

markets.” Texas Order ¶ 416.⁵⁴ The Commission has long recognized that the benefits of new entry in long distance presumptively outweigh any risk of harm.⁵⁵ That presumption is especially apt when applied to this application. MCI’s merger with WorldCom effectively eliminated the only facilities-based entrant into the interLATA market since the breakup of the Bell System. The need for SWBT to enter and energize the interLATA market in Kansas and Oklahoma has never been more acute.

A. Consumers in Texas and New York Are Clearly Benefiting from Bell Company Entry into the In-Region, InterLATA Market

Uniform historical experience confirms the benefits of in-region, interLATA entry by the BOCs, and Texas is only the clearest and most recent example. SBC’s newly granted ability to provide customers with a single source for local and long-distance service put significant pressure on the competition to provide lower prices, enhanced services, and greater quality. See generally J.G. Smith/Johnson Joint Aff. ¶¶ 41-47. Survey after survey has shown customers’

⁵⁴ See also New York Order, 15 FCC Rcd at 4164, ¶ 428 (“BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. As a general matter, [this Commission] believe[s] that additional competition in telecommunications markets will enhance the public interest.”); Michigan Order, 12 FCC Rcd at 20741-42, ¶ 381 (“BOC entry into the long distance market will further Congress’ objectives of promoting competition and deregulation of telecommunication markets.”); Memorandum Opinion and Order, Application of 360° Communications Co., Transferor, and ALLTEL Corp., Transferee, For Consent to Transfer Control of 360° Communications Co. and Affiliates, 14 FCC Rcd 2005, 2017, ¶ 26 (1998).

⁵⁵ See Report and Order, Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) (“plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public”); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, MTS-WATS Market Structure, 81 F.C.C.2d 177, 201-02, ¶ 103 (1980) (Commission will “refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects”).

confusion and frustration with telephone bills.⁵⁶ The prices and simplicity of SBC's initial long-distance service plans offer customers a low per-minute charge with no monthly minimum or monthly recurring charges. With simpler long-distance rates and the convenience to customers of one all-inclusive telephone bill, the 271-approved RBOCs have attracted an unexpectedly high number of customers. After only about ten days of service in Texas, SBC signed up 150,000 long-distance customers.⁵⁷ By the end of August 2000 – only six weeks after it started offering long distance in Texas – SBC announced enrollment of 500,000 long-distance customers, representing roughly five percent of all the lines in Texas.⁵⁸

In response to SBC's entry into the long-distance market in Texas, incumbent long-distance carriers such as AT&T, MCI WorldCom, and Sprint began to offer discounts on their regular long-distance plans to customers who also signed up for local service. These discounts have taken the form of bundling long-distance monthly fees with local service charges and credits for signing up for a local/long-distance bundle.⁵⁹

⁵⁶ SBC Communications To Launch Long Distance Service In Texas, Bus. Wire, July 7, 2000 (“Seventy-eight percent of those surveyed incorrectly believe the average amount paid per minute for a long distance call is between 5 and 14 cents. According to a recent survey by Gartner Group, the average consumer is paying 22 cents a minute for long distance.”).

⁵⁷ Bruce Meyerson, SBC And Sprint Top Wall Street Forecasts For April-June Quarter, Assoc. Press, July 20, 2000; Hight, supra note 2 (quoting Sam Simon, Chairman, Telecommunications Research & Action Center, who noted that “Bell Atlantic’s entry into long-distance – and the entry of AT&T and MCI among others, into local – has lowered costs and lowered rates for consumers, generally across the board”).

⁵⁸ Andrea Ahles, SBC Long-Distance Proves Popular, Fort Worth Star-Telegram, Aug. 22, 2000. In New York, Verizon claimed one million customers after seven months, reflecting a rate of enrollment that was twice as fast as analysts had expected. See PR Newswire, Verizon Wins One Million New York Long Distance Customers; Hits Target Five Months Earlier Than Expected; Company Celebrates Milestone By Donating \$1 Million To Charities; Customers Choose Where To Send Donations, PR Newswire, Aug. 3, 2000; Stewart Ain, Phone Companies’ Competition Heats Up, N.Y. Times, July 16, 2000, at 14LI-3.

⁵⁹ AT&T bundles residential local and long-distance service with a plan called “AT&T

Along with discounts on local/long-distance bundles and reduced intrastate rates, the incumbent interexchange carriers (“IXCs”) are also leveraging advanced technologies. AT&T is using Texas as one of its test grounds for cable telephone service.⁶⁰ AT&T’s wireless division also provides residential telephone service along with broadband “to nearly 3,000 homes in the Dallas-Fort Worth area through a household antenna.”⁶¹ The evidence that prices are falling, customers are rapidly changing carriers, and new technologies are being introduced into the market strongly indicates increased competition in Texas’s local and long-distance service markets.⁶²

Customers in Texas are also beginning to enjoy the benefits of having voice and advanced services bundled together in a single package. According to Chairman Kennard, “[w]e

Local One Rate Texas.” See <http://www.att.com/local_service/tx/html/index.html> (visited Oct. 9, 2000); see also J.G. Smith/Johnson Joint Aff. ¶ 43 (AT&T offers this local one rate only in Texas and New York, the two “states in which the incumbent Bell Operating Company has been given access to AT&T’s long distance marketplace”). New York was the first state, followed by Texas, where MCI WorldCom started offering its bundled local and long-distance service referred to as “One Company Advantage.” See David DeKok, Competitor Calls on Verizon’s Mid-State Clients, Harrisburg Patriot-News, Sept. 14, 2000; Bill Sulong, Telephone Companies Prepare for Battle, Harrisburg Patriot-News, Aug. 27, 2000; see J.G. Smith/Johnson Joint Aff. ¶ 46. And Sprint currently bundles residential local and long-distance service for Texans in five different configurations. See Sprint Local Service – Texas, available at <<https://clec.sprint.com/servlet?CLEC?PAGE+TOCOMPARE&MKT=0003?>> (visited Oct. 9, 2000); see J.G. Smith/Johnson Joint Aff. ¶ 45.

⁶⁰ AT&T Broadband spokeswoman Sarah Duisik commented on how AT&T has spent nearly \$200 million in Dallas to upgrade cable networks to offer two-way transmission. Jim Landers, Faster, Faster: Americans Clamor For High-Speed Net; FCC To Release Data On Spread Of Broadband Services, Dallas Morning News, Aug. 3, 2000, at 22A.

⁶¹ Id.

