ATTACHMENT C

ICG CHOICECOM, L.P.
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DOCKET NO. 21982

PROCEEDING TO EXAMINE	§	PUBLIC UTILITY COMMISSION
RECIPROCAL COMPENSATION	§	
PURSUANT TO SECTION 252 OF	§	
THE FEDERAL	§	OF TEXAS
TELECOMMUNICATIONS	§	
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REBUTTAL TESTIMONY OF DON J. WOOD ON BEHALF OF ICG CHOICECOM, L.P.

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REBUTTAL TESTIMONY OF DON J. WOOD ON BEHALF OF ICG CHOICECOM, L.P.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don J. Wood. My business address is 914 Stream Valley Trail, Alpharetta, Georgia 30022.

Q. ARE YOU THE SAME DON J. WOOD WHO PRESENTED DIRECT TESTIMONY ON BEHALF OF ICG IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to certain assertions made in the direct testimony of SWBT witnesses Wynn, Cooper, Jayroe, Harris, Taylor, Smith, and Long.

Based on my review of this testimony, I have reached the following conclusions:

1. The basis for a number of the conclusions set forth in the testimony of SWBT witnesses is at odds with the March 24, 2000 decision of the United States Court of Appeals for the District of Columbia Circuit ("Court"). As a result, SWBT's primary arguments regarding the appropriate inter-carrier compensation mechanism for traffic delivered to ISPs are now wholly without foundation.

2. The purported technical differences between local calls and calls to ISPs set forth by SWBT witness Jayroe do not exist for those network functions for which reciprocal

compensation is designed to apply. In fact, Mr. Joyce's diagrams illustrate that, from a technical and cost perspective, calls to ISPs cannot be distinguished from local calls.

4. The customer-specific "needs test" set forth by SWBT witness Wynn (and supported by Dr. Harris) is not an appropriate substitute for a cost-based reciprocal compensation rate. Dr. Harris also presents a series of attempts to recast the relevant question in a way that would lend support to SWBT's otherwise unjustified rate proposals. The logical fallacy of the arguments can be readily seen if the significant implications of a broader application of these theories are considered.

5. The testimony of SWBT witnesses Smith and Taylor underscores the fundamental problems with the design and implementation of the SWBT-IBT study that I described in my direct testimony. As a result, the results of the SWBT-IBT have no conceptual meaning and no application to the questions before the Commission in this case.

6. The limitations on the application of tandem-level reciprocal compensation rates advocated by SWBT witness Long are at odds with both the FCC rules and the development of competition for local exchange services.

I will describe my reasoning behind each of these conclusions below.

Q. YOU STATED THAT THE RECENT DECISION OF THE COURT UNDERMINES THE ARGUMENTS OF SWBT. PLEASE SUMMARIZE YOUR UNDERSTANDING OF THE COURT'S DECISION.

A. The Court described the case before it as follows:[1]

> The Telecommunications Act of 1996 requires local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." When LECs collaborate to complete a call, this provision ensures compensation for both the originating LEC, which receives payment from the end user, and for the recipient's LEC. By regulation the Commission has limited the scope of the reciprocal compensation requirement to "local telecommunications traffic." In the ruling under review, it considered whether calls to internet service providers ("ISPs") within the caller's local calling area are themselves "local." In doing so it applied its so-called "end to end"

[1] In the interest of readability, I have omitted the Court's embedded citations when presenting portions of the text from the decision.

> analysis, noting that the communication characteristically will ultimately (if indirectly) extend beyond the ISP to websites out of state and around the world. Accordingly it found the calls non-local.

In this review of the issue before it, the Court correctly noted the necessity of reciprocal compensation in order to ensure compensation when LECs collaborate to complete a call. As the Court points out, the originating carrier receives payment from the end user that originates the call, while the terminating carrier does not.

While the FCC's ISP Order led to the creation of, in the Court's terminology, "two unhappy groups," the decision to vacate the ruling and remand the case was clearly based on the arguments put forth by the "competitors" rather than the arguments of the "incumbents." Specifically, the Court concluded that

> The end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction. Here it used the analysis for quite a different purpose, without explaining why such an extension made sense in terms of the statute or the Commission's own regulations. Because of this gap, we vacate the ruling and remand the case for want of reasoned decision-making.

