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September 21, 2000

Ex Parte Submission

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

Re: *Ex Parte*, CC Docket No. ~~96-9~~8, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Salas:

Our client, AT&T Corporation ("AT&T Corp"), wishes to inform the Commission of recent actions taken in Texas which underscore the need for prompt action to adopt national rules that require ILECs to provide splitters to UNE-P CLECs that want to offer combinations of voice and data services to consumers. We also respond to the *ex parte* submission filed for SBC in this docket on August 25, as well as related *ex parte* submissions filed by BellSouth on the same date and by Qwest on August 9, which discuss the procedures necessary to support CLECs that provide their own splitters.

Background

Experience demonstrates that the combination of network elements known as the "UNE Platform" (UNE-P") is the only entry mechanism that potentially enables competitive local exchange carriers ("CLECs") practicably to serve residential consumers in large volumes in the short term. However, it is increasingly apparent that incumbent local exchange carriers ("ILECs") are exploiting burgeoning consumer demand for DSL services as a weapon to subvert UNE-P as an entry strategy. In particular, ILECs are contorting this Commission's prior rulings and using their control over monopoly facilities to force consumers to decide whether they will take advantage of the benefits of UNE-P based competition or the benefits of DSL capabilities --

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but not both. Neither the terms of the Communications Act nor the Commission's prior decisions countenance the ILECs' attempts to constrain competition and consumer choice in this manner.

Given the Commission's staunch support for local competition, it is inconceivable that it would countenance a reading of the Communications Act under which ILECs could make it easy for their own voice customers to add DSL capabilities to an existing loop, but make it difficult for UNE-P CLECs' customers to do the same. Nevertheless, these circumstances prevail throughout most of the country today. Critically, they will also continue into the foreseeable future unless this Commission acts promptly to require ILECs to cooperate fully with UNE-P CLECs, so that they can provide voice and data services over a single loop as swiftly, seamlessly, reliably, and economically as when the ILEC and its affiliate provide voice and data services, or when an ILEC provides voice services and a data-only CLEC provides advanced services.

The Commission has recognized the importance of these issues, which have come to be called "line splitting." The *Texas 271 Order* treats the issues associated with line splitting using *ILEC-supplied splitters* as a matter to be resolved in the reconsideration phase of the *UNE Remand* proceeding. The Commission stated that it believed those issues "merit prompt and thorough consideration" and "commit[ted] to resolving them expeditiously."[1] Regarding line splitting with *CLEC-supplied splitters*, the Commission treated this as a current obligation[2] but did not take any action to effectuate this specific requirement.

The Need for ILEC-Owned Splitters

AT&T's August 4 *ex parte* submission presented for the record an abundance of evidence and analysis demonstrating why ILECs must be required to provide splitters to UNE-P CLECs and other requesting CLECs on a shared use, line-at-a-time basis, and to implement all procedures necessary so that UNE-P CLECs wishing to provide voice and data services on a single loop have a meaningful opportunity to compete against the service packages provided by the ILECs and their affiliates.

The merits of AT&T's arguments on this point are confirmed by a recent decision issued by arbitrators appointed by the Texas Public Utilities Commission ("TPUC")(copy attached). The TPUC arbitrators' decision, citing prior rulings of this Commission, acknowledged that a CLEC purchasing UNEs or combinations of UNEs is entitled to "all capabilities of the loop including the low and high-frequency spectrum portion[s] of the loop . . . ."[3] The decision also

[1] *Texas 271 Order* at ¶ 328.

[2] *Id.* at ¶ 325.

[3] Arbitration Award, *Petition of Southwestern Bell Telephone Company for Arbitration with AT*T Communications of Texas*, Docket No. 22315, at 15 (Sep. 13, 2000)("TPUC Line Splitting Decision").

emphasized this Commission's prior rulings that ILECs must afford CLECs access to "all of the UNE's features, functions, and capabilities, 'in a manner that allow [s] the requesting telecommunications carrier to provide *any* telecommunications service that can be offered by means of that network element,'"[4] specifically including DSL services. The decision further found (i) that "excluding the splitter from the definition of the loop would limit its functionality," (ii) that "it is technically feasible for SWBT to furnish and install splitters to [enable CLECs to] gain access to the high frequency portion of the loop when purchased in combination with a switch port," and (iii) that it is "inaccurate from a technical standpoint to analogize splitters to DSLAMs."[5]

Significantly, the arbitrators also determined that "there is no technical distinction between line sharing and line splitting" and found that it was "discriminatory for SWBT to provide the splitter in a line sharing context while not providing the splitter in a line splitting context."[6] Critically, they also recognized that maintaining such a distinction would "have the effect of severely limiting the number of data CLECs with which a UNE-P provider can partner in order to provide advanced service" and, as a consequence, "could prove to be crippling from a competitive standpoint."[7]

Finally, the Texas decision noted that SWBT's effort to require CLECs to collocate in order to gain access to the high-frequency portion of the loop "(1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction, and splitter installation; and (3) unnecessarily wastes central office and frame space."[8] Thus, the arbitrators found that SWBT's approach "significantly prohibits UNE-P providers from achieving commercial volumes."[9] Conversely, they found that requiring the ILEC to provide the splitter not only advances competition but also "promote [s] more rapid deployment of advanced services to a broader cross section of consumers, as required by section 706" of the Telecommunications Act.[10]

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[4] *Id.* at 16 (citing 47 C.F.R. § 51.307)(emphasis in original).

