

AT&T. AT&T would like for the price quote response time to be 20 days, while SWBT proposes 60 days.

The Special Master recommends adoption AT&T's language, stating that because the UNE is already operational, twenty days is sufficient time for a price quote. In the other four states where SWBT is the incumbent local provider, SWBT is required to provide the price within ten days.

The Commission sees no reason for SWBT to need more than 20 days to provide this information and therefore finds that AT&T's proposed language should be adopted.

D. Group V Issues - PRICING

In general, AT&T alleges that the rates proposed by SWBT are for features that are included in the full functionality of the unbundled elements for which the Commission established permanent rates in either its July 31 or October 2 orders in Case. No. TO-97-40. In its November 26 response, AT&T requests the Commission to avoid making a final determination at this point in time about whether rates should be imposed for any of the following UNEs. AT&T would like for the Commission to delegate its authority to the Special Master to set a procedural schedule for determining whether any rates should be imposed and, if so, what the rates should be. AT&T also urges the Commission to make clear to the AAS and Special Master that SWBT is required to provide a Total Element Long Run Incremental Cost (TELRIC) study to support the rates it proposes, and to permit the Special Master to issue protective orders as needed so that AT&T can have access to the SWBT study.

The Commission finds that it is appropriate to adopt interim prices for some, but not all, of the UNEs in dispute, as set forth below. The establishment of interim rates shall not be construed as a final

determination by the Commission that a rate is appropriate. Similarly, the failure to establish interim rates shall not be construed as a final determination by the Commission that no rate is appropriate.

The Commission does not find it appropriate to have the Special Master set a procedural schedule or issue protective orders. The Commission finds that the Commission should adopt a schedule for setting permanent prices that is similar, but not identical, to the process used in Case No. TO-97-40, for the elements identified below as not being covered by the prices already established in Case No. TO-97-40. Also, the Commission finds that it is unnecessary to order SWBT to provide the TELRIC studies to the AAS to the extent that such studies have already been provided. However, the Commission will order SWBT to provide the AAS with any and all cost studies that are directly or indirectly relevant to the rate issues to be reviewed by the AAS pursuant to this order. The details of the process are set forth below.

Issue 1a (EAS Port Additive Charges)

The issue presented is whether the Commission's October 2 order precludes SWBT from assessing an Extended Area Services (EAS) Port Additive Charge when AT&T requests a telephone number with an NXX⁴ which has an expanded area calling scope. The Special Master recommends adoption of AT&T's proposal. Neither SWBT nor AT&T made any arguments specific to this issue in their November 26 responses. According to the Special Master, SWBT's proposed language would allow AT&T to have the option of purchasing this port additive, but that during the mediation sessions, AT&T indicated they did not want to purchase this port additive.

⁴ The term "NXX" or "NXX code" refers to the first three digits dialed in a seven digit number.

The Commission finds that AT&T's proposal to reject SWBT's language should be adopted, and AT&T's proposal to leave this issue unaddressed in the parties' final interconnection agreement should be approved. The Commission notes that its finding is based upon AT&T's lack of interest in the port additive at this time. The Commission's finding should not be construed as resolving the issue of whether a port additive charge would be appropriate if AT&T were to request this port additive in the future.

Issue 1b (Multiplexing Charges), Issue 1c (Digital Cross Connect (DCS) Charges), Issue 1j (Dedicated Transport Cross-Connect Charges), Issue 4 (NXX Migration) and Issue 7 (Pricing for Additional Elements)

Issue 1b poses the question of whether the Commission's October 2 order precludes SWBT from assessing multiplexing charges in addition to the dedicated transport charges approved by the Commission. Issue 1c is whether the Commission's October 2 order precludes SWBT from assessing Digital Cross Connect Systems (DCS) charges when AT&T controls the DCS. To resolve Issue 1j, the Commission must decide whether SWBT may assess dedicated transport cross-connect charges other than the DS3 transport cross-connect charge established by the Commission in its July 31 Final Arbitration Order in Case No. TO-97-40. Issue 4 is whether NXX migration is a form of interim number portability and, if not, the appropriate rate to be charged for NXX migration. Under Issue 7, the parties have requested that the Commission determine which of the following elements need to be priced⁵: 7b) 4-wire PRI loop to multiplexer cross-connect, 7c) dedicated

⁵ The Commission notes that, although the description of Issue 7a in the Amended Statement states that the Commission should decide whether Optical Transport (including multiplexing) needs to be priced, and the parties' Joint Settlement Document does not mention that Issue 7a has been settled, neither party's proposed language addresses this issue. Therefore, the
(continued...)

transport entrance facility when this element is actually utilized, 7d) SS7 links-cross connects, and 7e) call branding for Directory Assistance and Operator Services.

The Special Master urges the Commission to adopt SWBT's language for each of these issues, and neither SWBT nor AT&T has responded specifically to the Special Master's recommendations for resolution of these three issues in their November 26 responses.

For each of these issues, the Special Master asserts that both parties believe the AAS should review the applicable cost studies to determine the appropriate permanent rate, if any. AT&T believes there are no additional rate elements, while SWBT believes the rates should be those set forth in its proposed language. The AAS has examined the relevant cost studies and believes a rate is appropriate to address each issue, and so the Special Master concludes that SWBT's language should be adopted as it includes interim rates. In the event the permanent rates are different than the interim rates, SWBT's proposed language includes a true-up process.

The Commission finds that, because the AAS has made a preliminary determination that rates will be applicable and the language proposed by SWBT would provide AT&T with a true-up process in the event the Commission eventually determines that a rate is not appropriate or that a different rate should be applied, the Commission determines that interim rates are appropriate at the levels proposed by SWBT. The language proposed by SWBT for resolution of Issues 1b, 1c, 1j, 4 and 7(b, c, d and e) should be adopted.

