

"clear and convincing evidence," that providing access to SWBT's NID *where spare capacity exists* is technically infeasible. Ultimately, Mr. Deere in fact admitted that the sharing of a NID is a question of cooperation between service providers. Tr. p. 1304.

AT&T and MCI, on the other hand, presented evidence that new entrants connecting directly to an incumbent LEC's NID would mitigate network reliability concerns because, if the new entrant has to place its own NID and connect through outside wires to the incumbent's NID to gain access to inside wiring, the exposed wires which connect these devices have the potential to increase service outages. [Exhibit 39, p. 16]. Thus, directly connecting to the incumbent LEC's NID will actually mitigate incumbent LEC's expressed concerns about safety because the new entrant's loops would be terminated on the existing NID and be afforded the same protection that the incumbent LEC's NID provides. *Id.* In addition, AT&T presented evidence that placing multiple NID devices and boxes on the sides of customers' houses would present an anticompetitive barrier to new entrants because customers will be much less likely to go with a new entrant if customers must first permit the installation of new and unsightly equipment on the sides of their homes. [Exhibit 39, p. 16].

Therefore, AT&T and MCI recommend the following: (1) for a single unit dwelling and one to two line business locations a new entrant should be allowed direct access to SWBT's NID where spare slots are available; (2) if spare slots are not available, the new entrant should be able to install its own NID and connect to SWBT's NID to gain access to the customer's inside wiring, as is required by the FCC; and, (3) for large businesses with office complexes and multiple dwelling units where the customer's wiring is accessible outside the SWBT NID, the new entrant should provide its

own NID to connect directly to the customer's inside wiring. However, if inside wiring is not accessible, SWBT should rearrange its NID to provide access to the inside wiring.

8. **Should there be any limitations or restrictions on an LSP's use of Unbundled Network Elements?**

No. Mr. Deere has raised the issue of potential incompatible uses of network elements. Mr. Deere acknowledged, however, that AT&T and MCI have no interest in providing degraded service and that both AT&T and MCI would be interested in working with Southwestern Bell to obtain proper coordination to ensure efficient spectrum management. [Tr. p. 1119, line 5-18].

9. **Should there be a bona fide request process for additional Unbundled Network Elements?**

AT&T and MCI support the development of a process for the handling of bona fide requests for further unbundling of the incumbents network. Both the Act and the FCC Order recognize that carriers are likely to seek further unbundling of ILEC network elements. FCC Order, ¶ 246. AT&T joins in the proposal of MCI witness Laub:

When a carrier requests a new unbundled element from an ILEC, if the ILEC does not accept the request within ten days, the requesting carrier has ten days to file a petition with the Commission seeking its determination that the ILEC be required to provide the unbundled element. In its petition, the requesting carrier must provide an explanation of why the failure of the ILEC would decrease the quality, or increase the financial or administrative cost of a service the requesting carrier seeks to offer, compared with providing that service using other unbundled elements in the ILEC's network.

The requesting carrier may also provide evidence that it is technically feasible for the ILEC to provide the unbundled element and that such provision would not negatively affect network reliability.

The ILEC must respond within ten days of the petition being filed and demonstrate either that it is technically infeasible to provide the requested unbundled element, or that such provision would harm network reliability. The state Commission would then rule on the petition within 20 days of the ILEC response, and in no case more than 30 days after the filing of the requesting carrier's petition. In reaching its determination, the burden of proof must lie with the ILEC.

Laub Direct, p. 25-26.

### **Physical Interconnection and Collocation**

#### **10. How should the Parties interconnect their networks?**

The FCC Order established rule 51.305 which requires SWBT to allow MCI and AT&T to interconnect their facilities and equipment with SWBT's network:

(a)(1) for the transmission and routing of local and/or exchange access traffic;

(a)(2) at any technically feasible point including at a minimum (i) the line-side of a local switch, (ii) the trunk-side of a local switch, (iii) the trunk interconnection points for a tandem switch, (iv) central office cross-connect points, (v) out-of-band signaling transfer points for traffic exchange and access to call-related databases, and (vi) points of access to unbundled network elements;

(a)(3) at a level of quality equal to that which SWBT provides to itself or others;

(a)(4) or at a superior quality if requested and technically feasible;

(a)(5) on terms and conditions that are just, reasonable, and nondiscriminatory;

(f) with two-way trunking upon request if technically feasible.

Under rule 51.321, SWBT must allow MCI and AT&T interconnection through at least physical and virtual collocation and meet point arrangements. Rule 51.323 sets minimum standards for collocation.

