

Congress relied upon the competitive checklist to ensure that markets are open, and expressly rejected the “actual and demonstrable” competition test that AT&T disingenuously seeks to revive through a tortured interpretation of section 271(c)(1)(A). *See* 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler).

Nor is there any basis for an “independence” or “freedom” test. *See* Brooks Fiber at 11; Sprint at 16, 12-15. Such tests would require a qualifying CLEC to rely *exclusively* on facilities that it owns. Congress rejected such a requirement and expressly allowed a CLEC to qualify as a facilities-based carrier under section 271(c)(1)(A) even if it uses unbundled elements leased from the Bell company.¹³ Indeed, the conferees specifically anticipated that a CLEC might buy central office switching from a Bell company, and indicated that the presence of such a competitor would allow the Bell company to seek interLATA authority from the FCC.¹⁴ The legislative history confirms that the point of the facilities-based

¹³ Sprint (at 12-15) and AT&T (Rutan ¶ 32) argue that leased facilities obtained from SWBT do not count as the CLEC’s for purposes of the predominance test. That is incorrect, as Southwestern Bell’s draft brief explained. *See* Draft Br. at 10 n. 8. The outcome of this debate does not affect Brooks Fiber’s status under section 271(c)(1)(A), however, because Brooks Fiber serves business customers using entirely facilities it owns, and offers service to its residential customers on the same basis.

¹⁴ The Conference Report explained that “it is unlikely that competitors will have a fully redundant network in place when they initially offer local service,” and that, as a result, “[s]ome facilities and capabilities (e.g., central office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements.” Conf. Rep. at 148. Having said this, the Report then explains that the purpose of the “predominantly” facilities-based requirement was “to ensure a competitor offering service exclusively over through the resale of the BOC’s telephone exchange service does not qualify, and that an unaffiliated competing provider is present in the market.” *Id.*

requirement was *not* to require functional independence from the Bell company, as AT&T and Sprint argue, but rather to show the viability of competition. *Id.* (provision drafted “to ensure . . . that an unaffiliated competing provider is present in the market”).

Finally, it does not matter that Brooks Fiber furnishes service to additional customers through resale. Just as Brooks Fiber can meet the “residential and business subscribers” test even if it does not serve some neighborhoods or towns, so too can Brooks Fiber meet the “facilities-based” test by serving some customers, but not others, over its own network. As Sprint itself admits, the facilities-based test must be conducted “independent” of Brooks Fiber’s decision to serve additional customers “via resale.” Sprint at 16.¹⁵ It would make no sense to disqualify a CLEC from treatment as a facilities-based competitor simply because of its decision also to offer service as a local reseller. Such a rule would allow Bell company interLATA entry when a CLEC serves 1,000 customers over its own network, but not when the same CLEC signs up an additional 2,000 resale customers. This would create a perverse incentive for Bell companies to oppose resale competition, and would be contrary to Congress’ determination that local competition should speed, not slow, Bell company entry into in-region, interLATA services.

¹⁵ Even if the inquiry were to focus on “most of [Brooks Fiber’s] customers,” as Sprint erroneously suggests, Sprint at 16, Brooks Fiber would in any event qualify since only one-fifth of its customers are served through resale. Brooks Fiber at 2.

B. If Brooks Fiber Is Not a Qualifying Provider Under Subsection (A), Then Brooks Fiber Also Is Not “Such Provider” Under Subsection (B)

After providing in subsection (A) for entry based on an interconnection agreement with a “qualifying” facilities-based carrier, Congress went on to say in subsection (B) that “if no *such provider* has requested access and interconnection,” within the specified time, a Bell company may nevertheless apply for interLATA relief on the basis of an effective statement of terms and conditions. § 271(c)(1)(B) (emphasis added). Congress added this provision “to ensure 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.” Conf. Rep. at 148. In the case at hand, if Brooks Fiber does not meet the criteria of subsection (A) — as the interexchange carriers argue — then its request for interconnection does not prevent Southwestern Bell from applying on the basis of its STC under subsection (B).

Nevertheless, in an effort to have it both ways and delay Southwestern Bell’s interLATA entry indefinitely, the interexchange carriers advance arguments that would make entry under subsection (B) impossible as a practical matter. They do so by arguing that a request from *anyone*, regardless of whether the requester is “such provider” described in subsection (A), eliminates entry under subsection (B).¹⁶

¹⁶ AT&T’s Rutan ¶¶ 12, 17 (replacing “such provider” with “a carrier which aspires to provide local service”); Brooks Fiber at 9 (noting “requests for interconnection” and ignoring “such provider” altogether); OAG at 2 (same).

