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May 22, 1998

EX PARTE OR LATE FILED

EX PARTE PRESENTATION

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RE: Petitions Seeking Preemption of Certain Provisions of the Arkansas
Telecommunications Regulatory Reform Act of 1997, CC Docket
No. 97-100

Dear Ms. Salas:

On May 11, 1998, the Arkansas Public Service Commission ("APSC") issued Order No. 13 (copy enclosed) in the arbitration proceeding between Southwestern Bell Telephone Company ("SWBT") and AT&T. This order modifies Order No. 11 that had been issued by the APSC on February 18. In SWBT's view, the APSC has now carried out its responsibilities under section 252 of the Communications Act of 1934, as amended.

In Order No. 11, the APSC had held that it could not require SWBT, in an arbitration proceeding, to provide interconnection, resale, or unbundled network elements on terms and conditions that were different from those imposed by the Federal Act. This conclusion was entirely appropriate. The APSC then resolved all of the outstanding non-pricing issues in favor of SWBT. With respect to pricing issues, however, the APSC had found that it lacked authority under Arkansas law to investigate SWBT's cost studies. On March 19, SWBT petitioned the APSC for reconsideration, arguing that the APSC had ample authority under state law to investigate the pricing issues in an arbitration conducted under the Federal Act. On April 17, the APSC issued Order No. 12. Although denying SWBT's petition for reconsideration, the APSC offered SWBT the opportunity to supplement the record so that it would contain SWBT's revised cost studies. SWBT submitted the revised studies on April 27, suggesting that the APSC could issue a ruling on prices now that the record was complete. The APSC issued Order No. 13 to resolve all issues that it determined to be within the scope of the arbitration as well as to respond to SWBT's April 27 revised cost studies.

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After the APSC issued its original arbitration order (Order No. 5), SWBT and AT&T resumed negotiations to resolve the outstanding issues. Although the parties were able to agree on contractual language for many of the issues, there remained some that could not be resolved without the further intervention of the APSC. In Order No. 13, the APSC ruled on all of the specific issues presented by the parties in their contested agreement. The contested agreement contained three parts: Part A consisted of language on which the parties were in agreement; Part B consisted of competing language concerning issues that both parties agreed were arbitrated; and Part C consisted of competing language on issues that one of the parties believed had not been the subject of arbitration. In Order No. 13, the APSC addressed all issues in both Parts B and C.*

With respect to pricing issues, the APSC ruled in favor of SWBT. See Order No. 13 at 3 n.1. The APSC indicated that it was accepting SWBT's proposed prices despite the fact that it believed it had found inconsistencies between the APSC's findings in Order No. 5 and the inflation factors contained in SWBT's cost studies. To address this concern, SWBT intends to file a supplementary explanation, clarifying and correcting some of the inflation factors contained in the original cost studies. The revised cost studies are now in full compliance with Order No. 5.

Beginning on May 25, SWBT and AT&T are scheduled to begin post-hearing negotiations in order to reach a final agreement consistent with Order No. 13. SWBT anticipates that a final agreement will be submitted jointly on June 10. Of course, to the extent that AT&T or SWBT believes that the APSC has resolved any of the issues in a manner inconsistent with federal law, they are free to seek review in federal district court pursuant to 47 U.S.C. § 252(e)(6).

* The two enclosed tables summarize the issues in Parts B and C and indicate how the APSC ruled. The APSC reversed some of the conclusions it had reached in Order No. 11, ruling in favor of AT&T on some of the non-pricing issues. In addition, SWBT and AT&T have continued to discuss and resolve certain issues that have been the subject of this arbitration proceeding. All of the issues — whether resolved by the APSC in Order No. 13 or resolved by the parties after further negotiation — will be reflected in the contract to be filed on June 10, 1998.

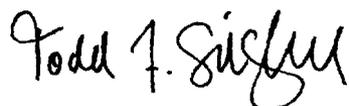
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In accordance with the Commission's rules concerning ex parte presentations, an original and two copies are provided herewith. Please contact me at (202) 326-8888 should you have any questions concerning the foregoing.

Respectfully submitted,

A handwritten signature in black ink that reads "Todd F. Silbergeld". The signature is written in a cursive style with a large, prominent "T" and "S".