FCC rules 51.305, 51.321 and 51.323 also establishes that SWBT has the burden of proving by clear and convincing evidence that interconnection and collocation at any point is not technically feasible, and that previous successful arrangement constitutes substantial evidence of technical feasibility. Technical feasibility means technical or operational concerns and not economic, space or site considerations. See also Rule 51.5.

MCI's proposed Interconnection Agreement addresses interconnection in Attachment IV and Collocation in Attachment V. (Russell Direct, JR-2). AT&T's proposed Agreement addresses these subjects in Attachments 11 and 13. (Jacobson Direct at 24, 36). As discussed under issue 42, the Commission should adopt these portions of these agreements. SWBT has in large part not contested them and has failed to meet its burden of proof on the few aspects it has challenged as next discussed.

MCI witness Paul Powers identified for this Commission the following steps involved in the essential interconnection of a new entrant's network with SWBT's network:

- + the physical connection at the interconnection point
- + trunking arrangements for the exchange of the various categories of traffic
- + physical connection of signaling networks

(Powers Direct at 7-9). Bell witness Deere agreed at the hearing. (Tr at 1135).

With regard to the physical connection at the interconnection point, the Commission should facilitate competition by making interconnection as easy as possible, including by instructing SWBT that:

- + MCI and AT&T can each interconnect with SWBT at as few as one point per LATA and SWBT cannot force them to build unnecessary facilities to multiple points within each LATA.

Mr. Powers explained the need for and feasibility of such interconnection (Direct at 9-11, Rebuttal at 10) and during the hearing Mr. Deere agreed (Tr. at 1133-34). See 51.305.

+ MCI and AT&T can each interconnect at the SWBT access tandem for all traffic.

AT&T witness Jacobson explains the efficiencies of such interconnection (Direct at 26), and Mr. Deere admitted at trial his concerns were limited and unfounded (Tr. at 1132-33).

+ MCI and AT&T can each interconnect with SWBT at any technically feasible cross-connect point, including telco closets for easy interconnection at commercial office buildings where the new entrants typically install their switches. Availability of space for collocation should be determined on a case-by-case basis, and should not be categorically rejected for specific types of locations based on general statements of lack of space.

Mr. Powers explained the need for and feasibility of such interconnection (Direct at 11-13, Rebuttal at 12), but Mr. Deere testified SWBT was unwilling to allow access to telco closets absent Commission order (Tr. at 1136). See 51.305, 51.323. The FCC has defined "premises" available for collocation very broadly, see 51.5, and has required a case-by-case determination, see 51.321(f).

+ MCI and AT&T can each interconnect with SWBT by physical collocation, virtual collocation, or meet point, including mid-span meets through all types of cable, including copper and coaxial as well as fiber, and unbundled transport if desired.

Mr. Powers explained the need for and feasibility of such interconnection and collocation (Direct at 13-14, 52-53, Rebuttal at 11) and Mr. Deere agreed (Tr. at 1137-38, 1175-76). See 51.305, 51.321, 51.323(d)(3) and (g).

+ MCI and AT&T can each collocate electronic equipment in SWBT central offices beyond basic transmission equipment, including subscriber loop electronics and remote switching modules/remote line units.

Mr. Powers discussed the need for, feasibility of, and efficiency of collocating such equipment to assure new entrants can provide quality service (Direct at 52-53, Rebuttal at 12-13), as did Mr. Jacobson (Direct at 28-34, Rebuttal 5-6) and Mr. Deere agreed at trial (Tr. at 1142-43). See 51.323(b).

+ MCI and AT&T must be able to collocate within two-to-three months of request.

Mr. Powers discussed the need for prompt collocation. (Direct at 52-53).

Mr. Jacobson also discussed these matters and identified delays AT&T has

experienced in its attempts to collocate with SWBT. ( Direct at 36, Rebuttal at 12).

Next, with regard to trunking arrangements and signaling for traffic exchange, the Commission should direct SWBT:

+ To provide both MCI and AT&T with separate trunk groups for (1) local , non-equal access intraLATA, and local transit traffic, (2) equal access transit traffic, (3) connection to each 911/E911 tandem, (4) connection to SWBT's operator service center, (4) connection to SWBT's directory assistance center, all subject to revision on request for combining traffic.

Mr. Powers described the need for and feasibility of such trunking arrangements (Direct at 15-16) and Mr. Deere agreed at hearing (Tr. at 1138-39). See 51.305.

+ To provide both MCI and AT&T with trunks with CCS7/SS7 signaling and configured with B8ZS Extended Superframe "Clear Channel" transmission for carrying local and interexchange traffic.

Mr. Powers describes the need for and feasibility of such trunking and signaling (Direct at 16-17) and Mr. Deere agreed at hearing (Tr at 1139). See 51.305.

