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January 18, 2000

Magalie Roman Salas
Office of the Secretary TW-A306
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 96-98, FCC 99-238
In the Matter of Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus eleven copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to ITS and to the Common Carrier Bureau. We are also providing an electronic copy of these comments via your ECFS interface.

Sincerely,

Pamela Pruitt Whittington, CPA
Director, Office of Policy Development

cc: ITS, Inc.
Jodie Donovan-May, Common Carrier Bureau

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)
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Implementation of the Local) CC Docket No. 96-98
Competition Provisions in the)
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COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS

I. INTRODUCTION

On November 5, 1999, the Federal Communications Commission (FCC or Commission) released the Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM) regarding Implementation of Local Competition provisions in the Telecommunications Act of 1996.¹ The Commission seeks comment on whether there is any basis in the statute or the FCC rules under which incumbent local exchange carriers (ILECs) could decline to provide entrance facilities at unbundled network element (UNE) prices. Also, the Commission seeks additional comments on whether requesting carriers may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching, to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service. Following the Fourth FNPRM the Commission issued a Supplemental Order expanding the scope of the Fourth FNPRM to also address the combination of loops and transport network

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, adopted September 15, 1999.

elements.² The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments in response to the Fourth FNPRM.

II. IMPACT OF SPECIAL AND SWITCHED ACCESS REVENUES ON USF

The Commission seeks comment regarding the financial impact on the federal Universal Service Fund (USF), should requesting carriers be allowed to use entrance facilities or combinations of UNE loops and transport in such a way as to avoid special access charges.³

The Texas PUC acknowledges the importance of the ILECs' special and switched access revenues to the federal universal service program. However, the Texas PUC has not performed or evaluated studies that would show the impact of the reduction of such revenues on the federal USF. Parallel circumstances involving the Texas USF have arisen and have been addressed by the Texas PUC. Briefly stated, recent efforts in Texas have been directed at converting implicit subsidies to explicit support of carriers through the Texas USF. The Texas PUC urges the Commission to avoid any action that would have an impact on state USF support mechanisms.

Historically, Texas intrastate switched access charges have contained implicit universal service support. To the extent that incumbent LECs' switched access revenues might be eroded through the use of UNEs, implicit universal service support could also be reduced. As a result, the Texas PUC determined that the revenues generated from inter-exchange carriers (IXCs) via

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370, adopted November 24, 1999.

³ Fourth FNPRM at ¶496, and *Supplemental Order* at ¶6.

special and switched access charges should be protected through UNE use restrictions imposed in the Mega-Arbitration dockets.⁴ Those protections are described in the next section.

The Texas PUC is currently addressing the implicit subsidies in Texas switched access rates through its universal service dockets.⁵ In these dockets, all ILECs in Texas must reduce switched access charges and intraLATA toll rates in exchange for Texas USF support. The Texas USF is funded through explicit assessments on all telecommunications providers' operations in the state and will be fully implemented by March 2000.

III. UNBUNDLED DEDICATED AND SHARED TRANSPORT

The Commission also asks the parties to refresh the record on whether requesting carriers may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching, to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service.⁶ The Texas PUC initially addressed this issue in the Mega-Arb Award.

In the Mega-Arb Award, the Texas PUC imposed restrictions on the use of UNEs in order to address the issue of displacement of special and switched access revenues. An IXC that is not also a customer's competitive local exchange carrier (non-CLEC IXC) could not purchase

⁴ Docket No. 16189, *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops*; Docket No. 16196, *Petition of Teleport Communications Group, Inc. for Arbitration to Establish an Interconnection Agreement*; Docket No. 16226, *Petition of AT&T communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*; Docket No. 16285, *Petition of MCI Telecommunication Corporation and Its Affiliate nMCImetro Access Transmission Services, Inc. for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996*; Docket No. 16290, *Petition of American Communications Services, Inc. and Its Local Exchange Operating Subsidiaries for Arbitration with Southwestern Bell Telephone Company pursuant to the Telecommunications Act of 1996* (collectively, the Mega-Arb).

⁵ Docket No. 18515, *Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan* and Docket No. 18516, *Compliance Proceeding for Implementation of the Small and Rural ILEC Service Plan*.

⁶ Fourth FNPRM at ¶496.

UNEs to avoid the payment of access charges.⁷ Addressing the use of UNE transport, the Award authorized the ILEC to bring a complaint arguing that an IXC is only engaged in a “sham” transaction whereby the IXC is acting as a CLEC in name only and purchases UNEs to avoid paying access charges.

