

measure). CLECs now serve, conservatively, more than 115,000 lines on a facilities basis in Kansas and close to 125,000 on a facilities basis in Oklahoma. See id. ¶ 29.⁴⁴

Oklahoma. No commenter disputes SWBT's satisfaction of Track A in Oklahoma. In fact, by its own admission, Cox is a "facilities-based CLEC" that fully expects to offer "robust competition" to SWBT in Oklahoma and already provides "local telecommunications services to both residential and business customers." Cox Comments at 4. Like Brooks and Logix, therefore, Cox is a "Track A" carrier. See J. G. Smith Reply Aff. ¶ 34.

Kansas. Alone among commenters, Sprint argues that SWBT fails to satisfy Track A in Kansas. Sprint Comments at 6-14. Yet Sprint itself provides local exchange service to business and residential subscribers. See J. G. Smith Reply Aff. ¶¶ 6-7. Indeed, by its own admission, Sprint is billing hundreds of residential customers for facilities-based local service, and it is "actively marketing" its ION service in an attempt to sign up more. Sprint Comments at 9; Sprint's Morris Aff. ¶ 12. Sprint's own pleadings thus establish that SWBT satisfies Track A in Kansas. See Michigan Order, 12 FCC Rcd at 20584, ¶ 75 (a facilities-based carrier satisfies Track A if it is "actually . . . in the market and operational").⁴⁵

⁴⁴ Sprint's and AT&T's contentions that SWBT has overstated the state of local competition in Kansas and Oklahoma are insubstantial. See Sprint Comments at 4-6; AT&T's Turner Decl. In fact, Sprint itself refuses to hazard its own estimates, preferring instead to rely on dated estimates that AT&T proffered to the OCC. See Sprint Comments at 5-6. For its part, AT&T disclaims reliance on those estimates, relying instead on three new ones that purport to capture current levels of competition. See AT&T's Turner Decl. ¶¶ 9-10, 22-29. But these estimates are badly flawed: the first completely ignores UNE-platform and resale; the second ignores competitors' own facilities; and the third is a meaningless multi-year average that does not even attempt to calculate how CLECs are faring in Kansas and Oklahoma today. See J. G. Smith Reply Aff. ¶¶ 21-32.

⁴⁵ Contrary to Sprint's reading, Track A includes no requirement that a carrier must serve a minimum amount of lines to be considered a "competing provider of local exchange service." See 47 U.S.C. § 271(c)(1)(A); Michigan Order, 12 FCC Rcd at 20585, ¶ 77 ("We also do not read section 271(c)(1)(A) to require that a new entrant serve a specific market share in its service area

In addition, several other carriers provide service to both business and residential markets in Kansas, and do so increasingly over their own facilities. Available evidence indicates that Birch and Ionex are providing service to residential subscribers exclusively over their own facilities using UNE-P. See J. G. Smith Reply Aff. ¶ 12. These carriers appear to be in the process of converting a substantial number of their residential resold lines to UNE-P, while they also provide resale and facilities-based service to business customers. See id. ¶ 12 & Table 4.⁴⁶ Both carriers thus provide local exchange service to business and residential customers “predominantly over their own facilities,” further confirming that SWBT satisfies Track A in Kansas. See Michigan Order, 12 FCC Rcd at 20594, ¶ 94.⁴⁷

B. Performance Remedy Plan

A few commenters question the adequacy of SWBT's performance plans in Kansas and Oklahoma. See Sprint Comments at 69-75; Allegiance Comments at 34-43; see also McLeodUSA/CapRock Comments at 40-49 (repeating Allegiance's comments). But these plans are built upon the foundation established in SWBT's Texas plan, which this Commission has approved. See Texas Order ¶¶ 422-429; Dysart Reply Aff. ¶ 135. Where the plans differ, moreover, they provide more incentives to continue providing nondiscriminatory access to CLECs and are less forgiving when SWBT fails to do so. See Dysart Reply Aff. ¶ 137.

to be considered a “competing provider.”). Even if it did, moreover, Sprint's substantial presence in Kansas would easily exceed any such minimum. See J. G. Smith Reply Aff. ¶¶ 6-7.

⁴⁶ As indicated in J. Gary Smith's Reply Affidavit, Birch and Ionex have a significant number of UNE-P access lines in Kansas. Although Birch and Ionex are the best source of information concerning the nature of the service they provide, SWBT is still investigating precisely how many of these UNE-P access lines are used to provide service to residential customers.

⁴⁷ Global Crossing's assertion that it is not offering facilities-based residential service in Kansas is immaterial in light of the other facilities-based carriers in Kansas.

Sprint notes that, because CLEC transaction volumes in Kansas and Oklahoma are likely to be lower than in Texas, SWBT is likely to pay less for sub-standard performance in Kansas and Oklahoma than in Texas. Sprint Comments at 70-71. Allegiance likewise points out that SWBT's monthly payment caps in Kansas and Oklahoma, though equivalent to the Texas plan's in percentage terms, are lower in absolute terms. Allegiance Comments at 38. These assertions may be true, but the inference drawn from them – that liability under the Kansas and Oklahoma plans is insufficient to protect against backsliding – is not. As the Commission has recognized, liability under a performance plan for a given state should be measured against local exchange revenues in that same state. See Texas Order ¶ 425 n.1235; New York Order, 15 FCC Rcd at 4168, ¶ 436 n.1332. That is the amount that, theoretically, SWBT could protect with discriminatory service. As SWBT has explained, and as Sprint concedes (at 72), its liability in Kansas and Oklahoma would be 36 percent of net revenue – exactly equivalent to the liability plans approved in Texas and New York. See Dysart Reply Aff. ¶ 141.

