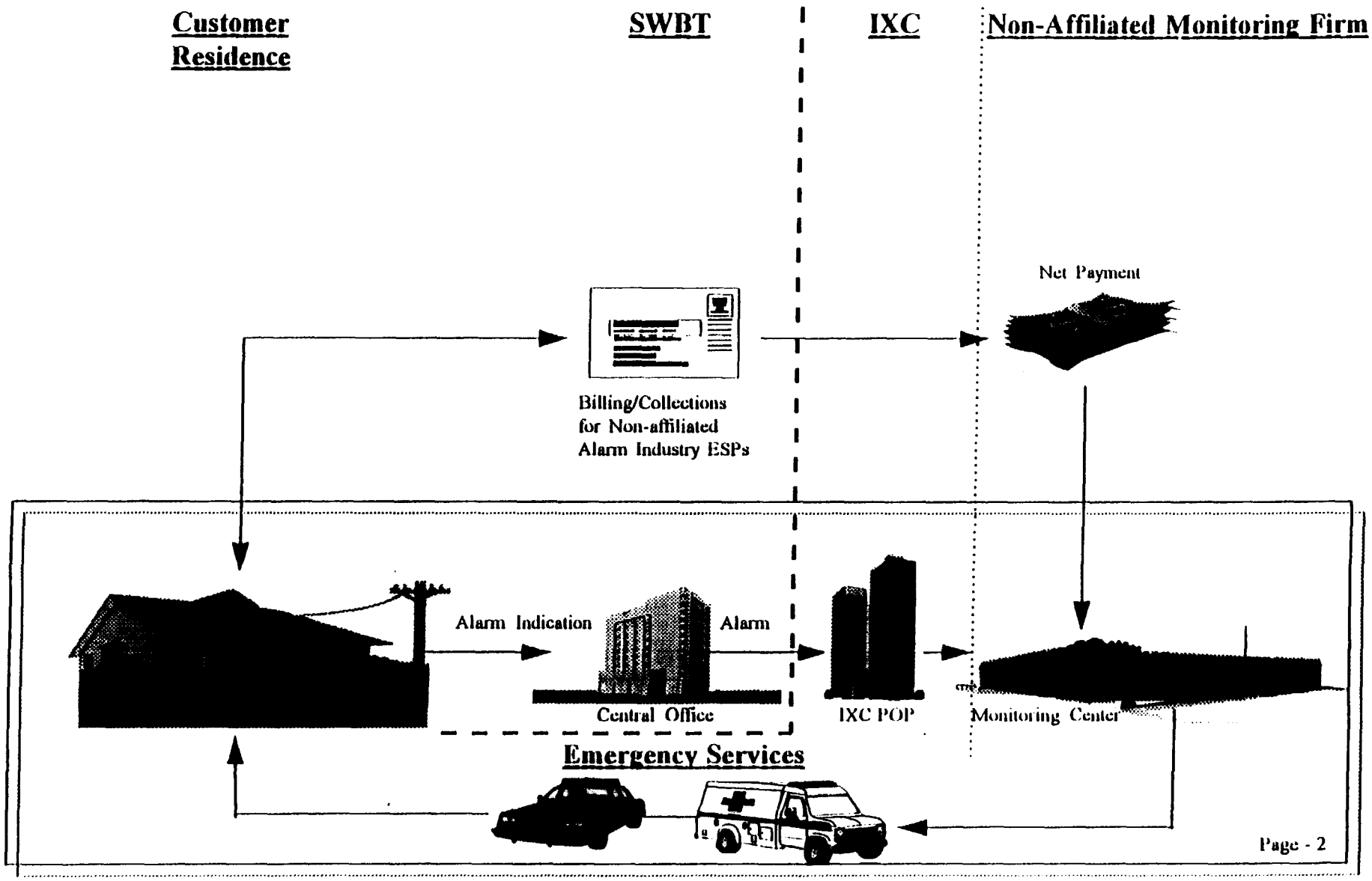
* SWBT has only asked the Bureau to approve SWBT's CEI Plan.