(...continued)
Commission will treat Issue 7a as resolved.

Issue 1d (LIDB Services Management System, Fraud Monitoring System and Service Order Charges)

The parties question whether the Commission's October 2 order precludes SWBT from assessing charges for the LIDB Services Management System and the Fraud Monitoring System, and a Service Order Charge when AT&T has a new switch or orders a new type of access to LIDB for query origination, in addition to LIDB and Calling Name (CNAM) query/query transport charges approved by the Commission. The Special Master recommends that the Commission adopt AT&T's language, and neither party addressed this recommendation specifically in its response.

As with Issues 1b, 1c, 1j, 4 and 7, SWBT's proposal includes proposed interim rates and a true-up provision in the event that the Commission establishes different permanent rates or finds that no rate should be imposed. However, the factual data submitted on this issue is not as complete as for Issues 1b, 1c, 1j, 4 and 7. The Special Master indicates that during the cost study review ordered pursuant to Case No. TO-97-40, SWBT failed to provide these cost studies along with the other signaling cost studies reviewed by AAS. SWBT presented the cost studies as a part of this arbitration, but the AAS has not formed a preliminary determination regarding whether a rate is appropriate. Therefore, the Special Master states that AT&T's language should be adopted as it does not include rates for these elements.

The Commission finds that interim rates should not be imposed without additional opportunity for the AAS to review SWBT's cost studies. Because AT&T's language does contain a process for arriving at permanent rates but does not impose interim rates, the Commission finds that AT&T's language should be adopted.

Issue 1e (Non-recurring Charges for Conversion)

The issue presented is whether the Commission's October 2 order precludes SWBT from assessing non-recurring charges (NRC), in addition to the CLEC Simple Conversion Charge approved by the Commission, when AT&T converts a SWBT customer to AT&T service using all the network elements required to provide the service.

The Special Master states that this issue was already resolved in the Final Arbitration Order in Case No. TO-97-40 issued July 31, and refers the Commission to Attachment C of the order, in which the AAS recommended "that there be no additional NRC for a CLEC Simple Conversion. The Staff Proposed Service Order Charge of \$5.00 would still apply."

SWBT's November 26 response asserted that the Special Master's recommendation is contrary to the Commission's November 5 order approving the interconnection agreement filed by SWBT and AT&T to implement the Commission's arbitration orders in Case No. TO-97-40. SWBT points to the following language from the Commission's November 5 order to support its argument:

The Agreement sets a \$5.00 customer change charge which SWBT will charge AT&T for switching an end user from SWBT to AT&T. If an end user adds features or services at the time the customer is switched from SWBT to AT&T, SWBT will also charge AT&T any applicable wholesale non-recurring charges for the features and services added.

See Southwestern Bell Telephone Company's Response to the Recommendations of the Special Master in the Joint Statement of Issues Remaining, p. 20 (emphasis added).

The Commission disagrees with the Special Master that the Commission foreclosed the possibility of SWBT assessing non-recurring charges for a CLEC Simple Conversion when it issued its July 31 order in

TO-97-40. The Commission's November 5 order approving the interconnection agreement submitted in that case clearly left open the possibility that non-recurring charges could be established. However, SWBT's language is not acceptable because it would impose an interim rate without any assessment having been made by the AAS and the Special Master about the appropriateness of the rate. The Commission finds that AT&T's language provides for a process to establish any appropriate permanent rates and does not establish interim rates, and so AT&T's proposed language should be adopted as recommended by the Special Master. The AAS should review the cost studies that are pertinent to SWBT's proposed charges as a part of the permanent rate development process discussed below.

Issue If (Mechanized Service Order Charges for UNEs)

This issue involves whether SWBT should be permitted to charge additional non-mechanized service order charges for services where they do not currently have a mechanized process. The Special Master indicates that the AAS is not in a position to make a recommendation on the appropriate costs, if any, at this time. SWBT's proposed language allows for the AAS to review these cost studies and recommend an appropriate rate, and the Special Master recommends that SWBT's language be adopted on an interim basis until AAS has completed a review of the cost studies and recommended appropriate rates. The Special Master points out that AT&T's proposed language does not allow for a review of the cost studies and that SWBT's proposed language includes a true-up mechanism.

The Commission agrees with the Special Master's recommendation to adopt SWBT's proposed language but finds that SWBT's language should be modified, because the AAS has not yet had an opportunity to make a preliminary assessment of those charges based on SWBT's cost studies. The

language proposed by each of the parties is faulty because the SWBT language imposes an interim rate not reviewed by the AAS and the AT&T language fails to include any process for establishing any appropriate permanent rates. While the Special Master was ordered to recommend adoption of one of the party's language in toto, the Commission is not so constrained.

Therefore, the Commission finds that the SWBT language should be adopted with the following modifications to the first and second paragraphs to resolve this issue:

SWBT shall not impose charges for nonmechanized service order types in those situations where SWBT does not have a mechanized process in place for its own customers unless and until such time as the arbitration advisory staff has reviewed the cost, made their recommendation to the Commission, and the Commission has ordered final cost based rates. If the Commission orders final cost based rates, AT&T will remit any amounts owed for the interim period to SWBT within a reasonable period. In accepting this procedure, the parties preserve all rights to appeal any Commission order, including the right to contest the process used in establishing the rates, terms and conditions between the parties.

SWBT offers the following order types.

The remaining paragraphs proposed by SWBT will remain intact, except that the rates listed in the chart entitled "Service Order Charges - Unbundled Element" should all be changed to "\$0.00" and all of SWBT's statements to the effect that charges will apply in the final two paragraphs should be deleted.

