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FACSIMILE 213 896 6600

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HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(213) 896-6604

WRITER'S E-MAIL ADDRESS
mhaddad@sidley.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Ex Parte Presentation

Re: In the Matter of Joint Application by SBC et al. for Provision of In-region InterLATA Service in Kansas and Oklahoma: CC Docket No. 00-217

Dear Ms. Salas:

This letter, which responds to SBC's reply comments concerning certain interconnection and reciprocal compensation issues raised by AT&T, is submitted at the request of Commission staff. Although these issues were contested by AT&T in proceedings in both Kansas and Oklahoma prior to the filing of SBC's joint application, SBC did not address them in its opening comments.

The core interconnection question that AT&T raised is whether SBC is providing CLECs with interconnection at any technically feasible point, including at a single point of interconnection ("POI") within each LATA, on just, reasonable, and non-discriminatory terms and conditions. In its opening comments, AT&T demonstrated that SBC is not providing CLECs with such interconnection. *See* AT&T Comments at 24-30. In particular, AT&T showed that the SBC's obligation to provide a single point of interconnection is set forth, both in the Oklahoma and Kansas 271 agreements ("O2A" and "K2A"), in terms that inappropriately shift onto CLECs the incumbent LEC's costs of transporting traffic to and from the POI, and impose access charges on CLECs in situations where the Act and this Commission's rules require SBC to provide reciprocal compensation. In support of this showing, AT&T submitted testimony that provided several examples of SBC's improper cost-shifting and denial of reciprocal compensation. *See* Declaration of Eva Fettig, Comments of AT&T Corp., Att. 2 (Nov. 15, 2000) ("Fettig Decl.").

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SBC's principal response is to urge the Commission not to reach the merits. In the alternative, SBC maintains that its interconnection policies do comply with the Act. Neither argument has merit.

I. THE INTERCONNECTION ISSUES ARE RIPE AND REQUIRE RESOLUTION

At the outset, SBC asks the Commission not to address the interconnection and reciprocal compensation issues on the merits. *See* SBC Reply at 77-79. In SBC's view, AT&T has raised only "fact-based interconnection disputes" based on "the specific network architecture that a CLEC might wish to deploy." *Id.* at 77-78. Accordingly, SBC claims that these issues should be resolved through "negotiation and arbitration procedures" under section 252 rather than in this proceeding. *Id.* at 77.

There is no valid basis for deferring a decision on this issue. *First*, contrary to SBC's mischaracterization, the dispute between AT&T and SBC here is a quintessentially legal one. The question is whether an incumbent LEC fulfills its obligation to permit CLECs a single point of interconnection within a LATA when it treats that single point of interconnection differently for purposes of assessing transport and access charges than it treats a point of interconnection established within a given exchange. AT&T's position is that such disparate treatment, as embodied in the K2A and O2A, is fundamentally incompatible with the Act's requirement that CLECs be permitted to choose any technically feasible point of interconnection, as set forth, *inter alia*, in sections 251(c)(2) and 271(c)(2)(b)(i) of the Act, the *Local Competition Order*, and the *Texas 271 Order*. *See also* 47 C.F.R. § 51.305(a)(2) (ILEC must provide interconnection "[a]t any technically feasible point within the incumbent LEC's network including, at a minimum: (i) The line-side of a local switch; (ii) The trunk-side of a local switch; (iii) The trunk interconnection points for a tandem switch; (iv) Central office cross-connect points; (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and (vi) The points of access to unbundled network elements as described in Sec. 51.319") SBC disagrees, and attempts to support the language of the K2A and O2A by referring to the *Local Competition Order* and to the *Texas 271 Order*. SBC's mischaracterization of the Commission's prior orders is addressed in Part II of this letter. For now, the important point is that SBC's response, and in particular its discussion of the various fact scenarios discussed by the parties, simply confirm that the underlying legal dispute is a real one, with practical consequences for local entry depending on how it is resolved. Under the plain language of section 271, this underlying legal dispute must be resolved before the Commission can make any finding that SBC has "fully implemented" its interconnection and reciprocal compensation obligations under the competitive checklist. 47 U.S.C. §§ 271(c)(2)(B)(i), (xiii); (d)(3)(A)(i).