The legislative history makes express what the words of the law clearly suggest: “Subparagraph (B) uses the words ‘such provider’ to refer back to the exclusively or predominantly facilities based [local service] provider described in subparagraph (A).” 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin). Indeed, Sprint itself acknowledges that “‘such provider’ refers back to . . . subparagraph A.” Sprint at 9.¹⁷ Thus, anything that is true of a qualifying CLEC for purposes of subsection (A) is also true for purposes of subsection (B) — including the central requirements of service to “residential and business subscribers” and “facilities-based” offerings. As an author of the language that became section 271(c)(1)¹⁸ explained during consideration of the Act, a competing local provider’s request for access and interconnection does not prevent interLATA entry under the B Track where that competitor fails to satisfy the full requirements of subsection (A). For instance, where the requesting CLEC has only “some facilities which are not predominant,” “no [relevant] request has been received.” 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin). Likewise, a

¹⁷ Sprint nevertheless argues that the “such provider” language in subparagraph (B) refers only to *some portions* of subparagraph (A). Specifically, Sprint claims that because the “business and residential subscribers” and “facilities-based” requirements of subsection (A) are preceded by the language “for the purpose of this subparagraph,” the “such provider” cross-reference in subsection (B) does not incorporate these two requirements. Sprint at 10. In fact, the “residential and business subscribers” requirement of subsection (c)(1)(A) does not even follow the language “for purposes of this paragraph;” it is found in the *preceding* sentence. § 271(c)(1)(A). More fundamentally, subsection (B) refers to “such provider” described in subsection (A) without any limitation or qualification.

¹⁸ See 142 Cong. Rec. H1145, H1152 (daily ed. Feb. 1, 1996).

request for access from a provider that “serve[s] only business customers” does not count.
Id.

The interexchange carriers’ approach to subsections (A) and (B) also must be rejected because it would effectively eliminate one of the Act’s routes to long distance entry.¹⁹ By its terms, subsection 271(c)(1)(B) is unavailable if a Bell company has received a qualifying interconnection request prior to September 8, 1996. Congress knew with virtual certainty that *someone* would request interconnection in each state by September 8, 1996 (seven months after the 1996 Act); Congress’ only doubt was whether those requests would come from facilities-based carriers.²⁰ Of course Southwestern Bell (and likely every other Bell company) *did* receive a request for interconnection and access prior to that date in each of its states. Under Sprint’s reading, then, *no* Bell company could *ever* benefit from subsection (B). Instead, in each state, a Bell company would have to wait until a CLEC decided to construct its own facilities before applying for interLATA relief. Congress did not intend this absurd result.

Because the interexchange carriers’ reading would essentially eliminate Bell company entry pursuant to subsection (B), and because it contradicts the plain language, legislative history, and structure of the Act, both this Commission and the FCC must reject it. Instead,

¹⁹ See *Lane v. Pena*, 116 S. Ct. 2092, 2100 (1996); *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253 (1992) (“courts should disfavor interpretations of statutes that render language superfluous”).

²⁰ See Conf. Rep. 148 (concern that “no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) [will] ha[ve] sought” interconnection).

the Commission should read subsections (A) and (B) consistently, so that if a CLEC's request for interconnection forecloses one route to interLATA entry, it opens the other.²¹

II. SOUTHWESTERN BELL NEED NOT RELY UPON COMPETITORS TO TAKE ALL CHECKLIST ITEMS AND MAY DEMONSTRATE CHECKLIST COMPLIANCE USING ITS AGREEMENTS AND STC

The competitive checklist of section 271(c)(2)(B) imposes requirements that are separate from the "A/B" provisions discussed above. While the interexchange carriers seek to conflate the checklist with the requirements of section 271(c)(1), these provisions serve a distinct purpose. By setting forth clearly the specific interconnection and access that is required to demonstrate open local markets — and outlawing the imposition of additional requirements (*see* § 271(d)(4)) — Congress guaranteed Bell companies a fixed, achievable standard for interLATA entry, and thus an incentive to meet that standard of open local markets. Congress chose a particularized checklist over the amorphous measures of local competition interexchange carriers proposed in the legislative debates and seek to resurrect in this proceeding. *See* 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement

²¹ That is not to say that subsections (A) and (B) are "*mutually exclusive*" as the Oklahoma Attorney General argues. OAG at 2. While subsection (B) is available during a specific time period — when "no such provider [described in (A)] has . . . requested access and interconnection . . . [by] the date that is 3 months before the date the [BOC] seeks interLATA authorization" § 271(c)(1)(B) — subsection (A) is available at any time that its requirements are met. If a Bell company that has an effective statement of terms and conditions also has implemented a state-approved agreement with a qualifying CLEC, but that CLEC only qualified, or requested access, within the prior three months, then the Bell company may apply for interLATA entry under subsection (A) *and* subsection (B).

of Sen. Pressler) (noting rejection of “actual and demonstrable” competition test in favor of “a test of when markets are open”).

