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March 26, 2002

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to Declare Switching an Unrestricted Unbundled Network Element*
Docket No. 02-00207

Dear Mr. Waddell:

BellSouth is in receipt of the Petitioners' Response to BellSouth's Reply which was filed on March 14, 2002. Once again, Petitioners have raised new arguments and BellSouth respectfully requests that a schedule be set for further briefing to address these new matters.

Enclosed are the original and thirteen copies of BellSouth's Notice of Supplemental Authority. Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JP/jej

Enclosure

439613

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to Declare Switching an Unrestricted Unbundled Network Element*

Docket No. 02-00207

NOTICE OF SUPPLEMENTAL AUTHORITY

BellSouth ("BellSouth") files this Notice of Supplemental Authority and respectfully shows the Authority as follows.

In its filing dated March 14, 2002, Petitioners in this docket reference a March 6 Recommendation of the Staff of the Texas Public Utility Commission. The reference in the filing by Petitioners suggests that this Authority supports its position. BellSouth attaches to this filing a complete copy of the Staff recommendation, which clearly demonstrates that the Texas Public Utility Commission Staff recommendation does not recommend departure from the FCC rule regarding the availability of the UNE platform in the top 50 MSAs. Rather, as demonstrated from the Staff recommendation attached, that recommendation was based upon the fact that the ILEC serving that market had not made EELs available, which is a prerequisite to the FCC exception. (*See* Staff Matrix at Issue 8, pg. 1 of 17). Moreover, the Staff Recommendation clearly discusses the manner in which the ILEC could invoke the FCC carve out by making EELs available.

BellSouth also attaches the decision of the Missouri Public Service Commission on the same issue in which the Commission of that state found that the relief sought by Petitioners in this case was not warranted. (*See* Arbitration Order Issue 8, pg. 17).

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

[X] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

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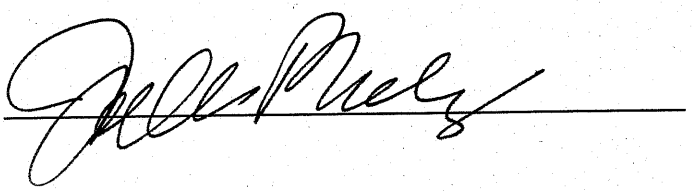

OPEN MEETING COVER SHEET

MEETING DATE:	03/06/02
DATE DELIVERED:	03/06/02
AGENDA ITEM NO.:	14
CAPTION:	Docket 24542 – Petition of MCImetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE Platform Coalition, McLeod USA Telecommunication Services, Inc. and AT&T Communications of Texas, LP for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996.
ACTION REQUESTED:	Discussion and possible action

Distribution List:
Commissioners' Office (8)
Adib, Parviz
Featherston, David
Hinkle, Martha
Journeay, Stephen
Lanford, Lane
Mueller, Paula
Durso, Susan
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Totten, Jess
Whittington, Pam
Central Records

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DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
8	Are there any exceptions in Texas to the treatment of unbundled local switching as a UNE?	**No.** Although the FCC has created an exception for certain customers in certain markets, the exception only applies if and when the ILEC provides non-discriminatory cost-based access to the enhanced extended link (EEL) throughout zone 1. In Texas, SWBT has not provided the EEL as required. Moreover, the assurance of market certainty requires that the Commission oversee implementation of the EEL to ensure that the EEL is properly available, and that CLECs have an adequate opportunity to transition to market based pricing or to seek alternative providers of local switching. Therefore, if and when SWBT desires to invoke an FCC carve out or exception to treating LS as a UNE, SWBT has the burden of initiating a proceeding before the Commission for that purpose to allow for Commission oversight of EEL transition and evaluation of applicability of desired carve out or exception.			
8A	Is there competitive merit, and is it in the public interest, for local switching to be a network element in all parts of Texas?	**Yes.** PURA allows the Commission to unbundle elements **in addition to** the unbundling required by Section 60.021 if it is in the public interest and there is competitive merit to do so. Staff finds continued availability of UNE-P and all of the components of the platform (including LS) will bring the immediate benefit of customer choice in service providers as well as in service packaging to a larger geographic ubiquitous segment of the population. Additionally, there are operational and economic barriers (i.e., lack of electronic OSS) to			

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		self-provisioning or using non-SWBT LS. SWBT's argument that the availability of UNE-P crowds out investment in the analog network is without merit. Duplication of the legacy analog network would be wasteful of limited industry capital and is not in the public interest. Staff believes that the presence of competitive market force will provide better guidance and serve as a stronger incentive for carriers to make prudent investment decisions regarding the type of technologies to be deployed.			
24	Is the Directory Assistant database a UNE?	**Yes.** SWBT should be required to provide the DALI database as a UNE. FCC states in the UNE Remand Order (paragraphs 401-403) that all call-related databases must be unbundled. DALI fits the definition of a call-related database from the Local Competition 1st report and order.	25, 25a, 31, 36, 38, 39		
25	Is SWBT required to provide Operator Services (OS) and Directory Assistance (DA) as UNEs and are CLECs impaired without access to OS and DA?	**Yes.** FCC stated in UNE Remand Order that OS and DA are not required to be available as network elements if the ILEC provides customized routing. SWBT does not currently provide customized routing in a manner requested by MCI, as required by UNE remand order. Moreover, the method used by SWBT to provide customized routing is very costly and the CLECs would be impaired if OS and DA were not provided as UNEs.	24, 25a, 31, 36, 38, 39		
25A	Is there competitive merit, and is it in the public interest, for OS and DA to	**Yes.** SWBT is the primary provider of OS and DA in Texas, and therefore, there is competitive merit and it is in the public interest for SWBT to	24, 25, 31, 36, 38, 39		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	be available as network elements?	continue to provide OS and DA as UNEs.			
31	Should SWBT be required to deliver emergency messages to end users that have nonpublished numbers for a CLEC at TELRIC rates?	**YES.** SWBT does not provide the nonpublished number to any other carriers, even in emergency circumstances. MCIm cannot provide this service itself. A TELRIC rate is reasonable because it duly compensates SWBT for the cost incurred.	24, 25, 25a, 36, 38, 39		
36	Should SWBT be required to provide emergency public agency numbers to CLECs?	**YES.** SWBT should continue to provide this information via electronic feed to CLECs. The public interest is served by ensuring the availability and consistency of these numbers to CLECs.	24, 25, 25a, 31, 38, 39		
38	What is the appropriate method for determining the cost for call branding?	OS/DA call branding is a UNE and its costs should, therefore, be based on TELRIC rates.	24, 25, 25a, 31, 36, 39		
39	Should SWBT be required to provide emergency non-published telephone notification for interLATA toll numbers?	**YES.** SWBT should continue to provide the service, but not in the manner described in the CLEC Handbook. In interactions between CLECs and the ILEC, this is not an interLATA service, contrary to SWBT's argument, although it is currently priced in the access tariff for IXCs. As in DPL Issue No. 31, MCIm cannot provide this service itself. Cost-based pricing is appropriate.	24, 25, 25a, 31, 36, 38		
3	Should SWBT be required to combine UNEs that it currently	**YES.** SWBT is required to combine UNEs that are not presently physically combined until such time as it provides non-discriminatory access to	5, 6, 7, 14		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	combines if the requested combination is not already physically combined?	such UNEs so as to allow MCIm to do its own combining. Such access can neither be predicated on collocation nor result in a degradation of service quality when compared with SWBT's combining of UNEs for itself. SWBT has failed to prove in this proceeding that it provides the non-discriminatory access necessary to allow CLECs to do their own combining of presently unconnected UNEs. Moreover, the assurance of market certainty requires that the Commission oversee SWBT's implementation of the access necessary to allow CLECs to combine presently unconnected UNEs. Therefore, if and when SWBT desires to discontinue combining UNEs SWBT has the burden of initiating a proceeding before the Commission for the purpose of satisfying the Commission that it has provided the required access and to allow for Commission oversight.			
5	Should multiplexing be available on a stand-alone basis?	**OPTION 1: YES.** The cost of collocation and the necessity of collocating multiple multiplexers in multiple COs indicates that CLECs would be impaired without the ability to purchase multiplexers on a stand-alone basis as a UNE. **OPTION 2: NO.** The FCC has not classified multiplexing as a stand-alone UNE. However, multiplexing is a feature/function/capability of either the loop or transport transmission facility and must be provided as part of that UNE.	3, 6, 7, 14		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	Should multiplexing combined with UNEs be priced at TELRIC?	**YES.** Regardless of whether multiplexing is purchased as a stand-alone UNE or as a feature/function/capability of the loop, it should be provided at TELRIC. The current MCIm language is acceptable.			
6	Should Unbundled Dedicated Transport and/or common transport be provided as a UNE between a CLEC and a third party?	**NO.** UDT should continue to be provided as it currently is by SWBT, based on the requirements specified in the UNE Remand Order. If the third party is a carrier, then the existing language would require SWBT to continue to provide the UDT as a UNE.	3, 5, 7, 14		
7	Is SWBT obligated to provide MCIm with § 14 of the UNE Attachment to the T2A?	**NO.** However, since several subsections of § 14 are the subject of other DPL issues, a modified version of § 14 will likely be included in the parties' IA. Staff will incorporate its recommendations on these related DPL issues into a modified § 14, and make such changes as are needed to conform those subsections with the ones in § 14 that the parties did not specifically address either here or elsewhere.	3, 5, 6, 14		
14	In accordance with the FCC's rules, how is SWBT obligated to provide Digital Cross-Connect Systems (DCS)?	Staff recommends adopting MCIm's proposal to incorporate, without change, the language from the MCI Worldcom IA regarding DCS, with the exception of final pricing which shall be determined in a subsequent cost proceeding.	3, 5, 6, 7		
10	Should the Commission re-evaluate UNE loop costs & rates?	**YES.** Evidence is compelling that enough significant changes have been made (i.e., PRONTO) in SWBT's network to merit, at a			

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	costs & rates?	minimum, an investigation regarding the impact on loop costs by new technology.			
10	Should the Commission apply new loop rates being developed in Dockets 22168 & 22469 to this Docket?	**NO.** First, costing/pricing decisions are deferred to a subsequent cost proceeding. Second, the cost information in the other dockets is neither completed, nor directly applicable to the costs at issue in this docket. Appropriate cost studies should be developed and/or refuted by parties specifically for this docket.			
11	Should the rate structure for Unbundled Local Switching (ULS) contain a usage sensitive component?	**YES.** Evidence regarding cost causation is compelling that there should be some level of usage sensitive rate. Moreover, a flat-rated structure, absent further refinement of zones, would likely result in subsidization of larger city customers by smaller communities' customers.			
11	What is the appropriate rate for ULS?	**DEFER.** Cost/rate issues to be handled in subsequent cost proceeding.			
12	Should there be a rate for Daily Usage Feed (DUF)?	**YES.** Inadequately refuted evidence from SWBT that there are distinct functions, therefore distinct, incremental costs associated with the DUF process. A subsequent cost proceeding, with appropriate cost study, will give SWBT opportunity to provide more detailed evidence, and CLECs opportunity to refute this evidence.			
12	What should the rate for DUF be?	**Defer.** Cost/rate issues to be handled in a subsequent cost proceeding. Rate should stay the same in the interim. This also applies to Sage's sub-issue (for which there was not a DPL question) regarding Sage not wanting to receive or			

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
		pay for certain DUF records.			
40	Who should be required to collect SWBT incollect charges for CLEC-customer accepted third-party calls? (MCIm)	(1) **In the event that CLEC and SWBT (payphone) are unable to enter into a billing and collection agreement outside of an ICA, SWBT is required to direct bill recipients of third-party calls.** CLECs are required to provide the billing address and the call detail information to enable SWBT to bill the customer since SWBT, as the payphone provider, would not otherwise have access. Further, the CLEC is obligated in cases of non-payment, upon notification by SWBT as the payphone provider, to implement call blocking by SWBT (wholesale). **OR** (2) **Generally use MCIm's language** as baseline, with considerable revision			
41	Same as 40 (Sage)	**Because Sage has already entered into an agreement to bill and collect for SWBT, it should continue to do so, but should not be responsible for uncollectibles.** Certain, but not all, of Sage's proposals are reasonable to "flesh out" the existing contract. Still, the optimal solution is for SWBT to direct bill.			
42	Should SWBT recover costs associated with call blocking where AIN is	Yes, based upon the Mega-Arb, SWBT should recover from MCIm the non-recurring cost of $0.05 associated with call blocking in end offices			

