

Before the
Federal Communications Commission
Washington, D.C. 20554

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 for Provision of In-Region,
InterLATA Services in Kansas and Oklahoma
CC Docket No. 00-217

ORDER ON REMAND

Adopted: November 10, 2003

Released: November 12, 2003

By the Commission:

I. INTRODUCTION

1. On January 22, 2001, the Commission released an order granting Southwestern Bell Long Distance's application for authority under section 271 of the Communications Act, as amended, to provide in-region, interLATA services in the states of Kansas and Oklahoma. On December 28, 2001, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded part of this order to the Commission. Specifically, the court asked the Commission to consider the relevance of price squeeze allegations in a section 271 application's public interest analysis. In this order, we further consider this issue and conclude that allegations of a price squeeze are relevant to our consideration of whether an applicant has met the section 271 public interest requirement. That is, a demonstration that a price squeeze dooms competitors to failure in an applicant state may warrant a finding that the grant of the application is not in the public interest. We conclude further, however, that demonstrating that a price squeeze exists in some limited subset of the statewide telecommunications market, without more, does not necessarily show a failure to meet the public interest requirement. Rather, we find that the existence of a limited price squeeze is one factor that we must consider when assessing

1 Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001) (SWBT Kansas/Oklahoma 271 Order), aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001). The application was filed by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications, Inc. d/b/a/ Southwestern Bell Long Distance (collectively SWBT).

2 Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001) (Sprint v. FCC).

3 Id. at 555.

whether approval of a section 271 application for a particular state would serve the public interest. Accordingly, we will consider the existence and scope of any alleged price squeeze along with all other relevant public interest factors. Based on these conclusions, we review the evidence underlying the *SWBT Kansas/Oklahoma 271 Order* and conclude that appellants have not established a *prima facie* case of price squeeze, nor have they established that SWBT failed to meet the section 271 public interest requirement for the states of Kansas and Oklahoma.<sup>4</sup>

## II. BACKGROUND

2. In the Telecommunications Act of 1996,<sup>5</sup> Congress conditioned BOC provision of in-region, interLATA service on compliance with certain provisions of section 271. Pursuant to section 271, BOCs must apply to this Commission for authorization to provide interLATA services originating in any in-region state.<sup>6</sup> Congress directed the Commission to issue a written determination on each application no later than 90 days after the application is filed.<sup>7</sup>

3. To obtain authorization to provide in-region, interLATA services under section 271, a BOC must show that: (1) it satisfies the requirements of either section 271(c)(1)(A), known as “Track A,” or section 271(c)(1)(B), known as “Track B”; (2) it has “fully implemented the competitive checklist” or, alternatively, the statement of terms and conditions that the company offers to provide access and interconnection approved by the state under section 252<sup>8</sup> satisfies the competitive checklist contained in section 271(c)(2)(B);<sup>9</sup> (3) the requested authorization will be carried out in accordance with the requirements of section 272;<sup>10</sup> and (4) the BOC’s entry into the in-region, interLATA market is “consistent with the public interest, convenience, and necessity.”<sup>11</sup> The statute specifies that, unless the Commission finds that these four criteria have been satisfied, the Commission “shall not approve” the requested authorization.<sup>12</sup>

4. Checklist item two of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.<sup>13</sup> Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network

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<sup>4</sup> The issue of how price squeeze should be evaluated in assessing whether approval of a section 271 application would serve the public interest was also considered in an October 22, 2002 opinion of the D.C. Circuit. The D.C. Circuit approved in large part the Commission’s decision to grant long-distance authority to Verizon in Massachusetts pursuant to section 271 of the Act. *WorldCom Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002). The court, however, found the Commission’s justification for declining to consider the appellants’ price squeeze allegations insufficient, and remanded the issue for further consideration in light of its determination in *Sprint v. FCC*. *Id.* at 8. We will address that issue in a forthcoming order.

<sup>5</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (*1996 Act* or *Act*).

