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FEDERAL COMMUNICATIONS COMMISSION
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VIA HAND DELIVERY

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

Re: *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma*

Dear Mr. Caton:

Enclosed for filing please find an original and twelve copies of the Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma. The applicants are submitting separately certain confidential materials under seal, pursuant to 47 C.F.R. § 0.459. Parties wishing to review these materials pursuant to an appropriate protective order may do so during normal business hours at the office of Michael K. Kellogg, at the above-listed address.

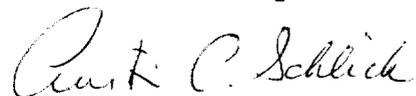
Consistent with the FCC's Public Notice, electronic versions of the applicants' brief and the supporting affidavits are being submitted in Wordperfect 5.1 format. The conversion of these documents to WordPerfect 5.1 format from their original formats (including Microsoft Word) may result in difficulties for those seeking to access the material from the FCC's home page. The applicants will upload the brief and all supporting affidavits to

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the Southwestern Bell home page (<http://www.swbell.com>) in their original formats. Copies of the application are being provided to the Department of Justice, the Oklahoma Corporation Commission, and ITS.

Please date stamp the extra copy and return it to the individual delivering this package. Thank you for your assistance in this matter.

Yours sincerely,

A handwritten signature in cursive script that reads "Austin C. Schlick". The signature is written in dark ink and is positioned above the typed name.

Austin C. Schlick

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Application by SBC Communications Inc.,
Southwestern Bell Telephone Company,
and Southwestern Bell Communications
Services, Inc. d/b/a Southwestern Bell
Long Distance for Provision of In-Region,
InterLATA Services in Oklahoma

CC Docket No.

97-121

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SBC COMMUNICATIONS INC.,
SOUTHWESTERN BELL TELEPHONE COMPANY, AND
SOUTHWESTERN BELL LONG DISTANCE FOR PROVISION OF
IN-REGION, INTERLATA SERVICES IN OKLAHOMA**

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April 11, 1997

EXECUTIVE SUMMARY

The Telecommunications Act of 1996 represented a giant step toward removing legal barriers to providing local telephone services and allowing anyone to compete. The Act also imposed the virtually unprecedented requirement that incumbent local exchange carriers ("LECs") devote their personnel and facilities to assisting entry by competitors.

For several years prior to passage of the Act, Southwestern Bell had supported federal and state legislation to permit fair competition in the local exchange. Since the legislation's passage, Southwestern Bell has worked diligently to fulfill its new responsibilities. In its traditional five-state service area, Southwestern Bell has negotiated and signed 89 agreements with 50 different competitors, including Sprint, ICG, Brooks Fiber, and numerous other companies that seek to capitalize on the opportunities presented by the 1996 Act. Southwestern Bell also has spent millions of dollars to revamp its operations to comply with the Act. Among other things, Southwestern Bell has unbundled its local network, offered retail services at a discount for resale, and made state-of-the-art electronic operations support systems available to competitors.

Despite the extraordinary burdens placed upon it, Southwestern Bell supported the 1996 Act because it was balanced. Congress sought to open all telecommunications markets to competition. In particular, the Act established a mechanism by which greater competition in local telephone services will go hand-in-hand with greater competition in interLATA services. Southwestern Bell is shouldering its statutory burdens and it will continue to do so. As a result, the local exchange market in Oklahoma has been opened and competition has an opportunity to

flourish. Now it is the public's turn, and Southwestern Bell's turn, to benefit from full competition in long distance in Oklahoma.

In Oklahoma, Southwestern Bell has satisfied all statutory prerequisites to obtaining in-region, interLATA relief. First, pursuant to the Act, the Oklahoma Corporation Commission ("OCC") has approved Southwestern Bell's interconnection agreements with six different local competitors. These include Brooks Fiber, which in January 1997 became the first competitor in Oklahoma to commence providing local exchange service to both residential and business customers and to offer such service exclusively or predominantly over its own network. The terms available to Brooks Fiber satisfy the Act's "competitive checklist," as this Brief and the supporting materials demonstrate.

In addition, Southwestern Bell filed a statement of generally available terms and conditions for interconnection and access in Oklahoma ("Statement"), which the OCC allowed to take effect on March 16, 1997. The Statement meets all the statutory and regulatory requirements associated with the Act's fourteen-point checklist. Southwestern Bell thus doubly satisfies the requirements of sections 271(c) of the Communications Act.

