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April 26, 2000

**REDACTED--FOR PUBLIC
INSPECTION**

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th Street, S.W.
TW-B-204
Washington, D.C. 20554

Re: *Application of SBC Communications, Inc.: Comments of ALTS/CLEC Coalition
CC Docket No. 00-65*

Dear Secretary Salas:

ALTS and the CLEC Coalition are filing two versions of their Initial Comments in the above referenced docket. We are submitting an original and two copies of a Redacted - for Public Inspection version of the filing as well as one copy of the portion of the Initial Comments that contain confidential information. The confidential filing is marked Confidential - Not for Public Inspection and should be treated accordingly. Please date stamp the extra copies of each submission and return them to the courier.

If you have any questions, please contact Ross Buntrock at (202) 955-9600.

Sincerely,



Eric Drummond

Enclosure
cc: Cecilia Stephens

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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. 00-65

INITIAL JOINT COMMENTS OF ALTS AND THE CLEC COALITION

ALTS AND THE CLEC COALITION¹

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April 26, 2000

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¹ For purposes of these comments, the members of the CLEC Coalition are ICG Communications, Inc. and NEXTLINK Texas, Inc. Both of these CLECs actively participated in Project No. 16251 before the Public Utility Commission of Texas.

SUMMARY AND INTRODUCTION

On January 10, 2000, SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Service, Inc. d/b/a Southwestern Bell Long Distance (collectively, "SWBT") filed an application with the Federal Communications Commission ("FCC" or "Commission") requesting authority to provide in-region, interLATA services in the State of Texas. On April 5, 2000, SWBT submitted additional information to the FCC attempting to support its original application and requesting that the 90-day clock for Commission review be restarted. Based on the Commission's procedural schedule issued on April 6, 2000, initial comments by interested third parties addressing SWBT's "refreshed" application are due on April 26, 2000.

SWBT's initial and subsequent applications should be evaluated in the context of the regulatory regime envisioned by Congress and embodied in the Telecommunications Act of 1996 ("FTA"). Under this new regulatory regime, which essentially has replaced regulatory protection of the monopoly telephony provider, the FCC has determined that its mandate is to affirmatively promote efficient competition by requiring incumbent local exchange carriers ("ILECs") to open their networks to competition. The goal that Congress and this Commission seek to achieve in fostering competition in the local exchange markets is to let the market regulate prices, ultimately lowering the cost of services, to promote the further deployment of advanced services and to deploy all types of services in rural and high cost areas.

As an ILEC, SWBT's obligations regarding competition in the local exchange market are clearly defined under sections 251 and 271 of the FTA. Section 251 mandates that SWBT open its network to competing carriers by providing interconnection to those competing carriers,

granting access to its unbundled network elements, and making its retail services available at wholesale rates. The incentive to affirmatively comply with section 251 is contained in section 271. Under section 271, once SWBT has taken the necessary steps to irreversibly open its local exchange markets to competing carriers, SWBT will be able to offer service in the lucrative long distance market. This Commission envisioned that the incentive Congress provided – entrance to the in-region long distance markets – would eliminate the ILEC’s desire, or at least control its willingness and potential ability to use its monopoly status to control “bottleneck” local facilities to impede free market competition. Unfortunately for consumers in Texas, such has not been the case.²

SWBT’s minimalist approach in complying with the pro-consumer, anti-monopoly provisions of the FTA has been evident throughout its section 271 proceedings in Texas and here at the FCC. Although SWBT to its credit very early in the process offered to make collocation arrangements available, SWBT continued to provide faulty, unworkable, and customer-affecting operational support systems (“OSS”); unreasonably limited access to its loops in the form of “hot cuts” by performing coordinated cuts at an unacceptable level of quality and with numerous resulting outages; and employed impermissible and ultimately penalized conduct to impede CLEC attempts to deploy xDSL. SWBT desperately wants to be able sell its services in the long distance market but it also wants to avoid the necessary oversight that would prevent it from

² As noted by this Commission, SBC Communications, Inc. (parent company of SWBT), rather than take advantage of the opportunities presented in the FTA, filed a lawsuit attacking sections 271-275 of the FTA claiming that these sections operated as an impermissible bill of attainder. *In the Matter of Application by 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, F.C.C. 99-404 (1999), ¶ 4 (hereinafter “BA/NY 271 Order”); *See also, SBC Communications, Inc. v. FCC*, 154 F. 3d 226 (5th Cir. 1998).

backsliding and stifling the nascent competition that now exists once its 271 application is approved.³

