SWBT's own retail customers in exactly the same measure as they are experienced by CLECs' customers.

It is a matter of interpretation whether SWBT has yet furnished OSS elements to CLECs on a commercial basis "with significant CLEC activity." Sprint's Meyer at 10. SWBT tests its OSS offerings every day, by processing *thousands* of transactions for retail customers. If to date there has not been what some would view as "significant CLEC activity," the reason is CLECs have not asked in significant numbers. It appears that CLECs themselves are not prepared to make use of SWBT's OSS functions; AT&T, for instance, has informed SWBT that it will not have the software it needs to implement electronic bonding until later this year.

AT&T's and Sprint's specific objections to SWBT's OSS offerings are similarly off-target. For instance, AT&T now complains that SWBT's hours of operation are, for some services, less than 24 hours per day, 7 days per week. AT&T's Dalton ¶ 31. In negotiations, AT&T has never indicated any dissatisfaction with SWBT's hours of operation. Furthermore, SWBT will work overtime to accommodate a CLEC's requirements if the CLEC is willing to accept the appropriate charges.

Sprint — though it chose to forego presenting disputes to an arbitrator in favor of negotiating an agreement — nevertheless now claims that SWBT's OSS offerings are deficient because, in some instances, they were not established in accordance with industry-wide standards. Sprint's Meyer at 14; *see* AT&T's Dalton ¶ 66. However, SWBT's interfaces meet every relevant industry standard issued to date, and SWBT will meet new

industry standards upon CLECs' request when they are issued. *See* Ham Aff. ¶¶ 25, 32, 39, 42. SWBT surely cannot be faulted for *leading* the industry in deploying OSS interfaces.

AT&T and Sprint note that manual processing of pre-ordering is required for some complex business services under SWBT's current systems. AT&T's Dalton ¶ 54; Sprint's Meyer at __. In every case, however, CLECs have "precisely the same access to pre-ordering capabilities that SWBT offers to its retail service representatives" (in addition to the ability to request other technically feasible arrangements), as the 1996 Act requires. Ham Aff. ¶ 22.

AT&T claims that SWBT's EASE system is "inherently . . . inferior" to electronic data interchange ("EDI") access. AT&T's Dalton ¶ 85; *see id.* ¶¶ 86-91. As explained in Southwestern Bell's draft brief, EASE is not a substitute for EDI; it is an alternative to EDI. Because EASE is used for SWBT's own internal operations, it has been offered to CLECs quickly, thereby allowing them OSS access even before new systems could be developed to accommodate the divergent needs of various CLECs. AT&T's plan to use systems other than EASE for its transactions in no way suggests that SWBT has failed to satisfy its requirements under the Act by, among other things, making EASE available to competitors.

Sprint claims that SWBT does not have an operational electronic bonding interface ("EBI"). Sprint's Meyer at 9. In fact, SWBT has had EBI in place, Ham Aff. ¶ 39, and working since April 1995. Moreover, while Sprint maintains that SWBT's EBI offering does not "mee[t] Sprint's requirements," Sprint's Meyer at 14, it conforms to industry standards,

Ham Aff. ¶ 39. Elsewhere, Sprint itself maintains that these industry standards should be the relevant benchmark. Sprint's Meyer at 11.

Sprint suggests that "SWBT has not been timely in providing information that Sprint has requested" relating to OSS. Sprint's Meyer at 16. SWBT already has provided much of the information requested by Sprint. For example, SWBT demonstrated its business and residential EASE systems for Sprint last February, and has given Sprint the hardware and software requirements, functionality, and availability of each OSS interface. SWBT has already undertaken to provide the remaining information cited by Ms. Meyer, or (in the case of EDI ordering requirements) will meet with Sprint to discuss any additional system details. SWBT likewise has diligently fulfilled AT&T's requests for information, once AT&T made clear what it was requesting.

4. Pricing

AT&T contends that SWBT's pricing for unbundled network elements is inconsistent with the requirements of the 1996 Act. As a general matter, AT&T suggests that so-called "interim" prices are *per se* inconsistent with the requirements of the 1996 Act. AT&T's Falcone/Turner ¶ 45.[37] This Commission has rejected AT&T's view, by adopting SWBT's proposed rates pursuant to section 252(c), subject to full Commission review and true-up. *See Arbitrator's Report* at 20; *Arbitration Order* at 4 (adopting arbitrator's decision). Nor is there any principled basis for AT&T's argument. Even though SWBT's rates — like all

[37] Ironically, it was counsel for AT&T who suggested that arbitration proceedings between AT&T and SWBT be bifurcated and that only interim rates be set in the first phase.

rates — are not necessarily "permanent," the FCC has recognized that this is a practical necessity. *See Local Interconnection Order* ¶¶ 22, 767 (establishing rate proxies). This is especially significant given Congress' expectation that Bell companies could apply for and receive in-region, interLATA authority "as soon as competing communications service providers reach an interconnection agreement." 142 Cong. Rec. S713 (statement of Sen. Breaux).

