

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

In the Matter of
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 Texas
CC Docket No. 00-65

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2000

Released: June 30, 2000

By the Commission: Commissioner Furchtgott-Roth concurring and issuing a statement.

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I. INTRODUCTION

1. On April 5, 2000, SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively, SWBT) filed its second application for authorization under section 271 of the Communications Act of 1934, as amended,¹ to provide interLATA services in the State of Texas.² Although SWBT initially filed for in-region, interLATA authority for the State of Texas

¹ 47 U.S.C. § 271. Section 271 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 151 *et seq.* We refer to the Communications Act of 1934, as amended, as “the Communications Act” or “the Act.” We refer to the Telecommunications Act of 1996 as “the 1996 Act.”

² *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 Texas*, CC Docket No. 00-65 (filed Apr. 5, 2000) (SWBT Texas I Application); *see Comments Requested on Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas (CC Docket No. 00-65)*, Public Notice, DA No. 00-750 (rel. Apr. 6, 2000). Unless an affidavit or appendix reference is included, all citations to the “SWBT Application” refer to SWBT’s “Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas.” References to all affidavits or other sources contained in the appendices submitted by SWBT are initially cited to the Appendix, Volume, and Tab number indicating the location of the source in the record. Subsequent citations to affidavits are cited by the affiant’s name, *e.g.*, “SWBT Dysart Aff.” (continued....)

on January 10, 2000,³ that application was withdrawn at SWBT's request.⁴ We therefore take no action with respect to SWBT's first application. In this Order, we grant SWBT's second application to enter the in-region, interLATA market in Texas based on evidence that SWBT has taken the statutorily required steps to open its local exchange and exchange access markets to competition.

2. This approval marks, for the first time, an application that is supported by both the Department of Justice and relevant state commission, in this case the Texas Public Utility Commission (Texas Commission). The success of this application is due, in large part, to the extensive review conducted by both the Department of Justice and the Texas Commission.

3. We applaud the efforts of the Texas Commission, which has expended significant time and effort overseeing SWBT's implementation of the requirements of section 271. For more than two years, the Texas Commission has worked with SWBT and competing carriers to identify and resolve a number of key issues related to SWBT's compliance with the Act. As a result of the Texas Commission's efforts, competition has taken root, and is expanding in local telecommunications markets, which ultimately benefits consumers. The Texas Commission utilized a number of effective methods to ensure that the local markets in Texas are open to competition today, and will remain so in the future. Of particular note, the Texas Commission ensured that its section 271 review process was open to participation by all interested parties, and supplemented its review of the operational readiness of SWBT's OSS with an independent third party test. As part of its section 271 review, the Texas Commission also developed clearly defined performance measurements and standards, and adopted a performance remedy plan to discourage backsliding. In a continuing effort to refine and monitor performance measurements, the Texas Commission has a six month review process in place. The Texas Commission is currently considering modifying existing measurements and adding new measurements based on

(Continued from previous page) _____

Comments on the current application are cited by party name, e.g., "ALTS Comments." Documents, such as affidavits and declarations, submitted by commenters are cited by the affiant's name and the party submitting the affidavit, e.g., "AT&T Rhinehart Aff.," "Covad Goodpastor Decl." A list of parties that submitted comments or replies is set forth in Appendix A.

³ See *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 Texas*, CC Docket No. 00-4 (filed Jan. 10, 2000) (SWBT Texas II Application); see *Comments Requested on Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas (CC Docket No. 00-4)*, Public Notice, DA No. 00-37 (rel. Jan. 10, 2000).

⁴ See Letter from James D. Ellis, Paul K. Mancini, Martin E. Grambow, Counsel for SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC (dated Apr. 5, 2000) (*SBC Apr. 5, 2000 Ex Parte Letter*) at 2; see also *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 Texas*, CC Docket No. 00-4, FCC 00-124, Order (rel. Apr. 6, 2000) (*SWBT Texas I Withdrawal Order*) (granting SWBT's request to withdraw its January 10 Application and to initiate a new application pursuant to section 271 based on the existing record in CC Docket 00-4 and the new information provided by SBC in its April 5 filing).

input from SWBT and competing carriers.

4. In addition to overseeing SWBT's implementation of the requirements to section 271 approval, the Texas Commission has actively implemented our rules issued under section 251, including the Commission's pricing standards and the rules relating to advanced services. Moreover, to address the concerns raised by the Department of Justice and commenters with respect to SWBT's initial application, the Texas Commission conducted a further review with respect to a number of key section 271 issues. Because of those efforts, this second application by SWBT is an improvement over its first one, especially in those areas identified as deficient by the Department of Justice in its evaluation of SWBT's first application. Furthermore, we accord the Texas Commission's verification of SWBT's compliance substantial weight based on the totality of its efforts and the extent of expertise it has developed on section 271 issues.

5. The fact that SWBT has implemented the competitive checklist in Texas can be seen in the degree of entry into the local exchange market. According to SWBT, it has unbundled more than 302,000 loops (including nearly 244,000 loops as part of an unbundled network element platform or "UNE-P").⁵ SWBT also reported resale of approximately 349,000 access lines to competitors (including 191,000 residential lines).⁶ The Department of Justice estimates that competitors have captured approximately eight percent of access lines in SWBT's territory in Texas.⁷

6. In addition to competition for voice services, SWBT provisioned nearly 7,000 unbundled loops to broadband competitors for provision of xDSL services.⁸ Although this is only a fraction of SWBT's ADSL customer base in Texas,⁹ recent implementation of our line sharing requirements will give xDSL providers additional opportunities to compete for residential and small business customers on an equal footing with SWBT's separate affiliate for advanced

⁵ SWBT Texas II Reply, App. A-4, Vol. 1, Tab 3, Reply Affidavit of John S. Habeeb (SWBT Texas II Habeeb Reply Aff.), Attach. A (reporting 58,704 "stand-alone" unbundled loops and 243,922 UNE loop/port combinations through March 2000).

⁶ *Id.* (reporting resale of 157,700 business lines and 191,040 residential lines through March 2000). Parties to this proceeding dispute SWBT's methodology for estimating the number of "facilities-based" lines that are served by competitors (through means other than resale or unbundled loops). Most, however seem to agree that, at a minimum, several hundred thousand access lines are served this way, primarily for business customers in urban areas.

⁷ Department of Justice Texas I Evaluation at 9 (estimating 840,000 – 890,000 competitive LEC lines compared with 9.6 million SWBT retail lines).

⁸ SWBT Texas II Habeeb Reply Aff. Attach. A (reporting 6,978 unbundled loops to xDSL service providers through March 2000).

⁹ Letter from Austin C. Schlick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Magalie Roman Salas, Esq., Secretary, Federal Communications Commission, CC Docket No. 00-4 at Tab 5 (filed Apr. 21, 2000) (SWBT Apr. 21 *Ex Parte* Letter) (reporting deployment of 36,000 ADSL lines in Texas during the six-month period from October 1999 through March 2000); *see also* SWBT Texas II Brown Reply Aff. (anticipating *monthly* volume of 9,000 ADSL orders for SWBT's advanced services affiliate in Texas by June 2000).

services.¹⁰ Monthly order volumes for unbundled xDSL-capable loops are steadily increasing,¹¹ as are UNE-P volumes.¹² Additionally, another branded player for voice services—WorldCom—joined AT&T in the Texas market in April with a focus on residential customers.¹³

7. As we noted in the *Bell Atlantic New York Order*, the grant of this application merely closes a chapter. It does not end the story. SWBT must continue to comply with the checklist obligations set forth in section 271, and the separate affiliate requirements of section 272. As noted throughout this Order, should the evidence demonstrate that SWBT ceases to comply with the requirements of the Act, enforcement action may be appropriate.¹⁴ Most notably, section 271(d)(6) authorizes the Commission to suspend or revoke the authorization granted herein.¹⁵

II. BACKGROUND

A. Statutory Framework

8. In the 1996 Act, Congress conditioned BOC provision of in-region, interLATA service on compliance with certain provisions of section 271.¹⁶ Pursuant to section 271, BOCs

¹⁰ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, paras. 4-5 (rel. Dec. 9, 1999) (*Line Sharing Order*).

¹¹ SWBT Texas II Habeeb Reply Aff. Attach. A; SWBT Texas II Application, App., Vol. A, Tab 1, Affidavit of John S. Habeeb (SWBT Texas II Habeeb Aff.), Attach. A (reflecting monthly order totals of 1160 loops in January, 1489 loops in February, and 2166 loops in March).

¹² SWBT Texas II Habeeb Reply Aff. Attach. A; SWBT Texas II Habeeb Aff. Attach. A (reflecting monthly order totals of 23,338 lines in January, 32,997 lines in February, and 40,750 lines in March).

¹³ WorldCom, Inc. Texas II Reply at 1. WorldCom, Inc. changed its corporate name from MCI WorldCom, Inc. effective May 1, 2000. *Id.* at n.1. AT&T reported capturing 130,000 local phone customers in Texas over UNE-P through March 2000, which represents greater than half of the UNE-P lines served by competitive carriers in Texas. “AT&T Reports Flat Earnings, Lowers Growth Estimates,” *Communications Daily* (May 3, 2000).

¹⁴ See, e.g., *Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Order, 15 FCC Rcd 5413, 5414 (2000) (adopting consent decree after investigation into potential violations of section 271 after grant of in-region, interLATA authority).

¹⁵ 47 U.S.C. § 271(d)(6)(A)(iii).

¹⁶ We note here that, for the provision of international services, a U.S. carrier must separately receive section 214 authorization from the Commission. See 47 U.S.C. § 214; see also *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, 11 FCC Rcd 12884 (1996); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891 (1997), *recon. pending*. This requirement applies notwithstanding a BOC’s approval under section 271 for the provision of in-region, interLATA service originating in a particular state.

must apply to this Commission for authorization to provide interLATA services originating in any in-region state.¹⁷ Congress has directed the Commission to issue a written determination on each application no later than 90 days after the application is filed.¹⁸

9. To obtain authorization to provide in-region, interLATA services under section 271, the BOC must show that: (1) it satisfies the requirements of either section 271(c)(1)(A), known as “Track A” or 271(c)(1)(B), known as “Track B”; (2) it has “fully implemented the competitive checklist” or that the statements approved by the state under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B);¹⁹ (3) the requested authorization will be carried out in accordance with the requirements of section 272;²⁰ and (4) the BOC’s entry into in-region, interLATA market is “consistent with the public interest, convenience, and necessity.”²¹ The statute specifies that, unless the Commission finds that these four criteria have been satisfied, the Commission “shall not approve” the requested authorization.²²

10. Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application “using any standard the Attorney General considers appropriate,” and the Commission is required to “give substantial weight to the Attorney General’s evaluation.”²³

11. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the “competitive checklist.”²⁴ Because the Act does not prescribe any standard for Commission consideration of a state commission’s verification under section 271(d)(2)(B), the Commission has discretion in each section 271

¹⁷ See 47 U.S.C. § 271.

¹⁸ *Id.* § 271(d)(3).

¹⁹ *Id.* § 271(d)(3)(A). The critical, market-opening provisions of section 251 are incorporated into the competitive checklist found in section 271. See *id.* § 251; see also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Red 15499 (1996) (*Local Competition First Report and Order*), *aff’d* in part and vacated in part sub nom, *Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part and remanded*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

²⁰ 47 U.S.C. § 271(d)(3)(B).

²¹ *Id.* § 271(d)(3)(C).

²² *Id.* § 271(d)(3); see *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413, 416 (D.C. Cir. 1998).

²³ 47 U.S.C. § 271(d)(2)(A).

²⁴ *Id.* § 271(d)(2)(B).

proceeding to determine the amount of weight to accord the state commission's verification.²⁵ The Commission has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the Commission's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.²⁶ As noted in the Introduction, we accord the Texas Commission's verification of SWBT's compliance substantial weight based on the totality of its efforts and the extent of its expertise on section 271 issues. Like the New York Commission, whose section 271 verification we also accorded substantial weight, the Texas Commission directed a lengthy, rigorous and open collaborative process with active participation by Commission staff and competitive LECs.²⁷ The Texas Commission also developed a comprehensive performance measurement and remedy plan, which it continues to monitor and refine.²⁸ In addition, the Texas Commission has taken the lead on a number of emerging technical and legal issues related to provisioning of xDSL-capable loops. We thus place substantial weight on the Texas Commission's comments in this matter, as they reflect its role not only as a driving force behind these proceedings, but also as an active participant in bringing competition for local telecommunications services to Texas.

B. History of this Application

12. In March 1998, SWBT filed with the Texas Commission a draft application to provide in-region, interLATA authority in the State of Texas.²⁹ On April 7, 1998, after a number of technical conferences and collaborative meetings, the Texas Commission concluded that SWBT had not demonstrated compliance with the requirements of section 271(c).³⁰ Shortly thereafter, on June 1, 1998, the Texas Commission issued Order Number 25 in which it listed 129 key issues that needed to be resolved before it could recommend approval of SWBT's application.³¹

13. To facilitate the resolution of the issues identified in Order Number 25, the Texas Commission invited SWBT and interested competing carriers to participate in a series of collaborative meetings and workshops and technical conferences, known as the "Texas 271

²⁵ *Bell Atlantic New York Order* 15 FCC Rcd at 3962, para. 20; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[A]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions' views any particular weight." *SBC Communications v. FCC*, 138 F.3d at 416.

²⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

²⁷ *Bell Atlantic New York Order* 15 FCC Rcd at 3962, para. 20.

²⁸ *Id.*

²⁹ Texas Commission Texas I Comments at 2.

³⁰ Texas Commission Texas I Comments at 2.

³¹ Texas Commission Texas I Comments at 2.

Collaborative Process.”³² During this process, staff of the Texas Commission, SWBT, and competing carriers worked collaboratively to identify and resolve a number of key issues related to SWBT’s compliance with section 271, including the operational readiness of SWBT’s OSS, and the development of a performance monitoring and enforcement mechanism.³³ Another key component of the Texas Commission’s section 271 proceeding was the development and adoption of a model interconnection agreement, which is referred to as the “Texas 271 Agreement” or “T2A.”³⁴ The Texas Commission ensured that its collaborative process was open to participation by all interested parties and, as a result, received and reviewed a massive record of public comments.

14. In connection with its review of the operational readiness of SWBT’s OSS, the Texas Commission retained Telcordia (formerly Bellcore) to conduct an independent third party evaluation of SWBT’s OSS.³⁵ The Telcordia test was intended to address a multitude of issues, including the ability of SWBT’s OSS to handle commercial volumes of orders, and SWBT’s implementation of the performance measurements that had been approved by the Texas Commission during its collaborative process.³⁶ Following the completion of initial and follow-up testing,³⁷ Telcordia issued a final report, in which it concluded that SWBT’s OSS were

³² Texas Commission Texas I Comments at 2.

³³ During the collaborative process, the staff of the Texas Commission worked with SWBT and competing carriers to develop a comprehensive set of performance measures and business rules that are intended to capture whether SWBT is providing nondiscriminatory service to competing carriers. The Texas Commission also approved a performance remedy plan that is intended to provide financial incentives for SWBT to maintain an open market and prevent “backsliding.” Pursuant to the Plan, SWBT must compensate either competing carriers or the Texas Treasury for noncompliance performance in connection with particular performance measurements. Texas Commission Texas I Comments at 3-4.

³⁴ Texas Commission Texas I Comments at 3.

³⁵ Texas Commission Texas I Comments at 5-6.

³⁶ Texas Commission Texas I Comments at 5.