In the FCC's approval of the Bell Atlantic/New York 271 application, this Commission stated that its "decision here reflects fundamental principles adopted in our prior 271 orders" that is, whether SWBT is providing service to competitors at parity with its retail offerings or, when there is no comparable retail activity, whether SWBT's performance permits an efficient competitor a *meaningful* opportunity to compete.⁴ SWBT must comply with the section 271 statutory requirements as refined by the FCC by demonstrating that it has fully implemented the competitive checklist identified in subsection (c)(2)(B), provisions of the law intended to require proof that the local exchange markets in which SWBT seeks to provide long distance service are irreversibly open to competition. As of this date, SWBT has failed to make such a showing.

With regard to the specific issues identified by the FCC's Chairman and for which SWBT seeks to "refresh" its application, work remains to be done. Consistent with the FTA's requirements, SWBT must demonstrate that it is providing requesting carriers nondiscriminatory access to its OSS functions;⁵ that it is providing unbundled loops in quantities reasonably demanded by competitors "at an acceptable level of quality," including loops needed to provision

³ Although SWBT has achieved parity performance in some areas, SWBT has not provided any assurance that it will continue to perform adequately once it receives section 271 authority. For example, improvements implemented by knowledgeable SWBT employees can quickly worsen when personnel are moved to different CLEC accounts, or poorly trained personnel with little telecommunications experience are assigned to a CLEC's account. See NEXTLINK Joint Affidavit of Koch and Smith, ¶ 8.

⁴ BA/NY 271 Order, ¶ 5.

⁵ *Id.*, at ¶¶ 84-85.

advanced services;⁶ and that it is able to cut over loops - hot cuts - in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption.⁷

Thanks to the commitment and dogged persistence of the Public Utility Commission of Texas (“TPUC”), SWBT has made measurable progress in providing the basic framework in Texas to permit competition to exist, but it still falls short of full checklist compliance. SWBT is not providing access to OSS and unbundled loops with the same quality, quantity and accuracy with which it provides these functions and elements to itself, its customers and its affiliates. Moreover, SWBT’s anticompetitive behavior is recently being evidenced by new issues, such as problems associated with the provisioning of DS-1s. Until SWBT provides these functions and network elements in the manner required by the FTA, on a nondiscriminatory basis, and as delineated by the FCC, SWBT’s application is not ready to be approved.

⁶ *Id.*, at ¶52.

⁷ *Id.*, at ¶ 291.

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INITIAL JOINT COMMENTS OF ALTS AND THE CLEC COALITION

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The nondiscriminatory provision of OSS and the ability of competing carriers to combine network elements are critical aspects of SWBT's obligations under checklist item ii. SWBT is required to provide requesting carriers nondiscriminatory access to its OSS functions and network elements. Pursuant to checklist item iv, SWBT "must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is *currently* doing so in the quantities that competitors reasonably demand and at an *acceptable level of quality*."⁸ SWBT is not able to make these demonstrations.

A. Checklist Item II – Access to Unbundled Network Elements

With the implementation of an EDI interface, NEXTLINK appears to be receiving initial FOCs from SWBT on a timely basis. However, NEXTLINK continues to experience an unnecessarily high rate of subsequent jeopardy notices related to those FOCs. For instance, in

⁸ BA/NY 271 Order, ¶ 269.

both February and March, NEXTLINK received jeopardy notices equaling from seven to ten percent of its total orders.⁹

Many of these jeopardy notices are used to inform NEXTLINK that SWBT does not have available the necessary facilities to complete the order.¹⁰ Because many jeopardy notices are sent to NEXTLINK so close in time to the scheduled service delivery date, NEXTLINK and other CLECs have very little time to prepare alternative solutions to provide service. Thus, many jeopardy notices affect the availability of service for NEXTLINK customers.¹¹

B. Checklist Item IV – Nondiscriminatory Access to Unbundled Local Loops

Although the CLEC community in Texas has focused a great deal of energy in attempting to resolve problems associated with the hot cut process, SWBT has yet to show that it can successfully provision loops to CLECs. In addition, SWBT appears to be unable to provision xDSL-capable loops on a nondiscriminatory basis. According to SWBT's own performance data provided for the first quarter of 2000, SWBT is consistently providing xDSL loops in a discriminatory and anticompetitive manner.

⁹ NEXTLINK Joint Affidavit of Koch and Smith, ¶ 12.

