

customer to have a PBX or Centrex service. Small customers are unlikely to purchase a PBX or subscribe to Centrex just to use Digital Link service. The proof of this pudding can be found in the fact that AT&T has the grand total of [BEGIN PROPRIETARY] [END PROPRIETARY] customers on Digital Link service. (Tr. 1403). This is a negligible fraction of the approximately [BEGIN PROPRIETARY] [END PROPRIETARY] business customers served by BA-PA. (AT&T St. 1.0 at 10).

BA-PA also touts other technologies as providing competitive opportunities for local exchange providers, including cellular service and "very small aperture terminal" ("VSAT"). (BA-PA R.B. at 44). VSAT is a satellite technology that is used for credit card verifications. (Tr. 1111-1114). Notwithstanding BA-PA's claims, there is no persuasive evidence in the record that these technologies are economically or technically viable substitutes for wireline local telephone service. While there may be some persons for whom cellular phone service is substitutable for wireline service, there is no evidence in the record of the extent to which this is the case.

#### B. Technical and Economic Reality.

It is now possible to consider the extent to which any of the currently used methods of competition are capable of providing effective competition for BA-PA's ubiquitous business local exchange telephone service, and the extent to which they are actually providing such competition. As previously discussed, resale is inadequate to provide competitive pressure

on BA-PA's retail prices. Thus, it is necessary to consider only facilities based competition in this discussion.

To begin with, BA-PA has between 400 (OTS St. 1 at 12) and 450 (Tr. 694) wire centers in Pennsylvania. Of these, only 94 have physical or virtual collocation either physically in place or under construction. (Tr. 693). At this time, there are only 27 to 30 wire centers where CLECs have physically collocated; the balance of the wire centers are those in which there is virtual collocation, or collocation space is under construction. (Tr. 692-696, 740-741). Thus, those forms of facilities based competition that depend on collocation are physically possible today in less than one-third of all BA-PA wire centers. As previously discussed, a facilities based competitor who uses only its own facilities to reach customers (i.e., a competitor with its own fiber ring and switch) need only collocate in one wire center per LATA. All other forms of facilities based competition require collocation in each wire center where the CLEC has customers, to take the customers' loops from BA-PA as unbundled loops or high capacity circuits, or to render service by UNE-P, under BA-PA's interpretation of the Eighth Circuit order. Also as previously discussed, even those CLECs that operate their own facilities to reach some customers, also need access to unbundled loops to reach others. As it stands today, a facilities based competitor can only extend its reach to about one-third of BA-PA's service territory, unless it is willing to extend its own wires to the remaining two thirds of all BA-PA wire centers. (Tr. 696). There is no credible

evidence in the record that such a construction project is financially feasible or rational for any competitor.

The foregoing discussion demonstrates why it would not be a good idea to grant BA-PA's petition with the intention of allowing BA-PA to rebalance business rates. If BA-PA were to impose rate increases in those areas where it faces no serious facilities based competition, resellers alone could compete with BA-PA, but would be unable to restrain price increases. Because facilities based competitors need collocation space (unless they are going to simply duplicate BA-PA's entire network--an unlikely event at best, particularly in rural areas), they will be unable to compete in most BA-PA wire centers simply because collocation is not available.

The foregoing discussion also shows why BA-PA's policy of requiring collocation for CLECs seeking to use the UNE-P is not in the public interest. In most BA-PA wire centers, collocation is not yet available, therefore, UNE-P, under BA-PA's interpretation of the Eighth Circuit order, is also unavailable. Again, this makes facilities based competition in rural areas simply impossible.

The credible evidence of record demonstrates that the collocation constraints described here have, in fact, acted to inhibit the growth of facilities based competition in BA-PA's service territory. The OTS presented a study of the location of competitive presence by wire center. That study, and the results thereof, are described adequately at pages 14 through 18 of the OTS main brief:

For his competitive presence analysis, Mr. Kubas obtained data on the number and location of NXX Codes assigned to competitive local exchange carriers (CLECs), the number of unbundled loops purchased by BA-PA wire center, and the extent of numbers ported by BA-PA wire center (updated through March 31, 1998). Mr. Kubas considered this data to be indicative of the presence of BLES competition, through, for example, a CLEC's purchase of unbundled network elements (UNEs). See, OTS St. No. 1, p. 11; OTS Ex. No. 1, Sched. 4 (revised); OCA Hearing Ex. No. 4.

Mr. Kubas then matched the BA-PA wire centers which had CLEC NXX Codes, unbundled loops, and/or ported numbers to the BA-PA exchanges encompassing those wire centers. As stated previously, 66 Pa. C.S. §3005(a)(1) requires competitive findings on, inter alia, "the availability of like or substitute services or other activities in the relevant geographic area." Emphasis added.

.....