⁶² The Wall Street Journal recently reported that AT&T plans to offer free installation and as many as five months of free local and long-distance service to customers signing up for “cable-telephony.” See Deborah Solomon, AT&T To Offer Free Cable Telephony In Campaign To Hit Subscriber Goals, Wall St. J., Aug. 30, 2000, at A3. This is perhaps the most vivid illustration yet that local exchange markets are open and that AT&T is fully capable of competing in them when and if it decides to do so. See J.G. Smith/Johnson Joint Aff. ¶ 44.

have witnessed a dynamic market for broadband services develop as a result of the opening of local markets in Texas and New York.”⁶³ SBC bundles local access with xDSL or DirecTV and a long-distance rate of six cents per minute with no additional fees.⁶⁴ And AT&T offers customers discounts to its cable television service for also signing up for AT&T long distance.⁶⁵ Currently, both AT&T and MCI WorldCom are testing wireless technology as a means of providing broadband services to Texas residential customers. AT&T selected Houston as one of its first cities to test fixed wireless for broadband internet access and local phone service to residential customers.⁶⁶ In Dallas, MCI WorldCom offers a new alternative to wireline voice and internet service with Multichannel Multipoint Distribution Service (“MMDS”) technology.⁶⁷

⁶³ Statement of William E. Kennard, Chairman, FCC, Before the Committee on the Judiciary United States House of Representatives on H.R. 1686 – the “Internet Freedom Act” and H.R. 1685 – the “Internet Growth and Development Act” (July 18, 2000), available at <<http://www.house.gov/judiciary/kenn0718.htm>> (visited Oct. 5, 2000).

⁶⁴ Southwestern Bell Texas Money Savers, available at <http://www.swbell.com/Products_Services/Residential/Catalog/1,1965,1-0-6-3-1,00.html#catid_1> (visited Oct. 5, 2000).

⁶⁵ Kathryn Hopper, Telecom Bundles Easy, But Not Always Economical, Fort Worth Star-Telegram, July 9, 2000, at 1.

⁶⁶ AT&T Press Release, AT&T Wireless To Offer Residential Broadband Service in Four New Cities, July 19, 2000, available at <<http://www.att.com/press>> (visited Oct. 5, 2000).

⁶⁷ MCI WorldCom Press Release, MCI WorldCom Adds Dallas to “Fixed Wireless” Service Trials, Apr. 5, 2000, available at <http://www.wcom.com/about_the_company/press_releases> (visited Oct. 5, 2000) (“MCI WorldCom today announced Dallas as the fifth market for test cutting-edge wireless technology which soon will offer customers a new, competitive alternative for high-speed, broadband service. The Dallas trial is the latest step in MCI WorldCom’s overall strategic efforts to offer high-speed, broadband services using radio spectrum designated for an advanced technology known as Multichannel Multipoint Distribution Service (MMDS).”).

And Sprint has developed a wireless Internet service, using line-of-sight technology, that debuted this past summer and is already available in Houston.⁶⁸

The benefits to the public of granting this joint application are real and apparent. The KCC Staff agreed that permitting Southwestern Bell to provide in-region, interLATA telecommunications services in Kansas would be in the public interest. See KCC Staff Report at 113. And the OCC concluded in its Final Order that “there is no serious dispute that Southwestern Bell’s entry into the long-distance market will likely help to drive the rates paid by residential and small-business consumers closer to the costs of providing service and increase consumer choice for long-distance services.” OCC Final Order at 192. Moreover, “Southwestern Bell’s entry into the interLATA market is likely to spur competition in the local exchange market as well.” Id.

B. SWBT Is Subject to Comprehensive Performance Reporting and Monitoring Requirements

This Commission has used the public-interest inquiry under section 271(d)(3)(C) to look for “evidence that a BOC has agreed to performance monitoring (including performance standards and reporting requirements) in its interconnection agreements with new entrants” and “whether such performance monitoring includes appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards.”⁶⁹ Second Louisiana Order, 13 FCC Rcd at 20806, ¶¶ 363-364. SWBT has demonstrated in this record and to the satisfaction of both the KCC and the OCC that it has in place performance measurements covering all aspects of its provisioning of services and

⁶⁸ Tom Fowler, Sprint Has Wireless Net Access, Houston Chronicle, Oct. 3, 2000.

⁶⁹ See also Texas Order ¶ 420; New York Order, 15 FCC Rcd at 4164, ¶ 429.

facilities to CLECs. These measurements were developed in a collaborative process, and this Commission approved them in the Texas Order. See Texas Order ¶ 425. Moreover, SWBT has committed to – and both the KCC Staff and the OCC have approved – the implementation of all changes to SWBT’s performance measurements that were ordered by the Texas Commission in its recently completed six-month review process. This is significant, because it ensures that the Kansas and Oklahoma markets will benefit from the evolving nature of SWBT’s performance plan, which this Commission specifically identified as “an important feature” of the plan. Id. Both the KCC and the OCC have approved these new business rules. Finally, SWBT has proposed a performance penalty plan that mirrors the Texas plan in all material respects, thus providing assurance that SWBT will continue to provide CLECs with nondiscriminatory service in the wake of section 271 relief.

Performance Measurements. To allow CLECs and regulators to confirm that SWBT is providing local facilities and services on a nondiscriminatory basis, SWBT’s performance plan creates a comprehensive set of primary performance measurement categories. See Dysart Aff. ¶ 10; Texas Order ¶ 422. These measures track all aspects of SWBT’s wholesale performance, including pre-ordering, ordering, provisioning, maintenance/repair, and billing of UNEs and resold services; interconnection and collocation; directory assistance and operator services; 911 services; interim and long-term number portability; directory assistance database; access to poles, ducts, conduits, and rights-of-way; loading and testing of NXX codes; and fulfillment of Bona Fide Requests (“BFRs”) for new UNEs or interconnection arrangements. Dysart Aff. ¶ 10.

To assess SWBT’s performance on each of these measurements, data are collected monthly and disaggregated on a product-specific basis in accordance with detailed business

rules. See id. ¶ 11.⁷⁰ Wherever possible, SWBT's performance measurements compare service on behalf of Kansas and Oklahoma CLECs directly to the level of service in SWBT's retail operations. Dysart Aff. ¶ 10. Where no comparable retail function exists, the level of service provided to CLECs is tested against established benchmarks. See id. SWBT employs traditional statistical analysis to gauge the significance of apparent differences in performance. Id. ¶¶ 33-34, 175-183.⁷¹

SWBT makes its performance data available to CLECs, the KCC, the OCC, and this Commission through an Internet website that includes individual CLECs' data (which are not available to other CLECs), aggregated data for all Kansas and Oklahoma CLECs, and SWBT's retail data. Id. ¶¶ 170-171. SWBT has also implemented procedures to allow CLECs access to the raw data underlying particular performance results. Id. ¶ 172. Kansas and Oklahoma CLECs wishing to receive performance measurement reports do not need to have specific provisions covering this reporting in their existing interconnection agreements; rather, SWBT generates,

⁷⁰ As described below, both the OCC and the KCC have determined that Version 1.7 of the performance measurements, which the Texas Commission has now adopted, is the preferable set of performance measurements on a going-forward basis. See KCC Staff Report at 115; OCC Final Order at 153 ("Version 1.7 should be implemented as part of the O2A within 90 days of this Commission's approval of Southwestern Bell's application."). Accordingly, while the data submitted with this application is based primarily on Version 1.6, which the Commission approved in the Texas Order (¶ 425), SWBT does report a few Version 1.7 measurements for September 2000 and will continue to track its future performance in Oklahoma and Kansas using Version 1.7. See K2A Attach. 17, App. 3 – Performance Measurement Business Rules (Version 1.7); O2A Attach. 17, App. 3 – Performance Measurement Business Rules (Version 1.7); Dysart Aff. ¶¶ 15, 210; September Data Joint Aff. Attachs. CC & DD.