* The Bureau's approval of SWBT's CEI Plan would be consistent with its action in the Bell Atlantic CEI Order, in which the Commission also rejected a commentor's claim that CEI approval would authorize various violations of the Telecommunications Act. As in that matter, "[t]his proceeding is limited to determining whether [the] CEI plan complies with the Commission's Computer III requirements." Bell Atlantic CEI Order, para. 47.

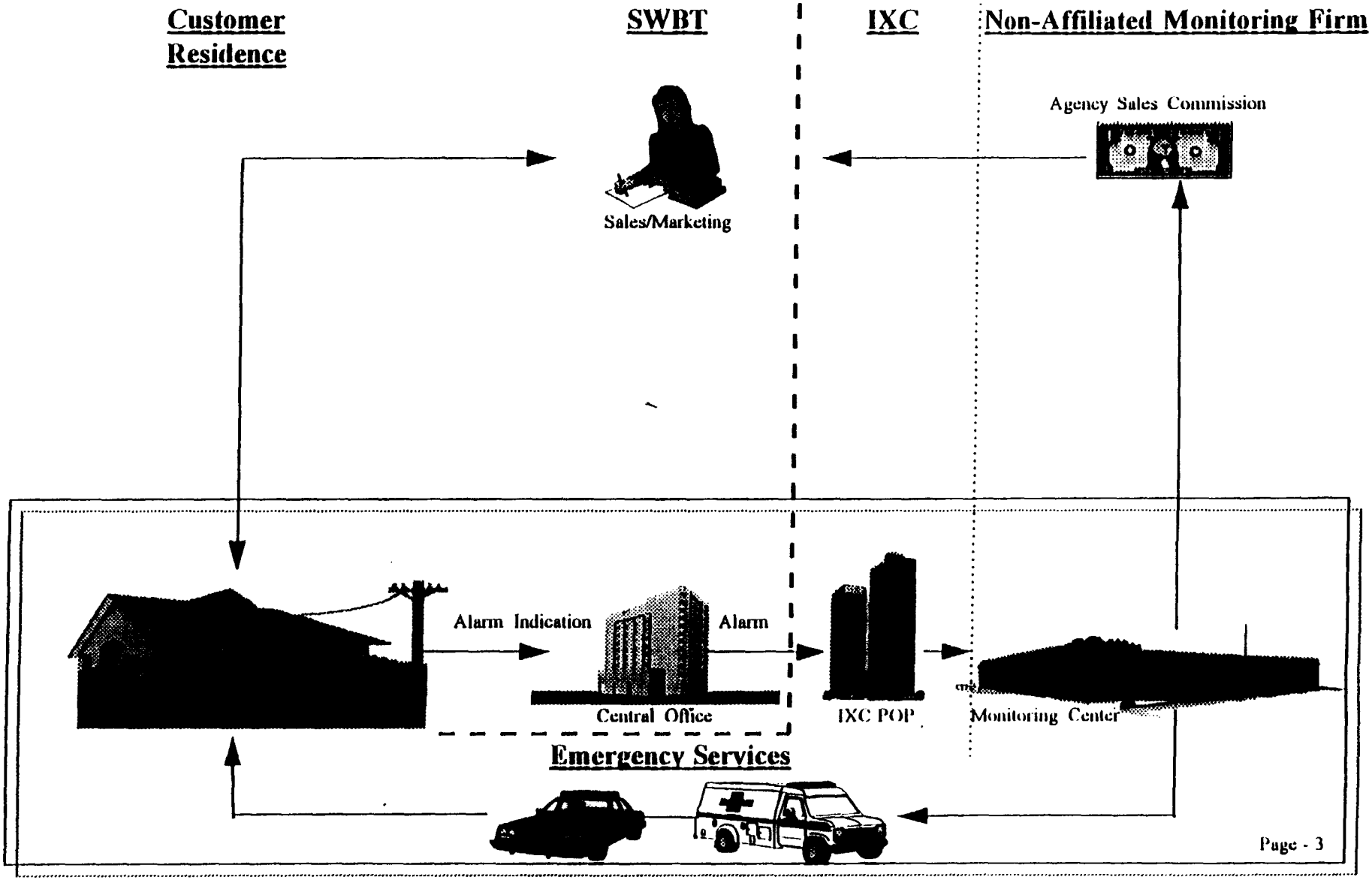
Alarm Service Architecture



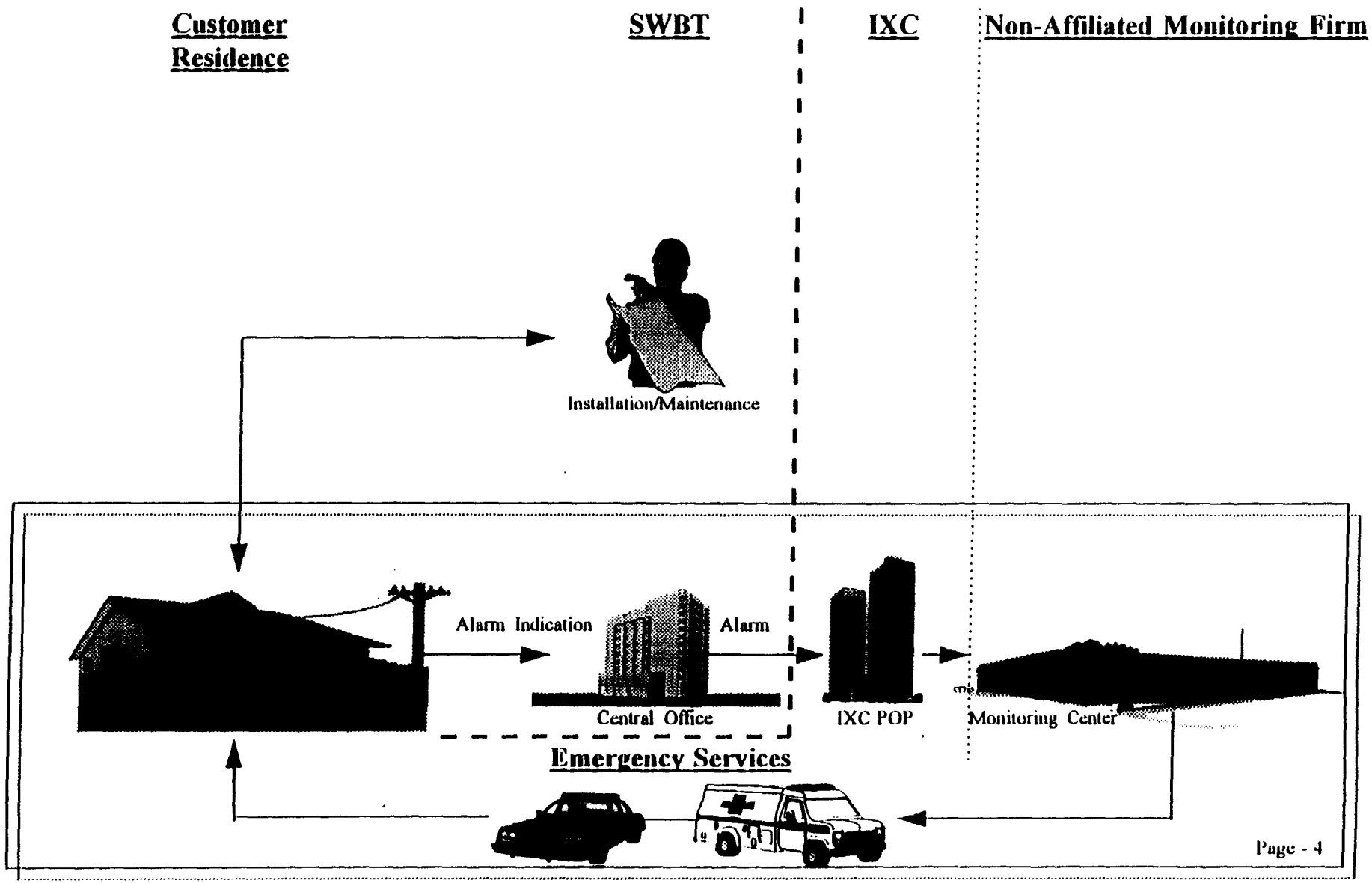
Existing SWBT Alarm Industry Involvement