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	deployed? And what is the responsibility for failure of call blocking?	where AIN is deployed. Further, a CLEC should not be responsible for charges incurred in the event that SWBT's call blocking fails.			
13	Should the LIDB definition be changed in recognition of all functions/services it performs?	**YES.** The definition should be expanded to describe all of the actual functions performed by the LIDB. This ruling does not affect the costing, pricing, form of access, or use of the information contained therein.	16		
15	Should SWBT be required to provide bulk/batch downloads of any or all of the data contained in the LIDB, including CNAM?	**NO.** FCC rules expressly provide CLECs with access to all call-related databases (for purposes of switch query and database response) via physical access at the signal transfer point. SWBT and all CLECs use and access information in these databases in the same manner.	17		
16	Should the agreement change the term "data owner" to "account owner," use either the NPA or RAO line designation/identification, and/or replace the term "validation" with the term "LIDB"?	**YES.** Language should be changed to reflect the use of the following terms: LIDB- instead of validation, account owner-instead of data owner, and use the NPA designation. There is no disagreement re the terms LIDB and account owner. The NPA/RAO designation is more appropriate than just RAO since specific calling card numbers have different NPAs, but share the same RAO. The RAO-only designation would lead to end-user billing errors.	13		
17	Are existing limitations re proprietary information contained in call-related databases appropriate?	**YES.** Existing limitations are appropriate in light of switch query access and database response through signal transfer point. Changes may be necessary if bulk download of CNAM data were required.	15, 18		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
		required.			
18	Should the local use only restriction be retained with regards to LIDB data?	**YES.** LIDB queries emanating from toll carriers are priced at non-TELRIC based rates, while local-related queries are priced at TELRIC rates. If the local use restriction is eliminated, MCIm could then obtain all queries at TELRIC rates; this is contrary to the status quo. This recommendation is also consistent with the proposition that the FTA did not over turn existing access charge schemes which established non-TELRIC based access charges in the post FTA era.	17, 45		
19	Should specific liability language regarding call-related databases be added to the Interconnection Agreement beyond those already contained in the General Terms and Conditions Attachment?	**NO.** The GT&Cs provide reasonable liability language for LIDB/CNAM. SWBT's proposed language could allow it to avoid liability for LIDB/CNAM errors for which it bears responsibility.	13, 15, 16, 17, 18, 20, 21, 22, 23, 26		
20	Should the Local Service Request (LSR) language for LIDB updates be added to reflect network changes?	**YES.** Language should be added to reflect completion of SWBT's T2A commitment re: the LSR interface (for LIDB administration) that is now in place.	51		
21	Should MCIm be responsible for the accuracy of its data stored in SWBT's LIDB?	**YES.** SWBT explained that when blocking has been ordered for a certain telephone number, it is critical that MCIm provide the proper blocking information to SWBT so that the LIDB can function in connection with blocking collect calls	13, 17, 18, 26, 40, 42		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
		or other ABS calls from terminating to an MCIm end-user. It must be MCIm's responsibility to provide accurate LIDB data concerning blocking of ABS calls.			
22	Is SWBT required to provide MCIm with access to its proprietary AIN features?	YES. UNE Remand Order provides that AIN service software is proprietary and exempt from unbundling requirements, only after the ILEC provides CLECs with fully functional access to SCE and SMS in a manner that allows CLECs to configure their own AIN services. In this proceeding, SWBT has not proven that such access is available. Moreover, the assurance of market certainty requires Commission oversight to ensure that such access is properly available, and that CLECs have an adequate opportunity to configure their own AIN services. Therefore, if and when SWBT seeks to treat its AIN service software as proprietary and exempt from unbundling requirements, SWBT has the burden of initiating a proceeding before the Commission for that purpose to allow for Commission oversight. In addition, SWBT must show that such access is operational and will not impair the network.	23		
23	Should SWBT be required to provide MCIm UNE-P customers access to AIN based features and functions?	YES. See #22.	22		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
26	Since the originating jurisdiction of all types of LIDB queries are indeterminable, should query rates be based upon Texas-specific cost, 5-state weighted average UNE rates, or the lowest of the 5-state UNE rates?	**Texas-specific cost** is the status quo and it should be maintained because 1) MCIm opposes the 5-state weighted proposal, and 2) the lowest of the low proposal is one-sided and fails to give any deference to other states rate setting authority.			
34	Should SWBT's Disclaimer of Warranty clause be adopted?	**NO.** SWBT's proposed language could allow it to avoid liability for LIDB/CNAM errors for which it bears responsibility. If SWBT modified its language to address this concern, such language might be acceptable.	19, 56		
45	Is MCIm entitled to access to SWBT's databases at TELRIC rates when acting as an IXC?	**NO.** This is not a use restriction as portrayed by MCIm. It's a pricing issue. MCIm seeks to obtain toll-related LIDB queries at TELRIC rates, instead of the applicable tariff rate.	18		
56	Should the Directory Listing Information (DLI) Appendix be changed from the Mega-Arb language to include breach of contract language specific to violations of the DLI provisions?	**NO.** Although there may a legitimate basis for treating a violation of the DLI provisions differently from other violations of the ICA (i.e., to protect SWBT's interest in the DLI), SWBT has not yet persuaded Staff of the need for breach of contract language specific to the DLI. MCIm has agreed that SWBT can stop sending updates and MCIm should have 30 days to cure non-monetary breaches.	19, 34		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
2	Should SWBT be required to maintain obsolete equipment or systems for MCIm when SWBT upgrades its network?	Staff recommends the establishment of a change management process to allow CLECs input and reasonable time in which to migrate to new equipment. During the change management process, CLECs may raise operational questions including, but not limited to, versioning. The process Staff proposes would not obligate SWBT to maintain obsolete equipment during network upgrade. Instead, SWBT would be required both to provide advance notice to CLECs of all planned upgrades to its network and to ensure that its network planning and design are coordinated with other carriers so as to facilitate effective and efficient interconnection of the networks. Therefore, Staff recommends adoption of MCIm's proposed contract language with modification. Specifically, CLECs should be able to request SWBT to maintain certain characteristics of affected elements up to twice the time that SWBT is required to provide advanced notice. For example, where SWBT is required to provide six months notice to MCIm, pursuant to Section 2.17.3, MCIm may submit a request within thirty days of its receipt of the required notice of planned modification, to maintain the characteristics of the affected elements for up to 12 months.			

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
9	Should SWBT's proposed language regarding inter- and intra-LATA toll call flows, ULS ports, and optional EAS be adopted?	**NO.** SWBT has proposed changes to provisions that reflect Commission policy, but has not provided any evidence or persuasive argument in support of its position.	37		
37	Should SWBT be obligated to provide retail intraLATA toll to MCIm's customers? If SWBT and the CLEC do not enter into a billing and collection agreement, must SWBT bill customers directly?	If SWBT is required to provide intra-LATA services, it must provide the service non-discriminatorily pursuant to its tariff, and the question is, therefore, outside the scope of the ICA. **YES.**	9		
30	Should SWBT's Bona Fide Request process and associated language replace the Special Request section?	**YES, GENERALLY.** MCIm agreed to use SWBT's BFR process language as outlined in SWBT's CLEC online handbook, as well as SWBT's 5-page BFR/interconnection or network element request application form for Special Requests. In addition, SWBT's BFR language appears to provide a reasonable procedure for cost recovery. However, SWBT's 13-State language is not proper in a Texas ICA and SWBT's treatment of OS/DA is inconsistent with staff's recommendation.	25, 25a, 44, 49, 57		
32	Should SWBT's terms and conditions for billing and collections & deposits be adopted?	**OPTION 1: NO.** The parties agree that the provisions involving deposits do not apply to MCIm. In addition, the evidence is that the current billing due date provisions are workable for these	33		

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	be adopted?	parties. **OPTION 2: YES.** Although many of SWBT's proposed provisions would not apply to MCIm, staff is cognizant of the likely reliance of other parties on this ICA. Therefore, SWBT's proposed language should be adopted to provide for procedures applicable to parties who have not established a record of financial responsibility.			
33	Which terms should be adopted for billing disputes: the terms adopted in the Mega Arbitration, or the terms proposed here by SWBT?	**THE MEGA-ARB TERMS.** Although SWBT is correct that MCIm has opened the door to negotiating the terms for billing disputes by electing to reject the legitimately related terms, SWBT's terms appear to require enormous detail regarding billing disputes over a very short period of time (i.e. 59 days). In addition, the payment or escrow requirement could devastate a small CLEC.	32		
43	Can MCIm opt into section 60 of the GT&Cs of the WorldCom Agreement? Is SWBT's proposed limitation to the separate affiliate language proper?	**YES.** MCIm may opt into section 60 of the GT&C because section 60 is not legitimately related to any provision being arbitrated. **NO.** Even if MCIm had opened the door to arbitrating this provision, SWBT's obligation to comply with section 272 is not contract-based and cannot be defeated by inclusion of SWBT's proposed language. Moreover, the language proposed by SWBT does not appear logically related to and would not materially alter the requirements of section 60.			

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
51	To the extent that SWBT is not currently recovering its costs related to LIDB query and LIDB database modifications, should SWBT be allowed to recover those costs?	**YES.** The amount is to be determined in a subsequent cost proceeding.	43		
46	Should Line Class Codes (LCC) be available in conjunction with the Local Switching UNE and included in the cost/price?	**YES.** Reasoning from previous arbitrations is still valid. LCCs are a legitimate "feature, function or capability" of the switch, unless it is a new LCC custom configured in response to a CLEC request. Such a request would be made through the BFR process and would be cost-based.			
47	Are Input/Output ports part of the features, functions, and capabilities of the local switching unbundled network element? Is the cost of the I/O port included in the cost of the line card?	**YES.** Because LS is unbundled, so are its FF&Cs. The I/O ports are FF&Cs of the LS because, although they are not a part of all switches, they are physically a part of the switches to which they are applied. The Commission has previously determined that the price of voice-mail and SMDI I/O ports is included in the ULS feature additive. If the I/O port is requested for something other than voice-mail or SMDI, the CLEC may acquire such a port under the BFR process. To the extent a party challenges the rates, it may adduce evidence in a subsequent cost proceeding.			
50	Should language regarding MLT approved	**YES.** The language regarding MLT reaffirms the Commission's findings from the Mega-Arbitration			

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
	by the Commission in the Mega Arbitration be retained as proposed by MCIm?	and subsequent proceedings that SWBT must provide CLECs with access to mechanized loop tests. Further, it was revealed that maintenance costs are included in the cost factors that the Commission used to determine the rates for any associated UNE(s).			
48	Should 13-state language regarding the offering of LVAS interfaces for UNE switch ports be included in this agreement?	**NO.** The state-specific differences in data administration are irrelevant to this Texas arbitration.	49, 57		
49	Should the language regarding Interactive Interfaces be modified by SWBT to include references to Pacific Bell, Ameritech and SNET?	**NO.** The Commission is without authority to interpret the laws of other states.	48, 57		
57	Should SBC-SWBT's 13-state language be included in this agreement, even where it applies only outside Texas?	**NO.** The Language proposed by SWBT does not affect conduct of the parties in Texas. To the extent it purports to govern the parties' conduct outside of Texas, the Commission does have the jurisdiction or responsibility to determine or enforce such provisions.	48, 49		
1	SETTLED BY PARTIES				

DPL NO.	DESCRIPTION OF ISSUE	STAFF RECOMMENDATION	RELATED TO AND/OR DEPENDENT ON	CONCUR	COMMENTS
4	WITHDRAWN				
27	WITHDRAWN				
28	WITHDRAWN				
29	SETTLED BY PARTIES				
35	WITHDRAWN				
44	SETTLED BY PARTIES				
52	SETTLED BY PARTIES				
53	SETTLED BY PARTIES				
54	SETTLED BY PARTIES				
55	SETTLED BY PARTIES				

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Petition of MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc., for Arbitration of an Interconnection Agreement With Southwestern Bell Telephone Company Under the Telecommunications Act of 1996.	))))))	**Case No. TO-2002-222**

ARBITRATION ORDER

Issue Date: **February 28, 2002**

Effective Date: **February 28, 2002**

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition of MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc., for Arbitration of an Interconnection Agreement With Southwestern Bell Telephone Company Under the Telecommunications Act of 1996.	))))))	**Case No. TO-2002-222**

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APPEARANCES

Carl J. Lumley and **Leland B. Curtis**, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for MCImetro Access Transmission Services, LLC; Brooks Fiber Communications of Missouri, Inc.; and MCI WorldCom Communications, Inc.

Stephen F. Morris, Attorney at Law, WorldCom Communications, Inc., 701 Brazos, Suite 600, Austin, Texas 78701, for WorldCom Communications, Inc.

