Issues	AT&T Final Offer	Arbitrator Decision
	other performance standards that are "customer affecting." Hearing Ex. 3, General Terms and Conditions, §7.1.1 and Attachment 17 Tr. 342-344	
6. What should the standard order intervals be for unbundled network elements?	SWBT should provide a standard order interval of 2 days for all "as is" orders of unbundled network elements. However, a longer period is permissible for non-standard orders of unbundled network elements. Hearing Ex. 3, Attachment 7, §8.7 Tr. 172-173	
7. Should the APSC decide all issues that are disputed between the parties, regardless of whether a specific issue is delineated in testimony?	Yes. All disputed interconnection agreement language needs to be decided upon by the APSC. Since the AT&T and SWBT proposed Interconnection Agreements follow the Texas form, all provisions identical between the parties should be deemed resolved. Dalton, Rebuttal 12 Tr. 157-159	
8. Once the Arbitration proceeding is complete, what process should be used for submission of the Interconnection Agreement to the APSC?	AT&T recommends the APSC adopt AT&T's proposed agreement, however if the APSC modifies the agreement, it should order the parties to modify their proposed Interconnection Agreement to include the policy decisions of the APSC and resubmit it for approval and adoption within 45 calendar days after a final arbitrated decision by the APSC. In the event the parties disagree on their interpretation of the arbiter's decision, each party would submit their respective contract language on the specific issue for resolution by the APSC. Dalton, Rebuttal 12 Tr. 338-340	

XII. CARRIER ACCESS

Issues	AT&T Final Offer	Arbitrator Decision
1. Is SWBT entitled to recover any intrastate access charges from LSPs that interconnect or purchase unbundled network elements for the provision of telephone exchange service and exchange access?	AT&T should be allowed to provide exchange access service when providing service through the purchase of UNEs. The FCC recognized this distinction between the purchase of UNEs and resale and stated: "carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under Section 251(c)(4) of the 1996 Act." *FCC Order* ¶ 333. Notwithstanding the fact that the FCC's interim order permitting LSPs to avoid access charges in connection with purchased unbundled network elements is stayed by the Eighth Circuit Court of Appeals, AT&T submits that this Commission should recognize the fact that AT&T pays SWBT for the cost of unbundled network elements providing exchange access services and that AT&T should be entitled to provide such exchange access services to its customers and be compensated accordingly.	

XIII. MISCELLANEOUS

Issues	AT&T Final Offer	Arbitrator Decision
1. Should the contract include terms which require SWBT to provide resold services, unbundled network elements, ancillary functions and interconnection on terms that are at least equal to those that SWBT uses to provide such services and facilities to itself?	Yes. SWBT must provide services that are equal to those it provides itself in quality, are subject to the same conditions, and are provided within the same provisioning time intervals. (47 C.F.R. *§§ 51.603 and 51.311(b))* Further, the quality of access to an unbundled network element may be either lesser than or superior to that which SWBT provides to itself when AT&T requests this and it is technically feasible. *47 U.S.C. §251(c)(2), (c)(3) and*	

Issues	AT&T Final Offer	Arbitrator Decision
	(c)(4) *47 C.F.R. § 51.311(c)* *FCC Order ¶¶ 66, 312-316* Jacobson, Direct 19-35, Rebuttal 15-16 Tr. 633-642	
2. What is SWBT's or AT&T's position pertaining to the pricing of white pages listings and other white pages information?	As to resold services, white pages listings should be free and production and delivery of white pages and yellow pages should be at SWBT's expense. As to customers served by UNEs, white pages listings should be priced at SWBT's TELRIC, adjusted to remove inflation factors, include 10.36% cost of capital, include FCC approved depreciation rates and include forward-looking common costs at 11.3%. Tr. 1760-1762; Hearing Ex. 13, p. 9. AT&T should be allowed to purchase any number of information pages at state-wide average TELRIC rates.	

