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October 14, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., NW, Room 222  
Washington, DC 20554

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OCT 14 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte - CC Docket No. 96-98; CCBPol 97-4  
Petition of MCI for Declaratory Ruling That New  
Entrants Need Not Obtain Separate License  
or Right-to-Use Agreements Before  
Purchasing Unbundled Network Elements

Dear Ms. Salas:

I am enclosing herewith for inclusion in the record in this proceeding five documents addressing the intellectual property issue that is the subject of MCI's petition in this proceeding -- an issue that has also been referred to the Commission by the United States District Court for the Western District of Texas. See AT&T v. SWBT, No. A-97-CA-029-SS, slip op Aug. 16, 1998 (W.D. TX). These documents were generated during the "collaborative" processes established by the Texas ("TPUC") and California ("CPUC") Public Utilities Commissions in connection with requests by Southwestern Bell Telephone Company ("SWBT") and Pacific Bell Company ("Pacific"), respectively, for certification that these Bell companies have complied with the "competitive checklist" in Section 271 of the Telecommunications Act of 1996 ("the Act").

The first document is a transcript of a session conducted by the ALJ in Texas supervising the TPUC's collaborative process ("ALJ Transcript"); the second document is a portion of the transcript of a TPUC open meeting ("TPUC Transcript"); the third document is a status report submitted by the TPUC's staff ("Status Report"); and the fourth document is an excerpt from the Final Staff Report by the CPUC's Telecommunications Division, dated October 5, 1998 ("CPUC Staff Final Report").

No. of Copies rec'd 023  
List A B C D E

The fifth document is a recommendation by AT&T and MCI that, as required by Section 251(c)(3) of the Act, the TPUC order SWBT to obtain any amendments to its existing licenses with its software and other vendors that would be necessary for CLECs to use UNEs in the same manner as SWBT. AT&T and MCI have also asserted that the Act requires that the costs to license intellectual property be recovered from all parties, including the incumbent, using the elements on the basis of their proportionate use -- just like any other input to or component of a UNE that is shared by multiple carriers. As AT&T has explained, this is the only resolution that will both (1) ensure that new entrants may use the incumbent's facilities on the same terms and conditions as the incumbent, and at the same cost, and (2) minimize the incentive of the incumbent, which enjoys tremendous leverage with its vendors due to its status as a party to the existing licenses and its enormous purchasing power, to urge its vendors to narrowly construe those licenses so as to exclude uses by CLECs.

The Status Report in Texas notes that SWBT opposes the AT&T/MCI recommendation because, according to SWBT, the recommendation would require SBC "having to pay for a portion of the CLEC's right-to-use fees when SWBT had to pay 100% of its own right-to-use fees." But this argument, which SWBT's affiliate Pacific has also asserted in California (see CPUC Staff Final Report, at 97), ignores the fact that CLECs already pay a portion of the incumbent's right-to-use costs through rates established for the particular UNE containing the intellectual property, as the CPUC's staff has explained. Specifically, the CPUC staff has recommended that to comply with the Act's nondiscrimination requirements, "Pacific should negotiate any necessary [right-to-use] agreements for use of the software which parallels that in its own agreement with the vendor," and that "[s]ince Pacific is already recovering this element in its UNE prices, Pacific should not charge CLECs for negotiations or the RTU fees."<sup>1</sup>

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<sup>1</sup> The CPUC staff's rationale is equally applicable to SWBT. During the TPUC's collaborative process, the TPUC's staff inquired about the possibility of adding the right-to-use fees incurred by SWBT when it purchased the equipment to any additional fees that would be necessary for CLECs to receive nondiscriminatory access, to derive a blended rate that SWBT and new entrants would pay. See ALJ Transcript, at 701-02 (remarks of TPUC staff). In response to that query, SWBT's representative (Mr. Auinbauh) stated (ALJ Transcript, at 703) that SWBT's "right to use" is obtained with the equipment on an "integrated" basis, and that "we are not aware of any way that we can separate those costs." Of course, this statement merely confirms that the right-to-use costs are built into the equipment costs, of which at least a portion are borne by CLECs through their payment of the UNE rates.

The ILECs' position that they may procure or accept language in contracts with vendors that preclude them from complying with their statutory duty to provide nondiscriminatory access is plainly unlawful as well as contrary to the Act's underlying purpose of dismantling economic barriers to entry. Indeed, during the collaborative process, a representative of TEXALTEL, an association of small CLECs, stated his organization's concern that "the intellectual property issue would, . . . keep small carriers from using UNES." ALJ Transcript, at 708. The TEXALTEL representative noted that although some CLECs were beginning to use UNES in Texas and that infringement claims had yet to be asserted, "our concern is that it looks like there is an intention on [SWBT's] part to somehow change the status quo out there, depending on how these discussions go." *Id.* at 708-09. AT&T shares TEXALTEL's concern, especially as larger CLECs such as AT&T and MCI consider making increased use of UNES in Texas. In fact, in a letter that SWBT has refused to disclose to AT&T, SWBT has contacted its vendors, apparently to alert them of potential infringement claims, and at least several vendors have advised SWBT that they object to use of UNES by CLECs without an additional license. See Letter, T. Silbergeld (SBC) to W. Caton (FCC), August 15, 1997, CCBPol 97-4; CC Docket No. 96-98 (attaching vendor letters).

The ALJ reported to the TPUC on the status of the collaborative process at an open meeting held on September 9, 1998. During the meeting, Commissioner Walsh reiterated her view that the intellectual property concerns "can be a barrier to entry." TPUC Transcript, at 88. Chairman Wood noted that the court had "referred this particular issue to the FCC for resolution" (*id.*), and that while "there will probably [be] some answer on this hopefully coming somewhere soon" (*id.*), a resolution would be necessary to conclude the collaborative process. Chairman Wood also stated that he "wished we had more folks on this [issue] in the arbitration proceeding." *Id.* at 89.

We understand that the intellectual property issue is scheduled to be the subject of further discussions in the TPUC's collaborative process on October 15, 1998. The CPUC staff's recommendation on the intellectual property issue has been submitted to the CPUC together with its other recommendations relating to Section 271's competitive checklist.

Two copies of this ex parte are being submitted to the Secretary of the Commission in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Very truly yours,

*Albert M. Benz*

Enclosures

cc: Ms. C. Matthey  
Mr. M. Pryor  
Mr. J. Jennings  
Mr. D. Kirschner  
Ms. T. Rutherford

**WORK SESSION PROJECT NO. 16251**

**PUBLIC UTILITY COMMISSION**

**COMPRESSED TRANSCRIPT**

**AUGUST 31, 1998 VOLUME 12**

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TRANSCRIPT OF PROCEEDINGS

BEFORE THE

PUBLIC UTILITY COMMISSION OF TEXAS

AUSTIN, TEXAS

INVESTIGATION OF SOUTHWESTERN )  
BELL TELEPHONE COMPANY'S ENTRY ) PROJECT NO.  
INTO THE TEXAS INTERLATA ) 16251  
TELECOMMUNICATIONS MARKET )

WORK SESSION

AUGUST 31, 1998

BE IT REMEMBERED THAT AT approximately  
4:00 p.m., on Monday, the 31st day of August  
1998, the above-entitled matter came on for  
continued hearing at the Offices of the Public  
Utility Commission of Texas, 1701 North Congress  
Avenue, William B. Travis State Office Building,  
Commissioners' Hearing Room, Austin, Texas  
78701, before KATHERINE FARROBA, Administrative  
Law Judge; and the following proceedings were  
reported by William C. Beardmore, a Certified  
Shorthand Reporter of:  
VOLUME 12 Pages 693 - 762

1 started, then, with Checklist Item No. 2,  
2 Recommendation No. 4, and I'll just go  
3 ahead and read that first. "Concerns have  
4 been raised about the Commission requiring  
5 CLECs to obtain right-to-use licenses where  
6 necessary when leasing UNEs."  
7 "Under the current UNE rates, the  
8 Commission believes the right-to-use  
9 decision made in the mega-arbitration is  
10 appropriate. However, the Commission  
11 invites CLECs to seek a UNE right-to-use  
12 adder. This adder would compensate  
13 Southwestern Bell for costs associated with  
14 right-to-use arrangements."  
15 For CLECs choosing to pay the  
16 cost-based adder, Southwestern Bell would  
17 agree to provide the right-to-use  
18 arrangement as a wholesale function. For  
19 CLECs choosing not to pay the adder, the  
20 Commission's position in the  
21 mega-arbitration would apply. The  
22 parameters of this issue shall be  
23 negotiated in a collaborative process."  
24 I would like to start out first  
25 by getting a response from Southwestern

1 P-R-O-C-E-E-D-I-N-G-S  
2 MONDAY, AUGUST 31, 1998  
3 (4:00 p.m.)  
4  
5 JUDGE FARROBA: Let's go  
6 ahead and go on the record in Project No.  
7 16251, investigation of Southwestern Bell  
8 Telephone Company's entry into the Texas  
9 interLATA telecommunications market.  
10 My name is Kathy Farroba. I'm  
11 the Administrative Law Judge assigned to  
12 this proceeding. This is the first work  
13 session on Checklist Item 2, Recommendation  
14 No. 4, which deals with intellectual  
15 property and licensing and Checklist Items  
16 11 and 12.  
17 What we're going to do is try to  
18 summarize everything that we've gone over  
19 today in this work session. And before we  
20 start, I would like to remind everyone when  
21 you speak on the record to please identify  
22 yourself and use the microphone so that the  
23 Court Reporter can hear what you are  
24 saying.  
25 I guess we'll go ahead and get

1 Bell.  
2 MR. AUINBAUH: Mike  
3 Auinbauh, for Southwestern Bell.  
4 Southwestern Bell is offering unbundled  
5 elements, consistent with the Commission's  
6 arbitration decision under the terms that  
7 you found in the recommendation to be  
8 appropriate.  
9 But in addition to that, we're  
10 willing to offer additional options; and  
11 that is, that our experience procurement  
12 people are willing to work with CLEC  
13 customers to either help them obtain  
14 right-to-use licenses either through our  
15 own folks operating on their behalf as  
16 their agent through an agreement that we be  
17 allowed to operate as their agent or in  
18 three-way discussions, if that's what they  
19 choose.  
20 Our approach to this would be  
21 based on sitting down with the individual  
22 customers and determining how they would  
23 like for us to approach it with the vendors  
24 or we are also willing to sit down with a  
25 group of wholesale customers and negotiate

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1 on behalf of the group.  
2 JUDGE FARROBA: And I  
3 believe there was a joint proposal by AT&T  
4 and MCI that was discussed. And if I could  
5 just get, I guess, a response from AT&T.  
6 MR. WITCHER: Certainly.  
7 For the record, Mark Witcher, for AT&T.  
8 MCI is not here. So I'll -- well, Jason is  
9 here.  
10 MR. WAKEFIELD: This is  
11 Jason Wakefield, for MCI. Mark can speak  
12 to this.  
13 MR. WITCHER: So jump in at  
14 any time. From AT&T's perspective, if the  
15 right-to-use adder is an issue that is to  
16 be addressed, it is -- it should comport  
17 with the Federal Act requirements that the  
18 terms of access to UNES, which we believe  
19 this would be one, be just, reasonable and  
20 nondiscriminatory or at parity with what  
21 Southwestern Bell has. We believe that,  
22 you know, Commissioner Walsh in the May 21  
23 Open Meeting described the competitive  
24 impacts that we were looking at to deal  
25 with here in terms such that they were --

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1 we were intended to pair down the  
2 right-to-use issue to the absolute bear  
3 minimum of legal licensing.  
4 We don't want to have any barrier  
5 to entry thrown up as a result of this, and  
6 that we're trying to avoid a situation  
7 where the vendors have an opportunity to  
8 profit from getting down to the -- you  
9 know, to this issue. Our concern with the  
10 Southwestern Bell proposal is that it does  
11 not meet those objectives.  
12 You've got a couple of situations  
13 here. You've got the vendors who have,  
14 from no malicious intent, but certainly  
15 have a natural incentive to attempt to  
16 profit in that you've got an embedded base  
17 of facilities, you're talking about, and in  
18 many cases you have a new CLEC who has no  
19 interest or no prior involvement with that  
20 vendor.  
21 And then under the arrangement  
22 that Southwestern Bell has proposed -- and  
23 by the way, it would be AT&T's view that  
24 many of those obligations exist anyway as  
25 far as facilitating our opportunity to

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1 obtain the licenses. You've got those --  
2 those concerns, and then if Southwestern  
3 Bell is merely negotiating on behalf of --  
4 of a competitor, then you have a situation  
5 -- again, it's no aspersion on Southwestern  
6 Bell. It's just natural that if  
7 Southwestern Bell -- Southwestern Bell has  
8 no real incentive to do two things: First,  
9 to ensure that no additional licenses are  
10 obtained where not required, and then  
11 second, to ensure that the rates are at the  
12 lowest reasonable cost.  
13 And so that is our concern with  
14 Southwestern Bell's proposal. We have  
15 made -- "we" being AT&T and MCI have made a  
16 proposal which we believe would provide  
17 that incentive. The gist of it would be  
18 that the right-to-use fees and cost would  
19 effectively be taken as a group and spread  
20 over all of the usage applied to that  
21 particular facility, Southwestern Bell and  
22 CLEC alike.  
23 We think that would provide the  
24 necessary incentive to make sure that these  
25 rates are provided at a reasonable level

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1 and that no additional licenses were  
2 obtained unless required, simply because we  
3 would then both have the same self-interest  
4 in making sure that those things didn't  
5 happen.  
6 So that would be AT&T's proposal.  
7 JUDGE FARROBA: Mr.  
8 Auinbauh, just quickly a response and then  
9 Mr. Siegel is only here for a few minutes,  
10 and so I would like to get his comments on  
11 the record before he has to leave.  
12 MR. AUINBAUH: A quick  
13 response. Mike Auinbauh, again, for  
14 Southwestern Bell. Our concern with AT&T's  
15 proposal is that it amounts to shifting  
16 costs from -- that are caused directly by  
17 AT&T to Southwestern Bell's retail  
18 offerings.  
19 We don't believe that it  
20 necessarily complies with the arbitration  
21 award. And, of course, the arbitration  
22 award has already afforded AT&T the  
23 opportunity if they are concerned with  
24 Southwestern Bell's ability to negotiate on  
25 their behalf to negotiate on their own

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1 behalf.