Nor is it impermissible for pricing of certain offerings to be negotiated between the parties pursuant to the guidelines of the 1996 Act. AT&T's Falcone/Turner ¶ 47. The arbitrator upheld this approach in the AT&T proceeding. *Arbitrator's Report* at 13 (physical collocation pricing). Furthermore, any CLEC that believes it is not being offered prices consistent with the Act can invoke the oversight powers of this Commission, or take advantage of prices offered to another CLEC pursuant to an OCC-approved interconnection agreement.

Lastly, AT&T objects that "the UNE prices set by the AT&T/SWBT Arbitration Order and by the [STC] provide no opportunity for new entrants to profitably serve residential or business customers." AT&T's Turner ¶ 30. This complaint, as its own terms suggest, is just another attempt to reopen the AT&T arbitration. *See Arbitrator's Report* at 19-20 (discussing AT&T arguments and adopting SWBT's proposed rates, subject to true-up); *Arbitration Order* at 4 (affirming). Yet, AT&T has not challenged the rates approved in the arbitration. Moreover, the standard for pricing of unbundled network elements under the 1996 Act is not "profitability" for CLECs, it is SWBT's cost, plus a reasonable profit for

SWBT. 47 U.S.C. § 252(d)(1). AT&T's grievances are thus irrelevant to the lawfulness of SWBT's rates.

C. Checklist Item (3): Access to Poles, Ducts, Conduits, and Rights-of-Way

Southwestern Bell's draft brief to the FCC explains that SWBT's STC provides access to poles, ducts, conduits, and rights of way in accordance with the 1996 Act and this Commission's order in the AT&T arbitration. Draft Br. at 24-26; *see Arbitrator's Report* at 13-16; *Arbitration Order* at 4. Ironically, only AT&T — a party to that arbitration — challenges SWBT's compliance with checklist item (3).[38] This is another example of AT&T's effort to keep Southwestern Bell from competing in long distance by raising issues AT&T did not think had enough merit even to present in the arbitration.

When AT&T first requested interconnection and network access from SWBT, SWBT offered to interconnect in accordance with its standard "Master Agreement" on poles, ducts conduits, and rights-of-way. Following negotiations, which led to significant revisions in the Master Agreement, AT&T sought arbitration of "five specific . . . disputed issues regarding poles, conduits and rights-of-way" (as well as other issues that were resolved to AT&T's satisfaction before the arbitrator ruled). *Arbitrator's Report* at 13. This Commission affirmed the arbitrator's decision on the five disputed issues. *Arbitration Order* at 4. SWBT has since conformed its Master Agreement to address issues resolved by the arbitrator and other issues requested by interconnectors in other negotiations.

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[38] *See* Statement of Daniel C. Keating, III on Behalf of AT&T Communications of the Southwest ¶¶ 11-27 (filed Mar. 11, 1997) ("AT&T's Keating").

SWBT has included a revised Master Agreement in its STC and offering to sign an interconnection agreement with AT&T that complies with the *Arbitration Order*. Nevertheless, AT&T is now attacking totally different provisions of the Master Agreement. Specifically, AT&T complains that by allowing "uncapped costs" without "reasonable performance criteria" the Master Agreement gives SWBT "a controlling upper hand," AT&T's Keating ¶ 17; that SWBT's supervision of its network of poles, ducts, conduits, and rights-of-way is "discriminatory," *id.* ¶ 18; that the Master Agreement restricts a CLEC's access to the "conduit that connects the Central Office (C.O.) Vault to the C.O. manhole," *id.* ¶ 19; that it does not treat AT&T as an "authorized contractor," *id.* ¶ 22; and that it requires CLECs to pay for all work performed by SWBT, *id.* ¶ 23.

This Commission should summarily reject AT&T's attempt to interject new issues in the 271 process, when any legitimate objections should have been raised in the arbitration conducted pursuant to section 252. Moreover, none of AT&T's new arguments has any merit. AT&T's vague accusations about "uncapped costs" and "performance criteria" are belied not only by AT&T's failure to mention them earlier, and its lack of any substantiation, but also by the absence of any similar complaints from other CLECs. AT&T's purported examples of SWBT supervision leading to "discriminatory treatment" involve simply SWBT carrying out its obligations to its own customers, to customers of CLECs and cable companies, and to the general public to ensure that service is uninterrupted and public rights-of-way remain safe. Further, SWBT is agreeable to protecting confidential and proprietary information submitted SWBT by interconnectors in connection with access to poles, ducts,

conduits, and rights-of-way and will negotiate with any firm, including AT&T, specific provisions protecting such information. SWBT's supervision is neither unreasonable nor burdensome. AT&T's complaints are hypothetical, not real, and there is no factual basis for any assertion that SWBT will attempt to engage in "supervisory" activities for any purposes other than those necessary to protect its legitimate interests (e.g., the safety and integrity of its network facilities).