Mr. Kubas very conservatively assumed that if either one or more BA-PA wire centers within an exchange had an NXX Code assigned to a CLEC, or had unbundled loops being provided or numbers being ported, then BLES competition was at least minimally present in that exchange. OTS St. No. 1, p. 14. However, Mr. Kubas' assumptions were extremely generous to BA-PA for the following reasons.

First of all, as indicated by Ms. Eichenlaub, the assignment of an NXX Code to a CLEC in an exchange does not necessarily indicate that a CLEC is providing BLES or any other business service in that exchange. Tr. 502-503. Also, there is no proof of record that the unbundled loops purchased and numbers ported actually relate to the provision of competitive BLES or any other particular business service. See, OTS Ex. No. 1, Sched. 4 (revised) and OCA Hearing Ex. 4, which provide no breakdown by service category. Furthermore, BA-PA does not maintain information on unbundled loops or ported numbers by customer class; consequently, some of these provisioned loops and ported numbers

may actually relate to residence rather than business competition in a given exchange. Tr. 1335.

Despite Mr. Kubas' extreme generosity in finding competitive presence for BLES, Mr. Kubas still found that there were 192 BA-PA exchanges (revised from 193 during the hearing on June 2, 1998)<sup>1</sup> where there is not even a minimal competitive presence for BLES, based upon no assignment of NXX Codes, no provisioning of unbundled loops, and no porting of numbers. OTS Ex. No. 1, Sched. 1 (revised). Also, all but six of these 192 exchanges are in Density Cell 4 (the least dense, rural areas of BA-PA's service territory), indicating again that the local exchange is a more relevant geographic area for targeting the presence of competition or lack thereof, than the entire state. OCA Hearing Ex. 5; Tr. 489, 1331.

In the remaining exchanges (other than the 192 exchanges in OTS Ex. No. 1, Sched. 1 (revised)), approximately 16,000 unbundled loops for business and residential customers combined are being provided in approximately [begin proprietary ██████████ end proprietary] BA-PA wire centers. OCA Hearing Ex. 4. Also, approximately 12,600 numbers are being ported for business and residential customers combined in approximately [begin proprietary ██████████ end proprietary] BA-PA wire centers. OTS Ex. No. 1, Sched. 4 (revised). BA-PA has approximately 400 wire centers in Pennsylvania. OTS St. No. 1, p. 12.

The 16,000 unbundled loops together with the 12,600 ported numbers represent approximately [begin proprietary ██████████ end proprietary] of BA-PA's total business, Centrex, and Public/PFV access lines, based upon data provided by BA-PA in response to an OTS interrogatory.<sup>2</sup> See, OTS Ex. No. 1, Sched. 5.

.....  
Based upon his analysis of NXX Codes assigned to CLECs, provisioned unbundled loops, and ported numbers, Mr. Kubas concluded that BA-PA is still the only provider of BLES in the 192 exchanges and the primary provider of BLES in the remainder of its territory. While

criteria other than competitive presence for BLES in the relevant geographic area must be considered, the presence of competitors is viewed by OTS as so fundamental to a competitive declaration as to constitute a threshold requirement. OTS St. No. 1, p. 16. Since competitive presence for BLES is not ubiquitous in BA-PA's service territory, and since BA-PA presented its case only on an "all or nothing basis", BA-PA's Petition should not be granted with respect to BLES.

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<sup>1</sup> While the 192 and 193 exchange numbers were treated as proprietary by OTS, BA-PA disavowed this proprietary status by placing these numbers in the public record. Tr. 503; BA-PA St. No. 1.1, p. 25.

<sup>2</sup> This percentage is, again, extremely generous to BA-PA as it does not reflect the possibility that a CLEC combines a ported number to an unbundled loop to serve one business access line.

The OTS study demonstrates, beyond any doubt, that there is no current facilities based competition in at least one-half of all BA-PA wire centers. This comes as no surprise considering that facilities based competition (except where the competitor installs its own entire network) is impossible without collocation, and collocation is not available in most BA-PA wire centers.

The OTS study also demonstrates that there is little facilities based competition anywhere in BA-PA's service territory. Because the OTS study does not count customers who are served by facilities based carriers who use their own facilities exclusively, it obviously underestimates the CLECs' market share. Nevertheless, even the data provided by BA-PA in Appendix I to its main brief shows that its largest facilities based competitors serve only [BEGIN PROPRIETARY] [REDACTED] END

PROPRIETARY] lines. However, BA-PA itself served [BEGIN PROPRIETARY] [REDACTED] [END PROPRIETARY] as of the beginning of this year. (OCA St. 1.0 at 21-22).

