

Appendix A. Research Methodology

This appendix discusses the methodology used by the Commission for collecting data for the 2003 Scope of Competition Report. A data collection form was developed to obtain information about a telephone company's service offerings, revenues, lines, and minutes-of-use.²⁴⁶ By Commission Order, all incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) operating in Texas were required to complete the survey form.²⁴⁷ In addition, non-regulated data affiliates of ILECs and CLECs, and cable companies operating in Texas, were urged to voluntarily submit information about their operations.

Of the 554 certificated telecommunications utilities in Texas, 202 carriers responded to the Commission's data request. Of those responses, 138 were from CLECs (compared to 128 CLECs that reported for the 2001 data request), while the rest of the responses were from ILECs. In addition, about 76 CLECs filed letters stating that they were not providing services at the time of the data request or had yet commence operations in Texas.²⁴⁸ The certified telecommunications utilities (CTU) responses were cross checked with information submitted to the Commission pursuant to the Municipal Access line Reporting System (MARS) and with filings made to the Federal Communications Commission (FCC) by Texas carriers pursuant to the FCC's Form 477. Based on this analysis, the Commission estimates that carriers representing at least 95% of the access lines served in Texas have responded to the Commission's data request.

Most of the sections on the data collection form requested information as of June 30, 2002. Information on switched access revenues and minutes-of-use were requested for the following time periods: 1999, 2000, 2001, and the first half of 2002.

The data collection form collected both aggregated and disaggregated information on the number of retail "plain old telephone service" (POTS) lines provided over local loops owned, leased, and resold, and the number of wholesale lines. CLECs were required to provide disaggregated information at an exchange level while both ILECs and CLECs were required to provide information aggregated as urban, suburban, and rural exchanges. The urban group consists of exchanges that have a population of more than 100,000. A total of 14 exchanges were in this category. The suburban group consists of exchanges that have a population of more than 20,000 but less than 100,000. A total of

²⁴⁶ The Commission's 2003 Data Collection Form can be found on the project's website, REPORT TO THE 78TH LEGISLATURE ON THE SCOPE OF COMPETITION IN TELECOMMUNICATIONS MARKETS, Project #24727: <http://www.puc.state.tx.us/telecomm/projects/24727/24727.cfm>.

²⁴⁷ This group consists of Certificated Telecommunication Utilities (CTUs) in the State of Texas, *i.e.*, holders of SPCOA, COA and CCN certificates. Only those providers who receive these certificates are eligible to offer basic local exchange services in Texas.

²⁴⁸ *Note:* The total number of Texas ILECs reporting to the FCC was 13, as compared to 64 who reported to the Texas Commission's Data Request for 2003 Scope of Competition Report. The total number of Texas CLECs reporting to the FCC was 26, as compared to 138 who reported to the Texas Commission's Data Request for 2003 Scope of Competition Report.

57 exchanges were in this category. The remaining 1092 exchanges were classified as rural, and were under 20,000 in population.

In addition to classifying lines based on the type of exchange, carriers were also required to identify whether those lines were provided to residential or non-residential customers. Non-residential customers consist of businesses, school districts, universities, churches, and non-profit organizations. Residential lines consist of those lines that serve single-family or multi-family dwelling units.

To obtain a historical context, the 2002 data was supplemented with data from the previous Scope of Competition Reports (2001 and 1999) and the Local Competition and Broadband Reports published by the FCC semi-annually.²⁴⁹ Combining data has enabled the Commission to develop time-series charts and perform historical analysis. However, it should be noted that while the Commission's data request requires all CTUs operating in Texas to report data to the Commission, the FCC only requires those CTUs with 5,000 or more lines to report data to the FCC. As a result, the FCC data may not be as comprehensive as the state-reported data.

Finally, due to issues associated with providing competitive-sensitive information to the Commission, CLECs and ILECs were allowed to use aggregators to represent various companies and report the requested information to the Commission in an aggregated form (aggregated across all carriers of an aggregator). Since most major carriers responded to the Commission's data request using an aggregator, it was not possible to determine how many CTUs offered choices or provided a type of service in a given exchange.

²⁴⁹ Federal Communications Commission, Industry Analysis and Technology Division, WIRELINE COMPETITION BUREAU, LOCAL TELEPHONE COMPETITION REPORTS, FCC (Aug. 2000, May 2001, July 2002), and HIGH-SPEED SERVICES FOR INTERNET ACCESS, FCC (July 2002). Available online at: www.fcc.gov/wcb/iatd/comp.html.

Appendix B. Capital Markets

Since March 2000, the Dow Jones communication technology index has dropped 86%, and the wireless communication index has fallen 89%.²⁵⁰ Many analysts are predicting that the telecom market will continue to fall in 2003. They argue that more companies, including smaller telecom equipment companies, will go bankrupt without access to capital, while big equipment makers will shelve innovative products and survive on contracts to maintain and upgrade already-installed switches and software.²⁵¹ William Kirsch, a mergers-and-acquisitions lawyer at Kirkland and Ellis, says that the uncertainty in the underlying industry and the questions about accounting are standing in the way of most new telecom deals.²⁵²

Despite the decline in the telecom market, some Wall Street analysts continue to remark on the staying power of the Baby Bells. Verizon, Southwestern Bell Corporation (SBC), and BellSouth made a combined \$20 billion profit last year and have a collective market value of \$240 billion.²⁵³ As demonstrated in Table 18, despite high capital expenditures, regional Bell operating companies (RBOCs) have had minimal to no revenue growth and are losing local lines.

Table 18 — The Cost of RBOCs Remaining Solvent

	Total local phone lines	Lines lost August 2001-August 2002	Lines lost, percent of total 2001	Capital expenditures per year	Revenue Growth
Verizon	61 million	1.7 million	2.7%	\$15 billion	0%
SBC	59 million	2.2 million	3.6%	\$10 billion	2.5%
BellSouth	25 million	0.5 million	2.0%	\$6 billion	6%

SOURCE: "Bad Connection," *Forbes*, August 12, 2002, p. 85.

²⁵⁰ Paul Starr, *The Great Telecom Implosion*, THE AMERICAN PROSPECT, September 9, 2002, available at <http://www.prospect.org/print/V13/16/starr-p.html/>.

²⁵¹ Stephanie N. Mehta, *Is there any way out of the telecom mess?*, FORTUNE, July 22, 2002, p. 84.

