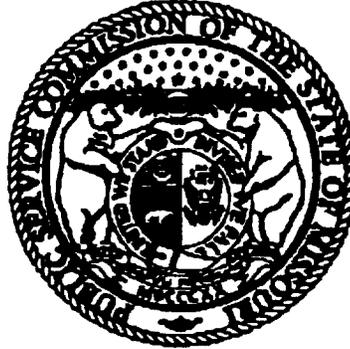


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of AT&T Communications of the
Southwest, Inc.'s Petition for Second Compulsory
Arbitration Pursuant to Section 252(b) of the
Telecommunications Act of 1996 to Establish an
Interconnection Agreement with Southwestern Bell
Telephone Company.

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) Case No. TO-98-115
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REPORT AND ORDER

Issue Date: December 23, 1997

Effective Date: January 2, 1998

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APPEARANCES

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REGULATORY LAW JUDGE: Amy E. Randles.

REPORT AND ORDER

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Procedural History

Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest, Inc. (AT&T) have been negotiating since March 14, 1996, to develop the terms for AT&T's interconnection with SWBT's facilities.

The parties' initial round of negotiations culminated in AT&T's first petition for arbitration, filed with the Commission on July 29, 1996, in Case No. TO-97-40¹.

The Commission issued its Arbitration Order in Case No. TO-97-40 on December 11, 1996, in which it resolved the issues presented by the parties and established interim rates for the resale of SWBT's services and for the sale of SWBT's unbundled network elements (UNEs) to AT&T. This order was modified on January 22, 1997². The Commission's July 31 Final Arbitration Order set permanent rates. This order was modified in several respects on October 2, when the Commission ordered SWBT and AT&T (the parties³) to file an interconnection agreement incorporating the findings made by the Commission. The parties filed an agreement and, on November 5, the Commission issued an order approving the proposed interconnection agreement.

Meanwhile, AT&T initiated negotiations with SWBT on a new set of issues, but the parties were again unable to resolve all of their differences. AT&T filed its petition for a second round of arbitration on September 10, initiating this case. AT&T alleged that it had made its

¹ The March 14, 1996, date was alleged by AT&T in its petition. Case No. TA-97-40 was consolidated with Case No. TA-97-67, a petition for arbitration of an interconnection agreement between MCI Telecommunications Corporation (MCI) and SWBT, on September 16, 1996.

² This and all subsequent references to dates in this order shall be to 1997, unless otherwise noted.

³ "The parties" shall be used to refer collectively to SWBT and AT&T in this Report and Order. The Commission's Staff (Staff) assisted the Commission in its decision-making role and did not act as a party before the Commission in this case. The Office of Public Counsel (OPC) was also a party to this proceeding, but OPC shall not be subsumed in the phrase "the parties" in this Report and Order because OPC will not be party to the interconnection agreement to be filed by SWBT and AT&T.

second request for negotiations to SWBT on April 3. SWBT filed its response to the petition on October 3, concurring in the April 3 date.

On October 17, the Commission ordered the parties to meet with specific members of the Commission's Staff (Arbitration Advisory Staff). The parties were ordered to jointly submit a comprehensive well-defined list of the issues on which they were requesting a second round of arbitration by October 24, and to appear before the Commission on October 27 to address certain jurisdictional issues. The parties complied. The Joint Issues List filed by the parties on October 24 grouped the issues under headings numbered I through XI, according to topic.

Following the hearing on jurisdictional issues, by its order of October 30, the Commission issued a procedural schedule to govern the submission of evidence and argument on the disputed issues. Pursuant to the Commission's order, the parties were required to maintain the same group and issue number designations used in the Joint Issues List throughout the proceedings in order to facilitate tracking of the issues. On November 7, SWBT and AT&T simultaneously filed testimony containing their proposed language on each of the remaining unresolved issues identified in the Joint Issues List.

SWBT and AT&T met during the period of November 10 through 20 with the Arbitration Advisory Staff (AAS) and with Dana K. Joyce, a Special Master appointed by the Commission, for the purpose of resolving as many of the unresolved issues as possible. The parties then filed their Joint Settlement Document on November 21 which identified each of the issues from the Joint Issues list which had either been withdrawn or resolved by agreement by SWBT and AT&T during mediation. In accordance with the

Commission's October 30 order, the Joint Settlement Document set forth the specific language agreed to by the parties for implementing their accord.

