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CORPORATION COMMISSION OF OKLAHOMA

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May 27, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20553

Re: FCC 970121

To Whom it May Concern:

Pursuant to the FCC procedures for Bell operating company applications under Section 271 of the Telecommunications Act and the FCC's April 11, 1997 Public Notice, please find enclosed reply comments of the Oklahoma Corporation Commission in support of Southwestern Bell Telephone's application to provide in-region interLATA service in Oklahoma.

Sincerely,

Cody L. Graves
Chairman

CLG:bc

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma	)))))	CC Docket No. 97-121

REPLY COMMENTS OF THE OKLAHOMA CORPORATION COMMISSION
ON THE APPLICATION OF SBC COMMUNICATIONS, INC.,
SOUTHWESTERN BELL TELEPHONE COMPANY AND
SOUTHWESTERN BELL LONG DISTANCE FOR PROVISION OF
IN-REGION INTERLATA SERVICES IN OKLAHOMA

The Oklahoma Corporation Commission ("OCC") with Commissioner Anthony dissenting, hereby submits these reply comments in accordance with the Federal Communication Commission's ("FCC's") Public Notice filed April 11, 1997.

Many of the comments received by the FCC are unsubstantiated and therefore must be disregarded

The Oklahoma Corporation Commission ("OCC") was astonished by some of the parties who filed comments in the above-entitled cause, considering the fact that some of the commentors have no direct knowledge of Oklahoma-specific information. Most of the parties who filed comments did not participate in the OCC's docket[1] to gather information on Southwestern Bell's compliance with Section 271 of the Telecommunications Act of 1996 ("the Act"), conduct any discovery, or speak with anyone on the OCC Staff. Additionally, the vast

[1] Cause No. PUD 970000064 ("PUD-64").

majority of the companies who provided comments have not sought authority to operate in Oklahoma nor shown any interest in operating in this state. This raises some obvious questions: Where did these parties get their information? Why, if they have no knowledge about or interest in Oklahoma, did they file comments? How reliable are their comments?

The OCC believes that many of the commentors are motivated by a fear or paranoia that once the first Bell operating company receives interLATA approval, regardless of location, the floodgates will be opened for the other Bell operating companies around the country. While this may occur, it will not happen without FCC approval and oversight by that agency and the state commissions. In any event, if the Bell operating companies meet the competitive checklist, the floodgates *should* be opened and, pursuant to the Act, are required to be opened.

In our May 1, 1997, comments, the OCC rejected the argument from some competitive local exchange companies ("CLECs") that once Southwestern Bell is allowed into the interLATA market, it will have no incentive to negotiate in good faith. The FCC should also reject this argument because it fails to recognize the safeguards provided in the Act.

The OCC believes that the comments received by the FCC from parties who had no first-hand knowledge of Oklahoma-specific information should be disregarded as unreliable. The sole purpose of this docket is to examine Oklahoma-specific information. What may or may not be happening in the other states served by Southwestern Bell should have no relevance to the FCC's examination in this docket. The OCC believes that attempts to incorporate information from outside Oklahoma directly conflicts with the Act. Greater weight should be given to the parties who have taken the time to personally obtain Oklahoma-specific information and who have no personal or financial interest in the outcome. The only party that falls into this category is the

OCC.

Approval of the application is in the public interest

Even before passage of the Act, the OCC had initiated proceedings to open the local exchange business to competition, just as it had authorized competition with respect to every other telephone service.

In OCC's view, this application involves more than a narrow request by a Bell operating company for interLATA relief. True, if the application is approved, Southwestern Bell will be authorized to provide full long distance services to Oklahoma consumers. Beyond that, however, approval of the pending application is the only remaining roadblock to full telephone competition in Oklahoma. Approval of the application will not only give Oklahoma consumers a full choice of interLATA providers, it will open up the intraLATA toll market to full competition and will spur further local competition in this state.[2]

The OCC's views on this were not hastily developed, but have come about as a result of implementing our policy of full telecommunications competition and observing the beneficial effects of this policy over the past several years, as well as considering the arguments and evidence recently put before us in PUD-64. Because of this, we believe that the FCC should

[2]Even since the OCC filed comments on May 1, 1997, other events have occurred in Oklahoma which support the OCC's findings on public interest. Other facility based competitors have expedited their proposed service dates and AT&T and Southwestern Bell have agreed to a procedural schedule designed to have a complete interconnection agreement in place by mid-July, 1997, to name a few. In addition, AT&T has made a verbal commitment to the OCC to be up and running and providing both residential and business local exchange services in Oklahoma in October 1997.

afford particular and substantial deference to this agency who, unlike the various companies who have filed comments, has no business axe to grind.

