

## Appendix 4

Unlike switched services, high capacity special access services are generally concentrated in revenue rich urban markets. There have been direct substitutes for special access services in the marketplace for years, putting special access markets at the forefront of local telecommunications competition. Because displacement of special access requires no interconnection with LEC services or LEC switches, IXCs and competitive access providers ("CAPs") are able to displace LEC facilities without the use of any LEC resources.<sup>7</sup>

A quick analysis of data for major markets supports the conclusion that direct substitutes for special access services exist and are being used by LEC customers. For example, a 1995 study commissioned by SBC Communications Inc. ("SBC") demonstrated that in the Dallas market, SWBT had already lost approximately 41.2% of the high capacity special access market as of the fourth quarter 1994.<sup>8</sup> Similar losses of 31.6% were shown in the Houston market during this time period, figures very similar to the market share losses experienced by AT&T in today's interexchange markets. SWBT, of course, is not unique in this regard. Similar market losses are occurring in most major markets, such as New York, Chicago, and Los Angeles.

It is important to note that these large market share losses were incurred without the availability of unbundled elements and with only limited use of collocation. The 1996 Act virtually guarantees ubiquitous availability of product and services substitutable with these access services through the recombination of LEC unbundled elements. In addition, the 1996 Act requires collocation of competitor equipment on LEC premises, making it very easy for a competitive access provider or interexchange carrier to combine its facilities with LEC unbundled elements to directly compete with LEC special access and direct trunked transport services.<sup>9</sup> Forbearance should be granted for special access services in all areas and for direct trunked transport in end offices and tandem offices.

With regard to interexchange services, the Commission found in the AT&T domestic Order that the domestic interstate interexchange market was competitive enough to reclassify AT&T as nondominant while it retained a 58% share of the market.<sup>10</sup> In contrast, SWBT has a de minimis market share in the interexchange marketplace. Therefore, SWBT should be declared nondominant for interexchange services and tariff regulation should be forborne.

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<sup>7</sup>See, SBC's Comments in response to the Second FNPRM in CC Docket No. 94-1, which demonstrate the extensive presence of alternate providers operating in SWBT's serving areas.

<sup>8</sup>Quality Strategies study, ©1995

<sup>9</sup>Section 251(c)(6)

<sup>10</sup> AT&T Domestic Order

Directory assistance and other operator services are also intensely competitive. Competitors like Excell Agent Services, INFONXX, Metro One Communications<sup>11</sup>, GTE, CFW and other have captured much of this market. For example, in the past year, AT&T has announced that it is taking back all of its directory assistance traffic from SWBT. Competitors are now able to gain entry into the directory assistance market easily and quickly capture market share. In January, 1995, Excell Agent Services handled its first directory assistance call for one IXC. Today, it is reported that Excell "has over 200 operators handling directory assistance traffic for several telecommunications providers, including three of the six largest long distance firms."<sup>12</sup> This rapid expansion in the directory assistance market, along with the ubiquitous availability of operators services and directory assistance unbundled elements, provides ample justification to forbear these services from tariff regulation.<sup>13</sup>

With respect to the second statutory requirement for forbearance, the Commission has determined that competitive forces protected consumers and that tariff regulation was unnecessary to protect consumer interests.<sup>14</sup> The Commission concluded that market forces, administration of Section 208 complaint process and the Commission's ability to reimpose tariff regulation was sufficient to protect consumers.<sup>15</sup> Tariff regulation is no longer needed to protect consumers with respect to special access services, direct trunked transport, operator services, directory assistance and interexchange services. In fact, since customers for special access, direct trunked transport, operator service and directory assistance are generally sophisticated interexchange carriers and large businesses, the need for tariff regulation is even more minuscule. Further, since so called "nondominant" competitive providers offer these services under streamlined regulation utilizing almost exclusively contract pricing, the majority of carriers offering these services are virtually free from any regulation. In addition, since virtually all large business customers have a direct relationship with their selected interexchange carrier, demand elasticity is increased and the threshold to influence a customer to switch access carriers is quite small. Thus, tariff regulation for special access, direct trunked transport, directory assistance, operator services and interexchange services is unnecessary.

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<sup>11</sup>Metro One's clients include Ameritech Cellular services, AT&T wireless Services Inc., Bell Atlantic NYNEX Mobile, BellSouth Cellular, GTE Mobilnet Inc and others.

<sup>12</sup>Business Wire, August 12, 1996

<sup>13</sup>Under the Telecommunications Act of 1996, SWBT and other ILECs are required to provide operator services and directory assistance to LSPs by privately negotiated contracts. Since the Commission rules (51.217(a)(b)) make no distinction among competing providers of local, intrastate or interstate services, SWBT will provide access to all operator services, directory assistance, and associated call-related databases to all carriers pursuant to the privately negotiated contracts required by the 1996 Act. See Letter from Todd Silbergeld, Director Federal Regulatory, SBC to William F. Caton, Acting Secretary, FCC, September 23, 1996, filed in CC Docket No. 96-98.

<sup>14</sup>Docket 96-61 Order, pars. 29 and 36-37

<sup>15</sup>Docket 96-61 Order, par. 36

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The third statutory requirement requires the Commission to determine whether forbearance from tariff regulation is consistent with the public interest. In making this determination, the statute specifically requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.<sup>16</sup> The Commission has found that the elimination of tariff regulation<sup>17</sup> would enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including the elimination of the possible invocation of the filed rate doctrine and establishing market conditions that more closely resemble an unregulated environment.<sup>18</sup> The elimination of tariff regulation for LEC special access service, direct trunked transport, directory assistance, operator services and interexchange services would benefit consumers.

Since interconnection and collocation agreements are approved by state commission and applied on a state-wide basis, the relevant geography over which the Commission should apply the three part statutory requirements on special access services is on a state-by-state basis. Since operator service and directory assistance are geographically nonspecific services, the Commission should be forebear tariff regulation on a region-wide basis. Similarly, since LECs have a de minimis market share in interexchange services, interexchange service should be forborne on a region-wide basis.

In view of the widespread nature of competitive alternatives and the years of Commission efforts to advance transport competition, the Commission should not wait for companies to file individual petitions for forbearance for special access services and direct trunked transport. In the interest of conserving the Commission's finite resources and in order to accelerate consumer benefits of increased special access competition, the Commission should rely on the record of the Access Reform proceeding to remove special access services, direct trunked transport, directory assistance, operator services, and interexchange services from regulation so that individual company showings would not be required to remove these services from tariff regulation.

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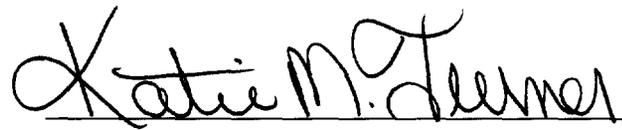
<sup>16</sup>47 U.S.C. at 160(a) and 160(b)

<sup>17</sup>In SWBT's opinion, there is a clear distinction between pervasive tariff regulation and the permissive detariffing approach suggested in the Comments of SBC previously referenced herein.

<sup>18</sup>Docket 96-61 Order, par. 52

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "OPPOSITION OF SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL AND NEVADA BELL TO PETITIONS FOR RECONSIDERATION" in Docket No. 96-187 has been filed this 10th day of April, 1997 to the Parties of Record.

A handwritten signature in black ink that reads "Katie M. Turner". The signature is written in a cursive style with a horizontal line underneath the name.

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