Second, there is also no merit to SBC's plea that the Commission defer action until after CLECs "request this form of interconnection" and pursue other proceedings under section 252. SBC Reply at 87. The simple fact is that AT&T has requested – and SBC has

refused to provide – interconnection on the terms and conditions required by the Act.[1] That is true both in Kansas and in Oklahoma.

In Kansas, AT&T already arbitrated the issue of a single point of interconnection. Accordingly, no further arbitration on this issue is currently available to AT&T. While the lawfulness of the particular language adopted in the K2A was not arbitrated, that was the result of SBC's strategic decision not to advance that language, but rather to defend its case on the more extreme, plainly unlawful position that it was not required to provide a single point of interconnection per LATA on any terms. Because SBC never advanced in Kansas its current position that it is free to deny CLECs the cost-savings associated with a single POI, SBC effectively denied AT&T the ability to get that issue fully resolved in arbitration. *See* Fettig Decl. ¶¶ 26-28. As the KCC Staff has endorsed a proposed amendment to the K2A that mirrors the language in the O2A, and has not disagreed with SBC's proposed interpretation of that language, *see id.*, the issue of the lawfulness of that language is squarely presented here. To relegate AT&T to further proceedings in Kansas would simply reward SBC for having taken an extreme and unlawful position in the arbitration that has already occurred, and would further encourage SBC and indeed all RBOCs to use the arbitration process as both an entry barrier and a means to delay and evade compliance with fundamental statutory obligations.

In Oklahoma, arbitration, though available to AT&T, will not provide a viable means of resolving the legal issue presented here. That is because AT&T already presented this issue to the Oklahoma Corporation Commission ("OCC") in last summer's section 271 proceedings, and the OCC squarely rejected AT&T's position that SWBT's interconnection language constitutes a checklist violation. Moreover, the OCC's Reply Comments now confirm its view that the interconnection language in the O2A "fully complies" with the law. OCC Reply Comments at 16. ("The OCC believes that the O2A . . . fully complies with the intentions of the FCC's single point of interconnection requirement.") And while the OCC is aware of the pending arbitration, it apparently sees that proceeding as raising only the issue of appropriate interconnection "locations." *Id.* Thus, AT&T has no reason to believe that arbitration provides a meaningful avenue of relief for it in Oklahoma.

Indeed, it may be useful briefly to recount here how thoroughly the issue has been vetted in Oklahoma. Although the OCC initially agreed that AT&T's concerns regarding the lawfulness of SBC's proposed interconnection amendment to the O2A had merit, the OCC subsequently and without explanation reversed ground; the OCC approved SBC's proposed POI

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[1] SBC's further claim Reply Affidavit of Rebecca Sparks ("Sparks Reply Aff."), ¶ 11) that AT&T has failed to provide SBC with its specific requirements for interconnection at an access tandem is incorrect. SBC does not and cannot deny that SBC has yet to respond to AT&T's longstanding request, repeated most recently at the October 2000 Oklahoma Technical Conference, that SBC provide AT&T with the vital information as to which SBC end offices do not subtend to a local tandem. Fettig Decl. ¶ 36. Without this information, AT&T cannot determine precisely which local exchanges it may choose to serve through interconnection at an SBC access tandem, and therefore cannot proceed to develop and implement market entry plans or provide more specific interconnection requests.

language, and then denied AT&T's motion to set aside that new ruling. *See* AT&T Comments at 28; Fettig Decl. ¶¶ 19-20. The OCC now asserts (Reply at p. 12) that although it appeared to rule in AT&T's favor, it meant to rule for SBC, as indicated by the fact that it attached SBC's version of Attachment 11 to the order. It is true that SBC's attachment was annexed to the original order. But the OCC's explanation in its original decision focused not on the attachment but on the concerns that AT&T raised:

> AT&T argued that [SWBT's] proposed Attachment 11 . . . improperly shifts the costs of transport and termination on to the CLEC, in violation of the federal Act. The Commission finds that AT&T's concerns have merit and directs that [SWBT's] Attachment 11 be replaced with the Attachment 11 proposed by AT&T as Attachment 3 to its Comments on the O2A. The Commission finds that this O2A provision, as amended, fully complies with the FCC's single [POI] requirement.

OCC Order (original version), p.164. The OCC account of last summer's proceedings also is inconsistent with the record in one noteworthy respect. The OCC now claims, for example, that:

> [i]t was obvious that a mistake had been made regarding Attachment 11 because no AT&T witness was presented at the hearing to support AT&T's version of Attachment 11. AT&T merely proposed in its comments that upon conclusion of the Texas arbitration, the resulting contract language should be incorporated into the O2A. AT&T then attached its proposed Attachment 11 to the comments.