ATTACHMENT

02/10 '97 11:39

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Arbitrator: Martha L. Cooper

ST. CORPORATION COMMISSION
FEB 0 6 1997
DOCKET ROOM

In the Matter of the Petition by AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 97-AT&T-290-ARB

ARBITRATION ORDER

NOW, the above-captioned matter comes for consideration and determination before Arbitrator Martha L. Cooper, appointed by the State Corporation Commission of the State of Kansas (Commission or KCC). This matter arises under section 252 of the Federal Telecommunications Act of 1996 (the Act), pursuant to which the Commission has the power to appoint arbitrators to hear interconnection disputes between a "requesting telecommunications carrier" as defined by 47 U.S.C. section 153(a)(26) and incumbent local exchange companies as defined under section 251(h) of the Act. Having reviewed the files and being fully advised of all matters of record, the Arbitrator finds and concludes as follows:

BACKGROUND

On November 14, 1996, AT&T Communications of the Southwest (AT&T) filed the above entitled petition for arbitration pursuant to section 252 of the Federal Telecommunications Act.

make rulings most likely to provide competitors and incumbent local exchange companies a level playing field.

Holding

The Arbitrator believes that AT&T's proposals are reasonable and are in the best interest of the public and most likely to promote competition within the local exchange market.

The Arbitrator holds that AT&T's position, as stated herein, should be adopted. The $5.00 change charge will be an interim rate until a TELRIC study can establish an appropriate rate. This will be determined in the generic investigation.

I. AT&T Issue #77: Resale-Prices

Facts

AT&T proposes that SWBT's resold services be priced at a discount of 21.6%. AT&T bases this discount rate on its own cost studies and refutes SWBT's cost studies. AT&T argues that SWBT's study does not determine the level of product advertising or other expenses that would be incurred in a wholesale-only market. As a result, according to AT&T, SWBT's service study provides no discount for product advertising, product development, indirect expenses, and operator and directory assistance services-- all expenses which the FCC presumed would be avoided in a wholesale market.

In addition, AT&T argues that the FCC stated an LEC need not actually experience a reduction in expenses in order for an expense to be considered avoidable. FCC order, ¶ 911. It is AT&T's concern that if the avoided cost discount

is set based upon the expenses that the LEC actually avoided, SWBT could eliminate the discount simply by refusing to reduce the level of its expenses. Thus, the LEC could control the amount of the discount. Consequently, AT&T strongly suggests the FCC correctly concluded the discount should be based upon "avoidable", rather than "avoided" expenses.

AT&T points out that SWBT did not use its own service - by - service study in negotiating avoided cost discounts with other new entrants. SWBT has filed with the commission an interconnection agreement with Fast Connections, Inc., and others, in which SWBT agreed to a wholesale discount of 14.8%.

AT&T is also particularly concerned with SWBT's inclusion of revenues from both access and EUCL in the denominator. AT&T contends that the inclusion of access and EUCL revenues has a significant effect on the overall discount and alleges that a correction to SWBT's methodology would raise SWBT's discount rate from 14.9%, SWBT's final offer, to over 20%.

Finally, AT&T notes that SWBT is the only party with access to all of the information necessary to determine what costs are avoided for a particular retail service and how those costs should be allocated. AT&T notes that even if SWBT is willing to produce all of this information, each party and this Commission would have to engage in a full-scale audit to verify that all retail expenses are captured by SWBT's avoided cost study and properly allocated to the appropriate service. AT&T suggests using publicly available ARMIS data in place of SWBT's cost studies.

SWBT states it has performed a service-specific avoided cost study for 25 service categories that complies with the FCC Rules and the Act. It alleges its service-specific study is more accurate than the aggregate study proposed by AT&T because the costs avoided vary significantly from one service group to another. Based upon this service by service study, SWBT offers a composite discount of 12.55%. However, SWBT recognizes the Arbitrator might adopt a single aggregate uniform discount across all services and submits that 14.9% should be the aggregate wholesale discount for resale services. SWBT's aggregate study was also conducted in accordance with the requirements of the Act and the FCC order, according to SWBT.

SWBT alleges that AT&T has no evidence in the record to support a 21.6% discount as required by the Act. It is alleged that AT&T's original proposal is based on an overly simplistic analysis of costs, relying solely on high level ARMIS data.

