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June 23, 1998

EX PARTE PRESENTATION

Via Hand Delivery

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

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JUN 23 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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 June 10, 1998, the staff of the Common Carrier Bureau's Policy and Program Planning Division sent a memorandum to Todd Silbergeld of SBC Communications Inc. and to Frank Simone of AT&T Corporation, requesting answers to four questions related to the impact of recent orders of the Arkansas Public Service Commission on the issues in this docket. On behalf of Southwestern Bell Telephone Company ("SWBT"), I am attaching a copy of SWBT's written responses to the staff's questions, together with a copy of the June 10 Memorandum. In accordance with the Commission's rules governing ex parte presentations, I am providing two (2) copies of the enclosed letter. Thank you for your consideration.

Sincerely,

Geoffrey M. Klineberg

Enclosures

cc: Carol Matthey  
Alex Starr  
Jonathan Askin  
Joe Welch

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JUN 23 1998

**RESPONSES OF SOUTHWESTERN BELL TELEPHONE COMPANY  
TO THE FCC'S QUESTIONS CONCERNING  
THE IMPACT OF ORDER NOS. 12 AND 13 ON CC DOCKET NO. 97-100**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Order No. 13, the Arkansas Public Service Commission ("Arkansas PSC") finally resolved those non-pricing issues that were still in dispute as AT&T Communications of the Southwest, Inc. ("AT&T") and Southwestern Bell Telephone Company ("SWBT") sought to negotiate the specific terms and conditions of a joint interconnection agreement in compliance with the Arkansas PSC's original arbitration award (Order No. 5). The parties have now reached an agreement; on June 10, 1998, they jointly submitted an Interconnection Agreement for approval by the Arkansas PSC.

In resolving "[t]he disputed interconnection agreement issues which were the subject of the arbitration," Order No. 13 at 8, the Arkansas PSC explicitly stated that it was doing so "pursuant to 47 U.S.C. §§ 251 and 252 and applicable Federal Communication[s] Commission (FCC) regulations, Ark. Code Ann. § 23-17-409, and Orders No. 5, No. 11 and No. 12," *id.* To the extent that either party believes that the Arkansas PSC's resolution of any disputed issue in Order No. 13 is inconsistent with federal law, it is free to seek judicial review of an order approving the agreement reached in compliance with Order No. 13 pursuant to 47 U.S.C. § 252(e)(6). SWBT respectfully suggests that it is not appropriate for the FCC to decide at this point whether the Arkansas PSC has properly interpreted federal law in ruling on the specific provisions in dispute. That is a role that Congress assigned to federal district courts. In the context of the preemption petitions at issue in this docket, the FCC's responsibility is limited to the question whether the Arkansas Act, as interpreted and applied by the Arkansas PSC, conflicts with the requirements of federal law. As SWBT has already argued, there is no conflict to justify preemption where the Arkansas Act requires the Arkansas PSC to impose interconnection, unbundling, and resale obligations on incumbent local exchange carriers ("ILECs") that are consistent with — but no more onerous than — the requirements under the Telecommunications Act of 1996 and applicable FCC regulations. An examination of the ways in which the Arkansas PSC resolved in Order No. 13 the specific non-pricing issues in dispute demonstrates that the Arkansas PSC considers state and federal law to be wholly compatible with one another.

In its Memorandum of June 10, 1998 ("June 10 Memo"), the staff of the Policy and Program Planning Division of the FCC's Common Carrier Bureau ("Staff") asked SWBT to respond to a series of questions:

**1. How do Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5? Do Order Nos. 12 and 13 resolve all such issues in favor of SWBT, as apparently required by Order No. 11? If not, why not?**

In its June 10 Memo, the Staff requested that SWBT answer these questions by addressing directly the eleven issues that were, at least at some point, in dispute between the parties. SWBT will also address two additional issues.

A. Short-Term Promotions (Part B, Tab 2, Issue 2)

The dispute on this issue was over how to interpret the FCC's decision in the Local Competition Order that "short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation." First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15970 [¶ 949] ("Local Competition Order"), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S. Ct. 979 (1998); 47 C.F.R. § 51.613(a)(2). Before the arbitrator, SWBT had argued that while promotions of less than 90 days ought not to be available for resale, the associated retail service would be available at the retail rate less the applicable wholesale discount. AT&T had argued that the exception for promotions of less than 90 days does not extend to restricting resale of the service at the promotional rate so that if SWBT were to run a short-term promotion at a promotional rate lower than the ordinary rate less the wholesale discount, SWBT should be ordered to resell the service at the promotional rate.

In Order No. 5, the arbitrator first adopted AT&T's last best offer ("LBO") on the question of what SWBT services should be required to be made available for resale at wholesale rates — that all services offered at retail to end users should be available for resale, including promotions of less than 90 days, although these need not be available at the wholesale discount. See Order No. 5 at 7. At the same time, however, the arbitrator adopted SWBT's LBO on the specific question whether promotional offerings of 90 days or less should be available for resale at the promotional rate — promotions of less than 90 days are not available for resale although the associated retail service will be available for resale at the retail rate less the applicable wholesale discount. Id. at 8. In any case, the parties had already reached agreement on this issue.

In Order No. 13, the Arkansas PSC resolved this issue in SWBT's favor. See Order No. 13 at 9. In the Agreement that has been jointly submitted by the parties, the promotion issue has been resolved as follows:

Promotions of Resale services of more than 90 days will be made available to AT&T on terms and conditions no less favorable than those SWBT makes available to its customers and will be made available at the avoided cost discount from the promotional rate.  
Promotions of 90 days or less will not be available for resale.

Agreement, Attach. 1, § 4.2. As SWBT explained to the arbitrator, however, SWBT must offer to AT&T the exact same service at the wholesale discount off the tariffed rate.

