

# **ATTACHMENT 1**



established rules that require ILECs to make the inside wire subloop available to CLECs to ensure fair competition.

2. SWBT is the ILEC that controls access to inside wire subloops in many multi-units buildings in Oklahoma. Cox attempted to negotiate with SWBT for reasonable terms for access to these inside wire subloops, but SWBT has refused to comply with federal requirements in negotiating those terms in its interconnection agreement with Cox. Accordingly, Cox initiated the underlying arbitration under federal statutory law to seek relief. The arbitrator approved the interconnection agreement on SWBT's terms, however, and the OCC's final order adopted the arbitrator's decision.

3. Cox now challenges the OCC's decision, which, among other errors, applied state law rather than controlling federal law to deny Cox's claims, misconstrued legal principles applicable to the determination of whether "direct access" was technically feasible and legally required, failed to apply the proper presumptions and standards of proof, and failed to make adequate findings of fact to support its final determination approving the interconnection agreement on SWBT's terms.

## **II. Jurisdiction**

4. This Court has jurisdiction pursuant to 47 U.S.C. § 252(e)(6), because Cox seeks review of an OCC determination to adjudicate whether the interconnection agreement ordered as a result of compulsory arbitration pursuant to 47 U.S.C. § 252(b) meets the requirements of 47 U.S.C. §§ 251 and 252. The court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

### III. Parties

5. Cox is a facilities-based CLEC certificated to provide telecommunications service throughout Oklahoma.

6. SWBT is the ILEC in certain of the service territories in which Cox operates in Oklahoma.

7. The OCC is an agency of the State of Oklahoma. Service of process upon the OCC may be had by serving the chief executive officer of the OCC, Chairman Denise Bode, Oklahoma Corporation Commission, Jim Thorpe Building, 2101 N. Lincoln Boulevard, Oklahoma City, Oklahoma City, OK 73105, by certified mail, restricted delivery. The OCC is a “State commission” within the meaning of 47 U.S.C. §§ 1153(41), 251, and 252.

### IV. Relevant Facts

#### A. Regulatory Background.

8. Congress has established a national system for the regulation of telecommunications in which the expert federal agency and state regulators have distinct roles. Congress created the Federal Communications Commission (the “FCC”) as the expert federal agency responsible for national telecommunications policy and implementation and has required the FCC to establish rules to govern the relationship between ILECs and CLECs. In contrast, State regulators must implement the federal rules and policies, and they may not apply state law principles to supplant federal requirements.

9. The FCC has established rules governing the terms and conditions of use of a facility known as the “inside wire subloop.” The inside wire subloop is the wiring that goes from the point where an ILEC’s wiring enters a multi-unit building (e.g., an apartment building) to the part of the building where the customer is located. The inside wire subloop is an “unbundled”

network element; i.e., it is offered as a facility separate from any other part of the telecommunications network. The inside wire subloop is also a critical link between the local telephone service provider and its customers in multi-unit buildings.

10. When the ILEC owns and controls the inside wire subloop, it has exclusive control over access to the inside wire subloop and to local telephone customers in multi-unit buildings.

11. Access to the inside wire subloop is extremely important for CLECs that wish to serve customers in multi-unit buildings that have inside wire subloops. Without such access, the CLEC generally is forced to construct its own wiring in the building, which is expensive, time consuming and disruptive to those in the building, and which requires cooperation from the building owner.

12. The FCC has concluded that access to inside wire subloops on reasonable terms and conditions is necessary to ensure local telephone competition and that competition would be impaired if CLECs could not use inside wire subloops. The FCC has adopted rules and policies that require ILECs to make the inside wire subloop available to CLECs.

**B. Cox Provides Local Telephone Competition to Residents in Oklahoma.**

13. Cox is a facilities-based CLEC that operates in Oklahoma. Cox's parent company and affiliates combine to make one of the leading CLECs in the United States, with more than one million residential lines in service, and over 100,000 business customers. Cox began offering local business telephone service in Oklahoma in 1997 and residential telephone service in 1999.

14. In many locations, Cox offers service using only its own facilities, including wiring from the customer's location to a Cox-owned switch, and Cox has invested billions of dollars to make this possible.

15. In apartment buildings and other multi-unit buildings, however, Cox often is forced to rely on the inside wire subloop to reach customers and potential customers.

16. To gain access to inside wire subloop facilities, Cox must enter into an "interconnection agreement" (the "ICA") with the ILEC, SWBT.

17. The ICA is a contract subject to federal regulatory requirements that ensure reasonable terms and conditions under §§ 251 and 252 of the Telecommunications Act of 1996 (the "1996 Act").

18. On or about April 10, 1997, Cox and SWBT entered into an ICA, which the OCC approved by Order No. 412966, dated May 28, 1997.

19. In 2002, Cox and SWBT entered into a new interconnection agreement (the "New ICA"). The OCC approved the New ICA by Order No. 466056, dated July 26, 2002.

20. Neither the ICA nor the New ICA contains terms or provisions concerning the "inside wire subloop" as a specific unbundled network element.

21. Specifically, the inside wire subloop is a pair of wires running from (a) the accessible terminal, typically mounted on the outside wall of an apartment building, to (b) the first telephone jack in a customer's office or apartment. Each inside wire subloop is dedicated to, and provides service only to, a particular individual office or apartment. For the most part, the inside wire subloops run into, through, and, ultimately, out of, interior walls.

22. SWBT owns or controls many (not all) inside wire subloops in Oklahoma multi-unit buildings. Only the inside wire subloops under SWBT's ownership or control are at issue in

this proceeding. Premises wiring that is under the ownership or control of the apartment owner, the tenant, or Cox, is not at issue in this proceeding.

C. **Cox Attempts to Negotiate Reasonable Rates, Terms and Conditions for Inside Wire Subloops.**

23. On or about October 15, 2002, Cox and SWBT initiated a negotiation of the rates, terms, and conditions of Cox's access to inside wire subloops. Cox and SWBT attempted to negotiate an amendment to the New ICA. The negotiation failed. Thus, all issues relating to the rates, terms, and conditions of Cox's access to and utilization of inside wire subloops at multi-unit buildings remained open.

24. On March 24, 2003, pursuant to 47 U.S.C. § 252 (b), Cox filed its Application in Cause No. PUD 200300157 before the OCC, for the arbitration of open issues concerning the rates, terms, and conditions of its access to inside wire subloops.

25. Both SWBT and Cox submitted proposals to the OCC regarding the rates, terms, and conditions of Cox's access to inside wire subloops.

(1) **SWBT's Proposal**

26. SWBT's proposal advanced the following three options for accessing inside wire subloops:

- Option 1. An intermediate cross-connect device that SWBT would place or construct, own, and manage.
- Option 2. An intermediate cross-connect device that Cox would place or construct, own, and manage.
- Option 3. SWBT's provisioning of inside wire subloops by extending "jumper/cross-connect" wire from its existing accessible terminal, left coiled up near Cox's terminal.

27. None of SWBT's three options would allow Cox's technicians to have direct access to inside wire subloops.

28. Option 1 (SWBT's original proposal) involved a complicated series of procedures and delays that would not provide to Cox effective access to the inside wire subloop.

29. Option 1 included an ordering and provisioning procedure that would require that "Connecting Facility Arrangement assignments must be in-place prior to ordering and assigning specific subloop circuit(s)." Cox would then be required to ". . . establish a Subloop Access Arrangement ("SAA") utilizing the Special Construction Arrangement. . . ." Cox would bear the responsibility of obtaining any needed rights of way or permissions from owners of the property for the placement of the intermediate cross-connect device (which SWBT would own and construct), prior to submitting an "SAA Application." Only then could Cox initiate a "Special Construction Arrangement" by submitting the "SAA Application." Within thirty (30) days of receiving Cox's order or SAA Application, SWBT would furnish Cox with a written estimate for construction, labor, materials, and related provisioning costs. After Cox had paid fifty percent (50%) of the estimate, SWBT would begin construction of the intermediate cross-connect device, to be completed within ninety (90) days. Upon completion, the balance of the actual costs incurred by SWBT would be due from Cox. The amount Cox would have to pay would differ for each location and would remain entirely within the control SWBT.

30. This intermediate cross-connect device would be an apparatus that would be placed near an existing accessible terminal, and a SWBT technician would thereafter run a connection from the accessible terminal to the intermediate cross-connect device for each separate customer, as ordered by Cox.

31. Under Option 1, the delay between the date of Cox's order for the SWBT-constructed intermediate cross-connect device until its construction by SWBT would be as much as 120 days.

32. Only at this point in the overall process would an individual order for connection to a specific multi-unit building customer, referred to as a Local Service Request or "LSR," be accepted by SWBT from Cox, triggering the second ordering and provisioning procedure. Only when "all subloop access arrangements have been completed" could the CLEC "place a LSR for subloops at this location."

33. Cox technicians would be restricted to gaining access to inside wire subloops only by virtue of the cross-connect procedure, performed by SWBT, using the intermediate cross-connect device.

34. SWBT's proposed rates for Option 1, a SWBT-constructed intermediate cross-connect device, are as follows:

- Cox would pay SWBT for time and material for construction of the intermediate cross-connect device. The amounts are currently unknown.
- \$117.68 – Non-recurring cross-connect charge per customer (initial customer per order)
- \$35.33 – Non-recurring cross-connect charge per customer (subsequent customer(s) per order)
- \$2.39 – monthly recurring charge per customer
- \$30.27 - conduit installation (initial and subsequent conduit placement)

35. In Option 2, SWBT proposed that Cox construct and/or place an intermediate cross-connect device, which Cox would own and manage. Under this proposal, SWBT's technicians would be granted direct access to the Cox-owned intermediate cross-connect device,

and the SWBT technician would connect a wire extension of the inside wire subloop from SWBT's accessible terminal to the Cox-owned device. Under this option, SWBT would offer no inside wire subloop testing, performance measures, or remedies for faulty inside wire subloops.

36. SWBT's proposed rates for Option 2, a Cox-constructed intermediate cross-connect device, are as follows:

- Cox would construct and pay for the intermediate box
- \$117.68 - non-recurring cross-connect charge per customer (initial customer per order)
- \$35.33- non-recurring cross-connect charge per customer (subsequent customers per order)
- \$2.39 - monthly recurring charge per customer
- \$30.27 - conduit installation (initial and subsequent conduit placement)

37. In Option 3, an SWBT technician would be required to travel to the customer's premises and extend the "jumper/cross connect" wire from SWBT's accessible terminal and leave it coiled up near the Cox terminal to be terminated by the Cox technician. During the time after the SWBT technician begins work and the time the Cox technician arrives and completes work, the customer would be without telephone service.

38. SWBT's proposed rates for Option 3 are as follows:

- \$117.68 - non-recurring cross-connect charge per customer (initial customer per order)
- \$35.33 - non-recurring cross-connect charge per customer (subsequent customer(s) per order)
- \$2.39 - monthly recurring charge per customer
- \$30.27 - conduit installation (initial and subsequent conduit placement)

39. All the rates proposed by SWBT for its three options were far in excess of approved rates in other jurisdictions for the same access to the same facilities. The uncontradicted evidence of record shows, on a comparative basis, a huge discrepancy between SWBT's proposed rates and those the Florida Public Service Commission approved for BellSouth for inside wire subloops.

40. In Option 3, for example, SWBT says the \$117.68 non-recurring cross-connection charge is to recover its costs associated only with the functions performed by an SWBT technician to extend the "jumper/cross connect" wire from SWBT's accessible terminal and leave it coiled up near the Cox terminal. If Cox were granted direct access to the accessible terminal, the non-recurring cross-connection charge would be \$0.00, because a SWBT technician would not be required to perform any operations in connection with the cross-connection. Moreover, if Cox had direct access to the SWBT accessible terminal, the customer would lose service for a period of only a few minutes or a few seconds.

41. The average term of local telephone service to apartment residents is approximately eleven (11) months. If any of the SWBT's Options were adopted, it would take more than eleven (11) months for Cox to recoup its cost of connecting telephone service to an apartment resident using the inside wire subloop. Therefore, SWBT's charge for the non-recurring cross-connection alone renders it economically implausible for Cox to continue to offer telecommunications services at residential multi-unit buildings using inside wire subloops.

#### (2) Cox's Proposal

42. In the negotiations, Cox proposed alternative terms for access to the inside wire subloops. Cox proposed that SWBT grant Cox direct physical access to all inside wire subloops

at existing SWBT accessible terminals, the identical location at which SWBT proposes to extend per-customer indirect access. This method is described as “direct access” because the connection of the inside wire subloop to Cox’s network typically is performed by Cox’s technicians, with no involvement of SWBT technicians. Cox uses the same industry standard installation methods and procedures used by SWBT.

43. Under the Cox proposal, Cox technicians would be entitled to direct access to accessible terminals and accessible terminal inside wiring subloops when access is in accordance with SWBT approved procedures. The direct access rates Cox proposed are as follows:

- \$0.00 - non-recurring cross-connect charge (initial customer per order)
- \$0.00 - non-recurring cross-connect charge (subsequent customer per order)
- \$1.05 - monthly recurring charge per customer
- \$0.00 - conduit installation (initial and subsequent customers per order)

44. Cox’s proposal also provided that, if Cox technicians were unable to obtain access in accordance with SWBT’s approved procedures because of the design of an accessible terminal, Cox technicians would not attempt direct access. Instead, Cox technicians would submit a service order to SWBT requesting indirect access and would obtain access in a manner similar to SWBT’s Option 3. This method is described as “indirect access” because the connection of inside wire subloops to Cox’s network is carried out by Cox’s technicians only after SWBT technicians have installed cross-connect wiring for Cox’s technicians’ use.

45. The indirect access rates Cox proposed are as follows:

- \$73.14 - non-recurring cross-connect charge (initial customer per order)
- \$23.16 - non-recurring cross-connect charge (subsequent customer per order)
- \$1.05 - monthly recurring charge per customer

- \$29.26 - conduit installation (initial customer per order)
- \$0.00 - conduit installation (subsequent customer per order)

46. The uncontradicted evidence of record shows that, on a comparative basis, Cox's rates are commensurate with rates approved in other jurisdictions for the same facilities and services and are just and reasonable.

**D. The OCC Arbitration and Appeal.**

47. The OCC assigned this matter (Cause No. PUD 200300157) for hearing to Administrative Law Judge Jacqueline T. Miller, to act as the arbitrator.

48. The cause came on for a hearing on the merits before the arbitrator on February 11, 12, and 13, 2004.

49. On April 2, 2004, the arbitrator issued a "Report and Recommendations of the Arbitrator" ("Arbitrator's Report"). In the Arbitrator's Report, the arbitrator adopted, in its entirety, SWBT's proposal and adopted, almost verbatim, SWBT's proposed findings of fact and conclusions of law.

50. On April 12, 2004, Cox appealed the Arbitrator's Report to the OCC. On May 4, 2004, the OCC heard Cox's Appeal.

51. On June 28, 2004, the OCC issued Order No. 491645 in Cause No. PUD 200300157 entitled "Final Order Adopting and Modifying (sic) the Arbitrator's Report," which adopted the Arbitrator's Report, with certain modifications. A copy of the June 28, 2004 OCC Order No. 491645 is attached hereto as Exhibit "A." In its June 28, 2004 order, the OCC ordered the parties to submit a revised interconnection agreement complying with the OCC's decision within thirty (30) days of the effective date of the order.

52. On July 30, 2004, the parties jointly filed an application in Cause No. PUD 200400338 requesting approval of an amendment to the ICA (the "Amendment") conforming to OCC Order No. 491645. Both parties reserved all rights to appeal the approval of the Amendment and all rulings in, or related to, OCC Cause No. PUD 200300157, and the rates, terms and conditions approved in Commission Order 491645.

53. On August 18, 2004, the parties filed a "Joint Supplement to Application," which supplemented the joint application by filing the signed Amendment.

54. On September 7, 2004, the OCC issued Order No. 494596 in Cause No. PUD 200400338 approving the Amendment, conforming to OCC Order No. 491645. A copy of OCC Order No. 494596 is attached hereto as Exhibit "B."

## VI. Assignments of Error.

### A. The OCC Erred As A Matter Of Law In Applying State Law Instead Of Federal Law.

55. The OCC erred as a matter of law in applying state law and failing to apply governing federal law in making the required determination in this case.

56. The OCC adopted the Arbitrator's Report, which makes the following legal conclusion at page 43:

The issues in this proceeding should be considered in the context of Rules of this Commission and the tariffs of SBC-OK. The controlling authority for resolution of the issues are the Commission's Rules, Commission Order No. 325917 issued in Cause No. PUD 238 and SBC Oklahoma's approved tariffs.

57. The OCC fundamentally erred as a matter of law by failing to find that the issues in this case are governed by the 1996 Act and the specific FCC orders and regulations implementing the 1996 Act.

**B. The OCC Erred In Concluding That Direct Access Is Not Required Under Federal Law.**

58. The OCC erred as a matter of law in concluding that the FCC “has neither required nor authorized the ‘direct access’ Cox seeks as a means to access” inside wire subloops. Arbitrator’s Report at 46.

59. FCC regulations state that an “incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring . . . at any . . . technically feasible point.” 47 C.F.R. Sec. 51.319(c).

60. The FCC also has pronounced that “accessible terminals contain cables and . . . wire pairs . . . which enables a competitor’s technician to cross-connect its terminal to the incumbent LEC’s to access the incumbent LEC’s loop from that point all the way to the end user customer.” *Triennial Review Order*, 18 F.C.C.R. 16978, 17184-86, par. 343, fn. 1013 (2003).

61. The OCC erred as a matter of law in refusing to consider and follow the FCC’s pronouncement because it erroneously viewed the FCC’s statement as a “casual reference,” Arbitrator’s Report at 47, rather than as controlling federal law.

62. The OCC erred in failing to find that the SWBT-proposed options that would require the construction, either by SWBT at Cox’s expense, or by Cox, of an intermediate cross-connect device, are prohibited by the FCC. The FCC has specifically prohibited incumbent LECs from requiring that a competitive LEC utilize a separate intermediate cross-connect box.

63. The OCC erred in failing to apply the proper standards and presumptions to its determinations on direct access, in failing to make findings of fact on this issue, and in failing to evaluate Cox’s evidence on this issue.

64. The OCC's finding that "without the ordering process, SWBT-OK cannot audit, track, or otherwise monitor the actual use by Cox of UNE subloops without unnecessary and unreasonable expense" is legally insufficient, in that the OCC failed to make any reference to any evidence purporting to support said finding. Also, the OCC erroneously ignored Cox's proposal, which provided for Cox to submit standard service orders to SWBT for every inside wire subloop used by Cox.

65. The OCC could not and did not make any reference to evidence in support of its findings, and the OCC's findings are not detailed sufficiently to apprise the reviewer of the basis for the decision. The OCC's decision is erroneous because it fails to provide any basis or explanation to support its findings of fact.

66. The OCC's decision is arbitrary and capricious and contrary to law.

C. **The OCC Erred As A Matter Of Law In Failing To Apply Presumptions Required Under Federal Law And In Failing To Find That Direct Access Was "Technically Feasible."**

67. The OCC erred in failing to determine that direct access at the accessible terminal (as Cox requested) is a "technically feasible" method of obtaining access to SWBT's inside wire subloops.

68. FCC regulations require that "an incumbent LEC shall provide . . . any technically feasible method of obtaining . . . access to unbundled network elements." 47 C.F.R. Sec. 51.321 (emphasis added).

69. There is no dispute on the record that Cox seeks access to the inside wire subloops at SWBT's "accessible terminal" and that SWBT's "accessible terminal" is "accessible."

70. By definition and logic, under the FCC regulations, the accessible terminal where Cox seeks access is a “point of technically feasible access.” 47 C.F.R. Sec. 319(b)(2)(i). The OCC erred in failing to make this inescapable finding and legal conclusion.

71. The OCC also erred in failing to make the presumption, as required under federal law, that the determinations made by other States that direct access is a technically feasible method of obtaining access to inside wire subloops are substantial evidence that direct access is technically feasible in Oklahoma.

72. The FCC’s regulations provide in part that “a previously successful method of obtaining . . . access to unbundled network elements . . . is substantial evidence that such method is technically feasible in the case of substantially similar network premises.” 47 C.F.R. Sec. 51.321(c).

73. The FCC has ordered that, “once a state has determined that it is technically feasible to access unbundled subloops at a designated point, it will be presumed that it is technically feasible for any incumbent LEC, in any other state, to unbundle the loops at the same point everywhere.” *UNE Remand Order*, 15 FCC Rcd. at 3799, par. 227.

74. The evidence of record is undisputed that Virginia, New York and Washington, among other states, have found that a CLEC’s direct access to inside wire subloops is technically feasible and have ordered ILECs to allow direct access by CLECs to their inside wire subloops.

75. The OCC erred in failing to make the required presumptions, which are unrebutted in this case, and in failing to find that this is substantial evidence that direct access is technically feasible.

76. The OCC failed even to address the issue of technical feasibility. Indeed, the words “technically feasible” do not appear anywhere in the OCC’s discussion of the direct access issue.

77. The OCC erred as a matter of law in failing to find and conclude that direct access was “technically feasible.”

**D. The OCC Erred As A Matter Of Law In Applying The Wrong Legal Standard And In Failing To Make Any Findings Of “Specific And Significant Adverse Network Reliability Impacts.”**

78. The OCC erred in failing to apply the correct legal standard, and in failing to make any findings, pertinent to the issue of whether direct access is a technically feasible method of access and whether the ILEC is excused from providing such access because of “specific and significant adverse network reliability impacts.” See 47 C.F.R. Sec. 51.5.

79. Under FCC regulations, an “incumbent LEC that claims it cannot satisfy such request [for direct access] because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such . . . methods would result in specific and significant adverse network reliability impacts.” 47 C.F.R. Sec. 51.5.

80. In contrast to the correct legal standard, the OCC found that direct access “may seriously jeopardize SBC-OK’s ability to maintain network integrity, security, and control” and “may cause SBC-OK unreasonably (sic) and unnecessary difficulty in maintaining network integrity, security, and control.” Arbitrator’s Report at 46.

81. The OCC’s finding does not meet the FCC requirement that SWBT prove, by clear and convincing evidence, that direct access would result in specific and significant adverse network reliability impacts.

82. The record fails to contain evidence that direct access would result in fact-specific harm to SWBT, as required under federal law. The undisputed evidence of record is that neither a Cox technician nor a SWBT technician, in performing the same operation (moving an inside wire subloop dedicated solely to a former SWBT customer from SWBT's network to Cox's network) posed a realistic danger to SWBT's distribution plant or its network reliability.

83. The OCC also erred in applying the standard mandated by the FCC for the "public interest" analysis. The OCC found that "'direct access' is not in the public interest," Arbitrator's Report at 45, but mistakenly identified the "public interest" with SWBT's interest. The public interest is in quality competitive telephone service, which is the ultimate benefit of facilities-based competition in the local exchange market.

**E. The OCC Erred As A Matter Of Law In Failing To Require Access On Non-Discriminatory Terms And Conditions, As Required Under Federal Law.**

84. The OCC erred in failing to require that SWBT provide access to local telephone customers on non-discriminatory rates, terms and conditions, as required under Section 252 of the 1996 Act and other federal rules.

85. The 1996 Act obligates an ILEC to provide access to inside wire subloops to a competitor on terms and conditions that are just, reasonable, and nondiscriminatory. Nondiscriminatory is defined in 47 C.F.R. Sec. 311(b), which states that the "quality of access to such unbundled network element . . . shall be at least equal in quality to that which the incumbent LEC provides to itself."

86. The OCC erred in finding that the terms, conditions and methods of access to inside wire subloops provided in SWBT's proposal are non-discriminatory and should be adopted in the ICA between SWBT and Cox.

87. For example, the OCC found that requiring a SWBT technician to disconnect inside wire subloops for Cox is “consistent with the manner in which SBC-OK provides UNEs to other CLECs, as well as the manner in which it provides service to its own retail customers.” Arbitrator’s Report at 46.

88. The uncontradicted evidence of record is that, under SWBT’s proposals, Cox’s access to inside wire subloops would be obtained only through terms and conditions that are vastly more burdensome to Cox than the terms and conditions upon which SWBT currently provides service to its own customers using the same inside wire subloops.