[5] *Id.* at 17.

[6] *Id.* at 18.

[7] *Id.* at 18-19.

[8] *Id.* at 19.

[9] *Id.*

[10] *Id.*

The Texas ruling is a significant stride forward for competition and for consumers. But neither competition nor consumers will benefit if this issue must be litigated in each of the 50 states. The time is ripe for a decision by this Commission, to make available on a national basis the benefits that will flow from FCC adoption of the analysis reflected in the Texas arbitration decision.

Support for CLEC-Owned Splitters

Attachment 8 to AT&T's August 4 *ex parte* letter described in some detail the support CLECs need when they provide their own splitters. SBC's August 25 *ex parte* submission nominally responds to AT&T's presentation. However, the most troubling feature of SBC's submission is that it continues a long-standing pattern of obstruction and obfuscation. SBC's strategy remains as AT&T described it back in January: to race ahead with its own DSL venture while holding all DSL competitors back in every way imaginable.[11] With every passing day, SBC signs up thousands of new DSL customers.[12] Meanwhile, CLECs that wish to compete with SBC in the provision of both voice and data services remain stuck at the starting gate.

SBC's latest letter continues the practice of trying to delay CLECs that use UNE-P from competing effectively in the market for DSL services. To this end, SBC ignores prior holdings by the Commission, contradicts its own prior representations, and fails to address numerous arguments presented by AT&T.

The operative framework of what is already required by existing law is the statement in the Texas 271 order that "incumbent LECs have an obligation to permit competing carriers to engage in line-splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter."[13] Astonishingly, despite more than 17 single-spaced pages of rhetoric, SBC never finds time to acknowledge, much less begin to comply with, this directive.

Instead, SBC (at 3) denigrates the importance of UNE-P, claiming it is "used to serve only a small fraction of all lines" and hinting that the Commission should not trifle with an entry mechanism that represents "a tiny piece of the overall competitive picture." Yet eight months ago, SBC bragged about its cooperation in meeting the needs of CLECs, including the provision

[11] Comments of AT&T Corp. in Opposition to Southwestern Bell Telephone Company's Section 271 Application for Texas, CC Docket No. 00-4, at 9-18 (Jan. 31, 2000). AT&T placed these comments and other relevant sections of pleadings filed in the Texas 271 proceeding in the record of CC Docket Nos. 96-98 and 98-147 by way of an *ex parte* submission on August 4, 2000.

[12] "SBC had 435,000 DSL customers as of mid-August and expects to reach 1 million by the end of the year." C. Grice, "SBC, Covad strike $600 million DSL alliance," CNET News.com (Sep. 11, 2000), *available at* <http://news.cnet.com/news/0-1004-200-2752288.html> (retrieved 9/12/2000). Achieving this goal will require a "run rate" of approximately 4,000 new DSL customers per day, seven days a week.

[13] *Texas 271 Order* at ¶ 325.

of "more than 125,000 'UNE Platforms'" in Texas alone,[14] a number that has grown substantially in the intervening months. Moreover, the Commission has expressly recognized the importance of UNE-P to competition in the residential mass market.[15]

Even worse, the carrier that not too long ago solemnly assured that Commission that "AT&T is free to offer both voice and data service over the UNE Platform"[16] now says (at 10) that "when a carrier seeks to disconnect a loop from the incumbent's switch and reconnect it to a newly provisioned splitter, it no longer seeks the UNE-P but rather a completely new service architecture." On this basis, SBC suggests (at 11) that "UNE-P processes may not be an appropriate analog for the new configuration." This is nonsense.

First and foremost, it is not AT&T's idea, but SBC's, to disconnect the loop from the switch and to require the inter-positioning of a CLEC-supplied splitter. AT&T has presented detailed arguments as to why ILECs should be required (at the option of the CLEC) to attach splitters to their loops without requiring the dismantling of existing loop-switch combinations, either when a UNE-P CLEC's voice-only customer seeks also to obtain DSL service or when an ILEC's voice customer seeks to obtain both voice and data service from a UNE-P CLEC.[17] These points were covered at length in Attachments 1-7 accompanying AT&T's August 4 ex parte submission and provide compelling reasons for a ruling in AT&T's favor in the reconsideration phase of the *UNE Remand* proceeding.[18]

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[14] Brief in Support of Application by Southwestern Bell for Provision of In-Region InterLATA Services in Texas, at ii, CC Docket No. 00-4 (Jan 10, 2000).

[15] *UNE Remand Order* at ¶ 273 n.543; *see id.* at ¶¶ 253, 273, 296. Not long ago, Verizon claimed that UNE-P now accounts for 38 percent of all competitive lines in New York. *See Application of New York Telephone Company (now Verizon) Pursuant to Section 271 of the Telecommunications Act of 1996, Connecticut Department of Public Utility Control Docket No. 97-01-23, Request of Verizon for Track B Certification Pursuant to Section 271 of the Telecommunications Act of 1996*, at 16 (filed July 31, 2000) (as of May, 2000, competitors were serving approximately 2.25 million lines, including 859,000 through UNE-P). Verizon forecasts that the demand for UNE-P lines in New York is expected to grow to almost 2.4 million by 2002. *See Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, New York Public Service Commission Case 00-C-0127, Brief of Rhythms NetConnections, Inc. at 52 (Aug. 15, 2000) (citing Verizon Response to Rhythms/COVAD Interrogatory 100).

