

ability to compete for low-volume AT&T customers who have been ignored by MCI and Sprint: whereas its share of revenues is 20 percent, its share of customers is half-again as high.⁶⁰

Wireless Long Distance. In 1991, the Bell companies requested that the MFJ be modified to allow them to provide long distance in conjunction with wireless services. AT&T, which dominated the wireless long distance market prior to Bell company entry,⁶¹ opposed the Bell companies' request on the grounds that it would harm, rather than promote, competition.⁶² AT&T was exactly wrong: Bell company entry has increased competition and lowered prices. Southwestern Bell, for instance, offers customers of its cellular affiliate a single flat rate of 20 cents per minute for all wireless long distance calls, which compares favorably with the rates charged by competing carriers.

In each of these examples, there is one constant. Contrary to the self-interested claims of incumbents, Bell company entry into interLATA services has benefitted competition and consumers. In fact, the internal documents of AT&T and MCI show that when off the public stage, their employees concede that Bell company provision of in-region, interLATA services will intensify competition and lower long distance prices.⁶³

^{60.} Id.

^{61.} See Competitive Impact Statement, 59 Fed. Reg. 44,166, 44,169 (1994) (citing AT&T market share of 70% in local markets).

^{62.} AT&T's Opposition to RBOCs' Motion to "Exempt" Wireless Services from Section II of the Decree at 55-56, United States v. Western Electric Co., No. 82-0192 (DOJ Apr. 27, 1992) (App. Vol. II, Tab 23).

^{63.} Joint Brief of Applicants Pacific Telesis Group and SBC Communications Inc. at 120-26, Matter of the Joint Application of Pacific Telesis Group ("Telesis") and SBC Communications Inc. ("SBC") for SBC to Control Pacific Bell, App. No. 96-04-038 (Cal. PUC Dec. 20, 1996)

2. *SBLD Is Well Positioned to Increase Competition in Oklahoma*

SBLD will bring important assets to the interLATA market that will enable it to compete effectively. Southwestern Bell is an established telecommunications carrier that has honed its marketing as a cellular carrier in Oklahoma, as well as a provider of other competitive offerings, such as exchange access to business customers, Centrex service, customer premises equipment, and directories. Because it has billing, collection, and administrative systems in place, Southwestern Bell would have relatively low start-up costs in these areas, a factor that is especially important in serving lower-volume customers.⁶⁴ These are the same sorts of efficiencies on which AT&T relied when securing approval to acquire McCaw, Applications of Craig O. McCaw and AT&T, 9 FCC Rcd 5836, 5885, ¶ 83 (1994), aff'd subnom., SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995), and that British Telecom and MCI are currently putting forward as a reason to approve their merger.⁶⁵

The familiar "Southwestern Bell" brand name also will make SBLD a strong competitor to the major incumbents. Independent market research indicates that, in 1995, 3 out of 4 SWBT customers rated the company as "very good" or "good" in the categories of customer service and service reliability/product quality — high ratings that are virtually the same as those for

("Merger Br.") (public version reproduced in App. Vol. II, Tab 13). These documents were obtained by Southwestern Bell and the Department of Justice in the course of state proceedings on SBC's merger with Pacific Telesis Group. In accordance with the governing confidentiality rules, they are not being provided to the Commission with this Brief (App. Vol. II, Tab 24).

⁶⁴. See generally Kahn Aff. ¶¶ 29-31, 34; cf. Non-Accounting Safeguards Order ¶ 178 (allowing sharing of services other than operation, installation, and maintenance of facilities).

⁶⁵. Applications and Notification, Merger of MCI and British Telecommunications, GN Docket No. 96-245, at 11 (filed Dec. 2, 1996) (App. Vol. II, Tab 25).

incumbent interexchange carriers. Schmalensee Aff. ¶ 27. This strong brand name and reputation in the telecommunications field in Oklahoma should lower SBLD's marketing costs as compared to other potential new entrants, positioning SBLD as a serious competitor from the first day of its entry.⁶⁶

SBLD's strength as a new entrant will be especially pronounced with relatively low-usage callers who are current SWBT customers. See Kahn Aff. ¶¶ 29, 34. These customers are part of a low-volume market segment that, by all accounts, is "neglected in the competition among interexchange carriers."⁶⁷ The failure of the three large carriers to market services to this group leads many residential and small business customers to choose AT&T out of inertia, despite its higher prices.⁶⁸

Likewise, the ability of SBLD and SWBT to offer bundled service offerings and "one stop shopping" will allow them to challenge the current incumbents by supplying high-quality

⁶⁶ See Schmalensee Aff. ¶ 34; Applications of Craig O. McCaw, 9 FCC Rcd at 5871-72, ¶ 57 (1994) (finding that AT&T acquisition of McCaw would serve public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how), aff'd sub nom. SBC Communications Inc v. FCC, 56 F.3d 1484 (D.C. Cir. 1995); see also Non-Accounting Safeguards Order ¶ 183 (allowing affiliates to share marketing services).