89. The OCC’s finding is not supported by any evidence that it is not technically feasible to provide access at a level of quality that is equal to that which SWBT provides to itself.

90. The OCC’s finding that the SWBT proposal would not result in unreasonable delays or service outages is not supported by any evidence of record. The OCC ignored evidence Cox presented that, under SWBT’s proposal, Cox would be required to wait for a SWBT technician to perform the cross-connect work and that this delay, among others, would cause Cox to suffer an inherent competitive disadvantage versus SWBT.

91. The OCC erred in failing to find that the methods of access to inside wire subloops, including direct access, set forth in Cox’s proposal were just, reasonable, and nondiscriminatory, in accordance with the requirements of Section 251 and 252 of the 1996 Act and the FCC’s rules, specifically 47 C.F.R. § 51.307.

F. **The OCC Erred As A Matter Of Law In Determining That The Demarcation Point For Control Of Wiring Must Be At The Same Location As the Network Interface Device.**

92. Under the FCC's rules, the point where control over telephone wiring passes from the telephone company to the owner of the premises is known as the demarcation point. Each telephone line also has what is known as a "network interface device" or "NID." The NID is used to connect customer-owned wiring to the telephone network.

93. In addressing demarcation points and NIDs, the OCC concluded:

That if SBC-OK terminals are found outside each building at a low-rise residential MTE [multi-tenant environment], or on each floor of a high-rise MTE, that Cox must assume that SBC-OK owns or controls the wiring to the first jack in each tenant customer premises and that Terminal-to-NID UNE subloops are present for access only according to the rates, terms and conditions set forth in the decision.

Arbitrator's Report at 45.

94. The OCC's conclusion that the network interface must be located at the same point as the demarcation point on SWBT's network is incorrect as a matter of law. The FCC has held that the location of the demarcation point and the location of the NID are independent of each other: "We find the demarcation point preferable to the NID in defining the termination of the loop because, in some cases, the NID does not mark the end of the incumbent's control of the loops facility." *UNE Remand Order, par. 168*

95. The OCC also erred because there is no evidence to support its conclusion and no reference to any such evidence in its final order.

96. The OCC erred in concluding that because SWBT owns or controls the inside wire to the first jack in the tenant customer's premise, SWBT, not the building owner, has the obligation to operate, maintain, and repair these facilities. This conclusion is not supported by the law.

**G. The OCC Erred As A Matter Of Law In Failing To Apply The FCC's TELRIC Rules When Determining The Rates For SWBT's Services.**

97. Under the FCC's rules, all prices for unbundled elements, including the inside wire subloop, must be calculated in accordance with a pricing regime known as "total element long run incremental cost," or "TELRIC." The TELRIC methodology is designed to derive prices for elements in the ILEC's network based upon the cost the ILEC would incur today if it built a local network that could provide all the services its current network provides, to meet reasonably foreseeable demand, using the least-cost, most-efficient technology.

98. Under the FCC's TELRIC rules, an incumbent LEC bears the burden of proof and "must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section . . ." 47 C.F.R. § 51.505(e).

99. The OCC erred in adopting the entire SWBT proposal, which includes "a comprehensive package for UNE subloops that Cox or other CLECs may need now or in the future." This was error because the SWBT proposal contains rates, terms, and conditions that apply to types of subloops that were not properly part of the proceeding below.

100. The OCC also erred in adopting the SWBT proposal as a package because the OCC ignored the requirement that an incumbent LEC use a cost study to "prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic

cost per unit of providing the element,” and instead improperly shifted the burden of proving the legality of the rates to Cox. There is no cost study or testimony in the record supporting many of SWBT’s proposed rates.

101. The OCC also erred in adopting SWBT’s rates because the uncontradicted evidence of record is that SWBT’s proposed rates are plainly excessive on a comparative basis with another state SWBT’s rates.

102. The OCC erred in finding that SWBT’s proposed recurring rates comply with the FCC’s TELRIC rules and in rejecting Cox’s proposed adjustments to the costs in SWBT’s recurring cost study. Cox’s proposed adjustments would be required to bring the recurring costs into compliance with TELRIC rules, to reflect the appropriate network equipment for multi-unit buildings in Oklahoma, and to update the inputs consistent with SWBT’s expense trends and forward-looking market data.

103. The OCC erred in finding that SWBT’s rates based on its Recurring Cost Study complied with the FCC’s TELRIC guidelines, because many aspects of the Recurring Cost Study are undisputedly based on historical costs, which is prohibited under TELRIC rules. For example, the OCC erred in finding that Cat-3, 4-pair wire “complies with TELRIC requirements.” The uncontradicted evidence of record is that, while SWBT’s proposal is based on the cost of CAT-3, 4-pair wire, the costs should be based on CAT-3, 2-pair wire.

104. The OCC also erred in failing to make an adjustment to SWBT’s proposed rates to reflect the proper unit cost of network terminating wire and in rejecting Cox’s proposed adjustment in SWBT’s Recurring Cost Study to reflect the proper unit cost of the network terminating wire. The OCC erred in rejecting Cox’s evidence, even though it was not Cox’s burden of proof, regarding the average length of inside wire subloops based upon the experience

of their technicians wiring the same types of multi-unit buildings as represented in SWBT's Recurring Cost Study.

105. The OCC erred in failing to make an adjustment to the investment cost of the standard network interface (SNI) in SWBT's Recurring Cost Study and in rejecting Cox's proposed adjustment to the investment cost of the SNI in SWBT's Recurring Cost Study. The uncontradicted evidence of record is that the retail price for a 2-pair SNI manufactured by Corning was significantly lower than the price of the SNI proposed by SWBT. SWBT made no objection to the function, quality, price, or availability of the Corning SNI. The OCC erred in finding that the 3-pair SNI SWBT proposed is cheaper than the Corning SNI Cox proposed, and such finding is not supported by any evidence.

106. The OCC erred in failing to make an adjustment to eliminate the engineering and provisioning loadings used to determine the unit investment of the building terminals in SWBT's Recurring Cost Study and in rejecting Cox's proposed adjustment to the investment cost of the building terminals in SWBT's Recurring Cost Study. By allowing engineering and provisioning costs to be recovered for sizing both distribution facilities and building terminals, the OCC has improperly permitted a double recovery of those costs.

107. The OCC erred in requiring the adoption of the non-recurring charges SWBT proposed for Option 1 which requires SWBT to construct, at Cox's expense, an "intermediate interconnection terminal." SWBT's own witnesses expressly and repeatedly admitted on the record that the cost study supporting Option 1 was flawed, because it was inapplicable to subloops in a multi-tenant environment. Notwithstanding this evidence, the OCC required the adoption of the non-recurring charges for Option 1.

108. The OCC erred in finding that SWBT's proposed non-recurring rates comply with the FCC's TELRIC guidelines and therefore should be accepted, and in rejecting Cox's proposed adjustments to the costs in SWBT's non-recurring cost study.

109. The OCC erred in finding that the SWBT proposed travel time of thirty minutes is a reasonable and accurate average time for traveling from job to job and conducting related activities; in adopting SWBT's proposed costs for technician wiring activities; and in failing to make an adjustment in the costs to eliminate the time allocated for "order analysis" of "additional" installations. Each of these findings is contradicted by the evidence of record and is not supported by substantial evidence.

110. Cox's proposed adjustments should be approved to bring the non-recurring costs into compliance with TELRIC principals, to reflect the appropriate network equipment for multi-unit buildings in Oklahoma, and to update the inputs consistent with SWBT's expense trends and forward-looking market data.

111. The OCC erred in failing to adjust SWBT's non-recurring cost study to eliminate the inflation adjustment to non-labor and non-benefit components of the loaded labor rate. The SWBT Recurring Cost Study used to support the rates is inconsistent with the federal legal requirement that costs be determined on a forward-looking basis and is contradicted by the evidence, which shows declining costs.

#### V. Relief Requested

WHEREFORE, as relief for the harms alleged herein, Cox requests that this Court:

a. Declare that the rates, terms and conditions, of the amendment to the interconnection agreement between Cox and SWBT, as determined by OCC Order No. 491645

and approved by OCC Order No. 494645, are contrary to the 1996 Act, and do not meet the requirements of 47 U.S.C. §§ 251 and 252;

b. Grant Cox preliminary injunctive relief to prevent the irreparable harm Cox will suffer under the amendment to the interconnection agreement, and thereafter permanently enjoin all defendants, and anyone acting in concert with them, from enforcing or attempting to enforce the rates, terms and conditions of the amendment to the interconnection agreement and the provisions of Order No. 491645 and Order No. 494596;

c. Vacate OCC Order No. 491645 and Order No. 494596, and remand this matter to the OCC with instructions to enter all necessary orders adjudicating the rates, terms and conditions of Cox's access to those inside wire subloops owned by SWBT consistent with Cox's proposal and the findings of fact and conclusions of law filed by Cox in Cause No. PUD 200300157; and

d. Grant such other relief as may be appropriate.

Respectfully submitted,

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ATTORNEYS FOR  
COX OKLAHOMA TELCOM L.L.C.

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF COX OKLAHOMA TELCOM, )  
L.L.C., FOR ARBITRATION OF )  
OPEN ISSUES CONCERNING UNBUNDLED )  
NETWORK ELEMENTS )

CAUSE NO. PUD 200300157

ORDER NO. 491645

**FINAL ORDER ADOPTING AND MODIFYING THE ARBITRATOR'S REPORT**

BY THE COMMISSION:

*SAN*  
The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration of the May 4, 2004, Cox Oklahoma Telcom, L.L.C.'s ("Cox") Appeal to the Report and Recommendations of the Arbitrator filed in the above-captioned cause on April 2, 2004.

The Commission, having considered Cox's Appeal of the Report and Recommendations of the Arbitrator, attached hereto as Exhibit A, and made a part hereof, the Commission finds that the Report and Recommendations of the Arbitrator Settlement Agreement shall be adopted with the modifications as follows:

1. For low-rise residential buildings, the non-recurring charge for the UNE inside wire subloop shall be two separate charges. The first charge will be non-recurring trip related charge at the rate of \$82.35. The second charge will be the work function related charge at the rate of \$35.33 per sheath.
2. When Cox is using Method 3, they shall be able to request not only the working pair but shall be allowed to request the spare pairs if the spare pairs are available for the customer being switched. This modification of Method 3 will result in possibly eliminating some service outage time for the end-user.
3. Cox shall utilize the mechanized ordering processes, pursuant to their Interconnection Agreement with SBC Oklahoma, to place any new orders or make a request for the UNE inside wire sub-loop and be charged the rate contained in their Interconnection Agreement for such mechanized ordering functions.

EXHIBIT " A "

4. Cox will provide to SBC Oklahoma detailed information of all existing customers such that SBC Oklahoma will be able to bill the monthly recurring UNE rate for the inside wire sub-loop. The monthly recurring rate shall be \$2.39.
5. The Transition is hereby not adopted by the Commission at this time, however, nothing herein will prohibit any of the parties from filing a separate cause to address multi-tenant environment customers who were switched to Cox from SBC Oklahoma prior to the effective date of this Order.

**ORDER**

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the attached Report and Recommendations of the Arbitrator thereto are hereby approved in part and modified in part.

IT IS FURTHER ORDERED that the above findings are hereby the Order of the Commission.

OKLAHOMA CORPORATION COMMISSION

*Denise A. Bode*

DENISE A. BODE, Chairman

*Bob Anthony*

BOB ANTHONY, Vice Chairman

*Jeff Cloud*

JEFF CLOUD, Commissioner

DONE AND PERFORMED THIS 28 DAY OF JUNE 2004, BY ORDER OF THE COMMISSION.

*Peggy Mitchell*  
PEGGY MITCHELL, Secretary

APR 02 2004

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA  
COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICATION OF COX OKLAHOMA )  
TELCOM, L.L.C. FOR ARBITRATION OF ) CAUSE NO. PUD 200300157  
OPEN ISSUES CONCERNING UNBUNDLED )  
NETWORK ELEMENTS )

**REPORT AND RECOMMENDATIONS  
OF THE ARBITRATOR**

This Cause came on for hearing on the eleventh day of February, 2004, before Jacqueline Miller, Administrative Law Judge of the Corporation Commission of Oklahoma ("Arbitrator"), for the purpose of hearing the merits and reporting findings and recommendations to the Commission.

Michael G. Harris, Brian R. Matula, and Katy Evans, Attorneys, appeared on behalf of the Applicant, Cox Oklahoma Telcom, L.L.C. ("Cox"). John Gray, Jr., Curtis Long, Mary Marks Jenkins, and L. Kirk Kridner, Attorneys, appeared on behalf of the Respondent, Southwestern Bell Telephone, L.P., d/b/a SBC Oklahoma ("SWBT" or "SBC Oklahoma"). Lenora Burdine, Assistant General Counsel, appeared on behalf of the Commission Staff.

**PROCEDURAL HISTORY**

On or about April 10, 1997, Cox and SWBT entered into an interconnection agreement (the "ICA") under Sections 251 and 252 of the Telecommunications Act of 1996 (the "1996 Act"), which was approved by the Commission in Order No. 412966, dated May 28, 1997. In 2002, Cox and SWBT entered into a new interconnection agreement (the "new ICA"), which was approved by the Commission in Order No. 466056, dated July 26, 2002. On March 24, 2003, Cox filed its Application in this Cause, pursuant to the Telecommunications Act of 1996 and OAC 165:55-17-7, requesting the Commission arbitrate open issues concerning unbundled network elements. On April 2, 2003 Cox, filed its Motion for procedural schedule. The procedural schedule was recommended by the Arbitrator on April 10, 2003. On May 7, 2003, the Commission entered Commission Order No. 475539, granting Cox's Motion for Procedural Schedule.<sup>1</sup> On April 18, 2004, SBC Oklahoma filed its Request for Interim Relief. Also on that date, SBC Oklahoma filed its Response to the Application of Cox and Objections to Cox's First Set of Data Requests. On May 1, 2003, SBC's objections filed April 18, 2004, were dismissed by agreement of the parties. On April 22, 2003, Cox filed its Motion to Dismiss SBC's Request for Interim Relief. On April 29, 2003, Cox filed its Objection to Request for Interim Relief. On May 5, 2003, the Arbitrator denied Cox's Motion to Dismiss SBC's Request for Interim Relief. On May 5, 2003, the Arbitrator addressed SBC's Request for Interim Relief with instructions.<sup>2</sup>

<sup>1</sup> The Commission issued Order Nos. 479897, 481047, 483382 and 487286 regarding procedure in this Docket.  
<sup>2</sup> Order Regarding Request for Interim Relief, Commission Order No. 482986.

On May 12, 2003, Cox filed objections and responses to SBC's First Set of Data Requests. On May 22, 2003, the matter was dismissed by agreement of the parties.

On May 23, 2003, Cox filed the prefiled direct testimony of F. Wayne Lafferty, Greg Beveridge, Jimmy Cordell, and Carl Branscum.

On May 23, 2003, SBC filed the prefiled direct testimony of William E. Weydeck, Barry A. Moore, and Roman A. Smith.

On May 23, 2003, the Public Utility Division of the Oklahoma Corporation Commission filed the prefiled direct testimony of Barbara Mallett.

On May 23, 2003, the prefiled testimony of Bill Burnett, former Director of the Consumer Services Division was filed.

On August 29, 2003, Cox filed the prefiled supplemental direct testimony of F. Wayne Lafferty.

On August 29, 2003, SBC filed the prefiled supplemental direct testimony of Barry A. Moore, Roman A. Smith, and William E. Weydeck.

On September 15, 2003, Cox filed its Motion to Strike Subsections of the Proposed Subloop Amendment and Related Rates Proposed by Southwestern Bell Telephone, L.P., d/b/a SBC Oklahoma.

On September 17, 2003, the Public Utility Division filed the Supplemental Testimony and the Amended Supplemental Testimony of Barbara L. Mallett.

On September 19, 2003, the Public Utility Division filed the Second Amended Supplemental Testimony of Barbara L. Mallett.

On September 19, 2003, Cox filed the prefiled rebuttal testimony of F. Wayne Lafferty, Greg Beveridge (and Greg Beveridge rebuttal testimony to Barbara L. Mallett), Carl Branscum, and Katy Evans.

On September 19, 2003, SBC filed the prefiled rebuttal testimony of Roman A. Smith, William E. Weydeck, and Mark P. Hitpas.

On September 22, 2003, SWBT filed its response to the Motion to Strike of Cox which was filed on September 15, 2003. On September 25, 2003, the Arbitrator denied the Motion to Strike.

On September 22, 2003, SBC filed the prefiled rebuttal testimony of Barry A. Moore.

On September 30, 2003, Cox filed the additional rebuttal testimony of F. Wayne Lafferty.

On October 10, 2003, Cox filed its Pre-Hearing Brief.

On January 12, 2004, SBC filed its Pre-Hearing Response Brief.

On January 12, 2004, the Public Utility Division filed its Reply Pre-Hearing Brief.

On January 30, 2004 SBC filed a Motion to Strike the Testimony of Carl Branscum. On February 4, 2004, Cox filed its response to SBC's Motion to Strike the Testimony of Carl Branscum. On January 5, 2004, the Arbitrator denied the Motion with instructions.

On February 2, 2004, Cox filed its Pre-Hearing Reply to the Public Utility Division's Reply Pre-Hearing Brief and Cox filed its Pre-Hearing Reply Brief.

Cause No. PUD 200300157 came on for hearing on February 11, 12, and 13, 2004, before Administrative Law Judge Jacqueline Miller, Arbitrator, for the purpose of hearing the merits and reporting thereon to the Commission. The prefiled testimony was accepted into the record and the parties were given the opportunity to cross-examine each party's witnesses. Pleadings filed in the Court Clerk's office of the Commission were admitted into the record. Additional exhibits OCC 124-OCC 147 were admitted. During the hearing, Cox made an offer of proof regarding Cox Exhibit No. 278. By Agreement of the parties, the testimony of Katy Evans and Bill Burnett were admitted into the record of the proceedings without oral examination.

A portion of SBC Exhibit No. 35 was late filed by Cox only for the purpose of showing, in part the underlying basis for the testimony of Mr. Beveridge. L. Kirk Krider also filed a late filed entry of appearance in the Cause.

Subsequent to the hearing on the merits, Cox and SBC submitted proposed findings of fact and conclusions of law and summaries of evidence to the Administrative Law Judge.

#### SUMMARY OF EVIDENCE

##### COX OKLAHOMA TELCOM, L.L.C.

Greg Beveridge

##### Summary of Rebuttal Testimony to Barbara Mallett's Testimony:

Several of Ms. Mallett's recommendations contemplate that Cox would access ATW subloops through an intermediate cross-connect box ("New Device") proposed by SWBT. In the Triennial Review Order, however, the FCC expressly prohibits requiring the use of such an intermediate cross-connect box.

intends to employ for providing telecommunications services. Thus, they should be rejected by the Commission.

As far as I can tell, Ms. Mallett's position regarding the location of demarcation points and NIDs in Oklahoma MTEs is simply based on what SWBT has told her and thus lacks the requisite independent analysis supporting an objective conclusion. The vast majority of MTE units in Oklahoma do not utilize a NID, according to SWBT's own practice. Additionally, the FCC has clearly stated that the location of a NID and the location of a demarcation point are independent of each other. Under FCC orders, including the TRO, the NID at most Oklahoma residential MTEs is the Accessible Terminal.

Ms. Mallett's asserted that Mr. Bill Burnett, by letter, directed Cox: "...in very clear terms that Cox's access of SBC's wire should cease." Mallett testimony, p. 8. This assertion is in error: the referenced Burnett letter simply does *not* state either "in very clear terms" or in any other way that Cox's access of SWBT's ATW should cease.

The conclusions in Mr. Burnett's letter to Cox rely upon a report by another Commission Staff member, which asserts that premises wire is not owned or controlled by SWBT, but is instead owned by the apartment owner. Moreover, the letter states that Cox has the right to use the customer's inside wire. Finally, Cox was told that it should work with SWBT regarding the use of the wire, and it has done so.

#### Summary of Direct Testimony and Supplemental Direct Testimony:

Cox should have direct access to the SWBT Accessible Terminal for the purpose of gaining access to SWBT-owned or -controlled ATW serving individual customers in multi-tenant environments ("MTEs"). Cox's technicians should be permitted to enter SWBT's Accessible Terminals at MTEs and to perform the cross-connection between SWBT-owned or -controlled wire serving individual customers and Cox's network.

In its rules that address ILEC challenges to technical feasibility, the FCC places the burden of proof on SWBT to demonstrate with "clear and convincing evidence" that "...such interconnection, access, or methods would result in *specific and significant adverse network reliability impacts.*" (Emphasis added.) 47 CFR Section 51.5.

FCC Rule Section 51.311(b) reads, in part: "...to the extent technically feasible, the quality of an unbundled network element, *as well as the quality of the access to such unbundled network element*, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, *the incumbent LEC must prove to the state commission that it is not technically feasible* to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself." (Emphasis added.) 47 CFR Section 51.311(b).

SWBT has failed to demonstrate such "specific and significant adverse network reliability impacts." Therefore, the Commission should find that the direct access sought by Cox is, in fact, technically feasible.

Section 305(a)(5) of the FCC's rules reads in part: "...offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. *This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.*" (Emphasis added.) 47 CFR Section 51.305(a)(5).

Thousands of subloop cutovers have been performed by Cox's technicians in Oklahoma (as well as thousands by other CLEC technicians in other states), without resulting in *any* network harm or significant negative customer impact.

Cox's proposal affords Cox technicians access only to those wires dedicated to individual customers' premises without any realistic danger to SWBT's distribution plant or switched network.

Cox is aware of many instances where SWBT's technicians have employed improper installation practices (mirroring those it accuses Cox of employing).

Even if an Accessible Terminal was obliterated, the impact would be limited to the small number of customers (typically less than 25) who were served directly by that terminal.

SWBT has proposed three options for Cox's access to ATW subloops:

1. Indirect access through a SWBT-constructed intermediate device;
2. Indirect access through a Cox-constructed intermediate device; and
3. Indirect access which a SWBT technician extends the ATW subloop from the Accessible Terminal for connection by a Cox technician to Cox's network.

None of SWBT's three proposed options provides for direct access by a Cox technician to the ATW subloop inside the Accessible Terminal.

None of SWBT's proposed options meets the unbundling requirements of the Telecommunications Act of 1996 ("Act").

SWBT's Accessible Terminal is functionally and architecturally identical to the "accessible terminal" and/or "access point" to which the FCC has held that direct access by CLECs must be provided. The FCC describes an accessible terminal as a point that "...enables a *competitor's technician* to cross connect its terminal to the incumbent LEC's." (Emphasis added.) Triennial Review Order ("TRO") at footnote 1013.

The FCC has acknowledged that the location of the demarcation point and the location of the NID are independent of each other: "We find the demarcation point preferable to the NID in defining the termination of the loop because, in some cases, the NID does not mark the end of the incumbent's control of the loop facility." UNE Remand at ¶168.

NIDs do *not* exist at the demarcation point in the vast majority of SWBT-served individual customer units in Oklahoma MTEs, according to SWBT's own written practice.

SWBT's Accessible Terminal is functionally and architecturally identical to the "NID" arrangement in the FCC's Virginia arbitration. (FCC's CC Docket No. 00-251).

Finding that such direct access posed no significant threat to the ILEC's network, the ECC granted AT&T direct access to Verizon-owned ATW between Verizon's accessible terminal and the demarcation point at customers' premises. (FCC's CC Docket No. 00-251).

Following a study that proved that such direct access posed no significant threat to the ILEC's network, the New York PSC granted CLECs direct access to ILEC-owned house & riser cable. See NYPSC Case No. 00-C-1931.

Direct access to ILEC accessible terminals by Cox technicians is the norm in California and Arizona. There is no evidence that the direct access Cox is seeking in Oklahoma is technically infeasible, unsafe or inefficient, and in fact, the evidence from these and other states supports Cox's contention that direct access is technically feasible, safe and efficient.

To address SWBT's concern that a Cox technician might not apply the same methodology as SWBT's technician for accessing ATW, Cox proposes to train its technicians using *exactly* the methods that SWBT's own technicians use.

Where the design of a SWBT's Accessible Terminal does not allow Cox to employ SWBT's standard procedures, Cox proposes to order indirect access (similar to SWBT's 3<sup>rd</sup> proposed option) to that particular subloop. Where Cox uses indirect access to SWBT ATW (which requires provisioning activity for both Cox and SWBT), Cox proposes to submit per-customer, per-pair orders for all such subloops.