Paul G. Lane, General Counsel-Missouri, and **Mimi B. MacDonald**, Attorney, Southwestern Bell Telephone Company, One Bell Center, Room 3520, St. Louis, Missouri 63101,
and
L. Kirk Kridner, Senior Counsel, SBC Communications, Inc., 175 East Houston Street, 4th Floor, San Antonio, Texas 78205, for Southwestern Bell Telephone Company.

Bruce H. Bates, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Vicky Ruth, Senior Regulatory Law Judge.**

ARBITRATION ORDER

Procedural History

On June 1, 2001, MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. (hereinafter collectively referred to as WCOM) and Southwestern Bell Telephone Company (now known as Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company) began negotiations to establish an interconnection agreement between WCOM and SWBT. On November 5, 2001, WCOM filed its Petition for Arbitration of Interconnection Agreement with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996. Attached to WCOM's Petition was WCOM's Initial Decision Point List.

The Commission issued its Notice of Petition for Arbitration and Order Setting Prehearing Conference on November 19, 2001. The Commission made SWBT a party, ordered that the Notice be served on SWBT, and directed SWBT to respond to the Petition by November 30, 2001. The Commission further set a prehearing conference for December 3, 2001, and directed that the parties prepare and jointly file a proposed procedural schedule by December 10, 2001. That deadline was later extended to December 14, 2001.

On November 30, 2001, SWBT filed its Motion to Dismiss WCOM's Petition. That same day, SWBT filed its Response to WCOM's Petition. On December 7, 2001, WCOM filed its Suggestions Opposing SWBT's Motion to Dismiss. On December 10, 2001, the Staff of the Missouri Public Service Commission filed its Response in Opposition to SWBT's Motion to Dismiss. On December 13, 2001, SWBT filed its Reply to WCOM's Suggestions Opposing SWBT's Motion to Dismiss. On December 17, 2001, WCOM filed its Response to SWBT's Reply Regarding WCOM's Opposition to Motion to Dismiss. On December 20, 2001, WCOM filed its Revised Decision Point List, adding Issues 49 and 50.

Pursuant to an agreement between WCOM, SWBT, and Staff, WCOM and SWBT filed Direct Testimony on December 18, 2001.[1] On December 21, 2001, the

Commission entered its Order Regarding Arbitration Procedures and Adopting Procedural Schedule, in which the Commission adopted procedural rules for the conduct of the arbitration and set the case schedule. The Commission also clarified Staff's role in the case.

On January 3, 2002, SWBT filed its Motion to Strike Issues 49 and 50 from WCOM's Revised Decision Point List. That same day, the Commission issued its Order Denying Motion to Dismiss. On January 4, 2002, the parties filed a Joint Motion to Establish Witness Schedule.

Pursuant to the Procedural Order, WCOM, SWBT and Staff filed Rebuttal Testimony on January 7, 2002.[2] Additionally, WCOM and SWBT filed a Joint Decision Point List with Position Statements on January 8, 2002. On January 9, 2002, WCOM and SWBT filed their Cross Examination Times Estimates. That same day, WCOM and SWBT filed a Joint Motion to Correct Decision Point List. Also on January 9, 2002, the Commission issued its Order Directing Filing, ordering Staff to file a supplemental pleading further explaining its position with regard to Attachment 26 of the Missouri 271 Interconnection Agreement (M2A) and Staff's position that UNE rates should be determined separately, as opposed to being taken as a section in their entirety.

Finally, on January 9, 2002, WCOM filed its Response to SWBT's Motion to Strike Issues 49 and 50. On January 11, 2002, Staff filed its Evaluation of Parties Positions. That same day, the Commission issued its Order Regarding Witness Schedule, allowing WCOM and SWBT to cross-examine witnesses pursuant to the estimates that they filed in their January 9, 2002 pleadings.[3] Staff was limited to ten minutes of cross-examination per witness. An evidentiary hearing was held from January 14-18, 2002. On January 14, 2002, the Commission denied SWBT's Motion to Strike Issues 49 and 50.

On January 31, 2002, WCOM, SWBT and Staff filed their Initial Briefs. On the same date, Staff filed the Substitute Sheets for Joint Decision Point List and then filed Staff Modification to Substitute Sheets.

On February 6, 2002, WCOM, SWBT and Staff filed their Proposed Findings of Fact and Conclusions of Law. WCOM and SWBT filed their Reply Briefs on February 11, 2002. On that date, Staff filed a statement indicating that it would not be filing a reply brief. This case has an Arbitration Deadline of March 1, 2002.

The Protective Order

During the prehearing conference held on December 3, 2001, WCOM requested a protective

order. The Commission issued its standard protective order on December 5.

The Decision Point List (DPL) and Late-filed Exhibit

WCOM and SWBT each filed issue lists with their initial pleadings. WCOM filed a revised list after SWBT's list was filed, at the direction of the Commission. The parties filed a joint DPL prior to the hearing, again at the direction of the Commission. The parties filed a final DPL on January 31, 2002, at the direction of the Commission, which is hereby received into the record as Late-filed Exhibit 53. As ordered, the final DPL includes Staff's final recommendations, as modified by a separate Staff pleading filed on January 31, 2002.

The Arbitration Hearing

The Commission conducted an evidentiary hearing on January 14, 15, 16, and 17, 2002, at its offices in Jefferson City, Missouri. Each party was represented by counsel and was permitted to offer the testimony of witnesses and other evidence. Cross-examination was permitted, although it was subject to time limitations set by the Commission.

Posthearing Proceedings

The parties filed their initial briefs on January 31, 2002, pursuant to the procedural schedule. On February 6, the parties filed their proposed findings of fact and conclusions of law. On February 11, the parties filed their reply briefs.

Discussion

As indicated above, the parties submitted the specific open issues requiring resolution in the form of a Decision Point List (DPL). This is a voluminous document containing forty-two specific disputed points requiring resolution by the Commission. The parties reorganized the issues into the following six topical categories in their Briefs:

1. General Contract Language Issues (25, 44, 29, 30, 18, 27 and 43)
2. UNEs (2-3, 5-7, 45, 8-9, 14, 21-2, 28, 35-38, 48)
3. LIDB/CNAM (13, 15-17, 33, 19-20)
4. DAL (24, 26, 47)
5. OS/DA (49)

6. Rate Issues (10-12, 23, 31, 46, 50)

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive.

The Parties

The parties are WCOM and SWBT, which are telecommunications companies. SWBT is a local exchange carrier (LEC) and provides local exchange telecommunications service in Missouri and other states. SWBT and its affiliates also provide long-distance and other telecommunications services. WCOM provides local exchange telecommunications services in Missouri and other states. It is a competitive local exchange carrier (CLEC). WCOM also provides long-distance and other telecommunications services.

Background to the Dispute

The present arbitration must be considered within the larger context of the implementation of the Telecommunications Act of 1996 in Missouri (the Act).

Case No. TO-99-227 and the M2A

On November 20, 1998, SWBT notified the Commission that it intended to seek authority from the FCC to provide interLATA telecommunications services in Missouri under Section 271 of the Act. This provision bars the Bell operating companies (BOCs), such as SWBT, from entering the interLATA long-distance market without prior approval from the FCC. FCC approval is conditioned on its finding that certain statutory measures have been met in the state in question.[4]

Thereafter, the Commission opened Case No. TO-99-227 and held proceedings in order to determine whether it could support SWBT's request for authority to enter the interLATA long-distance market by giving a positive recommendation to the FCC pursuant to Section 271(d)(2)(B) of the Act. That provision requires the FCC to consult with the state commission "to verify the compliance of the Bell operating company with the requirements of subsection (c)." A positive recommendation could be made

only if either the Commission determined that SWBT had entered into a binding interconnection agreement with at least one facilities-based competitor or the Commission approved a statement by SWBT of the terms and conditions upon which it generally offered to provide interconnection and access to UNEs. [5] In either case, the interconnection agreement or statement of terms and conditions was required to satisfy the 14-point checklist at Section 271(c)(2)(B) of the Act.

To meet the 14-point checklist and thereby secure a favorable recommendation from the Commission, SWBT tendered on June 28, 2000, a model interconnection agreement for Commission approval; this agreement is referred to as the M2A. The M2A is modeled upon an agreement negotiated in the course of SWBT's Section 271 proceeding in Texas, the T2A, which has been approved by the FCC.[6] The M2A was further modified after June 28, 2000, in response to comments by parties and interim position statements by the Commission.[7] The M2A includes binding terms for interconnection and for access to UNEs, including UNEs not currently combined in SWBT's network, and for the resale of services.[8]

On March 6, 2001, the Commission determined that the M2A met the 14-point checklist of Section 271, as well as the other requirements of the Act applicable to interconnection agreements.[9] The Commission further determined that the public interest supported SWBT's entry into the interLATA long-distance market in Missouri, so long as the M2A was made available to Missouri CLECs.[10] The M2A incorporates prices from the Commission's arbitration decisions in Case Nos. TO-97-40 and TO-98-115. [11] Three "spinoff dockets" were also initiated in order to determine costs and prices for certain other elements.[12] The results of these cases will be inserted into the M2A when they become available.[13]

SWBT'S Section 271 Application

Having obtained a favorable recommendation from the Missouri Commission, SWBT filed formal applications under Section 271 with the FCC.[14] During the course of those proceedings, SWBT also requested and obtained approval from this Commission to reduce some of the prices set forth in the M2A. [15] The FCC granted the application on November 16, 2001.[16] As a result, SWBT extended the term of the M2A to March 5, 2005.[17]

Resolution of Open Issues

Resolved Issues

The final DPL (Exhibit 53) reflects that issues 1, 4, 32, 34, and 39-42 have been resolved by the

parties and do not need to be decided by the Commission.

General Contract Language Issues

Issue 25: Should SWBT's Bona Fide Request process and associated language replace the Special Request section?

SWBT initially proposed a new "Bona Fide Request (BFR) Process" for WCOM to use in Missouri to obtain new UNEs (or existing types of UNEs where no facilities are in place) from SWBT in the future. In response, WCOM proposed continued use of the "Special Request Process" set forth in the M2A or, in the alternative, the BFR process language contained in SWBT's "CLEC Online Handbook". Staff recommended WCOM's alternative proposal of the BFR process language contained in SWBT's "CLEC Online Handbook". In its Brief, SWBT indicated it did not object to use of the "CLEC Online Handbook". Thus, there is no longer any dispute regarding this issue and the Commission accepts Staff's recommendation to utilize the provisions of the "CLEC Online Handbook".

Issue 44: Should the Commission require a CLEC to include in its interconnection agreement language from SBC's 13-state agreement where the CLEC's agreement applies only to Missouri?

SWBT proposes to include language applicable to other states in various sections throughout the Agreement. WCOM opposes the inclusion of such language. Staff recommends exclusion of such language consistent with the Commission's decision in Case No. TO-2001-455. Staff notes that the 13-state language does not facilitate market entry or the spread of best practices as the FCC intended with the SBC/Ameritech order.[18] Staff agrees with WCOM that the language is confusing and creates an administrative burden to the PSC. Including language that does not apply to Missouri hinders interpretation and administration of the Agreement.

Staff agrees with WCOM that the Agreement should be limited to terms and conditions that apply to Missouri only, and the Commission concurs. The Commission determines that a CLEC should not be required to include in its interconnection agreement language from SBC's 13-state agreement where the CLEC's agreement applies only to Missouri.

Issue 29: Is SWBT obligated to provide a retail intraLATA toll product to WCOM end-users?

WCOM argues that SWBT should be obligated to bill WCOM's intraLATA toll end-users who opt to obtain retail intraLATA service from SWBT. SWBT contends that this issue presumes that SWBT is

obligated and has chosen to provide retail intraLATA toll services to WCOM end-users, but that SWBT has not and does not offer to provide IntraLATA toll to WCOM's local end-user customers. Staff concurs with SWBT's position on the basis that it is unaware of any federal or state statute obligating SWBT to provide a retail intraLATA toll product to WCOM's end-user. This Commission previously determined in Case No. TO-2001-455 that SWBT has no obligation to provide intraLATA toll services to a CLEC's end-user customers and makes the same finding here. The Commission supports SWBT's position on this issue.

Issue 30: What proposed contract language should be used for Alternately Billed Traffic (ABT) in the MCIm agreement?

WCOM and SWBT have proposed competing versions of Attachment 27 to be used in the MCImetro agreement (not the Brooks and MCI WorldCom agreements) to deal with Alternately Billed Traffic (ABT) exchanged between the parties when MCImetro is operating as a reseller or using UNE-Platform.[19] At the hearing, WCOM explained that ABT consists of intraLATA or local phone calls transported by one carrier but billed to the account of a customer served by another carrier, such as collect calls, third-party billed calls, and calling card calls. Thus, the originating carrier rates the call and forwards records to the other carrier for billing. WCOM explained in detail how such traffic is handled between carriers.

