

SBC Long Distance Application - Brooks Communications Comments

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

CAUSE NO. PUD 970000064
APPLICATION OF ERNEST G. JOHNSON,
DIRECTOR OF THE PUBLIC UTILITY
DIVISION, OKLAHOMA CORPORATION
COMMISSION, TO EXPLORE THE
REQUIREMENTS OF SECTION 271 OF
THE TELECOMMUNICATIONS ACT OF 1996

INITIAL COMMENTS OF BROOKS FIBER COMMUNICATIONS OF OKLAHOMA,
INC., AND BROOKS FIBER COMMUNICATIONS OF TULSA, INC.

Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc., (hereinafter collectively referred to as "Brooks") submits the following comments in the above-captioned Cause.

INTRODUCTION

These initial comments are sub-divided into three sections. The first section provides a brief summary of Brooks's history of operations and current operational status in Oklahoma. The middle section focuses on Brooks' Oklahoma interconnection agreement with SWBT and interconnection implementation activity thereunder. The final section reviews the key provisions of the Telecommunications Act of 1996(1) related to Bell Operating Company ("BOC") entry into interLATA services.

1. SUMMARY OF BROOKS OKLAHOMA HISTORY AND CURRENT
OPERATIONAL STATUS.

While the Commission is familiar with the basic facts concerning Brooks' status in Oklahoma, a brief summary of those facts is provided for the record, as follows: Brooks obtained its initial certification in Oklahoma as a competitive access provider in April 1996, with authority to provide dedicated intra-exchange and inter-exchange services, i.e., special access and private line services. In August 1996 that authority was expanded by the Commission's grant to Brooks of authority to operate as a competitive local exchange company ("CLEC"), providing all types of intrastate switched services, including switched local exchange (i.e., dial-tone) service. Brooks Fiber Communications of Tulsa, Inc., operates in Tulsa and holds authority to provide intrastate services in Oklahoma within the territories of Southwestern Bell Telephone Company ("SWBT") and General Telephone Company ("GTE"), while Brooks Fiber Communications of Oklahoma, Inc., operates in Oklahoma City and holds authority to provide intrastate services in the service territory of SWBT. Brooks has intrastate dedicated and switched services tariffs which have become effective in Oklahoma.

Brooks provides telecommunications services through SONET-based fiber optic transmission systems

tied into a digital host switch. Currently Brooks' Oklahoma networks consist of a 221 mile transmission system in Tulsa, and a 44 mile system in Oklahoma City. Brooks has deployed one Lucent 5ESS digital host switch each in its Tulsa and Oklahoma City networks, and those switches became operational in January, 1997.(2)

Brooks has a signed, Commission-approved interconnection agreement with SWBT covering operations in Oklahoma. The interconnection agreement was executed on August 29, 1996 and approved by the Commission by its orders dated October 2, 1996. Shortly after signing the interconnection agreement, Brooks began the process of working with SWBT to implement the physical interconnection of networks (trunking) and other processes necessary for the passage of traffic between Brooks and SWBT. That initial interconnection process was completed in January, 1997, when Brooks and SWBT began exchanging "live" traffic.

Brooks commenced offering switched local exchange services to its first group of customers in January, 1997, once its Oklahoma switches became operational and initial network interconnection and associated systems were implemented with SWBT. At this early stage, Brooks Oklahoma operations are limited - Brooks is currently providing switched local exchange service to 13 business customers in Oklahoma City (6 via direct on-net connections to Brooks' fiber optic transmission rings, 6 through leased SWBT dedicated T-1 facilities and 1 through resold SWBT ISDN service), and to 7 business customers in Tulsa (2 via direct on-net connections to Brooks fiber optic transmission rings and 5 through leased SWBT dedicated T-1 facilities) and to 3 residential customers in Tulsa and 1 residential customer in Oklahoma City (all through resale of SWBT's local exchange service, and all currently on a test-basis). As explained further below, Brooks' expansion of service to a significant number of customers depends upon its ability to gain access to and utilize leased unbundled loop facilities of SWBT, a prerequisite for which is completion of physical collocations at various SWBT central offices.

