

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and)
Southwestern Bell Communications Services,)
Inc. d/b/a/ Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

CC Docket No. 00-4

RECEIVED
JAN 31 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF CCCTX, INC. D/B/A CONNECT!

CCCTX, Inc. d/b/a Connect! ("Connect"), by undersigned counsel and pursuant to the Commission's *Public Notice* (dated January 10, 2000), hereby submits its comments upon the above-captioned application ("Application") of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (collectively "SWBT").

SUMMARY AND INTRODUCTION

Connect opposes SWBT's Application on three grounds:

- (1) SWBT has attempted improperly to terminate its interconnection agreement with Connect, in violation of 47 U.S.C. § 271(c)(2)(B)(i);
- (2) SWBT has denied Connect the right to adopt an interconnection agreement under 47 U.S.C. § 252(i), also in violation of 47 U.S.C. § 271(c)(2)(B)(i); and
- (3) SWBT has alleged that its future Section 271 applications filed in other states will ensure adequate performance in Texas, even though it is blatantly violating an order of the Arkansas Public Service Commission requiring it to pay Connect reciprocal compensation for traffic to Internet service providers.

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ARGUMENT

I. SWBT HAS NOT PROVIDED INTERCONNECTION AS REQUIRED BY COMPETITIVE CHECKLIST ITEM ONE

A. SWBT Has Attempted to Terminated Its Interconnection Agreement with Connect in Bad Faith

In violation of its Checklist obligation to provide interconnection, SWBT has attempted to terminate its interconnection agreement with Connect without adequate cause. *See* 47 U.S.C. § 271(c)(2)(B)(i). As the attached Declaration of Bill Jester explains (at ¶ 10), SWBT has an interconnection agreement with Connect (hereinafter "Agreement") that continues on a month-to-month basis after January 22, 2000 while the parties negotiate a successor agreement. *See* Attachment 1 (attached hereto) (containing Declaration of Bill Jester). In a January 20, 2000 letter to Connect, SWBT stated its intention to terminate the Agreement as of January 22, 2000 on the ground that Connect had "failed and refused to engage in negotiations for a successor Agreement." *See id.*; Attachment 2, Exhibit 14 (attached hereto). SWBT also threatened Connect by stating that: "No further orders will be processed unless or until we are able to reach agreement on terms and conditions to apply after January 22, 2000." *See* Declaration of Bill Jester, at ¶ 10; Attachment 2, Exhibit 14.

It is not true, as SWBT asserts, that Connect refused to negotiate a successor agreement. Well before January 22, 2000, Connect sought to adopt SWBT's interconnection agreement with MFS Communications Company, Inc. ("MFS") in Texas pursuant to 47 U.S.C. § 252(i). Declaration of Bill Jester, at ¶ 11. SWBT rejected Connect's request for reasons that, as Section I.B explains below, were improper. *Id.* Connect also has explored the possibility of adopting the

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Southwestern Bell Telephone Company
State of Texas

T2A agreement in Texas as well as SBC's 13-state generic agreement. *Id.* Connect is currently analyzing the T2A agreement and searching for an alternative agreement to adopt under 47 U.S.C. § 252(i). *Id.* Connect has not broken off negotiations with SWBT and therefore the Agreement continues to run.¹

As one sign of Connect's good faith, Connect has joined the Texas Commission's consolidated arbitration proceeding to resolve disputes over whether Internet service provider ("ISP") traffic is eligible for reciprocal compensation. *Id.*, at ¶ 12; *see* TX PUC Docket No. 21982. Had Connect wished to insist upon its rights under the Agreement, it could have refused to pursue resolution of this reciprocal compensation issue until it and SWBT had reached impasse in negotiations over *all* issues. *Id.* By submitting the issue to the Texas Commission, Connect has ensured that it will be resolved expeditiously. SWBT therefore is not prejudiced by the fact that the Agreement continues to run.

The Commission should note that SWBT's tactics in this case are not new. Connect and SWBT are currently litigating a similar attempt by SWBT in Arkansas to terminate an interconnection agreement by claiming bad faith on the part of Connect. *Id.*, at ¶ 11 n.1. That case is pending in the Circuit Court of Pulaski County, Arkansas, Seventh Division (Case No. CV99-8537).

¹ The Commission should note that Connect has filed a complaint against SWBT at the Texas Commission, opposing SWBT's attempt to terminate the Agreement. *See* Attachment 2 (attached hereto).

The Commission should find that SWBT has failed to comply with Competitive Checklist item one because it does not honor its interconnection agreements with carriers such as Connect.

B. SWBT Will Not Make Available A Designated Interconnection Agreement for Adoption Pursuant to 47 U.S.C. § 252(i)

As noted above, SWBT has refused to allow Connect to adopt the interconnection agreement between SWBT and MFS pursuant to 47 U.S.C. § 252(i). SWBT asserts that because that agreement expired on October 15, 1998 and because "it is currently subject to the terms and conditions re: NonRenewal and Renegotiations delineated in that Agreement," it is not available for adoption. *See* Attachment 2, Exhibit 3 (containing letter of J.O. Krzesinski of SWBT to Cindy Lee of Connect (dated October 13, 1999)). SWBT's explanation is insufficient to discharge its obligation under 47 U.S.C. § 271(c)(2)(B)(i).

