

BEFORE THE STATE CORPORATION  
OF THE STATE OF KANSAS

In the Matter of the Petition of DIECA            )  
Communications, Inc. d/b/a Covad                )  
Communications Company for                        )  
Arbitration of Interconnection Rates,            )  
Terms, Conditions and Related                    )  
Arrangements with Southwestern Bell            )  
Telephone.    )

Docket No. 00-DCIT-389-ARB

**MOTION OF SOUTHWESTERN BELL TELEPHONE COMPANY  
TO DETERMINE AND LIMIT ARBITRABLE ISSUES**

COMES NOW Southwestern Bell Telephone Company ("SWBT"), pursuant to K.A.R. 82-1-201 *et seq.*, and submits its motion requesting an order of the Commission determining and limiting the issues subject to arbitration in the above-captioned matter.

In support of its motion, SWBT states and alleges as follows:

1. DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") filed its petition for arbitration of interconnection rates, terms, conditions, and related arrangements with the Commission on or about November 9, 1999.

2. In its petition for arbitration Covad identified nine issues relating to interconnection for arbitration and a tenth issue related to SWBT's alleged conduct during the negotiating period. Of the nine interconnection related issues identified by Covad, four involve interconnection or unbundled network element ("UNE") rates or charges proposed by SWBT and opposed or disputed by Covad. Those four issues are as follows:

**Issue A(3)- Loop Qualification:** What type of loop qualification process and charge are appropriate?

**Issue A(6)- Conditioning Charge:** Should SWBT be permitted to impose nonrecurring charges (NRC) for xDSL loop conditioning?

**Issue A(7)- DSL Loop Charges:** What are appropriate recurring and nonrecurring charges for ISDN loop rates?

**Issue A(8)- Cross Connect Charges:** What are appropriate cross connect charges?

3. On December 6, 1999 SWBT filed its response to Covad's petition for arbitration. In its response to the petition for arbitration, SWBT stated its belief that the costs and prices associated with the four issues identified by Covad are controlled by the Commission's orders and proceedings in KCC Docket No. 97-SCCC-149-GIT, commonly known as the *UNE Generic Cost Docket*.<sup>1</sup> Accordingly, SWBT responded that its costs/prices for interconnection and UNEs are not proper issues for arbitration in this proceeding.

#### I. UNE GENERIC COST DOCKET

4. On November 8, 1996 the Commission issued its order granting the application of Sprint Communications Company, L.P., and its affiliates, for a generic investigation of SWBT's rates for interconnection, unbundled elements, transport and termination, and resale in Docket No. 97-SCCC-149-GIT.<sup>2</sup> In its order establishing the *UNE Generic Cost Docket*, the Commission noted that the arbitration period for

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<sup>1</sup> In the Matter of the Application of Sprint Communications Company, L.P., United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas for the Commission to open a generic proceeding on Southwestern Bell Telephone Company's Rates for Interconnection, Unbundled Elements, Transport and Termination, and Resale, KCC Docket No. 97-SCCC-149-GIT [hereinafter the "*UNE Generic Cost Docket*"].

interconnection agreements provided by Congress under the Federal Telecommunications Act of 1996 was too brief to realistically resolve all of the cost issues associated with interconnection. For that reason, in order to allow for an "in-depth examination of cost issues," the Commission established the *UNE Generic Cost Docket*.

5. On December 19, 1997 the Commission issued its order in the *UNE Generic Cost Docket* adopting the cost methodology to be used in determining prices for interconnection and UNEs for SWBT. The Commission noted that 47 U.S.C. § 252(d) requires cost-based pricing for interconnection and UNEs. The Commission also found that the FCC had previously mandated the use of the Total Element Long Run Incremental Cost ("TELRIC") methodology for the calculation of costs of incumbent local exchange company facilities made available to competitors. Based upon evidence gathered through testimony, hearings and comments of the parties, the Commission concluded that SWBT's cost studies were to be used, with modifications deemed necessary by the Commission, to determine SWBT's prices for interconnection and UNEs.<sup>3</sup>

6. Continuing its efforts to establish prices for UNEs and interconnection, the Commission, in its *UNE Generic Cost Docket* order dated November 16, 1998, established the inputs SWBT is to use in its cost studies to determine the appropriate rates for interconnection. The Commission stated that after evaluating SWBT's cost

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<sup>2</sup> *Id.* Order Opening General Investigation of Rates for Interconnection, Unbundled Elements, Transport and Termination, and Resale, dated November 8, 1996.