Southwestern Bell and all its subsidiaries and affiliates will operate in accordance with the structural and non-structural safeguards of section 272 and the Commission's implementing regulations upon receiving interLATA authority.

Despite Southwestern Bell's full compliance with the statutory and regulatory safeguards, some may argue that entry into interLATA services should be contingent on a threshold level of local competition or market-share loss. Congress explicitly rejected this approach. Once a Bell

company complies with the 1996 Act's prerequisites for interLATA entry, competitors — not the Bell company — determine the extent, type, and timing of local exchange competition. For example, large incumbent interexchange carriers might put off plans to provide facilities-based local competition, and operate solely as resellers, if they thought this would keep Bell companies out of long distance. Similarly, local competitors will not compete for the business of those low-volume and rural customers a Bell company is required to serve below cost pursuant to state or federal rate orders. Such entry strategies reveal the vulnerability of Bell companies in their local business, not any limits on competitors.

Competitors in Oklahoma can compete against Southwestern Bell now, either on a facilities basis or as resellers (for instance by taking advantage of the 19.8 percent discount rate for wholesale services established by the Statement). Indeed, Oklahoma was the first State after passage of the 1996 Act to issue rules that open the local exchange to competition, and Southwestern Bell has been a leader in responding to the needs of competitors. Under the 1996 Act, these opportunities for local competitors in Oklahoma are a trigger for Southwestern Bell's entry into interLATA services in that State. Congress did not intend that long distance carriers could enter the local exchange while continuing to profit from entry barriers into their own core market. Rather, Congress wanted to accelerate competition in both local services and long distance by concurrently dropping barriers to entry in these previously separate markets.

Southwestern Bell's entry into interLATA services in Oklahoma would serve the public interest even if the interLATA market were perfectly competitive. Nevertheless, it is important to note that, across the country, interLATA markets exhibit healthiest competition in those areas,

such as Connecticut and two small "corridors" in New Jersey, where all companies have been permitted to compete. This contrasts with nationwide trends, where basic residential interstate rates have gone up by over 20 percent since 1994, notwithstanding sharp cost reductions from new technologies and a 10 percent drop in access charges from 1994 to 1996.

Southwestern Bell can use its brand name, reputation for providing reliable, high-quality telephone service, and network expertise to inject competition into interLATA services in Oklahoma, particularly for the business of ordinary residential callers. Southwestern Bell likewise will be able to offer "one-stop shopping," thereby enhancing competition in this emerging area. Southwestern Bell will be a committed, effective new entrant into the interLATA business in Oklahoma, and Oklahoma consumers will benefit from this new competition for all telecommunications services.

By a conservative estimate, immediate interLATA entry by Southwestern Bell in Oklahoma would result in the creation of an additional 10,000 jobs and an increase of more than \$700 million in the Gross State Product by the year 2006. In addition, as a result of incidental manufacturing relief, Southwestern Bell will be freed to put its expertise as a user of telecommunications equipment fully to work, leading to better and lower-cost products.

These concrete benefits can be realized without any threat of harm to competition or consumers. Federal and state regulatory safeguards fully address speculative concerns about possible cost misallocation or discrimination. Indeed, this Commission has already found that its rules will be effective in these areas. Southwestern Bell also will start with zero market share in

a business in which the incumbents have vast resources, well-developed advantages, and high sunk costs, factors that make its accumulation of market power inconceivable.

Consumers have benefitted whenever the Bell companies or other local carriers have been allowed to enter markets related to local telephone service, including interLATA services, cellular services, and information services. In addition, Southwestern Bell has an extensively documented, thirteen-year record of providing access and interconnection to long-distance carriers and wireless providers on a non-discriminatory basis. This not only shows the efficacy of existing equal access rules, but also establishes a baseline that will allow detection of any attempt to favor or disfavor a particular competitor.

Also worth noting are the interexchange carriers' actions in the marketplace, which speak more persuasively than their words. If, for example, AT&T really believed that LECs could get away with discriminatory access arrangements, it would not have invested billions of dollars in wireless systems that are configured to utilize such interconnection.