MCImetro's proposed Attachment 27 describes in detail the settlement responsibilities and operational responsibilities for ABT that is billed by MCImetro or SWBT. MCImetro's proposed Attachment 27 is completely reciprocal, which is why Staff recommended that the Commission select it over the less balanced approach of SWBT. It also expressly addresses MCImetro's current inability to include ABT charges on its direct invoices. Further, it fairly deals with the issue of all types of uncollectibles in the same manner as LEC/IXC agreements and SBC contract offers in other states so that the party that nets 98.7 percent of the revenues from the traffic bears the risk of nonpayment and the party that is simply providing a billing and collection service in good faith for a nominal fee does not unfairly bear that risk.[20]

WCOM also identified shortcomings of SWBT's proposed Attachment 27 as contrasted with the MCImetro proposal, as follows:

(1) SWBT does not address MCImetro's current inability to include ABT charges on its direct invoices;

(2) SWBT does not clearly define or delineate ABT or the settlement process;

(3) SWBT's proposed Attachment is one-sided and not reciprocal, failing to address ABT sent to SWBT by MCImetro and MCImetro liability and indemnification;

(4) SWBT does not allow recourse for all types of uncollectibles to protect the billing company;

(5) SWBT does not address responsibilities for taxes;

(6) SWBT would not allow MCImetro to follow its own procedures for customer service inquiries or treatment and collection;

(7) SWBT does not address Truth In Billing legal requirements;

(8) SWBT does not address lost data and traffic;

(9) SWBT's proposal contains language that conflicts with other provisions of the Agreement;

(10) SWBT would not allow the purchase of accounts receivable;

(11) SWBT would allow itself to transmit stale records but require MCImetro to meet unattainable short time deadlines;

(12) SWBT does not address audit rights;

(13) SWBT does not address confidentiality or publicity;

(14) SWBT does not address payment due dates;

(15) SWBT proposes unreasonable and unilateral dispute resolution language;

(16) SWBT demands unattainable unilateral performance levels;

(17) SWBT would include higher risk prison traffic without adequate compensation;

(18) SWBT would require MCImetro to block all ABT including that of other carriers when there is a problem only between SWBT and MCImetro;

(19) SWBT would improperly include sweepstakes charges, credit card retail purchases, and cellular charges.

While SWBT indicated a willingness to address some of these issues in its rebuttal testimony, it did not propose a revised Attachment 27.

For the foregoing reasons, the Commission selects WCOM's proposed Attachment 27, except for sections 2.3.10, 5.3.1 and 6.5.2.4 based on Staff's recommendation to delete these sections as unfeasible.

Issues 18, 27, and 43: Should specific liability language be added to the Interconnection Agreement to address call related database information?

Should SWBT's additional limitation of liability language be adopted?

Should the Directory Listing Information (DLI) Appendix include specific Breach of Contract language?

SWBT proposes to utilize specific limitation of liability language in UNE Attachment 6 concerning call-related databases (i.e., LIDB database and associated CNAM information). SWBT's proposed language regarding liability is unnecessary.

As WCOM explained, the General Terms and Conditions of the Agreement, which WCOM adopted from the M2A and which will expressly apply to all parts of the Agreement, already have very broad provisions (i.e., Sections 7.0 *et seq.*, 8.0 *et seq.*, 9.0 *et seq.*, 10.0 *et seq.*, 51.0, 51.1) that more than adequately cover the subjects of limitations on liability, indemnification and breach of contract, making SWBT's proposed changes unnecessary.

Staff agreed with WCOM on these issues and recommended that the Commission reject SWBT's proposed additional language consistent with decisions in prior arbitrations. Staff noted that 7.1.2 of the General Terms and Conditions addresses all instances of negligence or willful misconduct and adequately addresses the liability concerns of both parties. Staff agrees with WCOM that the disclaimer-of-warranty language in Section 7.1 "would also apply to the call-related database-information." Staff believes that Section 7.1 Limitation of Liability language, previously approved by the Commission as part of the M2A, gives SWBT the proper incentives to process accurate LIDB information. Staff further notes that Attachment DLI (Directory Listing Information) was previously sufficient, as approved in the M2A, without an accelerated breach clause such as SWBT now proposes.

SWBT has not presented convincing evidence indicating how the nature of the information has changed since approval of the M2A. Consistent with the M2A, breach of contract language in the General Terms and Conditions should apply to the whole of the agreements and specific breach of contract language is not needed in the DLI Appendix.

The Commission accepts Staff's recommendation, consistent with that of WCOM, not to include any additional language on these issues.

UNEs

Issue 2: Should SWBT be required to maintain characteristics of affected elements for WCOM when SWBT upgrades its network?

The Commission determines that SWBT should be required to maintain characteristics of affected elements for WCOM when SWBT upgrades its network. Contrary to SWBT's assertions that it would be required to maintain "obsolete equipment", WCOM is only asking that SWBT maintain the "characteristics" of affected unbundled network elements in those instances where SWBT upgrades its network. The language supported by WCOM and by Staff is not radical or novel; it is language that was also used in the M2A. More importantly, SWBT has the obligation under Section 256 of the Act to facilitate "effective and efficient interconnection" of networks.

WCOM needs to ensure that it will have the ability to continue utilizing certain characteristics of SWBT's network at the time its interconnection agreement is executed. If WCOM had no right to request that SWBT maintain the characteristics of the unbundled network elements throughout the term of the interconnection agreement, SWBT would be able to unilaterally change its network in ways that would effectively deny WCOM its right to lease such elements. The specific language of section 2.17.4 of Attachment 6 clarifies that SWBT's obligation to maintain these characteristics is limited to those circumstances in which "the requested characteristics are specifically provided for in this Attachment [Attachment 6], Technical Publication or other written description." The Commission finds that WCOM's proposed language for this issue is appropriate.

Issue 3: Should SWBT be required to combine UNEs not previously combined in its network?

WCOM seeks inclusion of language from the M2A pursuant to which SWBT voluntarily agreed to perform combinations of UNEs that are not currently combined in SWBT's network. SWBT opposes the inclusion of such language on the basis that, although it voluntarily made this offer in the M2A, it declines to make such a voluntary offer outside the M2A. SWBT further asserts that FCC Rules 51.315(c)-(f), which had required ILECs to perform such new combinations, has been declared to violate the Telecommunications Act of 1996 by the 8th Circuit Court of Appeals, which subsequently reaffirmed its vacature.

Staff opposes WCOM's language on the basis that it is unlawful and contrary to the Commission's decision in Case No. TO-99-227 that SWBT is not required to provide combinations of UNEs when they do not currently exist in SWBT's network. Staff proposed additional language clarifying that SWBT is not to separate existing UNE combinations in its network except upon request, but confirmed that its language was consistent with SWBT's position on this issue. Staff reiterates that the Commission has already addressed

this issue in Case No. TO-99-227, where it found that SWBT's only obligation is to provide access to its UNEs and existing UNE combinations.

SWBT points out that the issue stems from the FCC's promulgation of Rule 47 C.F.R. 51.315 (a)-(f). The first subsection of the rule restates the provisions of Section 251(c)(3) which expressly provides that the CLEC is to perform combinations. Subsection (b) provides that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." Subsections (c)-(f) placed an affirmative obligation on ILECs to combine UNEs at the request of a CLEC. In *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) ("IUB I"), the 8th Circuit vacated Rule 51.315(b)-(f). After the U.S. Supreme Court reversed the 8th Circuit on Rule 51.315(b), the FCC and various CLECs sought to persuade the 8th Circuit that Rule 51.315(c)-(f) should also be reinstated. In *Iowa Utilities Board v. FCC*, 219 F.3d 744, 758-759 (8th Cir. 2000) ("IUB II"), the 8th Circuit rejected that contention and continued its vacature of Subsections (c)-(f).

The combinations provisions of the M2A, which WCOM seeks to incorporate here, is a voluntary offering by SWBT that goes beyond the requirements of the federal Telecommunications Act of 1996 (Act). [21] Staff's proposed language properly reflects SWBT's obligations under the Act regarding combining UNEs and, therefore, will be adopted by this Commission. Therefore, the Commission finds SWBT's proposed language at 2.4 and 2.4.1 and at 1.1 – Appendix UNE Pricing, and 1.1, 1.2, 1.3 and b.1 at GT&C to be appropriate with the changes recommended by Staff in Staff's Evaluation of the DPL.

Issue 5: Is SWBT required to provide stand-alone multiplexing as a UNE?

The FCC, in its *UNE Remand Order*,[22] states that multiplexing is not a separate unbundled network element but is an example of attached electronics used to derive loop capacity. While WCOM agrees that stand-alone multiplexing is not a UNE, its proposed language would require SWBT to provide stand-alone multiplexing.

SWBT opposes such a requirement on the basis that WCOM's proposal is unlawful, as the FCC's *UNE Remand Order* clearly states that stand-alone multiplexing is not a separate UNE. SWBT explains that although it voluntarily offers stand-alone multiplexing in the M2A, it does not offer it outside the M2A. Staff concurs that WCOM's proposed language is inappropriate as contrary to the requirements of the Act as interpreted by the FCC.

The Commission agrees with Staff and SWBT that WCOM's proposed language is inappropriate and finds that Sections 8.2.1.5.1 and 8.2.1.5.2 proposed by WCOM are rejected. The Commission further finds that SWBT's proposed language properly reflects the FCC's determination and should be included in the interconnection agreement.

Issue 6: Should Unbundled Dedicated Transport be defined and provided as specified in the FCC Rules?

This issue involves the definition and application of Unbundled Dedicated Transport (UDT) as set forth in the FCC Rules. WCOM's proposed language would permit WCOM to order UDT between its switch and the switch of a third party. SWBT's proposed language provides that UDT is available between a SWBT wire center and a CLEC's wire center, or between switches owned by the same CLEC.

Staff recommended that the Commission modify and combine the language of the parties; Staff's proposed language does not require SWBT to provide UDT between two different CLECs' switches. Accordingly, Staff proposed to remove references concerning provision of UDT to third-party premises. SWBT indicates that it does not find Staff's proposed language for 8.0 and 8.2.1 to be objectionable. However, Staff also modifies Section 8.2.3.1 concerning physical diversity. SWBT argues that its language for Section 8.2.3.1 is more clear than Staff's language and should therefore be adopted even if the Commission otherwise adopts Staff's language in Sections 8.0 and 8.2.1.

The Commission finds that WCOM's proposed language exceeds the obligations of the Act as interpreted by the FCC. The Commission finds all of Staff's modifications to be appropriate and will adopt Staff's proposed language.

Issue 7: Is SWBT obligated to provide the items found in Section 14 of the M2A Agreement?

WCOM requests that the Commission require SWBT to provide the promotional offerings in Section 14 of the M2A. WCOM argues that SWBT should not be allowed to strike their "promotional" offerings based on a CLEC not taking the M2A in toto. WCOM argues that it is adopting all of the legitimately related terms, conditions and attachments, as set forth in Attachment 26, that are legitimately related to the provisions listed above that WCOM has chosen to negotiate. SWBT argues that Section 14 of the M2A contains many provisions that benefit CLECs that are beyond the ability of the Commission to impose under the Act.

Staff asserts that Section 14 of the M2A is appropriate with certain exceptions. The exceptions include modifications to Section 14.2, and the deletion of 14.3, 14.4, 14.6, 14.7, and 14.8. Staff indicates that Section 14.5 should be included. The Commission accepts the recommendation of the Staff as being appropriate for this case.

Issue 45: Should SWBT be permitted to charge for Central Office Access?

This issue involves charges for SWBT to combine UNEs that are not currently combined in SWBT's network at WCOM's request. WCOM and SWBT appear to be in agreement on this issue, albeit for different reasons. SWBT believes it has no obligation to combine elements. WCOM believes SWBT does have that obligation; however, WCOM also believes that SWBT should not be allowed to assess this so-called "glue charge" of combining such elements because the nonrecurring charge for ordering such to-be-combined UNEs fully compensates SWBT.

The Commission finds that the parties agree that there should not be a Central Office Access charge. Therefore, the Commission finds this issue resolved.

Issue 8: Are CLECs impaired without access to local switching as a network element?