¹⁰ NEXTLINK discussed this issue in its previous section 271 comments, describing the failure of SWBT's internal data collection mechanisms to accurately and completely capture all of SWBT's "lack of facilities" incidents with NEXTLINK. SWBT's March 2000 data records twice as many occurrences as does NEXTLINK, while failing to record any delays regarding the inability to provide DS-1 loops in Dallas for March. For PM 60(a) ("Percent Missed Due Dates Due to Lack of Facilities") SWBT missed the benchmark for 5db loops and BRI loops for the Dallas market for March and for DS-1 loops SWBT missed the benchmark for Dallas in both February and March of 2000. NEXTLINK Joint Affidavit of Koch and Smith, ¶ 15.

¹¹ NEXTLINK Joint Affidavit of Koch and Smith, ¶ 12.

1. Hot Cut Performance Measures

Pursuant to the Public Utility Commission of Texas' ("TPUC") order issued on April 4, 2000, SWBT met with NEXTLINK to reconcile hot cut-related data.¹² NEXTLINK and SWBT reviewed three months of outage data. NEXTLINK has experienced significant problems during this three-month time period, as outlined in greater detail in its affidavit. For instance, in both January and February, NEXTLINK experienced outages that affected a significant number of stations. Because so many customers were affected and because of the severity of the outages, it is critical that SWBT implement systemic changes that will result in concrete solutions. Moreover, SWBT should be required to provide the actual number of occurrences in instances where the number of occurrences is below the Z-score number.

NEXTLINK's data reveal that SWBT failed to capture a significant amount of NEXTLINK's outages. SWBT claimed that the cause of these omissions resulted from miscommunication between its Local Service Center ("LSC") and the LNP Outage Desk in the Local Operations Center ("LOC"). SWBT has informed NEXTLINK that it has now corrected the problem by sending a "flash" informing LSC personnel to report the outages and has provided the 800 numbers of the LNP outage desk as an additional escalation point. Unfortunately, NEXTLINK personnel have not been able, at this time, to successfully complete a call to the LNP Outage desks using the 800 number; it appears that the process for calling this group has yet to be fully implemented.

Although SWBT maintains that processes are now in place that will address previous reporting omissions, NEXTLINK's reconciliation efforts have reaffirmed its concerns.

¹² See NEXTLINK Affidavit of Krabill.

NEXTLINK's data appear to demonstrate that SWBT in many instances is not able to accurately record performance data related to the specific issues discussed in its affidavit.¹³ SWBT should be required to address how its "lack of internal communication" impacts SWBT's ability to accurately capture reporting data for all of its hot cuts measures, including PMs 114.1 and 115. While NEXTLINK's data collection program does not currently capture incidents under PM 114.1 and 115, SWBT's internal communications problem between the LSC and the LNP outage desk, and SWBT's poor performance reflected in these measurements, certainly raises issues as to whether SWBT is able to accurately and reliably provide data for these specific performance measurements.¹⁴ In addition, SWBT has failed to provide occurrences and benchmark/parity reporting data for the base number of occurrences that are below a certain threshold. Without such data, it is difficult for CLECs to properly determine whether SWBT is providing parity service.

NEXTLINK has even experienced difficulty gaining access to its data. On January 10, 2000, NEXTLINK formally requested that SWBT provide underlying raw data for NEXTLINK-specific performance reports. More than one month later, on February 14, 2000, SWBT finally provided data for its December 1999 data submission, and on February 22, 2000, provided the underlying data for its November 1999 reports. During a conference call on February 29, 2000, NEXTLINK requested that SWBT provide a detailed explanation of the raw data forwarded to NEXTLINK because column headings in SWBT's data submission failed to define the content

¹³ NEXTLINK Joint Affidavit of Koch and Smith, ¶ 14.

¹⁴ For NEXTLINK-specific data, SWBT shows that it did not meet the benchmark in Dallas for January for Performance Measure ("PM") 114.1 for Coordinated Hot Cuts for LNP with Loop. Similarly, SWBT did not meet the benchmark for PM 115a reflecting Coordinated Hot Cut activity in Dallas-Ft. Worth for LNP with Loop for both January and February. For PM 115b, Frame Due Time, in Dallas, SWBT did not meet the benchmark for LNP with Loop in February. Nor did it meet the benchmark in Houston for PM Continued. . .