BA-PA contended that Mr. Kubas' findings as to lack of competition in 192 or 193 BA-PA exchanges are inaccurate because Mr. Kubas did not consider resale or facilities-based competition that is allegedly present in some of these exchanges. Also, BA-PA belittled Mr. Kubas' study by characterizing the 193 exchanges as containing only 10% of BA-PA's business-access lines. (BA-PA St. 1.1 at 25; BA-PA St. 4.1 at 11). These arguments are meritless for the following reasons. As discussed above, while resale is a relatively inexpensive way to compete, it is ineffective in restraining BA-PA price increases, and may not be a viable way to enter the market in an environment where the only facilities based provider, BA-PA, can change retail prices at will. Second, there is only a negligible amount of resale being provided today, casting further doubt upon its viability as a competitive threat. Third, as also discussed above, even if you count all of the lines served by the largest facilities based CLECs, BA-PA's market share exceeds 90%. Fourth, there are no collocation facilities in two-thirds of BA-PA wire centers; facilities based competition is not practical in those wire centers without collocation. Finally, 10% of BA-PA's [BEGIN PROPRIETARY] [REDACTED] [END PROPRIETARY] still leaves roughly [BEGIN PROPRIETARY] [REDACTED] [END PROPRIETARY] without any competitive presence.

In further response to Mr. Kubas, BA-PA, for the first time in rebuttal, attempted a competitor presence analysis targeted to wire centers and density cells. (BA-PA St. 4.1, Tables 1 and 2). BA-PA witness Dr. Taylor examined Mr. Kubas' 193 exchanges (later revised to 192) and concluded, as indicated in his rebuttal Table 1, that [BEGIN PROPRIETARY] [END PROPRIETARY] of these exchanges had resale presence, [BEGIN PROPRIETARY] [END PROPRIETARY] also had CLEC facilities or collocation presence, and [BEGIN PROPRIETARY] [END PROPRIETARY] additional exchanges had CLEC facilities or collocation presence but no resale, for a total of [BEGIN PROPRIETARY] [END PROPRIETARY] exchanges with purported competitor presence out of the 193 identified by Mr. Kubas. (BA-PA St. 4.1, Table 1). Based upon Table 1, Dr. Taylor concluded that all but five percent of BA-PA's business access lines are in wire centers with a competitive presence. (BA-PA St. 4.1 at 12; Tr. 1332). Aside from the questionable nature of Dr. Taylor's methods of determining where competitors are "present" (OTS M.B. at 20-21), these arguments are meritless for the reasons set forth in the immediately preceding paragraph. Even these figures establish that, by Dr. Taylor's standards for "competitive presence," there are roughly 130 wire centers (about 25% of the total) with no competitive presence. The five percent of the access lines without a competitive presence amount to roughly [BEGIN PROPRIETARY] [END PROPRIETARY] of BA-PA's [BEGIN PROPRIETARY] [END PROPRIETARY]. Obviously, those customers in wire centers without a competitive

presence would be most likely to suffer rate increases if this petition is granted.

While there is other evidence in the record concerning competitive presence, it is not necessary to further analyze it, as it does not alter the reality that BA-PA possesses an overwhelming share of the market for business local exchange service in Pennsylvania. Nor does that evidence alter the fact that BA-PA retains its overwhelming market share a full five years after Chapter 30 of the Public Utility Code opened the local exchange market in Pennsylvania to competition, and two and one-half years after the Telecommunications Act of 1996 further opened the market.

BA-PA contends that the Commission should overlook its large market share. It contends that a large market share can be a liability and that growth is a more important measure of the competitors' ability to thwart attempts by BA-PA to raise prices. (BA-PA R.B. at 11-14). It asks the Commission to decide in its favor because resellers could enter the market if BA-PA raised rates, even though resellers have not done so to date. (BA-PA St. 1.1 at 25). I do not find these arguments to be persuasive.

Implicit in BA-PA's argument that the Commission should overlook its large market share is the notion that competitors could rapidly enter any of its local exchange markets if BA-PA raised rates in that market. Clearly that is not the case for facilities based carriers in the two-thirds of BA-PA wire centers where there are no collocation facilities. That leaves resellers. As previously discussed, for a variety of reasons, it

is not clear that resellers alone will be an effective restraint on BA-PA's ability to raise rates in the absence of regulation.

BA-PA has cited no case where an administrative agency has deregulated a dominant company with a market share in excess of 90% on the theory that there are some competitors who have gained a little market share, and who might be able to gain more if the former monopolist raised prices. As a matter of historical precedent, the FCC did not declare AT&T to be non-dominant in the toll market until 1995 "approximately 8 years after the general completion of interLATA equal access, at which point AT&T's share of access minutes was just 55 percent. (AT&T St. 1.1 at 5). See In re Motion of AT&T Corp. to be reclassified as a Non-Dominant Carrier, 11 F.C.C.R. 3271 (Oct. 23, 1995); Long Distance Market Shares, Third Quarter 1997, FCC Common Carrier Bureau, Jan. 1998, at 3. I do not cite this case to suggest that 55% market share is a magic figure. The FCC's ruling merely shows that BA-PA's request, to have all business services declared competitive, while holding a market share in the BLES market in excess of 90%, borders on the ridiculous.