The issue of sham transactions arose again in a post-interconnection dispute arbitration between an ILEC, Southwestern Bell Telephone Company (SWBT), and a CLEC, Waller Creek Communications, Inc. (WCC).⁸ Whereas, in the Mega-Arb Award, the focus was on competition in the local retail market, the focus in the WCC arbitration was on the ability of a CLEC to use UNEs to compete with an ILEC in the wholesale market and provide access services to non-CLEC IXCs among other customers. As a result, in the WCC arbitration, the Texas PUC addressed the displacement of special and switched access revenues caused by the use of UNE transport in a different manner.

In reaching its decision in the WCC arbitration, the Texas PUC affirmed that the basis for the non-CLEC IXC restriction⁹ in the Mega-Arb Award was to restrict the use of UNEs so that the implicit Texas USF support contained in special and switched access services are not potentially undermined.¹⁰ The Texas PUC considered two possible options to preserve this

⁷ Order Approving Amendments to Interconnection Agreement, Docket No. 16226, *Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company*; Docket No. 17579, *Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Further Issues to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company*, at p. 4.

⁸ Docket No. 17922, *Petition by Waller Creek Communications, Inc. for Arbitration with Southwestern Bell Telephone Company*, and Docket No. 20268, *Complaint by Waller Creek Communications, Inc. for Post Interconnection Agreement Dispute Resolution With Southwestern Bell Telephone Company* (collectively, the WCC Arbitration).

⁹ See discussion in Section II, Special and Switched Access Revenues, above.

¹⁰ Order on Reconsideration of Second Order on Appeal of Orders Nos. 9 and 2, Dockets Nos. 17922 and 20268 at 9 (June 9, 1999).

intent of the Meg-Arb Award. The first option would be to utilize the Mega-Arb Award blanket restriction to prohibit WCC from providing wholesale access services to non-CLEC IXCs. The Texas PUC rejected this option, concluding that such a restriction would preclude WCC from offering what might be a valuable and competition-enhancing wholesale access service to non-CLEC IXCs. Further, the non-CLEC IXCs would be deprived of the benefit of enhanced competition in the wholesale market.

The second option preserves the intent of the Mega-Arb Award to preclude the avoidance of access charges by non-CLEC IXCs while enhancing wholesale competition. WCC would be allowed to provide wholesale access to non-CLEC IXCs over the UNE dark fiber, but would be required to collect the implicit USF support embedded in the equivalent service and remit the support to SWBT, if SWBT is serving the local end-use customer, as long as those implicit subsidies exist.

The Texas PUC elected the second option, with one transitional condition. The Texas PUC did not place any restrictions on the use of UNEs but required the requesting carrier to pay implicit USF support contained in the tariffed access rates. WCC was allowed to use UNE dark fiber (or other UNEs) to carry traffic for any other telecommunication provider regardless of which provider served the retail local end-use customer. The condition imposed on this allowance was that if WCC utilizes dark fiber (or any other UNEs) obtained from SWBT under the WCC/SWBT interconnection agreement to provide wholesale transport service to a non-CLEC IXC, then WCC must collect from that wholesale customer any residual interconnection charge (RIC)¹¹ applicable to that transport service under SWBT's retail tariffs. WCC must then

¹¹ During the proceeding in the above referenced dockets, SWBT identified the intrastate RIC as the only implicit subsidy relevant to the transport element in the switched access service [*see* Hearing Tr., Dockets Nos. 17922 and 20268 at 104-106 (March 9, 1999)]. SWBT failed to identify any such subsidy in the special access service [*see* Hearing Tr., Dockets Nos. 17922 and 20268 at 131-133 (March 9, 1999)]. It is for this reason that the intrastate RIC is the only subsidy mentioned in the Texas PUC decision.

remit the RIC to SWBT if SWBT is serving the local end use customer. This condition was to remain in effect, the Texas PUC ruled, until the completion of various proceedings. The RIC was reduced by the Texas PUC as a result of changes in the Texas USF, and was eliminated from the intrastate tariffs on September 1, 1999, following the enactment of state legislation.¹² There are presently no remaining restrictions on WCC's use of UNEs to provide wholesale service as a result of the arbitration discussed above.