⁶⁷ Schmalensee Aff. ¶ 18; see Detariffing Order ¶ 123 (long distance carriers compete more vigorously for high-volume customers than low-volume customers).

⁶⁸ AT&T's national market shares were 58 percent of revenues, but 70 percent of access lines at the end of 1994, showing that it is disproportionately chosen by lower-volume customers. FCC, Trends in Telephone Service at Tables 29 and 31 (March 1997); see Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5889, ¶ 50 (1991) (AT&T's market share is "significantly lower" for business services than residential services).

interLATA services in innovative and more convenient ways.⁶⁹ Bundled service packages, the Commission and Congress have recognized, can "have clear advantages for the public," such as greater convenience and the ability to secure volume discounts by aggregating purchases of different services.⁷⁰ The Commission thus has supported developments that promise to speed the introduction of bundled services at the retail level. This was one reason why the Commission approved AT&T's buyout of the largest cellular carrier, McCaw Cellular Communications, saying that it "would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification" for doing so. Applications of Craig O. McCaw, 9 FCC Rcd at 5880 ¶ 75. The Commission, in fact, already has identified bundled offerings as a benefit of Bell company in-region interLATA entry. Non-Accounting Safeguards NPRM ¶ 6 & n. 13.

Granting SBLD and SWBT the ability to offer bundled packages is essential to full and fair competition in telecommunications markets. As the Commission has explained, interexchange carriers are "capable of offering one-stop shopping, by building their own local facilities, by reselling unbundled network elements, or by reselling [Bell company] facilities and adding that local offering to their existing long distance service." PacTel/SBC Order ¶ 48.

⁶⁹. See § 272(g); Non-Accounting Safeguards Order ¶¶ 183, 291 (upon interLATA approval, allowing BOC to market local and long distance services jointly and to share marketing services with long distance affiliate).

⁷⁰. Applications of Craig O. McCaw, 9 FCC Rcd at 5878-80; Memorandum Opinion & Order, Applications of Pacific Telesis Group and SBC Communications, Inc., FCC No. 97-28 ¶ 48 (rel. Jan. 31, 1997) ("PacTel/SBC Order") ("[T]he bundling of local access and long distance services . . . may be a desirable feature for some customers."); see also Kahn Aff. ¶ 67.

AT&T, for example, has announced that it plans to "take a basic \$25-a-month long distance customer and convert him or her into a \$100-a-month customer for a broader bundle of services."⁷¹ MCI, under the motto "One company, one number, one box, one bill" is offering bundled long distance, cellular service, Internet access, and MCImetro local service. Gordon Aff. ¶ 26. Sprint is positioning itself to bundle long distance with local landline service, cable television, and PCS offerings. Kahn Aff. ¶ 62. MFS Communications has merged with the Internet access provider Uunet and the long distance carrier WorldCom. Describing the plans of the new company, WorldCom's President explained: "We are creating the first company since the breakup of AT&T to bundle together local and long distance service carried over an international end-to-end fiber network owned or controlled by a single company."⁷²

The "first mover" advantage currently enjoyed by interexchange carriers helps to explain their vehement opposition to entry by Bell companies. AT&T's and MCI's own documents show that they are trying to block Bell company entry not just to maintain their high profit margins in long distance, but also to sign up their existing interLATA customers for service packages that include local service, before they face Bell company competition. See Merger Br. at 120-26. This abuse of administrative process benefits the incumbent interexchange carriers at

⁷¹ John Keller, AT&T Challenges the Bell Companies: Allen Outlines Plans to Take Big Part of Local Market Over Next Several Years, Wall Street Journal, June 12, 1996, at A3 (App. Vol. II, Tab 26).

⁷² Jube Shiver, Communications Firms to Join in \$12 Billion Deal, Los Angeles Times, August 27, 1996, at A-1 (App. Vol. II, Tab 27).

the expense of consumers, who are being denied the price and quality benefits that would flow from true competition.