<sup>6</sup> See 47 U.S.C. § 271.

<sup>7</sup> *Id.* § 271(d)(3).

<sup>8</sup> *Id.* § 271(c)(1)(B).

<sup>9</sup> *Id.* § 271(d)(3)(A).

<sup>10</sup> 47 U.S.C. § 271(d)(3)(B).

<sup>11</sup> *Id.* § 271(d)(3)(C).

<sup>12</sup> *Id.* § 271(d)(3). See *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413, 416 (D.C. Cir. 1998).

<sup>13</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>14</sup> Section 252(d)(1) requires that a state commission’s determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.<sup>15</sup> Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.<sup>16</sup> A UNE-Platform, or unbundled network element platform, consists of a 2-wire analog loop, an analog switch port, an analog loop-to-switch port cross-connect, and transport.

5. The public interest analysis of section 271 is separate from, and in addition to, the 14-point checklist, and under normal canons of statutory construction requires us to make an independent determination.<sup>17</sup> The public interest requirement is an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.<sup>18</sup> At the same time, Congress explicitly prohibited the Commission from enlarging the scope of the competitive checklist.<sup>19</sup>

6. In the *SWBT Kansas/Oklahoma 271 Order*, the Commission concluded that SWBT had taken the necessary steps to open its local exchange markets in Kansas and Oklahoma to competition in both states, meeting the requirements of section 271 of the Act.<sup>20</sup> In the course of the section 271 proceeding for Kansas and Oklahoma, various commenters asserted that SWBT’s rates in Kansas and Oklahoma for the UNE platform precluded competitive entry.<sup>21</sup> Commenters argued that these rates caused a “price squeeze,” that is, the rates for the competitors’ recurring inputs were so high that no competitor was able to earn a sufficient profit margin in the retail residential market.<sup>22</sup> One party, AT&T, further asserted that this price squeeze was evidence that SWBT’s rates were not TELRIC-compliant, in violation of checklist item two.<sup>23</sup> AT&T also contended that the lack of competition in the Kansas and Oklahoma markets served as proof that SWBT’s high rates precluded profitable competitive entry, in

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<sup>14</sup> *Id.* § 251(c)(3).

<sup>15</sup> *Id.* § 252(d)(1).

<sup>16</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-79; 47 C.F.R. §§ 51.501 *et seq.*

<sup>17</sup> See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 at 4161-62, para. 423 (1999).

<sup>18</sup> *Id.* at 4161-62, paras. 423-24.

<sup>19</sup> “The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).” 47 U.S.C. § 271(d)(4).

<sup>20</sup> *SWBT Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6239, para. 1.

<sup>21</sup> *Id.* at 6269, para. 65, 6280-81, para. 92.

<sup>22</sup> *Id.* AT&T’s price squeeze analysis includes nonrecurring charges. WorldCom asserts that nonrecurring charges contribute to an overall price that precludes entry; but, as discussed below, WorldCom does not provide a market analysis in support of its allegation.

<sup>23</sup> *Id.* at 6280-81, para. 92.

violation of section 271's separate public interest requirement.<sup>24</sup> Neither state commission addressed the issue of the commenters' price squeeze allegations in its section 271 comments, nor did the Department of Justice.

7. In general, a price squeeze occurs when a "wholesale supplier, who also sells at retail, charges such high rates to its wholesale customers that they cannot compete with the supplier's retail rates."<sup>25</sup> Price squeeze developed as a complaint under antitrust law<sup>26</sup> and was eventually applied in the area of regulated industries.<sup>27</sup> In regulated industries, a price squeeze analysis is frequently framed within a scheme of dual regulation, in which wholesale rates are regulated by a federal commission and retail rates are regulated by state commissions.<sup>28</sup> In a prior decision regarding price squeeze allegations, the Commission noted the complexity of proving the existence of a price squeeze, and held that the party alleging a price squeeze bears the burden of proving its allegations and must successfully rebut the business justifications of the opposing party.<sup>29</sup> The Commission also stated that a petitioner's allegations that it had lost some of its market share was not sufficient to prove that a price squeeze exists.<sup>30</sup> The petitioner must prove that the relationship between wholesale and retail rates is responsible for the price squeeze.<sup>31</sup>