Nor is it the case that this liability amount must be enough, standing alone, to prevent SWBT from engaging in discrimination. E.g., Allegiance Comments at 38 & n.114; Sprint Comments at 72. The Commission has repeatedly recognized that a BOC's penalty plan is not the only incentive protecting against discriminatory service. See New York Order, 15 FCC Rcd at 4167, ¶ 435 (“[W]e disagree with a basic assumption made by several commenters: that liability under the Plan must be sufficient, standing alone, to completely counterbalance Bell Atlantic's incentive to discriminate.”); Texas Order ¶ 424 (same). Indeed, the Commission's experience with Bell Atlantic in New York proves the point. Bell Atlantic's OSS difficulty

following 271 relief was met with swift and severe sanction by the Commission.⁴⁸ Far from undermining the Commission's analysis of penalty plans, see Allegiance Comments at 40-42, that episode – the details of which are self-evidently irrelevant to an analysis of SWBT's likely performance following 271 relief – merely proves that there are any number of incentives to ensure SWBT's continued nondiscriminatory performance in Kansas and Oklahoma.

Allegiance also claims that the Kansas and Oklahoma plans call for automatic penalties only after three consecutive months of sub-standard performance, and that the plans are insufficient as a result. Allegiance Comments at 38 & n.115. That premise, however, is incorrect. In both Kansas and Oklahoma, Tier I penalties are triggered when a measure is missed in a single month, and Tier II penalties are triggered either by three consecutive months of sub-standard performance or by six sub-standard months in a calendar year. See Dysart Reply Aff. ¶ 146. This basic two-tier penalty structure has already been approved by this Commission. See Texas Order ¶ 426.

Sprint claims that the Oklahoma and Kansas plans include statistical measures that improperly skew the results in SWBT's favor. Sprint Comments at 74. But the methodology by which SWBT designed its statistical tests – which, as Sprint recognizes, is intended to “take into account the random variation that may occur during the formulation of . . . statistical results,” id. at 74 – was used in developing the approved Texas plan. Dysart Reply Aff. ¶ 149. And as this Commission has explained, “the use of statistical analysis to take into account random variation in the metrics is desirable.” New York Order, 15 FCC Rcd at 4182, App. B ¶ 2 (emphasis added). Moreover, Sprint's specific statistical concerns – regarding the “critical Z-value” and “K

⁴⁸ See Order, Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service In the State of New York, 15 FCC Rcd 5413 (2000).

Table exemptions,” see Sprint Comments at 75 – are particularly misplaced. As the reply affidavit of Randy Dysart explains, the Oklahoma and Kansas plans substantially limit the application of those factors, as compared to the Texas plan approved by this Commission. See Dysart Reply Aff. ¶ 137. The end result is exactly what Sprint claims to want: a plan more likely “to capture . . . all missed measures.” Sprint Comments at 74.⁴⁹

Sprint also challenges the reliability of SWBT’s data generally. See Sprint Comments at 76-78. But Sprint never raised these concerns with the OCC or the KCC, and neither found any reason to question SWBT’s data. See Dysart Reply Aff. ¶¶ 118, 120. Sprint’s comments, moreover, disregard the fact that SWBT’s data have undergone three separate audits, each of which concluded that SWBT’s data are in fact reliable. See id. ¶¶ 122-131. In any event, as the FCC has held, “[w]here particular SWBT data are disputed by commenters,” that data should be examined in discussing the relevant checklist item. Texas Order ¶ 57. As discussed elsewhere, SWBT’s data conclusively establish compliance with each checklist item.

Sprint objects that the Kansas and Oklahoma plans contemplate on-going revision pursuant to the built-in six-month collaborative review process. Sprint Comments at 72, 74. But as this Commission has explained, the six-month review process ensures that the penalty plans will stay current, and in no way undermines the plans’ effectiveness as a deterrent to discriminatory behavior. See Texas Order ¶ 425 (the “continuing ability of the measurements to evolve is an important feature because it allows the Plan to reflect changes in the telecommunications industry”). And Sprint’s insistence that the KCC and its staff were somehow forced to rely on the six-month review process (instead of implementing Kansas-

⁴⁹ Allegiance complains about the change in the application of the Z-test, apparently without recognizing that the change is favorable to CLECs. See Allegiance at 39.

specific changes to SWBT's performance plan) is simply wrong. See Sprint Comments at 69, 73. In fact, the KCC expressly noted that SWBT's Kansas plan "embodies new changes sought by the [KCC] staff and Kansas [CLECs]." KCC Recommendation at 41; see Dysart Reply Aff. ¶ 136. Indeed, CLECs were so pleased with those changes that they requested that SWBT adopt them wholesale in Oklahoma, which SWBT did. Dysart Reply Aff. ¶ 136.

Finally, Allegiance proposes a set of "[a]dditional [a]nti-backsliding [m]easures" that it believes should accompany any grant of this Application. Allegiance Comments at 42. But as Allegiance candidly acknowledges, the Commission has already rejected these exact same proposals on the ground that the standards it has developed in the 271 review process are sufficient. See id. (citing Order, Development of a National Framework to Detect and Deter Backsliding, 15 FCC Rcd 1473 (2000)). As is abundantly clear from the paucity of comments on this topic as well as from SWBT's reply to those few comments, see Dysart Reply Aff. ¶¶ 133-165, the Oklahoma and Kansas plans meet those standards.