To provide context to the discussion of Brooks' current status and plans for operations in Oklahoma, it is important to understand the several potential methods available to a CLEC for offering originating service to customers. Generally, there are three primary methods: (a) on-net origination (i.e., where customers directly connect to the transmission facilities of the CLEC; (b) use of incumbent LEC unbundled network elements (including unbundled loops) in combination with the CLEC's transmission facilities; and (c) resale of the incumbent CLEC's services (i.e., where dial-tone is provided by the incumbent CLEC).

With respect to on-net origination, it is important to recognize that the fiber optic networks of CLEC's like Brooks do not approach the originating reach of the pre-existing, ubiquitous loop/switching/interoffice transmission networks of the incumbent local exchange carriers, which have been deployed in the past under the protective environment of a sanctioned monopoly. While Brooks has been expanding its fiber optic networks across the country and will continually evaluate the economic feasibility of further expansion, there is no realistic scenario under which the network of a fiber optic ring-based CLEC like Brooks will - in and of itself -- approach the ubiquitous originating reach of SWBT's network. This fact has enormous implications for Brooks' business operations and for a realistic evaluation of the current and future competitive environment in Oklahoma. It means that Brooks and CLEC's like it are highly dependent upon the incumbent LEC (through lease of the incumbent's unbundled network elements and/or resale of the incumbent's retail services) to expand the CLEC's originating reach beyond the finite limits of its fiber optic rings.

While some carriers may intend to operate by relying primarily or exclusively on resale of the incumbent CLEC's local exchange service for their originating reach, Brooks intends to operate as facilities-based provider - i.e., a CLEC that deploys its own transmission (and, in Brooks' case, switching facilities) and combines those facilities with unbundled network elements of the incumbent CLEC. Brooks will use resale of SWBT's local exchange service to some extent, but only as a secondary method to supplement its primary mode of operation of combining leased(3) SWBT unbundled loops with Brooks transmission and switching facilities. As discussed above, Brooks will also provide service on an on-net basis for this business customers located in close proximity to its fiber optic transmission facilities, but it is access to and use of SWBT's unbundled loops which will significantly expand Brooks ability to offer local exchange service in Oklahoma City and Tulsa.(4)

At this point, however, Brooks is not yet in a position to begin utilizing SWBT's unbundled loop facilities in Oklahoma. This is because Brooks will interconnect SWBT's unbundled loops to Brooks' network through collocations (primarily physical collocations(5)) being deployed at various SWBT central offices (six in Oklahoma City and five in Tulsa), and to date none of these collocations has been completed.(6) Brooks has had collocation applications in process for Oklahoma City and Tulsa central offices since as early as June, 1996, but the process has taken significantly longer than what Brooks had expected and longer than what Brooks believes reasonably should have been required for completion. It is Brooks' opinion that these delays have resulted, in significant part, from an SWBT collocation process which Brooks has found to be too inflexible to permit the continuous, interactive communications which are necessary for expeditious processing of technically intricate engineering and construction projects such as these.

Irrespective of the causes of the delays the fact is that, despite Brooks' best efforts to implement collocations at the earliest possible time, none of its SWBT collocation projects are completed. At this point, Brooks is hopeful that the first group of collocations in Oklahoma City and Tulsa will be completed in the next month or two. Once these collocations become operational, Brooks will be able to begin testing with SWBT's ordering, provisioning, and related operational support systems, and thereafter will be able to commence offering unbundled loop-originated service to customers served from the SWBT central offices where Brooks collocations will be located. Until those collocations are completed and SWBT's unbundled network element support systems have been tested and found to be sufficient, Brooks' operations in Oklahoma will be constricted.