SWBT is incorrect in arguing that its agreement with MFS has expired. Section 20.2 of that agreement provides for an "initial term" of two years, but states that

Absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party . . .

See Attachment 3 (containing Section 20 of MFS/SWBT Agreement) (attached hereto).

Apparently, neither SWBT nor MFS has terminated their agreement pursuant to this provision because they continue to operate under it. *See* Declaration of Bill Jester, at ¶ 11. Indeed, SWBT and MFS recently amended their agreement to incorporate new terms for unbundled dedicated

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interoffice transport, evidencing their intention to continue operating under it for the foreseeable future. *See* Attachment 4 (attached hereto) (containing Order of Texas Commission approving amendment (dated October 13, 1999)). Thus, by the agreement's own terms, it has not been terminated, but rather remains in "full force and effect." There is no basis for SWBT's denial of Connect's request to adopt the MFS/SWBT agreement under 47 U.S.C. § 252(i).

Even if the Commission were to deem the MFS/SWBT agreement as somehow technically expired but nevertheless viable for MFS and SWBT, the law would still compel SWBT to allow competitors to adopt the agreement. Section 252(i) of the Act states:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 252(i). The plain text of this section requires SWBT to make the MFS agreement available to Connect "upon the same terms and conditions as those provided in the agreement" — which, in this case, would mean subject to the automatic renewal clause of Section 20.2 of that agreement. The fact that the initial term of the MFS agreement has passed is of no moment for the analysis under 47 U.S.C. § 252(i).

SWBT may argue that, under the Commission's rules, it is obligated to make an agreement available for adoption only for a "reasonable period of time," which supposedly had passed in the case of the MFS agreement. *See* 47 C.F.R. § 51.809(c). While that argument would hold water in the case of an agreement that had actually expired, it is weak in the instant case. Congress intended 47 U.S.C. § 252(i) to deter incumbents like SWBT from discriminating

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Southwestern Bell Telephone Company
State of Texas*

against competitors by entering sweetheart deals with favored allies. *See Local Competition Order*,² ¶ 1315 ("primary purpose of section 252(i) [is to] prevent[] discrimination"). It would run directly contrary to Congressional intent for the Commission to allow SWBT to provide interconnection to MFS under rates, terms and conditions that would be unavailable to a CLEC such as Connect which exercises its rights under 47 U.S.C. § 252(i). The Commission did not intend its "reasonable period of time" standard to override the anti-discrimination function of 47 U.S.C. § 252(i).

Because SWBT has refused to make an existing, live interconnection agreement available to Connect under 47 U.S.C. § 252(i), it has failed to comply with Competitive Checklist item one. *See* 47 U.S.C. § 271(c)(2)(B)(i).

II. SWBT HAS REFUSED TO PAY CONNECT RECIPROCAL COMPENSATION FOR ISP TRAFFIC

SWBT has refused to pay Connect reciprocal compensation for ISP traffic terminated by Connect in Arkansas. While the Commission has stated that the applicant's practices in states other than the one for which it seeks Section 271 authority are irrelevant,³ SWBT itself has opened the door to considering practices in other states. SWBT claims that (1) its performance

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996), *vacated in part, Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) ("*Local Competition Order*").

³ *See Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, at ¶¶ 398-99 (rel. December 22, 1999) ("*Bell Atlantic Order*").

in Texas is unlikely to deteriorate following approval because it plans to seek Section 271 authority in its other states and (2) the Commission's review of those Section 271 applications will function as a de facto, additional review of SWBT's performance in Texas. *See* Application, at 46. Of course, if SWBT is blatantly defying the orders of regulators in its other states, it is unlikely to seek Section 271 authority there anytime soon and thus does not have an incentive to maintain its performance in Texas.

Accordingly, the Commission should be aware that SWBT has refused to pay Connect reciprocal compensation for ISP traffic in Arkansas, despite the fact that the Arkansas Commission has specifically ordered SWBT to pay. *See* Declaration of Bill Jester, at ¶ 14; *Connect Communications Corporation v. Southwestern Bell Telephone Company*, Docket No. 98-167-C, Order No. 6, 1998 WL 974059 (Ark. P.S.C. December 31, 1998). SWBT appealed the Arkansas Commission decision to federal district court, which dismissed the appeal on jurisdictional grounds.⁴ *Southwestern Bell Telephone Company v. Connect Communications, Corp.*, 72 F.Supp.2d 1043 (E.D. Ark., W.Div. Sept. 22, 1999). Neither the Arkansas Commission nor any court has granted a stay of the order requiring SWBT to pay Connect reciprocal compensation. SWBT consequently has a legal obligation to pay reciprocal compensation to Connect that it has obstreperously ignored.

In the *Bell Atlantic Order* (at ¶ 377), although the Commission stated that the

⁴ SWBT has appealed the district court's ruling and that case is pending. *Southwestern Bell Telephone Company v. Connect Communications Corporation*, No. 99-3952 (8th Cir., appeal filed Oct. 21, 1999).

