

is in one local exchange (or local calling area), and the calling and called parties are in another. The FCC has stated, however, that it has not "consider[ed] the issue of how the choice of interconnection would affect inter-carrier compensation arrangements."<sup>34</sup> The FCC further stated that "[t]o the extent that the parties believe that this is a matter requiring more explicit rules, . . . [the parties are invited] to file a petition for declaratory ruling or petition for rulemaking with the . . . [FCC]." Id. at ¶ 233.

To the extent that the parties have raised the issue of the relationship between single point of interconnection and reciprocal compensation, the Commission determines that this issue is not appropriately decided in the context of section 271 compliance. Based on the findings of fact above, and that only AT&T finds that there is still an issue on this point, SWBT has demonstrated that it provides interconnection at any single, technically feasible point within a LATA in compliance with 251(c)(2).

## **(2) Checklist Item 2: Nondiscriminatory Access to Network Elements**

Section 271(c)(2)(B) requires SWBT to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."

In addition, the FCC has issued guidance in its UNE Remand Order.

### **Access to UNEs Generally**

Section 271(c)(2)(B)(ii) requires SWBT to offer nondiscriminatory access to network elements. See 47 U.S.C. § 271(c)(2)(B)(ii).

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<sup>34</sup> Memorandum Opinion and Order, Joint Application by SBC Communications Inc., SWBT, and Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, FCC CC Docket No. 00-217, Rel. Jan. 22, 2001, ¶ 234.

Based on the findings of fact set out above, the Commission concludes that SWBT provides nondiscriminatory access to UNEs at any technically feasible point under just and reasonable rates, terms, and conditions, and at cost-based rates, as required by the Act. See 47 U.S.C. §§ 251(c)(3), 252(d)(1); See also, Texas Order ¶ 214.

### **UNE Combinations**

Section 251(c)(3) requires that SWBT provide nondiscriminatory access to UNEs under section 251(c)(3), including the requirement that it provide UNEs "in a manner that allows requesting carriers to combine such elements in order to provide [a] telecommunications service." 47 U.S.C. § 251(c)(3).

The FCC has emphasized that the ability of requesting carriers to use combinations of UNEs is "integral to achieving Congress' objective of promoting competition in local telecommunications markets." Texas Order ¶ 215.

ASCENT made an objection to SWBT's proposed secured frame option. See Response of ASCENT to SWBT's Updated Record, page 18. The FCC approved, however, this identical offering in the T2A, and concluded that SWBT "provides access to UNEs in a manner that allows requesting carriers to combine" network elements. Texas Order ¶¶ 216-217. The M2A's UNE combination provisions mirror those contained in the T2A. Therefore, the Commission rejects ASCENT's objection.

The Commission also rejects AT&T's claim that "the Act should be construed to require SWBT to combine elements for CLECs" or to do so based on TELRIC rates. AT&T's Comments at 18; AT&T's Post Oct. Hearing Comments at 17. The Commission also rejects requests to extend the period during which the UNE-P is offered or to extend the voluntary commitment to provide the EEL. See, e.g., Birch's Tidwell Test. at 11-15; WorldCom's Comments

at 29-33. As the Eighth Circuit recently reaffirmed, such a requirement would be unlawful. The Eighth Circuit held that

Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner."

Iowa Utils. Bd., 219 F.3d at 759. Thus, SWBT is not required to perform these UNE combinations and the Commission cannot impose a TELRIC price for this voluntary offering. See, Texas Order ¶ 235; SWBT's Sparks Reply Aff. ¶¶ 32-33.

The Commission concludes that the limitations that SWBT places on the EEL are wholly consistent with the recent findings of the FCC in its UNE Remand Supplemental Order<sup>35</sup> and its UNE Remand Supplemental Order Clarification<sup>36</sup> regarding the use of network elements to provide access services. The Commission therefore rejects the proposed modifications to the EEL of Birch and WorldCom. See also, Texas Order ¶ 227.

The Commission also disagrees with IP Communication's assertion that the UNE Remand Order does not prevent IP Communication from connecting unbundled dedicated transport services. IP Communication's argument is incorrect under the UNE Remand Supplemental Order Clarification's provisions for when carriers may convert existing special access services to network elements. See, SWBT's Sparks Reply Aff. ¶ 42.

The Commission also rejects ASCENT's objection to section 14.3.3 of the UNE attachment. See ASCENT's Comments at 17. As Ms. Sparks testified, the M2A provision, like its counterpart provision in the T2A,

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<sup>35</sup> Supplemental Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 1760 (1999) ("UNE Remand Supplemental Order").