2 JUDGE FARROBA: Thank you.

3 And once those proposals were on the table,

4 there were discussions of several, I guess,

5 various issues involving those, and one of

6 them Mr. Siegel is going to address right

7 now.

8 MR. SIEGEL: Well, one

9 thought that Staff had, which I think has

10 some relationship to the AT&T/MCI proposal

11 but with some clarification related to

12 developing the pot of dollars that relate

13 to usage fees.

14 And if you look at not just what

15 additional charges may come up next month

16 or the time of negotiating with the vendors

17 but also that portion that is included in

18 Southwestern Bell's bundled rate for the

19 equipment and services that it purchases

20 from its vendors and you pull that number

21 out and add it to the new number and then

22 you look at it on an access line basis,

23 that if the vendors are acting in a similar

24 manner between Southwestern Bell and the

25 CLECs that cost shifting probably wouldn't

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1 be a concern.

2 You would basically be making

3 explicit what was implicit in their rates.

4 Southwestern Bell would get allocated a

5 certain portion, but they would be credited

6 that portion that they have already paid as

7 part of the overall bundled equipment

8 charge. And so the thought there was, is

9 that, one, Southwestern Bell and the CLECs

10 would have the same incentives to keep the

11 prices low but, two, to the extent that

12 there was any overpricing that there would

13 at least be some mechanism for the parties

14 to share in that.

15 And the one complexity that staff

16 mentioned is there is always the difficulty

17 of determining what portion of that bundled

18 charge is appropriate to be allocated

19 towards the right to use, and that would

20 have difficulty in and of itself. And if

21 that was the direction that we were going

22 to go, we might need to try to come up with

23 some sort of interim solution to -- for 271

24 purposes while that larger solution would

25 be resolved.

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1 JUDGE FARROBA: Thank you.

2 And Mr. Auinbauh, did you want to respond

3 to that?

4 MR. AUINBAUH: If I may,

5 just briefly. We appreciate the

6 recommendation or the suggestion. We've

7 looked at it, and it does appear somewhat,

8 I'll say, simple, although I don't mean in

9 any derogatory sense to do that. I do

10 believe though in reality in the abstract

11 it looks like it's something that could be

12 done in reality, but we are not aware of

13 any way that we can separate those costs.

14 They really are -- they tend to

15 be rather integrated at least at the

16 original purchase of right-to-use and

17 equipment. We also are concerned that it

18 could become so complicated that it could

19 become its own proceeding in and of itself.

20 And so I guess we're offering at least that

21 caution, that in the abstract it looks like

22 something that could possibly work. We're

23 concerned in reality it may not.

24 JUDGE FARROBA: Well, and

25 another thing I would like to throw out

Page 702

1 that's a variation on that would be, to the

2 extent that that might be difficult or

3 entail a lot of detail and time to do,

4 rather than going back and looking

5 historically at those embedded costs, if

6 there could be some way to extrapolate --

7 come up with some sort of factor on the new

8 -- any new licensing charges and just come

9 up with the old number that way, then maybe

10 that might work, and that might save a lot

11 of time, especially if it could be a number

12 that would be workable to everyone

13 involved.

14 And I'll just throw that out

15 right now as another issue to think about.

16 MR. AUINBAUH: I think --

17 and I believe that maybe long term similar

18 to where we could end up with the proposal

19 that we've made.

20 We've offered to negotiate on

21 behalf of the CLECs, which could be an

22 education process, to determine, quite

23 frankly, through the negotiation whether it

24 be Southwestern Bell on their behalf or

25 Southwestern Bell in conjunction with the

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1 CLECs to learn what does include costs, and  
2 then that information could potentially be  
3 used to get to that end.  
4 At this point in time, we don't  
5 have the information and really haven't got  
6 the means to get to that end.  
7 JUDGE FARROBA: Mr. Witcher,  
8 did you have something?  
9 MR. WITCHER: Yeah. We were  
10 kicking around internally how to get around  
11 the issue that Mr. Auinbauh has raised, and  
12 we had looked at it in terms of what we had  
13 called imputation. I think it's the same  
14 thing you raised. You figure out -- I  
15 mean, to the extent it's varied and to the  
16 extent an additional license, you know, is  
17 attained -- if nondiscrimination and parity  
18 is the key, then those really ought to be  
19 the same, and you can impute it out of  
20 there.  
21 And so that would -- you would  
22 end up then with the incentive that we're  
23 talking about. So I think that's, you  
24 know, something that ought to be looked at.  
25 JUDGE FARROBA: Mr.

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1 Wakefield.  
2 MR. WAKEFIELD: Jason  
3 Wakefield, on behalf of MCI. What is  
4 attractive about that proposal is that it's  
5 MCI's thought that for the majority of  
6 these UNEs there will be no additional  
7 incremental cost and, thus, Southwestern  
8 Bell would have the incentive to negotiate  
9 with the vendor and to reach the conclusion  
10 that there was no incremental cost, because  
11 they would have the credit of the imputed  
12 charge and thus would have no additional  
13 costs whatsoever.  
14 So the imputation would have a  
15 lot of beneficial characteristics to it and  
16 would lead to good faith negotiations.  
17 JUDGE FARROBA: Any other  
18 comments on those proposals?  
19 I just want to note for the  
20 record also. There was another idea that  
21 was discussed, which was the idea of  
22 resolving this issue through an  
23 indemnification clause and interconnection  
24 agreements. And if anyone wants to make a  
25 response on that issue right now, you're

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1 welcome to do so.  
2 MR. WITCHER: Mark Witcher.  
3 I'll take the bait on that one. From our  
4 perspective, the concern about the proposal  
5 as we understood it was that effectively  
6 AT&T would indemnify Southwestern Bell for  
7 any future IP-type claims and we would just  
8 all -- you know, all go away.  
9 Our concern with that are frankly  
10 the same concerns that I have raised in my  
11 testimony in the 271 case and that we've  
12 talked about in the numerous briefings that  
13 we have had, which are, we will not be in a  
14 position in that environment to negotiate,  
15 but because of the issues that we have, as  
16 far as embedded base and a disparity of  
17 bargaining power, we will not have the  
18 opportunity to put ourselves in a parity  
19 position with Southwestern Bell, in those  
20 kinds of negotiations, so we're effectively  
21 inviting the very lawsuits that we are  
22 indemnifying Southwestern Bell against.  
23 So from my perspective that does  
24 not get us where we're trying to go in the  
25 sense of the goals that I laid out at the

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1 first of my presentation.  
2 JUDGE FARROBA: Any  
3 response?  
4 MR. AUINBAUH: I think I'll  
5 let that go.  
6 JUDGE FARROBA: Okay. And I  
7 believe that was basically the extent of  
8 the discussion on this item.  
9 Mr. Land.  
10 MR. LAND: Charles Land, for  
11 TEXALTEL. As discussed earlier, we have  
12 had concerns that the intellectual property  
13 issue would, in effect, if Southwestern  
14 Bell followed up on its stated intentions,  
15 keep smaller carriers from using unbundled  
16 network elements.  
17 I think that the proposals that  
18 Mr. Siegel has presented on part of the  
19 Staff are well worth exploring and would  
20 lead to a fair resolution of those  
21 problems. On the street, at the operating  
22 level, those issues are just being ignored  
23 at the present time.  
24 Various OSSs are being used and  
25 nobody is pursuing intellectual property

Page 709

1 rights for issues or lawsuits, and things  
 2 are working. But our concern is that it  
 3 looks like there is an intention on Bell's  
 4 part to somehow change the status quo out  
 5 there, depending on how these discussions  
 6 go.  
 7 And if that were to happen, then  
 8 and we would have lots of problems out  
 9 there with a great deal of urgency to them.  
 10 MR. AUNBAUH: I'm afraid I  
 11 will have to respond to that. First of  
 12 all, as I said earlier, we're providing  
 13 unbundled elements consistent with what the  
 14 Commission has already determined to be in  
 15 compliance with the Act.  
 16 What we're willing to offer are  
 17 other options here. And I think what we're  
 18 talking about in this recommendation is  
 19 additional options, not whether or not  
 20 we've already complied. We've already  
 21 complied with what the Commission has  
 22 asked -- has ordered us to do, and we are  
 23 doing that.  
 24 So we're not trying to change --  
 25 Charlie, we are not trying to change the

Page

1 behalf of AT&T and TCG.  
 2 There had been an issue raised in  
 3 connection with an OSS workshop where  
 4 Southwestern Bell agreed to check and see  
 5 whether documentation from third-party  
 6 vendors that is not currently circulated  
 7 within OSS training could be circulated  
 8 within OSS training.  
 9 My understanding is that Chris  
 10 Bourgeacq had checked and has a 1-800  
 11 number where CLECs can receive that  
 12 material from the third-party vendors  
 13 themselves. Is that correct, Chris?  
 14 MR. BOURGEACQ: Let me  
 15 clarify a little bit. It's my  
 16 understanding that the information from  
 17 third parties is not being withheld or not  
 18 circulated.  
 19 It is available. It just cannot  
 20 be copied because of copyright issues like  
 21 some of our internal CLEC training manuals.  
 22 But what Southwestern Bell will do and  
 23 provide within a week to 10 days is the  
 24 name of those publishes or vendors for  
 25 those couple of booklets or books with the

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1 status quo at all.  
 2 MR. BOURGEACQ: One  
 3 follow-up, Your Honor. With regard to the  
 4 imputation suggested by AT&T and MCI,  
 5 Southwestern Bell does not agree to that  
 6 because that's not required by Sections 251  
 7 or 252 of the Act.  
 8 JUDGE FARROBA: Okay.  
 9 MR. WAKEFIELD: Just for the  
 10 record, Jason Wakefield. It's my  
 11 understanding that it's the Staff's  
 12 suggestions as well to -- from Mr. Siegel  
 13 and from Judge Farroba with regards to some  
 14 of the possible proposals on imputation.  
 15 JUDGE FARROBA: Right. And  
 16 to the extent that's -- what we were trying  
 17 to do is enable Southwestern Bell to  
 18 recover any costs it may have had for  
 19 licensing previously. So -- but your  
 20 position is noted.  
 21 Anything else on this particular  
 22 issue? Okay. The next item we dealt with  
 23 was --  
 24 MS. BOURLANOFF: Your Honor,  
 25 for the record, Michelle Bourlanoff, on

Page 7

1 number that any CLEC who wants to have its  
 2 own copy of the manual can obtain for  
 3 itself.  
 4 JUDGE FARROBA: Okay. Thank  
 5 you. And thanks for reminding me on that  
 6 issue. Item 11. There were four  
 7 recommendations. I guess we'll start with  
 8 Recommendation No. 1, which addressed  
 9 corrective measures for minimizing the  
 10 manual intervention of the mechanized  
 11 process and the provision of interim number  
 12 portability.  
 13 And first, I guess, if we can  
 14 have Southwestern Bell go over what these  
 15 corrective measures are.  
 16 MS. CONWAY: This is Candy  
 17 Conway, with Southwestern Bell. And  
 18 Southwestern Bell has taken corrective  
 19 measures to minimize the concerns with  
 20 manual intervention. Many of those are  
 21 outlined in Linda Kramer's affidavit where  
 22 she discusses things such as the quality  
 23 checkpoints and the process improvement  
 24 team.  
 25 There are some additional

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1 measurements since that that we have, for  
2 corrective measures, that we've instituted  
3 since that affidavit, one of those being a  
4 jeopardy code, where we actually go in and  
5 manually put a code in that stops the  
6 conversion from happening and keeps the  
7 disconnect from flowing.  
8 In addition to that, we've added  
9 single points of contact throughout Texas.  
10 Actually there are three contacts in Texas  
11 that cover the entire state so that if we  
12 do have a problem with the coordinated  
13 conversion they would go to that contact,  
14 and they in turn contact the folks in their  
15 region or their market area to stop this  
16 conversion or help us with any concern that  
17 may -- excuse me -- may be going on.  
18 We also have instituted  
19 involvement with managers. Whenever there  
20 are cancellations of coordinated  
21 conversions within 24 hours of that  
22 conversion, contact is made to managers and  
23 RC MAC or TXI or Field Forces or wherever  
24 the conversion or a department that would  
25 be affected.

