market entry, and specifically with issues regarding the unbundling of Incumbent Local Exchange Company (ILEC) networks.

4. I formed Kaleo Consulting in January 1997. I consult primarily on regulatory issues related to facilities-based entry into local exchange service and, using financial models, advise companies on how and where to enter telecommunications markets.

II. PURPOSE AND SUMMARY OF STATEMENT

5. As discussed in the Statement of Edwin Rutan, (Rutan, ¶¶ 8, 11-15), because SWBT's application purports to be a "Track A" filing under Section 271(c)(1)(A) of the Federal Telecommunications Act of 1996 (FTA), SWBT must satisfy two requirements. First, SWBT must actually be providing access and interconnection to a predominantly facilities-based competing provider pursuant to approved interconnection agreements. Second, the access and interconnection must be provided in a manner that "fully implements" the "competitive checklist" of Section 271(c)(2)(B). (Rutan, ¶ 16).[1]

6. As to the first requirement, this Statement will demonstrate: (1) that facilities-based competition exists only in a very limited form in Oklahoma; (2) why resale agreements do not provide facilities-based competition and, indeed, offer only very limited forms of competition; (3) the consequent importance of facilities-based competition as a "check" on the anticompetitive tendencies of local exchange service monopolies and the crucial importance of unbundled network elements (UNEs) to the development of such facilities-based competition; and (4) how SWBT's pricing of UNEs threatens to be a major barrier to

[1] As explained in the Statements of Frederick Warren-Boulton and Joseph Gillan, SWBT's entry into interLATA services also could not comport with the public interest absent effective facilities-based local competition.

the development of facilities-based competition in Oklahoma. As to the second requirement, this Statement will demonstrate that even as to the unbundled access and interconnection agreements that have been negotiated and/or arbitrated in Oklahoma, SWBT has not fully implemented the competitive checklist.

7. Finally, and as is also addressed in the Statement of Edwin Rutan, Track B is not available to SWBT where, as here, a carrier has requested access and interconnection from SWBT on a timely basis. (Rutan, ¶¶ 9-15). Accordingly, it is my understanding that SWBT may not rely upon its Statement of Generally Available Terms and Conditions it has filed in Oklahoma (SGAT) in order to satisfy the checklist requirements of Section 271(c)(2)(B). Nonetheless, to ensure a complete record, this Statement will also explain at appropriate points why SWBT's SGAT will not enable facilities-based competition to develop in any meaningful way.

III. ONLY LIMITED FACILITIES-BASED COMPETITION EXISTS IN OKLAHOMA.

8. There is, to my knowledge, only limited facilities-based competition in business markets in Oklahoma, and certainly not effective competition for both residential and business customers, as the FTA requires. The entire State of Oklahoma does not yet have a single, unbundled loop being used for local service. Further, while Brooks Fiber Communications of Oklahoma, Inc. (Brooks) does have a few (seven) facilities-based customers today, Brooks serves these customers either "on-net" or by purchasing retail DS1s (not unbundled) from SWBT. These approaches, while they may work for a limited, narrow

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set of customers in particular niches of specific markets, cannot be used to provide broad-based competition to business and residential customers in Oklahoma.

9. Congress established a clear intent that facilities-based competition be delivered to businesses and residences prior to granting interLATA relief to an ILEC:

> A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange services . . . to *residential* and business subscribers.[2]

10. The extent of Brooks' facilities-based local service to residential customers is even more limited. Brooks currently has four employees participating in a test of resold local service from SWBT. Brooks has filed residential local service tariffs in Oklahoma and apparently intends to provide local service to residential customers, at some point. However, presently Brooks is serving no residential customers with its own facilities and Brooks has no immediate plans to provide residential service over Brooks' own facilities due to the high cost of loops. Brooks has not ported a single number.

11. SWBT may attempt to gloss over these critical facts by claiming that there are 14 companies that have interconnection agreements that have been approved, are pending approval, or are waiting to be filed in Oklahoma.[3] Those 14 companies are listed below:

Brooks Fiber Communications of Oklahoma, Inc. and Brooks Fiber Communications of Tulsa, Inc. (Brooks)

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[2] Federal Telecommunications Act of 1996, ¶ 271(c)(1)(A) (emphasis added).

[3] Affidavit of Ricardo Zamora, February 20, 1997 Draft, pp. 24.