Free entry into interLATA and intraLATA services will make both markets more competitive and best serve consumers, just as Congress foresaw. Consistent with the 1996 Act, Southwestern Bell has done its part to allow local competition in Oklahoma. Now the Commission should do its part to implement the congressional design. It should approve this application because Southwestern Bell has satisfied all the requirements for interLATA entry in Oklahoma, and because doing so will allow consumers in Oklahoma to realize the full benefits of competition.

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Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act" or "Act"), SBC Communications Inc. and its subsidiaries Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBLD") — collectively, "Southwestern Bell" — seek authority for SBLD to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the State of Oklahoma.¹ Southwestern Bell has satisfied each of the three requirements for approval

¹ Southwestern Bell currently intends to offer in-region, interLATA services in Oklahoma only through SBLD. However, all references to SBLD should be understood to encompass any affiliate of SWBT that operates consistent with this application's representations regarding SBLD's future activities and statutory compliance.

of this application under section 271(d)(3). Part I of this Brief makes preliminary showings required by the Commission. Part II more fully explains that Southwestern Bell has satisfied the local competition requirements of section 271(c). By virtue of a negotiated agreement that has been approved by the OCC, SWBT provides a facilities-based, competing provider of business and residential service with interconnection and network access that satisfies the competitive checklist. SWBT also satisfies the checklist by offering interconnection and access through its Statement, which the OCC has allowed to take effect. Part III confirms that Southwestern Bell will abide by the structural and non-structural safeguards of section 272, as well as the Commission's implementing regulations. Part IV demonstrates that approving this application is consistent with the public interest, convenience, and necessity.²

I. INTRODUCTION AND MANDATORY STATEMENTS

The 1996 Act overturns regulatory compacts formed generations ago. As holders of exclusive franchises, LECs historically were the sole providers of telephone services to their customers. They enjoyed freedom from local exchange service competition and the opportunity to obtain a reasonable return on their investment. In exchange, regulators determined LECs' ability to offer services and the prices they charged.

Congress established a new deregulatory compact through the 1996 Act, based on the principle that competition across all markets, not regulation, best serves the public interest. Congress required the states to allow local service competition. 47 U.S.C. § 253(a). Then it addressed economic and technical barriers to entry, by ordering incumbent LECs affirmatively to

² The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 follow this Brief.

assist competitors in entering local markets by providing interconnection, access to unbundled network elements, and services for resale. 47 U.S.C. §§ 251-252.

On the other side of the coin, Congress included incumbent LECs, and particularly the Bell companies, among those eligible to benefit from the new regime of open competition. New section 271 of the Communications Act represents a bargain by which the Bell companies will be freed on a state-by-state basis from restrictions that previously attached to their former monopoly position, once they have taken the mandated steps to give up their monopoly and have implemented safeguards precluding exercise of local market power.

In living up to its obligations under the 1996 Act, SWBT has devoted thousands of employee hours to negotiating in good faith with actual and potential competitors of all description. SWBT's 89 interconnection agreements are the tangible result of these efforts. See Zamora Aff. ¶ 22. On top of this, SWBT has invested millions of dollars to make its network accessible to competitors. SWBT has upgraded its equipment and systems to provide at least the level of network access and unbundling required under the 1996 Act and Commission orders. This includes not merely revamping SWBT's network equipment and software to accommodate competitive local exchange carriers ("CLECs"), see, e.g., Deere Aff. ¶¶ 8-25, 48-56 (describing interconnection arrangements and certain unbundling), but also developing entirely new services, organizations, interfaces, and operating procedures for the benefit of competitors. For instance, SWBT has established a Local Service Provider Center ("LSPC") and a Local Service Provider Service Center ("LSPSC") with the sole mission of providing competitors access to SWBT's facilities and services on a non-discriminatory basis. See Kramer Aff. (LSPC); Lowrance Aff.

(LSPSC). Functioning interfaces allow competitors the same level of access to operations support systems ("OSS") SWBT has, with the same speed. See Ham (OSS) Aff.

Southwestern Bell has done everything Congress expected as a condition of entry into interLATA services. Indeed, one of SWBT's competitors in Oklahoma recently proclaimed, "IT'S HISTORY!! The days of Southwestern Bell's monopoly on local phone service are over." Wheeler Aff. Sched. 2, at 25a (Brooks Fiber letter). Under Congress' plan for full competition across telecommunications markets, the time for total interLATA competition in Oklahoma has come.

