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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

1301 K STREET, N.W.  
SUITE 1000 WEST

WASHINGTON, D.C. 20005-3317

MICHAEL K. KELLOGG  
PETER W. HUBER  
MARK C. HANSEN  
K. CHRIS TODD  
MARK L. EVANS  
AUSTIN C. SCHLICK  
STEVEN F. BENZ

(202) 326-7900  
FACSIMILE:  
(202) 326-7999

NEIL M. GORSUCH  
GEOFFREY M. KLINEBERG  
REID M. FIGEL  
HENK BRANDS  
SEAN A. LEV  
COURTNEY SIMMONS ELWOOD  
EVAN T. LEO

May 11, 2000

**Ex Parte Submission**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

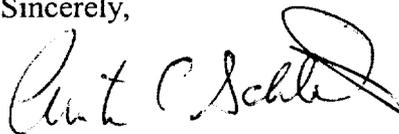
Re: *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65*

Dear Ms. Salas:

Attached for filing at the direct request of Commission staff is the May 1, 2000 Compliance Filing of Southwestern Bell Telephone Company ("SWBT") in Texas PUC Docket 22165, which presented SWBT's modified Plan to Ensure Competitive Neutrality and Nondiscrimination in the Use of Competitively Relevant Information, as required by the Texas Commission in its orders implementing the Covad/Rythms xDSL arbitration award. Also attached is the Texas PUC's Order No. 10 in Docket 22165 (issued May 8, 2000), which approved SWBT's modified plan.

The original and one copy of this letter and the accompanying attachments are enclosed. Please let me know if you have any questions about this matter.

Sincerely,



Austin C. Schlick

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List A B C D E

Magalie Roman Salas, Esq.

May 11, 2000

Page 2

cc: Mr. Stanley  
Ms. Stephens  
Ms. Wright  
Ms. Nelson, Texas PUC  
Ms. Heisler, DOJ  
ITS



**SWB**  
May 1, 2000

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**IMPLEMENTATION OF DOCKET  
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**PUBLIC UTILITY COMMISSION  
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**COMPLIANCE FILING OF SOUTHWESTERN BELL TELEPHONE COMPANY**

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cc: Rowland L. Curry, Arbitrator, PUC (hand delivered)  
    Melanie M. Malone, Arbitrator, PUC (hand delivered)  
    All Parties of Record (hand delivered/overnighted)

PROJECT NO. 22165

IMPLEMENTATION OF DOCKET  
NUMBERS 20226 AND 20272

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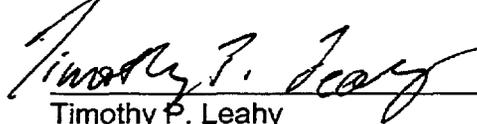
PUBLIC UTILITY COMMISSION  
OF TEXAS

COMPLIANCE FILING OF SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW, Southwestern Bell Telephone Company ("SWBT") and files its modified Plan to Ensure Competitive Neutrality and Nondiscrimination in the Use of Competitively Relevant Information, as required in Order No. 7 in this docket. SWBT has incorporated the modifications set forth in Section I, and will modify SBC Communications Inc.'s Competition Guidelines within 30 days of the Arbitrators' approval of SWBT's attached filing.

Respectfully Submitted,

ANN E. MEULEMAN  
General Counsel-Austin



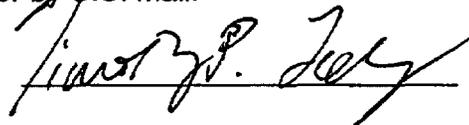
Timothy P. Leahy  
General Attorney  
Bar Card No. 24003748

SOUTHWESTERN BELL  
TELEPHONE COMPANY  
Legal Department  
1616 Guadalupe, Room 600  
Austin, Texas 78701  
Tel: (512) 870-5717  
Fax: (512) 870-3420

CERTIFICATE OF SERVICE

I, Timothy P. Leahy, General Attorney, for Southwestern Bell Telephone Company, certify that a copy of this document was served on all parties of record in this proceeding on the 1<sup>st</sup> day of May, 2000 in the following manner:

By hand delivery, facsimile and/or by U.S. Mail.