of the data in each column. Three weeks later, on March 21, 2000, SWBT finally informed NEXTLINK that there was no support currently available within SWBT operations to explain the raw data. Moreover, on that same date, NEXTLINK sent its files showing premature disconnects to both SWBT LSC and LOC representatives, seeking resolution. Not until the Texas Commission issued its April 4, 2000, order scheduling the six-month review of SWBT's performance, did SWBT provide data in a meaningful format and provide sufficient personnel to explain each occurrence and attempt to reconcile the data.¹⁵

SWBT now has agreed to support the provision and reconciliation of raw data exchanges with NEXTLINK. NEXTLINK remains troubled, however, by the fact that SWBT was unwilling to do so prior to direct TPUC involvement.¹⁶ NEXTLINK believes that raw data analysis regarding *disputed* reporting measures should be performed and completed before SWBT is granted interLATA relief. Discrepancies in SWBT's data collection program, such as those outlined above, must be identified and solved. SWBT should be required to implement a formal process that will allow CLECs, such as NEXTLINK, to submit data disputes to SWBT on a monthly basis and have the underlying service problems addressed and resolved in a prompt fashion.¹⁷

115a for Coordinated Hot Cuts for LNP with Loop in February.

¹⁵ NEXTLINK Krabill Affidavit.

¹⁶ When ICG requested both stand-alone loops and with LNP-only data, pursuant to the April 4, 2000 order, SWBT refused to provide ICG its LNP-only data. It was only at the April 12, 2000 hot cuts workshop when staff, on the record, requested that SWBT provide ICG its LNP-only data that SWBT agreed to do so. Even then, SWBT did not produce the additional data until April 17, 2000, which data remains to be reconciled.

¹⁷ In fact, SWBT has been assessed more than \$400,000 per month in PM penalties since the beginning of the year totaling \$879,600 for January and February 2000. (March penalty amounts will not be available until later this month.) These penalties are being assessed in the most *favorable* context for SWBT because many of the current PMs do not capture data that would evidence SWBT's failure to provide nondiscriminatory access to its network, permit SWBT to exclude relevant unfavorable data, and, indeed, Continued. . .

2. DSL Issues and SWBT's Advanced Services Affiliate, ASI

As noted in Comments previously filed in this proceeding, there are two means by which SWBT could demonstrate that it satisfies checklist item (iv). SWBT could submit comprehensive and accurate performance metrics showing non-discriminatory access to DSL-capable loops or SWBT could show the existence of a fully operational separate affiliate that will provide advanced services, thereby preventing discrimination.¹⁸ SWBT's most recent affidavits describe ASI's current and planned operations, particularly its impending move to using the same ordering procedures and OSS that CLECs use. Little is said, however, about the two areas in which the potential for discriminatory treatment favoring ASI is able to occur – Project Pronto and line sharing. Nor would one suspect from reading SWBT's filings just how far SBC is willing to go to grant an advantage to ASI.

a. Project Pronto

Project Pronto is described in SBC's public announcements and postings on its website as a \$6 billion investment in network changes that will deploy fiber into residential neighborhoods and make ADSL available to millions of additional customers over the next two years. Those public releases contain only general information, specific information on the technical workings of Project Pronto became available with the filing of SBC's Waiver Request.¹⁹ There, SBC revealed that the deployment of fiber from the central office to remote terminals entailed use of

additional PMs will be added, by agreement, that will demonstrate the severity of the problems being experienced in Texas. Sanford Nowlin, *SBC Hit By State Penalties – Fines Could Affect Long-Distance Plans*, SAN ANTONIO EXPRESS-NEWS, April 19, 2000, at 1E. See Attachment No. 3.

¹⁸ BA/NY 271 Order, ¶¶ 330-331. It should be noted that the FCC's Order states that a fully-operational affiliate "may provide significant evidence" of nondiscrimination. Thus, the mere presence of a fully operational affiliate, by itself, is no guarantee that the BOC's conduct is nondiscriminatory.

¹⁹ Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc. to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, dated February 15, 2000.

certain Alcatel equipment (including line cards) that SBC stated was capable of providing only ADSL, the sole type of DSL service that ASI currently is offering. Nothing in SBC's Waiver Request indicated whether this Alcatel equipment would be compatible with CLECs' commonly used equipment. Moreover, any CLEC desiring to make SDSL available to consumers, or desiring to offer a premium bandwidth not accommodated by SBC's plans, would simply find itself out of luck, as would consumers desiring that service.