Capital Telecommunications
Comm South Company
Dobson Wireless, Inc.
Fast Connections
ICG Telecom Group (ICG)
Intermedia Communications (ICI)
Preferred Carrier Services
Sprint Communications (Sprint)
Sterling International Funding d/b/a Reconex
US Long Distance, Inc. (USLD)
US Telco
Western Oklahoma Long Distance
TIE Communications (waiting to be filed)

12. Of these 14 interconnection agreements, nine are resale agreements which, as will be addressed below, do not provide facilities-based competition. To date, SWBT has reached five agreements with carriers that apparently intend to provide facilities-based competition: Brooks, ICG, ICI, Sprint, and USLD. Of these five agreements, four are with companies that have yet to interconnect their networks with SWBT's local exchange network: ICG, ICI, Sprint, and USLD. Only Brooks has engaged in some, albeit extremely limited, facilities-based competition for seven business customers. Not one of these agreements satisfies all of the FTA's requirements. SWBT has not implemented the competitive checklist pursuant to these agreements, and none of these companies is providing competing facilities-based service to residential and business customers. (See Section VI of my Statement for a further discussion of these facts).

IV. RESALE IS NOT FACILITIES-BASED COMPETITION.

13. Resale competition by definition does not meet the requirements of Section 271(c)(1)(A) of the FTA that facilities-based competition be offered by competing providers either exclusively or predominantly over their own telephone exchange service facilities.

Although resale is one mechanism by which a new entrant may enter the local telecommunications market, it will not and cannot provide effective competition for an ILEC such as SWBT.

A. Resale Is Limited in the Type of Service Offerings That Can Be Economically Resold in the Local Market.

14. Resale has severe limitations as a means of offering effective local exchange competition. First, resale limits the new entrant to precisely the same service offerings as the incumbent. In fact, the new entrant cannot even economically offer a new package of features to the market. For example, SWBT has a combination of features in Oklahoma known as "The Works." This feature package comes with 13 features for residential and business customers and is priced at $15.00 in Oklahoma for both. If a new entrant wanted to offer a comparable feature package with eight features in Oklahoma, an offer currently not available with SWBT, the new entrant's cost would be the individual price for each of the eight features.[4] The wholesale price, given Oklahoma's 19.8% discount, would be $13.63 for residential customers and $16.64 for business customers. The wholesale price for eight features for businesses would be higher than the retail price for "The Works." As a result, the new entrant would not be able to introduce a new combination of features to the local market for business customers under resale without suffering significant losses. Non-

[4] For the purposes of this exercise the following eight features were selected: Call Waiting, Call Forwarding, Remote Access to Call Forwarding, Three Way Calling, Speed Calling 8, Call Return, Auto Redial, and Call Blocking. The monthly retail price for these eight features under SWBT pricing is $17.00 for residential customers and $20.75 for business customers. The wholesale price under Resale for these six features is $13.63 for residential customers and $16.64 for business customers.

recurring costs associated with creation of the new entrant's own feature package only exacerbates this situation.

15. Competition is not served if the new entrant must wait for SWBT to offer this or any other feature package to its customers and then procure the avoided cost discount for the new package. The bottom line is that the new entrant under resale has no real opportunity to introduce new services or combinations of services that customers want. The ability to offer such new services, however, is surely at the very heart of the competition for local services envisioned in the FTA.

B. Resale Is Limited to Precisely the Same Calling Scopes as the Incumbent.

16. Another major limitation for new entrants under resale is that the new entrant is limited to the calling scope definition of the incumbent. The incumbent will have defined Wide Area Calling Plans/Extended Area Service (WACP/EAS) plans that the new entrant can sell at retail less avoided cost. However, if the new entrant attempts to create its own calling scopes without purchasing the incumbent's currently available plan, the new entrant will have to pay intraLATA access charges for all originating and terminating minutes outside of the incumbent's local calling scope. In Oklahoma, SWBT charges $0.07018 for intraLATA access. If the new entrant signs up a large WACP/EAS user under the new entrant's own calling scope definition, the new entrant has volunteered to pay SWBT $0.07018 for every intraLATA minute while SWBT's underlying cost, based on unbundled element rates, is $0.01541.[5] This recipe for financial disaster will prevent any new entrant

[5] An intraLATA call traversing the SWBT network, priced at SWBT's UNE prices, would use two Local Switching minutes ($0.01155), one Tandem Switching minute ($0.002822), and two Common Transport minutes ($0.001038), for a total cost per minute of $0.01541.

from introducing new calling scopes under resale. Again, the new entrant will be completely constrained to the market offers and pricing SWBT chooses to introduce.

17. These types of limitations on competition are widespread and, indeed, inherent in resale. And while it is clear that Congress intended for resale to be a market entry methodology for new entrants, it cannot be deemed full competition nor create the type of new services that were envisioned in the FTA.