Also on November 21, the parties and the Special Master filed their Commission ordered Joint Statement of Remaining Issues (Statement), which was amended by interlineation on November 24 and 25. This Statement was replaced by an Amended Joint Statement of Remaining Issues (Amended Statement) on November 26. The Amended Statement identified each of the unresolved issues from the Joint Issues List and, for each such issue, set forth 1) the language proposed by each party, 2) the Special Master's recommendations concerning which language to adopt, and 3) the Special Master's explanation of his recommendations. SWBT and AT&T each filed their responses to the Special Master's recommendations on November 26, and OPC filed its response to the Amended Statement on November 26. In its Response, SWBT requested a hearing with opportunities for cross-examination prior to issuance of this Report and Order.

Discussion

The arbitration proceedings in Case No. TO-97-40 and in this case were filed pursuant to the federal Telecommunications Act of 1996 (the Act). The Act establishes the following standards for State Commissions to follow in issuing arbitration orders mandating interconnection between incumbent and competitive local exchange carriers (ILECs and CLECs, respectively):

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

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

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

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

(d) PRICING STANDARDS -

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

(A) shall be-

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

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

* * *

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES - For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) APPROVAL BY STATE COMMISSION -

(1) APPROVAL REQUIRED - Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION - The State commission may only reject

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

47 U.S.C. § 252. Section 251 of the Act prescribes the duties of ILECs and CLECs in implementing competition in the local exchange telecommunications services market. See 47 U.S.C. § 251. These include duties relating to interconnection, compatibility, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, unbundled access to network elements, and collocation. *Id.* Relevant language from Section 251 is set forth in the remainder of this Report and Order only as needed.

For the issues which SWBT and AT&T resolved by the time they filed their November 21 Joint Settlement Document, the Commission's review is limited to determining whether the nondiscrimination and public interest standards of 47 U.S.C. § 252(e) have been met. The Commission will defer making a ruling on whether the negotiated terms are non-discriminatory or against the public interest, convenience and necessity until a complete interconnection agreement is filed in this case. The Commission will not require the parties to initiate a separate case for approval of their resolution on those issues.

1. Findings of Fact

The Commission notes at the outset that it is not required to support its decision by findings in this case, as was explained in the Commission's January 22 and October 2 orders in Case No. TO-97-40. Furthermore, the Commission is not restricted in its use of information as a basis for its decision as it would be in a contested case, because this is an arbitration proceeding. Nevertheless, the Commission bases its decision on the pleadings and testimony filed in this case and in Case No. TO-97-40.

Moreover, the Commission, having considered all of the competent and substantial evidence upon the whole record, voluntarily makes the following findings of fact in order to elucidate the reasons for its decision for the benefit of the parties. The positions and arguments of SWBT, AT&T, OPC and the Special Master have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive.

The following findings address all of the remaining issues in dispute as of November 21 (as they were presented in the November 26 Amended Statement). Some of the issues are discussed as a group. However, the Commission identifies all of the issues in this Report and Order by using the same heading and issue numbers as were used by the parties in their October 24 Joint Issues List and all subsequent filings.

For each issue discussed below, the Commission has reviewed the relevant pleadings and testimony and applied the standards enunciated in §§ 251 and 252(c), (d) and (e) of the Act to the facts to arrive at its

findings. Although the Special Master was required to recommend adoption of either the language proposed by SWBT or the language proposed by AT&T in toto, the Commission has considered, in the course of making its findings, whether language other than that proposed by either party should be adopted and whether any special conditions on the solutions proposed by the parties should be adopted.

A. Group I Issues - INTRALATA TOLL/ACCESS

Issue 1 (Receipt of Toll Revenue) and Issue 2 (IntraLATA toll - OS/DA)

These two issues involve the manner in which AT&T is entitled to participate in the intraLATA market before SWBT is authorized to provide in-region interLATA services.

AT&T takes the position that, when AT&T purchases local switching as an unbundled network element (UNE), AT&T should be recognized as the intraLATA toll provider and therefore receive access and toll revenue, prior to implementation of a dual primary interexchange carrier (PIC) system. AT&T maintains that when it purchases unbundled local switching from SWBT, it purchases the ability to originate and terminate all types of calls, including intraLATA toll calls. For the same reason, AT&T argues that intraLATA toll traffic that SWBT routed to AT&T's Operator Services and Directory Assistance (OS/DA) platform should not be returned to SWBT for completion of the call.