WCOM argues that CLECs are impaired without access to local switching as a network element. WCOM initially contended that provision of ULS would render it unable to provide service to residential customers, but subsequently conceded this was not the case as the exception would rarely, if ever, apply to residential customers. WCOM also contended that it would be impaired without access to ULS in the circumstances covered by the FCC's exception, but provided no evidence to support this position and conceded that it is currently using its own switches to provide service to business customers in St. Louis and Kansas City. SWBT, on the other hand, contends that it cannot be required to provide local switching as a UNE in the specific instances identified in the FCC's *UNE Remand Order*. Specifically, SWBT argues that in the *UNE Remand Order*, the FCC determined that ULS need not be provided (a) to customers with four or more lines, (b) served by central offices in density zone 1 in one of the top 50 Metropolitan Statistical Areas (MSAs) where (c) SWBT provides enhanced extended loops (EELs).

Staff states that the FCC provides a lengthy analysis of exceptions to the unbundling requirements in paragraphs 253 through 299 of the *UNE Remand Order*. Based on the FCC's analysis, Staff recommends that SWBT's language be incorporated into the Agreement except Staff recommends that the

time frame for written notice to CLECs be modified to "not less than 180 days". Staff also recommends that all references to multistate agreements be removed, consistent with the recommendation by Staff witness Peters.

The Commission finds that Staff's proposed language is appropriate for this case and should be adopted.

Issue 9: Should SWBT's proposed language for ULS be adopted?

This issue is whether SWBT's proposed language for unbundled local switching should be adopted, is closely related to Issue 29. WCOM opposes the inclusion of this language. As WCOM conceded at the hearing, Issue 9 is moot if the Commission determines under Issue 29 that SWBT is not required to provide intraLATA services to WCOM's local end-use customers. As SWBT discussed with regard to Issue 29, this Commission has previously determined that SWBT has no obligation to provide retail intraLATA toll services to customers of CLECs. Staff concurs with SWBT's analysis on this point and supports SWBT's position.

The Commission agrees with Staff and SWBT and finds that there is no obligation for SWBT to become a potential provider of intraLATA interexchange services to WCOM's end-users or that the Commission should impose such an obligation. Therefore, the Commission finds SWBT's language appropriate.

Issue 14: Should SWBT provide Digital Cross-Connect Systems (DCS) in accordance with the FCC's rules?

This issue centers around whether SWBT is required to provide Digital Cross-Connect Systems (DCS) as a UNE. WCOM argues that the answer is "yes", while SWBT alleges that pursuant to the terms of the FCC's *UNE Remand Order*, cross-connects are a means of interconnection and not a separate UNE. Staff states that the FCC concluded that ILECs must provide cross-connect facilities between an unbundled loop and a requesting carrier's collocated equipment. The FCC has defined the cross-connect as a means of interconnection, not as part of a UNE or as a separate UNE in and of itself. Staff recommends that the language of both parties should be combined and incorporated into the Agreement.

The Commission agrees with Staff's analysis and finds the language of both parties should be combined and incorporated in the Agreement as recommended by Staff.

Issue 21: Is SWBT required to provide WCOM access to proprietary AIN features developed by

SWBT?

WCOM proposes language that requires SWBT to provide access to proprietary AIN features. SWBT's proposed language provides that WCOM may develop its own proprietary AIN features, but may not have access to SWBT's proprietary AIN features. Staff supports SWBT's position on the basis that the *UNE Remand Order* makes it clear that based on the "necessary" standard, ILECs are not required to provide unbundled access to the services created in the AIN platform and that such services do not qualify for proprietary treatment. Staff's position recommending inclusion of SWBT's language is described in the Staff Evaluation of the Joint DPL.

The Commission finds that Staff's analysis on this issue is correct. The FCC specifically addressed the ILECs' obligation to offer access to AIN software in the *UNE Remand Order*. The FCC found that access to the AIN platform is required, but that ILEC service software in the AIN platform was proprietary and need not be unbundled.

Issue 22: Should SWBT be required to take responsibility for AIN CLEC service creations?

WCOM proposes language that obligates SWBT to provide information necessary for WCOM to utilize SWBT's service creation environment in the AIN software. Both parties agree to the language noted as WCOM's proposed language in its DPL position. The dispute arises over the additional language proposed by SWBT.

SWBT's proposed language provides that SWBT is not responsible for the development of WCOM's service creation in the AIN environment. SWBT notes that the FCC's *UNE Remand Order* specifically requires ILECs to permit access to the service creation environment in the AIN platform, but places the duty on WCOM to create its own proprietary software.

Staff proposes language that modifies SWBT's additional proposed language to make it clear that SWBT must provide the technical information necessary for WCOM to utilize the service creation environment, but is not responsible to develop or assist in the development of services.

The Commission finds SWBT's additional language to be appropriate with the changes recommended by Staff. Staff's modification clarifies that it is not SWBT's

responsibility to develop CLEC service creation. It is SWBT's responsibility to ensure that WCOM has the technical information necessary to utilize the service creation environment within the AIN platform.

Issue 28: Is SWBT required to collect, format and deliver paper copies and/or electronic copies of every emergency number in SWBT to WCOM?

WCOM does not want paper copies of this information and does not want to "put SWBT in a position where it would be required to 'collect, format, and deliver' paper copies of the emergency numbers in question." However, WCOM does want to "have SWBT sit down and discuss how the information could be provided periodically in an electronic feed so as to avoid the possibility of human and/or administrative error . . . ."

SWBT argued that it should not be required to collect and deliver paper and/or electronic copies of every emergency number to WCOM. SWBT noted several problems with WCOM's proposal, including (a) that SWBT does not have the means to ensure that the information it would be providing is accurate and/or current because it is up to the public agencies to ensure that their published information is accurate and current; (b) SWBT does not have any place where it stores emergency numbers in a group and it would, therefore, be required to research and prepare a document that does not currently exist; (c) emergency numbers are equally accessible to WCOM since SWBT provides WCOM with its DA listings and WCOM can look up this information just as readily as SWBT can; and (d) WCOM may seek paper copies from the public agencies themselves.

Staff originally recommended that if electronic transfer of emergency number information is not technically and/or financially prohibitive, Staff would support language allowing for the periodic electronic transfer of emergency information. SWBT contends that since it provides WCOM with electronic access to its DA listings, which contain the information, then SWBT has already and will continue to provide the emergency numbers. Furthermore, during the hearing Staff witness Peters agreed with SWBT that if this information is available through a public agency, SWBT should not be required to provide paper copies of this information. Mr. Peters further agreed that if WCOM is equally able to go the public agency and get the information electronically, that this "might be sufficient".[23]

The Commission finds that SWBT shall not be required to collect, format and deliver paper copies and/or electronic copies of every emergency number to WCOM. Since the white pages listing information is

electronically available to WCOM, the Commission finds this source acceptable.

Issue 35: Should SWBT be required to provide WCOM with Input/Output (I/O) ports?

The Commission determines that SWBT should be required to provide WCOM with Input/Output (I/O) ports. The I/O port is part of the features and functionalities of the switch. The FCC has defined local switching UNE as including all features, functions and capabilities of the switch. WCOM indicates that access to the I/O port is important for WCOM to deploy a centralized voice-mail capability for use in providing service to its customers served via UNE-P, but that capability would be meaningless without the ability to provide a notice to customers that they have messages waiting in the system. Typically, end-users are notified of messages in the form of a 'stutter dial tone,' or a dial tone that is interrupted briefly when the customer goes 'off hook.'" WCOM needs access to SWBT's I/O port in order to have the same opportunity to provide centralized voice-mail service as does SWBT's affiliate Southwestern Bell Messaging Service. Pursuant to the recommendation of Staff and WCOM, the Commission finds WCOM's language appropriate.

Issue 36: Should LVAS interfaces be offered for UNE switch ports?

The Commission determines that SWBT should offer LVAS interfaces for UNE switch ports. WCOM proposes the same language contained in the M2A. It appears that SWBT does not object to what WCOM proposes for section 9.4.4.4.1; however, SWBT proposes adding its generic so-called 13-state language, which contains references to Pacific Bell, Ameritech, and SNET. As previously discussed, such language is irrelevant to this Missouri proceeding and is rejected.[24]

Issue 37: Should the Commission retain language in the contract that addresses interactive interfaces for SNET and Ameritech?

As in issue 36, WCOM proposes the same language for section 9.4.4.5.1 as is contained in the M2A. It appears that SWBT does not object to this specific language; however, as with issue 36, SWBT has inserted references to Pacific Bell, Ameritech, and SNET. Such additional language is irrelevant to the Missouri proceeding and is rejected.[25]

Issue 38: Is SWBT required to treat CLEC loop test reports as its own?

WCOM argues that SWBT should be required to treat WCOM's loop test reports as its own. SWBT objects to the proposed language on the basis that utilization of WCOM test results could result in the unnecessary dispatch of SWBT technicians, with the result that other customers do not receive proper

service and SWBT fails to meet applicable performance standards.

Staff concurs with SWBT that WCOM's language should not be included. Staff points out that in the 271 proceeding (TO-99-227), the Commission found that SWBT provides nondiscriminatory access to the to the OSS functionality as required by the FCC, and more specifically, the maintenance and repair functions of OSS. Therefore, WCOM's language proposing CLEC testing is unnecessary and should be rejected. Staff also suggests that the Commission reiterate its expectation that SWBT continue to provide nondiscriminatory access to all OSS.

The Commission finds that utilization of WCOM's test reports as recommended by WCOM is inappropriate. SWBT already provides nondiscriminatory access to the OSS functionality as required by the FCC, including the maintenance and repair functions of the OSS. WCOM's language on this issue is unnecessary and shall be rejected. The Commission reiterates the expectation that SWBT will provide nondiscriminatory access to all OSS functionality in this Agreement.

Issue 48: Should SWBT be required to provide points of interconnection that are not available?

The Commission determines that SWBT should be required to provide points of interconnection as required by FCC Rule 51.321(a). This rule provides that SWBT "shall provide on terms that are just, reasonable, and non-discriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."[26] SWBT's proposal effectively eliminates the word "shall" in the FCC's rule, making SWBT the arbiter of what is technically feasible. SWBT's proposed language would require such access only where interconnection is technically feasible and facilities are available.

WCOM notes that the Commission rejected SWBT's proposal in the AT&T/SWBT arbitration, TO-2001-455. In that case, the Commission determined the nonrecurring costs of special construction related to establish a specific point of interconnection would be recovered based upon an equal split while the traffic sensitive costs of construction would be borne in direct proportion of the traffic carried by the newly constructed elements.

Staff states that the Act[27] and the FCC's rule[28] are clear: a requesting carrier may interconnect with an incumbent's network at any technically feasible point within the incumbent's network. Therefore, Staff recommends WCOM's language. The Commission agrees that WCOM's language should

be adopted for this issue.

LIDB/CNAM

Issue 13: Should the Commission adopt SWBT's definition of LIDB?

LIDB stands for Line Information Database and is a call-related database used for validating calling card, collect call and third-party call information. CNAM is a call-related database that is used by exchange carriers to provide caller identification services (Caller ID).

WCOM argues that SWBT's definition improperly consolidates the two, independent databases into one definition. WCOM alleges that by combining CNAM into the definition of LIDB, SWBT attempts to blur and confuse the distinctive differences between the two databases and, most significantly, ignores that CNAM Service Query is already separately defined in Attachment 6 at paragraph 9.5.1.

Staff contends that most of WCOM's and SWBT's language is descriptive and is not absolutely definitive. Therefore, Staff proposes to include a modified version of both parties' language. Staff notes that SWBT's LIDB may be queried from any network components and not just those identified as unbundled; Staff proposes to remove SWBT's term "unbundled". The Commission will adopt the language recommended by Staff as an appropriate resolution in this case.

Issue 15: Is SWBT required to provide CNAM database to WCOM on a bulk basis?

WCOM argues that SWBT is required to provide CNAM database to it on a bulk basis; SWBT and Staff disagree. In the *Local Competition First Report and Order* (paragraph 484) and *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rule Making* (*UNE Remand Order*, paragraph 402), the FCC determined that nondiscriminatory access to an incumbent local exchange carrier's call related databases is a UNE. The parties differ as to what is meant by "access".

WCOM appears to define access to SWBT's LIDB and CNAM as possessing a copy of the contents of SWBT's LIDB and CNAM in WCOM's own memory systems much as one business would sell its mailing lists to other companies. SWBT defines access more restrictively; SWBT considers access to be when the information contained in LIDB and CNAM is available on a per-call or usage basis.

Staff states that it is unaware of any federal or Missouri statutes, regulations, or orders that would impose a duty on SWBT to "sell" the contents of its databases in bulk. Staff contends that access to LIDB

and/or CNAM should not be equated to possession of the contents of those databases. SWBT argues that access to LIDB or CNAM on a usage basis would not be discriminatory or unduly burdensome to WCOM.

