

8. Signing and Support of Interconnection Agreement

In conjunction with approval of the settlement of the arbitration, the parties agree to execute the interconnection agreement already developed by SWBT and MAN (modified only to the extent required to reflect the settlement of the arbitration), and thereafter the parties will execute and submit that agreement to the Texas Commission as quickly as possible.

Nothing in this agreement prevents MAN or SWBT from taking any position in another proceeding, project, or rulemaking or from taking any other action they deem necessary to the extent not inconsistent with this stipulation.

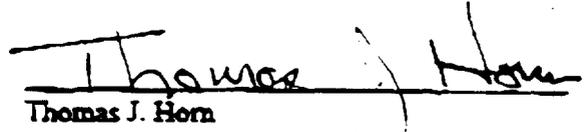
WHEREFORE, MAN and SWBT agree that for purposes of settling this proceeding, this Joint Stipulation and Agreement is reasonable and in the public interest. MAN and SWBT further request that the presiding officer and the Commission adopt this stipulation as the settlement of all issues. Following approval of this stipulation and the terms of the settlement, the parties intend to incorporate the settlement terms into the whole interconnection agreement previously agreed to in all other respects but for the physical collocation issues. Upon approval of the completed interconnection agreement, the parties state and believe there are no issues remaining that need the services of this Commission for purposes of mediation or arbitration.

METRO ACCESS NETWORK, INC.

**SOUTHWESTERN BELL TELEPHONE
COMPANY**



Ed Cadieux
Director of Regulatory Affairs,
Central Region



Thomas J. Horn
State of Texas Bar No. 00789972

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OFFICE PRODUCTS



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

In The Matter of Application of 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
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**REPLY AFFIDAVIT OF GREGORY J. WHEELER
ON BEHALF OF SOUTHWESTERN BELL TELEPHONE CO.**

**STATE OF OKLAHOMA §
 §
COUNTY OF OKLAHOMA §**

I, GREGORY J. WHEELER, being of lawful age and duly sworn, do hereby depose and state as follows:

1. My name is Gregory J. Wheeler. My first affidavit in this case provided information concerning competition in the provision of telecommunications services, and the presence and potential presence of competitive distribution networks in Oklahoma. The purpose of this reply affidavit is to respond to comments concerning the ability of Brooks Fiber to provide service to residential customers.
2. Attached are two maps, one depicting the Brooks fiber network in Oklahoma City, and one depicting the Brooks fiber network in Tulsa. The diamonds on the maps represent the locations of multiple dwelling units ("MDUs") relative to the location of the Brooks fiber network in both cities. The MDUs plotted on these maps are in the

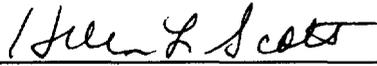
high/medium income level market, with owners having 3,000 or more access lines in their combined apartment communities.

3. I personally prepared and verified the information contained on these maps through public sources, or through visual inspection of the subject MDU complexes.
4. This concludes my affidavit.



GREGORY J. WHEELER
Director Competitive Analysis/Marketing Support

Subscribed and sworn to before me this 23rd day of May, 1997.