³⁷ Telcordia issued two reports on the operational readiness of SWBT’s OSS. In its initial report, Telcordia presented the results of its functionality and capacity testing and identified issues that warranted further review. Texas Commission Comments at 30-31. The issues identified by Telcordia in its initial report formed the basis of a re-test plan. *Id.* Following the completion of a retest, Telcordia issued a final report. Telcordia Technologies, *The Public Utility Commission of Texas Southwestern Bell OSS Readiness Report* (Sept. 1999) (Telcordia Final Report), SWBT Ham Texas I Aff., Attach. A. Although in its final report, Telcordia concluded that SWBT’s OSS were operationally ready, it highlighted seven areas in which the Texas Commission should focus to remove “service-affecting issues.” *Id.* at ES-1, 7. Specifically, Telcordia recommended: (1) the revision of certain procedures for scalability forecasting; (2) the implementation of eleven new performance measures; (3) that the Texas Commission expeditiously resolve thirty issues that were identified during the retest; (4) increased automation of the performance measure reporting process; (5) increased data security and auditability; (6) confirmation of the effectiveness of SWBT’s procedures for ordering xDSL-capable loops; and (7) further training for SWBT and competing carriers to improve the understanding and use of SWBT’s standard methods and procedures. *Id.* After Telcordia’s final report was issued, the Texas Commission worked further with SWBT and competing carriers to resolve the seven issues identified in Telcordia’s final report. Texas Commission Texas I Comments at 31-32.

“operationally ready to handle commercial volumes of transactions.”³⁸

15. Upon concluding that all outstanding issues relating to SWBT’s compliance with section 271 had been resolved, the Texas Commission voted at its December 16, 1999 open meeting to unanimously support SWBT’s section 271 application.³⁹

16. As noted above, on January 10, 2000, SWBT filed an application with this Commission to provide in-region, interLATA service in the State of Texas. On April 5, 2000, SWBT filed an extensive supplement to its January 10 Application.⁴⁰ Recognizing that such new evidence was filed shortly before the expiration of the 90-day statutory deadline, in its April 5 filing, SWBT requested that the Commission “restart the clock” on its January 10 Application.⁴¹ Alternatively, SWBT asked the Commission to treat its supplemental filing as: (1) a withdrawal of the January 10 Application; and (2) a resubmission of a new application, which incorporates both the January 10 and April 5 filings.⁴² On April 6, 2000, the Commission granted SWBT’s alternative request to withdraw its January 10 Application and to initiate a new application pursuant to section 271 based on the record generated in response to the January 10 and April 5 filings.⁴³ Throughout this Order, the January 10 filing will be referred to as the “Texas I Application,” and the April 5 filing will be referred to as the “Texas II Application.”

C. Texas Commission and Department of Justice Evaluations

17. The Texas Commission submitted its evaluation of SWBT’s Texas I and Texas II Applications to this Commission on January 31, 2000⁴⁴ and April 26, 2000,⁴⁵ respectively. The Texas Commission advises the Commission that SWBT has taken the statutorily required steps to open its local markets to competition.⁴⁶ Specifically, the Texas Commission states that SWBT has met its obligation under section 271(c)(1)(A) by entering into interconnection agreements with at

³⁸ Telcordia Final Report at 7.

³⁹ Texas Commission Texas I Comments at 7.

⁴⁰ The supplemental filing included a brief and eight affidavits. According to SWBT, this new evidence is intended to respond to issues and arguments that emerged during the course of the January 10 proceeding subsequent to the submission of reply comments on February 22. SWBT Texas II Application at 1.

⁴¹ Letter from James D. Ellis, Paul K. Mancini, Martin E. Grambow, Counsel for SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC (dated Apr. 5, 2000) (*SBC Apr. 5, 2000 Ex Parte Letter*) at 2.

⁴² *Id.*

⁴³ *See SWBT Texas I Withdrawal Order.*

⁴⁴ The Evaluation of the Public Utility Commission of Texas, CC Docket No. 00-4 (filed Jan. 31, 2000) (Texas Commission Texas I Comments).

⁴⁵ The Evaluation of the Public Utility Commission of Texas, CC Docket No. 00-65 (filed Apr. 26, 2000) (Texas Commission Texas II Comments).

⁴⁶ Texas Commission Texas I Comments at 1.

least 17 competing carriers that are serving residential and business customers either exclusively or predominantly over their own facilities.⁴⁷ In addition, the Texas Commission states that the record developed in the Texas proceeding establishes that SWBT has a legal obligation, under its interconnection agreements and state-approved tariffs, to provide the 14 items required under section 271's checklist, and that SWBT is meeting its legal obligation to provide these 14 items.⁴⁸

18. In its evaluation of SWBT's Texas II Application, the Texas Commission acknowledges the Department of Justice's finding that SWBT's initial application was deficient in certain critical areas.⁴⁹ To address these concerns, the Texas Commission states that it conducted a further review. Specifically, the Texas Commission states that it reexamined the evidence with respect to: (1) the integration of SWBT's pre-ordering and ordering interfaces; (2) the coordination, timing and quality of SWBT "hot cut" process; and (3) SWBT's provisioning of loops used by competing carriers to provide advanced services.⁵⁰ Based on the evidence presented in SWBT's Texas I Application, and its further review, the Texas Commission concludes that SWBT has taken the statutorily required steps to open its local markets to competition.⁵¹

19. The Department of Justice filed its evaluation of SWBT's Texas I Application on February 14, 2000.⁵² In this evaluation, the Department of Justice recommended that SWBT's application be denied.⁵³ The Department of Justice submitted evaluations of SWBT's Texas II

⁴⁷ Texas Commission Texas I Comments at 95.

⁴⁸ Texas Commission Texas I Comments at 10-90.

⁴⁹ Texas Commission Texas II Comments at 11, 34, 36; *see also infra* note 55 and accompanying text.

⁵⁰ Texas Commission Texas II Comments at 1.

⁵¹ *Id.*

⁵² Evaluation of the United States Department of Justice, CC Docket No. 00-4 (filed Feb. 14, 2000) (Department of Justice Texas I Evaluation).

⁵³ In its evaluation, the Department of Justice concluded that, although SWBT had shown substantial progress in opening its local markets to competition, it failed to satisfy the requirements of section 271 in the critical area of providing unbundled loops. Department of Justice Texas I Evaluation at 2. Specifically, the Department of Justice found that SWBT's performance was deficient with respect to providing unbundled loops for advanced services and coordinated conversions, or "hot cuts." *Id.* at 2-3. In addition to its findings with respect to xDSL and hot cuts, the Department of Justice expressed concern about some of the evidence presented by SWBT to demonstrate compliance with other section 271 requirements. For example, the Department of Justice noted that there was insufficient evidence in the record to determine whether SWBT could provide interconnection trunks in a timely manner, and whether carriers could compete effectively using the UNE-platform. *Id.* at 44-49 (interconnection), 49-53 (UNE-platform). The Department of Justice recommended that the Commission defer judgment on these issues until additional commercial data is available. *Id.* at 52-53. Moreover, the Department of Justice stated that the OSS test performed by Telcordia had significant limitations. In particular, the Department of Justice noted that, due to its limited scope and depth, "the Telcordia test does not provide evidence that SBC provides adequate wholesale services overall to CLECs in Texas." *Id.* at 5.

Application on May 12⁵⁴ and June 13, 2000.⁵⁵ In its May 12 evaluation, the Department of Justice concluded that SWBT's performance with respect to interconnection trunking had sufficiently improved to alleviate its concerns with respect to this issue.⁵⁶ It stated, however, that it would provide the Commission with its analysis of SWBT's performance in providing DSL-capable loops, hot cuts for analog loops, and UNE-platform after it had reviewed SWBT's April performance data. In its June 13, 2000 evaluation, the Department of Justice recommends approval of SWBT's application to provide long distance service in Texas, subject to certain qualifications.⁵⁷

20. In recommending approval of SWBT's Texas II Application, the Department of Justice notes that SWBT has addressed many of the deficiencies associated with its first application. More specifically, the Department of Justice concludes that SWBT has significantly improved the process by which it measures and reports its performance in providing unbundled loops for DSL services, and has demonstrated improvement in its ability to provision DSL-capable loops in a nondiscriminatory manner.⁵⁸ Indeed, the Department of Justice concludes that recent data indicate that SWBT "is now providing parity under virtually all measures relating to the provisioning of DSL loops."⁵⁹ The Department of Justice further finds that SWBT has demonstrated improvement in cutting over a loop to a competing carrier through both the coordinated hot cut (CHC) and frame due time (FDT) processes.⁶⁰ Finally, the Department of Justice states that commercial data with respect to competing carriers' ability to compete via the UNE-platform are encouraging. Indeed, the Department of Justice notes that entry by competing carriers using the UNE-platform has increased steadily over the last few months.

III. ANALYTICAL FRAMEWORK

A. Overview

⁵⁴ Evaluation of the United States Department of Justice, CC Docket No. 00-65 (filed May, 12, 2000) (Department of Justice Texas II May 12 Evaluation).

⁵⁵ Letter from Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, to Magalie Roman Salas, Secretary, FCC (dated June 13, 2000) (Department of Justice Texas II Evaluation).

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 1. For example, the Department of Justice recommends that the Commission ensure that adequate mechanisms exist to resolve emerging issues that will affect competition, such as DSL line sharing and SBC's Project Pronto. *Id.* at 20. As the Department of Justice notes, "Project Pronto is an SBC network upgrade that will employ fiber optic cable and remote terminals to provide DSL services to customers that are out of reach to central office digital subscriber line access multiplexers ('DSLAMS')." *Id.* at 7.

⁵⁸ *Id.* at 2-8.

⁵⁹ *Id.* at 4.

⁶⁰ *Id.* at 8-9.

21. As part of our determination that SWBT has satisfied the requirements of section 271, we consider whether SWBT has fully implemented the competitive checklist in subsection (c)(2)(B).⁶¹ In demonstrating compliance with each item on the competitive checklist, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.⁶²

22. Section 271 conditions authorization to enter the long-distance market on a BOC's compliance with the terms of the competitive checklist, and those terms generally incorporate by reference the core local competition obligations that sections 251 and 252 impose on all incumbent LECs. In a variety of proceedings since 1996, this Commission has discharged its statutory authority to issue comprehensive rules and orders giving specific content to those obligations, often in considerable detail. In determining whether a BOC applicant has met the local competition prerequisites for entry into the long-distance market, therefore, we evaluate its compliance with our rules and orders in effect at the time the application was filed.

23. Despite the comprehensiveness of our local competition rules, there will inevitably be, at any given point in time, a variety of new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act. Several commenters seek to use this section 271 proceeding as a forum for the mandatory resolution of many such local competition disputes, including disputes on issues of general application that are more appropriately the subjects of industry-wide notice-and-comment rulemaking. Indeed, those commenters would apparently compel this Commission to resolve those disputes in this proceeding, and to resolve each one in favor of SWBT, as a precondition to determining that SWBT has met the statutory obligations of section 271.

24. The position of those commenters is irreconcilable with this statutory scheme. There may be other kinds of statutory proceedings, such as certain complaint proceedings, in which we may bear an obligation to resolve particular interpretive disputes raised by a carrier as the basis for its complaint.⁶³ But the section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application.

25. First, Congress designed section 271 proceedings as highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular State at a particular time. Such fast-track, narrowly focused adjudications -- generally dominated by

⁶¹ See 47 U.S.C. § 271(d)(3). As set forth below, we conclude that SWBT has satisfied the requirements of subsection (c)(1)(A) ("Track A") and thus merits analysis under section 271(d)(3)(A)(i) of our rules.

⁶² *Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52 (*Ameritech Michigan Order*).

⁶³ *American Tel. & Tel. Co. v. FCC*, 978 F.2d 727 (D.C. Cir. 1992).

extremely fact-intensive disputes about an individual BOC's empirical performance -- are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability. If Congress had intended to compel us to use section 271 proceedings for that purpose, it would not have confined our already intensive review to an extraordinarily compressed 90-day timetable.

26. Second, Congress designed section 271 to give the BOCs an important incentive to open their local markets to competition, and that incentive presupposes a realistic hope of attaining section 271 authorization. That hope would largely vanish if a BOC's opponents could effectively doom any section 271 application by freightening their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor. Indeed, if that were the required approach, the BOCs would face enormous uncertainty about the steps they need to take to win section 271 authorization, and they would therefore lose much of their incentive to cooperate in opening their local markets to competition in the first place. That result would disserve the public interest in greater competition in both local and long-distance markets, and it would defeat the congressional intent underlying this statutory scheme.

27. Finally, simply as a matter of statutory construction, few of the substantive obligations contained in the local competition provisions of sections 251 and 252 are altogether self-executing; they rely for their content on the Commission's rules. That is most obviously true in the case of our legislative rules under section 251(d)(2) identifying "what network elements should be made available,"⁶⁴ but it is also true of our many other rules and orders giving content to the broadly-worded provisions of the 1996 Act. Our rules vary with time, redefining the statutory obligations that govern the market. Just as our long-standing approach to the procedural framework for section 271 applications focuses our factual inquiry on a BOC's performance at the time of its application, so too may we fix at that same point the local competition obligations against which the BOC's performance is generally measured for purposes of deciding whether to grant the application. Nothing in section 271 or any other provision of the Act compels us to require a BOC applicant to demonstrate compliance with new local competition obligations that were unrecognized at the time the application was filed.

B. Compliance With Unbundling Rules

28. One element of the required showing, as explained in more detail below, is that the applicant satisfies the Commission's rules governing unbundled network elements. It is necessary to clarify the aspects of the new rules governing incumbent LECs' unbundling and line sharing obligations with which we expect SWBT to demonstrate compliance in this proceeding. We note that both the *UNE Remand Order* and the *Line Sharing Order* introduced new rules which did not become binding until after SWBT filed its second section 271 application for Texas, on April 5, 2000.⁶⁵ We conclude that, for the purpose of evaluating compliance with checklist item 2, we

⁶⁴ 47 U.S.C. § 251(d)(2).

⁶⁵ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd at 3696 (1999) (*UNE Remand Order*); (continued....)

require SWBT to demonstrate that it is currently in compliance with the

rules in effect on the date of filing, but do not require SWBT to demonstrate that it complies with rules that become effective during the pendency of its application.

29. We emphasize that, on an ongoing basis, SWBT must comply with all of the Commission's rules implementing the requirements of sections 251 and 252 upon the dates specified by those rules. This includes such rules that have taken effect since the date SWBT filed its application, such as the new unbundling rules that became effective on May 18, 2000.

30. In the *Local Competition First Report and Order*, the Commission established a list of seven unbundled network elements (UNEs) which incumbent LECs were obliged to provide.⁶⁶ This obligation was codified in section 51.319 of the Commission's rules (rule 319).⁶⁷ In January 1999, the Supreme Court vacated rule 319 and instructed the Commission to revise the standards under which the unbundling obligation is determined and to reevaluate the network elements subject to the unbundling requirement.⁶⁸ On November 5, 1999, we released the *UNE Remand Order*, in which we reevaluated the unbundling obligations of incumbent LECs and promulgated a new rule 319, pursuant to the Supreme Court's direction and sections 251(c)(3) and 251(d)(2) of the Act. With certain exceptions, the new rule 319 and other requirements set forth in the *UNE Remand Order* took effect on February 17, 2000, 30 days after publication in the Federal Register.⁶⁹ The remaining aspects of the new rule 319 did not take effect until 120 days after the publication date, or May 18, 2000.⁷⁰ Therefore, on April 5, 2000, when SWBT

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see also *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

⁶⁶ The seven network elements set forth in the *Local Competition Order* were: (1) local loops; (2) network interface devices; (3) local and tandem switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operations support systems; and (7) operator services and directory assistance. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *on remand*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd. 3696 (1999).