[16] SBC Reply Brief, at 37 n.19, CC Docket No. 00-4 (Feb. 22, 2000). SBC also assured that the Commission that, "if CLECs chose to offer voice services, they could share the voice line in precisely the same way as SBC."" *Id.* at 25 n.11.

[17] The case for requiring SBC to deploy splitters for use by CLECs is especially strong, because SBC is willing to attach splitters to loops shared between its own voice services and its affiliate's or its competitors' data services. To withhold this functionality from those who wish to compete with SBC in the voice market while simultaneously providing it to those who help perpetuate SBC's voice monopoly is the most blatant discrimination possible.

[18] The great majority of SBC's oft-repeated arguments in opposition to requests that it supply splitters to CLECs have already been fully answered in AT&T's prior pleadings, especially those furnished as Attachments 1 and 2 to AT&T's August 4 letter (discussing "superior network," "necessary and impair," the meaning of Paras. 72 and 76 of

Second, pending a Commission decision regarding the CLECs' right to demand ILEC-supplied splitters in conjunction with the loop UNE, AT&T has provided a detailed description of the various issues that need to be addressed so that CLECs are able supply voice and data services via UNE combinations using CLEC-supplied splitters. As AT&T has repeatedly stated, the objective *must* be to formulate an approach that enables CLECs to serve customers as swiftly, seamlessly, reliably, and economically as when the ILEC provides the voice service and the ILEC or its affiliate provide the data service.[19] Attachment 8 to AT&T's August 4 ex parte submission specifically identified the various operational support systems and related processes needed to make that possible, and the cover letter explained at length why these requirements are necessary and appropriate, both as a matter of law and public policy.

SBC has failed to respond to AT&T's stated requirements in a responsible way. Rather than address AT&T's requests on the merits, SBC has made mountains of molehills, trying to portray each and every step of what should be a simple process as being fraught with complexity and expense.[20] Moreover, it has continued to obstruct and to obfuscate. Typical of this strategy is SBC's claim in one paragraph (at 5, with emphasis added) that, "when a CLEC is the voice provider . . . it (or another partnering CLEC) can provide xDSL service to that CLEC voice customer *without the need for a second loop* or ILEC involvement in the sharing arrangement." In the very next paragraph, however, SBC states that the way for voice CLECs to protect

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the Line Sharing Order, etc.). Nevertheless, SBC ignores many of the facts and arguments AT&T has previously presented. And SBC continues to recite various statements from the orders under reconsideration (in the *Line Sharing* proceeding as well as the *UNE Remand* proceeding), ignoring the Commission's right – indeed, its duty – to consider the various arguments that demonstrate why those orders ought to be clarified in some respects and changed in others.

[19] *See, e.g.*, AT&T 8/4 ex parte at 1.

[20] Presumably, SBC could also have described the processes of sharing a line with its affiliate, or with a data-only CLEC, in similarly complicated and burdensome terms, but those issues did not stop SBC from making the necessary arrangements. SBC's ability to cooperate with carriers that seek to compete for both voice and data appear to be attributable more SBC's incentives than to its abilities.

In this regard, the Commission should also recall that ILECs claimed line sharing would also be difficult and burdensome and that it could take years to resolve. *See, e.g.*, Comments of Ameritech, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, at 28 (filed Sept. 25, 1998) ("The ability to effectively manage spectrum capability when multiple providers share ... the same physical loop, will require additional standards beyond those currently contemplated. Thus, it is premature to consider mandating that any carrier be required to enter into such an arrangement"). *See also* Reply Comments of U S WEST, CC Docket No. 98-147, at 17-22, 25-28 (filed July 22, 1999) (indicating that line sharing would threaten serious degradation of voice service and make it impossible for an ILEC to assure the quality or reliability of voice service provided over a shared loop, raise numerous OSS problems – including, ordering, installation, billing, and maintenance and repair – that would require complicated and costly solutions, and require "significant retooling of systems").

customers against service disruption is to obtain a *separate* loop to provide both DSL service and voice services, after which "the UNE-P service could be *disconnected*."

The following paragraphs address a few additional examples of SBC's strategy:

- Despite the fact that SBC is racing ahead with its own DSL service and the FCC has said that ILECs are already required to "permit competing carriers to engage in line-splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter," SBC (at 7) nonetheless states that it would be "inappropriate and unwise to adopt any requirements [to effectuate this obligation] at this time." Thus, SBC apparently believes that its compliance with the law should be deferred indefinitely.

- When a CLEC wishes to add xDSL capabilities to an existing UNE-P arrangement, SBC (at 7) proposes to require the CLEC to submit three separate LSRs (any one of which "may generate multiple service orders"). The inevitable result would be to increase the likelihood that orders will not be coordinated successfully and that customer service will be disrupted.