8. The Commission declined to consider appellants' price squeeze allegations in the *SWBT Kansas/Oklahoma 271 Order*.<sup>32</sup> The Commission stated that incumbent LECs are not required to guarantee competitors a certain profit margin.<sup>33</sup> It further concluded that, pursuant to checklist item two of section 271's competitive checklist, incumbent LECs need only show that they provide UNEs at rates that are just, reasonable, and nondiscriminatory, and that allow the incumbent to recover a reasonable profit.<sup>34</sup> The Commission also noted that if it were to focus on competitors' profitability, it would have to consider the level of a state's retail rates, which are outside the Commission's authority.<sup>35</sup> The Commission similarly declined to consider allegations of insufficient profit margins in the context of the checklist's public interest requirement.<sup>36</sup>

9. Several parties appealed the *SWBT Kansas/Oklahoma 271 Order*. Appellants made various attacks on the Commission's UNE rate findings, including its finding that a price

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<sup>24</sup> *Id.*

<sup>25</sup> *Ellwood City v. FERC*, 731 F.2d at 959, n.15 (D.C. Circuit 1984) (internal citations omitted).

<sup>26</sup> *United States v. Aluminum Co. of America*, 138 F.2d 416, 436-38 (2d Cir. 1945).

<sup>27</sup> See generally *FPC v. Conway*, 426 U.S. 271 (1976); *City of Batavia v. FERC*, 672 F.2d 69 (D.C. Circuit 1982); *Bethany v. FERC*, 670 F.2d 187 (D.C. Circuit 1981).

<sup>28</sup> See *Batavia*, 672 F.2d at 86.

<sup>29</sup> *InfoNXX, Inc. v. New York Tel. Co.*, 13 FCC Rcd 3589, 3599-3600, para. 20 (1997).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 3600, para. 21.

<sup>32</sup> *SWBT Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6269, para. 65 and 6280-81, para. 92.

<sup>33</sup> *Id.* at 6269, para. 65.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 6280-81, para. 92.

<sup>36</sup> *Id.* at 6381, para. 281.

squeeze analysis was not required under either the UNE pricing rules or public interest examination. The court rejected most of the claims regarding UNE rates, but found that the Commission had not adequately justified its decision not to consider the price squeeze arguments as part of its public interest analysis.<sup>37</sup> The court did not vacate the Commission's order, but rather remanded for further consideration of the relevance of a price squeeze analysis to section 271's public interest analysis.<sup>38</sup>

10. Regarding the Commission's reasoning that profitability considerations were irrelevant under the statute, the court stated that the relevant issue is not profitability, but whether the UNE pricing in question "doom[s] competitors to failure."<sup>39</sup> The court noted that, even if the Commission had approved rates as being within a range that a reasonable application of TELRIC principles would produce, it might have approved rates that were at "too high a point within the [TELRIC] band"<sup>40</sup> to allow competitive providers to compete. The court agreed with the Commission that factors beyond a BOC's control, such as a competitive LEC's specific market strategy, might keep the competitor out of the residential market, but held that this was not an adequate basis for rejecting appellants' evidence that UNE rates precluded competitive entry.<sup>41</sup> The court stated that, under *FPC v. Conway*, the Commission may not refuse to consider allegations of a price squeeze merely because it does not have jurisdiction to set retail rates.<sup>42</sup> Commission counsel asserted at oral argument that competitors may not be able to make a sufficient profit in the residential market because state commissions may set retail rates below cost to keep rates affordable.<sup>43</sup> The court did not, however, evaluate this rationale, as it was not contained in the order under review.<sup>44</sup> The court made two observations at the end of its analysis of the price squeeze issue. First, it stated that a "serious price squeeze inquiry" may not be possible within a 90-day statutory review period.<sup>45</sup> The court noted that it had already recognized in the appeal of the *Bell Atlantic New York Order* that Congress' 90-day limit "constrains the scope of the Commission's inquiries."<sup>46</sup> Second, the court observed that if the Commission is correct that a showing of only minimal competition will satisfy Track A, this low threshold for satisfying Track A may reflect Congress' recognition that the residential market is not attractive to competitors, even if UNE rates are set at the lower end of a TELRIC range.<sup>47</sup>