⁶⁷ 47 C.F.R. § 51.319.

⁶⁸ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching this conclusion, the Court held that the Commission had not adequately considered the "necessary" and "impair" standards of section 251(d)(2) in establishing the list of seven network elements. *Id.* at 387-92.

⁶⁹ *UNE Remand Order* at para. 526. The order was published in the Federal Register on January 18, 2000. See *Revision of the Commission's Rules Specifying the Portions of the Nation's Local Telephone Networks That Incumbent Local Telephone Companies Must Make Available to Competitors*, 65 Fed. Reg. 2542 (2000).

⁷⁰ See *UNE Remand Order* at para 526. The requirements that were not contained in § 51.319 prior to the rule being vacated by the Supreme Court in *Iowa Utils. Bd.* became effective 120 days after publication in the Federal (continued....)

filed its re-application for section 271 authorization in Texas, certain aspects of the new rule 319 were not yet in effect.

31. In order to demonstrate compliance with checklist item 2, SWBT must demonstrate that it complies fully with those portions of the new rule 319 that took effect in February 2000, and thus were binding on the date SWBT filed this second application. Indeed, in the Texas I proceeding, SWBT had already committed to demonstrate compliance with the requirements of the *UNE Remand Order* that took effect in February 2000.⁷¹ No commenter has objected to SWBT's position.

32. For the purpose of evaluating whether its application satisfies section 271, we do not require SWBT to demonstrate that it complies with those portions of the new rule 319 that took effect in May 2000. Although SWBT, like all other incumbent LECs, was required to comply with rule 319 in May 2000, we believe it would be unfair to require SWBT to demonstrate compliance with rules that become effective after it submits an application for section 271 authorization, in advance of the effective date for other incumbent LECs. In addition, were we to require SWBT to supplement the record with additional evidence demonstrating its compliance with the new *UNE Remand* rules once they became effective on May 18, 2000, such a re-opening of the record would be administratively complicated and inconsistent with our well-established procedural framework for section 271 applications.⁷² A similar procedural situation was presented in the *Bell Atlantic New York* proceeding. Bell Atlantic filed its application for section 271 authorization in New York after the *UNE Remand Order* had been adopted but before it had taken effect and, thus, at a time when no binding section 319 rule was in effect.⁷³ Bell Atlantic suggested, and we agreed, that it would be reasonable for the Commission to use the original seven network elements identified in former rule 319 in evaluating compliance with checklist item 2 of its application.⁷⁴ We declined to require Bell Atlantic to demonstrate

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Register. These are: the requirement to provide access on an unbundled basis to dark fiber as set forth in § 51.319(a)(1); the requirement to provide access on an unbundled basis to subloops and inside wire as set forth in § 51.319(a)(2); the requirement to provide access on an unbundled basis to packet switching in the limited circumstances set forth in § 51.319(c)(3)(B); the requirement to provide access on an unbundled basis to dark fiber transport as set forth in § 51.319(d)(1)(B); the requirement to provide access on an unbundled basis to the Calling Name Database, 911 Database, and E911 Database as set forth in § 51.319(e)(2)(A); and the requirement to provide access on an unbundled basis to loop qualification information as set forth in § 51.319(g). *Id.* n.1040. We note that the T2A already contains provisions addressing many of these items. SWBT Texas I Auinbauh Aff. at para. 86.

⁷¹ SWBT Texas I Application at 36-37; SWBT Texas I Auinbauh Aff. at paras. 85-86. SWBT offers access through the T2A to the UNEs defined in the original rule 319. In addition, SWBT has complied with the *UNE Remand Order's* revised rule 319 by developing revised definitions of the loop, network interface device (NID), and interoffice transport network elements, and making these new definitions available to competitive LECs through an amendment to the T2A. *Id.*

⁷² See section III.C.1, *infra*.

⁷³ Bell Atlantic filed an application for section 271 authority in New York on September 29, 1999. *Bell Atlantic New York Order*, 15 FCC Rcd at 3953, para. 1.

⁷⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 3966-67, paras. 30-31.

compliance with the new rule 319 because we recognized that the new rule would not take effect until after the release of the *Bell Atlantic New York Order*, and because we believed it would be unfair to require Bell Atlantic to demonstrate compliance with new rules weeks or months before the rule became binding on other incumbent LECs. We thus find SWBT's approach to rule 319 to be reasonable, and consistent with our analysis in the *Bell Atlantic New York Order*.

33. For similar reasons, as discussed below, we do not require SWBT to prove that it has implemented the OSS and other loop facility modifications necessary to accommodate requests for line sharing as required in the Line Sharing Order.⁷⁵

C. Scope of Evidence in the Record

1. Procedural Framework

34. Section 271 proceedings are, at their core, adjudications that the Act requires the Commission to complete within ninety days of the application filing. The statute also requires us to consult with the Department of Justice and the relevant state commission in reviewing the application. In the context of this statutory framework, the Commission has established procedural rules governing BOC section 271 applications.⁷⁶ Among other things, these rules provide an opportunity for parties other than the Department of Justice and the relevant state commission to comment on section 271 applications.

35. Under our procedural rules governing BOC section 271 applications, we expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings.⁷⁷ An applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its

⁷⁵ See section V.D, *infra*. The *Line Sharing Order* amends the Commission's rules to require incumbent LECs to provide, as a network element, access to the high-frequency portion of the local loop to a requesting competitive LEC on loops that carry the incumbent LEC's basic telephone service. See *Line Sharing Order*, 14 FCC Rcd at 20926, para. 25.

⁷⁶ See, e.g., *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (Dec. 6, 1996) (Dec. 6, 1996 Public Notice); *Revised Comment Schedule for Ameritech Michigan Application, as amended, for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan*, Public Notice, DA 97-127 (Jan. 17, 1997) (Jan. 17, 1997 Public Notice); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (Sept. 19, 1997) (Sept. 19, 1997 Public Notice); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA-99-1994 (Sept. 28, 1999) (Sept. 28, 1999 Public Notice).

⁷⁷ Sept. 19, 1997 Public Notice at Section B.

application.⁷⁸ This includes the submission, on reply, of factual evidence gathered after the initial filing. In an effort to meet its burden of proof, however, a BOC may submit new factual information after the application is filed, if the sole purpose of that evidence is to rebut arguments or facts submitted by other commenters.⁷⁹ The new evidence, however, must cover only the period placed in dispute by commenters and may, in no event, post-date the filing of the comments (*i.e.*, day 20).⁸⁰ In the event that the applicant submits new or post-dated evidence in replies or *ex parte* filings and the evidence is not directly responsive to commenting parties, we retain the discretion to start the 90-day review process anew or to accord such evidence no weight.⁸¹

36. This precedent has served the Commission well by deterring incomplete filings from the BOCs. In particular, the rule is designed to prevent applicants from presenting part of their initial *prima facie* showing for the first time in reply comments.⁸² The rule has enabled us properly to manage our own internal consideration of the application and ensures that commenters are not faced with a “moving target” in the BOC’s section 271 application. We continue to believe, as a general matter, that it is highly disruptive to our processes to have a record that is constantly evolving. We emphasize, however, that our precedent makes clear that this rule is a discretionary one.⁸³

37. We do not expect that a BOC, in its initial application, will anticipate and address every foreseeable argument its opponents might make in their subsequent reply comments, but we have previously stated that a BOC must address in its initial application all facts that the BOC can reasonably anticipate will be at issue. Through state proceedings, BOCs should be able reasonably to identify and anticipate certain arguments and allegations that parties will make in

⁷⁸ *Id.*; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968, para. 34; *Ameritech Michigan Order*, 12 FCC Rcd at 20570-71, para. 50.

⁷⁹ *Id.*

⁸⁰ Sept. 19, 1997 Public Notice at Section B; *Ameritech Michigan Order*, 12 FCC Rcd at 20570-71, para. 50.

⁸¹ *Id.* (citing Jan. 17, 1997 Public Notice). The Commission subsequently released a procedural public notice incorporating this policy for future section 271 applications, *see* Sept. 19 Public Notice at Section B.

⁸² *Ameritech Michigan Order*, 12 FCC Rcd at 20573, para. 54.

⁸³ *See Bell Atlantic New York Order*, 15 FCC Rcd at 3969, para. 36; *Ameritech Michigan Order*, 12 FCC Rcd at 20571, para. 51 (“[I]f a BOC chooses to submit such evidence . . . we reserve the discretion . . . to accord the new evidence no weight in making our determination.”); *id.* at para. 54 (“[W]e find that using our discretion to accord BOC submissions of new factual evidence no weight will ensure that our proceedings are conducted in ‘such manner as will best conduce to the proper dispatch of business and to the ends of justice.’”); *id.* at para. 57 (“By retaining the discretion to accord new evidence no weight”); *id.* at para. 59 (“Because we will exercise our discretion in determining whether to accord new factual evidence any weight, we deny [the motion to strike]”); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20674 (“Given the complexity of this data and the fact that interested parties have not had an opportunity to address it, we exercise our discretion to accord the information minimal weight.”); Dec. 10 Public Notice at 1 (“[I]f parties choose to submit new evidence, [the Commission] retains the discretion to accord new evidence no weight.”).

their filings before the Commission.⁸⁴

38. In addition, the Commission has found that a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271.⁸⁵ In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on the evidence in the record that a BOC has actually demonstrated compliance with the requirements of section 271. Changes or upgrades (*e.g.*, development of new processes for providing access to checklist items) that post-date the application will not be relied upon for checklist compliance, but may provide us with further assurances that the applicant will continue to satisfy the conditions of market entry in the future.

39. With this procedural framework in mind, we find it appropriate to consider in connection with this application SWBT's Texas performance data for the month of April 2000, even though the month contains a few days that extend beyond the comment filing date, April 26, 2000. We believe that it would be administratively burdensome and would not result in any material change to the submitted data if we were to formalistically require SWBT to omit the last four days of April from its reports for the purposes of this proceeding. SWBT's state-approved procedures are geared toward generating performance reports on a monthly basis, and competitive LECs have become accustomed to receiving them in the same form.

40. Moreover, generation of a special report, *e.g.*, covering only the dates from April 1 to April 26, 2000, would pose a greater risk of manipulation or miscalculation and would presumably make it more difficult for competitive LECs to compare the reported data with their own records, which they have become accustomed to receiving in monthly reports. We find the monthly performance reports created in the ordinary course of business and according to established procedures to be inherently more reliable than any abbreviated report. In addition, submission of a second set of April performance data (consisting of hundreds of pages of nearly duplicative material) would make an already voluminous and complex docket even more difficult for interested parties to follow. Additionally, a partial month of data arguably would be less valuable for examining trends from previous full months. For these reasons we do not believe that any party to this proceeding is prejudiced by our decision to include consideration of the last four days of SWBT's April performance reports.

2. *Ex Parte* Submissions

41. Under the procedural rules governing section 271 applications, we strongly

⁸⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 3969, para. 36; *Ameritech Michigan Order*, 12 FCC Rcd at 20575.

⁸⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 3969, para. 37; *Ameritech Michigan Order*, 12 FCC Rcd at 20573-74.

encourage parties to set forth their views comprehensively in their formal submissions (i.e., Brief in Support, oppositions, supporting comments, etc.), and not to rely on subsequent *ex parte* presentations. At the same time, the Commission expressly provided that parties may file *ex partes*. Our procedural Public Notice thus clearly contemplates that parties may file written *ex partes*, when appropriate, to clarify the record.⁸⁶ We take this opportunity to clarify that like reply comments, *ex partes* must be directly responsive to arguments raised by parties commenting on the application. Such *ex partes* may, however, elaborate on, or provide additional explanation or detail in response to requests from Commission staff or in direct response to post-reply *ex parte* filings.

42. Nothing in our procedural rules or past precedent precludes the Commission and the staff from requesting clarification or an explanation about information or data contained in the filings specified above. Indeed, our procedural Public Notice expressly recognizes that the Commission may request additional information from the applicant, as the page limit for *ex partes* does not apply to written material filed in response to direct requests from Commission staff.⁸⁷ It is critical to the agency's deliberative process that the Commission and staff fully understand the evidence and arguments presented in the BOC's section 271 application, arguments raised in opposition, and responses made by parties on reply. Accordingly, the Commission retains the discretion to request additional information from the applicant or other parties that elaborates on positions set forth in the original application, comments, or reply comments.⁸⁸ We emphasize that we are not departing from our view that the applicant should set forth its position in a clear and concise manner in its formal filings. However, it is imperative that, as part of the Commission's deliberative process, we have the ability to engage in an ongoing dialogue with parties to ensure that we have a clear and accurate understanding of the information contained in all formal submissions.

D. Framework for Analyzing Compliance with Statutory Requirements

43. In this section, we discuss two aspects of the framework for analyzing compliance with the statutory requirements of section 271. First, we discuss the legal standards we have enunciated in past orders for determining whether a BOC is meeting the statutory nondiscrimination requirements. Second, we discuss the evidentiary requirements of a BOC's section 271 application and, in particular, the types of showings we will find probative in deciding whether a BOC has met the statutory standards.

1. Legal Standard

44. In order to comply with the requirements of section 271's competitive checklist, a BOC must demonstrate that it has "fully implemented the competitive checklist in subsection

⁸⁶ Sept. 19 Public Notice at Section H (establishing page limitations for *ex partes*, subject to certain exceptions).

⁸⁷ *Id.*

⁸⁸ Consistent with section 1.1204(a)(b) of our rules, responses to Commission inquiries will generally be placed in the record. 47 C.F.R. § 1.204(a)(b).

(c)(2)(B).”⁸⁹ In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.⁹⁰ Previous Commission orders addressing section 271 applications have elaborated on this statutory standard. First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is equal to (*i.e.*, substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.⁹¹ For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a “meaningful opportunity to compete.”⁹²

45. We do not view the “meaningful opportunity to compete” standard to be a weaker test than the “substantially the same time and manner” standard. Where the BOC provides functions to its competitors that it also provides for itself in connection with its retail service, its actual performance can be measured to determine whether it is providing access to its competitors in “substantially the same time and manner” as it does to itself. Where the BOC, however, does not provide a retail service that is similar to its wholesale service, its actual performance with respect to competitors cannot be measured against how it performs for itself because the BOC does not perform analogous activities for itself. In those situations, our examination of whether the quality of access provided to competitors offers “a meaningful opportunity to compete” is intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, is nondiscriminatory.

46. Finally, we note that a determination of whether the statutory standard is met is ultimately a judgment we must make based on our expertise in promoting competition in local markets and in telecommunications regulation generally. We have not established, nor do we believe it appropriate to establish, specific objective criteria for what constitutes “substantially the same time and manner” or a “meaningful opportunity to compete.” We look at each application on a case-by-case basis and consider the totality of the circumstances, including the origin and quality of the information before us, to determine whether the nondiscrimination requirements of the Act are met. Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances.

2. Evidentiary Case

⁸⁹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20599.

⁹⁰ 47 U.S.C. § 271(c)(1)(B)(i), (ii).