- SBC's statement (at 7) that it would implement CLEC orders by disconnecting the UNE-P loop from the existing switch port violates Rule 51.315(b), which directs that "an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." There would be even less of a justification for SBC to separate the loop from the original switch port when a remote terminal (RT) configuration is used (as in Project Pronto). There, the splitter function is performed at the RT, and the voice signal is separated from the data signal for transmission between the RT and the central office (CO). At the CO, there would be no reason (other than hindering competition) for disconnecting the voice circuit from the port and then reconnecting it.

- SBC (at 13) hints that the incumbent's line splitting performance should not be benchmarked against its line sharing performance because the former "may create additional points of failure outside the incumbent's control." To the extent this argument has any force, it merely emphasizes the need for ILEC-supplied splitters. The Texas arbitrators found that, with ILEC-supplied splitters, line sharing and line splitting are technically indistinguishable, and they required SWBT to provide nondiscriminatory provisioning and maintenance functions for both arrangements. If SWBT is saying that equal levels of service cannot be provided in the CLEC-supplied splitter scenario, it is necessarily strengthens the need to require ILECs to supply splitters.

In short, it is apparent that SBC is not seeking to cooperate with line splitting -- not even the watered down version (with CLEC-supplied splitters) that is already required under the *Texas 271 Order* -- but is just "running out the clock." Meanwhile, with each passing day, several thousand more customers are signed onto SBC's DSL service, while AT&T and other similarly situated CLECs remain stymied.

AT&T stands ready to discuss -- in Washington, Texas, or elsewhere -- the additional irrelevancies and trivialities SBC has raised as alleged impediments to line splitting (even with CLEC-supplied splitters).[21] But all the discussion of detailed implementation processes must not be permitted to obscure the need for forceful leadership by this Commission to compel SBC to enter into good faith (and expedited) negotiations to enable efficient competition for both voice and data services over a single line.[22] In fact, AT&T's prior Attachment 8 is a response to questions raised by the Commission staff concerning the OSS and processes that would be needed to make line-splitting with CLEC-supplied splitters function in a commercially reasonable and pro-competitive manner. AT&T did not ask, and does not expect, the Commission to establish regulatory rules on each of the topics in Attachment 8 as long as the ILECs' basic nondiscrimination responsibilities are laid out and the ILECs move forward expeditiously to negotiate implementation details promptly and in good faith.

If anything, the strength of AT&T's arguments has only grown as a result of recent developments. The anticompetitive effects of SBC's practices and policies were bad enough when the line sharing regime was beneficial only to SBC's affiliate and to those CLECs that do not threaten SBC's voice monopoly. But now, one of the three leading data-only CLECs has agreed to sell a majority stake to Verizon, and a second has just agreed to drop its litigation against SBC, has been promised hundreds of millions of dollars in resale revenue by SBC, and has accepted $150 million of SBC investment.[23] As a result, the prospects for line sharing to

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[21] Much of SBC's discussion, it should be noted, focuses on how SBC would contemplate enabling a CLEC to add DSL capabilities to a new line. Of course, in the vast majority of cases, AT&T's objective would be to add DSL to a line that already serves the customer (either by adding DSL to a UNE-P arrangement where AT&T already has the customer for voice or by converting a ILEC voice customer to an AT&T voice and data customer). Rhythms estimates that approximately thirty percent of all orders its receives for data service over the HFS portion of the loop are from customers who are already receiving voice service from a competitor using UNE-P. *See Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, New York Public Service Commission Case 00-C-0127, Brief of Rhythms NetConnections, Inc. at 52 (filed Aug. 15, 2000).

[22] AT&T does not disagree with SBC's statement (at 6-7) that the Commission should clarify the respective rights of the voice CLEC and data CLEC when a customer previously obtaining DSL from a data CLEC seeks to order voice (and possibly data) service from a different CLEC.

[23] Together, these two data CLECs accounted for over 80 percent of all competitive DSL lines in service at the end of 1999. "*The State of Competition in the U.S. Local Telecommunications Marketplace*," Annual Report of the Association for Local Telecommunications Services, at 7 & Graphic N (February 2000).

create real competition to the ILECs have further diminished, and the need to enable line splitting has become more acute.[24]

Much less needs to be said regarding the August 8 ex parte submission of Qwest. Because the written record of the communication is so meager, only two points warrant a comment. First, the statement (at page 2 of the accompanying slides) that ILECs need not provide access to the splitter "as it is not deemed by the FCC to be part of the loop" presupposes the outcome of the Commission's consideration of an issue that is very much in dispute. Whatever the Commission meant by its various statements in the *Line Sharing* and *UNE Remand* Orders, the pending reconsideration petitions clearly place in issue whether the splitter should be treated as part of the loop. Moreover, it is especially problematic in light of the Texas arbitrators' decision.