Contrary to AT&T's claims, SWBT has proposed terms that would allow AT&T's cable to extend from the entrance manhole to the central office vault. *See* AT&T's Keating ¶¶ 19. Because there is no reason to access ducts and conduits extending from the manhole to central office building facilities other than to reach collocated facilities, access to such ducts and conduits is treated as part of the collocation arrangements, including security arrangements which are necessarily more stringent than those applicable to poles, ducts, conduits, and rights-of-way. There is no need to rewrite the agreement relating to poles, ducts, conduits, and rights-of-way to include collocation terms and security arrangements, and AT&T did not suggest to the arbitrator that this be done.

SWBT has stipulated that AT&T, which has considerable experience of its own dealing with poles, ducts, conduits, and rights-of-way, meets the requirements to be an "authorized contractor." There is nothing unreasonable or discriminatory about requiring other firms, which do not have comparable experience, to establish to SWBT's satisfaction that they should also be so treated. In this regard, the work which "authorized contractors" perform under the Agreement is limited to types of work (modifications of SWBT's plant)

which neither the Pole Attachment Act nor other laws require SWBT to permit AT&T or other contractors to perform. There is no requirement that contractors qualify as "authorized contractors" before being permitted to perform route installation and maintenance work for AT&T and other interconnectors, and any suggestion to the contrary is in conflict with the specific terms of the Master Agreement.

AT&T advances several other arguments that have no substance. AT&T complains that SWBT's STC contains language different from that contained in stipulations between AT&T and SWBT. AT&T's Keating ¶ 22. Nothing in the Act requires SWBT to include in its STC the terms of every negotiated stipulation with a CLEC. If and when the stipulation is incorporated in an OCC-approved interconnection agreement with AT&T, its terms will be available to all other CLECs under section 252(i).

AT&T next complains that while SWBT's STC sets an inner duct rate in accordance with the Commission's *Arbitration Order*, SWBT reserves the right to change that rate *if* the Commission or another relevant authority authorizes a *new* rate. AT&T's Keating ¶ 27; *see* STC App. Pole, App. I § B(2)(f). This provision of the STC does nothing more than promise pricing in accordance with the 1996 Act as interpreted by appropriate authorities, and thus is by definition consistent with the Act's requirements. Further, SWBT notes that the FCC, on March 14, 1997, has released a Notice of Proposed Rulemaking in CS Docket No. 97-98 in which the FCC will revisit its pole attachment and conduit occupancy pricing rules.

Finally, AT&T objects generally that "there are many important procedural steps that are left open and remain the focus of continuing negotiations," AT&T's Keating ¶ 11, and

specifically that one provision of the Master Agreement — which AT&T did not challenge in its own arbitration proceeding — is inconsistent with arbitration decisions in other states. These claims do not establish any inconsistency with the Act. Congress determined that the details of interconnection and network access should be worked out through negotiation between the parties, and where necessary, state-by-state arbitrations. 47 U.S.C. §§ 252(a), (b); *see Iowa Utilities Board v. FCC*, slip op. no. 96-332, at 20 (8th Cir. Oct. 15, 1996) (noting "Act's system of private negotiation backed by state-run arbitration"). Although SWBT's STC provides basic terms upon which all CLECs in Oklahoma can access its poles, ducts, conduits, and rights-of-way, each CLEC must work out with SWBT the details of its actual use of SWBT facilities, based upon its own particular network configuration and business strategy. State regulators will oversee this process and resolve disputes that arise in their state under section 252 where necessary. SWBT's STC for Oklahoma does not remove the need for interaction between SWBT and CLECs, nor is it a compendium of arbitration decisions in other jurisdictions. Of course, SWBT will negotiate terms that vary from the Master Agreement where CLECs desire.

D. Checklist Item (4): Local Loops

AT&T makes three arguments regarding SWBT's satisfaction of the fourth checklist requirement — unbundling of local loops. AT&T repeats its faulty claims about supposedly unnecessary disconnections of customers when service is moved from SWBT to the CLEC. AT&T's Falcone/Turner ¶¶ 88-89. Those arguments are addressed in Part III(B), *supra*. AT&T also makes a new argument that SWBT has unlawfully restricted access to loops that

are combined through Integrated Digital Loop Carrier ("IDLC") technology. *Id.* ¶ 86. As AT&T appears to accept, such unbundling is not technically feasible and thus not required under sections 251(c) and 271. Thus, AT&T falls back to the claim that the "problem" of IDLC unbundling "could be mitigated" through subloop unbundling. *Id.* This is just another try at reopening the AT&T arbitration, as AT&T's Turner makes explicit in paragraph 28 of his Statement. In the arbitration proceeding, the arbitrator rejected AT&T's request for immediate subloop unbundling and held that SWBT has no duty to provide subloop unbundling to AT&T until (1) AT&T becomes a facilities-based provider and thus could potentially use such unbundled elements and (2) such unbundling is technically feasible. *Arbitrator's Report* at 9-10.