⁷¹ The statistical tests employed in the Kansas and Oklahoma plans have been revised slightly from the Texas plan. See Dysart Aff. ¶¶ 33-34. These changes are designed to make the tests easier to apply, while ensuring fidelity to accepted statistical techniques and to the standards approved in the New York Order, 15 FCC Rcd at 4182-91. See Dysart Aff. ¶¶ 35-37.

and makes available on the website, carrier-specific performance reports for each CLEC that requests such reports through its SWBT Account Manager. Id. ¶ 170.

Although based on a region-wide collaboration, SWBT's performance measurements reflect the input of numerous CLECs operating in Kansas and Oklahoma. Id. ¶¶ 17, 25. Moreover, the performance plan includes a six-month review process through which SWBT, state commissions, and CLECs may jointly review and make modifications to the measurements. Id. ¶ 25; K2A Attach. 17, § 6.4; O2A Attach. 17, § 6.4. As this Commission has recognized, the "continuing ability of the measurements to evolve is an important feature because it allows the Plan to reflect changes in the telecommunications industry." Texas Order ¶ 425. Indeed, in the recently completed Texas six-month review, the Texas Commission ordered certain changes to SWBT's performance measurements – including the refinement of DSL-related performance measurements and the further disaggregation of line-sharing data – resulting in a new and improved Version 1.7 of SWBT's performance measurements. See Dysart Aff. ¶ 27; September Data Joint Aff. Attachs. CC & DD. As noted above, both the KCC and the OCC have assented to SWBT's implementation of Version 1.7, thereby ensuring that the benefits of the Texas Commission's collaborative review are enjoyed throughout SWBT's region.

Independent Data Testing. SWBT's region-wide data collection methods and procedures have passed an independent, third-party test conducted by Telcordia under the direction of the Texas Commission. See Ham Aff. Attach. A, Telcordia Technologies Inc., Southwestern Bell OSS Readiness Report §§ 6.3.6.1, 6.5.1 (Tex. Comm'n filed Sept. 1999) ("Telcordia Final Report"). Telcordia confirmed that SWBT properly implemented the Plan's business rules for each performance measurement and validated numerical results reported by SWBT. See Dysart Aff. ¶¶ 193-204. "While Telcordia did make several recommendations regarding SWBT's data

control mechanisms, . . . SWBT has agreed to implement each of these measures.” Texas Order ¶ 429. These recommended improvements were suggested as additional safeguards and did not impact Telcordia’s assessment of the sufficiency of SWBT’s current reporting processes. Dysart Aff. ¶ 198.

Telcordia’s endorsement of SWBT’s data collection procedures is valid regionwide. See, e.g., OCC Final Report at 174. SWBT’s data have nonetheless undergone an additional independent third-party audit. This audit, conducted by Snavelly King under the auspices of the KCC, concluded that the business rules employed by SWBT capture the intent of the performance measurements, and that SWBT’s data gathering processes were sufficient. Dysart Aff. ¶ 206. Snavelly King further noted that the few perceived inadequacies in SWBT’s performance measurements had been resolved during the Texas Commission’s six-month review. Id. This audit provides further support for the adequacy of SWBT’s performance measurements, and for the reliability and accuracy of its reported data.⁷²

Penalty Plan. SWBT’s proposed payment plan – involving self-executing payments to the Kansas and Oklahoma state treasuries, as well as to CLECs – is practically a mirror image of the plan that this Commission approved in Texas. See Texas Order ¶¶ 422-427. The plan puts \$45 million at risk during the first year in Kansas and \$44 million in Oklahoma, see Dysart Aff. ¶ 19, which is virtually the same liability – measured as a percentage of net revenue – that was approved in Texas and New York. See Texas Order ¶ 424; New York Order, 15 FCC Rcd at 3889, ¶ 436 n.1332. Likewise, SWBT’s “procedural caps” – mechanisms designed to ensure that

⁷² SWBT is committed to ensuring that its reported data are accurate and reliable. When, for example, it was recently discovered that certain performance-measurement results were misstated due to a coding error, SWBT took immediate steps not only to correct the data but to impose additional safeguards to help guarantee that this coding error would not recur. See Noland/D. Smith Joint Aff. ¶¶ 75-87.

no single CLEC receives a disproportionate share of the total payments – are generally equivalent (on a percentage basis) to the procedural caps in place in Texas. See Dysart Aff. ¶ 32 & n.28. And the key structural features of the plan – including the two-tiered payment scheme, and increased assessments for substandard performance on certain measures affecting nascent services – are the same in Oklahoma and Kansas as they are in Texas. Id. ¶ 19.

These provisions establish SWBT’s satisfaction of all requirements for an effective performance remedy plan. See Texas Order ¶¶ 422-429; New York Order, 15 FCC Rcd at 4166-73, ¶¶ 433-443. SWBT’s plan “provides a meaningful and significant incentive to comply with the designated performance standards.” New York Order, 15 FCC Rcd at 4167, ¶ 433. It contains clearly stated, comprehensive measures and standards that are designed to detect and sanction deficient performance, and its payment provisions are self-executing. Finally, as a result of independent data testing, CLECs and regulators have strong assurance that SWBT’s performance reports are accurate.

IV. SOUTHWESTERN BELL WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

When providing authorized interLATA services in Oklahoma and Kansas, SWBT and its long-distance affiliate(s) will operate independently of each other and conduct business on an arm’s-length, nondiscriminatory basis in compliance with sections 271(d)(3)(B) and 272. The FCC has already found that SWBT has met its burden of proving compliance with section 272 in Texas. See Texas Order ¶ 396. Since SWBT maintains the same structural separation and nondiscrimination safeguards in Kansas and Oklahoma as it does in Texas, it also satisfies the requirements of section 272 in these states.⁷³

⁷³ On October 8, 1999, SBC merged with Ameritech, with the result that the Ameritech companies are now subsidiaries of SBC and affiliates of SWBT and SBCS. Ameritech has three

Separate Affiliate Requirements of Section 272(a). SBC has established SBCS as a separate affiliate to provide in-region, interLATA services in compliance with the structural separation and operational requirements of section 272. Carrisalez Aff. ¶¶ 7-17. SBCS is a wholly separate entity from SWBT, and neither owns stock of the other. Id. ¶ 8; Yohe Aff. ¶¶ 7-10. SBC may reorganize, merge, or otherwise change the form of SBCS or create or acquire additional interexchange subsidiaries. Any such subsidiaries designated as section 272 affiliates, however, will meet all of the requirements of section 272 when providing services covered by this application. Yohe Aff. ¶ 4.

Structural and Transactional Requirements of Section 272(b). The section 272 affiliate will operate in Kansas and Oklahoma in the same way that it operates in Texas – as a structurally separated affiliate in accordance with the five requirements of section 272(b). See Carrisalez Aff. ¶¶ 18-78; Larkin Aff. ¶¶ 12-23, 34; Yohe Aff. ¶¶ 11-17; Texas Order ¶ 399.