The role of the state commission under the federal act

Although only the FCC can remove the last remaining roadblock to full telecommunications competition in Oklahoma, by approving the pending Southwestern Bell application, Congress gave the states a very large role in opening the local exchange market to competition.

The federal act assigns to the states the role of mediating and arbitrating disputes in interconnection negotiations between incumbent and CLECs, Section 252(a) and (b); to set prices for interconnection, unbundled network elements, transport and termination of traffic, and resold services, Section 252(d); and to approve interconnection agreements and statements of generally available terms, Section 252(e) and (f). In Oklahoma, the OCC has not been called upon to mediate disputes, but has arbitrated interconnection issues between AT&T and Southwestern Bell and GTE. With respect to Southwestern Bell, four companies have filed for arbitration, but three of those companies withdrew the requests for arbitration and signed interconnection agreements before any arbitration proceedings were conducted. The OCC has completed one arbitration hearing between Southwestern Bell and AT&T and another proceeding is underway. With respect to that case, the parties have advised the OCC that they expect to submit an interconnection agreement to the OCC for approval by mid-July, 1997.

The OCC has approved rates for interconnection, unbundled elements and transport and termination of traffic, both through the Southwestern Bell/AT&T arbitration and through

approval of the several interconnection agreements that have been submitted to us for review.[3] We have established a resale discount for Southwestern Bell of 19.8% that is now regularly adopted in agreements between Southwestern Bell and CLECs. We have a pending proceeding, Cause No. PUD 970000020, where we will consider Southwestern Bell's statement of generally available terms and conditions.

In overseeing the transition to local competition, the OCC has gone beyond what is required by the Act.

In the spring of 1996, the OCC Staff attended an FCC meeting in Washington along with representatives of the FCC Staff, the DOJ and other state commissions. At that meeting, the FCC and the DOJ recommended that each state commission initiate a proceeding prior to the filing of a request for interLATA relief by a Bell operating company. As a result, the OCC initiated PUD-64, which was purposely designed to assist any intervenors in gathering as much information as possible about Southwestern Bell. The OCC even went beyond traditional procedures and established a procedure whereby Southwestern Bell would make its subject

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[3]These rates have been criticized because they are "interim." The setting of "interim" rates was proposed by and agreed to by AT&T, one of the parties who now complains about their "interim" nature. Four things are significant: (1) although "interim," these rates have been adopted by many other companies in their interconnection agreements with Southwestern Bell, since they were established in the AT&T arbitration proceeding,; (2) although "interim," we have nevertheless determined the rates are "cost-based" as required by the act since they are supported by Southwestern Bell cost studies, reflect rates that have been approved by state or federal regulatory commissions, or are rates contained in commission-approved interconnection agreements; (3) although "interim," the rates will be "trued up" once a full cost docket is completed; and (4) a full cost docket is underway in Oklahoma in Cause No. PUD 970000213, in which any CLEC is free to participate. In sum, we do not believe Congress intended interLATA competition to be thwarted by a sequence of events where a competitor could propose the setting of "interim" rates, then use that proposal as a shield against a request for interLATA authority.

matter experts available to any party who had questions. To the OCC's surprise, no intervenor utilized this procedure or attempted to talk to any of Southwestern Bell's subject matter experts.

In addition, throughout the processing of the case, the OCC's Senior Assistant General Counsel was in contact with the DOJ representative assigned to Oklahoma. Staff's counsel encouraged the Department representative to participate in PUD-64 and even offered to submit to Southwestern Bell any data requests the DOJ wanted asked. However, the OCC Staff's assistance was not utilized. Prior to the hearing in PUD-64, the OCC's Senior Assistant General Counsel offered to pose any questions the DOJ might like to have answers to, and again the Staff's offer of assistance was rejected. However, the OCC did not stop with these efforts. The OCC took another step to verify Southwestern Bell's compliance with the Act.