11. The questions now before us are how allegations of a price squeeze should be considered and how much weight these allegations should be accorded under the public interest

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<sup>37</sup> *Sprint v. FCC*, 274 F.3d at 555. The court also rejected appellants' claim that the Commission had erred in its "Track A" analysis. *Id.* at 561-62.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 554.

<sup>40</sup> *Id.* at 554-55.

<sup>41</sup> *Id.* at 555.

<sup>42</sup> *Conway*, 426 U.S. at 279.

<sup>43</sup> *Sprint v. FCC*, 274 F.3d at 555.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 555-56.

<sup>46</sup> *Id.* at 556, *accord*, *AT&T v. FCC*, 220 F.3d at 631.

<sup>47</sup> *Id.* at 556.

requirement of section 271(d)(C)(3). Further, we must determine whether the price squeeze alleged by appellants demonstrated that SWBT failed to meet this requirement.

### III. DISCUSSION

12. AT&T and WorldCom contend that the evidence of a price squeeze submitted in the SWBT Kansas/Oklahoma 271 proceeding demonstrated a violation of the section 271 public interest requirement. As discussed below, we find that evidence of a price squeeze may be probative of whether the public interest requirement has been met. As noted by the court, a price squeeze is capable of “[impeding] local competition enough to render a section 271 approval in contravention of the ‘public interest.’”<sup>48</sup> Because a section 271 public interest inquiry requires consideration of the public interest state-wide, demonstrating that a price squeeze exists in some limited subset of the statewide telecommunications market, without more, does not necessarily show a failure to meet the public interest requirement. Thus, a price squeeze must be considered along with other public policy factors that impact the state of competition in an applicant state when deciding whether the public interest requirement has been met. We conclude that appellants did not demonstrate a public interest violation here.

#### 1. A demonstration of a limited price squeeze must be considered along with other competing factors in the section 271 public interest analysis

13. We have reconsidered how allegations of a price squeeze should be weighed, and we conclude that where the margin between UNE rates and retail rates precludes efficient competitors from entering a market, competitors that rely solely on UNEs will be doomed to failure in that market. Whether such a showing demonstrates a failure to meet the section 271 public interest requirement depends on the competitive characteristics of the state telecommunications market across all zones and modes of entry. Thus, where a price squeeze is demonstrated in some subset of the statewide telecommunications market, we find that the appropriate question is whether such evidence precludes the grant of a section 271 application when considered in the context of all other competing public interest factors. While antitrust price squeeze law may provide guidance for our evaluation of whether a price squeeze exists, such a determination is not the end of the inquiry. Rather, to the extent a commenter demonstrates a price squeeze exists, we must consider such evidence in the context of all competing policy interests, even when the remedy may not be within our jurisdiction. Thus, even if state commission action, such as retail rate rebalancing or making high-cost support explicit and portable, may be necessary to address the concern, we may still find that the concern is relevant to our public interest inquiry under section 271. For example, in the *Verizon Vermont 271 Order*, we considered evidence that the applicant’s retail rates were lower than the cost of the UNE–Platform in certain regions of Vermont in the context of state public policies.<sup>49</sup> In that case, it appeared likely that a state public policy of keeping basic telephone service affordable resulted in cross-subsidization of residential retail rates in rural areas. That factor was not addressed by interested parties, and we determined that such circumstances weighed against finding a public interest violation in that instance. As in the Vermont application, we will

<sup>48</sup> *WorldCom v. FCC*, 308 F.3d at 10.