²⁵² Kara Scannell and Robert Frank, *Buyout Firms Find Telecom Too Risky*, WALL STREET JOURNAL, July 9, 2002, p. C1.

²⁵³ "Bad Connection," *Forbes*, August 12, 2002, p. 85.

As shown in Table 19, SBC, Verizon, and AT&T stock values, as well as revenue, have decreased. In the second quarter of 2002, SBC Communications reported \$1.84 billion in profits, down 11% from the same period in 2001, while Verizon reported a second-quarter loss of \$2.11 billion, and AT&T posted a \$12.7 billion loss, mainly due to the drop in market value for cable TV.²⁵⁴

Table 19 — Comparison of Largest Texas Telecom Firms' Capital Markets

	2 nd quarter revenues, 2001 ²⁵⁵	2 nd quarter revenues, 2002 ²⁵⁶	2 nd quarter 2002 loss or profit ²⁵⁷	Drop in stock price, Jan - July 2002 ²⁵⁸
SBC	\$13.6 billion	\$13.1 billion	+\$1.84 billion	38.8%
Verizon	\$16.91 billion	\$16.84 billion	-\$2.11 billion	39.6%
AT&T	\$13.27 billion	\$12.1 billion	-\$12.7 billion	51%

In addition, AT&T Business had a revenue decline of 3.8% from the previous year, mainly due to a 12% decline in long-distance voice revenue, while AT&T Broadband's revenue fell 1.5%. AT&T Consumer revenue dropped 22% from \$3.72 billion to \$2.91 billion.²⁵⁹

Some telecom companies had positive news to report at the end of the second quarter of 2002. Sprint received \$1.5 billion in credit in late July, despite being cut to the lowest investment-grade ratings by Moody's Investors Service and Standard & Poor's earlier in the month.²⁶⁰ Nokia had a second-quarter profit jump of 46%, despite a decline in sales of 6%.²⁶¹

²⁵⁴ *SBC Communications reports lower earnings for 2nd quarter*, ASSOCIATED PRESS, July 23, 2002. Andrea Ahles, *Verizon reports \$2.11 billion loss*, FORT WORTH STAR-TELEGRAM, August 1, 2002, p. 1C. Bruce Meyerson, *AT&T Posts \$12.7 Billion Loss*, ASSOCIATE PRESS, July 23, 2002.

²⁵⁵ *SBC Beats Analyst's Expectation*, ASSOCIATED PRESS, July 24, 2002. Andrea Ahles, *Verizon reports \$2.11 billion loss*, FORT WORTH STAR-TELEGRAM, August 1, 2002, p. 1C. Jesse Drucker, and *AT&T Posts a Loss of \$12.7 Billion*, WALL STREET JOURNAL, July 24, 2002, p. M9.

²⁵⁶ *Id.*

²⁵⁷ *SBC Communications reports lower earnings for 2nd quarter*, ASSOCIATED PRESS, July 23, 2002. Andrea Ahles, *Verizon reports \$2.11 billion loss*, FORT WORTH STAR-TELEGRAM, August 1, 2002, p. 1C. Bruce Meyerson, *AT&T Posts \$12.7 Billion Loss*, ASSOCIATE PRESS, July 23, 2002.

²⁵⁸ Seth Schiesel with Simon Romero, "Regional Bell Giants No Longer Invulnerable," *New York Times*, July 23, 2002, p. C6. AT&T data from Seth Schiesel, "AT&T, Writing Down Cable Assets, Posts Big Loss," *New York Times*, July 24, 2002, p. C4.

²⁵⁹ Jesse Drucker, *AT&T Posts a Loss of \$12.7 Billion*, WALL STREET JOURNAL, July 24, 2002, p. M9.

²⁶⁰ Tom Barkley, *Sprint Allays Fear of Cash Crunch With New Credit*, WALL STREET JOURNAL, July 31, 2002, p. B5.

²⁶¹ Elizabeth Douglass, *Losses Pile Up at Battered Telecom Firms*, LOS ANGELES TIMES, July 19, 2002.

Other telecommunications companies are not faring as well. Despite gains in its local and long-distance markets, Sprint posted a loss of \$68 million during the second quarter, mainly due to losses in its wireless unit.²⁶² In July 2002, Broadwing's stock was down 92% from its peak in October 2000, and had a debt load of \$2.8 billion from losses in its broadband unit.²⁶³ In August 2002, Standard & Poor's announced that it was reviewing Broadwing for a possible downgrade in its credit rating.²⁶⁴ Despite second quarter revenues of \$184.4 million, up \$60 million over the same quarter in 2001, Allegiance Telecom Inc. posted a second quarter loss of \$226.8 million, far greater than its second quarter 2001 loss of \$103.3 million.²⁶⁵ Lucent reported a fiscal third quarter loss of \$7.9 billion, and a revenue of \$3 billion, down 50% from the previous year.²⁶⁶

²⁶² Amy Shafer, *Sprint Loses \$68M in Second Quarter*, ASSOCIATED PRESS, July 18, 2002.

²⁶³ Elizabeth Douglass and Karen Kaplan, *More Firms on Brink?*, LOS ANGELES TIMES, July 22, 2002, available from <http://www.latimes.com/business/la-fi-whonext22jul22.story>.

²⁶⁴ *S&P might cut Broadwing corporate credit rating*, CINCINNATI BUSINESS COURIER, August 29, 2002.

²⁶⁵ Vikas Bajaj, *Allegiance loss widens, but revenue improves*, DALLAS MORNING NEWS, July 31, 2002, p. 4D.

²⁶⁶ Michelle Kessler, *Telecom earnings tell tale of sector's struggles*, USA TODAY, July 24, 2002.