Finally, Brooks Fiber notes that its Agreement sets rates for unbundled loops at FCC proxy levels. Brooks Fiber at 7. As noted above, the fact that this Commission will undertake further review of SWBT's rates for unbundled elements does not bear upon the lawfulness of the rates now in effect. Moreover, Brooks Fiber is not limited to the rates in its agreement, but can take advantage of rates for unbundled elements provided in the STC or in any other OCC-approved agreement. *See* Brooks Fiber Agreement § XXIV (MFN clause).

E. Checklist Item (5): Local Transport

AT&T's Falcone and Turner claim that the STC is deficient because it does not include multiplexing as part of its dedicated transport offering. AT&T's Falcone/Turner ¶¶ 50-54. AT&T never presented this issue in its arbitration. Multiplexing, moreover, is

available to all CLECs by virtue of the bona fide request procedures in the STC and SWBT's OCC-approved agreements.

SWBT has established cost-based rates for cross-connects and included those rates in its STC. STC App. Pricing Schedule at 1, 3, 6. AT&T does not represent that SWBT's STC is deficient because of these rates, but nevertheless believes establishing rate elements for cross-connects is "unnecessary." AT&T's Falcone/Turner ¶¶ 55-58. The arbitrator approved SWBT's pricing of cross-connects, *without* requiring inclusion of the cost of providing cross-connects in the rate for the associated unbundled elements. *Arbitrator's Report* at 20. SWBT's provision of cross-connects separately also is consistent with the FCC's requirement that "[i]ncumbent LECs . . . provide cross-connect facilities" and "recover the costs of providing such facilities in accordance with . . . rules on the costs of interconnection and unbundling. . . ." *Local Interconnection Order* ¶ 386.

F. Checklist Item (6): Local Switching

AT&T falsely states that SWBT's agreement with Sprint does not provide access to DS1 trunk ports. AT&T's Falcone/Turner ¶ 60. In fact, the Sprint Agreement expressly affords such access. Sprint Agreement Attach. UNE § 5.3.1.3. Pricing for this element was not negotiated between SWBT and Sprint and thus is not specifically included in the Sprint Agreement. Nevertheless, SWBT will provide this port type or any other port type requested, on an unbundled basis, at cost-based rates upon request. *See* STC App. UNE at § 2.4; Sprint Agreement Attach. UNE § 5.3.1.6. SWBT anticipates that its cost-based price for DS1 trunk ports, if requested, will be $277.90 per month with nonrecurring charges.

In one of AT&T's most absurd objections, Falcone and Turner state that while both SWBT's STC and the Sprint Agreement plainly offer customized routing, "the words of the [documents] are not sufficient to demonstrate [its] availability . . . ." AT&T's Falcone/Turner ¶ 64. This assertion that SWBT will not abide by its statutory and contractual obligation is nonsense.

AT&T also suggests that "SWBT has chosen the least desirable method for providing customized routing — using line class codes." AT&T's Falcone/Turner ¶ 65. Line class codes ("LCCs") are the only technically feasible method of custom routing available in SWBT's existing network. While SWBT is designing an alternate method in response to requests for customized routing using an advanced intelligent network ("AIN") platform, that alternative is not yet available.

Implementing customized routing through LCCs is complex, as AT&T's argument suggests. SWBT has worked with AT&T to help AT&T define its requirements, so that SWBT can begin to "build" the appropriate LCCs at each end office where AT&T desires custom routing capability. In Texas, SWBT notified AT&T last December that it has the capability to provide customized routing in every end office in that state. However, SWBT first received partial written specifications from AT&T for customized call routing on March 21, 1997. Pricing for customized routing will be established on a nondiscriminatory, individual contract basis. This is because the creation of LCCs in end offices is labor-intensive and the cost varies widely depending upon the switch type and customer requirements.

AT&T raises within the context of unbundled switching another issue that was not raised in the AT&T arbitration, concerning licensing of intellectual property. AT&T's Gaddy ¶¶ 33-34. AT&T maintains that by complying with its intellectual property obligations toward third parties, SWBT somehow discriminates against CLECs. The problem arises from the fact that some items included in the FCC's definition of unbundled network elements are owned *not* by SWBT, but by others who have licensed them to SWBT. For example, SWBT's own use of software to provide retail services may be covered by its license agreement with a vendor, but the same use of the software by a competing carrier, if not authorized by the owner of the software, could constitute copyright or patent infringement, as well as a violation of SWBT's obligation to protect the trade secrets of the manufacturer.[39] Because SWBT is not able to provide access where the elements encompass intellectual property and the owner of that property has not authorized SWBT to provide it to others, SWBT asks CLECs to obtain permission from the intellectual property owner itself and to indemnify SWBT for any intellectual property violation that the CLEC might cause by failing to obtain the necessary permission. STC § XV(A)(6)-(7).