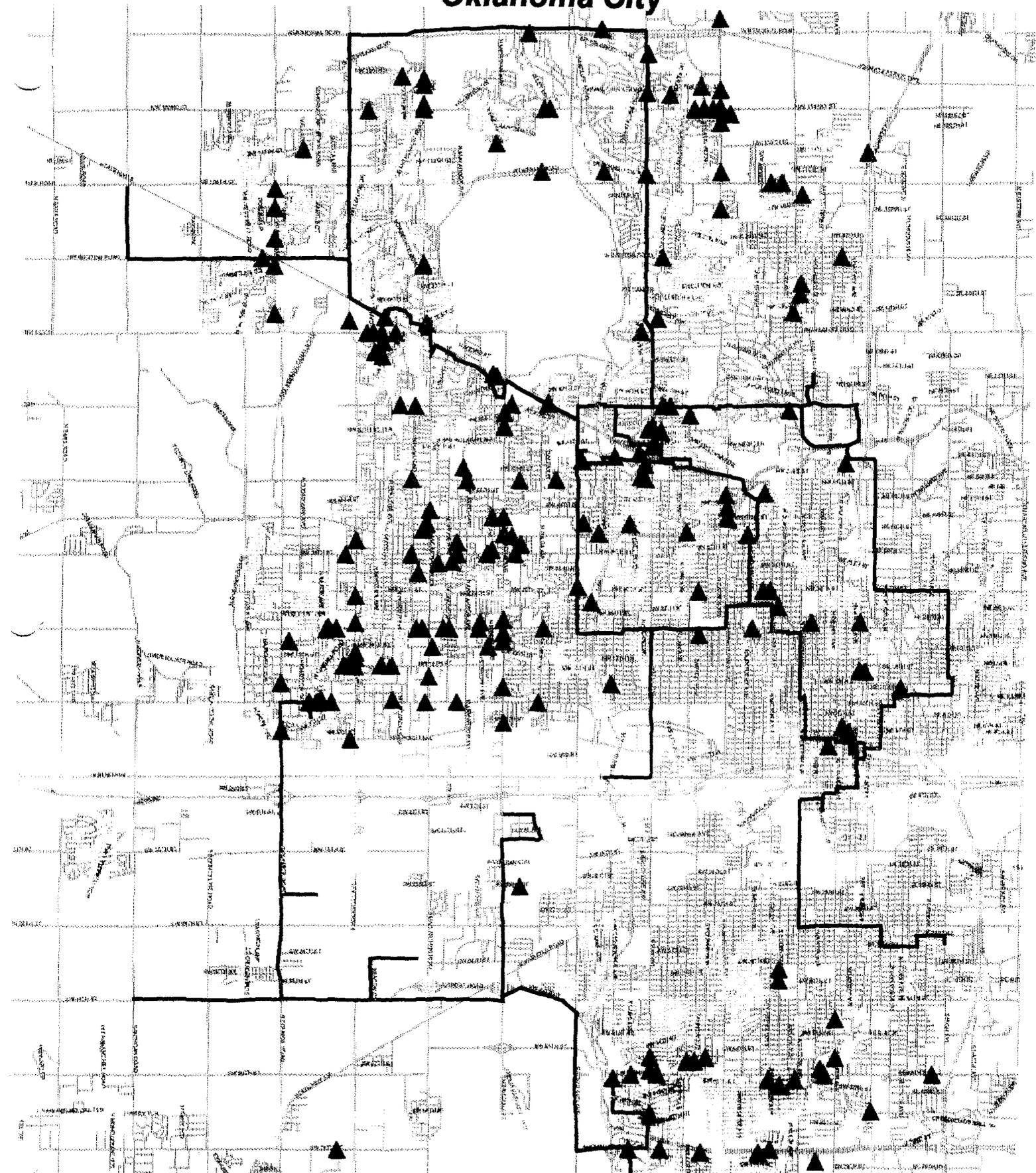


NOTARY PUBLIC

My Commission Expires:

8/28/00

BROOKS FIBER NETWORK Oklahoma City



 Multiple Dwelling Units
Brooks Fiber
OKC Streets



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

In the Matter of Application of 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
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**REPLY AFFIDAVIT OF RICARDO ZAMORA
ON BEHALF OF SOUTHWESTERN BELL TELEPHONE COMPANY**

**STATE OF TEXAS §
 §
COUNTY OF DALLAS §**

I, Ricardo Zamora, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is Ricardo Zamora. My first affidavit in this proceeding demonstrated that Southwestern Bell Telephone Company ("SWBT") has engaged in good faith negotiations with all parties interested in operating as a local service providers ("LSPs") in SWBT's five state region, including Oklahoma. In this affidavit I will address comments by AT&T witness Rian J. Wren concerning interconnection negotiations.
2. By and large, Mr. Wren's affidavit represents a restatement of AT&T's legal position on several matters--most notably the statutory requirements for the provision of unbundled network elements ("UNEs")--, which have been the subject of extensive negotiations between the parties. Other Southwestern Bell witnesses (including Jan Falkinburg, William Deere and Elizabeth Ham) demonstrate not only that Mr. Wren is wrong with regard to what the law requires, but that he has misstated and misrepresented the true nature of the dispute

between SWBT and AT&T relating to the UNE issue.