The Court went on to observe what many state regulators have known for some time: "[t]he issue at the heart of this case is whether a call to an ISP is local or long-distance." The Court noted that the FCC had applied its construction of the end to end nature of the communication, but found this analysis lacking in several respects. Specifically, the Court found that the FCC had "yet to provide an explanation why this inquiry [the end to end analysis of the communication] is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the

1 long distance model of a long-distance carrier collaborating with two LECs."[2] The
2 Court's concern with the FCC's "end to end nature of the communication" analysis went
3 beyond the FCC's failure to justify, however. The Court found that "the extension of
4 'end to end' analysis from jurisdictional purposes to the present context yields intuitively
5 backwards results...The inconsistency is not necessarily fatal...[b]ut it reveals that
6 arguments supporting use of the end to end analysis in the jurisdictional analysis are not
7 obviously transferable to this context."

8 Equally importantly, the Court also concluded that these calls appear to
9 "terminate" at the ISP, even though further "communication" may then be originated to
10 distant websites. Noting the FCC's definition of "termination" as "the switching of
11 traffic that is subject to section 251 (b) (5) at the terminating carrier's end office switch
12 (or equivalent facility) and delivery of that traffic from that switch to the called party's
13 premises," the Court concluded that "[c]alls to ISPs appear to fit this definition: the traffic
14 is switched by the LEC whose customer is the ISP and then delivered to the ISP, *which is*
15 *clearly the 'called party'*" (emphasis added). The Court then clarified the role of the ISP:
16 upon receiving the call as the called party, the ISP then originates "further
17 communications to deliver and retrieve information to and from distant websites." This
18 is where the rubber meets the road: The Court concluded that "*the mere fact that the ISP*
19 *originates further telecommunications does not imply that the original*
20 *telecommunications does not 'terminate' at the ISP*. However sound the end to end

2 It is not unreasonable to assume that the fact that no long distance carrier is involved in the delivery of the calls in question may have influenced the Court's conclusion in this regard.

analysis may be for jurisdictional purposes, the Commission has not explained why viewing these linked telecommunications as continuous works for purposes of reciprocal compensation" (emphasis added).

The Court also agreed with the arguments of the competitors that "[I]n this regard an ISP appears...no different from many businesses...The Commission has not satisfactory explained why an ISP is not, for purposes of reciprocal compensation, 'simply a communications-intensive business end user selling a product to other consumer and business end users.'"

The Court also addressed the argument that the fact that an ESP exemption had been granted necessarily led to the conclusion that "ESPs in fact use interstate access service, otherwise the exemption would not be necessary." The Court concluded that such an argument "is not very compelling. Although, to be sure, the Commission used policy arguments to justify the 'exemption,' it also rested it on an acknowledgement of the real differences between long-distance calls and calls to information service providers. It is obscure why those have now dropped out of the picture."

Finally, the Court observed an "independent ground requiring remand." The Court noted the argument made by the FCC that traffic with a given set of characteristics is either "telephone exchange service" or "exchange access," and the FCC's conclusion that "ISPs do not use exchange access." The Court also noted that an argument that ISPs, as non-carriers, purchase exchange access is inconsistent with the definition of exchange access as being offered "for the purpose of the origination or termination of telephone toll services."

1 Q. PLEASE EXPLAIN THE SIGNIFICANCE OF THESE FINDINGS OF THE COURT.

2 A. The Court's conclusion that the traffic in question consists of a call that appears to
3 "terminate" at the ISP, even though that ISP may then originate further communication to
4 distant websites, is significant. This conclusion underscores the comparability of calls
5 delivered to ISPs and calls delivered to any other called party within the local calling
6 area. These calls appear the same as other calls because they technically *are the same*,
7 and potentially more importantly, *cost the same*. As I described in my direct testimony, it
8 is the call between the end user customer who originates the call and the ISP that is at
9 issue; any further communication between the ISP and "potentially distant websites" is
10 not a part of the reciprocal compensation structure.

11 The identity of the ISP as the called party is significant. As I described in my
12 direct testimony, the identity of the called party as an ISP does not impact any of the cost
13 drivers of the call. As the Court correctly noted, an ISP appears "no different from many
14 businesses." As a result, there is no legitimate basis for SWBT's proposal to segregate
15 out traffic delivered to an ISP for different rate treatment.