The Texas PUC specifically addressed the issue of shared transport in the context of the routing of intraLATA toll traffic in a post-interconnection dispute arbitration between an ILEC, SWBT, and two CLECs.¹³ The Texas PUC ruled that a CLEC is not restricted from purchasing unbundled shared interoffice transport on the terminating side of the tandem regardless of whether it serves the local end-user on the terminating end of the *intraLATA* call.¹⁴

The Texas PUC based its decision on the interconnection agreement language, the relevant FCC decision prohibiting usage restrictions on UNEs, and policy considerations. The Texas PUC determined that not allowing CLECs to use unbundled shared transport in the routing of intraLATA toll traffic on the terminating side of the tandem would severely diminish competition in the intraLATA and local markets.¹⁵

¹² See Docket No. 21184, *Southwestern Bell Telephone Company Notice of Intent to File Amended Tariff Sheets to Implement Rate Reductions in Its Switched Access Service Tariff in compliance with the Recently Enacted Legislation from SB 560*, Final Order (September 1, 1999).

¹³ Docket No. 20745 *Complaint of Birch Telecom of Texas LTD., L.L.P. and ALT Communication, L.L.C. against Southwestern Bell Telephone Company for Refusal to provide intraLATA Equal Access Functionality*, and Docket No. 20755, *Complaint of Sage Telecom, Inc. against Southwestern Bell Telephone Company for Violating Unbundled Network Elements Provisions of the Interconnection Agreement*.

¹⁴ See network diagram, Attachment A. Elements Nos. 1 through 4 would be obtained by the competitive LEC as UNEs. Element No. 5 would be purchased out of the intrastate switched access tariff.

¹⁵ Arbitration Award, Docket Nos. 20745 and 20755 at 35-36. (November 4, 1999).

The Texas PUC has addressed the issue of use of UNE transport for the origination and termination of intraLATA toll traffic by carefully balancing the interests of the customers, the incumbent LECs and the competitive LECs. In reaching its decisions on this issue, the Texas PUC has focused on the need to permit unrestricted use of UNEs while at the same time protecting relevant access revenues through the Texas USF. The Texas PUC believes this approach fosters competition while protecting the customer and recommends the Commission consider a similar approach. In the event the Commission finds it necessary to restrict the use of UNE transport for the origination or termination of interstate toll traffic, the Texas PUC recommends that the Commission permit states the flexibility to implement policies that address this issue on a state-specific basis for intrastate toll traffic.

IV. COMBINATIONS OF UNBUNDLED LOOPS AND TRANSPORT

The Commission seeks comment on whether there is any basis under which ILECs can decline to provide combinations of loops and transport elements at UNE prices.¹⁶ The Texas PUC addressed the issue of loop and transport combinations in its proceeding relating to SWBT's application to provide in-region interLATA service under section 271 of the FTA.¹⁷ The Texas PUC addressed the issue within the limited context of ensuring CLEC access to the enhanced extended link (EEL) as an alternative to collocation within a SWBT central office.

In the 271 Proceeding, the Texas PUC negotiated an agreement with SWBT for the provisioning of EEL that was memorialized in the Memorandum of Understanding (MOU) filed

¹⁶ Supplemental Order at ¶6.

¹⁷ Project No. 16251, *Investigation of Southwestern Bell Telephone Company's Entry Into the InterLATA Telecommunications Market* (271 Proceeding).

by SWBT on April 26, 1999.¹⁸ The commitment by SWBT was later incorporated into the Texas 271 Interconnection Agreement (T2A), which was approved by the Texas PUC and is now available to CLECs.¹⁹ A copy of the relevant section of the T2A is included as Attachment B of these comments.

Pursuant to the MOU and T2A, SWBT will combine unbundled loops with unbundled dedicated transport, under specified conditions, to provide the enhanced extended link (EEL) at UNE prices. SWBT agreed to combine unbundled 2 or 4-wire analog or 2-wire digital loops with unbundled dedicated transport facilities to allow CLECs to provide circuit switched or packet switched telephone exchange service to the CLECs' own end-user customers. Combination of unbundled 4-wire digital loops with unbundled dedicated transport facilities would be performed by SWBT to allow CLECs to provide only circuit switched telephone exchange service to the CLECs' own end-user customers. Alternatively, CLECs may themselves combine any unbundled loop with unbundled dedicated transport facilities. If a CLEC orders a combination of unbundled loops and transport that meet the definition of EEL, and such elements are already combined, SWBT will supply the combination as a "pre-existing combination."

During its deliberations, the Texas PUC determined that for the elements SWBT agreed to combine, it was reasonable to allow limitations on the use of such combinations, because SWBT is not currently legally required to combine elements, and the action would provide CLECs with an alternative to having to collocate in every central office.²⁰ The new

¹⁸ Memorandum from James B. Shelley, President-SWBT Regulatory to Texas PUC, Project No. 16251, Memorandum of Understanding with Attachments, (filed April 26, 1999).