There is one other point that must be made about BA-PA's contention that competitive conditions are such that all of its business services may be declared competitive with no danger to either the consumers or the nascent competition. Simply put, if one buys this argument for business services, one must also accept that the residential market is competitive, and BA-PA's service for it should also be deregulated. Obviously, the facilities based carriers and resellers who are now serving the

business community are also "potential competition" for BA-PA in the residential market. Because any CLEC residential market share is undoubtedly small, the "growth" in that share must be phenomenal. Some carriers are marketing "bundled" local and toll service to residential customers, as well as Internet access. Finally, in the face of these arguments, the Commission should overlook BA-PA's own market share for residential local phone service. Plainly, all of BA-PA's arguments that the entire business market is competitive can be applied with equal force to the residential market. Yet, I cannot imagine anyone seriously contending (or believing) that the residential local telephone market is competitive. Frankly, if business service is declared competitive today, it will not be surprising to see a similar petition for residential in the near future.

For the foregoing reasons, I conclude that BA-PA has not proven that it faces effective competition for business local exchange service throughout its service territory. Because that issue is at the heart of this case, I also conclude that BA-PA has not shown that its telecommunications services to businesses throughout its service territory should be declared competitive. Accordingly, I recommend that this petition be denied.

Because I conclude that BA-PA has not shown that it faces effective competition throughout its service territory, it is unnecessary to address the other issues raised by the parties. Nevertheless, I will address certain issues, in brief. I will also address BA-PA's request for partial relief.

VII. Ease of Market Entry.

Strictly as an empirical matter, there cannot be ease of entry. As discussed above, fully five years after the passage of Chapter 30 of the Public Utility Code, BA-PA retains over 90% of the business local telecommunications market in its service territory. If entry is easy, where are the competitors? The CLECs point to two factors: the prices set by the Commission for resale and UNEs, and problems encountered in dealing with BA-PA. As I have previously indicated, I will not discuss the pricing issues. Whether due to prices or other factors, there is precious little competition in BA-PA's service territory. Moreover, UNE prices will be reviewed in the upcoming MFS Phase IV. Problems arising from the interactions between the CLECs and BA-PA are another matter.

The CLECs enumerate several problems arising from BA-PA's Operation Support Systems ("OSS"), including preordering, ordering, maintenance, repair and billing. Having heard this litany of complaints during several cases over the past two and one-half years, and confident that the Commission itself also has heard the litany multiple times, I will not repeat it here, but refer the reader to some of the briefs for examples of the problems: CTSI brief at 5-10, MCI main brief at 34-57. BA-PA offers several responses to those claims.

BA-PA claims that because its competitors are entering the market despite any problems with its OSS, the problems must be minimal. (BA-PA R.B. at 33, 38). Frankly, I am unsure what data BA-PA is relying upon to support this claim. As discussed,

the credible market share data shows that competitive entry has been minimal.

BA-PA also argues that the complaints are exaggerated, that some of the problems are caused by the CLECs themselves, that BA-PA is solving many of the problems, and that OSS is largely irrelevant to service provided by facilities based CLECs to large volume customers. (BA-PA R.B. at 33-43). Considering that I recommend denial of this petition for other reasons, it is unnecessary to discuss each of these points in detail, but it may be useful to discuss some points to provide guidance for the future.

While the CLECs are undoubtedly responsible for some of the problems that have arisen, it appears to be the case that BA-PA is dragging its feet in this area. It has been two and one-half years since the passage of the Act, and five years since the passage of Chapter 30. I have heard complaints from CLECs about these problems during several cases over the past two years. At this late date, it is unacceptable for BA-PA to provide the CLECs' programmers with inaccurate or insufficient information of the kind that they need to construct the CLEC side of electronic interfaces that they share with BA-PA. (MCI St. 4 at 25-26). It is equally unacceptable for BA-PA to make substantial changes to its electronic interfaces just as the CLECs are preparing to use them. (MCI St. 4.0 at 25-26). These kinds of problems suggest that BA-PA is making somewhat less than its best effort to meet this critical need. While developing these interfaces is undoubtedly a major task, it has been several years now.

Similarly, while it is true that OSS is less important for service provided by a facilities based CLEC to large volume customers, it is also true that certain forms of OSS are necessary even for these customers. Obviously of prime importance is that CLEC customers be included in the phone book. As described in CTSI's brief at page 7, BA-PA has omitted CLEC customers from phone directories published in February 1998 for Wyoming Valley and in May 1998 for Harrisburg. While it is possible to accept the first omission as an understandable mistake, it stretches one's credulity to think that a second mistake of this serious nature several months after the first was purely coincidental.

Lastly, it seems no coincidence that BA-PA is most responsive to these problems when it is asking for Commission approval of a petition like this one, or its request to enter the interLATA toll market. (CTSI Brief at 6).