OCC Reply at 12 (internal citation omitted).

In fact, AT&T did submit written testimony that discussed the transport issue. Because SBC did not propose its own language that matched the MCI language referenced in the Texas 271 Order until the rebuttal phase, and because SBC waived cross-examination of AT&T's witnesses, there was no occasion for specific oral testimony on AT&T's new Attachment 11. Nevertheless, AT&T's original testimony discussed all of the transport issues that are resolved through the Attachment 11 language that it also submitted.[2] It is thus clear that

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[2] *See* Direct Testimony of Eva Fettig (filed August 17, 2000), *Application of the Attorney General* et al. *to Explore Southwestern Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996* (OCC Cause No. PUD 970000560) ("PUD 97-560"), pp.5-6 (discussing SBC's illegal POI requirements and inadequacy of language from Texas MCI interconnection agreement), 7 ("Incumbents cannot require additional points of interconnection for the purpose of reducing their own transportation costs and forcing those costs back on the new entrants. Unfortunately, this is exactly what SWBT's interconnection policy does."); AT&T's Proposed Findings of Fact and Conclusions of Law at Issue 1 (PUD 97-560, September 26, 2000); AT&T's Motion to

the OCC has approved SBC's proposed attachment to the O2A notwithstanding AT&T's objections. This Commission should therefore not require further state proceedings on this issue.

Finally, the Commission should reject SBC's attempt to recharacterize the legal issues at stake as mere factual disputes about the application of SBC's position in various scenarios. As shown in Part II below, the disputes are not factual but legal. But in all events, even factual disputes about the applicability of SBC's interpretation of its interconnection obligations would provide no valid reason for avoiding the threshold legal issue. SBC's reply submission confirms that SBC's legal position conflicts with AT&T's, and despite litigation and arbitration, both state commissions have now approved the interconnection language SBC has endorsed. Given these facts, the possibility of yet more state proceedings provides no valid basis to avoid resolution of the core legal issue here. For all of these reasons, then, the Commission can and must resolve whether SBC has an enforceable legal commitment to provide, and is presently fully able to provide, CLECs with the interconnection and reciprocal compensation required by law. Memorandum Opinion and Order, Application of Ameritech, Michigan Pursuant to Section 271 to Provide in Region InterLATA Services in Michigan, 12 FCC Rcd. 20543, ¶ 110 (1997) ("*Michigan 271 Order*").

II. SBC'S SUBSTANTIVE RESPONSES LACK MERIT

On the merits, SBC addresses each of the four fact scenarios that AT&T offered to illustrate the ways in which SBC's misinterpretation of its legal obligations effectively denies CLECs the very cost-savings that a single POI is intended to produce. SBC Reply at 79-87; Sparks Reply Aff., ¶¶ 8-19. As shown below, none of SBC's responses has merit. Indeed, if accepted, they would completely subvert the basic principles and purpose of the Act's broad interconnection and reciprocal obligations.

A. Interconnection Within A Single Exchange

The first scenario that AT&T offered of SBC's unlawful cost-shifting involved the situation where a CLEC has established a POI at an SBC local tandem. The example involved calls within the local exchange served by that local tandem between a CLEC customer and an SBC customer. For a call from the CLEC customer to the SBC customer, AT&T showed that SBC would require the CLEC to bear the cost of transport and switching not only on its side of the POI, but on SBC's side as well. For a call from the SBC customer to the CLEC customer, however, SBC refuses to pay for the transport on the CLEC's side of the POI on a reciprocal compensation basis, as well as for its share of the costs of the interconnection facilities (either in proportion to the amount of traffic it places over the facilities, or on any other basis). *See* Fettig Decl. ¶ 23; *see also* Section 252(d)(2)(A) ("just and reasonable" reciprocal compensation requires "mutual and reciprocal recovery by each carrier of costs associated with the transport

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Reconsider and Clarify Order No. 445180 (PUD 97-560, October 9, 2000); AT&T's Motion to Reconsider Order Nunc Pro Tunc (PUD 97-560, October 16, 2000).

