

Sandra L. Hochstetter
Chairman
(501) 682-1455

Betty C. Dickey
Commissioner
(501) 682-1451

Lavenski R. Smith
Commissioner
(501) 682-1453

**ARKANSAS
PUBLIC SERVICE COMMISSION**

1000 Center
P.O. Box 400
Little Rock, Arkansas 72203-0400
Fax (501) 682-5731

<http://www.state.ar.us/psc>

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D. David Slaton
Chief of
Commissioners' Staff
(501) 682-1792

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September 7, 2001

VIA FEDERAL EXPRESS

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B-204
Washington, D.C. 20554

In Re: Application of Southwestern Bell Corporation, Inc. for Authorization Under
Section 271 of the Communications Act to Provide In-Region, InterLATA
Service in the States of Arkansas and Missouri, CC Docket No. 01-194

Dear Ms. Salas:

Enclosed herewith please find the Consultation Report of the Arkansas Public Service
Commission and an order from the Commission approving the A2A.

The complete record of the proceeding before the Arkansas Commission is available on the
internet at www.accessarkansas.org/psc/. The docket is available through the e-filings interface
under our Docket No. 00-211-U.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur H. Stuenkel".

Arthur H. Stuenkel
Attorney for the Arkansas
Public Service Commission

cc: Janice Miles, Common Carrier Bureau
445 12th Street, S.W., Room 5-B145
Washington, D.C. 20554 - 12 copies

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Ms. Magalie Roman Salas
September 7, 2001
Page 2

cc: Qualex International
Portals II
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Collin Stretch
Kellogg, Huber, Hasen, Todd, & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036-3209

Scott Bergmann (Via E-mail)

Lyla Seirafi
U.S. Department of Justice Anti-Trust Division, TTF
1401 H Street, N.W., Suite 8000
Washington, D.C. 20005 and (Via E-Mail)

Ed Allis (Via E-mail)

Sandra L. Hochstetter
Chairman
(501) 682-1455

Betty C. Dickey
Commissioner
(501) 682-1451

Lavenski R. Smith
Commissioner
(501) 682-1453

**ARKANSAS
PUBLIC SERVICE COMMISSION**

1000 Center
P.O. Box 400
Little Rock, Arkansas 72203-0400
Fax (501) 682-1717
<http://www.state.ar.us/psc>

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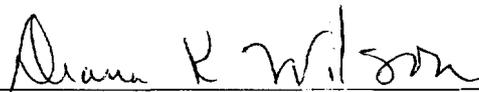


Diana K. Wilson
Secretary of Commission
(501) 682-5782
dianaw@psc.state.ar.us

CERTIFICATE

This is to certify that the attached is a true and correct copy of Order #17 filed June 18, 2001 in docket 00-211-U.

WITNESS my hand as Secretary under the official seal of the ARKANSAS PUBLIC SERVICE COMMISSION this 7th day of September, 2001.



Diana K. Wilson
Secretary of the Commission

JUN 18 1 58 PM '01

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION OF THE
SOUTHWESTERN BELL TELEPHONE COMPANY
FOR AUTHORIZATION TO PROVIDE IN-REGION
INTERLATA SERVICES PURSUANT TO SECTION
271 OF THE TELECOMMUNICATIONS ACT OF
1996 AND FOR APPROVAL OF THE ARKANSAS
INTERCONNECTION AGREEMENT

DOCKET NO. 00-211-U
ORDER NO. 17

ORDER

On May 31, 2001, Southwestern Bell filed a revised Attachment 6 to the Arkansas Interconnection Agreement ("A2A"), pursuant to the Commission's request in the Second Consultation Report in this proceeding. On June 14, 2001, the General Staff of the Arkansas Public Service Commission filed Supplemental Comments stating that the Attachment meets the Commission's request.

To the extent authorized by law, the Commission hereby finds that the A2A as amended is approved.

BY ORDER OF THE COMMISSION.

This 18th day of June.

Sandra L. Hochstetter
Sandra L. Hochstetter, Chairman

Betty C. Dickey
Betty C. Dickey, Commissioner

Lavenski R. Smith
Lavenski R. Smith, Commissioner

Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.

Diana K. Wilson
Secretary of the Commission
Date 6-18-01

Sandra L. Hochstetter
Chairman
(501) 682-1455

Betty C. Dickey
Commissioner
(501) 682-1451

Lavenski R. Smith
Commissioner
(501) 682-1453

ARKANSAS
PUBLIC SERVICE COMMISSION

1000 Center
P.O. Box 400
Little Rock, Arkansas 72203-0400
Fax (501) 682-1717
<http://www.state.ar.us/psc>

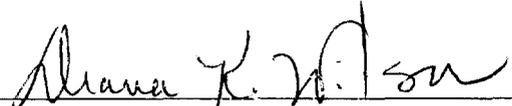


Diana K. Wilson
Secretary of Commission
(501) 682-5782
dianaw@psc.state.ar.us

CERTIFICATE

This is to certify that the attached is a true and correct copy of The Commission's Second Consultation Report filed on May 21, 2001 in docket 00-211-U.

WITNESS my hand as Secretary under the official seal of the ARKANSAS PUBLIC SERVICE COMMISSION this 7th day of September, 2001.



Diana K. Wilson
Secretary of the Commission

MAY 21 2 22 PM '01

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION OF)
SOUTHWESTERN BELL TELEPHONE)
COMPANY FOR AUTHORIZATION TO)
PROVIDE IN-REGION INTERLATA SERVICES)
PURSUANT TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996 AND)
FOR THE APPROVAL OF THE ARKANSAS)
INTERCONNECTION AGREEMENT)

DOCKET NO. 00-211-U

SECOND CONSULTATION REPORT OF
THE ARKANSAS PUBLIC SERVICE COMMISSION
TO THE FEDERAL COMMUNICATIONS COMMISSION
PURSUANT TO 47 USC SECTION 271(d)(2)(B)

On December 21, 2000 this Commission filed, pursuant to 47 U.S.C. §271(d)(2)(B), its Consultation Report in response to Southwestern Bell Telephone Company's (SWBT) application for authorization to provide in-region interLATA services and for approval of its proposed Arkansas 271 Interconnection Agreement (A2A), which had been filed on July 24, 2000. A copy of the Report is attached hereto. On March 23, 2001 SWBT filed its Response to the Commission's Consultation Report together with eight affidavits and exhibits supporting the affidavits (Response). In its Response, SWBT made modifications to its proposed A2A to address concerns raised by this Commission in the December 2000 Consultation Report.

Initial Comments on SWBT's Response were filed on April 12, 2001 by the General Staff of the Arkansas Public Service Commission (Staff), Sprint Communications Company LLP (Sprint), WorldCom, Inc. (WorldCom), AT&T Communications of the Southwest, Inc. (AT&T), and ALLTEL Communications (ALLTEL). On April 16, 2001, SWBT filed ten reply affidavits and reply comments addressing the issues raised in the responsive comments.