⁹¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

⁹² *Id.*

47. We have set forth above the analytical framework that we use in assessing whether a BOC has demonstrated compliance with the statutory requirements of section 271. At the outset, we reemphasize that the BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement.⁹³

48. The evidentiary standards governing our review of section 271 applications are intended to balance our need for reliable evidence against our recognition that, in such a complex endeavor as a section 271 proceeding, no finder of fact can expect proof to an absolute certainty. While we expect the BOC to demonstrate as thoroughly as possible that it satisfies each checklist item, the public interest standard, and the other statutory requirements, we reiterate that the BOC needs only to prove each element by “a preponderance of the evidence,” which generally means “the greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition to it.”⁹⁴

49. As we held in the *Second BellSouth Louisiana Order*, we first determine whether the BOC has made a *prima facie* case that it meets the requirements of a particular checklist item. The BOC must plead, with appropriate supporting evidence, facts which, if true, are sufficient to establish that the requirements of section 271 have been met. Once the BOC has made such a showing, opponents must produce evidence and arguments to show that the application does not satisfy the requirements of section 271, or risk a ruling in the BOC’s favor.⁹⁵

50. When considering commenters’ filings in opposition to the BOC’s application, we look for evidence that the BOC’s policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice.⁹⁶ Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for a commenter to overcome the BOC’s *prima facie* case. Moreover, a BOC may overcome such anecdotal evidence by, for example, providing objective performance data that demonstrate that it satisfies the statutory nondiscrimination requirement.

51. We will look to the state to resolve factual disputes wherever possible. Indeed, we view the state’s and the Department of Justice’s roles to be similar to that of an “expert witness.” Given the 90-day statutory deadline to reach a decision on a section 271 application, the

⁹³ *Bell Atlantic New York*, 15 FCC Rcd at 3972, para. 47; *Application of BellSouth Corporation for Provision of In-Region, Inter-LATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599 at 20635-36, para. 57 (*Second BellSouth Louisiana Order*); *Ameritech Michigan Order*, 12 FCC Rcd at 20567-68, para. 43.

⁹⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 3972-73, para. 48; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20638-39, para. 59; *Ameritech Michigan Order*, 12 FCC Rcd at 20568-69, para. 45.

⁹⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 3973, para. 49; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20638-39, para. 59.

⁹⁶ *See Ameritech Michigan Order*, 12 FCC Rcd at 20569, para. 45 (concluding that greater weight will be attached to comments and pleadings supported by an affidavit or sworn statement than to an unsupported contrary pleading); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 47.

Commission does not have the time or the resources to resolve the enormous number of factual disputes that inevitably arise from the technical details and data involved in such a complex endeavor. Accordingly, as discussed above, where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight in making our decision.

52. To make a *prima facie* case that the BOC is meeting the requirements of a particular checklist item under section 271(c)(1)(A), the BOC must demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. In particular, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.⁹⁷

53. The particular showing required to demonstrate compliance will vary depending on the individual checklist item and the circumstances of the application. We have given BOCs substantial leeway with respect to the evidence they present to satisfy the checklist. Although our orders have provided guidance on which types of evidence we find more persuasive, "we reiterate that we remain open to approving an application based on other types of evidence if a BOC can persuade us that such evidence demonstrates nondiscriminatory treatment and other aspects of the statutory requirements."⁹⁸ In past orders we have encouraged BOCs to provide performance data in their section 271 applications to demonstrate that they are providing nondiscriminatory access to unbundled network elements to requesting carriers.⁹⁹ We have concluded that the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage.¹⁰⁰ Performance measurements are an especially effective means of providing us with evidence of the quality and timeliness of the access provided by a BOC to requesting carriers.

⁹⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 3973, para. 52; *Ameritech Michigan Order*, 12 FCC Rcd at 20601-02, para. 110.

⁹⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20638-39, para. 59.

⁹⁹ See, e.g., *Bell Atlantic New York Order* at 3974, para. 53; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20658-59, para. 92; *Ameritech Michigan Order*, 12 FCC Rcd at 20627-52; *Application by BellSouth Corp. et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, *BellSouth Louisiana Order*, 13 FCC Rcd 6245, 6258-81, paras. 21-58 (1998) (*First BellSouth Louisiana Order*); *Application by BellSouth et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 597-634 (*BellSouth South Carolina Order*).

¹⁰⁰ *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20655, para. 86; *Ameritech Michigan Order*, 12 FCC Rcd at 20618, para. 138;

54. A number of state commissions, including Texas, have established a collaborative process through which they have developed, in conjunction with the incumbent and competing carriers, a set of measures, or metrics, for reporting of performance in various areas.¹⁰¹ Through such collaborative processes, Texas has also adopted performance standards for certain functions, typically where there can be no comparable measure based on the incumbent LEC's retail performance. We strongly encourage this type of process, because it allows the technical details that determine how the metrics are defined and measured to be worked out with the participation of all concerned parties. We also strongly support the efforts of state commissions to build and oversee a process that ensures the development of local competition that Congress intended. An extensive and rigorous evaluation of the BOC's performance by the states provides greater certainty that barriers to competition have been eliminated and the local markets in a state are open to competition.

55. We caution, however, that adoption by a state of a particular performance standard pursuant to its state regulatory authority is not determinative of what is necessary to establish checklist compliance under section 271. We recognize that metric definitions and incumbent LEC operating systems will likely vary among states, and that individual states may set standards at a particular level that would not apply in other states and that may constitute more or less than the checklist requires. Therefore, in evaluating checklist compliance in each application, we consider the BOC's performance within the context of each respective state. For example, where a state develops a performance benchmark with input from affected competitors and the BOC, such a standard may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete.¹⁰²

56. We emphasize that, because the Commission is statutorily required to determine checklist compliance, we must independently evaluate whether a BOC is fulfilling the nondiscrimination requirements of section 271. Nevertheless, in making our evaluation we will examine whether the state commission has adopted a retail analogue or a benchmark to measure BOC performance and then review the particular level of performance the state has required. If the state commission has made these determinations in the type of rigorous collaborative proceeding described above, we are much more likely to find that they are reasonable and appropriate measures of parity. Accordingly, we are inclined to rely on such standards and measurements in our own analysis but may reach a different conclusion where justified.

57. In determining that SWBT has satisfied each element of the competitive checklist,

¹⁰¹ In our *Performance Measurements NPRM* we proposed a model set of reporting requirements that states could adopt to measure whether an incumbent LEC is providing interconnection, resale, and unbundled network elements on nondiscriminatory terms. *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, Notice of Proposed Rulemaking, 13 FCC Rcd 12817 (rel. Apr. 17, 1998) (*Performance Measurements NPRM*). This Commission has not, however, adopted, as a federal requirement, a particular set of metrics or performance standards.

¹⁰² We also recognize that states may choose to set their performance benchmarks at levels higher than what is necessary to meet the statutory nondiscrimination standard. *Bell Atlantic New York Order* at para. 55, n.107.

we rely, among other factors, on performance data collected and submitted by SWBT. Several commenters challenge the validity of certain data submitted by SWBT, however, including performance data collected and reported pursuant to the performance measurements developed under the auspices of the Texas Commission.¹⁰³ We reject the contention that SWBT's data are generally invalid because they have not been audited, and thus cannot be relied upon to support its application. We note that the data submitted by SWBT in this proceeding have been subject to scrutiny and review by interested parties. To a large extent, moreover, the accuracy of the specific performance data relied upon by SWBT is not contested. Where particular SWBT data are disputed by commenters, we discuss these challenges in our checklist analysis, below. In such instances, we first look to the results of data reconciliations between SWBT and competing carriers. In other instances, we examine data collected and submitted by commenters in addition to SWBT's data.

58. The determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before us. There may be multiple performance measures associated with a particular checklist item, and an apparent disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. Other measures may tell a different story, and provide us with a more complete picture of the quality of service being provided. Whether we are applying the "substantially same time and manner" standard or the "meaningful opportunity to compete" standard, we will examine whether any differences in the measured performance are large enough to be deemed discriminatory under the statute. For this reason, and because standards established by the Texas Commission are not necessarily determinative of checklist compliance, we note that SWBT's failure of individual performance measurements does not, in itself, warrant denial of this application.¹⁰⁴

IV. COMPLIANCE WITH SECTION 271(C)(1)(A)

A. Background

59. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).¹⁰⁵ To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone

¹⁰³ See AT&T Texas II Reply Comments at 36 (arguing that SWBT should be required to prove the accuracy and reliability of its data collection and reporting processes); AT&T Texas I Pfau/DeYoung Decl. at paras. 15, 25, 56-58; WorldCom Texas I Comments at 34 (arguing that SWBT's data have not been sufficiently audited and thus are unreliable).

¹⁰⁴ We thus reject AT&T's contention that the application should be denied on the ground that SWBT failed to satisfy the Texas Commission's parity or benchmark standards for certain Texas performance measurements. See AT&T Texas II Comments at 64.

¹⁰⁵ 47 U.S.C. § 271(d)(3)(A).

exchange service . . . to residential and business subscribers.”¹⁰⁶ The Act states that “such telephone service may be offered . . . either exclusively over [the competitor’s] own telephone exchange service facilities or predominantly over [the competitor’s] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.”¹⁰⁷ The Commission concluded in the *Ameritech Michigan Order* that, when a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each carrier need not provide service to both residential and business customers.¹⁰⁸

B. Discussion

60. We conclude that SWBT demonstrates that it satisfies the requirements of Track A based on the interconnection agreements it has implemented with competing carriers in Texas. Specifically, we find that AT&T, Birch, CoServ, ETS, Optel, Sage, and KMC all provide telephone exchange service either exclusively or predominantly over their own facilities to residential subscribers and to business subscribers.¹⁰⁹ The Texas Commission also concludes that SWBT has met the requirements of section 271(c)(1)(A).¹¹⁰ None of the commenting parties, including the competitors cited by SWBT in support of its showing, challenge SWBT’s assertion in this regard.

V. CHECKLIST COMPLIANCE

A. Checklist Item 1 – Interconnection

1. Non-Pricing Aspects of Interconnection

a. Background

61. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”¹¹¹ Section 251(c)(2) imposes a duty on incumbent LECs “to provide, for the facilities and equipment

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85. *See also BellSouth Louisiana Order*, 13 FCC Rcd 20633-35 at paras. 46-48.

¹⁰⁹ Texas Commission Texas I Comments at 96.

¹¹⁰ Texas Commission Texas I Comments at 95-96. Although the Department of Justice does not address business and residential subscribers separately, it states that competitive LECs have a total of approximately 840,000 – 890,000 access lines, representing approximately eight percent of SWBT’s Texas market. Department of Justice Texas I Evaluation at 9.

¹¹¹ 47 U.S.C. § 271(c)(2)(B)(i); *see Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662-63, para. 222.

of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."¹¹² In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred "only to the physical linking of two networks for the mutual exchange of traffic."¹¹³ Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network."¹¹⁴ Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."¹¹⁵ Finally, the incumbent LEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252."¹¹⁶

62. To implement the equal-in-quality requirement in section 251, the Commission's rules require an incumbent LEC to design and operate its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within the incumbent LEC's network.¹¹⁷ In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC's technical criteria and service standards.¹¹⁸ In prior section 271 applications, the Commission concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.¹¹⁹

63. In the *Local Competition First Report and Order*, the Commission concluded that

¹¹² 47 U.S.C. § 251(c)(2)(A).

¹¹³ *Local Competition First Report and Order*, 11 FCC Rcd at 15590, para. 176. Transport and termination of traffic are therefore excluded from the Commission's definition of interconnection. *See Id.*

¹¹⁴ 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the Commission identified a minimum set of technically feasible points of interconnection. *See Local Competition First Report and Order*, 11 FCC Rcd at 15607-09, paras. 204-211.

¹¹⁵ 47 U.S.C. § 251(c)(2)(C).

¹¹⁶ 47 U.S.C. § 251(c)(2)(D).

¹¹⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15613-15, paras. 221-225; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20641-42, paras. 63-64.

¹¹⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25.

¹¹⁹ *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-50, paras. 74-77; *Ameritech Michigan Order*, 12 FCC Rcd at 20671-74, paras. 240-45. The Commission has relied on trunk blockage data to evaluate a BOC's interconnection performance. Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer's perception of a competitive LEC's service quality.

the requirement to provide interconnection on terms and conditions that are “just, reasonable, and nondiscriminatory” means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations.¹²⁰ The Commission’s rules interpret this obligation to include, among other things, the incumbent LEC’s installation time for interconnection service¹²¹ and its provisioning of two-way trunking arrangements.¹²² Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under “terms and conditions that are no less favorable than the terms and conditions” the BOC provides to its own retail operations.¹²³

64. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC’s network.¹²⁴ Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.¹²⁵ The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.¹²⁶ In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.¹²⁷ To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and our

¹²⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

¹²¹ 47 C.F.R. § 51.305(a)(5).

¹²² Our rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-220.

¹²³ 47 C.F.R. § 51.305(a)(5).

¹²⁴ *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

¹²⁵ 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

¹²⁶ 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

¹²⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) *vacated in part*, *GTE Services Corp. v. FCC*, Nos. 99-1176 *et al.* (D.C. Cir. Mar. 17, 2000) (*Advanced Services First Report and Order or Advanced Services First Report and Order and FNPRM*).

implementing rules.¹²⁸ Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, helps the Commission evaluate a BOC's compliance with its collocation obligations.¹²⁹

b. Discussion

65. We conclude, as described below, that SWBT demonstrates it provides equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251(c)(2) and as specified in section 271. We further find that SWBT meets its burden of proof that it designs its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within its own network. We also find that SWBT makes interconnection available at any technically feasible point, and that it is providing collocation in Texas in accordance with the Commission's rules. We note that the Texas Commission finds that SWBT has satisfied all aspects of this checklist item.¹³⁰

(i) Interconnection Trunking

66. Based on our review of the record, we are persuaded that SWBT provides competing carriers with interconnection trunking that is equal-in-quality to the interconnection SWBT provides to its own retail operations, and on terms and conditions that are just, reasonable, and nondiscriminatory.¹³¹ SWBT makes interconnection available in Texas through interconnection agreements, including its state-approved T2A agreement.¹³² SWBT receives orders for interconnection trunks through the Access Service Request (ASR) process, and accepts ASRs through an electronic application-to-application interface, through a proprietary OSS

¹²⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 183-84; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

¹²⁹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *see Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

¹³⁰ Texas Commission Texas I Comments at 10-22.

¹³¹ For certain interconnection performance metrics, the Texas Commission established a benchmark standard for evaluating SWBT's performance (*e.g.*, percent of trunk blockage and average interconnection trunk installation intervals). For other interconnection measurements, such as percent missed due dates for installation, a parity standard is applied.

¹³² SWBT Texas I Application App. B (providing interconnection agreements between SWBT and competing carriers); SWBT Texas I Application at 74, 77, 80; Texas Commission Texas I Comments at 10. Several competitive LECs raised complaints regarding receipt from SWBT of notices of termination of the T2A. *See* ALTS and CLEC Coalition Texas II Comments at 14-16; Allegiance Texas II Comments at 3; Z-Tel Texas II Comments at 5-6; Allegiance Texas II Reply Comments at 2. SWBT states that by the terms of the T2A it was required to send such notices six months prior to expiration of the T2A (which would expire after one year if SWBT's application for section 271 authority were not granted). Because SWBT's application is herein granted, the T2A will remain in effect for an additional three years. *See* SWBT Texas II Reply at 47-48.

system, and through manual orders.¹³³ SWBT provides performance data to measure the quality of interconnection service provided to competing carriers.¹³⁴

67. *Trunk Blockage.* In prior section 271 applications, we relied on trunk blockage data to evaluate a BOC's interconnection quality.¹³⁵ SWBT's performance data demonstrates that in the months leading up to its Texas II application, SWBT provided interconnection that is equal-in-quality to the interconnection it provides in its own network. Specifically, SWBT's statewide performance data measuring the percentage of calls blocked on outgoing traffic (trunk blockage from SWBT end office and tandem to competitive LEC end office) demonstrates that in the three months immediately preceding its Texas II section 271 application, SWBT was in compliance with the relevant benchmark established in Texas (*i.e.*, blockage not to exceed one percent on these trunks).¹³⁶

68. We find that allegations of some competitive LECs, that they have been unable to obtain the number of interconnection trunks they requested in a timely manner appear to be the exception rather than the rule. Indeed, as we discuss throughout this section, we find that SWBT's performance data indicate that it is providing nondiscriminatory interconnection trunking. To the extent there may have been some problems with trunk provisioning,¹³⁷ we agree with the Department of Justice that such issues have been adequately resolved.¹³⁸

¹³³ Texas Commission Texas I Comments at 10.