Furthermore, although the major interexchange carriers are temporarily prohibited from bundling any resold retail services they obtain from SWBT with interLATA services, this very limited restriction will be lifted in Oklahoma as soon as SBLD is allowed to provide interLATA services in the State. See § 271(e)(1). Thus, when Southwestern Bell enters the interLATA services business in Oklahoma, the major carriers can become even more formidable local competitors. Market surveys leave no doubt that the resulting competition will be intense; a recent survey by J.D. Power and Associates, for example, indicates that 65 percent of households are likely to sign up with one company for all telecommunications services, and a majority of these customers are likely to choose their current long distance carrier as their sole provider.⁷³

Importantly, any facilities or services SWBT provides to SBLD will be made available to other carriers on non-discriminatory terms, ensuring that all carriers will have a chance to generate similar economies of scope. See supra Part III(C). Thus, insofar as SBLD and SWBT are able to develop ways of utilizing SWBT's facilities or services more efficiently as inputs to interLATA service, even other carriers and their customers will benefit.

The total public benefits of SBLD's participation in the interLATA market in Oklahoma likely will be dramatic. The WEFA Group has undertaken to estimate the benefits for Oklahomans. It concluded that immediate long distance entry by SBLD would result in the

⁷³ J.D. Power and Associates, J.D. Power and Associates Analysis Reveals: Long Distance Carriers Prime for Local and Long Distance Telephone Market Share (Feb. 27, 1997) (news release) (App. Vol. II, Tab 28).

creation of an additional 10,000 jobs in Oklahoma and an increase of more than \$700 million in the Gross State Product by the year 2006. WEFA Rep. at 1. The benefits would not be limited to telecommunications industries, but rather would be “spread across all major industry groups as the benefit of lower prices . . . boost economic activity throughout the economy.” *Id.* These estimates are conservative and the benefits to the Oklahoma economy may well prove to be greater. Dauffenbach Aff. at 8; Price Aff. at 9. Indeed, Dean MacAvoy projects that the ultimate nationwide gain to consumers from unrestricted Bell company entry into the long-distance market would be as high as \$306 billion, even if AT&T, MCI, and Sprint “maintain their tacitly collusive pricing strategies.” MacAvoy Study at 185. And, during debates on the 1996 Act, Congress itself relied upon estimated savings of \$333 billion from greater long distance competition. 141 Cong. Rec. S 704 (daily ed. Feb. 1, 1996) (Statement of Sen. Ford).

3. *Approval of This Petition Will Promote Competition in IntraLATA Toll Service and Telecommunications Equipment Manufacturing.*

Congress recognized that it would be unfair to require a Bell company to offer 1+ presubscription for intraLATA toll service as long as it cannot compete for interLATA calls. § 271(e)(2). Under the quid pro quo established by the 1996 Act, however, SWBT must offer 1+ presubscription for intraLATA calls within Oklahoma immediately upon its entry into the interLATA market. SWBT will comply with this obligation. Kaeshoefer Aff. ¶ 65; Stafford Aff. ¶ 10. Accordingly, while the OCC already has opened intraLATA toll service to competitors in Oklahoma, see Stafford Aff. ¶ 6, approval of this application will allow even fuller competition in that market and provide yet another benefit to the public in Oklahoma.

In addition to bringing about additional interexchange and local competition, approval of this petition will allow Southwestern Bell fully to participate in telecommunications equipment manufacturing, subject to statutory and regulatory safeguards. See 47 U.S.C. § 273. In the legislative debates that preceded the 1996 Act, the potential benefits of Bell company participation in manufacturing were almost universally acknowledged. See 141 Cong. Rec. S699 (daily ed. Feb. 1, 1996) (statement of Sen. Lott) (noting widespread industry support). The past Assistant Attorney General for Antitrust, among others, noted that “[g]iven their expertise in the industry, some or all of the RBOCs may be natural entrants into developing and manufacturing telecommunications equipment, especially for network switching.” “Under the right terms and conditions,” Assistant Attorney General Bingaman continued, “entry by the RBOCs into these activities could help spur innovation and bring down prices for telecommunications equipment. In the process, RBOCs could help make American firms even more competitive in the international telecommunications equipment market.” Id.

The Senate Commerce Committee found that allowing the Bell Companies to engage in manufacturing will “foste[r] competition . . . and creat[e] jobs along the way.” S. Rep. No. 23, 104th Cong., 1st Sess. 67 (1995). In 1994, under a different majority party, the same Committee determined that “[s]ubstantial benefits can be expected from permitting the RBOCs to enter the business of manufacturing communications equipment” because the Bell Companies “have considerable expertise and experience in the communications field that can be readily transferred into manufacturing activities.” S. Rep. No. 367, 103d Cong., 1st Sess 6 (1994). According to the Committee, Bell company manufacturing activities “can be expected to stimulate greater

have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications . . . marke[t]." Non-Accounting Safeguards NPRM at ¶¶ 7-8. Neither of these fears retains vitality in light of developments since restrictions were placed on Bell company activities almost fifteen years ago.

