

Measurement 55.1 - 04	Line Sharing - Requires Conditioning			
	All CLECs		SWBT/ASI	Z-Value
	No. of Orders	Avg. Interval (Days)	Avg. Interval (Days)	
Sep-00	0	n/a	9.93	n/a
12 Mo. Total	0	n/a	9.93	

	SWBT	All CLECs
Sep-00	9.93	n/a

Percent SWBT Caused Missed Due Dates

Measurement
58 - 09

Oct-99
Nov-99
Dec-99
Jan-00
Feb-00
Mar-00
Apr-00
May-00
Jun-00
Jul-00
Aug-00
Sep-00
12 Mo. Total

DSL - No Line Sharing				
Measurement	All CLECs			In Parity (Yes = 0) (No = 2)
	No. of Circuits	# Missed Due Dates	% Missed Due Dates	
Oct-99	0	0	n/a	
Nov-99	0	0	n/a	
Dec-99	0	0	n/a	
Jan-00	0	0	n/a	
Feb-00	0	0	n/a	
Mar-00	36	10	27.8%	
Apr-00	84	18	21.4%	
May-00	68	6	8.8%	
Jun-00	87	10	11.5%	
Jul-00	73	10	13.7%	
Aug-00	72	15	20.8%	
Sep-00	121	10	8.3%	2
12 Mo. Total	541	79	14.6%	

	Benchmark	All CLECs
Oct-99	0.05	n/a
Nov-99	0.05	n/a
Dec-99	0.05	n/a
Jan-00	0.05	n/a
Feb-00	0.05	n/a
Mar-00	0.05	27.8%
Apr-00	0.05	21.4%
May-00	0.05	8.8%
Jun-00	0.05	11.5%
Jul-00	0.05	13.7%
Aug-00	0.05	20.8%
Sep-00	0.05	8.3%

Measurement
58 - 10

Oct-99
Nov-99
Dec-99
Jan-00
Feb-00
Mar-00
Apr-00
May-00
Jun-00
Jul-00
Aug-00
Sep-00

DSL - Line Sharing					
Measurement	All CLECs			SWBT/ASI	Z-Value
	No. of Circuits	# Missed Due Dates	% Missed Due Dates	% Missed Due Dates	
Oct-99				1.6%	
Nov-99				7.9%	
Dec-99				4.6%	
Jan-00				2.6%	
Feb-00				2.9%	
Mar-00				3.2%	
Apr-00				9.6%	
May-00				18.7%	
Jun-00				38.8%	
Jul-00				3.3%	
Aug-00				3.1%	
Sep-00	0	0	n/a	0.2%	n/a

	SWBT	All CLECs
Oct-99	0.02	
Nov-99	0.08	
Dec-99	0.05	
Jan-00	0.03	
Feb-00	0.03	
Mar-00	0.03	
Apr-00	0.10	
May-00	0.19	
Jun-00	0.39	
Jul-00	0.03	
Aug-00	0.03	
Sep-00	0.00	n/a

12 Mo. Total	0	0	n/a	9.4%
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Attachment 3

September 2000

Oklahoma

Average Installation Interval - DSL

Prior to September 2000, all Orders are classified as "No Line Sharing"

Measurement	No Line Sharing - Requires No Conditioning		Z-Value
	All CLECs		
55.1 - 01	No. of Orders	Avg. Interval (Days)	
Oct-99	0	n/a	
Nov-99	0	n/a	
Dec-99	0	n/a	
Jan-00	0	n/a	
Feb-00	0	n/a	
Mar-00	0	n/a	
Apr-00	0	n/a	
May-00	32	5.16	
Jun-00	86	5.59	
Jul-00	67	6.49	
Aug-00	101	6.46	
Sep-00	63	7.24	2.24
12 Mo. Total	349	6.27	