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1 The managers in those departments  
2 are notified so that we can get the  
3 appropriate attention to pulling that  
4 conversion off. As related to data, there  
5 is already some data being provided. But  
6 in addition to that, there are two  
7 measurements that we had discussed a couple  
8 of weeks ago. And those two measurements  
9 that we're adding for INP are, No. 1, we're  
10 going to look at any premature disconnects,  
11 and we will measure those.  
12 In addition to that, we're going  
13 to measure any Southwestern Bell misses.  
14 If we get into the conversion and 30  
15 minutes after the coordinated conversion is  
16 to take place Southwestern Bell is not  
17 ready to make that conversion, then that is  
18 a Southwestern Bell miss.  
19 On both of those measurements,  
20 the benchmark is a 95 percent success rate.  
21 JUDGE FARROBA: Okay. And  
22 also I believe there was a request by the  
23 Staff for the underlying data for the  
24 last -- the most recent three-month period,  
25 and Southwestern Bell has agreed to provide

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1 that.  
2 MS. CONWAY: That's correct.  
3 MR. FLEMING: And in  
4 addition, Your Honor -- I'm sorry. Go  
5 ahead. Do you have --  
6 MR. SRINIVASA: A copy of  
7 that will also be provided to the parties,  
8 you know, whatever underlying data that you  
9 provide.  
10 MS. BOURLANOFF: Can I  
11 clarify with regard to request by Staff? I  
12 wanted to clarify that the data that  
13 Southwestern Bell is providing for the  
14 three-month period isn't just performance  
15 measures that you recounted, but actually  
16 the data that shows how many coordinated  
17 conversions or how many INP cuts have been  
18 made and how many loss service, et cetera,  
19 that underlying data.  
20 MS. CONWAY: This is Candy  
21 Conway. That's correct.  
22 MR. FLEMING: This is Gary  
23 Fleming, Southwestern Bell. In addition to  
24 that, I think we had -- we had a discussion  
25 here. In my sense of it, there is the

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1 general agreement that the most effective  
2 means to minimize manual intervention is  
3 for us all to get better at meeting the  
4 appointments and the due dates that we set.  
5 That avoids the need to go in and  
6 have manual intervention. So to that  
7 target, what I would say is that we would  
8 recommend tracking of missed appointments  
9 by all service providers so that we can see  
10 how we are doing and we take an opportunity  
11 for the industry to look at best practices  
12 and find ways to improve the processes for  
13 each one of the service providers. I think  
14 that would serve us all well.  
15 And then, finally, Southwestern  
16 Bell has established the LNP operations  
17 forum. We mentioned that September 14th  
18 and 15th, where with our wholesale  
19 customers we want to sit down and discuss  
20 preorder, order and provisioning processes  
21 associated with LNP processes so that we  
22 can identify any kind of land mines or any  
23 kind of issues that we've seen up to this  
24 point and also get our customers'  
25 perspectives on how that process is

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1 working.  
 2 JUDGE FARROBA: Okay. And  
 3 then also I believe you mentioned the  
 4 Southwest Region Steering Committee --  
 5 MR. FLEMING: Exactly.  
 6 That's going to be in November. I don't  
 7 have the exact dates with me. Katherine,  
 8 do you recall those?  
 9 MS. MUDGE: No. This is  
 10 Katherine Mudge. No. I don't, Gary.  
 11 MR. FLEMING: It's the  
 12 November time frame. Seems like it's mid  
 13 November.  
 14 JUDGE FARROBA: And that one  
 15 will be more of a broad LNP overview?  
 16 MR. FLEMING: It will get  
 17 through some of the process flows and that  
 18 sort of thing, but also, yes, it will go  
 19 into broader issues, kind of the background  
 20 of LNP and those sort of things, some of --  
 21 for example, it will talk some about the  
 22 NANC, what happens there.  
 23 JUDGE FARROBA: And both of  
 24 those are free of charge.  
 25 MR. FLEMING: That's

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1 correct.  
 2 JUDGE FARROBA: Also, I  
 3 believe, when we had our discussion  
 4 earlier, you mentioned that there was  
 5 either a handbook or a manual or some sort  
 6 of documentation that I guess described a  
 7 lot of the common issues that arise in INP,  
 8 or could you address that?  
 9 MR. FLEMING: Yeah. We have  
 10 developed processes in response to some of  
 11 our customers' concerns that we've heard  
 12 about what happens if you get close to the  
 13 due time and you have a problem and we're  
 14 doing flow-through, how do we deal with  
 15 that.  
 16 So what we've done is outlined  
 17 the scenarios that we allude envision  
 18 happening and the processes that need to be  
 19 taken at that point by the wholesale  
 20 customer and by Southwestern Bell to  
 21 address those issues.  
 22 That's been introduced at the  
 23 network operations team already. It's also  
 24 been introduced in other places outside the  
 25 state, and the account managers will be

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1 providing that information as we -- in the  
 2 near future.  
 3 JUDGE FARROBA: Okay.  
 4 MR. FLEMING: They are in  
 5 process right now of trying to get that  
 6 information out. So -- and I've got a copy  
 7 of it today if anybody wants to see it.  
 8 JUDGE FARROBA: I think  
 9 Staff had a request at that point, that  
 10 this information also be made available  
 11 either in the CLEC handbook or on the  
 12 website.  
 13 MR. FLEMING: Okay.  
 14 MS. MUDGE: Judge Farroba,  
 15 may I clarify something on that; and that  
 16 is, that this particular document -- when  
 17 Mr. Fleming suggested that it was being  
 18 reviewed by the network operations team, at  
 19 this juncture we realistically don't know  
 20 when that document is going to be  
 21 completed.  
 22 Usually the way the network  
 23 operations team does its work is through a  
 24 consensus process, and sometimes that may  
 25 take one, two, or a few meetings. So it is

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1 difficult to say necessarily what that end  
 2 result of that document is going to look  
 3 like. It may be very similar, but we won't  
 4 know what that document looks like until  
 5 the network operations team has had an  
 6 opportunity to review it and meet on it in  
 7 its completion.  
 8 MR. FLEMING: There  
 9 certainly will be more discussion,  
 10 Katherine. But right now, it sets up the  
 11 procedures. And basically what this is  
 12 doing is formalizing procedures that are in  
 13 effect today. This is happening today.  
 14 It's not that when you have one of these  
 15 today we say, "Wait. We'll have something  
 16 out later on and we'll deal with it," but  
 17 as we're getting those requests today we're  
 18 dealing with them the best we can.  
 19 We want to be able to communicate  
 20 to our customers exactly what the processes  
 21 are, what they need to do initiate the  
 22 procedures and then what we'll do from that  
 23 perspective on. And what we've done, the  
 24 network operations team, has basically  
 25 taken and explained what those procedures

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1 are and to start that dialogue.  
2 Again, it's things that are  
3 happening right now, but we want to make  
4 sure that we get it out there how to go  
5 about this so that all of our customers  
6 will know exactly how to go about when they  
7 encounter one of these scenarios.  
8 JUDGE FARROBA: And I just  
9 want to also clarify for the record -- I'm  
10 not sure if we've already done this on the  
11 record. The network operations team is not  
12 a part of Southwestern Bell. It is an  
13 industry group --  
14 MR. FLEMING: That's  
15 correct. Part of the PNP -- the Southwest  
16 region PNP Steering Committee Task Force.  
17 JUDGE FARROBA: Thank you.  
18 And then I just had one other question. I  
19 believe there was some discussion on -- it  
20 may have be either coordinated cutovers or  
21 flow-through, but the requirement or  
22 request to have four business hours...  
23 MR. FLEMING: And that's  
24 part of that procedure that's included in  
25 there, the four business hour needs. So

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1 that should be addressed in those same  
2 processes.  
3 JUDGE FARROBA: Okay. And  
4 just quickly, if I could have MCI address  
5 their experiences since the hearing with  
6 INP and how that process is working.  
7 MR. PRICE: Don Price, on  
8 behalf of MCI. The process has improved  
9 since the hearing.  
10 I think it is fair to say some of  
11 the problems that had existed earlier were  
12 problems that once there was more  
13 experience with the process, Southwestern  
14 Bell was able to gain additional control  
15 over its processes and minimize the number  
16 of customer disrupting instances.  
17 They have not gone away  
18 completely but, you know, there has been  
19 improvement.  
20 JUDGE FARROBA: Mr.  
21 Wakefield.  
22 MR. PRICE: I don't know if  
23 you want to get into the numbers game. I  
24 mean, there have been --  
25 JUDGE FARROBA: Yes.

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1 Actually if you could just go over those  
2 numbers again.  
3 MR. PRICE: There were, I  
4 believe, 20 instances that had been  
5 outlined in the complaint that MCI had  
6 originally brought, and that was discussed  
7 again in the 271 hearing.  
8 Since the time of the hearing  
9 there have been, I believe, four other  
10 instances where customer disrupting  
11 activities, whatever you want to call it,  
12 took place. So, again, the number has  
13 declined.  
14 The number of cutovers in total,  
15 I don't think, has changed that  
16 dramatically. So it is an increase or an  
17 improvement in Southwestern's performance.  
18 JUDGE FARROBA: And what is  
19 that total number or what is an estimate?  
20 I think earlier you said about 80.  
21 MR. WAKEFIELD: Jason  
22 Wakefield, on behalf of MCI. As I recall  
23 at the hearing, Southwestern Bell had cut  
24 the service, typically early on, 20 out of  
25 the 80, total. So if we used 80 as kind of

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1 a rough estimate, then it would be three  
2 out of 80.  
3 JUDGE FARROBA: Thank you.  
4 Then I think we also had --  
5 MR. WAKEFIELD: Four out of  
6 80.  
7 JUDGE FARROBA: Okay. Four  
8 out of 80. There was some discussion  
9 involving ChoiceCom and some problems it  
10 had been experiencing with INP. And if I  
11 could get ChoiceCom to briefly address  
12 that, and then I believe the -- where that  
13 discussion led was that you would get  
14 together with Southwestern Bell and you-all  
15 would try to work on this and then report  
16 back on any progress that you've made.  
17 But let me go ahead and get on  
18 the record what the discussion was earlier.  
19 MR. KINSLOW: Yeah. Mike  
20 Kinslow, with ChoiceCom. And we had a  
21 couple of instances last week, and I'll get  
22 to specifics. Candy Conway and I are  
23 working those out today, and we talked  
24 through those and have identified them.  
25 I don't have any quantifiable

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1 numbers, though, how many orders that  
2 relates to for that particular window of  
3 time last week, and we'll be glad to  
4 provide that.  
5 JUDGE FARROBA: And do  
6 you-all have an estimate on when you could  
7 report back, either --  
8 MR. FLEMING: I'm sorry.  
9 Are you looking for us?  
10 JUDGE FARROBA: I guess what  
11 I -- once Southwestern Bell and ChoiceCom  
12 have had a chance to talk and try to come  
13 to some sort of resolution, if we could get  
14 a report back from -- either a joint report  
15 or individual report, that would be  
16 helpful.  
17 MR. BOURGEOIS: Southwestern  
18 Bell can get back in 10 days.  
19 JUDGE FARROBA: Let's go  
20 ahead and do that. And, I guess, if  
21 you-all would report back in 10 days.  
22 MS. CONWAY: This is Candy  
23 Conway, with Southwestern Bell. As far as  
24 the success rate on INP and some of the  
25 changes in what we've seen by instituting

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1 these corrected measures, our rate has  
2 gone -- I would say the last two months  
3 we're approaching 100 percent success rate.  
4 We did have those problems with  
5 MCI, and ChoiceCom has mentioned, but based  
6 on total numbers that we have ported, we  
7 are close to, in the past two months, 100  
8 percent success rate.  
9 JUDGE FARROBA: And that  
10 will be in the underlying data that --  
11 MS. CONWAY: Yes, ma'am.  
12 JUDGE FARROBA: -- you're  
13 going to provide to us.  
14 MR. FLEMING: Yes, Your  
15 Honor. Also we have discussed, when we  
16 were going through this earlier with Mike  
17 and ChoiceCom, the question of whether the  
18 process is working from having access to  
19 Southwestern Bell to address these issues  
20 and whether Southwestern Bell was being  
21 responsive, and I think that was an  
22 affirmative response that that process is  
23 working.  
24 We're responding to those and  
25 taking appropriate actions.