16 It is also instructive that the Court concluded that the fact that an ESP exemption
17 had been granted did not establish that ESPs were in fact purchasing exchange access.
18 Exchange access is provided, by definition, "for the purpose of the origination or
19 termination of telephone toll services." The FCC has made it clear that ISPs are not
20 carriers providing telephone toll services. As a result, the fact that an ISP exemption
21 exists tells this Commission nothing about the appropriate form of inter-carrier
22 compensation for calls delivered to an ISP.
23

1 Q. PLEASE EXPLAIN HOW THESE FINDINGS OF THE COURT UNDERMINE THE
2 FOUNDATION OF SWBT'S ARGUMENTS.

3 A. SWBT has based its case on two arguments that rely on the ISP Order, preceded by a
4 fundamental misunderstanding regarding the "calls" in question in this proceeding.

5 As an initial matter, SWBT has taken the FCC's conclusion that traffic bound for
6 the Internet is "predominantly interstate," and subtly transformed that finding into a
7 statement that ISP bound traffic is interstate access traffic (Wynn, p.6). SWBT witnesses
8 and information request responses use "ISP bound" and "Internet bound"
9 interchangeably.3 As the Court's decision makes clear, however, it is essential that one
10 be more precise when addressing this issue. The call between the originating end user
11 customer and the ISP involves a collaboration between LECs to complete a call. The
12 further communication between the ISP and the Internet in order to retrieve the
13 information requested by the originating end user is not traffic that the reciprocal
14 compensation mechanism is designed to address and is therefore not a part of the
15 telecommunications traffic at issue in this proceeding.

16 SWBT goes on to base two arguments on its interpretation of the FCC's findings.
17 First, it argues that since the FCC has found the traffic delivered to an ISP to be interstate
18 (as described above, this is not quite what the FCC concluded), these calls should be
19 treated as interstate toll calls. For example, in response to CLEC Coalition's Information
20 Request No. 2-19, SWBT stated that "Based on the FCC's ruling that ISP traffic is largely
21 interstate in nature, SWBT believes that the appropriate form of compensation has
22 already been established for this interstate traffic. The appropriate form of intercarrier

compensation for interstate traffic is meet point billing." As the Court has pointed out, however, there has been no demonstration made to date that the FCC's analysis based on the end to end nature of the communication is useful to an attempt to whether a call to an ISP is a local call completed by two collaborating LECs or a long distance call completed via a long-distance carrier. SWBT would have this Commission believe that a conclusion by the FCC that a call delivered to an ISP is likely to be interstate means that the Commission *cannot* consider such a call to be more like the local call model involving collaborating CLECs than the long distance model involving an interexchange carrier.[4] In reality, a call delivered to an ISP is not merely most like a local call; it is indistinguishable from it in all technical and cost characteristics. While the FCC's conclusion that at least some portion of this traffic is jurisdictionally interstate has never been dispositive of the issue, SWBT now no longer has the FCC's conclusion to serve as the foundation for its arguments.

SWBT witness Wynn also argues (p. 6) that calls delivered to an ISP must constitute interstate access because "if the traffic were not access, access charges would not have applied to ISP traffic, and thus there would have been no need for the FCC to exempt such traffic from access charges." In making this argument, Mr. Wynn incorrectly assumes that absent the exemption, access charges would have applied. As the Court correctly pointed out, however, the FCC's initial exemption for ESPs was based at least in part on "an acknowledgement of the real differences between long distance calls and calls to information service providers." Instead of supporting a claim that such

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3 Mr. Long refers to "Internet bound traffic" (p. 8), Mr. Wynn refers to "ISP traffic" (p. 3), Mr. Cooper to "ISP Internet calls" (p. 6), Ms. Smith to "Internet access calls" (p. 5), and Mr. Jayroe to "calls to ISPs" (p. 3).