V. THE NEED FOR UNBUNDLED NETWORK ELEMENTS AS A MARKET ENTRY STRATEGY

A. Why UNEs Are Important to Competition

18. The limitations outlined above and other limitations on resale are real and are not readily addressable under a resale entry strategy. It is for this reason that AT&T, or any other CLEC desiring to serve residential and small business customers without duplicating SWBT's network, must be able to utilize unbundled network elements, or UNEs, as its primary initial local market entry strategy. AT&T is investing heavily today to enter local markets through resale, but the objective, indeed the business imperative, is to place these customers onto UNEs as quickly as is operationally and economically possible.

19. Specifically, AT&T has pursued access to the UNE Platform (Platform) that was authorized in the FTA.[6] The Platform would enable a new entrant to purchase the unbundled elements and, along with them, the "features, functions, and capabilities that are

[6] FTA ¶ 251(c)(3) states: "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to *combine* such elements in order to provide such telecommunications service." There are no limitations stated or implied that the unbundled network elements cannot be recombined in their entirety in such a way as to provide "such telecommunications service."

provided by means of such facility or equipment."[7] This would thereby enable the new entrant to purchase the unbundled element of local switching and along with it all of the features and capabilities contained within the local switch. This ability to purchase the unbundled element of local switching and along with it all of the features and capabilities contained within the local switch is critical because, in contrast to resale, it would enable the new entrant to introduce a new package of features contained within the switch and not be limited to the incumbent's pricing methodology or packages. This type of flexibility will make possible new offerings to customers and thus a start on the type of competition envisioned by the FTA.

20. Further, while the use of UNEs alone will not make AT&T and other long distance carriers predominantly facilities-based providers of local service,[8] the use of UNEs is a critical step in that process. By starting out using UNEs as well as some of its own facilities, and then substituting more and more of its own facilities as time goes on -- as long distance carriers will do as rapidly as possible for economic and competitive reasons -- AT&T and other carriers would likely evolve into predominantly facilities-based carriers. (*See* Exhibit SET-1.)

21. This will occur only if AT&T and other long distance carriers can access and economically purchase the UNE Platform. Negotiations between AT&T and SWBT are continuing today on the methodology through which AT&T will access the UNE Platform. No doubt recognizing that use of the Platform will expose it to broader competition than

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[7] FTA Section 3(a)(45).

[8] Statement of Edwin Rutan, ¶¶ 31-32.

service resale, SWBT has opposed the Platform consistently throughout negotiations with AT&T. (It is obviously in SWBT's best interest, from a competition point of view, to keep long distance carriers bottled up in resale where they will provide only the faintest whiff of competition.)

22. As will be discussed later, the interconnection agreements SWBT has entered into as well as the SGAT evidence SWBT's intent to eliminate the Platform as an option through the pricing of the unbundled elements and SWBT's policies regarding the application of those prices.

B. How SWBT's Pricing of UNEs Is a Barrier to Competition

23. The way in which SWBT is attempting to discourage use of the Platform is well illustrated by its pricing for UNEs. SWBT's price for the UNE Platform is a major barrier to the development of competition in Oklahoma.

24. The prices for the individual elements used in the illustrations which follow will be obtained (a) from the Arbitrator's Order in the Oklahoma arbitration between SWBT and AT&T with additional supplements, as needed, from the SGAT;[9] and (b) from the SGAT itself. SWB has not proven that any of these prices are lost-based.

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[9] A full set of prices did not exist in the Arbitrator's Order; therefore, for illustrative purposes, I supplemented it with the SGAT prices. As explained in the statement of Edwin Rutan, however, Track A interconnection agreements and Track B SGATs are separate and distinct, making Track B a conditional alternative to Track A only, not a supplement. The SGAT prices illustrate the anticompetitive direction SWBT is headed.

1. A profile customer definition is required to establish the UNE Platform price.

25. One of the difficulties in understanding how the pricing of unbundled elements affects the economic feasibility of using the Platform as a viable market entry strategy is determining what SWBT would intend to charge for the Platform. The following paragraphs will lay out for illustrative purposes a reasonable view of the costs involved in purchasing the Platform under the Arbitrator's Order in the Oklahoma AT&T/SWBT arbitration with supplements, as needed, from the SGAT, and also under the SGAT itself. This view is based on the understanding I have gained through discussions with SWBT up to this point. Please understand, though, that SWBT is extraordinarily reluctant to make this option available to new entrants and these discussions are ongoing.