+ To provide both MCI and AT&T with the more efficient two-way trunking as required by the FCC.

Mr. Powers (Direct at 17) and Mr. Jacobson (Direct at 26-28) testified to the need for and feasibility of two-way trunking, including FGD-like connections and Mr. Deere agreed at trial (Tr. at 1140-41, 1182-83 and Ex 83). See 51.305(f).

+ To provide both MCI and AT&T with interconnection to all components and capabilities of SWBT's signaling network for traffic exchange through an STP to STP interconnection, with each interconnecting party designating one of two points of interconnection per LATA at any cross-connect point and providing the necessary STP ports without explicit charge.

Mr. Powers discusses the need for and feasibility of such mutually beneficial signaling interconnection, including an explanation of the mutual incentives for assuring efficiency of such interconnection created thereby. (Direct at 40-43, Rebuttal at 8-9). Mr. Deere agreed during cross-examination. (Tr at 1172-73). See 51.305.

+ Specifically, with regard to 911/E911, to provide both MCI and AT&T with the necessary dedicated trunk groups and routing, including selective routing of E911 calls, with industry-

standard signaling, all necessary reference and routing data, equal priority service restoration and information regarding scheduled and unscheduled outages.

MCI witness Laub addressed these critical features of just, reasonable and nondiscriminatory interconnection for provision of essential emergency services. (Direct 18-22). See also Russell Direct JR-2 at Attachment VIII, 6.1.1. Mr. Deere did not controvert this testimony, so apparently SWBT agrees. (Deere Rebuttal at 21).

**11. What types of number portability should be provided by SWBT?**

The Commission should require SWBT to provide new entrants with a full array of interim number portability (INP) solutions to enable them to serve customers in the most effective and efficient manner until a permanent number portability (PNP) solution can be implemented. As recognized by the FCC, INP is a dynamic evolving process; not a static one as SWBT would have it. See FCC LNP Order at ¶ 110. **In addition to the remote call forwarding (RCF), direct inward dialing (DID) and LERG Reassignment solutions proposed by SWBT, route index-portability hub (RI-PH) and direct number - route index (DN-RI) are technically feasible and should be ordered by the Commission.**<sup>22</sup> SWBT's objections to additional forms of INP are based on its admitted lack of knowledge and certainly its lack of desire to provide INP solutions that are

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<sup>22</sup>AT&T and MCI are not seeking an immediate flash-cut on all SWBT switches for RI-PH and DN-RI. Rather, they will make requests on a demand-needed basis and will work with SWBT to facilitate an efficient provision of any alternative INP solutions. (Lancaster Direct at 12).

more advantageous to the new entrants than RCF and DID. AT&T has provided solutions for each technical objection raised by SWBT. Given there is absolutely no guarantee as to when PNP will be implemented,<sup>23</sup> all feasible INP solutions should be made available now.

Number portability for purposes of this proceeding concerns the ability of a consumer to keep the same phone number when changing to another local service provider - otherwise known as Service Provider Portability. It is only an issue when the new provider has a switch and is not necessary for service resale. (Lancaster Direct at 6-7). See § 153(a)(46) of the Act. Number portability is a key ingredient to development of meaningful facilities - based competition. (Lancaster Direct at 7 -8, Tr. at 1764; Laub Direct at 3). See FCC LNP Order at ¶ 16. INP is incomplete, in that it relies upon the incumbent and precludes delivery of all service features, but it is a crucial bridge between the immediate need for alternative local services and a future full and permanent solution. (Id.). See § 251 (e)(2) of the Act.

INP solutions should not be limited to RCF, DID and LERG Reassignment of NXX codes.

The FCC did not limit INP solutions to RCF and DID. Instead the FCC noted that:

We believe that the 1996 Act contemplates a dynamic, not static, definition of technically feasible number portability methods. Under this view, LECs are required to offer number portability through RCF, DID, *and other comparable methods* . . . . *FCC LNP Order*, ¶ 110 (emphasis added).

The question then is whether RI-PH and DN-RI are “comparable methods,” and the answer is yes.

Route Indexing, like RCF and DID, are internal switch routing methods. (Lancaster Rebuttal at 4,

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<sup>23</sup>The FCC has set a schedule, see *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, FCC 96-286 (released July 2, 1996) (FCC LNP Order), but SWBT has made no commitment to abide by the implementation schedule adopted by the FCC, nor has it agreed to trial the leading candidate LRN solution anywhere in its five-state territory. (Laub Direct at 4-5).