4 It is puzzling that SWBT is not troubled by the lack of an interexchange carrier in the ISP bound scenario

1 traffic is [illegible] history of the ISP exemption actually clarifies that calls to ESP
2 including ISPs, are fundamentally different. As the Court concluded, Mr. Wynn's and the
3 FCC's argument "is not very compelling."
4
5 Q. ARE THE FINDINGS OF THE COURT RELEVANT TO THE FUNDAMENTAL
6 QUESTION BEFORE THE COMMISSION IN THIS PROCEEDING?
7 A. Yes. Clearly, the Court's findings expose SWBT's arguments for the house of cards that
8 they are. When the "FCC said these calls are interstate" card is removed, that house
9 collapses rather quickly. The Court's decision to vacate and remand the FCC's Order
10 also underscores the need for this Commission to take action on this issue; the wait for an
11 FCC rule will apparently now be a long one.
12 It is important to recognize, however, that the fundamental question before the
13 Commission in this case did not change as a result of the Court's decision because that
14 fundamental question has never relied upon the jurisdictional nature of the traffic
15 delivered to an ISP. As I stated in my direct testimony, the task before the Commission is
16 one that it has faced before: to determine the appropriate mechanism and rates for
17 reciprocal compensation such that (1) carriers who receive traffic originated by the end
18 user customer of another carrier, and who deliver that traffic to the destination chosen by
19 that end user customer, can recover the relevant cost of performing this essential task, and
20 (2) the continued development of competition for local exchange services will be
21 promoted. Within this context, a specific sub-issue to be addressed is whether calls that
22 are originated by the end user customers of one carrier, and that are received and

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when declaring these calls to comport with the long distance call model.

delivered by a second carrier, should be excluded from the reciprocal compensation mechanism merely because they are being delivered – pursuant to the desires of the end user customer who originated the call – to an ISP. If the Commission ultimately elects to exclude ISP-bound calls from reciprocal compensation, it must first conclude that the arguments in favor of excluding such calls (whatever they may be) outweigh (1) the interest of permitting a carrier to recover the relevant cost of performing the essential role of accepting and delivering traffic originated by the end user customers of another carrier, and (2) the interest of Texas consumers in the continued development of competition in the market for local exchange services.

Prior to the Court decision, the Commission faced this decision because the FCC decided not to adopt a rule in conjunction with the ISP Order but instead deferred to the states to resolve the issue for the time being. Subsequent to the Court decision, the Commission faces this decision pursuant to its role as arbitrator of interconnection disputes. Except for the question of whether an FCC rule would apply at some point in the future, the jurisdictional nature of the traffic in question has simply never been an issue. Instead, the question before the Commission is one of facts and costs: LECs, including SWBT and CLECs, are delivering calls originated by the end user customers of another carrier, and are incurring a cost to do so. Cost-based compensation is due in exchange for this service, and the cost is not impacted in any way by the fact that a given call is being delivered to an ISP.

Q. DOES THE COURT DECISION CHANGE YOUR RECOMMENDATION REGARDING ANY OF THE ITEMS ON THE PROPOSED DPL?

A. No. While the Court has pulled the rug out from under the assumption that pervades the SWBT testimony (e.g. that the traffic delivered to an ISP is interstate) none of the relevant facts supporting my recommendations have changed. As I describe in my direct testimony, my recommendations are based on an analysis of the capability being provided by one LEC to another and the relevant costs associated with providing that capability. The question of the jurisdictional nature of traffic delivered to an ISP has not been a part of that process.

Q. HAS A STATE REGULATOR RECENTLY REACHED A DECISION CONSISTENT WITH YOUR CONCLUSIONS?

A. Yes. In the Arbitration Panel Report in Case No. 99-1153-TP-ARB before the Public Utilities Commission of Ohio, the Arbitration Panel was presented with arguments by ICG and Ameritech that mirror the arguments made by CLECs and SWBT in this proceeding. After stating that it found the issue to be "straight-forward," the Arbitration Panel concluded as follows:

> First, there is no question that ICG incurs costs when it delivers ISP-bound traffic that has originated from an Ameritech customer. Once an ISP call is handed off by Ameritech, these calls are transported and switched by ICG and delivered to the ISP. Any carrier would incur some cost in performing this transport and switching function.
>
> Second, though the FCC has declared ISP-bound traffic to not be local, it treats this traffic as if it were local...Neither are states precluded from treating this traffic as local.

> Third, in the Panel's view, the compensation model within which the ISP traffic at issue in this proceeding most closely fits is the LEC-LEC model. Accordingly, the Panel believes reciprocal compensation is appropriately paid for ISP-bound traffic.