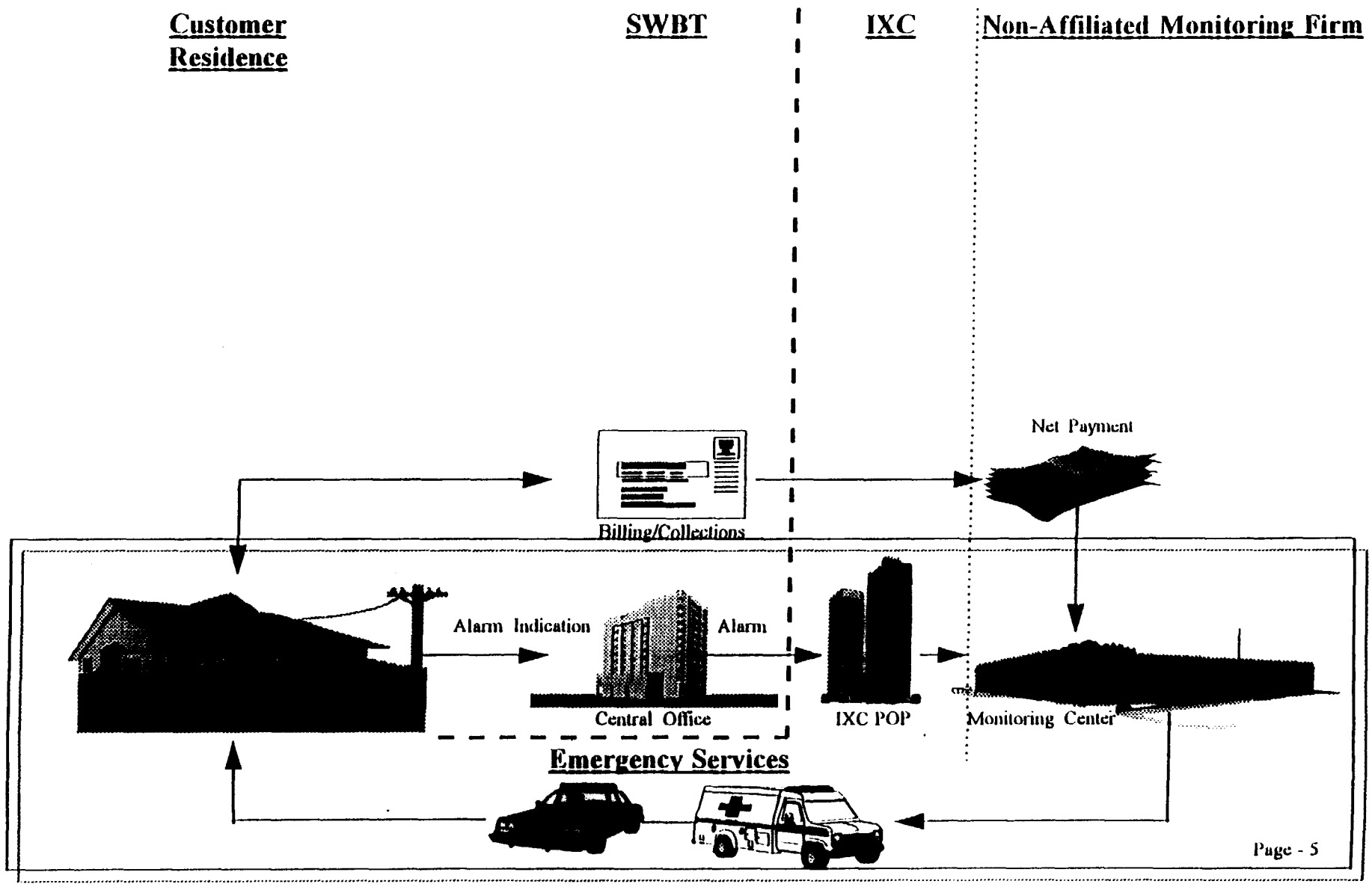
SWBT Security System Sales Agency Overview