To address SWBT's operational and administrative concerns regarding its ability to accurately inventory its distribution plant and to accurately bill Cox for its use of SWBT subloops, Cox proposes to submit records-only orders for all subloops to which Cox gains direct access. To address any concerns SWBT may have regarding Cox's ordering accuracy, Cox proposes to permit SWBT to audit the accuracy of Cox's orders.

To address SWBT's fears that Cox's direct access to ATW results in damage to SWBT's property or equipment, Cox proposes to accept liability for any demonstrated damage and to reimburse SWBT for the repair of such damage.

To address any concerns that SWBT may have about easily locating all ATW cable pairs, Cox proposes to leave SWBT wiring in the Accessible Terminal, and to extend Cox's wiring to SWBT's ATW cable pairs inside such Accessible Terminals.

If Cox were required to wait for a SWBT technician to perform the cross connect work (required with all three of SWBT's proposed options), Cox would suffer an inherent competitive disadvantage versus SWBT. Cox would be forced to accept additional delay in notifying SWBT of the need for the cross connection, in SWBT's scheduling of that work, and in receiving the confirmation it was completed. The delay inherent in each of these steps would be added to Cox's normal installation interval. Because there would be inevitable missed appointments and other priorities of SWBT technicians that would interfere with Cox's ability to complete all such work as committed, Cox would also suffer the cost of rescheduling installation commitments with its customers and the consequential damage to its reputation at the critical point in the customer relationship: when service is first being established. All three of SWBT's proposed options for access to ATW subloops are inherently discriminatory because they impose burdens on Cox which are not placed upon SWBT.

Regarding direct access, the FCC said: "Incumbent LECs are required to provide subloops to access multiunit premises *without collocation*. [Footnote omitted.] Competitive carriers are able to access these subloops at any technically feasible terminal point at or near the building *in any technically feasible manner*. [Footnote omitted.] This will provide facilities-based competitors the greatest flexibility in designing their networks and most efficiently accessing these subloops only at the point necessary. [Footnote omitted.]" (Emphasis added.) TRO at ¶350.

The FCC has expressly prohibited limiting CLEC access to ATW subloops by way of intermediary devices such as those proposed by SWBT. TRO at ¶ 358.

Federal regulations prohibit ILECs from imposing on a CLEC the requirements that an intermediate device be constructed, and that the CLEC's access to ILEC-owned or -controlled wire serving individual customers be only indirect through cross-connections to that device. See 47 CFR Section 51.323(k)(2).

Placement/use of an intermediary device or superfluous cross-connect work performed only by a SWBT technician does not preserve or enhance SWBT's network reliability.

In order to prevent lengthy out-of-service conditions for Cox's new customers under *all* of SWBT's three options, Cox would have to perfectly schedule and coordinate its personnel such that a Cox technician was always present at the moment a SWBT technician arrived at an MTE to install or extend SWBT's jumper/cross-connect wire.

If SWBT wins back a Cox MTE customer, no ordering or coordination with Cox is required to restore that customer's service to SWBT – SWBT experiences no analogous delay in serving its own customers directly or via win-back.

Cox technicians must have direct access to all ATW in an MTE property at any technically feasible point. Accordingly, ownership or control of the wiring, including any dispute over who owns or controls it, should not impede Cox's right of direct access. The only importance of resolving such an issue is to determine whether SWBT has the right to bill Cox for use of the contested wiring.

Both Cox and SWBT should be obligated to determine that premises wiring is in fact available for service by using either of the tests described in Section 2.8.3 of Cox's proposed contract language.

SWBT does not inventory premises wire information in its operations support system. This information, if recorded at all, is typically marked in a local record log kept in a centralized location, or marked on tags or on the terminals themselves. As long as Cox clearly marks the subloops in use at the Accessible Terminal location, there is no harm to SWBT. There would be substantial competitive harm to Cox if it had to identify to SWBT any service or other information in addition to marking the wiring at the Accessible Terminal.

SWBT has proposed a number of terms that have no relevance to the amendment being arbitrated because Cox has no wish to access such SWBT facilities. For example, the term "dead count" has no applicability to this amendment. Nor do the terms "digital subloop," "MDF-to-SAI/FDI," "MDF-to-Term," "SAI/FDA-to-Term," "SAI/FDI-to-NID" and "SAI/FDI." Cox has no wish to avail itself of access to any SWBT UNE subloop other than the ATW subloop. Accordingly, Cox believes that the list of additional UNE subloops advocated by SWBT for inclusion in this amendment should be rejected by the Commission.

The Commission should approve, as written, Cox's proposed amendment. Except in the very limited circumstance in which Cox has agreed to indirect access, the Commission should require that SWBT allow direct access to all Accessible Terminal Wiring pairs at all MTE Accessible Terminals, rejecting the intermediate device options proposed by SWBT. Similarly, the Commission should reject SWBT's proposed option that would require a SWBT technician to install a cross connecting wire for Cox's use in connecting a customer to Cox's network, except in the small minority of circumstances in which Cox has agreed to accept such indirect access. The Commission should further require that such direct access by Cox be carried out only by Cox's technicians, with no required involvement of SWBT's technicians for normal Cox provisioning of service to its MTE customers.

The Commission should adopt appropriate rates for SWBT's ATW subloops that do not include costs for intermediate devices, nor any costs associated with their planning, construction, implementation, or use. Such adopted rates should also reflect existing technology actually provided, for access. Finally, the Commission should reject all three of SWBT's proposed option for access to ATW subloops as discriminatory, unreasonable, and totally unnecessary. The Commission should find that SWBT's claim that Cox's proposals are technically infeasible is unsupported and completely without merit.

Rebuttal Testimony to Testimony of William Weydeck and Roman Smith

SWBT has not disputed its obligation to provide access to Accessible Terminal Wiring ("ATW") subloops as an unbundled network element ("UNE") in MTEs, but absolutely refuses to offer direct access to that subloop in its Accessible Terminals. SWBT Witness Weydeck clearly stated SWBT's "no-direct-access" policy: "As I stated in my direct testimony, SBC Oklahoma does not permit, and adamantly opposes, CLEC's direct access to its regulated network."

All of SWBT's proposals would require the presence of its technicians at Accessible Terminals to provide only indirect access to individual ATW pairs on a customer-by-customer basis, and two of its proposal options would require the placement of an intermediate device for the purpose of completing such individual customer connections to Cox's network.

SWBT's proposals for such intermediate devices, resulting in only indirect access by Cox, is actually collocation for interconnection, rather than access to UNEs. "The analogy of collocation is probably an apt one." Weydeck Testimony, p. 23. However, the FCC has stated: "The rules we adopt today make clear that no collocation requirements exists with respect to subloops used to access the infrastructure in multiunit premises." *Triennial Review Order*, para. 350. And it said further: "Accessible Terminals contain cables and their respective wire pairs that terminate on screw posts which enables a competitor's technician to cross connect its terminal to the incumbent LEC's to access the incumbent LEC's loop from that point all the way to the end-user customer." *Triennial Review Order*, footnote 1013. To date, SWBT has not demonstrated any specific and significant adverse network reliability impacts resulting from Cox's direct access to ATW subloops. Mr. Weydeck offers only weak, unsubstantiated opinions and warnings, such as "If [direct access] were allowed, SBC Oklahoma's switched network integrity would be placed in serious jeopardy." Weydeck Testimony, p. 31. By comparison, Cox has demonstrated, by virtue of its completion of tens of thousands of successful ATW connections in Oklahoma and other states, that direct access to subloops, which it advocates in this Cause, poses no significant risk to SWBT's network reliability.

In spite of Mr. Weydeck's assertion to the contrary, NIDs do *not* exist at the demarcation point in the vast majority of SWBT-served individual customer units in Oklahoma MTEs, according to SWBT's own written practice.

The FCC has also acknowledged that the location of the demarcation point and the location of the NID are independent of each other: "We find the demarcation point preferable to the NID in defining the termination of the loop because, in some cases, the NID does not mark the end of the incumbent's control of the loop facility." *UNE Remand Order* at para. 168.

Mr. Weydeck also mischaracterizes the subloop to which Cox seeks direct access, suggesting that Cox seeks access to the distribution facilities termination of SWBT's subloop that feeds back toward SWBT's own network. Cox does *not* seek such access; instead, Cox seeks direct access only to the ATW at the *customer side* of premises wiring inside SWBT's Accessible Terminals.

The Weydeck Testimony takes language of other regulatory proceedings (the FCC's CC Dockets 00-218, 00-249, and 00-251, "FCC's Virginia Case") out of context and mischaracterizes the ATW side of NIDs in Oklahoma MTEs as being the same as the end of the network distribution cable coming into the Accessible Terminal. However, the FCC noted: "The critical difference is that, when a competitive LEC's technician works on the customer side of the NID (albeit the network side of the demarcation point), that technician works on dedicated rather than network facilities." *FCC's Virginia Case*, para. 422.

Mr. Weydeck also ignores the following FCC language: "*Direct Access*. We find that WorldCom's language enabling its technicians to have direct access to the customer side of Verizon's NIDs is consistent with the Act and our rules." *FCC's Virginia Case*, para. 428. By his selective and tortured portrayal of otherwise clear language in the *FCC's Virginia Case*, Mr. Weydeck creates a false logical construction that I believe is designed to mislead the Commission in the present Cause.

Each of SWBT's three options for Cox's access to ATW subloops absolutely denies Cox direct physical access to ATW at any/all existing SWBT Accessible Terminals. All three options would also require coordinated pair-by-pair provisioning of ATW to Cox by a SWBT technician. The significant problems associated with such per-customer provisioning activities are described in my original Direct Testimony and apply to all three of SWBT's options.

Mr. Weydeck's assertions characterizing SWBT's four-month planning and construction period as inconsequential to Cox reflects a total lack of understanding of the actual internal provisioning intervals for Cox's telephone service.

SWBT's third option would require SWBT technicians to run cross connections out of Accessible Terminals for Cox's use in connecting a customer to Cox's network. During the period commencing when SWBT's technician connects a "tagged jumper wire" in its Accessible Terminal and leaves the other end "coiled up" outside for a customer changing his or her telephone service from SWBT to Cox, that customer is totally without telephone service of any kind. This is because the customer has *first* been disconnected from SWBT's network by the SWBT technician. Stated another way, the only way that Cox would be able to minimize the "no-service" interval for its new customers is to carefully coordinate the activities of both technicians, even though the SWBT technician is not under Cox's control.

All three forms of access proposed by SWBT and described by Mr. Weydeck present Cox with inherently inferior methods of access to ATW subloops, compared to SWBT's own use of that same facility, and are therefore not compliant with the Act, the *UNE Remand Order* or the *Triennial Review Order*. Each of these three SWBT options would be more costly, would introduce unnecessary delay and would lead to inferior service for Cox customers.

Mr. Weydeck charges that: "...the reference to splices in the jumper wire within the conduit is unacceptable." Weydeck Supplement, p. 6. Under no circumstance will Cox place

splices in conduit between SWBT's Accessible Terminal and Cox's terminal. All connections to ATW would be properly made by Cox in accordance with *SWBT's own practices*.

In its Supplemental Proposal, Cox has offered to comply with the exact methods and procedures used by SWBT's technicians for direct access to ATW subloops, to assure that Cox's methods and procedures for direct access would comport with SWBT's requirements for its technicians.

Mr. Roman Smith states that: "In the event a CLEC requests an untested facility, SBC Oklahoma should not be held responsible if later it is determined that a problem does exist." He then concludes with the unwarranted request to the OCC to "...grant a waiver of performance measurements." Supplemental Direct Testimony of Roman A. Smith, p. 12. As recommended in my original direct testimony, the OCC should reject SWBT's attempt to abdicate its operational responsibility. Further, the OCC should require SWBT to provide levels of support and maintenance to Cox that are equal to those which SWBT provides itself.

**Carl Branscum**

Summary of Direct Testimony:

Cox technicians have performed tens of thousands of telephone installations in multi-tenant environments ("MTEs") such as apartments in Oklahoma. Cox maintains records of all complaints or problems associated with telephone service. Cox refers to these records as "Trouble Call Reports." I am familiar with the Trouble Call Reports. Very few complaints or trouble calls have arisen from the standard methods, practices and procedures used by Cox to install telephone service to customers in MTEs. In addition, of the tens of thousands of installations at MTEs in Oklahoma, I am aware of only two service interruptions arising in connection with the installation of telephone service. These are discussed in my direct testimony.

I am familiar with SWBT's original proposal in this matter pertaining to the rates, terms and conditions for Cox's access to and use of the Accessible Terminal Wiring ("ATW") or Terminal-to-NID subloop. Rather than allowing Cox technicians to have direct access to the SWBT accessible terminal to cross-connect the wire dedicated to the resident or tenant of an MTE to the Cox terminal, SWBT proposes access through a new intermediate cross-connect device (the "New Terminal Box") which must be constructed and installed at each MTE building. Under SWBT's proposal, construction of the New Terminal Box at each MTE building would require as much as 120 days. In addition, after the New Terminal Box is constructed, SWBT's proposal would require Cox to order cross-connections on a customer-by-customer basis for every new Cox customer. In order to avoid any interruption of telephone service to the customer, each of these cross connections would require that the SWBT installation technicians and the Cox installation technician coordinate and schedule their simultaneous appearance at the customer's location to make the cross-connection.

SWBT can offer virtually immediate telephone service to a new customer in a MTE. Generally if a new apartment resident calls SWBT to order telephone service, SWBT can tell the customer that service will be established within a few days. If that same customer called Cox to request telephone service, under SWBT's proposal, Cox would not be able to offer service in less than 120 days. Obviously, Cox could not compete effectively with SWBT under these circumstances.

Under SWBT's proposal, Cox would first be required to pay the cost of constructing and installing the New Terminal Box. This cost would vary on a case-by-case basis for each MTE building. The cost would be based upon an estimate prepared by SWBT of the actual construction, labor, materials, and related provisioning costs, on a time and materials basis. In addition to the cost of installing the New Terminal Box, under SWBT's proposal Cox would pay a cross-connection charge of \$448.78 for each customer connected to Cox's network through the New Terminal Box.<sup>3</sup> Finally, Cox would pay a recurring charge of \$4.68 per month for each customer.

If SWBT's proposal was adopted, Cox would be forced to withdraw from offering telephone service in MTE locations where Cox was required to use SWBT's ATW or Terminal-to-NID subloop. Cox could not compete with SWBT in that market. Apartment residents move around a lot, and there is a very high turnover rate of customers at apartment complexes. The average length of telephone service to apartment residents is approximately 11 months. If SWBT's proposal was adopted, it would take Cox over 50 months to recoup its cost of connecting telephone service to an apartment resident. This takes into account only the \$448.78 cross-connection charge and the \$4.68 recurring monthly charge. It does not take into account the cost of constructing and installing the New Terminal Box. If the cost of constructing the New Terminal Box were included, it would take additional time for Cox to recoup its cost of connecting an apartment resident. Because the average length of telephone service to apartment residents is 11 months, obviously Cox could not provide service to these customers if it took over 50 months to recoup the cost of a customer connection.

Apartment residents constitute approximately 30% of Cox's customer base. Cox provides telephone service to over 16,000 apartment residents. If SWBT's proposal in this cause regarding the rates, terms, and conditions for Cox's use of the ATW or Term-to-NID subloops is adopted, Cox would have to withdraw from the residential apartment telephone market.

#### Summary of Rebuttal Testimony:

Mr. Weydeck asserts that "based upon the damage Cox has caused to SBC Oklahoma's network, it appears that the Cox technicians have little if any respect for the integrity of SBC

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<sup>3</sup> If Cox was able to place more than one customer on a cross-connection order, the \$448.78 charge for the initial customer on the order would be reduced to \$170.20 for additional customers on the same order. It is unlikely, however, that Cox would be able to accumulate orders and place more than one customer on a single order. Customers typically want to have immediate telephone service. It is unlikely that a customer would choose to use Cox telephone service if they were told that Cox would connect the customer as soon as Cox received additional orders from the same building, but did not know when additional orders might be received.

Oklahoma's network . . . ." This testimony is categorically untrue. As described in my testimony, the procedure used by Cox to relocate the wire dedicated to a tenant in a multi-tenant environment ("MTE") is very simple. The procedure is performed by every telephone installation technician many times each day. The Cox technician does not touch any of the SWBT facilities or wires in the SWBT network other than the wire dedicated to the single MTE resident who requested Cox telephone service. Because the Cox technician only touches the wire dedicated to the MTE resident who requested Cox telephone service, there is no realistic danger that the Cox technician could harm the SWBT network or disrupt telephone service to other SWBT customers.

SWBT technicians use exactly the same procedures to connect the wire dedicated to the MTE resident to SWBT's facilities that Cox uses to relocate the wire dedicated to a resident in an MTE. The same procedures are used throughout the telecommunications industry by all technicians, whether employed by SWBT, Cox, or any other telecommunications provider. These procedures will be demonstrated at the hearing in this cause.

Cox maintains "trouble call reports" of all complaints or problems associated with telephone service. Very few trouble calls have arisen from the standard procedures used by Cox to install telephone service to customers in MTEs. Of the tens of thousands of installations at MTEs in Oklahoma, I am aware of only two service interruptions arising in connection with the installation of telephone service. These service interruptions are described in my testimony.

Cox has been accused of using improper installation practices. I am familiar with the installation practices used by SWBT. I am aware of many instances in which SWBT has used the same practices that it alleges Cox to have employed. Examples of these practices will likewise be shown at the hearing.

To alleviate any concerns that a Cox technician might not apply the procedures used by SWBT's technicians for the simple task of accessing SWBT's Accessible Terminal Wiring subloop, Cox proposes to train its technicians using *exactly* the procedures used by SWBT's technicians. In addition, to alleviate any concerns regarding possible damage to SWBT's property resulting from Cox's direct access to the Accessible Terminal Wiring subloops, Cox proposes to accept liability for any damage and to reimburse SWBT for the repair of such damage.

Portions of Mr. Weydeck's testimony are misleading. Mr. Weydeck repeatedly states that under Cox's proposal Cox would be entitled to "appropriate" SWBT's property and use it without paying for that use. Cox filed the application in this cause. By filing the action, Cox seeks to establish the rates, terms and conditions that it shall pay for use of SWBT's Accessible Terminal Wiring subloops. It appears that Mr. Weydeck is attempting to mislead this Commission by wrongly stating that Cox's proposal would entitle Cox to use SWBT's Accessible Terminal Wiring subloops without paying for them.

The denial of Cox's direct access to the Accessible Terminal Wiring subloop would have a dramatic effect on Cox's ability to offer telecommunications services at MTEs. The first effect

is entirely financial. The only method of access to Accessible Terminal Wiring subloops offered by SWBT which might be used by Cox is the alternative by which a SWBT technician would extend a cross connect wire from SWBT's existing Accessible Terminal and leave the cross connect wire coiled up near Cox's terminal for the Cox technician to reconnect in Cox's terminal. Under SWBT's proposal, for this alternative, Cox would pay a non-recurring cross-connection charge of at least \$117.68 for each Accessible Terminal Wiring subloop (that is, for each customer) and a recurring monthly charge of \$2.70 per month for each customer. As explained in Cox's testimony, the \$117.68 non-recurring cross-connection charge is comprised entirely of SWBT costs associated with requiring an SWBT technician to travel to the customer's premises and extend the cross connect wire from SWBT's Accessible Terminal. If Cox was provided direct access to the SWBT Accessible Terminal, the non-recurring cross-connection charge would be \$0.00 because a SWBT technician would not be required to perform any operations in connection with the cross-connection.

The average length of telephone service to apartment residents is approximately 11 months. If SBC's proposal is adopted, it would take more than 11 months for Cox to recoup its cost of connecting telephone service to an apartment resident. Therefore, the non-recurring cross-connection charge alone would make it very difficult for Cox to continue to offer telephone service at MTEs. This charge would not be incurred if Cox had direct access to the Accessible Terminal Wiring subloop.

The other effects of denying Cox direct access are operational, although they also have financial consequences. As a practical matter, telephone installations at MTEs are simply operationally unworkable without direct access to Accessible Terminal Wiring subloops by Cox technicians. With direct access, a Cox technician can install phone service by himself in a matter of a few minutes. Without direct access, however, close coordination between the Cox technician and the SWBT technician would be required in order for them to simultaneously perform their work at the customer's premises. Such close coordination is simply impractical and unworkable.

Assume that an installation is scheduled for 10:00 a.m. and the Cox technician appears at the customer's premises at 10:00 a.m. If the SWBT technician does not appear because a previous installation took longer than anticipated, or because the technician had car trouble, then the installation could take the Cox technician several hours rather than the few minutes originally scheduled for it. As a result of this delay, all of the installations which the Cox technician had scheduled later in the day would be disrupted. Even if the SBC technician arrived at the installation at the scheduled time, the Cox technician would be unable to begin his or her work until the SBC technician was finished. These delays would decrease the amount of work each Cox technician can perform each day and require Cox to hire additional technicians, which would not be needed if Cox has direct access to ATW subloops.

It must be recognized that in order for a SWBT technician to extend the cross connect wire from SWBT's Accessible Terminal and leave it coiled up near the Cox terminal to be reconnected by the Cox technician, the SWBT technician must first disconnect the Accessible Terminal Wiring subloop from the SWBT network. When the SWBT technician does so, the

customer is totally without telephone service, including 911/E911 service. The only alternative to the unworkable close coordination and scheduling between the SWBT technician and Cox technician to perform their work simultaneously would be for the SWBT technician to disconnect the customer's phone service and leave it disconnected until the Cox technician could schedule a time to complete the cross-connection after the time he or she was certain that the SWBT technician had done his or her work. This is unacceptable. Few people would order telephone service from Cox under these circumstances, and it would deprive the customer of telephone service, including 911 service for an indefinite period of time. The installation processes currently used by Cox disrupt a customer's telephone service for only a very few minutes. Denial of direct access by Cox technicians to the SWBT Accessible Terminal Wiring subloops would cause the interruption of a customer's telephone service, including 911/E911 service, for an indefinite period of time.

Mr. Smith testified that "[d]uring a final meeting with the Commission Staff, SBC Oklahoma expressly requested that Cox cease and desist the unauthorized use [sic] of subloops until such time as Cox amended its ICA to allow for the use of the Term-to-NID subloop." I attended the meeting with representatives of SWBT, Cox and the Commission Staff. I do not recall any such request by SWBT. To my knowledge, at no point did SWBT request that Cox cease and desist the so-called unauthorized use of the subloops until the ICA was amended to establish the necessary rates, terms and conditions.

**Jimmy Cordell**

Summary of Direct Testimony:

Every Cox telephone installation technician undergoes an initial five-day instructor-led course to provide the technician with the knowledge and capability to install Cox telephone service. The course includes specific instruction for multi-tenant environments ("MTEs") such as apartment complexes. Cox does not use contractors for MTE installations. All MTE installations are performed by Cox employees.

The course consists of classroom lectures, demonstrations and module quizzes. Every technician must take a test before and after the five-day course to assess his/her knowledge. Every technician must complete the course, the comprehensive lab exercises associated with the course, and the post-course test, to the satisfaction of the instructor before becoming a Cox-certified technician. A technician must score at least 80% on the post-course test in order to pass the course. If a technician fails the five-day course, they may retake it after additional training.

After completing the initial five-day training course, new installation technicians are assigned to experienced technicians who act as mentors for the new technicians. The new technicians accompany, or "ride along" with the mentors for at least two weeks in order to gain practical experience regarding telephone installations and learn from the mentors. Several days of the "ride-along" period for new technicians is devoted exclusively to MTE installations. The new technicians must satisfy their mentors that they are sufficiently knowledgeable and capable of performing independent installations before being "released" by their mentors. Some new

technicians have continued the "ride-alongs" with their mentors for as long as 30 days before being released to perform independent installations.

Experienced installation technicians, on average, perform 5-6 installations a day. Upon being released by their mentors to perform independent installations, new technicians are assigned 2-3 installations a day. Generally, assignments to the new technicians are gradually increased over the course of several weeks as the technicians become more confident and more comfortable with an increased workload until the technicians assume a full schedule of installations. The new technicians' mentors are available to answer questions or assist in an installation if the new technicians encounter an unfamiliar situation or a problem with an installation.