<sup>3</sup> *Id.* Order Choosing Cost Methodology and Suggesting Procedural Schedule, dated December 19, 1997.

study results with the ordered inputs and the comments of the parties, the Commission would issue an order establishing the rates for interconnection.<sup>4</sup>

7. Subsequently, the Commission issued its *UNE Generic Cost Docket* order dated February 19, 1999 establishing SWBT's recurring and nonrecurring interconnection and UNE prices.<sup>5</sup> The Commission concluded that it had jurisdiction to evaluate costs and set interconnection and UNE prices on a "forward-looking, non-discriminatory basis that includes a reasonable profit."<sup>6</sup> In establishing the interconnection and UNE prices, the Commission concluded that "the prices . . . are based on the TELRIC cost of UNEs and interconnection and are just and reasonable." Further, the Commission directed that "[a]ll CLECs can avail themselves of the prices established herein."<sup>7</sup> The Commission also recognized that:

there may be additional elements which have not been addressed. If there are additional UNEs that require cost-based pricing, the parties should provide a list of the element and a proposed price, including the basis of the proposed price. SWBT may be required to file additional cost studies, if necessary. For additional cost studies, SWBT should use the inputs as determined in this proceeding.<sup>8</sup>

8. On September 17, 1999 the Commission issued its order reconsideration in the *UNE Generic Cost Docket*.<sup>9</sup> In that order, the Commission reaffirmed its prior findings that the interconnection and UNE prices established in the *UNE Generic Cost Docket* were TELRIC based. The Commission also concluded that:

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<sup>4</sup> *Id.* Order Setting Inputs for Cost Studies, dated November 16, 1998.

<sup>5</sup> *Id.* Final Order Establishing SWBT's Prices for Interconnection and UNEs, dated February 19, 1999 [hereinafter the "February 19, 1999 Order"].

<sup>6</sup> February 19, 1999 Order at ¶ 71.

<sup>7</sup> *Id.* at ¶ 74.

<sup>8</sup> *Id.* at ¶ 78.

In general, SWBT's cost to provide UNEs and interconnection will not vary from CLEC to CLEC; thus, the price established under TELRIC for those elements should not vary. It is not the Commission's intent to preclude parties from negotiating rates that differ from those established in this proceeding if the parties negotiate a unique agreement which warrants such a departure and involves different costs. But, SWBT's argument . . . that allowing prices to be negotiated provides 'companies the option to get a lower rate, by virtue of volume purchasing or some other negotiated arrangement' appears to be an empty argument. TELRIC costs (which we have used in adopting prices here) are calculated assuming the entire quantity demanded (the total market) is to be served. It is illogical to assume that a CLEC would achieve greater demand levels than the entire market today and thus realize the volume discount proffered by SWBT . . . especially in the near to mid term. Thus the value to competitors to be achieved by allowing SWBT to offer even lower prices than those indicated by TELRIC appears to be nil, particularly when it is noted that SWBT objects to many prices at the TELRIC level. Furthermore, there is not evidence in the record to suggest or conclude that the cost of even greater volumes of UNEs than that assumed for the TELRIC cost studies would be less (or more) than the costs that have been determined in this proceeding. The cost-based prices determined in this proceeding should be generally available to all CLECs provided the UNE and interconnection requests do not require a special or unique arrangement.<sup>10</sup>

In addition, the Commission ordered SWBT to re-run its non-recurring cost studies to include additional modifications, as well as to file a master list of UNEs and definitions. Finally, the Commission's order adopted revised UNE prices and established a schedule for the Commission's continued consideration and determination of revised interconnection and UNE non-recurring charges.<sup>11</sup>

<sup>9</sup> UNE Generic Cost Docket, Order on Reconsideration, dated September 17, 1999 [hereinafter the "September 17, 1999 Order"].

<sup>10</sup> September 17, 1999 Order at ¶ 53. (Emphasis added).

<sup>11</sup> *Id.* at pp. 42-43.