¹⁹ Project No. 16251, *Investigation of Southwestern Bell Telephone Company's Entry Into the InterLATA Telecommunications Market*, Order No. 55 Approving the Texas 271 Agreement (Oct. 13, 1999).

²⁰ Open Meeting Tr. at 28-29 (April 29, 1999).

combinations are intended to increase Texas local retail customers' options available from competing retail local service providers. The Texas PUC distinguished this ruling, which focuses on supporting competition in the local retail market, from the ruling in the WCC Arbitration, which focused on opening competition in the wholesale market.²¹

V. CONCLUSION

In the Fourth FNPRM and the Supplemental Order, the Commission is considering whether there is any basis in the statute or the Commission rules under which incumbent LECs could decline to provide entrance facilities or combinations of loops and transport at UNE prices.²² The Texas PUC has not found any basis in the statute or the Commission rules to allow incumbent LECs to unilaterally decline to provide entrance facilities at UNE prices. However, the Texas PUC has determined that it may impose restrictions for policy reasons, and has imposed limited, temporary restrictions on the use of UNEs or on the prices paid for unbundled network elements. As described more fully above, the Texas PUC has carefully balanced the interests of the customers, the incumbent LECs, and the competitive LECs by employing limited, temporary restrictions on the use of UNEs. The Texas PUC believes that this approach is one

²¹ *Id.*

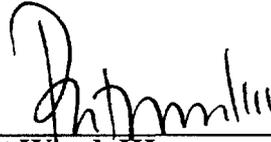
²² Fourth FNPRM at ¶495, and Supplemental Order at ¶6

that will foster competition while protecting the customer, and the Texas PUC recommends that the Commission consider such an approach.

Respectfully submitted,

**Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326**

January 13, 2000



**Pat Wood, III
Chairman**



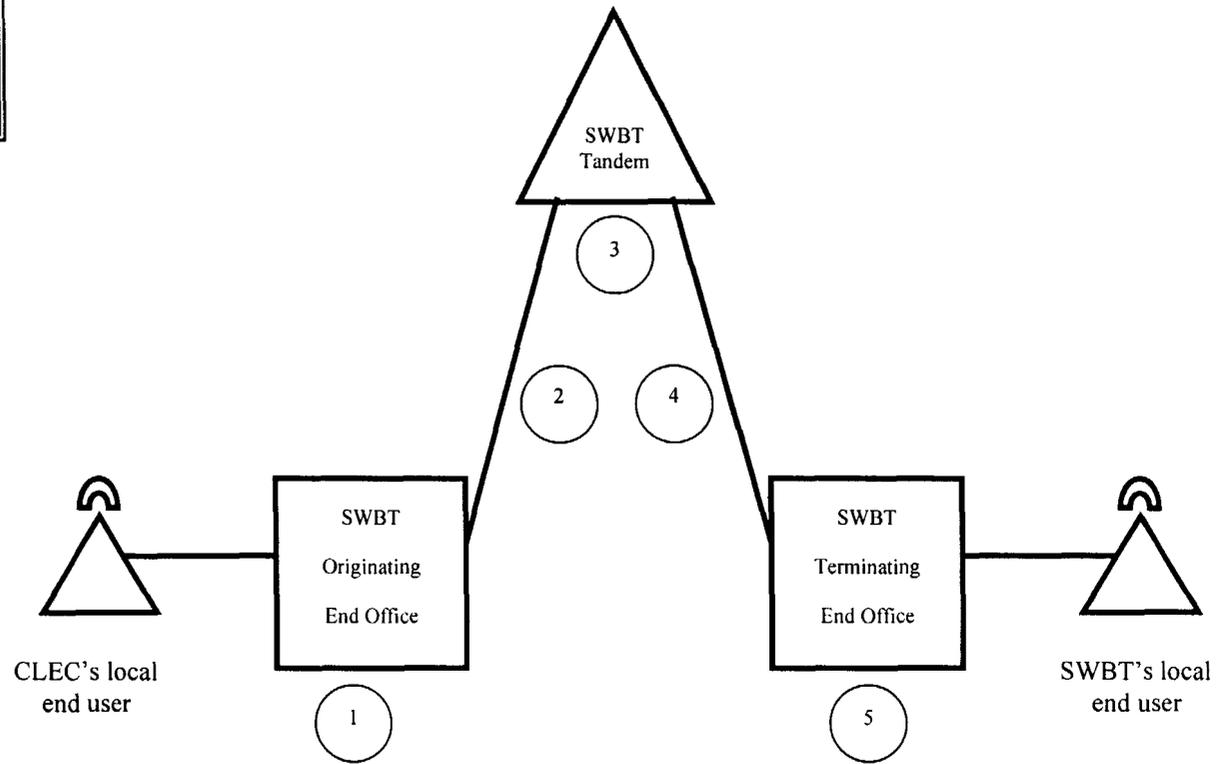
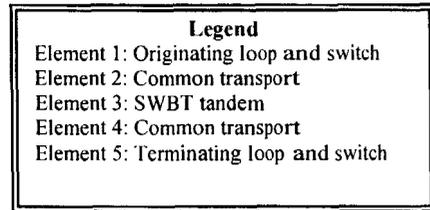
**Judy Walsh
Commissioner**