<sup>36</sup> Supplemental Order Clarification, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 9587 (2000) ("UNE Remand Supplemental Order Clarification").

simply notes when SWBT may elect not to perform the work of combining UNEs that are not already combined. One of the triggers is the presence of four or more collocators in a central office. See SWBT's Sparks Reply Aff. ¶ 46. Again, this trigger is fully consistent with the Act, which does not require SWBT to combine UNEs that are not already combined. Moreover, if SWBT elects not to combine in that office, each collocator - whether the first, fifth, tenth, etc. - has the same requirements and rights. Id.

The Commission finds that SWBT's offerings enable CLECs themselves to combine UNEs in compliance with section 251(c)(3). See SWBT's Deere Aff. ¶¶ 67, 140-154; SWBT's Sparks Aff. ¶¶ 33-34, 91; see also M2A Attach. 6 - UNE.

### **Line Sharing**

The record shows that SWBT was in compliance with the Line Sharing Order on May 29, 2000 - one week in advance of the FCC's implementation date. SWBT's Chapman Aff. ¶ 53.

The prices, terms, and conditions for SWBT's line sharing in the M2A are subject to a limited true-up with permanent prices, terms, and conditions set in the Commission's Case No. TT-2001-440. The Commission concludes that with the optional appendix for line sharing in the M2A, SWBT is in full compliance with the FCC's Line Sharing Order.

The Commission will also establish permanent prices, terms, and conditions for line splitting in Case No. TO-2001-440. In the interim, the line splitting appendix to the M2A provides for line splitting in Missouri at the same prices, terms, and conditions as in the state of Texas.

### **Intellectual Property**

AT&T argues that "SWBT should indemnify CLECs using UNEs in the same manner as SWBT from infringement claims by SWBT's vendors." AT&T's Comments at 9; see also AT&T's Kohly Test. at 51; T.2480 (AT&T's Kohly).

The FCC has held, however, that "the Intellectual Property Order did not require that incumbent LECs indemnify competitive LECs for any intellectual property liability associated with their use of UNEs, and the Commission does not find that unwillingness to provide such indemnification would necessarily constitute a violation of the Act." Texas Order ¶ 230. Rather, the FCC held that "[a]ll that the nondiscrimination principle requires in this context is that the incumbent LEC utilize its best efforts to obtain coextensive third party intellectual property rights for competitive LECs in the use of unbundled network elements." Id.

The SBC Telecom, Inc./Bell Atlantic-New York agreement provides no basis for departing from the FCC's conclusion in the Texas Order to reject the indemnification language requested by AT&T. Therefore, the Commission rejects AT&T's argument.

The Commission further concludes that SWBT fully complies with the best-efforts test. See SWBT's Palmer Reply Aff. ¶¶ 5-12. The Commission finds that SWBT's commitment in section 7.3 of the M2A to use its "best efforts" on behalf of CLECs satisfies the FCC's Intellectual Property Order and Texas Order.

The Commission also concludes that SWBT can not be required to seek a franchise under Missouri law, because it has a preexisting statewide franchise granted by the State prior to the passage of the statutes giving municipalities the right to seek franchise agreements. T.2770 (SWBT's Lane). Federal courts have recognized that a preexisting statewide franchise is a bar to collection of additional municipal fees under a purported franchise requirement and that this bar does not unlawfully discriminate against CLECs in contravention of the Act. See, e.g., TCG Detroit v. City of Dearborn, 16 F. Supp. 2d 785 (E.D. Mich. 1998), aff'd, 206 F.3d 618 (6th Cir. 2000).

## Pricing

Some participants in this proceeding, requested that the Commission require Texas pricing in every instance in the M2A. See, e.g., OPC's Post Oct. Hearing Comments at 3; Primary Network's Post Oct. Hearing Comments at 11.

The rates for UNEs in Missouri set in Case No. TO-97-40 are appropriately based on Missouri costs, and the Commission finds the proposal to utilize Texas rates in lieu of Commission-approved TELRIC rates in Missouri to be unreasonable. Prices for most of the network elements that are actually used in volumes by CLECs were established by the Commission in the AT&T arbitrations (Case Nos. TO-97-40, et al. and TO-98-115), and in the DSL arbitrations with BroadSpan (Case No. TO-99-370), Sprint (Case No. TO-99-461) and Covad (Case No. TO-2000-322).

Based on the findings of fact set out above, the Commission also concludes that the non-recurring rates in the M2A are consistent with TELRIC.

The Commission further concludes that the interim rates in the M2A based on Texas rates, are also TELRIC-compliant. Furthermore, the Commission has committed to entering orders establishing permanent rates as soon as possible in cases already established.