## **ADDENDUM**

Officer in charge of Network Engineering and Planning and all reporting management employees

Officer in charge of Network Operations and all reporting management employees

Officer in charge of Information Services and all reporting management employees

Officer in charge of Wholesale and all reporting management employees

Officer in charge of Marketing (Retail) and all reporting management employees

A recent Arbitration Award issued in Texas raised questions about Southwestern Bell Telephone Company's ("SWBT") use of loop information in the context of DSL technologies.<sup>1</sup> The Award also expressed concern about the sharing of sensitive competitor information between SWBT's retail and wholesale organizations, specifically when new products are being developed for retail deployment. As a result, the Award required SWBT to create "firewalls" to prevent impermissible flows of information between SWBT's wholesale xDSL organization and SBC Advanced Solutions Inc. ("ASI"), the current provider of our retail xDSL services in Texas. In the context of sharing certain information, SWBT must treat ASI as any other competitor-customer is treated.

ASI is a new and distinct legal and business entity, separate from SWBT. ASI is a subsidiary of SBC Communications Inc., and an affiliate of SWBT. SWBT is an incumbent local exchange carrier ("ILEC"), with obligations to provide non-discriminatory interconnection to competitive local exchange carriers ("CLECs"). ASI is also a CLEC, providing xDSL services, among other services, in Texas. The Federal Communications Commission permits ASI and SWBT to jointly and exclusively market their respective services and cooperate in a limited number of other ways, but otherwise SWBT must treat ASI as it would any other CLEC. To the extent ASI/SWBT activities fall within these "exclusive" spheres, as a general rule SWBT may share proprietary information with ASI without being obligated to provide that same information to unaffiliated CLECs. However, even with respect to "exclusive" activities, SWBT cannot share with ASI proprietary information SWBT has gained from CLECs in SWBT's role as an ILEC.

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<sup>1</sup> See Docket No. 20226; *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*; and Docket No. 20272; *Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, at page 70.

**SWBT's obligations can be divided into two parts:**

- **the obligation to avoid providing or obtaining information about the condition and availability of loops in SWBT's network in a way that is not permitted, as explained in more detail below; and**
- **the obligation to keep confidential information received from competitive DSL carriers as a result of SWBT providing service to those carriers.**

As you know, the SBC Code of Business Conduct places obligations on all employees and requires that you and your employees review these requirements each year. Employees who fail to comply with the Code of Business Conduct and applicable guidelines are subject to disciplinary action up to and including dismissal.

The first section of the Code of Business Conduct<sup>2</sup> mandates that employees conduct business according to the highest ethical standards, stressing that under no circumstances should any employee engage in any conduct that violates or gives the appearance of violating the requirements set forth in the Telecommunications Act or any other laws or regulations. The Competition Guidelines, which govern relationships with Competitors, place additional obligations on employees, including rules prohibiting misuse of proprietary and competitive information.

#### **Providing Information To SWBT Retail Sales And Marketing Or ASI**

SWBT has existing policies and guidelines regarding certain loop make-up information possessed by SWBT's network operations organization ("Telco Loop Information"). Disclosure of Telco Loop Information to retail sales and marketing operations or ASI is only permitted under certain formal processes.

Telco Loop Information that is available to SWBT's retail sales and marketing operations (or ASI) for the provision of Advanced Services must be made available at parity and in a non-discriminatory manner. Compliance with this requirement can be demonstrated by strict adherence to established procedures. For example, if Retail sales representatives make phone calls to engineers to get loop qualification information verbally instead of following the formal loop qualification process, it will be difficult, if not impossible, to demonstrate compliance with parity and nondiscrimination requirements.

Under recent FCC Orders—including the Order which approved the merger of SBC and Ameritech—SWBT has certain obligations to provide non-discriminatory access to Telco Loop Information for Advanced Services. This means that if such information is given to either SWBT's retail sales and marketing organizations or to ASI for the deployment of xDSL and other Advanced Services, it must be made available under similar terms and conditions to third party carriers, and in similar time frames. To the extent certain Telco

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<sup>2</sup> See Attachment A for a copy of this section.

Loop Information is not normally provided to either SWBT's retail personnel or ASI because ASI is not providing xDSL or other Advanced Services from a particular end office, it must nonetheless be provided to requesting third party carriers for the provision of Advanced Services when available.

In short, no Telco Loop Information can be passed to either SWBT retail sales and marketing personnel or ASI except via pre-approved processes. When dealing with Telco Loop Information, ASI must be treated as other CLECs are treated with regard to SWBT's network provisioning, information services, and wholesale activities.

These issues are complex. As a result, you should consult your supervisor and the appropriate attorney in the Legal Department, should you have any questions about these matters.

### **General Treatment Of Third Party Proprietary Information**

This portion of this letter reinforces the importance of SWBT's existing policies and guidelines regarding third party information received from a competitor-customer ("Competitor's Information"). Disclosure of Competitor's Information to SWBT's retail sales and marketing operations or to ASI is strictly prohibited, as this information could be misused to allow SWBT's retail organization or ASI an unfair advantage over competitors.

The basic rules relating to Competitor's Information are straightforward.

- Keep information received from competitor-customers confidential.
- Use information received from competitor-customers only for the limited purposes for which that information has been provided.
- Follow all statutes, rules, regulations, commission orders, and contractual non-disclosure obligations.
- Even in the absence of a clear rule, *assume* that information received from competitor-customers is to be held in confidence and do not disclose it to others within the Company or to third parties who do not have "a need to know."

Section 3.3.11<sup>3</sup> of the SBC Competition Guidelines specifically prohibits sharing within the family of companies any Competitor's Information received from competitor-customers, unless the information is required to perform legitimate business transactions with the competitor-customer.

Section 3.7<sup>4</sup> of the SBC Competition Guidelines covers the receipt of information from competitors and provides examples of activity that may violate legal duties as well as Company policy.

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<sup>3</sup> See Attachment B for a copy of this section.

<sup>4</sup> See Attachment C for a copy of this section.

Competitor's Information may include: CLEC order forecasts, collocation deployment locations, target market areas, and equipment technologies. Sharing such information with personnel without a need to know may violate legal duties and expose the Company to claims of improper conduct. **Therefore, personnel involved in network provisioning, information services, and wholesale activities should consult the Legal Department to determine the extent to which such information may be revealed, either in individualized or aggregated form, should such sharing of information be requested.**

Similarly, while network organizations are critical in the development of products and services for both SWBT retail and wholesale (and ASI), these organizations cannot improperly transfer Competitor's Information. During the product development process, network personnel are key players on retail development teams as well as wholesale deployment teams. Network participation on both retail and wholesale teams is required to ensure that the process and procedures are developed in parity. In addition, retail and wholesale product management must coordinate to maintain like feature and functionality for products to be in parity. For example, switch port features developed for retail need to be coordinated with the wholesale counterparts to ensure timely rollouts to CLECs. However, the coordination between these groups is for the purpose of ensuring parity. For these reasons, guidance from the Legal Department must be sought before any Competitor's Information is shared with other working groups within the company.

It is essential that each of us comply with the letter, spirit and effect of these policies. For this reason, each of your organizations must insure that all relevant personnel are thoroughly educated about SWBT's obligations addressed in this letter. Further, the SBC Competition Guidelines will be revised consistent with this letter, to clarify SBC's policy on relationships among affiliates and with competitors. Should there be any questions about your obligation as an employee, you should contact your supervisor and/or the attorney serving your organization.

**TO BE SIGNED BY OFFICER OF SWBT OR SBC.**

**ATTACHMENT A**

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## Compliance with Legal Requirements

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### Compliance with the Law and Fair

#### Competition

(Table of Contents)

**T**his section provides an overview of some of the laws and regulations that apply to SBC and its subsidiaries (collectively referred to as "the Company"). You are responsible for understanding and applying them on your job. In addition, you must exercise good judgment and should seek further guidance if you have any questions.

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## Antitrust and Trade Regulation Laws

### (Table of Contents)

**W**e must comply fully with the law, including the antitrust and trade regulation laws. We should avoid even the appearance of wrong-doing and, at all times, should conduct our businesses according to the highest ethical standards.

We should compete solely on the merits of our products and services and our ability to service what we offer, and not engage in any form of unfair competition.

The Telecommunications Act of 1996 was enacted on February 8, 1996. It replaced the restrictions previously imposed by the Modification of Final Judgment (MFJ). While the Telecommunications Act continues many of the MFJ business restrictions, it creates new processes for obtaining relief from those restrictions. Under no circumstances should any employee engage in any conduct that violates or may give the appearance of violating the line-of-business restrictions set forth in the Telecommunications Act or any other laws or regulations. Under no circumstances (whether emergency or otherwise) should any employee permit interLATA traffic originating in any of the Company's in-region states to be carried over Company facilities for use by customers, carriers, or others. Nor should any employee engage in any conduct that violates or may give the appearance of violating prohibitions against the Company's manufacturing and providing telecommunications equipment or manufacturing customer premises equipment (whether on an experimental basis or otherwise). Company personnel will be notified officially when authorization to engage in these now prohibited activities has been given. In the meantime, however, the Act opens our local exchange business to competition from long distance companies, access vendors, cable companies and others.

Accordingly, under no circumstances should any employee agree with an actual or potential competitor to restrict competition by fixing prices, allocating markets, or other means. Generally, an employee should not even discuss with a competitor any matters directly involving competition between such competitor and any SBC entity.

Employees should not arbitrarily refuse to deal with others, nor should they decline to purchase goods or services from others simply because they are competitors in other respects.

Equally important, an employee should not require others to buy from any SBC company before we will buy from them. Also, customers should not be required to purchase service they do not want in order to obtain one they do want. These requirements are prohibited whether expressed, implied, written, oral, formal or informal.

Some additional guidelines for employees are:

## SBC Code of Business Conduct

- Be courteous, accurate and truthful in all dealings with customers and competitors and be careful not to misrepresent the price, quality, features or availability of our products or services.
- Do not interfere with any business relationship or contracts made between a prospective customer and a supplier competing with any SBC company.
- Do not engage in industrial espionage or commercial bribery.
- Do not disparage a competitor's products or services.

Additionally, there are special Federal Communication Commission ("FCC") and state rules concerning structural separation, non-discrimination, cost accounting, and the methods by which the SBC companies can offer enhanced services, customer premises equipment ("CPE") and cellular mobile services. Generally, these rules prescribe which assets and records of SBC companies may be used to provide these services and equipment and how SBC companies must account for the costs of doing so. All employees must understand these rules and abide by them not only in internal dealings, but in our dealings with others. If you observe any of these prohibited behaviors or have any questions regarding the FCC rules, please notify your Legal Department, or the Compliance Line or Ombudsman Hotline, without fear of reprisal.

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**ATTACHMENT B**

3.3.9. Comply with all laws, rules, regulations, commission orders, tariffs, contract obligations, and company policies that prohibit discrimination against competitor-customers.

3.3.10. Take appropriate measures to prevent unlawful discrimination against competitor-customers by subordinates, co-workers, vendors, agents, contractors, and others acting on our behalf in the provision of services to competitor-customers. Promptly notify the appropriate personnel in your business unit, and the Legal Department, of any instance in which a competitor-customer or its customer claims to be receiving a lower or inferior level of services than the Company provides to other customers, including affiliates.

3.3.11. Do not exchange competitively sensitive information with competitor-customers except as necessary to accomplish legitimate business transactions between the Company and the competitor-customer. Do not share competitively sensitive information received from competitor-customers with persons outside the Company or persons within the Company who do not need such information in connection with the performance of legitimate business transactions with the competitor-customer.

3.3.12. Secure and comply with appropriate nondisclosure agreements and other nondisclosure obligations to prevent (a) collusive information exchanges (e.g., information exchanges that may facilitate improper coordination of pricing or other activities by the parties) or (b) misuse of confidential information to secure undue competitive advantages.

#### **3.4. Relationships with Competitors as Suppliers**

3.4.1. In dealing with competitors as suppliers, do not enter into agreements that include terms or conditions that unreasonably restrain competition. In general, do not enter into any agreement with a competitor-supplier that (a) limits the competitive freedom of either party (e.g., by agreeing on tariff or contract terms to be applicable to our respective customers) or (b) causes the improper sharing of competitively sensitive business information such as prices, costs or operating plans.

3.4.2. Negotiate in good faith with competitor-suppliers who are required by law to deal with our Company and in other situations where it is appropriate to obtain products or services from a competitor. Do not seek contract terms that serve no purpose other than to prevent, injure, delay, or otherwise hinder competition. Do not use business negotiations with competitor-suppliers as a means of acquiring business intelligence, diverting the resources of competitor-suppliers from other business activities, interfering with the efficient operation of the competitor-supplier's business, or as a means of manufacturing evidence of the competitor-supplier's noncompliance with legal requirements.

3.4.3. If it appears necessary or desirable to include in agreements with competitor-suppliers terms or conditions that may in some manner restrain competition in order to protect the legitimate business interests of either party or the rights of consumers, suppliers, or other third parties, consult the Legal Department before proposing or giving serious consideration to the Company's agreement to such terms or conditions.

**ATTACHMENT C**

### **3.7. Information Exchanges with Competitors**

**3.7.1.** Do not exchange information with a competitor, directly or indirectly, either orally or in any documentary form, unless there is a legal requirement or other legitimate business reason for doing so. Exchanges of competitively sensitive information such as information about prices or pricing policies, costs, or business plans may be interpreted as "facilitating practices" used to coordinate or police price fixing or other collusive agreements to limit competition.

**3.7.2.** Comply with laws, rules, regulations, and commission orders requiring information exchanges with competitors and with contractual obligations to competitors to share information. Consult the Legal Department before discontinuing the provision of information formerly provided to competitors who may claim they need the information to compete effectively.

**3.7.3.** To avoid any appearance of impropriety, do not (except as otherwise required by law) discuss, verify, or otherwise share with competitors, either generally or on a customer-specific basis, information concerning: (a) prices (either in general or with respect to specific areas, customers, or deals); (b) methods or methodologies used in setting prices; (c) plans to change prices; (d) plans to offer discounts or other promotions; (e) information concerning terms or conditions of sale (including credit standards or terms of credit); or (f) information about costs, profits, profit margins, or other information that could be used by a competitor to predict or coordinate prices, bids, or other terms of dealings. Consult the Legal Department if, for any reason, you believe that exchanging any such information is necessary for any legitimate business purpose.

**3.7.4.** To avoid any appearance of impropriety, do not (except as otherwise required by law) discuss, verify, or otherwise share with competitors, either generally or on a customer-specific basis, information concerning: (a) plans to deal or not to deal with a particular customer or supplier, or groups of customers or suppliers; (b) bids or plans to bid (or not to bid) on particular jobs; (c) geographic areas, customers, or categories of customers the Company serves or plans to serve; (d) products or services the Company will offer and when they will be offered; (e) present and future business or marketing plans; or (f) market share or other information that could be used by competitors to refrain from competing, coordinate efforts, or otherwise minimize competition. Consult the Legal Department if, for any reason, you believe that exchanging any such information is necessary for any legitimate business purpose.

**3.7.5.** In general, do not ask competitors for, or receive from competitors, information concerning their costs, their prices, their terms of dealing, their business or marketing plans, their distribution arrangements, their procurement arrangements, or any other competitively sensitive information. Personnel needing such competitively sensitive information for legitimate business purposes (e.g., forecasting the demand by competitors for services to be provided by the Company as required by law) should consult the Legal Department concerning appropriate safeguards to be followed in requesting, disseminating, and using such information.

**3.7.6.** Personnel involved in competitive analysis, marketing, and planning activities should adhere to the Company's guidelines relating to the collection of information about competitors and should consult the Legal Department as necessary to determine the propriety of obtaining information from competitors, from personnel involved in wholesale and procurement activities with competitor-customers or

## SBC COMPETITION GUIDELINES

competitor-suppliers, and from other potentially problematic sources.

3.7.7. Personnel involved in wholesale and procurement activities should adhere to the Company's guidelines relating to the disclosure of information received from competitors in the course of their activities. In general, such information may be shared with personnel involved in providing services to competitor-customers or procuring services from competitor-suppliers. Sharing such information with other personnel may violate legal duties and expose the Company to claims of improper conduct. Therefore, personnel involved in wholesale and procurement activities should consult the Legal Department to determine the extent to which such information may be revealed, either in individualized or aggregated forms, to planners, operations personnel, and other personnel asserting a need to know such information for legitimate business purposes.

3.7.8. Do not assume that information exchanges with competitors, other than those required by law, by contract, or to effectuate routine, day-to-day business transactions between the parties, are lawful. Consult the Legal Department before proposing or giving serious consideration to the Company's participating in any "benchmarking" project or other formal or informal information exchange with competitors or potential competitors. Secure appropriate nondisclosure agreements and comply with all applicable structural and procedural safeguards established to preclude the misuse of information exchanged with competitors in benchmarking projects and other voluntary information exchanges.

3.7.9. Do not assume that the kinds of information exchanges permitted in the past (e.g., exchanges of information between local exchange companies and interexchange companies or between local exchange companies and other local exchange companies) are now permissible or will be permissible indefinitely. Firms that were not competitors in the past due to line-of-business restrictions or other barriers to competition may be considered as competitors or potential competitors on a going-forward basis. There are, however, many appropriate reasons for sharing information with competitors and other firms. For example, sharing information may be necessary or even required to coordinate the delivery of services, accomplish interoperability, or minimize customer service outages. Information exchanges with other firms that compete or may compete with us in the future should be periodically reviewed and discussed with the Legal Department to ensure compliance with legal requirements as the business and legal environment changes.

3.7.10. Do not exchange competitively sensitive information with competitors involved in joint ventures and other cooperative business ventures except to the limited extent necessary to accomplish the procompetitive purposes of the venture. If, in connection with such ventures, there is a necessity to exchange such information, secure appropriate nondisclosure agreements and comply with all applicable structural and procedural safeguards established to preclude the misuse of such information.

3.7.11. Do not exchange competitively sensitive information with other participants in the activities of trade associations, standards-setting bodies, or other industry organizations and forums. If, in connection with such activities, there is a necessity to exchange such information, secure and comply with appropriate nondisclosure agreements to avoid the misuse of such information.

3.7.12. Do not exchange competitively sensitive information with competitors at social gatherings, during recreational activities at trade association meetings, on other unstructured occasions when competitors are present, or at locations where

## SBC COMPETITION GUIDELINES

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competitors may be present and able to overhear conversations intended to be confidential.



IMPLEMENTATION OF DOCKET § PUBLIC UTILITY COMMISSION  
NUMBERS 20226 AND 20272 § OF TEXAS  
§

ORDER NO. 10

ORDER APPROVING SWBT'S PLAN TO ENSURE COMPETITIVE NEUTRALITY  
AND NONDISCRIMINATION IN THE USE OF COMPETITIVELY RELEVANT  
INFORMATION

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I. APPROVAL OF SWBT'S PLAN

The Arbitration Award in Docket Nos. 20226 and 20272<sup>1</sup> ordered Southwestern Bell Telephone Company (SWBT) to create "firewalls" to separate SWBT's retail and wholesale digital subscriber line organizations. The purpose of the "firewalls" was to restrict the flow of competitively beneficial information. SWBT filed its plan to ensure the competitive neutrality and nondiscrimination in the use of competitively relevant information on January 14, 2000.<sup>2</sup> SWBT included a letter (Appendix A of that filing) to management employees discussing these concerns. SWBT filed additional information relating to the plan, as requested by the Arbitrators, on April 14, 2000. On April 24, 2000, the Arbitrators issued Order No. 7, which modified SWBT's plan. SWBT filed its modified plan on May 1, 2000. The Arbitrator's approve SWBT's modified plan and order that it be distributed to all relevant employees immediately. The Arbitrators order SWBT to file an affidavit affirming the distribution of the plan no later than May 16, 2000.

<sup>1</sup> See *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Docket No. 20226, Arbitration Award, DPL Issue Nos. 16 (Nov. 30, 1999); and *Petition of DIECA Communications, Inc., d/b/a/ COVAD Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket No. 20272, Arbitration Award, DPL Issue No. 16 (Nov. 30, 1999).

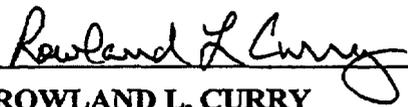
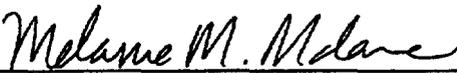
<sup>2</sup> SWBT's Notice of Plan to Ensure Competitive Neutrality and Nondiscrimination in the Use of Competitively Relevant Information, January 14, 2000.

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**II. MODIFICATIONS TO SBC'S COMPETITION GUIDELINES**

In order to fulfill SWBT's obligations as set forth in the Arbitration Award, the Arbitrators ordered SBC to revise its Competition Guidelines.<sup>3</sup> The SBC Competition Guidelines shall be updated to reflect the new policy clarifying the relationships between SBC affiliates and subsidiaries. SWBT shall file an updated version of the SBC Competition Guideline no later than June 2, 2000.

SIGNED AT AUSTIN, TEXAS the 8<sup>th</sup> day of May 2000.

**PUBLIC UTILITY COMMISSION OF TEXAS****ROWLAND L. CURRY****ARBITRATOR****MELANIE M. MALONE****ARBITRATOR**

Q: opd/arbs/22165/Order No. 10

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<sup>3</sup> See Order No. 7.