Most recently, Brooks has also experienced initial problems with SWBT in implementation of interim number portability (INP) through remote call forwarding. Because of the early stage of Brooks' switched services operations in Oklahoma, Brooks has had only a few instances of INP implementation with SWBT, but at this point Brooks has experienced problems with every one of these customer conversions - i.e., situations where the SWBT network does not forward calls to the ported number, with the result that the new Brooks customer fails to receive incoming calls for several hours at a time. This early pattern of problems with INP is very troubling to Brooks, since it provides an immediate, negative customer impression which can be very damaging to the success of a new entrant. Brooks is currently investigating this issue with SWBT to solve whatever may be the cause of this INP problem.

II. BROOKS-SWBT INTERCONNECTION AGREEMENT OVERVIEW

As noted above, Brooks and SWBT have a signed, Commission-approved interconnection agreement covering operations in Oklahoma. For purposes of this inquiry into the requirement of Section 271 interLATA long-distance entry, it is important to recognize the context of, and basis for, the Brooks-SWBT interconnection agreement from Brooks' perspective. Like any other CLEC seeking interconnection with a Bell Operating Company ("BOC"), Brooks was faced with decision whether to sign a negotiated agreement or pursue arbitration. However, Brooks' weighting of the factors relevant to that decision were not necessarily the same as may have been made by another CLEC.

In large part, the judgment regarding whether to settle for a negotiated agreement or to arbitrate involves a balancing of the need to obtain the best substantive rates, terms and conditions of interconnection as may be possible, versus timing of interconnection implementation and completion. One of the primary benefits to a CLEC of signing a negotiated interconnection agreement is that it removes uncertainty and accelerates the point at which interconnection implementation can commence compared with the arbitration alternative. It has been Brooks' experience generally across the country with all BOC's, including SWBT, that the BOC will begin working with Brooks on various interconnection implementation tasks (e.g., trunk deployment, 911/E-911 implementation, ancillary service arrangements, resale support systems, etc.) once an interconnection agreement is signed and submitted to the state commission for approval. Thus, in Oklahoma, Brooks began working with SWBT on interconnection implementation issues in September, 1996, soon after the agreement was signed and submitted to the Commission. Completion of these initial implementation steps is necessary before a CLEC can begin to interchange live traffic with the incumbent CLEC's network. In Oklahoma, it took approximately four months for Brooks and SWBT to complete these initial implementation steps and, as noted above, Brooks began limited switched local exchange operations in Oklahoma City and Tulsa in January of this year.

The interconnection implementation timing consideration is particularly important for a CLEC like Brooks which is making substantial relative capital investments in fiber optic transmission systems and digital switching equipment in cities across the nation. As a new entrant into local exchange markets dominated by the BOC possessing the only in-place ubiquitous network, it is essential from both a financial and a marketing perspective for Brooks to quickly begin utilizing its networks by offering service to customers. This timing consideration may be weighed differently by different CLEC's -- i.e., CLEC's such as the major IXC's may have a greater willingness to accept the delays and uncertainties of arbitration due to their pre-existing established revenue base in the long-distance and related telecommunications markets, because of an intent to operate primarily on a resale basis for local exchange service in the near-term, and/or because of the significantly greater resources which they can bring to bear in an arbitration as compared with smaller CLEC's.

The comparative timing benefit for a CLEC from entering into a negotiated agreement becomes clear when one looks to the actual experience of CLEC's that pursue the arbitration route. In Oklahoma, to Brooks' knowledge AT&T and SWBT have yet to submit an interconnection agreement to the Commission for final review and approval, notwithstanding the fact that the Commission issued its arbitration decision for those carriers nearly three months ago. Brooks must assume that because those carriers do not yet have a signed interconnection agreement, no interconnection implementation activity between them has occurred at this point. While it is unclear whether Brooks would have encountered the same type of delay in finalizing an arbitrated interconnection agreement as appears to have occurred between AT&T and SWBT, nevertheless this is precisely the kind of delay and uncertainty (i.e., how long would it actually be before an arbitrated interconnection agreement would be signed and

interconnection implementation could commence) which played a significant role in Brooks' evaluation of whether to pursue arbitration itself or sign the best negotiated agreement it could obtain from SWBT when it made its decision in August, 1996.