**Brett A. Perlman
Commissioner**

ATTACHMENT A

IntraLATA Call Flow Diagram



The above diagram is based on the diagram presented in the Arbitration Award, Docket Nos. 20745 and 20755 (November 4, 1999).

ATTACHMENT B

EXCERPT FROM TEXAS 271 INTERCONNECTION AGREEMENT RELATED TO ENHANCED EXTENDED LINKS (ATTACHMENT 6, SECTION 14.7)

ATTACHMENT 6: UNBUNDLED NETWORK ELEMENTS

1.0 Introduction

...

14.0 Additional Provisions

Notwithstanding anything in this Agreement to the contrary (including but not limited to this Attachment, Appendix Pricing-UNE, and Appendix Pricing-UNE Schedule of Prices):

- 14.1 Except as modified below, SWBT agrees to make all unbundled network elements (UNEs) set forth in this Agreement available to CLEC for the term of this Agreement, on the terms and at the prices provided in this Agreement.
- 14.2 SWBT will, except as provided elsewhere in Section 14, provide combinations of network elements to CLEC consistent with SWBT's obligations in this Agreement at the applicable charges set forth in this Agreement. For preexisting combined elements, where no manual work is required by SWBT in order to establish connections between the requested elements at the central office, an outside plant location, or the customer premises, SWBT will not apply a Central Office Access Charge but will apply all other recurring and nonrecurring charges applicable to the elements included in the combination, and the electronic service order charge. The pre-existing combined elements referred to in the preceding sentence include all orders included within the definition of "Contiguous Network Interconnection of Network Elements" in Attachment 7, sections 6.12 and 6.12.1. For new UNE combinations that are not within the above-referenced definition of "Contiguous Network Interconnection of Network Elements" and that require manual work by SWBT in order to establish connections between the requested elements at the central office, an outside plant location, or the customer premises, the applicable recurring and nonrecurring charges will apply, together with the Central Office Access Charge. Such combinations may be referred to elsewhere in this Agreement as "new" combinations.
- 14.3 For service to business customers, beginning October 13, 2001:
 - 14.3.1 If the FCC or the Texas Public Utility Commission determines after this Agreement is executed by the Parties or has determined before this Agreement is executed by the Parties that a certain network element need not be provided under Section 251(c)(3) of the FTA, either statewide or in a particular location or locations, SWBT may set

the price of such network element(s) at a market level for the applicable areas. SWBT will provide 60 days notice (in accordance with the Notice provision in the General Terms and Conditions of this Agreement) to CLEC that the FCC or the Texas Public Utility Commission has made such a determination. SWBT will include in the notice the specifics of any pricing changes and the implementation dates for the pricing changes applicable to CLEC. Existing nonrecurring prices will apply to any UNEs for which orders are received prior to midnight on the day preceding the date specified for the pricing change. Application of the market level nonrecurring prices will apply beginning at 12:01 a.m. on the date specified for implementation. Application of the market level recurring charges will apply beginning at 12:01 a.m. on the date specified for implementation without regard to the time or date the orders were received by SWBT. A market price set by SWBT pursuant to this paragraph will not be subject to review, approval or disapproval by the TPUC.