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Since the Commission issued its December 2000 Consultation Report, certain relevant changes have occurred. The Federal Communications Commission (FCC) released its Memorandum Opinion and Order on January 22, 2001 in CC Docket No. 00-217 (FCC 01-29) which addresses the Joint Application by SBC Communications, Inc. to provide in-region interLATA services in Kansas and Oklahoma (Kansas/Oklahoma Order). The Kansas and Oklahoma Commissions had approved separate model interconnection agreements for their states, based on the Texas Interconnection Agreement (T2A). The FCC's Kansas/Oklahoma Order approved SWBT's 271 Application for those states and approved SWBT's use of the Texas Interconnection Agreement as a basis for the Interconnection Agreements offered in Kansas and Oklahoma. The FCC stated:

In support of this application, SWBT urges us to place significant reliance on the Commission's finding in the SWBT Texas' Order on grounds that many of its systems and processes used in Kansas and Oklahoma as well as the legal obligations imposed by the Kansas and Oklahoma Commissions, are the same as those reviewed and approved in the Texas 271 proceeding. We agree that findings in the SWBT Texas Order may be a relevant factor in our analysis in this proceeding. Where SWBT provides evidence that a particular system reviewed and approved in Texas is also used in Kansas and Oklahoma, our review of the same system in this proceeding will be informed by our findings in the SWBT Texas order. Indeed, to the extent that issues have already been briefed, reviewed, and resolved in a prior Section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues.

(Kansas/Texas Order at ¶35, footnote omitted).

On April 16, 2001 the FCC released its Memorandum Opinion and Order in CC Docket No. 01-9 (FCC 01-130), the application of Verizon New England, Inc., et al, (Verizon) for authority to provide in-region interLATA services in Massachusetts (Massachusetts Order). In that order the FCC stated that it will not conduct "a de novo review of a state's pricing determinations and will reject an application only if 'basic TELRIC [total element long run incremental cost] principles are

violated or the state commission makes clear errors in factual findings on matters so substantial that the end results fall outside of the range the reasonable application of TELRIC principles would produce.” (Massachusetts Order at ¶20). For purposes of the Massachusetts interconnection agreement, Verizon opted to use the rates previously approved for Verizon in New York. The FCC found that it was permissible for Verizon to rely on New York rates because they meet the criteria established by the FCC in the Kansas/Oklahoma Order, i.e., they have a common Bell Operating Company (BOC) and geographical similarities; they have similar although not identical rate structures; and the rates to be used had already been found to be reasonable. (Massachusetts Order at ¶28).

SWBT's witness Lundy testified that nonrecurring costs are generally higher in Arkansas than in Kansas. (T. 2368-2369). SWBT's witness Morrissey used the FCC's Hybrid Cost Proxy Model to demonstrate that recurring costs for unbundled network elements (UNEs) are higher in Arkansas than in Kansas. (T. 2394-2396). This testimony was not disputed by the other parties. Accordingly, based on the precedent established by the FCC in prior section 271 proceedings, we believe it is permissible for SWBT to use the approved Kansas rates in this proceeding.

Status of Local Competition

SWBT's witness J. Gary Smith testified that 104 competitive local exchange companies (CLECs) are certified to operate in Arkansas and that SWBT has entered into 115 approved interconnection agreements in Arkansas as of January 30, 2001. Mr. Smith identified five (5) CLECs that are providing facilities-based business and residential services in Arkansas. (T. 235-236). Three (3) CLECs appeared at the hearing held on April 20, 2001 and addressed the issue of their provision

of facilities-based residential service. ALLTEL indicated that it had withdrawn from the residential market and from offering digital subscriber line (DSL) service. (T. 14-15). Navigator indicated that it had also discontinued the offering of UNE-based residential service in Arkansas stating that it had begun an experiment in deploying UNE-based residential service but found that SWBT's "assessment of unexpected, inapplicable and even hidden non-recurring charges has -- associated with UNE provisioning has rendered the provisioning of UNE-P service in Arkansas economically unfeasible for Navigator." (T. 48). WorldCom's comments state:

Brooks Fiber (a CLEC subsidiary of WCOM) is not providing facilities-based residential service in Arkansas. Nor is Brooks providing residential service as a reseller. Notwithstanding the assertions of SWBT witness Smith, Brooks is providing only facilities-based business service in Arkansas.

(T. 2802).

During cross examination, SWBT's witness Smith continued to assert that SWBT has evidence of WorldCom's provision of facilities-based residential service. (T. 275-276). The two (2) remaining CLECs identified in Mr. Smith's proprietary response affidavit are, according to the affidavit, together providing residential service to sixty-nine (69) customers. (T. 235-236).

Mr. Smith testified that SWBT uses three methods to estimate the number of lines served by facilities-based carriers in Arkansas. Two of the methods are based on the number of interconnection trunks leased by CLECs. The third method is based on CLECs' entries in the E911 data base. Based on his review of this information, Mr. Smith stated that the number of facilities-based lines exceeds, in percentage terms, the number of CLECs' facilities-based lines in Texas at the time of SWBT's Texas 271 application. (T. 196). Mr. Smith also stated that, between May 2000 and January 2001, E911 data base listing for facilities-based CLECs grew by 26%. He also indicated that in the same

time frame UNE loops grew by 53%. (T. 197).

The evidence presented at the hearing in this docket on November 2-3, 2000 led the Commission to determine that "ALLTEL is the only facilities-based CLEC serving residential customers" in Arkansas. (December 2000 Consultation Report, p. 5). SWBT has now offered evidence of other CLECs who may be offering facilities-based residential service. Navigator was identified as one of those CLECs. The Staff indicated that it had confirmed that Navigator is serving approximately 3400 residential customers in Arkansas using UNE-Ps. Staff also stated that ALLTEL continues to pursue business customers and to provide service to business and residential customers using a combination of UNE-Ps and its own facilities. (T. 2813-2814). However, as previously noted, at the beginning of the hearing, Navigator announced that it was discontinuing the provision of residential service on a UNE-P basis. It should also be noted, however, that the modified A2A based on Kansas rates will be more favorable to Navigator than Navigator's current interconnection agreement with SWBT.

47 U.S.C. §271(c)(1)(A) provides that a BOC meets the requirements of that section if it "has entered into one or more binding agreements that have been approved under 47 U.S.C. §252 specifying the terms and conditions under which the Bell Operating Company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." 47 U.S.C. §271(c)(1)(A) further provides that exchange service offered by competing providers may be offered exclusively over their own facilities or "predominantly over their own telephone exchange service facilities in combination with the resale of the telephone communications service of another

carrier.”

The record reveals that there are CLECs who are providing some level of residential service using a combination of UNE-Ps and their own network facilities. These carriers are engaged in ongoing competition for new business customers and are continuing to provide service to existing residential customers; however, the contested statements in the record do not support a finding that there is competition for new residential customers. Excluding ALLTEL, Navigator and WorldCom, who have denied competing to provide any new residential service, the remaining facilities-based providers listed by SWBT allegedly provide residential service to sixty-nine (69) customers. (T.235-236). Additionally, the record reveals that the number of customers being served by ALLTEL is decreasing. (T. 2787). However, since the modified A2A rates would be lower than the existing negotiated rates of the facilities-based CLECs, it is possible that competition for new residential customers could occur based on the lower rates.

Checklist Items

In the Consultation Report issued on August 28, 1998 in Docket No. 98-048-U, SWBT's initial application to provide interLATA services in Arkansas, the Commission concluded that SWBT met eight (8) of the fourteen (14) checklist items in 47 U.S.C. §271(d)(2)(B), or alternatively, that SWBT was in compliance with Arkansas law in providing service to CLECs on those items. The Commission reached no conclusion on two (2) of the check list items due to pending complaints involving the same issues addressed in those checklist items. The eight (8) checklist items approved were: (iii) nondiscriminatory access to poles, ducts, conduits and rights-of-way; (v) unbundling of local transport; (vi) unbundling of local switching; (viii) white pages directory listings; (ix) numbering

administration; (x) access to data bases and associated signaling; (xii) local dialing parity; and (xiv) resale. In the December 2000 Consultation Report in this docket, the Commission determined that SWBT was continuing to meet the eight (8) items approved in the August 28, 1998 Consultation Report. The Commission further determined that SWBT now met checklist items: (vii) nondiscriminatory access to 911, directory assistance and operator call services; (xi) number portability; and (xiii) reciprocal compensation. The Commission determined that SWBT did not at that time meet items (i) (ii) and (iv). (December 2000 Consultation Report at pp. 3, 18, 20-24). In the December 2000 Consultation Report, the Commission also raised concerns about specific rates, terms and conditions contained in the A2A. The Commission concluded that, if those terms were satisfied, the Commission would approve the A2A as being in compliance with the 14-point checklist contained in 47 U.S.C. §271(c).