C. Interconnection

AT&T makes four claims of alleged "unlawful shifting of transport costs," none of which has any merit. The first three claims purport to identify problems that simply do not exist. And the fourth claim, which concerns the Commission's single point of interconnection requirement from paragraph 78 of the Texas Order and its interplay with reciprocal compensation rules, involves an interconnection arrangement that has never been requested by any CLEC. Though precise terms and rates for this still-hypothetical arrangement have yet to be worked out, SWBT's offering fully complies with the Texas Order.

Fundamentally, all four claims are fact-based interconnection disputes that should be addressed at the state level pursuant to the section 252 negotiation and arbitration procedures. Their resolution depends on the specific network architecture that a CLEC might wish to deploy

under its particular interconnection agreement. The fourth claim, which is entirely hypothetical, would be especially inappropriate to address here. Nevertheless, after explaining why as a matter of proper procedure the Commission should not attempt to resolve any of these disputes in this section 271 proceeding, SWBT will demonstrate why each of AT&T's claims is meritless.

First, AT&T's claims should not be decided in this proceeding. AT&T seeks in essence to have this Commission conduct an interconnection dispute arbitration within a 271 proceeding. But as the Commission has explained, "there will inevitably be, at any given point in time, a variety of new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act." Texas Order ¶ 23. The 1996 Act leaves such disputes for resolution, not in this forum, but by negotiation or, if necessary, arbitration before the state commissions.

The 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law. Although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions.

Id. ¶ 383 (footnotes omitted) (emphasis added).

Indeed, faced with an analogous interconnection dispute in which a Texas CLEC alleged that SWBT would not provide interconnection trunks unless the CLEC agreed to certain conditions in a renegotiated interconnection agreement, the Commission held that the CLEC's "alleged difficulties are best resolved through the section 252 negotiation and arbitration process." Id. ¶ 71 n.150. So too here: AT&T "should bring this fact-specific dispute before the

[appropriate state] Commission.” Id. ¶ 383.⁵⁰ “But the section 271 process simply could not function as Congress intended if [the Commission] were generally required to resolve all such disputes as a precondition to granting a section 271 application.” Id. ¶ 24.

In any case, each of AT&T's claims fails on its merits. AT&T's first claim concerns the “equitable allocation of interconnection facilities charges” where a CLEC establishes a point of interconnection (“POI”) at a SWBT local tandem, and the caller and called party are in the same local exchange. AT&T's Fettig Decl. at 15 (Scenarios 1 and 1A) & Ex. 7, Example 1.⁵¹ When a CLEC customer calls a SWBT customer in the same local exchange, the CLEC must pay reciprocal compensation for tandem switching, tandem transport, and end office switching, where appropriate. (Scenario 1). When the SWBT customer originates the call, however, AT&T complains that “SWBT would not pay any transport charge (as part of reciprocal compensation or otherwise) to the CLEC for the connection between the POI and the CLEC switch.” Id. Therefore, AT&T concludes, “the CLEC is left to bear the full cost of interconnection facilities that benefit both parties.” Id. (citing AT&T Response to OCC Staff Report on 10/24/00 Technical Conference at section 2 (AT&T's Fettig Decl. Ex. 9)).

This claim is unfounded and is based on an apparent misunderstanding by AT&T. AT&T claims that the “O2A does not require the parties to share equitably in the costs of the facilities that are located on either side of the POI by paying for those facilities in proportion to

⁵⁰ See also Texas Order ¶ 223 n.614 (“We further note that Global Crossing may choose to address disputes, such as this one, arising out of its interconnection agreement with the Texas Commission.”); id. ¶ 329 (“In any event, the parties’ entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas Commission.”). id. ¶ 390 (“if NALA does not care for one of SWBT’s contract provisions, it may negotiate or arbitrate such provision, or otherwise work with the Texas Commission to find an interim solution until a final resolution is reached”).

⁵¹ Exhibit 7 constitutes five diagram examples that SWBT presented at an October 24, 2000 technical conference before the OCC Staff.

the amount of traffic that each party places over the facility,” id. at 16, but that is simply not the case. As SWBT explained at the October 24 Technical Conference, under the O2A (as well as the K2A) the interconnection arrangement is developed by the parties on a “mutually agreeable” basis. See Sparks Reply Aff. ¶ 11; O2A Attach. 11, § 1.2 ; K2A Attach. 11, § 1.1; AT&T's Response to OCC Staff Report, AT&T's Fettig Decl. Ex. 9, at 4. For example, if the CLEC chooses to interconnect using a mid-span fiber meet, each party bears its pro-rata share of that arrangement. Sparks Reply Aff. ¶ 11. And AT&T correctly understood SWBT's position at the OCC Technical Conference to be “that such equitable apportionment should and does occur through negotiations over the complete set of interconnection arrangements needed between a CLEC and SWBT.” AT&T's Response to OCC Staff Report, AT&T's Fettig Decl. Ex. 9, at 4.

In sum, there is no actual dispute on this issue. In any case, by proposing that the O2A be amended to state that “[s]pecific apportionment of the cost of interconnection facilities will be subject to negotiation and, if necessary, resolution in accordance with the provisions of General Terms and Conditions, section 9.5 (Formal Resolution of Disputes),” id. at 4-5, AT&T necessarily acknowledged that this issue is appropriate for resolution pursuant to the section 252 provisions for negotiation and (if necessary) arbitration before the state commission - but not for this section 271 proceeding, which the Commission must complete in 90 days. see 47 U.S.C. § 271(d)(3).

AT&T's next claim concerns the situation when a CLEC customer makes an intraLATA toll call to a SWBT customer in a different local exchange (or vice-versa). AT&T's Fettig Decl. at 16-17 (Scenarios 2 and 2A). AT&T claims that, when its customer originates the call, AT&T has to pay access charges to SWBT, whereas when a SWBT customer originates the call SWBT treats it as a local call.