**B. Resale of Distance Learning Services (This issue was not addressed in Order No. 13)**

The dispute on this issue concerned whether certain services that SWBT offers to schools, hospitals, and government offices should be subject to resale only at the regular discounted rate for such services or whether they should be subject to a further wholesale discount. SWBT had argued to the arbitrator that it would be a reasonable limitation on the resale requirement to require these below-cost services to be subject to resale but at the already-discounted tariff rate. SWBT argued further that requiring an additional discount would force SWBT to raise the price of the basic discounted service, which would not have been in the public interest. AT&T argued that below-cost services are retail services and should therefore be subject to the avoided-cost discount.

In Order No. 5, the arbitrator adopted AT&T's LBO — that “even telecommunications services provided below cost should be available at a wholesale discount” — relying on the FCC's conclusion in the Local Competition Order that “below cost services are subject to the wholesale rate obligation under section 251(c)(4) [11 FCC Rcd at 15973 [¶ 956]].” Order No. 5 at 9.

The parties resolved this issue as part of the negotiation process, and it was never presented to the Arkansas PSC for resolution in either Order No. 11 or No. 13. As part of the final Agreement, SWBT agreed to make “Distance Learning” services available to AT&T for resale at SWBT's tariffed rate “or in the event a service is not tariffed, at the rate SWBT charges its subscribers . . . .” Agreement, Attach. 1, § 1.5.

**C. Presumptive Unreasonableness of Resale Restrictions (Part B, Tab 2, Issues 1, 3 & 4)**

The issue here is whether existing Commission-approved use limitations and service parameters in SWBT's retail tariffs are properly characterized as restrictions on resale or as part of the definition of the service itself. SWBT had argued that, while it is willing to allow AT&T to resell SWBT's existing retail telecommunications services to compete for customers in the same way SWBT currently serves those customers, it ought not to be required to allow AT&T to purchase SWBT's retail services and change the essential nature of those services by ignoring the use limitations in SWBT tariffs that the Arkansas PSC had previously authorized. AT&T, on the other hand, had argued that use limitations are in fact resale restrictions.

In Order No. 5, the arbitrator approved AT&T's LBO — that all resale restrictions except cross-class reselling of residential services to non-residential end users and the cross-class selling of means tested services are presumptively unreasonable; this also applies to restrictions in the incumbent LEC's underlying tariffs. Order No. 5 at 10-11.

In Order No. 13, the Arkansas PSC effectively affirmed Order No. 5, ruling that SWBT may not impose resale limitations on aggregation of optional calling plans and effectively concluding

that, other than cross-class restrictions, all limitations on resale are presumptively unreasonable. The Agreement now provides as follows:

SWBT may not retain limitations on aggregation for purposes of the resale volume discount offers. Additional tariff restrictions, other than the cross-class restriction allowed by FTA96 Section 251(c)(4)(B), are presumptively unreasonable.

Agreement, Attach.1, § 1.12.

In Order No. 13, the Arkansas PSC did accept SWBT's position that resellers must take SWBT services as they currently exist and that approved use limitations should continue to be applicable. See Order No. 13 at 9 (Tab 2, Issues 3 & 4). The Agreement provides as follows: with respect to SWBT's "Plexar" service (similar to CENTREX), AT&T has agreed that "[a]ll use limitations, terms and conditions contained in SWBT's tariffs with respect to such PLEXAR services that are resold by AT&T will be enforced by AT&T when providing such PLEXAR services to its customers," at least until such time that it is determined by an appropriate authority that such limitation, term, or condition is unlawful. See id., Attach. 1, app. Services/Pricing, § 2.1.1.

D. Unbundling Dark Fiber (Part B, Tab 3, app. Pricing UNE - Schedule of Pricing)

Dark fiber is transmission media without electronics on either end so that, although it has been deployed, it is not being utilized to provide service at the present time. The question is whether dark fiber is a "network element" within the meaning of section 153(29) of the Communications Act, which defines network elements as facilities or equipment "used in the provision of a telecommunications service." 47 U.S.C. § 153(29) (emphasis added). SWBT had argued to the arbitrator that, because dark fiber is not used in the provision of a telecommunications service, it is not a network element and need not, therefore, be provided on an unbundled basis. AT&T argued to the arbitrator that unbundling dark fiber is technically feasible and, to the extent this beneficial technology can be put to use for Arkansas customers, it should not remain idle.

In Order No. 5, the arbitrator adopted AT&T's LBO. The arbitrator ordered SWBT to provide dark fiber on an unbundled basis. Order No. 5 at 25-28.

In Order No. 13, the Arkansas PSC accepted SWBT's position, relying on its own conclusion in Order No. 11 that it would only require SWBT to adhere to such terms and conditions that meet the minimum requirements of section 251 of the Communications Act. Order No. 13 at 9. The Agreement now reached between SWBT and AT&T does not provide for the provision of dark fiber as an unbundled network element. See Agreement, Attach. 6, § 2.21 (list of unbundled network elements to be provided does not include dark fiber).

E. Provision of Multiplexing, Digital Cross-Connect Systems, Etc. (Part B, Tab 3, Issue 11)

The question here is whether SWBT should be required to provide all technically feasible types of multiplexing, demultiplexing, grooming, digital cross-connect systems ("DCS"), bridging, broadcast, test and conversion features when and where available, or whether it is sufficient for SWBT to provide DCS in the same manner and through the same tariffs in which it offers the service to interexchange carriers ("IXCs"). SWBT had argued to the arbitrator that, because the FCC ordered LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services (see Local Competition Order, 11 FCC Rcd at 15719-20 [¶ 444]) and because the FCC specifically did not require ILECs to provide such elements on the same terms and conditions that they provide them to themselves, the arbitrator should not impose this additional obligation. AT&T argued that SWBT should be required to provide these services to AT&T on the terms and conditions that SWBT provides the services to itself.

In Order No. 5, the arbitrator accepted AT&T's LBO. The arbitrator required SWBT to provide to its competitors the same interoffice services that it provides to itself.