A. Statement Regarding Status of Interconnection Agreements

In Oklahoma, SWBT personnel have devoted thousands of work-hours to concluding negotiations with competitors and drafting and implementing the resulting agreements. See generally Zamora Aff. Their efforts thus far have produced sixteen negotiated interconnection and resale agreements, of which six have been approved by the OCC pursuant to section 252(e) of the Communications Act. Zamora Aff. ¶ 24; Stafford Aff. ¶¶ 13-14. All of these agreements were reached through negotiations, without arbitration. SWBT's OCC-approved agreements are with Brooks Fiber Communications ("Brooks Fiber"),³ Dobson Wireless, Inc., ICG Telecom Group, Inc. ("ICG"), Sprint Communications ("Sprint"), US Long Distance Inc. ("USLD"), and

³ Brooks Fiber Communications of Oklahoma and Brooks Fiber Communications of Tulsa separately executed a single agreement with SWBT. The "Brooks Fiber Agreement" dated August 29, 1996, was approved by the OCC on October 22, 1996. See App. Vol. III, Tab 2.

Western Oklahoma Long Distance ("WOLD").⁴ These agreements, and the OCC orders approving them, are reproduced in Volume III of the Appendix to this Brief.⁵ Eight additional agreements have been submitted to the OCC and are awaiting OCC approval.⁶

Each of SWBT's signed agreements was negotiated in good faith. Each constitutes evidence of Southwestern Bell's compliance with the 1996 Act. To establish satisfaction of section 271's requirements, however, this Brief relies only upon those agreements that have been approved by the OCC.

On December 12, 1996, the OCC rendered its final decision in Cause No. PUD 960000218, a compulsory arbitration initiated by AT&T Communications of the Southwest, Inc. ("AT&T") pursuant to Section 252(b) of the 1996 Act.⁷ The OCC's final decision in that case, approving in part and modifying in part the Arbitrator's Report and Recommendations, further defined SWBT's obligation to interconnect with competing CLECs in the State of Oklahoma. SWBT's Statement for Oklahoma is consistent with the terms of this decision. SWBT and

⁴ The OCC approved the "USLD Agreement" and the "Dobson Wireless Agreement" on December 23, 1996; it approved the "WOLD Agreement" on February 6, 1997; the "Sprint Agreement" and the "ICG Agreement" were approved on April 3, 1997. Stafford Aff. ¶ 14.

⁵ The agreements are provided in the same form in which they were filed with and approved by the OCC. Appendix Volume III also contains a copy of SWBT's agreement with Sterling International Funding d/b/a Reconex, which currently is pending before the OCC.

⁶ These agreements are with Caprock Communications, Chickasaw Telecommunications, Comm South Company, Fast Connections, Intermedia Communications, Preferred Carrier Services, Reconex, and U. S. Telco. Stafford Aff. ¶ 13. SWBT also has entered into interconnection agreements with TIE Communications and Capital Telecommunications. At TIE's and Capital's request, however, those agreements are not currently pending before the OCC. *Id.* ¶ 13 & n.1.

⁷ A copy of the OCC's final decision in the AT&T arbitration and a copy of the Arbitrator's Report and Recommendation are included in Appendix Volume III, at Tab 9.

AT&T currently are negotiating an interconnection agreement implementing the OCC's decision.

Zamora Aff. ¶ 28.⁸

There are no pending judicial actions arising from SWBT's negotiated interconnection agreements or the AT&T arbitration.

B. Statement Identifying How SWBT Meets the Requirements of Section 271(c)(1)

Brooks Fiber commenced providing telephone exchange service to residential and business customers in Oklahoma on January 15, 1997. Brooks Fiber qualifies as a facilities-based local service provider not only in the ordinary sense, but also under the narrow definition set out in subsection 271(c)(1)(A). See infra Part II(A)(1). SWBT is providing Brooks Fiber interconnection and access to SWBT's network pursuant to the parties' negotiated, OCC-approved agreement. SWBT thus may file this application pursuant to subsection 271(c)(1)(A).

See id.