AT&T, however, misdescribes the SWBT Example 3 diagram that it relies upon, which clearly demonstrates that such a call is not a local call: “SWBT bills [its] customer. . .for a long distance call” and “SWBT pays CLEC access rates” (Example 3) just as the CLEC pays SWBT access charges when its customer originates the call (Example 2). AT&T's Fettig Decl. Ex. 7, Examples 2 & 3. There is no basis for AT&T's claim that the call is a local call for SWBT's customer. See AT&T's Fettig Decl. at 17.⁵² Both the O2A and the K2A (like the T2A) clearly state that such calls are treated as intraLATA toll calls. See Sparks Reply Aff. ¶ 11; O2A Attach. 12: Compensation, § 5.2; K2A Attach. 12: Compensation, § 5.2.

AT&T next protests language in the O2A and the K2A requiring a CLEC collocated in a SWBT end office to interconnect there by provisioning direct trunks. AT&T's Fettig Decl. at 18-19 (Scenarios 4 and 4A); see O2A Attach. 11: Network Interconnection Architecture, § 1.2 (“If CLEC establishes collocation at an end office, any direct trunks will be provisioned over the CLEC collocation facility.”); K2A Attach. 11: Network Interconnection Architecture, § 1.1.

A CLEC need not accept this arrangement, however. SWBT submits that the proper reading of the O2A and the K2A is that direct trunking from the CLEC's collocation facility is an option, not a requirement. See O2A Attach. 11: Network Interconnection Architecture, § 1.1

⁵² AT&T recognizes that SWBT will apply reciprocal compensation rates for calls within mandatory local calling areas, as SWBT stated at the October 24 OCC Technical Conference. AT&T's Fettig Decl. at 17 n.21; AT&T's Response to OCC Staff Report, AT&T's Fettig Decl. Ex. 9, at 1 (“SWBT was clear that each of the Oklahoma mandatory local calling areas is considered to be a single exchange area, and does not have multiple exchanges within it.”). AT&T further claims that the O2A does not address optional calling areas, AT&T's Fettig Decl. at 17 n.21, but that is simply because there are no optional calling areas in Oklahoma. See O2A Attachment 12: Compensation, § 5.1. In Kansas, where there are state commission-approved optional calling areas, compensation for such traffic is contained in K2A Attachment 12: Compensation, § 5.1 (providing table of “rates for the transit and/or transport and termination of optional calling area traffic”). If the call were local, then local reciprocal compensation rules would apply.

(CLEC may choose “either” an arrangement subject to the trunking provision “or” the option of a single point of interconnection); K2A Attach. 11: Network Interconnection Architecture, § 1.2 (trunking requirement is “[s]ubject to paragraph 1.3 below,” which provides the option of a single point of interconnection). Therefore, a CLEC also has the option (discussed next) to interconnect at a single, technically feasible point of interconnection in each LATA.⁵³

AT&T's final complaint concerns the Commission's requirement that a CLEC “ha[ve] the option to interconnect at only one technically feasible point in each LATA.” Texas Order ¶ 78; see AT&T's Fettig Decl. at 17-18 (Scenario 3) & Ex. 7, Examples 4 & 5. In response to the Texas Order, SWBT proposed, and the KCC and OCC approved, amendments to the K2A and the O2A that explicitly provide a CLEC with the option to interconnect at a single point within a LATA. See Sparks Reply Aff. ¶ 8. The relevant language added to the K2A and the O2A is virtually identical to the language in WorldCom's Texas agreement, on which this Commission relied in approving SWBT's Texas application.⁵⁴

As this Commission held was the case in Texas, SWBT's offerings in Kansas and Oklahoma permit a CLEC to designate “a single point of interconnection within a LATA.”

⁵³ In the alternative, SWBT proposes that the O2A and the K2A be amended to provide explicitly that, “[i]f CLEC establishes collocation at an end office, the preferred method of provisioning any direct trunks will be over the CLEC collocation facility, unless CLEC chooses a single point of interconnection for the LATA.” See Sparks Reply Aff. ¶ 14.

⁵⁴ Compare Texas Order ¶ 78 n.174 (“If WorldCom desires a single point of interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party's facilities.”) with Sparks Reply Aff. ¶ 8 (K2A Attach. 11: Network Interconnection Architecture, § 1.1: “If CLEC desires a single point for interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by CLEC, or CLEC may self-provision, or use a third party's facilities.” O2A Attach. 11: Network Interconnection Architecture, § 1.3: “If CLEC desires a single POI or multiple POIs in a LATA, SWBT agrees to provide, for the exchange of local traffic, dedicated or common transport to any other exchange within the LATA requested by CLEC, or CLEC may self-provision, or use a third party's facilities.”).

Texas Order ¶ 78. Consequently, SWBT has made a legally binding commitment to provide such interconnection in a manner that complies with the Texas Order. Should AT&T (or any other CLEC) seek particular terms and conditions in order to implement that requirement based on a particular network configuration (and neither AT&T nor any other CLEC has), and should the negotiation process set out in section 252 fail to yield an agreement, then AT&T would be “free to take it up with the [Kansas or Oklahoma] Commission,” as the Commission held AT&T could do in Texas with respect to getting the single point of interconnection provision from another carrier’s interconnection agreement. Id. Indeed, AT&T discusses arbitrations in both Kansas and Oklahoma concerning the technical feasibility of certain points of interconnection, AT&T’s Fettig Decl. at 25, yet AT&T does not explain why that same process would be inappropriate or foreclosed to it here. In any case, the Commission rejected AT&T’s objections to SWBT’s single point of interconnection offering in the Texas proceeding, Texas Order ¶ 78, and (if the Commission were to reach the merits) it should do the same here.