- 14.3.2 If the FCC or a court modifies (after this Agreement is executed by the Parties) the TELRIC methodology applicable to unbundled network elements, SWBT and CLEC may renegotiate the applicable prices for unbundled network elements provided pursuant to Section 251(c)(3) of Title 47, United States Code. If the Parties are unable to reach agreement on applicable prices within 135 days of the request by either Party for such negotiations, either Party may submit remaining disputes to the Texas Commission for arbitration. The scope of renegotiation and arbitration of prices under this section will be limited to the scope of the FCC or court modification of the TELRIC methodology to the extent that such methodology was relied upon in setting the unbundled network element rates in this Agreement, and further limited to the impact that the modification of the TELRIC methodology would have had if it had been in effect at the time the UNE prices in Appendix Pricing UNE – Schedule of Prices were established. Pending the establishment of any modified prices by Commission arbitration award or Commission approval of negotiated modifications, the prices set forth in Appendix Pricing UNE -- Schedule of Prices will apply.
- 14.3.3 In those SWBT central offices where there are four (4) or more CLECs collocated for which SWBT has provided UNEs, SWBT may elect to not combine UNEs that are not already combined in that central office, *i.e.*, “new” combinations as defined in section 14.2. In that event, SWBT will request that CLEC provide a one (1) year forecast of its expected demand for UNEs in that central office which CLEC will combine outside of its existing or planned collocation arrangements. Within sixty (60) days of receipt of CLEC's forecast, SWBT will construct a secured frame room in the central office or, if space is not available, external cross connect cabinet until space becomes available in the central office at no additional cost to CLEC where CLEC may combine UNEs. If CLEC submits such a forecast, SWBT will continue to combine UNEs until the secured frame room or external cross connect cabinet is made available to CLEC. However, if at any time after a secured frame room or external cross connect cabinet is made available, SWBT is unable to meet CLEC's forecasted demand for UNEs to be combined through use of these arrangements due to a lack of capacity, SWBT will resume combining UNEs for CLEC on new combination orders until capacity can be provided. If CLEC fails to submit such a

forecast, SWBT will no longer combine UNEs that are not already combined. CLEC can access the secured frame or the external cross-connect cabinet without having to collocate.

- 14.3.3.1 When a CLEC orders elements for combining at the secured frame or cabinet, SWBT will cross-connect those elements to the frame or cabinet at no additional charge to the CLEC, beyond the recurring and non-recurring charges provided for the elements themselves under this agreement (e.g., for a loop and port combination, SWBT will cross-connect the loop and the port to the secured frame or cabinet, and the CLEC will pay applicable recurring and non-recurring charges for the loop and the port, but there is no charge for use of the frame or cabinet and no charge for a cross connect from loop to frame/cabinet or from port to frame/cabinet). SWBT may not collect a Central Office Access Charge when CLEC combines elements at the frame or cabinet under this section.
- 14.3.3.2 SWBT and CLEC shall negotiate a mutually agreeable method of wiring for cross-connects at the secured frame or cabinet. During such period of negotiation or until a mutually agreeable method of wiring is established, the CLEC may obtain from SWBT, the combining services for Network Elements at a non-recurring charge to be set by SWBT at any amount not to exceed \$44.92 for simple business orders and \$98.31 for complex business orders. This charge shall apply in addition to any other applicable recurring and non-recurring charges.
- 14.3.3.3 A CLEC may order multiple elements on a single LSR for combining at the secured frame or external cabinet, in accordance with the terms and conditions for ordering and provisioning of UNEs as set out in Attachment 7, Ordering and Provisioning Unbundled Network Elements.
- 14.3.3.4 SWBT will develop performance measures related to the timeliness and accuracy of its provisioning of elements for combining at the secured frame or external cabinet, during the six-month review process as set out in Attachment 17, Performance Remedy Plan. These measures will be incorporated into the liquidated damages and assessments provisions of Attachment 17.
- 14.3.4 SWBT may not substitute the above described methods of combining UNEs for its own continued performance of such connections at cost based rates if the FCC or reviewing court has determined that the ILECs have an obligation to perform such connections.
- 14.4 For service to residential customers, beginning October 13, 2002:
- 14.4.1 If the FCC or the Commission determines that a certain network element need not be provided under Section 251(c)(3) of the FTA, either statewide or in a particular location or locations, SWBT may set the price of such network element(s) at a market level for the applicable areas. To the extent that the FCC or Commission determination eliminates the obligation to supply an element at TELRIC rates as part

of a platform of unbundled network elements, *i.e.*, a combination of elements sufficient to permit a CLEC to deliver end-to-end service to an end user customer without using CLEC equipment or facilities (other than operator services and directory assistance service that the CLEC may supply via customized routing), then, in pricing the unbundled network element platform under this provision, SWBT shall not increase the total price of the platform by more than twenty (20) percent each year.