It is obvious that the CLECs have an incentive (their desire to enter the market) to fix these problems, while BA-PA has an incentive (retention of its enormous market share) to drag its feet. It seems that the Commission must establish, monitor, and enforce specific performance standards in this area for BA-PA. Independent monitoring of these processes is necessary to sort out the charges and counter-charges between BA-PA and the CLECs. Permanent monitoring is needed to ensure that these problems, once solved, do not reoccur after BA-PA has been allowed into the interLATA market, and once all markets have been declared competitive.

VIII. Ability Of Competitors To Offer Services At  
Competitive Prices, Terms And Conditions.

This is another finding where empirical evidence (five years after the passage of Chapter 30 of the Public Utility Code, BA-PA retains over 90% of the business local telecommunications market in its service territory) directs an obvious answer. If competitors were able to offer all business services or other similar activities throughout BA-PA's service territory, one would expect that they would be doing so now. That clearly is not the case today.

IX. The Availability Of Like Or Substitute Services  
Or Other Activities In The Relevant Geographic  
Area.

This issue has been covered at pages 12-14 and 33, and further elaboration is unnecessary.

X. Coin Telephone and Internet Service Providers.

The coin telephone providers (CAPA) and the Internet service providers (ISP) differ from the CLEC parties in that they are both purchasers of retail service from BA-PA and competitors of BA-PA or a BA-PA affiliate. Because I am recommending denial of BA-PA's petition, it is unnecessary to address their specific claims.

XI. The Imputation Standard.

BA-PA proposes to meet the imputation test of Chapter 30 by aggregating the revenues for all of these services. That is, a proposed rate for a deregulated BA-PA business service would pass the imputation test as long as the revenues for all

business services exceed the revenues that BA-PA would realize from the sale of the associated basic service functions to its competitors. Thus, BA-PA would be free to offer some services at below cost as long as others were priced above cost. According to BA-PA, even a price of zero on a specific service would not flunk this test. (Tr. 339).

This is similar to the proposal that BA-PA made in its Petition Of Bell Atlantic - Pennsylvania, Inc. For A Determination Of Whether IntraLATA Toll Service Is Competitive Under Chapter 30 of the Public Utility Code, Docket No. Docket No. P-00971293. My rulings here, if necessary, would be similar to, but not identical to, my rulings in my recommended decision signed March 30, 1998, in that case. In particular, I conclude that Commission precedent precludes the broad interpretation of the imputation test urged by BA-PA. In an order permitting several Bell toll calling plans to go into effect, the Commission required each of those plans to comply with an imputation safeguard. AT&T Communications of Pennsylvania, Inc., et al. v. Bell Atlantic- Pennsylvania, Inc., Docket Nos. R-00953394C002-0004, R-00953396C0002-0004, R-00953409C0001&C0004, entered July 9, 1997, at 12, 16 and 19. Also, in the Investigation to Establish Standards and Safeguards for Competitive Services, Docket No. M-00940587 (Order entered August 6, 1996), the Commission required BA-PA to perform an imputation analysis for its Centrex Extend service, despite BA-PA's claim that Centrex Extend is a "feature" and not a service. Competitive Safeguards, at 42.

Although I conclude that Commission precedent favors the interpretation urged by AT&T, MCI and OTS, I am not unsympathetic to BA-PA's view of this issue. In a fully competitive market, it would have, and would need, the freedom to price as it saw fit. I do not agree with BA-PA, however, that we are yet at that point. Given the fact that facilities based competition for BLES is non-existent in much of BA-PA's territory, adoption of BA-PA's imputation test would be an invitation to BA-PA to raise prices in areas without facilities based competition, while lowering prices in areas where it faced such competition. Again, this might not be a bad thing, if it attracted facilities based competitors to the areas where BA-PA had raised rates; however, facilities based competitors need collocation space which is not now available in two-thirds of BA-PA's wire centers.

#### XII. Partial Relief.

At the outset of this case, BA-PA took an all-or-nothing approach to its request for competitive designation of all business telecommunications service throughout its entire service territory. BA-PA now asks for the following partial relief in the event that the petition is not granted in full:

Second, even if the record did not support competitive classification of BA-PA's business telecommunications service for all business customers, which it does, it is undisputed that customers generating (conservatively) \$10,000 in annual BA-PA total billed revenues have competitive alternatives via dedicated access arrangements such as AT&T's Digital Link service throughout BA-PA's service territory. Competitors do not need BA-PA's UNEs or its OSS to reach these customers. If the Commission declines to grant BA-PA's petition in its entirety, nothing prevents it from

classifying as competitive telecommunications service the services provided by BA-PA to the obviously competitive segment of the business market of customers spending or committing to spend \$10,000 in annual BA-PA telecommunications revenue.<sup>1</sup>

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<sup>1</sup> The fact that BA-PA has not presented imputation results for this customer segment has no bearing on the Commission's ability to declare business telecommunications service competitive for these customers. Imputation is a forward-looking requirement, not, as the Supreme Court has recently confirmed, a precondition to competitive classification. *Popovsky v. Pennsylvania Pub. Util. Comm'n*, 706 A.2d 1197 (1997). The imputation methodology presented by BA-PA complies with the statute and would be applied to any service declared competitive by the Commission.