The Commission concludes that SWBT's proposed pricing in the M2A complies in all respects with section 252(d)(1)(A).

## Nondiscriminatory Access to OSS

The Act requires SWBT to show that it has developed electronic and manual interfaces that allow CLECs to access all of the OSS functions required by the FCC in a nondiscriminatory manner. See Texas Order ¶ 92. The Commission has investigated whether SWBT has "deployed the necessary

systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them," as well as whether these systems are ready, as a practical matter. Id. ¶ 96.

In view of the factual finding that SWBT provides CLECs serving customers in Missouri with the same OSS that it offers throughout its five-state region, the Commission concludes that it is wholly appropriate for it to take into account the record developed in Texas, as well as those developed in Oklahoma and Kansas, where the state commissions similarly found that SWBT's OSS are regional.<sup>37</sup>

While SWBT's OSS performance is not perfect, it is generally at parity with SWBT's own retail services or the applicable Texas Commission-established benchmarks and offers an efficient carrier a meaningful opportunity to compete. See id. ¶¶ 94-96, 99.

The Commission finds that SWBT's CMP in Missouri, which was developed in collaboration with CLECs under the supervision of the Texas Commission, verified by Telcordia, and approved by the FCC in Texas, offers an efficient carrier a meaningful opportunity to compete. See SWBT's Lawson Aff. ¶¶ 353-415; SWBT's Lawson Reply Aff. ¶¶ 25-26; Texas Order ¶ 110. The Commission acknowledges the claims made by CLEC commenters (see, e.g., AT&T's Willard Test. at 12-18; WorldCom's Comments at 6); the Commission concurs, however, with the assessment of the FCC that SWBT's CMP

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<sup>37</sup> See also Memorandum Opinion and Order, Application by BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana, 13 FCC Rcd 6245, 6258, ¶ 21 (1998) ("First Louisiana Order") (using the findings of the Memorandum Opinion and Order, Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, 13 FCC Rcd 539 (1997) ("South Carolina Order"), as a starting point for examining the same OSS in Louisiana); Second Louisiana Order, 13 FCC Rcd at 20637-38, ¶ 56, 20655, ¶ 86 (same).

is effective and "affords competing carriers a meaningful opportunity to compete." Texas Order ¶ 118.

None of the individual allegations raised by various commenters, all of which have been fully rebutted by SWBT's witnesses, detracts from this finding. See SWBT's Lawson Reply Aff. ¶¶ 27-43. The Commission notes that, if future evidence comes to light that SWBT is failing to adhere to its agreed-upon CMP or has altered its testing environment so as to discriminate against competing carriers, the FCC has a range of enforcement options available to it under section 271(d)(6).

In the Texas proceeding, the FCC found that SWBT offers nondiscriminatory access to OSS pre-ordering functions, and our examination of the record in this proceeding reaffirms that conclusion. See Texas Order ¶ 147.

Like the FCC in the Texas proceeding, the Commission's review of the data submitted leads it to conclude that "SWBT demonstrates that it provides nondiscriminatory access to its ordering systems in accordance with the requirements of section 271." Id. ¶ 169.

The Commission also finds that SWBT's reject provisioning affords CLECs a reasonable opportunity to compete. See id. ¶ 174.

The FCC considered the benchmark for PM 10.1 (Percentage of Manual Rejects Received Electronically and Returned in Five Hours) to be "strict" and concluded that "SWBT's ability to return manually-generated rejects in an average of five to eight hours provides efficient competing carriers a meaningful opportunity to compete, particularly in light of the fact that most rejects are mechanically-generated and are returned in under an hour." Id. ¶ 175. Because the mean time to return manual rejects has been significantly shorter in Missouri than the interval approved by the FCC in Texas, the Commission concludes that SWBT's performance is satisfactory and finds AT&T's complaint on this issue unpersuasive.

The Commission also has found that CLECs are afforded a reasonable opportunity to compete through SWBT's return of service order completions. See SWBT's Noland Reply Aff. ¶¶ 33-34, 37; Texas Order ¶¶ 187-188. The Commission concludes that SWBT provides jeopardy notifications to competing carriers in a nondiscriminatory manner. See SWBT's Noland Reply Aff. ¶ 36; Texas Order ¶¶ 184-185.