The interexchange carriers correctly note that interconnection needs will vary with the services CLECs provide and the facilities they own.²² Congress logically did not intend for the FCC’s checklist inquiry to focus exclusively upon the interconnection and access furnished to any single CLEC, but rather to ensure that *all* CLECs have access to any of the 14 checklist items they require.

The interexchange carriers nevertheless wrongly argue that if Southwestern Bell relies on an interconnection agreement with a facilities-based carrier to satisfy subsection 271(c)(1)(A), then Southwestern Bell cannot satisfy the checklist unless that facilities-based CLEC has taken all 14 checklist items.²³ Specifically, they suggest that if Southwestern Bell is eligible to apply for interLATA relief based on its implemented, OCC-approved agreement with Brooks Fiber under subsection 271(c)(1)(A), Southwestern Bell’s application is doomed to fail because Brooks Fiber provides service over its own facilities without taking all 14 checklist items. This argument is simply wrong.

²² See Sprint at 4 (“variety of competing firms which will, in all likelihood, access and interconnect with the [Bell company’s] network in a variety of ways”).

²³ AT&T’s Rutan ¶¶ 39, 41; Statement of Steven E. Turner on Behalf of AT&T Communications of the Southwest ¶ 35 (filed Mar. 11, 1997) (“AT&T’s Turner”); Sprint at 7-8, 19; *see also* OAG at 4-5, 6-7.

A. Facilities-Based Carriers Need Not Take Every Checklist Item

The interexchange carriers' position not only would fail to promote Bell company interLATA entry — a “principal goal” of the 1996 Act²⁴ — but also would make Bell company interLATA entry virtually impossible. Bell companies might never find a carrier that takes all 14 checklist items; if they did, the interexchange carriers surely would argue that the very act of taking all elements — including trunks, loops, and switching — disqualifies a CLEC under the facilities-based test of subsection 271(c)(1)(A).²⁵ At best, Bell companies could hope that after implementing interconnection agreements with numerous facilities-based carriers, all of these carriers together might eventually take all possible permutations of network elements without jeopardizing their facilities-based status. Given Congress' desire to promote simultaneous local and interLATA entry as soon as possible, and its recognition that construction of even a single competing network might take some time, Congress could not possibly have intended to delay Bell company interLATA entry

²⁴ *Local Interconnection Order* at ¶ 3; see also 142 Cong. Rec. S686, S687 (Feb. 1, 1996) (statement of Sen. Pressler) (1996 Act “will lower prices on long-distance calls through competition”).

²⁵ Indeed, in another stark example of the interexchange carriers arguing conflicting positions in order to defeat Southwestern Bell's attempts to compete with them, AT&T and Sprint themselves argue that in order to satisfy the “predominantly or exclusively facilities-based” requirement, a carrier must construct its own facilities, rather than lease unbundled elements from Southwestern Bell. AT&T's Rutan ¶¶ 31-32; Sprint at 12-15.

until multiple CLECs construct their own facilities and then collectively request just the right combination of checklist items.²⁶

The text, structure, and legislative history of the Act confirm that Congress did not intend the absurd result proposed by the interexchange carriers.²⁷ When a Bell company applies for interLATA entry on the basis of an interconnection agreement with a facilities-based CLEC, the CLEC need not actually *take* all 14 checklist items, but rather must *be provided access* to all those items. The Act requires only that a Bell company “provide . . . access and interconnection” in accordance with the competitive checklist. § 271(c)(2)(B). The interexchange carriers seek to equate “provide” with “deliver,”²⁸ even though that is not the only ordinary meaning of the word.²⁹ In common usage, for example, a host who passes around hors d’oeuvres at a party has “provided” food, even if his guests choose not to indulge. So too may a Bell company “provide” CLECs with (for example)

²⁶ AT&T wrongly suggests that Congress expected to wait “three years, or more,” for Bell company interLATA entry. AT&T’s Rutan ¶ 43. In fact, legislators expected entry under subsection A to be almost “immediat[e].” 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breau). And, in case it should not occur so quickly, Congress permitted entry under subsection (B) as of December 8, 1996 — ten months after the 1996 Act was passed.

²⁷ See *In re Nofziger*, 925 F.2d 428, 434 (D.C. Cir. 1991) (“Legislatures are presumed to act reasonably and statutes will be construed to avoid unreasonable and absurd results”).

²⁸ Sprint at 19; AT&T’s Rutan ¶ 22; and OAG at 6-7.

²⁹ See Draft Br. at 13-14 (noting that dictionary definition of “to provide” includes “to make available”).

unbundled trunks, without regard to whether a particular CLEC ultimately chooses to use those trunks.