On April 24, 1997, the OCC sent the OCC's Telecommunications Coordinator, Staff engineer and the Senior Assistant General Counsel to St. Louis to examine Southwestern Bell's operational support systems ("OSS"). In its meeting with Southwestern Bell representatives, the OCC Staff posed many questions that had been supplied to Staff by industry representatives opposed to Southwestern Bell's application. In each instance, the Staff found that things were not as alleged by the CLECs. Specifically, the Staff found that Southwestern Bell was offering to CLECs the same database and network it currently utilizes for itself. The answers and information provided by Southwestern Bell were readily verifiable. The OCC Staff's findings were reported back to the OCC and formed the basis of the OCC's May 1, 1997 comments in this proceeding.[4]

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[4]Although it cannot speak for Southwestern Bell, the OCC doubts that the company would refuse a request by the FCC to conduct a hands-on investigation of Southwestern Bell's

Although the OCC instituted the evidentiary proceeding that had been suggested by the FCC, the DOJ and NARUC, only a few companies participated. The FCC did not. Neither did the DOJ. Many of the commentors who have filed comments opposing Southwestern Bell's application at the FCC, did not participate at all in the OCC proceeding.[5]

Having declined the opportunity to fully participate in a fact-finding process regarding Southwestern Bell's current checklist compliance, opponents focused their comments at the OCC hearings, both before the Administrative Law Judge and before the OCC *en banc*, on troubles Brooks Fiber alleged it had experienced when turning up its operations in Oklahoma two to three months earlier. This agency, however, concluded, as we noted in our initial comments in this proceeding, that any problems Brooks Fiber experienced (none of which were brought to our attention when they occurred), were of an implementation nature and did not reflect either Southwestern Bell's refusal or inability to provide the interconnection and access to its network required by the federal act. On this point, we continue to find it significant that Brooks Fiber is serving customers in Oklahoma and is doing so without any complaint to this agency that Southwestern Bell is not complying with the federal act. This, along with the fact that other

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operations similar to the OCC's investigation.

[5]For example, although they have recommended that the FCC not authorize full long distance competition in Oklahoma, we never heard from any of the following companies and organizations: Paging and Narrowband PCS Alliance of the Personal Communications Industry Association; National Cable Television Association; Competition Policy Institute; Competitive Telecommunications Association; Dobson Wireless, Inc.; U.S. Long Distance; Telecommunications Resellers Association; Texas Association of Long Distance Telephone Companies; Time Warner Communications Holdings, Inc., and WorldCom, Inc. These entities were certainly welcome to participate in PUD-64, but chose instead to ignore an opportunity to gain first-hand knowledge of regarding Southwestern Bell's compliance with the federal act and withhold their views until that proceeding was completed.

facilities-based providers[6] have reached agreements with Southwestern Bell and are on the verge of beginning operations and the fact that no company has filed a complaint alleging that Southwestern Bell is failing or refusing to provide required checklist items, is the strongest possible *verification* that Southwestern Bell is complying with the competitive checklist. The OCC believes the fact that Brooks Fiber is operating and providing local service to former Southwestern Bell customers is *dispositive* evidence that the purposes of the federal act are being carried out in Oklahoma and that Southwestern Bell is meeting its checklist responsibilities.

With respect to the Track "A" versus Track "B" issue, the OCC has determined that Brooks Fiber is providing both business and residential service and is doing so predominantly through its own facilities. Further, Brooks has begun media advertisements seeking to attract both business and residential customers. This should be no surprise to anyone. Brooks is providing service in Oklahoma, to both business and residential customers, just as its OCC-approved tariff requires and just as its representative testified it would when Brooks Fiber sought a certificate of convenience and necessity from the OCC to provide local exchange service last summer.[7] The OCC will object to any attempt by Brooks Fiber to deviate from providing service

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[6]American Communication Services of Tulsa, Inc., and Cox Oklahoma Telcom, Inc., have submitted interconnection agreements to the OCC for approval. The OCC Staff has already approved the agreements, which are scheduled to be presented to the OCC's administrative law judge on May 28, 1997, for formal approval. Cause Nos. PUD 970000207 (Cox) and 970000215 (American Communication Services).