In Order No. 13, the Arkansas PSC agreed with AT&T. Relying on section 251 and on the Local Competition Order, the Arkansas PSC ordered SWBT to provide DCS to AT&T with the same functionality that SWBT provides to itself. The Agreement now provides that "SWBT will provide AT&T such additional technically feasible types of multiplexing/demultiplexing, grooming, Digital Cross-Connect Systems (DCS), bridging, broadcast, test, and conversion features when and where available to SWBT for use in providing telecommunications services." Agreement, Attach. 6, § 8.2.1.7.2. Furthermore, SWBT has agreed to offer DCS "as part of the unbundled dedicated transport element with the same functionality that SWBT provides to itself or additional functionality as the Parties may agree." Id. § 8.2.3.1.

F. Collocation in SWBT's Huts and Vaults (Part B, Tab 4, Issue 1)

This issue concerns the minimum requirements for collocation of a CLEC's equipment in the ILEC's premises. SWBT had argued to the arbitrator that it would provide physical collocation as required under section 251(c)(6) but that there is simply no room for CLECs to collocate in SWBT's huts or vaults. AT&T argued that it should be able to collocate in all SWBT huts, vaults, cabinets, central offices, tandem offices or other similar buildings or structures that house network facilities.

In Order No. 5, the arbitrator agreed with AT&T. Order No. 5 at 36-37. In Order No. 13, the Arkansas PSC agreed with SWBT that it did not have to provide access to its huts and vaults where doing so would be technically impractical. Order No. 13 at 9. But by the time Order No. 13 had been issued, the parties had already negotiated a resolution of the issue. In the Agreement, SWBT has granted to AT&T access to and use of collocated space within SWBT's "eligible structures," which is defined to include "all SWBT central offices, tandem offices and serving wire

centers and all buildings and similar structures owned or leased by SWBT that house SWBT network facilities and, all structures that house SWBT facilities on public rights-of-way, controlled environmental vaults (CEVs), huts, and cabinets." Agreement, Attach. 13, app. Collocation, § 2.1. Although SWBT is entitled to retain a limited amount of space for defined future uses within its eligible structures, SWBT will allocate other space within its eligible structures "on a nondiscriminatory, 'first-come, first-served' basis among itself, AT&T, and other collocators, provided that there is space and power available for collocation and for reasonable security arrangements and subject to any other limitations provided by law." Id. § 2.4.

G. Reciprocal Compensation (Bill and Keep) (Part B, Tab 2, Issue 23)

The question is whether the Bill-and-Keep method should be used as a reciprocal compensation arrangement (either temporarily or permanently) for the transport and termination of local traffic between the ILEC and the CLEC. SWBT had argued to the arbitrator that the Communications Act, as amended, did not make Bill-and-Keep an option at all unless both parties waived mutual recovery of reciprocal compensation, something SWBT was unwilling to do because it believed that its costs for terminating traffic would be far greater in light of its more extensive facilities. AT&T, on the other hand, argued that a Bill-and-Keep arrangement should be imposed for the first nine months, after which it would continue unless and until a significant and continuing disparity in the levels of traffic terminated on the respective networks could be demonstrated.

In Order No. 5, the arbitrator agreed with AT&T's position. It concluded that SWBT had offered no proof of its assertion that the traffic would not be balanced. See Order No. 5 at 38. AT&T's position would, in the arbitrator's opinion, allow the parties to monitor the traffic and evaluate the merits of the Bill-and-Keep arrangement. Id.

In Order No. 13, the Arkansas PSC concluded that the issue of the appropriate compensation rates was "not ripe for decision," Order No. 13 at 9. The Arkansas PSC's "decision" left in place the arbitrator's decision to impose AT&T's interim Bill-and-Keep proposal. Indeed, the Agreement provides that

Bill and Keep will be the reciprocal compensation arrangement for the first nine (9) months after the date upon which the first commercial call is terminated between SWBT and AT&T in Arkansas. At the completion of the nine month period, Bill and Keep will remain unless the difference between the traffic volumes flowing between the two networks in Arkansas exceeds ten percent of the larger volume of traffic, the Parties will assess each other symmetrical transport and termination rates specified [in the Agreement].

Agreement, Attach. 12, § 1.4.

H. Compensation for Extended Area Calling (Part B, Tab 2, Issue 24)

The question here concerns how to define "local traffic" for purposes of reciprocal compensation. SWBT had argued to the arbitrator that "local traffic" should be defined as traffic originated and terminated in the same SWBT local exchange area, including SWBT's mandatory extended calling areas associated with that area. Calls originating and terminating between SWBT exchanges and exchanges of ILECs that share a mandatory local calling scope, as well as those between exchanges where optional calling plans exist, should be considered interexchange traffic. AT&T argued that any traffic from the mandatory extended area should be treated as local traffic.

In Order No. 5, the arbitrator adopted AT&T's LBO, concluding that "all traffic which originates or terminates within the mandatory local calling area of SWBT, including extended area service should be considered local to ensure that AT&T can match the calling area of SWBT." Order No. 5 at 39.

In Order No. 13, the Arkansas PSC affirmed its earlier decision and adopted AT&T's definition of "local traffic." Order No. 13 at 9. The Agreement has incorporated this decision, defining "local traffic" to include

[c]alls originated by AT&T's end users and terminated to SWBT's end users (or vice versa) . . . if: (i) the call originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT Exchanges that share a common mandatory local calling area, e.g., mandatory Extended Area Service (EAS), or other like types of mandatory expanded local calling scopes.

Agreement, Attach. 12, § 1.2.

I. Local Dialing Parity for IntraLATA Calls (This issue was not addressed in Order No. 13)

The issue here is whether an ILEC must provide intraLATA dialing parity before it is entitled to provide in-region, interLATA services. SWBT argued to the arbitrator that, while it would continue to provide non-discriminatory access to numbers and would not require AT&T's local customers to dial more digits for local or interLATA calls than its own customers must dial, it would provide intraLATA dialing parity when it is authorized to provide in-region, interLATA services. AT&T argued that SWBT should provide complete local dialing parity — including intraLATA calls — without regard to its being able to provide in-region, interLATA services.