Competitive Checklist does not require payment of reciprocal compensation for ISP traffic, it nevertheless recognized that the applicant has an obligation to comply with state commission orders regarding the payment of reciprocal compensation for ISP traffic. If that holding accurately interpreted the reciprocal compensation prong of the Competitive Checklist, SWBT would be in violation of it in Arkansas. However, the Commission misinterpreted the reach of the Competitive Checklist in the *Bell Atlantic Order*. The Commission ruled that the Competitive Checklist requires only compliance with 47 U.S.C. § 251(b)(5), which provides an obligation to pay reciprocal compensation for local telecommunications traffic, rather than the payment of reciprocal compensation for ISP traffic because that traffic, according to an earlier ruling,⁵ is "non-local interstate traffic." *Bell Atlantic Order*, ¶ 377. The Commission mischaracterized its holding in the *Declaratory Ruling* because it "did not mean to suggest there that calls involving ISPs are never 'telephone exchange service.'" *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78 and 98-91, FCC 99-413, at n. 77 (rel. December 23, 1999). On the contrary, "ISP-bound traffic is jurisdictionally mixed" (*id.*) and therefore composed of some local traffic for which reciprocal compensation would be due under 47 U.S.C. § 251(b)(5). Consequently, unless SWBT demonstrates that none of the ISP traffic at issue in a state is local traffic, it must pay reciprocal compensation associated with such traffic to comply with the Competitive

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 99-38, 14 FCC Rcd 3689 at n. 87 (1999) ("*Declaratory Ruling*").

Checklist.

Thus, SWBT's claim that future Section 271 applications will constrain its behavior in Texas lacks force because, based upon its present behavior in one of these states, SWBT is unlikely to file a future Section 271 application there.

CONCLUSION

For the foregoing reasons, the Commission should deny the SWBT Application.

Respectfully submitted,



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Dated: January 31, 2000

Counsel for CCCTX, Inc. d/b/a Connect!

*CCCTX, Inc. d/b/a Connect!
Southwestern Bell Telephone Company
State of Texas*

CERTIFICATE OF SERVICE

I, Antony Richard Petrilla, hereby certify that on January 31, 2000, I caused to be served upon the following individuals the Comments of CCCTX, Inc. d/b/a Connect! in CC Docket 00-4:



Antony Richard Petrilla

Via Courier:

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ATTACHMENT 1

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Application by SBC Communications Inc.,)
Southwestern Bell Telephone Company, and) CC Docket No. 00-4
Southwestern Bell Communications Services,)
Inc. d/b/a/ Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)

**DECLARATION OF BILL JESTER
ON BEHALF OF CCCTX, INC. D/B/A CONNECT!**

I, Bill Jester, first being duly sworn, depose and state as follows:

1. I am the Vice President and Director of Operations for CCCTX, Inc. d/b/a Connect! ("Connect").
2. The purpose of my declaration is to provide background regarding Connect's operations in Texas, to explain the interconnection dispute currently taking place between Connect and Southwestern Bell Telephone Company ("SWBT") in Texas, and to discuss SWBT's failure to pay reciprocal compensation for traffic to Internet service providers in Arkansas.

Background on Connect's Operations in Texas

3. Connect is a facilities-based provider of local exchange services that operates in Arkansas, Rhode Island, and Utah. Connect is seeking to enter the local exchange market in Texas.
4. Connect adopted the SWBT/NextLink interconnection agreement in Texas pursuant to Section 252(i) of the Communications Act, as amended, in January of 1999. The Texas Commission approved that agreement on April 26, 1999.
5. In August of 1999, Connect signed an agreement with NextLink to collocate in space owned by NextLink. Connect soon thereafter installed equipment in this collocation space, including a switch.

6. On October 12, 1999, Connect and SWBT held a conference call to discuss Connect's plans to interconnect with SWBT in Dallas, TX. During that call, Connect provided SWBT with information about the proposed architecture of Connect's network.
7. In the following month, Connect requested interconnection trunks by submitting access service requests ("ASRs") to SWBT. SWBT disregarded these ASRs because it refused to interconnect with Connect's switch. After legal counsel for Connect intervened, SWBT backed down and agreed to accept Connect's ASRs on December 16, 1999. SWBT sent Connect confirmations for these ASRs on December 27 - 29, 1999.
8. On January 4, 2000, Connect called SWBT to confirm the schedule for installing the requested interconnection trunks. At that time, SWBT stated that it lacked sufficient trunks to fill Connect's orders. On January 18, 2000, SWBT stated that it hoped to fill Connect's trunk orders during the first week of February, 2000.
9. Connect has not yet entered the local exchange market in Texas because of SWBT's inability to fill Connect's trunk orders and because of the interconnection dispute described in the next section.

SWBT Has Attempted to Terminate Its Interconnection Agreement with Connect

10. On January 20, 2000, SWBT attempted to terminate its interconnection agreement with Connect by January 22, 2000 on the ground that Connect had failed to negotiate a successor agreement. *See* Connect Comments at Attachment 2, Exhibit 14 (containing unsigned letter of Patricia Bonham of SWBT to Bill Jester (dated January 20, 2000)). Under the parties' interconnection agreement, after January 22, 2000, the "same terms, conditions and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant" to the dispute resolution procedures of the agreement. *See* Agreement, § 4.2. SWBT argued that it had sent a notice requesting renegotiation on May 13, 1999 and that "[s]ince that time you have failed and refused to engage in negotiations for a successor Agreement in accordance with Sections 4.1 and 4.2 of the Agreement. Therefore, your Agreement with SWBT for the state of Texas will terminate on January 22, 2000." *See* Connect Comments, Attachment 2, Exhibit 14. SWBT further stated that: "No further orders will be processed unless or until we are able to reach agreement on terms and conditions to apply after January 22, 2000." *Id.*
11. SWBT's accusation that Connect "failed and refused to engage in negotiations for a successor Agreement" is false. There is numerous correspondence between the parties regarding Connect's inquiries as to agreements that it could adopt under 47 U.S.C. § 252(i). *See* Connect Comments, Attachment 2, Exhibits 2, 3, 4, 5, 12, & 13 (containing letters exchanged between SWBT and Connect regarding possible adoption of MFS, Intermedia and T2A agreements). Connect has sought to adopt the MFS Intelenet