The integration of electronic ordering and pre-ordering functions with CLECs' back-end systems has been of special concern to the FCC.<sup>38</sup> The FCC has concluded that SWBT's "application-to-application interfaces allow competing carriers to integrate successfully pre-ordering information obtained from the DataGate interface into the ordering process and the carriers' back office systems." Texas Order ¶ 152. In light of the evidence in the record and the absence of contrary claims by CLECs, the Commission agrees with the FCC's conclusion that DataGate can be integrated with SWBT's EDI ordering gateway as well as with the CLECs' own back-end systems. See id.

Based on the Commission's review of the evidence and the absence of complaints from CLECs, including performance data and the few CLEC comments on maintenance and repair matters, the Commission concludes that SWBT provides nondiscriminatory access to maintenance and repair OSS functions. See id. ¶¶ 201-209.

The evidence of double billing is insufficient to call into question the Commission's conclusion that SWBT's billing processes and procedures are nondiscriminatory. See id. ¶ 192.

Based on the record established in this docket, including current commercial usage data and the results of the third-party test in Texas of

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<sup>38</sup> See New York Order, 15 FCC Rcd at 4019-20, ¶ 137; Second Louisiana Order, 13 FCC Rcd at 20661-67, ¶¶ 96-103; First Louisiana Order, 13 FCC Rcd at 6275-79, ¶¶ 49-55; South Carolina Order, 13 FCC Rcd at 602, ¶ 112, 621-29, ¶¶ 152-166.

SWBT's OSS, the Commission finds that SWBT has shown by a preponderance of the evidence that it continues to offer nondiscriminatory access to its OSS, in keeping with the FCC's finding in the Texas Order. See id. ¶ 99.

**(3) Checklist Item 3: Nondiscriminatory Access to Poles, Ducts, Conduits, and Rights-of-Way**

Section 271(c)(2)(B)(iii) requires a BOC to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way at "just and reasonable rates." 47 U.S.C. § 271(c)(2)(B)(iii); see Texas Order ¶ 245.

SWBT provided evidence of its provision of access to poles, duct, conduits, and rights-of-way. No CLEC has challenged SWBT's compliance with this checklist item. Based on its findings of fact set out above, the Commission finds that SWBT offers nondiscriminatory access to poles, ducts, conduits, and rights-of-way in compliance with the requirements of section 271(c)(2)(B)(iii).

**(4) Checklist Item 4: Local Loops**

Section 271(c)(2)(B)(iv) requires SWBT to provide or offer access to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." Based on the findings of fact set out above, the Commission concludes that SWBT provides nondiscriminatory access to all of the "features, functions, and capabilities of the [local loop] transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMs) owned by the incumbent LEC, between an incumbent LEC's central office and the loop demarcation point at the customer premises." UNE Remand Order, 15 FCC Rcd at 3772, ¶ 167; see M2A Attach. 6 - UNE.

In offering to provide access to additional loop types and conditioning pursuant to the Special Request process, the Commission finds that SWBT satisfies the FCC's requirement that "[a] BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested." Second Louisiana Order, 13 FCC Rcd at 20713, ¶ 187.

The Commission concurs with the FCC that the new "outages on conversion" performance measurement developed during the Texas six-month review that SWBT began reporting in October 2000 "will be a useful, standardized way for competing carriers to assess FDT and CHC outage rates in the future." See Texas Order ¶ 273. In the Texas Order, however, the FCC found that SWBT could demonstrate nondiscriminatory access to hot cut loops despite the absence of a performance measurement that captures outages during coordinated conversions. Instead, the FCC, as does this Commission, relied upon the results of data reconciliation by the SWBT/AT&T Performance Process Improvement Group (PPIG). See Texas Order ¶¶ 268-273.

The Commission concludes that SWBT provides nondiscriminatory access to xDSL-capable loops and related services, in full satisfaction of all obligations under the Line Sharing Order and the UNE Remand Order.

SWBT's on-time hot-cut performance for both CHC and FDT surpasses the 90-percent benchmark established by the FCC in the New York and Texas proceedings. See New York Order, 15 FCC Rcd at 4121-22, ¶ 329; Texas Order ¶ 264.

SWBT meets the 5-percent benchmark for outages during conversion for both CHC and FDT cuts.

SWBT satisfies the FCC's 2-percent standard for I-7 trouble reports. See SWBT's D. Smith Reply Aff. ¶¶ 8-26; SWBT's Noland Aff. ¶¶ 101-108.

The Commission finds that although participation by IP Communications and Primary Networks in SWBT's "Yellow Zone" trial should alleviate their provisioning concerns, these concerns are not, in any case, sufficient to undermine the conclusion that SWBT satisfies this checklist item. The FCC has repeatedly held that, "where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness." Texas Order ¶ 44; see also New York Order, 15 FCC Rcd at 3971-72, ¶ 44; T.2965-66, 2971 (SWBT's Chapman). The applicable standard is one of parity, not perfection. As explained in the UNE Remand Order, SWBT "must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to [itself]." 15 FCC Rcd at 3885, ¶ 427.