9. In its most recent order in the *UNE Generic Cost Docket*, dated October 26, 1999, the Commission, rejecting SWBT's argument urging the reconsideration of the establishment of a UNE price list, once again reaffirmed its intention that the prices set in the course of the docket be applicable to all CLECs.<sup>12</sup>

[I]t is not the Commission's intent to preclude negotiation of rates different from those established in this proceeding, if the parties negotiate a unique agreement warranting such a departure. The prices established in this proceeding are intended to be available to competitive local exchange carriers, but a request for unbundled network elements and interconnection might require a special or unique arrangement. The Commission is not persuaded that the establishment of a general price list precludes SWBT from negotiating rates for unbundled network elements; nor that it precludes pricing flexibility when special conditions exist.<sup>13</sup>

## II. ARBITRATION OF INTERCONNECTION AND UNE RATES

10. As is reflected in SWBT's response to Covad's petition for arbitration, each of the interconnection and UNE rates offered to Covad and now at issue, are either drawn directly from prior Commission orders in the *UNE Generic Cost Docket* or are interim rates subject to true-up based upon UNE cost studies previously filed with and pending before the Commission for inclusion in an anticipated order on non-recurring charges as directed in the Commission's September 27, 1999 Order. Specifically, SWBT's proposed interconnection and UNE rates at issue are those drawn or based upon Commission orders or filed cost studies as indicated on the attached schedule entitled "SWBT Interconnection Prices Subject to UNE Generic Cost Docket" designated as Exhibit "A" and incorporated herein by this reference.

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<sup>12</sup> *UNE Generic Cost Docket, Order on Petition for Reconsideration and/or Clarification*, dated October 26, 1999 at ¶ 15 [hereinafter the "October 26, 1999 Order"].

11. Covad has previously rejected SWBT's offer of the aforementioned interconnection and UNE rates. However, all other interconnection and UNE rates contained in the proposed SWBT-Covad interconnection agreement and not identified for arbitration in this proceeding are drawn from the Commission's orders or based on SWBT's cost studies filed in the *UNE Generic Cost Docket*, and are apparently acceptable to Covad. Covad appears to believe that it is entitled to pick and choose those rates from the *UNE Generic Cost Docket* that it finds acceptable and challenge those it deems to be excessive.

12. Covad also contends that, despite the Commission's stated intent in its orders that the interconnection and UNE rates established in the *UNE Generic Cost Docket* be available to all CLECs, it is entitled to negotiate different rates.<sup>14</sup> Covad's position ignores the Commission's qualification of the availability of the *UNE Generic Cost Docket* approved rates. The Commission's orders make it abundantly clear that only if a proposed interconnection agreement requires a "special or unique arrangement," is a deviation from the Commission ordered rates warranted.<sup>15</sup>

13. Nothing about the proposed SWBT-Covad Interconnection Agreement is "special or unique" thus warranting a departure from the Commission's prices for interconnection and UNEs established in the *UNE Generic Cost Docket*. The fact that an agreement is negotiated separately with each individual carrier does not make or qualify that agreement as "special or unique." SWBT believes it was the Commission's

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<sup>13</sup> *Id.* (Emphasis added).

<sup>14</sup> See Letter dated December 15, 1999 from Covad's counsel, Mark P. Johnson, responding to SWBT's objections to certain requests for information, attached hereto as Exhibit "B" and incorporated herein and made a part hereof by this reference.

<sup>15</sup> See October 26, 1999 Order at ¶ 15; September 17, 1999 Order at ¶ 53.

intent to limit application of the “special or unique” circumstances exception to those rare instances when a CLEC’s request to interconnect involves special or unique work requirements and/or costs other than those contemplated in the establishment of the rates, not the basic nature of or the language used in the interconnection document itself. Covad’s petition contains no allegations of a “special or unique” nature involving its intended interconnection with SWBT’s network. Covad’s only basis for seeking to review the interconnection and UNE rates, established by the Commission and offered by SWBT, is Covad’s belief that those rates constitute “price gouging” by SWBT.<sup>16</sup> Further, Covad is attempting to arbitrate KCC ordered rates in this proceeding, irrespective of the fact that it admitted in a September 23, 1999 letter to SWBT, in response to SWBT’s request for Covad’s cost studies, that Covad had not prepared any such studies. Rather, Covad advised SWBT that “[w]hile reviewing and analyzing an ILEC’s proposed pricing schemes, Covad typically compares the proposed prices to those offered by other ILECs.”<sup>17</sup>

14. To allow Covad to attempt to arbitrate lower prices than those established in the *UNE Generic Cost Docket* would result in the unraveling of the Commission’s work and stated intentions with regard to the same. Each and every CLEC would then attempt to pick and chose only those prices they liked and arbitrate the rest. The concept of judicial economy and certainty in the market which the Commission sought to achieve through the *UNE Generic Cost Docket* would be lost forever.

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<sup>16</sup> See Covad’s Petition for Arbitration at ¶ 40.