SWBT takes an opposite position, citing § 271(e)(2)(b) of the Act. SWBT's position is that it cannot be required to provide intraLATA toll dialing parity under the Act until the earlier of either three years or the time it obtains authority to provide interLATA interexchange services. According to SWBT, when AT&T purchases unbundled local switching, a 1+ intraLATA toll call is automatically routed over SWBT's intraLATA toll

network, and AT&T is effectively reselling SWBT's intraLATA toll and should be required to pay SWBT the retail rate for such usage less the resale discount rate established by the Commission. SWBT states that the Special Master has incorrectly understood the issue to be which company will be the intraLATA toll provider, and that the issue is actually over pricing. (See SWBT's November 26 response). SWBT states in its November 26 response that § 271(e)(2)(b) of the Act "effectively protects SWBT's intraLATA toll revenues for the duration of the applicable time period, but that protection would be eroded if AT&T were permitted to use SWBT's intraLATA toll network without paying intraLATA toll rates (less the 19.2 percent discount) merely because it purchased unbundled local switching."

On these two issues, the Special Master takes the position that AT&T's proposed language should be adopted because the FCC recognizes that § 251(c)(3) of the Act anticipates carriers requesting interconnection to purchase UNEs for the purpose of offering exchange access services (See the *FCC's First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, et al., ¶ 356 (Aug. 1, 1996)*) (hereinafter referred to as the *FCC's First Report and Order*). The Special Master also points out that the unbundled local switching rates contained in this Commission's July 31 Final Arbitration Order in Case No. TO-97-40, et al., were intended to include the ability to originate and terminate all types of calls. The Special Master states that when AT&T purchases unbundled local switching at the rates ordered by the Commission, it is purchasing the full functionality of the switching element, and SWBT's position would deny AT&T the full functionality of this element by limiting AT&T's use of the element.

The Commission agrees with the Special Master that the Act provides no basis for SWBT to exclude intraLATA toll services from the category of services that a CLEC may provide using UNEs. The provision cited by SWBT does not "effectively protect" SWBT's intraLATA toll revenues. This provision addresses the point in time at which SWBT must offer intraLATA toll dialing parity, whereas the language which AT&T seeks to include in an interconnection agreement with SWBT deals only with AT&T's ability to handle intraLATA toll calls when it has purchased local switching as a UNE from SWBT. The Commission finds that when it established prices for AT&T to purchase unbundled local switching capabilities in Case No. TO-97-40, the prices covered the full functionality of the local switch, which includes the ability to originate and terminate all types of calls. The Commission finds that AT&T's proposed language on Issues 1 and 2 correctly implement the requirements of the Act and the Commission's prior orders and should be adopted.

Issue 3 (Tandem Switching and Transport)

This issue concerns whether AT&T or SWBT is entitled to bill access charges to interexchange carriers (IXCs) for calls which are originated by an AT&T customer served by unbundled local switching and for calls terminating to an AT&T customer served by unbundled local switching. SWBT opposes the language proposed by AT&T because in SWBT's view, AT&T's language would permit AT&T to usurp SWBT's intraLATA and interLATA access network and claim the revenues for common transport as its own. SWBT relies on § 251(d)(3) and (g) of the Act to support its argument that access arrangements to IXCs are intended to be unchanged by local interconnection.

The Special Master recommends the adoption of AT&T's language, emphasizing that IXCs currently have a choice of terminating over their own dedicated access facilities or over SWBT's network. The Special Master points out that AT&T's language will allow it to provide access transport for calls originated by an AT&T local customer or terminating to an AT&T local customer, and that when AT&T performs these services, it will pay the appropriate UNE rates established by the Commission to SWBT. The Special Master states that this is consistent with § 356 of the FCC's *First Report and Order*, which allows CLECs to purchase UNEs to provide exchange access service.

The Commission finds that the language proposed by AT&T should be adopted. The portions of the Act which SWBT cites do not provide that access arrangements to IXCs are intended to be unchanged by local interconnection. Rather, § 251(d)(3) simply limits the FCC's jurisdiction to interfere with access charges established by states. Section 251(g) is designed, *inter alia*, to prevent ILECs such as SWBT from cutting off exchange access services in the wake of competition in order to prevent CLECs from effectively participating in the local markets.