agreement. SWBT refused Connect's request on the ground that that agreement allegedly had expired, even though MFS has received service under the agreement for more than a year after this so-called expiration date and, in fact, the parties recently agreed to amend the agreement in order to incorporate terms for unbundled dedicated interoffice transport. *See* Connect Comments, Attachment 4 (containing Order of Texas Commission approving amendment (dated October 13, 1999)). Connect also has explored the possibility of adopting the T2A agreement as well as SBC's 13-state generic agreement (which includes Texas). Connect is currently investigating the possibility of opting into either the T2A or another interconnection agreement. Connect has not discontinued negotiations with SWBT.¹

12. Interestingly, SWBT claims that its January 20, 2000 letter is in response to the January 17, 2000 letter from counsel for Connect. *See* Connect Comments, Attachment 5. SWBT acts as if the January 17, 2000 letter had broken off negotiations between the parties. Instead, that letter preserves the parties' negotiations as to all issues except the question of whether SWBT must pay reciprocal compensation for ISP traffic. Recognizing that SWBT resisted negotiating that issue, the January 17, 2000 letter merely notifies SWBT that Connect will participate in the Texas Public Utility Commission's consolidated arbitration on the issue. *See* TX PUC Docket No. 21982. By proactively subjecting itself to the Texas Commission's consideration of the ISP-traffic issue, Connect has expedited the resolution of the issue. Had Connect wished, it could have invoked its rights under section 4.2 of the parties' interconnection agreement, negotiated *all* issues to an impasse and then petitioned the Texas Commission for arbitration. That process would have taken much longer to resolve the ISP-traffic issue than Connect's chosen path. So, I am perplexed by SWBT's statement that the January 20, 2000 letter is in response to Connect's January 17, 2000 letter.
13. Connect has filed a complaint against SWBT at the Texas Commission, opposing SWBT's attempt to terminate the Agreement. *See* Connect Comments, Attachment 2.

Reciprocal Compensation

14. SWBT claims that its performance will not backslide in Texas because it plans to seek Section 271 approval in its other states and commenters opposing those applications certainly would raise the issue of any backsliding that occurred in Texas. SWBT Application, at 46. I am here to tell you that SWBT so blatantly violates the law in some

¹ The Commission should note that this situation also arose in Arkansas. SWBT and Connect have an interconnection agreement that runs month-to-month while the parties are negotiating. SWBT accused Connect of failing to negotiate and attempted to terminate the agreement entirely. Connect has sued SWBT and the case is pending in the Circuit Court of Pulaski County, Arkansas, Seventh Division (Case No. CV99-8537).

of its other states that I cannot imagine it filing for Section 271 approval in those jurisdictions. In Arkansas, SWBT owes Connect a considerable amount of reciprocal compensation, which it has refused to pay in outright defiance of an order of the Arkansas Commission. *Connect Communications Corporation v. Southwestern Bell Telephone Company*, Docket No. 98-167-C, Order No. 6, 1998 WL 974059 (Ark. P.S.C. December 31, 1998); see *Southwestern Bell Telephone Company v. Connect Communications Corp.*, 72 F.Supp.2d 1043 (E.D. Ark., W.Div. Sept. 22, 1999) (dismissing appeal of SWBT on jurisdictional grounds); *Southwestern Bell Telephone Company v. Connect Communications Corporation*, No. 99-3952 (8th Cir., appeal filed Oct. 21, 1999) (SWBT appeal of district court's ruling). It is not credible for SWBT to suggest that its performance in Texas is guaranteed by its future plans to file a Section 271 application in Arkansas. Given SWBT's willingness to disregard the orders of the Arkansas Commission, SWBT apparently has little or no plans to seek Section 271 authority there.

15. This concludes my declaration.

Pursuant to 47 C.F.R. § 1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on: January 31, 2000.


Bill Jester

ATTACHMENT 2

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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January 28, 2000

VIA COURIER

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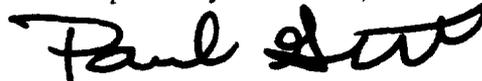
Re: Complaint and Request for Expedited Ruling of CCCTX, Inc. d/b/a Connect!
Against Southwestern Bell Telephone Company for Resolution of Dispute Under
Interconnection Agreement

Dear Mr. Galloway:

Enclosed for filing on behalf of CCCTX, Inc. d/b/a Connect! ("Connect!") are an original and thirteen (13) copies of the above-referenced complaint. The above-captioned Complaint has also been submitted using the Commission's Interchange Filer program.

Please sign and date the Interchange-generated form, date-stamp the enclosed extra copy, and return both in the enclosed self-addressed, postage prepaid envelope provided. If you have any questions, please do not hesitate to contact Paul W. Garnett at (202) 945-6925.