and termination on each carrier's network facilities of calls that originate on the network facilities on the other carrier"); In *re TSR Wireless, LLC, et. al., v. U.S. West*, file Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000) (finding that LEC efforts to charge for the "delivery of [LEC-originated] traffic would be unjust and unreasonable" and therefore that ILECs "may not impose upon Complainants charges for the facilities used to deliver LEC-originated traffic to Complainants"). The CLEC thus is forced to bear the full cost of an interconnection arrangement that benefits both SBC as well as the CLEC.[3]

There is no fact dispute about SBC's position here. Indeed, nowhere does SBC deny that its position is precisely as AT&T has described it. Instead, SBC simply talks past this basic point. SBC Reply at 79-80; Sparks Reply Aff. ¶ 11. SBC first claims that the O2A and K2A require interconnection to be developed on a "mutually agreeable" basis. *See* SBC Reply at 80; Sparks Reply Aff. ¶ 11. This requirement is itself a direct violation of the Act. The Act requires the incumbent LEC to accommodate the CLEC's choice of a point of interconnection, so long as it is technically feasible. § 251(c)(2).[4] It is also a non-sequitur. SBC's reply submission itself makes clear that SBC will find a single POI within an exchange to be "agreeable" only if SBC is permitted to impose its transport costs and access charges on the CLEC—an arrangement that defeats the very purpose of establishing the single POI and that violates SBC's obligations pursuant to the Act. SBC's response thus confirms the need to resolve, rather than defer, the legal dispute.

SBC also claims that, if a CLEC were willing "to interconnect using a mid-span fiber meet," then SBC would agree to terms in which "each party bears its pro-rata share of that arrangement." SBC Reply at 80; Sparks Reply Aff. ¶ 11. This response again confirms SBC's refusal to offer reasonable access to a single POI, for two reasons.

First, as SBC has elsewhere made clear, SBC's mid-span meet arrangement involves a CLEC extending facilities to a manhole immediately outside an SBC central office. *See SBC CLEC Handbook for Oklahoma*, Products & Services: Interconnection, ¶2.2.1 Mid-Span Fiber Interconnection (available at https://clec.sbc.com/clechb). In this arrangement, the CLEC bears all of the costs of all of the fiber and electronics needed to establish such interconnection, while SBC absorbs only the comparatively trivial costs of connecting from the manhole to its immediately adjacent building. As a result, SBC's mid-span meet does not meet the CLEC halfway, in terms of either geography or cost, and does not provide an equitable sharing of costs.

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[3] Interconnection within a single local exchange area is governed by section 1.2 of O2A Attachment 11. Neither that section, nor any other, provides any standard to govern allocation of costs of interconnection facilities as between SBC and the CLEC. The parallel K2A language appears at Attachment 11, section 1.1.

[4] AT&T's proposed amendment to the O2A (see SBC Reply Comments at 80) is not to the contrary; by seeking to provide a mechanism for resolving interconnection disputes, AT&T has in no way waived its right to seek resolution before this Commission of the basic rules and principles that will apply to such disputes.

Second, the fact that SBC would offer to bear "its pro-rata share" of interconnection costs only in this unique arrangement, where SBC needs extend its facilities only to a manhole outside its central office, shows that SBC is unlawfully attempting to dictate where and how CLECs may choose to interconnect. Under section 251(c)(2), it is the CLEC – not SBC – that may select any technically feasible method and point of interconnection. The FCC has stated that

> under sections 251(c)(2) and 251 (c)(3) any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled network elements.

First Report and Order, Implementation of the Local Competition Provisions of the Telecom Act of 1996, 11 FCC Rcd. 15499, ¶ 549 (1996) ("*Local Competition Order*"). SBC, in turn, must accommodate that choice. It may not discriminate by offering more favorable terms to CLECs who choose a point and method of interconnection more convenient for SBC. SBC's willingness to comply with its obligations only when CLECs choose points of interconnection via a mid-span meet interconnection arrangement that minimize SBC's costs flatly conflicts with SBC's duty to permit CLECs to interconnect at any technically feasible point that the CLEC chooses.

B. Interconnection At One POI Serving Multiple Exchanges Within A Local Calling Area

AT&T's second example involves an arrangement where a CLEC interconnects at an access tandem that serves multiple local exchanges. Fettig Decl. ¶ 23. As is made expressly clear in the example, the multiple local exchanges served by the tandem are all assumed to lie within a single SBC "local calling area." *Id.* As a result, when any SBC customer originates and terminates a call within that local calling area, SBC rates the call as local, even if it traverses more than one local exchange. *Id.* Given that, all calls that originate and terminate within this local calling area should be subject to reciprocal compensation.