In Order No. 5, the arbitrator agreed with SWBT that "[p]ursuant to 47 U.S.C. § 271(e)(2)(D), AT&T cannot have intraLATA toll dialing parity with SWBT until SWBT receives approval from the FCC to provide interLATA toll service or three years from the date of the enactment of the 1996 Act." Order No. 5 at 22. But with respect to local dialing parity, the

arbitrator accepted AT&T's LBO that SWBT should provide local dialing parity from its facilities to AT&T's end-user local exchange customers in parity with its own similarly situated customers. Id. at 40-41.

The parties reached an agreement on how to handle local dialing parity, so the issue was never presented to the Arkansas PSC for a decision in Order No. 11 or No. 13. The Agreement between SWBT and AT&T provides as follows:

SWBT will ensure that all AT&T Customers experience the same dialing parity as similarly-situated customers of SWBT services, such that, for all call types: (i) an AT&T Customer is not required to dial any greater number of digits than a similarly-situated SWBT customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by an AT&T Customer is at least equal in quality to that experienced by a similarly-situated SWBT customer; and (iii) the AT&T Customer may retain its local telephone number.

Agreement § 47.1.

J. Access to Poles, Ducts, Conduits, and Rights-of-Way (Part B, Tab 5)

The general issue under this heading is whether access to such facilities should be governed by SWBT's Master Agreement or whether the terms and conditions should be negotiated separately and incorporated into the Interconnection Agreement. SWBT had argued to the arbitrator that its Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way satisfies the need to provide a uniform, nondiscriminatory contract and that no changes to the Master Agreement are necessary. AT&T argued that its proposed contract was preferable and that the terms and conditions of access to such facilities should be subject to negotiation as part of the Interconnection Agreement.

In Order No. 5, the arbitrator agreed that "access to poles, conduits and rights-of-way should be a part of the interconnection agreement and should not be governed by the separate Master Agreement of SWBT." Order No. 5 at 42-43. It then went on to resolve 25 specific issues concerning access to poles and conduits, sometimes siding with SWBT, sometimes with AT&T. Id. at 43-51.

In Order No. 13, the Arkansas PSC resolved a number of outstanding issues — some in SWBT's favor, others in AT&T's favor — concerning the terms and conditions for access to poles and conduits. Order No. 13 at 10. By the time the Arkansas PSC had issued its order, the parties had continued to negotiate and had resolved all of the outstanding disputes with respect to these issues. The Agreement now incorporates a 74-page appendix constituting the Master Agreement, according to which "SWBT will provide AT&T nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and

commission orders, to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT and located in [Arkansas]." Agreement, Attach. 13, app. Poles, Conduits, and Rights-of-Way, preamble. According to the terms of the Master Agreement, the Arkansas PSC "has stated that the FCC's First Report and Order in CC Docket No. 96-98 clearly requires a utility to provide access that does not favor itself over new entrants and that nondiscriminatory access means more than requiring incumbent local exchange carriers to treat all new entrants equally. This Appendix has been drafted and shall be construed to effectuate these principles." *Id.* art. 2.

K. Access to Services "Equal in Quality" to that Which SWBT Provides to Itself (Part C, Tab 2, Issues 28-31)

There is no dispute that performance standards should be the same for new entrants as they are for SWBT's end users. The only disagreement is the determination of damages for failure to satisfy these performance standards. SWBT had argued to the arbitrator that any liabilities for failing to meet these standards should not exceed the liability SWBT would have to its own customers for failing to meet those same standards. SWBT also indicated that it would be willing to negotiate a liquidated damages provision as a sole remedy for specific performance breaches. AT&T argued that a liquidated damages provision should apply to any performance standard that is "customer affecting."

In Order No. 5, the arbitrator agreed with SWBT's position, concluding that it was "reasonable and should be adopted." Order No. 5 at 52. Specifically, the arbitrator concluded that "[l]iquidated damages should be limited to serious breaches of performance standards." *Id.*

In Order No. 13, the Arkansas PSC adopted SWBT's proposed performance criteria, even though the parties had largely resolved the remaining disputes in this area prior to Order No. 13. Order No. 13 at 11. In their Agreement, AT&T and SWBT have provided for the payment of liquidated damages of \$25,000 for each measurement that is more than one but less than three standard deviations below the performance criteria for two consecutive months (and \$75,000 if greater than three standard deviations below the performance criteria in a single month); at the same time, SWBT will accrue performance credits for service that exceeds that which is provided to its own customers, and such credits may be used to offset future performance penalties. Agreement, attach. 17, §§ 1.1.4.2 - .3.

L. IntraLATA Toll and Exchange Access Charges (Part B, Tab 3, Issues 13 & 15)

SWBT had argued to the arbitrator that nothing in the Communications Act gives AT&T the right to have intraLATA toll calls placed over unbundled network elements purchased from SWBT without compensating SWBT for the appropriate toll charges. AT&T, on the other hand, had argued that SWBT should provide the complete functionality of unbundled network elements to AT&T, including intraLATA toll and exchange access.

In Order No. 5, the arbitrator agreed with SWBT that there is no authority in the Communications Act to use unbundled network elements as a means to avoid the restriction on AT&T's ability to have intraLATA toll dialing parity prior to February 8, 1999, unless SWBT receives approval to provide in-region, interLATA services. See Order No. 5 at 22. But the arbitrator did require SWBT to compensate AT&T for any applicable access charges for intraLATA toll. Because "SWBT is accessing that network to provide toll service to an AT&T customer when it carries a 1+ or 0+ intraLATA toll call for an AT&T customer, . . . SWBT must compensate AT&T for access at the same rates AT&T would be required to compensate SWBT for access." Id.

In Order No. 13, the Arkansas PSC effectively affirmed the decision reached by the arbitrator in Order No. 5. Accordingly, SWBT must pay access charges to AT&T whenever AT&T terminates an intraLATA toll call with a customer being served by an unbundled switching element purchased by AT&T. Conversely, when AT&T uses its unbundled switching elements to provide access to interLATA exchange services, SWBT may not bill AT&T for access charges. The Agreement provides that "SWBT must compensate AT&T for [intraLATA] access at the same rates AT&T would be required to compensate SWBT for access, including applicable CCL, RIC, local switching, information surcharge, and local transport." Agreement, Attach. 6, app. Pricing-UNE, § 5.2.2.2.3.1.1.