Appendix C. Bankruptcies

Some analysts argue that most companies emerging from bankruptcy will be unable to raise the necessary capital to continue functioning. The other major problem of overcapacity is that these companies suddenly have worthless assets. Since companies tended to overbuild the same network, most competitors of bankrupt companies will not need another long-haul facility or transatlantic cable. Three of the regional Bell operating companies (RBOCs)—Verizon, SBC, and BellSouth—have relatively healthy prospects in capital markets despite the current scrutiny of their credit ratings, and will likely be able to simply outlast the competition.²⁶⁷

The bankruptcy of WorldCom was sudden. WorldCom declared bankruptcy on July 21, 2002, with \$107 billion in assets making this the largest bankruptcy in history.²⁶⁸ WorldCom received a \$2 billion loan to keep operating under bankruptcy protection.²⁶⁹ Equipment companies such as Lucent Technologies Inc. and Nortel Networks Ltd., which supplied hundreds of million of dollars worth of networking gear on credit to WorldCom, may be the next to suffer from WorldCom's bankruptcy.²⁷⁰ WorldCom pays local phone companies about \$750 million a month for access to their networks.²⁷¹ Opinions vary widely regarding whether WorldCom owes access charges to carriers. Southwestern Bell Corporation (SBC) and BellSouth have discussed potentially retaining long-distance revenue collected.²⁷²

The Teacher's Retirement System of Texas, the State's largest public investment fund, reports that it has lost at least \$93 million on investments in WorldCom.²⁷³ The Employees Retirement System of Texas has not released how much it has lost in WorldCom, but it held \$50 million in investments as of December 30, 2001.²⁷⁴ The

²⁶⁷ Stephanie N. Mehta, *Is there any way out of the telecom mess?*, FORTUNE, July 22, 2002, p. 84.

²⁶⁸ Simon Romero and Riva D. Atlas, *Worldcom Files For Bankruptcy; Largest U.S. Case*, NEW YORK TIMES, July 22, 2002, p. A1.

²⁶⁹ Christopher Stern, *WorldCom Gets \$2 Billion Bankruptcy Loan*, WASHINGTON POST, July 17, 2002, p. E02.

²⁷⁰ Elizabeth Douglass and Karen Kaplan, *More Firms on Brink?*, LOS ANGELES TIMES, July 22, 2002, available from <http://www.latimes.com/business/la-fi-whonext22jul22.story>.

²⁷¹ Seth Schiesel with Simon Romero, *Regional Bell Giants No Longer Invulnerable*, NEW YORK TIMES, July 23, 2002, p. C6.

²⁷² Sanford Nowlin, *SBC nervous about money it is owed*, SAN ANTONIO EXPRESS-NEWS, July 23, 2002, p. 9A.

²⁷³ Rod Kurtz, *State's WorldCom losses mount*, AUSTIN AMERICAN-STATESMAN, July 9, 2002, p. A1.

²⁷⁴ Anuradha Raghunathan, *Angry bondholders assess damage*, DALLAS MORNING NEWS, June 28, 2002.

University of Texas System Fund lost \$50 million in WorldCom bonds, which was about 0.3% of the fund's entire holdings.²⁷⁵

The Commission has established Project No. 23998, *PUC Proceeding For Filing Notification(s) of Bankruptcy by COA and SPCOA Holders*, to address bankruptcy filings by Texas telecom carriers. In Project No. 23998, carriers file notice as they enter into bankruptcy, and Commission staff files further information as needed. Unlike the electric side, the Public Utility Regulatory Act (PURA) is silent as to how the Commission should address bankruptcy filings for telecom customers, although the Commission does have a few guidelines in its substantive rules in the event that an investigation is needed or customers need to be transitioned to other carriers. The Commission is mindful of 11 U.S.C. §§ 101-1330, which govern bankruptcies, and especially 11 U.S.C. § 525, Protection Against Discriminatory Treatment, which precludes a governmental body from denying, revoking, suspending, or refusing to renew, the license of a bankrupt company solely on account of its bankruptcy.

²⁷⁵ Anuradha Raghunathan, *Angry bondholders assess damage*, DALLAS MORNING NEWS, June 28, 2002.

Appendix D. Layoffs and Capital Expenditures

Southwestern Bell Corporation (SBC) has stated that its 2003 capital expenditures for its 13-state area will be reduced to \$5-6 billion, down from \$7.5 billion in 2002²⁷⁶ and the \$11.2 billion spent on its network in 2001.²⁷⁷ Small, rural incumbent local exchange carriers (ILECs) are also predicting that the loss of access revenues from WorldCom may affect their bottom line.²⁷⁸ Telecommunications providers and equipment vendors laid off 17,028 Texas workers between January 2001 and September 2002, according to data from the Texas Workforce Commission. Nationwide, telecommunications providers and telecom equipment providers laid off about 500,000 people in the same time period.²⁷⁹ Table 20 below breaks down the total layoffs in Texas by type of company from 1998-2002.

Table 20 — Annual Texas Layoffs by Telecom Providers and Equipment Vendors

	1998	1999	2000	2001	Jan – Sept 2002
Equipment Vendors	924	48	271	8,187	4,230
Telecom	-	250	837	3,887	724
Total	924	298	1,108	12,074	4,954
Austin Area	407	-	320	1,688	1,779
Dallas-Fort Worth Area	517	298	279	8,192	2,590
Other Areas (including Houston, El Paso, San Antonio, and others)	-	-	509	2,194	585
Total	924	298	1,108	12,074	4,954

SOURCE: Texas Workforce Commission

More telecommunications layoffs are coming in 2003, and some of those layoffs may affect Texas. After reporting second quarter losses, SBC indicated in July 2002 that it would cut 3,000 more jobs nationwide, on top of the 13,000 cut since October 2001.²⁸⁰ Then, in September 2002, SBC announced forthcoming layoffs of another 11,000 jobs

²⁷⁶ Simon Romero, SBC to Lay Off 11,000 Workers; Loss of Phone Customers Is Cited, NEW YORK TIMES at C6 (Sept. 27, 2002).

²⁷⁷ Sanford Nowlin, *Its Earnings Down, SBC To Cut More Jobs*, EXPRESS-NEWS at E1 (July 24, 2002).

²⁷⁸ OPASTCO: Industry Problems Hit Small Carriers Hardest, TR DAILY (July 30, 2002).

²⁷⁹ *Too many debts; too few calls*, THE ECONOMIST, July 20, 2002, p. 59.

²⁸⁰ Vikas Bajaj, *SBC, Lucent to cut thousands of jobs*, DALLAS MORNING NEWS, July 24, 2002, p. D1.

through the first quarter of 2003.²⁸¹ Lucent announced that it will cut 7,000 more jobs after its fiscal third quarter, in addition to the 95,000 jobs that it has already cut.²⁸² Lucent began 2002 with 62,000 jobs and expects to cut that number almost in half through layoffs, spin-offs, and attrition. The company expects to have about 35,000 employees by March 2003; three years ago, it had more than 150,000.²⁸³ Nortel has also announced plans to cut 3,500 more jobs nationwide, even though its workforce has already been cut in half since the beginning of the recession.²⁸⁴

²⁸¹ Dan Piller, *SBC woes linked to ill economy*, FORT WORTH STAR-TELEGRAM, September 28, 2002, p. C1.