	All CLECs	Benchmark
Oct-99	n/a	5
Nov-99	n/a	5
Dec-99	n/a	5
Jan-00	n/a	5
Feb-00	n/a	5
Mar-00	n/a	5
Apr-00	n/a	5
May-00	5.16	5
Jun-00	5.59	5
Jul-00	6.49	5
Aug-00	6.46	5
Sep-00	7.24	5

Measurement

55.1 - 02

Oct-99
Nov-99
Dec-99
Jan-00
Feb-00
Mar-00
Apr-00
May-00
Jun-00
Jul-00
Aug-00
Sep-00

12 Mo. Total

No Line Sharing - Requires Conditioning		
All CLECs		Z-Value
No. of Orders	Avg. Interval (Days)	
0	n/a	6.00
0	n/a	
7	11.43	
12	14.83	
7	16.71	
9	16.00	
35	14.83	

All CLECs Benchmark

Oct-99	n/a	10
Nov-99	n/a	10
Dec-99	n/a	10
Jan-00	n/a	10
Feb-00	n/a	10
Mar-00	n/a	10
Apr-00	n/a	10
May-00	n/a	10
Jun-00	11.43	10
Jul-00	14.83	10
Aug-00	16.71	10
Sep-00	16.00	10

Line Sharing - Requires No Conditioning			
All CLECs		SWBT/ASI	Z-Value
No. of Orders	Avg. Interval (Days)	Avg. Interval (Days)	
0	n/a	4.15	n/a
12 Mo. Total		4.15	

Measurement
55.1 - 03

Sep-00

12 Mo. Total

	SWBT	All CLECs
Sep-00	4.15	n/a

Measurement
55.1 - 04

Sep-00

12 Mo. Total

Line Sharing - Requires Conditioning			
All CLECs		SWBT/ASI	Z-Value
No. of Orders	Avg. Interval (Days)	Avg. Interval (Days)	
0	n/a	11.24	n/a
0	n/a	11.24	

	SWBT	All CLECs
Sep-00	11.24	n/a

Percent SWBT Caused Missed Due Dates

Measurement	DSL - No Line Sharing				In Parity (Yes = 0) (No = 2)
	All CLECs				
	No. of Circuits	# Missed Due Dates	% Missed Due Dates		
58 - 09					
Oct-99	0	0	n/a		
Nov-99	0	0	n/a		
Dec-99	0	0	n/a		
Jan-00	0	0	n/a		
Feb-00	0	0	n/a		
Mar-00	0	0	n/a		
Apr-00	1	0	0.0%		
May-00	53	0	0.0%		
Jun-00	115	8	7.0%		
Jul-00	147	20	13.6%		
Aug-00	134	23	17.2%		
Sep-00	134	17	12.7%		2
12 Mo. Total	584	68	11.6%		

	Benchmark	All CLECs
Oct-99	0.05	n/a
Nov-99	0.05	n/a
Dec-99	0.05	n/a
Jan-00	0.05	n/a
Feb-00	0.05	n/a
Mar-00	0.05	n/a
Apr-00	0.05	0.0%
May-00	0.05	0.0%
Jun-00	0.05	7.0%
Jul-00	0.05	13.6%
Aug-00	0.05	17.2%
Sep-00	0.05	12.7%

Measurement
58 - 10

DSL - Line Sharing					
Measurement	All CLECs			SWBT/ASI	Z-Value
	No. of Circuits	# Missed Due Dates	% Missed Due Dates	% Missed Due Dates	
Oct-99				2.0%	
Nov-99				2.0%	
Dec-99				2.8%	
Jan-00				2.3%	
Feb-00				2.7%	
Mar-00				2.9%	
Apr-00				4.0%	
May-00				11.9%	
Jun-00				19.8%	
Jul-00				1.8%	
Aug-00				5.8%	
Sep-00	0	0	n/a	0.5%	n/a
12 Mo. Total	0	0	n/a	6.0%	

	SWBT	All CLECs
Oct-99	0.02	
Nov-99	0.02	
Dec-99	0.03	
Jan-00	0.02	
Feb-00	0.03	
Mar-00	0.03	
Apr-00	0.04	
May-00	0.12	
Jun-00	0.20	
Jul-00	0.02	
Aug-00	0.06	
Sep-00	0.01	n/a