In addition to the initial training provided to installation technicians, Cox offers employee advancement or progression opportunities which allow technicians to pursue career advancement from installation Technician II to Technician V. Each advancement requires demonstrated knowledge and proficiency in specified job skills including use of test equipment and installation techniques.

Cox supervises, monitors, and controls the quality of its telephone installations in several ways. First, at MTEs it is common to have multiple installations at the same building as additional residents in the building choose Cox for telephone service. Therefore, it is common for a Cox technician to observe the work done previously by other Cox technicians. Cox's "peer intervention" processes require Cox technicians to report any improper practices or departures from standard installation practices observed in prior installations in order to ensure that all technicians understand and use proper, standard installation practices.

In addition, every installation manager physically checks at least 10% of the installations made by his/her technicians to ensure that the technicians employ proper installation practices in accordance with Cox standard methods, practices, and procedures. These manager installation checks or audits are performed at least monthly on the installations performed by experienced technicians and weekly on the work of new technicians. The manager checks the installations against a quality control checklist. The manager keeps a record of any quality deficiencies. Depending upon their importance and frequency, quality deficiencies can result in a memo to the technician's personnel file, a verbal admonishment, a written admonishment, or termination. Cox technicians whose work does not meet company standards are assigned to an experienced technician for additional mentoring and retraining.

MTE customers comprise over 30% of Cox's customer base. Cox technicians have performed tens of thousands of telephone installations in MTEs in Oklahoma. Cox maintains records of all complaints or problems associated with telephone service. Cox refers to these records as "Trouble Call Reports." I am familiar with the Trouble Call Reports. Very few complaints or trouble calls have arisen from the standard methods, practices and procedures used by Cox to install telephone service to customers in MTEs. In addition, of the tens of thousands of installations at MTEs in Oklahoma, I am aware of only two service interruptions arising in connection with the installation of telephone service. In one case, the technician pinched and

severed a wire when closing a wall terminal and thereby caused a service interruption to one customer. In the other case, upon receiving a request for telephone service from an apartment resident, Cox relocated the wire dedicated to the apartment from SBC's accessible terminal to Cox's distribution facilities. Cox received a complaint that it had improperly interrupted SBC service to the apartment resident. Cox later learned that a mother and daughter lived in the apartment. The mother had SBC service and wanted to keep it. The daughter wanted separate Cox telephone service. As a result of this incident, Cox policies were changed. Cox will no longer provide telephone service to an apartment which continues to be served by another telephone service provider.

The procedure used by Cox installation technicians to relocate the wire dedicated to a resident or tenant in an MTE from SBC's facilities to Cox's facilities when the resident or tenant requests Cox telephone service is a very simple procedure which takes longer to describe than to perform. The procedure is performed by every telephone installation technician many times each day. The Cox installation technician simply removes the wire dedicated to the apartment resident or tenant from the SBC accessible terminal (or distribution box) by gently pulling it from the terminal block (or by loosening the screw post on older terminal blocks) and re-connects the wire to the Cox terminal (or distribution box).

The Cox technician does not touch or disturb any of the SBC facilities or wires in the SBC network other than the wire dedicated to the MTE resident or tenant who requested Cox telephone service. Because the Cox technician only touches the wire dedicated to the MTE resident who requested Cox telephone service, there is no realistic danger that the Cox technician could harm the SBC network or disrupt telephone service to other SBC customers.

SBC technicians use exactly the methods, practices, procedures, equipment, to connect the wire dedicated to the MTE resident or tenant to SBC's facilities that Cox uses to relocate the wire dedicated to a resident or tenant in an MTE from SBC's facilities to Cox's facilities. This is a very simple procedure. The procedures, equipment, and material used in connection with it are employed uniformly throughout the telecommunications industry by all technicians, whether employed by SBC, Cox, or any other facilities-based telecommunications provider. These procedures, and the equipment and material used with them, will be demonstrated at the hearing in this cause.

Katy Evans

Summary of Rebuttal Testimony of Bill Burnett:

Mr. Burnett's testimony related his findings during field visits with Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma ("SWBT") representatives to several MTE premises at which both SWBT and Cox provide telecommunications services. Mr. Burnett stated that his findings and conclusions are expressed in the August 19, 2002, letter addressed to me which is attached as Exhibit One to his testimony.

The letter attached to Mr. Burnett's testimony is not complete. In his August 19, 2002 letter Mr. Burnett states that "[i]t would be redundant to repeat my findings since I am enclosing

Steve Wilt's report which accurately and specifically states the case as we observed it." Mr. Wilt's report is not included with the letter attached as Exhibit One to Mr. Burnett's testimony.

Two matters contained in Mr. Wilt's report bear on the issues in this Cause. First, SWBT takes the position that the Accessible Terminal Wiring subloop which is the subject of this Cause is owned by SWBT. Mr. Wilt's report, however, states that the Accessible Terminal Wiring subloop is owned by the apartment owner and that Cox has the right to use it. Second, Ms. Barbara Mallett, a Public Utility Regulatory Analyst of the Commission, filed testimony in this Cause stating that Mr. Burnett issued a letter to Cox "stating in very clear terms that Cox's access of SBC's wire should cease." Mr. Burnett's letter did nothing of the sort.

With respect to the Accessible Terminal Wiring subloop in apartments, or multi-tenant environments ("MTEs"), which is the subject of this Cause, Mr. Wilt's report states:

As for the first apartment complex, the wiring from the street to the SWBT wall pedestal should not have been removed or touched in any way (by the apartment owner or Cox), as it is SWBT property. From the SWBT interface to the various apartments, that wiring now belongs to the apartment owner. It is also evident that the wiring installed by Cox for use from the PBX can also be used by SWBT to provide service to the various locations within the apartment complex, accessed from a common location within the apartment complex. As was seen at both apartment complexes, Cox should not have pulled the SWBT wall pedestal away from the wall, nor should they have removed the inside wiring from the SWBT pedestal and reinstalled it in the Cox pedestal without proper assistance from SWBT (as this inside wiring could be used by either SWBT or Cox, they need to work together to not invite service quality problems).

Mr. Wilt states that "[f]rom the SWBT interface to the various apartments, that wiring now belongs to the apartment owner." He also states that the wiring in the SWBT wall pedestal "could be used by either SWBT or Cox." It is clear that Mr. Wilt does not agree with the position taken by SWBT in this Cause.

Rather than stating that Cox should cease its access to SWBT's wire, Mr. Wilt's report states that the wire constituting the Accessible Terminal Wiring subloop "now belongs to the apartment owner," that "this inside wiring could be used by either SWBT or Cox," and that "they need to work together to not invite service quality problems." Furthermore, nothing in the body of Mr. Burnett's letter directs Cox to cease its access to SWBT's wire.

I am unsure why Ms. Mallett stated that Cox continued to access SWBT's wire after being told by Mr. Burnett, in very clear terms, to cease doing so. Mr. Burnett's letter to Cox states that the wire in question is not owned or controlled by SWBT, but instead is owned by the apartment owner. Moreover, the letter states that Cox has the right to use the wire. Finally, Cox was told that it should work with SWBT regarding the use of the wire and it has done so. I am

not aware of any other letter in which Mr. Burnett directed Cox to cease its access to SWBT's wire.

#### F. Wayne Lafferty

##### Summary of Rebuttal Testimony of Barbara J. Mallett:

Staff Witness Mallet made an attempt to analyze SWBT's proposed costs and rates through an analysis of the treatment of the Term-to-NID subloop by regulators in other states. While Cox applauds her intentions, Staff Witness Mallett has not sought the opinions and findings of CLECs and therefore only presented one side of the debate. Therefore, Cox strongly objects to her research methodology and to the manner in which it was employed. Her incomplete research results in completely unreliable results and should not be accepted by the Commission.

Ms. Mallett based her testimony and conclusions almost completely on hearsay, consisting of opinions obtained from BellSouth employees. Unfortunately, she did not develop a complete picture of the challenges associated with access to the Term-to-NID subloop by also contacting CLECs.

Directed by BellSouth to consider Florida information, Ms. Mallett ignores the evidence in other BellSouth states that shows that regulators have permitted access to the Term-to-NID subloop without the requirement for an intermediate device or have required such a device that is fully funded by the ILEC. Furthermore, her analysis completely ignores the rates for access to the Term-to-NID subloop implemented by BellSouth in Louisiana.

Witness Mallett's research methodology leads to three erroneous conclusions:

1. Her conclusion that "... except for Florida, BellSouth recovers its non-recurring costs for installation of the intermediate terminal box and retermination of all copper pairs from BellSouth's terminal box to the intermediate box on a monthly per copper pair basis rather than through a one-time non-recurring charge" is contrary to state regulatory decisions.
2. Her acceptance of the BellSouth position that the Florida Public Service Commission ("FPSC") "discounted" BellSouth's cost studies and labor costs is not supported by the FPSC's own orders. The FPSC conducted an exhaustive investigation into all the details of BellSouth's UNE cost studies and made reasoned conclusions based on a record developed over almost four years.
3. Her comparison between the Term-to-NID subloop rates of BellSouth in Florida and SWBT in Oklahoma is not supported by her own assumptions and not based on actual installation practices in Oklahoma.
4.
  - \* As a result of her incomplete research process and calculation shortfalls, Staff Witness Mallett calculates SWBT's non-recurring rates as approximately twice

those of BellSouth's. However, the SWBT example devised by Ms. Mallett actually produces a non-recurring rate to the CLEC approximately 4.5 times BellSouth's rate.

- Despite incorrect assumptions concerning the number of copper pairs, Staff Witness Mallett correctly determines that SWBT's monthly recurring rate is almost six times higher than BellSouth's rate. However, Ms. Mallett then erroneously decides that BellSouth's rates only include maintenance expense when in actuality BellSouth's recurring rate is the actual comprehensive rate for the use of the Term-to-NID subloop.
- Correcting for her errors clearly shows the Commission that SWBT's cost studies and proposed rates in Oklahoma are grossly overstated and should be reduced to the level proposed by Cox, if not lower.

#### Direct, Supplemental Direct And Supplemental Rebuttal Testimonies:

The recurring and non-recurring cost studies initially furnished to Cox by SWBT in April 2003 ("Initial Cost Studies") did not represent the network components, work activities or costs associated with Term-to-NID subloops at multi-tenant environments ("MTEs"). As a result, the rates proposed by SWBT were not supported by the Initial Cost Studies.

In July 2003, SWBT submitted to Cox revised recurring and non-recurring cost studies ("RC Study" and "NRC Study" respectively) that were said to more accurately reflect the network components and work activities relating to Term-to-NID subloops in MTEs.<sup>4</sup> SWBT alleged that the RC and NRC Studies were designed specifically for the MTE marketplace. However, they are neither completely TELRIC based nor representative of the proper forward-looking network configuration and costs for serving MTEs in Oklahoma. For these reasons, the RC and NRC Studies do not support the rates proposed by SWBT.

In August 2003, SWBT also submitted to Cox a non-recurring cost study that included testing of the Term-to-NID subloop ("Testing NRC Study"). The Testing NRC Study suffers from the same flaws discovered in the NRC Study.

#### Competitive Implications

The local services telecommunications marketplace is slowly becoming more competitive in Oklahoma and throughout the United States. Access to reasonably priced UNEs, including the Term-to-NID subloop, impacts the ability of customers to benefit from the promises of competition inherent in the 1996 Act, especially customers in multi-tenant environments ("MTEs").

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<sup>4</sup> SWBT has provided prices and costs for business low-rise and business high-rise MTEs as well as residential MTEs. Cox's analysis specifically addresses the cost study and rates for residential MTEs; however, the other two cost studies and sets of rates suffer from many of the same flaws as the cost studies and rates for residential MTEs.

The pricing principles specified in the 1996 Act and subsequent Federal Communications Commission ("FCC") rules require ILECs, such as SWBT, to develop UNE prices based on a forward-looking cost methodology. The relevant costs are those incurred in the future deployment of the most efficient technology to meet reasonable foreseeable capacity needs, taking into consideration the existing network configuration.

A forward-looking cost methodology is NOT based on embedded or historical costs, even when inflation is taken into consideration.

#### Cox's Recommended Rates for ATW

Cox currently proposes a monthly recurring rate of \$1.05 for the Term-to-NID subloop under both its Direct and Indirect Access proposals.<sup>5</sup>

Under Cox's Direct Access proposal there would be no non-recurring charges to install the Term-to-NID subloop or the conduit.

Under Cox's Indirect Access proposal, the non-recurring rates would currently be \$73.14 and \$23.16 for initial and subsequent installations respectively. Prices for conduit installation would be \$29.26 and \$0.00 for initial and subsequent installations respectively.<sup>6</sup>

The rates proposed by Cox are based on SWBT's proposed cost studies; however, modifications to those studies are necessary as discussed in my testimonies. The rates proposed by Cox are based on the information available to Cox at this time and may be modified as additional information becomes available.

For competition to become a reality in the MTE marketplace in Oklahoma, it is critical that the Commission adopt Cox's proposed rates for the ATW subloop. Additionally, the Commission should make the recommended modifications to SWBT's proposed cost studies explained in my testimonies so these studies will properly support the approved rates.

#### Analysis of the RC Study

SWBT's proposed recurring costs should be reduced to \$0.8811 to bring the RC Cost Study into compliance with TELRIC principles, reflect the appropriate network equipment for

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<sup>5</sup> Under Cox's Direct Access proposal, a Cox technician would install a cross connection from a particular customer's premises wiring in an accessible terminal to Cox's network; no SWBT technician would be required. Under Cox's Indirect Access proposal, a SWBT technician would install the wiring for such a cross connection and a Cox technician would use it to connect to Cox's network; therefore, a technician from each company would be required.

<sup>6</sup> If the Commission determines that a SWBT technician must be dispatched to install the cross connect to implement a Term-to-NID subloop as proposed by SWBT, the same rates as Cox's Indirect Access Proposal would apply.

MTEs in Oklahoma and update its inputs consistent with SWBT's expense trends and forward-looking market data.

Many aspects of the RC Cost Study are based on historical costs. Therefore, it does not fully comply with the FCC's TELRIC guidelines or the intent of the Congress in passing the 1996 Act.

The following modifications to the RC Study are required to reflect the correct network equipment, financial market conditions and cost trends for SWBT:

1. The facilities and costs for Network Terminating Wire ("NTW") must be modified to reflect the actual equipment used to provide basic voice telephony. The six pair CAT-5 wire proposed by SWBT is not representative of the existing or future network for voice telephony. Two or four pair CAT-3 wire is more than adequate. The average length of NTW should be reduced to 75 feet to correspond with the actual usage of wire at MTEs in Oklahoma. With these changes, SWBT's unit cost for NTW should be reduced to \$0.03003 per foot.
2. The facilities and costs for the standard network interface ("SNI") must also be modified. The three-line SNI proposed by SWBT exceeds the requirements for MTEs in Oklahoma as determined by the inputs adopted by SWBT for inclusion in the RC Study, which reflect current and projected demand at an individual MTE unit of barely more than one line. SWBT's proposed unit cost for SNIs should be reduced to \$14.57 to reflect the cost of a two-line SNI and the volume discount in purchasing that is appropriate for SWBT.
3. Unacceptably low fill factors result from SWBT's use of inappropriate facilities for NTW and SNIs. The fill factor for NTW and SNIs must be increased to 57.19%, based on the number of lines in service at MTEs in Oklahoma shown in the RC Study.
4. The engineering and provisioning loadings to the unit investment for the building terminals are not appropriate costs for the Term-to-NID subloop. The size of the building terminal is driven by the customer demand inherent in the underlying network wire serving the MTE.
5. In determining the capacity of the building terminal, SWBT's assumption that every MTE unit will require 2 lines is incorrect. SWBT's own building terminal costs are based on an assumption of barely more than one line per MTE unit. Modifying the RC Study to reflect SWBT's actual number of lines per MTE on average allows the use of smaller and less expensive building terminals in some cases and increases the fill factor for such terminals to 55.97%.
6. SWBT has proposed a maintenance factor based on 1999 plant expense data increased for inflation to represent allegedly forward-looking expenses. However, ARMIS reports filed with the FCC by SBC Corporation and its affiliates show a significant reduction in the expenses per unit of investment since 1999. Based on the reduction in expenses reported by SBC Corporation

affiliates, the maintenance factor should be reduced to \$0.073408 and \$0.05104 for aerial and buried cable respectively.

7. Similarly, SWBT's proposed "Other Expense" factor should be reduced to \$0.016572 to reflect the reduction in plant operations and engineering expenses shown in SBC Corporation's ARMIS reports.

8. Given the downward trend in expenses reflected in SBC Corporation's ARMIS reports, the annual charge factors should not include an inflation adjustment. Costs for SWBT are decreasing, not increasing, thus making an inflation adjustment unnecessary.

9. SWBT's proposed cost of capital components were derived from 1998-1999 financial market data and should be updated to reflect forward-looking market trends. The United States economy and the financial situation for the telecommunications industry have changed dramatically since 1998 as reflected in the depressed stock prices of many companies including SBC Corporation. By using the same models and similar sources of data as proposed by SWBT, but updating the inputs by using more recent data, SWBT's cost of capital should be reduced to 8.56%. The 8.56% cost of capital is based on a 9.72% cost of equity and a 6.16% cost of debt developed using the same cost of equity pricing models and similar sources of inputs as proposed by SWBT.

10. SWBT's proposed debt and equity percentages derived entirely from a market-based capital structure ignores the financial condition of the company. Cox's proposal to base the capital structure on both market and book values is more realistic and takes into consideration the inherent risk of the overall financial market as well as SWBT itself. The resulting capital structure should be 32.60% debt and 67.40% equity.

11. Using the proper forward-looking cost of equity, cost of debt and debt ratio reduces SWBT's cost of money factors to 0.04045 and 0.04660 for aerial and buried cable respectively.

12. Similarly, the depreciation factors are reduced to 0.10922 and 0.06522 for aerial and buried cable respectively.

13. Also, the income tax factors are reduced to 0.01950 and 0.02246 for aerial and buried cable respectively.

#### Analysis of the NRC Study

Under Cox's Direct Access proposal, which would be applicable in the vast majority of cases, Cox technicians would have direct access to SWBT's accessible terminal and none of the costs outlined in the NRC Study would apply. Therefore, the non-recurring cost and rate for SWBT's Term-to-NID subloop under this proposal (including any charges for conduit placement) would be \$0.00.

Under Cox's Indirect Access proposal, which would apply only in a limited number of cases, an SWBT technician would disconnect SWBT's Term-to-NID subloop from SWBT's distribution facilities terminal block in the accessible terminal, and install a wire extension for Cox's use in connecting a particular customer's premises wiring to its own network. The non-recurring costs for this proposal should be reduced to \$61.65 and \$19.52 for initial and subsequent installations respectively.

In the rare occasions that SWBT must install a conduit, the non-recurring cost should be reduced to \$24.66 for the initial installation to reflect the proper loadings to SWBT's labor rate. Subsequent installations as defined by SWBT would not require a conduit, thereby making the cost \$0.00.

Similar to the RC Study, portions of the NRC Study use historical data and are not completely forward-looking and compliant with the TELRIC pricing methodology. To correct these deficiencies, the following modifications are required:

1. SWBT's proposed non-recurring costs must be adjusted to reflect the proper work activities and times. Travel time should be reduced to ten minutes consistent with Cox's experiences in Oklahoma and industry efforts to increase productivity and efficiently utilize resources consistent with TELRIC principles.
2. The time to install the cross connect should be reduced to reflect the connection of one pair of CAT 3 wire as opposed to the six pairs of CAT 5 wire proposed by SWBT.
3. Order analysis time for subsequent orders should be eliminated since, by definition, subsequent installations are scheduled on the same service order as the initial installation.
4. SWBT's proposed labor rate is marked up by 346% to reflect loadings for time off, benefits, inflation and support expenses. Since according to ARMIS reports SWBT's expenses are decreasing, the inflation adjustment should be removed from the non-labor components of the loaded labor rate. In addition, the Commission should review all of SWBT's labor loadings in more detail to determine whether a 346% markup is appropriate.

SWBT's O2A contains a subloop NRC titled "Disconnect Loop from Inside Wiring, per NID" ("NID Disconnect"). SWBT has indicated that the activities relating to the NID Disconnect are work order analysis, travel time, disconnection of wiring and closing out a work request. However, the NID Disconnect price is \$34.61. Given that these work activities are similar -- if not identical -- to those for the Term-to-NID subloop, this NID Disconnect rate provides a reasonably comparable amount for the non-recurring costs and rates for the Term-to-NID subloop. A comparison of these rates and the work activities involved indicates that SWBT's proposed non-recurring costs and rates for the Term-to-NID subloop are overstated.

### Intermediary Device Construction

SWBT has not provided any costs or prices associated with its proposed construction of an intermediary device as part of the Subloop Access Arrangement ("SAA") originally proposed by SWBT. In the Triennial Review Order, the FCC has made it clear that intermediary devices are neither necessary nor desirable for CLECs' access to premises wiring at MTEs. However, if such a device is deemed to be appropriate by the Commission, Cox and the Commission should be provided a cost study and price list to review before any charges for installing and operating such a device can be assessed.

### Summary

A review of SWBT's cost studies for both the recurring and non-recurring costs for the Term-to-NID subloop at MTEs indicates that SWBT's proposed prices are inherently anti-competitive and, unless modified significantly, will serve as a significant barrier to facilities-based competition in Oklahoma's MTE marketplace. For six years, Cox has been investing heavily in the necessary facilities to compete robustly in Oklahoma and currently represents the only truly facilities-based alternative to SWBT, especially for customers in MTEs. However, Cox must gain access to Term-to-NID subloops from SWBT at TELRIC-based prices to serve many MTEs. Therefore, for competition to remain a reality in the MTE marketplace in Oklahoma, it is critical that the Commission adopt Cox's proposed rates for the Term-to-NID subloop and make the required modifications to SWBT's proposed cost studies and rates as outlined in my testimonies. Cox has proposed the necessary modifications based on information available at this time; however, we reserve the right to update our proposals should additional information become available.

### SBC OKLAHOMA

William Weydeck

### Summary of Testimony:

The FCC has defined the Inside Wire Subloop as "all loop plant owned by the incumbent LEC on end-user customer premises as far as the point of demarcation . . . including the loop plant near the end-user customer premises." The subloop segment at issue here and that Cox has been and continues to inappropriately access is the Terminal-to-NID subloop segment.

The demarcation point is defined in this Commission's Rules as the physical location at which responsibility for operating and maintaining facilities passes from one person to another. FCC Rules, 47 CFR Part 68.105, are similar. In a Multi-Tenant Environment (MTE), the property owner determines whether there will be multiple demarcation points each located near the entry point to the individual tenant customer's premise. Based on the property owner's choice, the demarcation points in Oklahoma MTEs are located in each individual tenant customer's premise. All of the MTEs at issue are multiple demarcation properties, so chosen by

the property owner, and the demarcation point for each end-user in the MTE is at the first jack inside each end-user's premise in the MTE.

The NID is defined in the Commission's Rules as the normal demarcation point separating the carrier's regulated facilities and equipment from the end-user's deregulated facilities, equipment, or systems. In all Oklahoma MTEs, the location of the demarcation point and the NID are the same.

Cox is not entitled to direct access to SBC's network under the Act, and no other Oklahoma CLEC has direct access. The direct access Cox seeks poses a serious concern because of damage to SBC's network and because SBC has the sole responsibility to maintain the service level and integrity of its network. Based upon the damage Cox has caused to SBC's network to date, Cox technicians have little if any respect for the integrity of the network.

Cox describes the training that its technicians receive, but damage to SBC's terminals and facilities still occurs and tells a different story. SBC has experienced numerous incidents where its terminals have been left open, and torn or pried from their mountings on the building walls. Cox has disconnected thousands of SBC's subloops without authority, left hundreds of terminals unsealed, left bare and unprotected wires loose within terminals and damaged the terminals and seals. Unsealed terminals expose subloops to damage due to intrusion by plants and insects, and exposure to sun and rain. From September 2002 to August 2003, SBC has received more than 1,630 trouble reports where the cause is noted as resulting from Cox actions at MTE facilities. Pictures showing examples of this damage are attached to my rebuttal testimony.