AT&T seeks to require SWBT to obtain whatever permission is necessary from a licensor on behalf of all CLECs. AT&T's Gaddy ¶¶ 33-34. But nothing in the Act or the FCC's rules imposes a duty on Bell companies to secure intellectual property rights from

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[39] *Cf. MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993), *cert. dismissed*, 510 U.S. 1033 (1994) (loading a computer program constitutes copying under Copyright Act).

third parties on behalf of CLECs.[40] Indeed, it would make no sense to place the onus upon SWBT to negotiate on behalf of CLECs. Only CLECs know how they intend to use unbundled elements and whether such uses would infringe the intellectual property rights of third parties. SWBT also cannot effectively negotiate agreements on behalf of CLECs in advance, because it will not know how many CLECs will seek rights to particular intellectual property. Thus, rather than creating any efficiencies, AT&T's proposal is unworkable.

Nor is requiring CLECs to negotiate for themselves discriminatory. *See* AT&T's Gaddy ¶ 33. CLECs are in the same position as SWBT. Just as SWBT has had to obtain a license for use of the item in question, so too must the CLEC.[41]

G. Checklist Item (7): Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services

All parties accept that SWBT satisfies this checklist requirement (vii), save for the interexchange carriers' over-arching claim that checklist elements must be furnished, not just made available as the 1996 Act requires. *See* AT&T's Gaddy ¶ 35. In any event, AT&T is wrong when it claims that SWBT has not furnished 911 service. *Id.* Brooks Fiber and SWBT began passing live 911 traffic in January 1997. As to directory assistance ("DA") and

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[40] In an effort to establish such an obligation, MCI has requested a ruling from the FCC that would shift "the burden . . . to negotiate" to incumbent local exchange carriers. *Petition of MCI for Declaratory Ruling* at 13 (FCC Mar. 11, 1997).

[41] Although AT&T hypothesizes that a CLEC might have to negotiate with Southwestern Bell's manufacturing entity to obtain a license, it is unclear what point AT&T seeks to make. *See* AT&T's Gaddy ¶ 33. Under 47 U.S.C. § 272, SWBT's manufacturing affiliate must be a separate corporate entity that deals with SWBT on an arms-length basis, just as it would with any CLEC.

operator services ("OS"), the services offered in Appendices DA and OS to the STC and through SWBT's OCC-approved agreements will be implemented in exactly the same manner as DA and OS have been furnished for many years to 39 independent telephone companies in Oklahoma under similar contracts.

H. Checklist Item (8): White Pages Directory Listings

With the exception of the interexchange carriers' claim that every checklist element must actually be furnished to a CLEC prior to interLATA entry under section 271, no party disputes SWBT's satisfaction of section 271(c)(2)(viii) — access to white pages directory listings.[42]

I. Checklist Item (9): Nondiscriminatory Access to Telephone Numbers

AT&T raises three objections to SWBT's provision of access to telephone numbers. First, Mr. Lancaster notes that SWBT "proposes" in its STC "that the CLEC align its office code (NPA-NXX codes) calling scope with SWBT's." AT&T's Lancaster ¶ 17. The STC requires that CLECs obtain NXX codes that correspond to SWBT's calling scopes solely for purposes of identifying the jurisdictional nature of the traffic for proper application of reciprocal compensation for the transport and termination of such traffic. STC § IV(A). This convention allows SWBT and the CLEC properly to bill for traffic that passes between

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[42] While Sprint makes claims pertaining to Southwestern Bell's Yellow Pages business, Sprint's Meyer at 19, the 1996 Act imposes no duty on Southwestern Bell to make a non-regulated entity's services available. To assist CLECs in making arrangements with Southwestern Bell Yellow Pages, however, SWBT has provided contact names and telephone numbers to requesting CLECs.

them. It does not limit the CLEC's ability to define the calling scopes of its own retail customers; those calling scopes may be larger, smaller, or the same as SWBT's, subject to the industry-developed and -maintained *Central Office Code Assignment (NXX) Guidelines* ("*Guidelines*").

Second, Lancaster argues that SWBT's charges for NXX migration are not cost-based. AT&T's Lancaster ¶¶ 18-19. NXX migration need not be offered under the 1996 Act or FCC rules. In particular, it is not an unbundled element and so is not subject to the requirement of cost-based rates. SWBT nevertheless has agreed to provide NXX migration at prices based on SWBT's cost of providing the service. SWBT also has agreed to reciprocal NXX migration rates where an NXX is migrated from a CLEC to SWBT. *See, e.g.*, STC § 4(F).