(BA-PA R.B. at 2). The other parties oppose BA-PA's request for partial relief on various grounds.

A full reading of the record suggests that large volume customers, particularly in the urban areas of Philadelphia and Pittsburgh, have competitive alternatives to BA-PA. This is not surprising since these areas are where facilities based carriers such as TCG have located fiber rings and switches. (TCG St. 1 at 5). This is not surprising for another reason: it is much easier and more profitable for a CLEC to serve a customer large enough to utilize one or more high capacity lines because the CLEC does not need UNE loops from BA-PA. If a CLEC does not need UNE loops from BA-PA, this lessens (but does not eliminate) the reliance of the CLEC on BA-PA's OSS, which is one less barrier to serving the customer. (The CLEC still needs to get the customer listed in the local BA-PA phone directory; not always a trivial task, as previously discussed.) On balance, effective local phone

competition seems to be much more of a reality for large customers.

The record, unfortunately, contains too little evidence to determine with any degree of confidence the type or size of customer for which competitive designation would be prudent. In its reply brief BA-PA has suggested a break-point of \$10,000 in local revenue, because it calculates that AT&T offers its Digital Link service to customers who generate that little local revenue. (BA-PA R.B. at 2). Equally plausible demarcation points might be \$40,000 in revenue or 24 voice grade lines (corresponding to a single T-1 high capacity line). (Tr. 390-391, 1453-1454). The problem is that the record is insufficiently developed to make a decision on this issue. (I would not necessarily accept BA-PA's proposal based loosely on AT&T's Digital Link service because that service requires a customer to have a PBX, or Centrex service.) The record is also unclear as to the extent to which these services are actually available outside of the major metropolitan areas. Because it was BA-PA's duty to develop the record on these issues, I have no choice but to recommend denial of its request for partial relief. Frankly, had BA-PA originally presented a proposal limited to competitive designation for service to large customers, it might have been possible to try the case within a 180 day schedule, with at least a reasonable prospect for success. As it is, I cannot determine on this record where to draw the line, or what conditions to impose for partial relief.

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CONCLUSION

For the reasons set forth above, I recommend that the Commission dismiss this petition.

RECOMMENDED ORDER

THEREFORE, IT IS ORDERED (subject to Commission approval):

That the Petition of Bell Atlantic - Pennsylvania, Inc. for a determination of whether the Provision of Business Telecommunications Services Is Competitive Under Chapter 30 of the Public Utility Code at Docket No. P-00971307 is denied and dismissed.

Date: July 24, 1998

Michael C. Schnierle  
Michael C. Schnierle  
Administrative Law Judge

## PUC PROJECT NO. 16251

**INVESTIGATION OF SOUTHWESTERN BELL  
TELEPHONE COMPANY'S ENTRY INTO THE  
TEXAS INTERLATA TELECOMMUNICATIONS  
MARKET**

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§  
§  
§  
§

**PUBLIC UTILITY CO  
OF TEXAS**

## COMMISSION RECOMMENDATION

The Texas Public Utility Commission (the Commission) and the telecommunications industry have worked steadily since the passage of the federal Telecommunications Act of 1996 (FTA96) to negotiate and arbitrate interconnection agreements that will facilitate local competition in Texas. Pursuant to FTA96, new entrants have the legal authority to enter the local market in Texas through resale, unbundled network elements (UNEs), and interconnection. FTA96 § 251 (47 U.S.C. § 251).

In order to provide in-region interLATA services, Southwestern Bell Telephone Company (SWBT), a Bell Operating Company (BOC), must establish that the local telecommunications market is irreversibly open to competition. Specifically, Section 271 of FTA96 requires SWBT to establish that

- it satisfies the requirements of either Section 271(c)(1)(A), known as "Track A," or Section 271(c)(1)(B), known as "Track B";
- it is providing the 14 checklist items listed in Section 271(c)(2)(B) pursuant to either a Track A state-approved interconnection agreement or a Track B statement of generally available terms (SGAT);
- the requested authorization will be carried out in accordance with the requirements of Section 272; and
- SWBT's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity." Section 271(d)(3)(C).

Although the Federal Communications Commission (FCC) ultimately determines whether SWBT has established its entitlement to enter the interLATA market pursuant to Section 271, the statute directs the FCC to consult with state commissions. The FCC relies upon state commissions to develop a complete factual record.

SWBT filed its application to provide in-region interLATA service in Texas on March 2, 1998 with the Commission. On April 7, 1998, the Commission held an open meeting at SWBT's Local Service Center (LSC) in the Dallas-Ft. Worth area and on April 21st through the 25th, the Commission held an extensive hearing on SWBT's application. Many competitive local exchange companies (CLECs) and other parties participated in the Commission's 271 proceeding.