Todd F. Silbergeld
Director-Federal Regulatory

Enclosures

cc: Carol Matthey
Alex Starr
Jonathan Askin

PART B ISSUES

PART B	AWARD	ISSUE
TAB 1		
Issue 3(a) & 8	SWBT	SWBT not required to indemnify AT&T for breaches of intellectual property rights.
TAB 2		
Issue 1	AT&T	SWBT may not impose resale limitations on aggregation of optional calling plans. Other than cross-class restrictions, all restrictions are presumptively unreasonable.
Issue 2	SWBT	For services in promotions of <u>90 days or less</u> , SWBT must offer to AT&T at the normal retail rate less the wholesale discount.
Issue 3	SWBT	SWBT may retain use limitations on Plexar resale, e.g., single premises.
Issue 4	SWBT	SWBT may retain use limitations on Plexar resale specifying single end user only.
Issue 8*	SWBT	SWBT does not have to accept AT&T's definitions and parameters for customized routing of OS & DA. Parties should continue to work to resolve.
Issue 12	SWBT	Adopted SWBT's language that EDI would be available, "as agreed by the parties."
Issue 22	SWBT	SWBT does not have to

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

		pay AT&T compensation for tandem switching when AT&T's end office is not specifically performing a tandem function.
Issue 23	" Issue not ripe for a decision."	Issue was the compensation rates. Means that AT&T's demand to interim bill & keep was preserved.
Issue 24	AT&T	Mandatory EAS and Optional EAS between SWBT exchanges subject to local compensation only.
TAB 3		
Issue 1	SWBT	AT&T may not " combine" UNEs with access services.
Issue 3	SWBT	SWBT may charge AT&T access charges for interlata toll minutes.
Issue 9	SWBT	SWBT may disconnect working services for " as is" UNE conversions.
Issue 11	AT&T	SWBT must offer Digital Cross-Connect Systems to AT&T with the same functionality that SWBT provides to itself (as opposed to with the same functionality it provides to IXCs).
Issue 13	AT&T	SWBT must pay AT&T access when it strips intralata calls utilizing unbundled local switching.
Issue 15	AT&T	SWBT may not assess access charges to the CLEC when unbundled local switching is utilized for toll calls.
Issue 19*	SWBT	The Commission did not determine what constitutes " parity"

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

		for OSS issues.
Issue 20	SWBT	No firm deadlines for OSS implementation dates. Subject to parties negotiating.
Issue 22*	SWBT	SWBT does not have to adhere to AT&T's definitions of "parity" for various OSS functions. Commission relied on SWBT's commitment to offer OSS of the same quality it provides to itself.
Issue 41	SWBT	AT&T must pay for the cross connect on digital loop to interoffice trunks for 4-wire PRI.
APPENDIX PRICING ONE - SCHEDULE	SWBT	
DARK FIBER	SWBT	SWBT is not required to make dark fiber available to AT&T.
TAB 4		
Issue 1*	SWBT	SWBT does not have to allow collocation in structures, including CEVs, cabinets and huts, where it is technically impractical.
TAB 5		
Issue 3*	AT&T	Inclusion of building entrance ducts, riser ducts and other conduit under SWBT's ownership or control.
Issue 7*	AT&T	Full preservation of

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

		AT&T's rights when SWBT transfers ownership of poles, ducts or conduits.
Issue 17*	AT&T	Pro-rata reimbursement to AT&T when other parties use same poles, ducts, etc.
Issue 18*	AT&T	Approves AT&T's proposal to include separate indemnification language in Appendix Poles.
Issue 24*	SWBT	½ duct rate for inner duct instead of 1/3 duct rate.
Issue 25*	SWBT	SWBT's right to be compensated for ancillary work performed under Appendix Poles.
Issue 26*	SWBT	Invoice payments.
Issue 27*	SWBT	SWBT may modify its prices for poles, ducts, conduits.
Issue 30(a, b, c, d)*	AT&T	Rights and obligations of successors and assigns.