#### M. Trunk Group Configurations (Part C, Tab 2, Issue 18)

SWBT had originally argued that it was not technically feasible for it to combine local, intraLATA toll, and interLATA toll traffic on the same trunk group. But in Order No. 13, the Arkansas PSC required SWBT to permit AT&T to combine local, intraLATA, and interLATA traffic on a single trunk group and send it to the access tandem or end office. The Agreement memorializes this decision: "InterLATA toll traffic and IntraLATA toll traffic may be combined with local traffic on the same trunk group when AT&T routes traffic to either a SWBT access tandem which serves as a combined local and toll tandem or directly to a SWBT end office." Agreement, Attach. 11, app. Interconnection Trunking Requirements (ITR), § 2.1.1.

#### **2. Describe how, if at all, Order Nos. 12 and 13 explain the way in which their resolutions of the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251.**

Order Nos. 12 and 13 are admittedly rather terse when it comes to providing an explanation of the way the Arkansas PSC's resolution of the non-pricing issues comports with the minimum requirements of section 251. Although SWBT had requested that the Arkansas PSC explain its resolution of each issue and advise SWBT of how its position complies with 47 U.S.C. § 251, the Arkansas PSC has taken the position that "there is no requirement that the Commission provide SWBT with such rationale beyond that contained in Order No. 11." Order No. 12 at 11.

Nevertheless, in Order No. 13, the Arkansas PSC provided a sufficient explanation for each of the conclusions it reached:

A. Short-Term Promotions. In concluding that SWBT need not make promotions lasting 90 days or less available for resale, the Arkansas PSC relied on both section 9(d) of the Arkansas Act and 47 C.F.R. § 51.613. See Order No. 13 at 9 (Tab 2, Issue 2). Section 9(d) provides that “[p]romotional 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.” Ark. Code Ann. § 23-17-409(d). The FCC’s applicable regulation provides that

[a]n incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if: (i) Such promotions involve rates that will be in effect for no more than 90 days; and (ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

47 C.F.R. § 51.613(a)(2).

B. Distance Learning Services. This issue was resolved by the parties and was never presented to the Arkansas PSC for resolution in Order No. 13.

C. Presumptive Unreasonableness of Resale Restrictions. In concluding that SWBT may not impose any limitations, other than cross-class restrictions, on resale, the Arkansas PSC explicitly invoked section 251(c)(4) and 47 C.F.R. § 51.613. See Order No. 13 at 9 (Tab 2, Issue 1). In other words, the rule in Arkansas is that, with the exception of cross-class selling and short-term promotions, “an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.” 47 C.F.R. § 51.613(b).

D. Unbundling Dark Fiber. The Arkansas PSC cited its prior decision in Order No. 11, and section 9(f) of the Arkansas Act to support its decision not to require SWBT to unbundle dark fiber. See Order No. 13 at 9. In SWBT’s view, section 9(f) merely limits the Arkansas PSC’s authority to arbitrate and approve an agreement to the terms and conditions that were subject to actual negotiations between the ILEC and the CLEC. The Arkansas PSC’s reliance on Order No. 11 simply confirms its view that the unbundling of dark fiber goes beyond the “minimum requirements for interconnection specified in Sec. 251 of the 1996 Act.” Order No. 11 at 4. By relying on Order No. 11 in adopting SWBT’s position with respect to dark fiber, the Arkansas PSC evidently determined that SWBT’s position complied with the minimum requirements of resale under section 251.

E. Provision of Multiplexing, Etc. In adopting AT&T’s position and requiring SWBT to provide DCS with the same functionality that SWBT provides to itself, the Arkansas PSC explicitly relied on “47 U.S.C. § 251 and FCC First Report and Order, CC Docket No. 96-98

released August 8, 1997, (FCC Order), FCC Order at ¶ 444 and ¶ 445." Order No. 13 at 9 (Tab 3, Issue 11). In the Local Competition Order, the FCC required incumbent LECs, "as a condition of offering unbundled interoffice facilities . . . to provide requesting carriers with access to digital cross-connect system (DCS) functionality." Local Competition Order, 11 FCC Rcd at 15719 [¶ 444].

F. Collocation in Huts and Vaults. In concluding that SWBT did not have to provide access to its huts and vaults where doing so would be technically impractical, the Arkansas PSC invoked Order Nos. 5 and 11, as well as section 9(f) of the Arkansas Act. See Order No. 13 at 9 (Tab 4, Issue 1). As explained above, there was no genuine dispute between the parties with respect to this issue, and the Arkansas PSC's decision to side with SWBT was consistent with federal law.

G. Reciprocal Compensation (Bill-and-Keep). The Arkansas PSC concluded in Order No. 13 that compensation rates were "not ripe for decision," thereby leaving in place the arbitrator's decision to require Bill-and-Keep unless and until a significant imbalance in the termination of traffic is demonstrated. See Order No. 13 at 9 (Tab 2, Issue 23). The Arkansas PSC explained that it would exceed its jurisdiction under 47 U.S.C. § 252(b)(4)(A) for it to resolve issues "not raised in the arbitration." Id. at 7.

H. Compensation for Extended Area Calling. The Arkansas PSC adopted AT&T's definition of "local traffic," justifying its decision by relying on "Order No. 5 and [the] federal Telecommunications Act." Order No. 13 at 9 (Tab 2, Issue 24). The arbitrator had concluded that it would conflict with the 1996 Act for SWBT to impose access charges on traffic which originates or terminates in SWBT's extended service area. Order No. 5 at 39. The Arkansas PSC apparently agreed in Order No. 13.

I. Local Dialing Parity for IntraLATA Calls. This issue was resolved by the parties and was never presented to the Arkansas PSC for resolution in Order No. 13.