Laub Tr. at 150-51). RCF routes calls to a second telephone line on a new entrant switch. (Id.) DID routes calls to a designated trunk group leading to the new entrant switch (Id.). All three are software driven routing tools. (Id.). In fact, SWBT witness Deere stated that route indexes are used on RCF/DID. (Deere Direct at 102, Tr. at 1204). It is hard to see Route Indexing as anything other than comparable with RCF and DID when the method of routing the call and the result of the routing is so similar. (Lancaster Direct at 4).

AT&T established that RI-PH and DN-RI are technically feasible. Mr. Lancaster provided technical information that explained how RI-PH and DN-RI can be implemented today. (Lancaster Direct at 10-20, Rebuttal at 5). Several incumbent LECs have identified or will offer one or both of the Route Indexing solutions for INP. Besides the existence of the US West DN-RI tariff in Oregon, and a successful operational testing of RI-PH by Ameritech, there is a growing recognition of Route Indexing as a more reasonable INP approach to mid-to-large size customer applications. (Lancaster Direct at 17). AT&T and BellSouth have recently agreed to RI-PH and DN-RI solutions for INP in their interconnection agreements in Tennessee, Georgia, Florida, and North Carolina. (Lancaster Rebuttal at 6, Tr. 1765). BellSouth will ultimately offer both Route Indexing solutions in all of its nine states. (Id.). Finally, even SWBT's own witness established that Route Indexing solutions are technically feasible. As stated earlier, Mr. Deere explains that a route index is used to switch calls from DID. It is the same route index within the switch that will enable these INP solutions to be implemented. (Lancaster Rebuttal at 4-5, 16-17).

Furthermore, RCF and DID are existing services that have inherent and significant disadvantages when used as INP solutions for customers with more than a small number of lines. See

DID do not require SWBT to take any action to advance new INP solutions. (Lancaster Rebuttal at 4). By limiting INP solutions to RCF and DID, SWBT maintains yet another advantage over provisioning service to end-user customers because of the inherent quality of service degradation of RCF and DID. SWBT's goal appears to be maintenance of competitive advantages, more so than presentation of resources. (Lancaster Direct at 14).

The advantages to RI-PH and DN-RI are undisputed. Both Route Index solutions provide the capability of providing effective interim number portability to medium and large customers. (Lancaster Direct at 10, ML-2, Chart Nos. 9, 10, 12). RI-PH and DN-RI even provide advantages to SWBT. (Lancaster Direct at 19-20). Finally, and certainly very important to this State, both Route Indexing INP solutions are single number solutions, as compared to RCF and DID which use two telephone numbers for each arrangement and will hasten number exhaust trends. (Lancaster Direct at 6, 17-18, 19; Deere Tr. at 1206).

Aside from the competitive disadvantage that new entrants will face when using RCF and DID, the Commission must also be cognizant of the fact that PNP solutions are not guaranteed. In fact, even if SWBT were to meet the FCC's schedule, PNP in most parts of this State will likely not be available for at least 2 1/2 years. (Lancaster Rebuttal at 5, Deere Tr. at 1206). At a minimum, the Commission should establish an aggressive PNP implementation timetable and hold SWBT to it.<sup>24</sup> (Laub Direct at 4-5, Rebuttal at 4).

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<sup>24</sup>In the event that the Commission decides that future testing must take place on RI-PH and DN-RI, then it is imperative that AT&T and MCI be involved in the testing of each INP solution. Moreover, it would be more efficient if SWBT were ordered to gain the testing parameters already performed by other incumbent LECs, such as Ameritech and BellSouth, to expedite the testing. Delay in provisioning an INP solution is to SWBT's advantage, which should provide the Commission with more impetus to order SWBT to complete testing of alternative interim solutions within 60 days of the Commission's final award in this proceeding and require a

Other terms and conditions regarding number portability are set forth in AT&T's proposed Interconnection Agreement in Attachment 14 (Lancaster Direct at 20), and in MCI's proposed Interconnection Agreement in Attachment VII (Russell Direct JR-2).

The need for INP raises another issue, involving the sharing of switched access revenues on calls to ported numbers between SWBT and new entrants. **A new entrant is entitled to the terminating access revenues for calls terminating to its customer on new entrant facilities regardless of whether the customer has a ported or new number.** But for the interim need for INP measures, SWBT's switches would not be in the traffic flow for a call to a new entrant customer. SWBT will recoup its costs for any switching functions within the properly identified INP unit cost. If there are any terminating local transport fees that are applicable, then SWBT should be allowed to retain those charges. The remaining terminating switched access revenues associated with a ported call, including the Carrier Common Line charge, rightfully belong to the new entrant who is actually terminating the call to its customer. (Lancaster Direct at 21, Laub Direct at 6-7, Tr. 145-48). See FCC LNP Order at ¶ 140.