The section 272 affiliate will operate independently of SWBT in Oklahoma and Kansas as required by section 272(b)(1). See Carrisalez Aff. ¶¶ 18-26; Yohe Aff. ¶¶ 11-17. Consistent with the FCC's application of section 272(b)(2), SBCS maintains its books, records, and accounts in accordance with Generally Accepted Accounting Principles ("GAAP"). Carrisalez Aff. ¶¶ 27-36; Larkin Aff. ¶¶ 9-11, 36-42. SBCS and SWBT will have separate officers,

section 272 affiliates that currently comply with the structural separation and nondiscrimination requirements of section 272. See Yohe Aff. ¶ 5 & Attach. A (Affidavit of John Muhs) (App. A, Tab 22). As part of the post-merger integration process, however, the Ameritech Operating Companies and their section 272 affiliates are being brought within the Southwestern Bell compliance program described in this Application. Id. ¶¶ 58-59. Before the Ameritech merger, SBC owned two Bell Operating Companies ("BOCs"), Pacific Bell and Nevada Bell, in addition to SWBT. While not covered by this application, these other BOCs are operating in conformity with section 272's requirements in the same manner as SWBT. See generally Yohe Aff.; Carrisalez Aff. (App. A, Tab 19); Larkin Aff. (App. A, Tab 20).

directors, and employees. 47 U.S.C. § 272(b)(3); Carrisalez Aff. ¶¶ 37-46 & Attachs. D-S; Yohe Aff. ¶¶ 18-19; Texas Order ¶ 401.

Creditors of SBCS do not and will not have recourse to the assets of SWBT. In addition, SBCS does not and will not provide creditors indirect recourse to SWBT's assets through a non-section 272 affiliate of SWBT. 47 U.S.C. § 272(b)(4); Carrisalez Aff. ¶¶ 47-49; Yohe Aff. ¶¶ 20-21; Texas Order ¶ 402.

All transactions between SWBT and SBCS have been reduced to writing and are available for public inspection. 47 U.S.C. § 272(b)(5); Larkin Aff. ¶¶ 13-36; Carrisalez Aff. ¶¶ 50-78; Texas Order ¶¶ 403-407. Such transactions have been and will continue to be carried out on an arm's-length basis in accordance with the FCC's applicable affiliate transaction and cost-accounting rules. Larkin Aff. ¶¶ 13-16, 21, 25-31.

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits SWBT from discriminating between SBCS and other entities. Subject to the joint-marketing authority granted by section 272(g), SWBT makes available to unaffiliated entities any goods, services, facilities, and information that it provides or will provide to SBCS at the same rates, terms, and conditions. Yohe Aff. ¶¶ 22-32; Texas Order ¶ 410.

Furthermore, as in Texas, SWBT will account for all transactions as required with its section 272 affiliates in Oklahoma and Kansas in accordance with the accounting rules designated by the Commission. See 47 U.S.C. § 272(c)(2); Larkin Aff. ¶ 7; Texas Order ¶ 408.

Review Requirements of Section 272(d). Pursuant to section 272(d) and consistent with the FCC's rules, SWBT will obtain and pay for a biennial, independent federal/state review. Larkin Aff. ¶¶ 37-41; Carrisalez Aff. ¶¶ 79-81; Texas Order ¶ 409. In accordance with section 272(d)(2), the independent auditor will provide this Commission, the KCC, and the OCC with

access to working papers and supporting materials relating to its review. Larkin Aff. ¶ 42. And, as required by section 272(d)(3), SBC and its affiliates, including SBCS and SWBT, will provide the independent auditor, the Commission, the KCC, and the OCC with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements of section 272(b). Id. ¶ 41; Carrisalez Aff. ¶¶ 79-81.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), SWBT will fulfill, on a nondiscriminatory basis, all requests from unaffiliated entities for telephone exchange and exchange access services within the same intervals as these services are provided to SBCS. Yohe Aff. ¶¶ 33-39; see Deere Aff. ¶¶ 229-231; Texas Order ¶ 412. SBCS's requests are placed and processed using the same organizations, procedures, and OSS interfaces as requests from unaffiliated carriers. Yohe Aff. ¶¶ 33-37; Deere Aff. ¶ 229. This precludes discrimination. See Second Louisiana Order, 13 FCC Rcd at 20800-01, ¶ 349. Unaffiliated carriers are able to obtain information regarding service quality and the service intervals within which SWBT provides telephone exchange and exchange access services to itself and its affiliates. Yohe Aff. ¶ 39.

SWBT will comply with section 272(e)(2) by providing any facilities, services, or information concerning its provision of exchange access to SBCS only if such facilities, services, or information are made available to other authorized providers of interLATA services in that market on the same terms and conditions. Id. ¶¶ 40-43. In accordance with section 272(e)(3), SWBT will charge SBCS rates for telephone exchange service and exchange access that are no less than the amount SWBT would charge any unaffiliated IXC for such service. Id. ¶¶ 44-45.

To the extent that SWBT provides (under regulatory authorization) interLATA or intraLATA facilities or services to SBCS, SWBT will make such services or facilities available to all carriers at the same rates and on the same terms and conditions, in accordance with section 272(e)(4). Id. ¶¶ 46-47. SWBT will record any such transactions between SWBT and SBCS in the manner prescribed in the FCC's Accounting Safeguards Order,⁷⁴ unless other rules apply. See Larkin Aff. ¶¶ 14-21.

Joint-Marketing Provisions of Section 272(g). Pursuant to section 272(g)(1), SBCS will not market or sell SWBT's telephone exchange services unless SWBT permits SBCS's competitors to market SWBT's telephone exchange services as well. Carrisalez Aff. ¶¶ 82-90; Yohe Aff. ¶¶ 48-50; Texas Order ¶¶ 414-415.

SWBT will conduct any joint marketing in a manner consistent with the Commission's South Carolina Order. See 13 FCC Rcd at 671-72, ¶ 239. See Yohe Aff. ¶ 50; Carrisalez Aff. ¶ 88. Moreover, to the extent SWBT is involved in planning, design, and development activities for SBCS that are not themselves joint marketing, SWBT will make these services available to other entities on a nondiscriminatory basis pursuant to section 272(c)(1). Yohe Aff. ¶¶ 31-32.

Training and Internal Control Mechanisms. To ensure strict adherence to the requirements of section 272 by all employees, SWBT and SBCS have put in place extensive training programs, including live sessions, videotaped presentations, and written materials. Id. ¶¶ 51-57 (describing SBC's and SWBT's compliance and training activities) & Attach. H (training videotape); Carrisalez Aff. ¶ 76 & Attach. O (SBCS compliance training policy). Before SBCS begins offering interLATA services in Kansas and Oklahoma, Southwestern Bell

⁷⁴ Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539 (1996) ("Accounting Safeguards Order").

will distribute a section 272 compliance booklet to all employees of SBC, SWBT, and SBCS, and to personnel of other affiliates whose responsibilities require familiarity with section 272's requirements. Yohe Aff. ¶ 56 & Attach. I (compliance booklet).

SWBT has a centralized Affiliate Oversight Group that is responsible for ensuring compliance with applicable state and federal accounting safeguards and has established intra-corporate reporting and review requirements to assist in accomplishing that function. Larkin Aff. ¶¶ 43-48. In addition, SBC's 272 Oversight Team meets on a regular basis to review affiliate transactions for consistency with the requirements of section 272. Yohe Aff. ¶ 54. Prior to undertaking a transaction or other joint activity with an existing or planned section 272 affiliate, managers must contact the 272 Oversight Team for review and approval. *Id.* ¶ 55.