¹³⁴ SWBT Dysart Texas I Aff. at para. 548 and Attach. A, Measurements 70-78, (Performance Measurement Business Rules) (Version 1.6). SWBT has implemented nine Texas Commission-approved performance measures relating to this checklist item, including measures that compare trunk blockage between SWBT and competitive LECs (PM 70), measures that capture missed due dates for trunk installations (PM 73), and measures that provide data on average installation intervals (PM 78). *Id.*; *see also* SWBT Aggregated Performance Measurement Data No. 70-78 at 271-No. 70-71-78 (showing performance measurement data for January 2000 through March 2000).

¹³⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 3981-83, paras. 69-72; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20649-50, para. 76; *Ameritech Michigan Order*, 12 FCC Rcd at 20669-74, paras. 236-245.

¹³⁶ For SWBT end office to competitive LEC end office, SWBT's statewide data indicate zero (0.0%) trunk blockage for the months of January through March. For SWBT tandem to competitive LEC end office, SWBT's data indicate blockage well below the benchmark, 0.1 % for January and February, 0.0% blockage for March. *See* SWBT Aggregated Performance Data, No. 70-01, 70-02 at 271-No. 70-71 (showing performance measurement data for January 2000 through March 2000). The Texas Commission applied blockage criteria of one percent as a benchmark to ensure that the competitive LEC's network traffic does not experience the same blockage as SWBT's network (citing the disproportionate impact of blocked trunks on new entrants). Texas Commission Texas I Comments at 14; *see also* SWBT Texas I Dysart Aff. at paras. 543-547.

¹³⁷ The Department of Justice initially raised concerns in the Texas I application, which were also raised by the competitive LECs themselves, that some competitive LECs had been unable to obtain the number of interconnection trunks they needed and that these competitive LECs had difficulty ordering trunks. *See* Department of Justice Texas I Evaluation at 44-49; *see also* Department of Justice Texas I March 20, 2000 *ex parte* at 1, n.2.

¹³⁸ In its Evaluation of SWBT's Texas II application, the Department of Justice stated that "the efforts of SBC, competitive local exchange carriers and the Texas PUC appear to have led to improvements in SBC's (continued...)

69. Competitive LECs allege that they have encountered problems ordering trunks from SWBT which has resulted in blockage on competitive LEC networks, in some cases leading to customer complaints and lost or forgone sales.¹³⁹ TWTC, which provided the most extensive history of its blockage problems, stated that its most severe blockage occurred in Houston during the conversion of the SWBT and TWTC interconnection facilities from one-way to two-way trunks during the second half of 1999.¹⁴⁰ TWTC acknowledges that the blocking ended in mid-October, 1999.¹⁴¹ Furthermore, we note that SWBT implemented improvements approved by the Texas Commission during supplemental proceedings in November and December 1999 to respond to competitive LEC concerns. As stated above, SWBT meets the state benchmark for PM 70 for January, February, March and April.¹⁴² We also note that, as of October, over 75% of the trunks

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interconnection trunking performance and to a better understanding of trunk provisioning by the various parties to the process.” Department of Justice Texas II Evaluation at 5. The Texas Commission reviewed SWBT’s trunk utilization, forecasting, ordering and provisioning processes, as well as plans to relieve blockage through proper cooperative planning between SWBT and competitive LECs. As a result of this review, SWBT agreed to implement improvements relating to trunk forecasts, data collection, application of exclusions, and the process for ordering trunks. SWBT was also permitted to apply certain exclusions in calculating the performance measurements (e.g., customer not ready exclusion). Texas Commission Texas I Comments at 14; SWBT Deere Texas I Reply Aff. at para. 11; SWBT Laurie Leathers Texas I Aff. (filed Dec. 14, 1999 in Docket 16251); SWBT Deere Texas I Reply Aff. at para. 19; SWBT Dysart Texas I Aff. at para. 56, Attach. K Dysart Aff. (filed Dec. 14 in Docket 16251), *see also* Texas Commission Dec. 16 Open Meeting Transcript at 26-27; 32.

¹³⁹ CLEC Coalition Texas I Comments at 7-12, TWTC Nick Summit Texas I Aff. as Attach. 4 to CLEC Coalition Texas I Comments; TWTC Kelsi Reeves Texas I Aff. as Attach. 5 to CLEC Coalition Texas I Comments; ALTS Texas I Comments at 17-23, e.spire Texas I Comments at 3, George Wong Texas I Aff. at 2-4 as Attach. to e.spire Texas I Comments; CompTel Texas I Comments at 10-12, CapRock Jere Thompson Texas I Aff. as Exhibit B to CompTel Texas I Comments; NTS Mitch Elliott Texas I Aff. as Exhibit C to CompTel Texas I Comments; Sprint Texas I Comments at 62-64.

¹⁴⁰ TWTC Reeves Texas I Aff. at paras. 17-24; TWTC Summit Texas I Aff. at paras. 12-14.

¹⁴¹ TWTC Summit Texas I Aff. at para. 11. SWBT Texas I Application at 79; SWBT Dysart Texas I Aff. at paras. 549-559. *See also* Texas Commission Texas I Comments at 10-22. SWBT modified its trunk ordering guidelines in December 1999. SWBT agreed to accept orders of 12 DS1s per competitive LEC per day (an increase from eight DS1s per day) in each of the four market areas in Texas. This modification was approved by the Texas Commission at its December 16, 1999 Open Meeting. SWBT Deere Reply Aff. at paras. 7-9. SWBT’s Deere Attach. A to Reply Aff. (confidential) reflects all occasions on which SWBT has provisioned eight or more DS1s per day, per competitive LEC, per market area from January 1 to February 11, 2000. It shows SWBT has provided 12 or more DS1s per day on at least 18 different occasions. SWBT has also agreed to accept quarterly forecasts from competitive LECs (instead of only semi-annual forecasts accepted previously). According to the business rule for PM 70 (Version 1.6), if a competitive LEC exceeds 25% of its most recent forecast (which must have been provided within the last six months), an exclusion applies. SWBT has agreed to measure the 25% exclusion against forecasts provided by competitive LECs on a quarterly basis. SWBT Deere Texas I Reply Aff. at para. 12; SWBT Dysart Texas I Reply Aff. at para. 64; Texas Commission Texas I Reply Comments at 15-16. *See also* March 8, 2000 *ex parte* letter from SWBT to Magalie Roman Salas, Secretary, Federal Communications Commission.

¹⁴² SWBT Aggregated Performance Measurement Data No. 70-01, 70-2 at 271-No. 70-71 (showing performance measurement data for January 1999 through December 1999). e.spire makes general allegations concerning blockage caused by SWBT and SWBT’s lack of assistance to e.spire. e.spire Wong Texas I Aff. paras. 8-12. (continued...)

provisioned in Texas were two-way trunks.¹⁴³ In the future, if competitive LECs allege that blocking is occurring on outgoing calls from the competitive LEC network to the BOC network, and that such blockage is not being captured by the state-approved performance measure, then competitive LECs should provide evidence, such as reliable performance data, along with a showing of why the BOC is responsible for the blockage. Should such evidence develop in the future in Texas, we will consider whether enforcement action pursuant to section 271(d)(6) is warranted.

70. *Missed Due Dates.* We find that other aspects of SWBT's performance data further indicate it is providing nondiscriminatory interconnection trunking in Texas. SWBT's performance data concerning the percentage of missed due dates for provisioning of interconnection trunks show that in the months preceding its Texas II application, SWBT provided parity or better performance to competitors.¹⁴⁴ Recently implemented modifications in reporting give us added assurance that SWBT will continue to provide timely installation of interconnection trunks. In response to competitive LEC concerns that the performance measurement does not capture "held orders,"¹⁴⁵ the Texas Commission implemented a new measure, PM 73.1, to capture the percentage of held interconnection trunk orders greater than 90 calendar days.¹⁴⁶ SWBT asserts that there were no held orders greater than 90 days between

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e.spire's allegations, however, do not disprove the submitted data showing that SWBT met the benchmark on the trunk blocking performance measure (PM 70), as detailed above.

¹⁴³ Texas Commission Texas I Comments at 11. We also note that TWTC acknowledged that the conversion from one-way to two-way trunks in Austin "was a huge success for both companies." TWTC Reeves Texas I Aff. at para. 17. This is significant because where a competitive LEC does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request wherever technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. The provisioning of two-way trunking arrangements is among the obligations that the Commission concluded in the *Local Competition Order* demonstrated an incumbent LEC was providing interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations. *Local Competition First Report and Order*, 11 FCC Rcd at 15612-613, paras. 217-220; see also 47 C.F.R. § 51.305(f).

¹⁴⁴ SWBT's percentage of missed due dates:

PM 73: Missed Due Dates			
	Jan	Feb	Mar
CLEC	10.4%	4.4%	4.1%
SWBT	60.3%	27.6%	22.5%

See SWBT Aggregated Performance Measurement Data PM 73 at 271-No.73-76 (showing performance measurement data for January 2000 through March 2000). SWBT continues to meet the benchmark in April.

¹⁴⁵ "Held orders" are orders that SWBT does not process due to lack of interconnection facilities. A lack of interconnection facilities, in turn, could mean that SWBT could not satisfy its interconnection obligation.

¹⁴⁶ Texas Commission Texas I Comments at 15. The interim measure will be finalized as part of the Texas Commission's six-month review of performance measurements which began in April 2000. See Texas Commission Dec. 16, 1999 Open Meeting Transcript at 29-31. CapRock and NTS alleged that the pre-planning process that occurs before SWBT officially counts a competitive LEC's request as an order (e.g. scheduling of (continued...))

January and March.¹⁴⁷ We find that SWBT has satisfied the benchmark. Further, commenters have not raised any new allegations of inadequate or overlong trunk provisioning. We note that the Department of Justice agrees that SWBT's performance is satisfactory with respect to this measurement.¹⁴⁸

71. *Average Installation Intervals.* SWBT's performance data that measure the average time for installation of interconnection trunks demonstrate that SWBT meets the state benchmark in February, March and April.¹⁴⁹ We have considered the concerns of the Telecommunications Resellers Association and others in addition to the Department of Justice, and find that the extensive review by the Texas Commission of SWBT's operational processes and empirical performance data satisfactorily addresses their concerns.¹⁵⁰ We therefore reject the

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initial planning meeting and preparation by SWBT of a Service Planning Document summarizing the requirements specified by a competitive LEC), further delays their ability to obtain interconnection trunks (and is not tracked by performance measurements). CompTel Texas I Comments at 10-11, Exhibit C, NTS Mitch Elliot Aff., Exhibit B, Caprock Jere Thompson Aff. SWBT responds that this supposed delay is no more than timely contract preparation. SWBT Texas I Reply Comments at 49. The Texas Commission stated that NTS and Caprock had never brought their complaints to the attention of the Texas Commission, and it did not believe that based on the evidence developed in the Section 271 proceeding that the complaints of NTS and CapRock indicate systemic problems. Inasmuch as the Texas Commission had little opportunity to investigate those complaints and develop a factual record, we accord them little weight. Texas Commission Texas I Reply Comments at 13-14.

¹⁴⁷ See SWBT Texas I March 17 *ex parte* Attach. 3; SWBT Texas I February 18 *ex parte* at 5-6; SWBT Dysart Texas I Aff. Attach. K at 11. NTS' allegation that the orders it submitted in Amarillo were held for lack of facilities does not constitute evidence demonstrating that SWBT fails to meet the checklist item. Specifically, NTS alleged that when it submitted properly forecasted orders on December 23, 1999, SWBT claimed it did not have enough multiplexing equipment available to fulfill NTS's order and that as of its Texas I filing, the trunks were still not installed. SWBT responded that on December 23, 1999, NTS ordered a single DS-3 facility to support its interconnection trunks in Amarillo. SWBT stated that it responded to NTS the same day explaining that SWBT lacked facilities to provision the DS-3, but offered to fill the order using DS-1s to provide the same capacity. SWBT Texas I *ex parte* letter of March 22, 2000. SWBT stated that NTS ordered the DS-1s on January 4, 2000, but twice delayed provisioning of these trunks on the basis that NTS was not ready to receive them. SWBT stated that most recently, the trunks were scheduled for delivery between March 14 and March 16, but that NTS indicated on each of these dates that it was not ready to accept the trunks. SWBT Texas I *ex parte* letter of March 22, 2000. The Texas Commission noted on Reply that it will work with SWBT, NTS [and CapRock] in Docket 20400 to ascertain if there are problems. However, based on the evidence developed in the section 271 proceeding, the Texas Commission did not believe that the complaints of NTS [and CapRock] indicate systemic problems." Texas Commission Texas I Reply. We agree.

¹⁴⁸ Department of Justice Texas II Evaluation at 5, stating that PM 73.1 reports very few orders held for lack of facilities for March 2000.

¹⁴⁹ In February, March, and April, SWBT met the 20 business day benchmark with an average installation interval of 16.5, 17.4, and 17.3 business days respectively for competitive LECs. The Texas Commission established a benchmark instead of a parity measure because SWBT installs more trunks for competitive LECs than for its retail side. Texas Commission Texas I Comments at 16.

¹⁵⁰ Department of Justice Texas I Evaluation at 47; Telecommunications Resellers Association Texas I at 9-10, 13; Sprint Texas I at 62-64; Sprint Texas II Comments at 46; CompTel Texas II Comments at 2. We also note that the performance measures will be reviewed by SWBT, competitive LECs and the Texas Commission every six (continued....)

concerns raised in the record regarding SWBT's average installation interval performance as those concerns relate largely to last year's performance. The data submitted as part of the instant application indicate SWBT meets the state benchmark.

72. In conclusion, our decision that SWBT satisfies the requirements of this checklist item is based on the following: its trunk group blockage rates for competitors pass the state benchmark, its rate of missed due dates for trunk installations is lower for service to competitors than for service to itself, and its average time to install interconnection trunks passes the state benchmark.

(ii) Collocation

73. SWBT has demonstrated that its collocation offering in Texas satisfies the requirements of sections 271 and 251 of the Act. SWBT provides physical and virtual collocation through a state-approved tariff.¹⁵¹ In its application, SWBT indicates that shared, cageless, and adjacent collocation options are available in Texas, and that it has taken other steps to implement the collocation requirements contained in the *Advanced Services First Report and Order*.¹⁵² SWBT provides terms for physical collocation in its physical collocation tariff, as well as in a physical collocation handbook that it incorporates into the tariff by reference.¹⁵³ SWBT's collocation performance data indicate that SWBT processed requests for collocation within time frames established by the Texas Commission. SWBT stated that it has provided 655 physical collocation arrangements in 166 different SWBT central offices in Texas. Except where a

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months, beginning in April 2000, "to determine whether they are properly reflecting the behaviors and results needed for a sustainable competitive market." Texas Commission Texas I Comments at 4. We disagree with the allegation of Pontio that its interconnection dispute with SWBT disqualifies SWBT from receiving section 271 authority. Specifically, Pontio alleges that SWBT will not provide requested interconnection trunks unless Pontio agrees to an amended interconnection agreement that would impose per minute local switching charges. See Texas II Comments of @Link, BlueStar, DSLnet et. al. at 23. SWBT states that the trunks at issue were provisioned on May 11, 2000 and the terms to recover the appropriate costs for the use of those facilities are subject to ongoing negotiations with Pontio. See SWBT Texas II Reply at 50. We believe Pontio's alleged difficulties are best resolved through the section 252 negotiation and arbitration process.