Finally, AT&T urges a new rule, under which incumbent local exchange carriers would be required publicly to disclose their numbering administration procedures and other information. AT&T's Lancaster ¶¶ 20-21. As explained in the draft Affidavit of William T. Adair, filed with the Commission on February 20, SWBT currently performs its responsibilities as Central Code Administrator in compliance with an extensive set of FCC regulations. In particular, SWBT uses the *Guidelines* in performing its number administration responsibilities. All procedures, requirements and policies associated with number administration used by SWBT are detailed in the *Guidelines*, which are publicly available. The *Guidelines* were developed at the direction of the FCC by the Industry Numbering Committee ("INC") of the Industry Carriers Compatibility Forum. AT&T is an

active member of the INC. Furthermore, AT&T has actively participated in several recent industry number administration meetings convened by the SWBT number administrator. These meetings discussed specific number assignment procedures, detailed in the *Guidelines*, to be used within the State of Oklahoma. Thus, AT&T's proposal not only lacks any basis under section 271, but also is pointless.

J. Checklist Item (10): Nondiscriminatory Access to Signaling and Call-Related Databases

All parties accept that, putting aside arguments whether SWBT must actually furnish every checklist element, SWBT holds out nondiscriminatory access to databases and associated signaling necessary for call routing and completion, as required under section 271(c)(2)(B) (v).

K. Checklist Item (11): Interim Number Portability

Southwestern Bell's draft brief explained that SWBT's STC and OCC-approved agreements provide interim number portability ("INP") in accordance with section 272(c)(2)(B)(xi) of the Act and all relevant FCC regulations. Draft Br. at 32-33. Indeed, in the AT&T arbitration, this Commission approved central aspects of SWBT's approach to INP as consistent with the Act and FCC rules. *Arbitration Order* at 5; *Arbitrator's Report* at 16-17.

Brooks Fiber points to incidents in which several new Brooks customers did not receive incoming calls "for hours at a time" due to difficulties with remote call forwarding. Brooks Fiber at 4. SWBT takes any gap in INP — no matter how small — very seriously.

In fact, when SWBT determined that problems with its methods had caused some early INP implementation delays, it revised those methods. With respect to the more recent problems encountered by Brooks Fiber, SWBT's investigation revealed that the problem arose because Brooks Fiber mistakenly submitted a set of orders to SWBT's retail business office rather than to the LSPSC, which handles CLEC orders. SWBT's investigation further indicated that this error did not reflect any broad failure of communication between Brooks Fiber and SWBT. SWBT has made every effort to ensure that its ordering procedures are easy to follow and are understood by Brooks Fiber and other CLECs. In April 1996, for instance, SWBT provided Brooks Fiber with an easy-to-use handbook titled *How to do Business with SWBT: A Handbook for Switched Based Local Service Providers*. In October 1996, Brooks Fiber personnel attended an overview session on ordering procedures, at which SWBT reviewed various order forms, including those for INP. In addition, Brooks Fiber personnel attended an LSPSC workshop that was specifically designed to teach CLECs ordering procedures.

In contrast to Brooks Fiber's narrow concern, AT&T takes a broad swipe at SWBT's provision of INP. AT&T's principal objection is the same one this Commission rejected in the AT&T arbitration. Indeed, the Statement of AT&T's Mark Lancaster repeats his testimony before the arbitrator. Lancaster argues that SWBT should be required to provide "Remote Call Forwarding Index (RCF), Route Index Portability Hub (RI-PH), Directory

Number Route Index (DN-RI), and Local Exchange Routing Guide (LERG) Reassignment."[43] The arbitrator specifically rejected Lancaster's arguments and held instead that "SWBT's proposal to offer Remote Call Forwarding as an INP solution complies with both the federal Act and the FCC Number Portability Order." *Arbitrator's Report* at 16. Similarly, Lancaster argues in this proceeding that SWBT's prices for INP are not "neutral," AT&T's Lancaster ¶ 67, even though the arbitrator specifically found that SWBT's cost-recovery method "is reasonable and complies with the federal Act and the FCC Number Portability Order," *Arbitrator's Report* at 17. This Commission affirmed the arbitrator's decision on this point. *Arbitration Order* at 4-5.

AT&T makes additional, miscellaneous arguments — regarding performance intervals, provisions governing customers in arrears, and intercept charges — that it did not think worthy of raising in the arbitration. *See* AT&T's Lancaster ¶¶ 62-66 As AT&T's failure to raise them earlier suggests, these arguments reflect *not* any genuine concern that SWBT is failing to abide by Congress' requirements, but rather an effort to keep Southwestern Bell out of long distance competition any way possible. For instance, Lancaster's "apples to oranges" comparison between SWBT's performance intervals for services provided to CLECs (which are not available to SWBT's retail customers) and different services provided to retail

[43] Statement of Mark Lancaster on Behalf of AT&T Communications of the Southwest, Inc. ¶ 33 (filed Mar. 11, 1997) ("AT&T's Lancaster"); *see Arbitrator's Report* at 16 (summarizing Lancaster's testimony).

customers shows no discrimination; equal treatment of parties that are not similarly situated often yields different outcomes.