26. To develop the price of the Platform, I created a Local Usage Profile and a Toll Usage Profile for a representative residential or business customer. The profile was created so as to capture the usage characteristics of these representative customers and how those usage characteristics would "trigger" different UNE rate elements.[10] The tables below describe the usage characteristics of a profile customer.

[10] The profiles were not intended to capture precisely every usage parameter of a residential or business customer. Instead, these profiles identify the primary characteristics that "trigger" UNE rate elements and the consequent cost of the platform for CLECs.

Local Usage Profile

Local Usage (Originating and Terminating)	1400 MOU
Terminating to Originating Ratio	1
Average Call Holding Time	3.5 MOU
Intraswitch Traffic Flow	40%
Interswitch Traffic Flow	60%
Direct Trunked Traffic Flow	30% (50% of Interswitch Traffic Flow)
Tandem Trunked Traffic Flow	30% (50% of Interswitch Traffic Flow)
Local CNAM Queries (per Month)	10
Directory Assistance	
Total Calls	5
Calls from Above with Call Completion	2
Local CLASS Features	3

Toll Usage Profile

InterLATA Usage (Originating and Terminating)	80 MOU
InterLATA Interstate Usage	50%
IntraLATA Usage (Originating and Terminating)	40 MOU
Terminating to Originating Ratio	1
Average Call Holding Time	1
InterLATA Trunking	
Direct Trunking to IXC	75%
Tandem Trunking to IXC	25%
IntraLATA Trunking	
Direct Trunking	0%
Tandem Trunking	100%
Database Queries	
Simple 800	10
Complex 800	10
LIDB	10

2. The usage characteristics enable the CLEC to identify which UNE rate elements to select and develop the recurring and non-recurring costs for customers.

27. For purposes of this discussion, the usage characteristics outlined above identify which UNEs are required to service these customers. Additionally, the usage

characteristics will dictate the volume of usage sensitive elements (i.e. tandem switching, common transport) that must be purchased. The following tables were generated by taking the usage characteristics set forth above and applying the appropriate rate elements to develop the monthly recurring cost for the profile business and residential customers and the one-time non-recurring costs (NRCs) to establish the Platform. The zone that was selected for these prices was Zone C. This is the urban zone and the area where competition will most likely first develop. This is also the zone that provides the lowest cost view of SWBT's pricing policy in Oklahoma.

Single Residential Line UNE Platform Cost for a Profile Customer

UNE Element	UNE Recurring PUD 960000218 Award	UNE Recurring SGAT	UNE NRC
2-Wire Analog Loop	$20.70	$20.70	$47.45
Local Switching - Analog Line Side Port	$ 3.00	$ 3.00	$80.50
Local Switching - Usage	$ 8.78	$15.25	NA
Common Transport	$ 0.35	$ 0.02	NA
Tandem Switching	$ 0.71	$ 0.11	NA
Signaling and Database Queries	$ 0.60	$ 0.60	NA
Directory Assistance	$ 1.81	$ 1.81	NA
Operator Services	$ 1.60	$ 1.60	NA
Service Order	NA	NA	$58.00
TOTAL	**$37.55**	**$43.09**	**$185.95**

Single Business Line UNE Platform Cost for a Profile Customer

UNE Element	UNE Recurring PUD 960000218 Award	UNE Recurring SGAT	UNE NRC
2-Wire Analog Loop	$20.70	$20.70	$47.45
Loop Conditioning	$ 7.65	$ 7.65	$43.00
Local Switching - Analog Line Side Port	$ 3.00	$ 3.00	$80.50
Local Switching - Usage	$ 8.78	$15.25	NA
Common Transport	$ 0.35	$ 0.02	NA
Tandem Switching	$ 0.71	$ 0.11	NA
Signaling and Database Queries	$ 0.60	$ 0.60	NA
Directory Assistance	$ 1.81	$ 1.81	NA
Operator Services	$ 1.60	$ 1.60	NA
Service Order	NA	NA	$58.00
TOTAL	**$45.20**	**$50.74**	**$228.95**

3. **The UNE Platform cost can be compared to retail pricing for the profiled customers to develop a gross margin for the CLEC.**

28. The final step in understanding how these prices are a significant barrier to the development of competition is to assess them against the revenue opportunity as defined by SWBT's pricing policy. Unfortunately, SWBT has several inconsistencies within its methodology for applying UNE costs. First, SWBT states in the UNE Appendix to its SGAT: "When LSP uses a ULS port to initiate a call to a terminating number associated with a different 11-digit CLLI, LSP will pay a rate per minute for ULS plus a rate per minute for UCT transport."[11] This statement of UNE cost application is not complete as it