The O2A does not expressly require SBC to provide reciprocal compensation in this situation. As AT&T noted, one SBC witness indicated at an Oklahoma technical conference that SBC would provide reciprocal compensation in this situation (Fettig Decl. ¶ 23 n.21). In its Reply, SBC merely reiterates that assertion. SBC Reply at 81 n.52. SBC does not propose to amend the O2A, however, or otherwise indicate how it will provide CLECs with a legally enforceable commitment to provide reciprocal compensation when a CLEC has established a single POI within a local calling area.[5] The Commission should insist on proof of a legally

[5] While SBC asserts that the "K2A and O2A, like the T2A, clearly state that local calls are treated as local for reciprocal compensation purposes" (Sparks Reply Aff. ¶ 11), SBC fails to address the fact that neither agreement

enforceable commitment before deeming SBC to have fully implemented its interconnection and reciprocal compensation obligations. *Michigan 271 Order* ¶ 110.

C. The Impact Of Collocation On Points Of Interconnection

SBC then skips ahead (Reply at 81-82) to AT&T's last example, which explains how SBC discriminates against CLECs who choose to collocate at numerous SBC end offices. Such collocation would be necessary in order to implement, for example, a UNE-L business plan (that combines unbundled loops with the CLECs' own switching and transport facilities). But SBC's policies, as evidenced in the O2A and K2A, discriminate against such CLECs by deeming each such collocation to be a point of interconnection, and requiring the CLEC to establish direct trunks over the CLEC collocation facility. *See* Fettig Decl. ¶ 23. SBC's policy thus forces those CLECs to dedicate valuable collocation space to additional facilities to accommodate the interconnection, and imposes additional transport costs on CLECs between the points of collocation and the CLEC's own end offices. In effect, SBC's policy denies CLECs their right to choose technically feasible points of interconnection under § 251(c)(2), and is plainly discriminatory, because it means that only CLECs that do not pursue collocation are free to choose a single point of interconnection; all those who pursue collocation lose that option.

In response, SBC disavows its prior interpretation of the O2A and K2A. SBC now claims that the O2A and K2A do not so constrain CLECs, and in the alternative proposes amendments to the O2A and K2A that purport to preserve the ability of the CLEC to designate a single POI regardless of the presence of any collocated facilities. SBC Reply at 82 n.53; Sparks Reply Aff. ¶ 14. SBC's backpedaling is welcome, but plainly does not go far enough. SBC's proposed amendment would allow a CLEC to avoid having its collocation designated a point of interconnection by SBC only if the CLEC "chooses a single point of interconnection for the LATA as set forth in Paragraph 1.3." *See* Sparks Reply Aff. ¶ 14. That is unacceptable, for two reasons.

First, the scope of interconnection permitted by Paragraph 1.3 is itself unduly constrained. Contrary to SBC's generic representations, paragraph 1.3 does not require, and SBC has refused to provide, nondiscriminatory interconnection "at an access tandem." Sparks Reply Aff. ¶ 11. This refusal is competitively very significant. Approximately 30-35% of SBC end offices (in the five-state SWBT region) are not homed to a local tandem; instead, SBC relies on direct trunking to handle its traffic between those end offices. While that configuration may

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makes clear how calls that traverse more than one local exchange but originate and terminate within a single local calling area are treated for reciprocal compensation purposes. And SWBT's refusal to add such language stands in stark contrast to its willingness to do so in Missouri. *See* Transcript of Missouri Public Service Commission Case No. 99-227 (Missouri's 271 docket) at 2994-3001 (November 9, 2000) (SWBT witness Rebecca Sparks confirming that language addressing this issue, as read into the record by a representative of Gabriel, a Missouri CLEC, was acceptable to SWBT). It is SBC's refusal to provide a written, enforceable commitment to treat all such calls as local for reciprocal compensation purposes, and not impose access charges on CLECs for calls that SBC would rate as local for its own customers, that is the issue here.

be appropriate for an incumbent monopolist, it is thoroughly inefficient for an entering CLEC. AT&T has therefore been requesting, since December 1999, the right to interconnect at SBC's access tandems wherever no local tandems are available. Fettig Decl. ¶ 24. Although SBC itself uses these access tandems solely to provide exchange access services, it is technically feasible for a CLEC to interconnect with access tandems for the purpose of exchanging local traffic. *Id.*