The Arbitration Panel went on to provide a succinct conclusion of this "straight-forward" issue: "Excepting for the fact that the FCC has ruled that ISP-bound calls are interstate, *every other aspect of ISP calling suggests the calls are local.* The manner in which the call is switched, transported, and switched again is the same whether the call is destined for an ISP or for a local access line in the completion of a voice call. The ISP is treated as an end user and buys services out of the local exchange tariff: the same could be said for a residential or business customer" (emphasis added). Since this decision, of course, the Court has eliminated the single "exception" noted by the Arbitration Panel: the FCC's conclusion has been vacated. What remains is the following: calls are being originated by SWBT's customers that are being delivered to the called party by a CLEC. Sometimes the called party happens to be an ISP, but these calls are technically indistinguishable from any other call completed within the local calling area. When these calls are made, the CLEC incurs a cost to deliver those calls to the called party of the SWBT customer's choosing, and those costs are indistinguishable from any other call completed within the local calling area. ISPs are not just *treated* as end users in this scenario; in every respect they *are* end users of telephone exchange service. In this light, the Arbitration Panel's characterization of the issue as "straight-forward" is right on target.

1 Q. IN HIS DIRECT TESTIMONY, MR. JAYROE POINTS OUT A NUMBER OF
2 PURPORTED "TECHNICAL DIFFERENCES BETWEEN CALLS DELIVERED TO
3 ISPS AND CALLS DELIVERED TO OTHER CALLED PARTIES." DO YOU AGREE
4 WITH HIS CONCLUSIONS?
5 A. No, although I do find his diagrams instructive. In Figure 1, Mr. Jayroe shows a local
6 call, for which he concedes "there is no dispute that this call, if made between SWBT and
7 a CLEC, would be subject to reciprocal compensation" (p. 3). Mr. Jayroe's diagram
8 depicts a call flow from the calling party's telephone, via a local loop to the originating
9 end office, via an interoffice trunk to a local tandem, via an interoffice trunk to the
10 terminating end office, and via a local loop to the called party. While he has used
11 telephone icons in his diagram, I can only assume that Mr. Jayroe has not intended to
12 limit his definition of a local call to voice calls only, and would not object to the
13 substitution of a computer at either the calling party's or called party's location (or both).
14 Local data calls certainly do exist and there should likewise be "no dispute" that such a
15 call would be subject to reciprocal compensation.
16 Mr. Jayroe's Figure 2 purports to show a call to an ISP. As he correctly points
17 out, "the end user dials either a 7 or 10-digit number and the call is transmitted to an end
18 office in the same local exchange just as Figure 1 depicts." Two important observations
19 should be made regarding Mr. Jayroe's Figure 2. First and foremost for the issues to be
20 addressed in this proceeding, the two Figures are identical in all relevant respects.
21 Reciprocal compensation is designed to permit the recovery of switching and transport
22 costs associated with delivering a call. *The switching and transport elements are*
23 *identical in Mr. Jayroe's Figures 1 and 2.* Reciprocal compensation is not intended to

permit recovery of the cost of the loop between the terminating end office and the called party in Figure 1, and likewise is not intended to address any portion of Figure 2 beyond the terminating end office. As Mr. Jayroe's illustrations make clear, the switching and transport elements do not change when the called party is an ISP – the portions of Figures 1 and 2 related to the elements of reciprocal compensation are the same in both cases. More importantly, the costs represented by these identical portions of Figures 1 and 2 are likewise identical, eliminating any cost basis for a different rate based on the identity of the called party as an ISP.

Second, Mr. Jayroe bases his distinction between a call to an ISP and a local call solely on the FCC's "end to end communication" theory: "[t]he call destined for the ISP does not terminate in the local exchange" (p. 4). Basing the purported distinction on this theory presents two obvious problems. First, there may be no distinction: as the Court has pointed out, the ISP is clearly the "called party" and the fact that upon receiving a call an ISP originates further communications to retrieve information from distant websites does not mean that the original communication does not "terminate" at the ISP. Second, and more importantly, any distinction that could be shown to exist would be a distinction without a difference: as Mr. Jayroe's diagrams illustrate, the call flow and the application of the elements of reciprocal compensation do not vary when the called party is an ISP. The question of whether the call "terminates" at the ISP is relevant only to the extent that the jurisdictional nature of the traffic is relevant;5 the fact remains that a LEC is delivering a call originated by the end user customer of another LEC, to the destination chosen by that end user customer, and is incurring the cost of doing so. When the calling

party and the called party are in the same local exchange (or an EAS exchange)

2 reciprocal compensation is designed to permit the recovery of those costs.