AT&T’s complaint is not that it (or any other CLEC) is actually denied interconnection at a single point within a LATA. Rather, AT&T complains of having to pay the reasonable cost of that interconnection when the traffic, due to the CLEC’s decision of where to interconnect, must be transported from one local exchange to “any other local exchange” within the same LATA. AT&T’s Fettig Decl. ¶ 5. In the scenario of which AT&T complains, the calling and called parties are in the same local exchange but the CLEC’s point of interconnection is in a different local exchange. AT&T’s Fettig Decl. at 17-18 (Scenario 3) & Ex. 7, Examples 4 & 5. In view of the large size of the few LATAs in both of these mostly rural states, the CLEC’s POI could well be 300 miles or more from the local exchange where the calling and called parties are located. See Sparks Reply Aff. ¶ 16. Moreover, the SWBT traffic terminated by CLECs is

much greater than the CLEC traffic terminated by SWBT, which would dramatically drive up SWBT's costs relative to the CLECs' for this single point of interconnection arrangement.⁵⁵ See id. ¶ 17. Indeed, AT&T recognizes that this is the case and that, if reciprocal compensation rates were to control, then SWBT's payments to CLECs could be "unreasonable." AT&T's Fettig Decl. at 24 n.30.

Given this scenario, SWBT submits that the CLEC should be responsible for paying the cost of transporting the call from SWBT's end office to the POI in the other local exchange, and vice-versa, depending on whether SWBT's or the CLEC's customer originates the call. Id. at 17-18 (Scenario 3) & Ex. 7, Examples 4 & 5. AT&T is wrong to suggest that the extra transport costs should be covered by reciprocal compensation. The reciprocal compensation rules, developed for local calls, were never meant to cover the situation where the POI is outside the local calling area. This is an interconnection issue - not a reciprocal compensation issue. AT&T notes the Commission's finding "that the 1996 Act bars consideration of costs in determining 'technically feasible' points of interconnection or access." Local Competition Order, 11 FCC Rcd at 15603, ¶ 199; see AT&T's Fettig Decl. ¶ 11. But what AT&T conveniently leaves out is that the Commission in that same passage held that, "[o]f course, a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." Local Competition Order, 11 FCC Rcd at 15603, ¶ 199.

Thus, section 252(d)(1) requires that SWBT be allowed to recover the added costs thrust upon it by a CLEC's "expensive interconnection." Id.; see also 47 U.S.C. § 251(c)(2)(D)

⁵⁵ To the extent that this imbalance reflects treatment of Internet-bound traffic, Southwestern Bell disputes that characterization, as discussed elsewhere in this brief.

(providing for interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory”). That is the only sensible answer; otherwise, a CLEC could select a point of interconnection that is more expensive in the aggregate simply because it need not take account of the costs that it avoids by transferring them to the incumbent. But the Commission intended for CLECs to bear the fair share of the cost of their interconnection choices and to consider all of the costs resulting from those choices: “because competing carriers usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.” Local Competition Order, 11 FCC Rcd at 15608, ¶ 209.

Of course, that incentive to make economically efficient decisions about where to interconnect would be meaningless if CLECs could avoid the financial consequences of their interconnection choices. If transport throughout the LATA were free, then the CLEC would make no efficiency calculation whatsoever. They would also choose not to build facilities where it would be economically efficient to do so, thus thwarting the Commission’s goal of promoting facilities-based competition. Moreover, this arrangement would harm consumers, whom the Act seeks most to protect and who will ultimately bear the burden of the resulting higher aggregate costs.

AT&T points to language in the Texas Order concerning a CLEC’s ability to select the “most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers’ costs of, among other things, transport and termination.” Texas Order ¶ 78 (quoting Local Competition Order, 11 FCC Rcd at 15588, ¶ 172); see AT&T’s Fettig Decl. ¶ 10. But efficiency is not to be judged solely from AT&T’s perspective. And it is pure speculation on AT&T’s part whether this would be “the economic equivalent of extending the CLEC’s transport

network to a POI in each exchange.” Id. ¶ 5. It might well be more efficient for the CLEC to purchase interexchange transport to one exchange from its point of interconnection in another exchange, rather than to establish a point of interconnection in each exchange. But even if it were not, as discussed above, a CLEC has no right to avoid the costs of its chosen “‘technically feasible’ but expensive interconnection.” Local Competition Order, 11 FCC Rcd at 15603, ¶ 199.

Surely the Commission recognized this in the Texas Order, for the language from the MCI/WorldCom agreement that it approved there is the same as the language in the O2A and the K2A: “‘SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party’s facilities.’” Texas Order ¶ 78 n.174.⁵⁶ It could not be argued (and AT&T does not argue) that SWBT’s Texas agreement with WorldCom to “provide” transport to any other exchange within a LATA means that only SWBT would pay for that transport. Id. In the other two options — self-provisioning and use of a third party’s facilities — the CLEC would necessarily pay for the transport to another exchange. But a CLEC would never have reason to select either of these options if, in the third option, SWBT had agreed to cover that cost. Therefore, the only reasonable reading of the WorldCom agreement as approved by the Commission is that the CLEC would in each of the three options (not just two of the three) cover the cost of the additional transport to and from another exchange. Cf. Gustafson v. Alloyd Co., 513 U.S. 561,

⁵⁶ Compare Sparks Reply Aff. ¶ 8 (K2A Attach. 11: Network Interconnection Architecture, § 1.1: “SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by CLEC, or CLEC may self-provision, or use a third party’s facilities.” O2A Attach. 11: Network Interconnection Architecture, § 1.3: “SWBT agrees to provide, for the exchange of local traffic, dedicated or common transport to any other exchange within the LATA requested by CLEC, or CLEC may self-provision, or use a third party’s facilities.”).