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

PART C ISSUES

PART C	AWARD	ISSUE
TAB 1		
Issue 6	SWBT	Limitation of liability language is needed in other sections of the contract in addition to that in the terms & conditions.
Issue 10	SWBT	Only an end user can initiate a challenge to a change in its local exchange provider consistent with Act 77.
TAB 2		
Issue 5	SWBT	AT&T can only aggregate customers on dedicated access facilities where allowed to do so under the provisions of the access tariffs.
Issue 9*	SWBT	SWBT doesn't provide the requested DA Customized Routing over FG D for itself or any other carrier where DA is concerned.
Issue 17	SWBT	Adopted SWBT's Local Disconnect Report price of \$.10 per Working Telephone Number.
Issue 18	AT&T	AT&T may combine local, intraLATA and interLATA traffic on a single trunk group & send it to the access tandem or EO.
Issue 26	SWBT	SWBT doesn't want actual usage data to be limited to using only PLU or an estimate whenever actual data isn't available.
Issue 28-31*	SWBT	Adopted SWBT's proposed <u>Performance Criteria</u> .
Issue 32	SWBT	Adopted SWBT's proposed language and rates for <u>Exchange of Directory Listings</u> since these rates are considered permanent until either costs or market conditions change.
Issue 34*	SWBT	SWBT will only deliver intraLATA, while AT&T contended order was for all types of calls including DA/OS, with the required signaling for <u>call completion</u> .

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

Issue 36	SWBT	Adopted SWBT's language regarding Pricing for Recording Functions and circumstances under which prices could change.
TAB 3		
Issue 2*	SWBT	Adopted SWBT's language regarding the transmission of performance data.
Issue 5	SWBT	AT&T is required to pay for Customized Routing on an ICB basis utilizing SWBT's proposed price quote & order filling intervals.
Issue 6*	SWBT	AT&T is not entitled to FG D in connection with customized routing. SWBT does not provide that to itself or other carriers.
Issue 8	SWBT	SWBT is not required to provide greater protection from liability than SWBT receives today under its own contracts with customers.
Issue 9	SWBT	SWBT will charge AT&T the \$12 conversion charge for "as is" conversion orders rather than \$5 which applies for resale orders.
Issue 10	SWBT	SWBT not required to offer automated testing with UNEs.
Issue 14	SWBT	Pricing language consistent with SWBT position that PSC had ruled on cost and price.
Issue 16*	AT&T	AT&T can collect the appropriate charges from an IXC who terminates a call to the 800 provider, assuming AT&T also pays the applicable UNE charges to SWBT.
Issue 17-18	SWBT	17 - The temporary ULS rate structure proposed by SWBT is not subject to a predetermined end date. 18 - Adopted SWBT UNE Service Order charges rather than resale conversion charges.
Issue 21	SWBT	If an UNE feature is contractually available SWBT will investigate the CLEC request on an ICB to determine if the feature is technically

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

		supportable from that switch.
Issue 23*	SWBT	SWBT will provide access to test systems that are equal in quality to ones used for itself.
Issue 26*	SWBT	SWBT has the discretion to either use CABS or CABS-like format in billing for mutual compensation.
TAB 4		
Issue 2*	SWBT	SWBT can reserve a limited amount of its own floor space that is subject to collocation. Not all space in a structure is statutorily required to be made available.
Issue 3*	SWBT	SWBT allowed to determine whether requests may be denied on grounds of technical feasibility due to space limitations.
Issue 5*	SWBT	AT&T must use SWBT's standard publication specifying price quotation response time in business days for all collocators and does not have to provide AT&T a special set of parameters.
Issue 6*	AT&T	The Monthly Charge will consist of the monthly charges for floor space, power usage, maintenance, administration, and taxes for equipment charged by SWBT to AT&T for use of the collocated space.
Issue 7*	SWBT	SWBT does not have to allow AT&T to "warehouse" space while AT&T is appealing a price quote with the PSC.
Issue 26*	SWBT	Collocation billing disputes can be handled on an informal basis or in accordance with the dispute resolution procedures contained in the Gen. terms & cond. section.
Issue 27*	SWBT	AT&T is only entitled to the same amount of time to review price quotes prior to construction as other collocators.
TAB 5		
Issue 34*	AT&T	When AT&T modifies the equipment subsequent the

* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

		original order, SWBT will only be allowed to charge for necessary incremental changes to the space.
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* Ongoing negotiations since the date of the arbitration have resolved most, if not all, disputes regarding this issue.