AT&T likewise can point to nothing in the Act or FCC regulations that prohibits SWBT's practice of collecting a customer's past-due bill before porting that end user's telephone number to a CLEC. This commercially reasonable practice does no more than ensure SWBT's recovery of charges it is owed for services previously provided. SWBT does not and will not refuse to connect a customer to a CLEC prior to payment of the end user's bill, so its policy does not prevent CLECs from acquiring SWBT's retail customers.

Finally, SWBT provides basic intercept announcements (for example, alerting the caller that the called number has been changed) at no charge in accordance with its General Exchange Tariff for Oklahoma. Tariff charges apply only if the CLEC desires a special intercept referral announcement. SWBT's tariffed rates for intercept announcements have been found just and reasonable by the OCC.

L. Checklist Item (12): Dialing Parity

AT&T offers no basis for questioning SWBT's ability or intention to supply access that enables dialing parity, as guaranteed in SWBT's STC and agreements. AT&T only argues that dialing parity must be "actually deliver[ed]" to satisfy the checklist. AT&T's Turner ¶ 35. As we have said, that is not the law. By virtue of the parties' OCC-approved interconnection agreement, SWBT currently affords Brooks Fiber all network access necessary for Brooks to offer dialing parity to end users. SWBT is unaware whether Brooks is taking advantage of this opportunity in offering its own retail services.

M. Checklist Item (13): Reciprocal Compensation for the Exchange of Local Traffic

As explained in Southwestern Bell's draft brief (at 34-35), SWBT offers reciprocal rates for both tandem office-based and end office-based transport and termination of local traffic originating on the CLEC's network. These rates are cost-based and generally were derived from cost studies performed in accordance with the FCC's stayed pricing rules. AT&T suggests that this is not enough, because the Commission has not yet made a "final determination . . . with respect to the cost basis for SWBT's rates." AT&T's Gaddy ¶ 58.[44] This is just another version of AT&T's incorrect argument that the Commission must complete all intended rate proceedings relating to any checklist item before Southwestern Bell can secure interLATA relief. *See supra* Part III(B)(2). The 1996 Act, which allows Bell companies to apply for interLATA relief any time after February 1996, § 271(d)(1), does not mandate this delay. By making cost-based rates available to CLECs, SWBT has fulfilled its statutory duties.

AT&T also makes broad allegations regarding SWBT's treatment of optional extended local calling traffic. AT&T's Gaddy ¶¶ 59-63. Mr. Gaddy made the same arguments to the arbitrator in the AT&T proceeding. *See Arbitrator's Report* at 21-22. The arbitrator found, and this Commission agreed, that defining "local areas" for purposes of reciprocal compensation is a matter for the states, and treating optional extended-area service territories

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[44] Once again AT&T questions the effectiveness of interim rates even though it proposed, in its arbitration with SWBT, that the arbitrator establish interim rates before proceeding to determine final rates.

as "local" is consistent with this Commission's "historical practice of defining local service areas for incumbent LECs as the area in which all end-users of a given class are served at uniform rates." *Arbitrator's Report* at 22; *see Arbitration Order* at 4 (adopting arbitrator's report in relevant part).[45]

Finally, Gaddy tries to tie SWBT's satisfaction of the checklist requirements to AT&T's long-standing campaign to overturn regulatory access charge policies. AT&T's Gaddy ¶¶ 64-67. Yet Gaddy ultimately admits — with true understatement — that access charges "might not be an item on the competitive checklist" and, indeed, his testimony has nothing to do with SWBT's satisfaction of section 272(c)'s requirements. *Id.* ¶ 67.

N. Checklist Item (14): Resale

With respect to resale of SWBT's services, Mr. Gaddy expounds at length on still more issues that were settled in the AT&T arbitration. Gaddy first repeats testimony he gave in the AT&T arbitration regarding supposed restrictions on resale of SWBT's retail services. *Compare* AT&T's Gaddy ¶¶ 46-50 *with Arbitrator's Report* at 4 (summarizing prior testimony). In resubmitting this testimony, AT&T chooses to ignore the arbitrator's conclusion, ratified by this Commission, that "SWBT's position is reasonable and is consistent with the federal Act and the FCC [Local Interconnection] Order." *Arbitrator's Report* at 5; *see Arbitration Order* at 4 (adopting Report in relevant part). SWBT explained