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1 MR. KINSLOW: Mike Kinslow,  
2 with ChoiceCom. That is an affirmative  
3 response. They have been real receptive in  
4 communication in that.  
5 JUDGE FARROBA: Great.  
6 That's good news. I think the next  
7 issue -- oh, okay. Mr. Srinivasa.  
8 MR. SRINIVASA: I think  
9 under the same heading of recommendations  
10 there were a couple of other discussions.  
11 In the workshop you were going to discuss  
12 the LNP was migrating from INP to LN -- PNP  
13 or INP -- I mean -- excuse me -- LNP.  
14 MR. FLEMING: I believe, and  
15 subject to check -- I don't have the agenda  
16 in front of me -- I think the INP to LNP  
17 transition is part of the discussions.  
18 That also may be part of the discussions in  
19 the Southwest Region Steering Committee's  
20 forum that is being scheduled.  
21 MR. SRINIVASA: But also you  
22 described exactly someone who sends in an  
23 order to change from the INP to the LNP,  
24 the process that you wrote down, some of  
25 the examples of how that would be done with

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1 Southwestern Bell's switch location, the  
2 unconditional 10-digit trigger is  
3 initiated, and then at the same time the  
4 remote call forwarding or whatever  
5 methodology is used for the INP that is  
6 disconnected.  
7 MR. FLEMING: Let me explain  
8 that. At the Southwestern Bell switch at  
9 12:01 a.m. on the due date, the  
10 unconditional 10-digit trigger is  
11 activated. The next action by Southwestern  
12 Bell doesn't come until the due date at  
13 10:00 p.m. when the disconnect flows, and  
14 that's assuming that we don't get a manual  
15 intervention to stop that.  
16 At the new service provider's  
17 switch location, there is two basic things  
18 that need to happen. The first is that  
19 they assign -- they start to activate the  
20 NXX and do the translations to activate the  
21 telephone number on the true telephone  
22 number instead of the forwarded two  
23 telephone.  
24 And then the second thing is that  
25 they disconnect the forwarded two telephone

1 number.  
2 JUDGE FARROBA: Okay. And  
3 now on Recommendation No. 2 on Item 11, if  
4 we could get, I guess, Mr. Fleming, the  
5 report you gave on Texas LNP implementation  
6 status.

7 MR. FLEMING: Yes. I  
8 provided a report, and the Court reporter  
9 has a copy of that that basically reflects  
10 Phase I through Phase III completions and  
11 the porting -- successful porting of over  
12 12,000 numbers now in Texas. In addition  
13 to that, we're on track in Phase IV and  
14 Phase V which includes Austin, San Antonio  
15 and El Paso.

16 And the success that we've had in  
17 this both from a Southwestern Bell  
18 perspective and as an industry I think  
19 demonstrates both the ability and the  
20 intent to meet the FCC's deadlines, and we  
21 don't anticipate any further delays at this  
22 point.

23 That same handout is responsive  
24 to Recommendation No. 4, if you would like  
25 me to cover that at this point.

1 I like to jump back and make a comment about  
2 Item 1. I didn't realize we were moving on  
3 until we were moved on.

4 JUDGE FARROBA: Okay. Okay.  
5 Let's go ahead and take that now.

6 MR. PRICE: Yeah, very  
7 briefly, Mr. Fleming had suggested at some  
8 point that perhaps there was a need to do  
9 some measurements of performance in some of  
10 the CLECs, and I just wanted to reiterate  
11 the discussion we had this morning.

12 At this time, unless -- well, if  
13 you're dealing with business customers  
14 particularly and PBX customers, the CLEC  
15 has to deal with -- through the customer  
16 and then with the customer's vendor for the  
17 PBX equipment, and there are things that  
18 can happen with respect to the scheduling  
19 of appointments and whether or not the  
20 vendor shows up at the appropriate time  
21 that has been negotiated with the customer  
22 that is totally outside the CLEC's control.

23 And I want to make sure that the  
24 record is clear that they can measure  
25 whatever -- I mean, you know, we can talk

1 JUDGE FARROBA: Sure. I  
2 guess we can take those both now. And  
3 No. 4, just for the record, is that  
4 Southwestern Bell shall demonstrate that it  
5 has an approved tariff providing PNP.

6 MR. FLEMING: And very  
7 simply, what I've detailed in the handout  
8 is what we've done already, but the facts  
9 are -- and I guess to boil it down -- the  
10 FCC has claimed exclusive federal cost  
11 recovery.

12 However, Southwestern Bell does  
13 have an approved tariff on file with the  
14 FCC for PNP. Those will, again, in  
15 accordance with the FCC schedule will  
16 continue to do -- to pursue the tariffs,  
17 the other tariffs, for end user charges,  
18 but we have an approved tariff on file  
19 today.

20 JUDGE FARROBA: Are there  
21 any other comments on Recommendations 2 and  
22 4?

23 MR. PRICE: No, ma'am. What  
24 I would -- this is Don Price, with MCI. If  
25 I could at the appropriate time, I would

1 about these kinds of measurements but these  
2 things are not all within the control of  
3 the CLEC.

4 MR. FLEMING: And we  
5 certainly recognize that there is a lot of  
6 variables out there when you're trying to  
7 meet a due date.

8 Our experience have been some  
9 service providers -- some of our customers  
10 have very high success ratios at meeting  
11 those due dates. They encounter the same  
12 kinds of problems as others do, I would  
13 assume. I think what -- the point of this  
14 measurement is not to be punitive, but the  
15 point of the measurement is so as an  
16 industry we can see where people are having  
17 success and where people may be having more  
18 problems and have an opportunity to share  
19 best practices, which might show, for  
20 example, a way that one carrier is using to  
21 overcome that kind of a problem.

22 Maybe they developed some kind of  
23 communication with a vendor that has made  
24 that less of a problem. So we think that  
25 is a good opportunity to indicate problem

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1 areas, for one, and to find ways to resolve  
2 those problems and to adopt best practices.  
3 JUDGE FARROBA: Any other  
4 comments?  
5 MS. BOURLANOFF: I just  
6 wanted to add -- Michelle Bourianoff, on  
7 behalf of AT&T and TCG. With regard to  
8 Recommendation 4, Mr. Fleming stated that  
9 Southwestern Bell had an approved FCC  
10 tariff. I wanted to clarify that it's my  
11 understanding that the FCC has approved  
12 their query tariff on an interim basis,  
13 subject to true-up at a later time.  
14 MR. FLEMING: It is on an  
15 interim basis, and we discussed the true-up  
16 and then I didn't know what the order said.  
17 So...  
18 MR. SRINIVASA: Also there  
19 was a discussion that Southwestern Bell  
20 stated that if Southwestern Bell queries on  
21 behalf of an N-1 carrier there is going to  
22 be a charge. Is that correct?  
23 MR. FLEMING: Yes. In the  
24 interim, until the FCC -- as you pointed  
25 out, we have interim approval on this, and

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1 would like to see. Yes.  
2 JUDGE FARROBA: Any other  
3 comments on Recommendations 2 and 4?  
4 MS. MUDGE: This is  
5 Katherine Mudge, on behalf of AT&T and TCG.  
6 My concern that I want to make  
7 sure is -- for the record -- is that with  
8 respect to the 90 day window AT&T during  
9 the permanent number portability steering  
10 committee meetings has, and even during the  
11 271 proceedings, discussed concerns about  
12 how Southwestern Bell would handle  
13 transitioning INP to PNP orders, and I'm  
14 not sure that all of those issues have  
15 necessarily been resolved at this point.  
16 Mr. Lancaster included some of  
17 those concerns in his affidavit in 271.  
18 And, again -- so I don't want you or the  
19 record to reflect that those differences  
20 have been resolved. I think that they are  
21 concerns and without Mr. Lancaster being  
22 here I would hate to say that all of those  
23 concerns outlined in his testimony were  
24 resolved.  
25 MR. FLEMING: If I could

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1 so the approved tariff would provide --  
2 whenever we provide a query on behalf of  
3 the N-1 carrier, then there is a charge  
4 associated with that.  
5 MR. SRINIVASA: And the  
6 other note I have here is -- correct me if  
7 I'm wrong -- within 90 days after the  
8 permanent number portability is  
9 established, you will be able to migrate  
10 INPs to PNP or within 90 days you will do  
11 that?  
12 MR. FLEMING: Yeah. Thank  
13 you. Gary Fleming, Southwestern Bell. Our  
14 objective is to hit a 90 day target for  
15 transition.  
16 What we're doing is trying to  
17 negotiate with each one of our customers to  
18 develop and custom tailor with each one of  
19 those customers what we need to do relative  
20 to INP to LNP transition. If a customer  
21 has five lines, obviously the transition  
22 period would be different, and so we had  
23 looked to do that quicker than 90 days.  
24 But our goal is to get it all  
25 completed within 90 days. That is what we

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1 respond to that. Mr. Lancaster's concerns,  
2 as I recall them from his testimony, as I  
3 got an opportunity to respond to them then,  
4 were that it would take 90 days to do the  
5 transition.  
6 Southwestern Bell shares those  
7 concerns. We would love to see it sooner  
8 if we can. So as quickly as we can get the  
9 INPs transitioned to LNP, we're really more  
10 than happy to do that. What we have seen,  
11 and as I indicated from the last Southwest  
12 Steering Committee meeting, is a concern,  
13 at least on GTE's part, that because they  
14 did Houston 3-31-98, that they have not  
15 been approached by their customers to begin  
16 that transition.  
17 We've already started working  
18 with some of the carriers here to begin  
19 planning for that negotiation -- or  
20 negotiating that transition period. So we  
21 are anxious to sit down and begin those  
22 discussions and get this on a fast track to  
23 see how quickly we can get the transitions  
24 done.  
25 MR. WAKEFIELD: The one

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1 clarification -- Jason Wakefield, on behalf  
2 of MCI -- that Mr. Price made, but he just  
3 stepped back in, was that on the LNP  
4 implementation status table, the fourth  
5 row, I guess, with regards to intercompany  
6 testing to begin 8-24 at CLEC's customer  
7 request that MCI can now be added to that  
8 list. I believe it occurred this week  
9 after --

10 MR. FLEMING: Yeah. As we  
11 pointed out -- and I'll point it back out  
12 for the record -- is that that -- the dates  
13 for the testing or the -- I did that on the  
14 24th. So that was done from last week's  
15 information. So if we had someone that has  
16 requested the test since then, it's not  
17 reflected on there.

18 JUDGE FARROBA: Ms. Mudge.  
19 MS. MUDGE: Judge Farroba,  
20 the only thing I was thinking about,  
21 because Mr. Lancaster isn't here, would it  
22 be possible within a ten-day period to  
23 report back to you jointly after visiting  
24 with Mr. Lancaster and Mr. Fleming to  
25 assure that those concerns that

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1 Mr. Lancaster raised in his 271 affidavit  
2 have been taken care of, given the  
3 discussion that Mr. Fleming had?

4 It seems to me that to have those  
5 two get together, and maybe they have had a  
6 meeting of the minds, and then be able to  
7 report back to you, I would at least like  
8 to be able to give you that assurance. And  
9 if there are any difficulties, if I could  
10 have the opportunity to identify those and  
11 see if we can work them out and I would  
12 like to be able to do that.

13 JUDGE FARROBA: Mr.  
14 Bourgeacq, do you want to respond?

15 MR. BOURGEACQ: My response,  
16 Your Honor, is Mr. Lancaster has had since  
17 the May 21st Open Meeting, June 1st order,  
18 the July 3rd filing, whatever, AT&T has had  
19 ample opportunity to respond. And we've  
20 brought our folks here today to do this.  
21 They have made their position clear. As  
22 Chairman Wood I think at one time said that  
23 these workshops at the time the industry  
24 needs to be here and say their positions,  
25 speak their piece, and try to get things

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1 worked out, not collaterally and all these  
2 other proceedings. So we put our position  
3 on the record.

4 MS. BOURIANOFF: Your Honor,  
5 I would just like to respond to that.  
6 Michelle Bourianoff, on behalf of AT&T and  
7 TCG.

8 I understand the importance of  
9 being here, and I apologized off the record  
10 for miscommunication with 25 work sessions.  
11 It has been a little bit interesting to try  
12 and keep all the signals straight. So I  
13 apologize for the miscommunication in not  
14 having Mr. Lancaster here today.