ARKANSAS
PUBLIC SERVICE COMMISSION

MAY 11 2 12 PM '98

FILED

IN THE MATTER OF AT&T COMMUNICATIONS)
OF THE SOUTHWEST, INC.'S PETITION FOR)
ARBITRATION OF UNRESOLVED ISSUES WITH)
SOUTHWESTERN BELL TELEPHONE COMPANY)
PURSUANT TO SEC. 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. 96-395-U
ORDER NO. 13

ORDER

On July 25, 1997, Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest, Inc. (AT&T) filed a proposed Interconnection Agreement based upon Order No. 5 entered on February 25, 1997. Order No. 5 is the arbitration award which resolved issues raised in the arbitration between SWBT and AT&T which was initiated by AT&T on November 15, 1996, pursuant to 47 U.S.C. §252(b). According to AT&T and SWBT, the proposed Interconnection Agreement is in three parts: Part A includes the arbitrated issues and the contractual language agreed upon by SWBT and AT&T; Part B includes the arbitrated issues upon which SWBT and AT&T cannot agree and the competing contractual language proposed by each party; and, Part C includes issues that AT&T believes were resolved in Order No. 5 but SWBT contends were not at issue in the arbitration and therefore, are outside the scope of the Docket.

After the arbitration hearing was concluded, Act 77 of 1997, Ark. Code Ann. §§23-17-401-412, became law on February 4, 1997. The terms and conditions for interconnection between a competitive local exchange carrier (CLEC) and an incumbent local exchange carrier (ILEC) are

prescribed in Section 9 of Act 77, Ark. Code Ann. §23-17-409. In addition, Act 77 allows ILECs to elect "alternative regulation" pursuant to Ark. Code Ann. §§23-17-406-408. An electing ILEC is exempt from any Commission investigation of rates and charges, earnings, rate of return, or rate base pursuant to Ark. Code Ann. §§23-17-406, 407, 408 and 411. SWBT elected "alternative regulation" on February 4, 1997.

Pursuant to Ark. Code Ann. §23-17-409, the Commission entered Order No. 11 on February 18, 1998, reversing Order No. 5 on all issues, with the exception of pricing of unbundled network elements (UNEs) which awarded AT&T access to interconnection, resale or UNEs on terms exceeding the minimum requirements of 47 U.S.C. §251. SWBT petitioned for reconsideration of Order No. 11 on March 19, 1998, in part, requesting that the Commission make specific findings on pricing. In Order No. 12 entered on April 17, 1998, the Commission denied the Petition for Reconsideration and stated that there is no record on which to make specific findings on SWBT's pricing which SWBT was ordered to revise in accordance with Ark. Code Ann. §23-17-409 after the conclusion of the hearing. Further, the Commission found that pursuant to Act 77, the Commission has no authority to order SWBT as an electing ILEC to submit to discovery and review of its pricing. However, the Commission offered to reopen the arbitration on the pricing issues, if SWBT would "voluntarily submit to such a proceeding, including submission to reasonable discovery, regardless of the statutory restrictions on the Commission's authority to conduct such a proceeding." On April 27, 1998, SWBT declined the Commission's offer and stated that "SWBT revised its cost studies by

removing the inflation factors and by adjusting the cost of capital to 10.36%.”¹ On March 6, 1998, AT&T filed a Response to SWBT's Response requesting that the procedural schedule be rescinded and stated that this proceeding should be concluded. Therefore, the procedural schedule established in Order No. 12 is canceled.

The federal Telecommunications Act of 1996 requires ILECs to negotiate interconnection agreements with CLECs. If the parties cannot reach agreement through good faith negotiations, unresolved issues may be submitted to the state commission for arbitration. Sec. 252 of the federal Telecommunications Act, 47 U.S.C. §252 provides the procedures and standards for arbitration:

(b) AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION.—

(1) ARBITRATION.— During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) DUTY OF PETITIONER.—

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation

¹ Order No. 5 directed SWBT to revise its cost studies for UNE pricing by removing inflation factors to comply with Ark. Code Ann. §23-17-409(e) which provides that prices for UNEs "include actual costs, including an allocation of joint and common costs and a reasonable profit." SWBT was also ordered to use a cost of capital of 10.36%. A cursory review of the cost studies filed by SWBT on April 27, 1998, shows that the revised cost studies include various inflation factors. For example, the cost studies entitled, "Arkansas Unbundled Primary Rate Interface Port, 1996, April 18, 1997" and "Arkansas Network Interface Device (NID) Cost Study, 1996-1999, November 1996", among others appear to include the incorrect cost of capital and inflation factors. All but four of the thirty-eight cost studies submitted by SWBT include inflation in calculating costs. See also AT&T's Unbundled Network Element Pricing Dispute Memorandum filed on July 25, 1997. However, pursuant to Ark. Code Ann. §23-17-406, 408 and 411, SWBT's UNE pricing is accepted.