Moreover, Qwest's second argument is clearly in tension with its first. The main "network issue" Qwest has identified (page 9 of the slides) is that "UNE-P carriers are not necessarily the same as those engaged in line sharing" and that "additional infrastructure builds" will be needed. It elaborates by alluding to "additional collocation space requirements," "additional TIE cabling from the ICDF to the MDF/COSMIC," "premature frame exhaust," and even "building additions." Needless to say, UNE-P carriers would *not* want to be compelled to collocate at ILEC central offices. Rather, they would prefer to have the option of partnering with data CLECs whose collocation requirements should be no greater when partnering with AT&T than when line sharing with Qwest.[25]

As for the *ex parte* submission by BellSouth, it too fails to make any concrete substantive progress on the issue of line splitting. BellSouth expresses (at 1-2) its willingness to support line splitting by re-terminating the loop and the switch port at the collocation space of a CLEC but addresses none of the necessary details. BellSouth seeks (at 2) to downplay the advantages of ILEC-supplied splitters but in so doing obscures the differences between providing splitters on a line-at-a-time basis and providing them on a shelf-at-a-time basis. BellSouth's claim (at 2) that disruption of the customer's service will be required (and that an "administrative morass" will be created) is indeed a likely consequence of shelf-at-a-time deployment, but can easily be avoided by line-at-a-time deployment.

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[24] Like the provisions of the *Line Sharing Order*, the DSL conditions adopted in the SBC/Ameritech merger proceeding were of value mainly to data-only CLECs like Covad and Northpoint. The effectiveness of these conditions (and of the conditions recently adopted in conjunction with SBC's request for interpretation, modification, or waiver of the merger conditions) are obviously reduced when the data CLECs become part of the ILEC brotherhood.

[25] *See* TPUC Line Splitting Decision at 19.

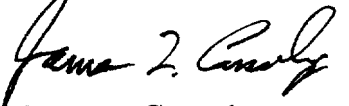
BellSouth also states (at 2-3) that it should be the party that determines whether the ILEC should deal with the voice CLEC or the data CLEC in implementing line-splitting arrangements. That decision should not be left to the ILEC but should be dictated by the Commission's determination with respect to which CLEC "owns" the unbundled loop, not which CLEC used the loop first or whose collocation space it runs to.

On the issue of sub-leased virtually collocated equipment, BellSouth neglects to address whose requests they would honor with respect to provisioning and maintenance. BellSouth (at 3) seems to feel it is legitimate to insist on dealing only with the data CLEC (if it is the one with the virtually collocated equipment), even where the UNE-P CLEC "owns" the loop and the customer relationship. This is simply impractical and inconsistent with commercial operations. These issues can be resolved by applying ordinary principles of contract and agency law.

AT&T hopes that this letter and its attachments will assist the Commission is sorting through the issues and in following through on its commitment to provide a "thorough" and "expeditious" resolution to the issues that AT&T has been raising throughout the entire year. An original and two copies of this letter are being submitted pursuant to Section 1.1206 (b) of the Commission's rules. Please insert one copy into the public record of CC Docket Nos. 96-98 and 98-147.

Please let us know if you have any questions.

Very truly yours,



James L. Casserly

Attachment

cc: Michelle Carey
James Carr
Margaret Egler
Kathy Farroba
Jonathan Nuechterlein
John Stanley
Jessica Rosenworcel

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DOCKET NO. 22315

PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR ARBITRATION WITH AT&T COMMUNICATIONS OF TEXAS, L.P. TCG DALLAS, AND TELEPORT COMMUNICATIONS, INC. PURSUANT TO SECTION 252(B)(1) OF THE FEDERAL COMMUNICATIONS ACT OF 1996	§ § § § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD

I. SUMMARY OF PROCEEDINGS

A. Procedural History

On March 23, 2000, Southwestern Bell Telephone Company (SWBT) filed a Petition for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications, Inc. (collectively AT&T) pursuant to Section 252(b)(1) of the federal Telecommunications Act of 1996 (FTA) and P.U.C. PROC. R. 22.305. The hearing on the merits was held on July 31 and August 1, 2000.

This arbitration proceeding has been conducted in accordance with the Commission's rules and FTA Section 252(c). On May 31, 2000, the parties filed a joint decision point list (DPL), which was amended by agreement on August 4, 2000.[1] The scope of the issues addressed in this arbitration proceeding is limited to those issues identified in the DPL. By agreement, the parties extended the deadline for issuance of this Award until September 13, 2000.

[1] Parties Ex. No. 3, Revised Decision Point List.

B. Structure of the Award

The issues in the final DPL are grouped into the following five areas: physical network interconnection issues, intercarrier compensation issues, general terms and conditions, DSL issues, and OSS and billing issues. Because of the number of issues, this Award does not provide a detailed discussion of each issue presented in the DPL. Instead, the text of the Award addresses the issues that the parties focussed upon in their testimony and briefing. The remainder of issues are addressed in the DPL.[2] Accordingly, the Arbitrators have attached the DPL to this Award as "Attachment A" in order to provide a ruling on each discrete issue presented.

II. PHYSICAL NETWORK INTERCONNECTION ISSUES

DPL Issue Nos. 1 – 4

1. **How should the quantity and location of interconnection points ("IP") in each LATA be determined and what operational and network responsibilities should each party have with respect to network interconnection?**
4. **If the Commission affirms AT&T's proposed network architecture for interconnection with SWBT, under what terms should conversion from existing arrangements occur and should each party bear its own costs to convert from the existing interconnection arrangements to the interconnection arrangements described in the resulting interconnection agreement?**

SWBT's Position

SWBT asserts that the location and number of points of interconnection (POI) for the exchange of local traffic should be in the local exchange area[3] approved by this Commission; otherwise, SWBT argues that it will have to transport the local call across its network as if it were an intraLATA toll call, although local compensation would apply.[4] SWBT contends that

[2] Only those issues currently in dispute that are not covered in the text of this Award are included on the attached DPL matrix.