Checklist Item (i) - Interconnection

In its December 2000 Consultation Report, this Commission withheld approval of checklist item (i) because the Commission determined that the rates and intervals for collocation were not sufficiently justified. SWBT is now proposing to incorporate the rates, terms and conditions from the Kansas collocation tariff in the A2A. Although the rates in the Kansas tariff are interim, the FCC has given SWBT Section 271 authority in Kansas based on those rates. Further, SWBT has committed to provide a revised price schedule to this Commission as an amendment to the A2A when final rates are set for the K2A. Because these rates have been approved by the FCC, and SWBT has committed to maintain parity with the K2A rates, the Commission finds that SWBT has satisfied checklist item (i).

Checklist Item (ii) - Access to Unbundled Network Elements

SWBT has mirrored Kansas UNE prices in the modified A2A. The record clearly reveals that costs in Arkansas are equal to or above Kansas costs. (T. 2337, 2391). The proposed UNE rates have also been approved by the FCC as being in compliance with the TELRIC methodology for use in the K2A. In addition, Arkansas and Kansas are geographically similar, have a common BOC and similar rate structures. Therefore, the Commission concludes that the UNE prices in the proposed A2A are within the parameters of the TELRIC methodology as applied.

AT&T continues to argue that the inclusion of a "trip charge" in the A2A rates is inappropriate. The trip charge has been considered and allowed by the Kansas and Oklahoma Commissions as well as the FCC. In dealing with this issue the FCC states:

Additionally, we know that nonrecurring charges for loops in Texas do not include certain installation and maintenance activity nonrecurring charges which SWBT wanted to recover in Texas through its "trip charge" but which the Texas Commission disallowed. The fact that SWBT recovers the "trip charge" in Kansas but not in Texas accounts for most of the disparity in nonrecurring two-wire analog loop and loop cross-connect charges between the two states. We find nothing in the record to refute SWBT's claim that the trip charge is a legitimate expense, and we do not conduct a *de novo* review of the Kansas Commission's decision to allow such a charge.

(Kansas/Oklahoma Order at ¶61).

SWBT has modified the A2A so that it does not incorporate the provisions contained in the K2A, O2A and T2A requiring that SWBT provide UNE-P CLECs with access to line class codes, which SWBT admits to be an intrinsic part of the central office switch. (T. 376-377). SWBT's justification for this omission is its interpretation of the UNE Remand Order, (Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, released

November 5, 1999). (T. 376-377). Under SWBT's interpretation of the Order, the FCC's discussion of the necessity for access to intellectual property for advanced intelligent network programming is applied to the line class codes which SWBT claims as proprietary information. (T. 377).

Line class codes are used by SWBT and CLECs to associate a particular calling scope with a customer's telephone number. (T. 2323). SWBT concedes that, absent CLEC access to the line class codes, a CLEC will either have to design its own codes and program them into SWBT's switch, if so allowed by SWBT, or pay SWBT to design and implement the line class codes. (T. 2325). Either alternative would clearly create an additional burden for CLECs operating in Arkansas which would not be applicable in the other states in SWBT's region. Additionally, SWBT's unique interpretation of the UNE Remand Order is not reflected in the Kansas/Oklahoma Order, even though the UNE Remand Order was released over a year before the Kansas/Oklahoma Order was released. Given the limited amount of competition which currently exists in Arkansas, this Commission does not think it wise to create additional barriers to market entry, particularly with such questionable justification. There is clearly a benefit in promoting regional uniformity in the terms and conditions of the interconnection agreements used by SWBT. This uniformity should aid in the administration of the interconnection agreements, by regional CLECs and SWBT, by producing consistency among those agreements and eliminating the need for state specific administration of each individual interconnection agreement. The Commission therefore finds that SWBT will satisfy this checklist item if the A2A is revised to mirror the language in the K2A regarding access to line class codes.

Checklist Item (iv) - Unbundled Local Loops

In the December 2000 Consultation Report, this Commission indicated that it could not

conclude from the record that SWBT had satisfied the requirements of checklist item iv because of certain problems in providing unbundled DSL facilities. This determination was based in large part on complaints by ALLTEL suggesting that SWBT denied ALLTEL equal access as a result of the burdensome process in pre-ordering DSL conditioned loops and lack of nondiscriminatory access to data which would reflect whether a loop is DSL conditioned. SWBT's DSL performance in Arkansas has improved significantly. (T. 2751). Although SWBT has not met the minimum performance standards each month, between November 2000 and January 2001, SWBT performance results indicated it has provided stand-alone loops not requiring conditioning within the 5-day bench mark and has provided conditioned loops within a 10-day bench mark. (T. 2492).

SWBT's witness Carol Chapman testified that SWBT's advanced services affiliate, ASI, uses the same interfaces available to all other CLECs in ordering DSL conditioned loops and has the same information available to determine loop qualification options. Ms. Chapman notes that the FCC determined in both the Texas and Kansas/Oklahoma proceedings that the same systems are used to provide DSL loop information to affiliated and non-affiliated CLECs and that, therefore, the access to the necessary OSS interfaces is nondiscriminatory. (T. 59).

"Although SWBT's performance data indicate that it has continued difficulties satisfying the state-approved benchmarks for missed installation due dates, this performance alone does not undermine our determination that SWBT installs xDSL-capable loops in a manner that satisfies the checklist." (Kansas/Oklahoma Order at ¶188). It is also noted that SWBT uses the same systems for provisioning loops in Arkansas that it uses in Kansas, Oklahoma and Texas. This Commission agrees with the FCC's statement that the "parties generally point to disparity in SWBT's performance

data without providing additional evidence of competitive harm.” (*Id.*, at 189).

Enforcement

In its Response to the Commission's December 2000 Consultation Report filed March 23, 2001, SWBT states that, “[u]nder the unique circumstances in Arkansas - where this Commission has decided not to arbitrate or otherwise to establish UNE rates - it is entirely appropriate to proceed with cost-based prices from Kansas, given that SWBT can also demonstrate that the costs in Arkansas are at least equal to (if not higher than) Kansas.” (SWBT's Response at p. 8). While the Commission agrees that based on FCC precedent and the evidence regarding Arkansas' cost of service it is permissible to use cost-based prices from Kansas, the Commission wishes to clarify that this Commission has not decided to refuse to hear arbitration proceedings. Indeed, there are arbitration proceedings currently pending before this Commission; however, in establishing UNE rates, the Commission is bound by Ark. Code Ann. §23-17-409(e)(Supp.1999) which requires that, “The prices for unbundled network elements shall include the actual costs including an allocation of joint and common costs and reasonable profit.” This Commission is also prohibited from imposing any interconnection requirements that go beyond the requirements of the federal act or regulations promulgated under the federal act. (Ark. Code Ann. §23-17-408(i)(2)(Supp. 1999)). Except for basic local exchange service and switched-access service, any company making an election under Ark. Code Ann. §23-17-406, such as SWBT, may increase or decrease its rates for telecommunications services without Commission approval. (Ark. Code Ann. §23-17-408(c)(Supp. 1999)).