In that regard, the contrast between incumbent interexchange carriers' vague, theoretical claims about potential cross-subsidy or discrimination, and the concrete rules and market forces that prevent such misdeeds, must be stressed. MCI recently stressed in connection with its own planned merger with British Telecom, that regulators must reject the claims of parties who "merely speculate about what could go wrong" when that speculation runs contrary to "a comprehensive regulatory program," economic logic, and actual market experience.⁷⁴ MCI's caution against crediting self-interested speculation applies with full force here.

1. Regulation and Practical Constraints Make "Leveraging" Strategies Impossible to Accomplish

a. *Cost Misallocation.* Theories that Southwestern Bell might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, depend upon the dual assumptions that Southwestern Bell can fool regulators and that its local revenues will rise if the costs of providing local service rise.

⁷⁴ British Telecommunications PLC and MCI Communications Corp., Opposition & Reply at 13, Merger of MCI Communications Corp. and British Telecommunications plc, GN Dkt. No. 96-245 (Feb. 24, 1997) (App. Vol II, Tab 29).

Price Caps. To cure the problem of cost misallocation at its origin, the Commission has totally overhauled its approach to rate regulation. It adopted a price caps regime that sets aggregate maximum rates almost entirely without regard to costs, thereby encouraging LECs to cut the costs of their regulated services: "Because cost savings do not trigger reductions in the cap, the firm has a powerful profit incentive to reduce costs. Nor is there any reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce [a] higher legal ceiling price[]."⁷⁵ Indeed, the Commission recently described price caps regulation of interstate access as providing strong "efficiency incentives" to keep down costs allocated to regulated services. Accounting Safeguards Order ¶ 145; see also Non-Accounting Safeguards Order ¶ 181 (price caps reduce incentives to misallocate costs).

Structural Separation. Congress also has addressed concerns about possible cost misallocation. In section 272 of the 1996 Act, it prevented cost-shifting by requiring that a Bell company provide long distance through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. § 272(a). As explained in Part III, supra, all transactions between the two companies must be conducted on an "arm's length basis . . . reduced to writing and available for public inspection." § 272(b)(5). Congress also prevented the affiliate from obtaining credit for its long distance operations on more favorable terms by relying upon the assets, or credit rating, of the Bell company's local exchange business. § 272(b)(4). And it reinforced structural separation with demanding accounting requirements. § 272(d).

⁷⁵ National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993); see Non-Accounting Safeguards NPRM ¶ 136 (Commission's price cap policies "reduc[e] the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services").

Legislators concluded in 1996, after hearing arguments on all sides, that these statutory safeguards and the Commission's implementing rules would be sufficient to deal with concerns about Bell company cost misallocation. See, e.g., § 254(k) (requiring Commission to implement regulations as necessary "to ensure that" revenues from regulated services are not used to subsidize competitively provided services).

The Commission's Implementing Regulations. The Commission's recent rulemakings to implement section 272's safeguards, together with its pre-existing regulations, ensure that the statutory protections are adequate to prevent potential cost misallocation. The Commission has explained that its preexisting "cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers' competitive ventures." Accounting Safeguards Order ¶ 25. It reasoned that these rules together "will effectively prevent predatory behavior that might result from cross-subsidization," and that because they "have proven generally effective" there was "no reason to require a change to a different system" when regulating Bell company interLATA operations. Id. ¶¶ 28, 108. The Commission further noted that "existing accounting safeguards, with the modifications . . . adopt[ed] in this Order, prevent subsidization of competitive nonregulated services . . . by subscribers to an incumbent local exchange carrier's regulated telecommunications services." Id. ¶ 275.

State Regulation. Oklahoma regulators have implemented a parallel regulatory regime that contains many of these same protections. As a general matter, state legislators and

regulators have an "overwhelming concern for keeping the rates for local residential service low," and consequently have a powerful reason to prevent cost-shifting from unregulated activities to regulated telephone services. United States v. Western Elec. Co., 993 F.2d 1572, 1581 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993). Consistent with these incentives, the OCC requires SWBT to follow the Uniform System of Accounts and the Commission's Part 32 rules, unless otherwise ordered by the OCC. See Okl. Admin. Code § 165:70-1-2 (defining "accounting method").