On the other hand, the disadvantage for a CLEC of signing a negotiated agreement in lieu of arbitration is the loss of the opportunity to obtain the best potential rates, terms and conditions of interconnection in the near-term. It has been Brooks' experience generally that the BOC's, including SWBT, have been unwilling to provide the best possible rates, terms and conditions to Brooks in the context of interconnection agreements which were negotiated (rather than arbitrated). In one sense this is not surprising since - for example - at the same time SWBT was negotiating with Brooks, arbitration petitions by carriers like AT&T were either already filed or were certainly anticipated in most states, including Oklahoma. The resulting effect of the impending arbitration was that the BOC's generally have been unwilling to offer rates, terms and conditions as part of a negotiated interconnection agreement which were any more favorable to the CLEC than the positions which the BOC anticipated advocating in its arbitration proceedings, presumably based on a fear that the offering of more favorable rates, terms or conditions in a negotiated agreement would tend to undermine the BOC's position in arbitration.

Given these conflicting considerations, a key factor in Brooks' evaluation of whether to sign a negotiated agreement or to arbitrate involved what generally is referred to as "most favored nations" or "more favorable provisions" rights. As part of its interconnection agreement with SWBT, Brooks has the right to opt-into various categories of provisions of interconnection agreements that SWBT enters into with other carriers. See, Section XXIV of the Brooks-SWBT interconnection agreement. This contractual right to opt-into more favorable provisions - when combined with the assumption that one or more of the larger CLEC's, like AT&T, would likely arbitrate with SWBT - provided Brooks with knowledge that at some time in the future it would be able to modify a Brooks-SWBT negotiated agreement by opting into provisions of another carrier's interconnection agreement whose rates, terms and conditions result from an arbitration process. Thus, Brooks' contractual "more favorable provision" rights creates the potential for improvement of the rates, terms and conditions of its interconnection agreement on an after-the-fact basis. Nevertheless, there are risks associated with reliance on the more favorable provisions rights - primarily the fact that Brooks does not control which issues another carrier chooses to arbitrate or how aggressively it may pursue issues which may be of particular importance to Brooks, and the uncertainty of how long it may be before an arbitration actually results in a signed and Commission-approved interconnection agreement (again, as illustrated by the current situation with the AT&T-SWBT arbitration).

After weighing all of these considerations, Brooks ultimately decided to move forward with interconnection implementation by signing a negotiated interconnection agreement with SWBT for Oklahoma. By signing and supporting that interconnection agreement, however, Brooks did not (and does not) concede that the rates, terms and conditions contained therein are consistent with and satisfy the substantive requirements of Sections 251 and 252 of the Act. The standard for approval of a negotiated interconnection agreement is limited in nature - such an agreement can only be rejected if found to discriminate against non-parties, or if found to be "not consistent with the public interest, convenience and necessity...". See, Section 252(e). As part of the interconnection agreement, Brooks asserted that the agreement met the limited standard of Section 252(e), but Brooks otherwise explicitly refrained from making any additional concessions concerning the rates, terms and conditions of the agreement. See, Section XXIV of the Brooks-SWBT agreement. Brooks did not have access to SWBT cost studies during

the course of the negotiation process, and thus had no specific information in its possession to confirm whether the rates contained in its interconnection agreement with SWBT are set on appropriately calculated cost bases. Nor has the Commission been called on to make any determination on the merits regarding whether the rates contained in the Brooks-SWBT interconnection are set at cost-based levels.