[11] SGAT, Appendix UNE, ¶ 12.9.1.

currently stands because it does not account for the likely occurrence of tandem switched calls between two different end offices. More importantly, though, this statement is not consistent with the rate element included in the Pricing Schedule Appendix to the SGAT. Here, SWBT has included a "Local Switching Between Different Central Offices" rate element that is *not* the sum of a ULS minute and a UCT minutes as previously defined.[12] The sum of these two rate elements is $0.006294. However, SWBT intends to charge $0.013480 for local switching between two different end offices.[13] Nowhere within the SGAT does SWBT explain why there is this difference between the language of the UNE Appendix and the price in the Pricing Schedule. However, SWBT's consistent negotiation position regarding pricing is that it applies the rate elements as defined in the Pricing Schedule and if a rate element does not exist in the Pricing Schedule, it is not available for purchase regardless of the language of the UNE Appendix. Consequently, the following analysis related to the SGAT will utilize the rate as defined in the Pricing Schedule Appendix.

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12 SGAT Appendix Pricing Schedule at Page 2.

13 Even this rate of $0.013480 is suspect. SWBT has contended in negotiations (this explanation does not exist within the SGAT) that this rate element is the sum of two end office switching charges ($0.01155), one common transport charge ($0.000519), and half of a tandem switching charge ($0.001411). The half of a tandem switching charge is reasonable if half of the interoffice traffic is tandem trunked and half is direct trunked. SWBT must be using the single common transport charge in some "weighted" fashion as well to account for there being more transport in a tandem switched call than in a direct switched call. But, the most unusual and fallacious cost is the two end office switching charges. SWBT should only charge for one end office switching charge consistent with the language in Appendix UNE ¶ 12.9.1, since the terminating switching charge will either be paid by SWBT (for its local customers), another CLEC (for its local customers), or by AT&T separately for terminating the call. A strict interpretation of the Appendix Pricing Schedule, however, would indicate that this local switching rate element between different central offices applies to originating or terminating minutes of use. Consequently, a call between two AT&T UNE customers in two different switches would require AT&T to pay for four local switching charges. There is no conceivable way that this element and SWBT's intended application could be considered cost based.

28. SWBT's general pricing policy position in Oklahoma is that the purchase of unbundled local switching restricts the new entrant from acquiring the intraLATA toll revenue sources. The AT&T/SWBT Arbitration Order was silent on this point. However, this SWBT pricing policy position can be determined from the SGAT, where SWBT expressly states its intent to retain the IntraLATA toll revenues even when UNEs are purchased.[14] In negotiations, SWBT asserted that the fact that customers cannot presubscribe to an intraLATA carrier means that all intraLATA traffic belongs to SWBT. The following tables illustrate the negative consequences to competition from SWBT's policy.

14 SGAT, Appendix UNE, ¶ 12.10.2.C.

Residential Single Line Customer Gross Margin Analysis

	PUD 960000218 Interim Pricing Toll Excluded View	SGAT Pricing Toll Excluded View	Toll Included View
Revenue			
Local	$27.99[15]	$27.99[16]	$27.99[17]
IntraLATA Toll	0.00	0.00	4.40[18]
InterLATA Access	2.38[19]	2.38[20]	2.38[21]
Total Revenue	**$30.37**	**$30.37**	**$34.77**
Cost of Goods (Platform)	**$37.25[22]**	**$42.79[23]**	**$37.55**
Gross Margin	**($ 6.88)**	**($12.42)**	**($ 2.78)**
Gross Margin Percentage	**(22.65)**	**(40.90)**	**(8.00)**

UNE NRC = $185.95

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15 The Local Revenue includes the monthly recurring charge for the line including the FCC subscriber line charge, features (Call Forwarding, Call Waiting, and 3-Way Calling), plus incidental revenue for operator services and directory assistance.

16 *Id.*

17 *Id.*

18 IntraLATA Toll Revenue was calcualted at 20 originating minutes at an average revenue per minute of $0.22.

19 InterLATA Access Revenue was calculated as the weighted average (based on the interLATA interstate usage percentage) of the interstate interLATA access rate and the intrastate interLATA access rate times the appropriate minutes of use.

20 *Id.*

21 *Id.*

22 SGAT, Appendix UNE, ¶ 12.10.2.C states that no ULS usage charges will apply on intraLATA toll calls because SWBT is retaining this revenue source. The earlier UNE Platform Cost charts assumed AT&T would be paying for all element usage and therefore would be receiving the intraLATA revenue source. The primary elements this affects are unbundled local switching, tandem switching, and common transport. The cost for these three elements, if AT&T were to receive the intraLATA revenue, would be $0.30. Therefore, with SWBT excluding AT&T from intraLATA toll, the UNE Platform Cost has been reduced by this amount.