concerning—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) OPPORTUNITY TO RESPOND.— A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) ACTION BY STATE COMMISSION.—

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State Commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) REFUSAL TO NEGOTIATE.— The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) **STANDARDS FOR ARBITRATION.**— In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) **PRICING STANDARDS.**—

(1) **INTERCONNECTION AND NETWORK ELEMENT CHARGES.**— Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) **CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.**—

(A) **IN GENERAL.**— For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) **RULES OF CONSTRUCTION.**— This paragraph shall not be construed—

(i) to preclude arrangements that afford the

mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES.— For the purposes of section 251(c)(4), a State commission shall determine wholesale rates 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.

Only those issues raised in the arbitration are to be resolved by the Commission pursuant to 47 U.S.C. §252(b)(4)(A). Once the arbitration award is entered by the Commission, the federal Telecommunications Act contemplates the submission of an interconnection agreement by the ILEC and the CLEC in compliance with the arbitration award for approval pursuant to 47 U.S.C. §252(e).

In the SWBT and AT&T joint filing of a proposed but disputed interconnection agreement, the parties request that the Commission engage in an additional procedure which is not specified in the federal Act. AT&T and SWBT have not submitted an interconnection agreement for review in compliance with the federal Act but have submitted a continuation of the arbitration dispute requesting that the Commission again resolve disputed issues between the parties. The disputed interconnection agreement of SWBT and AT&T requests resolution of issues which were arbitrated and issues which were not raised in the arbitration. The Commission will, in this instance, resolve issues raised in the arbitration and submitted in the disputed interconnection agreement. However,

the Commission must comply with the provisions of 47 U.S.C. §252(b)(4)(A) and not exceed the scope of the arbitration by resolving issues not raised in the arbitration.

The federal Telecommunications Act does not contemplate the Commission resolving disputed issues after the parties have been directed to produce an interconnection agreement in conformance with an arbitration award. However, the Commission will provide this extraordinary resolution of disputed issues this one time. Subsequent to this Order, the parties have the option of submitting an interconnection agreement with no disputed issues, requesting a new arbitration raising specific issues to be resolved in compliance with 47 U.S.C. §252(b) or dismissing the docket. The Commission will dismiss and strike from the record any future disputed interconnection agreement filed by SWBT and AT&T for failure to comply with 47 U.S.C. §252.

The Commission's review of the disputed interconnection agreements issues is governed by Ark. Code Ann. §23-17-409 which provides that:

(d) Except to the extent required by the federal act and this subchapter, the commission shall not require an incumbent local exchange carrier to negotiate resale of its retail telecommunications services, to provide interconnection, or to sell unbundled network elements to a competing local exchange carrier for the purpose of allowing such competing local exchange carrier to compete with the incumbent local exchange carrier in the provision of basic local exchange service. Promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale.

(e) The prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit.

(f) As provided in Sections 251 and 252 of the federal act (47 U.S.C. §251 and 252), the commission's authority with respect to interconnection, resale, and unbundling is limited to the terms, conditions and agreements pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a CLEC for the purpose of the CLEC competing with the incumbent local exchange carrier in the provision of

telecommunications services to end-user customers.

(g) The commission shall approve, as permitted by the federal act, resale restrictions which prohibit resellers from purchasing retail local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to nonresidential customers, or aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by the federal act. The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from Section 251(c) of the federal act (47 U.S.C. §251(c)) and that are being sold for the purposes of resale, shall be the retail rate of the service less any net avoided costs due to the resale. The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local exchange carrier due to it selling the service for resale less any additional costs that will be incurred as a result of selling the service for the purpose of resale.

(h) Incumbent local exchange carriers shall provide CLECs, at reasonable rates, nondiscriminatory access to operator services, directory listings and assistance, and 911 service only to the extent required in the federal act.