Measurement 56 - 04	DS1 Loop									
	1 - 10 Loops			11-20 Loops			20 + Loops			
	No. Orders	% Install 3 Days	Benchmark "Z - Value"	No. Orders	% Install 7 Days	Benchmark "Z - Value"	No. Orders	% Install 10 Days	Benchmark "Z - Value"	
Oct-99	0	n/a	n/a	0	n/a	n/a	0	n/a	n/a	Oct-99
Nov-99	0	n/a	n/a	0	n/a	n/a	0	n/a	n/a	Nov-99
Dec-99	0	n/a	n/a	0	n/a	n/a	0	n/a	n/a	Dec-99
Jan-00	0	n/a	n/a	0	n/a	n/a	0	n/a	n/a	Jan-00
Feb-00	0	n/a	n/a	0	n/a	n/a	0	n/a	n/a	Feb-00
Mar-00	2	0.0%	95.00	0	n/a	n/a	0	n/a	n/a	Mar-00
Apr-00	4	100.0%	-5.00	0	n/a	n/a	0	n/a	n/a	Apr-00
May-00	11	54.5%	40.45	0	n/a	n/a	0	n/a	n/a	May-00
Jun-00	7	85.7%	9.29	0	n/a	n/a	0	n/a	n/a	Jun-00
Jul-00	4	25.0%	70.00	0	n/a	n/a	0	n/a	n/a	Jul-00
Aug-00	7	14.3%	80.71	0	n/a	n/a	0	n/a	n/a	Aug-00
Sep-00	4	50.0%	45.00	0	n/a	n/a	0	n/a	n/a	Sep-00
12 Mo. Total	39	51.3%		0	n/a		0	n/a		

Attachment 4

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

IN THE MATTER OF SOUTHWESTERN BELL)
TELEPHONE COMPANY – KANSAS’)
COMPLIANCE WITH SECTION 271 OF THE) Docket No. 97-SWBT-411 GIT
FEDERAL TELECOMMUNICATIONS ACT)
OF 1996)

**IP COMMUNICATIONS CORPORATION’S REPLY COMMENTS
REGARDING SWBT’S APPLICATION AS IT RELATES TO TERMS,
CONDITIONS, AND RATES FOR UNES THAT SUPPORT ADVANCED SERVICES**

COMES NOW IP Communications Corporation (“IP”) and, pursuant to the procedural orders in this proceeding, files these reply comments regarding the Section 271 application of Southwestern Bell Telephone Company - Kansas (“SWBT”).

I. Overview

*If you can dream – and not make dreams you master, . . .
If you can fill the unforgiving minute
With sixty seconds’ worth of distance run,
Yours is the Earth and everything that’s in it,
And – which is more – you’ll be a Man, my son!*

– Kipling

From a Commission perspective, a Section 271 proceeding should be viewed as an opportunity. It is the one time that the Bell Operating Company (“BOC”) comes to the Commission asking for the Commission’s assistance. This proceeding will be the Kansas Corporation Commission’s one opportunity to comprehensively review the status of competition and seek the implementation of robust market opening initiatives. This is the Commission’s sixty seconds to open Kansas telecommunications markets to competition. Staff is correct that a Section 271 proceeding is not the last step in the process. But, it is the most critical. The most critical because never again will this Commission have the full scale of issues before it. Never

again will the Commission have as good an opportunity for its initiatives to become reality. It is a time to demand results, get to the bottom of concerns experienced in the marketplace by listening closely to those trying to enter it, and seek the reduction of barriers through collaboration.

Unfortunately, in the case of many of the participating CLECs, and specifically in the case of IP, the opportunity for collaborative resolution has been lost. In most cases, it is not even so much a matter of disagreement as it is a matter of ignoring the concerns. Fortunately, we are only 30 seconds into the Commission's 60 seconds. The Commission retains the opportunity to pull on the reins, investigate concerns, and get the parties in a room where they can develop solutions. That is the way IP approached its initial comments, and that is the way IP would like to conclude this proceeding. Unfortunately, reply comments are in effect a status report. As the Commission will read, the status is not good. That said, great distances can still be traveled before the proceeding concludes.