²⁸² Michelle Kessler, *Telecom earnings tell tale of sector's struggles*, USA TODAY, July 24, 2002.

²⁸³ Christopher Stern, Washington Post Staff Writer, *Lucent Ends Dismal Year, CEO Optimistic for 2003 Despite 10 Straight Losing Quarters*, October 24, 2002; at E04 <http://www.washingtonpost.com>.

²⁸⁴ Elizabeth Douglass, *Losses Pile Up at Battered Telecom Firms*, LOS ANGELES TIMES, July 19, 2002.

Appendix E. Consolidation

According to a study by the Consumers Union, the largest four local companies²⁸⁵ that served 48% of all phone lines in the country in 1996 now serve more than 85% of all local phone lines nationwide.²⁸⁶

Despite the fact that the U.S. Department of Justice blocked a merger between WorldCom and Sprint in 2000, the Federal Communications Commission (FCC) indicated that it would consider a merger between WorldCom and a regional Bell operating company (RBOC) in July 2002, before WorldCom filed for bankruptcy.²⁸⁷ However, the number of consolidations has dropped since the peak in 2000, when nationally, telecom companies completed or announced more than 20 large mergers and acquisitions totaling more than \$100 billion.²⁸⁸ One of these mergers in 2000 of special import to the Texas market was between TXU Communications and Fort Bend Communication Companies, an incumbent local exchange carrier (ILEC) based in Fort Bend, Harris, Waller, and Brazoria counties.²⁸⁹ However, the only large national acquisition in 2001 was AT&T's purchase of NorthPoint Communications, a bankrupt digital subscriber line (DSL) provider, for \$135 million, and there have been none of note in 2002.

On the State level, some smaller local exchange carriers (LECs) have continued to merge in 2002. Valor Telecommunications, which is based in Irving, acquired Kerrville Communications Corporation on February 5, 2002, bringing Valor's number of phone lines up to 585,000.²⁹⁰ Grande Communications, a company offering phone, cable, and broadband, and based in San Marcos, bought Austin-based ClearSource on July 2, 2002.²⁹¹ With ClearSource, Grande has raised \$450 million in equity and \$70 million in loans since 1998, and has \$100 million in annual revenue.²⁹²

²⁸⁵ These companies are known as the remaining RBOCs, and include SBC, BellSouth, Qwest, and Verizon.

²⁸⁶ Michael A. Hiltzik and James F. Peltz, *Did Telecom Reformers Dial the Wrong Number?*, LOS ANGELES TIMES, July 24, 2002.

²⁸⁷ Liane H. LaBarba, *Powell: WorldCom Stance Is In Line With FCC Policy*, TELEPHONY ONLINE, July 22, 2002. Aaron Pressman, "U.S. to Block Sprint-WorldCom Merger," *The Industry Standard*, June 27, 2000.

²⁸⁸ Eric Moskowitz, *M&A Insight: Telecom mergers on hold*, RED HERRING, June 1, 2001.

²⁸⁹ Dallas-based TXU buys Fort Bend Communication Companies, HOUSTON BUSINESS JOURNAL, March 13, 2000.

²⁹⁰ *Valor Telecom buys Kerrville Communications*, DALLAS BUSINESS JOURNAL, February 5, 2002.

²⁹¹ *Grande wraps up ClearSource deal*, AUSTIN BUSINESS JOURNAL, July 2, 2002.

²⁹² Vikas Bajaj, *Slow and steady*, DALLAS MORNING NEWS, August 27, 2002, p. D1.

Appendix F. Long-Distance Market Effect on Profit Share

AT&T

In the first quarter of 2002, AT&T's profit margin in the corporate market was down by 3% from the previous year, but its long-distance business was more profitable than its current high-growth businesses, such as data services.²⁹³ AT&T has introduced unlimited flat-rate long-distance in an attempt to keep customers from substituting cell phones or email for long-distance service.²⁹⁴

Sprint

Sprint's long-distance traffic dropped 10% in the second quarter of 2002.²⁹⁵ Sprint passes through a 1.08% carrier property tax to customers with the intent of keeping its per-minute charges low.²⁹⁶

WorldCom

WorldCom has had a declining long-distance market for years, but its finances have been offset by more than 60 acquisitions over the last 15 years.²⁹⁷

²⁹³ Stephanie N. Mehta, *Is there any way out of the telecom mess?*, FORTUNE, July 22, 2002, p. 84.

²⁹⁴ Shelley Emling, "Telecom pain: No long-distance gain," *Austin American-Statesman*, June 28, 2002, p. 1C.

²⁹⁵ "Bad Connection," *Forbes*, August 12, 2002, p. 85.

²⁹⁶ Ruth Simon, "Telecom Woes Hit Consumers," *Wall Street Journal*, May 7, 2002, p. D1.

²⁹⁷ Shelley Emling, "Telecom pain: No long-distance gain," *Austin American-Statesman*, June 28, 2002, p. 1C.