<sup>17</sup> September 23, 1999 letter from Laura Izon of Covad to Amy Wagner and Patricia Hogue of SWBT, attached hereto as Exhibit “C” and incorporated herein and made a part hereof by this reference.

WHEREFORE, SWBT respectfully requests the Commission/Arbitrator take administrative notice of the following orders issued in the *UNE Generic Cost Docket*, Docket No. 97-SCCC-149-GIT, dated November 8, 1996; December 19, 1997; November 16, 1998; February 19, 1999; September 17, 1999; and, October 26, 1999.

FURTHER, SWBT respectfully requests the Commission/Arbitrator issue an order determining that the Commission's orders issued or pending in the *UNE Generic Cost Docket*, as well as the recurring and non-recurring interconnection and UNE rates established therein, control in this proceeding.

FURTHER, SWBT requests an order determining that the interconnection and UNE rates identified by Covad as being at issue are not arbitrable in this proceeding by virtue of the Commission's orders in the *UNE Generic Cost Docket*.

Respectfully submitted,

  
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KRISTIN J. BLOMQUIST (#15636)  
BRUCE A. NEY (#15554)  
220 E. Sixth Street, Room 515  
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Attorneys for Southwestern Bell  
Telephone Company

CERTIFICATE OF SERVICE

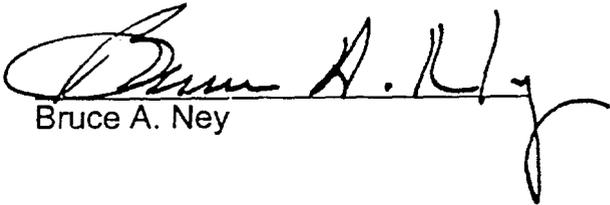
I hereby certify that a correct copy of the Motion were sent via Overnight delivery on this 20<sup>th</sup> day of December, 1999 to:

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Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604-4027

Marianne Deagle  
Assistant General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
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Lisa C. Creighton  
Mark P. Johnson  
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Laura A. Izon  
Covad Communications  
2330 Central Expressway  
Santa Clara, CA 95050

  
Bruce A. Ney

# Exhibit A

**SWBT Interconnection Prices Subject to UNE Generic Cost Docket**

	Recurring	<u>Basis for Price</u>	Nonrecurring (1)		<u>Basis for Price</u>
PSD #1 Capable Loop - 2-Wire Very Low-band Symmetric Technology:					
a.	2-Wire Digital "ISDN Digital Subscriber Line" ("IDSL") technology				
					Supporting Cost Study
	Zone 1/A - Rural	\$ 40.69	Sept. 17, 1999 Order	\$ 181.75 \$ 94.80	**
	Zone 2/B - Suburban	\$ 29.50	Sept. 17, 1999 Order	\$ 181.75 \$ 94.80	**
	Zone 3/C - Urban	\$ 32.66	Sept. 17, 1999 Order	\$ 181.75 \$ 94.80	**
b.	2-Wire Copper "Symmetric Digital Subscriber Line" ("SDSL")				
	Zone 1/A - Rural	\$ 23.34	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
	Zone 2/B - Suburban	\$ 13.64	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
	Zone 3/C - Urban	\$ 11.86	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
PSD #2 Capable Loop - 2-Wire Low-band Symmetric Technology					
	Zone 1/A - Rural	\$ 23.34	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
	Zone 2/B - Suburban	\$ 13.64	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
	Zone 3/C - Urban	\$ 11.86	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
PSD #3 Capable Loop – Mid-band Symmetric Technology:					
a.	2-Wire Mid-band Symmetric Technology				
	Zone 1/A - Rural	\$ 23.34	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
	Zone 2/B - Suburban	\$ 13.64	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
	Zone 3/C - Urban	\$ 11.86	Sept. 17, 1999 Order	\$ 60.55 \$ 25.30	**
b.	4-Wire Mid-band Symmetric Technology				
	Zone 1/A - Rural	\$ 41.76	Sept. 17, 1999 Order	\$ 305.90 \$ 117.05	**
	Zone 2/B - Suburban	\$ 23.94	Sept. 17, 1999 Order	\$ 305.90 \$ 117.05	**
	Zone 3/C - Urban	\$ 19.44	Sept. 17, 1999 Order	\$ 305.90 \$ 117.05	**