Respectfully submitted,



Patrick J. Donovan
Paul W. Garnett

Counsel for CCCTX, Inc. d/b/a Connect!

Enclosures

cc: Errol S. Phipps (SWBT) (via facsimile)
Patricia Bonham (SWBT) (via facsimile)
Executive Director - CPAT (SWBT) (via facsimile)
Ramona Maxwell
Richard M. Rindler

PUC DOCKET NO. _____

Complaint of CCCTX, Inc. d/b/a Connect!)
Against Southwestern Bell Telephone)
Company for Resolution of Dispute) Before the
Under Interconnection Agreement) Public Utility Commission of Texas

**Complaint and Request for Expedited Ruling and
Request for Interim Ruling**

CCCTX, Inc. d/b/a Connect! (“Connect!”), by its undersigned counsel, pursuant to Texas Admin. Code, Title 16, §§ 22.327-22.328 and 47 U.S.C. §§ 251(a)(1), 251(c)(1), 251(c)(2) and 252(b)(5), files this Complaint and Request for Expedited Ruling and Request for Interim Ruling against Southwestern Bell Telephone (“SWBT”) for continuing violations of the parties’ interconnection agreement and federal law.¹ As will be discussed in greater detail below, SWBT is unlawfully refusing to interconnect its network with Connect! in violation of Connect!’s Interconnection Agreement with SWBT, as well as Sections 251(a)(1), 251(c)(1), 251(c)(2) and 252(b)(5) of the Telecommunications Act of 1996 (“Telecommunications Act”), 47 U.S.C. §§ 251(a)(1), 251(c)(1), 251(c)(2) and 252(b)(5).

Because this dispute directly affects the ability of Connect! to provide uninterrupted service to its customers and precludes the provisioning of services, functionalities, and network elements, Connect! requests that the Commission, pursuant to Texas Admin. Code, Title 16, § 22.327, initiate an Expedited Ruling regarding this matter. Pursuant to Texas Admin. Code, Title 16, § 22.328, Connect! also respectfully requests that the Commission issue an Interim

¹ The Commission has jurisdiction under Sections 251-252 of the Telecommunications Act of 1996 (“Telecommunications Act”) to enforce interconnection agreements. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *rev'd in part and remanded in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (U.S. Jan. 25, 1999).

Ruling granting Connect! the relief requested pending the resolution of the merits of this dispute. In particular, Connect! requests that the Commission: (i) declare SWBT in breach of the Interconnection Agreement, and in violation of Sections 251(a)(1), 251(c)(1), 251(c)(2) and 252(b)(5) of the Telecommunications Act; (ii) order SWBT to immediately cease and desist from unlawfully refusing to provide interconnection to Connect!; and (iii) grant such other relief as the Commission deems is appropriate.

SWBT's failure to comply with its interconnection obligations under Section 251(c)(2) of the Telecommunications Act shows that it is prepared to willfully breach its interconnection obligations under the Act in order to achieve other objectives such as limiting liability for reciprocal compensation. It also shows that SWBT is prepared to wield the power of incumbency by withholding essential interconnection in order to disadvantage competitors. Its refusal to interconnect provides compelling evidence that SWBT has not satisfied the standards for interLATA entry under Section 271 and disqualifies it from entry into the interLATA marketplace in the State of Texas under the first item of the competitive checklist of Section 271(c)(2)(B) of the Telecommunications Act, 47 U.S.C. § 271(c)(2)(B). Connect! will promptly bring to the FCC's attention any determination by this Commission as a result of this complaint that SWBT has violated its interconnection obligations, and requests that this Commission grant this complaint on an expedited basis so that Connect! may do so.

In support of its Complaint, Connect! states as follows:

PARTIES

1. CCCTX, Inc. d/b/a Connect!, a corporation organized under the laws of the State of Texas, is authorized, by virtue of certification and registration, to provide local and interexchange telecommunications services in the State of Texas.² Connect!'s affiliates are authorized to provide telecommunications services in over twenty (20) states. Connect!'s affiliates have been providing telecommunications services since December 1997.

2. The Southwestern Bell Telephone Company ("SWBT") is authorized to provide local exchange services in the State of Texas.

FACTUAL BACKGROUND

3. Connect! is authorized to provide local exchange service to residential and business customers in the State of Texas.

4. Connect! and SWBT have executed an Interconnection Agreement in January 1999, which the Commission approved on April 26, 1999.

5. Pursuant to Section 4.1 of the Interconnection Agreement, Ms. Janice O. Krzesinski, Lead Negotiator-Local Provider Account Team for SWBT, sent a letter, dated May 13, 1999, to Connect! stating that SWBT intended to terminate its existing interconnection agreement with Connect!. See Exhibit 1. Section 4.1 of the interconnection agreement states:

This Agreement . . . will expire on January 22, 2000, plus two one year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an

² Connect! is certificated to provide local exchange services under Certificate No. 60245.

additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notice the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.

6. In its May 13, 1999 letter, SWBT also stated that, at Connect!'s election, "SWBT will immediately commence renegotiation of a new interconnection agreement. In the event CCCTX desires to renegotiate a new interconnection agreement, the terms of our existing interconnection Agreement shall continue without interruption pursuant to Section 4.2." *See* Exhibit 1. Section 4.2 of the interconnection agreement states:

The same terms, conditions and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the Texas PUC for arbitration.