Staff also notes that SWBT's proposed language in Sections 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refer to activities outside of Missouri and not under the Commission's jurisdiction; Staff recommends the Commission disallow that language in the Agreement. Furthermore, Staff finds WCOM's language in 9.5.1.1.2 to be overly one-sided and recommends against its inclusion into the Agreement. Staff recommends that the Commission order SWBT's proposed language in Attachment 6, Sections 9.0, 9.4.2.6, 9.4.2.6.3, and WCOM's proposed language in Sections 9.3.1, 9.3.1.1, and 9.4.1.1 into this Agreement.

The Commission finds that Staff's position is appropriate and shall be adopted for this Agreement.

Issue 16: Should language be added to the Interconnection Agreement to address changes in LIDB and CNAM access?

This issue centers around whether the Commission should adopt language to address changes in LIDB and CNAM access. SWBT and WCOM disagree over the use of the terms "Data Owner" and "Account Owner". WCOM argues that the term "Data Owner" more effectively describes the owner of the information contained in the LIDB and CNAM databases. WCOM states that an "Account Owner" may or may not own the data; "Data Owner" more accurately describes the party in interest for purposes of these contract sections.

SWBT argues that the term "Data Owner" is obsolete. SWBT states that "Account Owner" encompasses all the data in LIDB, not just validation data and identifies company ownership at the telephone number level.

Staff states that since the agreements are negotiated/arbitrated agreements, applicable only to the parties to this Agreement and to any CLECs that choose to opt into the final agreements, Staff recommends that the language of the parties be combined as outlined in Staff's DPL/Findings of Fact and Conclusions of law document. Staff suggests that any language deemed inconsistent with industry standards only applies to these agreements and does not change common industry terminology. The Commission notes that

Staff's proposal includes a definition for "Data Owner". The Commission accepts Staff's recommendation and will incorporate Staff's proposal into the Agreement.

Issue 17: Is SWBT required to provide nondiscriminatory access to its LIDB/CNAM databases, including removing the local use restriction? (Or, as worded by SWBT, are existing limits on proprietary information provided by call-related databases appropriate?)

Under 47 C.F.R. 51.309(b), a telecommunications carrier may purchase the use of UNEs from an incumbent exchange carrier to provide exchange access services to itself in order to provide interexchange services to its subscribers. Staff states that given that access to LIDB and CNAM are UNEs, Staff believes that SWBT must remove the local use restriction on these databases. Staff witness Cecil indicated that in this negotiation, the issues regard the exchange of local traffic by local exchange carriers (LEC) or the termination of interexchange traffic by a LEC. Staff does not believe that an interconnection agreement is the proper venue for inclusion of language that allows an interexchange carrier (IXC) access to an ILEC's LIDB/CNAM databases. Staff recommends that the Commission find that SWBT's proposed language in Sections 9.4.2.6 and 9.4.2.6.3 is appropriate. Staff also notes that SWBT's proposed language in Sections 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refers to activities outside of Missouri and should be stricken from the proposed Agreement. The Commission agrees with Staff's analysis and will adopt the language proposed by Staff.

Issue 33: Is WCOM allowed to access SWBT's LIDB and CNAM databases at TELRIC rates when acting as an IXC?

Staff indicates that it recognizes that WCOM is comprised of local and interexchange carrier-affiliates but believes an agreement between an IXC and a local carrier does not belong in a local interconnection agreement. Staff recommends that the Commission order that SWBT's proposed language in Attachment 6, Section 9.4.2.6.3, be incorporated into this Agreement. Staff states that its objection to Section 9.4.2.6.4 (from Issue 15) remains and recommends against that section's inclusion into the Agreement. The Commission finds Staff's recommendation to be a reasonable and directs that Staff's position be incorporated into the Agreement.

Issue 19: Should Local Service Request (LSR) language for LIDB database updates be added to the Interconnection Agreement to reflect network changes since the Commission approved the Missouri 271 Agreement?

SWBT agreed to create a Local Service Request (LSR) based interface in the process of creating

the M2A. SWBT noted that since the M2A was completed before SWBT could complete development of the interface, the M2A could not contain all the terms and conditions regarding LSR and all parties agree that those terms and conditions should be incorporated into this Agreement. Staff supports SWBT's proposed language after the removal of the multistate references.

The Commission agrees with Staff that SWBT's proposed language is appropriate after the removal of all multistate references. If WCOM desires additional interfaces, WCOM should bear all costs of developing and maintaining those interfaces.

Issue 20: What obligations should WCOM have for the information it stores in SWBT's LIDB?

Staff points out that this issue is directly related to Issue 30, the appropriate contract language for alternatively billed traffic. In that issue, the Commission found that WCOM's Attachment 27 was the appropriate language. As recommended by Staff, the Commission finds that SWBT's language for Issue 20 is inconsistent with the Commission's findings regarding Issue 30 and should be removed from the Agreement.

DAL

Issue 24: Is SWBT's local use restriction for Directory Assistance Listings (DAL) reasonable?

WCOM argues that SWBT's local use restriction for DAL is not reasonable. WCOM alleges that Section 1.5.1 contains language that is contrary to the language in SWBT's Accessible Letter CLEC01-065, which states that SWBT will comply with the FCC's DAL Provisioning Order.

SWBT disagrees, and argues that it offers a provision in its Directory Listing Information, Attachment 18, which specifically addresses whether SWBT will enforce any restrictions on the use of directory assistance listings (DAL). Specifically, SWBT has agreed that subject to any subsequent decision or order by the FCC or a court, the SBC telephone companies will comply with the FCC's Order and will not enforce any restrictions on the use of directory assistance listing information by any directory assistance provider that provides telephone exchange service or telephone toll service under section 251(b)(3) or by any directory assistance provider that acts as an agent or independent contractor for a qualifying entity under section 251(b)(3). SWBT notified WCOM of this position via Accessible Letter CLEC01-065 on March 21, 2001. SWBT contends that it removed all of the potential use restrictions from its proposed language.

Staff notes that in the *UNE Remand Order*, paragraph 442, and Section 251 (b) of the Act, incumbents are obligated to provide nondiscriminatory access to OS/DA. Staff states that with the proposed language revisions SWBT filed on January 9 2002, SWBT's language is acceptable and should be adopted. The Commission agrees with Staff's analysis and will adopt SWBT's language as revised.

Issue 26: Must SWBT deliver for WCOM at cost-based rates emergency messages to end-users that have nonpublished numbers? (Orig. WCOM issue #8)

SWBT Issue #26: (a) Should SWBT's process for delivering emergency messages to end-users with nonpublished numbers be utilized? (b) Must SWBT deliver emergency messages for WCOM to end-users that have nonpublished numbers at TELRIC rates?

This issue centers around whether SWBT's process for delivering emergency messages to end-users with nonpublished (NP) numbers should be utilized and if so, should such delivery occur at TELRIC rates. WCOM proposed a new notification procedure and argues that TELRIC rates should apply. SWBT alleges that it currently has the same procedures in place for both retail and wholesale customers, and SWBT operators handle NP emergency requests from all callers in the same manner regardless of the caller's LEC. SWBT, therefore, maintains that its procedures should continue as is and that market-based rates should apply.

Under SWBT's procedures, in an emergency, a supervisor of an operator can be enlisted to: (1) obtain the NP numbers by invoking a special security procedure; (2) relay a message to the NP subscriber to let him or her know that the caller is attempting to make contact; (3) provide the NP subscriber with the caller's call-back telephone number; and (4) make two attempts over approximately a half-an-hour period if the first attempt to contact the NP subscriber is not successful. This procedure is posted on the CLEC website.

SWBT provides the same process, which can take as much as 45 minutes and involves both an operator and a supervisor, that SWBT uses for itself and all other carriers. SWBT, thus, provides operator services on a nondiscriminatory basis to all CLECs and their subscribers as required by Section 251(b)(3) and 271(C)(2)(b) of the Act.

Further, SWBT argues that the delivery of emergency messages to end users with NP numbers is not a UNE because operator and directory assistance services are not UNEs; thus, nondiscriminatory market-based rates must apply.[29]

Staff agrees with SWBT's language at Section 3.2.1 in Attachment 18 DLI-MO. The Commission finds that all WCOM language should be removed from Section 3.2 of the Agreement, consistent with Staff's position on this issue. The Commission also agrees with Staff's position that SWBT must deliver emergency messages for WCOM at the same rate it delivers emergency messages for other carriers.

Issue 47: Must SWBT offer DAL rates at their forward-looking cost?

In the *UNE Remand Order*, the FCC determined that nondiscriminatory access to the ILEC's underlying databases used in the provision of OS/DA is required only under Section 251(b)(3) and not under Section 251(c)(3) of the Act.[30] Moreover, the FCC specifically declined to expand the definition of OS/DA to include an obligation to provide directory assistance listings (DAL) in daily electronic batch files.[31] In other words, DAL is not an unbundled network element.

SWBT argues that it provides nondiscriminatory access to its DAL, pursuant to Section 251(b)(3) of the Act (and the relevant rules thereunder), in bulk, in Attachment DLI/DAL for those CLECs that wish to provide DA services of their own. As part of the 271 process, SWBT submitted "X2A" agreements in Arkansas, Kansas, Missouri, and Oklahoma as evidence that SWBT was complying with the FCC Orders and the Act's checklist requirements. The FCC approved all of SWBT's applications, including provisions permitting market-based pricing of DAL. SWBT states that the FCC's approval confirms that SWBT is not obligated to provide DAL as a UNE. Thus, SWBT argues that market-based rates apply.

Staff notes that the Commission has already approved a market-based rate in the M2A. Staff agrees with SWBT that market-based rates should apply. The Commission finds that the market-based rate approach advocated by SWBT and Staff is appropriate.

OS/DA

Issue 49: What are SWBT's obligations with respect to OS/DA?

On January 3, 2002, SWBT filed a Motion to Strike Issues 49 and 50 From WCOM's Revised Proposed Decision Point List. SWBT alleged that these two issues were neither contained in WCOM's Petition nor in SWBT's Response, and therefore, they are beyond the scope of the Act. On January 14, 2002, the Commission denied SWBT's Motion to Strike. Upon further review, the Commission determines that WCOM's Issue 49 should be stricken; this issue was not contained in either WCOM's Petition nor in SWBT's Response. Consequently, this issue is not an appropriate decision item for this case.

Rates Issues

Issue 10: Should the Commission reevaluate the forward-looking loop rates that apply to all two-wire analog loops, including loops used for UNE-P?

WCOM argues that the Commission should reevaluate the forward-looking loop rates that apply to all two-wire analog loops, including loops used for UNE-P, and that the parties should be allowed to incorporate the results of a subsequent, generic proceeding into this Agreement. WCOM states that a generic proceeding would enable the Commission to implement the results of the anticipated Supreme Court decision on TELRIC. Once the generic cost proceeding is complete, WCOM contends that the Commission will have adjusted UNE cost studies on which it, SWBT, and all CLECs can rely. WCOM further argues that the FCC expressly expects the Commission to conduct such reexaminations.

SWBT opposes a generic reexamination of UNE loop costs and rates and argues that under the Act, price must be based on cost, which the FCC requires to be determined under the TELRIC standard. SWBT points out that it provided the only cost studies and testimony supporting its proposed UNE rates, and that its cost studies were developed utilizing a proper application of TELRIC principles and are appropriate for use in this proceeding. SWBT emphasizes that WCOM failed to provide any cost studies in this case, and contends that WCOM has provided no basis in the record in this case for the Commission to adopt any particular rates for UNE rates at issue. SWBT maintains that the M2A rates were developed utilizing the TELRIC methodology, but that adjustments and voluntary reductions were made that resulted in rates below the level required by the proper application of the TELRIC methodology.

Staff recommends that the Commission adopt the M2A rates as adjusted by the outcome of the Case No. TO-2001-438. Staff also recommends that the Commission open a new, generic case to reevaluate this issue, where all concerned parties could participate in a working group to review all relevant issues. Staff views the generic docket as a benchmark for future proceedings.

As in Case No. TO-2001-455, the Commission will not implement substantial increases in prices for basic UNEs based on the cost studies submitted in this case by SWBT, which have not been the subject of rigorous review by Staff, CLECs, and the Commission because of the strict time restraints on the arbitration case. Instead, the Commission takes notice of the M2A, including the rates contained therein. The M2A was the product of a lengthy proceeding and close scrutiny. The Commission has already

determined that it complies with all of the standards applicable to interconnection agreements, including the 14-point checklist in Section 271.[32] Because it is known to be compliant with both the Act and the FCC's regulations, the Commission concludes that the M2A, with the adjustments from Case No. TO-2001-438, is appropriate as a resolution of the parties' dispute.