23 *Id.*

Business Single Line Customer Gross Margin Analysis

	PUD 960000218 Interim Pricing Toll Excluded View	SGAT Pricing Toll Excluded View	Toll Included View
Revenue			
Local	$58.30[24]	$58.30[25]	$58.30[26]
IntraLATA Toll	0.00	0.00	4.40[27]
InterLATA Access	2.38[28]	2.38[29]	2.38[30]
Total Revenue	**$60.68**	**$60.68**	**$65.08**
Cost of Goods (Platform)	**$44.90[31]**	**$50.44[32]**	**$45.20**
Gross Margin	**$15.78**	**$10.24**	**$19.88**
Gross Margin Percentage	**26.01**	**16.88**	**30.55**

UNE NRC = $228.95

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24 The Local Revenue includes the monthly recurring charge for the line including the FCC subscriber line charge, feature (Call Forwarding, Call Waiting, and 3-Way Calling), plus incidental revenue for operator services and directory assistance.

25 *Id.*

26 *Id.*

27 IntraLATA Toll Revenue was calculated at 20 originating minutes at an average revenue per minute of $0.22.

28 InterLATA Access Revenue was calculated as the weighted average (based on the interLATA interstate usage percentage) of the interstate interLATA access rate and the intrastate interLATA access rate times the appropriate minutes of use.

29 *Id.*

30 *Id.*

31 SGAT, Appendix UNE, ¶ 12.10.2.C states that no ULS usage charges will apply on intraLATA toll calls because SWBT is retaining this revenue source. The earlier UNE Platform Cost charts assumed AT&T would be paying for all element usage and therefore would be receiving the intraLATA revenue source. The primary elements this affects are unbundled local switching, tandem switching, and common transport. The cost for these three elements, if AT&T were to receive the intraLATA revenue; would be $0.30. Therefore, with SWBT excluding AT&T from intraLATA toll, the UNE Platform Cost has been reduced by this amount.

32 *Id.*

29. The distinction between the Toll Excluded View and the Toll Included View has to do with how IntraLATA Toll Revenue is handled. Although the AT&T/SWBT Arbitration Order was silent, the SGAT clearly states that SWBT intends to retain this significant revenue source. The retention by SWBT of such revenue is in direct conflict with the FCC's First Report and Order, which states:

> We confirm our tentative conclusion in the NPRM that section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers.[33]

30. The primary conclusion to draw from the above tables, however, is that the UNE prices set by the AT&T/SWBT Arbitration Order and by the SGAT provide no opportunity for new entrants to profitably serve residential or business customers. Given the way the Arbitrator's Order handles intraLATA toll, the gross margin for residential customers is a negative 22.65%. Given the way the SGAT handles intraLATA toll and its associated UNE prices, the gross margin for residential customers is even worse--a negative 40.90%. SWBT charges the CLEC $185.95 (NRC) for the right to lose $6.88 every month in gross margin under the Arbitration Order and lose $12.42 every month in gross margin under the SGAT. Keep in mind that the gross margin is calculated before a new entrant would pay for any marketing, sales, operations, customer service, or general expenses.

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[33] FCC First Report and Order ¶ 356. *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunictions Act of 1996*, CC Docket Nos. 96-98, *et. al.*, First Report and Order (Rel. Aug. 8, 1996), ¶ 356.

31. The gross margin for the profiled business customer is a positive 26.01% under the Arbitration Order, and a positive 16.88% under the SGAT. Although these appear to be healthy gross margins, there are three realities that will prevent these margins from providing an opportunity for competition to develop. First, these are not sufficient gross margins for telecommunications companies to operate profitably. SWBT itself enjoys a gross margin of 52.83%, 26.82% greater than AT&T under the Arbitration Order and a full 35.95% greater than a new entrant under the SGAT. SWBT has a Selling, General, and Administrative ratio of 28.86%. Thus, even if AT&T is as efficient as SWBT in this area, AT&T will have a negative operating margin of 2.85% under the Arbitration Order, and a new entrant under the SGAT will have a negative operating margin of 11.98%, while SWBT has a positive operating margin of 23.97%.