Any doubt as to the advantage SBC is creating for ASI by modifying its network is dispelled by simply reading the comments filed by the United States Telecom Association ("USTA") in support of SBC's waiver. USTA states that:

[a]n incumbent LEC is empowered, and legally obligated, to make investment decisions that it believes will maximize the value of its network, within the bounds of existing legal obligations. It owes that duty to its shareholders, who bear the risk of those investment decisions. And the Commission has no authority to override those decisions or otherwise to appropriate the value of the incumbent LEC's network by forcing the LEC to make design decisions for the benefit of competitors.²⁰

USTA and SBC both contended to the FCC that an ILEC's network design is the exclusive purview of the ILEC, strongly rejecting the CLECs' contention that the requirement for interoperable networks and unbundling contained in the FTA require consideration of CLEC needs. Yet, what SBC is doing with Project Pronto is nothing less than extraordinary.

SWBT's network is not being upgraded in order to benefit the ILEC's operations or to meet consumer needs, but rather changes are being made to create precisely the network modifications one CLEC desires—ASI. SWBT as an ILEC would have no interest in spending

²⁰ *In the Matter of Applications for Consent to the Transfer of Control Licenses and Section 214 Authorizations from Ameritech Corporation to SBC Communications, Inc.*, CC Docket No. 98-141 Continued. . .

\$6 billion to meet the network design requirements of any one CLEC, particularly not a CLEC in its infancy.²¹ The intelligent business choice would be to design its network to meet the needs of many CLECs and many consumers in order to maximize potential revenues. Were it not for the affiliate relationship between SWBT and ASI, a relationship the Merger Order²² supposes to be neutral, the very idea of an ILEC restructuring its network to serve *one and only one* customer would be ludicrous.

As MCIWorldCom pointed out in its Comments to the FCC on SBC's request for a waiver,

SBC is modifying [SWBT's] local network to support only the types of advanced services that [SBC] wishes to provide, using only the brands of equipment it selects, and deploying the new infrastructure only when and where it chooses. It takes no imagination to predict SBC's [and SWBT's] response if an unaffiliated CLEC would ask [SWBT] to redesign its network to permit the CLEC to provide a different type of advanced service using a different architecture or different equipment in different areas on a different schedule. Yet SBC is accommodating the business plan of its supposedly 'separate' advanced services affiliates in ways of which unaffiliated CLECs could never dream.²³

SWBT has become the lackey of its parent, a servant to its affiliate. The ILEC's independent judgment as to its network design no longer controls within SBC. SWBT's

("Waiver Request Docket"); Comments of USTA, p. 4.

²¹ Indeed, SWBT's affidavits imply that ASI is committing to submission of more xDSL-capable loops than it reasonably needs just to demonstrate that it is subject to the same ordering and provisioning systems CLECs must use. (Supplemental Affidavit of Lincoln Brown, ¶ 22.)

²² *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum and Order, FCC 99-279 at ¶¶ 348-518 and Appendix C (rel. Oct. 8, 1999) ("*SBC/Ameritech Merger Order*"), *app. pend. sub. nom. Telecommunications Resellers Ass'n v. FCC*, Case No. 99-1441 (D.C. Cir.).

²³ Comments of MCIWorldCom, Inc., p. 5.

statements that ASI will use the same OSS as other CLECs is scarcely evidence of an independent affiliate relationship when SWBT plans to implement a network design that limits CLECs' ability to obtain clean copper loops, to collocate CLECs' equipment in a manner analogous to that used by ASI, and to provide varieties of DSL other than ADSL.²⁴

Project Pronto's inbuilt design and service restrictions are less obvious than, but just as pervasive as, the spectrum management plan SWBT originally proposed to implement for DSL. That plan was correctly rejected by the TPUC in the Covad/Rhythms Arbitration proceeding, but even before CLECs can confirm that that plan has been dismantled as ordered,²⁵ new restrictions appear. SBC seems intent on using SWBT and ASI as complementary weapons for the purpose of gaining competitive advantage. Under these circumstances, ASI cannot be found to be the independent affiliate the FCC ordered SBC to create as part of the Merger Conditions.²⁶

Without a fully operational *separate* affiliate, checklist item (iv) can only be satisfied through proof of non-discriminatory performance, and it is ALTS' and the CLEC Coalition's

²⁴ The obvious *lack* of an independent relationship between SWBT and ASI became all too apparent when CLECs noted at the April 13, 2000, xDSL workshop that workshop participants were discussing ASI's actions and commitments, and not a single ASI representative or legal representative was at the meeting. All of the decisions and commitments on behalf of ASI were being made by SWBT legal counsel and SWBT regulatory personnel. See Attachment No. 2, Tr. at 180-183 (April 13, 2000) *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, Docket No. 20400.