J. Access to Poles, Ducts, Conduits, Etc. As discussed above, although the Arkansas PSC went through the disputed issues concerning the Master Agreement, the parties had effectively resolved the issues by the time Order No. 13 was issued. In resolving the issues, however, the Arkansas PSC explicitly invoked both Order Nos. 5 and 11, as well as sections 251 and 252 of the Communications Act. See Order No. 13 at 10 (Tab 5).

K. Access to Services "Equal in Quality". In accepting SWBT's position on the applicability of liquidated damages in the case of a failure to meet certain performance standards, the Arkansas PSC simply affirmed the conclusion reached by the arbitrator in Order No. 5. See Order No. 13 at 11 (Tab 2, Issues 28-31). Specifically, the Arkansas PSC relied on "Orders No. 5 and No. 11" in adopting SWBT's proposed performance criteria, even though the parties had largely resolved the performance measurements issue by the time Order No. 13 was released.

L. IntraLATA Toll and Exchange Access Charges. In ruling that SWBT must pay AT&T access charges for the termination of intraLATA toll calls on the unbundled switching element and that SWBT may not assess access charges against AT&T for providing access to interLATA exchange services, the Arkansas PSC invoked section 251(c)(3) and 47 C.F.R. §§ 51.307 and 51.309. See Order No. 13 at 9 (Tab 3, Issues 13 & 15). The Arkansas PSC explicitly relied on the FCC regulation that requires an incumbent LEC to provide access to unbundled network elements "along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the [CLEC] to provide any telecommunications service that can be offered by means of that network element," 47 C.F.R. § 51.307(c). In addition, the Arkansas PSC invoked the FCC regulation that entitles a CLEC to "use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers." Id. § 51.309(b).

M. Trunk Group Configurations. In ruling that AT&T must be allowed to combine local, intraLATA, and interLATA traffic on a single trunk group and send it to the access tandem or end office, the Arkansas PSC relied on Order No. 5 and on 47 C.F.R. § 51.309. Order No. 13 at 11 (Tab 2, Issue 18). Section 51.309(a) requires an incumbent LEC to refrain from imposing any "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." Id. § 51.309(a).

**3. Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251?**

Under section 252(e)(6) of the Communications Act, federal district courts have the exclusive authority to determine whether or not a State commission's approval of an interconnection agreement is consistent with the requirements of sections 251 and 252. SWBT submits, therefore, that whether or not the Arkansas PSC's resolution in Order No. 13 of the "non-pricing issues decided in favor of AT&T in Order No. 5" is consistent with the minimum requirements of section 251 is a matter solely for the federal district court in Arkansas to determine. What is clear beyond question is that the Arkansas PSC believes itself to be bound by federal law — as reflected in the numerous decisions reached in Order No. 13 based explicitly on a provision of the federal statute or applicable federal regulations — and believes that its responsibility under Arkansas law is to determine whether "the [incumbent LEC] is offering interconnection, resale and unbundling which complies with the minimum requirements of Sec. 251 of the 1996 Act," Order No. 11 at 4. Whether it has "gotten it right" in every instance is an issue for a different decision maker; that it perceives no conflict between its obligations under state and federal law is what is relevant here.

SWBT believes that the Arkansas PSC's resolution of each of the relevant issues in Order No. 13 complies with the minimum requirements of the Communications Act. For example, the

Arkansas PSC's decision not to require the resale of short-term promotional offerings is entirely consistent with the FCC's conclusion "that promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers." Local Competition Order, 11 FCC Rcd at 15970 [¶ 950]. Of course, the services themselves are available for resale at the wholesale discount off the regular retail price.

The Arkansas PSC's decision not to require SWBT to provide "dark fiber" as an unbundled network element is not only consistent with the FCC's Local Competition Order, 11 FCC Rcd at 15683 [¶ 366] (listing "minimum set of elements that must be unbundled by incumbent LECs" and excluding "dark fiber" from the list), but it is consistent with the decision reached by many other State commissions throughout the country. See, e.g., Petitions by AT&T Communications of the Southern States, Inc. for Arbitration with BellSouth Telecommunications, Inc., No. 960833-TP, at 22 (Fla. PSC Dec. 31, 1996) ("we find that dark fiber is not a network element, as defined by the Act, because it is not a facility or equipment used in the provision of a telecommunications service"); Application of MCI Telecommunications Corp. for Arbitration with GTE California, Inc., No. 96-09-012, at 34 (Cal. PUC Sept. 10, 1996) ("Since dark fiber is not used to provide telecommunications services . . . GTEC shall not be required to unbundle its dark fiber"); Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., No. U-22145, at 43 (La. PSC Jan. 15, 1997) (dark fiber "is by definition not used, and therefore it is not a 'network element'").\*

SWBT also believes that the Arkansas PSC's decision to require resellers to take SWBT services as they currently exist, including approved use limitations on the services themselves is consistent with the 1996 Act. See Order No. 13 at 9 (Tab 2, Issues 3 & 4). Although the FCC has defined "resale restrictions" to include "conditions and limitations contained in the incumbent

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\*Accord Petition of MCIMetro Access Transmission Services, Inc. for Arbitration to Bell Atlantic-PA, Inc., No. A-310236F0002, at 25 (Pa. PUC Dec. 19, 1996) ("Bell is not required to unbundle dark fiber"); AT&T Communications of Washington, D.C., Inc. Petition for Arbitration with Bell Atlantic, Case 1, Order No. 7 at 23 (D.C. PSC Dec. 2, 1996) (dark fiber is "not a network element and . . . BA-DC is not required to provide unbundled access"); Petition of MCI Telecommunications Corp. for Arbitration with Bell Atlantic, No. T096080621, at 11 (N.J. PUC Dec. 19, 1996) ("dark fiber should not be made available to local competing carriers"); Petition of AT&T Communications of Indiana, Inc. Requesting Arbitration, No. 40571-INT, at 17 (Ind. PUC Dec. 12, 1996) ("GTE is not required to provide access" to dark fiber); Petitions for Approval of Agreements and Arbitration of Unresolved Issues, No. 8731, Order No. 73010, at 26 (Md. PSC Nov. 8, 1996) (the Commission "disagree[s] with AT&T and MCI that Bell Atlantic should be required to provide" dark fiber); Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., No. 96-AD-0559, at 27-28 (Miss. PSC Feb. 12, 1997) ("BellSouth should not be required to provide dark fiber as an unbundled network element").