32. Second, pricing pressure will develop where any positive margin opportunities exist. Overall reductions in the price of telecommunications services was certainly one of Congress' goals when it approved the FTA. All new entrants should be prepared for competition to lower the overall price of local telecommunications service. However, AT&T and other new entrants will have no opportunity to compete if SWBT is able through interconnection agreements and the SGAT to preserve for themselves over new entrants an additional margin percentage ranging from 26.82% to 35.95%. SWBT will readily be able to lower prices on competitive services to crush new entrants while preserving their profitability.

33. Notice that all of this discussion on potentially competitive margins has focused on business customers. The margins for residential customers discussed in

paragraph 28 are so low (they are negative) that Platform (and facilities-based) competition will have no chance to develop.

34. Third, the non-recurring costs associated with the UNE Platform and unbundled network elements in general present an enormous barrier to new entrants. SWBT has provided no cost basis for the non-recurring costs that have been placed on UNEs. SWBT will charge approximately $200 in non-recurring charges to switch a customer to the UNE Platform, which involves absolutely no rearrangement of the customer's existing service arrangement. Such a software based change should cost no more than the $5 that is today charged for a long distance PIC change. With a negative margin for residential lines and an insufficient margin on business lines, there is no way that competition will develop in any measurable amount given the extraordinary NRC hurdles SWBT has established unilaterally through the SGAT.

VI. SWBT CANNOT MEET SECTION 271'S SECOND REQUIREMENT BECAUSE THE AGREEMENTS WHICH IT HAS REACHED DO NOT FULLY IMPLEMENT THE CHECKLIST.

A. Full Implementation of Unbundled Access and Interconnection Is Required by the FTA.

35. In Section 271, the FTA provides: "The Commission shall not approve the authorization requested in an application (for interLATA relief) unless it finds that the petitioning Bell operating company has . . . with respect to access and interconnection . . . *fully implemented* the competitive checklist."[34] (Emphasis added.) Full implementation means more than a claim by SWBT on paper that it is prepared to offer all items on the

[34] FTA, ¶ 271(d)(3).

checklist. As I will show, using Brooks for purposes of illustration, SWBT in reality is not even offering to do all that the checklist requires, much less fully implementing the checklist. More importantly, full implementation means that each and every item on the competitive checklist must be met through approved interconnection agreements singly or in combination, and SWBT must actually be delivering each and every item to competing, facilities-based carriers at commercially reasonable volumes.[35]

36. No company is further along in preparing to provide facilities-based competition in Oklahoma than Brooks. Thus, the extent to which SWBT has implemented the checklist with respect to Brooks provides some measure of SWBT's compliance in Oklahoma with the FTA's requirements.

B. SWBT Has Not Complied with The FTA Regarding Collocation.

37. Physical collocation is a critical component of interconnection. Congress established that SWBT must "provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."[36] Interconnection for the purposes of exchanging traffic or accessing unbundled elements cannot occur without effective collocation arrangements.

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35 In other Statements, AT&T has shown where the interconnection agreements established with SWBT fail to comply with the checklist. The following assessment will simply evaluate SWBT's performance in those relatively straightforward areas of interconnection that have been agreed to between Brooks and SWBT and will likely be areas of concern for any facilities-based entrant.

36 FTA, ¶ 251(c)(6)

38. Brooks is currently pursuing several physical collocations with SWBT for networks in Oklahoma City and Tulsa. Collocation is an early barometer of how SWBT will respond to new entrants, and the reading is not good. Brooks included the following statement in a Request for Information made by the Kansas Corporation Commission regarding SWBT's failure in the area of collocation:

> The one area in which Brooks does have some experience regarding interconnection implementation issues related to its Kansas network is in the area of collocation, since Brooks submitted (and SWBT accepted for processing) applications for physical collocations at various SWBT central offices in the Kansas City area prior to execution of the Kansas Interconnection Agreement. While deployment of those collocations is still in progress, Brooks can state generally that there are significant differences in opinion between Brooks and SWBT concerning the reasonableness of the collocations prices quoted by SWBT, and regarding the processing time frames associated with making collocation spaces available. Brooks believes that the collocation prices are excessive and that the time frames required by SWBT to process Brooks' collocation applications have been unreasonably long.[37]

39. SWBT's performance has been no different in Oklahoma. Brooks has waited months for the right to physically collocate telecommunications equipment in SWBT central offices. SWBT will no doubt contend that much of the delay has been due to errors on Brooks' part. However, AT&T knows from its own collocation experience that SWBT does absolutely nothing to help facilitate the new entrant's application for space. In Texas, for example, after waiting months for a response, AT&T received a proposal with average non-

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[37] Brooks Communications of Missouri, Inc. response to KCC Staff Data Requests - Docket No. 97-SWBT-411-GIT, Question J.

recurring charges of $500,000 per office, for a 400 square foot cage. This might make sense, if the collocation cage were made of gold.