The FCC has already concluded that SWBT provides CLECs equivalent access to the same database that SWBT itself uses, and in the exact same time frame. See Texas Order ¶¶ 165-167. Nothing more is required under the UNE Remand Order, see 15 FCC Rcd at 3886, ¶ 429, or under the Act, see Iowa Utils. Bd., 219 F.3d at 757-58 (superior quality rules violate the Act).

The Act does not require incumbent carriers to provide the high-frequency portion of the loop functionality to UNE Platform users. See Line Sharing Order, 14 FCC Rcd at 20947, ¶ 72; Texas Order ¶ 330; see also SWBT's Chapman Post Oct. Hearing Reply Aff.

SWBT's performance across available loop types demonstrates that SWBT provides nondiscriminatory access in compliance with this checklist item. See SWBT's Dysart Aff. Attach. A; SWBT's Dysart Reply Aff. Attach. A; SWBT's Joint Dysart, Noland, D. Smith Post Oct. Hearing Reply Aff. Attach. A; SWBT's Dysart Post Nov. Hearing Aff. Attachs. A-C.

The M2A allows AT&T to engage in line splitting and meet all requirements for line splitting. SWBT allows CLECs to perform line splitting in Missouri in precisely the same manner as it does in Texas, with interim prices, terms, and conditions subject to a limited true-up with permanent prices, terms, and conditions to be set in Case No. TO-2001-440.

**(5) Checklist Item 5: Unbundled Local Transport**

Section 271(c)(2)(B)(v) requires SWBT to offer local transport unbundled from switching or other services.

Although the available data show very few months in which more than 10 data points were recorded, the Commission finds that SWBT's provisioning of transport to CLECs is nondiscriminatory. See SWBT's Dysart Reply Aff. Attach. A (PM 65-06); see also Texas Order ¶ 333.

Based on the findings of fact above, the Commission concludes that SWBT's dedicated and shared transport offerings satisfy the requirements of section 271(c)(2)(B)(v).

**(6) Checklist Item 6: Unbundled Local Switching**

Section 271(c)(2)(B)(vi) requires that Bell companies make available local switching unbundled from transport, local loops, and other services.

Based on the findings of fact above, the Commission concludes that SWBT provides nondiscriminatory access to unbundled local switching in compliance with the requirements of section 271(c)(2)(B)(vi).

**(7) Checklist Item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services**

Section 271(c)(2)(B)(vii) requires that SWBT offer: "Nondiscriminatory access to - (I) 911 and E911 services; (II) directory

assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services."

Various CLECs claim that SWBT should be required to continue providing operator services and directory assistance services as unbundled network elements. See AT&T's Comments at 16; WorldCom's Comments at 29; Gabriel's Cadieux Aff. ¶¶ 41-44; NEXTLINK's Comments at 25-26. But the FCC has now removed directory assistance and operator services from the list of required elements subject to the unbundling requirements of sections 251 and 252, including the requirement that rates be based on forward-looking costs. UNE Remand Order, 15 FCC Rcd at 3891-92, ¶¶ 441-442.

WorldCom suggests that SWBT should allow WorldCom to use subscriber list information obtained under section 251(b)(3) to publish directories. See WorldCom's Comments at 50. WorldCom may only obtain subscriber list information for publication purposes under an agreement it enters into with SWBT under 47 U.S.C. § 222(e).

Based on the findings of fact, the Commission concludes that SWBT has demonstrated that it is providing nondiscriminatory access to 911 and E911 services, directory assistance, and operator call completion services in compliance with section(c)(2)(B)(vii). See SWBT's Deere Aff. ¶¶ 155-186; and SWBT's Rogers Aff. ¶¶ 10-47.

#### **(8) Checklist Item 8: White Pages Directory Listings**

Section 271(c)(2)(B)(viii) requires SWBT to provide White Pages directory listings for customers of other carriers.

Based on the findings of fact set out above, the Commission concludes that SWBT provides White Pages directory listings in compliance with section 271(c)(2)(B)(viii).

**(9) Checklist Item 9: Nondiscriminatory Access to Telephone Numbers**

Section 271(c)(2)(B)(ix) requires SWBT to provide CLECs with nondiscriminatory access to telephone numbers for assignment to their customers, until telecommunications numbering administration guidelines, plans, or rules are established. SWBT provided evidence that it provides CLECs with nondiscriminatory access to telephone numbers for assignment to their customers. See generally, SWBT's Adair Aff. Therefore, the Commission finds that SWBT complies with section 271(c)(2)(B)(ix).