[7]Edward J. Cadieux, the Director of Central Region Regulatory Affairs for Brooks Fiber, testified in Cause Nos. PUD 960000102 and 960000103, as follows: "Brooks' initial networks are in the Oklahoma City and Tulsa metropolitan areas. And that is where we will at least for the near term, for the foreseeable future, originate service from. We have built fiber networks in both of those metropolitan areas." Transcript of July 15, 1996, hearing at 25. Later in the hearing, Mr. Cadieux was asked if Brooks intended to offer its services to both business and residential

to both residential and business customers.

The OCC's views should predominate

The OCC is charged with adopting and implementing telecommunications policy in Oklahoma. Congress, through the federal Telecommunications Act of 1996, has delegated substantial responsibility to the OCC and the other state commissions to make sure that the Bell operating companies comply with their obligations under the act and to verify that compliance with the FCC.

Beginning in 1994, two years before the passage of the federal act, our agency began devoting substantial time and resources to establishing a framework where competition in all areas of telecommunications could be fostered. The OCC has met its goal of establishing an environment that encourages competition and has fulfilled its responsibilities under the federal act. This has required the OCC's investigation and observation of Southwestern Bell over the course of the nearly 16 months since passage of the federal act.

As a result of the OCC's experience and its first-hand observations, the OCC has concluded that Southwestern Bell is meeting the "competitive checklist,"[8] and is otherwise

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customers. "That's correct," he responded. *Id.* at 35.

[8]In this regard, the OCC overruled part of the recommendation of the Administrative Law Judge (ALJ). Our investigation continued beyond the time frame of the matters addressed in the ALJ hearing and focused on Southwestern Bell's *current* compliance with the competitive checklist. Following the ALJ hearing, the Commission staff personally investigated, e.g., Southwestern Bell's OSS operations and a Brooks Fiber collocation site. The OCC conducted additional public hearings. Based on our investigation, and having considered the nature and timing of the complaints raised by intervenors regarding Southwestern Bell's provision of access and interconnection to Brooks Fiber, the OCC had sufficient factual information to find and

complying with the requirements of the federal act and should be permitted to offer interLATA long distance services to all telephone customers in this state. In Oklahoma, the OCC has opened the local exchange market, with appropriate procedures and regulations in place to allow competitors to provide local exchange service on a resale basis, through unbundled elements, on a facilities-basis, or by means of a combination of these methods.

The OCC believes our findings and recommendations should be given great weight by the FCC in ruling on Southwestern Bell's pending application. The views of the state commissions, who have major enforcement and implementation responsibilities under the federal act and who are familiar with the conduct and policies of the Bell operating companies who serve their states *on a first-hand basis*, should predominate over those of competitors whose have vested interests to slow down or prevent competition in the markets they serve. On this score, the OCC have also reviewed the "Evaluation" of the DOJ which, because the DOJ declined an opportunity to participate in PUD-64, relied extensively on the comments of competitors. The OCC has reviewed the complaints underlying the DOJ's evaluation and have found that they do not establish violation of the competitive checklist by Southwestern Bell. Without intending to discount the significant role the DOJ plays in this process, the OCC believes it is inappropriate for the DOJ to "second-guess" the state commission with respect to whether Southwestern Bell is providing or generally offering the required access and interconnection to competitors in Oklahoma.

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verify that Southwestern Bell was complying with each of the checklist items at the time it filed its FCC application.

Conclusion

Having reviewed the comments of the various parties, the Oklahoma Corporation Commission continues to recommend that the FCC approve the Applicants' request for in-region interLATA relief. The public interest in Oklahoma would be furthered if the FCC would remove the last remaining roadblock to full telecommunications competition in our state.

Respectfully submitted,

Cody L. Graves, Chairman
Oklahoma Corporation Commission

May 27, 1997
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments of the Oklahoma Corporation Commission has been served on each of the parties listed on the attached service list, by regular mail, postage-prepaid, this 27th day of May, 1997.

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