15 My understanding is Southwestern  
16 Bell has had to cancel an OSS work session  
17 because their (inaudible) will not be  
18 available. I mean, instead of asking to  
19 cancel this we tried to participate the  
20 best of our ability today. If it's  
21 something that would be helpful to have  
22 Mr. Lancaster and Mr. Fleming try to get  
23 together and make sure all of their  
24 concerns are resolved we'll be willing to  
25 do that. If not, we understand that the

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1 meeting was scheduled for today.  
2 We just wanted to make that  
3 offer.

4 MS. MUDGE: And, Your Honor,  
5 I only used the 10 days just because Mr.  
6 Bourgeacq had indicated there was some  
7 information on some other issue he would  
8 get back in 10 days. Again, I'm not trying  
9 to prolong the process. If anything I  
10 would hope that we might be able to get  
11 some assurances that those issues had been  
12 taken care of either through the  
13 discussions in the permanent number  
14 portability steering committee or in other  
15 discussions. I just don't know.

16 MR. BOURGEACQ: If Mr.  
17 Fleming will agree to contact  
18 Mr. Armstrong, (sic) I think it is, or vice  
19 versa if -- (laughter) -- if Mr. Fleming  
20 and Mr. Lancaster can contact and provide a  
21 report as soon as possible, Southwestern  
22 Bell is fine with that.

23 MR. FLEMING: I'd be glad to  
24 call Mike or Mark, either one. (Laughter)  
25 As I indicated earlier, I have read Mark

1 Lancaster's affidavit, and I would assume  
2 that we're going to limit it to the  
3 concerns that he expressed in those  
4 affidavits.  
5 MS. BOURLANOFF: Yes.  
6 Absolutely.  
7 MS. MUDGE: Absolutely.  
8 JUDGE FARROBA: Okay. And  
9 just to clarify, I'm assuming these are  
10 issues that are being dealt with in the  
11 Southwest Steering Committee at this point.  
12 MR. FLEMING: Actually, I  
13 will just tell you that the issues that  
14 Mr. Lancaster had, his concern was that we  
15 weren't converting INPs fast enough, that  
16 it didn't start until the end of the  
17 deadline and then we started converting.  
18 However, I will tell you as a  
19 practical matter, nobody was ready to do  
20 that any sooner anyway.  
21 And the real question has become  
22 trying to get people to be able to convert  
23 within what we would like to do, is the 90  
24 days. So the concerns that he had -- and  
25 the affidavit speaks for itself, but the

1 MR. KINSLOW: Okay.  
2 JUDGE FARROBA: Okay. Let's  
3 move on to Recommendation No. 3, under Item  
4 11, which states, "Southwestern Bell shall  
5 set forth its policy on route indexing and  
6 other forms of INP, including the terms and  
7 conditions upon which it is offered." Mr.  
8 Fleming.  
9 MR. FLEMING: Thank you.  
10 This is Gary Fleming, Southwestern Bell.  
11 Again, we feel like the real answer to this  
12 lies in LNP.  
13 It's going to be available in all  
14 the top SMAS in Texas, the largest SMAS by  
15 the end of this year; plus we certainly can  
16 make LNP available anyplace else that we  
17 get a bona fide request within six months  
18 after 1-1-99 or sooner. So we would like  
19 to have that information as quickly as we  
20 can from our customers to help us in the  
21 planning process.  
22 But nonetheless we are willing to  
23 provide route indexing. What we want to do  
24 is to be able to recover our development  
25 costs. We need information from the

1 concerns that he had was how quickly we  
2 could do that, and we're real willing to  
3 sit down. I would be willing to talk to  
4 Mark about that.  
5 JUDGE FARROBA: Okay. Then  
6 let's just leave it at that then and get a  
7 report back.  
8 Any other comments on  
9 Recommendations 2 and 4?  
10 MR. KINSLOW: Yeah. Mike  
11 Kinslow, with ChoiceCom. I just -- part of  
12 our discussion earlier today on the INP to  
13 LNP implementation is there a -- as part of  
14 the implementation schedule, is there a  
15 time-line where we cannot process INP  
16 orders prior to LNP?  
17 MR. FLEMING: And the answer  
18 to that was affirmative. Once the -- once  
19 the date -- the deadline when we start  
20 live commercial porting, then we cannot  
21 have any INP orders on that date or after.  
22 So, for example -- I think the  
23 example we used was 12-14. Then we  
24 wouldn't accept any orders that had 12-14  
25 or later for an INP order.

1 requesting customer to know what their  
2 desires are and what their requirements.  
3 And I just again would point out that we  
4 believe that it was Missouri where this was  
5 ordered, and in Missouri they set forth the  
6 same basic principles the Commission did  
7 there and we have yet to hear from anyone  
8 that wants to sit down and really discuss  
9 those terms and conditions and try to  
10 develop the costs.  
11 JUDGE FARROBA: Okay. And  
12 also I believe, as part of that offer,  
13 assuming there would be a second customer  
14 requesting after the first person, then the  
15 costs would be prorated and so forth and so  
16 on.  
17 MR. FLEMING: That's  
18 correct. We would find some methodology as  
19 we have on other issues to prorate those  
20 costs.  
21 JUDGE FARROBA: And then I  
22 believe there was discussion back and forth  
23 between AT&T and Southwestern Bell. And,  
24 Ms. Mudge, would you like to address that.  
25 MS. MUDGE: Yes, Your Honor.

1 Just to simply summarize, AT&T does want to  
2 pursue at this juncture the route indexing,  
3 and with the change of position of  
4 Southwestern Bell that they will now  
5 provide route indexing, given -- subject to  
6 recovery of developmental costs, our  
7 discussion dealt with the issue of whether  
8 or not anybody should pay developmental  
9 costs, because it's AT&T's position that  
10 it's an INP provision of service and under  
11 the arbitration award each party should  
12 bear their own cost.

13 There wasn't a resolution to  
14 that, but nonetheless that's simply to  
15 summarize our position. The other issue  
16 that we agreed to do, however, was that we  
17 were willing to take the discussion. And  
18 Southwestern Bell's agreement to provide  
19 route indexing, given the parameters that  
20 Mr. Fleming laid out in terms of needing  
21 specific information, et cetera, we were  
22 willing to take that back to our clients in  
23 order to determine from a business  
24 perspective if we wished to pursue  
25 continued discussions with Southwestern

1 that may be an issue that needs to be  
2 referred in the dispute resolution, but we  
3 certainly disagree with their position with  
4 respect to it. I just prefer to leave it  
5 at that.

6 JUDGE FARROBA: All right.  
7 And that's fine. I think the only other  
8 item in that discussion was that -- if AT&T  
9 would just recap the fact that you've got  
10 an agreement with GTE that includes route  
11 indexing.

12 MS. MUDGE: Yes, ma'am. I  
13 would be happy to. AT&T had come into this  
14 workshop believing that we would be looking  
15 at some terms and conditions. And we were  
16 realistically looking at terms and  
17 conditions that AT&T negotiated with -- as  
18 an example, with GTE in Texas. It did not  
19 require an arbitration as to the specific  
20 terms and conditions.

21 That's found in Attachment A to  
22 the GTE interconnection agreement, Section  
23 2.4. And so, you know, when we're looking  
24 at terms and conditions we think that this  
25 is certainly an appropriate place to start.

1 Bell on that issue, and we agreed to report  
2 back to this Commission in two weeks, in  
3 which we will do.

4 And during that time, we will  
5 make an internal business decision and also  
6 be in contact with Southwestern Bell on  
7 that issue as an initial discussion.

8 JUDGE FARROBA: Mr. Kridner.

9 MR. KRIDNER: I would just  
10 simply say that I think that Southwestern  
11 Bell, to this point, has been complying  
12 with the arbitration awards and with the  
13 contract of the parties, but I do also  
14 think that Southwestern Bell has made a  
15 substantial movement today by saying that  
16 it is willing to offer route indexing  
17 subject to the positions that Mr. Fleming  
18 placed upon it through our discussions.

19 And with respect to the costs, I  
20 really don't want to get into that issue at  
21 this point. I don't think that that  
22 profits anything until such time as AT&T  
23 comes to us and tells us whether they have  
24 made a decision. And at that point, the  
25 issue of costs may become very relevant and

1 MS. BOURIANOFF: And AT&T  
2 agreed to provide copies of those terms and  
3 conditions to Staff and to any party in  
4 this docket. We'll make copies available.

5 JUDGE FARROBA: If you could  
6 just -- you don't need to file those. Just  
7 deliver them to everyone.

8 MS. BOURIANOFF: We'll  
9 provide them in the work session if that's  
10 okay.

11 MS. MUDGE: Great. Thank  
12 you very much.

13 MR. SIFUENTES: Your Honor,  
14 Jesus Sifuentes, for WorldCom. I think  
15 that that whole discussion also included  
16 not only AT&T but other CLECs. And with  
17 regard to the terms and conditions as  
18 stated in Recommendation -- under Item 11,  
19 No. 3, that Mr. Kridner and I think  
20 Mr. Fleming would agree that they would  
21 work on terms and conditions or provide  
22 terms and conditions for providing route  
23 indexing once they had the interest or  
24 request of parties.

25 MR. FLEMING: Yes. That's

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1 accurate. Any service provider, any of our  
2 customers can request this and we'll be  
3 glad to meet with any of them.  
4 MS. MUDGE: Well, just for  
5 clarification, I think one of the things  
6 that Ms. Bourianoff clarified was that --  
7 during our discussion, was that we didn't  
8 necessarily have to have a bona fide  
9 request on the table before we actually sat  
10 down to discuss the initial concepts, et  
11 cetera.  
12 And I wanted to make sure -- I  
13 don't think that's what you're saying,  
14 Gary, but since other CLECs are not here  
15 they might want to make sure they know the  
16 parameters. A CLEC does not have to file a  
17 bona fide request to begin discussions with  
18 Southwestern Bell regarding provision of  
19 route indexing. And so that's already off  
20 the table.  
21 Instead, the initial discussions  
22 that a CLEC can have deals with the  
23 business plan or the ideas with respect to  
24 the need for route indexing, and then if  
25 that is a successful discussion then one

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1 respect to terms and conditions or methods  
2 and procedures. And we are willing, as  
3 Mr. Fleming indicated, to sit down and work  
4 with the party that comes to us and would  
5 like to explore using route indexing.  
6 Now, if we are to get into  
7 developing specific terms and conditions or  
8 specific methods and procedures for  
9 offering a route indexing arrangement, then  
10 we're going to need something more than  
11 just an expression of interest. Now,  
12 whether that arises to a bona fide request,  
13 I'm -- I think that's something that we'll  
14 need to take a look at internally.  
15 But that does get down to  
16 incurring expense within the Company, and  
17 that's going to be something that we are  
18 going to be looking at recovering. But I  
19 do not think that Southwestern Bell should  
20 be required to come forward with a complete  
21 proposal, including terms and conditions  
22 and/or methods and procedures, for offering  
23 an arrangement just simply because somebody  
24 wants to sit down at the table.  
25 There has to be more than that.

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1 can go down the bona fide request. That is  
2 your proposal.  
3 MR. FLEMING: That's  
4 correct. And we agreed that the bona fide  
5 request wouldn't be required to start those  
6 initial discussions, that it would be  
7 required before we started -- made any kind  
8 of expenditure, any development work.  
9 MS. MUDGE: Thank you.  
10 JUDGE FARROBA: Mr. Kridner,  
11 do you want to add anything to that?  
12 MR. KRIDNER: No. I will  
13 agree with what Mr. Fleming, the way he  
14 characterized it. I think that our  
15 position is adequately on the table here.  
16 MR. SIFUENTES: Your Honor,  
17 just for clarification. It was not my  
18 understanding that a bona fide request  
19 would be required in order for Southwestern  
20 Bell to provide the terms and conditions  
21 upon which he was offering route indexing.  
22 JUDGE FARROBA: Mr. Kridner,  
23 why don't you go ahead and...  
24 MR. KRIDNER: Well, I mean,  
25 we start getting into semantics with

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1 And, as I say, I think we've come a long  
2 way from where we were, even last week, to  
3 where we are today.  
4 JUDGE FARROBA: Okay. I'm  
5 going to leave it at this point -- there  
6 may be some semantics differences -- and  
7 then just wait for the report back from  
8 AT&T and Southwestern Bell.  
9 MS. BOURIANOFF: AT&T would  
10 agree that it's a substantial change in  
11 Southwestern Bell's position. For the  
12 record, we would agree with that.  
13 MR. SIFUENTES: Well -- and  
14 for the record, Your Honor -- Jesus  
15 Sifuentes, with WorldCom. I would just  
16 note that Recommendation Item No. 11 --  
17 it's not a matter of semantics but does  
18 state that Southwestern Bell would include  
19 the terms and conditions upon which it is  
20 offering route indexing.  
21 MS. NELSON: Right.  
22 MR. SIFUENTES: That is all  
23 I'm asking. I'm not asking about methods  
24 and procedures.  
25 MS. NELSON: Right. And