The disputed interconnection agreement issues which were the subject of the arbitration will be resolved pursuant to 47 U.S.C. §§251 and 252 and applicable Federal Communication Commission (FCC) regulations, Ark. Code Ann. §23-17-409, and Orders No. 5, No. 11 and No. 12. The issues will be resolved in the format in which they were submitted by SWBT and AT&T.

It is, therefore, ORDERED:

Part B: Contractual Disputed Issues Matrix

Tab 1: Arkansas Terms & Conditions and Various Related Provisions.

Issue 3(a) & 8: SWBT, Order No. 5 and Order No. 11.²

² The term "SWBT" or "AT&T" after an issue designation means that the Commission finds for that company on the designated issue. The companies' positions on each issue are fully explained in the designated sections. The citations following the company are the basis for the Commission's decision.

Tab 2: Resale and Miscellaneous Issues.

- Issue 1: AT&T, 47 U.S.C. §251(c)(4) and 47 C.F.R. §51.613.
- Issue 2: SWBT, Ark. Code Ann. §23-17-409(d) and 47 C.F.R. §51.613.
- Issue 3: SWBT, Ark. Code Ann. §23-17-409(d) and (g).
- Issue 4: SWBT, Ark. Code Ann. §23-17-409(d) and (g).
- Issue 8: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §23-17-409.
- Issue 12: SWBT, Orders No. 5 and 11 and Ark. Code Ann. §23-17-409.
- Issue 22: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §23-17-409.
- Issue 23: Issue is not ripe for decision.
- Issue 24: AT&T, Order No. 5 and federal Telecommunications Act.

Tab 3: Unbundled Network Elements

- Issue 1: SWBT, Orders No. 5 and No. 11.
- Issue 3: SWBT, Ark. Code Ann. §23-17-404(e)(4)(D) and Ark. Code Ann. §23-17-409(f).
- Issue 9: SWBT, Orders No. 5 and No. 11.
- Issue 11: AT&T, 47 U.S.C. §251 and FCC First Report and Order, CC Docket No. 96-98 released August 8, 1996, (FCC Order), FCC Order at ¶444 and ¶445.
- Issue 13: AT&T, Order No. 5 and 47 C.F.R. §51.307 and §51.309.
- Issue 15: AT&T, Order No. 5, 47 U.S.C. §251(c)(3), and 47 C.F.R. §51.307 and §51.309.
- Issue 19: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §23-17-409(f).
- Issue 20: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §23-17-409(f).
- Issue 22: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §23-17-409(f).
- Issue 41: SWBT, Order No. 11 and Ark. Code Ann. §23-17-409(f).

Appendix Pricing UNE - Schedule of Pricing: SWBT³

Dark Fiber: SWBT: See Order No. 11 and Ark. Code Ann. §23-17-409(f).

Tab 4: Collocation Issues.

- Issue 1: SWBT, Orders No. 5 and No. 11, and Ark. Code Ann. §23-17-409(f).

³ See Footnote 1. See also SWBT Response filed on April 27, 1998 and AT&T Response filed on May 6, 1998.

Tab 5: Poles, Conduits, and Rights-of-Way.

Issue 3: AT&T, Order No. 5, 47 U.S.C. §251, 47 U.S.C. §224 and FCC Order ¶1185.

Issue 7: AT&T, Order No. 5 and 47 U.S.C. §251.

Issue 8: The issue was resolved prior to the issuance of Order No. 5 and therefore, exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issue 12: The issue was resolved prior to the issuance of Order 5 and therefore, exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issue 17: AT&T, Order No. 5 and 47 U.S.C. §251.

Issue 18: AT&T, Order No. 5 and 47 U.S.C. §251.

Issue 24: SWBT, Orders No. 5 and No. 11, Ark. Code Ann. §§23-17-406, 408, 409(f) and 411.

Issue 25: SWBT, Orders No. 5 and No. 11.

Issue 26: SWBT, Orders No. 5 and No. 11.

Issue 27: SWBT, Orders No. 5 and No. 11.

Issue 30(a), (b), (c) & (d): AT&T, Order No. 5 and 47 U.S.C. §251.

Part C: Contractual Disputed Issues Matrix.

Tab 1. Terms & Conditions and Various Related Issues.

Issue 1: The language of the section Terms and Conditions 1.6 is sufficient and need not be amended as proposed by either party.

Issue 2: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issue 3(b): Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issues 4 & 5: Issues exceed the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issue 6: SWBT, Orders No. 5 and No. 11.