3

4 Q. MR. WYNN AND DR. HARRIS ARGUE THAT THE COMMISSION SHOULD

5 ADOPTED A NEEDS BASED, RATHER THAN COST BASED, MECHANISM FOR

6 INTER-CARRIER COMPENSATION. DO YOU AGREE?

7 A. Absolutely not. There is no precedent in this industry for a test that requires that a carrier

8 otherwise fail to recover its costs from end users before receiving payment for a service

9 rendered to another carrier, yet this appears to be what SWBT is proposing.

10 Mr. Wynn argues (pp. 9-10) that "[c]ost recovery principles would require that

11 such a determination be made first and that any additional compensation be strictly

12 limited to no more than any demonstrable shortfall, in order to avoid systematic over-

13 recovery of costs." Two elements of Mr. Wynn's assertion need to be addressed.

14 First, he does not identify or explain the "cost recovery principles" to which he is

15 referring . I have spent the past twelve years reviewing cost studies – and the

16 corresponding rate proposals – prepared by each of the Tier 1 ILECs, including SWBT

17 (well over 350 studies in all). I have never heard an ILEC argue that the recovery of the

18 calculated costs should be contingent on its failure to receive sufficient revenues from

19 other related (or unrelated) sources. In contrast, the ILECs have consistently argued that

20 the reported costs should be recoverable without regard to other sources of revenue.

21 Second, Mr. Wynn does not explain what he means by the phrase "systematic

22 over-recovery of costs." In the context in which it is presented (as a part of SWBT's

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5 The jurisdictional nature of the traffic is only relevant to the extent that an interstate or intrastate regulator

1 proposed to limit payments of reciprocal compensation), such an "over-recovery of costs"
2 would occur any time a carrier receives total revenues in excess of total costs.
3 Mr. Wynn goes on (pp. 23-24) to explain how his theory would work in practice.
4 CLECs would apparently be required to demonstrate to the Commission that the revenues
5 received from a given ISP are insufficient to permit the recovery of the CLEC's cost of
6 serving that ISP. Mr. Wynn does not explain which costs are to be included in this
7 analysis, however. Clearly, the costs associated with providing network access (local
8 loop or other facilities) should be recovered from the ISP, as they would be for any other
9 end user customer.6 The costs at issue in this proceeding, however, are not those
10 associated with network access, but instead are directly related to the delivery of a call
11 originated by the end user customer of one LEC to a called party served by a second LEC,
12 including those times that the called party is an ISP. Mr. Wynn seems to be confused
13 about what the CLECs are arguing in this case. ICG is not (and to the best of my
14 knowledge the other CLECs are not) arguing that the costs of providing network access to
15 an ISP should be recovered through reciprocal compensation charges. It is up to each
16 CLEC to recover (or to fail to recover, if it chooses to do so) those network access costs
17 through its rates to the ISP. The CLECs are seeking reciprocal compensation for its
18 intended purpose: to permit the recovery of the costs incurred when delivering a call
19 when the calling party is the customer of another LEC.
20

has adopted a rule governing compensation for the traffic in question.

6 Of course, in high cost areas it may be appropriate for the network access costs to be recovered through a combination of charges to the end user customer and disbursements from a universal service fund.