The next section responds to SWBT's reply. However, because SWBT submitted its reply to IP's initial comments to the Commission without providing any substantive refutation of IP's concerns, it is clear that the record does not contain any evidence to support SWBT's application with regard to the issues raised by IP. IP had hoped that by painstakingly discussing problems and proposing solutions, barriers would be lessened, ultimately making SWBT's 271 application more robust. Moreover, where a problem could not be addressed immediately, IP proposed interim solutions to further the 271 process. To every point, SWBT responded by ignoring the concerns, the rationale, and the Commission's mandate to determine whether markets are irreversibly open to competition. Although IP will limit its comments to the issues in its original comments, with one exception, it should be clear that SWBT's tactics to avoid

issues is generally consistent throughout its reply pleadings in response to other CLEC concerns. SWBT's reply demonstrates a selective representation of the Texas 271 proceeding. Where CLEC concerns regarding performance were voiced, discussions with the Commission and the parties were held including hearings and collaborative sessions on the T2A and other SWBT proposals. Yet, in Kansas, SWBT seeks to avoid a discussion of the CLEC concerns by avoiding a debate on the issues and by certainly avoiding collaboration. Rather than strengthening its 271 application by engaging in a discussion to improve its wholesale offerings and performance by working with IP, SWBT dooms its application by its refusal to provide information in response to IP's comments. As to the issues raised by IP, IP provided comments and solutions tailored to get to "yes." In these reply comments, SWBT's failure to work collaboratively forces IP into the position of discussing why we are at "no." As will be demonstrated in these reply comments, SWBT's 271 application must be rejected because so many critical competition-affecting issues stand uncontroverted. SWBT, however, is not the only loser. IP loses. All competitors seeking an open market lose. This Commission loses since it will have to start again when SWBT applies anew. Finally, and most importantly, the citizens of Kansas lose due to SWBT's failure to respond to valid concerns as was required in Texas; they will continue to wait to realize the full benefits of the 1996 Act.

In the section following the reply to SWBT, IP responds to Staff's recommendation. With due respect to Staff's hard work, IP will point out a number of flawed assumptions that permeate Staff's recommendation. These flawed assumptions include, but are not limited to, a faulty application of the burden of proof, a misunderstanding of the issues and results that can be "ported" from Texas, and a mistaken understanding of the SWBT retail DSL process that was followed prior to full separation of SWBT's data affiliate, Advanced Solutions, Inc. ("ASI").

II. Issue-by-Issue Response to SWBT

1) Line Sharing Issues

SWBT's application must be rejected because it fails to meet checklist item IV. Specifically, SWBT fails to meet its burden of proof regarding line sharing.

i) Terms and Conditions

As an example of SWBT's selective representation of the Texas 271 proceeding, in the Texas interim line sharing arbitration, the Arbitrators found the SWBT contract proposal to be inadequate. Just to meet the minimum requirements necessary for a stop-gap interim agreement, the vast majority of modifications proposed by IP were ordered to be made to the SWBT generic agreement, which is the template for the Line Sharing optional amendment to the K2A. Yet, despite the Texas arbitrators' ruling, Ms. Chapman still states that the SWBT optional amendment meets the FCC's requirements.¹ It is unfortunate that SWBT did not choose to share with the Commission the complete facts relating to the contract proposal. Furthermore, SWBT's agreeing to an expedited arbitration process to replace its proposed language is like saying that this Commission and the FCC can ignore the fact that the application is flawed because the harm can be addressed later. Of course, the standard for approval of SWBT's 271 application is not whether or not flaws are capable of eventual improvement, but whether the