SWBT also is authorized to file this application pursuant to section 271(c)(1)(B). On January 15, 1997, SWBT filed its Statement with the OCC. The Statement sets out the terms and conditions under which SWBT offers to provide access to its network, interconnection, and resale opportunities on a non-discriminatory basis to any requesting CLEC, in accordance with the Act and the Commission's rules. See App. Vol. III, Tab 1; see also § 252(f). The OCC allowed SWBT's Statement to take effect as of March 17, 1997. With the Statement in effect,

⁸ SWBT recently requested mediation to aid those negotiations. AT&T then requested that the OCC adopt AT&T's position on all disputed issues in the implementation negotiations. SWBT has moved to dismiss that filing as untimely and improper under the Act.

SWBT is able to apply for interLATA relief in Oklahoma under subsection 271(c)(1)(B) in the event this Commission finds that SWBT has received no timely request for access and interconnection from any qualifying CLEC, including Brooks Fiber, whose request would bar such a filing. See infra Part II(A)(2).

C. Statement Regarding OCC Proceedings

On February 18, 1997, an administrative law judge established a procedural schedule regarding the OCC's consideration of Southwestern Bell's future section 271 application pursuant to section 271(d)(2)(b). Aside from Southwestern Bell, only six parties — AT&T (joined in part by MCI), Sprint, Brooks Fiber, Cox Communications, and the Oklahoma Attorney General — filed comments in that proceeding. The record of the OCC's proceeding through April 3, 1997, is reproduced in Appendix Volume IV to this Brief.

D. Statement Regarding Efforts to Narrow the Issues in Dispute

The OCC's section 271 proceeding has given all interested parties the opportunity to identify disputed issues concerning Southwestern Bell's application. In addition, Southwestern Bell contacted all carriers with which it is negotiating or has negotiated a local interconnection agreement for Oklahoma in an effort to determine whether they intend to oppose SWBT's application and, if so, whether a meeting might help to narrow any issue in dispute. See App. Vol. II, Tab 1 (letters). Some carriers who filed comments in the OCC proceeding have indicated that they wish to meet to discuss potential areas of dispute in the FCC docket, and at least one carrier affirmatively has indicated it has no objection to Southwestern Bell's application. See App. Vol. II, Tab 2 (AT&T and Annox letters). Southwestern Bell will

schedule meetings with those carriers and report to the Commission any developments that bear upon the status of this application. No carriers, other than some carriers involved in the OCC docket, have indicated an intention to oppose Southwestern Bell's FCC application for interLATA entry in Oklahoma.

II. SWBT AFFORDS COMPETITORS NETWORK ACCESS AND INTERCONNECTION AS REQUIRED UNDER SECTION 271(c)

Subsection 271(d)(3)(A) of the Communications Act measures whether a Bell company seeking in-region, interLATA authority has met the Act's preconditions for providing or generally offering network access and interconnection, as set out in section 271(c).⁹ SWBT's satisfaction of this test ensures that any CLEC that wishes to provide local services in Oklahoma can do so.

A. SWBT Has Satisfied the Requirements of Section 271(c)(1)

1. SWBT Satisfies Section 271(c)(1) by Virtue of its Provision of Access and Interconnection to Brooks Fiber

Subsection 271(c)(1)(A) permits a Bell company to apply for interLATA relief in a state when it provides interconnection and network access to one or more qualifying, facilities-based CLECs; that is, to competitor(s) that provide telephone exchange service (excluding exchange access) to residential and business customers and offer such service "either exclusively over their

⁹ Southwestern Bell recognizes that the Commission has no power now to grant relief on Southwestern Bell's belief that section 271, along with other provisions of the 1996 Act that single out and impose burdens on the BOCs by name, constitutes an unconstitutional bill of attainder, and also violates both separation of powers and equal protection principles. Accordingly, Southwestern Bell hereby preserves these arguments in the event that an appeal from the Commission's decision is necessary.

own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.” 47 U.S.C. § 271(c)(1)(A).

Brooks Fiber, a CLEC unaffiliated with SWBT, represents that it has received authority to “provid[e] all types of intrastate switched services, including switched local exchange (i.e., dial-tone) service” in Oklahoma.¹⁰ Brooks Fiber further represents that it actually furnishes local exchange service to both residential and business customers in Tulsa and Oklahoma City pursuant to its interconnection agreement with SWBT, and began doing so in mid-January 1997. Brooks Fiber OCC Comments at 2; OCCHearing Tr. at 125-26 (Feb. 13, 1997), reproduced in App. Vol. IV, Tab 8. SWBT is aware that Brooks Fiber continues to sign up current SWBT customers as new subscribers. Wheeler Aff. ¶ 8.