3. The purpose of my affidavit is to address Mr. Wren's unsupported allegations concerning SWBT's practices and its intentions with regard to the negotiation of interconnection agreements.
4. Under Section 251 of the Act, SWBT has a duty to negotiate the terms and conditions of interconnection agreements in good faith. Further, SWBT has a duty to provide any requesting carrier non-discriminatory interconnection, unbundled access and resale on terms and conditions that are just and reasonable. These are obligations that SWBT as a company, I personally, and my entire interconnection negotiating team, have been dedicated to fulfilling ever since the Act was passed. SWBT's whole approach to interconnection negotiations has been geared to meeting the statutory requirements for the provision of access and interconnection as quickly, thoroughly and effectively as possible. As set out in my first affidavit, SWBT has worked diligently to meet the needs of LECs in the negotiating process; we have devoted enormous resources and have worked days, nights and weekends to ensure that LSP issues were addressed in a timely and reasonable manner, and that LSPs concerns, questions and requests for information were addressed.
5. In spite of these efforts, Mr. Wren--who purports to be generally familiar with the SWBT/AT&T contract negotiations--repeatedly states that SWBT has "pursued a negotiation strategy" designed to "delay discussions" on UNE issues for the purpose of "thwarting UNE competition." In other words, Mr. Wren--with no supporting evidence--essentially charges that SWBT has operated in bad faith to "thwart competition" in violation of the law as embodied in the Telecommunications Act of 1996.

6. These are serious charges and absolutely false. Given the time and effort SWBT has devoted to complying with the terms of the Act, and to meeting AT&T demands in particular, these are charges which are offensive to me on both a personal and professional level.
7. Mr. Wren provides no evidence to support his claims simply because there is none. Although he repeatedly references "delay" on the part of SWBT, Mr. Wren does not and cannot refer to a single instance where SWBT has avoided meeting with AT&T to discuss any of the issues raised in his affidavit. Indeed, since April 1, 1996, SWBT has dedicated a negotiating team full-time to meeting with AT&T negotiation personnel to assure continuity and familiarity with AT&T's needs. SWBT's team includes two attorneys dedicated full-time to negotiation with AT&T, three full-time negotiators and numerous others who individually have dedicated hundreds of hours to the AT&T negotiations. In addition, SWBT has provided two additional attorneys and several additional subject matter experts to negotiate collocation and access to SWBT's poles, conduits, and other rights-of-way. There simply is no support for any claim on the part of Mr. Wren that SWBT has attempted to delay negotiations of any checklist item.
8. In Mr. Wren's view, SWBT's negotiating "delay tactics," including a supposed failure to discuss UNEs until the Oklahoma arbitration process was "nearly complete," were supposedly "designed to ensure that the Oklahoma Corporation Commission would not be able to decide many important UNE issues in the arbitrations...." However, given that the OCC arbitrated *each and every issue* identified in AT&T's arbitration request, and given that AT&T never raised a single complaint concerning delay with the OCC until it decided to oppose SWBT's 271 efforts, it easy to see that AT&T's claims of delay have been

manufactured for purpose of this proceeding and have nothing to do with negotiating “tactics” on the part of SWBT.

9. In paragraph 26, Mr. Wren notes that “more than 400 days after it first sought an interconnection agreement with SWBT, AT&T still has no agreement with SWBT in Oklahoma.” It is curious that AT&T would choose to emphasize this point. Forty-eight companies have requested negotiations with SWBT, and 19 of those companies have successfully concluded negotiations by entering into signed agreements with SWBT. AT&T is the only company that has had to have the OCC intervene through arbitration (much less two arbitrations).¹ No other company has ever even requested mediation. These facts alone demonstrate that if any party is utilizing delay tactics to its own advantage, it is AT&T and not SWBT.
10. Mr. Wren's allegations of delay on the part of SWBT in “meaningful negotiation on most UNE issues in Texas” again distort the true facts. First, it must be noted that this allegation relates to Texas and not Oklahoma, which is the sole focus of this FCC proceeding. Second, in its post-arbitration proposed interconnection agreement in Texas, AT&T used the term “combinations” of UNEs to mean some capability of ordering existing unbundled elements as a package. AT&T took the position that it was entitled to order these elements on an “as is”