**(10) Checklist Item 10: Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion**

Section 271(c)(2)(B)(x) requires SWBT to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."

The FCC has specifically stated:

In the Local Competition Order, the Commission determined that access to call-related databases was technically feasible, and concluded incumbent LECs must provide nondiscriminatory access to the call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network.

UNE Remand Order, 15 FCC Rcd at 3874, ¶ 400 (emphasis added).

Because bulk database downloads would specifically negate the switch query and database response aspect of CNAM and LIDB, WorldCom's proposal is completely without foundation. In its Local Competition Order, the FCC stated:

We require incumbent LECs to provide this access to their call-related databases by means of physical access at the STP linked to the unbundled database. . . . We, therefore, emphasize that access to call-related databases must be provided through interconnection at the STP and that we do not require direct access to call-related databases.

11 FCC Rcd at 15742, ¶¶ 484-485.<sup>39</sup>

Thus, the FCC only requires access at the signaling transfer point. The Commission concludes that SWBT is not required to provide CLECs access to listing or other information contained in the CNAM database on a bulk basis.

Based on the findings of fact set out above, the Commission concludes that SWBT provides “[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion.”

### **(11) Checklist Item 11: Number Portability**

Section 271(c)(2)(B)(xi) requires compliance with FCC regulations regarding number portability.

The evidence submitted in this proceeding demonstrates that SWBT has complied with its obligations to implement both LNP and INP under the applicable FCC orders. See, SWBT’s Dysart Aff. ¶¶ 81-84.

The Commission finds that SWBT’s methods for providing INP, where required, comply with the FCC’s requirements. Accordingly, the Commission concludes that SWBT has satisfied the INP obligations under section 271(c)(2)(B)(xi). See, SWBT’s Deere Aff. ¶¶ 209-215.

### **(12) Checklist Item 12: Local Dialing Parity**

Section 271(c)(2)(B)(xii) requires SWBT to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the

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<sup>39</sup> See also, UNE Remand Order, 15 FCC Rcd at 3878, ¶ 410 (“[W]e require incumbent LECs to provide nondiscriminatory access to their call-related databases, including, but not limited to, the CNAM Database . . . by means of physical access at the signaling transfer point linked to the unbundled databases.”).

requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."

The FCC anticipated "that local dialing parity [would] be achieved upon implementation of the number portability and interconnection requirements of section 251." Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19430, ¶ 71 (1996). SWBT has successfully implemented local dialing parity in Missouri.

Based on the findings of fact set out above, the Commission concludes that SWBT provides nondiscriminatory access to services or information necessary to allow CLECs to implement local dialing parity in accordance with section 251(b)(3).

### **(13) Checklist Item 13: Reciprocal Compensation**

Section 271(c)(2)(B)(xiii) requires that SWBT provide "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."

The FCC has made clear that the treatment of Internet-bound traffic for reciprocal compensation purposes will not be considered in evaluating checklist compliance, pending completion of federal proceedings on this issue. Texas Order ¶ 386. SWBT has complied with this Commission's order in Case No. TO-98-278, in which the Commission determined that it would defer to the FCC's resolution of this issue. See, SWBT's Sparks Aff. ¶¶ 109-110.

McLeodUSA criticizes the terms of a voluntary agreement between SWBT and Intermedia, but this has no effect on SWBT's obligation to pay reciprocal compensation on local traffic. McLeodUSA also claims that, if SWBT complies with the bill and keep methodology adopted by the Commission, then it will fail to comply with this checklist item. However, the

Commission's order in Case No. TO-99-483 gives CLECs the option to participate in the MCA plan; CLEC participation is not mandatory.

Therefore, based on the findings of fact as set out above, the Commission finds that SWBT has satisfied the requirements of section 271(c)(2)(B)(xiii).

#### **(14) Checklist Item 14: Resale**

Section 271(c)(2)(B)(xiv) requires that SWBT make "[t]elecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."

Based on the findings of fact set out above, the Commission concludes that SWBT offers its retail services for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

Therefore, the Commission finds that SWBT has satisfied the requirements under section 271(c)(2)(B)(xiv).

## **V. THE PUBLIC INTEREST**

### **A. FINDINGS OF FACT**

Section 271(d)(3)(C) provides that the FCC shall not authorize a BOC to enter into the interLATA market unless it determines that "the requested authorization is consistent with the public interest, convenience, and necessity."