¹ Reply Affidavit of Carol A. Chapman to Comments Filed July 19 at para. 5. See also *Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues*, Docket No. 00-312 and *Rhythms Links, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues*, Docket No. 00-313, Arbitration Decision at 25-26 ("*Illinois Commission Line Sharing Decision*").

application is complete and adequate to show that SWBT's markets are irreversibly open to competition today.

ii) Rates

Consistent with its reply as a whole, SWBT ignores IP's arguments regarding interim rates, and does not submit any information for the Commission's consideration of this issue. Consequently, the statements in IP's initial comments are uncontroverted and SWBT's application must be rejected. In its original comments, IP stated the following:

Regarding DSL rates generally, all DSL rates are currently interim. While the FCC has recognized that interim rates will not always bar a 271 application, the FCC did recognize that the lack of permanent rates can create sufficient uncertainty as to fatally flaw a 271 application. Quoting the *Bell Atlantic New York 271 Order*², the FCC noted that:

a BOC's application for in-region interLATA authority should not be rejected solely because permanent rates may not yet have been established for each and every element or nonrecurring cost of provisioning an element. We believe that this question should be addressed on a case-by-case basis. If the uncertainty caused by the use of interim rates can be minimized, then it may be appropriate, at least for the time being, to approve an application based on the interim rates contained in the relevant tariff.³

Unfortunately, this is currently the case in Kansas. SWBT has an infamous history in a number of states, including Kansas, as to its rates. For example, SWBT vigorously argued that it need not file known, stable collocation rates. Instead, it has repeatedly attempted to inflict uncertainty on CLECs in the collocation context by insisting on individual case basis (ICB) pricing.⁴ This Commission recently recognized how harmful ICB pricing is when it becomes so

² *FCC SWBT Texas 271 Order*, para. 85.

³ *Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Order, 15 FCC Rcd 4090, para. 258 (2000) (*Bell Atlantic 271 Order*).

⁴ *See, e.g., In the Matter Southwestern Bell Telephone Company Filing Tariff Revisions to Establish a New Local Access Services Tariff for Physical Collocation Arrangements Furnished or Made by SWBT in the State of Kansas*, Docket No. 00-SWBT-733-TAR.

pervasive.⁵ Similarly, in the DSL context, SWBT has proposed very high rates in a number of proceedings. Although CLECs are always hopeful that reasonable rates will eventually be ordered, given SWBT's history, CLECs cannot fully effectuate their business plans until they have the certainty that is provided by permanent rates. Thus, while SWBT's affiliate, ASI, can boldly move ahead because any overpayments are going to its parent company, SBC, CLECs are prevented from competing equally.

SWBT does not respond to this argument. SWBT merely recites paragraph 88 of the *Texas 271 Order*. IP agrees that the paragraph was quoted correctly. That paragraph, however, does not undo the provision in the *Bell Atlantic 271 Order*. Rather than simply quote a sentence, IP explains why past conduct makes the use of interim rates suspect in this situation. SWBT does not respond to the concerns. Consequently, those concerns are uncontroverted in the record. As such, SWBT's reliance on interim rates in this situation fails to meet the burden of proof on checklist item IV unless the Commission orders the solution proposed by IP in its initial comments.

iii) Line Sharing Provisioning

The most obvious failure in the SWBT application as it relates to line sharing concerns is SWBT's failure to demonstrate parity on a commercial or test basis. As is explained herein, by definition, the application must be rejected on this point. A 271 application must demonstrate the RBOC's ability to provide UNEs at parity; and, while commercial evidence is the most probative, where adequate commercial traffic does not exist, sufficient, independent third party testing can be relied upon.⁶ In other words, terms and conditions are only a step in the right

⁵ See final order in Docket No. 00-SWBT-733-TAR (June 1, 2000).