SBC has consistently refused, however, to allow its access tandems to be used for local interconnection on the same terms and conditions that would apply to, for example, interconnection at a local tandem. Rather, SBC has insisted that it would allow such interconnection, if at all, only if AT&T would pay switched access rates for all local traffic that traverses the access tandem. *Id.* To refuse to treat local traffic as local traffic, and to do so solely because it passes through a tandem that SBC chooses to use exclusively for access, is wholly arbitrary and discriminatory. Such a practice not only denies the CLEC its right to establish a technically feasible point of interconnection,[6] but it discriminates against CLECs that choose to interconnect at an access tandem as opposed to some other location (*e.g.*, an SBC end office) where SBC would not insist on charging access for local traffic.

SBC's proposed amendments to the O2A and K2A are flawed for a second, equally fundamental reason. The underlying, and incorrect, assumption of each collocation provision and proposed amendment is that SBC is entitled to designate which locations in a CLEC's network SBC will treat as a point of interconnection, and what the consequences of that decision will be. SBC has it exactly backwards. It is the CLEC, not the incumbent LEC, that has the right, under section 251(c)(2), to select the point(s) at which the CLEC wishes to interconnect with the incumbent LEC. So long as the CLEC selects a technically feasible point, SBC is obliged to provide the CLEC with reasonable and nondiscriminatory interconnection at that point. Rather than carve out an unduly narrow exception (e.g. section 1.3 of the O2A) to an SBC-designated point of interconnection, SBC should amend the O2A and K2A to clarify that CLECs may designate the point(s) of interconnection that they choose, and to confirm that SBC will not discriminate in the terms and conditions it offers to CLECs based on the particular point of interconnection the CLEC selects.

D. Effect Of POI Established In A Separate Exchange On Calls Within A Single Local Exchange Area

The final scenario SBC addresses, and the one to which it devotes the most space, involves calls within a single local exchange area. In this scenario, the CLEC has established a point of interconnection at a local tandem that serves multiple local exchanges, but is located outside the particular exchange area in question. In this circumstance, AT&T pointed out, and SBC does not deny, that SBC will refuse to treat such calls as local calls subject to reciprocal compensation. Rather, SBC's position is that, for calls to a CLEC customer originated by an

[6] FCC Rule 51.305(a)(2) provides that an ILEC must provide interconnection "[a]t any technically feasible point within the incumbent LEC's network", including "(iii) The trunk interconnection points for a tandem switch".

SBC customer, the CLEC must pay for the transport on SBC's side of the POI – i.e., for transport between SBC's end office and the CLEC's POI. Thus, SBC is refusing to pay for the cost of delivering its traffic to the CLEC's POI, and is imposing those transport costs on the CLEC. As noted above, the imposition of charges on the CLEC for the delivery of ILEC originated traffic has been rejected by the FCC. *See In re TSR Wireless, supra* (finding that LEC efforts to charge for the "delivery of [LEC-originated] traffic would be unjust and unreasonable" and therefore that ILECs "may not impose upon Complainants charges for the facilities used to deliver LEC-originated traffic to Complainants"); *see also* 47 C.F.R. §§ 51.703(b). For calls to an SBC customer originated by a CLEC, SBC again refuses to treat the call as subject to reciprocal compensation, and instead requires the CLEC either to establish a local POI or pay the cost of transport between the CLEC POI and the SBC end office. Fettig Decl. ¶ 23, pp. 17-18; *see also* O2A Attachment 11, revised section 1.3 as proposed in Sparks Rebuttal Testimony (included at Attachment 1 to Fettig Decl.); parallel language was added to K2A Attachment 11, section 1.2 in Sparks Reply Aff. at 6 (August 2, 2000). In short, here again SBC is attempting to defeat the purpose of a single point of interconnection by forcing the CLEC to bear more than its share of the transport costs.

SBC cannot and does not deny that the calls in question are local calls that, if the CLEC established a local point of interconnection within the local exchange area in question, would be subject to reciprocal compensation. But SBC claims that the fact that the CLEC has chosen a single POI that is outside the local exchange area is sufficient grounds, in itself, to deny CLECs the reciprocal compensation arrangements that would otherwise be required. As discussed above, SBC's policy violates section 251(c)(2), by denying CLECs the ability to select a single POI on the same terms and conditions that would be available to another CLEC selecting a different POI that SBC would prefer. None of SBC's arguments for creating an exception to the basic obligations under section 251(c)(2) has merit.