Although the FCC has encouraged state performance monitoring and post-entry enforcement, the FCC has not required proof by Section 271 applicants that they are subject to such mechanisms

as a condition of Section 271 approval. (Massachusetts Order at ¶237, Kansas/Oklahoma order at ¶69). Due to this Commission's limited legal authority to ensure future performance, we would strongly suggest that the FCC consider including potential anti-backsliding provisions in any determination it makes on a prospective SWBT application for permission to provide interLATA telecommunications services in Arkansas.

Conclusion

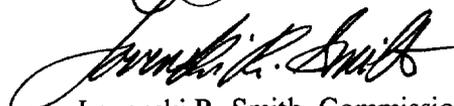
The Commission finds that, with the modifications discussed herein, the A2A will satisfy the fourteen point checklist contained in 47 U.S.C. §271 when it is made available to CLECs. However, the Commission can find no precedent to provide guidance in determining whether the CLECs in Arkansas who are currently providing both business and residential service but have stated that they will refuse to accept new residential customers fit the definition of "competing providers of telephone exchange service" as used in 47 U.S.C. §271(c)(1)(A). Competition for existing and new business customers continues, and provision of service to approximately nine thousand current residential customers also continues. In addition, the modified A2A rates, based on Kansas rates, would provide facilities-based CLECs with lower rates than they have in their existing interconnection agreements with SWBT. However, the record does not demonstrate that there are currently facilities-based CLECS competing to provide service to new residential customers in Arkansas and there is no evidence that any CLEC will offer service to the residential market prospectively under the newly-proposed A2A rates. Accordingly, based on the unique facts of this record, we defer to the FCC to determine whether the aforementioned Arkansas CLECs constitute "competing providers" under 47 U.S.C. §271(c)(1)(A).

BY ORDER OF THE COMMISSION.

This 21 day of May, 2001.


Sandra L. Hochstetter, Chairman


Betty C. Dickey, Commissioner


Lavenski R. Smith, Commissioner


Diana Wilson
Secretary of the Commission

DEC 21 11 45 AM '00 ATTACHMENT "1"

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION OF)
SOUTHWESTERN BELL TELEPHONE)
COMPANY FOR AUTHORIZATION TO)
PROVIDE IN-REGION INTERLATA SERVICES)
PURSUANT TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996 AND)
FOR THE APPROVAL OF THE ARKANSAS)
INTERCONNECTION AGREEMENT)

DOCKET NO. 00-211-U

CONSULTATION REPORT OF
THE ARKANSAS PUBLIC SERVICE COMMISSION
TO THE FEDERAL COMMUNICATIONS COMMISSION
PURSUANT TO 47 U.S.C. SECTION 271(D)(2)(B)

Procedural History

The federal Telecommunications Act of 1996 (1996 Act) allows a Bell operating company (BOC) to apply to the Federal Communications Commission (FCC) for authority to provide in-region interLATA telecommunications service in any BOC in-region state. Pursuant to 47 U.S.C. §271, the BOC must file a state-specific application for in-region interLATA authority for each of the states in which the BOC provides local exchange telecommunications service as an incumbent local exchange carrier (ILEC). When Southwestern Bell Telephone (SWBT) or any other BOC files an application for authority to provide in-region interLATA telecommunications service, "[t]he Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements" of 47 U.S.C. §271(c). 47 U.S.C. §271(d)(2)(B).

On July 24, 2000, SWBT filed an Application for Authorization to Provide In-Region InterLATA Services and for Approval of the Arkansas 271 Interconnection Agreement (271

Application) requesting that the Commission issue an order or report indicating the Commission's support of the §271 Application SWBT proposes to file with the FCC. With its Application, SWBT filed twenty-two (22) Affidavits of proposed witnesses and a draft of its Brief in Support of its FCC Application. As part of its Application, SWBT filed a document which SWBT designated as the Arkansas 271 Interconnection Agreement (A2A). In its 271 Application, SWBT seeks a consultation report from this Commission for submission to the FCC to verify that SWBT has complied with the fourteen (14) point checklist set out in 47 U.S.C. §271(c)(2)(B) in SWBT's provision of interconnection to competitive local exchange carriers (CLECs) and for verification that the A2A satisfies the checklist of the 1996 Act.

In SWBT's current 271 Application proceeding, AT&T Communications of the Southwest, Inc. (AT&T), WorldCom, Inc. (WorldCom), Sprint Communications, LP, e.spire Communications, Inc. f/k/a American Communication Services, Inc. (e.spire), Connect Communications Corporation (Connect) and ALLTEL Communications, Inc. (ALLTEL) were granted intervention. Pursuant to the procedural schedule established in Order No. 5 entered on August 22, 2000, a public hearing on SWBT's 271 Application was held on November 2 and 3, 2000.

The 271 Application filed by SWBT on July 24, 2000, is the second 271 Application SWBT has filed with this Commission. SWBT filed its first application for Commission review of a proposed FCC §271 filing on February 24, 1998 in Docket No. 98-048-U. The application was amended and supplemented by SWBT on April 17, 1998.

After notice and hearing on SWBT's first 271 Application, the Commission issued a Consultation Report on August 28, 1998 (First Consultation Report). In its Report, the Commission

concluded that SWBT appeared to meet the requirements of eight (8) of the items on the 47 U.S.C. §271(c) checklist or, alternatively, that SWBT was in compliance with Arkansas law in providing service to CLECs on those items. The Commission reached no conclusion on two (2) of the checklist items due to pending complaints involving the same issues addressed in those checklist items. In its First Consultation Report, the Commission concluded that SWBT satisfied the checklist requirements by providing: (iii) nondiscriminatory access to poles, ducts, conduits and rights-of-way; (v) unbundling of local transport; (vi) unbundling of local switching; (viii) white pages directory listing; (ix) numbering administration; (x) access to data bases and associated signaling; (xii) local dialing parity; and (xiv) resale.

FCC Standard of Review of State Commission Consultation Report

In reviewing SWBT's proposed application to the FCC for §271 approval to provide in-region interLATA telecommunications services, this Commission's role is limited. The Commission is given the opportunity in 47 U.S.C. §271(d)(2)(B) to submit a consultation report to the FCC reflecting the status of competition in the local exchange market in Arkansas and SWBT's efforts to open its markets to competition within the state. The 1996 Act does not prescribe any standard for the FCC to use in considering a state commission's consultation report. The FCC "has discretion in each section 271 proceeding to determine the amount of weight to accord the state commission's verification. The Commission (FCC) has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the Commission's (FCC) role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met." CC Docket No. 00-65, *In the Matter of the*

Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, ¶ 11 (hereinafter "SWBT Texas Order").

Analysis of Local Competition

47 U.S.C. §271(c)(2) SPECIFIC INTERCONNECTION REQUIREMENTS.--

(A) AGREEMENT REQUIRED.--A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought -

(i)(I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

A BOC meets the access and interconnection requirements of 47 U.S.C. §271(c)(2) described in 47 U.S.C. §271(c)(1)(A) by having entered into one or more binding interconnection agreements approved pursuant to 47 U.S.C. §252 by which the BOC is providing access and interconnection to a facilities-based competitor. The CLEC must be providing telephone exchange service to residential and business subscribers.

According to the General Staff of the Arkansas Public Service Commission (Staff), as of September 22, 2000, SWBT had approved interconnection agreements with 77 CLECs. Six of those CLECs are known to have facilities in Arkansas. Staff Comments at 2, 3. SWBT witness Harbin states that as of May 31, 2000, CLECs have acquired 77,109 customer access lines in the state which

amounts to approximately 7% of the one million access lines in SWBT's Arkansas serving area. Harbin Aff. at 3. The facilities-based CLECs are serving 4,619 residential and 55,041 business access lines. The 4,619 residential access lines are served by ALLTEL. No other facilities-based CLEC in the state serves any residential access lines. Staff comments at 4.5.