²⁵ PUC Docket No. 20272; *Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangement with Southwestern Bell Telephone Company*; PUC Docket No. 20226; *Petition of Accelerated Connections, Inc., d/b/a ACI Corp. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*.

²⁶ Comments filed at the FCC regarding SBC's Waiver Request conclude that there is little space to collocate DSLAMs at remote terminals. The Texas PUC specifically granted CLECs the right to collocate as part of its Covad/Rhythms Arbitration Award as one option available to CLECs to ensure access to copper loops for the purpose of providing those xDSL services requiring access to such loops. That decision is consistent with the FCC's conclusion in the *UNE Remand Order* to require access to the sub-loop in its list of UNEs. It appears that ASI's business plan to offer only ADSL services could be implemented without any need to collocate, while competing CLECs would need this option to serve their customers. Whether SBC will commit to allowing competitive CLECs to insert line cards for their Continued. . .

understanding that performance issues remain. Until SWBT demonstrates that it has met the requirement of providing non-discriminatory access to DSL-capable loops through the pre-ordering, ordering, provisioning and maintenance stages, SWBT's entry into the interLATA market must be denied.²⁷

b. Line Sharing

On December 9, 1999, the FCC ordered the unbundling of the high frequency portion of the local loop.²⁸ While it is true that CLECs desiring to use the high-frequency portion of the local loop soon will be able to do so, thereby eliminating the need to acquire and use a second line to serve a customer's premises, CLECs will not be able to provide voice and data services over the same loop.

Specifically, the Line Sharing Order requires the ILEC to provide to CLECs only the high frequency portion of loops ("HFPL") on which the incumbent is providing voice services.²⁹ Thus, SWBT can, and has announced that it will, market voice over DSL service in which SWBT provides the voice and ASI provides the ADSL service to a customer using a single local loop. No CLEC that acquires a local loop through resale or as a UNE can itself provide voice over DSL, however, nor can it provide the voice portion of a service on a resold or UNE loop and enter into an agreement with another CLEC to provide a DSL service over that loop. While

chosen technologies in the remote terminals is unknown.

²⁷ It is important to note that the PMs that currently exist for DSL-capable loops are unable to detect discriminatory treatment arising from network design, which is the issue with Project Pronto. The existing measures do not address order rejects and delays that occur due to a lack of collocation space in remote terminals, for example. Nor would these measures pick up a refusal to allow CLECs to place their own line cards in those terminals in order to provide services other than ADSL.

²⁸ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; Fourth Report and Order, Released December 9, 1999, ("Line Sharing Order").

²⁹ *Id.*

this marketing disadvantage may not have been intended by the FCC, the practical result is that SWBT and only SWBT is able to offer both services, an advantage compounded by the joint marketing already underway.

Furthermore, there are no established performance measures to ensure non-discriminatory treatment between CLECs and ASI, nor are there any rates, terms and conditions in place for the use of SWBT splitters, for interconnection or collocation as may be required for line sharing. While SWBT has agreed to price the HFPL at 50% of the loop price and has agreed to TELRIC pricing for the splitter,³⁰ the practical aspects of the terms and conditions of line sharing remain to be worked out.

3. Violation of Section 51.309 Use of Unbundled Network Elements

Section 51.309 states “an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.” SWBT is violating this provision by imposing technical restrictions that prevent ICG Communications from providing integrated communication services.

An “integrated access service” (“IAS”) enables customers to transmit voice and data over a single DS-1 circuit. In order to provide this service, ICG installs equipment, typically manufactured by Cisco, on the customer’s premise as well as in central offices. This equipment utilizes the DS-1’s overhead bit stream for its maintenance signaling.

³⁰ Affidavit of Michael C. Auinbauh, ¶¶ 6 and 7.

A critical, service-affecting issue arises, however, when the DS-1 is provisioned over HDSL. SWBT, as well as other ILECs, appears to be provisioning DS-1s over HDSL more frequently. With an HDSL DS-1, only two mid-span repeaters are necessary to extend the circuit to the length of 30,000 feet whereas multiple repeaters would be necessary to extend a non-HDSL loop the same length. The reduction in the number of repeaters translates into cost-savings for the ILEC but, as shown below, increases the incidence of service outages for the CLEC's customers.