Issue 11: Should the Commission revise the local switching rates in the agreement to reflect a flat rate structure, with permanent rates based on current TELRIC costs?

As already discussed above, the Commission has rejected the use of interim prices. Likewise, as discussed above, UNE rates including switching prices may be reexamined in a subsequent proceeding, with the results used as a benchmark for further proceedings as suggested by Staff. However, the Commission again declines to open a generic case as part of the determination in this case.

As noted above, the Commission agrees with Staff that the M2A rates are appropriate. Staff also recommends that it would be appropriate to reevaluate this issue in a generic case. The Commission adopts Staff's recommendation for this issue.

Issue 12: Should the Commission delete the $.003 per message charge for the daily usage feed (DUF)?

SWBT Issue #12: Is SWBT entitled to be compensated for providing daily usage feed (DUF) to WCOM at the existing rate of $.003 per message approved in the 271 proceeding?

Under the M2A, SWBT does not currently charge CLECs for daily usage feed (DUF) records, which are records that allow a CLEC to bill its end-users. WCOM opposes any charge for the provision of these records. SWBT admits there is no such charge in the M2A, and no charge was proposed in Case No. TO-2001-438. WCOM's witness Mr. Turner contends that there are no new incremental costs to be recovered by such an additional charge. According to WCOM, all costs regarding these DUF records (that are used to identify calls made by customers using unbundled switching) are inherent to and will be recovered in switching and AIN query rates, as already determined by the Texas Commission based on admissions by SWBT witnesses.

Staff recommends that the M2A rates are appropriate for this Agreement. Staff notes that these rates have been previously approved by the Commission and have been determined to be TELRIC-based.

The Commission has previously determined that the M2A rates satisfy the criteria set forth in the Act.[33] The Commission rejects SWBT's proposal to impose a new charge of $0.003 for daily usage feeds

(DUF) in connection with local switching, and finds Staff's recommendation to adopt the M2A rates to be reasonable. The Commission declines to open a generic case as part of the determination in this case.

Issue 23: What is the appropriate rate structure for LIDB query access?

The Commission has previously established a rate structure for LIDB query access and neither party proposes a change in that rate structure. Hence, this issue is moot. To the extent that SWBT seeks to expand the issue to include a reconsideration of the rate itself, given that SWBT admits that it cannot determine from which state a query originates, the Commission rejects SWBT's efforts to establish a multistate rate in this Missouri arbitration.[34]

Staff again recommends that the Commission find that the decision for this issue shall be consistent with the decision made in TO-2001-438. In that case, Staff recommended that rates for LIDB query access should be those set as permanent rates in Case No. TO-97-40. During the hearing in the present case, Staff witness Cecil noted that SWBT admits that it doesn't really know what price to charge here, but Staff feels that SWBT needs to charge a Missouri-specific price. Thus, Staff relies on the price set in TO-97-40, arguing that the price structure from TO-97-40 should remain. Staff also recommends that if the Commission opens a generic case to look at UNE rates, that it may be appropriate to address this issue at that time also.

The Commission finds that, based upon the limited evidence presented in this case, Staff's position is the appropriate resolution of this issue. However, the Commission declines to open a generic case as part of the determination in this case.

Issue 31: Should SWBT be allowed to recover the cost associated with call blocking in end offices where AIN is deployed?

The Commission rejects SWBT's proposal to delete language that would prohibit SWBT from imposing an additional charge, beyond the AIN query rate, for standard call blocking and screening functions in end offices where AIN has been deployed. WCOM witness Turner and Staff witness Dietrich explained that the AIN query rate already covers the costs of standard blocking and screening functions. The language prohibiting an additional charge in such end offices is in the M2A, has been required by the Texas Commission as well, and would not impact SWBT's ability to impose an additional charge in end offices

where AIN has not been deployed. SWBT acknowledges that it would not incur additional line class code costs because "in an AIN-based office we could probably identify your [WCOM] traffic apart from ours and thus not have to create a unique line class code."[35]

Staff recommends that the Commission find that WCOM's language is appropriate for this issue. Staff witness Dietrich notes that SWBT seems to object to the proposed language because SWBT should be allowed to charge for originating call blocking, often referred to as toll restriction. Staff states that the issue is not whether SWBT can charge for toll blocking, but rather whether SWBT can charge for call blocking *where AIN is deployed.* Staff indicates that since the purpose of AIN software is to provide the functionality for an end-user (in this case, presumably a WCOM end-user, not a SWBT end-user), to either accept or reject a call, the costs for rejecting that call would be inherent in the functionality of the AIN software and the language proposed by WCOM should be incorporated in the Agreement. The Commission agrees with Staff's analysis, and will adopt WCOM's language for this issue.

Issue 46: Should SWBT be permitted to charge for a change in CLEC's signaling point code?

This issue involves SWBT's proposed language that permits the imposition of a charge when a CLEC modifies an existing signaling point code. SWBT contends that the purpose of its language is not to set a charge for establishing a signaling point code, but is instead designed to recover a portion of the cost involved if a CLEC seeks to change an existing point code. Because changes to a signaling point code must typically be done after working hours in order to avoid customer disruption, the cost to change a signaling point code exceeds the cost of initial establishment of such a code. Although the costs are higher, SWBT seeks to recover only the same level of costs associated with establishing a signaling point code.

WCOM opposes this proposed language on the basis that charges to establish a signaling point code were previously established in Case No. TO-97-40. In its prefiled testimony, Staff initially concurred with WCOM's position. But at the hearing, Staff agreed that it is appropriate to assess a charge. On January 31, 2002, Staff filed a Modification to Substitute Sheets, noting that a signaling point code was set in Case No. TO-97-40. That rate, according to SWBT, is only intended for the initialization of service. Staff states that it does not believe that WCOM has refuted that argument. Therefore, Staff now suggests that a signaling point code change rate is appropriate, and recommends that SWBT's language should be included in the Agreement.[36]

The Commission finds that SWBT is entitled to recover the costs of changing an existing signaling point code and that no other charge approved by the Commission includes these costs as a part of the applicable rate. Accordingly, the Commission approves the inclusion of the language proposed by SWBT and recommended by Staff.

Issue 50: Should the Commission delete the $.08 per transaction charge for local account maintenance?

The Local Account Maintenance Charge is a per transaction charge for each working telephone number that disconnects from WCOM and switches to another local service provider. SWBT charges: (1) $.08 for a Local Disconnect Report (LDR) via a 960-byte industry standard Customer Account Record Exchange format; and (2) $.003 for the LDR via Electronic Data Interchange format. SWBT argues that it should be allowed to recover the costs associated with providing this service. WCOM argues that it should not. SWBT further argues that this Commission previously determined that SWBT should be allowed to recover for Local Account Maintenance in the AT&T Interconnection Agreement in 1997 and in the M2A. Staff recommends that the Commission adopt the M2A rate as the appropriate rate for this case, [37] with any associated adjustments from TO-2001-438; the Commission finds that Staff's recommendation is appropriate and shall be incorporated into the Agreement.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Arbitration Under the Telecommunications Act of 1996

The Telecommunications Act of 1996 was enacted by Congress to bring competition to the telecommunications industry and thereby to reap such benefits as lower rates, more efficient service, and a quickened pace of technological innovation.[38] Key to the scheme created by the Act are various provisions requiring the incumbent local telephone companies – the ILECs – to share their networks with competitors. Thus every carrier, of whatever type, is required to interconnect, directly or indirectly, with other carriers.[39] All local carriers, whether old and entrenched or new and upstart, are obligated to permit competitors to resell their services, to provide number portability and dialing parity, to establish reciprocal compensation arrangements for the transport and termination of traffic, and to allow access to their poles, conduits and rights-of-way.[40] Most importantly, the ILECs are required to negotiate "in good faith" and to

make agreements with competitors as to interconnection, access to network elements on an unbundled basis (UNEs), and the sale of telecommunications services at wholesale rates for resale by competitors.[41] Finally, the Act imposes on ILECs, such as SWBT, the duty to provide for such physical collocation of facilities and equipment as is necessary for interconnection or access to UNEs.[42]

The Act favors agreements reached voluntarily, by negotiation, and permits these to be made "without regard to the standards set forth in subsections (c) and (d) of section 251."[43] Such voluntary agreements must be submitted to the state commission for approval and the state commission may only reject such a voluntary agreement on a finding that it discriminates against a nonparty carrier or that its implementation "is not consistent with the public interest, convenience, and necessity[.]"[44]

Congress recognized, however, that it would not always be possible for competing carriers to reach agreement through voluntary negotiation. Therefore, the Act creates a scheme of compulsory arbitration.[45] The state commission must resolve each open issue by "imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement[.]"[46] Arbitrated agreements must also be approved by the state commission, which may reject them if they do not meet the requirements of Section 251 of the Act, or the standards at Section 252(d) of the Act, or the requirements of the FCC's regulations interpreting and implementing Section 251 of the Act.[47]

Jurisdiction Under the Telecommunications Act of 1996

The Commission's jurisdiction to arbitrate under the Act is conditioned upon proper invocation by the party seeking arbitration.[48]

A party seeking compulsory arbitration must file its petition with the state commission "during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section[.]"[49] The parties agree that WCOM requested negotiations on June 1, 2001, and that the interval during which compulsory arbitration could be requested ran from October 14, 2001, through November 13, 2001. Therefore, the Commission concludes that WCOM's petition for arbitration was timely filed on November 5, 2001.

Additionally, a party seeking compulsory arbitration must, simultaneously with its petition for arbitration, "provide [to] the State commission all relevant documentation concerning (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issues

discussed and resolved by the parties."[50] Attached and/or incorporated by reference to WCOM's petition were extensive exhibits, including matrices setting out the disputed issues, the parties' positions on those issues (as known), and WCOM's proposed successor interconnection agreement, divided into topical attachments. The Commission concludes that WCOM complied with Section 252(b)(2)(A) of the Act.

Finally, a party seeking compulsory arbitration must "provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition."[51] Attached to WorldCom's petition was a certificate showing service by United States Mail upon SWBT as well as the General

Counsel of the Commission and the Office of the Public Counsel, on November 5, 2001, the date on which the petition was filed with the Commission. The Commission concludes that WorldCom complied with Section 252(b)(2)(B) of the Act.

Because WCOM complied with all of the Act's prerequisites for compulsory arbitration by a state commission, the Commission concludes that it is authorized under the Act to arbitrate this dispute.

State Law Jurisdiction

SWBT, as a provider of local exchange and intraLATA long-distance telecommunications service, is a "telecommunications company" and a "public utility" within the intendments of Section 386.020, (32) and (42), and is therefore subject to the jurisdiction of the Commission under Chapters 386 and 392, RSMo. In the terms of the Act, SWBT is a Bell operating company (BOC) and an incumbent local exchange carrier (ILEC).[52]

WCOM is also a "telecommunications company" and a "public utility" within the intendments of Section 386.020, (32) and (42), and is also therefore subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo.

Arbitration Standards

The Act provides:[53]

> In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall –
>
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission [FCC] pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms, and conditions by the parties to the agreement.

Arbitration Procedures

The Act does not specify any particular procedure for arbitrations by state commissions. This Commission has experimented with different procedural models in the past. The Commission is authorized by its organic law to arbitrate disputes.[54] However, that provision also does not specify any particular procedure, other than to require "due notice" and a hearing.

The FCC Arbitration Procedures

The Commission adopted for this case the arbitration procedures used by the FCC, 47 C.F.R. Section 51.807 (October 2000), as supplemented by the FCC's *Public Notice of the Establishment of Procedures for Arbitration of Interconnection Agreements Between Verizon Verizon and AT&T, Cox, and WorldCom,* (DA 01-270, Feb. 1, 2001). These procedures were modified to reflect the fact that the petition and response had already been filed in this case and that a prehearing conference had been held.

The FCC rules are constructed around the concept of final offer arbitration, also referred to as "baseball" arbitration. In that model, each of the two contending parties must submit its final offer and all supporting evidence for consideration by the arbitrator. The arbitrator then selects from among the offers submitted by the parties. The Commission modified the FCC's final offer arbitration procedure by requiring that the Commission's Staff participate as a third party as discussed in more detail below.