SWBT has done much in Texas to open the local market to competition. Notwithstanding that fact, if the Commission were asked to give a recommendation to the FCC today, it regrettably would be required on the record before it to say "not yet." The Commission files this Recommendation in an effort to provide SWBT with guidance on what the Commission believes

SWBT will need to do in order for this Commission to say that the local market is irreversibly open and SWBT should be allowed to provide in-region interLATA service. The Commission files this Recommendation in the spirit of cooperation and in the hope that SWBT will work with the 271 participants and this Commission to get SWBT to "yes."

Participants presented evidence throughout this Section 271 proceeding that indicated their difficulty in working with SWBT to interconnect, purchase UNEs, and provide resale. Although the Commission believes the evidence may indicate that SWBT needs to change its corporate attitude and view the participants as wholesale customers, the Commission also believes many of the problems may be attributable to lack of communication within SWBT and between SWBT and the participants. The Commission believes that SWBT attempted to address many of the problems raised by the participants during the course of the 271 hearing itself. The Commission hopes that this response by SWBT indicates a willingness to address the issues that will get SWBT to "yes."

### **Public Interest**

With regard to the public interest aspect of Section 271 (including the "ease of doing business with SWBT") the Commission makes the following recommendations:

1. The Commission shall establish a collaborative process whereby SWBT, Commission staff, and participants to this project establish a working system that addresses all of the issues raised in this recommendation;
2. SWBT needs to show this Commission and participants during the collaborative process by its actions that its corporate attitude has changed and that it has begun to treat CLECs like its customers;
3. SWBT needs to establish better communication between its upper management, including its policy group, and its account representatives. As a first step, SWBT shall develop policy manuals for its account representatives and put in place a system, such as email notifications, to communicate decisions by the policy group to account representatives and questions or comments back to the policy group;
4. SWBT needs to establish consistent policies used by all SWBT employees in responding to issues raised by CLECs. Toward that end, SWBT shall establish an interdepartmental group whose responsibility is trouble-shooting for CLECs engaged in interconnection, purchase of UNEs, and resale. This group shall be headed by an executive of SWBT with the final decision making power;
5. SWBT needs to establish a system for providing financial or other incentives to LSC personnel based upon CLEC satisfaction;
6. SWBT needs to commit to resolving problem issues with CLECs in a manner that will give CLECs a meaningful opportunity to compete;
7. SWBT shall draft a comprehensive manual for CLECs to ensure the timely provision of all aspects of interconnection, provision of UNEs and resale. The manual shall be written in a fashion that clearly delineates parties' responsibilities, the procedures for obtaining technical and other practical information, and the timelines for accomplishing the various steps in interconnection, purchase of UNEs and resale. The manual should also set forth SWBT's policy with regard to a CLEC's ability to adopt an approved interconnection agreement pursuant to Section 252(i) (this process will be referred to as the "MFN" process);
8. SWBT needs to treat CLECs at parity with the way it treats itself or its unregulated affiliates;
9. SWBT needs to show proof that it has made all the changes it agreed to make during the

- process of the Commission's 271 hearing, all of which have been detailed in the record;
10. SWBT needs to establish that its interconnection agreements are binding and are available on a nondiscriminatory basis to all CLECs;
  11. To the extent SWBT chooses to establish 271 requirements by relying upon interconnection agreements it has appealed, SWBT should consider adopting a statement of generally available terms and conditions;
  12. SWBT needs to establish that it is following all Commission orders referenced in this recommendation and that it intends to follow future directives of the Commission;
  13. SWBT needs to establish its commitment to offering the terms of current interconnection agreements during any period of renegotiation, even if the negotiations extend beyond the original term of the interconnection agreements;
  14. Commission staff, SWBT, and the participants need to establish adequate performance monitoring (including performance standards, reporting requirements, and enforcement mechanisms) during the collaborative process that will allow self-policing of the interconnection agreements after SWBT has been allowed to enter the long distance market;
  15. SWBT shall not use customer proprietary network information to "winback" customers lost to competitors.

### Checklist Items

**ITEM ONE:** Has SWBT provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1), pursuant to 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the public interest section, and the OSS and performance standard sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall investigate and implement measures to expedite construction and installation activities both at tandem and end office locations and, in order to provide for a reasonably foreseeable demand, SWBT shall engage in cooperative planning of trunking facilities with a view toward providing parity for CLECs;
2. The physical collocation tariff should be amended to be made available to any CLEC that wants to physically collocate in SWBT's facilities. A CLEC should be allowed to use the tariff without going through the MFN process in Section 252(i) of FTA96;
3. SWBT shall implement a cost-based virtual collocation tariff available to all CLECs;
4. SWBT shall allow CLECs to buy equipment from non-SWBT entities, and in turn, sell the equipment to SWBT in order to reduce the CLECs' costs.