At this time, ALLTEL is the only facilities-based CLEC serving residential customers, and 2,025 (44%) of ALLTEL's residential customers are employees of ALLTEL. At the beginning of the public hearing herein, ALLTEL publicly announced that it would discontinue offering residential CLEC service in Arkansas on the basis of cost considerations. Existing residential customers will be able to continue ALLTEL service only at their present location. ALLTEL will no longer serve or compete in any way for new residential customers.

With ALLTEL's withdrawal from the residential CLEC market, the Commission cannot say that SWBT now meets the requirements of 47 U.S.C. 271§(c)(1)(A) that it have a facilities-based CLEC providing local exchange service to residential and business subscribers. For the present, ALLTEL has residential customers, but through attrition those numbers will steadily decline. No new customers will be added by ALLTEL and ALLTEL will not compete with SWBT for residential customers. The question which the FCC will have to answer in reviewing SWBT's §271 application is whether or not ALLTEL is a competitor of SWBT's in the residential market after ALLTEL's announcement that it has withdrawn from the residential market.

The other alternative for a 47 U.S.C. §271 is "track B," 47 U.S.C. §271(c)(1)(B). However, as Staff correctly observed:

Consideration of SWBT's application under 47 U.S.C. §271(c)(1)(B) would require that this Commission certify that all CLECs requesting access have failed to

negotiate in good faith or failed to comply, within a reasonable period of time, with the implementation schedule contained in their interconnection agreements. Since SWBT has received requests for interconnection, has approved interconnection agreements with facilities-based providers, and the CLECs have neither failed to negotiate in good faith nor comply with their implementation schedule, its application cannot be considered using 47 U.S.C. §271(c)(1)(B). Staff Comments at 4.

Arkansas 271 Interconnection Agreement

In its Application, SWBT describes the A2A as a key component of its Application and proposed §271 filing with the FCC. According to SWBT, the A2A is an interconnection agreement which would not become available to CLECs in Arkansas "unless the Arkansas PSC finds that it satisfies the 14-point checklist of §271(c) of the Act." 271 App. ¶ 9. SWBT contends that the A2A will enhance CLECs' ability to compete by offering interconnection terms and conditions that have been examined in the Texas 271 process and will give "Arkansas CLECs the benefits of the lengthy collaborative process in Texas." 271 App. ¶ 10.

Interconnection agreements are the contracts between incumbent local exchange carriers (ILECs) such as SWBT and CLECs prescribed in the 1996 Act to allow CLECs access to the ILECs network and to enable CLECs to provide telecommunications service. The 1996 Act requires that interconnection agreements be submitted to state commissions for review and approval. 47 U.S.C. §252(e)(1). Section 251 of the 1996 Act sets out the minimum requirements for interconnection between CLECs and ILECs. In Section 252, the 1996 Act provides the framework for state commission review of interconnection agreements and arbitration of issues between the parties to the interconnection agreement. Negotiated interconnection agreements and arbitrated interconnection agreements must be submitted to a state commission for approval. Negotiated

agreements may contain any terms, rates and conditions upon which the two parties involved may agree. A state commission may only reject a negotiated agreement if it finds that the agreement discriminates against a telecommunications carrier that is not a party to the agreement or that the agreement is not in the public interest. 47 U.S.C. §252(e)(2)(A). An arbitrated agreement must comply with §251 and §252(d) to be approved by a state commission. 47 U.S.C. §252(e)(2)(B).

According to SWBT, the A2A is a model agreement which has not been negotiated with any CLEC, and no CLEC in Arkansas has been offered or has accepted the A2A as an interconnection agreement. In fact, SWBT states that the A2A will not be offered to a CLEC unless the Commission finds that the A2A meets the §271 checklist "because of the quid pro quo aspects" of SWBT's offer of the agreement. T. 104. Due to the unique nature of SWBT's request that the Commission approve an interconnection agreement which is not a contract between two parties and which does not appear to be contemplated in the 47 U.S.C. §252(e) approval process, the Commission entered Order No. 13 on October 27, 2000, directing the parties to brief the issue of whether the Commission has the authority to approve or modify the A2A.

The position of SWBT is that the A2A is similar though not identical to the T2A which the Texas Public Utility Commission (Texas PUC) approved and, therefore, this Commission should also approve the A2A based upon the Texas PUC's approval of the T2A. Further, SWBT contends that the fact that the A2A is not a negotiated or arbitrated agreement "does not preclude this Commission from finding that the A2A provides CLECs in Arkansas with nondiscriminatory access to each of the "competitive checklist" items at just and reasonable rates as mandated by federal law." SWBT A2A Brief at ¶ 4.

The Staff of the Arkansas Public Service Commission (Staff) takes the position that:

SWBT correctly notes that Congress did not expressly anticipate proposed agreements like the A2A and that there is nothing in the federal act that prohibits this sort of agreement from serving as a model agreement. Staff believes that this misses the point. The Telecommunications Act is a general grant of authority with some restrictions to state commissions. The Telecommunications Act is not generally a limitation on existing state commission authority to approve interconnection agreements. To say that the Act does not prohibit something does not answer the question of what authorizes the particular action desired. Staff A2A Brief at 2.

In responding to Order No. 13, e.spire contends that the Commission has no authority under state or federal law to approve or modify the A2A. e.spire contends that the applicable provision of state law is Ark. Code Ann. § 23-17-408(c)(5) which states that this Commission has no jurisdiction over services other than telecommunications services and that the A2A does not propose telecommunications services as defined in Ark. Code Ann. § 23-17-403(25)(A). Therefore, according to e.spire, the Commission has no authority under state law to approve or modify the A2A. AT&T and Connect agree with e.spire's position on state law. AT&T, Connect, e.spire and Staff also assert that there is no authority under federal law for the Commission to approve or modify the A2A because the A2A is neither an interconnection agreement nor a statement of generally available terms (SGAT) under 47 U.S.C. §§ 252(b), (e), or (f). "Federal law does not authorize this Commission to entertain anything else, much less approve, disapprove, or modify it." e.spire A2A Brief at ¶ 4. The parties also note that even if the A2A did propose telecommunications services, this Commission could not approve or modify it because, under Ark Code Ann. § 23-17-408(c)(2), rates for services do not require Commission approval. "In other words, there is nothing the Commission can do about the A2A that could bind anybody to anything for any length of time." e.spire A2A Brief at ¶ 5.

In its A2A Brief, Staff offered an alternative position to approving or modifying the A2A. The Staff takes the position that the Commission could issue an advisory opinion commenting on the A2A's compliance with federal law and comparing the benefits to the terms of existing interconnection agreements. The Staff observes that the Commission's report is only a recommendation to the FCC in compliance with 47 U.S.C. §271(d)(2)(B) and is not binding on SWBT or the FCC.

SWBT places a great deal of emphasis on the proceeding before the Texas PUC and the Texas PUC's approval of the T2A in its Application requesting Commission review of the proposed §271 filing. SWBT appears to take the position that the Texas PUC's proceeding was so detailed a review of SWBT's T2A and other operations as to eliminate any need to conduct an in depth review of the A2A or checklist compliance in Arkansas. In addition, SWBT argues that the FCC Texas Order is crucial to evaluation of its Arkansas 271 Application, contending that in that order, the FCC makes it "clear that SWBT's efforts to open its local markets to competition in Arkansas and across its five-state region meets, and in many cases, exceeds the requirements of §271." 271 App. at ¶ 7.