B. Group III Issues - OPERATIONAL ISSUES

Issue 1 (UNE Ordering and Provisioning - Use of EASE)

This issue presents the question of whether SWBT should be required to provide access to Easy Access Sales Environment (EASE) as an interim solution for UNE ordering. The Special Master recommends adoption of SWBT's language. According to the Special Master, AT&T desires a modified version of EASE as an interim method for processing UNE transactions, but the time and expense necessary to implement another interim method is not a productive use of resources. There is already an

interim method (LSR Exchange System (LEX)) in place by virtue of Case No. TO-97-40 and the permanent Electronic Data Interchange (EDI) solution will be ready in the near future. The Special Master states that the most appropriate solution is to continue the current interim method until EDI is fully developed.

AT&T emphasizes in its November 26 response that the capabilities of LEX have not been tested, whereas EASE has been used in the Texas market to provision resale customers with little or no manual work on the SWBT side of the interface. AT&T alleges that SWBT has stated that LEX will not provide flow-through capability for UNE orders. According to AT&T, LEX will at best be inferior at processing UNE loop with port orders to the EASE interface that SWBT uses to provision retail POTS (plain old telephone service), which also uses loops with ports. However, AT&T acknowledges that EASE is itself only a partial and interim UNE solution.

AT&T further points out that the language which SWBT proposes to add would limit the types of conversion orders that can be placed using LEX. AT&T states that elsewhere in the Amended Statement the Special Master recommends that SWBT be required to provide already intact UNE combinations to AT&T and that SWBT's language would deny AT&T any interim interface for placing the CLEC Simple Conversion Order authorized by the Commission's July 31 order in Case No. TO-97-40.

The Commission finds that the language proposed by SWBT should be adopted with some modifications because EDI, which is a permanent solution to UNE ordering and provisioning, will be available in the near future and the parties' resources should not be wasted on a new partial, interim solution when a LEX is already available as an interim solution and a permanent solution is imminent. The Commission agrees with AT&T that

SWBT's language could be used by SWBT as authority not to provide LEX ordering for facilities-based conversion orders, whether conversions with changes or conversions as specified. The Commission will require processing of such orders as discussed below. Therefore, the Commission finds that SWBT's language should be adopted, but modified to replace the phrase "Conversion (resale only)" with the phrase "Conversion (resale or using unbundled network elements as specified)."

Issue 2 (UNE Ordering and Provisioning - Data for Conversion as Specified Orders)

This issue involves the data that AT&T must provide to SWBT on a conversion as specified order.

The Special Master recommends adoption of AT&T's language because when AT&T identifies and orders UNEs, and SWBT proposes to delete all customer database records associated with the requested UNEs (with the exception of Line Information Database (LIDB)) before providing the UNEs to AT&T. This would require the purchaser to reenter the data before being able to use UNE components. The Special Master opines that SWBT's position presents a barrier to access because it results in unnecessary and costly redundant work for both parties. In addition, the deletion and reentry of the data (including 911 information) would increase the potential for human error. SWBT maintains data on closed customer accounts and it clearly can continue to do so with AT&T bearing the responsibility of updating for accuracy. The Special Master states that SWBT should not be allowed to purge the database and thus require AT&T to reenter the same data.

SWBT argues in its November 26 response that it only seeks to require AT&T to update the customer information databases (excluding LIDB) utilizing the same processes and procedures that SWBT uses for provisioning

service to its own end users. For example, SWBT prepares a disconnect order and then reenters the customer information into the customer information databases after a new connect is prepared, in order to refresh the information in the database. SWBT suggests that AT&T's language would permit AT&T, contrary to the practice used by SWBT, to assume all previous customer service information remains accurate without verifying the information with the customer. SWBT alleges that, without requiring AT&T to update the databases when AT&T converts customers to its service, the Commission would permit AT&T to destroy the accurate databases which SWBT has maintained. SWBT suggests that this could result in a tragedy in instances where AT&T fails to confirm and reenter a change of address and the 911 database is inaccurate.

The Commission finds that AT&T's proposed language should be adopted. AT&T's language does not pose the threats which SWBT alleges. SWBT ignores the fact that AT&T will have an incentive to maintain accurate telephone and address information so that it can bill its customers and contact them in the event of disconnection. AT&T's language merely prevents SWBT from purging information that SWBT already has in its databases and will require AT&T to provide a complete information update whenever AT&T wishes to change any information in SWBT's database. The Commission agrees with the Special Master's assessment of the issue.