Appendix G. Texas Companies Declaring Bankruptcy

Table 21 — Texas Companies Declaring Bankruptcy

PARTY	CHAPTER	BANKRUPTCY COURT	DATE FILED
@Link Networks, Inc.	11	Delaware	4/25/01
2 ND Century Communications of VA, Inc.	11	Southern District of Florida	6/25/01
360 Networks USA, Inc.	11	Southern District of New York	6/28/01
Adelphia Business Solutions, Inc.	11	Southern District of New York	3/27/02
ATS Telecommunications Systems, Inc.	7	Southern District of Texas	3/30/01
Birch Telecom, Inc.	11	Delaware	7/29/02
Broadband Office Communications, Inc.	11	Delaware	5/09/01
Connectsouth Communications, Inc.	11	Western District of Texas	3/13/01
Convergent Communications, Inc.	11	Colorado	6/12/01
CoServ, LLC	11	Northern District of Texas	11/30/01
E. Spire Communications, Inc.	11	Delaware	6/04/01
Enron Broadband Services, Inc.	11	Southern District of New York	12/02/01
Essential.com , Inc.	11	Massachusetts	6/29/01
Global Crossing, Ltd.	11	Southern District of New York	1/28/02
GST Action Telecom, Inc.	11	Delaware	5/17/01
GST Texas Lightwave, Inc.	11	Delaware	5/17/01
ICG Communications, Inc.	11	Delaware	11/14/00
ITC ^DeltaCom	11	Delaware	6/25/02
Lightyear Communications, Inc.	11	Western District of Kentucky	4/10/02
Logix Communications	11	Southern District of Texas	2/28/02
Metromedia Fiber Network Services, Inc.	11	Southern District of New York	5/20/02
Mpower Communications Corporation	11	Delaware	4/08/02
Net2000 Communications, Inc.	11	Delaware	11/16/01
Northpoint Communications, Inc.	7	Northern District of California	1/16/01
Northpoint International, Inc.	7	Northern District of California	6/12/01
Omniplex communications Group	11	Eastern District of Missouri	2/28/02
OnlineChoice.com, Inc.	7	Western District of Pennsylvania	4/30/01
Onsite Access, Inc.	11	Southern District of New York	5/16/01
Onsite Access, LLC	11	Southern District of New York	5/16/01
Optel (Texas) Telecom, Inc.	11	Delaware	10/28/99
Pathnet, Inc.	11	Northern District of Iowa	4/20/01
PointeCom, Inc.	11	Delaware	4/27/01
Rhythms NetConnections, Inc.	11	Southern District of New York	8/01/01
Servisense.com, Inc.	11	Massachusetts	8/20/01
Star Net Paging, Inc.	7	Eastern District of Texas	7/01/01
TechTel, Inc.	11	Northern District of Texas	9/05/02
Teligent, Inc.	11	Southern District of New York	5/21/01
Telscape International, Inc.	11	Delaware	4/27/01
Twister Communications Network, Inc.	7	Southern District of Texas	5/23/00
Vectris Telecom, Inc.	7	Western District of Texas	1/18/01
Viatel, Inc.	11	Delaware	5/02/01
Western Integrated Networks of Texas Operating, L.P.	11	Colorado	3/11/02
Winstar Communications, Inc.	11	Delaware	4/18/01
WorldCom, Inc.	11	Southern District of New York	7/21/02
XO Communications, Inc.	11	Southern District of New York	6/17/02

SOURCE: Texas Workforce Commission



Appendix H. Total ILEC and CLEC Retail Lines in Texas

Table 22 — Total ILEC and CLEC Retail Lines in Texas

YEAR	ILEC	CLEC	TOTAL
Dec-99	12,601,936	586,111	13,188,047
Jun-00	12,349,899	1,042,606	13,392,505
Dec-00	12,063,098	1,687,586	13,750,684
Jun-01	11,496,247	1,891,131	13,387,378
Dec-01	11,365,441	2,166,033	13,531,474
Jun-02	11,350,694	2,078,465	13,429,159

SOURCES: *Local Telephone Competition Reports*, FCC (Aug. 2000, May 2001, July 2002), Texas PUC 2003 Scope of Competition Data Responses.



Appendix I. CLEC Entry Strategies

Facilities-Based

The question of what factors determine whether a competitive local exchange carrier (CLEC) is providing facilities-based services is currently unanswered. Some proponents argue that facilities-based competition is present when a CLEC owns the switch and thus offers service by means other than resale or unbundled network elements platform (UNE-P). However, on the other end of the spectrum, some argue that CLECs must offer service via wholly-owned facilities-based offerings, including the CLEC's own loop. While the industry has yet to reach consensus regarding the meaning of facilities-based competition, for purposes of gathering data for this Report, the Commission defines facilities-based as providing services entirely through the CLEC's own facilities. However, it is difficult to ascertain which carriers offer wholly versus partially facilities-based services. There is no information collected by the Commission on a regular basis that provides any certainty regarding facilities-based services provided by local exchange carriers (LECs). It is apparent that the capital investment required to establish a strictly facilities-based operation is beyond the reach of most CLECs today.

Resale

The resale mode of entry is the most simple, least investment-intensive approach. Simply put, the incumbent local exchange carriers (ILECs) offer all services and products at a 21.6% discount to resellers. Some CLECs provide resale service to high-risk customers by offering prepaid services. Other CLECs utilize resale upon entering a market and then combine resale with other options, such as unbundled network elements (UNEs) or facilities-based services.

Compared to the other modes of entry, CLECs choosing to provide service via resale are generally at the mercy of the ILECs. If the ILEC raises its prices, the resellers must respond accordingly or reduce their profit margin. Increases in rates resulting in a loss of customers can be better absorbed by the ILECs, who have much broader customer basis.

Unbundled Network Elements: UNEs/UNE-P

As discussed in Chapter III, leasing facilities via UNEs or UNE-P appears to be the predominant method of market entry in Texas since the inception of the Federal Telecommunications Act of 1996 (FTA). A great deal of public and private resources have been invested in facilitating this mode of entry. Many CLECs utilize UNEs, either alone or in conjunction with their own facilities, to provide innovative products or specialized customer service to business and residential customers.²⁹⁸

Compared to full facilities-based providers and resellers, CLECs utilizing UNEs are presented with the greatest deal of the uncertainty because of the ongoing debate at

²⁹⁸ See also discussion of wholesale competitors in Chapter III.

both the state and federal levels as to what network components should be made available as UNEs.

At the state level, telecommunications providers present to the Commission requests for arbitration of interconnection agreements in an effort to address changes in technology, the market, and competition.²⁹⁹ One recent arbitration of note, referred to as the MCIMetro Arbitration, involved multiple parties and addressed issues for the first time since the adoption of the Texas 271 agreement (T2A) regarding network elements. Among those debated was the issue of unbundling requirements of Section 251 of the FTA.³⁰⁰ In the MCIMetro Arbitration, the Commission preserved the availability of UNEs for CLECs. However, in the Arbitration Award, the Commission noted that at a future time, the Commission may reconsider the possibility that the bundled switch and loop may be reexamined.³⁰¹ Additionally, at the federal level, the Federal Communications Commission (FCC) is currently undergoing its triennial review regarding the future availability of traditional UNEs.³⁰²

Although CLECs have access to the current list of UNEs approved at the state and federal levels, future circumstances may warrant a change in that list pursuant to relevant state and federal law. Unfortunately, these circumstances tend to promote a “wait and see” attitude among CLECs and disrupt a CLEC’s ability to plan future investment and market-entry strategies. However, the Commission continues to attempt to address these concerns and provide CLECs with the tools necessary for effective competition.

²⁹⁹ See *infra* Chapter IV, Arbitration Decisions and Dispute Resolutions.