**SWBT Interconnection Prices Subject to UNE Generic Cost Docket**

	Recurring	<u>Basis for Price</u>	Nonrecurring (1)		<u>Basis for Price</u>
PSD #4 Capable Loop – 2 Wire High-band					
Symmetric Technology					
Zone 1/A - Rural	\$ 23.34	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
Zone 2/B - Suburban	\$ 13.64	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
Zone 3/C - Urban	\$ 11.86	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
PSD #5 2-Wire Capable Loop - 2-Wire					
Asymmetrical Digital Subscriber Line Technology					
Zone 1/A - Rural	\$ 23.34	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
Zone 2/B - Suburban	\$ 13.64	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
Zone 3/C - Urban	\$ 11.86	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
PSD #7 2-Wire Capable Loop – 2-Wire					
Short Reach Very High-band Symmetric Technology					
Zone 1/A - Rural	\$ 23.34	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
Zone 2/B - Suburban	\$ 13.64	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
Zone 3/C - Urban	\$ 11.86	Sept. 17, 1999 Order	\$ 60.55	\$ 25.30	**
*Loop Qualification Process (Max. rate pending cost study at deployment)	N/A		\$ 15.00		***
CrossConnect to Collocation Cage					
ADSL Shielded	\$ 1.05	Results Provided in 99-SCCC-710-ARB	\$ 129.40	\$ TBD	
2-Wire Analog	\$ 1.47	Sept. 17, 1999 Order	\$ 35.83	\$ 29.44	February 19, 1999 Order
2-Wire Digital	\$ 2.10	*	\$ 19.96	\$ 12.69	February 19, 1999 Order
4-Wire Analog	\$ 2.95	Sept. 17, 1999 Order	\$ 41.63	\$ 35.73	February 19, 1999 Order

**SWBT Interconnection Prices Subject to UNE Generic Cost Docket**

	Recurring	Nonrecurring (1)		<u>Basis for Price</u>
DSL Conditioning Options				
Removal of Repeaters	N/A	\$ 392.65	\$ 17.00	***
Removal of Bridged Taps and Repeaters	N/A	\$ TBD	\$ TBD	***
Removal of Bridged Taps	N/A	\$ 656.35	\$ 30.00	***
Removal of Bridged Taps and Load Coils	N/A	\$ TBD	\$ TBD	***
Removal of Load Coils	N/A	\$ 1,082.20	\$ 22.50	***
Conditioning for loops over 17,500 ft	N/A	\$ ICB	\$ ICB	****

(1) The Nonrecurring rates are interim and subject to true-up with a final, unappealable order issued in Docket No. 97-SCCC-149-GIT.

\* Unbundled Network Component Cross Connect TELRIC 1996-1998 filed 10-15-96 in 96-SCCC-167-ARB; 12/9/96 in 97-AT&T-290-ARB; 8/1/97 in 97-BCSC-546-ARB; rerun per KCC Order in 97-SCCC-149-GIT filed 12/14/98.

\*\* Nonrecurring Loop Cost support is included in the Unbundled Local Loop Study 8db Basic Rate Interface DS1 (Primary Rate Interface) TELRIC Study 1996-1999. The study was initially filed in the following dockets: 10-15-96 in 96-SCCC-167-ARB; 12/9/96 in 97-AT&T-290-ARB; and 8/1/97 in 97-BCSC-546-ARB. It was included in the 97-SCCC-149-GIT Docket by the Commission in its order dated December 19, 1997. Rerun Nonrecurring Costs were included in the TELRIC Unbundled Local Loop Study 1996 and filed November 9, 1999 in 97-SCCC-149-GIT.

\*\*\* Nonrecurring Costs for Loop Conditions are included in Unbundled ADSL Loop Crossconnect and Nonrecurring Cost Study 1998 filed with the KCC in Docket No. 97-SCCC-149-GIT on November 9, 1999.

\*\*\*\* Nonrecurring Costs for Loop Conditions on loops greater than 17.5Kft are included in Nonrecurring Cost Study – Unbundled Network Elements Digital Subscriber Line (DSL) Loop Conditioning Beyond 17.5 Kft., filed with the Commission on November 22, 1999

## **Exhibit B**



**BEFORE THE STATE CORPORATION COMMISSION      STATE CORPORATION COMMIS  
OF THE STATE OF KANSAS**

**OCT 24 2000**

**IN THE MATTER OF SOUTHWESTERN BELL )  
TELEPHONE COMPANY – KANSAS'        )  
COMPLIANCE WITH SECTION 271 OF THE )  
FEDERAL TELECOMMUNICATIONS ACT    )  
OF 1996                                    )**