Issue 1h (Rate Quotation Service Charges)

The parties also seek resolution of the issue of whether SWBT may assess charges in addition to the Operator Services and Directory Assistance charges established by the Commission when SWBT provides rate quotation service to AT&T, either in a UNE or resale environment. The

Special Master recommends that the Commission adopt AT&T's language because AT&T's proposed language allows for the AAS to review these cost studies and recommend appropriate rates and for a true-up following establishment of any applicable rates, while SWBT's proposed language does not allow for a review of the cost studies. The Special Master states that the AAS is not in a position to make a recommendation on the appropriate costs at this time, and that no interim rates should be adopted until AAS has completed a review of the cost studies and recommended appropriate rates. SWBT's and AT&T's November 26 responses did not specifically address this issue.

The Commission finds that, consistent with its findings on Issues 1d, 1e and 1f, no interim rate should be implemented where the AAS has not had a sufficient opportunity to make even a preliminary assessment concerning their appropriateness. Therefore, the Commission finds that AT&T's proposed language should be adopted.

Issue 3a (Rates for White Pages-Resale, White Pages-Other and Directory Listings)

The Special Master states that the Commission should adopt AT&T's proposed language as it allows for the AAS to review these cost studies and recommend appropriate rates and also allows for a true-up mechanism. SWBT's proposed language does not allow for a review of the cost studies. According to the Special Master, the AAS is not in a position to make a recommendation on the appropriate costs, if any, at this time. Neither SWBT nor AT&T included a specific response to the Special Master's recommendation on this issue.

This issue is similar to Issue 1f in that the only party proposing a process for establishing permanent rates and a true-up at the end of that process (SWBT) is also proposing establishment of interim rates, even

though the Special Master has indicated that the AAS has not had sufficient time to review the appropriateness of the proposed interim rates. However, this issue is in a different posture from Issue 1f because both SWBT and AT&T are proposing adoption of the same rate of \$3,191.73 for a single sided informational white page per year in any book covering a geographic area. For this reason, the Commission finds that it should adopt the interim rate and implementing language proposed by AT&T, with one modification to correct an apparent typographical error. AT&T's second paragraph under "Appendix White Pages - Resale" should have the appropriate section number inserted following the word "Section."

Issue 8 (Additional Pricing Issues)

Finally, Issue 8 is whether the Commission's October 2 order covers pricing for the following items:

- a. Loop Cross Connect without testing to DCS
- b. Loop Cross Connect with testing to DCS
- c. Subloop Cross Connect
- d. Nonrecurring Charge for Unbundled Switch Port-Vertical Features
- e. Access to Directory Assistance database
- f. Dark Fiber cross connect
- g. Dark Fiber record research

The Special Master states that, consistent with SWBT's position on combining ONEs, the cross-connects in Issues 8a and 8b were withdrawn by SWBT, and AT&T did not object⁶.

For issues 8c, 8e, 8f, and 8g, the Special Master recommends that SWBT's rates be adopted on an interim basis because the AAS believes that a rate may be appropriate. The Special Master noted that SWBT's proposed language provides for the imposition of interim rates while AT&T's does

⁶ As with Issue 7a, the parties did not identify Issues 8a and 8b as settled in their Joint Settlement Document. Nevertheless, the Commission will treat these issues as resolved.

not, but both parties recommend that a procedure be established to determine any applicable permanent rates for items 8c, 8e, 8f and 8g with a true-up process at the end. Neither SWBT nor AT&T responded to this recommendation.

However, for Issue 8d, the Special Master recommends that SWBT's proposed rates be rejected and no additional rates for the functionality of unbundled local switching be applied. The Special Master relies on the Commission's Final Arbitration Order in Case No. TO-97-40, in which the Commission found that prices for the unbundled network elements include the full functionality of each element. In the Special Master's opinion, SWBT's proposed rates under Issue 8d are for activating the functionality of unbundled local switching. In its response, SWBT made the same arguments as it did for Issue 1e.

For the reasons stated above for Issues 1b, 1c, 1j, 4 and 7, the Commission finds that SWBT's proposed interim rates and language should be adopted to resolve Issues 8c, 8e, 8f and 8g.

As with Issue 1e, the Commission does not adopt the Special Master's conclusion that the Commission foreclosed the possibility of SWBT assessing the non-recurring charges identified in Issue 8d when it issued its July 31 order in TO-97-40. However, SWBT's language is not acceptable because it would impose an interim rate without any assessment having been made by the AAS and the Special Master about the appropriateness of the rate. The Commission finds that SWBT's language should be adopted except that the interim charges listed under the section entitled "d. Nonrecurring Charge for Unbundled Switch Port - Vertical Features" should all be changed to \$0.00. The AAS should review the cost studies that are pertinent to

SWBT's proposed charges as a part of the permanent rate development process discussed below.

E. Group VI Issues - NETWORK EFFICIENCY

Issue 2 (Flexibility in Establishing Trunk Groups)

Issue 2 is whether AT&T should be allowed to combine all traffic, including local and toll, on a single trunk group over its interconnection facility with SWBT. Under the Commission's December 11, 1996 Arbitration Order in Case No. TO-97-40, AT&T may combine intraLATA and local traffic onto the same trunk group. The issue has now been expanded to include interLATA traffic.

The Special Master recommended adoption of AT&T's proposal to allow it to combine interLATA, intraLATA and local traffic over a single trunk group, noting that allowing AT&T to combine interLATA traffic with intraLATA and local traffic provides the most efficient use of network resources and is therefore consistent with the intent of the Commission's December 11, 1996, order in Case No. TO-97-40.