Once a Cox technician enters the SBC terminal, he has access to the service of all customers in that building. The wires are easily broken or pushed together in a manner that can cause service interruptions likely to relate to service to SBC customers. The Cox technician might not even notice the damage he does and Cox would not receive a trouble report because the service problem would relate only to SBC customers.

Cox erroneously states that the FCC granted direct access to CLECs to Verizon Virginia's network. The FCC granted only limited access in those instances where the Verizon Virginia NID did not constitute the demarcation point (i.e., the NID and the demarcation point were not at the same location). This decision, along with others cited by Cox, has no application in Oklahoma. Virginia is an MPOE state, which means that Verizon Virginia establishes a single demarcation point at MTEs so that all of the wiring between the single demarcation point and each end-user premises inside the MTE constitutes the customer side of the network and is deregulated. This is distinguishable from Oklahoma, in which multiple demarcation points have been established at every MTE, according to the desires of the property owner.

The FCC Triennial Review Order does not require direct access. The FCC said the ILECs must grant access to the inside wire subloop when it owns that wiring, but the FCC did not mandate the direct physical access Cox seeks in this Cause. The FCC intended for some sort of interconnection to take place that allows for protection of both parties' networks, such as the interconnection SBC proposes.

The only way that SBC can maintain the integrity of its network is to restrict direct access. If every Oklahoma CLEC were unlawfully afforded the opportunity to directly access SBC's network, it would reap havoc on the network and would make it impossible for SBC to maintain the integrity of its network and of its service reliability.

SBC has a process for implementation and use of intermediate cross-connect devices that are reasonable and practical: the Subloop Access Arrangement (SAA). This process for accessing the subloops provides for an interconnection point to be established by an intermediary box installed by SBC. The SAA takes into consideration the varied facility arrangements encountered in the network and allows the engineers to design the proper devices needed.

SBC also offers two additional alternatives to Cox and other CLECs in an effort to address the direct testimony of Ms. Barbara Mallett. The first would allow Cox to place its own intermediary box within two feet of the SBC building terminal located at each MTE building. The second option involves SBC handing off a tagged jumper wire to Cox. This tagged jumper would run from the SBC building terminal and be coiled up for Cox to terminate in its building terminal. This option would not require SBC to place an intermediary box in the MTE properties – just the jumper wire, tagged with the circuit ID. All Cox has to do is place an order for a terminal-to-NID subloop. In addition, SBC is offering to exclude the traditional testing and associated labor, which would significantly reduce the costs.

For every location where Cox requests to interconnect, the SAA process provides that the location be studied, designed, and priced based on the number of lines that Cox or other CLECs desire to serve through the SAA. Through the SAA process, SBC can bill, track and inventory usage of the spare portions of its network that it provides as subloops to Cox.

The "honor system" method that Cox proposes does not allow for accurate billing by SBC. Cox has already shown that it cannot be trusted to advise SBC when it has accessed and is utilizing SBC's subloops. In a recent random audit, SBC technicians visited about 10% of the identified properties in which Cox admitted to utilizing SBC subloops. Of the 39 MTEs visited, over 5,600 incidents were discovered where Cox had improperly accessed SBC's network and had not informed SBC to commence billing Cox for access to the subloop facilities. In these MTEs, Cox has entered about 1,010 SBC building terminals, virtually every one on these properties.

If Cox does not wish to use the SAA to obtain access to SBC's subloops, Cox could extend its wiring into the buildings at issue by placing its own wire between its terminal at each MTE unit to the NID at each end-user's premise.

A Single Point of Interconnection (SPOI) is a point at or near the property line where one or more carrier can gain access to the UNE subloops beyond. It is created at the request of a CLEC and the CLEC pays for this reconfiguration of the network. SBC makes this additional option available to all CLECs. Cox wants the SPOI at little or no cost, but the placing of a SPOI is expensive and Cox should bear the expense.

Cox proposes at 2.4.2 that SBC provide its training materials so that Cox can properly train its technicians. SBC opposes this because it is under no requirement to provide training information. Cox, like all other carriers, is responsible for developing its own training materials.

Cox's proposed language in 2.4.3.1 indicates that it would not demand direct access to the building terminal if the building terminal was not equipped with specific weather resistant materials. All SBC outside building terminals are so equipped to allow terminal-to-NID subloop wiring to enter the building terminal. Thus, Cox is still effectively seeking direct access to any SBC Oklahoma building terminals it may wish to access at whim.

**Mark Hitpas**

Summary Rebuttal Testimony

Cost of Capital

Cox contends that SBC's cost of capital is composed of dated inputs that have "no relation to the current or expected future economic or market situation faced by SBC Corporation or its investors" (Lafferty Supplemental Direct, page 12). Cox contends that a reduction in demand for capital has caused the cost of capital to fall, and that investor expectations are significantly different today. (Lafferty Supplemental Direct, page 31) Mr. Lafferty recalculated SBC's cost of capital using an average of book and market value, resulting in an 8.56% weighted cost of capital.

Mr. Hitpas' testimony explains that SBC Oklahoma's TELRIC cost of capital is based on the long-run risk facing an incumbent provider in a fully competitive telecommunications market. In contrast, Cox contends that the cost of capital should measure the current risk to a "monopoly provider of unbundled network elements," given the current level of competition for local exchange services (Lafferty Supplemental Direct, page 33). The FCC's Triennial Review Order sides with SBC's view, explicitly pointing out that the TELRIC-based cost of capital should be based on the risks of a competitive market which in turn would produce a TELRIC price in a facilities-based competitive environment. (Triennial Review Order, ¶ 680). The FCC explicitly rejected CLEC arguments toward the State Commissions "to considering only the actual competitive risk the incumbent LEC currently faces in providing UNEs." (Triennial Review Order, ¶ 681).

In a very recent ruling (FCC Wireline Competition Bureau, Virginia Arbitration Order, August 28, 2003), the FCC staff calculated a cost of capital for Verizon of 13.068%, and eventually ordered Verizon to use its own, more conservative calculation of 12.95%. Since SBC is in the same industry and has a similar scope of operation, it is reasonable to assume that both carry equal amount of risk. Each company's equity risk can be quantified by their beta. SBC and Verizon recently reflected a beta of "1.0" in their equity instruments. Also, both companies carry similar debt ratings, with Verizon carrying a Moody's rating of A2 and SBC with a rating

of A1. Therefore, it is reasonable to conclude that SBC and Verizon would have similar costs of capital.

It is true that the U.S. economy and Telecom industry have changed dramatically since 1998. However, this would argue for a higher cost of capital rather than the lower cost of capital that Cox is proposing. As competition from within and outside the industry has increased, coupled with the restraints of the regulatory arena, the earnings outlook for the telecom companies has clouded. This leads to greater uncertainty for investors which translates to an escalating level of risk. Investors demand higher returns to compensate for increases in risk.

While, as Cox argues, the demand for capital in telecom has declined, it has been met with an equal or greater decline in supply. As investors tighten their purse strings in response to the greater risk involved in the industry, supply had dried up along with the demand. These combined forces put upward pressure on SBC's cost of capital.

Mr. Lafferty's proposed capital structure includes a weighting of market and book values. This methodology contradicts forward-looking principles, as the book values on SBC's balance sheet reflect, in large part, decisions made when most of SBC's assets were placed under past regulatory structures. This concept is thoroughly supported by the FCC's (Virginia Arbitration Order, ¶102) recent order in which it denotes that Market Values (versus book values) should be used in arriving at the capital structures of the cost of capital used in TELRIC prices. The FCC staff further denoted that the book value of Verizon's existing network is irrelevant for TELRIC purposes. Additionally, Ibbotson Associates indicates on their website that "Financial theory unambiguously states that market values are required to calculate the weights for a WACC correctly". (Ibbotson Associates Industry Analysis Guide [2003], "Capital Structure Ratios" heading, "Academia" paragraph, 1<sup>st</sup> sentence, @ Ibbotson.com).

Mr. Lafferty notes that "Investors as well as ILEC financial managers will continue to factor both the regulatory environment and the emergence of competition into their decision making". (Lafferty Supplemental Direct, p.33). However, to the contrary, the FCC denoted that the ILECs risk is not fully reflected in their betas. Since book values would not incorporate this additional risk into its valuation, using Market Values is the only choice appropriate for forward-looking analyses.

#### Operating Expense Factors

Cox contends that SBC's Operating Expense Factors are dated and that the inflation rates should be eliminated (Lafferty Supplemental Direct, pages 26, 27, & 30). Cox alleges that expenses for SBC have declined in relation to the corresponding investments from 1999-2002 (Lafferty Supplemental Direct, pages 27-30). Mr. Lafferty proposes to decrease SBC's factors by a like amount. Mr. Lafferty's proposed reductions are overly simplistic. Mr. Lafferty ignores the differences between ACFs for copper and fiber. SBC's maintenance factors for copper are significantly higher than for fiber. Mr. Lafferty derives his proposed maintenance factor reduction from the ARMIS plant specific expenses for *all* aerial and buried cable types (copper and fiber). Therefore, it is overly broad to apply Mr. Lafferty's proposed maintenance factor

discounts. Mr. Lafferty's proposed maintenance factor reductions would be overstated or unwarranted to the extent that the "copper-only cable expenses-to-investment" ratios have declined less than (or not at all) the "copper and fiber cable-to-associated investment" ratios.

In addition, Cox ignores the significant adjustments that SBC Oklahoma applies to both the numerator and denominator in calculating the operating expense factors. The following adjustments are made to the numerator: a) nonrecurring costs are removed from the numerator; b) expenses related to the Transitional Benefit Obligation (TBO) are removed; c) additional non-plant specific expenses related to commercial power consumption, testing activities, other terminal equipment, and other operating expenses are allocated to the numerator; d) the Operating Expense factors include an assignment of support asset expenses to the numerator to account for support activities related to specific accounts.

The current-cost-to-book-cost (CC to BC) ratio is applied to the denominator to express historic investments at current, replacement value.

All of these adjustments to the numerator and denominator produce operating expense factors that are forward looking and applied to recurring investments. Cox's proposed generalized, consolidated discount factor derived straight from ARMIS data, glosses over these important adjustments.

Mr. Lafferty also noted that it was inappropriate to include inflation factors in the development of ACFs (Lafferty Supplemental Direct, p.30). SBC Oklahoma does not include inflation in the calculation of the ACF. The ACFs are stated at their current value. The cost studies apply inflation to the elements of the cost that reflect labor-determined expense. Since it is evident that labor-related expenses increase over time, given the contracted wage increases and escalating benefits expenses, it is reasonable to apply a broad measure of inflation to expenses driven by labor. This is precisely what SBC Oklahoma's forward-looking cost studies do.

#### Labor Rates

Cox mentions only generalizations about SBC Oklahoma's labor costs to conclude that "components of the loaded labor rate are inappropriate". Cox implies that labor rate components such as Benefits and Special Payments are overstated in SBC Oklahoma's proposed labor rates because the underlying data date to 2000. (Lafferty Supplemental Direct, p. 49) To the contrary, the Benefits and Special Payments factors based on 1999 data (and adjusted to reflect an effective wage increase as of year 2000) are likely understated. SBC Oklahoma's benefits factor accounts for expenses the firm incurs to offer medical insurance and pension coverage for its employees. It is common knowledge that the cost of medical insurance has increased dramatically, especially in very recent years. Increases in medical coverage affect all employers, including a firm like Cox. Furthermore, anticipated increases in medical expenses are likely to continue into the foreseeable future. Similarly, all major employers have seen significant increases in pension expenses due to a large base of retirees and recent poor performance in most pension funds. Special Payments cover overtime and company bonus payments for employees. With workforce reductions implemented throughout SBC Oklahoma since 2000, the company

relies more on overtime work from remaining employees. This serves to increase overtime expenses. Thus, if anything, it is likely that the Special Payments component of SBC Oklahoma's proposed labor rates has increased since 2000. Given these explanations, the OCC should not entertain any proposals by Cox to reduce SBC Oklahoma's labor rates.

Roman A. Smith

Summary of Direct, Supplemental Direct and Rebuttal

The purpose of my testimony is to address SBC Oklahoma's (SBC-OK) position and rebut Cox's in regards to the issue of lawful access to SBC Oklahoma's Terminal-to-Network Interface Device ("NID") subloops at Multi-Tenant Environment ("MTE") properties.

SBC-OK and Cox Communications (Cox) disagree as to the location of the NID and demarcation points and how Cox may obtain access to SBC-OK's Term-to-NID subloops.

All of the MTE properties in question contain multiple demarcation points and those demarcation points are at the NID and are within 12 inches of where SBC-OK's regulated wire enters the end user's individual premises.

SBC-OK disagree on whether this proceeding is an arbitration or a post-Interconnection (ICA) dispute. The current ICA between Cox and SBC-OK has not expired or been noticed for termination/renegotiation. This proceeding is not an arbitration but a post-ICA dispute.

SBC-OK proposed new contractual language/rates and insisted such terms be amended to Cox's ICA for lawful subloop access after field discoveries by SBC-OK found severe damage and trespass had taken place on the part of Cox. By Cox's unlawful confiscation and damage to SBC-OK's network terminating wiring, SBC-OK's business reputation and integrity to its end users and the entire state of Oklahoma has been put at unnecessary jeopardy. Cox's damage to SBC-OK's network has in many cases exposed the network to service degradation. This damage has a potential of disrupting vital 911 services which in turn potentially impacts the safety of Oklahoma communities.

The OCC Staff has toured the damage caused by Cox. The Director of the Consumer Services Division, Mr. Bill Burnett, commented in a letter to Cox after witnessing such damage that "this was inexcusable and should not be tolerated." He further stated, "this comes under the category of vandalism."

The OCC Staff has been a critically helpful Third Party facilitator in working with SBC-OK and Cox to come to resolution on this issue. However, still to this day, Cox flatly refuses to accept the non-Minimum Point of Entry (MPOE) architecture of Oklahoma. And even, more importantly, the necessary contractual terms and rates to lawfully access SBC-OK's network.

SBC-OK has proposed contractual language that is consistent with both the FCC and Oklahoma General Exchange Tariff. On the other hand, Cox has continued to stick to its proposed language and position based upon a Virginia Verizon decision that has no relevance here in Oklahoma. Virginia is a MPOE state, where that is not the case in Oklahoma.

Cox must be held responsible to pay SBC-OK for the appropriate access to SBC-OK's network wiring. Through negotiations with Cox and recommendations by OCC Staff, SBC-OK developed costs that were specifically applicable to Term-to-NID subloops in an MTE environment. This resulted in substantial reductions in the rates for MTE subloops as opposed to SBC-OK's original rates proposed for those subloops.

The MTE subloop recurring and non-recurring rates proposed by SBC-OK addressed the MTE arrangement of Residential Low-Rise, Business Low Rise, and Business High Rise.

The new rates specifically tailored to MTE subloops in Oklahoma were the result of new cost studies completed by SBC-OK in July and August 2003.

In addition to the new rates specific to MTE subloops that SBC-OK proposed to Cox, SBC-OK submitted new contractual enhancements of language that fell squarely in line with OCC Staff recommendations and addressed Cox's concerns on the timing and cost associated with the placement of the intermediary box.

SBC-OK's proposed language included three (3) fair options in regards to the intermediary box for gaining lawful access to SBC-OK's MTE subloops. These options included 1) Cox can establish its own intermediary box, 2) SBC-OK would hand off a tagged jumper wire to Cox, or 3) SBC-OK can establish the intermediary box for Cox.

As part of this proposal to lower costs to Cox and increase speed of provisioning, SBC-OK also proposed to Cox the option of ordering the MTE Term-to-NID subloops to be delivered to Cox without traditional testing and associated labor. This did not preclude Cox from ordering the subloops with testing. Understandably, tested subloops would incur additional costs.

Because of SBC-OK's alternate proposal of delivery MTE subloops without testing to Cox, SBC-OK respectfully requests this Commission to grant a waiver of performance measures. In the event a CLEC request an untested facility, at its option, SBC-OK should not be held responsible if later it is determined that a problem exists on the facility. On the other hand, it is entirely appropriate for this Commission to require the appropriate performance measures that subject Cox to a three (3) day timeframe to return the terminal wiring to SBC-OK in the case where an end user customer changes providers.

Furthermore, SBC-OK requests that the Commission reject Cox's inappropriate artificial proposed window to allow SBC-OK to repair a defective pair within a 6 hour timeframe. Cox wrongfully asserts that it should be granted direct access to SBC-OK's facility if the artificially proposed timeframe interval is not met by SBC-OK.

Cox has continued to refuse to accept any of SBC-OK's fair and reasonable proposals to resolve this issue. Cox continues to push its theme that it should be allowed unfettered direct access to SBC-OK's facilities.

Throughout its filings in this proceeding, Cox has yet to demonstrate any legal or contractual basis that supports its request for direct access. Cox's assertions continue to rely upon authorities in Virginia and other MPOE cited state authorities that simply do not apply to the situation in Oklahoma. The Virginia decision centered on the ILEC owning wiring beyond the NID. The situation is not the issue here. In Oklahoma, SBC-OK's facilities extend to the NID, a demarcation point which has been designated by this Commission as the first jack at the end-user's premises. Cox can access customer wire on the customer side of the NID, but it cannot have direct access to the SBC-OK side of the NID. In Oklahoma, SBC-OK's facilities end at the demarcation points at the individual units' NIDs, which in the case of MTEs at issue here is located not outside the building as in Virginia, but at each end users' premises. This was made clear by Ms. Mallet (OCC Regulatory Analyst) in her direct testimony by pointing to this Commission's Order No. 325917.

Ms. Mallet concurred with SBC-OK and even explicitly recommended that direct access to SBC-OK's terminal boxes should not be allowed in Oklahoma.

Cox also purports to confuse the issue in this proceeding by claiming Cox's proposed form of access to SBC-OK's loop plant is technically feasible. Technical feasibility is clearly not the issue in this proceeding. This issue is clearly not about what is or isn't technically feasible. It is simply what is and isn't lawful access to SBC-OK loop plant. Technical feasibility, of and in of itself, cannot be the sole argument for this Commission to turn its rules on demarcation that have already been determined.

Lastly, in regards to the recently released FCC's Triennial Review Order (TRO), SBC-OK's proposals still remain valid. Cox's claim that the intermediary box is a type of collocation is misleading. The intermediary box proposed to Cox as an option is clearly not a form of collocation. The intermediary box is an option that Cox has to lawfully access unbundled subloops in MTE premises. It is an access arrangement that has clearly been acknowledged by this Commission for proper access to MTE subloops in Oklahoma. The intermediary box is an option only. Cox can install the box itself or choose not to have one at all if SBC-OK hands the terminal wiring to its location. It is clearly not a collocation requirement.

Most importantly, the TRO did not change the non-MPOE type of architecture at MTE premises that are present in Oklahoma.

In conclusion, SBC-OK respectfully requests this Commission to approve the fair, reasonable, and lawful terms and rates proposed to Cox in this proceeding and reject both Cox's language in its entirety. Most importantly, SBC-OK requests this Commission to order Cox to cease and desist from any further direct physical access to SBC-OK's MTE terminals and subloops. Blatant unlawful access and damage has been done to the telecommunications infrastructure of Oklahoma that could have a lasting impact to consumers in this state.

Barry A. Moore

Testimony Summary:

Direct

Zeroing in on the subloop cost components that are relevant to this proceeding and the rate elements at issue, Mr. Moore provided detailed illustrations of recurring and nonrecurring cost components for Term-to NID. Costs were developed using a TELRIC cost methodology representing costs directly caused by the resources, installation, and disconnection of sub-loop elements. Subloop investments were determined through the use of the SBC Loop Cost System model. Investments for aerial and buried service wire and NID were weighted by the percent occurrence in each of the geographic zones. Sub-loop investments were multiplied by annual cost factors to calculate recurring costs. Nonrecurring costs for installation and disconnect activities were determined by identifying the workgroups that involved in the process, their respective activities, and the associated work times. Work activities that are not always necessary were assigned based on both Task Occurrence and Work Group Occurrence probabilities.

Supplemental Direct

Mr. Moore focused on the recurring and nonrecurring (with and without testing) costs underlying new rate elements for an alternative set of subloop arrangements for Cox – in an MTE. These costs included Residential Low-Rise, Business Low-Rise, and Business High-Rise. The recurring (monthly) cost study included capital and operating expenses associated with the terminal at the building as well as the regulated cabling/wiring that extends from that terminal up to and including the network interface at the end-customer's location. For the high-rise arrangement, the recurring cost study also included the cost for the connecting block that will be used at the end-customer's floor of the building. The nonrecurring cost study calculated the costs for establishing the cross-connect arrangement from SBC Oklahoma's terminal to the intermediary termination box. This essentially included the work needed to identify pairs, disconnect the SBC "feed" at the SBC terminal, place a conduit to the intermediary box when necessary, and terminate jumper cable/wire on the apartment side of the SBC terminal which is then extended by placing wiring to the intermediary box. The recurring and nonrecurring costs were developed using a TELRIC cost methodology and represented forward-looking direct costs, taking into account the latest technology that can be used in Oklahoma's network.

Nonrecurring costs were determined by identifying the workgroups involved in the process, their respective activities, and the associated work times. The nonrecurring cost study identified the forward-looking costs that will be necessary to provision a cross-connect arrangement for the MTE Term-to-NID Analog Subloop arrangement. Approximately 70% of the time to provision the cross-connect arrangement was related to travel and wiring activities. For low-rise applications, the technician will be required to place conduit to house cross-connect wire/cable. Conduit costs were not included for high-rise applications. In addition, once conduit

has been placed, it may not be necessary to install another conduit as long as capacity remains. The conduit cost was listed as a separate element to take this into account.

Mr. Moore explained the main differences between the previous Term-to-NID subloop studies and those that SBC Oklahoma developed for the MTE environment. The previous Term-to-NID recurring subloop costs addressed a typical (non-C.O. originating) arrangement for the Term-to-NID subloop that would essentially involve a terminal at a pole or pedestal with a buried or aerial drop arrangement to the structure. The new arrangement addresses specifically an MTE as previously described. The previous study also required testing. That arrangement did not contemplate an intermediary terminal and building terminal where a cross-connect arrangement would be handed off to the CLEC as does the MTE study. The MTE nonrecurring costs exclude costs for testing – based on the assumption that the CLEC will not require SBC Oklahoma to conduct testing although an additional nonrecurring cost study was presented to add in testing if Cox would so desire.

#### Rebuttal

SBC's cost methodology is consistent with TELRIC principles – the cost methodology does not ignore the existing network design but bases costs on efficient, new technology. SBC Oklahoma will provide SNIs and terminating wire that may not be the same as that currently existing at a location in the network today but are consistent with efficient practices, for equipment that SBC will use on a going-forward basis to provide service in Oklahoma.

The placement of components proposed by Mr. Lafferty are not efficient since 2-pair JKT wire is not representative of what will be placed and limits the pair count as well as bandwidth. 2-pair SNIs are not what SBC will place for the MTE and are not efficient because they limit the pair count and actually cost the company more than the 3-pair SNI that will be used.

Regarding recurring costs, Mr. Lafferty has made modifications to SBC Oklahoma's Network Terminating Wire (NTW), Standard Network Interface (SNI), and Network Terminal components. There are several problems with Cox's modifications that are the most important. Regarding NTW, Exhibit FWL-3 is faulty and if corrected would increase Cox's cost basis for that element more than two-fold. Regarding the NID, Mr. Lafferty has used an equipment purchase price that Cox received verbally from a supplier for which SBC has no contract – for equipment that SBC will not use. For the Network Terminal, Mr. Lafferty incorrectly removed all expenses associated with provisioning (materials management, supply, and warehousing) and engineering.

None of these modifications are correct. Since the fill factor is representative of the capacity only, as Cox has confirmed, then it is directly changed by reducing, or increasing, the capacity. Therefore, the Commission need not even address any issue on fill, but rather the capacity, type and purchase price of the equipment.

The recurring cost study should not calculate the cost for the size and type of wire specifically tailored to the bandwidth and capacity that Cox desires for its end-customers. Inside

wiring should be placed to provide a wide range of services, similar to loop distribution plant which is designed to transmit a number of circuit types. It is inefficient to build inside wire specific only to the purposes of one single CLEC. This inhibits the flexibility of other latter CLECs and SBC Oklahoma to provide services. To the extent that providers require high bandwidth capability that does not exist, the potential result is the fishing of walls, removing walls, cabling outside, etc., to supplement facilities at a later date - more costly than provisioning more flexible facilities in the first place. 2-pair JKT is inappropriate.