There is no requirement that a qualifying CLEC under subsection 271(c)(1)(A) serve any minimum number of customers. Congress rejected all metric tests of the actual level of competition in favor of a clear statutory “test of when markets are open.” 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler). Senator Kerrey, for instance, proposed an amendment that would have changed section 271(c)(1) to provide that “a Bell operating company may provide interLATA services in accordance with this Section only if that company has reached interconnection agreements under Section 251 with . . . telecommunications carriers capable of providing a substantial number of business and

¹⁰. Initial Comments of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc., at 1 (“Brooks Fiber OCC Comments”) (App. Vol. IV, Tab 23).

residential customers with” service. 141 Cong. Rec. S8310, S8319 (daily ed. June 14, 1995).

That proposed amendment was defeated, as was a similar House proposal.¹¹ Brooks Fiber thus fully satisfies subsection 271(c)(1)(A)’s “residential and business subscribers” test.

Under section 271(c)(1)(A), a qualifying CLEC’s local service “may be offered . . . either exclusively over [the CLEC’s] own telephone exchange service facilities or predominantly over [its] own telephone exchange service facilities in combination with the resale of the telecommunications services” of Southwestern Bell. Brooks Fiber not only “offer[s]” service over its own network — thereby fulfilling this requirement — but actually furnishes service to customers exclusively over that network. Brooks Fiber OCC Comments at 2.

Brooks Fiber’s General and Local Exchange Tariffs, on file with and approved by the OCC, state that Brooks Fiber will provide telephone exchange service using its own fiber optic cable and switching facilities. See App. Vol. II, Tab 3, at §§ 2.1.1 & 4. Brooks Fiber’s local network in Tulsa includes 221 route miles of fiber and a Lucent 5ESS central office switch. Brooks Fiber OCC Comments at 2; see Wheeler Aff. ¶ 14. In Oklahoma City, Brooks Fiber owns and operates a 44-mile network and a second Lucent 5ESS switch. Brooks Fiber OCC Comments at 2; see Wheeler Aff. ¶ 7. In both Tulsa and Oklahoma City, Brooks Fiber has obtained local/intraLATA trunks from SWBT that connect its facilities to SWBT facilities. Butler Aff. ¶¶ 4-7.

¹¹. See 141 Cong. Rec. H8454 (daily ed. Aug. 4, 1995) (statement of Rep. Bunn) (noting House’s rejection of threshold test, which would have required CLECs to offer local services to 10% of customers).

Brooks Fiber uses its Lucent switches to perform all network switching. Id. ¶¶ 5-7; see Brooks Fiber OCC Comments at 2. As of March 11, 8 of Brooks Fiber's 21 business customers in Oklahoma were served "via direct on-net connections," over the switched fiber networks described above. Brooks Fiber OCC Comments at 2.¹² Brooks Fiber thus, by its own account, serves business customers exclusively over its existing network. Brooks Fiber also offers service to residential customers in this fashion (although as of mid-March 1997, it actually served residential customers only through resale). Brooks Fiber OCC Comments at 2; see id. at 3 (resale "a secondary method"). These facts demonstrate that Brooks Fiber is a qualifying carrier under subsection 271(c)(1)(A).

Even if Brooks Fiber did not serve customers entirely over facilities not obtained from SWBT, but instead served all of its customers in part over T-1 circuits leased from SWBT, Brooks Fiber would still satisfy the "predominantly" facilities-based requirement. In that case, Brooks Fiber would complete calls within its network using no switching or trunking facilities obtained from SWBT. Local exchange facilities can be broken down into three principal network elements: local loops, local transport, and local switching. Since Brooks Fiber only takes at most one of these elements from SWBT (i.e., T-1 circuits to serve as local loops), the test of predominance is met.¹³ Furthermore, as to the leased T-1 circuits themselves, the statute does

¹² Eleven business customers were connected to a Brooks Fiber network using T-1 facilities leased from SWBT. One business customer received ISDN service furnished by Brooks Fiber on a resale basis. Id.