**ITEM TWO:** Has SWBT provided nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1) of FTA, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the public interest section, and the OSS and performance standard sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The

Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall offer at least the following three methods to allow CLECs to recombine UNEs. These three methods attempt to balance SWBT's security concerns with the desire of CLECs to combine UNEs:
  - virtual collocation of cross-connects at cost-based rates,
  - access to recent change capability of the switch to combine loop port combinations, and
  - electronic access such as Digital Cross Connect (DCS) for combining loop and port at cost based rates, where available;
2. SWBT, Commission Staff, and the participants to this proceeding shall explore the following issues during the collaborative process:
  - additional methods for recombining UNEs or for allowing CLECs to combine UNEs and the costs associated with such methods;
  - whether SWBT is providing any and all individual UNEs required by FTA96;
3. Concerning virtual collocation of cross connects, the Commission recommends that CLECs be able to provide incumbent local exchange companies (ILECs) with rolls of their own wire. When a customer changes carriers from the ILEC to a CLEC, the ILEC would take out a wire from the CLEC's inventory, untie and remove the ILEC's wire, and insert and tie the CLEC's wire. Similarly, if a customer returns to the ILEC, the ILEC must remove the CLECs wire, insert its wire, and return the CLEC's wire to the CLEC's inventory. SWBT, under this scenario, would be able to recover its forward-looking, economic costs and insure the security of the network;
4. Concerns have been raised about the Commission requiring CLECs to obtain right to use licenses, where necessary, when leasing UNEs. Under the current UNE rates, the Commission believes the right to use decision made in the mega-arbitration is appropriate. However, the Commission invites CLECs to seek a UNE-Right to Use adder. This adder would compensate SWBT for costs associated with right to use arrangements. For CLECs choosing to pay the cost-based adder, SWBT would agree to provide the right to use arrangements as a wholesale function. For CLECs choosing not to pay the adder, the Commission's position in the mega-arbitration would apply. The parameters of this issue shall be negotiated in the collaborative process.

**ITEM THREE:** Has SWBT provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the FTA96 pursuant to 271(c)(2)(B)(iii), and applicable rules promulgated by the FCC?

**RECOMMENDATION:** If SWBT implements the Commission's recommendations in the public interest section above, and the OSS and performance standard sections addressed below, the Commission believes SWBT will meet this checklist item.

**ITEM FOUR:** Does the access and interconnection provided by SWBT include local loop

transmission from the central office to the customer's premises, unbundled from local switching or other services in accordance with the requirements of section 271(c)(2)(B)(iv) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the public interest section, and the OSS and performance standard sections addressed below, Staff recommends the following, the details of which could be established in the collaborative process. Staff believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall publish a technical manual showing CLECs how to use the unbundled loops to provide Asymmetric Digital Subscriber Line (ADSL) and High-Speed Digital Subscriber Line (HDSL) services. Spectrum management of available cable space shall be conducted by SWBT in an expedited manner, upon request from a CLEC who intends to use the unbundled loop for high speed ADSL and/or HDSL services;
2. SWBT shall also allow 4-wire HDSL service on an unbundled loop, provided the subscriber to such service has adequate cable or channel capacity or other means to place 911 calls from the same location;
3. SWBT must demonstrate it is complying with its development/reporting obligations for digital subscriber loops and that CLECs using recombined UNEs will have access to mechanized line testing (MLT) at parity with SWBT before the Commission can recommend that SWBT be found to have met this checklist item. Moreover, to the extent SWBT provides virtual collocation of the cross-connect and/or disconnection by recent change order, the MLT issue may be resolved.

**ITEM FIVE:** Does the access and interconnection provided by SWBT include local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services in accordance with the requirements of section 271(c)(2)(B)(v) of FTA96 and applicable rules promulgated by the FCC?

**RECOMMENDATIONS:** In addition to the recommendations addressed above in the public interest section, and the OSS and performance standard sections addressed below, the Commission recommends the following, the details of which could be established in the collaborative process. The Commission believes implementation of both the spirit and the letter of these recommendations would lead to an affirmative answer on this checklist issue.

1. SWBT shall be required to provide the multiplexar and the unbundled dedicated transport (UDT) as a UNE;
2. SWBT shall be required to demonstrate that it is complying with the order in Docket No. 18117 and that it is providing two-way trunks upon request to CLECs. Although the Commission concurs with SWBT that the mere existence of a past dispute that has been resolved by the Commission does not disqualify SWBT from satisfying a check list requirement, it is necessary for SWBT to demonstrate that it is, in fact, complying with the Commission's orders.

**ITEM SIX:** Does the access and interconnection provided by SWBT include local switching unbundled from transport, local loop transmission, or other services in accordance with the requirements of section 271(c)(2)(B)(vi) of FTA96 and applicable rules promulgated by the FCC?