Issue 3 (UNE Ordering and Provisioning - Industry Guidelines)

This issue involves the standards to be followed for UNE ordering and provisioning in light of the fact that the Ordering and Billing Forum (OBF) has not finalized industry standards for UNE ordering and provisioning.

The Special Master points out that those standards are anticipated to be finalized shortly and that AT&T's proposed language allows for an interim method to transmit the necessary data so that service is not delayed. The Special Master recommends adoption of AT&T's proposed language.

In its November 26 response, SWBT argues that OBF has defined the ordering requirements for some UNEs, such as loop and port, and that it should not be required to expend resources on interim solutions that are specific to AT&T that are not contained in the finalized industry standards set out by OBF.

The Commission finds that AT&T's proposed language would only require SWBT to use industry guidelines when they are available, and that AT&T's proposed language should be adopted.

C. Group IV Issues - UNE PARITY

Issue 1 (Parity: Overview) and Issue 2 (Ordering, Provisioning, and Maintenance: Access to Information)

These issues require the Commission to determine how the parity standards in the existing interconnection agreement and in the Act apply to UNEs. For both issues, the Special Master recommends that AT&T's proposed language be adopted. Under Issue 1, the parties dispute whether SWBT can charge separately for each UNE ordered by AT&T, even when such UNEs are to be used in combination, and whether SWBT is required to meet performance quality standards for combinations or platforms of elements. Under Issue 2, the parties dispute whether SWBT must provide AT&T information concerning dispatch and due date requirements when it provides other pre-service ordering information for unbundled elements ordered in combination.

According to the Special Master, the issues in dispute concern parity for UNEs when used in combination, and AT&T's proposed language is consistent with the Act. The Special Master asserts that without parity standards applied to UNEs used in combination, AT&T cannot be guaranteed nondiscriminatory access and comparable performance and quality. The Special Master points to relevant Federal Communications Commission (FCC) rules, the Act, and the recent decision of the United States Court of Appeals for the Eighth Circuit in *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (hereinafter *Iowa Utilities Bd.*), as well as specific contract language in the approved interconnection agreement between SWBT and AT&T as support. With regard to Issue 2, the Special Master states that dispatch and due date functionality must be included with UNE ordering and provisioning terms or there will be no parity between SWBT's services and AT&T's.

SWBT's November 26 response to the Special Master objected to his recommendation on Issue 1 because the *Iowa Utilities Bd.* court has decided that UNEs must be combined by CLECs, not ILECs. SWBT argues further that, even if it were required to combine UNEs for AT&T, the service being provided for AT&T customers would not be "equivalent" because UNEs are not equivalent to any SWBT service. SWBT reaches this conclusion because "UNEs are provided on an unbundled basis and only to CLECs." SWBT opposes any performance parameters that differ from those specified in Attachment 17 of the existing agreement for individual UNEs. AT&T's response does not add to its prior filings. However, the Commission notes on its own that AT&T's proposed language explicitly limits performance standards to those already set forth in Attachment 17.

With regard to dispatch and due date requirements, SWBT argues that standard intervals for AT&T to obtain access to this information are already set forth in Attachment 17. SWBT alleges that, while resold services are subject to dispatch and due date requirements, UNEs are not and so there is no reason to establish new dispatch and due date access processes when UNEs are ordered in combination. SWBT does not cite any legal authority for its position. AT&T has not responded to the Special Master's recommendation on Issue 2, but the Commission notes that AT&T's proposed language for resolving Issue 1 would preserve the standards set forth in Attachment 17. This should alleviate SWBT's concerns about new standards.

The Commission notes first that § 251(c)(3) of the Act states that ILECs have:

[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

47 U.S.C. § 251(c)(3). Both the *Iowa Utilities Bd.* decision and § 251(c)(3) of the Act require the ILEC to provide UNEs in a nondiscriminatory manner that permits the CLEC to combine the elements as it sees fit. They do not go so far as to require the CLEC to purchase UNEs separately and then recombine them, at the time of the order, if the ILEC already uses the elements specified by the CLEC in the same combination that the CLEC requests. SWBT has not pointed to any provision requiring disassembly and

then reassembly of identical service, and nothing in AT&T's language attempts to force SWBT to combine elements for AT&T.