This arrangement should be settled on a "meet-point billing" arrangement, as is common in access billing between LECs. This solution is also consistent with the FCC's handling of this issue. FCC LNP Order, ¶ 140. However, it is clear from this proceeding that the parties have reached an impasse that might not even allow negotiations of a meet-point billing arrangement. The Commission must make an initial determination that SWBT can retain only those terminating transport access revenues associated with carriage on SWBT facilities for the ported numbers. Once that decision is

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report back to the Commission within 30 days of the completion of such testing.

made, the parties should be able to reach an appropriate meet point billing arrangement. (Lancaster Direct at 21, Laub Direct at 6-7, Tr. 148-50).

**Finally, SWBT must accept billing for charges resulting from ported third number and collect calls, and must properly maintain the Line Information Database record for ported numbers.** (Laub Direct at 7).

**12. How should the costs of INP be recovered?**

The only issues on cost recovery are to whom should the INP costs be allocated, and by what method. There seems to be little dispute that the unit cost for each INP solution should be identified with a properly performed TSLRIC study. (Lancaster Direct at 22, 25-26). See FCC LNP Order at ¶ 129.

The first issue is who should bear the costs. The options in this record are: direct bill to the requesting carrier, each local exchange carrier absorb its own costs, allocate to “relevant” telecommunications carriers, or allocate to all telecommunications carriers. The first option - direct bill - as proposed by SWBT has already been rejected by the FCC.<sup>25</sup> **The second option, as proposed by MCI, is viable and would comply with the FCC LNP Order. See FCC LNP Order at ¶ 130. This approach calls for all carriers to bear their own costs to avoid the expense of**

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<sup>25</sup>It is clear that the FCC has rejected the notion that the cost causer should be billed directly by the incumbent LEC for INP costs. The FCC determined, “[w]ith respect to number portability, Congress has directed that we depart from cost causation principles if necessary in order to adopt a ‘competitive neutral’ standard . . . .” FCC LNP Order, ¶ 131. Further, the FCC noted the importance of requiring the incumbent to bear a significant portion of the costs, so as to have an incentive to keep costs down. FCC LNP Order at ¶ 125. The portion to be borne by the new entrant per customer must be close to zero to be competitively neutral. See FCC LNP Order at ¶ 133.

establishing an interim cost recovery method. (Laub Direct at 6, Rebuttal at 3). The third option, as proposed by AT&T, is also viable and would comply with the FCC LNP Order. See FCC LNP Order at ¶ 130. This approach allocates the costs to “relevant” carriers who must provide and benefit from the local dial tone and INP functions - incumbent LECs and new landline carriers, (Lancaster 27-28, Laub Direct at 6). MCI’s and AT&T’s proposals are both competitively neutral and involve the relevant carriers as required by the FCC. See FCC LNP Order at ¶ 130.

The final option, as proposed by SWBT, should be rejected. It is obvious what SWBT is trying to accomplish - because it cannot bill all costs to the new entrants, it wants to spread the costs to as many carriers as possible, without regard to benefit, to minimize the costs it will have to bear. (Lancaster Rebuttal at 8). This final option is contrary to the FCC LNP Order, which allows apportionment among “relevant” carriers, and is not one of the permissible methods listed by the FCC. See FCC LNP Order at ¶ 130. IXC’s obviously do not receive any direct benefit from local number portability nor do they cause the need for INP.<sup>26</sup> CMRS carriers are not required to provide INP until 1999. See FCC LNP Order, ¶ 169. Paging carriers have no interest in INP because of their evolving use of 800, 888, 500, and 900 numbers. Id. at ¶¶ 147, 156. Those carriers that will not be participating in INP should not have to subsidize it. (Lancaster Direct at 27-28, Rebuttal at 8-9).

Once the “relevant” carriers are identified, then a cost recovery mechanism must be adopted. SWBT’s Elemental Access Lines (EAL) formula should be rejected because it has no relevance to

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<sup>26</sup>However, a company providing both local and interexchange services would participate in cost recovery under the MCI and AT&T proposals. (Laub Tr. at 142).

INP or the manner in which INP will be provided. The FCC did not identify EAL as an appropriate methodology. SWBT has not provided any justification for extracting subsidies from intraLATA, interLATA, wireless and/or paging companies for local service provider INP, for a service which they cannot offer. Only local service providers (e.g. SWBT and new entrants) can offer dial tone for the kind of local service that is the subject of this arbitration. (Laub Rebuttal at 2). SWBT Witness Baker-Oliver could not even explain how a wireless carrier has an "Elemental Access Line." (Tr. 1734-35). Further, costs would be disproportionately shared under the EAL approach based solely on a snapshot of competitive success at the end of the INP period, when competition would presumably cause their largest share. (Tr. 1738-39).