[3] SWBT defines local exchange area as "the area covered by the local and mandatory local calling scope for SWBT and other LECs that has been approved by the Texas PUC." SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 4.

[4] SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 6.

AT&T's proposal increases transport costs and raises network reliability concerns.[5] SWBT also contends that its access tandems were not designed to handle local traffic.[6] SWBT asserts that a single POI would result in network congestion, tandem exhaust, and blocked trunks for all carriers using the same facilities.[7] SWBT adds that its proposal more equitably allocates the facility costs associated with the exchange of local traffic.[8] SWBT states that it should not be required to pay for AT&T's business plan.[9]

From a legal standpoint, SWBT maintains that its proposal is consistent with the Commission's decision in the *MCIW Arbitration*.[10] SWBT acknowledges that the Federal Communication Commission's (FCC's) *First Report and Order*[11] finds it technically feasible to provide interconnection on the trunk-side of the tandem switch.[12] SWBT, however, maintains that the question is not about the technical feasibility of interconnecting with a CLEC: "Rather, the issue, as local competition moves forward, is how networks should be designed to deal with traffic growth and how investment should be shared by interconnecting carriers."[13]

AT&T's Position

AT&T agrees with SWBT that interconnection points should be negotiated between the parties, but failing agreement, AT&T asserts that "each party should have equivalent obligations to deliver traffic to equivalent points in the other party's network."[14] AT&T maintains that each

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[5] SWBT's Post-Hearing Brief at 7.

[6] SWBT Ex. No. 2, Rebuttal Testimony of Robert Jayroe at 6.

[7] SWBT's Post-Hearing Brief at 8.

[8] *Id.*

[9] *Id.* at 13.

[10] *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996,* Docket No. 21791, Arbitration Award (May 26, 2000).

[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98, 11 FCC Rcd 15499.

[12] *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the federal Telecommunications Act of 1996,* Arbitration Hearing Tr. at 49 (July 31 – Aug. 1, 2000) (Arbitration Hearing Tr.).

[13] SWBT's Post-Hearing Brief at 13-14; *see also* SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 5-6.

[14] Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 4 (emphasis in original).

party's interconnection points[15] should be located at the top of its network and that each party should be responsible for delivering interconnection traffic[16] to the other party's interconnection points.[17] AT&T opposes SWBT's efforts to require AT&T to have a POI in each local exchange; AT&T notes that such an arrangement compromises the network architecture deployed by AT&T, requiring the AT&T network to be a "SWBT-look-a-like."[18] AT&T states:

> The Commission has long recognized the legitimacy of CLECs having their own calling scopes, indeed it is such *differences* between the operations of CLECs and the ILEC that should produce the benefits of competition. But the Commission has yet to see significantly different CLEC calling scopes for residential consumers, and as long as fundamental aspects of the interconnection relationship, be it reciprocal compensation or points of interconnection, continue to be tied to the ILEC's local exchange area then local exchange competition will continue to be just a slight variation on the ILEC theme.[19]

AT&T proposes to establish interconnection points based on the number of SWBT tandem switch centers and AT&T switch centers in the LATA.[20] AT&T stated that it would generally be AT&T's preference to have a minimum of two interconnection points in each LATA, unless the parties exchange a de minimis amount of traffic between the parties. AT&T acknowledges that more interconnection points are probably better in order to have robustness in the interconnection.[21]

AT&T states that federal law is clear in that it allows the CLEC to choose the most economically efficient points of interconnection.[22] SWBT is relieved of that obligation only if it

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[15] AT&T defines this as the point at which it receives traffic for termination. AT&T Ex. No. 1, Direct Testimony of David L. Talbott at 9.

[16] AT&T defines this as traffic originating on or transiting through its network. *Id.*

[17] *Id.*

[18] Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 8.

[19] *Id.* at 8-9.

[20] AT&T Ex. No. 1, Direct Testimony of David L. Talbott at 16-17.

[21] Arbitration Hearing Tr. at 65 (July 31, 2000).

[22] AT&T Ex. No. 1, Direct Testimony of David L. Talbott at 4; Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 11, 16 ("In its *Local Competition Order*, the FCC stated that section 251(c)(2) 'allows competing carriers to choose the most efficient

proves to this Commission by clear and convincing evidence that such interconnection is technically infeasible.[23] AT&T contends that interconnection at the access tandem is presumptively reasonable under the FCC's *First Report and Order*, and because numerous other RBOCs allow CLECs to interconnect at the access tandem.[24] AT&T maintains that SWBT has not shown technical infeasibility. AT&T points out that SWBT's evidence is "nothing more than an argument that there may be additional costs to allow interconnection at SWBT's access tandem switch centers. . . ."[25] AT&T asserts that cost has been rejected as a basis for technical infeasibility.