In support of its argument that granting its Application in Missouri will serve the public interest, SWBT has presented testimony by economists Richard L. Schmalensee and Paul S. Brandon that SWBT's entry into the long-distance market will benefit the public interest in Missouri by increasing competition in the provision of long-distance services. See generally SWBT's Schmalensee & Brandon Aff.

AT&T and others disagree with some of SWBT's claims regarding the magnitude of these benefits, see, e.g., AT&T's Kohly Test. at 25-30, but there is no serious dispute that SWBT's entry into the long-distance market will likely help to drive the rates paid by residential and small-business consumers closer to the costs of providing service and increase consumer choice for long-distance services. See SWBT's Schmalensee & Brandon Reply Aff. ¶ 11.

SWBT has no ability to impede long-distance competition by entering the interLATA market in Missouri. As the FCC has found, today's accounting safeguards and price regulation make misallocation of interLATA costs to local services hard to accomplish and relatively easy to detect.<sup>40</sup> And any attempt to subsidize interLATA rates or to discriminate against competing long-distance carriers would be met with swift and stern action by the FCC.

SWBT's entry into the interLATA market is likely to spur competition in the local exchange market as well. Once SWBT is able to offer bundled packages of local and long-distance service, all potential entrants will have to compete even more intensely for local business in Missouri. The FCC has acknowledged that the fear of losing long-distance profits to the BOC once it is able to be a one-stop provider "would surely

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<sup>40</sup> See, e.g., Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756, 15817, ¶ 105 (1997); Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17550-51, ¶ 25, 17586, ¶ 108 (1996).

give long distance carriers an added incentive to enter the local market."<sup>41</sup>

In addition to the effects of SWBT's interLATA entry on local and long-distance competition, the FCC has indicated that it is particularly interested in "evidence that a BOC has agreed to performance monitoring (including performance standards and reporting requirements) in its interconnection agreements with new entrants" and "whether such performance monitoring includes appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards."<sup>42</sup>

SWBT has demonstrated in this record that it has in place performance measurements covering - among other things - OSS (including pre-ordering, ordering, provisioning, maintenance and repair, and billing), interconnection, access to UNEs, resold services, number portability, and directory and operator services. As noted above, these measurements were developed in a collaborative process involving CLECs and state and federal regulators, and they were approved by the FCC in Texas. See, Texas Order ¶ 425.

This Commission has adopted all changes to the performance measurements that were ordered by the Texas Commission in its recently completed six-month review process. See, SWBT's Dysart Reply Aff. ¶¶ 11-18. This is significant, because adoption of these changes ensures that the Missouri market will benefit from the evolving nature of SWBT's

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<sup>41</sup> South Carolina Order, 13 FCC Rcd at 552-53, ¶ 25; see also id. ¶ 25 n.45 (referring to the South Carolina PSC's conclusion that allowing BellSouth into long distance "will create real incentives for the major [interexchange carriers] to enter the local market . . . , because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities").

<sup>42</sup> Second Louisiana Order, 13 FCC Rcd at 20806, ¶¶ 363-364; see also, Texas Order ¶ 420; New York Order, 15 FCC Rcd at 4164-65, ¶ 429.

performance plan, which the FCC specifically identified as "an important feature." Texas Order ¶ 425.

The proposed performance penalty plan is in all material respects a mirror image of the plan approved by the FCC in Texas.<sup>43</sup> The plan puts \$98 million at risk during the first year, which is precisely the same liability - measured as a percentage of net revenue - that is at risk in Texas. See id. ¶ 424 & n.1235. (It is also the same percentage that Bell Atlantic proposed, and the FCC approved, in New York.<sup>44</sup>) Under the plan's first tier, when SWBT fails to meet specified performance levels on specific measures, payments are made to affected CLECs in the form of liquidated damages under their interconnection agreements. Under the second tier, if substandard performance continues over a series of months, SWBT makes payments to the Missouri State Treasury.

## **B. CONCLUSIONS OF LAW**

The Act does not require this Commission to make a recommendation to the FCC on the public interest consequences of SWBT's interLATA entry. See 47 U.S.C. § 271(d)(2)(B). Yet this Commission is uniquely situated to evaluate the probable effects of SWBT's potential entry into the interLATA market in Missouri. Having carefully considered the arguments on both sides of this issue, this Commission has concluded that a recommendation to the FCC is appropriate and that SWBT's interLATA entry would serve the public interest.

SWBT's entry into long distance will increase consumer choice and reduce long-distance prices, particularly for residential consumers.