In sum, for precisely the same reasons that this Commission concluded that SWBT satisfied the requirements of section 272 in its Texas application, this Commission should find that section 272 has been satisfied with respect to this joint application for Kansas and Oklahoma.

V. SOUTHWESTERN BELL'S KCC- AND OCC-APPROVED AGREEMENTS SATISFY ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST

Because the "competitive checklist" of section 271(c)(2)(B) incorporates substantive requirements of section 251, it allows this Commission to verify that Congress's "three paths of entry into the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale" – are available in practice. South Carolina Order, 13 FCC Red at 545-46, ¶¶ 10-11. The remainder of this Brief comprehensively addresses SWBT's compliance with the detailed requirements of the checklist and the implementing orders of this Commission, the KCC, and the OCC. In virtually every case, this compliance is accomplished through the same systems, processes, and procedures as were found sufficient for section 271

relief in Texas. See Second Louisiana Order, 13 FCC Rcd at 20604, ¶ 8, 20638, ¶ 58 & n.151 (allowing BOC to rely upon prior determinations of checklist compliance); id. at 20637-38, ¶ 56, 20655, ¶ 86 (evidence from other states admissible for region-wide processes).

As explained below, and as the FCC held in its Texas Order, any CLEC can obtain from SWBT in a timely and efficient manner the facilities and services it needs to provide local service in Kansas and Oklahoma, no matter what statutorily authorized mode of entry the CLEC selects. To ensure that this is so, SWBT has incurred “a concrete and specific legal obligation to furnish [each checklist] item upon request” and has done what is necessary to supply those items “in the quantities that competitors may reasonably demand and at an acceptable level of quality.” Michigan Order, 12 FCC Rcd at 20601-02, ¶ 110.

Interconnection Agreements. SWBT is legally obligated under its KCC- and OCC-approved interconnection agreements to furnish all checklist items on the requisite terms. Sparks Aff. ¶¶ 26-32. By August 31, 2000, the KCC had approved 100 interconnection or resale agreements in Kansas, and the OCC had approved 79 in Oklahoma, thus demonstrating that CLECs in both states have ample means to compete with SWBT for local exchange customers. J.G. Smith/Johnson Joint Aff. ¶ 9; see also id. Attach. C (list of approved interconnection/resale agreements).

CLECs in Kansas and Oklahoma have the same options as in Texas to obtain an interconnection agreement, including a successor agreement, with SWBT. First, a CLEC may negotiate (and, if necessary, arbitrate at the state commission) the terms of interconnection, access to network elements, and/or resale with SWBT. Sparks Aff. ¶ 27. Second, a CLEC may choose to negotiate some terms and to obtain others, including all legitimately related terms and conditions, from an effective interconnection agreement between SWBT and another CLEC. Id.

¶ 28; see also K2A Attach. 26 – Legitimately Related Provisions; O2A Attach. 26 – Legitimately Related Provisions (allowing opt-in to legitimately related provisions of other agreements, in accordance with the Local Competition Order, 11 FCC Rcd at 16139, ¶ 1315). Third, at its option, the CLEC may adopt the entirety of another currently effective KCC- or OCC-approved agreement, pursuant to section 252(i). Sparks Aff. ¶ 29 (“Most Favored Nation (MFN) option”).

In conjunction with these three offerings, a CLEC also may opt into all or part of the terms of the K2A or the O2A. Id. ¶ 5. These model agreements provide binding terms for interconnection, access to UNEs, and resale that the respective state commissions have determined fully comply with sections 251, 252, and 271 of the Act. Id. The K2A and the O2A were modeled on the Texas 271 Agreement (the “T2A”) developed in the Texas Commission’s collaborative process. Id. ¶¶ 5, 26, 31. The Texas Commission found that the T2A complies with section 271(c), id. ¶ 26, and this Commission found that the Texas Commission’s development and adoption of the T2A was a “key component” of that state’s section 271 proceeding, Texas Order ¶ 13. Both the K2A and the O2A incorporate many of the commitments SWBT made during the Texas collaborative process, as well as the state-specific holdings of the KCC and the OCC. Cleek Aff. ¶¶ 9-10; Jones Aff. ¶ 10.

The following sections (and the affidavits and other materials supporting them) discuss SWBT’s contractual offerings and the associated network arrangements.

A. Checklist Item 1: Interconnection

In satisfaction of Checklist Item 1, SWBT provides interconnection “at any technically feasible point” within its network that is verifiably “at least equal in quality” to the interconnection SWBT provides itself, on rates, terms, and conditions that are “just, reasonable, and nondiscriminatory.” 47 U.S.C. § 251(c)(2); Texas Order ¶ 61. CLECs in Kansas and

Oklahoma thus have access to the most fundamental prerequisite of local exchange competition – the ability to send their customers’ calls to, and receive calls from, customers of the incumbent carrier. CLECs are able to connect their networks to SWBT’s by the most efficient means possible, including placement of the CLEC’s own equipment in SWBT buildings.

To carry traffic between SWBT and CLEC locations, SWBT has provisioned more than 30,000 interconnection trunks in Kansas, and more than 40,000 in Oklahoma. Deere Aff. ¶ 33 (figures as of September 25, 2000); see also J.G. Smith/Johnson Joint Aff. ¶ 25 & Attach. A. To ensure nondiscrimination, SWBT provisions these trunks using the same equipment, interfaces, technical criteria, and service standards that are used for SWBT’s own retail trunks. Deere Aff. ¶ 31; see Texas Order ¶ 62. As in Texas, and as further discussed below, these and other steps to facilitate interconnection between SWBT and CLECs fully satisfy the requirements of Checklist Item 1. See Texas Order ¶ 65. Both the KCC Staff and the OCC have found that SWBT’s offerings and performance described below satisfy this checklist item. See KCC Staff Report at 4-11; OCC Final Order at 165.

The K2A and the O2A, along with SWBT’s interconnection agreements with other carriers, establish five standard methods by which CLECs may connect their networks to SWBT’s: mid-span fiber interconnection, physical collocation, virtual collocation, synchronous optical network-based (“SONET”) interconnection, and leasing of SWBT facilities. Deere Aff. ¶ 15. Each of these interconnection arrangements is available at the trunk side or line side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. Id. ¶¶ 21-22. For the purposes of interconnection to exchange local traffic, a CLEC may choose a single, technically feasible point of interconnection within a LATA. See id. ¶¶ 5, 14, 66; Texas Order ¶ 78. SWBT

will provide other technically feasible alternatives through a Special Request Procedure. Deere Aff. ¶¶ 15, 84-88.

1. Interconnection Trunking

Mid-span fiber interconnection is available at any mutually agreeable, economically, and technically feasible point between a CLEC's premises and a SWBT tandem or end office. Id. ¶ 16. The MSFI arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via SWBT's tandem switch. Id. ¶ 17; see also id. ¶¶ 18-20.