After considering the proposals made by Mr. Lafferty, Mr. Moore reviewed various prices and types of NTW with SBC contacts and determined that 4-pair CAT-3 NTW was more typical for MTE and has adopted this wire determine costs for the residential low-rise application. It is still different than Mr. Lafferty's proposed 2-pair (4-conductor) JKT. The revised monthly recurring cost is now \$2.01 (\$2.39 rate). This revised monthly cost is a result of the change in capacity, and associated fill for that capacity. The Unit Investment is higher than that proposed by Mr. Lafferty because Mr. Lafferty's Exhibit.FWL-3 is faulty. Mr. Lafferty uses, as a surrogate, 4-pair CAT-3 pricing for his 2-pair JKT assumption, since he could not find a price for 2-pair JKT. By using a price for 4 pairs in the Unit Cost column he then uses 4 pairs in the Pair Capacity column - in order to calculate a cost per-pair. However, since this is supposedly representing 2-pair JKT he then uses a fill factor for only 2 pairs in the Fill Factor column. What is problematic is that he could have used the price for 2-pair CAT-3 cable as a surrogate instead of 4-pair CAT-3. SBC currently pays \$0.0391 for 2-pair CAT-3 cable. Correcting FLW-3 results in a Unit Investment that is very close to SBC's unit investment. Mr. Lafferty's pricing should not be used. 2-pair JKT will not be used and 4-pair CAT-3 NTW needs no surrogate price since it has its own price. The price that Mr. Lafferty proposes is simply not what SBC Oklahoma pays for this wire. The recurring cost for NTW, that SBC is now proposing, should be considered a conservative value since the wiring it represents is at the smaller end of the scale of that actually placed.

CAT-3 wire is not superior in quality to that provided by SBC Oklahoma to its own end-customers. The CAT-3, and in some cases CAT-5 wire, is what SBC Oklahoma will use in an MTE on a going-forward basis.

SBC retail customers, investors, and wholesale customers are burdened if SBC under-builds facilities that will have to be supplemented at a later date. If, at some point in the future, other CLECs desire to serve high bandwidth services or multiple lines to end-customers they would not be able to do so because Cox had previously forced SBC Oklahoma into placing inefficient and under-built facilities. The result would be additional costs to place supplemental facilities in the future for those purposes, without any guarantee of cost recovery.

SBC Oklahoma's cost study does not reflect the need for no more than two pairs of wire for a unit at an MTE, as alleged by Mr. Lafferty. The fill of distribution facilities is lower when compared to feeder cable since there is a need for enough facilities to limit breaking up driveways, streets, etc., as recognized in the Oklahoma UNE cost proceeding. Enough NTW facilities should be built such that walls do not require additional fishing or breakouts, additional wiring outside the premises, etc., in the future.

Regarding the SNI, none of Cox's SNI modifications are correct. Like NTW, the fill is tied directly to the capacity so the only issues that the Commission might address have to do with the size and purchase price of the SNI itself.

It does matter whether or not the 2-pair or 3-pair SNI is used to provide the termination. Similar to NTW, placing an undersized SNI leads to potential future placements of SNI capacity. The standard SNI to be used for an MTE is a 3-pair SNI which can be adapted for up to 6 pairs. The 2-pair SNI that SBC Oklahoma can purchase is actually more expensive than a 3-pair SNI. 2-pair SNIs, used for some applications, are purchased by SBC Oklahoma for \$33.32 and handle a smaller capacity. Should the Commission adopt a 2-pair SNI, the unit investment would need to include this value, not that proposed by Cox. In addition, placing the 2-pair SNI can lead to additional supplemental placements in the future. Furthermore, the purchase price of Corning SNIs proposed by Mr. Lafferty would not be appropriate to use as a cost input. SBC does not have a contract with Corning for SNIs. It would be counter-intuitive to think that SBC simply calls up a manufacturer, gets a price, and then establishes that component as its standard for the whole network of Oklahoma. This is the essence of what Cox suggests and it is precisely the process it used to determine its Corning SNI price. The standard practice for SBC Oklahoma will be to place ML-6 SNIs. The SNI that is used is consistent with efficient practices and is made by the manufacturer that has been chosen for numerous SBC Oklahoma facility placements, for wholesale and retail alike.

A pricing discount, as proposed by Mr. Lafferty, is not appropriate. If SBC were forced to use the Corning SNI for applications associated with Cox, this certainly would not represent a wide application resulting in a large purchase volume. There would be no confidence that SBC would receive any discount at all given that circumstance, nor are the costs associated with such a SNI represented by Mr. Lafferty's proposal.

Mr. Lafferty is incorrect that provisioning and engineering costs are part of the feeder cable and not the building terminal itself. Provisioning costs are incurred (supply and warehousing operations, material management) when equipment components are purchased and supplied for use in the network. Managing materials is not a process of simply calling a manufacturer's service representative, asking about a price, ordering it, and then having it sent to the field to be placed. Engineering efforts and considerations are made with regard to network terminals.

Regarding nonrecurring costs, installation times for the hand-off arrangement should not be reduced based on a 4-conductor assumption, and thus lowered. It is not clear that Mr. Lafferty understands the object of the nonrecurring cost study. Generally speaking, this study calculates the costs to remove a number of pairs from SBC Oklahoma's distribution cable side of the network terminal and terminate a "tie-cable" on the "customer-unit" side of the terminal. The object of the study is the number of "tie" pairs requested by Cox, NOT the number of pairs that are used for NTW that runs from the network terminal to the end-customer. For the "tie cable", CLECs can order in quantities of up to 6 pairs for that arrangement. This is done because wiring comes in sizes of 2, 4, 6, and then 25. The study was conducted to allow for a single rate

for these smaller sizes since the variance between running a 2, 4, or 6-pair "tie cable" would be minimal. SBC conducted the study with an intention to provide for the convenience of one rate for any of these smaller cable sizes, instead of several.

If Cox was requesting specific increments for "tie cables", or just 2 pairs, then SBC would have specifically identify the cost for providing just 2 pairs. It is perceived that costs would not vary significantly from what has been provided under the "up to 6 pair" version currently available. Reducing the costs by 25% is nowhere near accurate and Mr. Lafferty provides no reliable support for such a reduction. However, assuming that 2 pairs is going to be the application and cost basis to recover from Cox, then a rate and cost would be needed for only 2 pairs requested by Cox and would limit Cox's own flexibility. If the Commission were to adopt the "2-pair tie-cable" only scenario, then it would also need to adopt a rate description signifying that as the capacity, along with additional rate elements for other capacities.

Order analysis activities should not be removed from the "additional" costs. The relatively small additional amount of time included for this activity deals with the function of reviewing the additional customer address and related information.

Conduit additions should not be excluded as inferred by Mr. Lafferty. There may be some confusion as to what additional conduit represents. If additional pairs are requested and they can be placed in conduit that was initially placed, then no additional conduit costs will be incurred. However, to the extent that the conduit is exhausted and pairs are requested at that point in time, then another conduit will have to be placed - recognized by Cox through a data response. The cost study that Mr. Lafferty has modified includes at Tab 3, Unit Cost Summary, specific language that describes the element as "per conduit", and so there is no reason to revise the costs to zero, for additional per-conduit.

Regarding Cox's Proposed costs, SBC has provided modifications to the exhibits produced by Mr. Lafferty. SBC has not included any revised exhibits for Business Low-Rise or High-Rise elements. Mr. Lafferty provided no exhibits for those two elements, nor has he indicated that any specific changes should be made to those elements in the way of component changes.

Mr. Moore also discussed miscellaneous issues.

#### STAFF

Bill Burnett

The pre-filed testimony of Mr. Bill Burnett was entered into the record by the parties. Mr. Burnett was the Director of the Consumer Services Division at the Commission from January 2, 1992 until his recent retirement. He was employed by the Commission for over 21 years. He presented his testimony on behalf of the Commission Staff.

Mr. Burnett testified about his findings during a visit to a number of premises served by Cox Communications and in some instances also served by SBC. Accompanying him on the visit were Rodney Poff and Nick Egner of Mr. Burnett's quality of service staff.

Mr. Burnett concluded that in some locations Bell's terminal boxes were pulled away from the wall and its wires cut and Cox's wires spliced into inside wire and the splices left exposed to the elements. This invites noise (static) during heavy dew and rain. Two subsequent meetings between Cox Communications and SBC were hosted by Mr. Burnett at the Commission. Mr. Burnett did not believe that much was accomplished because the companies failed reach any agreements over their differences.

Mr. Burnett later proposed revisions in Commission rules which when adopted would give Commission staff increased authority to deal with matters generated by the competitive process. Mr. Burnett stated in his testimony that members of the telecommunications and utility industries should resist the temptation to engage in unacceptable and unprofessional conduct which places consumers in untenable positions in terms of creating service quality issues which degrade the level of quality to end users.

**Barbara Mallett**

Prefiled Direct Testimony:

Staff recognizes that the question of requirement by the FCC of the OCC to allow direct access is a point of law. The FCC has stated that the subloop must be unbundled "at any technically feasible point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within."<sup>7</sup> The FCC did not require direct access in that Order nor has it provided clear guidance on how such access may be achieved.

SBC's counsel has commented that Cox is "operating outside of its interconnection agreement" when Cox utilized direct access of SBC's Term-to-NID subloop in MTEs. Staff agrees. In Staff's opinion Cox has accessed SBC's Term-to-NID subloop without notification or payment at least since 1998. SBC complained to the Consumer Services Division ("CSD") of the Oklahoma Corporation Commission ("OCC") in late 2002. After Staff's investigation, Mr. Bill Burnett, Director of the CSD, issued a letter to Cox stating in very clear terms that Cox's access of SBC's wire should cease. As far as Staff is aware, Cox continued to access SBC's wire without notice or payment in spite of Mr. Burnett's letter. In light of the problems reported in other states regarding failure to report direct access under the "honor system", and the resulting problems created for the ILEC and in some cases other CLECs, involving billing, facilities tracking, and customer service, and because in Staff's opinion the FCC's Virginia Arbitration Order did not support Cox's case for direct access for Oklahoma, Staff does not support direct access in Oklahoma.

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<sup>7</sup> UNE Remand Order, paragraph 206.

Staff made the following recommendations.

1. Staff recommends that direct access of Southwestern Bell Telephone, L.P., d/b/a SBC Oklahoma's ("SBC's") terminal boxes be denied in Oklahoma.
2. Staff recommends that SBC be ordered to present, at a minimum, terms and conditions and rates for a simple installation, a complex installation, and a mid-level of complexity of installation of a "neutral terminal box". The rate and time frame for completion of the simple and mid-level complexity of installation scenarios should be significantly lower and shorter than the 30 days and 90 days as described below.
3. Staff recommends acceptance of SBC's proposed rates on an interim basis, and subject to true-up, until Staff has had an opportunity to review the information to be presented by witnesses in this cause and reach a conclusion regarding the reasonableness of SBC's and Cox's proposed rates.
4. Staff recommends that Cox's request in issue nine be granted, and that Cox and SBC be given the opportunity to negotiate permanent rates for the subloop elements that Cox needs. If the Parties cannot come to agreement, the OCC should initiate a proceeding to set permanent rates for these subloop elements. Staff also recommends that TELRIC pricing should be applied.
5. If direct access is allowed, any provisions regarding installation of "neutral terminal boxes" should be removed, unless the Parties agree "neutral terminal boxes" may be required to meet Cox's needs under the amendment. If the OCC does not allow direct access, Staff recommends that the provisions regarding direct access by Cox's technicians be removed from the proposed amendment, and that the OCC consider ordering that the cost of the installation of the "neutral terminal boxes" be shared, which would support competition. Staff's comments with regard to the issues raised by Cox in its Application were addressed individually and attached to Staff's Prefiled Direct Testimony as Attachment A.

Supplemental Testimony:

Staff collected information from other states regarding their actions, if any, pertaining to access to subloop elements in the hope that this information may lend perspective to the cost studies submitted by SBC and testimony regarding the studies. Staff was able to contact the four other regional SBC states (Arkansas, Kansas, Missouri and Texas), New York, and Virginia. Staff was also able to obtain information regarding the Bell South states (North Carolina, South Carolina, Georgia, Alabama, Mississippi, Tennessee, Kentucky, Louisiana, and Florida).

AR -- The Arkansas Public Service Commission ("APSC"), by state law, does not set the rates of the utilities it regulates. The APSC has arbitrated interconnection agreements but has not had an arbitration docket regarding an agreement covering access to subloops.

KS -- Direct access has not taken place in Kansas. The issue has not arisen as a formal docket before the Kansas Corporation Commission ("KCC"). However Sunflower Cable

TV, which operates in Kansas, is in a position similar to Cox's in Oklahoma. In addition, Cox has recently begun providing telecommunications services in Kansas. The KCC asked for information regarding Oklahoma's decisions on the subject when this arbitration is completed.

MO -- In Missouri the issue was formally addressed in an arbitration proceeding before the Missouri Public Service Commission ("MPSC"), but the parties, SBC and AT&T Communications of the Southwest, TCG St. Louis, and TCG Kansas City, settled prior to hearing. The M2A, the Missouri version of the O2A, was adopted. In its testimony, KCC Staff recommended that the interconnection agreement should control the terms & conditions of subloop access and that if an agreement cannot be reached between the parties, they should apply for arbitration.

TX -- In a discussion with the head of the Texas Public Utility Commission ("TPUC") Arbitration Projects Team, Diane Parker, Staff learned that access to subloop elements has arisen in a formal arbitration proceeding, however, the issues concerned access to inside wire over which the TPUC has no jurisdiction. Ms. Parker's opinion was similar to that of Staff in the MPSC, that the interconnection agreement controls the terms & conditions and rates for access to the ILEC's subloop elements.

NY -- Staff contacted the New York State Public Service Commission ("NYPSC") and was directed to Verizon New York, Inc.'s rates on the Company's web site. Staff would like to point out, as I did in my Prefiled Testimony, that the typical situation covered by Verizon New York's rates would be architecturally more complex than that found in a typical two to four level apartment complex or business office. The rates are site-specific, including components ICB rates (individual case basis) and rates per unit where the number of units vary from location to location. For this reason it is not possible to compare Verizon's rates with SBC's proposed rate for multiple tenant environment ("MTE") Business High Rise Analog Term-to-NID rate.

VA -- Staff of the Virginia State Corporation Commission ("VCC") explained that no rate order has yet been issued in the course of the arbitration proceeding at the Federal Communications Commission ("FCC"). I am referring to the FCC proceeding in CC Docket No. 00-218, 00-249 and 00-251 in which the Virginia Arbitration Order<sup>8</sup>, referred to in Staff's Prefiled Testimony, was released.

Bell South -- Staff obtained Bell South's rates for multiple dwelling unit ("MDU") environments to try to compare them with SBC's proposed rates for MTE residential low-rise analog Term-to-NID environments. Staff also recontacted Mr. Jerry Latham, Subloop Product Manager for Bell South, and contacted Ms. Arlene Johnson, Subloop Cost Manager for Bell South, and discussed application of these rates and any changes that may have been imposed on Bell South's cost study or proposed rates by a state

<sup>8</sup> Virginia Arbitration Order (MEMORANDUM OPINION AND ORDER, CC Docket No. 00-218, 00-249, and 00-251, released July 17, 2002)

commission during the approval process to determine comparability of the rates. Staff learned that direct comparison is problematic for several reasons.

- 1) In most cases the state commission "discounted" Bell South's cost studies between fifty and one hundred percent.
- 2) Bell South's rates include installation of the intermediate terminal box, materials and labor of installation and retermination of copper wires as a mandatory item. SBC proposes to allow Cox access to their copper wire without requiring installation of an intermediate terminal box.
- 3) Bell South Florida's study is roughly three years old. SBC's cost study was completed in July of 2003 and uses the Company's most current costs.

Staff was able to compare the proposed SBC rate for MTE residential low-rise analog Term-to-NID with the rates in place for Bell South Florida. Staff roughly, and conservatively, compensated for the discounts applied to the materials and labor components of Bell South Florida's cost study by the Florida Public Service Commission by simply multiplying the Bell South rates by two. This accomplished, the proposed non-recurring and recurring rates for Oklahoma, and those in place in Florida, appear to be approximately comparable.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### The Terminal-to-NID UNE Subloop and its Components (Issue 8)

In this proceeding, Cox seeks an amendment to the existing Interconnection Agreement between Cox and SBC-OK. Cox seeks access to the inside wiring that exists in Multiple Tenant Environments ("MTEs") between the SBC-OK terminal (normally located outside each apartment building) and the first jack within each tenant customer's premise. This wiring is the "Terminal-to-NID Subloop" and can be referred to generically as an Unbundled Network Element or "UNE" Subloop. In the normal situation, these UNE Subloops have been installed inside MTE structures. Cox seeks to serve MTE tenants as its retail telephone customers by purchasing access to SBC-OK's Terminal-to-NID Subloops available at SBC's terminal at the outside of each MTE building. The right of Cox to some method of access is not disputed by SBC-OK; the disagreement centers around the rates, terms and conditions for access to these UNE Subloops. The issues in this proceeding should be considered in the context of Rules of this Commission and the tariffs of SBC-OK. The controlling authority for resolution of the issues are the Commission's Rules, Commission Order No. 325917 issued in Cause No. PUD 238<sup>9</sup> and SBC Oklahoma's approved tariffs.

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<sup>9</sup> Exhibit 126.

SBC-OK's Terminal-to-NID UNE Subloops extend from the SBC-OK terminals to the "Demarcation Point" between the network owned or controlled by SBC-OK and the wiring and telephone equipment belonging to the MTE tenant customer. The Demarcation Point consists of wire or a jack.<sup>10</sup> Under the Rules of this Commission,<sup>11</sup> the "Network Interface" means the "normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user." The SBC-OK tariff contains similar language.<sup>12</sup> Under these authorities, the Network Interface must be located at the same point as the Demarcation Point on SBC-OK's network. That point is characterized by a "Network Interface Device" or "NID" which is a standard jack or its equivalent installed at the demarcation point at the tenant customer's premise.<sup>13</sup>

Ownership and Control of UNE Subloops and Maintenance and Repair Obligations  
(Issues 5 and 6)

The Arbitrator finds that the UNE Subloops in question in this proceeding are owned or controlled by SBC-OK to the first jack in each respective tenant customer's premise. Cox recognizes this in its Application,<sup>14</sup> in the testimony of Mr. Beveridge,<sup>15</sup> and in the letter of counsel dated February 11, 2003.<sup>16</sup> The Arbitrator further finds that based on the testimony of Mr. Weydeck,<sup>17</sup> the policy and practice of SBC-OK is to designate Oklahoma MTEs as Multiunit Installations having a demarcation point for each tenant customer on the MTE property, located at the first jack in the tenant customer premise.<sup>18</sup> MTE owners may choose to convert their respective properties from a Multiunit Installation (multiple demarcation points) to a Single Unit Installation (single demarcation point), and in rare instances they do so.<sup>19</sup> Once a property is so converted, it must keep that designation for the life of the building or campus. The Arbitrator takes judicial notice of SBC-OK's Oklahoma tariff<sup>20</sup> discussed in the testimony and finds that SBC-OK's policies and practices comply with those tariff provisions, as well as the Rules<sup>21</sup> of this Commission and its previous ruling in Order No. 325917 issued in Cause PUD 238.<sup>22</sup>

The Arbitrator further finds that because SBC-OK owns or controls the inside wire to the first jack in the tenant customer's premise, SBC-OK, not the MTE owner, has the obligation to

<sup>10</sup> SBC-OK General Exchange Tariff, Explanation of Terms, 2nd Revised Sheet 2.1; 47 C.F.R. § 68.3; *see also*, OAC 165:55-1-4 ("Demarcation Point").

<sup>11</sup> OAC 165:55-1-4 ("Network Interface").

<sup>12</sup> SBC-OK General Exchange Tariff, Explanation of Terms, Original Sheet 5.1.

<sup>13</sup> Tr. 101-106 (2.13.04); SBC-OK General Exchange Tariff, Explanation of Terms, Original Sheet 5.1.

<sup>14</sup> Exhibit 1, p. 2, ¶ 8.

<sup>15</sup> Tr. 42-44 (2.11.04).

<sup>16</sup> Direct Testimony of Barbara L. Mallett, Exhibit 36, p. 6.

<sup>17</sup> Tr. 94, 98-100, 101-106 (2.13.04).

<sup>18</sup> In a Single Unit Installation, there is one demarcation point for the entire property. Mr. Weydeck testified at the hearing that SBC-OK does not allow multiple demarcation points at terminals located at each building within a single MTE complex. Tr. 94, 98-100 (2.13.04). *See also*, 47 CFR §68.105(d).

<sup>19</sup> Tr. 74-75, 94 (2.13.04).

<sup>20</sup> SBC-OK General Exchange Tariff, Original Sheet 25, §13.2.

<sup>21</sup> OAC 165:55-1-4 and 55-13-40(d).

<sup>22</sup> Exhibit 126.

operate, maintain and repair those facilities. The Arbitrator finds that except in only a few instances not relevant to this proceeding, MTE owners have not sought to undertake the obligation of operation, maintenance and repair for this wiring by requesting that SBC-OK establish the property as a Single Unit Installation.

An MTE owner may easily determine whether the MTE is configured with multiple demarcation points at the first jack at each tenant customer premise, or with a single demarcation point for the entire property. The FCC has established a process for the MTE owner to resolve any questions on this point.<sup>23</sup> Under this process, SBC-OK must provide the MTE owner with the location of the demarcation point(s) on the MTE property within ten (10) business days of the owner's request. This process can be used by the MTE owner to resolve any question over the location of the demarcation point(s) and thus the ownership or control of inside wiring at any Oklahoma MTE. SBC-OK has also provided Cox with a voluntary process to determine the ownership or control of facilities at MTEs.<sup>24</sup> The Arbitrator finds that if SBC-OK terminals are found outside each building at a low-rise residential MTE, or on each floor of a high-rise MTE, that Cox must assume that SBC-OK owns or controls the wiring to the first jack in each tenant customer premise and that Terminal-to-NID UNE Subloops are present for access only according to the rates, terms and conditions set forth in this decision.

"Direct Access" to the Terminal-to-NID UNE Subloop  
(Issues 1 and 2)

The Arbitrator finds that because the obligation for operation, maintenance and repair for facilities to the first jack at each tenant customer premise falls on SBC-OK, the method of access to these facilities by third parties such as Cox must be chosen with issues of network integrity and operational concerns in mind.

Cox requests that this Commission approve a method of access to SBC-OK's UNE Subloops referred to as "direct access." Direct access means that Cox technicians enter SBC-OK terminals at MTEs, identify UNE Subloops that Cox seeks to use, disconnect those UNE Subloops from the SBC-OK network and connect them to the Cox network by cross-connect procedure. The Arbitrator finds that this procedure would occur on SBC-OK's regulated network side of the NID (which is located at the first jack of the tenant premise).

The Arbitrator finds that "direct access" is not in the public interest. The Arbitrator further finds that "direct access" may seriously jeopardize SBC-OK's ability to maintain network integrity, security and control, as well as accountability for damage and substandard engineering and operational practices. Such matters jeopardize the quality of service to the public and the reliability of the public switched telephone network in Oklahoma. Cox has been practicing direct access to gain access to SBC-OK's UNE subloops for a number of years. Cox denies that it caused the damage or degradation, asserting that Cox does no damage, merely taking the SBC-OK facilities as Cox finds them. The Arbitrator finds that "direct access" as practiced by Cox in

<sup>23</sup> 47 C.F.R. §68.105(d)(4).

<sup>24</sup> Exhibit 146; Tr. 71-73 (2.13.04).

Oklahoma may cause SBC-OK unreasonably and unnecessary difficulty in maintaining network integrity, security and control (including tracking of network status and usage). SBC-OK should have broad authority to maintain procedures to avoid, prohibit and assess responsibility for damage to its network, particularly where, as here, there are other methods to access UNE Subloops that do not threaten the public's interest in a reliable, high-quality telephone network.

The Arbitrator finds that the ability of SBC-OK to maintain network integrity and control may be further debilitated if the Commission were to approve the Cox-sponsored amendment to the Interconnection Agreement and other CLECs chose to avail themselves of direct access to these same facilities. Where only SBC-OK technicians enter SBC-OK terminals and handle network facilities, the likelihood of damage and degradation, as well as disagreements over responsibility for resulting damage, is reduced considerably, if not eliminated entirely.

Based on the evidence of the disagreements between the parties to date, the Arbitrator finds that future disagreements over what constitutes "demonstrated damage" are very likely under the direct access methods proposed by Cox. Accordingly, the Arbitrator finds that the most reasonable and efficient way to control network damage and degradation is to authorize only SBC-OK technicians to perform the installation and provisioning of SBC-OK facilities, including UNE Subloops. This result is completely consistent with the manner in which SBC-OK provides UNEs to other CLECs, as well as the manner in which it provides service to its own retail customers.

The Arbitrator finds that evidence presented by Cox of a few damaged or substandard terminals at MTEs in which Cox is not present<sup>25</sup> does not provide a reason to grant Cox authority for direct access. Mr. Weydeck testified that the pictures presented by Cox were not at all typical and that because SBC-OK cannot routinely inspect all of its thousands of terminals, that it will typically know of problems at particular installations only when trouble calls are made.<sup>26</sup> Upon receiving such calls, SBC-OK will correct the trouble under its maintenance obligation and at its expense. While it does appear to the Arbitrator that some SBC-OK facilities are not in pristine condition, that is no basis to authorize direct access to these facilities by Cox.

On the contrary, repair, maintenance and control of damage and degradation to the network would only be worse if Cox (and other CLECs) were given authority to enter these SBC-OK facilities as they may choose. Furthermore, the Arbitrator finds that because other CLECs could choose to adopt the provisions of the Cox interconnection agreement, it is entirely possible that numerous CLECs could engage in any "direct access" this Commission might approve. The Arbitrator finds that an arrangement in which multiple CLECs could enter SBC-OK's sensitive terminals and handle fragile wiring is not in the public interest.

The Arbitrator further concludes that the FCC has neither required nor authorized the "direct access" Cox seeks as a means to access Terminal-to-NID UNE Subloops. To the contrary, in the *Virginia Verizon* decision, the Chief of the Wireline Competition Bureau of the

<sup>25</sup> Exhibit 134; Tr. 183 (2.11.04).

<sup>26</sup> Tr. 55, 65-66 (2.13.04); Exhibit 134.

FCC has affirmed the need for incumbent LECs to maintain network integrity on the network side of the NID at customer premises.<sup>27</sup> This Commission is aware of only a single instance in which the FCC appeared to acknowledge that CLEC technicians might enter the MTE terminals of incumbent LECs. That single reference is found at Footnote 1013 of the FCC's *Triennial Review Order*,<sup>28</sup> citing as authority Footnote 395 in ¶ 206 of the FCC's *UNE Remand Order*.<sup>29</sup> But this reference is not supported at all by the more extensive discussion of the same issue in the cited portion of the FCC's *UNE Remand Order*.<sup>30</sup> The Arbitrator is not prepared to conclude that the FCC intended to supersede important issues of local network integrity, security and control (and the resulting affect on the Oklahoma public) by such casual reference.

The Arbitrator does not find that the *Virginia Verizon* decision authorizes "direct access" at SBC-OK's MTE terminals in Oklahoma. In Virginia, the incumbent's NID was always located at the MTE building terminal. The *Virginia Verizon* decision authorized direct access only on the customer's side of the NID. The architecture is quite different in Oklahoma. In Oklahoma, the NID is always located at the first jack of the tenant customer premise, not at each MTE building terminal. Cox could have direct access at the NID inside the apartment, but seeks instead to have direct access outside at the MTE terminal. That point of access is within the SBC-OK network and on the network side of the NID. The *Virginia Verizon* decision specifically prohibited this kind of direct access.

SBC-OK Proposal for Access to Terminal-to-NID Subloops  
(Issues 4 and 10)

The Arbitrator finds that the Subloop Amendment proposed by SBC-OK for access by Cox to UNE Subloops is reasonable and should be adopted for inclusion in the Interconnection Agreement between SBC-OK and Cox. The Subloop Amendment provides Cox and other CLECs three optional methods of access at the MTE terminal that each carrier can use at its sole

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<sup>27</sup> *In the Matter of Petitions of WorldCom, Inc., and Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration*, Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, DA 02-1731, ¶¶ 421, 426 (rel. July 17, 2002) (the "*Verizon Virginia*" decision). The Commission does not read this decision to authorize "direct access" to the incumbent's network by CLECs. Access was granted in that case only on the customer's side of the NID. Here, Cox seeks direct access on the *network* side of the NID. The *Verizon Virginia* decision did not grant that kind of access and neither does this Commission.

<sup>28</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capacity*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order, and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 343, n.1013 (rel. Aug. 21, 2003) (the "*Triennial Review Order*").

<sup>29</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3969, (1999) (the "*UNE Remand Order*").

<sup>30</sup> At ¶ 206, n. 395 of the *UNE Remand Order*, the FCC states, "Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals collocated at the same point." References to access by a "competitor's technician" are absent completely.

discretion. The Supplemental Direct Testimony of Mr. Weydeck<sup>31</sup> outlines the options available for Cox and other CLECs to access SBC Oklahoma's Terminal-to-NID Subloop. The options are (1) at the request of Cox or any other CLEC, SBC-OK would install a cross connect facility at which point SBC would cross connect its UNE Subloops to the Cox or other CLEC's network; (2) Cox or the CLEC may choose to install its own intermediate box at which point SBC would cross connect UNE Subloops; or (3) SBC-OK would install a jumper wire from its UNE Subloops, coiled up and left next to the Cox facility for Cox to cross connect the UNE Subloop to the Cox network when it chooses.<sup>32</sup> Under Method 2 or 3, Cox would have the further choice of ordering either a tested or an untested UNE Subloop.

The Arbitrator finds that the SBC-OK Subloop Amendment proposal should be adopted in its entirety. The three optional methods of access contained in this proposal were set forth by SBC-OK in response to concerns expressed by Staff and by Cox. Although Cox contends that it will not use all these methods of access, business plans and needs may change and other CLECs may avail themselves of rates, terms and conditions of this interconnection agreement. Accordingly, the Arbitrator finds that the provisions of the agreement should provide for flexibility and allowance for varying choices. A needlessly narrow agreement would force the parties into new negotiations and arbitration whenever new circumstances arise. The Arbitrator strongly discourages such a practice.

The Arbitrator finds that the SBC-OK proposal offers reasonable flexibility, responds to concerns expressed by Staff in its initial testimony, and eliminates concerns about network integrity, security and control that threaten the quality and reliability of service to the public. When Cox chooses to begin providing service at a particular MTE, it could choose Method 1 or 2 in advance and as part of Cox's initial facility provisioning plan, so that UNE Subloops could be ordered and provided as needed for particular customers within the normal provisioning interval and within Cox's desired time frame. In the event isolated UNE Subloops were needed, or if time does not permit the installation of the cross connect facility, Cox could choose Method 3. The offering of an option for untested UNE Subloops under Method 2 or 3 also reduces cost to Cox substantially.

The Arbitrator finds that the SBC-OK proposal would not result in unreasonable delays or service outages. Coordination between Cox and SBC-OK technicians would not necessarily be required to avoid service outages. For example, the Arbitrator finds that, based on evidence presented by Cox,<sup>33</sup> MTE tenants are relatively short-term customers. Accordingly, it is quite likely that new service will be ordered when a customer moves into a vacant apartment and SBC-OK would be able to provision UNE Subloops under one of the three methods within the normal provisioning interval before the customer's anticipated move-in date and without any service disruption or coordination between technicians.<sup>34</sup> In other instances a UNE Subloop could be

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<sup>31</sup> Exhibit No. 46, at page 2-6.

<sup>32</sup> A fourth method, the Single Point of Interconnection or "SPOI," is discussed separately, *infra.*, because it is quite different from access at MTE building terminals.

<sup>33</sup> Direct Testimony of Carl Branscum, Exhibit 32, p.7 and attached Exhibit CB 1; Tr. 61 (2.11.04).

<sup>34</sup> Tr. 62-66 (2.11.04).

provisioned using a spare subloop without disconnecting service.<sup>35</sup> If a cutover of existing service is required and coordination between Cox and SBC-OK is necessary, the Arbitrator observes that SBC-OK has years of experience performing "hot cuts" and substantial experience in doing so in a competitive environment, without adverse effects on the public or on the opportunity for CLECs to compete. In addition, the Arbitrator finds that Cox has failed to present any evidence to suggest the coordination between SBC-OK technicians and CLEC technicians is a problem.

The Arbitrator further finds that under the SBC-OK proposal, "collocation" is not required. The FCC said in its *Triennial Review Order* that "collocation" may not be required for access to UNE Subloops at MTEs.<sup>36</sup> By providing Cox with various options of interconnection, SBC-OK is not requiring Cox to collocate; therefore, SBC-OK's proposal is not contrary to the FCC Triennial Review Order. Furthermore, under Method 3, Cox has an option to gain access to UNE Subloops without the requirement to install a cross connect box of any kind.<sup>37</sup> Because such a facility is not required by the SBC-OK proposal, this Commission need not decide and expresses no opinion on whether the cross connect box provided under either Method 1 or 2 is "collocation."

Ordering for the Terminal-to-NID UNE Subloops  
(Issue 3)

The Arbitrator finds Cox (along with all other CLECs) should be required to order UNE subloops from SBC-OK through the existing OSS processes. This ordering process is used by CLECs to achieve access to UNEs in all other instances and there is no persuasive evidence in this proceeding to suggest that SBC-OK's current OSS is unable to accommodate CLECs' request for subloops, nor does the evidence justifying an exemption for Cox from use of SBC-OK's OSS. Use of the existing ordering processes will contribute to accurate and timely billing and accounting for UNE subloops provisioned at MTEs. The Arbitrator further finds that without the ordering process, SBC-OK cannot audit, track or otherwise monitor the actual use by Cox of UNE subloops without unnecessary and unreasonable expense.

The Arbitrator further finds that the process for Cox to order UNE subloops is not inferior to that which SBC-OK uses for its own retail customers. As Mr. Weydeck pointed out at the hearing,<sup>38</sup> SBC-OK requires that both its retail and wholesale customers use an ordering process for their telecommunications services. The process by which Cox may order UNE subloops is at least equal in quality to that which SBC-OK uses for its own retail services.

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<sup>35</sup> Tr. 66 (2.11.04).

<sup>36</sup> *Triennial Review Order*, ¶ 358.

<sup>37</sup> Supplemental Direct Testimony of William E. Weydeck, Exhibit 46, pp. 4-6 (in which Method 3 is described as a "second option"); Tr. 92 (2.13.04).

<sup>38</sup> Tr. 180-183 (2.13.04).

Rates for the Terminal-to-NID UNE Subloop  
(Issue 9)

The Arbitrator finds that non-recurring and monthly recurring rates for UNE Subloops must be established by applying Total Element Long Range Incremental Cost or "TELRIC" principles. The TELRIC methodology requires that the Commission consider the long run, forward-looking cost of the most efficient technology available for the "total element" under consideration.<sup>39</sup> TELRIC also requires that UNE costs should be "calculated taking as a given the incumbent LEC's provision of other elements."<sup>40</sup> In this case, the Commission considers the forward-looking costs that relate to the Terminal-to-NID Subloop and all its constituent components. In doing so, the Commission should look at the entire demand placed on that particular element. The Arbitrator finds that the rates submitted by SBC-OK are based on TELRIC and therefore should be accepted.

The Arbitrator finds that in determining monthly recurring rates for UNE Subloops at residential low-rise MTEs, the capacity or bandwidth of the inside wire that is to be deployed will affect the cost and thus the rate for this element. Cox contends that cheaper 2 pair JKT wire should be used.<sup>41</sup> That wire is no longer being used<sup>42</sup> and the Cox witness Lafferty testified that he was unable even to obtain a price for the outdated wiring.<sup>43</sup> According to undisputed testimony, SBC-OK currently deploys the following types of wire at MTEs for its own retail customers (in order of ascending bandwidth and cost): 4 pair CAT 3, 4 pair CAT 5, or 6 pair CAT 5 wire, with 4 pair CAT 3 being the typical type of wire installed.<sup>44</sup> CAT 3 and CAT 5 wire are in use because they can support more lines, have greater bandwidth and provide higher quality over a wider range of services than 2 pair JKT wire.<sup>45</sup>

The Arbitrator finds that inside wiring at MTEs is placed to provide a wide range of services to the customer and that voice grade telephone over one or two lines covers only part of that range. The Arbitrator further finds that if 2 pair JKT were installed as inside wire at MTEs, SBC-OK's retail and wholesale customers would not have the benefit of additional lines, higher bandwidths and enhanced service quality without expensive and duplicative rewiring of existing structures.<sup>46</sup> Accordingly, the Arbitrator finds that 2 pair JKT is not forward-looking technology

<sup>39</sup> 47 C.F.R. §51.505(b).

<sup>40</sup> 47 C.F.R. §51.505(b).

<sup>41</sup> Because Mr. Lafferty was unable to find a price for 2 pair JKT wire, he used a surrogate price, which according to Mr. Moore's undisputed testimony did not cover the actual cost of 2 pair wire. Rebuttal Testimony of Barry Moore, Exhibit 147, at pp. 11-12.

<sup>42</sup> Rebuttal Testimony of Barry Moore, Exhibit 147, p. 11. By Mr. Lafferty's own admission at the hearing, 2 pair JKT is not necessarily what will be deployed on a forward-looking basis. Tr. 260 (2.11.04).

<sup>43</sup> Tr. 263 (2.11.04).

<sup>44</sup> Rebuttal Testimony of Barry Moore, Exhibit 147, at pp. 8-9. Mr. Lafferty testified on behalf of Cox that "today you would find the CAT 3 installed. ... [Y]ou probably would have trouble buying the JKT. I actually made an attempt myself and gave up." Tr. 261 (2.11.04).

<sup>45</sup> Mr. Lafferty testified on behalf of Cox that "the quality [for non-voice telephony service] would be better over the CAT 3 because it is twisted pairs as opposed to just basic shielded pair" and that JKT "may not work as well as CAT 3 wire for some services ...." Tr. 262-263 (2.11.04).

<sup>46</sup> Mr. Beveridge acknowledged that retail customers may take two or three services requiring multiple lines. Tr. 96 (line 18) - 97 (2.11.04). He further acknowledged that rewiring can be prohibitively expensive. Tr. 42-43

and that in the long run it would cost more and result in inefficiencies. The Arbitrator also finds that a forward-looking cost study must be based on those facilities that are capable of delivering the capacity and bandwidth that both wholesale and retail customers are likely to require. The Arbitrator further finds that 4 pair CAT 3 wire complies with TELRIC requirements as forward-looking, efficient technology, even though it is at the lower end of the types of wire actually deployed in low rise MTEs today.

Cox contends that the cost of the wire that constitutes the Terminal-to-NID UNE Subloop should be discounted by 30 to 40 percent. Cox based its assumption of SBC-OK's discount on a discussion with a named person, and the Commission cannot rely on such speculation. The Arbitrator finds that the Cox assumptions are not based on evidence and therefore should be rejected.<sup>47</sup> On the other hand, the cost study presented by SBC-OK is based on actual costs of wiring to SBC-OK. The Arbitrator finds that the actual cost of wiring currently being paid by SBC-OK is a more accurate indicator of forward-looking cost than speculation about the discount to Home Depot prices that SBC-OK might command. The Arbitrator finds that the wire costs presented by Cox should be rejected.

The Arbitrator finds that the 135 feet of inside wire used in the SBC-OK cost studies for residential low rise MTEs is reasonable and should be adopted for purposes of determining costs for the recurring monthly rates. Cox proposes that the cost of the inside wiring should be based on 70 feet of wiring, not the 135 used in the SBC-OK cost study. Cox based its assumption by "eyeing" the property and coming up with an estimate of the footage. Mr. Moore testified that the 135 feet was correct based on his experience.<sup>48</sup> Mr. Weydeck testified that he had personally wired many MTEs and that there are normally several separate apartments in each building and that the respective UNE Subloops extend from the terminal serving the building to the respective kitchens in each apartment unit, not to the closest jack in each apartment.<sup>49</sup> Cox did not present any study or measurement to support its position that the UNE Subloop wiring uses 75 feet of wire rather than the 135 feet presented in the SBC-OK cost study.<sup>50</sup>

The Arbitrator finds that the travel time for technicians to travel from job to job is also a component of the cost of the recurring monthly rate. The cost study of SBC-OK specifies 30 minutes for the technician to load up the truck, drive to the next job, locate the MTE address, park, set safety cones, locate the MTE terminal, and unload. Cox argues that those activities take only 10 minutes.<sup>51</sup> The Arbitrator finds that in a metropolitan area the size of Oklahoma City the SBC-OK time of 30 minutes in the SBC-OK cost study is a reasonable and accurate average time

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(2.11.04). Mr. Lafferty acknowledged that the Terminal-to-NID Subloop has multiple uses, including uses by other CLECs that offer data services. Tr. 249-250 (2.11.04).

<sup>47</sup> Mr. Lafferty testified on behalf of Cox that his opinion that SBC-OK could command discounts of 30 to 40 percent was not based on any specific price quote for wiring, nor had he done any analysis of any SBC purchases. Tr. 267-268 (2.11.04)

<sup>48</sup> Tr. 200-201 (2.13.04).

<sup>49</sup> Tr. 145-146 (2.13.04)

<sup>50</sup> Mr. Lafferty's testimony on behalf of Cox that this 75 feet was based on Cox technicians "trying to estimate the distance from point A to point B, based off of ... the size of the rooms ...." Tr. 100-101 (2.12.04).

<sup>51</sup> Tr. 113, 114 (2.12.04).

for properly and safely traveling from job to job and conducting related activities. Therefore, the Arbitrator finds that SBC-OK's time estimate should be accepted.

Cox proposes the use of a 2 pair Single Network Interface ("SNI") device as a component of this UNE Subloop for residential low rise applications.<sup>52</sup> The Arbitrator finds that a three pair SNI should be used in order to comply with TELRIC principles of forward-looking cost. Moreover, the three pair SNI that SBC-OK is actually deploying for its own retail customers is less expensive than the Corning SNI that Cox proposes.<sup>53</sup> Accordingly, the Arbitrator finds that the three pair SNI is the more efficient technology required by TELRIC methodology.

Cox also proposed the exclusion of engineering expenses associated with the building terminal.<sup>54</sup> Mr. Weydeck testified that the building terminal must be sized according to the number of tenants in each building and that those engineering costs should not be disregarded.<sup>55</sup> Mr. Lafferty, on the other hand, contended that engineering the building terminal already took place with the development of the SBC's loop plant. The Arbitrator finds that a proper forward-looking TELRIC methodology does not address those kinds of sunk costs. To the contrary, costs should be assigned as direct costs that are recovered in the long-run. SBC's identification of engineering costs for the building terminal are appropriate direct costs for the Terminal-to-NID UNE Subloop and supported by undisputed data. Therefore, the Arbitrator finds that SBC-OK's position should be adopted.

Similarly, Cox proposed the exclusion of provisioning expenses associated with the building terminal. Mr. Moore testified that the provisioning expenses include those associated with provisioning costs are incurred (supply and warehousing operations, material management) when equipment components are purchased and supplied for use in the network.<sup>56</sup> The Arbitrator finds the inclusion of provisioning costs as appropriate and directly attributable to the Terminal-to-NID UNE Subloop, based on undisputed data.

The Arbitrator finds that under the TELRIC methodology, SBC-OK's cost of capital should reflect the risks that would exist in a market in which there is facilities-based competition, without limiting the inquiry to the actual competitive risk the incumbent presently faces.<sup>57</sup> Cox proposes a significant adjustment for SBC-OK's cost of capital by applying a capital structure based on an average of book and market values for SBC-OK equity because of a Cox belief that competition has not developed as anticipated in Oklahoma. The Arbitrator finds that the Cox adjustments based on book value of equity do not replicate prices that would exist in a market in which there is facilities-based competition, as required by TELRIC. Therefore, the Arbitrator finds that Cox's proposed adjustments should be rejected.

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<sup>52</sup> Mr. Beveridge acknowledged that some customers will take 2 services and some will take three services, thus contradicting the 2 pair Cox assumption. Tr. 96 (line 18) - 97 (2.11.04).

<sup>53</sup> Rebuttal Testimony of Barry Moore, Exhibit 147, pp. 16-17.

<sup>54</sup> Supplemental Direct Testimony of F. Wayne Lafferty, Exhibit 43, pp. 12, 22.

<sup>55</sup> Rebuttal Testimony of William E. Weydeck, Exhibit 68, pp. 13-14.

<sup>56</sup> Rebuttal Testimony of Barry Moore, Exhibit 147, pp. 18-19.

<sup>57</sup> *Triennial Review Order*, ¶ 680-681; Memorandum Opinion and Order, CC Docket Nos. 00-218 and 00-251, ¶¶ 102, 104, (FCC, Wireline Competition Bureau, released August 28, 2003).

SBC-OK presents costs for non-recurring rates for these UNE Subloops for installation of "up to 6 pair" wires at MTEs. Cox proposes a 25 percent adjustment to that cost on the ground that 6 pair wire connections are unnecessary, but does not produce persuasive evidentiary support for its contention that installation of a "four conductor" wire is less expensive.<sup>58</sup> SBC-OK presented undisputed evidence that the differences in the cost of installing 2 pair, 4 pair or 6 pair wire are insignificant.<sup>59</sup> The Arbitrator finds that there is no substantial evidence for the 25 percent adjustment proposed by Cox and therefore declines to adopt it.

Based on the foregoing, as well as the Commission's review of the record, the Arbitrator finds that the rates set forth on Exhibit A hereto are adopted, effective immediately, as the applicable non-recurring and monthly recurring rates for Terminal-to-NID UNE Subloops at Oklahoma MTEs. The Arbitrator finds that these rates comply with TELRIC principles for forward-looking, efficient technology. The Arbitrator further finds that the rate for the installation of the SBC-OK cross connect facility under Method 1 cannot be set because the costs will vary considerably with the particular circumstances encountered at each MTE. Accordingly, the Arbitrator finds that the rates for the installation of the SBC-OK cross connect facility under Method 1 should be established on an individual case basis. The Arbitrator further finds that the rates established by this Report do not cover any damage to SBC-OK's MTE terminals or subloops as a result of direct access.

### Transition

It is the recommendation of the Arbitrator, beginning on the effective date of a final order in this cause, Cox shall begin paying to SBC-OK the monthly recurring rates set forth in Exhibit A for all UNE Subloops Cox previously removed from SBC-OK's network. SBC-OK and Cox shall collaborate on a process to transition all existing MTEs to one of the methods of access approved in this Report, at the applicable rates set forth herein. Pending completion of the transition to approved methods of access, the transition process shall not excuse Cox from its obligation to pay the monthly recurring rates for all UNE Subloops removed from SBC-OK's network, beginning on the effective date of a final order in this cause. Furthermore, upon a final order in this cause, Cox shall henceforth have available those approved methods of access set forth in this Report. Nothing in this Report shall be construed to prohibit SBC-OK from repairing any damage to its MTE terminals pending transition.

### Single Point of Interconnection ("SPOI")

(Issue 6)

The SPOI is a fourth alternative to the three methods of access proposed by SBC-OK and adopted by this Commission. A SPOI is a single point at or near the property line where one or more carriers can at that single location gain access to any of the UNE subloops beyond. The SPOI is created by the reconfiguration of the network at the request of a CLEC to SBC-OK. The

<sup>58</sup> Tr. 261-264 (2.11.04).

<sup>59</sup> Rebuttal Testimony of Barry Moore, Exhibit 147, pp. 20-21.

CLEC pays for this reconfiguration. SBC-OK makes this option available to all CLECs in association with the MTEs where SBC-OK owns the wiring on the property to each NID located inside each individual tenant customer's premise in an MTE. The demarcation point does not change under this option. Because each reconfiguration will be different and will depend on the directions of the MTE owner, and on the size and layout of a particular MTE, the Arbitrator finds that the SPOI alternative should be made available in the Subloop Amendment and provider pursuant to a Bona Fide Request process.