¹Wren also attempts to argue that SWBT's Motion to Dismiss AT&T's “Application” to have outstanding issues resolved by the arbitrator again constitutes “delay” on the part of SWBT. In fact, AT&T's application violated the law in two respects: 1) it sought to have the arbitrator approve an interconnection agreement containing AT&T's proposed language -- rather than language agreed to which both parties agreed; and 2) it purported to seek arbitration without regard to the time frames and procedures set forth in the Act. The fact that the OCC refused to adopt AT&T's proposed contract and is requiring AT&T to arbitrate all outstanding issues in a manner consistent with the Federal Act demonstrates the merit of SWBT's position on this issue.

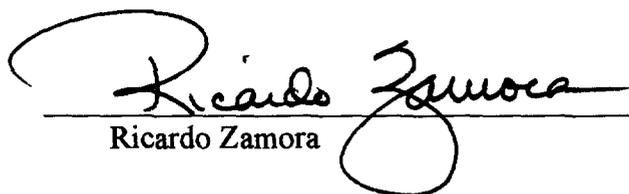
basis. SWBT argued that, while its OSS would allow combination of elements selected by the LSP, it was up to the LSP to designate the specific elements it wished to provide to its end user. The Texas PUC agreed with SWBT, stating:

“The commission does not find that AT&T may specify a combination of elements on one order without specifically detailing the elements in the order. The arbitration did not address that specific ramification of utilizing “combinations” of UNEs, and the Commission does not in this Order approve such an interpretation of the Award.”

13. Having had its position rejected by the Texas PUC, AT&T has now begun to use a different term to refer to “combinations” and “convert as is,” namely the “UNE platform.” Delay in negotiating UNEs in Texas and elsewhere has resulted from such conduct on the part of AT&T--i.e., attempting to obtain what it has already been denied by the state commission by giving it a different name--and not from any alleged negotiation “strategy” on the part of SWBT.
14. Such conduct on the part of AT&T is also evident when Mr. Wren complains about the interim rates set by the OCC in PUD-218 and contained in the Oklahoma Statement of Terms and Conditions. AT&T specifically requested a bifurcated proceeding in which interim rates, subject to “true-up” would be set in the first phase of the proceeding. The parties both agreed to present a witness who would file supplemental testimony on interim rates for decision by the ALJ. After losing on interim pricing in Oklahoma, AT&T now hides the fact that it asked for and agreed to this procedure.
15. To conclude, if any party to these proceedings has employed delaying tactics, it has most certainly been AT&T and not SWBT. AT&T’s accusations are unfounded and represent nothing more than AT&T’s continued attempts to relitigate issues, expand the competitive

checklist, and rewrite the law to suit its purposes. At all times SWBT has negotiated with AT&T in good faith and in compliance with all aspects of the 1996 Act.

The information contained in this affidavit is true and correct to the best of my knowledge and belief.


Ricardo Zamora

Subscribed and sworn to before me this 23 day of May, 1997.


NOTARY PUBLIC

My commission expires:

EDUARDO GARCIA
NOTARY PUBLIC STATE OF CALIFORNIA
COMM. NO. 10117
MY COMMISSION EXPIRES 01/01/2000

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

In the matter of)
)
Application of SBC Communications Inc.,)
Southwestern Bell Telephone Company,) CC Docket No. 97-121
and Southwestern Bell Communications)
Services, Inc., for Provision of In-Region,)
InterLATA Services in Oklahoma)

I. REPLY AFFIDAVIT OF KENNETH GORDON

KENNETH GORDON, being duly sworn, deposes and says:

II. STATEMENT OF QUALIFICATIONS

1. I am Senior Vice President of National Economic Research Associates, Inc. (NERA), One Main Street, Cambridge, MA 02142, and have held that position since November of 1995. Immediately prior to that I was Chairman of the Massachusetts Department of Public Utilities, and before that was Chairman of the Maine Public Utilities Commission. I have been an economist since 1965, and since 1980, when I became an industry economist at the FCC, have been directly involved with developing and establishing virtually all aspects of regulatory policy for telecommunications at the federal and state levels. While I was at the Massachusetts commission, that commission undertook a proceeding to examine in detail interconnection and other issues related to the development of competition at all levels of telecommunications.