LEC's underlying tariff," Local Competition Order, 11 FCC Rcd at 15966 [¶ 939], it has also concluded that "[t]he 1996 Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers." Id. at 15934 [¶ 872] (emphasis added); see also 47 C.F.R. § 51.603(b) ("A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users."); 47 U.S.C. § 251(4)(A) (an incumbent LEC must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" (emphasis added)). SWBT believes that the use restrictions in its Plexar service, for example, are merely aspects of the definition of the retail service itself, rather than a restriction on resale.

**4. Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in AT&T's favor in Order No. 5 support SWBT's interpretation of Order No. 11 (as described in the June 10 Memo) or AT&T's interpretation of Order No. 11 (as described in the June 10 Memo), or some other interpretation?**

According to the Staff's June 10 Memo, "[i]n SWBT's view, the problem with Order No. 11 is not that it construes the Arkansas Act to preclude the Arkansas Commission from interpreting and enforcing the minimum requirements of section 251, but merely that it fails to explain how the reversal of Order No. 5's rulings in favor of AT&T comports with the minimum requirements of section 251." June 10 Memo at 2. SWBT believes not only that this view of Order No. 11 is accurate but that the Arkansas PSC's subsequent decision in Order No. 13 confirms its accuracy.

Although it is certainly true that the Arkansas PSC could have written both Order No. 11 and Order No. 13 in a more intelligible and accessible manner, it is also true that it had no obligation to provide an exhaustive explanation of the reasons for reaching its conclusions. As the Arkansas PSC repeatedly indicated in Order No. 11, it believes that Arkansas law requires it to approve the terms and conditions with which the incumbent LEC will agree "if those terms and conditions meet the minimum requirements for interconnection specified in Sec. 251 of the 1996 Act." Order No. 11 at 4 (emphasis added). Where the Arkansas PSC concluded that the terms and conditions proposed by the incumbent LEC did not meet the minimum requirements for interconnection under federal law — such as where SWBT proposed to provide digital cross-connect services only in the same manner that it provides such services to IXCs, rather than in the manner that it provides such services to itself — the Arkansas PSC rejected the incumbent LEC's proposed terms and conditions and adopted those of the CLEC.

In sum, although the parties may continue to disagree about whether or not the Arkansas PSC has properly interpreted what the minimum requirements of federal law are in each instance, there is simply no doubt that the Arkansas PSC has applied its view of those minimum requirements in resolving the disputed issues in Order No. 13. To the extent that the parties continue to disagree about the way the Arkansas PSC resolved particular issues that have now

been incorporated into the Agreement, their remedy lies in section 252(e)(6). Neither SWBT nor AT&T has hesitated to invoke this statutory remedy in the past, and they have both recognized that it is the exclusive mechanism for resolving disputes of this kind.



**COMMON CARRIER BUREAU  
POLICY & PROGRAM PLANNING DIVISION**

**To: Todd Silbergeld, SBC  
Frank Simons, AT&T**

**From: Carol Matthey, Chief, Policy and Program Planning Division, FCC CCB  
Alex Starr, Policy Division Staff  
Jonathan Askin, Policy Division Staff  
Joe Welch, Policy Division Staff**

**Re: Impact of Arkansas PSC Order Nos. 12, 13 on FCC Preemption Proceeding 97-100**

**Date: June 10, 1998**

We would like to meet soon with representatives of your respective companies to discuss whether and to what extent Order Nos. 12 and 13 of the Arkansas Public Service Commission (Arkansas Commission or Arkansas PSC) in the interconnection arbitration proceeding between AT&T Communications of the Southwest, Inc. (AT&T) and Southwestern Bell Telephone Company (SWBT) affect issues raised by the preemption petitions filed with the FCC by MCI Telecommunications Co., Inc. (MCI) and American Communications Services, Inc. (ACSI) regarding the Arkansas Telecommunications Regulatory Reform Act of 1997 (Arkansas Act or Act 77), CC Docket No. 97-100. To foster productive discussions during these meetings, we summarize below the issues we would like to address.

In Order No. 11, the Arkansas Commission concluded that, "[p]ursuant to the restrictions on the [Arkansas] Commission's authority in Act 77, the [Arkansas] Commission has no authority to order SWBT to provide interconnection, resale or unbundling to AT&T on any different terms or conditions than SWBT will agree to provide such services to a competitor if those terms and conditions meet the minimum requirements for interconnection specified in Sec. 251 of the 1996 Act." Order No. 11 at 4 (emphasis added). Also in Order No. 11, the Arkansas Commission "reverse[d] Order No. 5 on any interconnection, resale, and unbundling issues, with the exception of pricing, which adopted the position of AT&T." Order No. 11 at 5 (emphasis added). In Order No. 5, however, the Arkansas Commission often adopted the position of AT&T precisely because it believed that doing so was necessary to comply with the minimum requirements of section 251. See Order No. 5 at 7 (resale of promotions), 8-9 (resale of distance learning services), 9-11 (presumptive unreasonableness of resale restrictions), 25-28 (unbundling of dark fiber), 30-31 (unbundling of multiplexing and other services), 36-37 (collocation in huts and vaults), 37-38 (bill and keep method of reciprocal compensation), 38-39 (geographic scope of local calling areas), 40-41 (dialing

parity for intraLATA calls), 41-43 (access to poles, ducts, and conduits), 57 (equal access to services, UNEs, interconnection, and ancillary functions).