In contrast, the annual percentage Active Lines formula proposed by AT&T is recognized as an acceptable methodology by the FCC.<sup>27</sup> See FCC LNP Order at ¶ 136. (Lancaster Direct at 28-29, Rebuttal at 9, Tr. at 1769). It is fair and is easy to administer. (Lancaster Tr. at 1769). Similarly, MCI's proposal is simple, fair and inexpensive. It eliminates the need for litigating over cost studies, tracking of costs, allocating and collecting costs - all of which will impose administrative burdens which outweigh the benefits of recovering the costs of INP. (Laub Direct at 4-5). It will also encourage SWBT to keep costs to a minimum and hasten the advent of PNP. (Id.).

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<sup>27</sup>Formula: SWBT Annual INP TSLRIC x (active carrier lines/active industry lines) = annual charge per carrier.

## White Pages

### 13. How should SWBT be required to manage LSP White Page Directory Information and Directory Assistance Information?

Section 251(b)(3) of the Act requires SWBT to give MCI and AT&T nondiscriminatory access to directory assistance and directory listings. The FCC has concluded that the quality of such access must be “at least the same quality of access to these services that a LEC itself enjoys.” See FCC Second Order at para. 141-42.

SWBT has agreed to the following:

- + To publish a single white pages directory and manage a directory assistance database which includes MCI’s and AT&T’s subscriber information in the same manner as SWBT’s subscriber information, including updates from the service order process. (Baker-Oliver Direct at 11-13, Rebuttal at 14).
- + To provide resale basic listings free of charge. (Baker-Oliver, Tr. At 1741-42).
- + To provide MCI and AT&T customers the same opportunities for enhanced listings as are made available to SWBT customers. (Dalton Direct at 40-41).
- + To deliver white pages directories to MCI’s and AT&T’s customers in the same manner as SWBT’s customers, or as other wise requested by the LSP. (Id.).

+ To deliver MCI's and AT&T's subscriber information to the Yellow Pages publisher together with SWBT's subscriber information so all such information is indistinguishable and will be published. (Baker-Oliver Rebuttal at 14, 16).

+ To charge MCI and AT&T their respective shares of the TELRIC costs of directory production and delivery. (Baker-Oliver Direct at 13-14).

+ To provide MCI and AT&T each with up to eight (four double-sided) informational pages in the white pages directory at cost-based rates. (Baker-Oliver Rebuttal at 13).

+ To provide MCI and AT&T with information space (including logos) on an "index-like" informational page in the white pages directory at no charge. (Baker-Oliver Rebuttal at 17).

+ To provide MCI and AT&T advance schedules and notification of directory publishing schedules. (Baker-Oliver Rebuttal at 14).

+ To include on request both the ported number and the actual number in subscriber listing databases and directories when remote call forwarding is the INP method in use. (Baker-Oliver Rebuttal at 15).

+ To provide MCI and AT&T with SWBT's published listings from its subscriber listing system on a daily basis by electronic transfer. (Dalton Direct at 40, Baker-Oliver Rebuttal at 14).

+ To provide the foregoing regardless of whether or not MCI or AT&T purchase unbundled switching. (Baker-Oliver Direct at 14).

One issue in dispute is whether SWBT should be able to charge MCI and AT&T for including basic listings of non-resale customers in the DA database and in directories, on top of charging for their proportionate share of directory production and delivery costs. MCI and AT&T oppose such additional charges, because the payment of publishing and distribution costs fully compensates SWBT, and because the exchange of such information is mutually beneficial. (Laub Direct at 17-18, Rebuttal at 4, Dalton Direct at 40).

Another issue involves the rights to compensation received from third parties for resold services listing information. Resale customers and their listing information belong to their chosen provider, and SWBT should transmit to MCI and AT&T any compensation received from third parties for such listings. (Dalton Direct at 40).

A third issue involves SWBT's proposal to charge licensing fees for the exchange of listing information. For the same reasons stated above, MCI and AT&T oppose such charges.

Directory listings issues are dealt with in <sup>^</sup> of MCI's proposed Interconnection Agreement, which should be adopted. (Russell Direct at JR-1 and JR-2). Likewise, AT&T has set such matters out in its Resale Appendix under Directory Assistance/Operator Services and Attachment

18:Directory Listings, and Resale Appendix White Pages and Attachment 19:White Pages, which should be adopted. (Dalton Direct at 40-41).

SWBT's proposed geographic deaveraging should not be considered until a specific proposal is made and subjected to discovery and cross-examination. (Laub Rebuttal at 4-5).