The affidavit of William C. Deere discusses interconnection interoffice trunking arrangements from a CLEC to SWBT (for traffic originated by the CLEC), and from SWBT to a CLEC (for traffic terminated over the CLEC's network). Id. ¶¶ 35-41. Forecasting and servicing of interconnection trunk groups are based upon the same industry-standard objectives that SWBT uses for its own trunk groups, or even stricter standards. Id. ¶ 42; see also id. ¶¶ 43-64. SWBT also uses standard trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as trunking for SWBT's own local services. Id. ¶¶ 45, 50. In order to ensure equality, SWBT interconnects with CLECs using the same facilities, interfaces, technical criteria, and service standards as SWBT uses for its own retail operations. Id. ¶ 31.

SWBT has implemented, as part of its Performance Measurement Plan, multiple separate measures relating to interconnection trunking. Dysart Aff. Attach. E, at 85-95 (Version 1.6); id. Attach. F, at 118-29 (Version 1.7). Relevant measures track trunk blockage (PMs 70, 71), missed due dates (PMs 73, 75), the length of delays for missed due dates (PM 74), trunk

restoration intervals (PMs 76, 77), and average installation intervals (PM 78). Id.⁷⁵ These are the very same “clearly defined performance measurements and standards” developed in Texas. Texas Order ¶ 3; see Dysart Aff. Attach. E, at 85-95; id. Attach. F, at 118-29.

In Texas, this Commission based its approval of SWBT’s interconnection trunking performance largely on the finding that, in the three months preceding its application, SWBT met the relevant benchmarks under PM 70 in Texas for trunk blockage (i.e., blockage not to exceed one percent). Texas Order ¶ 67 & n.136; see also id. ¶ 67 (“In prior section 271 applications, we relied on trunk blockage data to evaluate a BOC’s interconnection quality.”). The same is true in both Kansas and Oklahoma. See Dysart Aff. Attachs. J & K. In Kansas, for SWBT end office to CLEC end office (PM 70-01), and for SWBT tandem to CLEC end office (PM 70-02), SWBT’s statewide data indicate 0.0 percent trunk blockage for the months of July, August, and September 2000. September Data Joint Aff. Attach. H. Similarly, in Oklahoma, under PM 70-02 SWBT reported 0.0 percent blockage for the same period. Id. Attach. G. And under PM 71-01 (Common Transport Blockage Greater than Two Percent), SWBT easily met the benchmark in July, August, and September in both Kansas and Oklahoma. Id. Attachs. H & G.

This Commission also looked to SWBT’s performance under PM 73, which measures missed due dates for installation of interconnection trunks. Texas Order ¶ 70. As in Texas, SWBT in Kansas provided parity or better performance to competitors in each of the three months preceding this application. See September Data Joint Aff. Attach. H (PM 73-01). In Oklahoma, SWBT provided parity or better performance in two of the three months preceding this application, id. Attach. G (PM 73-01), which also demonstrates nondiscriminatory

⁷⁵ As a result of the six-month review in Texas, PM 75 and PM 78 were eliminated in Version 1.7 of the Performance Measurement Plan, effective July 12, 2000. See Dysart Aff. Attach. F, at 126, 129.

performance. See Texas Order ¶ 319 (finding compliance where SWBT, over three months, “missed only slightly more due dates for competing carrier DS1 loops than it did for its own retail DS1 service”); see also id. ¶ 58 (“There may be multiple performance measures associated with a particular checklist item, and an apparent disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist.”).

2. Collocation

CLECs in Kansas and Oklahoma may use collocation for interconnection, to combine UNEs obtained from SWBT with other network facilities, and to provide exchange access or interexchange access. Sparks Aff. ¶¶ 6, 33; Deere Aff. ¶¶ 24, 27. In fact, SWBT has provided CLECs 233 physical collocation spaces in 38 different SWBT central offices in Kansas, and 366 physical collocation spaces in 66 different SWBT central offices in Oklahoma. J.G. Smith/Johnson Joint Aff. Attach. A. SWBT has also provided ten virtual collocation spaces in Kansas, and 50 in Oklahoma. Id.

SWBT’s terms and conditions for both physical and virtual collocation are provided pursuant to tariff. The KCC approved the Kansas Physical Collocation Tariff on June 14, 2000. Sparks Aff. ¶ 34; Cleek Aff. ¶ 16. SWBT’s Kansas Virtual Collocation Tariff was unopposed and became effective by operation of law on April 12, 2000. Sparks Aff. ¶ 34; Cleek Aff. ¶ 15. As discussed further below, rates in Kansas for both physical and virtual collocation are interim and subject to true-up; the KCC is scheduled to set permanent rates later this year. Sparks Aff. ¶ 34; Cleek Aff. ¶ 17.

The OCC adopted the terms and conditions of SWBT’s Texas Physical and Virtual Collocation Tariffs on an interim basis, subject to true-up, while it reviews SWBT’s Oklahoma Physical and Virtual Collocation Tariffs filed on May 9, 2000. Sparks Aff. ¶ 34; Jones Aff. ¶ 40.

SWBT's Kansas and Oklahoma Physical and Virtual Collocation Tariffs are virtually identical to the Texas Physical and Virtual Collocation Tariffs. See, e.g., Sparks Aff. ¶¶ 36, 38-39, 42-43, 45-47, 50, 52-53, 55, 57, 60, 71-72. SWBT also provides both physical and virtual collocation pursuant to its FCC-approved interstate tariff, FCC No. 73, § 25. Id. ¶ 34. Because SWBT's terms and conditions for collocation are provided via FCC-, KCC-, or OCC-approved tariffs, or, at the CLEC's option, through binding interconnection agreements, they are legally binding and cannot be changed without review by the state commission or the FCC. Id. ¶ 37.

The following discussion of the collocation terms and conditions is based on those tariffs, the relevant provisions of which are cited in the supporting affidavits. As also discussed below, SWBT's collocation offerings fully comply with the requirements of the Collocation & Advances Services Reconsideration Order,⁷⁶ which took effect October 10, 2000. SWBT provided Accessible Letter CLEC00-203 on October 10, 2000, which outlines the minimal changes in SWBT's procedures necessary for compliance with that order. Sparks Aff. ¶ 82; App. E – KS, Tab 34.

Physical collocation of CLEC equipment is available wherever space permits. See Sparks Aff. ¶¶ 61-66; Deere Aff. ¶ 23. SWBT allows collocation of telecommunications equipment that a CLEC uses to transmit and route telephone exchange or exchange access service, or to obtain access to UNEs. Sparks Aff. ¶ 50; Deere Aff. ¶ 27.

SWBT makes available caged, shared cage, cageless, and physical collocation arrangements, all at the option of the CLEC. Sparks Aff. ¶¶ 49, 53-57. Adjacent space

⁷⁶ Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 & 96-98, FCC 00-297 (rel. Aug. 10, 2000) ("Collocation & Advanced Services Reconsideration Order").

collocation is available when all space for physical collocation is legitimately exhausted. Id. ¶ 58. If space in an Eligible Structure subsequently becomes available, the CLEC may, at its option, relocate its equipment into that interior space. Id. ¶ 80; see 47 C.F.R. § 51.323(k)(3) (as revised by the Collocation & Advanced Services Reconsideration Order ¶ 46). SWBT also will make available other technically feasible collocation arrangements. Sparks Aff. ¶ 60.