The Commission acknowledges that there are certain areas of compliance with the §271 checklist which are regional in nature. As the Commission observed in the First Consultation Report, there are economies and efficiencies to regional operational support systems (OSS) and the Commission indicated its willingness to await the outcome of an ongoing review in Texas. *See* First Consultation Report at 15. However, the A2A is not regional and, as SWBT readily admits, the A2A and the T2A are not identical. There are very significant differences between the two agreements

that far exceed changing the state names used in the agreements. The differences between the T2A and A2A would have a significant impact on CLECs in Arkansas.

A major difference between the T2A and the A2A is the rates and charges. The rates in the A2A for recurring and nonrecurring charges are substantially higher than the rates available to CLECs in the T2A. ALLTEL, the only facilities-based CLEC serving residential customers in Arkansas, states that its principal concerns with the A2A are the unbundled network element (UNE) rates and nonrecurring charges. ALLTEL also expresses concerns that the rates in the A2A are not firm rates.

So a person who would opt into that or execute this A2A, even with the lower current rates that they're proposing, which are lower than Alltel's interconnection agreement rate, they're not real, because they can be trued up and, presumably SWBT would then be supporting in that cost docket the original A2A rates because those are the ones that they contended are in compliance with FCC rules, TELRIC, et cetera. And so ultimately, the true up would go against CLECs if they're successful in that docket, if this Commission had the authority to conduct such a docket, a cost docket. If it does, then certainly we would support a cost docket, because perhaps out of it, it could improve rates, and we would certainly be interested in that. T.18.

In Kansas and Oklahoma, SWBT also offered model agreements in its §271 applications with rates substantially higher than the rates in the T2A. In evaluating the Kansas and Oklahoma applications before the FCC pursuant to 47 U.S.C. §271(d)(2)(A), the United States Department of Justice (DOJ) observed that:

Both the recurring and nonrecurring charges for the use of UNEs in Oklahoma, and the nonrecurring charges for use of UNEs in Kansas, are substantially greater than the comparable charges in Texas, which the Commission (FCC) has found to be appropriately cost based. There is no obvious difference in costs between and among the states that would account for the difference in prices, and there are some indications in the record that the prices in Kansas and Oklahoma were not determined in accordance with the Commission's methodological requirements.

Moreover, competitive local exchange carriers (CLECs) have chosen to use UNEs to a very limited extent in Kansas and Oklahoma, a fact that could suggest that the prices of those UNEs are not appropriately based on cost. In these circumstances, we believe the Commission (FCC) should undertake an independent determination whether these prices conform to the requirements of the 1996 Act and the Commission's (FCC) rules, rather than relying on the decisions of the KCC and OCC to approve those prices.

In the Matter of the Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, DOJ Evaluation, December 4, 2000, at 3 (DOJ Evaluation).

In evaluating the Kansas and Oklahoma Applications, DOJ also observed that "[p]rices which are not properly cost-based act as a barrier to entry; such prices may prevent entry entirely, or limit entry in type or scale." DOJ Evaluation at 11. In support of this statement, DOJ cited "ConnectSouth Comments at 4 ("On November 2, 2000, ConnectSouth (sic) notified the Arkansas Public Service Commission that it was withdrawing from the Arkansas market due to SWBT's high collocation and UNE charges.")" Id. at footnote 41. (The Commission believes that the DOJ incorrectly used the name ConnectSouth since it was actually ALLTEL that notified the Commission that it would no longer offer service to new residential customers.)

ALLTEL is the only facilities-based CLEC in Arkansas serving residential customers at this time and it announced that it would no longer compete for any additional residential customers as of November 1, 2000, citing cost considerations as the principal reason. T. 19. ALLTEL indicated that its current residential customers in SWBT territory may retain services; however, if they move from their current location they cannot take the services with them. ALLTEL's witness cited three concerns which ALLTEL had in trying to compete in the residential market: collocation, pricing and operational problems. According to ALLTEL, it would only consider resuming further service to

the residential market if SWBT made improvements in those areas which might make it feasible for ALLTEL to consider competing in the residential market again. T. 401-402.

The Commission has reviewed the DOJ's evaluation of the Kansas and Oklahoma agreements which notes the differences between the T2A and the Kansas and Oklahoma agreements submitted to the FCC and the DOJ's conclusion that those differences may not conform to the 1996 Act. SWBT has represented that the rates and charges in the A2A are comparable to the rates and charges in the Kansas and Oklahoma agreements--- the same rates and charges which DOJ concludes are probably not in conformance with the 1996 Act. Based upon the DOJ's unfavorable evaluation of the comparable agreements from Kansas and Oklahoma and the comments and testimony herein, the Commission is not persuaded that the A2A as presented by SWBT can be considered to be in compliance with all the checklist items in 47 U.S.C. §271(c). From the DOJ's Evaluation of the Kansas and Oklahoma agreements, it appears probable that the A2A would not be found by the DOJ to be in compliance with the checklist if SWBT files a §271 application for Arkansas with the FCC. However, if SWBT amended the A2A to eliminate the differences between the A2A and the T2A and to make available the same terms, conditions and rates in the T2A in a legally binding agreement to be offered to Arkansas CLECs, the Commission would approve the A2A as in compliance with the checklist in 47 U.S.C. §271(c) to the extent that the Commission has the legal authority to do so under state and federal law.

47 U.S.C. §271(c)(2)(B), Competitive Checklist

(B) Competitive checklist

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of this title.

Section 251(c)(2) requires that interconnection be provided that is equal in quality to that provided by the local exchange carrier to itself or to any subsidiary or affiliate for the transmission and routing of telephone exchange service and exchange access at technically feasible points. Section 252(d)(1) requires that a state commission determine the just and reasonable rates for interconnection of facilities and equipment for network elements, be cost-based, and that rates be non-discriminatory. This section also requires reciprocal compensation and wholesale prices which are based on the retail rates less cost associated with marketing, billing, collection, or other avoided costs.

SWBT witness Deere testified that SWBT provides requesting CLECs with non-discriminatory access to UNEs at technically feasible points in conformance with the FCC's rules. SWBT witness Deere states that the A2A, together with Commission approved interconnection agreements, establishes several methods of interconnection arrangements available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect point, out-of-band signaling transfer points, and points of access to UNEs. Deere Aff. at ¶ 18, ¶ 24. The witness also testified that CLECs may request custom interconnection arrangements

which allow CLECs to modify existing interconnection arrangements and create additional arrangements. Deere Aff. at ¶ 33, ¶¶ 84-87.

The rates for physical collocation which SWBT proposes in its A2A have not previously been negotiated with any CLEC or reviewed or approved by this Commission or any other commission. T. 59. The A2A rates, terms and conditions are not consistent with those contained in the Texas collocation tariffs that were approved by the FCC in the SWBT Texas 271 order. To arrive at the proposed A2A UNE rates, SWBT applied certain adjustments, which the Texas PUC ordered to be made to the T2A, to SWBT's Arkansas cost studies. T. 190 and Joint Sparks, Allis Dysart, Rogers Affidavit paragraph 26. SWBT did not make all of the adjustments in Arkansas that were required in Texas; for instance, it did not include any Texas rulings or adjustments that related to rates rather than costs. T. 192-96. The A2A rates proposed by SWBT, even as modified in SWBT's rebuttal testimony, remain substantially higher than the T2A rates, and the record does not reflect that SWBT has justified these substantially higher rates.