Moreover, the OCC has undertaken to respond to the "major changes" brought about by the 1996 Act through appropriate regulatory reforms.⁷⁶ These include possible departure from traditional rate regulation in favor of price caps or other incentive regulation. Id. at 2-4. Thus, the compliance of Southwestern Bell in Oklahoma with the 1996 Act's requirements, and with related regulatory safeguards, will be monitored effectively not only by this Commission, but also at the state level.

b. *"Price Squeezes" and Predatory Pricing.* Just as cost misallocation would be impossible to accomplish, Southwestern Bell could not effectively effectuate a "price squeeze" on other interexchange carriers in Oklahoma by raising the prices of its interstate access services.⁷⁷ The Commission has found that interexchange carriers' ability to acquire retail

⁷⁶ Notice of Proposed Rulemaking at 1, Rulemaking of the Okl. Corp. Comm'n to Establish Rules and Regs. for Alternative Forms of Reg. in Okl. for the Telecommunications Indus., Cause No. RM 970000001 (Jan. 15, 1997) (App. Vol. II, Tab 30).

⁷⁷ See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

services at wholesale rates and to buy unbundled network elements is itself sufficient to enable those competitors "to defeat" an attempted price squeeze. PacTel/SBC Order ¶ 54. In addition, price caps for interstate access establish maximum aggregate rate levels that cannot be changed without Commission approval. For a LEC to price above the cap, it must make an "above-cap" filing that includes "extensive support materials" to satisfy the "stringent review standards."⁷⁸ Rate averaging requirements, separate price cap indices for different service baskets, service band indices within each basket, and the "just and reasonable" rates requirement of 47 U.S.C. § 202(a), further prevent Southwestern Bell from engaging in anticompetitive price manipulation of interstate rates. See generally Telephone Co.-Cable Television Cross-Ownership Rules, 10 FCC Rcd 244, 318-19, ¶¶ 152-154 (1994).

With respect to predatory pricing, the Commission has concluded that "further rules addressing predatory pricing by BOC section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem." Non-Accounting Safeguards Order ¶ 258. Realistically, moreover, any attempt to drive out large and well-financed incumbent carriers who have made mammoth sunk investments would be doomed. See Kahn Aff. ¶ 39. AT&T itself has conceded that "there is little reason to fear that [a Bell company] could monopolize the interexchange market" by driving the major incumbents out of business.⁷⁹ Even

⁷⁸. Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6823-24 ¶¶ 303-04 (1990), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

⁷⁹. AT&T's Opposition to Ameritech's Motions for "Permanent" and "Temporary" Waivers from the Interexchange Restriction of the Decree at 26, United States v. Western Elec. Co., No. 82-0192 (DOJ filed Feb. 15, 1994) (App. Vol. II, Tab 31).

if a facilities-based carrier could be driven out of the market, its network would remain in the ground and could be acquired — probably at a discount — by a new entrant. See Kahn Aff.

¶¶ 39, 76; see Non-Accounting Safeguards NPRM ¶ 137; PacTel/SBC Order ¶ 54. Furthermore, as just one of a number of interexchange carriers serving Oklahoma, SBLD would have to share any benefits from driving out a competitor with the other large carriers that remain, tilting the calculus that much more against attempting predation. For reasons such as these, the Commission has concluded — with considerable understatement — that successful predation is “unlikely” in the interLATA business. Non-Accounting Safeguards NPRM ¶ 137.

c. Price Discrimination. Nor is it conceivable that SWBT might discriminate in the pricing of its exchange access services. Congress specifically provided that Bell companies must charge their interLATA affiliate, or impute to themselves, “an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier for such service.” § 272(e)(3). Because access services are provided at publicly known, tariffed rates, enforcing this restriction is easy. Accordingly, the Commission has found that price discrimination “is relatively easy for us and others to detect, and is therefore unlikely to occur.” PacTel/SBC Order ¶ 53.

d. Technical Discrimination. Theories that SWBT might impede competition in Oklahoma by engaging in technical discrimination are equally unfounded. Interexchange carriers such as AT&T, MCI/British Telecom, and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with the expertise and resources to detect and challenge systematic discrimination. Indeed, to state how discrimination

against them would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, Southwestern Bell would have to provide inferior access services to its competitors in Oklahoma, without disrupting its own local or long distance services, in a fashion that is invisible to other carriers and regulators, yet so apparent to customers that it drives them to switch to SBLD's long distance service, but not the service of some other competitor. See Kahn Aff. ¶ 37. It thus is not surprising that interexchange carriers never have produced specifics (much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible, what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices. When one considers the hard facts, it is clear that competitively meaningful discrimination simply could not go undetected.