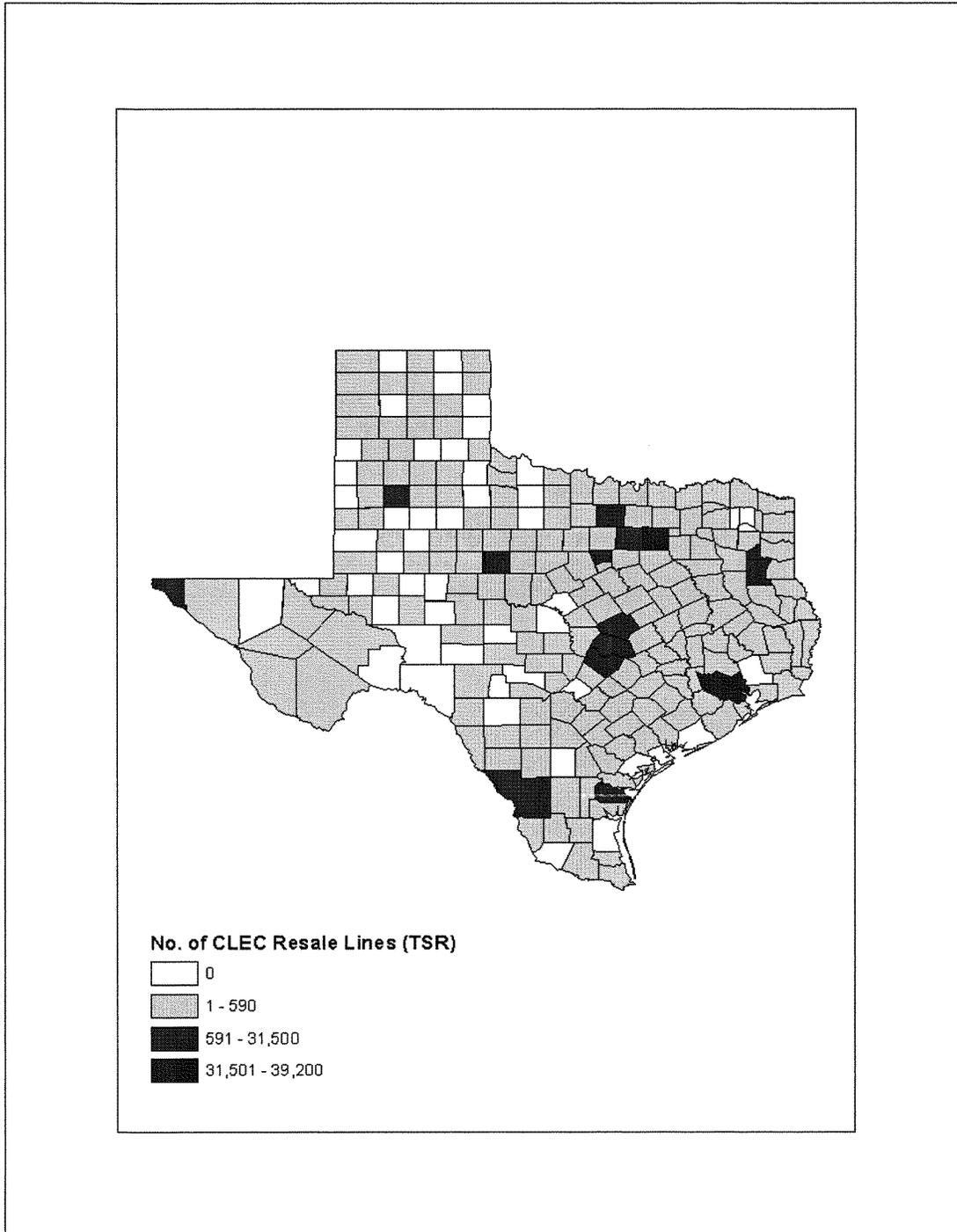
³⁰⁰ *Petition of MCIMetro Access Transmission Services LLC for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Docket No. 24542, Arbitration Award (Apr. 29, 2002) (“MCIMetro Arbitration”).

³⁰¹ In the MCIMetro Arbitration, the Commission did not reconsider rates for UNEs or other services. Those issues were severed into a second phase of the arbitration that is pending in Docket No. 25834, *Proceeding on Cost Issues Severed From Docket No. 24542*.

³⁰² The FCC is also reviewing the availability of line sharing, CLEC access to ILEC facilities necessary to provide xDSL service. See *infra* Chapter V, FCC Activities.