SWBT is opposed to AT&T's proposal because it is concerned about its ability to record data and bill properly for various types of traffic in one trunk. SWBT argues that the Special Master's recommendation is not limited to intrastate interLATA traffic and therefore is beyond the PSC's jurisdiction. SWBT asserts that the Commission's December 11, 1996, order in Case No. TO-97-40 rejected such a proposal made by MCI in that proceeding. Finally, SWBT suggests that AT&T could use combined trunking facilities to avoid access charges owed to SWBT.

AT&T responded to the Special Master's recommendation by asserting that the efficiency to be achieved by its proposal goes to the heart of one of the key benefits to be gained by introducing competition. AT&T stated

affirmatively in its November 26 response that it does not intend to avoid paying access charges when it functions as an interexchange carrier only.

The Commission notes that AT&T's language specifies the use of percentage of jurisdictional use factors reports as an interim method to identify traffic types for billing purposes and that AT&T has stated that it will pay all applicable access charges in its proposed language. The interim billing method proposed by AT&T is consistent with Commission's order of December 11, 1996, in Case No. TO-97-40. Contrary to SWBT's assertion, the order was silent on the specific issue of combining interLATA traffic with intraLATA and local traffic.

The Commission finds that AT&T's proposed language should be adopted. The Commission's order should not be construed as affecting interstate interLATA traffic outside of its jurisdiction.

F. Group IX Issues - POLES, CONDUITS, AND RIGHTS-OF-WAY

Issue 31 (Compensation for Use of Rights-of-Way)

Under this issue, SWBT seeks to have AT&T compensate it for costs incurred in obtaining exclusive rights-of-way, and AT&T opposes the addition of this language to the parties' agreement. The Special Master notes that the language SWBT proposes should be adopted, as nothing in the existing section 5.03 allows for SWBT to be compensated for AT&T's access to exclusive rights-of-way. AT&T did not respond to the Special Master's recommendation.

The Commission finds that where SWBT has purchased exclusive rights-of-way, AT&T must share the cost when and to the extent that AT&T uses those rights-of-way. SWBT's language fairly allocates costs for such use and should be adopted.

G. Group X Issues - CONTRACT TERMS AND CONDITIONS AND OTHER ISSUES

Issues 3a, 3b, 3c and 4 (Limitation of Liabilities and Indemnification), Issue 15 (Intellectual Property Rights Associated with UNEs) and Issue 8 (Responsibility for Environmental Contamination)

These issues are related because they deal with the allocation of responsibilities toward end users and other third parties between SWBT and AT&T and correlated limitation of liability and indemnification arrangements. Issues 3a and 15 require a determination of whether SWBT or AT&T should be responsible for obtaining copyrights, licenses and any other required intellectual property rights before AT&T provides service using SWBT's facilities. Issue 3b relates to the length of time to be used in measuring the liability cap for damages to be paid by the parties to one another for negligent acts other than those specifically addressed elsewhere. Issue 3c and 4 involve the parties' responsibilities to indemnify one another for damages sought by their end users. Finally, Issue 8 addresses what the agreement should provide regarding responsibility for the presence or release of environmental hazardous at an affected work location that was introduced by a third party.

SWBT proposes to address Issue 3b by capping each party's damages for harm to one another to the amounts paid for the affected services as defined in the Performance Criteria section of the agreement, which corresponds to the amount of time that service is interrupted. SWBT's language also proposes damages to recover the injured party's collocated equipment or property that was destroyed or damaged by the injuring party. AT&T's language would permit damages up to the total amount paid for the entire contract for a given contract year. The Special Master comments that AT&T's language permits damages that are too high because the annual

contract amount might be greater than actual damages in many instances, and AT&T's language fails to permit recovery for the value of any damaged collocated equipment or property. While SWBT did not respond to the Special Master's recommendations, AT&T commented that SWBT's approach would treat AT&T as an end user with an outage rather than as a competitor with potentially large consequential damages.

The Commission finds that SWBT's language is most appropriate. AT&T has ignored the fact that, under SWBT's proposed language, SWBT and AT&T are to be treated equally. Therefore, if this provision treats AT&T as an end user with an outage whenever SWBT causes damage to AT&T, the reverse is also true. Each party will have an incentive to avoid causing the other to incur consequential damages because each party will be subject to the same limitation of liability amounts. The Commission does not agree with the Special Master's statement that AT&T's language would permit AT&T to recover damages beyond actual damages, but agrees that AT&T's proposed liability limit is too high because the limitations of liability imposed by most telecommunications carriers on their customers are similar to the limits proposed by SWBT. There is no reason that companies should be permitted to limit the damages their end users can obtain against them while preserving much higher claims for themselves. The Commission finds SWBT's proposed language preferable to AT&T's for this reason and for the reason that SWBT's language would permit the companies to recover their costs for any damaged collocation equipment or property as a cost of interconnection. The Commission finds that SWBT's language should be adopted.

The Special Master also recommends the Commission adopt SWBT's language for resolution of Issues 3a and 15. The Commission notes that

SWBT's proposed language would place the responsibility for obtaining all licenses, copyrights and other intellectual property rights required by law on AT&T when SWBT provides UNEs to AT&T that are purchased from third parties and protected by intellectual property laws. SWBT does promise to assist AT&T in identifying the applicable licenses, but AT&T bears ultimate responsibility for compliance with intellectual property laws. By contrast, AT&T's language would require SWBT to indemnify AT&T for any infringements of intellectual property rights by AT&T. AT&T responded to the Special Master's recommendation by alleging that SWBT could use its proposed language to prevent AT&T's use of unbundled elements by claiming that AT&T has failed to purchase the necessary copyrights, and such actions by SWBT would violate the Act.