1 Q. IS THERE ANY MEANS THAT THE COMMISSION CAN UTILIZE TO DETERMINE
2 THE REASONABLENESS OF THE SWBT PROPOSAL?
3 A. One means of testing the reasonableness of a proposal is to consider whether the general
4 principles used to support the proposal in a specific context would also support the
5 application of the proposal in other contexts. In other words, while a given proposal may
6 be specific to a given set of circumstances (in this case SWBT seeks to apply a needs test
7 only to CLECs serving ISPs), the principles underlying and supporting the proposal
8 should hold and continue to make sense in a broader application.
9 The broad application of the Wynn theory in the telecommunications industry
10 would result in a number of interesting changes to rates and rate structures, depending on
11 how he intends his proposal to be applied. Mr. Wynn refers to "revenues from the ISPs"
12 in his testimony, but it is unclear whether he would require CLECs to make a needs test
13 demonstration for each individual ISP or for their ISP customers collectively.
14
15 Q. WHAT IS YOUR UNDERSTANDING OF HOW THE SWBT NEEDS TEST WOULD
16 BE APPLIED AT THE LEVEL OF INDIVIDUAL CUSTOMERS?
17 A. If the test is to be applied at the level of the individual customer, it is my understanding
18 that the general principle supporting the SWBT proposal to be the following: carriers
19 should not be compensated for accepting traffic from another carrier and delivering traffic
20 to a called party served by their network unless they have first demonstrated that the
21 revenues that they receive from the called party are insufficient to recover the costs of
22 serving them. In the immediate context, the application of this principle would eliminate
23 reciprocal compensation payments to CLECs for delivering calls to ISPs unless they have

1 demonstrate that their costs of [illegible] the ISP will not be recovered from the revenues
2 that are received (or could be received prusuant to the terms of the access charge
3 exemption) from the ISP.

4 Of course, the delivery of traffic to ISPs by CLECs is not the only possible
5 application of this principle. SWBT delivers significant volumes of traffic to called
6 parties delivered to it by other carriers, namely IXCs. If the principle underlying the
7 Wynn theory is applied in this context, SWBT will only be entitled to receive terminating
8 access charges if they have first met their burden of proving that the revenues that they
9 receive from the called party are less than their costs of providing service. For the
10 majority of business customers and for many residential customers (especially those
11 which live in relatively dense areas, purchase vertical features, or make intraLATA toll
12 calls), SWBT will be unable to make such a demonstration of "need." *As a result, a*
13 *broader application of the Wynn theory will inevitably result in the elimination of most*
14 *terminating access charges currently paid by IXCs to SWBT.* If a cost-based test is
15 applied, SWBT should receive terminating access charges as compensation for its costs
16 incurred when delivering the call to the called party, and CLEC should likewise receive
17 reciprocal compensation for delivering calls to called parties, including ISPs. If a needs-
18 based test is applied, CLEC will not be entitled to reciprocal compensation unless they
19 first demonstrate that it is "needed" for a given customer, and SWBT will not be entitled
20 to terminating access charges unless it first demonstrates that a "need" exists for a given
21 customer. In addition, any universal service funding that SWBT currently receives would
22 need to be revisited pursuant to the Wynn theory. It would not longer be sufficient for
23 SWBT to demonstrate a need for universal service funding by identifying high cost areas

and considering only certain rates charged to those customers, it would be necessary for SWBT to demonstrate that each residential subscriber, when all revenues from that subscriber are considered, generates a total revenue that is less than the cost of providing service to that customer.

Q. HOW DO THE IMPLICATIONS CHANGE IF THE SWBT NEEDS TEST IS APPLIED AT THE LEVEL OF CLASSES OF CUSTOMERS RATHER THEN THE LEVEL OF THE INDIVIDUAL CUSTOMER?

A. A second alternative is that Mr. Wynn intends the phrase "revenues from the ISPs" to mean revenue from all of a CLEC's ISP customers collectively. Broader application of the general principle underlying the Wynn theory to classes of customers, rather than individual customers, would have further implications. Terminating access charges would be eliminated for all calls delivered to business subscribers, and would likely be eliminated for all calls made to all residential subscribers. In order to receive universal service funding, SWBT must prove that the total revenue that it receives from providing services to residential subscribers is, in the aggregate, less than the total cost of serving those customers. When this needs test is applied, it is likely that universal service funding will no longer be necessary for SWBT.