⁶ In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. 00-65 (*Texas 271 Order*).

direction but results are critical. Applying the FCC's approach, the first question is: What SWBT reported performance measures reveal line sharing performance? The answer is "none." SWBT admits this in its reply affidavits. In response to IP, SWBT witness Dysart states that beginning with Version 1.7, SWBT "will account for and measure line sharing via multiple disaggregated performance measurements."⁷ In other words, no data is reported today to support the application.⁸

Therefore, the application fails unless sufficient, independent third party testing was performed. The second question, therefore, is: What testing was performed with regard to line sharing? The answer again is "none." Line sharing was not within the scope of the Texas Telcordia test because the test predated the requirement. Given that SWBT's support for its line sharing provisioning is: "none" and "none," SWBT fails to meet its burden of proof and the application must be rejected because checklist item IV is not met.

Consistent with the Texas template that SWBT favorably cites throughout its application, the following steps must be taken: SWBT must report its performance for line sharing as demonstrated by the Version 1.7 business rules; an independent third party must verify that the business rules are being implemented correctly; a minimum of three months of reported performance must be reviewed by staff; the results of the staff review must be presented to the Commission at a hearing, and data reconciliation must be performed by SWBT and CLECs if there is a dispute as to the accuracy of the reported data. Anything less would not reach the

⁷ Reply Affidavit of Randy Dysart to Comments Filed July 19 at para. 126.

⁸ Without speaking to the appropriateness of SWBT's position broadly, it is critical to note that even if SWBT's reliance on the old Version 1.6 Performance Measure were appropriate, they are not appropriate for line sharing. In the Texas 271 Order, the FCC explicitly determined that line sharing would not be applicable to SWBT for Texas because the application was filed prior to June 6, 2000. The failure of Version 1.6 to address line sharing was therefore not subject to review in that proceeding. This is obviously a key difference between the Texas application and the Kansas application that SWBT failed to discuss.

“bar” set by the FCC (as referenced by SWBT in the second sentence of its “Second Reply Comments in Support of Southwestern Bell’s Application for Section 271 Relief in Kansas”). Moreover, if a sufficient volume of unaffiliated, commercial orders have not been handled by SWBT necessary to judge SWBT’s performance, then an independent third party test would be required.

2) Project Pronto

Since SWBT failed to respond to any of the concerns or proposals suggested by IP regarding Project Pronto, IP is forced to conclude that SWBT has no controverting evidence to provide to the Commission and is conceding to the proposals offered by IP. In its initial comments, IP proposed that SWBT commit to offering as an attachment to the K2A the terms and conditions being developed in Texas for Project Pronto. Currently there are no proceedings in Kansas regarding Project Pronto. IP also proposed a streamlined process for rates whereby as rates are set in Texas, those rates will become interim rates in Kansas as well as presumptive permanent rates in Kansas subject only to a narrowly tailored state-specific cost proceeding. These proposals are neither controverted nor opposed by SWBT in its reply and therefore must be incorporated into the K2A before the application can be approved.

3) Database Accuracy

In the area of database accuracy, which includes the accuracy of both mechanized and paper-based information, key issues are uncontroverted requiring the Commission to deny SWBT’s application. In its initial comments, IP explained the database accuracy issue, why it was of concern, what was needed to fix the problem, and interim solutions that could be implemented so SWBT’s 271 could move forward prior to the problem being “fixed.” Unfortunately, SWBT’s response amounted to: “it doesn’t matter because I don’t gotta do it.” IP is baffled by this response, since the Commission “doesn’t have to recommend approval of

SWBT's 271 application either." What is uncontroverted is that SWBT's databases provide DSL providers inaccurate loop information and that such inaccuracy causes costly delays for DSL providers and leads them to make inappropriate business decisions based on false indicators in SWBT's records.

Of key importance, even if it is determined that SWBT's affiliate and CLECs access the same flawed database, **CLECs are harmed to a greater extent than SWBT's Affiliate.** Unlike SWBT's affiliate that may joint market under the name "SWBT", IP is new to the telecommunications marketplace. Should ASI face the same problem as IP, ASI, operating under the SWBT name, benefits from the SWBT name recognition and is likely to get a second chance.⁹ Moreover, any negative opinions of ASI resulting from a bad experience, will be outweighed by the long-standing presence of SWBT in the state. As a result, IP is harmed to a much greater degree by SWBT inaccuracies as a wholesale provider than its affiliate.¹⁰

As a result, SWBT's failure to seriously address this critical issue results in discrimination with regard to unbundled loops requiring the rejection of SWBT's application by failing to meet checklist item IV.