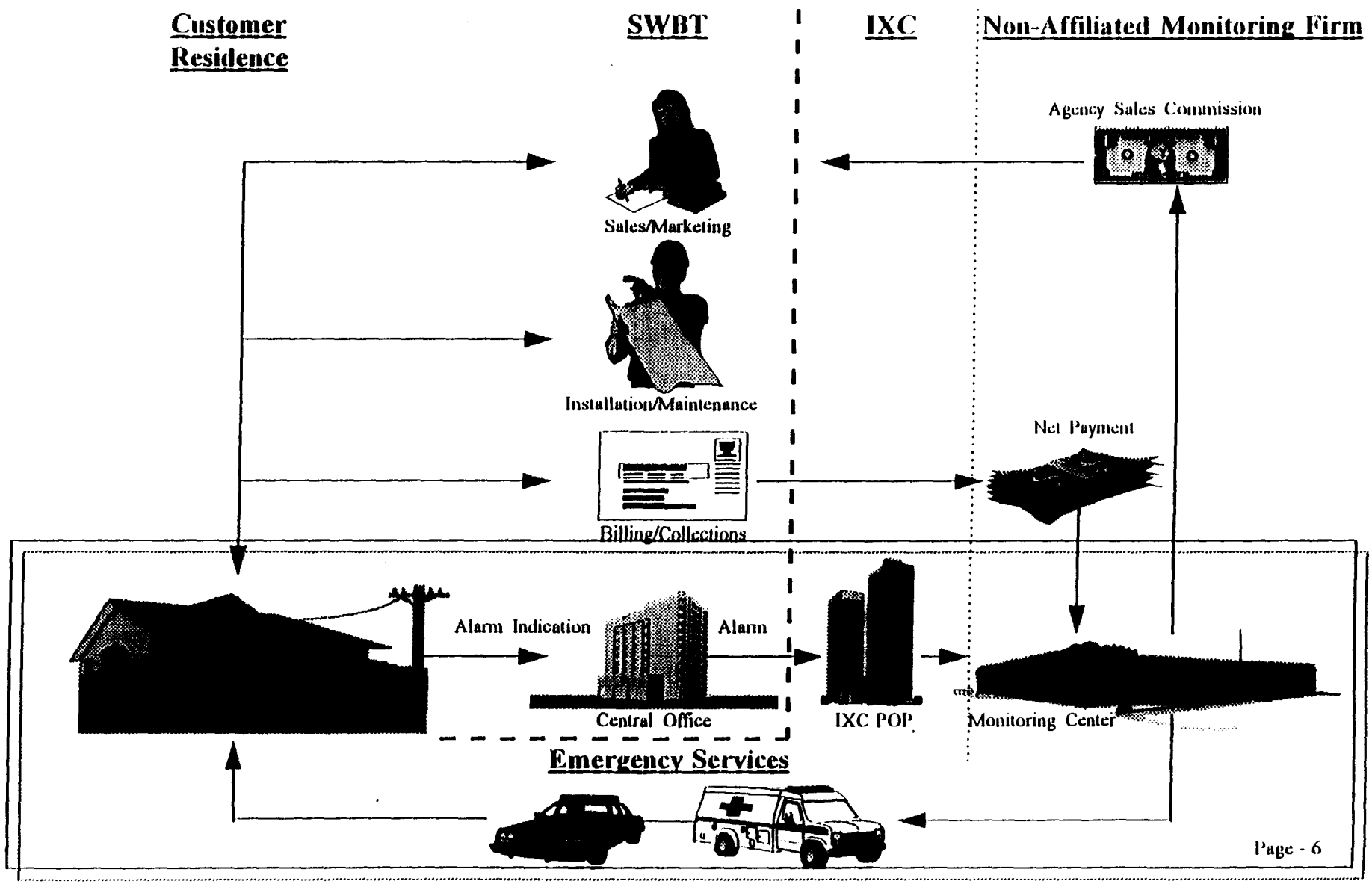
SWBT Security System Installation/Maintenance Overview