¹⁵¹ SWBT's physical and virtual collocation tariffs were revised in connection with the Texas Commission's collaborative process and workshops designed to address competitive LEC concerns. The revised physical and virtual collocation tariffs became effective upon state approval October 29, 1999. See Texas Commission Texas I Comments at 16. SWBT's physical collocation tariff contained a 50 square foot minimum space requirement for shared cage collocation. However, our rules provide that an ILEC must make shared collocation space available in single-bay increments or their equivalent, *i.e.*, a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment. 47 CFR § 51.323 (k)(1). We note that SWBT eliminated the minimum space requirement and notified competitive LECs through an Accessible Letter of February 29, 2000 that it had removed the minimum space requirement. See SWBT Accessible Letter of February 29, 2000 "Clarification of minimum cage size for Caged and Shared Cage collocation Kansas, Missouri, Oklahoma, Texas," No. CLEC00-050.

¹⁵² SWBT Texas I Application at 73-78; see also Texas Commission Texas I Comments at 16-22.

¹⁵³ SWBT Texas I Application at 74.

competitive LEC places a large number of collocation orders in the same 5-business day period, SWBT responds to each request within 10 days.¹⁵⁴ SWBT provides three measurements (disaggregated into various submeasures) for collocation: Percentage of Missed Collocation Due Dates (PM 107), Average Delay Days for SWBT Missed Due Dates (PM 108), and Percent of Requests Processed within the Tariffed Timelines (PM 109). Where data points are available, SWBT's data indicates it meets the measures for the months of January, February, and March.¹⁵⁵

74. SWBT makes virtual collocation available through its virtual collocation tariff, with notification and installation intervals for all tariffed equipment established in SWBT's Interconnector's Collocation Services Handbook for Virtual Collocation.¹⁵⁶ In addition, SWBT states that competitive LECs may negotiate custom-tailored interconnection arrangements on request.¹⁵⁷ The Texas Commission agrees that SWBT's revised physical collocation offerings comply with the *Advanced Services Order*.¹⁵⁸ Further, SWBT's collocation offering underwent an active and thorough review at the state level. The Texas Commission addressed the provisioning of collocation space and established standard provisioning intervals for caged, cageless, and virtual collocation.¹⁵⁹

75. We disagree with ALTS and the CLEC Coalition that SWBT's practice of walling in its own equipment as a "reasonable security measure" violates our collocation rules.¹⁶⁰ Our rules as they existed at the time of filing did not explicitly prohibit this practice.¹⁶¹ Therefore, we

¹⁵⁴ SWBT Texas I Application at 75, SWBT Dysart Texas I Aff. at para. 629, SWBT Auinbauh Texas I Aff. at paras. 44-45.

¹⁵⁵ See SWBT Aggregated Performance Measurement Data PMs 107-109 at 271-No. 107a -109b (showing performance measurement data for January 2000 through March 2000).

¹⁵⁶ SWBT Texas I Application at 77. SWBT states that it has completed 40 virtual collocation arrangements in Texas.

¹⁵⁷ SWBT Texas I Application at 78.

¹⁵⁸ "SWBT's physical and virtual collocation tariffs have been revised in conformance with the Texas Commission recommendations, and address the myriad competitive LEC concerns discussed at length in the Texas Commission's collaborative process and workshops." Texas Commission Texas I Comments at 16.

¹⁵⁹ Texas Commission Texas I Comments at 17-18.

¹⁶⁰ ALTS and the CLEC Coalition objected to SWBT's practice of walling in its own equipment as a "reasonable security measure" associated with cageless collocation and then charging competitive LECs for the construction. The competitive LECs contended this practice is not contemplated by the Commission's *Advanced Services First Report and Order*. ALTS Texas I Comments at 24; CLEC Coalition Texas I Comments at 12; see also AT&T's DeYoung Texas I Aff. at para. 327 n.240. Pending completion of the Texas Commission's rate proceedings, the interim rate for security for cageless collocation is zero, subject to true-up. SWBT argues therefore that as a practical matter there is no genuine issue. See pricing discussion *infra* at section V.A.2; SWBT's Auinbauh Texas I Reply Aff. at para. 32; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 3987-88, para. 79.

¹⁶¹ See Petition for Partial Reconsideration or Clarification filed June 1, 1999, Sprint Corporation requests that we clarify and further strengthen the collocation rules adopted in the *Advanced Services First Report and Order*.

find that these allegations do not rise to the level of non-compliance for this checklist item.¹⁶² In addition, we believe that Metromedia Fiber Network Services' (MFNS) alleged difficulties negotiating collocation arrangements with SWBT are best resolved through the section 252 negotiation and arbitration process or through the section 208 complaint process.¹⁶³

(iii) Technically Feasible Points of Interconnection

76. We conclude that SWBT provides interconnection at all technically feasible points, and therefore demonstrates compliance with the checklist item. SWBT asserts that it makes each of its standard methods of interconnection available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs.¹⁶⁴ SWBT demonstrates that it has an approved state interconnection agreement that spells out readily available points of interconnection, and provides a process for requesting interconnection at additional, technically feasible points.¹⁶⁵

77. We disagree with AT&T that SWBT has violated its obligation to permit competing carriers to select interconnection points.¹⁶⁶ The existing language in the interconnection agreement between SWBT and AT&T states that "in each SWBT exchange area in which AT&T offers local exchange services, the parties will interconnect their network facilities

¹⁶² On March 17, 1999, the D.C. Circuit vacated and remanded certain aspects of the *Advanced Services First Report and Order*, including the relevant sections at issue here. See *GTE Service Corp. v. FCC*, Nos. 99-1176 *et al.* (D.C. Cir. Mar. 17, 2000).

¹⁶³ See MFNS Texas I Comments and Reply Comments. See also Auinbauh Texas I Reply Aff. at paras. 25-26. MFNS filed a section 208 complaint with the Commission's Enforcement Bureau on February 15, 2000 requesting that SWBT be directed to provide its Competitive Alternate Transport Terminal "CATT" interconnection. That complaint was dismissed without prejudice for failure to comply with the Commission's complaint requirements. See February 28, 2000 Letter from Radhika V. Karmarkar, Enforcement Bureau, to Karen Nations (MFNS), Jonathan E. Canis and David A. Konuch (Kelley Drye & Warren) and Christine Jines (SBC).

¹⁶⁴ SWBT Deere Texas I Aff. at paras. 14; 20-21. SWBT will provide other technically feasible alternatives using the Special Request Procedure set forth in the T2A. *Id.* at 14.

¹⁶⁵ SWBT Texas I Application at 73-78. SWBT's state approved T2A requires SWBT to provide other collocation arrangements that have been demonstrated to be technically feasible and in compliance with the *Advanced Services Order*. The T2A provides a rebuttable presumption of technical feasibility when a collocation arrangement has been deployed by any incumbent LEC. *Id.* at 17.

¹⁶⁶ Specifically, AT&T objects to SWBT's requirement that AT&T establish direct trunks to each central office in the Dallas exchange area, which is not served by a local tandem, instead of allowing AT&T to interconnect at the access tandem serving the central offices in the Dallas exchange area. AT&T alleged that SWBT's requirement led to a three-month delay in AT&T's final testing of its telephony-over-cable service in the Dallas area. See AT&T Texas I Comments at 59-60; AT&T Texas I DeYoung Aff. at paras. 20-26; AT&T *ex parte* of March 8, 2000; AT&T Texas II Reply Comments at 49; *but see* SWBT Deere Texas I Reply Aff. at 24-25; SWBT Texas II *ex parte* of April 26; SWBT Texas II Reply Comments at 50-54. See also AT&T Texas II *ex parte* letter of June 13, 2000.

at a minimum of one mutually agreeable point of interconnection.”¹⁶⁷ This portion of the interconnection agreement between SWBT and AT&T, however, was negotiated and, therefore, does not have to comply with section 251.¹⁶⁸ Consequently, AT&T’s experience does not constitute evidence of a failure by SWBT to provide interconnection at all technically feasible points for purposes of section 271 review.¹⁶⁹

78. Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.¹⁷⁰ The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible.¹⁷¹ Thus, new entrants may select the “most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers’ costs of, among other things, transport and termination.”¹⁷² Indeed, “section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC’s network at any technically feasible point in the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.”¹⁷³ We note that in SWBT’s interconnection agreement with MCI (WorldCom), WorldCom may designate “a single interconnection point within a LATA.”¹⁷⁴

¹⁶⁷ See SWBT Deere Texas II Reply Aff., App. A-4 at 5-7; AT&T Texas II Reply Comments, DeYoung/Fettig Decl., at 5 n.7.

¹⁶⁸ SWBT Texas II Reply Comments at 53. SWBT notes that the issues raised by AT&T will be debated before the Texas Commission in a pending arbitration between SWBT and AT&T. SWBT Deere Texas II Reply Aff. App. A-4 at 7. We believe that AT&T’s issue is appropriately resolved through the Texas Commission’s arbitration process. See *AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications, Inc.’s Response to Southwestern Bell Telephone Company’s Petition for Arbitration*, Tex. PUC Docket 22315 at 13-17 (filed April 17, 2000).

¹⁶⁹ In addition, we find that SWBT satisfactorily addresses AT&T’s concern that SWBT does not allow virtual collocation if space for physical collocation is available. AT&T’s DeYoung Texas I Aff. at para. 332; see also AT&T’s March 8, 2000 *ex parte* at 2-3. SWBT confirms that sections 25 and 26 of SWBT’s Virtual Collocation Tariff make virtual collocation available to competitive LECs regardless of the availability of physical collocation; the restriction to which AT&T refers involves a maintenance and repair option for virtually collocated equipment, and such language does not deny virtual collocation as alleged by AT&T. SWBT Texas I Reply Comments at 51; Auinbauh Texas I Reply Aff. at paras. 34-35.

¹⁷⁰ See 47 U.S.C § 251(c)(2),(3); see also 47 C.F.R. §51.305(a)(2); see, e.g., *Memorandum of the Federal Communications Commission as Amicus Curiae, US West Communications, Inc., vs. AT&T Communications of the Pacific Northwest, Inc. et. al*, No. CV 97-1575 JE.

¹⁷¹ 47 C.F.R Section 51.305(e); see also *Local Competition First Report and Order*, 11 FCC Rcd at 15602, 15605-06, paras. 198, 203, 205.

¹⁷² See *Local Competition First Report and Order*, 11 FCC Rcd at 15588, para. 172.

¹⁷³ *Local Competition First Report and Order*, 11 FCC Rcd at 15608, para. 209.

¹⁷⁴ See SWBT Texas II Application , App. 5, Tab 45, MCI(WorldCom) Agreement Attach. 4, § 1.2.2. Section 1.2.2 of the WorldCom Agreement states: “MCI(WorldCom) and SWBT agree that MCI(WorldCom) may (continued....)”

Thus, SWBT provides WorldCom interconnection at any technically feasible point, and section 252(i) entitles AT&T, or any requesting carrier, to seek the same terms and conditions as those contained in WorldCom's agreement, a matter any carrier is free to take up with the Texas Commission.¹⁷⁵

2. Pricing of Interconnection

a. Background

79. As discussed above, checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."¹⁷⁶ Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network ... on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."¹⁷⁷ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.¹⁷⁸

80. Interconnection trunking, physical and virtual collocation, and meet-point arrangements are among the technically feasible methods of interconnection.¹⁷⁹ Shared cage and cageless collocation arrangements must be part of an incumbent LEC's physical collocation offerings.¹⁸⁰ To comply with its collocation obligations, an incumbent LEC must make collocation arrangements available on "rates, terms, and conditions that are just, reasonable, and

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designate, at its option, a minimum of one point of interconnection within a single SWBT exchange where SWBT facilities are available, or multiple points of interconnection within the exchange, for the exchange of all traffic within that exchange. If WorldCom desires a single point for interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party's facilities." SWBT Texas II Application, App. 5, Tab 45, WorldCom Agreement Attach. 4, § 1.2.2

¹⁷⁵ See 47 U.S.C. § 252(i). Section 252(i) makes these terms and conditions available to all requesting carriers despite SWBT's statement that it requires competitive LECs to interconnect in every local exchange area. See SWBT Texas II Reply at 50.

¹⁷⁶ 47 U.S.C. § 271(c)(2)(B)(i).

¹⁷⁷ 47 U.S.C. § 251(c)(2).

¹⁷⁸ 47 U.S.C. § 252(d)(1).

¹⁷⁹ 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-81, paras. 549-53. In a physical collocation arrangement, an interconnecting carrier has physical access to space in the LEC central office to connect to the incumbent LEC network. *Id.* at 15784, para. 559, and n.1361. In a virtual collocation arrangement, interconnectors designate central office transmission equipment dedicated to their use, but have no right to enter the central office and do not pay for incumbent LEC floor space. *Id.* In a meet-point arrangement, the parties negotiate a point at which one carrier's responsibility for service ends and the other carrier's begins. See *id.* at 15778, n.1332.

¹⁸⁰ *Advanced Services First Report and Order*, 14 FCC Rcd at 4783-85, paras. 40-42.

nondiscriminatory.”¹⁸¹ The Commission’s pricing rules require, among other things, that incumbent LECs provide collocation based on the total element, long-run, incremental cost (TELRIC).¹⁸²

81. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission’s pricing rules in 1996,¹⁸³ the Supreme Court restored the Commission’s pricing authority on January 25, 1999.¹⁸⁴ In reaching its decision, the Court acknowledged that section 201(b) “explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies.”¹⁸⁵ Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that “the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section.”¹⁸⁶ The Court also held that the pricing provisions implemented under the Commission’s rulemaking authority do not inhibit the establishment of rates by the states.¹⁸⁷ The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as “it is the States that will apply those standards and implement that methodology, determining the concrete result.”¹⁸⁸

b. Discussion

82. Based on the evidence in the record, we find that SWBT offers interconnection in Texas to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.¹⁸⁹ SWBT states that it provides interconnection at TELRIC-based rates that are just, reasonable, and nondiscriminatory.¹⁹⁰ SWBT provides terms for physical

¹⁸¹ See 47 U.S.C. § 251(c)(6); 47 C.F.R. §§ 51.305(a)(5), 51.321(a)-(b); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para 66.

¹⁸² See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

¹⁸³ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (1997).

¹⁸⁴ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹⁸⁵ *Id.* at 380.

¹⁸⁶ *Id.* at 382.

¹⁸⁷ *Id.* at 384.

¹⁸⁸ *Id.*

¹⁸⁹ We note that other unbundled network elements are required pursuant to the checklist, but we discuss them in the context of other checklist items. Additionally, we discuss UNE pricing, including both recurring and non-recurring charges, in checklist item 2; rates for access to poles, ducts, and conduits in checklist item 3; the pricing of directory assistance and operator services in checklist item 7; reciprocal compensation rates in checklist item 13; and resale rates in checklist item 14.