Finally, AT&T notes that the FCC's decision granting SWBT the right to provide long distance service reconfirmed AT&T's right to interconnect at the most efficient point: "[t]he FCC noted with approval the WorldCom interconnection agreement which permits WorldCom to designate 'a single interconnection point within a LATA.'"[26]

Arbitrators' Decision

As noted by the parties, several FCC Orders and two recent Texas Commission arbitration awards are relevant to the discussion of these issues. The MCIW Arbitration Award was issued on May 26, 2000 and the Level 3 Arbitration Award was issued on August 11, 2000.[27] The Commissioners considered the *MCIW Arbitration* at the August 10, 2000 Open Meeting but have not yet issued an Order. Inasmuch as the Commission's decision in the *MCIW Arbitration* will be precedential in this case from a legal standpoint, the Arbitrators defer the decision on these issues until after an Order is issued in the *MCIW Arbitration*. The Arbitrators

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points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.'").

[23] Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 16.

[24] Post-Hearing Reply Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 5.

[25] *Id.* at 4.

[26] Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 16.

[27] *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791, Arbitration Award (May 26, 2000); *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(B) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and PURA for Rates, Terms, and Conditions with Southwestern Bell Telephone Company*, Docket No. 22441, Arbitration Award (Aug. 11, 2000).

will issue a Revised Award in this proceeding within five business days of the filing of the MCIW Commission Order.

2. Should the parties establish one-way or two-way trunks for the delivery of local, intraLATA toll and transit traffic?

SWBT's Position

SWBT believes that one-way trunks are less efficient than two-way trunk groups.[28] SWBT notes that the total call-carrying capacity of two one-way trunk groups, a group in each direction, is less than the call carrying capacity of a single two-way trunk group with the same total number of trunks.[29] SWBT maintains, therefore, that two-way trunk groups reduce the total number of trunks required to carry a particular traffic load, which reduces the cost of trunk terminations and facilities.[30] SWBT also asserts that two-way trunks help prevent tandem exhaust, reduce blockage and stranding, and are able to accommodate "calling busy cycles."[31] SWBT also points out that an additional benefit to two-way trunking is that CLECs are able to control (initiate orders to increase or decrease) the size of the trunk groups since they have administrative control over trunk groups.[32]

SWBT argues that CLECs demanded two-way trunking architecture during the development of the Texas 271 Agreement (T2A) in Docket No. 16251.[33] SWBT further argues that AT&T should not unilaterally be allowed to change the standard that this Commission deemed appropriate. Other CLECs and ILECs should have the ability to present comments at a trunking forum to determine if it is beneficial for the industry to return to one-way trunking.[34]

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[28] SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 8.

[29] *Id.* (One-way trunk groups are less efficient because "[t]he call-carrying capacity of a trunk group is based on the probability that every trunk in the group will be needed at the same time. A two-way trunk group provides the maximum flexibility to carry a call placed in either direction. Splitting a two-way group of a particular size into two one-way trunk groups, one in each direction, causes some loss of that flexibility, and hence, loss of efficiency (i.e., call-carrying capacity) of the total number of trunks.")

[30] *Id.* at 10.

[31] SWBT's Post-Hearing Brief at 16; *See also* Arbitration Hearing Tr. at 95–96 (July 31, 2000), 119–220 (Aug. 1, 2000).

[32] SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 11.

[33] Arbitration Hearing Tr. at 87-90 (July 31, 2000); SWBT's Post-Hearing Brief at 14.

[34] SWBT's Post-Hearing Brief at 15.

From a legal perspective, SWBT asserts that when the FCC required ILECs to provide two-way trunking upon request, the FCC was showing a preference for two-way trunking.[35] SWBT further asserts that federal law requires ILECs to provide two-way trunking where technically feasible.[36]

AT&T's Position

AT&T maintains that the parties should provision one-way trunks for local traffic and two-way trunks for traffic destined for IXC customers and transit traffic.[37] AT&T admits that two-way trunks are "moderately" more efficient, depending upon the volume of traffic.[38] AT&T objects to the use of two-way trunks for local traffic because of the administrative expense[39] and because AT&T is required to pay for one-half of the trunking costs, when AT&T generates only 28% of the traffic.[40] AT&T believes that one-way trunks allow each party to manage its own network.[41] AT&T asserts that two-way trunks are equitable only when traffic is perfectly in balance.[42] Two-way trunks place an unfair financial burden on the party originating less traffic.[43] "Furthermore, the current inequity of requiring AT&T to pay for a disproportionate share of trunking costs only provides a financial disincentive for AT&T to add additional end office trunks, which exacerbates any tandem congestion."[44]

From a legal standpoint, AT&T quotes FCC Rule 51.305(f): "If techically feasible, an incumbent LEC shall provide two-way trunking upon request." AT&T contends that the "undeniable assumption of the rule is that one way trunks are the default approach" and that

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[35] SWBT's Post-Hearing Reply Brief at 7.

[36] *Id.*

[37] AT&T Ex. No. 1, Direct Testimony of David L. Talbott at 17; Arbitration Hearing Tr. at 99 (July 31, 2000).

[38] Arbitration Hearing Tr. at 84 (July 31, 2000).