III. PURPOSE OF REPLY AFFIDAVIT

2. I filed an affidavit in support of the petition of SBC Communications Inc. and its subsidiaries Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (SBLD) -- collectively, "Southwestern Bell" -- for SBLD to be authorized to provide in-region, interLATA services in the State of Oklahoma. A number of parties have filed comments with the FCC in opposition to Southwestern Bell's petition, and some of those parties included affidavits from economists who do not agree with my conclusion that Southwestern Bell's petition should be granted. The purpose of this reply affidavit is to respond to certain arguments raised by economists hired by AT&T and MCI in opposition to Southwestern Bell's petition. In particular, I will respond to arguments raised by Professor William J. Baumol on behalf of AT&T and Professor Robert E. Hall on behalf of MCI.

IV. INTRODUCTION

3. In their evaluation of Southwestern Bell's petition, Professors Baumol and Hall remain rooted in the "quarantine" theory of the MFJ, which suggests that Bell operating companies (BOCs) should not be allowed to offer, or be affiliated with a company that offers, interLATA services. This is profoundly at odds with the Act. The Act replaces the blanket prohibitions of the MFJ with a stringent set of conditions that will allow Bell operating companies (BOCs) to offer interLATA services through an affiliate of the BOCs' local exchange companies. Those conditions include the following:

- The BOC establishes a separate affiliate, pursuant to Section 272 of the Act, for the provision of interLATA services for at least three years.
- The BOC complies with the 14-point competitive checklist in the Act, which demonstrates that local exchange market entry barriers have been dramatically reduced.

- Compliance with regulatory safeguards designed to prevent the anticompetitive misallocation of costs and discrimination by the LEC in favor of its affiliate.
- The FCC finds that interLATA entry is in the public interest.

4. These requirements in the Act are what I called in my affidavit a “belt and suspenders” approach to allowing the Bell companies into the interLATA market. The belt is the regulatory safeguards, including the separate affiliate requirement, which will prevent the Bell companies from using any residual market power in the local exchange market to obtain an anti-competitive advantage in the long-distance market, and the suspenders are the change in entry conditions for local exchange competitors as reflected in the 14-point competitive checklist.

5. Professor Hall simply asserts that “The Telecommunications Act relies on the principle of structural separation until there is sufficient local competition that the principle is no longer needed.” (Hall Affidavit, ¶ 181). I can find no such principle in the Act. To the contrary, the Act itself carefully lays out the conditions for interLATA entry, even before there is effective competition in the local exchange market. Otherwise, what is the purpose of the Act’s regulatory safeguards?

6. The four conditions listed above should be viewed in concert, not in isolation. Essentially, Professors Baumol and Hall appear to advocate using the public interest requirement, which is the only one without specific standards supplied by Congress, as a means to ignore all of the Act’s other interLATA entry requirements and to reintroduce the standards and requirements of the MFJ back into the process. Had Congress intended such a result, it could have simply allowed the status quo to remain with respect to this issue. All the sound and fury that went into the Act would have signified nothing. Moreover, it is counterintuitive to conclude that the regulatory safeguards in the Act should be used only after the ability and incentives to discriminate have been removed. At that point, no safeguards are necessary, and there would have been no reason for Congress to have included them. In fact, at that point, deregulation would be more the order of the day.

7. Professor Baumol correctly notes that the public interest standard requires the Commission to determine whether allowing Oklahoma customers to choose SBLD for their long-distance service will enhance or harm competition, but then he leaps from there to the conclusion that this analysis in turn requires the Commission to determine that local exchange markets in Oklahoma are sufficiently competitive to prevent anticompetitive conduct. One can only make such a leap if one completely ignores the specific entry conditions laid out in the Act, and relies entirely on the public interest standard as an MFJ-like test.¹