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1 we're saying a lot of these issues can't be  
2 resolved in one meeting. We are going to  
3 way until the parties come and report back,  
4 because quite frankly if nobody is  
5 interested in going forward then it colors  
6 this Commission's perception of the issue.  
7 JUDGE FARROBA: Okay. Item  
8 12, Recommendation No. 1 related to  
9 offering optional two-way extended area  
10 service arrangements.  
11 And if I could just have  
12 Southwestern Bell briefly state your  
13 proposal on that issue.  
14 MR. GROGAN: Thank you.  
15 Mike Grogan, for Southwestern Bell.  
16 Regarding Item No. 1 on Checklist 12,  
17 Southwestern Bell agrees with the  
18 recommendation, that in areas where we  
19 offer two-way EAS arrangements that CLEC  
20 customers should have the opportunity to  
21 negotiate interconnection rates, terms and  
22 conditions for similar arrangements with  
23 Southwestern Bell.  
24 And we've been involved in these  
25 kinds of negotiations with various CLEC

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1 customers for several years. The -- in  
2 these arrangements, Southwestern Bell does  
3 complete the calls to the retail customers  
4 of the CLEC customers as toll free, and  
5 there is compensation associated with that.  
6 There was an issue that came up  
7 with e\*spire, also known as ACSI formerly,  
8 and we're happy to announce that since the  
9 hearing -- since that issue came up in the  
10 hearing, that issue has been resolved with  
11 e\*spire and we have signed an  
12 interconnection arrangement including the  
13 compensation to resolve that matter.  
14 Relative to the rates that are  
15 associated in that agreement as well as our  
16 agreements with other CLEC customers, those  
17 are the rates that have been determined by  
18 the Commission in its arbitration  
19 proceeding in the second mega-arbitration  
20 and also in the arbitration proceeding that  
21 occurred before that.  
22 And Southwestern Bell is willing  
23 to extend those same terms and arrangements  
24 with other CLEC customers that are  
25 interested. There have been some issues

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1 that have come up in terms of implementing  
2 this, as pointed out in the affidavits of  
3 some of the parties, specifically the area  
4 of needing to obtain a unique NXX code to  
5 implement these kinds of network service  
6 arrangements.  
7 And Southwestern Bell has been  
8 working with the industry and the  
9 Commission Staff to resolve the shortage of  
10 NXX problems as they exist through  
11 activities such as rate center  
12 consolidation.  
13 JUDGE FARROBA: Thank you.  
14 And, Ms. Hartline.  
15 MS. HARTLINE: This is Rina  
16 Hartline, for e\*spire. Your Honor,  
17 Mr. Grogan is correct that e\*spire has  
18 signed an agreement with Southwestern Bell  
19 providing that these calls will be  
20 completed on a toll basis.  
21 This is not consistent with  
22 e\*spire's understanding of the Staff's  
23 comments during the Open Meeting discussing  
24 the recommendation, where e\*spire  
25 understood that these -- that its agreement

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1 did in fact cover these calls as local  
2 calls and not as toll.  
3 But as a business decision,  
4 e\*spire did go ahead and sign the agreement  
5 so that these calls would no longer be  
6 blocked.  
7 JUDGE FARROBA: Okay. Let  
8 me just clarify that these -- you don't  
9 have to dial 1-plus on the calls under that  
10 agreement?  
11 MS. HARTLINE: As a result  
12 of the agreement, the customers no longer  
13 need to dial 1-plus. That's correct.  
14 MR. GROGAN: And just to  
15 clarify, the calls were never blocked.  
16 These calls that we're discussing were toll  
17 calls under our interconnection agreement.  
18 Southwestern Bell assessed toll  
19 rates to its customers. The customers have  
20 to dial a 1-plus in order to dial a toll  
21 call. So the calls were never blocked.  
22 They were just treated as a toll call in  
23 our network arrangements. It was e\*spire's  
24 objective to have those calls treated as a  
25 toll free incoming call, and once they

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1 agreed to the compensation rates that the  
2 Commission had determined in its  
3 arbitration award Southwestern Bell was  
4 willing to extend that same agreement to  
5 e\*spire and change the network routing so  
6 that those calls could be treated as toll  
7 free.

8 MS. HARTLINE: Your Honor,  
9 I'm sorry. One last clarification. I  
10 think this dispute was a dispute over  
11 whether or not the particular language in  
12 e\*spire's agreement actually covered these  
13 calls.

14 E\*spire contended that it did and  
15 Southwestern Bell said that it didn't.  
16 E\*spire has gone ahead and signed that  
17 agreement now.

18 MR. SRINIVASA: Well, the  
19 interconnection agreement they had prior to  
20 that, if someone did not Dial 1, the call  
21 wouldn't go through.

22 Is that correct?

23 MR. GROGAN: No. The call  
24 -- if the -- the call -- it's Southwestern  
25 Bell originating the call and we're

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1 was sent out, Order No. 5, today which  
2 requests comments on the recent filing by  
3 Southwestern Bell of more details on its  
4 plan. And those comments by intervenors  
5 are due September 9th, and then a response  
6 or recommendation from General Counsel is  
7 due September 16th.

8 Are there any other questions or  
9 items that need to be discussed at this  
10 point?

11 MR. WITCHER: This is Mark  
12 Witcher, for the record. Can I raise one  
13 point of order? We handed out a one-page  
14 sheet that identified our proposal, an  
15 MCI/AT&T joint proposal, on intellectual  
16 property.

17 I purposely didn't give that to  
18 the Court Reporter, because I understand  
19 that that had not been processed, and I  
20 understand from Mr. Fleming that at least  
21 the status report that Southwestern Bell  
22 provided was given to the Court Reporter.

23 Would I have permission to  
24 provide our proposals to the Court Reporter  
25 to be carried along to the same extent that

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1 originating it to -- it's an interexchange  
2 call that we treat as a toll call to our  
3 retail customers.

4 So that's the way that the call  
5 would go through.

6 MR. SRINIVASA: Now they  
7 have to dial -- they don't need to dial  
8 1-plus anymore.

9 MR. GROGAN: That's correct.

10 MR. SRINIVASA: That has  
11 been corrected.

12 MR. GROGAN: That's correct.

13 JUDGE FARROBA: Okay. Were  
14 there any other comments on this particular  
15 recommendation item? Okay.

16 The final thing on the agenda for  
17 today was Recommendation No. 2 under Item  
18 12. And what happened there was I gave a  
19 brief status report, because this is a  
20 docket that is currently pending before the  
21 Commission.

22 As of this date, Southwestern  
23 Bell has complied with all Commission  
24 orders in the docket.

25 There is a scheduling order that

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1 Mr. Fleming's document would be.

2 MS. NELSON: I think it's  
3 just the Court Reporter seeks it just for  
4 the purpose of being able to type in what  
5 you read. And so for that purpose you may  
6 provide a copy.

7 MR. WITCHER: Okay. Thank  
8 you.

9 MR. WAKEFIELD: Would we be  
10 able -- Jason Wakefield, on behalf of  
11 MCI -- do what we did with the performance  
12 measures which would be to file in this  
13 docket what we handed out and that way --

14 MS. NELSON: Sure.

15 JUDGE FARROBA: If you want  
16 to file it, you can go ahead and file it.

17 MS. BOURIANOFF: Your Honor,  
18 I don't think that this needs to be on the  
19 record, but we have some feedback on the  
20 forecast information you were looking for.

21 We could probably do that off the  
22 record, though.

23 JUDGE FARROBA: Okay.

24 So other than the forecast issue,  
25 is there anything else? Okay.

1 MR. SRINIVASA: Did you  
2 obtain all the dialing parity, the  
3 17000 --

4 JUDGE FARROBA: Yeah. I  
5 just discussed that.

6 That was the docket that was  
7 currently pending.

8 MR. SRINIVASA: Sorry.

9 JUDGE FARROBA: That's fine.  
10 This work session is adjourned.

11  
12 (Whereupon, the work session was  
13 adjourned at approximately 5:07 p.m.)  
14  
15  
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1 C E R T I F I C A T E

2  
3 STATE OF TEXAS )  
4 COUNTY OF TRAVIS )  
5  
6 I, William C. Beardmore, a  
7 Certified Shorthand Reporter in and for the  
8 State of Texas, do hereby certify that the  
9 above-mentioned matter occurred as  
10 hereinbefore set out.

11 I FURTHER CERTIFY THAT the  
12 proceedings of such were reported by me or  
13 under my supervision, later reduced to  
14 typewritten form under my supervision and  
15 control and that the foregoing pages are a  
16 full, true, and correct transcription of  
17 the original notes.

18  
19 IN WITNESS WHEREOF, I have  
20 hereunto set my hand and seal this 1st day  
21 of September 1998.

22  
23 William C. Beardmore  
24 Certified Shorthand Reporter  
25 CSR No. 918 - Expires 12/31/98  
Kennedy Reporting Service, Inc.  
800 Brazos, Suite 340  
Austin, Texas 78701.

<p align="center"><b>-1-</b></p> <p>1 [6] 712:8 714:9 731:2 753:8,16 757:20 1-1-99 [1] 743:18 1-800 [1] 711:10 1-plus [4] 756:9,13,20 758:8 10 [5] 711:23 725:18,21 740:5,8 10-digit [2] 728:2,10 100 [2] 726:3,7 10:00 [1] 728:13 11 [6] 694:16 712:6 729:3 743:4 748:18 752:16 12 [5] 693:22 694:16 753:8,16 758:18 12,000 [1] 729:12 12-14 [2] 742:23,24 12/31/98 [1] 762:23 12:01 [1] 728:9 14th [1] 716:17 15th [1] 716:18 16251 [2] 693:7 694:7 16th [1] 759:7 17000 [1] 761:3 1701 [1] 693:15 1998 [4] 693:10,13 694:2 762:21 1st [2] 738:17 762:20</p>	<p>742:9 4:00 [2] 693:12 694:3</p> <p align="center"><b>-5-</b></p> <p>5 [1] 759:1 5:07 [1] 761:13</p> <p align="center"><b>-6-</b></p> <p>693 [1] 693:22</p> <p align="center"><b>-7-</b></p> <p>762 [1] 693:22 78701 [2] 693:18 762:25</p> <p align="center"><b>-8-</b></p> <p>8-24 [1] 737:6 80 [6] 723:20,25,25 724:2 724:6,8 800 [1] 762:24</p> <p align="center"><b>-9-</b></p> <p>90 [8] 734:7,10,14,23,25 735:8 736:4 741:23 918 [1] 762:23 95 [1] 714:20 9th [1] 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**PUCT OPEN MEETING**

**Project No. 16251**

**COMPRESSED TRANSCRIPT**

**September 9, 1998**

**KENNEDY REPORTING SERVICE, INC.**

**(512)474-2233**

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WIA

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1 (Brief recess)

2

3 AGENDA ITEM NOS. 12 & 13

4 PROJECT NO. 16251 - INVESTIGATION  
5 INTO SOUTHWESTERN BELL TELEPHONE  
6 COMPANY'S ENTRY INTO THE InterLATA  
7 TELECOMMUNICATIONS MARKET IN TEXAS

8 PROJECT NO. 19000 - RELATING TO  
9 THE IMPLEMENTATION OF SWBT'S  
10 INTERCONNECTION AGREEMENTS WITH  
11 AT&T AND MC:

12

13 CHAIRMAN WOOD: The

14 Commission will go back on the record and

15 take up concurrently Docket Nos. 16251 and

16 19000, which are Items 12 and 13.

17 MS. NELSON: Commissioners,

18 good morning. Donna Nelson, and with me is

19 Kathy Farroba and Howard Siegel. We

20 provided you with a status report on our

21 271 collaborative sessions. What I propose

22 to do today is go through our staff

23 recommendations in that report to apprise

24 you of how we intend to proceed and to get

25 any inputs that you would like to provide

us. Before I do that, I would like to

outline what the status report covers. In

the document before you, we have reviewed

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1 Commission's concerns. Randy Dysart for

2 Southwestern Bell and the subject matter

3 experts for the CLECs have been working

4 very hard to resolve their differences and

5 draft performance measures that will allow

6 the parties to measure parity after

7 Southwestern Bell has entered the long

8 distance market those issues are extremely

9 important. They must be done right for the

10 market to flourish post 271.

11 We believe that when we bring it

12 back next time, we will be able to tell you

13 that many of the performance measure

14 recommendations contained in order 25 have

15 been met. It almost goes without saying

16 that we're not bringing forth any

17 recommendations from the public interest

18 section of the recommendation in that we

19 just held our first two sessions involving

20 the public interest last Thursday and

21 Friday, but I will state it just to make

22 the record clear.