The Commission disagrees with AT&T's assessment of the language proposed by SWBT. SWBT's proposed language would not make AT&T's purchase of the necessary copyrights a condition precedent to provisioning UNEs, but merely clarifies that SWBT cannot be held responsible to third parties for AT&T's copyright infringements. Also, AT&T's argument is undercut by SWBT's promise to assist AT&T in locating the applicable intellectual property rights. It is difficult to see how SWBT could successfully prevent AT&T's use of UNEs on the ground that AT&T failed to seek necessary licenses when SWBT would itself be under an obligation to disclose any known intellectual property rights to AT&T. The Commission finds that SWBT's proposed language merely exculpates SWBT and requires AT&T to defend, hold harmless and indemnify SWBT for AT&T's infringements. This does not violate the Act. The Commission finds that SWBT's language should be adopted to resolve Issues 3a and 15.

With respect to Issues 3c and 4, the Special Master recommends that AT&T's language be adopted, because AT&T's proposed language suggests that each party be responsible for the damage it causes toward its end users. By contrast, SWBT's proposed language seeks to protect itself from damages to AT&T's end users caused by SWBT, and to protect AT&T from damages that AT&T causes to SWBT's end users. The Special Master asserts that SWBT should not be permitted to abrogate its liability for its own actions. AT&T does not respond to this specific recommendation. However, SWBT argues that AT&T's proposed language would present a departure from the Commission's longstanding practice of permitting companies to limit their liability toward end users. SWBT suggests that, with AT&T in control of its tariff provisions and contracts with customers, AT&T can limit its own liability toward its customers, but SWBT does not have a direct contractual relationship with AT&T's customers and cannot do likewise. The reverse is also true. Therefore, SWBT advocates an agreement term requiring each party to indemnify the other for damages alleged by its own customers, so that each party will have an incentive to limit liability to customers for both itself and the other party.

The Commission finds that AT&T's proposed language for resolving Issues 3c and 4 is reasonable and should be adopted. SWBT has not explained how the language proposed by AT&T is more favorable toward AT&T than it is toward SWBT, as SWBT could likewise limit its damages toward its end users and encourage them to sue AT&T. The Commission acknowledges SWBT's concerns about its exposure to liability but finds that SWBT's proposed system would create much worse incentives. If each party could avoid responsibility for harm that it caused to the other party's customers

there would be little incentive for either party to work together on providing customers with quality service.

Finally, the Special Master believes that the Commission should adopt AT&T's proposed language for resolution of Issue 8. AT&T believes that neither party should be responsible for hazards which it has not introduced to the affected work location and attempts to introduce language that would protect it from responsibility for hazards introduced at a work site by any person, including SWBT. SWBT likewise believes that each party should only be responsible for hazards it has introduced, but SWBT would only limit each party's responsibility in the event of hazards introduced by the other; SWBT's proposed language would not address responsibility for hazards introduced by third parties. Neither SWBT nor AT&T responded to the Special Master's recommendation to adopt AT&T's language.

The Commission finds that SWBT's proposed language is not broad enough because it would allow SWBT to sue AT&T for damages due to hazards introduced at a work site by a third party rather than suing the responsible third party. While neither party can limit its liability to the federal or state government or prevent the government from suing all responsible parties for environmental harm and then allowing them to indemnify one another appropriately, AT&T's proposed language at least addresses the allocation of responsibility as between SWBT and AT&T. The Commission finds that AT&T's proposed language should be adopted.

Issue 6 (Local Exchange Carrier Selection/"Slamming")

SWBT proposes to add language concerning the procedures for investigating charges of slamming. This language would require each party to provide to the other party any customer authorization without charge when a request is made to investigate claims of unauthorized changes. The

Special Master has recommended that the Commission adopt SWBT's proposed language, and AT&T has responded to this recommendation by pointing out that it is opposed to SWBT's proposal because it fears that SWBT could use this language to interfere with competition by requesting customer authorizations on its own initiative.

The Commission finds that AT&T's fears are unjustified. The existing language, when read together with SWBT's proposed new language, would clearly require an end user request for a slamming investigation before either party could demand customer authorizations, for free or for a charge, from one another. The Commission finds that SWBT's proposed language should be adopted.

Issue 16 (Dispute Resolution Process)

AT&T proposes to add language to the agreement that requires the parties to seek arbitration before the Commission of any disputes arising from either party's desire to add terms to their agreement. SWBT opposes this new language. The Special Master endorses AT&T's position, and neither party has responded to that recommendation. The Commission finds that AT&T's language restates the requirements of the Act. To the extent that the Act gives the Commission jurisdiction over any particular disputes, either party can force the other to arbitrate before the Commission pursuant to § 252(b) if the party acts within the time frames established under the Act. To the extent that the Commission lacks jurisdiction over any particular disputes, the proposed language will be unenforceable.

The Commission adopts the language proposed by AT&T and notes that its finding should not be construed as an attempt to confer upon the Commission any jurisdiction which it does not have. This finding is not

contrary to the Commission's October 30 order in this case because the proposed language deals with the parties' obligations to submit their disputes for arbitration, and not with the Commission's authority or obligation to resolve such disputes. As the Special Master states, the Commission should determine its responsibility to address any such disputes on a case by case basis.

Issue 18 (Custom Routing to Multiple SWBT End Offices)

According to the Special Master, the Commission should adopt AT&T's language requiring SWBT to custom route AT&T local calls to multiple SWBT end offices. The Special Master states that SWBT currently employs various routing methodologies to route local calls to multiple destinations, and that it is technically feasible for SWBT to route certain local calls over its common transport to a tandem end office, or to route certain local calls over dedicated facilities to a specified end office. The Special Master concludes that AT&T's proposed routing arrangement utilizes network facilities more efficiently, and that SWBT should provide the same routing functionality to AT&T as SWBT provides itself.