SWBT also attacks AT&T's analysis of the wholesale discount rate alleging that AT&T has excluded access revenues from the denominator while failing to exclude access expenses from the numerator in calculating its single wholesale discount. SWBT believes that access should be included in both the numerator and denominator because of (a) the subsidy impact on other retail rates; and (b) the difficulty of measuring access on a part 36 basis. SWBT states that even if access were excluded from both the numerator and denominator in an aggregate study, the resulting maximum aggregate discount would be 18%, which is still closer to SWBT's proposed 14.9% discount than AT&T's 21.6% proposed discount.

The Arbitrator notes that additional evidence not reflected in the briefs was submitted at the Arbitration. Under K.S.A. 60-409 (b), the Arbitrator takes administrative notice of the arbitration decisions of the Texas, Oklahoma and Missouri Commissions. The holding regarding SWBT's wholesale discount on resale services rates varied in those jurisdictions between 19.8% and 21.64%. In addition, the Arbitrator notes that the FCC's Interconnection Order identified a proxy range for wholesale discounts of resale services of 17 - 25%.

Law

Section 252(d)(3) of the Act states wholesale prices for telecommunications services shall be determined "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." Since the FCC's Order concerning this section of the Act has been stayed by the Eighth Circuit, the Arbitrator is under no obligation to interpret section 252(d)(3) in the same manner as the FCC, however, she may consider and adopt the FCC's position if it serves the public interest.

The FCC Interconnection Order at ¶ 911 states:

> we find that 'the portion [of the retail rate]. . . attributable to costs that will be avoided' includes all of the costs that the LEC incurs in maintaining a retail as opposed to a wholesale business. In other words, the avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers. Thus, we reject the arguments of incumbent LECs and others who maintain the LEC must actually experience a reduction in its operating expenses for a cost to be considered 'avoided' for purposes of section 252(d)(3).

Holding

The Arbitrator does not make a ruling concerning which methodology, AT&T's or SWBT's, should be adopted to determine the wholesale discount on resale services. That determination will be made by the KCC in the generic investigation. The Arbitrator notes the proceeding did not allow for sufficient time or input from the parties to determine which methodology is more accurate and therefore refuses to rely on evidence which is not yet fully reviewed.

Instead, the Arbitrator orders that the discount rate shall be 21.6% and will be for an interim time period only. The permanent rate will be set by the Commission in the general investigation docket.

The Arbitrator finds support for this decision in several AT&T arguments and based upon taking judicial notice of the discount rates which have been ordered in other SWBT states. The Arbitrator specifically notes that the decision here differs from that in the Sprint Arbitration order; however, the substance of the evidence produced by the parties differ significantly from that produced in the Sprint Arbitration also. For example, at the time of the Sprint Arbitration, the Arbitrator was not aware of the discount rates which had been set in other SWBT states. Nor did Sprint provide support for its recommendation, other than that it was within the FCC's range.

The Arbitrator is not obligated to adopt the FCC proxy range of 17 - 25% for wholesale discounts of resale services. The Arbitrator does, however, consider the expertise of the parties who participated in the comprehensive, independent

investigation leading to the Interconnection Order. The Arbitrator also believes that in light of the FCC's completed analysis of numerous cost studies, it is, on balance, reasonable to use the FCC's proxy rate as a benchmark.

Finally, the Arbitrator finds additional support for the decision in AT&T's argument for removing the access and EUCL revenue since the services will not be discounted. When adjustments were made to the numerator (expenses for access service) and the denominator (access revenues), SWBT's 14.9% discount factor is increased substantially to over 20% in AT&T's calculation, and to 18% in SWBT's calculation. The Arbitrator is not ruling that the AT&T study, nor that the SWBT study methodology is valid, rather, the Arbitrator holds that there is justification for setting the discount percentage within the FCC proxy range.

The Arbitrator specifically does not address issues 77 - 85(c) since no determination is made concerning the cost studies proposed by the parties. The Arbitrator defers that decision to the generic investigation docket. Therefore, it is improper to address here the individual avoided costs which are the subject of those cost studies.

2. RESALE-OPERATIONAL ISSUES/ELECTRONIC INTERFACE

A. Required Electronic Interfaces (AT&T 1, SWBT 2.a)

Facts

AT&T contends that operational interfaces provided by SWBT for both unbundled network elements (UNEs) and total service resale must provide a full