Monitoring and Reporting Requirements. SWBT has been supplying exchange access services to the long distance industry for over a dozen years. This experience, together with established, objective performance standards and monitoring mechanisms, make a reversal to lower quality service utterly implausible. Deere Aff. ¶ 160; Kahn Aff. ¶ 45.

Interexchange carriers can and do directly monitor SWBT's performance. Deere Aff. ¶¶ 160-64. For instance, SWBT maintains test lines for each central office that interexchange carriers can use to verify quality automatically. Id. ¶ 162. SWBT also is required to file with the Commission reports relating to service quality, customer satisfaction, and infrastructure and investment. For example, FCC Report 43-05 provides, inter alia, information about trunk blockage figures and total switch downtime. FCC Report 43-06 reflects the results of consumer

satisfaction surveys conducted by carriers. See Order, Revisions of ARMIS Quarterly Report, CC Dkt. No. 96-193, ¶¶ 20, 22 (AAD rel. Dec. 17, 1996).

Provisioning and maintenance likewise are the subject of extensive experience. Interexchange carriers specify performance and timeliness standards for access services in their agreements with SWBT, and there is a record of SWBT's historical performance for each company. Deere Aff. ¶ 160. Installation and repair intervals also are included in the reports that SWBT must file with the Commission. Revisions of ARMIS Quarterly Report ¶ 20. Moreover, to ensure against discriminatory service delays, the Commission has required all Bell companies to make available to unaffiliated entities the "service intervals in which the BOCs provide service to themselves or their affiliates." Non-Accounting Safeguards Order ¶¶ 242, 368.

The Commission recently reaffirmed its commitment "to monitor compliance with section 272[']s nondiscrimination] requirements" and "reserve[d] the ability to undertake appropriate measures in the event that future developments warranted." Non-Accounting Safeguards Order ¶ 321. At the same time, however, it rejected additional reporting requirements because "sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements." Id. The Commission explained that "the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations"

and "will also facilitate detection of potential violations of the section 272 requirements." Id.

¶ 327. That finding should be dispositive here.

Unbundling of SWBT's Network. While monitoring is one low-cost way of defeating attempts at discrimination, the 1996 Act provides another. The Commission's rules implementing sections 251 and 252 allow interexchange carriers to use unbundled network elements obtained from the incumbent LEC to complete their long distance calls. Local Interconnection Order ¶ 356. Under these rules, interexchange carriers are able effectively to bypass SWBT while still using parts of SWBT's network. See Deere Aff. ¶¶ 35-47, 165. For example, if AT&T perceives a danger in discriminatory switching, it can buy a switch (or obtain switching from another CLEC) while using SWBT loops and trunks. See § 271(c)(2)(B)(vi). There is no need to duplicate SWBT's entire local network or to make massive sunk investments.

Equality in New Service Offerings. Suggestions that SWBT might seek to slow-roll interexchange carriers in developing and implementing new access arrangements in Oklahoma are equally unfounded. The 1996 Act provides that a Bell telephone operating company "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." § 272(c)(1). The Act goes on to specify that the operating companies must fulfill "any requests from an unaffiliated entity for telephone exchange services, and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates." § 272(e)(1). Moreover, the operating companies are prohibited from providing facilities, services, or information concerning exchange access to their

long distance affiliates unless they are made available to other providers of interLATA service on the same terms and conditions. §§ 272(e)(2), (4).

The Commission interprets the statute as requiring "at minimum" that Bell operating companies "must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, facilities and information to and from those other entities under the same terms, conditions, and rates." Non-Accounting Safeguards Order ¶ 73; Non-Accounting Safeguards Order ¶¶ 198, 202. Indeed, the Commission has even held that when a Bell company develops a new service for or with its long distance affiliate, "it must develop new services for or with unaffiliated entities in the same manner." Non-Accounting Safeguards NPRM ¶ 210. These requirements, together with general interconnection and non-discrimination requirements of Title II of the Communications Act, fully address any potential discriminatory strategies. See Non-Accounting Safeguards Order ¶ 211.