Appendix K. CLEC Total Service Resale (TSR) Lines by County

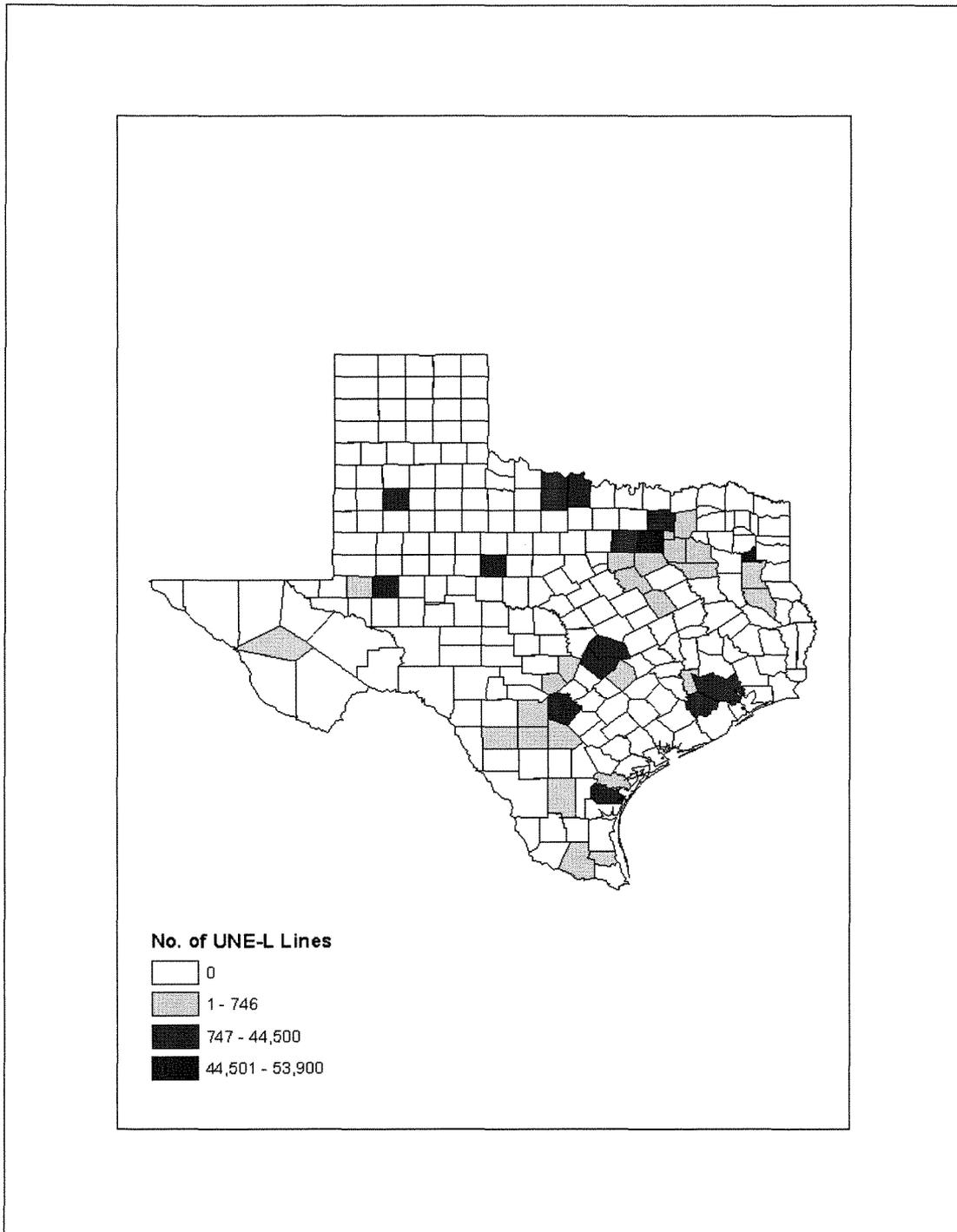
Figure 36 — CLEC Total Service Resale (TSR) Lines by County



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Appendix L. CLEC UNE-L Lines by County

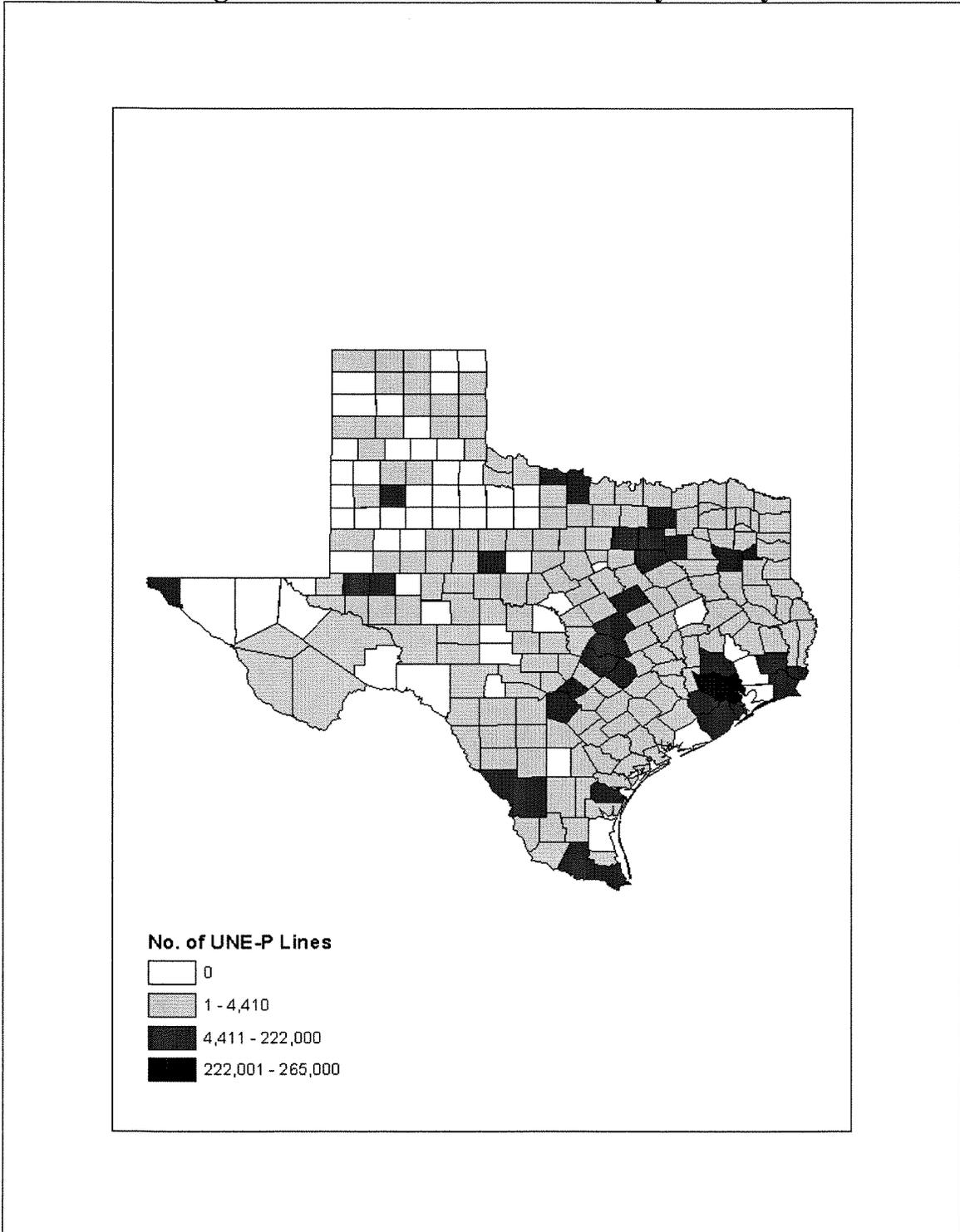
Figure 37 — CLEC UNE-L Lines by County



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Appendix M. CLEC UNE-P Lines by County

Figure 38 — CLEC UNE-P Lines by County



SOURCE: Texas PUC 2003 Scope of Competition Data Responses

Appendix N. Commission Arbitration Decisions

Points of Interconnection

DOCKET NO. 22315—*Petition of Southwestern Bell Telephone Company for Arbitration With AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996.*

This was an arbitration dispute in which the Commission determined that AT&T has the option to connect at only one technically feasible point in each LATA. Although cost cannot be a determinant of technical feasibility, the Commission found that costs may be taken into consideration after technical feasibility has been established. Transport costs associated with interconnection are based on the assumption of a standard 14-mile distance for local transport. Because competitive local exchange carriers (CLECs) select the location of a point of interconnection (POI) in an incumbent local exchange carrier's (ILEC's) network, an alternative mechanism must be established to address local traffic that goes beyond the 14-mile limit. The Commission determined that until a *de minimis* traffic threshold is reached, reciprocal compensation rates will apply to all calls regardless of whether the call was transported across the local calling area boundary to the POI. However, after this threshold is reached, the compensation mechanisms will vary depending on whether the local call crossed that boundary.