### **Numbering Issues**

14. **What practices and procedures must SWBT use relating to Number Administration and area code relief activities?**

MCI and AT&T should have access to the number assignment data to assign telephone numbers directly to customers, on a real-time basis. New entrants should not be dependent upon SWBT to assign numbers. (Russell Direct, JR-1 at 16). At hearing, SWBT agreed to provide such access. (Watts, Tr. at 1335).

### **Poles, Ducts, Conduits and Rights of Way**

15. **What procedure should be used to apply for access to SWBT's poles, conduits and rights-of way?**

Southwestern Bell proposes that all LSPs be required to execute the "Interim Master Licensing Agreement" attached to the testimony of Mr. Hearst. Although Southwestern Bell has been allowing access to its poles for some twenty years, this agreement was instated only after the passage of the Federal Telecommunications Act. [Tr. p.1028, line 4-5]. This new licensing agreement designed with competitive LECs in mind is approximately 100 pages long and requires, among other things, that an LSP indemnify Southwestern Bell for the gross negligence of Southwestern Bell's employees. [Tr. 1714, line 22 through Tr. 1715 line 1]. The agreement has six

separate fees and charges, including a \$250.00 administrative fee, which Southwestern Bell does not impose on itself. [Tr. p. 1706 line 7-20].

Not only would Southwestern Bell require the execution of this extremely burdensome and one sided "licensing agreement" but would further require every LSP to go through a fifteen step process for obtaining access to Southwestern Bell's poles and conduits. Among the requirements are that the applicant perform a pre-license survey. Southwestern Bell will then provide the applicant with an estimate of the costs of performing this survey, which is neither required or permitted by the FCC, and the applicant must pay Southwestern Bell in advance for this "service." Even Southwestern Bell has admitted that it does not pay its contractors in advance. [Tr. p.1719 line 20-22].

Although Southwestern Bell maintains that it will allow access to its poles within 45 days as required by the FCC, the proposed procedures listed by Mr. Hearst provide for several extensions of that time period. At Step 9, Mr. Hearst indicates that SWB will notify the LSP whether or not it is granting access within 45 days. [Exhibit 27, p.3]. After this notice is given, however, and before any cable can actually be attached to a pole, SWB and the LSP must also complete steps 10-14. [Tr. p. 1721 line 24 through p. 1722 line 4]. These steps include a sixty day notification period and an unspecified amount of time in which SWB will perform its make ready work.

Southwestern Bell will not be required to complete this fifteen step process or agree to indemnify the gross negligence of another contractor's employees. These proposals are designed solely to make gaining access to poles and conduits as difficult and time consuming as possible. The FCC order grants an LSP the right to gain access to SWB's poles and conduits on a nondiscriminatory basis. **AT&T and MCI should be permitted to gain access to these poles and**

**conduits through the same mechanisms that Southwestern Bell has access to its poles and conduits.**

**16. What access to rights-of-way, conduits and poles should be allowed?**

SWBT must provide all new entrants with access to its poles, conduits and rights-of-way "on rates, terms and conditions" that are nondiscriminatory. Act, §§ 224(f)(1) and 251(b)(4). AT&T, MCI, and SWBT have reached agreements resolving several of the issues regarding outside plant in Texas, which should apply in Missouri as well.

**A. LSPs should be able to select their own spaces on poles and in conduit consistent with the network engineering guidelines SWBT applies to itself.**

As part of nondiscriminatory access to outside plant facilities, new entrants should be given the opportunity to select their own space on poles and in conduit consistent with the network engineering guidelines that SWBT applies to itself. [Keating Tr. at 1093]. SWBT proposes, without justification, to make the unilateral decision where to place new entrants' attachment on the pole. [SWBT (Hearst) Schedule 1, 11.03]. AT&T believes that SWBT will exercise such discretion to always place its own attachment at the top of the pole.<sup>28</sup> Such placement would increase new entrants' "make-ready" costs because the cost of "make-ready" activities is directly related to the position on the pole or duct. [Keating Tr. at 1098]. Given competition, SWBT will have an incentive to assign less desirable and more costly pole and duct positions to MCI and AT&T, raising LSP costs and reserving more desirable positions for itself. Because the Act and the FCC Order prohibit such

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<sup>28</sup> See AT&T (Keating) DCK-1, "AT&T's Unrestricted Choice of Pathway Space Prevents Discrimination".

forms of discriminatory and anti-competitive conduct, the Commission should allow the new entrant to select space on poles and conduits. [Keating Tr. at 1095].