In prior discussions, we asked SWBT and AT&T to address this seeming inconsistency between Order No. 5 and Order No. 11. In particular, we asked SWBT and AT&T to explain how one can square the Arkansas Commission's professed standard of adherence to the minimum requirements of section 251 in Order No. 11, with the Arkansas Commission's reversal in Order No. 11 of *all* non-pricing decisions favoring AT&T in Order No. 5, including decisions in Order No. 5 apparently rendered to meet the minimum requirements of section 251.

SWBT and AT&T responded with conflicting answers. In sum, SWBT stated that, even after Order No. 11, the Arkansas Act does not preclude the Arkansas Commission from interpreting for itself and imposing, over SWBT's objection, the "minimum requirements" of section 251 in a manner that supplements or exceeds the requirements specified in FCC orders and regulations. In SWBT's view, the problem with Order No. 11 is not that it construes the Arkansas Act to preclude the Arkansas Commission from interpreting and enforcing the minimum requirements of section 251, but merely that it fails to explain how the reversal of Order No. 5's rulings in favor of AT&T comports with the minimum requirements of section 251. SWBT argued, for example:

The Arkansas PSC can -- indeed, must -- interpret for itself what constitutes the "minimum requirements" of section 251 and is not limited to the requirements specified in the FCC's *Local Competition Order*. In Order No. 11, the Arkansas PSC has interpreted the Arkansas Act only to preclude it from imposing on incumbent LECs any interconnection, unbundling, or resale obligation *beyond* those required by federal law.

\* \* \* \*

To the extent that the Arkansas PSC believes that section 251 requires interconnection, unbundling, or resale that is not explicitly required in the *Local Competition Order*, the PSC may under Arkansas law -- and must under federal law -- impose those obligations.

\* \* \* \*

The problem with the PSC's decision in Order No. 11 was not that it limited SWBT's obligations to the minimum requirements of section 251 and the *Local Competition Order* -- rather, it was in the way it broadly reversed its prior decisions without explaining how SWBT's particular proposals satisfied the

requirements of section 251 and the *Local Competition Order*. . . .<sup>1</sup>

AT&T construed Order No. 11 very differently. In brief, AT&T stated that, after Order No. 11, the Arkansas Act precludes the Arkansas Commission from interpreting for itself the "minimum requirements" of section 251, and from imposing on SWBT *any* "interconnection" requirement to which SWBT objects, even a requirement imposed by FCC orders or regulations. According to AT&T, Order No. 11 must be read in this limiting manner, because Order No. 11 reverses all of Order No. 5's non-pricing decisions favoring AT&T without also explaining that such reversals comport with the minimum requirements of section 251. AT&T argued, for example:

AT&T believes that [in Order No. 11] the Arkansas commission treated Act 77 as a mandatory rule of construction prohibiting it from interpreting the [1996 federal] Telecommunications Act in such a manner that would require incumbent LECs to provide access and interconnection on any terms and conditions to which they do not agree. The Arkansas Commission's interpretation and application of Act 77 in Order No. 11 forecloses the possibility that the Arkansas commission believes that it is permitted by Act 77 to impose even those obligations specified in the FCC's Local Competition Order, unless SBC agrees to them. This is confirmed by the numerous respects in which the result that appears to have been mandated in Order No. 11 violates the FCC's Order.

\* \* \* \*

Order No. 11 reflects the Arkansas commission's belief that Act 77 prohibits it from interpreting the [1996 federal] Telecommunications Act to require any term or condition for interconnection, access to unbundled elements and resale which is opposed by the incumbent LEC.<sup>2</sup>

Since SWBT and AT&T responded to our inquiries regarding Order No. 11, the Arkansas Commission has issued Order Nos. 12 and 13 in the interconnection arbitration proceeding between SWBT and AT&T. Order Nos. 12 and 13 may have some relevance to

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<sup>1</sup> Attachment to Letter dated March 10, 1998 from Geoffrey M. Klineberg, Attorney for SWBT, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 97-100, at 3-4, 7 (emphasis in original).

<sup>2</sup> Attachment to Letter dated March 5, 1998 from Frank S. Simone, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 97-100, at 3, 5.

the issues before the FCC regarding preemption of the Arkansas Act. To address that point, we ask that SWBT and AT&T respond, in writing if at all possible, to the following questions:

1. How do Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5? Do Order Nos. 12 and 13 resolve all such issues in favor of SWBT, as apparently required by Order No. 11? If not, why not?

2. Describe how, if at all, Order Nos. 12 and 13 explain the way in which their resolutions of the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251.

3. Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in favor of AT&T in Order No. 5 comport with the minimum requirements of section 251?

4. Does the way in which Order Nos. 12 and 13 resolve the non-pricing issues decided in AT&T's favor in Order No. 5 support SWBT's interpretation of Order No. 11 (as described above), or AT&T's interpretation of Order No. 11 (as described above), or some other interpretation?

In answering these questions, please identify and discuss each relevant arbitration issue separately, comprehensively, and as specifically as possible, including a substantive summary, the pages of each order in which the issue is discussed and resolved, and the issue's reference number. Please address, at a minimum, the issues confronted in Order No. 5 at 7 (resale of promotions), 8-9 (resale of distance learning services), 9-11 (presumptive unreasonableness of resale restrictions), 25-28 (unbundling of dark fiber), 30-31 (unbundling of multiplexing and other services), 36-37 (collocation in huts and vaults), 37-38 (bill and keep method of reciprocal compensation), 38-39 (geographic scope of local calling areas), 40-41 (dialing parity for intraLATA calls), 41-43 (access to poles, ducts, and conduits), and 57 (equal access to services, UNEs, interconnection, and ancillary functions).

We very much appreciate your participation in this dialogue and look forward to discussing the foregoing matters with you. Please call Alex Starr (418-7284) promptly after receipt of this memorandum to schedule a meeting. In addition, please attach a copy of this memorandum to (i) any written responses hereto that you file with the Commission in CC Docket No. 97-100, and (ii) any related meeting summary that you file with the Commission in CC Docket No. 97-100. If you would like a "hard copy" of this memorandum, in addition to a faxed copy, please call Joe Welch (418-1598).

cc: Danny E. Adams, ACSI  
Lisa B. Smith, MCI