23 We provided you with a copy of

24 our status report and recommendations for

25 going forward. We have not provided it to

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1 the Commission recommendations from Order

2 No. 25 covered in the following

3 collaborative sessions: OSS, Section 272,

4 Item 2, which is UNES, and that's

5 Recommendation 4 in that item, which is

6 intellectual property; Item 3, poles, ducts

7 and conduits; Item 8, White Pages; Item 11,

8 number portability, and Item 12, dialing

9 parity.

10 As you know, and Southwestern

11 Bell and all the participants in the

12 collaborative session know, we are

13 maintaining a very aggressive ambitious

14 schedule in the collaborative sessions. As

15 a result it took extraordinary effort to

16 get the status report to you today. As a

17 result of the time crunch, we're not

18 bringing you a status today on performance

19 measures. We hope to bring that report to

20 you at the next Open Meeting. We believe,

21 however, that great progress has been made

22 in the area of performance measures in the

23 collaborative sessions. Southwestern Bell

24 has been very cooperative in bringing forth

25 very specific proposals to address this

Page 8

1 the parties, but will file it next Monday,

2 sooner if we can; but, again, we've got --

3 we have two collaborative sessions on

4 Thursday and Friday.

5 As I go through the Staff

6 recommendations, you will note that we have

7 indicated that some of the recommendations

8 from Order 25 have been met. When we say

9 that a recommendation has been met, we of

10 course mean that it will be met once

11 Southwestern Bell brings forth evidence

12 consistent with their representations in

13 the collaborative process. I will discuss

14 that further after I go over the specific

15 recommendations. Many of those that have

16 not been met are moving forward and will

17 likely come to closure after staff receives

18 additional information and explores that in

19 a further collaborative session. Some of

20 those that have not been met involved key

21 issues that we will be bringing back to you

22 for input after the parties have given

23 additional feedback time, sometimes in the

24 form of a briefing. So I'm going to go

25 item by item.

1 The first item is -- deals with  
2 Commission recommendations from Item 2,  
3 Recommendation 4, and that has to do with  
4 right to use licenses. And I'm not going  
5 to reread that recommendation itself,  
6 but -- just because it's so long. But this  
7 issue needs further development in a future  
8 collaborative session. The parties have  
9 worked on, as it says -- one of the things  
10 it says is the Commission invites CLECs to  
11 seek a UNE right to use adder, and it says  
12 the parameters of this issue shall be  
13 negotiated in the collaborative session.

1 We've had one collaborative  
15 session on that. Several proposals have  
16 been made. The parties are, I guess,  
17 thinking about those right now. They've  
18 taken them back and it needs further  
19 development.

20 JUDGE FARROBA: This is  
21 Kathy Farroba. Are there any questions on  
22 this particular item?

23 CHAIRMAN WOOD: I'm aware  
24 that DOJ has suggested that a CLEC  
25 indemnify SWBT if they think that they

1 if they pay if necessary for it under this  
2 adder. Two is you take the chance and give  
3 the indemnity provision to kind of move  
4 forward and then to solve all problems that  
5 you've got new equipment and said that it's  
6 implicitly part of that deal so that this  
7 issue really becomes smaller every time if  
8 indeed the FCC doesn't resolve it. I see  
9 (inaudible) Sparks has referred this  
10 particular issue to the FCC for resolution  
11 under their primary jurisdiction and our  
12 arbitration appeal. So there will be  
13 probably some answer on this hopefully  
14 coming somewhere soon, but if we could  
15 craft one here it could certainly get that  
16 issue off the table.

17 COMM. WALSH: I think that,  
18 you know, we did what we did with this in  
19 the arbitration in terms of requiring the  
20 CLECs to do that. And while we might  
21 rethink what we did in the arbitration, I  
22 don't think that's necessary. But I think  
23 in this proceeding we have to look at  
24 anything that can be a barrier to entry.  
25 And I think that the difficulty in getting

1 don't need these at all. That they say  
2 fine, if the vendor comes after us and they  
3 prevail on some action, then we'll take the  
4 hit ourselves and leave you, Bell, out of  
5 it. I think that's a reasonable  
6 alternative.

7 MS. NELSON: Right. And  
8 that's one that was suggested at the --

9 CHAIRMAN WOOD: And I also  
10 would say on a going-forward basis -- I  
11 know this issue has apparently popped up in  
12 other jurisdictions -- they are  
13 contemplating putting a requirement in  
14 there as far as any new equipment is  
15 concerned from kind of 271 forward that  
16 there be explicit multi-user authority  
17 gained when that equipment is purchased.  
18 And so that really all we're talking about  
19 here is grandfathered set of equipment  
20 which in this industry it's written off  
21 pretty quick.

22 So, I mean, it seems like there's  
23 kind of a three-way option. One is to do  
24 the -- do the Bell negotiating on behalf of  
25 the CLEC with the vendors to get it. And

1 access to intellectual property or  
2 licensing or whatever can be a barrier to  
3 entry. And so for this proceeding it's  
4 important that these parties worked out  
5 either a blanket authorization or one of  
6 the issues that the Chairman -- one of the  
7 options that the Chairman proposed because  
8 having it be (inaudible) is not the answer.

9 CHAIRMAN WOOD: Yeah, I  
10 mean, we've got to get this thing resolved.  
11 I wish we had honestly had more folks on  
12 this in the arbitration rather than hearing  
13 about it at court for the first time --

14 COMM. WALSH: Well, I think  
15 it just slipped by and people didn't  
16 realize what a problem it was going to be.

17 JUDGE FARROBA: We'll  
18 continue then during the collaborative  
19 processes on discussion on this issue.

20 CHAIRMAN WOOD: So the other  
21 items under 2 dash -- under Item 2, which  
22 were -- let me see what they were. We had  
23 Check List Item 2. We had a total of four  
24 recommendations. This is the fourth. The  
25 others deal with the recombination issue --

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1 JUDGE FARROBA: Right. And  
2 those haven't been addressed yet.  
3 CHAIRMAN WOOD: Okay.  
4 MS. NELSON: Right.  
5 CHAIRMAN WOOD: Okay. And  
6 we've put that toward the end?  
7 MR. NELSON: Right.  
8 CHAIRMAN WOOD: Okay. So  
9 Item 2 of -- Item 4 on Check List Item 2 is  
10 the only one we've talked about in the  
11 Check List Item 2 today?  
12 MS. NELSON: That's correct.  
13 Are you ready to move on to Item 3?  
14 CHAIRMAN WOOD: Pat?  
15 COMM. CURRAN: Yeah.  
16 CHAIRMAN WOOD: Judy?  
17 COMM. WALSH: Yes.  
18 MS. NELSON: And Item 3 as  
19 you may recall, it's polls, ducts and  
20 conduits. And what we said is if  
21 Southwestern Bell implements the  
22 Commission's recommendations in public  
23 interest, OSS and performance standards  
24 that they would have met this. And  
25 actually Southwestern Bell has established

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1 some performance measures. So staff is  
2 recommending that this check list item is  
3 met except for the OSS -- sort of  
4 overarching OSS issues.  
5 CHAIRMAN WOOD: Okay.  
6 MS. NELSON: And public  
7 interest.  
8 COMM. WALSH: That's fine.  
9 CHAIRMAN WOOD: Good.  
10 MS. NELSON: Okay. We  
11 haven't considered yet Check List Items 4,  
12 5 and 6 and 7 in collaborative sessions.  
13 Four, five and six are actually scheduled  
14 for consideration this Thursday and Friday.  
15 JUDGE FARROBA: Along with  
16 Check List Item 1.  
17 MS. NELSON: Right. Along  
18 with Check List Item 1, which I guess we  
19 skipped over.  
20 The next one is Commission Check  
21 List Item 8, which is White Pages. And on  
22 that, the first three recommendations --  
23 I'll read those because they're shorter.  
24 "Southwestern Bell shall be required  
25 to provide CLEC resellers with the

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1 opportunity to review and correct  
2 White Page Directory listings  
3 prior to the date White Page  
4 Directory listings are published  
5 in telephone directories to  
6 sustain its burden of proof with  
7 regard to the non-discriminatory  
8 access standard between and among  
9 carriers."  
10 That was Recommendation 1. And  
11 two is:  
12 "Southwestern Bell shall allow CLECs  
13 to choose whether their White Page  
14 listings are interspersed with  
15 Southwestern Bell listings or  
16 whether they're separate from  
17 Southwestern Bell listings."  
18 And 3 is Southwestern Bell shall  
19 allow CLEC resellers the same options as  
20 facilities based CLECs for distribution of  
21 White Page telephone directories. And  
22 during the collaborative session on this  
23 issue, Southwestern Bell came forward and  
24 described LIRA (phonetic), which is a new  
25 database management system that will allow

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1 Southwestern Bell to distinguish between  
2 resellers listings and their own listings.  
3 And once that's up in place, which  
4 starts -- it's going to be introduced like  
5 the end of September, early October, and  
6 then testing will begin.  
7 And so what staff is saying is  
8 that follow up is necessary to verify  
9 proper functioning of the LIRA system, but  
10 that we don't necessarily need to wait  
11 until the first white page that results  
12 from that system comes out.  
13 CHAIRMAN WOOD: And the LIRA  
14 system is up and working now?  
15 JUDGE FARROBA: No, the  
16 testing begins in the October-November,  
17 1998 time frame and then actual  
18 verification reports will be available  
19 beginning January 1, 1999.  
20 MS. NELSON: Right. Did  
21 y'all have any comments about that specific  
22 issue?  
23 CHAIRMAN WOOD: So does our  
24 approval of that check list item wait until  
25 January 1 or has it met its --

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1 MS. NELSON: Well, we want  
2 to wait and see what's available after  
3 October 1st when the system is up and  
4 functioning and testing is going on. And  
5 we want to talk -- have another  
6 collaborative session and talk to the  
7 people who have had a chance to test it and  
8 see if they think it will address their  
9 concerns.  
10 COMM. WALSH: You think the  
11 issue is resolved, but you want to wait to  
12 check it off until --  
13 MS. NELSON: Exactly.  
14 CHAIRMAN WOOD: And just to  
15 posture -- I mean, at the end of this we  
16 will want to do a hearing to get all the  
17 evidence in and work through that anyway --  
18 not work through it; hopefully it will have  
19 been worked through already and worked  
20 through getting the evidence in. So I  
21 guess my thought is they've got it checked;  
22 say we've got it and we're just going to  
23 wait on the actual real-world results, but  
24 as far as any further -- anything other  
25 than analyzing or getting feedback from how

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1 the process works, we're done. Is that  
2 right?  
3 MS. NELSON: Right, on that  
4 issue. All we need to see is that it's  
5 implemented and that it works.  
6 JUDGE FARROBA: Right.  
7 Because it hasn't even been tested yet.  
8 CHAIRMAN WOOD: That's 8, 1,  
9 2 and 3 are all under that?  
10 MS. NELSON: That's correct.  
11 And then eight four says Southwestern Bell  
12 shall institute procedures to permit CLECs  
13 to adhere advertisements to the White Page  
14 directory. And during the collaborative  
15 session, they went through the process.  
16 Those adhered advertisements are called tip  
17 on's, and in the collaborative process they  
18 explained how it works. And if a CLEC  
19 chooses bulk delivery, Southwestern Bell  
20 will provide the phone books without  
21 Southwestern Bell's tip on's on and a CLEC  
22 could adhere their own and deliver to their  
23 own customers, or they can get bulk  
24 delivery and put their own covers on the  
25 phone books. And as a result, staff

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1 believes this recommendation has been let.  
2 CHAIRMAN WOOD: Okay.  
3 Questions on White Pages?  
4 MS. NELSON: In terms -- the  
5 next item that we're bringing up today is  
6 Item 11. And these relate to number  
7 portability. Item 11, Recommendation 1  
8 says:  
9 "Southwestern Bell shall take  
10 corrective measures to minimize  
11 the manual intervention of the  
12 mechanized process of interim  
13 number portability. Southwestern  
14 Bell shall provide at least three  
15 month's of data beginning May 15th  
16 to this Commission and to the  
17 participants to ensure that CLEC  
18 customers do not lose service  
19 during the IMP process."  
20 And I think this recommendation  
21 and Southwestern Bell's response to it is  
22 an example of an issue that has been  
23 resolved very quickly and with good action  
24 on the part of Southwestern Bell.  
25 As you might recall, MCI had

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1 customers lose service in 20 out of 80 IMP  
2 cutovers at the time of the 271 hearing.  
3 And MCI said since the hearing they've had  
4 customers lose service in only four out of  
5 80 IMP cutovers. And Choice Com had a  
6 couple of instances, but they said  
7 Southwestern Bell has been very responsive  
8 in correcting the problems.  
9 Southwestern Bell has agreed to  
10 provide staff with information on the past  
11 three months of coordinated conversions.  
12 They have represented that Southwestern  
13 Bell is close to 100 percent success rate  
14 on cutovers. So again, this is an instance  
15 where we want to see that documentation and  
16 discuss it before we go forward, but we  
17 believe that Southwestern Bell's response  
18 to this recommendation has been excellent.  
19 JUDGE FARROBA: And if the  
20 documentation substantiates what we've  
21 discussed, then this would be one we would  
22 bring up to say that it's been met.  
23 CHAIRMAN WOOD: Okay.  
24 MS. NELSON: And No. 2,  
25 related to the Commission's concerns

# Public Utility Commission of Texas

## Memorandum

**TO:** Chairman Pat Wood, III  
Commissioner Judy Walsh  
Commissioner Patricia A. Curran

**FROM:** Donna L. Nelson  
Office of Regulatory Affairs  
Katherine D. Farroba  
Office of Policy Development

**RE:** Project No. 16251, *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market* -- Staff Status Report on Collaborative Process

**DATE:** ✓September 15, 1998

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Attached is the first Staff status report on the collaborative work sessions addressing the Commission Recommendation in this Project. This is the status report that was presented to you at the September 9, 1998 open meeting.