¹⁹⁰ SWBT Texas I Application at 72, 80; SWBT Texas I Auinbauh Aff at para. 148.

collocation in its physical collocation tariff, as well as in a physical collocation handbook that it incorporates into the tariff by reference.¹⁹¹ SWBT makes virtual collocation available through its virtual collocation tariff.¹⁹² SWBT says it will also negotiate custom-tailored interconnection arrangements on request.¹⁹³ According to SWBT, TELRIC-based charges apply to custom work even if no rate has been established previously.¹⁹⁴ SWBT states that it pro-rates its site preparation charges and allocates them based on the percentage of the total space each competitive LEC uses.¹⁹⁵ SWBT also says that it pro-rates its collocation charges so that the first competitive LEC to enter the premises is not responsible for all the site preparation costs.¹⁹⁶

83. The Texas Commission states in its evaluation that SWBT has satisfied the requirements of checklist item 1.¹⁹⁷ According to the Texas Commission, SWBT provides interconnection trunking at just, reasonable, and nondiscriminatory terms and conditions.¹⁹⁸ The state commission says that SWBT makes interconnection available through the Texas Commission-approved 271 agreement, and that the Texas-approved physical and virtual collocation tariffs comply with sections 251 and 271 of the Act.¹⁹⁹

84. We stress that we place great weight on the Texas Commission's active review of SWBT's pricing elements in its 271 application. The Texas Commission has encouraged active and open participation by all carriers in setting rates through numerous proceedings, reviewed costs studies and conflicting testimonies, arbitrated pricing issues and incorporated its findings into interconnection agreements, and has demonstrated its commitment to applying the pricing standards of sections 251 and 252 of the Act as implemented by our rules.²⁰⁰

85. As the Texas Commission explains, "[t]he collocation tariffs contain interim rates,

¹⁹¹ See SWBT Texas I Application at 74, 80.

¹⁹² *Id.* at 77.

¹⁹³ *Id.* at 78.

¹⁹⁴ *Id.* at 80; SWBT Texas I Auinbauh Aff. at para. 149.

¹⁹⁵ SWBT Texas I Application at 80; SWBT Texas I Auinbauh Aff. at paras. 59-60, 63.

¹⁹⁶ SWBT Texas I Application at 80; SWBT Texas I Auinbauh Aff. at para. 59-60, 63.

¹⁹⁷ Texas I Commission Comments at 10.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 10, 16, 21.

²⁰⁰ See Texas I Commission Comments at 80; Texas II Commission Comments at 55-58; Letter from Donna Nelson, Director-Telecommunications, Legal Division, Texas Public Utility Commission to Magalie Roman Salas, CC Docket No. 00-65, Attach. 5, Interim Award at 17 (filed June 19, 2000) (Texas Commission June 19 *Ex Parte*).

subject to true-up, for all aspects and methods of available collocation.”²⁰¹ AT&T argues that the interim nature of these rates proves fatal to SWBT’s application in light of our discussion of interim rates in the *Bell Atlantic New York Order*.²⁰² We disagree. In that order, we stated that:

a BOC’s application for in-region interLATA authority should not be rejected solely because permanent rates may not yet have been established for each and every element or nonrecurring cost of provisioning an element. We believe that this question should be addressed on a case-by-case basis. If the uncertainty caused by the use of interim rates can be minimized, then it may be appropriate, at least for the time being, to approve an application based on the interim rates contained in the relevant tariff.²⁰³

86. We concluded that the interim nature of Bell Atlantic’s xDSL rates posed no obstacle to the approval of its application. We reasoned that the xDSL rate dispute was relatively new, that the New York Commission has a track record of setting other prices at TELRIC rates, and that the interim rates would be subject to a refund or true-up once final rates were set.²⁰⁴ Although we noted that competitive “[u]ncertainty will be minimized if the interim rates are for a few isolated ancillary items,” we did not say that the disputed items must be ancillary in character to ensure compliance with the checklist.²⁰⁵

87. This case again presents the question of the significance of interim rates for purposes of adjudicating a section 271 application. We again conclude that the section 271 process could not function as Congress intended if we adopted a general policy of denying any section 271 application accompanied by unresolved pricing and other intercarrier disputes. Our experience has demonstrated that, at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC’s obligations under sections 251 and 252. BOCs and their competitors can be expected to take opposite positions in those disputes, and the adjudicated resolution ultimately will often fall somewhere in between the positions of the opposing parties. If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome.

88. The 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district

²⁰¹ Texas I Commission Comments at 21.

²⁰² AT&T Texas I Comments at 41; AT&T Texas I DeYoung Aff. at paras. 317-18, 328.

²⁰³ *Bell Atlantic New York Order*, 15 FCC Rcd at 4090, para. 258.

²⁰⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 259.

²⁰⁵ *Compare Bell Atlantic New York Order*, 15 FCC Rcd at 4090-91, para. 258 with *id.* at 4091, para. 259.

courts to ensure that the results of the state arbitration process are consistent with federal law.²⁰⁶ Although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored our pricing jurisdiction and has thereby directed the state commissions (and the federal courts on review) to follow our pricing rules in their disposition of those disputes. For those reasons, the mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set.²⁰⁷ As discussed below, the interim rates in dispute here meet that standard.

89. AT&T argues that the interim nature of SWBT's collocation rates demands that we deny the section 271 application.²⁰⁸ We disagree. As we explained in the *Bell Atlantic New York Order*, we examine interim rates under section 271 on a case-by-case basis.²⁰⁹ We conclude that the state has made reasonable efforts to set interim collocation rates in accordance with the Act and the FCC's rules. The Texas Commission set the interim rates pursuant to TELRIC standards so that competitive LECs could obtain collocation while the state incorporated the Commission's findings in the March 31, 1999, *Advanced Services Order*.²¹⁰ AT&T argues that the interim caged collocation rates are not TELRIC-based, and stem instead from outdated tariffs that include costs for things such as asbestos removal and separate entryways that the FCC has since deemed improper.²¹¹ AT&T admits, however, that the Texas Commission reduced one of the elements of the caged collocation rates by 30 percent to accommodate that fact.²¹² AT&T argues that the reduction is insufficient to conform the caged collocation rates to TELRIC standards,²¹³ but we view it as a reasonable attempt by the state commission to set an interim

²⁰⁶ 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

²⁰⁷ See para. 84, *supra* (discussion of Texas Commission's commitment to apply pricing standards of sections 251 and 252 of the Act).

²⁰⁸ AT&T Texas I DeYoung Aff. at paras. 320, 328.

²⁰⁹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4090-91, para. 258.

²¹⁰ SWBT Texas I Auinbauh Aff. at paras. 6, 40, 149; SWBT Texas I Shelley Aff. at paras. 44-46; SWBT Texas I Reply at 50; SWBT Texas I Auinbauh Reply Aff. at paras. 12, 27-28. See *Advanced Services Order*, 14 FCC Rcd at 4771-94, paras. 19-60.

²¹¹ AT&T Texas I Comments at 41-42; AT&T Texas I DeYoung Aff. at paras. 320-21, 328 & nn.230, 233.

²¹² AT&T Texas I DeYoung Aff. at para. 321.

²¹³ AT&T Texas I DeYoung Aff. at para. 322. According to AT&T, a competitive LEC acquiring a 100-square-foot caged space would pay \$4,166 in interim non-recurring charges and \$64 per month in interim recurring charges, compared to no non-recurring charges and a maximum of \$42.01 per month in recurring charges under the AT&T/MCI cost model. *Id.* AT&T says that SWBT's own rate comparison indicates that the interim rates, prior to the 30 percent reduction, are approximately twice those produced by the AT&T/MCI model, representing a difference of about \$14,000 in non-recurring charges for a 100 square-foot cage. *Id.* at 323 & nn.235-236.

TELRIC-based rate pending its final determination. Moreover, the Texas Commission based the majority of the interim rates, at least with regard to physical collocation, from a TELRIC model developed by AT&T and MCI, albeit with some modifications.²¹⁴

90. The Texas Commission has set up a schedule to set permanent rates, and has indicated to the parties that the interim rates are subject to a refund or true-up, an approach apparently urged by AT&T.²¹⁵ AT&T acknowledges that the Texas Commission has directed use of the AT&T/MCI model in setting permanent physical and virtual collocation rates.²¹⁶ Further cost studies were due April 12, 2000, and a hearing was scheduled for June 15-16, 2000.²¹⁷ Based on the record, we believe that the Texas Commission has taken a reasonable approach. We conclude that the uncertainty surrounding the interim rates has been minimized, and we have

confidence that the Texas Commission will set permanent rates that are in compliance with the Act and our rules. Consequently, we find that SWBT has met its obligations under this checklist item.²¹⁸

B. Checklist Item 2 – Unbundled Network Elements

91. Our analysis under checklist item 2 addresses whether SWBT satisfies its obligation to provide nondiscriminatory access to unbundled network elements pursuant to section 251(c), at prices that meet the requirements of section 252(d). As discussed above, the Commission has identified a number of UNEs, including operations support systems (OSS), that incumbent LECs must make available under section 251(c)(3) as of the filing date of this application.²¹⁹ In this section, we address whether SWBT provides access to OSS and to combinations of UNEs in accordance with section 251(c)(3) and our rules.²²⁰ We recognize, as we have in prior section 271 orders, that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.²²¹ Aside from OSS, the other UNEs that SWBT must make available under section 251(c)(3) are also listed as separate items on the competitive checklist, and are addressed below in separate sections for each checklist

²¹⁴ AT&T Texas I DeYoung Aff. at para 320 & n.231.

²¹⁵ See SWBT Texas I Reply at 50; SWBT Texas I Auinbauh Reply Aff. at paras. 27-29.

²¹⁶ AT&T Texas I DeYoung Aff. at para. 325.

²¹⁷ Texas I Commission Comments at 21.

²¹⁸ We also observe that in any context in which prices are not set in accordance with our rules and the Act, we retain the ability to take a variety of enforcement actions and will not hesitate to do so. See 47 U.S.C. § 271(d)(6).

²¹⁹ See section III.B.1, *supra*; *UNE Remand Order* at para. 15.

²²⁰ 47 U.S.C. § 51.315(b).

²²¹ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

item.²²²

1. Operations Support Systems

a. Background

92. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.²²³ The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.²²⁴ For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.²²⁵ The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.²²⁶

93. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."²²⁷ The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.²²⁸ The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).²²⁹ In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.²³⁰ Consistent with

²²² See 47 U.S.C. § 271(c)(2)(B) (for example, unbundled loops, transport and switching are listed separately as checklist items iv, v and vi).

²²³ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

²²⁴ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585.

²²⁵ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

²²⁶ *Id.*

²²⁷ 47 U.S.C. § 271(c)(2)(B)(ii).

²²⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

²²⁹ *Id.*

²³⁰ *Id.* As part of a BOC's demonstration that it is "providing" a checklist item (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, (continued....)

prior orders, we examine SWBT's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.²³¹

94. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, unbundled network elements, and resale.²³² For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.²³³ The BOC must provide access that permits competing carriers to perform these functions in “substantially the same time and manner” as the BOC.²³⁴ The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.²³⁵

95. For OSS functions that have no retail analogue, the BOC must offer access “sufficient to allow an efficient competitor a meaningful opportunity to compete.”²³⁶ In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, we will examine, in the first instance, whether specific performance standards exist for those functions.²³⁷ In particular, we will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.²³⁸ If such performance standards exist, we will evaluate whether the BOC’s performance is sufficient to

(Continued from previous page) _____

information, and personnel that support that element or service. An examination of a BOC’s OSS performance is therefore integral to our determination of whether a BOC is offering all of the items contained in the competitive checklist. *Id.*

²³¹ *Id.* at 3990-91, para. 84.

²³² *Id.* at 3991, para. 85.

²³³ *Id.*

²³⁴ *Id.* For example, we would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

²³⁵ *See id.*

²³⁶ *Id.* at para. 3991, para. 86.

²³⁷ *Id.*

²³⁸ *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *Id.* at 20619-20.

allow an efficient competitor a meaningful opportunity to compete.²³⁹

96. We analyze whether SWBT has met the nondiscrimination standard for each OSS function using the two-step approach outlined in prior orders. First, we determine “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”²⁴⁰ We next

²³⁹ See *id.* at 3991-92, para. 86.

²⁴⁰ *Id.* at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, we “consider all of the automated and manual processes a BOC has undertaken to provide access to OSS functions,” including the interface (or gateway) that connects the competing carrier’s own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC’s OSS (including all necessary back office systems and personnel); and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. *Ameritech Michigan Order*, 12 FCC Rcd at 20615; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

assess “whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”²⁴¹

97. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.²⁴² For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC’s systems and any relevant interfaces.²⁴³ In addition, a BOC must disclose to competing carriers any internal business rules²⁴⁴ and other formatting information necessary to ensure that a carrier’s requests and orders are processed efficiently.²⁴⁵ Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers’ access to OSS functions.²⁴⁶ Although not a prerequisite, the Commission continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.²⁴⁷

98. Under the second inquiry, we examine performance measurements and other evidence of commercial readiness to ascertain whether the BOC’s OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.²⁴⁸ The most probative evidence that OSS functions are operationally ready is actual commercial usage.²⁴⁹ Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC’s OSS.²⁵⁰ Although we do not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC’s OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC’s evidence of actual commercial usage is weak or is otherwise challenged by

²⁴¹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders and include information concerning ordering codes such as universal service ordering codes (USOCs) and field identifiers (FIDs). *Id.*; see also *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.335.

²⁴⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

²⁴⁶ *Id.*

²⁴⁷ See *id.*

²⁴⁸ *Id.* at 3993, para. 89.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

competitors, The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.²⁵¹ If the review is limited in scope or depth or is not independent and blind, we will give it minimal weight.

b. Discussion

99. For the reasons discussed more fully below, we conclude that SWBT has demonstrated that it provides nondiscriminatory access to its OSS. The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition, as well as providing access to other checklist items.²⁵² For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers. The evidence presented in this record shows that SWBT provides nondiscriminatory access to OSS pre-ordering, ordering, maintenance and repair, and billing functions. We base these findings primarily on evidence in the record of SWBT's actual commercial performance, including SWBT's performance measurements developed under the auspices of the Texas Commission. In addition, we find that the Telcordia third-party test provides some additional evidence of the functionality and capability of SWBT's OSS. We also find that SWBT has instituted a change management process that will help to ensure that changes to SWBT's OSS interfaces do not impede a carrier's ability to access critical OSS functions.

100. Although the Department of Justice identified several areas of concern regarding the performance and readiness of SWBT's OSS in the *Texas I* proceeding,²⁵³ it recommends approval of SWBT's second application and states that it is "encourag[ed]" by recent developments with respect to OSS. The Department of Justice nonetheless expresses "lingering concerns" about several allegations raised by competitive LECs.²⁵⁴ We address each of these concerns below. Based on evidence submitted in this second proceeding, including evidence demonstrating that SWBT's performance has improved in several critical areas, we find that the areas of concern identified by the Department of Justice do not merit denial of SWBT's

²⁵¹ See *id.*; *Ameritech Michigan Order*, 12 FCC Rcd at 20659 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

²⁵² See *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-3990, para. 83.

²⁵³ See Department of Justice Texas I Evaluation at 36 to 52.