Because of its intended use of unbundled loops and physical collocations, Brooks is particularly concerned regarding the prices of these items. The unbundled loop price contained in the interconnection agreement is \$17.63, which is the same as the statewide Oklahoma "proxy ceiling" price identified by the FCC. (7) To Brooks' knowledge, the Commission has not been presented with information establishing that this rate is based on an cost appropriately calculated, and the Commission has made no on-the-merits determination in that regard. With respect to the costs of physical collocation, Brooks is that the price quotations it receives from SWBT are substantially greater than what Brooks encounters with other BOC's for similar collocation arrangements. However, with collocation Brooks is faced with a similar price/timing dilemma as described above regarding interconnection generally - i.e., the fact that litigation of price issues risks substantial delay in Brooks' ability to complete and activate collocation facilities, with resulting delay in entering the market in a meaningful manner. With respect to collocation with SWBT, Brooks is taking the approach of paying SWBT's price quotes in order to have the collocations completed, while reserving its rights to pursue recovery of excessive costs on an after-the-fact basis.

As with the unbundled loop prices, other rates contained in the Brooks-SWBT interconnection agreement also lack any on-the-merits demonstration of being based on appropriate cost calculations. Two examples are the resale discount and the price of remote call forwarding for interim number portability. The resale discount in the Brooks-SWBT interconnection agreement is 15.4%. While SWBT represents this discount as reflecting avoided cost, Brooks has not had access to SWBT's avoided cost information, and the discount is less than that established in the AT&T-SWBT arbitration decision. With respect to charges for remote call forwarding/interim number portability (RCF/INP), again Brooks has not had access to any supporting cost information. Moreover, there is has been no showing by SWBT that the rates contained in the Brooks-SWBT interconnection agreement are consistent with the FCC's directives regarding recovery of such costs.(8)

III. APPLICATION OF SECTION 271 STANDARDS TO BROOKS' OPERATIONAL STATUS

Brooks does not have specific information concerning the interconnection status of any other CLEC's in Oklahoma, but understands and believes that it is the first CLEC to complete initial interconnection with SWBT and to begin commercial operations in the State. Accordingly, Brooks herein provides analysis regarding the Section 271 interrelate long-distance entry requirements only in the context of its operational status and its experience with SWBT.

A. BOC INTERLATA ENTRY UNDER SECTION 271

1. OVERVIEW

The mechanism for BOC entry into interLATA services under the Act is a three-part substantive test to be applied by the FCC. In summary, BOC interLATA cannot be approved unless the FCC finds that:

- a. the BOC has met the requirements of (c)(1)(A) or (c)(1)(B) and, in either instance, access and

interconnection is being provided (in the case of "Track A") or is being offered (in the case of "Track B") consistent with the "competitive checklist" set forth in Section 271(c)(2)(B);

b. the authorization will be carried out in accordance with the separate affiliate requirements of section 272; and

c. the requested authorization is consistent with the public interest, convenience, and necessity.

2. THE "TRACK B" APPROACH--SECTION 271(c)(1)(B)

Section 271(c)(1)(B) contains what has come to be known as the "Track B" approach. It provides as follows:

(B) FAILURE TO REQUEST ACCESS - A Bell operating company (C) meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