As such, Section 4.2 requires the parties to continue operating under their existing interconnection agreement, pending the negotiation and execution of a successor agreement.

7. In accordance with Section 4.2 of the interconnection agreement, the parties subsequently commenced negotiations with regard to a successor agreement. As described in greater detail below, since May 13, 1999, the parties have continually negotiated the terms of a successor agreement. At no point have negotiations reached "an impasse." In addition, at no point has Connect! refused to negotiate a successor agreement. Over the course of the last eight (8) months, Connect! has repeatedly and consistently reaffirmed its desire to negotiate such a successor agreement and has attempted to "opt-in" to certain agreements which SWBT has refused. On the other hand, as demonstrated below, over the course of last eight (8) months, SWBT has engaged in coercion and intimidation by withholding necessary interconnection with

SWBT's network, to force Connect! to agree to terms not present in the parties' existing interconnection agreement and to negotiate a successor agreement that only includes SWBT's preferred terms.

8. In accordance with Section 31.1 of the Parties' current interconnection agreement, and Section 252(i) of the Telecommunications Act, 47 U.S.C. § 252(i), on October 11, 1999, Ms. Cindy Lee, Manager of Regulatory Affairs for Connect!, submitted to SWBT a request to opt into the interconnection agreement between SWBT and MFS Intelenet ("MFS"). *See* Exhibit 2. Although SWBT and MFS continue to operate under their interconnection agreement, SWBT, by letter dated October 13, 1999, denied Connect!'s request, stating that the MFS/SWBT interconnection agreement is no longer available because the initial term of the agreement has expired. *See* Exhibit 3.

9. By letter dated October 20, 1999, Connect! renewed its request for adoption of the MFS/SWBT interconnection agreement under Section 252(i) of the Telecommunications Act, 47 U.S.C. § 252(i). *See* Exhibit 4. By letter dated October 29, 1999, SWBT denied Connect!'s request. *See* Exhibit 5.

10. During this same time period, SWBT began refusing to provision trunks for Connect! for purposes of interconnecting their respective networks in Austin, Houston, San Antonio and Dallas, Texas. In support of this refusal, SWBT erroneously claimed that the Lucent equipment purchased by Connect! was incapable of both originating and terminating calls to the public switched network. SWBT stated that, under 251(c)(2) of the Telecommunications Act, SWBT was only obligated to interconnect with "two way equipment." *See* Letter, Dated November 22, 1999, attached hereto as Exhibit 6.

11. Section 251(c)(2) of the Telecommunications Act, 47 U.S.C. § 251(c)(2), imposes a duty on Incumbent Local Exchange Carriers (“ILECs”) to “provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access.” No mention is made of “two way traffic.”

12. Even though the Telecommunications Act imposes no such limitation, by letters dated November 23, 1999, Connect! and Lucent provided SWBT with assurances that the Lucent ASG/TNT switching equipment Connect! would use “allows users . . . to originate and terminate calls to the PSTN.” *See* Exhibit 7.

13. In a further effort to comply with Section 31.1 of the Parties’ current interconnection agreement, on November 23, 1999, Connect! submitted to SWBT a request to opt into the interconnection agreement between SWBT and Intermedia Communications, Inc. *See* Exhibit 8.

14. By letter dated November 30, 1999, SWBT retreated from its previous claim that Lucent ASG/TNT switching equipment was not capable of two way traffic, but nonetheless refused to permit Connect! to interconnect with SWBT’s public switched network in Austin, Dallas, Houston, and San Antonio, Texas. *See* Exhibit 9. In support of its latest refusal, SWBT speculated that “Connect’s Lucent ASG/TNT equipment will be used predominantly, if not exclusively, to deliver calls to Internet Service Providers (ISPs), rather than for the mutual exchange of traditional telecommunications traffic.” Without support, SWBT further claimed “that such interconnection does not fall within the intent or scope of SWBT’s current interconnection agreement with Connect.” In its letter, SWBT provided absolutely no support

for its theory other than to suggest that SWBT somehow was familiar with Connect!'s proprietary marketing plans and does not approve of them. *See also* December 1, 1999 letter to Errol S. Phipps, attached hereto as Exhibit 10.

15. In spite of language in Attachment 12 of the interconnection agreement requiring reciprocal and symmetrical compensation for the transport and termination of local traffic, in its November 30, 1999 letter, SWBT also suggested that the parties interconnect their equipment and begin exchanging traffic without compensation. In subsequent correspondence between the parties, SWBT suggested that interconnection of the two parties' networks would not occur unless Connect! agreed to SWBT's proposal regarding compensation for the exchange of traffic. *See* voicemail and email correspondence, attached hereto at Exhibit 11.

16. By letter dated December 1, 1999, SWBT denied Connect!'s request to opt into the interconnection agreement between SWBT and Intermedia. *See* Exhibit 12. In support of its refusal, SWBT noted that Intermedia recently availed itself of SWBT's Generic Interconnection Agreement.

17. On December 10, 1999, SWBT forwarded to Connect! a copy of a Generic Interconnection Agreement that covers the 13-state SBC service region for Connect! to review. *See* Exhibit 13.