The HDSL repeater can be set either on the "auto" or "unframed (UNFR) /free framing" mode. When set in "auto," the repeater uses the same overhead bit stream used by the IAS equipment as well as other types of DS-1 systems such as the Lucent SLC-2000 DLCs. These types of equipment transmit their own proprietary frame patterns for maintenance purposes. The "auto" mode of the HDSL repeater, using the same overhead bit stream of the DS-1 circuit, reads these signals as pseudo DS-1 signaling patterns. The confusion causes DS-1 errors. In other words, the DS-1 circuit goes down. And the customer loses service.

The consequent DS-1 failures are chronic and have lasted from two hours to four days. The resulting repetitive service outages have resulted in loss of customers and ICG's inability to provide effectively integrated services in SWBT states. In fact, ICG's product rollout has been derailed by SWBT's unnecessary restrictions. ICG's ability to provide its services over an unbundled network element is knowingly negated by SWBT every time SWBT delivers a DS-1 over HDSL to ICG. In the meanwhile, SWBT's own integrated access services appear to escape these fatal technical issues.

A simple solution exists and it has been embraced by other ILECs such as BellSouth and US West. By setting the HDSL repeater on "unframed or free framing" ("UNFR") mode, the

repeater no longer reads the overhead bit stream in such a manner to cause DS-1 errors. As the technical advisory from PairGain,³¹ whose HDSL repeater equipment is prevalent throughout carrier networks, unequivocally states, the repeater “must be provisioned to UNFR to avoid these bit errors”

Already established, industry standard “Network Channel Interface” (“NCI”) codes, which are used by carriers to configure DS-1s, enable CLECs to order “unframed” DS-1s. The valid NCI code “04DU9.AN” signals to ILECs such as US West and BellSouth that the DS-1 should be “unframed” and any HDSL repeater should be set in the appropriate operational mode. While SWBT acknowledges the NCI code as configuring the DS-1 as “unframed,” they have refused to provide an unframed DS-1 with their HDSL repeaters set accordingly.

Setting the HDSL repeater to “unframed” would disconnect the maintenance signal only on the network element, the unframed DS-1, provisioned for ICG. The setting would not have a systemic impact on SWBT’s monitoring capability for facilities used by itself or any other CLEC. Although ICG has escalated this issue to the executive level within SWBT, the ILEC nevertheless remains intransigent in its position. It will continue to set their HDSL repeaters in “auto” in order to send maintenance signals over the unbundled loop, regardless whether this signal interferes with the maintenance signals that ICG’s customer premise and central office equipment transmits over the same overhead bit stream.

SWBT’s position substantially violates ICG’s right to provision a legitimate service over unbundled network elements provisioned for ICG’s exclusive use. As we have witnessed in a

³¹ See Attachment No. 5, Technical Advisory from Pair Gain regarding the use of framed v. unframed mode.

previous debate over DSL spectrum management policies, SWBT historically has used technical subterfuge to thwart CLECs from effectively deploying new services. Other ILECs have applied a simple, easy solution to the critical issue of signal interference from their repeaters. SWBT, on the other hand, continued use of technical “red herrings” to impede competitors casts a large shadow of doubt concerning SWBT’s commitment to fulfil fundamental obligations under the law and its faithfulness to the principle of treating CLECs as customers.

C. Checklist Item VIII – White Pages Directory Listings

NEXTLINK continues to experience problems with the directory listings database. NEXTLINK is losing business customers because the customers’ listings are dropped out of the database. NEXTLINK’s directory problems appear to be related to orders falling out of the automated systems and not being completed by SWBT’s back end office systems. When the order is finally completed and a SOC issued, SWBT eventually works the disconnect order and the customer is removed from the directory assistance database. Moreover, customers are being dropped from the database after the database has been updated. Because of the problems NEXTLINK has experienced, it has even made 411 directory assistance calls for every one of its customers to determine if they are still in the database. NEXTLINK and other CLECs cannot tolerate a situation where business customers are dropped from the database and themselves lose customers and revenue. This situation must be resolved because the CLEC is blamed for SWBT’s error and the disaffected business customer often returns to SWBT.

D. Regulatory Certainty is Essential to an Open Market

During the 271 collaborative process, the TPUC recognized the critical importance of regulatory certainty in the Texas local exchange market. Most CLEC interconnection agreements with SWBT were due to expire in late 1999 or early 2000, creating the likelihood of

numerous arbitrations over controversial issues, such as collocation, enhanced extended links (“EELs”), performance measures and penalties, and UNEs. In order to achieve regulatory certainty in these and other areas, TPUC Chairman Wood spent months negotiating to obtain commitments from SWBT that would eventually be incorporated into a four-year “master” interconnection agreement that could be easily and quickly adopted by a CLEC. This agreement was eventually named the Texas 271 Agreement (“T2A”) and has been adopted by over 65 CLECs in Texas.