Track B is, on its face, not applicable under the circumstances in Oklahoma. SWBT cannot, as this provision requires, assert and demonstrate that "no such provider has requested the access and interconnection described in subparagraph (A)". Brooks submitted its interconnection request to SWBT for Oklahoma in April, 1996 and that request culminated in the Brooks-SWBT interconnection agreement which has been approved by this Commission. Based on the AT&T arbitration and interconnection agreements submitted by other carriers (e.g., U. S. Long Distance and Sprint) it is clear that SWBT received multiple requests for interconnection prior to 10 months after the passage of the Act. As a result, Track B is not applicable in Oklahoma. The unambiguous terms of Section 271(c)(1)(B) establish that the vehicle of filing a Statement of Generally Available Terms as a vehicle for interLATA entry was intended as a mechanism to avoid a BOC being "frozen out" from applying for interLATA entry due solely to the inaction of potential interconnectors. This is evident from the plain wording of the provision - i.e., "...if...no such provider has requested the access and interconnection described in subparagraph (A)...", and from the provisos contained at the conclusion of the subparagraph, which specify circumstances under which Track B may be utilized notwithstanding the fact that one or more providers has requested interconnection - i.e., where the interconnectors have either not pursued negotiations or failed to implement interconnection within a reasonable period of time. It is clear that this subparagraph is intended to provide a default option to protect the BOC's from circumstances due to interconnector inaction which is wholly beyond the BOC's control - i.e., where CLEC's either fail to request interconnection or, having requested interconnection have failed to pursue negotiations, or have failed to pursue implementation of interconnection after an agreement and within a reasonable period of

time. These required circumstances do not exist in Oklahoma, and Track B is simply not applicable as a potential interLATA entry mechanism under the terms of the Act.

3. THE "TRACK A" APPROACH - SECTION 271 (c)(1)(A)

Section 271(c)(1)(A) contains the primary vehicle for BOC intraLATA entry. In pertinent part it provides as follows:

(A) A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

Thus, the "Track A" standard can be summarized as requiring that the BOC have at least one approved interconnection agreement with a competitor that is providing local exchange service to both residential and business subscribers at least predominantly over its own facilities. Moreover, a condition for entry under either "Track A" or "Track B" is compliance with the "competitive checklist". Pursuant to Section 271©(2)(A),

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

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

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

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

The "competitive checklist" is, in turn, set out at Section 271©(2)(B). Among other things, the checklist includes:

(i) (Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) [and]

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

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

Thus, in evaluating the Section 271 entry standards in light of Brooks' current operational status, the

critical questions that must be answered consistent with the purposes of the Act include:

Q: Is SWBT providing Brooks access to unbundled network elements and interconnection consistent with substantive standards of Sections 251(c)(2) and (3), and 252(d)(1)?

Q: Is Brooks offering telephone exchange service to residential and business customers either exclusively... or predominantly over [its] own telephone exchange facilities...", as those terms are reasonably interpreted consistent with the purposes of the Act?

With respect to the first question, Brooks believes the clear answer is, "no". The Track A requirement is that the BOC is providing access and interconnection consistent with the substantive standards of Section 251(c)(2) and (3) and 252(d)(1). This language clearly contemplates the actual provision of these elements and functions in a meaningful manner, not just the mere signing and approval of an interconnection agreement, which offers, unbundled elements and interconnection. As discussed above, Brooks is not yet able to begin leasing of unbundled loops from SWBT, due to the delay in completion of collocations in SWBT central offices. This is critical to an evaluation of the Section 271 standards, particularly in the circumstances of a CLEC like Brooks, whose planned primary method of originating service is through unbundled loops. At this point and despite its best efforts, Brooks does not yet have unbundled loop availability from SWBT and, as a result, item (ii) of the competitive checklist is not met by Brooks' operational status.

Furthermore, even if the facts were different and Brooks was leasing and utilizing SWBT's unbundled loop facilities under the Brooks-SWBT interconnection agreement, SWBT would not have satisfied item (ii) of the competitive checklist because there has been no showing and no on-the-merits determination - that rates, terms and conditions contained in the Brooks SWBT interconnection are accurately set based on SWBT's cost of providing various elements and services as required by Section 252(d)(1). The lack of any demonstration of cost-based pricing applies not only to the unbundled loop network elements, but also to all other important items covered by the Brooks-SWBT interconnection agreement including, collocation prices, the resale discount and RCF/INP prices.

With respect to the second question, Brooks again believes that the clear answer is, "no". Indeed, it strains credulity to suggest that -- in comparison with SWBT's ubiquitous network -- Brooks' current provision of service over its finite transmission rings constitutes the offering of service "exclusively... or predominantly over [its]... own telephone exchange service facilities...", particularly given the current lack of broad availability and usage of SWBT unbundled loop facilities.