18. By letter dated January 20, 2000, SWBT informed Connect! that Connect!'s interconnection agreement with SWBT for the State of Texas would terminate on January 22, 2000. *See* Exhibit 14. SWBT informed Connect! that "[n]o further Orders [for interconnection] will be processed unless or until we are able to reach agreement on the terms and conditions to apply after January 22, 2000." In addition, SWBT stated that "trunks will not be turned up for

live traffic.” In support of its refusal to continue operating under Section 4.2 of the interconnection agreement, SWBT erroneously claimed that Connect! has “failed and refused to engage in negotiations for a successor Agreement in accordance with Sections 4.1 and 4.2 of the Agreement.”

19. In response to SWBT’s notice of termination and refusal to interconnect, by letter dated January 21, 2000, Connect! stated that it has neither failed nor refused to negotiate with Southwestern Bell for a successor agreement. *See* Exhibit 15. Connect! also invited SWBT to continue negotiating the terms of a successor agreement.

20. As evidenced by the attached correspondence, Connect! unsuccessfully has attempted to negotiate a successor agreement with SWBT by opting into Other Agreements, as that term is defined in Section 31.1 of the parties’ current interconnection agreement. Connect! also is currently considering SWBT’s Generic Interconnection Agreement.

21. In spite of SWBT’s claims to the contrary, no impasse has been reached at this time in Connect!’s discussions with SWBT. As recently as January 21, 2000, Connect! submitted a letter to SWBT requesting that SWBT continue negotiating the terms of a new interconnection agreement and to continue providing interconnection to Connect! in accordance with the terms of the Parties’ present agreement. *See* Exhibit 15. In addition, the Parties were in discussions as recently as January 25, 2000 regarding the possible terms of an interconnection agreement and SWBT has renewed in the last few days its request that Connect! opt in to its Generic Interconnection Agreement.

22. As result of SWBT's refusal to interconnect its network with Connect!, Connect! has been unable to commence providing services in Austin, Houston, San Antonio and Dallas, Texas.

COUNT I – VIOLATION OF INTERCONNECTION AGREEMENT

23. Connect! incorporates and realleges the allegations in paragraphs 1-22.

24. Connect! and SWBT have executed an interconnection agreement which the Commission approved on April 26, 1999.

25. Section 4.2 of the interconnection agreement directs the parties to continue operating under the existing agreement, on a month-to-month basis, pending the negotiation of a successor agreement. The existing agreement remains in full force and effect as long as negotiations are continuing without impasse and then until the execution of a successor agreement. Section 4.2 also directs the parties to "resolve any impasse by submission of the disputed matter to the Texas PUC for arbitration." As discussed above, at no point has Connect! refused to negotiate a successor agreement with SWBT nor has either party requested arbitration. In addition, since May 13, 1999 (when SWBT first gave its notice of intent to negotiate such a successor agreement), the parties have continually negotiated a successor agreement. As such, SWBT's claim that Connect! is refusing to negotiate the terms of a successor agreement and therefore the existing agreement should be terminated, is baseless.

26. As demonstrated by its correspondence, SWBT's real reason for refusing to provide interconnection to Connect! is that Connect! has not consented to SWBT's demand that the parties interconnect their networks without reciprocal compensation. To the extent that SWBT believes an impasse has been reached, its remedy under the existing agreement is to seek

arbitration while continuing to meet its obligations under the SWBT/Connect! interconnection agreement, not unlawfully deny interconnection. Connect! submits that SWBT may not refuse to interconnect or comply with existing agreements as its response to disagreements with competitive carriers that arise in the course of negotiations. In reality, SWBT's refusal to interconnect is a classic instance of an attempt to use the power of incumbency and its control of essential interconnection facilities to gain an advantage over competitors.

27. Section 57.1 affirms Connect!'s "right to interconnect with unbundled Network Elements furnished by SWBT at any technically feasible point within SWBT's network." In this vein, Attachment 11 of the interconnection agreement directs the parties to interconnect their networks for purposes of exchanging traffic. As discussed above, SWBT is refusing to permit Connect! to interconnect with SWBT's public switched network in Austin, Dallas, Houston, and San Antonio, Texas. Such a refusal violates Section 57.1 and Attachment 11 of the interconnection agreement.

28. SWBT's refusal to negotiate a successor interconnection agreement and its refusal to permit Connect! to interconnect with SWBT's public switched network precludes the provisioning of services, functionalities, and network elements, preventing Connect! from serving customers and severely harming Connect!'s business and reputation. Therefore, the Commission should grant this complaint on an expedited basis under Texas Admin. Code, Title 16, § 22.327. The Commission should also grant this complaint on an interim basis under Texas Admin. Code, Title 16, § 22.328.

**COUNT II – VIOLATION OF FEDERAL INTERCONNECTION
OBLIGATIONS**

29. Connect! incorporates and realleges the allegations in paragraphs 1-28.

30. Section 251(a)(1) of the Telecommunications Act, 47 U.S.C. § 251(a)(1), imposes a general duty on telecommunications carriers “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”

31. Section 251(c)(2) of the Telecommunications Act, 47 U.S.C. § 251(c)(2)(A), requires SWBT to provide “for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . at any technically feasible point within the carrier’s network.” *See also* 47 C.F.R. 51.305.

32. Likewise, Section 251(c)(1) of the Telecommunications Act, 47 U.S.C. § 251(c)(1), requires SWBT to negotiate in good faith, in accordance with Section 252 of the Telecommunication Act, the terms of a successor interconnection agreement. Section 252(b)(5) of the Telecommunications Act, 47 U.S.C. § 251(b)(5), states that “[t]he refusal of any other party to the negotiation [of an interconnection agreement] to participate further in the negotiations . . . shall be considered a failure to negotiate in food faith.”