Detailed terms for collocation are spelled out in Technical Publication TP 76300MP, Installation Requirements, which is incorporated by reference in the Kansas and Oklahoma Physical Collocation Tariffs. Id. ¶ 51. CLECs obtaining physical collocation also receive access via the CLEC Online website to SWBT's Interconnector's Collocation Services Handbook for Physical Collocation in Kansas, or for Oklahoma, as the case may be. Id.

If SWBT must deny a CLEC's request for physical collocation because space is not available, SWBT will furnish detailed documentation of this denial to the CLEC within ten days. Id. ¶ 61. After reviewing SWBT's documentation and touring the structure, the CLEC may initiate an independent third-party review of space availability, with ultimate review and approval by the appropriate state commission, if necessary. Id. ¶ 62. SWBT maintains a publicly available document on the Internet indicating those facilities, if any, that currently are full, updated within ten days of the date a central office is determined to be out of physical collocation space. Id. ¶ 63 & Attachs. A-KS & A-OK. Both the Kansas and Oklahoma Physical Collocation Tariffs provide nondiscriminatory standards for space reservation. Id. ¶ 65. As required by the Collocation & Advanced Services Reconsideration Order ¶ 53 (revising 47 C.F.R. § 51.323(f)), these space reservation policies apply as well to affiliates of SWBT. Sparks Aff. ¶ 79. SWBT has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market,

including removal of obsolete unused equipment upon reasonable request by a collocator or upon order of the state commission. Id. ¶ 66. SWBT also conserves caged collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain one rack or bay of equipment. Id. ¶ 53.⁷⁷

Security measures for collocators in SWBT's central offices in both Kansas and Oklahoma reasonably protect SWBT's network and equipment from harm, and are no more stringent than those followed by SWBT's own personnel. Id. ¶ 67. CLEC personnel need not undergo any security training that is more stringent or intensive than the training undergone by SWBT personnel, nor are they required to obtain training from SWBT. Id. ¶ 68. Consistent with the Collocation & Advanced Services Order,⁷⁸ SWBT may recover the costs of erecting an interior security partition to separate SWBT's own equipment in lieu of the costs of other reasonable security measures. Sparks Aff. ¶ 69. Such a security partition will not interfere with a CLEC's access to their own equipment, and will not be the basis for a claim that collocation space is exhausted. Id. ¶ 70. CLECs have access to their collocated equipment 24 hours a day, seven days a week, without a security escort and with no need to use a separate entrance. Id. ¶ 71. CLECs also have reasonable access to their chosen collocation space during construction. Id. ¶¶ 45, 77; see Collocation & Advanced Services Reconsideration Order ¶ 55 (revising 47 C.F.R. § 51.321(f)). SWBT does not use information obtained from CLECs in the course of implementing security arrangements for marketing or other competitive purposes. Sparks Aff.

⁷⁷ Pursuant to a February 29, 2000 Accessible Letter, CLECs may request caged or shared cage collocation space in even smaller increments. Id.

⁷⁸ First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, 4784-85, ¶ 42, 4788, ¶ 48 (1999) ("Collocation & Advanced Services Order"), vacated in part, GTE Serv. Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

¶ 67. SWBT requires CLECs' equipment to satisfy the Bellcore Network Equipment and Building Specifications ("NEBS") Level 1 safety standards, but does not refuse collocation of equipment that fails to meet NEBS reliability standards. Id. ¶ 72; see Collocation & Advanced Services Reconsideration Order ¶ 55. SWBT has also modified its internal procedures to ensure that, if it denies collocation on the ground that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit contains all information required by the Collocation and Advanced Services Reconsideration Order ¶ 57 (revising 47 C.F.R. § 51.323(b)). Sparks Aff. ¶ 78.

SWBT provisions collocation space in conformance with FCC requirements. Although the Collocation & Advanced Services Reconsideration Order established default national intervals for physical collocation effective October 10, 2000, those intervals apply only "in the absence of state standards." Collocation & Advanced Services Reconsideration Order ¶ 21; see 47 C.F.R. § 51.323(l).⁷⁹ Because the KCC and the OCC have already established their own collocation application and provisioning intervals, SWBT is currently in compliance with the new regulation. See Sparks Aff. ¶ 81; see also id. ¶ 34 (explaining that the KCC has approved the Kansas Physical Collocation Tariff, and the OCC has adopted the Texas Physical Collocation Tariff on an interim basis while it considers SWBT's proposed Oklahoma Physical Collocation Tariff). Under the tariffs now effective in both Kansas and Oklahoma, SWBT responds to each request within ten days with a notification of whether space is available, and (if so) a price

⁷⁹ The FCC's default standards require the incumbent LEC to give notification of its acceptance or denial of a CLEC's error-free application for collocation within ten calendar days of its receipt, and to provision the space within 90 calendar days of its receipt. See Collocation & Advanced Services Reconsideration Order ¶¶ 24-27. The FCC did not set provisioning intervals for virtual collocation. Id. ¶ 32.

quotation, except where a CLEC places a large number of collocation orders in the same five-business-day period. Id. ¶¶ 38-42.

Construction intervals likewise are short. In central office space with existing collocation infrastructure, for example, SWBT completes construction of caged physical collocation space within 90 days. Id. ¶ 43. For inactive space, the interval is 140 days. Id. SWBT completes cageless collocation within 55 days if the collocator provides its own bays, and within 70 days if the collocator does not. Id. ¶ 44. These application and provisioning intervals allow Kansas and Oklahoma CLECs to obtain collocation in a timely manner and are identical to those approved in Texas. See id. ¶¶ 38-44; Collocation & Advanced Services Reconsideration Order ¶ 17 (describing Texas intervals).

The performance data from September 1999 through August 2000 show that SWBT processed CLECs' requests for collocation within the applicable interval more than 96 percent of the time in Kansas, and more than 98 percent of the time in Oklahoma. Dysart Aff. ¶¶ 53, 56 (PM 109). As further evidence of SWBT's excellent collocation performance, SWBT completed 218 collocation projects in Kansas and 72 in Oklahoma without a single missed due date. Id. (PM 107).⁸⁰

Virtual collocation is available to CLECs regardless of the availability of physical collocation. See Sparks Aff. ¶ 73; Deere Aff. ¶ 25. SWBT uses the same engineering practices for virtually collocated equipment as it does for its own similar equipment. Sparks Aff. ¶ 74.

⁸⁰ In September 2000, where data points are available, SWBT met the relevant collocation measures with but one exception, PM 107-03 (Percent Missed Collocation Due Dates – Cageless) in Oklahoma. September Data Joint Aff. Attachs. G & H.

Although not required by law,⁸¹ CLECs have the option in some circumstances to maintain and repair their own virtually collocated equipment. Sparks Aff. ¶ 75; Deere Aff. ¶ 25.

SONET-based interconnection is similar to the virtual collocation arrangement, except that both the CLEC and SWBT install SONET-based equipment in their respective locations and each can select the SONET equipment vendor of their choice. Deere Aff. ¶ 28. All of the same options for service configurations exist for this arrangement as with virtual collocation interconnection. Id.