575 (1995) (“[A] word is known by the company it keeps (the doctrine of noscitur a sociis). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words. . . .”).

For these reasons, the Commission should reject AT&T's claim, if it were to reach the merits. The appropriate course, however, would be to wait until a CLEC requests this form of interconnection. If the parties are unable to agree on all the necessary terms and conditions within the negotiation process set out in section 252, the CLEC could then bring any “fact-specific dispute before the [appropriate state] Commission.” Texas Order ¶ 383 (holding reciprocal compensation dispute inappropriate for resolution in section 271 proceeding).

The claim by Metromedia Fiber Network Services, Inc. (“MFNS”) is also procedurally inappropriate for this proceeding, for the reasons detailed above regarding AT&T's claims. In any case, it is meritless. MFNS seeks collocation of a Fiber Distribution Frame (“FDF”) in order to provide transport services to CLECs within SBC central offices. MFNS Comments at 2. The FDF would not, however, interconnect with or provide MFNS access to UNEs; rather, the FDF would allow MFNS to interconnect with collocated CLECs, and therefore does not meet the definition of equipment eligible for collocation. See Sparks Reply Aff. ¶ 23. The D.C. Circuit has held, in no uncertain terms, that the collocation provision of the 1996 Act, 47 U.S.C § 251(c)(6), “is focused solely on connecting new competitors to LEC's networks,” not connecting competitors to one another. GTE Serv. Corp. v. FCC, 205 F.3d 416, 423 (D.C. Cir. 2000) (emphasis added). Section 251(c)(6) authorizes the Commission to require LECs to provide collocation “as ‘necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier,’ and nothing more.” Id. (emphasis added).

In any case, SWBT has agreed with MFNS that, at the request of a legitimate collocator for entrance facilities, MFNS may leave a fiber coil at the manhole to satisfy any CLEC's request for fiber to meet its collocation request. See Sparks Reply Aff. ¶ 26. Thus SWBT and MFNS have reached an agreement to accommodate MFNS's business plans. Id. ¶ 22.⁵⁷

Finally, SWBT recognizes that interconnection trunk performance is important. Although interconnection trunk installation delay days in Oklahoma in October averaged over 90 days, this is not truly representative of SWBT's performance. Dysart Reply Aff. ¶ 114. Under PM 74 (Average Delay Days for Interconnection Trunks), if there is a SWBT-caused missed appointment, any subsequent delay days are counted—even where SWBT becomes ready after the initial miss, but the CLEC then declines to accept the installation at that time. See id. ¶¶ 114-15. Thus SWBT would be held accountable for all delay days, including those caused by the CLEC. Id. ¶ 115. Moreover, if SWBT's facilities are tied up for long periods because the CLEC has not chosen to accept the trunks it has ordered, it may cause missed installation appointments and consequent delay days to other CLECs whose orders cannot be filled because of "dedicated but unused" facilities, which also affects SWBT's reported results under PM 73 (Percent Missed Due Dates—Interconnection Trunks). See Mah Aff. ¶ 42. Thus, orders delayed due to a combination of SWBT and customer reasons are reflected as a SWBT miss in their

⁵⁷ Sprint complains of an isolated problem in Kansas regarding remote collocation in order to gain access to the sub-loop. Sprint Comments at 65-66. Ms. Halwe's affidavit filed in the Kansas proceeding provides a detailed chronology of these events, and of SWBT's efforts to work with Sprint. Sparks Reply Aff. ¶ 28. On November 8, 2000, Sprint accepted SWBT's cost quotation for such collocation location in Kansas, which is currently being implemented, id., and Sprint and SWBT have reached agreement on language to be added to a new Sprint interconnection agreement, id. ¶ 29. This isolated dispute is insufficient to derail approval of SWBT's 271 application. See Texas Order ¶ 431 ("we will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act"). As the KCC Staff found, if Sprint perceives any further difficulties the proper forum is that state's six-month review of the collocation tariff. Sparks Reply Aff. ¶ 30.

entirety. See id. ¶ 43. SWBT is currently identifying all factors contributing to this situation and taking steps to improve reporting. See id. ¶ 44.

In any case, SWBT's long-term performance in Oklahoma has been excellent. SWBT has achieved or surpassed parity (often by wide margins) in 10 of the last 12 months under PM 73, and it has provided CLECs more timely trunk installations than for its own retail operations, by a factor of nearly three. Dysart Reply Aff. ¶ 111; see Texas Order ¶ 70 (finding SWBT met checklist item one where it provided "parity or better performance to competitors" under PM 73). Moreover, Oklahoma CLECs have not experienced service degradation, as SWBT has far exceeded the one percent benchmark standard for trunk blockage (PM 70) in each of the last twelve months; indeed, during that period trunk blockage has never exceeded 0.10 percent. Dysart Reply Aff. ¶ 113. Similarly, SWBT has also met the benchmark for PM 71 (Common Transport Trunk Blockage (% of Trunk Groups with > 2% Blockage)) in each of the last twelve months. Id. SWBT thus provides Oklahoma CLECs a meaningful opportunity to compete.

D. Unbundling Issues

1. UNE Combinations. As SWBT explained in its application, its UNE combination offerings go above and beyond what the 1996 Act and the Commission require. See Southwestern Bell Br. at 45-47. Two commenters, however, have expressed concern with SWBT's procedures for converting special access circuits to a combination of network elements known as the enhanced extended link ("EEL"). See Focal Comments at 4-7; e.spire Comments at 6-9. SWBT's procedures for converting special access circuits to UNEs fully comply with the Commission's rules. Sparks Reply Aff. ¶ 33.