SBC rests its argument on its assertion that, in "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." SBC Reply Br. at 83. In such circumstances, SBC maintains, it is the CLEC that should pay bear all of the costs of transporting what could otherwise be a local call handled within a local exchange area between that exchange area and the CLEC's POI. *Id.* at 84. Such arrangements were "never meant" to be covered by reciprocal compensation, SBC claims, (*id.*) but rather represent "'expensive interconnection'" that must be paid for by CLECs. *Id.* (*quoting Local Competition Order* ¶ 199). In short, in SBC's view, a CLEC must choose a point of interconnection that is efficient from SBC's perspective, or else bear all the costs of transport and termination.

SBC's position has no merit. While SBC claims that "efficiency is not to be judged solely from AT&T's perspective" (SBC Reply 85), Congress reached a different judgment in section 251(c)(2). As the Commission has clearly explained, the reason why "section 251(c)(2) . . . allows competing carriers [and not incumbent LECs] to choose the most efficient points at which to exchange traffic" is to "lower[ ] the *competing carriers'* costs of,

among other things, transport and termination of traffic." *Local Competition Order*, ¶ 172 (emphasis added). This primary purpose is undone if CLECs must accommodate the incumbent LECs preferences. By forcing CLECs to accommodate SBC's preferred points of interconnection, SBC advocates an approach that was effectively rejected by Congress and this Commission, and that would thwart the basic purpose of section 251(c)(2). *See* AT&T Comments at 24-25; *Local Competition Order* at ¶¶ 198-99; 209-212; *id.* at ¶ 209 (section 251(c)(2) relieves CLECs of the need "to transport traffic to less convenient or efficient interconnection points."). SBC must not be permitted to deny CLECs the benefits that section 251(c)(2) and a single POI are intended to provide by shifting back onto CLECs the very costs that a single POI should allow CLECs to avoid.

There is no more validity to SBC's claim in the context of a rural state than anywhere else. Indeed, it is only through enforcement of the Act's requirements and the Commission's rules that CLECs will have the incentive and ability to enter in such states and provide consumers with an alternative to the incumbent. In this regard, SBC's "Topeka/Colby" hypothetical is instructive. Suppose that a CLEC established a single POI (for the purpose of handing off and receiving traffic)[7] near Topeka, and that the CLEC's initial market entry was focused on Topeka. If the CLEC wanted to expand its service to Colby, the most efficient option for the CLEC likely would be to continue to use the Topeka-based POI. Contrary to SBC's misstatement, choosing such a POI would not permit CLECs to "avoid the financial consequences of their interconnection choices." SBC Reply 85. Under the Act and the Commission's rules, the CLEC must bear the costs of transport on its side of the POI. For that reason, the CLEC itself would eventually have an incentive, if the CLEC's volume of Colby-based customers increased sufficiently, to establish another POI closer to Colby. But in the meantime, allowing the CLEC to choose its POI ensures that the CLEC is able to develop and grow its network in a manner that is most efficient for implementing its business plan, and thus for promoting local competition. In short, it is by accommodating the efficiency of a CLEC's business plan – and not the incumbent LEC's existing network[8] – that the Act will protect consumers and produce lower costs.[9]

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[7] A single POI as described above is only one method of interconnection that a CLEC might choose; there are many others. For example, a CLEC might choose to have ILECs deliver traffic on one-way trunks to the CLEC's end office while the CLEC delivers its traffic on one–way trunks to an equivalent number of ILEC tandems.

[8] Indeed, SBC's local calling areas reflect SBC's rate setting for its own customers, unrelated to the capacity of switches and facilities, and are likely to be subject to substantial changes as competitors seek competitive advantages for their own respective local service offerings. Interconnection based solely on SBC's local calling areas would disregard the legitimacy of competitors' local calling areas, discourage competitors from expanding local calling areas, and would deny consumers the efficiencies of the alternative network architectures of AT&T and other CLECs.