When enforcing these requirements, the Commission will build upon existing rules relating to enhanced services and customer premises equipment, which currently protect against analogous discrimination. Non-Accounting Safeguards NPRM ¶ 75. Additionally, SWBT has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase use of its exchange access services and resultant revenues. Gordon Aff. ¶ 33; Kahn Aff. ¶ 39 n.32. SWBT's goal in providing access services will remain the same: providing the best possible service to its customers at a fair price. In the context of new exchange access arrangements, this will involve an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and SWBT.

e. Misuse of Confidential Information. The Commission's rules require SWBT to make network disclosure information available to other interexchange carriers on the same terms and conditions as its own long distance affiliate. Non-Accounting Safeguards Order ¶ 222. With respect to network information, the Commission already has concluded that its "current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any 'information concerning . . . exchange access' on a nondiscriminatory basis." Non-Accounting Safeguards Order ¶ 253.⁸⁰ Commission regulations also have long governed, and will continue to regulate, access to competitively useful information concerning particular customers. Indeed, the Commission has commenced a rulemaking for just this purpose.⁸¹

f. Penalties. Southwestern Bell's inability successfully to engage in cost misallocation or discrimination eliminates any reason to risk the substantial penalties likely to follow such a fruitless endeavor. Yet if Southwestern Bell were to violate any provision of the Communications Act it would be liable to injured parties for the amount of their injuries plus

⁸⁰. Under the Commission's "All Carrier Rule," carriers must make any information necessary to carrier interconnection available in a timely manner and on a reasonable basis. Computer and Business Equipment Mfrs. Ass'n, 93 F.C.C.2d 1226, 1228 ¶ 6 (1983); *see also* Computer III, 104 F.C.C.2d 958, 1080-86. After several years of experience with analogous network disclosure regulations for enhanced services, the Commission determined that they "provide the [competitors] with critical network information in a timely fashion, and thus serve as an effective safeguard against discrimination in the provision of basic services to competing [providers]." Bell Operating Co. Safeguards, 6 FCC Rcd at 7603.

⁸¹. See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Dkt. No. 96-115, Notice of Proposed Rulemaking, 11 FCC Rcd 12,513 (1996).

attorneys fees. 47 U.S.C. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 further provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of any statutory or regulatory provision. Finally, if the Commission determines that Southwestern Bell “has ceased to meet any of the conditions required for” interLATA entry, it can revoke interLATA authority under section 271(d)(6).

All of the Act’s and the Commission’s specific statutory and regulatory protections are backed up by the federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping systematic discrimination or cost-shifting secret, make it all the more unlikely that Bell company managers would order unlawful practices.

2. *Actual Experience with LEC Participation in Adjacent Markets Disproves Theories about Anticompetitive Potential*

SBLD’s inability to raise prices or restrict output as an interexchange carrier in Oklahoma is confirmed by over a decade of actual experience. Southwestern Bell and other Bell companies have entered a variety of new markets since their divestiture by AT&T in 1984, including information services, local cellular service, customer equipment, and wireless long distance. Each time, incumbents in those markets, wishing to protect their own profits, sought to convince regulators and/or the courts that prices would rise and competition would suffer. They raised the same sort of arguments about “unfair” efficiencies and alleged anticompetitive opportunities that opponents of full interLATA relief make today. Yet in each case, Bell company entry has

enhanced, rather than diminished, competition. In addition, other large LECs, such as SNET and GTE, have provided wireline interLATA services without any anticompetitive results. These and other examples of healthy competition in adjacent markets discredit not only the predictions of monopolization that preceded them, but also the similar predictions that will be made by those who seek to thwart Southwestern Bell's interLATA entry in Oklahoma.

Long Distance. Local exchange carriers have competed fairly and effectively in the limited instances in which they have been permitted to offer long distance. See supra Part IV(C)(1). One would not have expected such competitive benefits based on the self-serving predictions of the long distance incumbents. For instance, AT&T opposed Bell company entry into wireless long distance on the ground that Bell companies "would increase the prices paid by customers of the RBOCs['] cellular companies], for the RBOCs are seeking the right to overcharge their cellular customers for long distance service"82 Similarly, MCI opposed Southwestern Bell's efforts to offer out-of-region long distance service under the MFJ, based on a prediction that SWBT would discriminate against competing interexchange carriers when providing in-region interconnection so as to "damag[e] the competitor's services and reputation on a national basis."⁸³ Yet, now that relief has been afforded in these areas, there have been no allegations of Bell company misconduct in wireless long distance or of discriminatory interconnection due to Bell company provision of out-of-region interLATA services.

⁸². AT&T's Opposition to RBOCs' Motion to "Exempt" Wireless Services from Section II of the Decree at 55-56, United States v. Western Electric Co., No. 82-0192 (DOJ Apr. 27, 1992).

⁸³. MCI Comments, Southwestern Bell's Waiver Request to Provide Interexchange Service Waiver No. 20202, at 4 (DOJ Aug. 1, 1994) (App. Vol. II, Tab 32).