Moreover, Section 2.1 of Attachment UNE (Attachment 6) of the approved SWBT/AT&T interconnection agreement states:

SWBT will permit AT&T to designate any point at which it wishes to connect AT&T's facilities or facilities provided by a third party on behalf of AT&T with SWBT's network of access to unbundled Network Elements for the provision by AT&T of a Telecommunications Service. If the point designated by AT&T is technically feasible, SWBT will make the requested connection.

Additionally Section 2.4 of Attachment UNE of the approved SWBT/AT&T interconnection agreement states:

SWBT will provide AT&T access to the unbundled Network Elements provided for in this Attachment, including combinations of Network Elements, without restriction.

Finally, Section 2.8 of Attachment UNE of the agreement states that:

Except upon request, SWBT will not separate requested network elements that SWBT currently combines.

The Commission finds that SWBT's proposed language is contrary to agreed-upon and approved language.

The Commission finds that AT&T's proposed language on Issue 1 implements the prior agreement of the parties and should be adopted. In addition, the Commission finds that it should adopt the language proposed by AT&T for resolution of Issue 2 in order to ensure UNE parity. If AT&T does not have dispatch and due date requirements available to it as with other pre-service ordering information, AT&T cannot provide service to its customers that is equivalent to SWBT's.

Issue 3 (Interconnected and Functional Network Elements), Issue 4 (Service Disruption With IDLC), Issue 7 (Automated Testing), Issue 10 (Automated Testing Through EBI), Issue 14b (Input-Output Port) and Issue 16 (Combining Elements)

For all six of these issues, the Commission must address the extent of SWBT's obligation to provide combined UNEs. Issue 3 involves SWBT's ability to disconnect elements that are ordered in combination by AT&T when those elements are already interconnected and functional at the time of the order. Issue 4 addresses whether SWBT may interrupt service to rearrange loop facilities on working service served by Integrated Digital Loop Carrier (IDLEC) technology when AT&T orders the loop and switch port in combination. Issue 7 addresses whether SWBT must provide automated loop testing through the local switch rather than install a loop test point when AT&T utilizes a SWBT unbundled local loop and SWBT unbundled switch port in combination. Under Issue 10, the dispute is over AT&T's right to initiate and receive test results through EBI, and under Issue 14b, the parties dispute AT&T's right to have access to Input/Output ports at locations other than in AT&T's collocation space. Issue 16 is whether the agreement should provide for SWBT to combine those elements that are not interconnected in the SWBT network at the time of AT&T's order.

For all of these issues, the Special Master recommends adoption of AT&T's proposed language because SWBT has already agreed not to separate requested network elements that SWBT currently combines, referring to Sections 2.1, 2.4 and 2.8 of Attachment ONE (Attachment 6). Moreover, the Special Master states that Issues 3 and 4 involve functions included within the full functionality of the switching element already purchased by AT&T. If there is to be parity, SWBT must provide the functions requested by AT&T

in the manner that it provides such functions to itself. Parity is required for the reasons set forth under Issues 1 and 2, above.

The Commission finds that SWBT is bound by this contractual language because the Eighth Circuit's recent ruling in *Iowa Utilities Bd.* has not made SWBT's and AT&T's contract provisions illegal. The decision simply vacated FCC rules which required that ILECs combine elements; it did not prevent ILECs from volunteering to combine such elements. Also, the Commission concurs with the Special Master's reasoning on Issues 3 and 4 related to parity. The Commission finds that AT&T's proposed language should be adopted for Issues 3, 4, 7, 10, 14b and 16.

Issue 14c (Switch Capability)

This issue involves the information SWBT should be required to provide to AT&T concerning the features, functions and capabilities of each end office. The difference between the parties is primarily over AT&T's access to information concerning the identity of the specific programs installed, rather than just information concerning the capabilities of the network.

The Special Master recommends adoption of SWBT's language because AT&T's proposed language may require SWBT to provide its competitors with proprietary business information. SWBT's proposed language would provide AT&T with adequate information to operate effectively. The Commission has reviewed the language proposed by both parties and their arguments in support and agrees that SWBT's proposed language should be adopted.

Issue 14d (Expedited Special Request Process)

This issue is limited to a determination of the amount of time that SWBT should have to respond to an expedited special request made by