- 14.4.2 If the FCC or a court modifies (after this Agreement is executed by the Parties) the TELRIC methodology applicable to unbundled network elements, SWBT and CLEC may renegotiate the applicable prices for unbundled network elements provided pursuant to Section 251(c)(3) of Title 47, United States Code. If the Parties are unable to reach agreement on applicable prices within 135 days of the request by either Party for such negotiations, either Party may submit remaining disputes to the Texas Commission for arbitration. The scope of renegotiation and arbitration of prices under this section will be limited to the scope of the FCC or court modification of the TELRIC methodology to the extent that such methodology was relied upon in setting the unbundled network element rates in this Agreement, and further limited to the impact that the modification of the TELRIC methodology would have had if it had been in effect at the time the UNE prices in Appendix Pricing UNE – Schedule of Prices were established. Pending the establishment of any modified prices by Commission arbitration award or Commission approval of negotiated modifications, the prices set forth in Appendix Pricing UNE -- Schedule of Prices will apply.
- 14.5 To the extent the Commission by arbitration, authorizes new unbundled network elements, SWBT will provide such elements, consistent with the terms of this Section, to CLEC. If the Commission-approved unbundled network element is operational, CLEC may obtain the unbundled network element through the Commission's 252(i) process or through the expedited special request procedure set out in section 2.22.11. If the Commission-approved unbundled network element is not operational at the time it is approved by the Commission in an arbitration, the availability date shall comply with the availability date established in the implementation schedule in effect under that interconnection agreement, and shall not be less than ten days. If the availability date in the interconnection agreement has passed the new unbundled network element is considered operational. If the FCC has authorized a new unbundled network element that the Commission has not previously ordered in an interconnection agreement, SWBT will provide CLEC with a proposed statement of terms and conditions, including prices, for access to any new element within thirty days of CLEC's request after the FCC ruling authorizing access to the new element. If SWBT and CLEC have not agreed on terms and conditions of access to the new element within forty-five days thereafter, either party may take the matter to the Commission for dispute resolution. If the FCC ruling authorizing access to the new element prescribes a different procedure for establishing terms and conditions of access, that procedure will govern.

14.6 Dark fiber as a media for dedicated interoffice transport and for loop feeder in a digital loop carrier environment may be used in connection with residential services, but is more prevalently used in connection with business services. Thus, consistent with its obligations under this Agreement generally and Section 14 specifically, SWBT will provide dark fiber as an unbundled network element subject to the two year provisions of Section 14.3 as opposed to the three year provisions of Section 14.4.

14.7 Enhanced Extended Loop (EEL)

Consistent with Sections 14.3.1, 14.3.2, 14.4.1, and 14.4.2 above:

14.7.1 SWBT will combine unbundled loops with unbundled dedicated transport as described herein to provide enhanced extended loop at the recurring and nonrecurring charges applicable to each UNE requested above, with applicable recurring and nonrecurring charges for cross connects, the Central Office Access Charge where applicable and applicable Service Order Charge. SWBT will cross-connect unbundled 2 or 4-wire analog or 2-wire digital loops to unbundled voice grade/DS0, DS1, or DS3 dedicated transport facilities (DS0 dedicated transport is only available between SWBT central offices) for CLEC's provision of circuit switched or packet switched telephone exchange service to CLEC's own end user customers. SWBT will also cross-connect unbundled 4-wire digital loops to unbundled DS1, or DS3 dedicated transport facilities for CLEC's provision of circuit switched telephone exchange service to CLEC's own end user customers.

14.7.2 The dedicated transport facility will extend from CLEC customer's SWBT serving wire center to either CLEC's collocation cage in a different SWBT central office (in which case, no dedicated transport entrance facility is necessary) or to CLEC's point of access through a dedicated transport entrance facility. CLECs must order the dedicated transport facility, with any necessary multiplexing, from CLEC's collocation cage or CLEC's switch location to the wire center serving CLEC's end user customer. CLEC will order each loop as needed and provide SWBT with the Channel Facility Assignment (CFA) to the dedicated transport. For the loop UNE, the dedicated transport UNE, the cross-connects needed to combine the two, as well as any necessary multiplexing, ordering and provisioning will be pursuant to the ordering and provisioning terms and conditions for UNEs as set out in Attachment 7 of this Agreement. For the loop UNE, the dedicated transport UNE, the cross-connects needed to combine the two, as well as any necessary multiplexing, maintenance will be pursuant to the maintenance terms and conditions for UNEs as set out in Attachment 8 of this Agreement. SWBT will implement electronic ordering of EELs as specified in Attachment 7, Section 1.4.