Even when SWBT's unbundled loops and other unbundled network elements become broadly available and widely utilized, CLEC's which combine those elements with their own networks will remain highly dependent upon SWBT for a fundamental input to the CLEC's services to its customers. Brooks believes that the "exclusively/predominantly" test, reasonably interpreted, is one of effective freedom from substantial dependence on the incumbent CLEC's facilities. This is confirmed by the common and established definition of the term, "predominant" - e.g., "to exert controlling power or influence, to hold an advantage in numbers or quantity," (Webster's Third New International Dictionary at 1786 (1986); and, "something greater or superior in power and influence to others with which it is connected or compared," (Black's Law Dictionary 1060 (5th Ed. 1979)). Brooks' own fiber optic transmission systems in Oklahoma City and Tulsa cannot - by any stretch of the imagination - be characterized as "predominant" in

comparison to SWBT's ubiquitous loop/switching/interoffice transport system. The originating "reach" of Brooks' network will be substantially smaller than that of SWBT's network for the foreseeable future, and Brooks will only be able to approach the originating reach of SWBT on a competitive basis when it has pervasive and reliable access to SWBT unbundled loop facilities at cost-based prices, with effective monitoring to protect against anti-provisioning, maintenance and related support functions.

At this very early stage in of local exchange competition in Oklahoma, Brooks is anything but free from dependence on SWBT's facilities. On the contrary, Brooks experience with deploying collocations illustrates SWBT's continuing control over critical bottleneck facilities, and Brooks must advance over the collocation hurdle before it can reach the next critical hurdle - on-going reliance on SWBT leased unbundled loops and on reliance on SWBT's ordering, provisioning, maintenance and related support systems. Under these circumstances, any contention that SWBT currently meets the Section 271 standard for entry into the interLATA market is wholly untenable and without merit.

4. PUBLIC INTEREST TEST

The public interest test is a broad standard and the effect of a grant of authority on competition in the relevant market has historically been construed as a key factor in a public interest determination. See, *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90, 91 (1953); *United States v. FCC*, 652 F. 2d. 72, 81-82 (D.C. Cir. 1980) (en banc). As applied to the issue of Section 271 interLATA entry, the public interest test must focus on an evaluation of whether a grant of a BOC's in-region interLATA application at a particular time will, on balance, produce benefits for consumers - both short and long term - by creating, preserving and enhancing competition in the local exchange and inter-exchange markets. Thus, an assessment must be made whether BOC interLATA entry at a particular time will limit or impede the development of competition in the BOC's local exchange market in the state covered by the application, and whether such entry will harm existing competition in the interLATA long-distance market.

As explained, at this early stage of local exchange competition Brooks is highly dependent upon the facilities and systems of SWBT. As a result, SWBT retains substantial power to materially affect and impede Brooks' ability to operate successfully in local exchange markets in Oklahoma. Once SWBT is granted interLATA authority, its incentive to cooperate and avoid activities, which impede local exchange competition, will be substantially reduced. As a result, based on presently available information and under current circumstances, Brooks believes that SWBT interLATA entry in Oklahoma at this point would be extremely premature and contrary to the public interest test under Section 271(c)(3)(C).

CONCLUSION

For the reasons identified herein, Brooks respectfully urges the Commission to conclude and advise the FCC - pursuant to Section 271(d)(2)(B) - that an interLATA services application by SWBT for Oklahoma under current circumstances would be premature and should be rejected.

Respectfully submitted,

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STATE OF MISSOURI

SS.

COUNTY OF ST. LOUIS

VERIFICATION

I, EDWARD J. CADIEUX, first being duly sworn, states on my oath that I am the Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc. (BFP). I am authorized to act on behalf of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications Tulsa, Inc., (both wholly-owned subsidiaries of BFP) regarding the foregoing Initial Comments. I have read the aforesaid Initial Comments and I am informed and believe that the matters contained therein are true and correct to the best of my knowledge.