C. SWBT Has Failed to Comply With Section 271 of the FTA in Transmission and Routing of Telephone Exchange Service.[38]

40. The exchange of traffic is central to the full implementation of interconnection. Again, SWBT has failed in this area. Congress established that interconnection must be "at least equal in quality to that provided by the local exchange carrier to itself" and provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[39] Brooks initially requested approximately 800 trunks between itself and SWBT. SWBT refused to provide this quantity of trunks and insisted on Brooks first proving (apparently through blocking calls) that it really needed this quantity of trunks. Brooks had to escalate the issue within SWBT to obtain any resolution of the problem.

41. This is not "just, reasonable, and nondiscriminatory" treatment of Brooks in the provisioning of interconnection trunking. Brooks was fully aware of the customers on its network and their traffic requirements. Further, Brooks and SWBT had negotiated an interconnection agreement that contained agreed-upon provisions for dealing with capacity over-provisioning.[40] Notwithstanding these facts, SWBT unilaterally restricted Brooks' ability to serve its customers until Brooks escalated the problem within SWBT to resolve the situation. This experience with SWBT in the "transmission and routing of telephone

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[38] FTA, ¶ 271(c)(2)(B)(i).

[39] *Id.* ¶¶ 251(c)(2)(C) and 251(c)(2)(D).

[40] Interconnection Agreement between Brooks Fiber Communications of Oklahoma, Inc. . . . and Southwestern Bell Telephone Company, Appendix NIM, at 3-4.

exchange service" caused Brooks (and should cause all new entrants) to be concerned about SWBT's apparent intent to restrict a new entrant's ability to meet growing demand from its customer base.

D. SWBT Has Failed to Provide Nondiscriminatory Access to Unbundled Elements As Required by Section 271 of the FTA.[41]

42. One of the requirements Congress established for ILECs to receive interLATA regulatory relief is full implementation of the checklist. Although SWBT has negotiated unbundled elements with five companies, as identified above, not a single unbundled element has yet been ordered or purchased from SWBT by any carrier. SWBT's performance in this area cannot be fully evaluated at this time. However, the lack of any orders for unbundled elements is a problem of SWBT's own making.

43. As outlined in detail above, the pricing SWBT has established for unbundled elements is extraordinarily high and wholly unreasonable. Consequently, Brooks has been forced to serve its few customers "on net" with at least two exceptions.[42] Brooks had two customers come to them for DS1 service where Brooks could not provide them an "on net" connection. This is the perfect opportunity to purchase an unbundled loop. Brooks could have purchased an unbundled DS1 loop from SWBT under its interconnection prices at a monthly cost of $173.25 and a non-recurring cost of $360.35. Instead, Brooks chose to purchase a DS1 out of SWBT's Special Access Tariff for a monthly cost of approximately $152.00 and virtually no non-recurring cost. Congress required in the FTA that the prices

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41 Federal Telecommunications Act of 1996, ¶ 271(c)(2)(B)(ii).

42 The term "on net" means that Brooks would provide the facilities for the entire path from the switch to the customer's premises.

for unbundled elements be cost based.[43] This pricing discrepancy, particularly in relation to the non-recurring costs, clearly indicates that SWBT has not provided cost-based pricing as required by the checklist.

44. Brooks has chosen for economic and operational reasons not to purchase unbundled loops from SWBT at present. None of the other unbundled elements that are outlined in the checklist have even been considered for purchase by an CLEC in Oklahoma.[44] Thus a determination of SWBT's full implementation of the checklist cannot be made at this time. AT&T, as discussed earlier in this testimony, is very interested in purchasing unbundled elements in the form of the Platform. But this will not occur unless and until SWBT ceases to establish roadblocks to the Platform at every turn and offers cost-based unbundled element prices that allow for the economical provision of local telecommunications service.

E. SWBT Has Failed to Fully Implement the Checklist with Respect to OSS Billing Functions.

45. SWBT proudly claims to have provided non-discriminatory access to its OSS functions. This issue is addressed at length in the Statement of Nancy Dalton. However, Brooks has had the opportunity to experience first-hand how SWBT is living up to this claim in the area of billing. Brooks began purchasing interconnection services from SWBT in November 1996. SWBT is supposed to provide a monthly bill for these services. Brooks has yet to receive a bill from SWBT and believes it is primarily due to a deficiency in

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[43] FTA, ¶ 252(d)(1).

[44] *Id.* ¶ 272(c)(2)(B)(iv)-(vi).