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<sup>43</sup> See Texas Order ¶¶ 422-427. The Commission notes with approval that in response to Staff comments SWBT has removed from the M2A language providing that performance penalties awarded under the plan are the "sole and exclusive remedy" for SWBT's failure to meet the standards and benchmarks included within the plan. See SWBT's Dysart Reply Aff. ¶ 29.

<sup>44</sup> New York Order, 15 FCC Rcd at 4168, ¶ 436 n.1332.

According to the FCC, "BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. As a general matter, [the FCC] believe[s] that additional competition in telecommunications markets will enhance the public interest."<sup>45</sup>

Considered in light of the other factors that bear on SWBT's incentive to provide nondiscriminatory service, the Commission concludes that SWBT's performance penalty plan provides the necessary financial incentives for it to continue to provide access and interconnection that is nondiscriminatory and ensures CLECs in Missouri a meaningful opportunity to compete in the local market.

Approval of SWBT's Application to the FCC for interLATA relief in Missouri will be in the public interest

## **VI. SEPARATE AFFILIATE -- SECTION 272**

Section 271(d)(3)(B) of the Act requires that a BOC comply with the requirements of section 272, regarding separate affiliates, before being granted authority to provide interLATA services, by the FCC. A recommendation by this Commission to the FCC regarding SWBT's compliance with sections 271(d)(3)(B) and 272 is not necessary. SWBT has, however, provided evidence that it proposes the same standards for Missouri that were approved by the FCC for Texas. The Commission's Staff is of the opinion that SWBT complies with section 272. See, Staff's Responses to SWBT's Updated Record, filed Aug. 28, 2000. Because SWBT will operate under the same standards in Missouri with regard to its separate affiliate,

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<sup>45</sup> New York Order, 15 FCC Rcd at 4164, ¶ 428; see also Texas Order ¶ 416; Michigan Order, 12 FCC Rcd at 20741-42, ¶ 381 ("BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunication markets."); see also Memorandum Opinion and Order, Application of 360° Communications Co., Transferor, and ALLTEL Corp., Transferee, for Consent to Transfer Control of 360° Communications Co. and Affiliates, 14 FCC Rcd 2005, 2017, ¶ 26 (1998).

as it has in Texas, the Commission concludes that SWBT complies with the requirements of section 272.

## **CONCLUSION**

Based on the extensive record in this case, the availability of the M2A to Missouri CLECs, and the Commission's intention to expeditiously determine permanent rates, terms, and conditions for collocation, line sharing, line splitting, loop conditioning, and unbundled network elements, the Commission concludes that facilities-based local competition exists in Missouri for both business and residential customers; that SWBT is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion; and that SWBT's entry into the Missouri long-distance market is in the public interest. In addition, the Commission finds that the M2A complies with the requirements of 47 U.S.C. § 271(c). The Commission recommends that the FCC grant SWBT's Application for authorization to provide in-region, interLATA services in the state of Missouri.

### **IT IS THEREFORE ORDERED:**

1. That the Missouri Interconnection Agreement (M2A) filed by SWBT on February 16, 2001, as revised on February 28, 2001, is found to meet the requirements of 47 U.S.C. § 271(c).

2. That any interconnection agreement adopted by a carrier and filed with the Commission with substantially the same terms and conditions as the Missouri Interconnection Agreement (M2A) shall be deemed approved by the Commission when filed.

3. That Southwestern Bell Telephone Company is found to meet the requirements in Missouri of the 14-point competitive checklist of 47 U.S.C. § 271(c)(2)(B).

4. That Southwestern Bell Telephone Company's entry into the long distance market in Missouri is in the public interest.

5. That the Missouri Public Service Commission supports Southwestern Bell Telephone Company's application for authority to provide in-region interLATA telecommunications service within Missouri.

6. That Gabriel Communications, Inc.'s motion to submit a supplemental affidavit is granted.

7. That AT&T's request to examine the confidential and proprietary work papers of Ernst & Young is denied.

8. That all motions not previously ruled on are denied and all objections not previously ruled on are overruled.

9. That this order shall become effective on March 25, 2001.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Drainer, Murray,  
Schemenauer, and Simmons, CC.,  
concur and certify compliance  
with the provisions of  
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 15th day of March, 2001.

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
March 15, 2001**

**CASE NO: TO-99-227**

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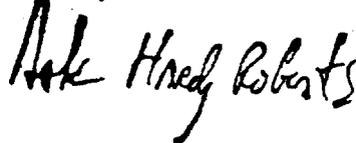
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts**  
Secretary/Chief Regulatory Law Judge