<sup>49</sup> See *Application by Verizon New England Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625 at 7663-64, paras. 68-70 (*Verizon Vermont Order*).

consider the price squeeze allegations before us here in the context of all relevant evidence and public interest factors.

14. A price squeeze analysis as part of a section 271 application is distinct from typical antitrust price squeeze inquiries. As the court noted, a price squeeze inquiry is a complex undertaking that can take years to resolve. Courts have also recognized that conducting a price squeeze inquiry in a regulated industry adds complexity, as regulatory and antitrust laws typically aim at similar goals, such as ensuring low and efficient prices and ensuring innovation, but seek to achieve the goals “in very different ways.”<sup>50</sup> What we are faced with in the course of considering 271 applications are even more complicated circumstances. We are examining competitive viability in a market that is transitioning from a regulated to a competitive industry, where maintaining ubiquitous availability of phone service continues to be a paramount public policy concern. The nature of a market in transition will be taken into account, along with other factors, in determining whether a demonstrated price squeeze amounts to a violation of the section 271 public interest requirement.

15. We also find that a public interest inquiry will go beyond the market or mode of entry in which a price squeeze is demonstrated. As noted above, the public interest inquiry is a broad inquiry. As characterized by the court, the question to be answered is whether the UNE prices at issue “[doom] competitors to failure”<sup>51</sup> or might “impede local competition enough to render a section 271 approval in contravention of the ‘public interest.’”<sup>52</sup> Many of the price squeeze allegations raised in section 271 applications have focused on the UNE-Platform residential market. The standard for UNE prices is that they be set in accordance with TELRIC principles. We conduct a specific review of pricing to determine whether this standard is met, and we decline to impose a requirement separate from TELRIC that UNE rates be profitable in all markets. Rather, we will consider evidence of a price squeeze along with evidence of how much the alleged price squeeze affects competition state-wide and the state of or potential for competition by other modes of entry, including facilities-based entry and resale.<sup>53</sup> Thus, the competitive significance state-wide of any demonstrated price squeeze must be taken into

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<sup>50</sup> *Concord Massachusetts v. Boston Edison Co.*, 915 F.2d 17 (1<sup>st</sup> Cir. 1990) (*Concord*).

<sup>51</sup> *Sprint v. FCC*, 274 F.2d at 554.

<sup>52</sup> *WorldCom v. FCC*, 308 F.3d at 10.

<sup>53</sup> We think that consideration of resale competition as part of a section 271 public interest analysis is particularly appropriate in the case of high cost areas where residential rates may be lower than the cost of providing service. *Verizon Vermont Order* at 7663-64. Such pricing is often a reflection of the state's decision to keep residential rates lower than they otherwise would be, rather than an indication that the UNE rates are above TELRIC levels. *Id.* We note that in the *Triennial Review Order*, for purposes of section 251(d)(2), we specifically declined to adopt the position advocated by certain parties “that requesting carriers are not necessarily impaired if they can use incumbent LEC resold or retail tariffed services . . . to provide their retail service.” *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Deployment of Wireline Services Offering Advanced Telecommunication Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, para. 102 (2003) (*Triennial Review Order*), Errata, 18 FCC Rcd 19020 (2003). In addition, we found that it would be inconsistent with the Act to permit incumbent LECs to avoid unbundling at TELRIC rates simply by voluntarily making services available on a resale or tariffed basis. Accordingly, we concluded that we could not sanction an approach that would so easily remove one entry mode. *Id.* We believe that the differences in the treatment of resale in the present order and the *Triennial Review Order* are fully justified by the differences in context.

account, along with other factors, in determining whether such price squeeze amounts to a violation of the section 271 public interest requirement. This addresses the court's concern that, despite checklist compliance, a price squeeze may have a significant adverse affect on competition in an applicant state,

16. As the court also noted, the statutory 90-day time frame controls the scope of our price squeeze analysis. There is a limit to the depth of analysis that can be accomplished in that period of time. Given the complexity of both a price squeeze and a public interest analysis as described above, we find that parties alleging a public interest violation bear a significant burden in filing a thorough and well supported analysis of the state of competition in the applicant state.