AT&T's response to the Special Master's recommendation emphasizes in addition that SWBT's proposed language would be discriminatory because it would significantly restrict AT&T's access to basic functions of the local switch such as connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. AT&T suggests that if SWBT only permits AT&T to route local calls to one location, this could result in line blocking during busy periods and in order to avoid this result AT&T would have to order inefficiently large trunks out of the local switch.

SWBT alleges that AT&T's proposed language would be inefficient and would use up an unjustified amount of SWBT's network facilities because

a greater number of trunks is required to carry the same amount of traffic when the traffic is routed over multiple trunk groups rather than a single trunk group.

The Commission finds that AT&T's proposed language should be adopted because the Act requires the Commission to address AT&T's discrimination concerns, and because SWBT's efficiency concerns are countered by AT&T's efficiency and blocking concerns. AT&T's proposed language ensures that the full functionality of local switching capabilities will be available to AT&T on the same basis as they are available to SWBT, while SWBT's proposed language would implement a discriminatory regime and be likely to result in either the blocking of AT&T customers' calls or the purchase by AT&T of unnecessarily large numbers of trunks. Nondiscriminatory access is a primary duty under § 251 of the Act. SWBT may be correct that certain inefficiencies could result from routing local calls to multiple end offices, but the Commission finds that it is just as likely that inefficiencies will result if AT&T is forced to direct all calls over a single trunk group.

Issue 20 (Separate NXX Codes for Each SWBT Exchange)

This issue addresses the NXX codes to be used by AT&T for assignment of numbers to its end users and encompasses both billing and Numbering Plan Area (NPA) exhaustion concerns shared by the parties. Both parties propose language that would require AT&T to obtain a separate NXX code for each SWBT exchange or group of exchanges that share a common mandatory calling scope as defined in SWBT's tariffs in metropolitan exchange areas where AT&T intends to offer service. This would permit the parties to identify the jurisdictional nature of traffic for purposes of intercompany compensation for the foreseeable future.

However, the parties disagree about how to address any NPA number exhaustion that may develop in those areas. SWBT would use NXX codes for billing identification purposes until both of the parties have implemented billing and routing capabilities to determine traffic jurisdiction on a non-NXX code basis, and would resort to industry forums or the Commission for a solution if NPA exhaustion occurs before that time. By contrast, AT&T does not provide for termination of the NXX code based billing approach outside of an NPA exhaustion context. However, in the event of NPA exhaustion, AT&T would establish a substitute billing method involving use of certain fields in SWBT's "92-99" billing record if the parties could not agree to an alternative method by March 31, 1998. The Special Master recommends adoption of AT&T's language because it is proactive in that it establishes a deadline for voluntarily resolution of NPA exhaustion problems and a precise and feasible alternative billing method to be implemented by the parties without the need for Commission intervention.

AT&T did not respond to the Special Master's recommendation. However, SWBT did respond. SWBT alleges that AT&T's proposed solution involving SWBT's "92-99" billing record would allow AT&T to originate calls without accepting responsibility for processing all of the types of calls that AT&T is obligated by law to terminate for its end users under § 386.020(4) of the Revised Statutes of Missouri (Supp. 1996). According to SWBT, AT&T's proposal does not provide any billing solution for calls made by AT&T's customers to companies other than SWBT. SWBT insists that, at a minimum, AT&T should be required to explain this billing method completely and to assure the Commission that AT&T will provide full local service even if AT&T is allowed to use SWBT's NXX codes in assigning numbers.

The Commission finds that the level of service to be provided to AT&T's customers is an issue best resolved in connection with the tariffs filed by AT&T. The Commission also finds that AT&T's proposal provides a permanent solution, rather than a temporary solution, to a problem that both of the parties acknowledge could develop. AT&T's proposal, like SWBT's, requires the parties to work toward alternative solutions before resorting to the "92-99" billing record field approach, and so SWBT will have an opportunity to address any remaining feasibility concerns with AT&T even if SWBT's language is not adopted. The Commission finds that it should adopt AT&T's proposed language for the reasons stated above.

Issue 22 (Timing of AT&T Service to Business and Residential Customers)

SWBT seeks to insert language into the agreement that would require AT&T to provide telephone exchange service to business and residential customers within a specified period after approval of the PSC, and AT&T opposes this requirement. The Special Master recommends adoption of AT&T's position that no language should be inserted. The Special Master notes that the Commission has found in prior cases that serving either business customers or residential customers is acceptable, and that AT&T has already filed tariffs to provide residential service. Neither party responded to the Special Master's recommendation.

The Special Master correctly describes the approach adopted by the Commission in prior cases with respect to providing service to both residential and business customers. SWBT has not provided the Commission with a good reason for changing its interpretation of the applicable law, and so the Commission finds that AT&T's proposal to reject SWBT's additional language is adopted.

H. Group XI Issues - COLLOCATION

Issue 33e (Environmental, Health and Safety Questionnaires)

The parties are in agreement that SWBT must comply with all federal and state laws regarding environmental, health and safety issues applicable to SWBT. Their disagreement is over additional language that AT&T would like to insert in the agreement to force SWBT to complete an "Environmental, Health & Safety Questionnaire" for each eligible structure in which AT&T applies for collocated space.