Likewise, when NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the district court worried that allowing such service would give "the Operating Companies the same incentive to discriminate against new entrants that they had while part of the integrated Bell system," and that it "may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic." United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). Despite the district court's fears, these Bell companies do not dominate corridor traffic. By AT&T's count, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. Moreover, AT&T and MCI sought authority to lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local "bottlenecks," but rather because their prices are being undercut.⁸⁴ As discussed above, the evidence similarly suggests that SNET's competitive success in Connecticut is due to its low prices — not any anticompetitive behavior. See supra Part IV(C)(1).

GTE's brief ownership of Sprint proves the same point on a larger scale. As the fourth largest local exchange carrier, GTE had the same theoretical incentives to impede interexchange competition as would a Bell company entering the long distance market today. See United States

⁸⁴ See AT&T Waiver Petition at 5; MCI Comments at 3. Although AT&T made a conclusory claim that Bell Atlantic's lower prices are due in part to avoidance of access charges, AT&T Waiver Petition at 4, it did not allege that Bell Atlantic has violated the relevant Commission rules requiring it to impute such charges. Bell Atlantic has confirmed that its "corridor service pays (and publicly reports) the full tariffed access rates as an imputed expense" and "receives no special discounts over the rates paid by AT&T." Comments of Bell Atlantic at 4, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) (citing 47 C.F.R. § 61.44(b)) (App. Vol. II, Tab 33).

v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984). Yet, as conclusive proof of its inability to earn supra-competitive profits in the long distance business, GTE sold Sprint in three installments between 1986 and 1992. GTE's experience with Sprint thus disproves any claims that Southwestern Bell could carry out anti-competitive strategies upon entering the interLATA market in Oklahoma.

Finally, there is the example of intraLATA toll. Bell companies across the country are losing substantial market share to interexchange competitors. Kahn Aff. ¶ 59. IntraLATA toll prices fell faster than interstate long distance prices between 1990 and 1994, and that does not even account for the recent hikes in interstate rates. Hausman MTV Aff. ¶ 45. Again, this demonstrates the adequacy of existing safeguards to protect against anticompetitive conduct by Bell companies.

Cellular Services. Experience with LEC participation in cellular services provides another good example. Given that cellular carriers and interexchange carriers have similar local interconnection requirements, Bell companies have had essentially the same incentive and ability to act anticompetitively against rival cellular carriers as they would have to act anticompetitively against other interexchange carriers in in-region states. This theoretical incentive of wireline carriers to inhibit cellular growth has not created any actual problems, however. See Kahn Aff. ¶¶ 54-55. Cellular subscribership has soared from near zero in the early 1980s to 34 million in early 1996. CTIA, The Wireless FactBook 12 (Spring 1996). There now are more than two new

cellular subscriptions for every new wireline telephone that is installed.⁸⁵ Cellular bills have fallen by nearly 50 percent.⁸⁶

The Commission has confirmed "the infrequency of interconnection problems" between local exchange carriers and unaffiliated cellular providers. Eligibility for the Specialized Mobile Radio Servs., 77 Rad. Reg. 2d (P & F) 431, at ¶ 22 (FCC Mar. 7, 1995). And, the Bell companies have not displayed an ability to dominate the cellular business due to their control over local exchange facilities.⁸⁷ As the Commission has found, "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs." Applications of Craig O. McCaw, 9 FCC Rcd at 5861-62, ¶ 38.

LECs, who would know if local wireline carriers could give their cellular affiliates an unfair competitive edge, have invested heavily in cellular systems that compete with the incumbent LEC's systems. Kahn Aff. ¶ 55. (Southwestern Bell, for instance, competes against an affiliate of the incumbent LEC in the District of Columbia, Illinois, Indiana, and Massachusetts.) Such investments would never be made if Bell companies really believed that LECs can frustrate fair competition. Even AT&T effectively has agreed that the Bell companies

⁸⁵. Compare CTIA, The Wireless Sourcebook 12 (Spring 1996) (9,651,240 new cellular subscriptions between December 1994 and 1995) with FCC, Trends in Telephone Service at Tables 14 and 17 (March 1997) (3,963,150 new wirelines between June 1994 and 1995).

⁸⁶. See FCC, Trends in Telephone Service at Table 48 (March 1997) (average monthly bills dropped from \$96.83 in December 1987 to \$47.70 in December 1996).

⁸⁷. Kahn Aff. ¶ 54; see also Paul S. Brandon & Richard L. Schmalensee, The Benefits of Releasing the Bell Companies from the Interexchange Restrictions, 16 *Managerial & Decision Econ.* 349, 357-58 (1995) (no statistically significant difference between market shares of BOC and non-BOC first cellular carriers).