[9] There is also no basis for creating an exception to section 251(c)(2) based upon the "traffic imbalance" caused by "Internet traffic" originating on SBC's network. Sparks Reply Aff. ¶ 17. If there were any merit to SBC's concerns in that regard, the Commission can and should address them in the separate proceedings related to intercarrier compensation for Internet traffic, and not by carving out exceptions to general statutory duties under section 251.

Under SBC's approach, by contrast, the CLEC is required either to choose points of interconnection that are efficient for *SBC* or, if it chooses a single POI in a LATA, it must bear all the costs of transport for both its calls as well as for SWBT's calls. SBC Reply 85. That approach turns the Act on its head. CLECs are not required to deploy network arrangements that are efficient for the incumbent LEC. That "'could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.'" AT&T Comments at 24 (citation omitted). For that same reason, CLECs that decline to design their points of interconnection to meet the incumbents' preferences may not be forced to bear the incumbent's costs of transport to those points. Indeed, under a bill-and-keep scenario, the burden on CLECs in SBC's example above would be even greater, because then the CLEC would not be compensated for terminating traffic that it has had to haul for hundreds of miles, and for which it has incurred the costs to establish the facilities to do the hauling. Rather, the Act requires incumbent LECs to grant CLECs non-discriminatory access to and interconnection with incumbent LEC networks precisely in order to ensure that CLECs are able to take advantage of the efficiencies and ubiquitous nature of the incumbent LEC's network without having to duplicate them.

The *Local Competition Order* provides no support for SBC's position. As noted above, the Commission rejected SBC's interpretation at the outset (paragraph 172) of its discussion of interconnection and section 251(c)(2).[10] And nowhere does SBC even attempt to respond to AT&T's showing (AT&T Comments at 25-26) that SBC's policies violate the Commission's explicit rules requiring reciprocal compensation for local traffic that originates on the incumbent LEC's network. *See* 47 C.F.R. §§ 51.703(b); 51.711.

Instead, SBC relies on one snippet, drawn out of context, in which the Commission referred to the obligation of CLECs to pay for "'expensive interconnection.'" SBC Reply Comments at 84-85 (quoting *Local Competition Order* ¶ 199). It is obvious from the context of the paragraph that SBC relies upon, however, that the "expensive interconnection" that the Commission is addressing was interconnection that was technically feasible, but that required unusually expensive physical work on the incumbent LEC's part to establish. *See Local Competition Order* ¶ 199. Paragraph 199 is not a discussion about the incumbent LEC carrier's transport and reciprocal compensation obligations as they arise from its duty of interconnection –

[10] See also *Local Competition Order*, ¶ 1062 ("The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier provides one-way trunks that the inter-connecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the inter-connecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. The inter-connecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the inter-connecting carrier.") (emphasis added); 47 C.F.R. § 51.709(b) ("The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.").

which is the heart of SWBT's POI proposal. The *Local Competition Order* itself thus forecloses the gloss that SBC now tries to impose upon it.

Finally, there is no basis for SBC's claim (Reply at 86-87) that the Commission resolved this issue in the *Texas 271 Order* when it cited language from the SBC/WorldCom interconnection agreement with approval. The Commission relied on that language for the different purpose of demonstrating that SBC was prepared to permit CLECs to establish, as a physical matter, a single point of interconnection per LATA. The issue whether SBC had imposed unlawful terms and conditions on such interconnection was neither briefed nor argued to the Commission.

That issue has, however, been raised – and fully aired – here. And the issue is one that is very important to the future prospects of local competition. If this Commission permits SBC to deny CLECs the economic advantages of a single point of interconnection, or relegates them to yet more years of attempting to obtain these advantages through protracted litigation with SBC, it will have imposed a substantial barrier to new entry that will delay and deter the onset of local competition, not only in Kansas and Oklahoma but in other states as well. The Commission should therefore find that SBC has failed fully to implement its obligations to provide CLECs with the ability to interconnect at any technically feasible point and with reciprocal compensation in accordance with the Act and this Commission's rules.

Sincerely,

Mark E. Haddad /RMA

Mark E. Haddad

cc: A. Gomez
J. Goldstein
K. Dixon
R. Beynon
D. Shetler
D. Attwood
G. Reynolds
M. Carey
K. Farroba
J. Stanley
T. Navin

I hereby affirm under penalty of perjury that the factual assertions set forth in the foregoing submission by AT&T are true and correct to the best of my knowledge and belief.

Executed on December 18, 2000

Eva Fettig