17. We also find that our ability to determine the appropriate remedy for a price squeeze that has been established is limited by the nature of the record in a 271 application. If a price squeeze does exist and UNE rates have been set in accordance with TELRIC principles, we believe the remedy for such a price squeeze will include one or all of the following: rebalancing retail rates, making high cost support for rural areas explicit and portable, and, as posited by the court, reducing UNE rates to a lower point in the TELRIC range.<sup>54</sup> For the most part, state commissions, rather than this Commission, have jurisdiction to provide for these remedies. Accordingly, we encourage commenters to raise concerns regarding a price squeeze to state commissions. State commissions set both wholesale and retail rates, and have the benefit of extensive cost analyses on which to rely when resolving such claims. At a minimum, a state record will assist immeasurably in our analysis of the competing claims of carriers.

## **2. Appellants Do Not Establish a Public Interest Violation in Kansas and Oklahoma**

18. As discussed above, AT&T and WorldCom assert that evidence of a minimal statewide average margin between the costs associated with providing service utilizing the UNE-Platform and the revenues available from potential customers is sufficient to demonstrate that a price squeeze exists in the Kansas and Oklahoma residential markets. The UNE rate for unbundled loops is disaggregated into three zones in Oklahoma to reflect the cost differences associated with providing loops in areas with differing population densities across the state. This difference in loop rates between zones accounts for the differences in the available margins AT&T asserts as evidence of a price squeeze. AT&T submitted evidence that the available margin in Oklahoma was \$6.24 in zone three and negative in zones one and two.<sup>55</sup> After the filing of this evidence, and in the course of the 271 proceeding, SWBT filed new, discounted rates. The discounted rates are the rates relied on by the Commission in the *SWBT Kansas/Oklahoma 271 Order*.<sup>56</sup> By applying AT&T's calculations and assumptions to SWBT's discounted rates, we find that, according to AT&T's analysis, it could achieve a \$5.05 margin in zone two and a \$7.69 margin in zone three.<sup>57</sup> These rates constitute margins of 18.5 percent and

<sup>54</sup> *Sprint v. FCC*, 274 F.2d at 555.

<sup>55</sup> AT&T Kansas-Oklahoma Comments at Attach. 3, Declaration of Michael Lieberman at 9 (*AT&T Lieberman Declaration*).

<sup>56</sup> *SWBT Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6265-66, para. 58.

<sup>57</sup> Since we issued our decision in the *SWBT Kansas/Oklahoma 271 Order*, SWBT increased its subscriber line charge from \$4.35 to \$5.27, which would affect the margin available to a competitor. See *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance)*,

(continued....)

almost 27 percent, respectively. Zones two and three account for 75 percent of the population of Oklahoma. Zone one continues to have a negative \$11.12 margin. AT&T contends that the available margin in Kansas is similarly insufficient, but it does not provide any analysis to support this claim.<sup>58</sup> WorldCom asserted that it would not enter either the Kansas or Oklahoma markets because SWBT's rates preclude entry, even after SWBT lowered its rates.<sup>59</sup> WorldCom does not provide a margin analysis in support of its allegations comparable to that submitted by AT&T.