Even if the interexchange carriers' strained reading of "provide" were accepted, these commenters ignore the fact that what must be provided is "access and interconnection." Interconnection automatically is furnished whenever an interconnection agreement is implemented. For example, ever since Brooks Fiber and Southwestern Bell "completed" the "initial interconnection process . . . in January 1997," Southwestern Bell has been furnishing interconnection to Brooks Fiber. Brooks Fiber at 2. The only remaining requirement is that Southwestern Bell provide "access" to network facilities and services in accordance with all checklist requirements, which means only that Brooks Fiber must have the ability to obtain each checklist item on the required terms if it so chooses.

One explanation for the interexchange carriers' erroneous interpretation of the phrase "provide . . . interconnection and access" is their confusion, real or feigned, between the "implementation" requirement of section 271(c)(1)(A) and the checklist compliance provisions of section 271(c)(2)(B). *See, e.g.,* AT&T's Rutan ¶ 23 (advocating a "commercially operational" test for each checklist item). As noted earlier, a Bell company is eligible to apply for interLATA relief under section 271(c)(1)(A) if it has implemented an interconnection agreement with a qualifying facilities-based carrier. This rule is the result of Congress' considered judgment that the actual entry of even a single qualifying facilities-based carrier demonstrates that local markets are open and new entry viable. *See supra* at 7-9. But this "implementation" requirement in section 271(c)(1)(A) has no place in the

checklist provisions of section 271(c)(2)(B). Section 271(c)(2)(B) requires a Bell company to “provide . . . access” to each of the 14 checklist items, and section 271(d)(4) expressly prohibits regulators from “extend[ing] the terms used in the competitive checklist.” Any requirement that all 14 checklist items actually be taken by CLECs would unlawfully “extend” the checklist.

The legislative history confirms that Congress did not intend to require that all 14 items actually be sold, just that they be available. As already noted, legislators anticipated that the presence of a facilities-based competitor that supplies its own local loops (one of the checklist items) could allow the Bell company to seek interLATA authority. Conf. Rep. at 148. Representative Paxon likewise explained during consideration of the final congressional legislation:

Where the Bell operating company has *offered* to include all of the checklist items in an interconnection agreement and has stated its willingness to *offer* them to others, the Bell operating company has done all that can be asked of it and, assuming it has satisfied the other requirements for in-region interLATA relief, the Commission should approve the Bell operating company's application for that relief.

142 Cong. Rec. E261-62 (daily ed. Feb. 1, 1996) (emphasis added).

B. Access to Checklist Items Under Section 271(c)(2) May Be Provided Through Agreements and a Statement

There are several ways a Bell company may “provide” a CLEC with “access” to checklist items.

First, and most obviously, the terms of a state-approved interconnection agreement between the Bell company and CLEC may expressly afford access to a particular checklist item.

Second, a Bell company may “provide” a CLEC with “access” to a checklist item through the “most favored nation” (“MFN”) clause of an interconnection agreement. Brooks Fiber explains, for example, that “[a]s part of its interconnection agreement with SWBT, Brooks has the right to opt-into various categories of provisions of interconnection agreements that SWBT enters into with other carriers.” Brooks Fiber at 6.

Third, even where a CLEC does not have an MFN clause incorporating the provisions of other state-approved agreements, a CLEC nonetheless automatically is “provided . . . access” to those provisions under section 252(i), which requires Bell companies to “make available any interconnection, service, or network element provided under any agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.” Sprint points out that section 252(i) “yields confidence that additional competitors are . . . able to enter and expand by utilizing the existing agreements.” Sprint at 5.³⁰

³⁰ The proper interpretation of section 252(i) is an issue before the U.S. Court of Appeals for the 8th Circuit and need not be addressed by this Commission. If the court upholds the FCC’s pick-and-choose rules, then Sprint’s request for this Commission to adopt the same view is moot. Sprint at 5-6. In any event, this is not a rulemaking proceeding. The OCC can address the consistency of SWBT’s negotiated and arbitrated agreements with the terms of the Act, and specifically section 252(i), when it reviews particular agreements under section 252. Furthermore, *no one* actually urges the straw-man position Sprint attacks: *i.e.*, that section 252(i) entitles a CLEC to an “entire agreemen[t]” or nothing at all. Rather, the

Finally, the generally available terms and conditions included in a Bell company's effective statement *by definition* are available to *all* CLECs in the state. The very purpose of SWBT's STC is to "provide" CLECs with "access" and "interconnection" at standard rates, terms, and conditions.

The interexchange carriers wrongly assert that if Southwestern Bell relies upon its agreement with Brooks Fiber to satisfy section 271(c)(1)(A), Southwestern Bell cannot refer to the STC when demonstrating checklist compliance. Sprint at 19; AT&T's Rutan ¶ 22; *see also* OAG at 6. Once again, they confuse the eligibility requirements of section 271(c)(1) and checklist requirements of section 271(c)(2)(B).