Under this checklist item, SWBT must be offering interconnection in accordance with 47 U.S.C. §271(d)(1) which requires that SWBT provide interconnection to CLECs at cost based rates. SWBT has offered the A2A as in compliance with the entire checklist, and SWBT has represented that the rates in the A2A are similar to the rates offered in the Kansas and Oklahoma agreements. However, these are the same rates which the DOJ found to be substantially different from the rates in the T2A and are the rates which the DOJ suggested the FCC investigate as not being cost based or in compliance with the 1996 Act. DOJ Evaluation. Accordingly, based upon the DOJ's Evaluation and SWBT's representation of the similarities with the Kansas and Oklahoma

agreements, this Commission cannot conclude that SWBT is in compliance with this checklist item.

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of this title.

As noted under the previous checklist item, SWBT's witnesses testified as to the UNE elements and interconnection points available in the A2A. As this Commission noted in its First Consultation Report, Section 251(c)(3) requires SWBT to provide nondiscriminatory access to UNEs at technically feasible points, on rates, terms and conditions which are just and reasonable, and to provide those elements in a manner which allows a CLEC to combine the UNEs to provide telecommunications services. SWBT's provision of OSS is included under this checklist item. OSS is not a specific checklist item, but the provision of this service impacts SWBT's compliance with multiple checklist items.

The parties appear to agree that SWBT provides the required UNEs. The point of contention arises as to whether SWBT provides these UNEs at technically feasible points which are equal in quality to that which SWBT provides itself or an affiliate, and whether the rates terms and conditions for providing the UNEs are just, reasonable and nondiscriminatory.

As initially proposed, the A2A would have required a CLEC to establish a physical point of interconnection with SWBT's network in each local exchange area. Turner at 20-34. In rebuttal to AT&T's witness, SWBT proposed to add Section 1.3 to A2A attachment 11, which provides a CLEC the option of using a single point of interconnection or multiple points of interconnection throughout a local access transport area (LATA). Sparks Rebuttal Aff. at ¶ 28. AT&T contends that this section would require a CLEC using a single point of interconnection to bare all costs of transport on SWBT's side of the point of interconnection. AT&T also asserts that the A2A would

require a CLEC to extend its transport using transport from a third party or SWBT. According to AT&T, the economic effect is the same as requiring the CLEC to establish a physical point of interconnection in each local exchange area. *See AT&T Communications of the Southwest, Inc.'s Findings of Fact and Conclusions of Law at 7.*

SWBT asserts that it has complied with the requirement to provide interconnection at technically feasible points and argues that the rates are reasonable and nondiscriminatory. SWBT also states that the provisions complained of by AT&T were negotiated and arbitrated between AT&T and SWBT in Texas, and that the FCC found "AT&T's experience does not constitute evidence of a failure by SWBT to provide interconnection at all technically feasible points for purposes of section 271 review." *Deere Rebuttal Aff. at ¶¶ 32-33, referencing Texas Order at ¶ 77.*

A determination of whether SWBT provides the required network elements in equal quality to that which it provides to itself or an affiliate rests largely on the performance measurements relating to the OSS functions. As stated by the FCC:

Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(1)(c)(3) and 252(d)(1)." The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under Section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under Section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. The Commission must therefore examine a BOC's OSS performance to evaluate compliance with Section 271(c)(2)(B)(ii) and (xxib). In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well. *Texas Order at ¶ 93.*

AT&T's arguments regarding the technically feasible points of interconnection are essentially the same arguments that AT&T made in opposition to SWBT's 271(b) application in Texas. SWBT appears to comply with the requirement that it offer CLECs interconnection at technically feasible points. SWBT has demonstrated that it has approved interconnection agreements which provide CLECs with a process for requesting interconnection at additional, technically feasible points.

SWBT's OSS functions employed in Arkansas are the same as those employed across SWBT's region. Staff Comments at 14. SWBT reports most of its performance measurements on a state-specific basis, and the third party testing of SWBT's systems conducted by Telcordia pursuant to the directives of the Texas Commission provides evidence of the capabilities of SWBT's OSS functions. Because SWBT's OSS functions are the same throughout its regions, the findings of the Texas Commission should be equally valid in Arkansas. Additionally, SWBT's training materials and local service support center provide an ongoing support for CLECs in accessing and dealing with SWBT's OSS.

With regard to the collocation issue, ALLTEL witness Weeks testified that:

... SWBT proposes reserving space for transport equipment for the current year, plus two (2) years. SWBT also proposes reserving space for switching, power and Main Distribution Frame ("MDF") for the current year plus ten (10) years and for a Digital Cross Connect System ("DCS") for the current year plus ten (10) years for anticipated growth. While SWBT is entitled to reserve space for reasonable and anticipated growth, the proposed time frames are excessive. SWBT offers no justification why space reservation intervals in Arkansas should be extended beyond those already established in Texas. Alltel proposes to use the T2A maximum reservation times. Weeks Testimony at 8.

In response, SWBT's witness contends that the space reservation intervals in the A2A "are the same space reservation intervals that CLECs and SWBT stipulated to in the Kansas Collocation Tariff

Agreement and approved by the Kansas Commission on June 14, 2000. In addition, the CLEC coalition in Missouri also agreed with these intervals. SWBT's proposal is the only proposal with space reservation intervals agreed to by both CLECs and SWBT." Matthew Adam Rebuttal Aff. at 5. SWBT contends that ALLTEL fails to offer any evidence why the Texas reservation intervals are superior to the ones proposed by SWBT in the A2A and that ALLTEL's preference for the reservation requirements contained in the T2A is clearly based on the fact that those reservation requirements are more favorable to CLECs.

SWBT has presented the A2A as a "negotiated agreement" which this Commission is free to accept under Section 252 of the Federal Act; however, SWBT has clearly used a pick and choose approach from agreements other than the T2A in order to fashion an agreement, the entirety of which has not been negotiated, which is composed of parts of various agreements that are favored by SWBT. SWBT has provided no justification for the failure to include within the A2A the same reservation intervals which are in the T2A, and accordingly the Commission cannot conclude that the A2A as offered is in compliance with the checklist.

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224 of this title.

This item was approved in the Commission's First Consultation Report and there is no evidence which suggests that SWBT is not currently providing nondiscriminatory access to the poles, ducts, conduits and rights-of-way. See SWBT's first affidavit.

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

In the Commission's First Consultation Report, the Commission stated that SWBT's interconnection agreements appear to make local loops available as UNEs; however, as AT&T's testimony reflects, SWBT is not in compliance with the FCC's *First Report and Order* with regard to Digital Subscriber Line (DSL) unbundling. The Commission cannot conclude from the record that SWBT has met this checklist item. First Consultation Report at 19.

In this proceeding, ALLTEL asserts that SWBT fails to provide nondiscriminatory access to DSL capable loops as a result of inaccuracies or incomplete information in SWBT's data bases. Weeks Testimony at 10-11. ALLTEL suggests that SWBT should agree to amend its interconnection agreements to include escalation provisions and penalties when due dates for the provisioning of DSL service are missed. ALLTEL Proposed Findings of Fact, Conclusion of Law and Modified A2A at 2. ALLTEL witness York stated that ALLTEL has "had a very, very hard time getting ADSL service provisioned in an acceptable amount of time for our customers, which has caused us to lose several of them." T. 394.