The Role of the Commission's Staff

Given the highly technical nature of the matters at issue in this case and the Commission's obligation to safeguard and promote the public interest, as opposed to the private interests of the contending carriers who are the parties to this arbitration, the Commission determined that it required access to the neutral technical expertise of its Staff. Therefore, Staff was required to file Rebuttal Testimony in response to the Direct Testimony filed by the parties. Staff was also required to file an evaluation of each of the offers filed by the parties. In that evaluation, Staff was directed to consider the technical feasibility and public interest impact of each issue contained in each offer. Staff was directed to file with its evaluation all necessary supporting material. Finally, to the extent that the public interest so required, Staff was authorized to file a proposed resolution as to any issue within the scope of this arbitration.

The Scope of Arbitration

The Arbitration Timeline

In its petition, WCOM stated that it requested the Commission to conduct a two-phase arbitration such as this Commission and certain other state commissions have conducted in the past. WCOM took the position that, while the arbitration of various non-cost-related issues could be completed by the statutory deadline, the arbitration of the costs of certain UNEs (loops and switching) could not realistically be

completed within the statutory timeframe, particularly as WCOM expected the development of this issue to require extensive discovery and access to SWBT's own highly confidential costing models. Therefore, WCOM proposed that the Commission arbitrate the non-cost-related issues by the statutory deadline and simply adopt as interim prices UNE prices contained in the M2A with final loop and switching prices to be set after the costs were fully litigated. WCOM relied upon the prior practice of this and other state commissions and certain paragraphs of the FCC's *Local Competition Order*, 11 F.C.C. Rcd. 154999, CC Docket No. 96-98 (released August 8, 1996).

SWBT, in turn, took the position that all issues, including final prices for UNEs, must be resolved by the Commission by the statutory deadline or the Commission would lose jurisdiction.

For this case, the Commission adopted the position urged by SWBT, in view of the express language of the Act providing that the state commission "shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section."[55]

Issues for Determination

The Act expressly limits the issues subject to resolution by the state commission to those framed by the petition for arbitration and the response to the petition.[56] As indicated, after the arbitration hearing, the parties jointly tendered a final DPL that has been admitted without objection as Exhibit 53.

Resolution of Open Issues

Costing and Pricing

In resolving by compulsory arbitration the open issues presented to it by the parties, the Commission must establish rates pursuant to the specific requirements of the Act:[57]

> (d) Pricing standards –
>
> (1) Interconnection and network element charges.--Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—
>
> (A) shall be--
>
> (i) based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network

element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic.—

(A) In general.--For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction.--This paragraph shall not be construed –

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services.--For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

Additionally, the United States Supreme Court has held that rates set by a state commission in a compulsory arbitration under the Act must also comply with the pricing regulations of the FCC.[58] These rules provide that "[a]n incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in Secs. 51.507 and 51.509, and shall be established . . . [p]ursuant to the forward-looking economic cost based pricing methodology set forth in Secs. 51.505 and 51.511[.]"[59] Also, the forward-looking economic cost of an element is defined as the sum of its total element long run incremental cost plus a reasonable allocation of forward-looking common costs.[60] The TELRIC of an element is "the forward-

looking cost over the long run of the total quantity of

the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements."[61] This is calculated based on a hypothetical network, using the most efficient technology available and the lowest cost network configuration imposed on the LEC's existing wire centers, and employing forward-looking costs of capital and economic depreciation rates.[62]

The Commission concludes that the rates contained in the M2A meet all the requirements of the Act and the regulations of the FCC.

However, as noted above, the Commission has also concluded that it is appropriate to commence a new proceeding to reexamine SWBT's costs.

General Terms and Conditions

The Commission concludes that its resolution of the open issues under this category meet all the requirements of the Act and the regulations of the FCC.

Unbundled Network Elements (UNES) Terms and Conditions

The Act imposes on ILECs:[63]

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

The rules promulgated by the FCC define a "network element" as[64] a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

The FCC's rules further provide that:[65]

> (a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers.
>
> (b) Where applicable, the terms and conditions pursuant to which an incumbent LEC

offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.

The Commission concludes that its resolution of the open issues under this category meets all the requirements of the Act and the regulations of the FCC.

Network Interconnection and Architecture

The Act imposes on all carriers a duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers[.]"[66] The Act additionally imposes on ILECs:[67]

> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
>
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

The Commission concludes that its resolution of the open issues under this category meets all the requirements of the Act and the regulations of the FCC.

Operations Support Systems (OSS)

The FCC rules provide that:[68]

> An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems.

The Commission concludes that its resolution of the open issues under this category meets all the requirements of the Act and the regulations of the FCC.

IT IS THEREFORE ORDERED:

1. That MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc., and Southwestern Bell Telephone Company shall incorporate the Commission's resolution of each open issue as described in this Order into their interconnection agreement and provide a draft of their conformed interconnection agreement to the Staff of the Missouri Public Service Commission within 30 days following the effective date of this Order.

2. That the Staff of the Missouri Public Service Commission shall review the draft interconnection agreement of the parties and determine whether or not the agreement complies with this

Order. In the event that Staff determines that the agreement tendered by the parties does not comply with this Order, Staff shall so advise the parties and they shall cooperate with Staff in amending the draft agreement to comply with this Order, modifying language in all sections of the agreement to avoid potentially contradictory provisions.

3. That the parties shall file the conformed interconnection agreement with the Commission for approval upon notification by Staff that the agreement is in compliance with this Order.

4. That Staff shall file a Memorandum advising the Commission that it has reviewed the agreement and determined that it complies with this Order no later than the seventh day following the filing of the agreement with the Commission. The Staff shall further advise the Commission in its Memorandum whether or not the Commission should reject the agreement pursuant to 47 U.S.C. Section 252(e)(2)(B).

5. That this Arbitration Order shall become effective on February 28, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Lumpe, Gaw, and
Forbis, CC., concur.
Murray, C., dissents, with dissenting
opinion to follow.

Dated at Jefferson City, Missouri,
on this 28th day of February, 2002.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Petition of MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc., for Arbitration of an Interconnection Agreement With Southwestern Bell Telephone Company Under the Telecommunications Act of 1996.	))))))	**Case No. TO-2002-222**

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I respectfully dissent from the Arbitration Order of February 28, 2002. It is my opinion that the Commission acted beyond its authority in imposing rates from the M2A because there is no evidence that those rates are TELRIC based. The rates imposed are below those previously identified by this Commission as compliant with the TELRIC methodology, because SWBT voluntarily reduced those rates for the purpose of the M2A.[69] Therefore, the Commission has no evidence upon which to base the required determination that the rates are not, as SWBT claims, below the level required by a proper application of the TELRIC methodology.

Therefore, I dissent.

Respectfully submitted,

Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 1st day of March, 2002.

[1] On December 19, 2001, SWBT filed a Motion to File Direct Testimony After December 18, 2001, as well as a Motion to File Schedule 2 Attached to the Direct Testimony of Thomas F. Hughes After December 18, 2001. Those Motions were granted on the first day of hearing, January 14, 2002.

[2] On January 8, 2002, SWBT filed a Motion to File the Rebuttal Testimony of June A. Burgess Out of Time, which was later granted by the Commission.

[3] During the hearing, minor adjustments were made to the time limitations.

[4] 47 U.S.C. Section 271(d)(3).

[5] 47 U.S.C. Section 271(c)(1), (A) and (B), and Section 252(f).

[6] In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act, Case No. TO-99-227 (Order Finding Compliance with the Requirements of Section 271 of the Telecommunications Act of 1996, issued March 6, 2001) (hereinafter the "271 Compliance Order") at 2.

[7] *Id.*, at 3.

[8] In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act, Case No. TO-99-227 (Report & Order, issued March 15, 2001) (hereinafter the "271 Report & Order") at 17-19.

[9] 271 Compliance Order, at 3-4.

[10] *Id.*

[11] 271 Report & Order, at 16.

[12] In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act, Case No. TO-99-227 (Report & Order, issued March 15, 2001), at 18. The cases are TO-2001-438 (certain UNEs); TO-2001-439 (xDSL-capable loops); and TO-2001-440 (line splitting and line sharing).

[13] *Id.*

[14] *See* 47 U.S.C. Section 271(d)(1). SWBT's initial application was assigned CC Docket No. 01-88. SWBT withdrew its initial application and refiled, and its new application was assigned CC Docket No. 01-194.

[15] *See* Order Granting Motion to Accept Revised Missouri Interconnection Rates, Case No. TO-99-227 (August 30, 2001).

[16] *In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, Memorandum and Opinion (November 16, 2001).

[17] *See* Order Denying Motion to Reconsider Recommendation and Opening Case for Monitoring Purposes, Case No. TO-99-227 (September 4, 2001).

[18] CC Docket No. 98-141, Memorandum Opinion and Order: In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 241 and 310(d) of the Communications Act and parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules. Page 160, paragraph 388.

[19] Adoption of Attachments 1-5 did not foreclose WCOM from proposing additional provisions regarding ABT.

[20] In the alternative, in the absence of an Attachment 27, MCImetro proposed language for Attachment 10, Section 8.3.1 to

deal with the issue of uncollectibles.

[21] Order Regarding Recommendation on 271 Application, Case No. TO-99-227, March 15, 2001, pp. 70-71.

[22] CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Revisions of the Telecommunications Act of 1996*, para. 175.

[23] Transcript, pp.1019-1020.

[24] See Issue 44.

[25] See Issue 44.

[26] FCC Rule 51.321(a).

[27] 47 U.S.C. Sections 251(c)(2)(B) and (c)(3).

[28] 47 C.F.R.51.305(2).

[29] *UNE Remand Order*, ¶441.

[30] *UNE Remand Order*, ¶44.

[31] *UNE Remand Order*, ¶444.

[32] 271 Report and Order, at 68.

[33] *See* Case No. TO-2001-455, p. 64.

[34] See also Issue 44 regarding the impropriety of multistate provisions.

[35] Tr. 573, 585, 592.

[36] Staff's Modification to Substitute Sheets, filed January 31, 2002.

[37] The Commission realizes that the M2A rate for this issue is currently set at zero.

[38] *Iowa Utilities Bd., et al. v. FCC, et al.*, 120 F.3d 753, 791-92 (8th Cir. 1997) (Iowa Utilities Bd. I), aff'd in part, rev'd in part, 525 U.S. 366 (1999); "Congress sought 'to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.' Telecommunications Act of 1996, Pub. L. No. 104-104, purpose statement, 110 Stat. 56, 56b (1996)."

[39] 47 U.S.C. Section 251(a)(1).

[40] 47 U.S.C. Section 251(b).

[41] 47 U.S.C. Section 2519c), (2), (3) and (4).

[42] 47 U.S.C. Section 251(c)(6).

[43] 47 U.S.C. Section 252(a)(1).

[44] 47 U.S.C. Section 252, (a)(1) and (e), (1) and (2)(A).

[45] 47 U.S.C. Section 252(b), passim.

[46] 47 U.S.C. Section 252(b)(4)(C).

[47] 47 U.S.C. Section 252(e), (1) and (2)(B).

[48] 47 U.S.C. Section 252(b)(1).

[49] *Id.*

[50] 47 U.S.C. Section 252(b)(2)(A).

[51] 47 U.S.C. Section 252(b)(2)(B).

[52] 47 U.S.C. Sections 3(4)(A) and 251(h)(1).

[53] 47 U.S.C. Section 252(c), "Standards of Arbitration."

[54] Section 386.230.

[55] 47 U.S.C. Section 252(b)(4)(C).

[56] 47 U.S.C. Section 252(b)(4)(A).

[57] 47 U.S.C. Section 252(d).

[58] *AT&T Corp. et al. v. Iowa Utilities Board, et al.*, 525 U.S. 366, 384-85, 119 S.Ct. 721, 732-33, 142 L.Ed.2d 835 (1999).

[59] 47 C.F.R. Section 51.503(b)(1).

[60] 47 C.F.R. Section 51.505(a). The total element long-run incremental cost method is referred to by the acronym "TELRIC."

[61] 47 C.F.R. Section 51.505(b).

[62] 47 C.F.R. Section 51.505(b), (1)-(3). The Eighth Circuit Court of Appeals invalidated 51.505(b)(1) in Iowa Utilities Bd., II, *Iowa Utilities Bd. v. FCC*, 219 F.3d 744, 751 (8th Cir. 2000), but stayed its mandate pending appeal to the United States Supreme Court.

[63] 47 U.S.C. Section 251(c)(3).

[64] 47 C.F.R. Section 51.5.

[65] 47 C.F.R. Section 51.313, (a) and (b).

[66] 47 U.S.C. Section 251(a)(1).

[67] 47 U.S.C. Section 251(c)(2).

[68] 47 C.F.R. Section 51.313(c).

[69] The Arbitration Order of June 7, 2001, in Case No. TO-2001-455, is distinguishable because it was issued prior to SWBT's voluntary rate reduction for purposes of the M2A.