Q. IS IT YOUR TESTIMONY THAT THE WYNN THEORY SHOULD BE APPLIED IN THESE (AND OTHER) BROADER CONTEXTS?

A. No. I firmly believe that Texans are best served when telecommunications rates – including rates charged by carriers to other carriers -- are established based on cost and in

1 [illegible] of the roles that interconnected carriers play in ensuring that all calls are
2 delivered to their intended destination. But as trite as the adage may be, "what's good for
3 the goose is good for the gander." The paradigm shift now proposed by SWBT – to
4 compensate carriers not for what they do (and the costs they incur) but instead based on
5 whether they "need" the money to serve a given customer or class of customers – will
6 certainly have consequences beyond the limited question of whether CLECs are entitled
7 to reciprocal compensation. Rather than turn the industry on its head in order address a
8 single issue, the Commission should first consider whether that issue can be effectively
9 addressed within the conceptual framework currently in place. In this case, it can and
10 should be.
11
12 Q. AT PAGE 23 OF IS TESTIMONY, MR. WYNN IDENTIFIES WHAT HE CALLS A
13 "FUNDAMENTAL QUESTION THE COMMISSION SHOULD ANSWER." DO YOU
14 AGREE WITH HIS CHARACTERIZATION?
15 A. Not at all. Specifically, Mr. Wynn's "fundamental question" is as follows: If revenues
16 from the ISPs were sufficient to compensate ILECs for their cost of providing access to
17 ISPs before the Act, then why is it that those same revenues are not sufficient to
18 compensate the CLEC for its cost of providing that access?"[7] Mr. Wynn's question is

7 Mr. Wynn refers in his question to "access" provided to ISPs; I can only assume that he intends the term to mean the "network access" that is provided to all end user customers, and not attempting to indicate that ISPs were or are purchasing exchange access.

based on a false premise and illustrates a fundamental misunderstanding regarding what is at issue in this proceeding. The costs in question – those for which reciprocal compensation is intended to recover – are not related in any way to the CLEC providing network access to its end user customers, including ISPs. The costs at issue are those incurred by a CLEC when it delivers a call originated by a SWBT end user customer; it is the cost of serving SWBT's customer that originates the call, not the CLEC's customer that receives the call, that must be addressed. The rate that SWBT charges to its customer is intended (alone or in conjunction with universal service disbursements) to permit recovery of the costs associated with serving that customer. In a monopoly environment, SWBT incurs the cost of originating and terminating all of the local calls made by that customer. In a competitive environment, SWBT continues to receive the same revenue from that customer, but a portion of the costs previously incurred to serve it – those associated with the delivery of calls to certain other end users – have been transferred to a CLEC. If reciprocal compensation rates accurately reflect the cost that SWBT avoids when another LEC delivers these calls (as the existing rates in Texas do), SWBT should be indifferent: its revenues from the customer are the same, and the final cost that it incurs to serve that customer is the same.

The answer to Mr. Wynn's question is moot with regard to this proceeding. CLECs are not, to my knowledge, arguing that they need to receive additional revenues from ISPs (or from anyone else) in order to recover their cost of serving them. SWBT is making it clear that it is not asking (Wynn, p. 4) for an increase in the rates that it charges to its end users. As a result, the question of whether SWBT or CLECs are fully recovering the cost of serving their respective end users, in the rates charged to those end

users, is academic. Maybe they are and maybe they aren't, but neither is attempting to change those rates in this proceeding. The truly "fundamental question the Commission should answer" in this proceeding is the following: What should happen when (1) a call is made by the end user of a LEC, (2) the LEC providing service to that customer receives all of the revenue from that customer, but (3) the costs of completing that customer's call are shared by two collaborating LECs? To borrow Mr. Wynn's phrase, "the only possible answer to this question" is that reciprocal compensation should apply so that the LEC receiving all of the revenue compensates the LEC that incurs a portion of the cost.

Q. IN HIS TESTIMONY, DR. HARRIS PUTS FORTH A NUMBER OF ALTERNATIVE WAYS TO VIEW THE TRAFFIC IN QUESTION IN THIS PROCEEDING. DO YOU AGREE WITH HIS OBSERVATIONS?

A. No. As an initial matter, it is not necessary to explore these alternative states in order reach a resolution of the issues on the DPL. Calls are being originated by the end user customers of one LEC, and are being delivered at the calling party's request by a second LEC to the called party. The public's interest in such interconnection among carriers is explicitly set forth in the Act, the FCC Orders and corresponding rules, and in the recent Court decision described previously in my testimony. The fact that a LEC is delivering traffic originated by the end user customer of a competitor, and incurring the cost of doing so, is as complex as this proceeding need get. It is not necessary to know the other elements of the relationship between either of the LECs and the calling or called party, the customer's state of mind, the revenues that they may or may not generate by purchasing other services, or the color of their underwear. The identity of the called party