Issue 7 & 9: Issues exceed the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issue 10: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

However, SWBT's position is consistent with Ark. Code Ann. §23-17-411(j).

Issue 11: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Tab 2: Resale & Miscellaneous Issues.

Issue 5: SWBT, Order No. 11 and Ark. Code Ann. §23-17-409(g).

Issue 6: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

See also 47 U.S.C. §276.

Issue 7: Issue exceeds the scope of the arbitration, however, the issue must be

resolved in conformance with Ark. Code Ann. §§23-17-406, 408, 409 and 411.

- Issue 9: SWBT, Orders No. 5 and No. 11.
- Issue 11: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 17: SWBT, Ark. Code Ann. §§23-17-406, 408, 409 and 411.
- Issue 18: AT&T, Order No. 5 and 47 C.F.R. §51.309.
- Issue 21: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 26: SWBT, Orders No. 5 and No. 11.
- Issue 27: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issues 28 - 31: SWBT, Orders No. 5 and No. 11.
- Issue 32: SWBT, Ark. Code Ann. §23-17-409(h).
- Issue 33: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 34: SWBT, Orders No. 5 and No. 11.
- Issue 36: SWBT, Ark. Code Ann. §§ 23-17-406, 408, 409 & 411.

Tab 3: Unbundled Network Elements.

- Issue 2: SWBT, Orders No. 5 and No. 11.
- Issue 4, 4a-4m: Issues exceed the scope of the arbitration, however, the resolution of the issues is subject to Ark. Code Ann. §23-17-409.
- Issue 5: SWBT, Orders No. 5 and No. 11.
- Issue 6: SWBT, Orders No. 5 and No. 11.
- Issue 7: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 8: SWBT, Orders No. 5 and No. 11.
- Issue 9: SWBT, Ark. Code Ann. §§23-17-406, 408, 409 & 411.
- Issue 10: SWBT, Order No. 11.
- Issue 12: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 14: SWBT, Ark. Code Ann. §§23-17-406, 408, 409 & 411.
- Issue 16: AT&T, 47 C.F.R. §51.309.
- Issues 17 and 18: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §§406, 408, 409(e) and 411.
- Issue 21: SWBT, Orders No. 5 and No. 11.
- Issue 23: SWBT, Orders No. 5 and No. 11.
- Issue 24: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 25: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 26: SWBT, Orders No. 5 and No. 11.
- Issue 27: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 28: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 29: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).
- Issue 30: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Tab 4: Collocation Issues.

Issue 2: SWBT, 47 C.F.R. §51.323.

Issue 3: SWBT, 47 U.S.C. §251 and 47 C.F.R. §51.323.

Issue 5: SWBT, the proposed language in the interconnection agreement is sufficient.

Issue 6: AT&T, Order No. 5 and No. 11.

Issue 7: SWBT, Orders No. 5 and No. 11 and Ark. Code Ann. §23-17-409.

Issues 8 - 25: Issues exceed the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Issue 26: SWBT, Orders No. 5 and No. 11.

Issue 27: SWBT, 47 U.S.C. §251(c)(6).

Issue 28 - 57: Issues exceed the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

Tab 5: Poles, Conduits and Rights-of-Way.

Issue 32: Issue exceeds the scope of the arbitration. 47 U.S.C. §252(b)(4)(A).

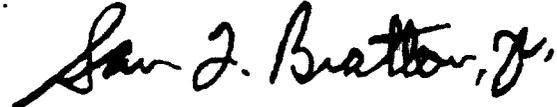
Issue 34: AT&T, Order No. 5.

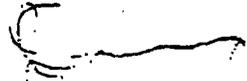
The Commission's decisions hereinabove are based upon Act 77, the federal Telecommunications Act and the FCC rules implementing the federal Act. However, pursuant to the federal Telecommunications Act, SWBT and AT&T are free to negotiate any terms or conditions the parties may desire and file an interconnection agreement reflecting those terms and conditions regardless of the findings herein. An interconnection agreement pursuant to this Order shall be filed within thirty (30) days of the date of this Order.

BY ORDER OF THE COMMISSION.

This 11th day of May, 1998.


Lavenski R. Smith, Chairman


Sam I. Bratton, Jr., Commissioner


Julius D. Kearney, Commissioner


Jan Sanders
Secretary of the Commission