The Special Master recommends adoption of SWBT's language without the additional language suggested by AT&T, stating that SWBT should not be required to bear the burden of completing such questionnaires in order to satisfy AT&T's insurance requirements. In the Special Master's opinion, however, SWBT should be required to provide AT&T a copy of any such questionnaires that SWBT previously completed or is required to complete in the future for its own purposes. Neither SWBT nor AT&T responded to the Special Master's recommendation on this issue.

The Commission finds that the language proposed by SWBT should be adopted but the additional language proposed by AT&T should be rejected, for the reasons given by the Special Master. The Commission notes in addition that AT&T's proposed language might unfairly shift responsibility to SWBT for compliance with environmental laws, without AT&T assuming a concomitant responsibility for its equipment that is collocated in SWBT's space, and is therefore unreasonable.

The Commission notes that the Special Master has complied with the Commission's order to choose between the alternatives presented by the parties, but he has also suggested that it would be appropriate for SWBT to provide copies to AT&T of any questionnaires which it completes in the

course of its regular business. The Commission finds that it should fully implement the Special Master's recommendation by adding the following language to that proposed by SWBT: "SWBT is required to provide AT&T a copy of any environmental, health and safety questionnaires that SWBT has previously completed or is required to complete in the future for its own purposes."

Issue 43 (Equipment Removal)

The parties agree that if AT&T fails to remove any of the equipment, property or other items that it has brought into the collocated space, SWBT may perform removal at AT&T's cost. The issue remains unresolved because SWBT wishes to add language that would require AT&T to indemnify and hold harmless SWBT for any claims, expenses, fees or other costs related to removal. The Special Master states that the Commission should adopt SWBT's language, and neither party responded to this recommendation.

The Commission agrees with the Special Master that it would be unreasonable to require SWBT to bear risks for AT&T's failure to meet its responsibility to remove items it brings into the collocated space or any part of the eligible structure, except when SWBT acts willfully or negligently in causing damage to SWBT. The Commission notes that the language agreed to by the parties gives AT&T 30 days to remove its equipment on its own and finds that, under these circumstances, it is fair to limit SWBT's liability for taking care of AT&T's equipment. In addition, SWBT's responsibility for its willful or negligent acts should be maintained because of the language to be adopted for resolution of Issue 48 (see below). Therefore, the Commission adopts SWBT's proposed language to resolve this issue.

Issue 48 (Restoration, Repair or Replacement of AT&T's Improvements, Equipment and Fixtures)

This issue concerns SWBT's responsibility to rebuild, restore, repair or replace AT&T's improvements, equipment or fixtures that are damaged due to casualties or due to SWBT's negligence or intentional misconduct. The parties agree that SWBT should not be responsible for casualty losses, but AT&T wishes to insert language to retain SWBT's liability for negligent or intentional acts of SWBT, its agents and employees. The Special Master recommends adoption of AT&T's additional language, reasoning that it is fair and reasonable to permit AT&T to seek recompense for any acts of intentional misconduct or acts of negligence or omission by SWBT's employees or agents. Neither SWBT nor AT&T commented on the Special Master's recommendation.

The Commission finds that AT&T's additional language should be adopted so that SWBT has an incentive to act with care when handling AT&T's equipment, fixtures and improvements in the collocated space. SWBT may have a duty to avoid negligence and intentional acts causing harm to AT&T's property under the Act, but permitting AT&T to recover damages for such harm will provide incentive for compliance with the Act's collocation requirements and is consistent with the Commission's resolution of Issue 3b (Limitation of Liabilities and Indemnification) under Section G above.

Issue 52 (Liability for Acts and Omissions of "Others")

This issue relates to SWBT's responsibility to AT&T for any damage caused to AT&T by the acts of third parties. SWBT proposes to add extremely broad language that would insulate SWBT from liability to AT&T for the acts and omissions of such third parties regardless of the degree of culpability of SWBT. SWBT's proposed language would also require AT&T

to save and hold SWBT harmless for any claims made against SWBT that are associated with the acts or omissions of third parties who act on behalf of AT&T. AT&T opposes the adoption of this new language, given that it has already acknowledged that its equipment and fixtures in collocated space may be subjected to harm by third parties under the parties' collocation arrangements. AT&T would have the General Terms and Conditions portion of the agreement cover collocation, as well.

The Special Master recommends adoption of AT&T's language and rejection of SWBT's language, stating that he believes SWBT's language is over broad. The parties did not respond to this recommendation.

The Commission finds that it should adopt the AT&T proposed language without the additional language proposed by SWBT. The Commission finds that the SWBT language is unreasonably broad because it seeks to insulate SWBT from the actions of others even where SWBT shares culpability with them. This would create an incentive for SWBT to act irresponsibly. Also, there is no reason that the allocation of liability under the General Terms and Conditions portion of the agreement should not apply to collocation issues, as well.

Issue 54a (Damage to Vehicles of AT&T and its Employees, Contractors, Invitees, Licensees or Agents)

On this issue, the parties agree that AT&T should be required to maintain automobile liability insurance for its own automobiles located on SWBT's property and that AT&T should hold SWBT harmless for any damage that occurs to its employees' vehicles. However, SWBT would like for AT&T to be responsible for also indemnifying SWBT for any damages that SWBT must pay to AT&T's employees for harm to their automobiles, and SWBT would expand the hold harmless and indemnification clause to AT&T's contractors,

invitees, licensees or agents, as well. The Special Master recommends that the Commission adopt SWBT's proposed language, and neither party responded to this recommendation.

The Commission finds that SWBT's proposed language should be adopted because SWBT should not be responsible for the automobiles of any individuals or companies who are on SWBT's property in order to serve AT&T's business purposes.