8. Ironically, Professor Baumol in his comments hits upon the reason that the competitive checklist does not require a traditional antitrust-type analysis of whether there is effective competition in the local exchange prior to entry, and that reason is the market power-dampening effects of potential competition. According to Professor Baumol, markets are subject to the influence of potential competition when those markets are “contestable,” which condition holds when entry is relatively free of artificial (*e.g.*, franchise restrictions) or natural (*e.g.*, high sunk costs) barriers to entry. Professor Baumol concludes that the current local exchange market, even under the local competition provisions of the Act, is not contestable. I disagree with his conclusion, and Professor Baumol references the primary reason that I believe the local exchange market to be contestable – namely, the unrestricted availability of the incumbent’s unbundled network elements at cost-based rates, which provides an avenue for entry into the access market and other local services with relatively few sunk costs. Professor Baumol does not consider the availability of unbundled network elements to represent a free enough path of market entry because “UNE-based entrants must still sink some costs before serving customers.” (Baumol Affidavit, ¶ 32). Of course, every entry path, including pure resale, involves *some* sunk costs, but I submit that the use of unbundled network elements, which does not require the entrant to make any other network investments, is as free of sunk costs as an entry strategy can possibly be.

¹ Perhaps Professor Baumol makes such a leap because, as I pointed out in my initial affidavit, the FCC already has concluded that its existing and supplemented regulatory safeguards are sufficient to protect against discrimination and anticompetitive misallocation of costs.

9. Most, if not all, Bell companies argued before the FCC against the unrestricted availability of UNEs in part because it is such an easy path of market entry and provides a manner by which the large IXCs, such as AT&T, MCI, and Sprint, can evade the Act's symmetric restrictions on joint marketing.² Whether or not Professor Baumol considers a UNE-based entry strategy to be free enough to make the market contestable, the BOCs certainly have made it clear that they do. And the market power-dampening effect of potential competition relies on how the entity with market power views the ease of entry. The way the BOCs have already reacted to the availability of UNEs strongly suggests that their future actions in the access market will be influenced considerably by the availability of UNEs, even when actual competition has not yet developed to a significant degree.

10. I do agree with Professor Baumol about the end-state of where we should be going: effective competition in all markets, and no need for economic regulation. Where we disagree is about whether MFJ-type restrictions on BOCs are necessary throughout the transition period, or whether the Act's "belt and suspenders" are sufficient to allow BOC entry into the interLATA market before we reach the point where no regulation is necessary. For the reasons discussed in my affidavit, I conclude that these protections are sufficient, and the FCC should implement the Act's provisions on BOC interLATA entry according to the standards in the Act and its own previous findings about the efficacy of its regulatory safeguards in preventing anticompetitive conduct, and not according to the discarded standards and rationale of the MFJ. With this as the framework for analysis, the Commission should approve Southwestern Bell's petition.

² Large IXCs (*i.e.*, those who serve greater than five percent of the presubscribed access lines in the country), are restricted from jointly marketing their own long-distance service in combination with a BOC's local exchange service purchased by the IXC for resale under section 251(c)(4) of the Act. This restriction lasts only until the BOC also has the capability, through interLATA entry, to offer customers a joint service package, or until 36 months after the passage of the Telecommunications Act, whichever is earlier.

V. SPECIFIC RESPONSES TO PROFESSOR HALL

A. Prices Paid By Small Customers – Generally, Benefits Of Entry

11. Professor Hall concludes that Oklahoma consumers have “little to gain” from being able to choose Southwestern Bell for long-distance service (Hall Affidavit, ¶ 159). But the whole point of moving to reliance on competition rather than regulated monopoly is that it is for the customers – no one else – to decide. There is a general preference in our economy for letting the market decide such things, but, as I noted in my affidavit, I do not consider it plausible to argue that there will not be significant benefits for Oklahoma customers associated with the entry of Southwestern Bell, one of the most sophisticated and experienced telecommunications firms in the world, in a market that is currently served by only three major facilities-based carriers. The important point is that it really does not matter to what extent that long-distance is an oligopoly or to what degree there are excessive cost-price margins in the current long-distance market. Free markets are based on the notion that companies who are willing, and who believe they are able, to serve a market should be free to do so. Customers are then free to choose which ones of this wider array of companies they will buy from.