Any CLEC that meets the criteria approved by the Commission in the UNE Remand Supplemental Clarification Order⁵⁸ has the ability to process orders to convert special access services to UNEs, in both Kansas and Oklahoma. See Sparks Reply Aff. ¶ 33. SWBT's conversion procedures are available on SBC's CLEC online website. See id. ¶ 32 (referencing <<https://clec.sbc.com>>). These processes have been developed specifically to ensure that there is no loss of service to the end-user and that the correct circuits are discontinued. Id. ¶ 19. Neither Focal nor e.spire explains how SWBT's processes violate the Commission's rules, id. ¶ 20, and neither party has ever complained to the relevant state commission, id. Moreover, it is entirely inappropriate to convert a section 271 application proceeding into a forum for airing specific operational concerns regarding ordering processes. Id.

2. Project Pronto. Some commenters ask the Commission to require SWBT to unbundle its Project Pronto offering. See, e.g., IP Communications Comments at 21-27; McLeodUSA/CapRock Comments at 36-40. Their argument boils down to nothing more than a claim that Project Pronto is important, so, therefore, SWBT must unbundle its components. IP Communications, for example, argues that the Project Pronto facilities can be combined with CLEC facilities to provision a telecommunications service. See IP Communications Comments at 22. But the same can be said about other facilities – e.g., packet switching capability – and that is clearly not the unbundling standard articulated in section 251(d)(2). Although IP Communications argues that the “necessary and impair” test of section 251(d)(2) should not apply to Project Pronto, id. at 23, that is flatly at odds with the Supreme Court's requirement that

⁵⁸ Supplemental Order Clarification, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 9587 (2000) (“UNE Remand Supplemental Clarification Order”).

the Commission conduct a “necessary” and “impair” analysis as a threshold inquiry before any element is unbundled. See AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).⁵⁹

There is also no merit to the assertion that Project Pronto will have “immediate and enormous implications on the terms, conditions, and rates faced by CLECs providing service over DSL technologies.” IP Communications Comments at 22. Those rates, terms, and conditions are entirely independent of Project Pronto facilities, which, as the Commission recognized in the SBC/Ameritech Merger Conditions Modification Order,⁶⁰ offer the means to make DSL service available to additional communities and households. Modification Order ¶ 23 & n.65.

In any case, the Commission’s task in this proceeding is to determine whether SWBT has complied with the Commission’s existing requirements. See Texas Order ¶ 22 (“[W]e evaluate [a BOC’s] compliance with our rules and orders in effect at the time the application was filed.”) (emphasis added); see also New York Order, 15 FCC Rcd at 3968, ¶ 34, 4080, ¶ 236. Under current law, packet switching equipment need not be unbundled unless (1) SWBT offers voice service via digital loop carrier, (2) there are no spare copper facilities available, and (3) SWBT has refused to permit CLECs to collocate at the SWBT remote terminal. UNE Remand Order, 15 FCC Rcd at 3838-39, ¶ 313. These conditions are not met here. First, since Project Pronto

⁵⁹ As SBC has argued elsewhere, the elements that comprise Project Pronto clearly do not meet the “necessary and impair” test. See Comments of SBC Communications Inc. at 58-63, Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 & 96-98 (FCC filed Oct. 12, 2000); Reply Comments of SBC Communications Inc. at 58-65, Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 & 96-98 (FCC filed Nov. 14, 2000).

⁶⁰ Second Memorandum Opinion and Order, Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control, CC Docket No. 98-141, FCC 00-336 (rel. Sept. 8, 2000) (“Modification Order”).

involves a fiber overlay, it does not involve the replacement of any copper facilities. See Chapman Aff. ¶¶ 114-117. Whatever facilities are currently available will remain available to CLECs for provisioning DSL service. Second, SWBT performs line and station transfers as necessary to move POTS customers to the digital loop carrier, freeing up copper capacity. See Welch Reply Aff. ¶¶ 5-6. Third, SWBT permits CLECs to collocate in or adjacent to its remote terminals. See Chapman Reply Aff. ¶ 75. Accordingly, SWBT has no obligation to unbundle the Project Pronto facilities, and need only provide nondiscriminatory access to its wholesale broadband service to CLECs and ASI alike.

This Commission concluded that extending UNE regulation to packet switching would stifle the incentives of carriers to use such technology, in flat contradiction to section 706 of the 1996 Act. See UNE Remand Order, 15 FCC Rcd at 3839-40, ¶¶ 314-316. There is no basis for the Commission to depart from that determination in this proceeding. On the contrary, “[t]he statute does not permit appellants in section 271 proceedings to collaterally attack orders or rules adopted by the Commission in other proceedings.” AT&T Corp. v. FCC, 220 F.3d 607, 630 (D.C. Cir. 2000). “[A]ny such challenge could be brought only through a petition for review” of the UNE Remand Order itself, “not as a collateral attack” in a section 271 proceeding. Id.

E. White Pages Directory Listings

In Oklahoma and Kansas, SWBT continues to provide white pages directory listings to customers of the other carriers' telephone exchange service in a manner that satisfies checklist item viii. See Southwestern Bell Br. at 108-09; Rogers Aff. ¶¶ 51-65; Rogers Reply Aff. Nevertheless, McLeodUSA/CapRock alleges that because it may have experienced discriminatory treatment in the provision of white pages directory listings by Ameritech's Directory Organization in Illinois and Wisconsin, the Commission should deny Southwestern

Bell's Application for relief in this proceeding. See McLeodUSA/CapRock Comments at 24-25. McLeodUSA/CapRock's claims are meritless.