The report summarizes the status of the recommendations that were addressed in the following work sessions:

July 30, 1998, Checklist Item 8  
August 4, 1998, Performance Measures (only as related to Checklist Item 3)  
August 6, 1998, Section 272  
August 13, 1998, OSS  
August 14, 1998, OSS  
August 19, 1998, Section 272  
August 27, 1998, OSS  
August 28, 1998, OSS  
August 31, 1998, Checklist Items 2 (Rec. No. 4 only), 11 and 12

We anticipate the next status report will include summaries on at least the following: the August 4, 5, 11, 25 and September 16, 1998 work sessions on Performance Measures and the September 3 and 4, 1998 work sessions on the public interest.

cc: SWBT and all participants

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**CHECKLIST 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?

**Commission Recommendation Four:**

Concerns have been raised about the Commission requiring CLECs to obtain right to use licenses, where necessary, when leasing UNEs.<sup>1</sup> 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.

**SWBT's Proposal:**

SWBT committed to acting on behalf of any requesting CLEC the negotiations with vendors.

SWBT also raised concerns regarding other proposals: (1) regarding the AT&T/MCI proposal, SWBT raised concerns regarding SWBT's having to pay for a portion of the CLECs right to use fees when SWBT had to pay 100% of its own right to use fees, (2) regarding the proposal presented by Staff at the work session, SWBT raised concerns that while the proposal was theoretically fair, it would not be practical and could require a new costing docket, (3) regarding the indemnity protection option, SWBT had a lesser opposition.

**CLEC'S Comment:**

AT&T/MCI proposed a right-to-use fee sharing mechanism. Under this proposal, parties would share in the additional right to use fees. CLECs opposed SWBT's negotiation offer and the indemnity provision proposal but appeared receptive to Staff's "enhancement" to the AT&T/MCI proposal.

**Staff Recommendation and Follow-Up:**

This issue needs further development at a future collaborative session.

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<sup>1</sup> The issue of the rights of third party vendors is currently pending before the FCC.

**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
**TELECOMMUNICATIONS DIVISION**  
**FINAL STAFF REPORT**

**Pacific Bell (U 1001 C) and Pacific Bell Communications**  
**Notice of Intent to File Section 271 Application**  
**For InterLATA Authority in California**

**October 5, 1998**

will not make a formal recommendation to the Commission on the method for combining UNEs. Instead, staff expect this issue to be addressed in the current pricing phase of the OANAD proceeding, and the Commission should have a draft decision for consideration by the end of the year. An issue of this importance and impact is best addressed in a generic proceeding where a substantial record has been developed. Staff will defer to the outcome in this generic proceeding, where the issue can be examined in a much broader context than was possible in the instant 271 proceeding.

However, if Pacific's five methods are approved in OANAD, in its 271 compliance filing, Pacific should provide a rigorous independent test that demonstrates how well each of the five methods performs. For more information, see the OSS Testing section.

***b) Access to Intellectual Property***

Intellectual property (IP) is the software programs which are part of a UNE which a CLEC leases. Pacific indicated that it is the CLEC's responsibility to obtain any necessary Right To Use (RTU) agreements, although during the course of the workshop Pacific did agree to negotiate with software vendors on behalf of a CLEC. Pacific also indicated that it would provide a list of licensees and use its best efforts to facilitate the obtaining of any licenses. Pacific stated that the company only intends to recover the costs of negotiating on CLECs' behalf, including any RTU specific to the CLEC's use of the UNE.

CLECs countered that Pacific should negotiate a master agreement with vendors on behalf of all CLECs using the intellectual property. When a CLEC orders a UNE that requires the use of intellectual property, Pacific is in the best position to know which rights are implicated.

The workshop participants discussed whether the software vendors are interested in having agreements with the CLECs. Pacific provided copies of documents filed at the FCC by Bellcore, Lucent Technologies, Northern Telecom, et. al. in April 1997 in CC Docket No. 96-98, in response to MCI's petition for declaratory ruling concerning provision in Southwestern Bell's Oklahoma and Kansas Statement of Generally Available Terms (SGAT). The SGAT provision made it clear that the CLEC, not the ILEC, was to negotiate agreements to use any intellectual property belonging to a party other than the ILEC which is embedded in an unbundled network element to be used by a CLEC. MCI asked the FCC to hold that TA 96 requires the ILEC to negotiate the CLEC's use agreement. The FCC has not yet acted on this issue.

Lucent made the following statement in its FCC filing on this issue:

(T)he Commission must preserve Lucent's right to protect its intellectual property against use by any entity, whether a CLEC or incumbent LEC, in a

manner which exceeds the scope of the originally issued license grant, without due and just remuneration. This protection may include, but is not limited to, additional license terms, additional license fees and non-disclosure terms, as appropriate.

Lucent described cases where the scope of a license would have to be expanded. For example, its software licenses may contain provisions limiting the use of the software beyond a certain capacity (i.e., number of users or number of minutes). Another example Lucent raised involves its software development platforms licensed to customers for use in developing telecommunications applications. Use of the platform by a CLEC to develop its own applications would be outside the original license granted to the ILEC.

In its comments, Northern Telecom (Nortel) raised similar concerns, stating that if the UNE allows a carrier to access the vendor's equipment, software and/or proprietary information, or permits such carrier to modify the equipment or software, "significant vendor rights are likely to be implicated." Nortel also states that quality and performance specifications and indemnities made by Nortel to its customer may become void if the access provided to the requesting carrier results in the equipment or software being used in a manner not contemplated by the contract.

While Nortel's contracts may grant an ILEC or CLEC the right to make modifications to its software, Nortel states that it should not be liable for any claims that may be brought against the company arising out of such modifications. Either or both carriers should affirmatively indemnify Nortel against any claims brought by third parties against Nortel because of such modifications.

Even though the FCC has not yet acted on MCI's declaratory ruling, staff determined that the views expressed by the major switch vendors have merit, and will be taken into account. Software is a valuable commodity, and the rights of the developers of such intellectual property must be maintained.

At the time that a CLEC first orders a UNE involving the use of intellectual property, Pacific should give the CLEC two things: (1) a list of all software licenses associated with the UNE and (2) a description of the specific uses allowable under its own license agreement with the vendor.

Other issues to address include who should negotiate with the vendor, and who should pay the RTU fee. Decision 98-02-106 in the Commission's OANAD proceeding adopted Pacific's cost studies for UNEs, with some modifications which are discussed in the decision. The decision states as follows:

Pacific's January 13 cost studies reflect the reassignment of approximately \$500 million of "shared family" costs approved in D.96-08-021 directly to unbundled network elements, as required by TELRIC principles. Of this \$500 million, Pacific determined that approximately \$110 million should be assigned to

switching elements, such as call set-up, usage, line ports, trunk ports and vertical features. Approximately three-quarter's of the reassigned \$110 million represents Right to Use (RTU) fees, i.e., license fees that Pacific pays for the use of switching software.

In other words, CLECs are already paying over \$80 million in RTU fees which has been embedded in the cost of the switching UNE. While Pacific's position in the 271 proceeding is that the RTU for individual CLECs is not included in UNE prices,<sup>15</sup> that does not square with Pacific's cost study for the switching UNE. RTU fees have been included in the cost studies that Pacific filed with the Commission. Since Pacific is assessing this cost on CLECs, Pacific has the obligation to obtain any necessary RTU agreements on behalf of CLECs, at least for all instances in which the CLEC's usage of the intellectual property is the same as Pacific's. This must be done at no charge to the CLEC for either the negotiations or for the RTU fees themselves, since Pacific is already recovering those costs in the price of the UNE. However, in those cases where the CLEC seeks to use the software in a different manner, or to modify that software, the CLEC has an obligation to negotiate an RTU directly with the vendor and pay any RTU fees set by the vendor. Pacific should be indemnified and held harmless if the CLEC does not negotiate RTU agreements in those cases where it is using the software in a different manner from Pacific, or is modifying the software. Likewise, the software vendor should be indemnified and held harmless for any modifications to its software.

Staff recommends that Pacific perform the following steps relating to CLEC access to intellectual property in order to satisfy checklist requirements:

- At the time that a CLEC purchases a UNE involving access to intellectual property, Pacific should provide the following:
  - A list of the software vendors
  - A description of the specific license agreements for each type of software, i.e., specific uses, limits on number of users, or number of minutes.
- Pacific should negotiate any necessary RTU agreements for use of the software which parallels that in its own agreement with the vendor. Since Pacific is already recovering this element in its UNE prices, Pacific should not charge CLECs for negotiations or the RTU fees.

*c) Access to Ancillary Equipment*

In its March 31, 1998, filing AT&T stated that Pacific refuses to provide ancillary equipment (i.e., amplifiers, pads, equalizers, and signaling units) necessary for AT&T to be able to provide service through UNEs. Ancillary equipment is needed to interconnect UNEs or to make a UNE function properly. Without this equipment, many of the

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<sup>15</sup> Pacific's comments on Staff Notes, Subject: UNEs: Access to Intellectual Property, July 23, 1998.

AT&T/MCI JOINT PROPOSAL – RIGHT TO USE ADDER  
CHECKLIST ITEM 2, RECOMMENDATION 4

**Legal Requirements**

To the extent a right to use (RTU) adder is imposed, it must be provided in a way which ensures just, reasonable and nondiscriminatory access to UNES at parity with that SWBT itself obtains – Section 251(c)(3) of the federal act.

**Competitive Requirements**

Vendors, when approached by SWBT about additional RTUs, will have the natural incentive to seek to take advantage of the profit opportunity by demanding additional licenses. If the adder is negotiated by SWBT, but paid only by the CLECs, it is reasonable to expect that SWBT would have little incentive to test vendor claims that additional licenses are required or to ensure that fees are reasonable and on par with the fees charged SWBT. This expectation is reasonable in any circumstance where any entity, not just SWBT, is negotiating on behalf of its competitors and without any of its own self-interest at stake.

The outcome of such negotiations to be expected would likely be multiple and continuing proceedings in which the Commission is called upon to review individual RTUs obtained by SWBT to resolve disputes as to whether licenses were actually required and the extent to which the agreed fees were reasonable. This is precisely the situation that Commissioner Walsh sought to avoid in the May 21 Open Meeting:

There may be stuff that's licensed to Southwestern Bell that other competitive providers or other ILECs have been using all along, and, you know, there may only be five things where, as a matter, you know, that you have to get a license, and what I want to do in the collaborative process is to pare the right-to-use issue down to the absolute bare minimum of legal licensing, and I want Southwestern Bell to participate in that, and to the extent that other people have been using this stuff in their system ad infinitum or for years or whatever, I don't want this to be thrown up as a barrier to entry, and I want to see it get down to the absolute bare minimum.

I think we have to keep from having rights to use just sort of rise up now because people see an opportunity somehow to profit from this thing and get it down to the true . . . legal issue of violating somebody's licensing if you use it and don't get permission. (Docket No. 16251, May 21, 1998 Open Meeting Transcript, Pages 245-246)

The most efficient way to avoid or limit the unnecessary licenses and unreasonable fees is to ensure SWBT has the same incentives to limit incremental RTU fees that it has with respect to RTUs to this point. The events in the UNE cost proceeding, in which proposed costs in many instances were substantially above the level found by the Commission to be reasonable, is a good predictor of the course to be expected for RTU fees, absent the existence of such incentives.

In the existing environment where SWBT negotiates RTUs for its benefit and to benefit its customers, SWBT has the necessary self-interest to negotiate licenses only where necessary and to obtain the most reasonable fees, because it is compelled to pay the resulting costs.

**Proposal**

AT&T/MCI propose to extend this incentive to future RTUs by creation of single right to use adder which is calculated by application of all RTUs associated with the facility, existing fees plus any incremental fees subsequently negotiated by SWBT, across all uses of those facilities. All users of the facilities to which the right to use fees relate, CLECs and SWBT alike, would bear the right to use costs associated with the facility, with individual shares being determined by the individual company's actual use of the facility.