12. The Telecommunications Act of 1996, if nothing else, is about bringing this traditionally regulated industry into the world of free markets. As long as the Act’s interLATA entry conditions are met by BOCs, and the FCC determines that competition will not be harmed, the public interest will be served by removing restrictions on BOC entry, in order that the long-distance market will truly become a free market.

13. If, however, the interLATA market it is not as competitive as it could be, there is even more reason to remove restrictions on participation in that market.³ Professor Hall argues that there will be no benefits of BOC entry because there is little or no margin between costs

³ Professor Kahn and Dr. Tardiff explain in more detail in their reply affidavit the reasons to believe that the current long-distance market is not as competitive as it could be.

and prices in the current long distance market. But there is a problem with defining the benefits of entry wholly in terms of current margins in the long-distance industry because this assumes that the entrant will have the same cost structure as the current providers. There are several reasons that SBLD may be a lower-cost provider, notwithstanding Professor Hall's claims to the contrary. For example, SBLD's brand name is well-known to Oklahoma consumers, which means SBLD will not have to invest as much in initial, name-recognition marketing. Also, subject to affiliate transaction rules, SBLD will obtain efficiencies in sharing corporate overhead functions with other Southwestern Bell affiliates. Again, however, the relative efficiency of rivals is for the market to determine.

14. In addition, as I noted in my affidavit, low-volume residential customers have not benefited in the post-divestiture long-distance market as other customers have, and it is likely that this will change with BOC entry. Professor Hall points out that discount calling plans have been the primary way in which residential customers have achieved the benefits of competition, including pass-through of some portion of carrier access rate reductions. Up until recently, however, these plans only were available to higher-volume customers, and many of them still are restricted by volume today. Professor Hall acknowledges that incumbent IXCs have just started – mainly since the passage of the Act – to offer a few discount plans that qualify low-volume customers. Perhaps it is the prospect of competition from the BOCs that has caused the incumbent IXCs to change their marketing strategy? If the incumbent IXCs can profitably serve low-volume customers at discounted rates (which they presumably do since they are now making these discounts available to these customers), then it is likely that BOCs will be able to profitably serve them at a discount as well. In fact, the BOCs will be likely to target these customers as an underserved market opportunity since the incumbent IXCs have been so slow in bringing the benefits of competition to these customers. As Professor Hall notes, “FCC policy needs to consider the interests of all long-distance customers.” (*Id.*, ¶ 115).

B. Cooperation vs. Competition

15. Professor Hall states: "Competing with rivals, not helping them, is a central principle of the American economy." I could not agree more. The Act commendably seeks to place the telecommunications industry firmly into the operations of this "central principle" by introducing competition into all communications markets. However, Professor Hall suggests that cooperation, not competition, is the desired state of affairs for all transactions between rivals when one rival supplies essential facilities to itself as well as others. I agree to the extent that cooperation should govern the relationship between vertically-integrated and non-integrated firms where *essential facilities and network standards* are concerned, but not for non-essential services, including billing in telecommunications. One example of Professor Hall's unnecessary expansion of the need for cooperation is his reference to SNET's withdrawal of billing services from AT&T in Connecticut.

16. There should not be a presumption that the upstream firm exists to satisfy every need of downstream competitors. As long as the upstream firm is providing services that downstream competitors cannot reasonably supply for themselves on the same terms that it supplies these services to its affiliate, there should be no competitive concerns about the "loss" of cooperation in the provision of other, non-essential services.

17. Professor Hall also suggests that the BOCs' local exchange carriers have been willing to cooperate equally with wireline and non-wireline cellular companies because of (un-cited) capacity constraints in the cellular industry. In my affidavit, however, I described the growing market for cellular, which exceeded all projections, yet generally has not met with any capacity constraints. Demand for cellular service grew from just over 1.2 million subscribers in 1987 to more than 24 million subscribers at the end of 1994, and cellular service revenues grew in that same period from just over one billion dollars to over 14 billion dollars. 1995 Statistical Abstract of the United States, 115th Edition, page 575, Table No. 905. There may be congestion periods in the largest cellular markets at the busiest time of the day, but this has not stopped cellular companies from competing heavily for new subscribers and to take subscribers