33. On information and belief, SWBT is refusing to permit Connect! to interconnect with SWBT’s public switched network in the Texas. Moreover, SWBT is refusing to continue negotiating the terms of a successor agreement with Connect!. As such, SWBT is in violation of Sections 251(a)(1), 251(c)(1), 251(c)(2) and 252(b)(5) of the Telecommunications Act.

**SWBT'S UNLAWFUL REFUSAL TO PROVIDE CONNECT! WITH
INTERCONNECTION DISQUALIFIES SWBT FROM ENTRY INTO THE
INTERLATA MARKETPLACE IN THE STATE OF TEXAS**

34. SWBT's failure to comply with its interconnection obligations under Sections 251(a)(1) and 251(c)(2) of the Telecommunications Act disqualifies it from entry into the interLATA marketplace in the State of Texas. Under the competitive checklist included in Section 271(c)(2)(B)(i) of the Telecommunications Act, 47 U.S.C. § 271(c)(2)(B)(i), SWBT must first demonstrate that it has provided interconnection in accordance with Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act prior to being permitted by the FCC to enter the interLATA marketplace in Texas or any other state in its region. As discussed above, SWBT's refusal to permit Connect! to interconnect with SWBT's public switched network in the State of Texas is in clear violation of Section 251(c)(2) of the Telecommunications Act. This unlawful refusal to interconnect shows that SWBT is prepared to deliberately breach its key obligations under the Act when it believes this would achieve other objectives such as limiting its liability for reciprocal compensation. Accordingly, this refusal to interconnect shows that it has not demonstrated that it is making interconnection available on a nondiscriminatory basis as required under Section 271(c)(2)(B)(i) to qualify for interLATA entry.

35. The issue before the FCC in the Texas 271 proceeding of whether SWBT has complied with the fundamental obligation to interconnect on a nondiscriminatory basis should be evaluated on the basis of a complete record. Connect! requests that the Commission urgently determine whether SWBT has violated its obligation to provide interconnection on a nondiscriminatory basis to Connect!. If the Commission rules that SWBT has breached its interconnection obligations, Connect! intends to promptly bring this matter to the attention of the

FCC so that it may evaluate this circumstance in assessing whether SWBT should be permitted to offer interLATA services in Texas.

36. Connect! stresses that it is not requesting that this Commission evaluate in any respect whether SWBT should be granted interLATA authority for Texas. That issue is now before the FCC for the FCC to determine. Connect! only requests that this Commission require SWBT to promptly provide the requested interconnection under the existing SWBT/Connect! interconnection agreement and that SWBT's refusal to provide such interconnection has violated its interconnection obligations under Section 251(c)(2) of the Telecommunications Act. At the same time, however, this Commission should not hesitate to determine that SWBT has not met its obligations under the Act even though this may affect the merits of its Section 271 application now before the FCC.

PARTIES TO RECEIVE SERVICE

Correspondence or communications pertaining to this complaint should be directed to the parties as follows:

To CCCTX, Inc. d/b/a Connect!:

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Manager of Regulatory Affairs
CCCTX, Inc. d/b/a Connect!
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To Southwestern Bell Telephone Company (unless otherwise directed by SWBT):

Ms. Patricia Bonham
Account Manager – Local Provider Account Team
Southwestern Bell Telephone Company
Four Bell Plaza, 7th Floor
311 S. Akard
Dallas, TX 75202

Executive Director – CPAT
Southwestern Bell Telephone Company
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311 S. Akard
Dallas, TX 75202

REQUEST FOR RELIEF

For the reasons stated above, CCCTX, Inc. d/b/a Connect! respectfully requests that the Commission, on an Interim or Expedited basis, enter an order:

- (i) Declaring SWBT in breach of the interconnection agreement and in violation of Sections 251(a)(1), 251(c)(1), 251(c)(2) and 252(b)(5) of the Telecommunications Act;
- (ii) Ordering SWBT to immediately cease and desist from unlawfully refusing to provide interconnection to Connect!; and
- (iii) Granting such other relief as the Commission deems is appropriate.

Respectfully submitted,



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Counsel for CCCTX, Inc. d/b/a Connect!

January 28, 2000

EXHIBITS

- Exhibit 1 May 13, 1999 Letter from SWBT
- Exhibit 2 October 11, 1999 Letter from Connect!
- Exhibit 3 October 13, 1999 Letter from SWBT
- Exhibit 4 October 20, 1999 Letter from Connect!
- Exhibit 5 October 29, 1999 Letter from SWBT
- Exhibit 6 November 22, 1999 Letter from SWBT
- Exhibit 7 November 23, 1999 Letters from Connect! and Lucent
- Exhibit 8 November 23, 1999 Letter from Connect!
- Exhibit 9 November 30, 1999 Letter from SWBT
- Exhibit 10 December 1, 1999 Letter from Connect!
- Exhibit 11 Voicemail and Email Correspondence
- Exhibit 12 December 1, 1999 Letter from SWBT
- Exhibit 13 December 10, 1999 Letter from SWBT
- Exhibit 14 January 20, 2000 Letter from SWBT
- Exhibit 15 January 21, 2000 Letter from Connect!