*Jeffrey S. Wasson* Doc  
Rd  
**Docket No. 97-SWBT-411-GIT      --**

**IONEX COMMUNICATIONS, INC'S MOTION TO STAY FURTHER  
PROCEEDINGS WITH RESPECT TO  
SWBT'S SECTION 271 APPLICATION**

COMES NOW, Ionex Communications, Inc. ("Ionex") and hereby moves the Commission for an order staying further proceedings with respect to Southwestern Bell Telephone Company's ("SWBT") Section 271 Application. In support of this Motion to Stay, Ionex states as follows:

1. On October 23, 2000, Ionex filed a Complaint with this Commission to enforce the Commission's orders issued *In the Matter of Joint Application of Sprint United Telephone Company, United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas and United Telephone Company of Southeastern Kansas for the Commission to Open A Generic Proceeding on Southwestern Bell Telephone Company's Rates for Interconnection, Unbundled Elements, Transport and Termination and Resale*, Docket No. 97-SCCC-149-GIT (hereinafter the "Generic UNE Docket"). A copy of the Complaint is attached as Exhibit A. In the Complaint, Ionex alleges that SWBT has illegally failed and refused to apply the Commission's permanent UNE rates to Ionex's interconnection agreement with SWBT.

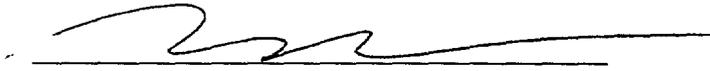
2. SWBT's failure to comply with the Commission's orders from the Generic UNE Docket goes to the core of the Commission's recommendation in this docket. One of the essential aspects of a Section 271 Application is the Commission's determination that SWBT's UNE rates

are cost based and nondiscriminatory, as required by 47 U.S.C. §§ 251(c)(2) and 252(d)(1). In the absence of cost-based, nondiscriminatory rates, this Commission may not recommend approval of SWBT's Section 271 Application. See 47 U.S.C. § 271(c)(2)(B)(i). Indeed, in making its recommendation on the Section 271 Application, Staff repeatedly relied on its belief that SWBT was in fact making the Commission determine UNE rates available to all CLECs. *See Staff's Recommendation*, Executive Summary at page 2, and Section 1, page 11. ("SWBT provides UNEs at TELRIC based UNE-rates as established by this Commission in Docket No. 97-SCCC-149-GIT") As reflected in the attached Complaint, ***this is not true.*** SWBT has refused to apply the February and September, 1999 orders setting permanent cost-based UNE rates to existing interconnection agreements, even though the existing agreements specifically incorporate the Commission determined cost-based rates from the Generic UNE Docket. SWBT's conduct completely undermines any Staff recommendation and should prevent the Commission from issuing a written recommendation in favor of SWBT's Application.

3. Due to the egregious nature of SWBT's refusal to abide by the Commission's orders and the devastating impact on competition, Ionex seeks a motion to stay this proceeding until SWBT can prove to this Commission that the basis of Staff's recommendation – that SWBT is offering cost-based UNE rates in compliance with the Commission's orders to all CLECs -- is in fact valid. Accordingly, further proceedings with respect to SWBT's Section 271 Application should be stayed.

WHEREFORE, for the above and foregoing reasons, Ionex Communications, Inc. respectfully requests an order from the Commission staying further proceedings with respect to Southwestern Bell Telephone Company's Section 271 Application.

Respectfully submitted,



Mark P. Johnson

Lisa C. Creighton                      KS #14847

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ATTORNEYS FOR IONEX COMMUNICATIONS, INC.

**VERIFICATION**

STATE OF MISSOURI     )  
  ) ss:  
COUNTY OF JACKSON    )

COMES NOW Lisa C. Creighton, being of lawful age and duly sworn, who swears and affirms as follows:

1. My name is Lisa C. Creighton, and I am an attorney for Ionex Communications Company. In that capacity, I am authorized to verify this Motion to Stay Further Proceedings with Respect to SWBT's Section 271 Application and the information contained therein.

2. The information contained in the Motion to Stay Further Proceedings with Respect to SWBT's Section 271 Application is true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Lisa C. Creighton

Subscribed and sworn to before me this 24<sup>th</sup> day of Oct 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

<p><b>CARMEN M. WESSON</b> <b>Notary Public - Notary Seal</b> <b>STATE OF MISSOURI</b> <b>Clay County</b> My Commission Expires: March <b>23, 2004</b></p>
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was mailed, postage prepaid, this 24<sup>th</sup> day of October, 2000, to:

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**EXHIBIT A**