The testimony of SWBT's witness Welch reflects that SWBT required ALLTEL to go through a burdensome process in pre-ordering DSL conditioned loops. T. 225-239. ALLTEL suggests, and the record reflects, that SWBT is not providing nondiscriminatory access to data which would reflect whether a loop is DSL conditioned. SWBT responds by stating that it is offering ALLTEL the opportunity to participate in expansion of SWBT's "yellow zone" line sharing trial which would eliminate the need for loop qualification and dramatically reduce the provisioning intervals from those contained in the current SWBT/ALLTEL interconnection agreement. Welch Rebuttal Aff. at ¶ 22. The yellow zone trial may prove to eliminate the concerns regarding

provisioning DSL conditioned loops; however, the Commission cannot conclude from the record that SWBT has met this checklist item.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

This Commission's First Consultation Report found that SWBT offers local transport unbundled from switching or other services. *See* First Consultation Report at 20-21. Additionally, SWBT offers shared or common transport between its central office switches, between its tandem switches, and between tandem switches and central office switches in accordance with the shared transport requirements of the FCC's UNE remand order. *See* Sparks Aff. at ¶ 101, and Deere Aff. at ¶ 110. Accordingly, this Commission finds for purposes of this Consultation Report that SWBT continues to meet this checklist item.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

This Commission's First Consultation Report found that SWBT was providing unbundled local switching, and the evidence of record in this proceeding clearly suggests that SWBT continues to do so. *See* Sparks Aff. at ¶¶ 102-140.

(vii) 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.

No CLEC has alleged that SWBT fails to provide access to 911 and E911 services. Although this Commission's First Consultation Report indicated that this Commission could not conclude that SWBT had met this requirement, the record now clearly reveals that SWBT is meeting the requirements.

The FCC UNE remand order has removed directory assistance and operator services from the list of elements required under checklist Item 7. See UNE Remand Order, 15 FCC Rcd at ¶¶ 441-442. Accordingly, the Commission concludes that SWBT has shown compliance with checklist Item 7.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

This Commission's First Consultation Report found that SWBT appears to be in compliance with this checklist item. Although some CLECS have complaints regarding the accuracy of the white pages listings and the frequency of updates for those listings, these problems can, at least in part, be attributed to difficulties inputting correct information into the data bases, such that a certain amount of inaccuracy is, unfortunately, to be expected. The Commission does not believe that the complaint concerning SWBT's provision of white page listings is such that it indicates that SWBT does not provide white page directory listings to customers of other carriers. Accordingly, the Commission continues to believe that SWBT is in compliance with this checklist item.

(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

In its First Consultation Report, this Commission found that SWBT provides nondiscriminatory access to telephone numbers. In this proceeding, the record reflects that SWBT has assigned numbers in accordance with industry established guidelines published by the industry numbering committee and continues to provide nondiscriminatory access to telephone numbers. See Adair Aff. at ¶¶ 10-18.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

The Commission's First Consultation Report found SWBT to be in compliance with this checklist item. WorldCom has proposed that SWBT be required to make the contents of its Calling Name Database (CNAM) available to CLECs on a bulk basis. The information contained in the CNAM database is available to CLEC's end office switches on a query-by-query basis, just as that information is available to SWBT's end office switches. See Rogers Rebuttal Testimony at ¶ 10.

We do not believe that the complaints of WorldCom support a conclusion that SWBT has failed to provide nondiscriminatory access to databases and associated signaling for call routing and completion. Accordingly, the Commission finds that SWBT continues to be in compliance with checklist Item 10.

(xi) Until the date by which the Commission issues regulations pursuant to section 251 of this title to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

SWBT has equipped eighty-one percent of its access lines in Arkansas with local number portability (LNP). CLECs in Arkansas serve more than 70,000 ported access lines. Orozco Aff. at ¶ 26. Although some problems continue to exist regarding LNP, (see Willard Testimony at 60-61 and Dysart Rebuttal Testimony), SWBT generally meets the performance benchmark related to LNP and also provides two forms of INP, remote call forwarding and direct inward dialing. The evidence indicates that SWBT provides number portability on reasonable terms and conditions.

(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of this title.

This Commission's First Consultation Report approved SWBT's provision of local dialing parity. No CLEC has presented any evidence questioning SWBT's ability to provide the necessary access to allow local dialing parity, and this Commission continues to believe that SWBT complies with this checklist item.

(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of this title.

Since the issuance of the Commission's First Consultation Report, the FCC has indicated that it will not take into account a Bell operating company's failure to pay reciprocal compensation for Internet traffic in evaluating checklist compliance. Texas Order at ¶ 386. Although some CLECs have complained that the issue of reciprocal compensation payments for Internet traffic remains unresolved, the Commission is of the opinion that, based on the FCC's Texas Order, the issue of whether Internet traffic is subject to reciprocal compensation does not affect the issue of whether SWBT is providing reciprocal compensation arrangements in accordance with section 252(d)(2) of the Federal Act. Accordingly, based on the testimony provided, the Commission finds that SWBT is in compliance with this checklist item.

(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of this title.

This Commission's First Consultation Report found that SWBT was making its telecommunications services available for resale. There are several resellers of service in Arkansas and SWBT has proposed a wholesale discount rate of 18.26%. See Lundy Aff. at ¶ 35, and Sparks

Aff. at ¶¶ 121-123. The Commission believes that SWBT continues to comply with this checklist item.

Furthermore, the Commission believes that it is not necessary for the Commission to conduct an independent review of SWBT's performance data. The regional processes for collecting and reporting data were validated by Telcordia and were accepted by the FCC.

Conclusion

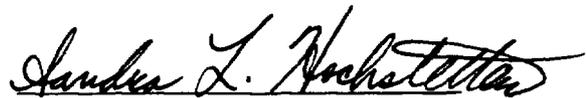
The Commission finds that SWBT has made significant progress in providing service to CLECs in compliance with the checklist since SWBT's first 271 application was filed in 1998. However, with SWBT's only facilities-based residential competitor, ALLTEL, having withdrawn from the residential service market, it does not appear that SWBT complies with the requirement that it be "providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers." 47 U.S.C. §271(c)(1)(A). To apply to the FCC for 271 approval to provide interLATA telecommunications service, SWBT must meet the requirements of 47 U.S.C. §271(c)(1)(A), as well as provide service to CLECs in compliance with the checklist. 47 U.S.C. §271(c)(2)(A) and (B). Further, the Commission cannot conclude that SWBT's utilization of the A2A as presently proposed would put SWBT in compliance with all the checklist items in 47 U.S.C. §271(c)(2)(B).

However, with that said, if SWBT were to modify its proposed A2A to offer Arkansas CLECs the same terms, conditions, and rates that are available in the Texas T2A, the Commission would approve the A2A as complying with the checklist items in 47 U.S.C. §271(c)(2)(B) to the extent of the Commission's authority. Although these revisions may not in and of themselves alter

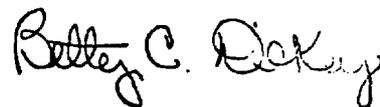
ALLTEL's decision to withdraw from the residential market, the Commission fervently hopes that they will provide sufficient incentive for some facilities-based CLECs to compete in the residential market in Arkansas.

The Commission understands that the entry or exit from any telecommunications market is an independent business decision that is based upon numerous factors, but the testimony of record in this proceeding has highlighted the critical importance of the UNE rates and non-recurring charges as a fundamental element of a competitor's decision to enter or abandon the market. Accordingly, the Commission is hopeful that the prospect of the Texas T2A rates, terms and conditions being made available in Arkansas would make a positive contribution to the reinstatement of, or creation of, new competition in the residential telecommunications market in Arkansas.

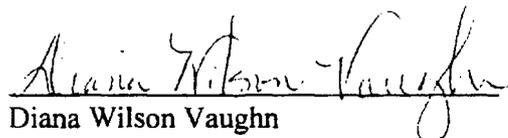
Submitted this 21st day of December, 2000.


Sandra L. Hochstetter, Chairman


Sam I. Bratton, Jr., Commissioner



Betty C. Dickey, Commissioner


Diana Wilson Vaughn
Secretary of the Commission