**B. SWBT's personnel costs for inspecting or overseeing LSP work should not be imposed as an additional cost on LSPs.**

While AT&T and MCI do not propose to deny SWBT the opportunity to be present to observe work operations at any SWBT pole, conduit or right-of-way (provided such presence does not interfere with the work being performed), new entrants should not have to pay SWBT's costs. To begin with, SWBT's claim that LSPs might damage its facilities is completely unfounded and is not supported by anything in the record. AT&T and MCI have years of experience in telephony and is quite capable of attaching cable to a pole without disrupting SWBT's network. Furthermore, there is no evidence that the likelihood of an accident by MCI or AT&T personnel is any greater than the likelihood of an accident by SWBT personnel.

Forcing new entrants to pay for a SWBT person to stand idly by and watch routine work will place new entrants at a significant cost disadvantage. Paying for non-essential SWBT personnel will increase the costs of deploying network facilities and would be operationally impractical. These increased costs will significantly, if not altogether, impede the new entrant's ability to deploy outside plant facilities in Missouri. In the context of a direct competitor, the incentive, and the likely tendency, will be to impose unnecessary costs on new entrants. SWBT should have the right to supervise these operations, but at its own expense. At worst, the costs should be *shared* in a manner that minimizes the potential incentive to impose unnecessary and unreasonable supervision expenses on LSPs.<sup>29</sup>

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<sup>29</sup> Consistent with the statute, the FCC required that access to poles, conduits, ducts and rights-of-way shall be non-discriminatory. *FCC Order*, ¶ 1119. Because SWBT does not staff its

**17. How should the costs of modifications or rearrangements be allocated?**

AT&T and MCI do not contest the appropriateness of reimbursing SWBT for modifications made to accommodate their space requests, consistent with the FCC Order, provided the modifications are directly attributable to the space needs requested by MCI and AT&T and that they have the flexibility of performing the modifications themselves or with mutually agreeable contractors if SWBT's intervals do not meet MCI's and AT&T's respective needs. Terms of payment for make-ready work should be consistent with the costs borne by SWBT. Since most make-ready work is performed by outside contractors, and payment to outside contractors is generally made at 50% completion and at 100% completion, SWBT should not be permitted to demand full payment in advance [SWBT (Hearst) Schedule 1, 10.06], removing any incentive to actually complete the work.

Consistent with industry practice, SWBT has stipulated and agreed to remove at its expense all retired or inactive cable to create duct and pole space for use by new entrants. AT&T and MCI request that the Commission's Order incorporate the parties' agreement, both with respect to current inactive/retired cable and prospectively for removal of such cable in the future.

**18. What are the pole and conduit rates?**

AT&T and MCI have proposed rates for poles and conduits which are substantially the same as Southwestern Bell. Southwestern Bell, however, has attempted to impose numerous other charges on LSPs which it does not charge itself. SWBT should not be permitted to charge additional fees,

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field crews and work forces with non-essential supervisors, any effort to force supervision costs on new entrants is *per se* discriminatory. Further, the FCC specifically rejected an effort by the incumbent LECs to designate or control the employees or contractors used by the new entrants to perform work on outside plant facilities, further supporting AT&T's position. *Id.*, ¶ 1182

on top of the agreed-upon rates for make-ready work and attachment fees, that it does not impose upon itself.

SWBT has proposed to charge new entrants with a host of ancillary fees in connection with the entrant's access to poles and conduits. [SWBT (Hearst) Schedule 1, 20.03-20.11]. First, SWBT seeks to recover a "make-ready" fee and an annual recurring fee to provide this access. [SWBT (Hearst) Schedule 1, 20.05]. SWBT also proposes to recover "ancillary fees" such as an application fee, a billing event fee, and other unspecified fees. [SWBT (Hearst) Schedule 1, 20.03, 20.11]. First, allowing the recovery of additional fees that SWBT does not impose upon itself is *prima facie* discriminatory. Second, many of the "ancillary fees" are unquantified -- allowing SWBT the discretion to establish fees that are excessive and not cost-based. Finally, there is no evidence in the record to support or otherwise substantiate the recovery of ancillary fees. As a result, neither the Commission nor AT&T and MCI have any way of knowing what these fees are, how these fees were determined, or whether they are cost-based as the FCC requires. Simply put, there is no basis to support recovery of these ancillary fees and should not be permitted.

#### **Directory Assistance and Operator Services Issues**

19. **Should SWBT provide customized routing of Directory Assistance and Operator Services calls from SWBT offices to an LSP's alternate Operator Services platform?**

SWBT has agreed to provide customized routing of operator services and directory assistance services (0-, 0+Local, 0+411, and 1+411 calls) on switches with existing capabilities and capacity starting March 1, 1997, and on all such switches by June 30, 1997. For switches that lack capability and/or capacity, SWBT has agreed to develop alternate methods and implement them by December