Under the terms of the agreement with the TPUC, the T2A’s initial term is one-year and will expire on October 13, 2000, unless SWBT receives the FCC’s 271 approval by July 12, 2000.³² Because the T2A requires notice of re-negotiation 180 days from its expiration date, SWBT recently sent re-negotiation notices to the Texas CLECs that have executed the T2A. SWBT contends, however, that it will withdraw its notice in the event its current application is approved by July 5, 2000. Nonetheless, the regulatory certainty sought by the TPUC and Texas CLECs is tenuous at best. In attempting to resolve the outstanding issues regarding SWBT’s application, the Commission must keep in mind that the TPUC has repeatedly stated that its support for SWBT’s application is premised on the T2A being a four-year agreement. If SWBT’s application is not approved in July, the Commission should ensure that any efforts by the Commission to continue to work with SWBT to resolve outstanding performance or other issues is predicated on SWBT’s agreement to continue the term of the T2A until October 13, 2003.

³² Originally, this deadline was January 1, 2000, then became April 20, 2000, when SWBT did not file its 271 application until January 10, 2000. Due to the re-filing of its 271 application, SWBT has now moved this deadline to July 12, 2000.

It is a tribute to the TPUC's foresight and commitment to an open marketplace that at the time the Memorandum of Understanding, upon which the T2A was based, was being negotiated many of the final terms that the TPUC insisted upon were not clearly required by the law. As a result of this Commission's 1999 Advanced Services and UNE Remand orders, however, the T2A provisions regarding cageless collocation, EEL, and UNE combinations are now a matter of law and do not reflect any significant "give" on the part of SWBT. Because the circumstances underlying the TPUC's agreement to SWBT's initial term "deadline" have changed, it is no longer reasonable for SWBT to hold the continuation of the T2A hostage to the approval of its 271 application. Regardless of the outcome of SWBT's pending application, it would be fundamentally unfair for the Commission to sanction the continuation of a situation in which CLECs cannot reasonably rely on their interconnection agreement with SWBT for more than a few months. If SWBT is truly committed to facilitating an open market in Texas, it will make the T2A a four-year agreement now.

E. Modifications to SWBT's Website are Necessary

Throughout the TPUC's collaborative process, CLECs have urged the availability of information about SWBT's wholesale support, pending changes to SWBT's service offerings, interconnection agreements with affiliates, performance data and other important information. CLECs were urged to rely on the availability of such information on SWBT's website for CLEC-related information. Indeed, over time, the scope and depth of SWBT's website has improved considerably and has become an important resource for Texas CLECs. In the past, SWBT has assigned a single password to each CLEC to allow access to almost all of the information on the website. However, apparently in response to CLECs' concerns about former employees being able to access confidential information about the CLEC on the website, SWBT recently proposed

an arrangement whereby every employee that has access to the SWBT website would have his or her own password and the CLEC would administer the user's identification number and password.

While SWBT's intentions are certainly appreciated by many CLECs, the large number of CLEC employees that need access to SWBT's current password-protected information will cause great difficulties for CLECs. Specifically, because such a large volume of non-confidential information on the website is password-protected and dozens (if not hundreds) of employees within each CLEC need access to such information, the proposed change would place an enormous burden on CLECs to administer and monitor each employee's user ID and password. However, a simple solution to these problems is for SWBT to make all non-confidential information available on its website without requiring a password (or, alternatively, a single company password for all non-confidential information and documents). Such information would include SWBT's CLEC handbooks and technical publications, Accessible Letters, interconnection and affiliate agreements that SWBT has agreed to post on its website, and other types of information about SWBT's services and wholesale support. There is no reason for this type of information to be subject to password protection, as is currently the case. Only CLEC-specific information, *e.g.* performance data, should require a password. If SWBT would agree to make this change, only a few employees of each CLEC would need a password and the whole process would be considerably easier for CLECs to manage. ALTS and the CLECs are hopeful that SWBT will voluntarily agree to this change.

CONCLUSION

For the reasons described above, ALTS and the CLEC Coalition request that the Commission deny SWBT's section 271 Application until the critical, customer-affecting

problems described herein are resolved and this Commission has implemented pro-competitive, anti-backsliding measures consistent with the goals of the Telecommunications Act of 1996.



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