Unlike the eligibility provisions of section 271(c)(1) — which preclude reliance on a statement after a qualifying CLEC requests interconnection — the checklist provisions of section 271(c)(2) allow a Bell company to rely upon a statement of generally available terms and conditions at any time. The text of section 271(c)(2) says that a Bell company must "provid[e] access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or . . . generally offer access and interconnection pursuant to a statement described in paragraph (1)(B)," and that "*such access and interconnection [must] meet the requirements of* the competitive checklist. (emphasis added). Regardless of whether it is eligible to proceed under the B Track of section 271(c)(1), and regardless of whether it

issue is whether a CLEC can exploit the give and take of another CLEC's negotiations to gain the benefit of every concession made by Southwestern Bell, without the corollary concession by the CLEC.

provides access and interconnection to some CLECs pursuant to OCC-approved agreements, Southwestern Bell offers interconnection and access pursuant to a “statement described in subsection (c)(1)(B).” If its STC or agreements offer “access and interconnection [that] meet the requirements of” the competitive checklist, Southwestern Bell will have fulfilled its obligations under section 271(c)(2).

The Act’s legislative history further confirms that a Bell company may demonstrate checklist compliance using *both* state-approved agreements and an effective statement. Just before final approval of the 1996 Act, Representative Paxon explained that “the legislation would not require the Bell operating company to actually provide every item to a new competitor under the agreement contemplated in section 271(c)(1)(A) in order to obtain in-region relief.” 142 Cong. Rec. E261-62 (daily ed. Feb. 1, 1996). Rather, where a “competitor [does] not want every item on the list” “the Bell operating company would satisfy its obligations by demonstrating, by means of a statement similar to that required by section 271(c)(1)(B), how and under what terms it would make those items available to that competitor and others when and if they are requested.” 142 Cong. Rec. E261-62 (daily ed. Feb. 1, 1996) (statement of Rep. Paxon).

In sum, whether Southwestern Bell pursues the A or B options of section 271(c)(1), the text and history of the Act instruct the FCC and this Commission to consider both SWBT’s STC and all of its OCC-approved interconnection agreements in deciding whether Southwestern Bell has satisfied the competitive checklist.

III. SOUTHWESTERN BELL HAS SATISFIED ALL 14 POINTS OF THE CHECKLIST

Opponents' claims that SWBT has not satisfied the checklist requirements of section 271(c)(2)(B) are fatally infected by the pervasive legal errors described above. Indeed, one or more of three basic errors characterize virtually all of the arguments that AT&T and Sprint advance. *First*, AT&T and Sprint maintain that checklist compliance cannot be shown until SWBT has a track record of actually furnishing every checklist item to a CLEC. As already discussed, this claim is contrary to the language, structure, and intent of the 1996 Act. The checklist is satisfied where the Bell company "provide[s]" or "generally offer[s]" interconnection and *access* to its network. § 271(c). There simply is no requirement that specific facilities or services actually be furnished; imposing one would be equivalent to requiring a certain level of actual local competition as a precondition of Bell company entry into interLATA services, which Congress refused to do.

Second, AT&T seeks to re-fight battles it lost, or did not join, in the AT&T arbitration proceeding. The Commission there interpreted a number of the relevant requirements of the 1996 Act, and Southwestern Bell in each case has complied with the Commission's interpretation of the Act. Yet, AT&T now attacks aspects of the interconnection and access offered by SWBT that this Commission expressly approved, or AT&T failed to question, in the arbitration. This proceeding is not an opportunity for AT&T to obtain reconsideration through the back door. Nor is it proper for AT&T to raise, for the first time, arguments and

objections that — aside from being baseless — could have been presented to this Commission months ago in the AT&T arbitration.

Third, AT&T seeks to equate checklist compliance with SWBT's acceptance of AT&T negotiating positions. AT&T maintains that SWBT cannot satisfy the checklist until it has reached an agreement on disputed issues that is satisfactory to AT&T, which is just another way of saying that SWBT needs AT&T's acquiescence to enter the long distance business. SWBT has offered AT&T — through its STC and other OCC-approved agreements — terms for interconnection and network access that satisfy every checklist requirement. In addition, SWBT is abiding by all the terms of the AT&T Arbitration Order. There is no statutory requirement that SWBT fill AT&T's wish list. Adopting such a rule would not only contravene the 1996 Act, but also harm Oklahoma consumers by allowing AT&T to delay genuine competition in interLATA services by dragging out its negotiations for an interconnection agreement.

In that regard, SWBT must set straight the record of its negotiations with AT&T. Any suggestion that SWBT has held back in its effort to reach a final agreement is unfounded. SWBT personnel have worked tirelessly to accommodate AT&T. Since AT&T's request to begin negotiations for Oklahoma, SWBT has assigned personnel to meet AT&T's needs at every turn, made virtually all meeting arrangements, and responded rapidly to AT&T's requests for information. During the first three months of this year alone, SWBT's negotiating team has spent *seven* weeks in full-time, off-site negotiations with AT&T to

hammer out an agreement for Oklahoma.³¹ This team has five core members. In addition, about a dozen SWBT employees with specialized expertise were present as needed, for up to several weeks each, to address AT&T's requests. Numerous other subject matter experts have supplied research assistance and technical explanations to AT&T. SWBT even has a dedicated, on-site support team of three to four individuals, which assists the negotiators to ensure that their work proceeds efficiently.

There are a number of reasons why negotiations have taken many weeks, even though both parties have negotiated with intensity and diligence. These include, above all, the difficulty of reaching agreements for new services, interfaces, and rates. Beyond this, however, there have been some unnecessary delays, such as repeated requests from AT&T for the same information, a lack of continuity in AT&T's negotiating team,³² and AT&T's scheduling preferences. For example, in mid-March AT&T canceled two weeks of face-to-face meetings that were scheduled to begin on March 24.

Once the underbrush of opponents' misstatements of law and fact is cleared away, the comments filed in this proceeding do not identify a single, actual deficiency in Southwestern Bell's showing of checklist compliance.

³¹ It is misleading to focus only on Oklahoma, moreover. AT&T asked SWBT to begin negotiations with Texas, and much of the effort that was expended to bring the parties into agreement in that state is transferable to Oklahoma.

³² By contrast, SWBT has assigned the same subject-matter personnel to negotiate with AT&T for all states from the very beginning, to eliminate the need — on SWBT's side — for "start-up time" during the negotiations.

A. Checklist Item (1): Interconnection

AT&T raises several claims regarding SWBT's provision of interconnection under its STC and approved interconnection agreements. It first contends that the STC and agreements are "vague" when setting out prices for collocation.³³ In the AT&T Arbitration, the arbitrator approved SWBT's approach to pricing collocation as consistent with the requirements of the 1996 Act.³⁴ AT&T's objection thus boils down to a complaint that it has not yet entered into a final interconnection agreement with SWBT detailing all terms for collocation. AT&T's Falcone/Turner ¶¶ 71-72. Any delays in signing a final agreement are, as noted above, not attributable to a lack of good-faith or effort on SWBT's part.

Brooks Fiber raises concerns about the actual price levels of SWBT's collocation offerings. Brooks Fiber at 7. The bulk of the charges for collocation are non-recurring and reflect actual subcontractor billings. Amounts above or below the estimates are trued-up. While Brooks Fiber suggests that SWBT's rates for collocation are higher than the rates offered by other Bell companies, this comparison (even if it is accurate) is meaningless in

³³ Statement of Phillip L. Gaddy on Behalf of AT&T Communications of the Southwest ¶ 13 (filed Mar. 11, 1997) ("AT&T's Gaddy"); Statement of Robert V. Falcone and Steven E. Turner on Behalf of AT&T Communications of the Southwest, Inc. ¶ 71 (filed Mar. 11, 1997) ("AT&T's Falcone/Turner").

³⁴ Report and Recommendations of the Arbitrator at 13, *Application of AT&T Communications of the Southwest, Inc., for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to § 252(b) of the Telecommunications Act of 1996*, Cause No. PUD 960000218 (Nov. 13, 1996) ("*Arbitrator's Report*"), adopted in relevant part, Order Regarding Unresolved Issues, at 4 (OCC Dec. 12, 1996) ("*Arbitration Order*"). See also 47 U.S.C. § 252(c) (requiring that arbitration decisions be consistent with sections 251 and 252(d)).

the absence of a corresponding comparison of costs. Although SWBT cannot confirm or deny Brooks Fiber's comparison of rates, SWBT's rates are nondiscriminatory and cost-based as the Act requires.

Brooks Fiber and AT&T also cite delays and inconvenience that Brooks Fiber allegedly has suffered with respect to its applications for collocation, particularly physical collocation. Brooks Fiber at 3-4; AT&T's Turner at ¶¶ 37-39; AT&T's Falcone/Turner at ¶ 73. The facts are as follows. SWBT received multiple applications for physical collocation in Oklahoma from Brooks Fiber during the summer of 1996. After discussions and numerous major revisions to its requests, Brooks Fiber resubmitted each of its orders, in substantially revised form, in early December 1996. SWBT received a larger number of additional requests for collocation in other central offices from Brooks Fiber at about the same time. Brooks Fiber later changed the amount of electrical power required for the equipment associated with each of its requests. Due to the "bunching" of Brooks Fiber's collocation requests in early December and the change in power requirements, it took SWBT an additional two weeks to provide rate quotes to Brooks Fiber. SWBT expects to complete each of the collocations no later than one week after the original target date given to Brooks Fiber last December (and before the target date in most cases).

As this short history suggests, Brooks Fiber has changed its collocation requirements significantly, requiring SWBT to revise its engineering and pricing to reflect the latest request. Each physical collocation job requires the participation of account personnel, engineers, floor space planners, architects, cost study experts, and others. Coordination

among all of these players takes time, and requires documentation that may be inconsistent with Brooks Fiber's suggestion that procedures be more "[f]lexible." Brooks Fiber at 4. Thus, while SWBT has taken steps to be more expeditious in processing Brooks Fibers' requests, Brooks Fiber's suggestions of unreasonable delays or failures of cooperation are unfounded.

AT&T next complains that SWBT fails to allow two-way trunking and places some other restrictions on interconnection, such as limits on combining different types of traffic over trunk groups and limits on the methods of interconnection. AT&T's Gaddy ¶ 14; AT&T's Falcone/Turner ¶¶ 76-84. AT&T agreed to one-way local and intraLATA trunk groups during implementation of the SWBT/AT&T interconnection agreement in Texas. Furthermore, this objection appears to be another attempt by AT&T to revive issues that were resolved in the AT&T arbitration. *See Arbitrator's Report* at 10-11. The methods of interconnection set out in SWBT's STC and interconnection agreements are the ones approved in that arbitration. *See Deere Aff.* ¶¶ 9-34; *also compare, e.g., Arbitrator's Report* at 11 *with* STC App. NIM *and* Brooks Fiber Agreement App. NIM. However, the Sprint Agreement allows two-way trunking of local and interLATA traffic and thus, as AT&T admits, addresses AT&T's objections to the STC. Sprint Agreement App. NIM § 2; *see* AT&T's Falcone/Turner ¶¶ 79, 83. Subject to Commission approval of the Sprint Agreement, AT&T or any other requesting CLEC can avail itself of the terms contained in that Agreement pursuant to 47 U.S.C. § 252(i).

AT&T raises concerns regarding routing of intraLATA traffic, which also did not prevail in the arbitration. See AT&T's Gaddy ¶ 43. SWBT's STC provides "SWBT will route intraLATA toll calls as defined by the exchange dialing plan when [the CLEC] uses local switching elements and will provide intraLATA toll to [the CLEC] without other usage sensitive elements." Under the provisions of SWBT's OCC-approved exchange dialing plan, SWBT is entitled to carry all 1+ intraLATA toll traffic. This is consistent with the requirements of the 1996 Act. See § 271(e)(2)(B).

Gaddy also claims that SWBT does not allow connections between CLECs in its central offices, supposedly in violation of the *Local Interconnection Order*. AT&T's Gaddy ¶ 42. This assertion is baseless. The restriction Gaddy complains of expires when the *Local Interconnection Order* becomes effective, as it has with respect to this issue. STC App. NIM § 7.1.

B. Checklist Item (2): Access to Network Elements

AT&T's principal objection to SWBT's offerings of unbundled network elements is that SWBT has not "demonstrate[d] actual implementation of [unbundled network element] access" AT&T's Gaddy ¶ 16; or, stated differently, "actually . . . deliver[ed] each and every item to competing, facilities-based carriers at commercially reasonable volumes." AT&T's Turner ¶ 35. As explained above, there is no such requirement in the Act or FCC rules.

Beyond this, AT&T misrepresents the terms that are available to it. AT&T claims that SWBT places unlawful restrictions on CLECs' ability to combine network elements. AT&T's Falcone/Turner ¶¶ 25-26; AT&T's Gaddy ¶ 17. In fact, AT&T merely voices

concerns about language found in two particular negotiated agreements — those with Brooks Fiber and USLD — which are not in the STC or other agreements. And AT&T misquotes the language from the two supposedly defective agreements. Whereas AT&T represents that SWBT will not allow cross-connections from unbundled loops to unbundled switch ports (allegedly in contravention of the FCC's *Local Interconnection Order*), the agreements actually provide that this restriction expires as soon as the FCC's *Local Interconnection Order* is final and effective, as it is with respect to this provision. Brooks Fiber Agreement App. UNC, at 1; USLD Agreement App. UNC, at 1.

There also is no substance to AT&T's claim that SWBT will make unnecessary disconnections when a residential customer moves from SWBT POTS service to a CLEC service that uses POTS equivalent unbundled network elements, whether due to treatment of the change as a "designed service" or otherwise. See AT&T's Falcone/Turner ¶¶ 27-36; AT&T's Gaddy ¶ 18. For this type of conversion, there may be (generally very brief) service outages as a result of customer choices to change carriers and/or to establish unbundled network elements. SWBT also must move the end user from one billing system to another in order to begin billing the CLEC's account, although in most cases that process does not require physical changes to the customer's designated cable pair or to SWBT's central office equipment. Such necessary responses to customer requests cannot be considered "disruptions" of service and SWBT policy is that service outages will be kept to the minimum necessary to fill the order. Prices for SWBT's unbundled network elements are cost-based and in accordance with the *AT&T Arbitration Order*.