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[45] Mr. Gaddy suggests that Southwestern Bell has an improper EAS "strategy" or "plan." AT&T's Gaddy ¶¶ 59-60. To support this claim, he relies solely upon a heavily struck-out, *draft* document which literally states on every page that it "does not represent company policy." AT&T's Gaddy at 23 n.17 & Ex. PG-3.

during the arbitration proceeding that the contested tariff restrictions are not "resale restrictions" at all, but rather use limitations *that attach to the retail service itself. See Arbitrator's Report* at 4 (discussing Jackson testimony). As the arbitrator put it: "if the terms and conditions contained in SWBT's tariffs were not enforced by AT&T in reselling a particular service, in effect, AT&T would be offering a different service." *Id.* at 5. This, the arbitrator explained, AT&T has no right to do. *Id.*; *see Local Interconnection Order* ¶ 872 (rejecting claim that incumbent LECs must offer wholesale services that are not available to LEC's own retail customers).

Gaddy's positions on SWBT's customer change charge and resale of promotional services were rejected by the arbitrator in equally unequivocal terms. With respect to the customer change charge, Gaddy ignores the plain language of the arbitration award, which resolves his concern. The arbitrator ruled that AT&T could lawfully be required to pay "the change charge and the wholesale nonrecurring charge , if applicable, for any additional services or feature added." *Compare* AT&T's Gaddy ¶¶ 51-55 *with Arbitrator's Report* at 3 (setting interim charge); *Arbitration Order* at 4 (adopting arbitrator's decision). Similarly, Gaddy ignores this Commission's holding that CLECs such as AT&T have no right under the 1996 Act or the *Local Interconnection Order* to obtain, at wholesale rates, SWBT's promotions of 90 days or less. *See* AT&T's Gaddy ¶ 56; *Arbitrator's Report* at 5-6; *Arbitration Order* at 4.

IV. SOUTHWESTERN BELL'S ENTRY INTO INTERLATA SERVICES WILL SERVE THE PUBLIC INTEREST

Hard evidence proves that Southwestern Bell's entry into interLATA services will increase competition in the State, for long distance as well as local services.[46] As explained in the draft section 271 application submitted to this Commission, AT&T, MCI, and Sprint are raising their basic rates in lockstep, notwithstanding that access charges and other costs of providing service are falling. Draft Br. at 52-56. Although discount plans afford a limited degree of relief for price-conscious, higher-volume callers, most residential long distance customers pay the fast-rising basic rates. *Id.* at 56-59. Across the country, the only exception to this trend is in those isolated areas where an incumbent Bell company or another major incumbent LEC has been allowed to enter the market. In those regions, the LECs typically offer prices 20-30 percent below AT&T's, prompting the major carriers to respond with targeted promotions of their own. *Id.* at 59-62. Indeed, AT&T and MCI have forthrightly stated that interLATA competition is more intense in Connecticut and in the New Jersey "corridors" than elsewhere, due to the in-region, interLATA offerings of SNET and Bell Atlantic. *Id.* at 60-61.

Southwestern Bell's existing customer relationships and strong brand name position it to give interLATA competition a similar boost in Oklahoma. Southwestern Bell can market to lower-volume callers effectively and serve them efficiently, so the Big Three carriers no

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[46] The Federal Act does not vest this Commission with a formal consultative role regarding the FCC's determination whether granting Southwestern Bell's application for authority to offer interLATA services in Oklahoma will serve the public interest. *See* §§ 271(d)(3)(C) (FCC inquiry); 271(d)(2)(B) (consultation with state commissions).

longer will be able to take the business of these residential subscribers for granted. *Id.* at 62-64. Southwestern Bell also will be able to compete, on a level field, by offering packages of local and long distance service. This will trigger new competition in both local and long distance markets, with the likely result of higher quality, lower cost services for consumers. *Id.* at 62-67.

The benefits of greater competition — including not only direct consumer savings but also the spillover effects of better and cheaper telecommunications services for businesses and government — will be tremendous. The WEFA Group conservatively estimates the benefits from Southwestern Bell's interLATA entry in Oklahoma at an additional 10,000 jobs and a $700 million increase in the Gross State Product by the year 2006. WEFA Rep. at 1. These predictions are in accord with the forecasts relied upon by Congress in drafting the 1996 Act and the work of other prominent economists. *See* Draft Br. at 67.

Even the incumbent interexchange carriers do not dispute that additional competition in the long distance business will serve the public interest. In an effort to postpone competition in their markets, however, AT&T, MCI, and Sprint claim that Southwestern Bell, which is particularly capable of generating new competition, should be the only carrier forbidden to do so. Their first argument is that Southwestern Bell's entry into interLATA services should be withheld to give CLECs "a lever" over Southwestern Bell with respect to local interconnection, at least until some vaguely described level of actual local competition emerges. Sprint's Phelan at 3; *see* AT&T's Gillan ¶ 7 (same). This is a nearly explicit suggestion that the FCC use the public interest test to override Congress' judgment that Bell