DOCKET NO. 22441—*Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and PURA for Rates, Terms, and Conditions with Southwestern Bell Telephone Company.*

In this proceeding, the Commission determined that at least one POI is appropriate in any mandatory local calling area in which a CLEC offers service to customers. This determination can be distinguished from the Commission's decision in Docket No. 22315 that gave the CLEC the option to interconnect at *only one* technically feasible point *in each LATA*. Further, the Commission determined that a CLEC needs only one POI where it has end-use customers in a local calling area in a LATA. Similar to Docket Nos. 21791 and 22315, the Arbitration Award in this proceeding encourages the negotiation of additional POIs when call traffic levels reach a certain point in order to avoid network and tandem exhaust.

Collocation

DOCKET NO. 21333—*Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*

This was a proceeding to determine permanent rates and rate elements, as well as additional rate elements, rates, terms and conditions in the permanent cost proceeding for microwave systems and transmission, and interconnection arrangements for interfaces operating at speeds greater than DS-3 through Digital Cross-Connect Systems (DCS). The Commission held that the cageless collocation should be modeled as a form of

virtual collocation rather than common collocation to avoid potential problems of space unavailability and higher costs. The Commission also found that, to comply with the Section 271 requirements, promote competition in Texas, and remove barriers to entry, Southwestern Bell Telephone Company (SWBT) must provide off-site collocation arrangements to the extent space is unavailable in SWBT's central office.

Reciprocal Compensation

The Federal Telecommunications Act of 1996 (FTA) specifies that all local exchange carriers have the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. A telephone call may originate on one carrier's network but terminate on the network of another carrier. The *originating* carrier typically pays the *terminating* carrier for completing the call. Reciprocal compensation is the program by which the company doing the billing and collecting the money pays over some of those monies to the other phone companies in the chain. Typically, when amounts and direction of traffic is relatively balanced between the originating and terminating carriers, carriers often instituted *bill-and-keep* arrangements whereby no payments occurs between carriers.

However, internet calling patterns changed reciprocal compensation arrangements considerably. Reciprocal compensation arrangements were designed to compensate companies for their customers' traditional voice calls, which calls tended to be of approximately equal duration customer-to-customer and to be reasonably balanced carrier-to-carrier. Internet calls, on the other hand, tend to be of long duration and are often uni-directional, particularly when one company's customers are primarily, or even exclusively, internet service providers (ISPs).

DOCKET NO. 21982—*Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996.*³⁰³

The Commission reaffirmed its previous conclusions that ISP-bound traffic is local in nature and is eligible for reciprocal compensation. The Commission also reaffirmed its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory extended area service (EAS)/extended local calling service (ELCS) areas comprised of SWBT exchanges and the mandatory EAS/ELCS areas comprised of SWBT exchanges and exchanges of ILECs.

With respect to a hierarchical or two-tier switch network, the Commission found that if only an end-office switch is employed to terminate traffic, then the end-office rate shall apply, and if a tandem switch is used, then the tandem rate shall apply. For a network using multiple-function switches, the Commission adopted the "tandem blended rate." This rate is calculated by adding end-office switching to the percentage of the tandem switch and interoffice transport. This rate reflects that only a percentage of the

³⁰³ *Southwestern Bell Tele. Co. v. Public Util. Comm.*, No. W-00-CA-313, slip op. at 19 (W.D. Tex. Apr. 4, 2002)

calls switched use tandem functions and are terminated in a geographically dispersed area.

The Commission acknowledged the lack of agreement among the parties with respect to billing issues, and concluded that, when technically feasible, the terminating carrier's records shall be used to bill originating carriers (excluding transiting carriers) for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. Terminating carriers shall be required to directly bill third parties that originate calls and send traffic over SWBT's network. On April 4, 2002, the federal district court in Waco issued a final judgment affirming the Commission's order in all respects. However, the cause remains pending before district court to address a SWBT motion seeking clarification of whether the judgment applies to CLECs that had previously declared bankruptcy.

CLEC Wholesale Provisioning of ILEC UNEs to Other CLECs

DOCKET NO. 25188—*Petition of El Paso Networks, LLC for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company*

In this arbitration proceeding between El Paso Networks (EPN) and SWBT, the Commission made a number of critical findings. First, with respect to Wholesale Service, the Commission confirmed an earlier arbitration decision (*see, Petition of Waller Creek Communications, Inc. with SWBT*, Docket No. 17922) that CLECs can use unbundled network element (UNE) dark fiber (or other UNEs) to carry traffic for any other telecommunications provider regardless of who is serving the retail, local end-use customer. Thus, in this case, the Commission found that EPN can use UNEs in combination with its own facilities to provide wholesale services to other providers.

With respect to UNE combinations, the Commission found that SWBT shall, upon request, perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in its network, provided that such combination is: (1) technically feasible; and (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the ILEC's network. This obligation on SWBT is consistent with the FTA § 251(c)(3), 47 CFR § 51.315(c) ("Rule 315(c)") and the United States Supreme Court's holding in *Verizon v. Federal Communications Commission*.

With respect to Dark Fiber, the Commission found that dark fiber is fiber that has not been activated through connection to the electronics that "light" it and render it capable of carrying telecommunications services. SWBT is obligated to provide dark fiber UNEs to EPN, but the dark fiber UNEs do not necessarily need to be terminated at both ends. The Commission found that the availability of fiber is governed by the 25% rule.³⁰⁴ Further, SWBT has an obligation to provide unspliced dark fiber and shall splice the fiber upon request by EPN.

³⁰⁴ A telecommunications provider may not, in a 24-month period lease more than 25% of SWBT's excess dark fiber capacity in a particular dedicated, interoffice transport segment.