AT&T next faults SWBT's performance commitments. AT&T maintains that it is insufficient for SWBT to guarantee CLECs the same quality and timeliness as SWBT provides itself, AT&T's Falcone/Turner ¶¶ 42-44; AT&T's Gaddy ¶ 20, yet that is precisely the standard set by the FCC. 47 C.F.R. § 51.313(b). SWBT's approach to establishing and assuring performance standards was approved by the arbitrator in the AT&T arbitration. *Arbitrator's Report* at 8-9. AT&T's real grievance is with the 1996 Act, the FCC, and this Commission's *Arbitration Order*, not with SWBT's STC or agreements.

Two other groups of criticisms leveled by AT&T and Sprint, pertaining to operations support systems (OSS) functions and pricing of unbundled elements, are made at greater length and thus require greater discussion.

3. OSS

Nearly all of the criticisms of SWBT's OSS offerings boil down to a single objection: that SWBT's electronic and manual modes of access have not been "fully tested, implemented, and sustained." Testimony of Cynthia K. Meyer on Behalf of Sprint Communications L.P. at 14-15 (filed Mar. 11, 1997) ("Sprint's Meyer"); AT&T's Dalton ¶ 7 ("[T]he issue is not necessarily what individual OSS interfaces SWBT . . . has agreed to provide; it is how the OSSs are implemented . . ."). AT&T even arrogantly claims that SWBT's OSS unbundling cannot be sufficient under the 1996 Act until SWBT has entered into an interconnection agreement specifically with AT&T, and AT&T has used SWBT's OSS elements and found them to its liking. AT&T's Dalton ¶¶ 23, 52. Congress did not give AT&T any such power to veto Southwestern Bell's entry into long distance.

Under section 271, Southwestern Bell's duty with respect to OSS unbundling is the same as its duty with respect to other checklist elements — SWBT must provide or generally offer access pursuant to its agreements and/or STC. Specifically, SWBT must ensure that CLECs can access its existing OSS functions on a nondiscriminatory basis, must negotiate in good faith regarding forms of OSS access that do not exist today, and must implement such new forms of access where technically feasible and a CLEC is willing to pay the associated costs. *Local Interconnection Order* ¶¶ 278, 314, 523, 525.

SWBT has amply met these obligations. In the draft brief submitted to this Commission on February 20, Southwestern Bell discussed at length the extraordinary steps it has taken to provide competitors access to its OSS functions. Draft Br. at 20-24. Further details are provided in the draft Ham, Lowrance, and Kramer affidavits submitted with that brief. As these materials show, SWBT stands ready to give any requesting CLEC access to SWBT's OSS functions that is equivalent to the access received by SWBT personnel. Southwestern Bell also has established support organizations specifically to serve CLECs, including an OSS Help Desk, Local Service Provider Service Center ("LSPSC"), and Local Service Provider Center ("LSPC"). These organizations provide nondiscriminatory support to CLECs as they access SWBT's OSS functions, place service orders, and report trouble conditions. The LSPC, which is responsible for repair and maintenance functions, is staffed around the clock.

In an effort to stimulate CLEC interest in SWBT's electronic interfaces and address CLECs' questions, SWBT has demonstrated its electronic interfaces for AT&T, MCI, Sprint,

and other CLECs.³⁵ SWBT offers CLECs free access for 90 days to either evaluate the OSS applications or use the OSS functions in "live" mode, at no charge.

SWBT has been working with AT&T and other CLECs to implement its new OSS interfaces for many months. Substantial progress has been made despite the universally acknowledged complexity of designing and implementing totally new interfaces; CLECs' demands for systems incorporating computing technologies that are not yet established in the marketplace; and the limited or unreliable information supplied by CLECs to SWBT.³⁶ One example of this progress is that SWBT and AT&T have agreed to joint testing of EDI ordering, beginning on April 1, 1997.

AT&T has acknowledged before this Commission that SWBT is a national leader in developing OSS interfaces that adhere to national standards. Dalton Testimony Tr. at 51, Cause No. PUD 960000218 (Oct. 14, 1996). Consistent with that strong track record, SWBT has — by AT&T's own admission — been seeking AT&T's input in developing OSS functions *for the last year*. AT&T's Dalton ¶ 37 (noting SWBT presentation to AT&T on April 1, 1996). In that regard, it should be stressed that SWBT has every incentive to set up systems that will be able to handle CLECs' actual future demand. Because CLECs have nondiscriminatory access to the same systems that SWBT personnel use to process the orders of SWBT's retail customers, any delays in processing transactions will be experienced by

³⁵ SWBT also has invited the Commission and/or its staff to a demonstration.

³⁶ AT&T, for example, concedes that it cannot accurately supply SWBT with its forecast of demand for unbundled network elements. AT&T's Dalton ¶ 62.