Issue 54d (Lost Profits and Revenues)

SWBT seeks to include language in the Appendix on collocation that clarifies that SWBT should not be required to pay AT&T for lost profits and revenues due to service interruptions. AT&T opposes inclusion of this language. The Special Master recommends adoption of SWBT's proposed language, noting that lost profits and revenues are speculative and difficult to quantify, and that in many instances if AT&T's services are interrupted, SWBT's will probably be interrupted too. Neither party responded to this recommendation.

For the reasons enunciated by the Special Master, the Commission finds that it should adopt SWBT's proposed language to resolve this issue.

2. Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission concludes that the recommendations of the Special Master should be adopted, with the minor modifications specified above. The Commission has determined that the rates established in this arbitration shall be interim rates only and that further proceedings shall be conducted to establish permanent rates.

3. Procedure for Establishment of Permanent Rates

In order to implement permanent rates, the AAS in its capacity as advisor to the Commission is instructed to conduct an investigation beginning on January 5, 1998, with a special focus on identifying the critical inputs and analyzing the costing models. The AAS and SWBT personnel shall meet in SWBT offices in St. Louis where software, data and subject matter experts responsible for critical input values will be readily available. Because SWBT will perhaps be required to disclose confidential information, including trade secrets and other proprietary matter, AT&T will not participate in these meetings. Similarly, the AAS shall meet with AT&T during this investigation period at a mutually agreed upon location to analyze cost data provided by AT&T. SWBT will not participate in these meetings. Because of its status under Missouri law, OPC will be allowed to participate in these meetings. See § 386.710, RSMo 1994. If either of the parties desires access to specific information produced by the other party during the review process it may use data requests, and any disputes over the production of such data may be brought to the Commission's attention in the form of a motion for protective order.

This process will allow the parties the opportunity to work with the AAS to explain in a thorough, detailed and analytical fashion their costing models and final costing inputs. The parties are expected to provide full cooperation with the AAS in this effort, including providing necessary training of the AAS, documentation for all inputs and calculations, and access to each of its cost models. The parties shall allow the AAS to analyze the models using various inputs and assumptions and make available all necessary data including data it considers to be proprietary.

The AAS should then submit to the Commission, SWBT, AT&T and OPC its report containing proposed permanent rates based on the same permanent rate costing approach adopted in Case No. TO-97-40 and commenting on the costing approaches proposed by the parties during the review process. The parties will be given an opportunity to file comments on the rates and the costing model proposed by the AAS and to support their positions with affidavits and schedules. The parties may seek protective orders from the Commission prior to filing these.

The Commission will then hold a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the AAS and OPC. There will be no opportunity for cross-examination by the parties, but the Commission will permit the filing of briefs following the hearing.

The Commission anticipates that it will issue a final order establishing permanent rates no later than July 1, 1998. The specific dates for the parties and OPC to respond to the AAS report, for the hearing, and for briefing will be established in a subsequent order.

The Commission notes that, by permitting SWBT and AT&T to file comments and by holding a hearing in this case, the Commission is not making a finding that it is required to do so under the Act, contrary to the arguments made by SWBT in its November 26 response. The Act's provisions governing State Commission arbitration proceedings do not mention the word "hearing" and do not otherwise suggest that a hearing is required. See 47 U.S.C. § 252(b). Moreover, the Act permits the Commission to use information from any source to make its determinations. See 47 U.S.C. § 252(b)(4)(B). This order should not be construed as finding that the Commission is required to permit the parties to each

present a case as in a contested case. SWBT's request for a contested case hearing with opportunity for cross-examination prior to issuance of this Report and Order and prior to the establishment of permanent rates should be denied.

IT IS THEREFORE ORDERED:

1. That the issues remaining in dispute as of the date of filing of the parties' Joint Statement of Remaining Issues on November 21, 1997, are resolved by the adoption of implementing language as set forth in this Report and Order.

2. That the language adopted by this Report and Order shall be incorporated by the Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc. into the interconnection agreement that they are required to submit pursuant to Ordered Paragraph 3.

3. That Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc. shall file an interconnection agreement implementing the language they have agreed to and the language adopted by the Commission in this Report and Order by February 1, 1998.

4. That the Commission will defer ruling on the language agreed to by the parties for the issues resolved following the filing of AT&T Communications of the Southwest, Inc.'s petition until it has reviewed the interconnection agreement required to be filed in accordance with Ordered paragraph 3.

5. That the scope of the evidentiary hearing to be scheduled in a subsequent Commission order shall be limited as described in this order and that Southwestern Bell Telephone Company's request for a hearing with opportunity for cross-examination is denied.

5. That the following procedural schedule is established for the purpose of determining permanent rates for the pricing issues described in this Report and Order:

Begin cost study review process - January 5, 1998

7. That any objections to the process established in this Report and Order for the setting of permanent rates shall be filed no later than December 29, 1997.

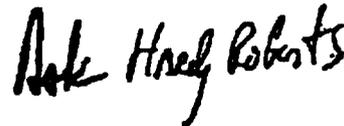
8. That Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc. shall use the interim rates approved in this Report and Order pending the development of permanent rates for these elements.

9. That Southwestern Bell Telephone Company and AT&T Communications of the Southwest, Inc. shall comply with the Commission's finding on each and every issue and shall comply with the procedure for determining permanent rates set forth in this order.

10. That this Report and Order shall become effective on January 2, 1998.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Lumpe, Ch., Drainer and Murray,
CC., concur.
Crumpton, C., dissents, with
dissenting opinion to follow.

Dated at Jefferson City, Missouri,
on this 23rd day of December, 1997.

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

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 23rd day of December, 1997.**

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

December 23, 1997

CASE NO: TO-98-115

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Mark Witcher, AT&T Communications, Suite 1500, 919 Congress, Austin, TX 78701

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy: