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June 22, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William E. Kennard
Federal Communications Commission
445 Twelfth Street, SW, Room 8B201
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation: Application of SWBT for Authorization To Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65

Dear Chairman Kennard:

I respectfully urge the Commission to reject Southwestern Bell Telephone Company's pending Section 271 application. While there exist a number of serious reasons to reject this application, I write to underscore a particular concern with SWBT's continuing efforts to impede competition from CLECs that use combinations of unbundled network elements ("UNEs"). As you know, UNE combinations provide the only near term hope of mass market competition for local residential services across an incumbent LEC's service territory. If SWBT is permitted to continue to undermine the use of UNE combinations, it will frustrate the Commission's careful and steadfast efforts to open local markets to competition even after SWBT corrects its wholesale provisioning deficiencies.[1]

First, SWBT refuses to allow a CLEC to provide DSL services over the same unbundled loop that the CLEC uses in conjunction with unbundled switching – in the combination that has come to be known as the UNE Platform or UNE-P – to provide

[1] SWBT's wholesale provisioning deficiencies alone warrant rejection of this application. For example, recent improvements in SWBT's performance in the coordinated hot cut ("CHC") provisioning of unbundled loops cannot excuse SWBT's failure consistently to provision loop "hot cuts" using either its CHC or frame due time ("FDT") procedures, its on-going abysmal FDT performance, and its ability to improve CHC performance only after directing CLECs to use the FDT process for cutting-over loop orders of less than 20 lines. Further, in addition to SWBT's failure to show that its OSS can support commercial volumes of residential orders, the record confirms unacceptably high order reject rates and the continuing absence of a reliable test environment, change management process, and system versioning.

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competitive local exchange voice services. This obviously forecloses competition from UNE-P carriers in the provision of DSL services because it denies CLECs the opportunity to provide broadband data services in the only configuration that can today support mass market offerings throughout SWBT's serving territory.

SWBT's action also seriously undermines competition for local exchange voice services. Consumers who wish to obtain competitive voice and broadband data services from a single provider cannot do so because only SWBT will be able to provide both. Even consumers who would obtain voice service from a CLEC and broadband data service from SWBT cannot do so because SWBT refuses to provide its DSL services to any consumer who obtains voice services from a CLEC. Moreover, CLECs that wish to enhance the economics of providing local exchange voice services by supplementing those offerings with a DSL offering – and the additional revenues such an offering would generate – cannot do so because of SWBT's refusal to provide CLECs nondiscriminatory access to its unbundled loops.

Second, SWBT further undercuts prospects for residential local exchange competition by continuing to insist on a right to impose non-cost-based "glue" charges on CLECs that use combinations of UNEs. These charges – about $20 per order – necessarily mean that, for no legitimate reason, CLEC costs will be higher and fewer customers will enjoy the benefits of competition provided using UNE combinations. And while SWBT claims that it will defer these charges for the time being, it will do so only if a CLEC agrees that these charges may be recovered on a retroactive basis.

Third, SWBT continues to claim, notwithstanding the FCC's recent order concerning nondiscriminatory access to network elements,[2] that its has the right to withhold access to UNEs unless and until SWBT complies with its duty to procure right-to-use licenses from its hardware and software vendors.[3] Of course, this perpetuates the very controversy over the use of UNEs that the FCC's order was intended to end.

If allowed to provide long distance services in Texas notwithstanding these anticompetitive tactics, SWBT will quickly undermine the gains that have been made in

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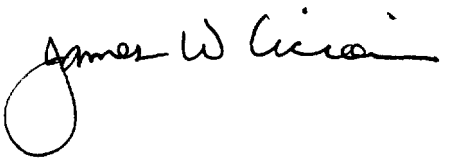
2 Memorandum Opinion and Order, released April 27, 2000, In the Matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements and Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CCBPol. 97-4 and CC Docket No. 96-98.

3 Southwestern Bell Telephone's Notice to the Court of FCC Decision Regarding Intellectual Property, Southwestern Bell Telephone Company v. Ed Apple, et al., and AT&T Communications of the Southwest, Inc., v. Southwestern Bell Telephone Company, et al., Case No. Civ-97-1507-A consolidated with Case No. Civ-97-1514-A (May 9, 2000 W.D. OK).

Texas. It will inappropriately increase its competitors' costs and stunt their revenue, use its unique access to the unbundled loop to secure an illicit advantage in the provision of DSL services, and use this improper DSL advantage to foreclose voice competition in the local exchange marketplace. SWBT's efforts do not comport with the public interest, and do not satisfy the competitive checklist of Section 271 of the Act. AT&T respectfully requests that the Commission reject this application, and, in doing so, make clear that these tactics will not be tolerated.

Sincerely,



cc: Commissioner Ness
Commissioner Furchtgott-Roth
Commissioner Powell
Commissioner Tristani