#### Other Issues

UNE Subloops other than the Terminal-to-NID Subloop are included in SBC-OK's proposal. In accordance with the findings of this Arbitrator under Issues 4 and 10, *supra*, the Arbitrator finds that to present a comprehensive package for UNE subloops that Cox or other CLECs may need now or in the future, the entire SBC-OK proposal should be adopted. Attached as Exhibit B is the rate schedule from other UNE Subloops (other than the Terminal-to-NID UNE Subloops listed on Exhibit A). Persuasive evidence was not presented in opposition to these rates accordingly should be adopted in their entirety.

Based on the proceedings herein, the Arbitrator takes judicial notice of Southwestern Bell Telephone L.P., A Texas Limited Partnership d/b/a SBC Oklahoma, Plaintiff versus Cox Oklahoma Telcom, LLC, a Delaware Limited Liability Company, Defendant, filed in the United States District Court for the Western District of Oklahoma, Case No. CIV-03-0495. The merits of SBC's Motion for Interim Relief filed in this Cause relate to issues litigated in the district court proceeding and therefore does not require determination by the Arbitrator.

#### CONCLUSION

The Arbitrator has made the findings and Recommendations as set forth above based upon the requirements of the Telecommunications Act of 1996 and the record created by the parties. If this recommendation is adopted, the parties shall submit a revised interconnection agreement to the Commission thirty (30) days following the effective date of a final order by the Commission in this Cause.

Jacqueline T. Miller  
JACQUELINE T. MILLER  
Arbitrator

April 2, 2004  
Date

EXHIBIT A

Monthly Recurring Rates (Method 1, 2 or 3)

MTE Residential Low-Rise Analog Terminal-to-NID Subloop	\$2.39
MTE Business Low-Rise Analog Terminal-to-NID Subloop	\$1.35
MTE Business High-Rise Analog Terminal-to-NID Subloop	\$0.97

Non-Recurring Rates for Method 1

Subloop Cross Connect 2-Wire Analog	
Non-Central Office Originating	
Non-recurring rate first line	\$448.78
Non-recurring rate additional line	\$170.20

Non-Recurring Rates With No Testing (Method 2 or 3)

MTE Residential Low-Rise Analog Terminal-to-NID	
Wiring Installation (up to 6 pr.)	
Initial (per sheath)	\$117.68
Additional (per sheath)	\$35.33
Conduit placement, per conduit	
Initial (per conduit)	\$30.27
Additional (per conduit)	\$30.27
MTE Business Low-Rise Analog Terminal-to-NID	
Wiring Installation (up to 6 pr.)	
Initial (per sheath)	\$117.68
Additional (per sheath)	\$35.33
Conduit placement, per conduit	
Initial (per conduit)	\$30.27
Additional (per conduit)	\$30.27
Wiring Installation (25 pr.)	
Initial (per sheath)	\$184.91
Additional (per sheath)	\$85.75
Conduit placement, per conduit	
Initial (per conduit)	\$30.27
Additional (per conduit)	\$30.27

**MTE Business High Rise Analog Terminal-to-NID**

<b>Wiring Installation (25 pr.)</b>	
Initial (per sheath)	\$210.14
Additional (per sheath)	\$110.98
<b>Conduit placement, per conduit</b>	
Initial (per conduit)	NA
Additional (per conduit)	NA

Non-Recurring Rates With Testing (Method 2 or 3)

**MTE Residential Low-Rise Analog Terminal-to-NID**

<b>Wiring Installation (up to 6 pr.)</b>	
Initial (per sheath)	\$151.30
Additional (per sheath)	\$68.95
<b>Conduit placement, per conduit</b>	
Initial (per conduit)	\$30.27
Additional (per conduit)	\$30.27

**MTE Business Low-Rise Analog Terminal-to-NID**

<b>Wiring Installation (up to 6 pr.)</b>	
Initial (per sheath)	\$151.30
Additional (per sheath)	\$68.95
<b>Conduit placement, per conduit</b>	
Initial (per conduit)	\$30.27
Additional (per conduit)	\$30.27

<b>Wiring Installation (25 pr.)</b>	
Initial (per sheath)	\$218.53
Additional (per sheath)	\$119.38
<b>Conduit placement, per conduit</b>	
Initial (per conduit)	\$30.27
Additional (per conduit)	\$30.27

**MTE Business High Rise Analog Terminal-to-NID**

<b>Wiring Installation (25 pr.)</b>	
Initial (per sheath)	\$243.76
Additional (per sheath)	\$144.60
<b>Conduit placement, per conduit</b>	
Initial (per conduit)	NA
Additional (per conduit)	NA

SOUTHWESTERN BELL TELEPHONE L.P. d/b/a  
SBC OKLAHOMA  
APRIL 3, 2003

APPENDIX PRICING  
Effective Date: xx/xx/xx  
SBC OK/CLEC

Change/ Updates	Service	Rate Elements	USOCs	Recurring Rate	Nonrecurring Rate First	Nonrecurring Rate Additional	Subsequent Changes
	<b>UNBUNDLED NETWORK ELEMENTS</b>						
	<b>Sub-loop Unbundling</b>						
		MDF to ECS subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAM	\$ 12.11	None	None	
		MDF to ECS subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAM	\$ 11.75	None	None	
		MDF to ECS subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAM	\$ 12.59	None	None	
		MDF to SAI subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAN	\$ 11.03	None	None	
		MDF to SAI subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAN	\$ 10.33	None	None	
		MDF to SAI subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAN	\$ 10.11	None	None	
		MDF to Terminal subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAO	\$ 33.17	None	None	
		MDF to Terminal subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAO	\$ 21.72	None	None	
		MDF to Terminal subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAO	\$ 18.90	None	None	
		ECS to SAI subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAP	\$ 3.78	None	None	
		ECS to SAI subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAP	\$ 3.20	None	None	
		ECS to SAI subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAP	\$ 2.01	None	None	
		ECS to Terminal subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAQ	\$ 25.92	None	None	
		ECS to Terminal subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAQ	\$ 14.59	None	None	
		ECS to Terminal subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAQ	\$ 10.80	None	None	
		ECS to NID subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAR	\$ 30.19	None	None	
		ECS to NID subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAR	\$ 19.20	None	None	
		ECS to NID subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAR	\$ 15.33	None	None	
		SAI to Terminal subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAS	\$ 22.73	None	None	
		SAI to Terminal subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAS	\$ 11.95	None	None	
		SAI to Terminal subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAS	\$ 9.35	None	None	
		SAI to NID subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAT	\$ 27.00	None	None	
		SAI to NID subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAT	\$ 16.56	None	None	
		SAI to NID subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAT	\$ 13.88	None	None	
		Terminal to NID subloop charge 2-Wire Analog Zone 1 (Rural)	U6LAU	\$ 4.41	None	None	
		Terminal to NID subloop charge 2-Wire Analog Zone 2 (Suburban)	U6LAU	\$ 4.75	None	None	
		Terminal to NID subloop charge 2-Wire Analog Zone 3 (Urban)	U6LAU	\$ 2.68	None	None	
		MDF to ECS subloop charge 4-Wire Analog Zone 1 (Rural)	U6LEM	\$ 36.27	None	None	
		MDF to ECS subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LEM	\$ 35.55	None	None	
		MDF to ECS subloop charge 4-Wire Analog Zone 3 (Urban)	U6LEM	\$ 37.21	None	None	
		MDF to SAI subloop charge 4-Wire Analog Zone 1 (Rural)	U6LEN	\$ 27.59	None	None	
		MDF to SAI subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LEN	\$ 26.94	None	None	
		MDF to SAI subloop charge 4-Wire Analog Zone 3 (Urban)	U6LEN	\$ 26.60	None	None	
		MDF to Terminal subloop charge 4-Wire Analog Zone 1 (Rural)	U6LEO	\$ 71.88	None	None	
		MDF to Terminal subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LEO	\$ 49.61	None	None	
		MDF to Terminal subloop charge 4-Wire Analog Zone 3 (Urban)	U6LEO	\$ 44.05	None	None	
		ECS to SAI subloop charge 4-Wire Analog Zone 1 (Rural)	U6LEP	\$ 7.57	None	None	
		ECS to SAI subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LEP	\$ 6.41	None	None	
		ECS to SAI subloop charge 4-Wire Analog Zone 3 (Urban)	U6LEP	\$ 4.03	None	None	
		ECS to Terminal subloop charge 4-Wire Analog Zone 1 (Rural)	U6LEQ	\$ 51.84	None	None	
		ECS to Terminal subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LEQ	\$ 29.19	None	None	
		ECS to Terminal subloop charge 4-Wire Analog Zone 3 (Urban)	U6LEQ	\$ 21.61	None	None	
		ECS to NID subloop charge 4-Wire Analog Zone 1 (Rural)	U6LER	\$ 58.56	None	None	
		ECS to NID subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LER	\$ 35.91	None	None	
		ECS to NID subloop charge 4-Wire Analog Zone 3 (Urban)	U6LER	\$ 28.33	None	None	
		SAI to Terminal subloop charge 4-Wire Analog Zone 1 (Rural)	U6LES	\$ 45.47	None	None	
		SAI to Terminal subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LES	\$ 23.91	None	None	
		SAI to Terminal subloop charge 4-Wire Analog Zone 3 (Urban)	U6LES	\$ 18.70	None	None	
		SAI to NID subloop charge 4-Wire Analog Zone 1 (Rural)	U6LET	\$ 52.18	None	None	
		SAI to NID subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LET	\$ 30.83	None	None	
		SAI to NID subloop charge 4-Wire Analog Zone 3 (Urban)	U6LET	\$ 25.42	None	None	
		Terminal to NID subloop charge 4-Wire Analog Zone 1 (Rural)	U6LEU	\$ 7.02	None	None	
		Terminal to NID subloop charge 4-Wire Analog Zone 2 (Suburban)	U6LEU	\$ 7.02	None	None	
		Terminal to NID subloop charge 4-Wire Analog Zone 3 (Urban)	U6LEU	\$ 7.02	None	None	
		MDF to ECS subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCM	\$ 23.02	None	None	
		MDF to ECS subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCM	\$ 16.85	None	None	

## SOUTHWESTERN BELL TELEPHONE L.P. d/b/a

SBC OKLAHOMA

APRIL 3, 2003

APPENDIX PRICING

Effective Date: xx/xx/xx

SBC OK/CLEC

Change/ Updates	Service	Rate Elements	USOCs	Recurring Rate	Nonrecurring Rate	Nonrecurring Rate	Subsequent Changes
					First	Additional	
		MDF to ECS subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCM	\$ 11.39	None	None	
		MDF to SAI subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCN	\$ 23.76	None	None	
		MDF to SAI subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCN	\$ 17.36	None	None	
		MDF to SAI subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCN	\$ 12.07	None	None	
		MDF to Terminal subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCO	\$ 45.89	None	None	
		MDF to Terminal subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCO	\$ 28.75	None	None	
		MDF to Terminal subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCO	\$ 20.86	None	None	
		ECS to SAI subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCP	\$ 3.80	None	None	
		ECS to SAI subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCP	\$ 3.23	None	None	
		ECS to SAI subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCP	\$ 2.01	None	None	
		ECS to Terminal subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCQ	\$ 25.94	None	None	
		ECS to Terminal subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCQ	\$ 14.62	None	None	
		ECS to Terminal subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCQ	\$ 10.80	None	None	
		ECS to NID subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCR	\$ 30.20	None	None	
		ECS to NID subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCR	\$ 19.23	None	None	
		ECS to NID subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCR	\$ 15.33	None	None	
		SAI to Terminal subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCS	\$ 22.75	None	None	
		SAI to Terminal subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCS	\$ 11.98	None	None	
		SAI to Terminal subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCS	\$ 9.35	None	None	
		SAI to NID subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCT	\$ 27.02	None	None	
		SAI to NID subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCT	\$ 16.58	None	None	
		SAI to NID subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCT	\$ 13.88	None	None	
		Terminal to NID subloop charge 2-Wire DSL Zone 1 (Rural)	U6LCU	\$ 4.41	None	None	
		Terminal to NID subloop charge 2-Wire DSL Zone 2 (Suburban)	U6LCU	\$ 4.75	None	None	
		Terminal to NID subloop charge 2-Wire DSL Zone 3 (Urban)	U6LCU	\$ 4.68	None	None	
		MDF to ECS subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGM	\$ 46.03	None	None	
		MDF to ECS subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGM	\$ 33.29	None	None	
		MDF to ECS subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGM	\$ 21.85	None	None	
		MDF to SAI subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGN	\$ 47.51	None	None	
		MDF to SAI subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGN	\$ 34.73	None	None	
		MDF to SAI subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGN	\$ 24.15	None	None	
		MDF to Terminal subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGO	\$ 91.78	None	None	
		MDF to Terminal subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGO	\$ 57.51	None	None	
		MDF to Terminal subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGO	\$ 41.72	None	None	
		ECS to SAI subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGP	\$ 7.60	None	None	
		ECS to SAI subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGP	\$ 6.46	None	None	
		ECS to SAI subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGP	\$ 4.03	None	None	
		ECS to Terminal subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGQ	\$ 51.87	None	None	
		ECS to Terminal subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGO	\$ 29.24	None	None	
		ECS to Terminal subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGO	\$ 21.61	None	None	
		ECS to NID subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGR	\$ 58.59	None	None	
		ECS to NID subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGR	\$ 35.96	None	None	
		ECS to NID subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGR	\$ 28.33	None	None	
		SAI to Terminal subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGS	\$ 45.50	None	None	
		SAI to Terminal subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGS	\$ 23.96	None	None	
		SAI to Terminal subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGS	\$ 18.70	None	None	
		SAI to NID subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGT	\$ 52.22	None	None	
		SAI to NID subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGT	\$ 30.68	None	None	
		SAI to NID subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGT	\$ 25.42	None	None	
		Terminal to NID subloop charge 4-Wire DSL Zone 1 (Rural)	U6LGU	\$ 7.02	None	None	
		Terminal to NID subloop charge 4-Wire DSL Zone 2 (Suburban)	U6LGU	\$ 7.02	None	None	
		Terminal to NID subloop charge 4-Wire DSL Zone 3 (Urban)	U6LGU	\$ 7.02	None	None	
		MDF to ECS Subloop Charge 2-Wire ISDN Zone 1 (Rural)	U6LBM	\$ 30.12	None	None	
		MDF to ECS Subloop Charge 2-Wire ISDN Zone 2 (Suburban)	U6LBM	\$ 29.06	None	None	
		MDF to ECS Subloop Charge 2-Wire ISDN Zone 3 (Urban)	U6LBM	\$ 31.53	None	None	
		MDF to SAI subloop charge 2-Wire ISDN Zone 1 (Rural)	U6LBN	\$ 19.29	None	None	
		MDF to SAI Subloop Charge 2-Wire ISDN Zone 2 (Suburban)	U6LBN	\$ 19.35	None	None	
		MDF to SAI Subloop Charge 2-Wire ISDN Zone 3 (Urban)	U6LBN	\$ 20.15	None	None	
		MDF to Terminal subloop charge 2-Wire ISDN Zone 1 (Rural)	U6LBO	\$ 41.43	None	None	
		MDF to Terminal Subloop Charge 2-Wire ISDN Zone 2 (Suburban)	U6LBO	\$ 30.74	None	None	
		MDF to Terminal Subloop Charge 2-Wire ISDN Zone 3 (Urban)	U6LBO	\$ 28.94	None	None	
		MDF to RT Subloop Charge 4-Wire DS1 Zone 1 (Rural)	U6L1M	\$ 137.61	None	None	

SOUTHWESTERN BELL TELEPHONE L.P. d/b/a  
 SBC OKLAHOMA  
 APRIL 3, 2003

APPENDIX PRICING  
 Effective Date: xx/xx/xx  
 SBC OKCLEC

Change/ Updates	Service	Rate Elements	USOCs	Recurring Rate	Nonrecurring Rate First	Nonrecurring Rate Additional	Subsequent Changes
		MDF to RT Subloop Charge 4-Wire DS1 Zone 2 (Suburban)	U6L1M	\$ 133.55	None	None	
		MDF to RT Subloop Charge 4-Wire DS1 Zone 3 (Urban)	U6L1M	\$ 130.60	None	None	
		MDF to RT Subloop Charge-DS3 Zone 1 (Rural)	U6L3M	\$ 1,138.51	None	None	
		MDF to RT Subloop Charge-DS3 Zone 2 (Suburban)	U6L3M	\$ 1,102.43	None	None	
		MDF to RT Subloop Charge-DS3 Zone 3 (Urban)	U6L3M	\$ 848.82	None	None	
Sub-loop Unbundling Cross Connect		Subloop Cross Connect 2-Wire Analog Central Office Originating	UKCU2	None	\$ 342.63	\$ 131.18	
		Subloop Cross Connect 2-Wire Analog Non-Central Office Originating	UKCV2	None	\$ 448.78	\$ 170.20	
		Subloop Cross Connect 4-Wire Analog Central Office Originating	UKCU4	None	\$ 344.20	\$ 132.73	
		Subloop Cross Connect 4-Wire Analog Non-Central Office Originating	UKCV4	None	\$ 450.33	\$ 171.77	
		Subloop Cross Connect 2-Wire DSL Central Office Originating	UKCY2	None	\$ 342.63	\$ 131.18	
		Subloop Cross Connect 2-Wire DSL Non-Central Office Originating	UKCZ2	None	\$ 448.78	\$ 170.20	
		Subloop Cross Connect 4-Wire DSL Central Office Originating	UKCY4	None	\$ 344.20	\$ 132.73	
		Subloop Cross Connect 4-Wire DSL Non-Central Office Originating	UKCZ4	None	\$ 450.57	\$ 171.77	
		Subloop Cross Connect 2-Wire Digital (ISDN) Central Office Originating	UKC12	None	\$ 386.36	\$ 146.24	
		Subloop Cross Connect DS1 Central Office Originating	UKC3X	None	\$ 1,067.34	\$ 537.05	
		Subloop Cross Connect DS3 Central Office Originating	UKC5X	None	\$ 1,222.30	\$ 590.27	

SOUTHWESTERN BELL TELEPHONE L.P.  
 OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA

JOINT APPLICATION OF SOUTHWESTERN )  
BELL TELEPHONE, L.P., D/B/A SBC ) CAUSE NO. PUD 200400338  
OKLAHOMA AND COX OKLAHOMA )  
TELECOM, L.L.C. SEEKING APPROVAL OF AN )  
AMENDMENT TO THE INTERCONNECTION )  
AGREEMENT BETWEEN THE PARTIES )  
CONFORMING TO ORDER NO. 491645. ) ORDER NO. 494596

JAS  
JRS

ORDER APPROVING AMENDMENT TO INTERCONNECTION AGREEMENT  
CONFORMING TO COMMISSION ORDER 491645

HEARING: August 19, 2004  
Before Maribeth D. Snapp, Administrative Law Judge

APPEARANCES: Mary Marks Jenkins and John W. Gray, Jr.  
Attorneys for Southwestern Bell Telephone, L.P., d/b/a SBC  
Oklahoma  
Michael G. Harris and Katy Boren  
Attorneys for Cox Oklahoma Telecom, L.L.C.  
Jennifer L. Barger, Assistant General Counsel  
Public Utility Division, Oklahoma Corporation Commission

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma (the "Commission") being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action the joint application of Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma ("SBC-OK") and Cox Oklahoma Telcom, L.L.C. ("Cox")(collectively, "the Parties" or "the Joint Applicants") for approval of an amendment (the "Amendment") to the interconnection agreement between them. The Amendment conforms to the Commission Order No. 491645 in Cause No. PUD 200300157.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 24, 2003, Cox filed an Application in Cause No. PUD 200300157 pursuant to the Telecommunications Act of 1996 and OAC 165:55-17, requesting the Commission arbitrate open issues concerning certain unbundled network elements consisting of the wiring in Multiple Tenant Environments, between the SBC-OK terminal (normally located outside each apartment and office building) and the first jack within each tenant customer's premise. Cause No. PUD 200300157 was heard by the Commission-appointed Arbitrator, Jacqueline T. Miller on February 11 through 13, 2004. On April 2, 2004, the Arbitrator issued her Report and Recommendation that Cox timely appealed. The appeal was heard before the Commission *En Banc* on May 4, 2004. On June 28, 2004, the Commission issued Order No. 491645, Final Order Adopting and Modifying the Arbitrator's Report.

The entirety of the record in Cause No. PUD 200300157, including, but not limited to, all pleadings, orders, reports, testimony, exhibits, transcripts, and other documents, materials, or information on file in said cause, is incorporated into, and made a part of, the record in this cause.

Commission Order 491645 directed the Parties to submit to the Commission for approval an amendment conforming to Order 491645.

Pursuant to Commission Order 491645, on July 30, 2004, SBC-OK and Cox filed an application (the "Joint Application") in this cause seeking approval of the Amendment to Agreement conforming to Order No. 491645.

In the Joint Application, and at all other relevant times, the parties stated that by submitting the Joint Application in this cause, and seeking approval of the Amendment, neither Party waives any right, including a right derived from a change of law, and both parties expressly reserve all rights, to challenge, object to, appeal, seek review of, or stay, any order approving the Amendment sought to be approved in the Joint Application, and all rulings in, or related to, Commission Cause No. PUD 200300157, including, but not limited to, the terms, conditions, and rates approved in Commission Order 491645.

The Public Utility Division has reviewed the Joint Application and concurs that the Amendment presented here conforms to Order 491645.

The Commission finds that it has jurisdiction over the above-entitled cause pursuant to Article IX, § 18 of the Oklahoma Constitution, 17 O.S. 2001 § 131, *et seq.*, OAC 165:55-17, and 47 U.S.C. § 252. Further, the Commission finds that the Joint Application was duly filed in compliance with the rules of the Commission, that proper notice was issued, and that the signed Amendment submitted by the Parties in this cause conforms to Commission Order 491645 in all respects. Further, the Commission finds that the Amendment meets the requirements of 47 U.S.C. §252 and the requirements of OAC 165:55-17 and should be approved.

ORDER

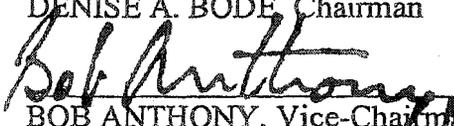
IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the Amendment to the interconnection agreement between Southwestern Bell Telephone, L.P., d/b/a SBC Oklahoma, and Cox Oklahoma Telecom, L.L.C., which conforms to Commission Order No. 491645, as submitted herein, is hereby approved.

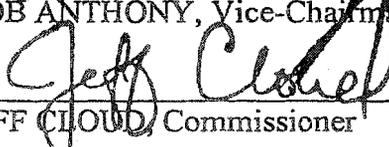
~~IT IS FURTHER THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the entirety of the record in Cause No. PUD 200300157, including, but not limited to, all pleadings, orders, reports, testimony, exhibits, transcripts, and other documents, materials, or information on file in said cause, is incorporated into and made a part of the record in this cause.~~

IT IS FURTHER THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that all of the findings of the Commission are hereby adopted.

CORPORATION COMMISSION OF OKLAHOMA

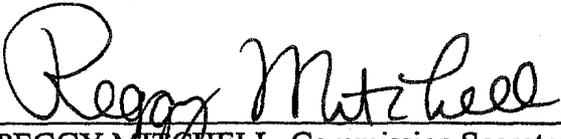
\_\_\_\_\_  
DENISE A. BODE, Chairman

  
\_\_\_\_\_  
BOB ANTHONY, Vice-Chairman

  
\_\_\_\_\_  
JEFF CLOUD, Commissioner

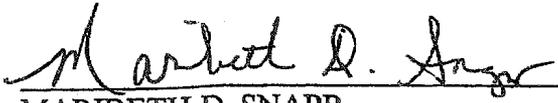
Done and performed this 7 day of Sept, 2004.

By Order of the Commission:

  
\_\_\_\_\_  
PEGGY MITCHELL, Commission Secretary

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

The foregoing Findings and Order are the Report and Recommendations of the Administrative Law Judge.

  
\_\_\_\_\_  
MARIBETH D. SNAPP  
Administrative Law Judge

9-1-04  
\_\_\_\_\_  
Date