SWBT Security System Billing/Collections Overview



SWBT Security System Overview



0350184

Before the
Federal Communications Commission
Washington, D. C. 20554

1604

In the Matter of	)	
	)	
ILLINOIS BELL TELEPHONE COMPANY	)	
	)	
Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations	)	ENF File No. 83-19
	)	
OHIO BELL TELEPHONE COMPANY	)	
	)	
Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations	)	ENF File No. 83-35
	)	
KLF, INCORPORATED	)	
	)	
v.	)	ENF File No. 83-40
	)	
INDIANA BELL TELEPHONE COMPANY	)	

MEMORANDUM OPINION AND ORDER

Adopted December 28, 1983 ; Released January 4, 1984

By the Chief, Common Carrier Bureau

1. We have for consideration three matters relating to the marketing of new customer premises equipment (CPE) and enhanced services by the Bell Operating Companies (BOCs) pursuant to the rules and policies of the Second Computer Inquiry [1] and prior to their divestiture on January 1, 1984, under the terms of the Modified Final Judgment (MFJ). [2] The Computer II rules provide that if the American Telephone and Telegraph Co. (AT&T) and its affiliates choose to market new CPE and enhanced services to end users, they must do so through a separate corporate entity.

---

1 Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (1980), reconsideration, 84 FCC 2d 50 (1981), further reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 103 S. Ct. 2109 (1983).

2 United States v. American Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 103 S. Ct. 1240 (1983).

2. By a supplement filed June 24, 1983, to a petition for waiver of the Computer II structural separation requirements, filed March 15, 1983, Illinois Bell Telephone Co. seeks permission prior to divestiture to respond to requests for quotations (RFQs) for "total communications packages" not involving the provision of enhanced services. Illinois Bell originally filed a letter with the Common Carrier Bureau on February 10, 1983, inquiring whether the Computer II rules permitted the company to provide a "total communications package" including customer premises equipment and an environmental control system. The Bureau responded by letter dated February 25, 1983, advising Illinois Bell to file a petition for waiver if it intended to provide new CPE. The letter also granted Illinois Bell limited temporary authority to participate in the bidding process for the RFQ in question. In the June 24, 1983 supplement, Illinois Bell notified the Bureau that another bidder had been selected for the contract described in its petition for waiver. Nevertheless, Illinois Bell asked for a clarification of the applicability of the Computer II rules to the provision of new CPE by the BOCs prior to divestiture. Illinois Bell stated that it would act as a general contractor on behalf of non-affiliated CPE suppliers and on its own behalf as a provider of communications services. Illinois Bell argues that permitting it to bid during 1983 for projects to be completed in 1984 would be consistent with the provision in the MFJ granting it authority to reenter CPE markets after divestiture.

3. In a petition for reconsideration, filed July 22, 1983, Ohio Bell Telephone Co. requests permission to submit responses to RFQs prior to divestiture, without complying with the Computer II rules. Ohio Bell would answer RFQs for contracts involving the provision of basic communications services with CPE and enhanced services. Ohio Bell's original petition, filed June 16, 1983, was dismissed by the Bureau on June 28, 1983 for failure to timely file the petition and for failure to propose adequate safeguards in place of the Computer II structural requirements.[3] In addition to arguing that its original petition was procedurally sound, the petition for reconsideration asserts that Computer II prohibits only the "furnishing" of CPE on an unseparated basis. Thus, Ohio Bell claims, proposals to furnish CPE and enhanced services to customers issuing RFQs are not prohibited under the rules. Both Ohio Bell's petition for

---

3 Letter from Chief, Common Carrier Bureau to Charles S. Rawlings, Ohio Bell Telephone Co. (June 28, 1983).

reconsideration and Illinois Bell's request were the subject of public comment.[4]

4. Finally, KLF, Inc. filed an informal complaint on September 15, 1983, alleging that Indiana Bell Telephone Co. submitted bid proposals to provide new CPE during 1983 in violation of the Computer II rules.[5] The Bureau served this complaint upon Indiana Bell, on September 30, 1983 together with information requests. Indiana Bell responded on October 17, 1983. From its responses, it appears that Indiana Bell submitted at least thirteen bid proposals to sell new CPE during the period from January 1983 to the date its responses were filed. Indiana Bell has neither sought nor been granted a waiver of the Computer II requirements. Indiana Bell does not state whether any of its bid proposals were accepted.