[39] *Id.* at 84, 88-9, and 106.

[40] *Id.* at 78-80.

[41] *Id.* at 111-12.

[42] Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 18.

[43] *Id.*

[44] *Id.*

trunks are converted to two-way only at the CLEC's discretion—not SWBT's.[45] AT&T further relies upon recent decisions by arbitrators in California and Kansas to support its request for one-way trunks.[46] Finally, AT&T notes that in the *First Report and Order* at paragraph 1062 the FCC stated: "The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facilities."[47] With two-way trunks, AT&T asserts, AT&T pays for 50 percent of the transport, even though AT&T delivers only 28 percent of the traffic.

Arbitrators' Decision

Based upon the fact that one-way trunks are less efficient than two-way trunk groups because two-way trunk groups provide the maximum flexibility to carry a call placed in either direction, the Arbitrators find that it is appropriate for the parties to continue using two-way trunks.[48] As SWBT witness Robert Jayroe testified: "The use of two-way trunk groups reduces the total number of trunks required to carry a particular traffic load, which, in turn, reduces the associated cost of trunk terminations and facilities."[49]

In the hearing, AT&T stated that much of AT&T's objections to the use of two-way trunks would be gone if the Commission requires the parties to pay for transport in proportion to traffic.[50] The Arbitrators understand the inequity of requiring AT&T to pay for 50 percent of the transport when AT&T is generating only 28 percent of the traffic. Therefore, although the Arbitrators require the continued use of two-way trunks, the Arbitrators find that the cost of transport facilities must be equitably shared in proportion to the originating carrier's traffic. If parties negotiate to have mid-span fiber meet, the cost of transport for two-way trunking shall also be negotiated.

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[45] *Id.* at 19.

[46] *Id.* at 20.

[47] *Id.* at 21.

[48] SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 8.

[49] *Id.*

[50] Arbitration Hearing Tr. at 108-09 (July 31, 2000).

3. How should the financial responsibility for interconnection facilities be allocated between the parties' networks?

SWBT's Position

Consistent with its two-way trunk proposal, SWBT proposes that AT&T should be financially responsible for approximately one-half of all tandem and direct end office trunking facilities.[51] SWBT maintains that the trunks used to interconnect with AT&T are dedicated to AT&T local, intraLATA and interLATA traffic and are not used by any other ILEC of CLEC.[52]

AT&T's Position

AT&T states that if the Commission were to continue to require two-way trunks, AT&T believes that each party should only be required to pay for its own use. AT&T proposes that (1) costs should be allocated using traffic data from the most recent three-month period; (2) the parties should conduct a quarterly traffic study; (3) costs should be apportioned for existing interconnection facilities based on the results of the first of such studies; and (4) costs for future trunking should be borne in proportion to the balance identified in the most recent traffic study.[53]

Arbitrators' Decision

As noted in response to Issue 2 above, the Arbitrators find that it is equitable for each party to pay commensurate with the level of traffic generated. AT&T proposes a method for doing so that seems reasonable to the Arbitrators; therefore, the parties Interconnection Agreement should reflect the same.

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[51] SWBT Ex. No. 1, Direct Testimony of Robert Jayroe at 6.

[52] *Id.*

[53] Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 22; AT&T Ex. No. 1, Direct Testimony of David L. Talbott at 25.

III. DSL ISSUES

DPL Issue Nos. 1-4, 6 and 7

1. **(SWBT's version) Should SWBT be required to provide access to the HFS portion of the loop as part of the UNE platform, even though SWBT is not the voice provider in such circumstances?**

1. **(AT&T's version) Should SWBT be required to provide access to the HFS portion of the loop to a UNE-P voice provider?**

4. **(SWBT's version) Should SWBT be obligated to support AT&T's transactions with other carriers to provide voice and data over a single loop?**

4. **(AT&T's version) Should SWBT be obligated to interact with AT&T's authorized agents as if they were AT&T?**

6. **(SWBT's version) What should happen in the event an end user disconnects service on a loop over which SWBT and an advanced services provider are currently providing voice and data services, and AT&T seeks to acquire the loop?**

6. **(AT&T's version) Where a customer wants to drop SBC voice and continue with voice & data, how may AT&T convert a SWBT retail voice customer (POTS) to AT&T-provided voice service and DSL service using a single unbundled loop/switch port combination leased from SWBT?**

7. **(SWBT's version) Should SWBT or AT&T own the splitter needed for line sharing, and where should it be located?**

7. **(AT&T's version) Should SWBT be required to own the splitter needed for line splitting and where should it be located?**

SWBT's Position

Relying upon the FCC's *Line Sharing Order*,[54] SWBT asserts that it is not obligated to provide line sharing "to requesting carriers that are purchasing a combination of network elements known as the platform."[55] SWBT adds that in the FCC's *Line Sharing Order*, the FCC specifically stated that line sharing was not required where the incumbent LEC was not the voice provider, and gave as an example, the UNE platform.[56] SWBT states that, as AT&T defines it,

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[54] Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No.* 96-98, CC Docket 98-147 (Rel. Dec. 9, 1999) ("*Line Sharing Order*").

[55] SWBT Post Hearing Brief at 37; *Line Sharing Order* at para. 72.

[56] *Id.*