As the Commission has held in the Texas Order, allegations regarding a BOC's out-of-state services are irrelevant to a determination as to whether the BOC satisfies a checklist item in the state in which it is seeking relief. See Texas Order ¶ 351 (concluding that WorldCom's challenge to the prices of SWBT's out-of-state directory assistance services "is not relevant to a determination of whether SWBT meets checklist item 7 in Texas."). Moreover, Ameritech's systems, tariffs, and ordering processes are different from those of SWBT. Rogers Reply Aff. ¶ 8.

KMC Telecom ("KMC") refers to isolated instances where 15 of its customers allegedly failed to receive listings in the white page directories. See KMC Comments at 12-13. This is clearly not the appropriate proceeding to resolve KMC's complaints. SWBT ensures that all listings remain intact when customers transfer their local telephone service from SWBT to other CLECs. See Rogers Reply Aff. ¶¶ 5-6. Contrary to KMC's unsupported assertions, SWBT also makes available to CLECs daily verification reports as well as CD-ROMs containing page proofs 60 days prior to directory closing. Id. ¶ 9. KMC, however, has so far failed to take advantage of any of these verification options. Id. Nevertheless, SWBT continues to work with KMC to resolve all outstanding issues it may have regarding allegedly dropped directory listings. Id. ¶¶ 6-7.

F. Number Portability

Commenters raise a few issues with respect to SWBT's compliance with local number portability. Sprint claims that 23 percent of 30 customers – perhaps in Kansas, though Sprint is notably ambiguous on this point - experienced service outages in August and September after Sprint placed FDT LNP orders because SWBT failed to process cancellation requests in a timely

manner. Sprint Comments 62-63; Sprint's Morris Aff. ¶¶ 15-16. In fact, it is not clear that Sprint has any basis for accurately assessing the prevalence of outages due to failure to process cancellation requests, and SWBT's performance data do not indicate any problem of this kind. See D. Smith Reply Aff. ¶ 24; see also id. ¶¶ 27-28. In any event, since Sprint representatives brought this issue to the attention of the LSC in September — albeit without any details — SWBT has focused additional attention on the timely processing of cancellation requests, thus reducing the possibility of any additional problems in this area. See Noland Reply Aff. ¶ 25.

Sprint also raises issues with respect to two LNP-related performance measures. First, Sprint notes that SWBT missed PM 96-02 (Percent premature disconnect – LNP w/ Loop) in Kansas in June, although it acknowledges that SWBT's performance has been perfect since. See Sprint Comments at 64. The June data, however, are not reliable due to a programming error while the September data – which shows perfect performance – are reliable. See Dysart Reply Aff. ¶ 108. Second, Sprint notes that SWBT missed the benchmark for PM 97-02 (Percent Time SWBT Applies 10-digit Trigger Prior to LNP Due Date – LNP w/ Loop) in June and July. But in the three months since, SWBT's performance has been stellar, with back-to-back perfect months in September and October, including by far its heaviest month yet. See id. ¶ 109. Combined with SWBT's generally excellent results for other LNP-related performance records, this shows ample compliance with this checklist item. Id.

G. Reciprocal Compensation for the Exchange of Local Traffic

WorldCom and e.spire claim that Southwestern Bell has failed to comply with this checklist item because SWBT has not agreed to pay compensation for Internet-bound calls in Oklahoma. e.spire Comments at 9-13; see also WorldCom Comments at 22-25. The Commission has made clear that it will not address disputes over compensation for Internet-

bound traffic in the context of section 271 applications (Texas Order ¶ 386); it is not clear why WorldCom and e.spire have failed to heed the Commission's plain holding on this point.

In any event, the claims that SWBT's conduct has been in any way improper are false. SWBT has complied with every state commission order concerning Internet-bound traffic and has exercised its right to litigate this issue where not yet decided in light of subsequent clarification of the requirements of federal law. See Sparks Reply Aff. ¶ 44. This is as the Commission has said it should be, because where a state commission orders reciprocal compensation for Internet-bound traffic based on the mistaken belief that such traffic "terminates at an ISP server" the state commission may "re-examine their conclusion that reciprocal compensation is due." ISP Declaratory Ruling,⁶¹ 14 FCC Rcd at 3706, ¶ 27. The claims of e.spire and WorldCom are all the more frivolous in light of the OCC's and the KCC's explicit determination that SWBT is in compliance with this checklist item. See Sparks Reply Aff. ¶ 45. In any case, both the KCC and the OCC are addressing the nature of ISP traffic in pending complaint proceedings. Id. ¶ 44. These are the appropriate proceedings in which to resolve these issues, and SWBT will comply with the eventual rulings of the OCC and KCC.

H. Resale

McLeodUSA/CapRock and Allegiance have argued that this Commission should impose a "fresh look" requirement on SWBT and thereby provide an opportunity for retail and wholesale customers to exit without penalty long-term contracts that they have voluntarily entered into with SWBT. But this Commission has already concluded that "the absence of a 'fresh look'

⁶¹ Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999) ("ISP Declaratory Ruling"), vacated and remanded, Bell Atlantic Tel. Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000).

requirement is not a basis for rejecting a section 271 application.” Texas Order ¶ 392. This Commission expressly disagreed “with commenters that believe that a section 271 application is an appropriate forum to consider instituting a ‘fresh look’ policy.” Id. ¶ 433. The Commission should reach the same conclusion here.

CONCLUSION

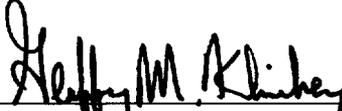
The Joint Application should be granted.

Respectfully submitted,

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