Dated:

EDWARD J. CADIEUX

EDWARD J. CADIEUX appeared, and being first duly sworn upon his oath, stated that he is the Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc. (BFP) and that he signed the foregoing document as Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc., and the facts contained therein are true and correct according to the best of his knowledge.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal in the aforesaid County and State on the above date.

Dated:

NOTARY PUBLIC

My Appointment Expires:

1. 1Pub.L.No. 104-104, 110 Stat. 56 (to be codified at 47 U.S.C.Secs. 151 et seq.
2. 2Brooks also plans to deploy remote switches in a number of the physical collocations which are currently under construction at SWBT central offices in Oklahoma City and Tulsa.
3. 3It should be noted that the leases of unbundled loops from SWBT are not long-term in nature - i.e., Brooks has the right to use a particular unbundled loop contingent upon the respective end-user's continued purchase of service from Brooks at that particular location and upon Brooks payment of associated charges to SWBT. Brooks does not obtain title to any of the unbundled loop facilities, nor the right to perform its own maintenance or to self -provision the facilities.
4. 4As noted above Brooks has utilized SWBT-provided dedicated T-1 access (sometimes referred to as "type 2" access) to originate dial-tone service for several customers. This approach has been implemented as a partial, stopgap measure prior to the availability of SWBT unbundled loops. This "type 2" approach to offering dial-tone service requires deployment of special network equipment by Brooks and is only economically feasible for providing service to certain customers.
5. 5Physical collocation involves CLEC leasing of dedicated space within an incumbent LEC central office and deployment of transmission (and, in some instances, remote switching) equipment therein for use in obtaining access to unbundled network elements and for interconnection. In physical collocation arrangements, the CLEC purchases and owns the transmission (and, if applicable, the remote switching equipment) located in its collocation space.
6. 6Brooks has pre-existing virtual collocations at one SWBT central office each in Oklahoma City and Tulsa. Those arrangements are provided by SWBT pursuant to its interstate virtual expanded interconnection tariff, which is subject to an FCC investigation regarding the reasonableness of its pricing. These SWBT tariffed virtual collocation arrangements differ in important respects from physical collocation arrangements. With tariffed virtual collocation, the point of interconnection normally is outside of the central office, deployment of remote switching equipment is not permitted, and the interconnector designates but does not own the transmission equipment. Brooks has found SWBT's interstate tariffed virtual collocation to be extremely expensive compared to comparable virtual collocation from most other BOC's. This type of virtual collocation is not usable by Brooks for unbundled loop access due to both network and economic feasibility considerations. Brooks is also in the process of negotiating a contract with SWBT for a different type of virtual collocation - where transmission equipment could be purchased by Brooks and located in common areas of central offices. This would provide Brooks an additional collocation option in central offices where physical collocation is not feasible. However, the parties are still working on the contract language and none of these new virtual collocations has been deployed to date.

7. Ironically, the price of unbundled loops to Brooks actually increased during the course of negotiations after the FCC's August 8, 1996 Interconnection Order. The parties had reached closure on this pricing issue prior to the FCC's order, at a price that turned out to be lower than the FCC's proxy ceiling rate for Oklahoma of \$17.63. However, subsequent to the FCC's August 8 Order but prior to resolution of other issues and execution of the interconnection agreement SWBT revised its position on unbundled loop pricing such that the price offered to Brooks was then and thereafter \$17.63, notwithstanding the fact that the FCC identified its proxy rates as ceiling prices rather than minimum or prescribed prices. As a "negotiated" rate, the \$17.63 rate prevails in the Brooks-SWBT contract notwithstanding the subsequent stay of the pricing provisions of the FCC's August 8, 1996 Order pending federal appellate court review.

8. See, First Report and Order and Further Notice of Proposed Rulemaking