14.7.3 Alternatively, CLEC may cross-connect unbundled loops with the unbundled dedicated transport facilities in its physical collocation space utilizing its own equipment or through the secured frame room in the central office, or if space is not available, in an external cross-connect cabinet until space becomes available in the central office. The restrictions on loop and transport facility type, and on CLEC

services to be provided over the extended loop, that are contained in Section 14.7.1 regarding SWBT-combined EELs do not apply to the combinations assembled by CLECs under this subsection 14.7.3. CLEC can access the secured frame or the external cross connect cabinet without having to collocate. If CLEC elects the secured frame or cabinet option, CLEC will provide a rolling 12 month forecast, updated every six (6) months, of its expected demand for unbundled loops to be connected with the unbundled dedicated transport facilities in each central office in which CLEC will combine outside of its existing or planned collocation arrangements. Within sixty (60) days of receipt of CLEC's forecast for a given central office, SWBT will construct, at no additional cost to CLEC, a secured frame room in the central office, or, if space is not available, external cross connect cabinet until space becomes available in the central office, where CLEC may combine unbundled loops with the unbundled dedicated transport facilities. There will be no additional charge to the CLEC for SWBT extending loop and transport elements to the secured frame or cabinet. If CLEC submits such a forecast, SWBT will temporarily combine unbundled loops with the unbundled dedicated transport facilities until the secured frame room or external cross connect cabinet is made available to CLEC. When the secured frame room or external cross connect cabinet is made available, CLEC will, within ninety (90) days after providing a forecast for a particular central office or thirty (30) days after receiving appropriate terminal assignment information to place connections on the secured frame, whichever is later, replace the temporary connections made by SWBT, effectively half-tapping the existing temporary connections so that the temporary connection can be removed without interrupting the end user's service. When notified by CLEC that its connections are complete within the period described above, SWBT will remove its temporary connections. If CLEC fails to notify SWBT that it has placed its connections on the secured frame during that period, SWBT will charge CLEC the applicable special access recurring and nonrecurring rates, in lieu of the UNE rates. Such special access charges shall be retroactive to the date SWBT began combining the UNEs for CLEC pursuant to this paragraph. If at any time after a secured frame room or external cross connect cabinet is made available, SWBT is unable to meet CLEC's forecasted demand for use of these arrangements due to a lack of capacity, SWBT will again temporarily combine unbundled loops with the unbundled dedicated transport facilities as an interim arrangement for CLEC until capacity can be provided. When capacity is made available, temporary connections performed by SWBT will be removed as described above. If a CLEC is located at an external cross connect cabinet because SWBT ran out of space in a central office, once there is additional space available in the central office, and a CLEC requests to move to the secured frame room, there will be no charge to the CLEC for moving. Such move shall be coordinated to minimize service disruption to the customer.

If CLEC submits forecasts pursuant to this section, and fails to meet fifty percent (50%) of its submitted forecast for any central office for twelve consecutive months, CLEC will pay SWBT the reasonable costs for those twelve months associated with the unused capacity of the secured frame for that office, *i.e.*, the capacity that would

have been used if CLEC had achieved 50% of its forecast and which was not in fact used by other carriers.

SWBT will not disclose the forecasts provided for in this section to any persons other than SWBT employees responsible for provisioning extended loops under the secured frame and cabinet options. Any other disclosure, and any use by SWBT of these forecasts for marketing or business strategic purposes, is prohibited.

- 14.7.3.1 SWBT and CLECs shall jointly establish, within 30 days from the approval of this Agreement, a detailed procedure for combining 4 wire digital loops (*e.g.*, DS1 loops) to dedicated transport facilities (*e.g.*, DS3 transport) where CLECs are required to combine. In the event the parties are unable to reach agreement, the Commission shall establish the procedure within sixty days.
- 14.7.4 If CLEC orders a combination of unbundled loops and transport that meet the definition of enhanced extended link in this Agreement that are already connected at the time of the CLEC order (*e.g.*, the elements are in an existing equivalent configuration), SWBT will supply that combination to CLEC as a "pre-existing combination," without separating and recombining the elements, pursuant to Section 14.3 and other applicable provisions of this Agreement. For preexisting combined UNEs, SWBT will not apply a Central Office Access Charge but will apply the recurring and nonrecurring charges applicable to each UNE requested along with the appropriate Service Order Charge.
- 14.8 For purposes of this Section and, for the time period(s) specified in this Section, SWBT agrees to waive the right to assert that it need not provide pursuant to the "necessary and impair" standards of Section 251(d)(2) of Title 47, United States Code, a network element now available under the terms of this Agreement and/or its rights with regard to the combination of any such network elements that are not already assembled. Except as provided in Section 14.5 above, CLEC agrees that the UNE provisions of this Agreement are non-severable and "legitimately related" for purposes of Section 252(i) of Title 47, United States Code. Accordingly, CLEC agrees to take the UNE provisions of this Agreement in their entirety, without change, alteration or modification, waiving its rights to "pick and choose" UNE provisions from other agreements under Section 252(i) of Title 47, United States Code. This mutual waiver of rights by the Parties will constitute additional consideration for the Agreement.