19. WorldCom argues that the available margin in a state must be at least \$10.00 to cover WorldCom's internal costs for entry into the residential market.<sup>60</sup> AT&T asserts that Oklahoma gross margins are so low that it sees no need to analyze internal costs to conclude that UNE entry is uneconomic.<sup>61</sup> Neither WorldCom nor AT&T provides cost or other data to support their assertions regarding the minimum margin necessary to support entry. We note that WorldCom is currently offering a bundled local and long distance package in both Kansas and Oklahoma.<sup>62</sup>

20. In light of the analysis outlined above, we reconsider appellants' price squeeze allegations for Kansas and Oklahoma and find that appellants do not establish that a price squeeze exists in either state justifying denial of SWBT's application on public interest grounds. Appellants provided no evidence regarding available margins in Kansas. Accordingly, we find that no price squeeze was established in any segment of the Kansas market, and appellants' allegations have no impact on our public interest analysis for the state of Kansas. In Oklahoma, even if we assume that appellant's basic analysis was correct, we find the analysis to be materially insufficient because it did not consider potential revenues from interLATA or intraLATA toll or universal service support, nor did it consider whether using a mix of the UNE-Platform and resale to provide service would affect its price squeeze arguments.<sup>63</sup> Additionally, according to AT&T's analysis in Oklahoma, AT&T could still achieve a margin of 18.5 percent and almost 27 percent in zones two and three, respectively, which account for 75 percent of the population of Oklahoma.<sup>64</sup> WorldCom's assertion that it cannot achieve a sufficient profit margin in Oklahoma is undercut by the fact that it has entered the Oklahoma residential market

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*NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, Memorandum Opinion and Order, 17 FCC Rcd 18660 at 18743, para. 161 (2002) (*Verizon New Hampshire/Delaware Order*).

<sup>58</sup> AT&T Comments at 26-27.

<sup>59</sup> WorldCom Reply Comments at 3-4.

<sup>60</sup> *Id.* at 7.

<sup>61</sup> *AT&T Lieberman Declaration* at para. 14.

<sup>62</sup> See [www.mci.com](http://www.mci.com).

<sup>63</sup> See *Verizon Vermont Order*, 17 FCC Rcd at 7663, para. 69.

<sup>64</sup> We also note that no commenter discussed whether lower amounts of residential competition here are the result of a state commission policy of keeping residential rates affordable in high-cost areas. As we have previously noted, a lack of profitability in entering high-cost areas of the residential market may reflect subsidized residential rates, not that UNE rates are at too high a point in the TELRIC range. Parties asserting that a price squeeze demonstrates a public interest violation will need to address such competing public policy interests. See *id.* at 7663, para. 68; *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18751, para. 161

through its offering of “The Neighborhood” since we issued our decision in the *SWBT Kansas/Oklahoma 271 Order*.<sup>65</sup> Thus, we find that no price squeeze was established in Oklahoma. Because AT&T and WorldCom based their allegations of a public interest violation primarily on the existence of a price squeeze and we conclude that they have not established that a price squeeze exists in either Kansas or Oklahoma, we find no public interest violation.

21. We find also that, if we had found that a price squeeze existed in the UNE-Platform market in Oklahoma and Kansas, we would have had to consider whether the existence of a price squeeze in this subset of the statewide telecommunications market demonstrated a failure to meet the public interest requirement. Such an analysis would have included consideration of competing state public policies, such as keeping basic telephone services affordable. It would also have included an examination of the competitive significance of the demonstrated price squeeze across all modes of competitive entry by considering factors such as the viability of facilities based competition. We do not, however, reach these issues because we conclude that AT&T and WorldCom did not establish that a price squeeze exists in either Kansas or Oklahoma.

#### IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 10, 201-205, 251-254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201-205, 251-254, 256, 271, and 303(r), this *Order on Remand* IS ADOPTED.

23. IT IS FURTHER ORDERED that the Commission’s holding in its *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>65</sup> See [www.mci.com](http://www.mci.com). See also WorldCom Ex Parte Letter from Keith L. Seat, Senior Counsel Federal Law and Public Policy to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-176, Application of Verizon Pursuant to Section 271 of Telecommunications Act of 1996 to Provide InterLATA Services in Massachusetts at 2-4 (Nov. 30, 2000).