5. During 1983, Illinois Bell, Ohio Bell and Indiana Bell have continued to be part of AT&T and as such are subject to the Computer II structural separation conditions. Although AT&T could have formed separate subsidiaries for the provision of CPE and enhanced services in each operating company, it chose instead to incorporate a single subsidiary, AT&T Information Systems Inc., to serve the entire nation. To receive a waiver of Computer II structural separation requirements, the petition must show with detailed evidence (a) that structural separation would prevent a service from being offered or would impose unreasonable costs upon consumers, and

---

4 Commenting parties included Bell Atlantic, Computer & Communications Industry Association (CCIA), General Services Administration (GSA), Independent Data Communications Manufacturers Association, Inc. (IDCMA), North American Telephone Association (NATA), and Rolm Corp. (Rolm). Replies were filed by Bell Atlantic, CCIA, NATA, U.S. Department of Justice (DOJ), Ohio Bell and Illinois Bell Telephone Companies, IDCMA, and Rolm. All motions for acceptance of late-filed pleadings are hereby granted. In light of the disposition herein, we find it unnecessary to specifically address the contentions of the commenters. Furthermore, most of these comments related to the propriety of applying the Computer II structural separation conditions to the BOCs post-divestiture. Comments similar to those tendered in this matter were considered in CC Docket 83-115. See Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, CC Docket 83-115, FCC 83-552 (adopted November 23, 1983) (BOC Separation Order).

5 KLF also filed a supplement to its informal complaint on September 19, 1983, a petition for expedited relief and order to show cause on September 22, 1983, and an errata to that petition on October 14, 1983.

(b) that these concerns outweigh any concerns about cross-subsidization and other anticompetitive effects.[6] Neither Illinois Bell nor Ohio Bell has supplied the detailed evidence required to support their claim that the Computer II structural separation conditions should not be applied to them prior to divestiture.

6. Illinois Bell and Ohio Bell argue that the possibility of cross-subsidization between regulated and unregulated activities in submitting bids does not arise if adequate accounting procedures are present. Since neither Ohio Bell nor Illinois Bell has described accounting procedures that would separate the costs associated with preparing and submitting the CPE and enhanced services portions of their bids, we have no assurance that accounting could serve even in these limited circumstances as a substitute for structural separation. Further, neither Ohio Bell nor Illinois Bell demonstrates how the potential for anticompetitive conduct resulting from joint marketing activities can be assuaged without structural separation.

7. We also reject the contention of Ohio Bell and Indiana Bell that the Computer II rules do not apply to the preparation and submission of proposals for the provision of CPE and enhanced services by an AT&T affiliate. The term "furnish" includes the many and various activities involved in the sale and provision of CPE and enhanced services. All steps preceding the physical placement of CPE with a customer must be included within the term "furnish," especially where, as in the preparation and submission of bids, an activity integral to the marketing of telecommunications products or services is involved.

8. We are dismissing as moot the KLF complaint and petition for expedited relief and order to show cause. The Commission has recently determined that the soon-to-be-divested BOCs may provide regulated and unregulated activities subject to accounting separation until June 30, 1984, when structural separation must be fully implemented. Until June 30, 1984, the regional operating companies will be allowed to market integrated offerings of basic services, enhanced services and customer premises equipment without complying with the Computer II separation requirements. Since release of the BOC Separation Order is anticipated soon, no purpose would be served by initiating a formal inquiry into Indiana Bell's CPE marketing practices at this time.

---

6 Reconsideration, supra, 84 FCC 2d at 58. See also Custom Calling Services II, 88 FCC 2d 1, 6 (1981); Clarification of Computer II Requirements Concerning Earth Stations, FCC 83-603 (adopted December 22, 1983).

9. Accordingly, IT IS ORDERED that the petition for waiver filed by Illinois Bell Telephone Co. IS DENIED.

10. IT IS FURTHER ORDERED that the petition for reconsideration filed by Ohio Bell Telephone Co. IS DENIED.

11. IT IS FURTHER ORDERED that the KLF informal complaint and petition for expedited relief and order to show cause ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Jack D. Smith
Chief, Common Carrier Bureau