⁹ Customers often do not realize that they are doing business with ASI, not SWBT.

¹⁰ It is also important to note that this is not a novel argument. For example, in the area of performance measures many benchmarks have been adopted in lieu of parity when a harm was found to harm CLECs to a greater degree than SWBT. Those very same benchmarks are part of the performance measures offered in this document and should be applied to this situation.

4) Terms, Conditions And Rates

In IP's initial comments, it recommends that SWBT match the voluntary offering it made in the SWBT Oklahoma 271 proceeding.¹¹ To counter the recommendation, SWBT cites the merger conditions' multistate most favored nations (MFN) provisions. IP will not quibble over SWBT's interpretation of those provisions at this time. Although it is heartening that SWBT is familiar with that document, it is unfortunate that SWBT forgets that this is a 271 proceeding, not a Section 252 arbitration. SWBT neither argues that it would be substantially harmed by offering the language contained in its O2A proposal nor explains why offering such language would not be in the public interest. This Commission has the authority to condition any future 271 approval on providing the language proposed by IP, and IP recommends incorporation of its proposed conditions once the other application deficiencies are addressed.

5) Merger Condition Compliance

Again, SWBT does not provide any reply to IP's comment regarding Merger Condition Compliance. To succinctly restate the issue from IP's initial comments: Since both the merger conditions and 271 include a public interest standard, it is logical to assume that a violation of the conditions that impairs the public interest would also impair 271 compliance. For example, paragraph 4 of the merger order states as follows:

The proposed conditions, however, change the public interest balance. We expect that with these conditions, competition in the provision of local exchange services, including advanced services, will increase both inside and outside the merged firm's region. Accordingly, assuming the Applicants' ongoing compliance with the conditions described in this Order, we find that the Applicants have demonstrated that the proposed transfer of licenses and lines from Ameritech to SBC serves the public interest, convenience, and necessity.¹²

¹¹ SWBT committed, in its initial O2A filing, to allow carriers to port the arbitrated Texas DSL terms and conditions to Oklahoma. This offering was at no time required by the Oklahoma commission.

¹² In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and

Because merger compliance is necessary to meet the public interest standard, 271 approval should be conditioned on SWBT's compliance with all merger conditions that affect competitors in this state. Such a commitment would subject SWBT to 271 enforcement upon a failure to comply with the merger conditions. SWBT does not respond to this proposal in its comments. Consequently, IP's proposal is not opposed in the record and should be adopted.

6) Maintaining Separate Affiliate For Data Services Indefinitely

Lastly, SWBT does not controvert any of the facts in IP's comments. Consequently it is uncontroverted that: (1) SBC/SWBT has made statements in meetings with CLECs regarding Project Pronto that suggest that SBC/SWBT is making certain offerings to CLECs only because they have a separate data affiliate, and that offerings will possibly be taken away once the merger requirement for a separate affiliate is taken away (*i.e.*, three years from merger approval date); (2) that for CLECs to have a reasonable opportunity to compete today, they need the level of certainty that is available to SWBT and its data affiliate; (3) without such assurances, CLECs cannot effectively compete in the marketplace or in the world of financing; and (4) that this barrier would be alleviated if this Commission conditions 271 approval on SWBT committing to either maintain the separate DSL affiliate structure indefinitely or agree that all terms, conditions, and pricing availability would continue into the future as if ASI were a separate affiliate.

Instead of controverting any of these statements, SWBT erroneously suggests that this Commission, in spite of the uncontroverted concerns, is powerless to condition its voluntary approval of SWBT's 271 application upon the remedy that would solve the problem. SWBT

(..continued)

Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999) para. 4 (*SBC/Ameritech Merger Order*).