¹³ Congress recognized that new competitors are unlikely to have their own "fully redundant network[s]" and, at least at the outset, may need to purchase "[s]ome facilities and capabilities (e.g., central office switching)" from the incumbent LEC. Conference Report at 148. Legislators

not require that a qualifying CLEC have legal title to “its own” facilities. It is enough that the facilities are dedicated solely to the CLEC’s use, as under a lease arrangement. The plain language of subsection 271(c)(1)(A) in fact distinguishes a CLEC’s “own telephone exchange service facilities,” on the one hand, from “resale of the telecommunications services of another carrier,” on the other (emphasis added). This language fits with the point of the “predominantly” facilities-based requirement, which was simply to screen out “a competitor offering service exclusively through the resale of the BOC’s telephone exchange service.” S. Rep. 230, 104th Cong., 2d Sess. 148 (1996) (“Conference Report”) (emphasis added).

Brooks Fiber thus serves both business and residential customers in Oklahoma and offers its service exclusively or predominantly over facilities it owns or obtains from a party other than SWBT. The facilities-based competition requirement of subsection 271(c)(1)(A) is satisfied.

The Brooks Fiber Agreement has been approved by the OCC. See App. Vol. III, Tab 2. As described in Part II(B) below, this agreement “specifies the terms and conditions under which [SWBT] is providing access and interconnection to its network facilities for the network facilities” of Brooks Fiber. § 271(c)(1)(A). Accordingly, SWBT’s implemented agreement with Brooks Fiber satisfies all the requirements of subsection (A).

2. *SWBT also Satisfies Section 271(c)(1) by Virtue of its Statement*

As a counterpoint to the carrier-specific focus of subsection (A), subsection (B) allows a Bell company to satisfy the requirements for interconnection and network access by offering

intended that these carriers would be treated as facilities-based competitors for purposes of Bell company interLATA entry. Id.

terms and conditions to CLECs generally, through a statement of terms and conditions. This opportunity “ensure[s] that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market.” Conference Report at 148. Subsection (B) reflects Congress’ recognition that actual, facilities-based local service competition may not occur as soon as it is possible, and that consumers would suffer if such competition were compulsory before Bell companies could enter long distance in their home regions.

Congress was aware that deployment of competing local networks is beyond the incumbent Bell company’s control. See Conference Report at 148 (noting that competitors likely will not deploy fully redundant networks initially). Indeed, if interexchange carriers thought they could keep Bell companies from competing in long distance by themselves providing only resold local services, they might well avoid facilities-based entry altogether. Strategic local entry by interexchange carriers, unaccompanied by a chance for interLATA entry by the incumbent Bell company, would undo Congress’ decision that there should be symmetrical opportunities. As this Commission has explained, the 1996 Act

links the effective opening of competition in the local market with the timing of BOC entry into the long distance market, so as to ensure that neither the BOCs nor the existing interexchange carriers could enjoy an advantage from being the first to enter the other’s market.¹⁴

¹⁴ First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Dkt. No. 96-149, FCC 96-940 at ¶ 8 (rel. Dec. 24, 1996) (“Non-Accounting Safeguards Order”).

Interexchange carriers and others have the opportunity to provide local services in competition with Southwestern Bell today; some are taking advantage of it. Congress intended that this opportunity would be the trigger for Southwestern Bell's entry into long distance, so that consumers could benefit from competition across the formerly separate markets that is full, as well as fair.

In accordance with these congressional goals, subsection 271(c)(1)(B) ensures that competitors' decisions regarding facilities-based local entry will not substantially delay greater long-distance competition. Subsection (B) allows the Bell companies to apply after December 8, 1996 for interLATA entry based upon an effective "statement of the terms and conditions that the company generally offers to provide . . . access and interconnection." This route is available where no CLEC that is a qualifying, facilities-based telephone exchange competitor for purposes of subsection (A) "has requested" access and interconnection. § 271(c)(1)(B). To prevent interLATA entry under subsection (B), however, the requesting local competitor may not simply anticipate building facilities and seek interconnection in anticipation of that day. Rather, it must actually be "such provider" described in subsection (A). *Id.*; see 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin) ("Subparagraph (B) uses the words 'such provider' to refer back to the exclusively or predominantly facilities based [local service] provider described in subparagraph (A)").

Southwestern Bell thus may submit this application pursuant to subsection (B) if the Commission should find that: (1) no CLEC, including Brooks Fiber, qualifies as a facilities-based provider of business and residential local service within the definition of subsection