Special Request Process. In addition to these standard offerings, CLECs may request custom-tailored interconnection arrangements through a Special Request process. Deere Aff. ¶¶ 15, 84-89; Sparks Aff. ¶ 60. This process, which is also known as the “Bona Fide Request” process, allows CLECs to request modifications to existing interconnection arrangements as well as additional arrangements. K2A Attach. 6 – UNE, § 2.22; O2A Attach. 6 – UNE, § 2.22.⁸² SWBT will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days. Deere Aff. ¶ 9; K2A Attach. 6 – UNE, § 2.22.5; O2A Attach. 6 – UNE, § 2.22.5. If the request is technically feasible and the CLEC authorizes further development, SWBT will negotiate a schedule for arriving at price and implementation terms (which generally will not extend beyond 90 days from SWBT’s receipt of the request). Deere Aff. ¶ 87; K2A Attach. 6 – UNE, § 2.22.6; O2A Attach. 6 – UNE, § 2.22.6. The CLEC may

⁸¹ See Collocation & Advanced Services Reconsideration Order ¶ 9 (“In a virtual collocation arrangement, the competitor designates the equipment to be placed at the incumbent LEC’s premises. The competing provider, however, does not have physical access to the incumbent’s premises. Instead, the equipment is under the physical control of the incumbent LEC, and the incumbent is responsible for installing, maintaining, and repairing equipment designated by the competing provider.”).

⁸² The Special Request section of the O2A and the K2A are the same as in the Texas T2A, with two minor exceptions. Deere Aff. ¶¶ 88-89.

arbitrate feasibility issues before the appropriate state commission. K2A Attach. 6 – UNE, § 2.22.10; O2A Attach. 6 – UNE, § 2.22.10.

3. Pricing for Interconnection and UNEs

In both Kansas and Oklahoma, SWBT provides interconnection at geographically deaveraged prices that are consistent with 47 U.S.C. § 252(d) and this Commission’s rules. Consistent with 47 C.F.R. § 51.507(f), these prices reflect the relevant state commission-determined cost difference in each of three defined geographic rate areas in Kansas and in Oklahoma. Sparks Aff. ¶¶ 9-13. The prices available in the K2A and the O2A have all been approved either by the respective state commission or by the Texas Commission, or are set at interim levels pending state commission review; in each instance where the state commission has not yet set a “permanent price,” the prices are interim and are subject to true-up. *Id.* ¶¶ 162-169, 181-187; see also, e.g., K2A Attach. 6 – App. Pricing – UNE; O2A Attach. 6 – App. Pricing – UNE.

In Kansas, SWBT has established prices for physical collocation using the TELRIC methodology; these rates are interim subject to true-up after a final determination of rates by the KCC. See Sparks Aff. ¶ 175; Cleek Aff. ¶ 17. In Oklahoma, SWBT offers physical collocation pursuant to the interim rates from its Texas tariff, which are also subject to true-up. Sparks Aff. ¶ 193; Jones Aff. ¶ 40. Prices in each state for virtual collocation reflect the rates in the Texas Virtual Collocation Tariff, and are interim subject to true-up following KCC and OCC review. Sparks Aff. ¶¶ 175, 193; Cleek Aff. ¶ 17; Jones Aff. ¶ 40. Site preparation charges are pro-rated and allocated based on the percentage of the total space used by each CLEC, so that the first CLEC in a premises is not responsible for the entire cost of site preparation. Sparks Aff. ¶¶ 53, 57.

As this Commission has made clear, “the mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set.” Texas Order ¶ 88 (approving SWBT’s Texas application despite interim rates for interconnection); see also New York Order, 15 FCC Rcd at 4090-91, ¶ 258. As with Texas, both Kansas and Oklahoma have made reasonable efforts to set interim rates “in accordance with the Act and the FCC’s rules.” Texas Order ¶ 89; see, e.g., Cleek Aff. ¶¶ 13-22 (describing Kansas interconnection rate proceedings); Jones Aff. ¶¶ 27-40 (describing Oklahoma interconnection rate proceedings). The interim solution here is reasonable because all of the interim rates for interconnection, including collocation, are cost-based,⁸³ both the KCC and the OCC are currently engaged in setting permanent rates,⁸⁴ and the interim rates are subject to true-up.

⁸³ See KCC Staff Report at 11 (noting that the KCC established interim rates and has continued to consider comments and modify the rates when appropriate); OCC Final Order at 161-62 (“Although some of the rates [for checklist item one] are interim and subject to true-up, the [OCC] finds that such rates satisfy the requirements of section 252(d).”).

⁸⁴ In Kansas, SWBT has filed cost studies associated with providing physical and virtual collocation. Permanent rates will be set in the second phase of KCC Docket No. 00-SWBT-733-TAR, which is scheduled to conclude later this year. Cleek Aff. ¶ 17. As the KCC Staff explained, “the uncertainty of the interim prices is [therefore] limited.” KCC Staff Report at 11. In Oklahoma, the OCC recently held “that a procedural schedule should be established in PUD 200000249 which will permit an expeditious determination of permanent rates regarding collocation.” OCC Final Order at 162; Jones Aff. ¶ 8. In order to “provide an incentive for Southwestern Bell to expeditiously seek a final rate for collocation in Oklahoma, thereby giving CLECs the certainty they need to do business,” the OCC held “that any true-up requirements for an interim rate shall not exceed a 6 month period of time beyond the date of this Order.” OCC Final Order at 165-66. SWBT has already filed or shortly will file cost support for these elements and establish permanent rates within the Commission’s prescribed six-month period. Jones Aff. ¶ 8.

B. Checklist Item 2: Access to Network Elements

SWBT satisfies Checklist Item 2 by providing “nondiscriminatory access to network elements” on an “unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory.” 47 U.S.C. § 251(c)(3); see id. §§ 271(c)(2)(B)(ii), 252(d)(1). This offer of leased access to individual components of SWBT’s local exchange network enables CLECs to serve their local customers without duplicating SWBT’s multi-billion dollar investment in local network infrastructure. The issues covered by Checklist Item 2 – access to OSS, UNE combinations, intellectual property rights for UNEs, and UNE pricing, see Texas Order ¶¶ 91-242 – have been discussed in Parts II.A (OSS) and II.B (UNE combinations, intellectual property rights, and pricing), supra.

C. Checklist Item 3: Poles, Ducts, Conduits, and Rights-of-Way

Section 271(c)(2)(B)(iii) requires a BOC to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.” 47 U.S.C. § 271(c)(2)(B)(iii). In the Texas Order, the FCC determined that SWBT’s Master Agreement for access to poles, ducts, conduits, and rights-of-way satisfies the requirements of this checklist item. Texas Order ¶ 245. Because the SWBT Master Agreement is available in Kansas and Oklahoma, that determination should be controlling here as well. The OCC and the KCC Staff have determined that SWBT is in compliance with this checklist item. See OCC Final Order at 31; KCC Staff Report at 46.

In Kansas, SWBT is furnishing five CLECs access to 22 poles and more than 87,000 feet of conduit space; in Oklahoma, five CLECs have been granted access to 443 poles and more than 103,000 feet of conduit space. Hearst Aff. ¶ 12 (App. A, Tab 5). This provisioning is “business