²⁵⁴ See Department of Justice June 13 *ex parte* submission at 17-19. Specifically, the Department of Justice expressed concern about: (i) the "apparent difficulty CLECs have had integrating SBC's pre-order interfaces with SBC's ordering interface" (see section V.B.1.e, *infra*); (ii) allegations regarding SBC's inability to provide nondiscriminatory access to updating the LIDB database in a timely and accurate manner (see section V.B.1.f.i.f, *infra*); and (iii) "disturbing allegations" raised by two competing LECs regarding specific recent SWBT conduct in Texas (see section V.B.2.b.i, *infra*).

application, and conclude that SWBT has demonstrated that it provides nondiscriminatory access to its OSS.

c. Independent Third Party Testing

101. The Texas Commission retained Telcordia (formerly Bellcore) as an independent third party to oversee a carrier-to-carrier test of the operational readiness of SWBT's OSS and to evaluate the efficacy of the documentation and other processes SWBT makes available to competing carriers in Texas.²⁵⁵ With the help of the Technical Advisory Group (TAG), a group composed of the Texas Commission, several competitive LECs, and SWBT, Telcordia developed a Master Test Plan that outlined the general structure of the testing, and framed the specific requirements necessary for testing certain SWBT systems.²⁵⁶ The test consisted of a "functionality" test designed to evaluate and validate the ability of SWBT's OSS systems to process different types of orders, and a "capacity" test designed to evaluate the ability of SWBT's systems to handle reasonably foreseeable volumes of orders.²⁵⁷ The actual tests of SWBT's OSS were conducted using electronic interfaces certain carriers had already developed for interconnecting with SWBT's systems.²⁵⁸ Telcordia's role was to validate the test design, monitor the test execution, validate the test results, and report the results of the testing.²⁵⁹ We applaud the Texas Commission for its significant role in developing a third-party test in Texas, for its oversight of Telcordia's review of SWBT's OSS readiness, and for its continuing role in ensuring that SWBT provides access to its OSS in a non-discriminatory manner.²⁶⁰ We continue to encourage strong state participation in ensuring that the BOCs' OSS can support competitive entry into the local markets.

102. We view independent third party testing as a useful tool in determining whether a BOC's deployment of OSS is nondiscriminatory. While there may be several ways to design and conduct a meaningful third party test, we have recognized that the persuasiveness of such a test is dependent on the conditions and scope of the review, and we thus encourage BOCs to pursue comprehensive OSS testing. The findings of a third party tester may be necessary to assess whether a BOC is providing nondiscriminatory access to its OSS, particularly if other evidence,

²⁵⁵ Texas Commission Texas 1 Comments at 5-6, 28-32; SWBT Texas 1 Ham Aff. at para. 251; Telcordia Final Report at §1.1.1.

²⁵⁶ Texas Commission Texas 1 Comments at 5 n.7; Telcordia Final Report at § 1.1.1.

²⁵⁷ Texas Commission Texas 1 Comments at 5.

²⁵⁸ SWBT Texas 1 Application at 28; Texas Commission Texas 1 Comments at 5; SWBT Texas 1 Ham Aff. at para. 256-258. Seven competitive LECs were test participants in the test. Only AT&T and WorldCom actively participated in testing their EDI interface. See Telcordia Final Report at §§ 1.1.1.1-1.1.1.2; Transcript of OSS Testing Workshop, SBC Application App. D, Vol. 3, Tab 50.

²⁵⁹ Telcordia Final Report at 3.2.4.

²⁶⁰ As we stated in the New York order, rigorous state proceedings can contribute to the success of a section 271 application. *Bell Atlantic New York Order*, 15 FCC Rcd at 3958, para. 8.

such as data reflecting actual commercial usage, is not presented by the applicant. As we have stated previously, however, we consider actual commercial usage to be the most probative evidence that a BOC is providing nondiscriminatory access to its OSS.²⁶¹ We thus first examine actual commercial usage in making our determination in this matter.

103. We find that the third party test conducted by Telcordia provides evidence of the functionality and capacity of SWBT's OSS in several important areas.²⁶² At the same time, however, we agree with several commenters and the Department of Justice that the Telcordia test was limited in scope and depth.²⁶³ This is not to say, as some commenters contend, that SWBT's application is inadequate. Rather, this finding simply means that, in those substantive areas not covered by the Telcordia test, we will rely instead on other evidence, such as actual commercial usage, to assess whether SWBT provides nondiscriminatory access to its OSS. Throughout the following analysis, we describe various aspects of the Telcordia test, and identify the specific portions of the test upon which we rely. We also explain where we are unable to rely on Telcordia's findings, such as when we find that a particular issue was not covered by the test.

104. Several commenters also challenge the blindness of the test process and Telcordia's independence, and argue that Telcordia's findings thus should be given little weight.²⁶⁴ We note, however, that the Texas Commission played an active role throughout the testing process and acted as "test manager."²⁶⁵ The Texas Commission also describes specific efforts that

²⁶¹ See *Bell Atlantic New York Order* 15 FCC Rcd at 3974, para. 53; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20655, para. 86; *Ameritech Michigan Order*, 12 FCC Rcd at 20618, para. 138.

²⁶² See, e.g., sections V.B.1.e and V.B.1.f, *infra*. See also Department of Justice Texas I Evaluation at 4 (suggesting that Telcordia's test has "significant limitations," but also "provid[es] some evidence of the functionality and capacity of SBC's [OSS]").

²⁶³ See Department of Justice Texas I Evaluation at 4-7; AT&T Texas I Comments at 74-75, 79-80; WorldCom Texas I McMillon & Sivori Decl. at 110; Allegiance Texas I Comments at 9, 17. In sum, the Department of Justice and commenters suggested that Telcordia: (i) tested an inadequate number of transaction scenarios, excluding, for example, the provisioning of xDSL capable loops; (ii) did not test SWBT's manual processes or back-end systems; (iii) did not adequately test SWBT's change management processes or competitive LEC support organizations such as the Help Desk and Customer Service Center; and (iv) did not evaluate the accuracy of the raw data used by SWBT to calculate its performance measurements. *Id.* Several parties also argued that the third party test in Texas was less comprehensive than the test executed by KPMG in New York, with respect to the Bell Atlantic section 271 process. In Bell Atlantic's New York application, we treated the conclusions in the KPMG Final Report as persuasive evidence of Bell Atlantic's OSS readiness based, in part, on the scope and depth of KPMG's review. *Bell Atlantic New York Order*, at paras. 96-100.

²⁶⁴ See, e.g., WorldCom Texas I Comments at 40; CLEC Coalition Texas I Comments at 5 (arguing that SWBT had advanced notice of test scenarios and competitive LECs test participants and used special codes that earmarked their test orders); AT&T Texas I Comments at 9 and 73-74 (asserting that SWBT provided much of the content of the process review report); AT&T Texas I Dalton/Connolly Decl. at paras. 39-49; Allegiance Texas I Comments at 9 (stating that Telcordia shared its findings with SWBT before reporting them to the Texas Commission and the competing carriers).

²⁶⁵ See Texas Commission Texas I Comments at 28-32. The Texas Commission explains that its "role in the OSS readiness test included: overseeing the development of the functionality and capacity tests, overseeing the test (continued....)

were taken to maintain testing blindness.²⁶⁶ Based on our review of the evidence in the record describing the test process, and on the assurances provided by the Texas Commission, we find that the results of Telcordia's test, in certain areas, provide meaningful evidence that is relevant to our analysis of SWBT's OSS.

d. Change Management Process

105. We conclude that SWBT demonstrates that it provides the documentation and support necessary to provide competing carriers nondiscriminatory access to its OSS. SWBT makes this demonstration by showing that it has an adequate change management process in place in Texas. The record also reflects that SWBT has adhered to its change management process over time. As a result, we find that SWBT provides access to its OSS in a manner that allows an efficient competitor a meaningful opportunity to compete.

(i) Background

106. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.²⁶⁷ Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."²⁶⁸ By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete.²⁶⁹ As part of this demonstration, the Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.²⁷⁰

107. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS system.²⁷¹ Such changes may include updates to existing functions

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process, assisting in the defining of the test scope, ensuring a collaborative process, providing final approval of 'baselined' documents with input from the TAG and Telcordia, approving data retention policy for participants [and] acting as the test manager." *Id.* at 29-30.

²⁶⁶ See Texas Commission Texas I Comments at 30, 38 (describing efforts to maintain testing blindness).

²⁶⁷ *Bell Atlantic New York Order* at para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd. at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd. at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd. at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd. at 19742.

²⁶⁸ *Bell Atlantic New York Order*, 15 FCC Rcd. at 3999, para. 102.

²⁶⁹ *Id.* at 3999-4000, para. 102.

²⁷⁰ *Id.* at 4000, para. 102.

²⁷¹ *Id.* at 4000, para. 103.

that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.²⁷² Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.²⁷³ Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).²⁷⁴

(a) Discussion

108. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate. In making this determination, we assess whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;²⁷⁵ (2) that competing carriers had substantial input in the design and continued operation of the change management process;²⁷⁶ (3) that the change management plan defines a procedure for the timely resolution of change management disputes;²⁷⁷ (4) the availability of a stable testing environment that mirrors production;²⁷⁸ and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.²⁷⁹ After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan.²⁸⁰

109. We disagree with commenters that argue that SWBT's failure to implement a change management plan that is identical to the one adopted by Bell Atlantic in New York is a

²⁷² *Id.*

²⁷³ *Id.* at 4000, para. 103.

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 4002, para. 107.

²⁷⁶ *Id.* at 4000, para. 104.

²⁷⁷ *Id.* at 4002, para. 108.

²⁷⁸ *Id.* at 4002-03, paras. 109-10.

²⁷⁹ *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, we used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. We left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

²⁸⁰ *Id.* at 3999, para. 101, 4004-05, para. 112.

basis for concluding that SWBT's change management plan is inadequate.²⁸¹ Indeed, because an effective change management plan is based on collaboration between a BOC and the carriers operating in its territory, we do not expect such plans to be identical in every state. The fact that SWBT's and Bell Atlantic's change management plans are different, yet equally allow the smooth and effective transition from one EDI release to another, is persuasive evidence that more than one type of change management plan is adequate for the purpose of demonstrating compliance with the requirements of section 271.²⁸²

(i) Adequacy of Change Management Plan

110. SWBT's current change management process became effective in September 1999.²⁸³ We find that this process, which is the result of collaborative efforts between SWBT and competing carriers, provides an efficient competitor a meaningful opportunity to compete.²⁸⁴ As an initial matter, we note that SWBT's change management documentation is clearly organized and readily accessible to competing carriers. The basic change management process is memorialized in a single document entitled "SWBT Competitive Local Exchange Carrier (CLEC) Interface Change Management Process" (Change Agreement).²⁸⁵ This document sets forth the process and procedures that govern the introduction, modification, and retirement of OSS interfaces.²⁸⁶ The change management plan is designed to accommodate five different types of changes: emergency changes; regulatory changes; changes in industry standards; changes initiated

²⁸¹ As explained more fully in part V.B.1.d(i)(a)(i) *infra*, some commenters criticize SWBT's change management plan because, in contrast to Bell Atlantic's change management plan, it has not been used in connection with a major release, was not subjected to rigorous third party testing, and fails to include performance measurements to capture whether SWBT is complying with the change management notification intervals.

²⁸² See *Bell Atlantic New York Order*, 15 FCC Rcd. at 4003, para. 111 (recognizing that various change management plans may be adequate to meet the needs of competing carriers).

²⁸³ SWBT Ham Texas I Aff. at paras. 307, 314.

²⁸⁴ We note that, as far back as March 1998, SWBT expressed an interest in working jointly with competing carriers to establish an effective change control process for EDI. See SWBT Texas I Application, App. C, Tab 169, Affidavit of Liz Ham on Behalf of SWBT at para. 64 (filed Mar. 2, 1998 in Texas Commission Project No. 16251). Indeed, at that time, SWBT developed a change control process plan and provided it to AT&T for its review in input. According to SWBT, the purpose of this initial plan was to serve as a starting point to establish a change control process between the two companies. *Id.* Beginning in October 1998, at the direction of the Texas Commission, SWBT committed to: (1) hold change management meetings on a monthly basis; (2) provide competing carriers with the ability to establish the agenda for the meetings; (3) submit the minutes of the meetings to competing carriers and allow competing carriers five business days to comment; (4) file minutes of such meetings with the Texas Commission; and (5) file a competing carrier's comments along with such minutes if such competing carrier's requested changes were not incorporated by SWBT into the meeting minutes. Texas Commission Comments at 47; see also SWBT Texas I Application, App. C, Vol. 75, Tab 1233, Texas Commission Final Staff Report on Collaborative Process at 168 (filed Nov. 18, 1998 in Texas Commission Project No. 16251).

²⁸⁵ SWBT Ham Texas I Aff., App. A-4, Vol. 6, Attach. NN, SWBT Competitive Local Exchange Carrier (CLEC) Interface Change Management Process (dated Sept. 23, 1999) (Change Agreement).

²⁸⁶ SWBT Ham Texas I Aff. at para. 308.

by SWBT; and changes requested by competing carriers. The dates and timelines associated with each type of change are clearly reflected in the change management documentation.²⁸⁷ The basic change management agreement, and any modifications thereto, are made available to competing carriers through SWBT's website.²⁸⁸

111. We further note that SWBT's change management process provides for substantial input from competing carriers. For example, the document provides for regularly scheduled change management meetings between SWBT and competing carriers.²⁸⁹ The Agreement further requires SWBT to provide competing carriers with a "12-Month Development Plan," which reflects SWBT's plans for future OSS modifications. Moreover, the plan provides for feedback from competing carriers on proposed changes, and indicates that change releases will be based on consensus among the parties.²⁹⁰ We further note that the Change Agreement includes a schedule for the distribution of draft specifications or business rules, receipt of competing carrier comments on the documentation, and distribution of final documentation that is based on the consensus of the parties.²⁹¹

112. We also find that SWBT's change management process includes many elements that provide assurances that changes to existing OSS interfaces will not disrupt competing carriers' use of SWBT's OSS. Specifically, the plan includes a process whereby competing carriers can decide whether or not to implement a new release (*i.e.*, "go/no go" vote), and a

²⁸⁷ See Change Agreement §§ 3.3.1-3.3.16 (setting forth timeline associated with changes to application-to-application interfaces); *id.* §§3.5.1 (defining timeline for changes to graphical-user interfaces).

²⁸⁸ Pursuant to the Change Agreement, SWBT must maintain information relating to the change management process on a webpage that is made available to competing carriers (hereinafter referred to as "competing carrier webpage"). The Change Agreement provides that the competing carrier webpage will contain, at a minimum, the following: (1) current version of the Change Agreement; (2) LSR-EDI Joint Release Test Plan Template; (3) log of competing carrier change requests; (4) references and/or links to requirements for upcoming releases; and (5) SWBT's exceptions to the EDI LSOG Mechanization Specifications. Change Agreement § 8.0. ALTS and the CLEC Coalition argue that modifications to the competing carrier website are necessary. ALTS/CLEC Coalition Texas II Comments at 17. We are confident that issues such as these will be adequately resolved through the normal change management process.

²⁸⁹ Currently, these meetings are held on a monthly basis. This interval, however, may change in the future. SWBT Ham Texas I Aff. at para. 330. The record indicates that competing carriers have an active role in the development of the agenda for the change management meetings. As a result of Telcordia's findings, SWBT includes an "Action Item Register" in the minutes to the change management meetings. According to SWBT, this log facilitates the tracking of change management issues and notifies all participants of the status of outstanding issues. *Id.* at para. 334.

²⁹⁰ For example, SWBT's Change Agreement defines the procedure by which a competing carrier can submit an interface change request to SWBT. SWBT explains that, in deciding whether to include a competing carrier's change request in its requirements, it will consider such factors as feasibility, cost, and cost reduction, and user benefits. SWBT Ham Texas I Aff. at para. 318.

²⁹¹ See *infra* note 338 and accompanying text. We further note that the Change Agreement specifies that the change management plan is dynamic in nature, and will be managed through regularly scheduled meetings based on group consensus. Change Agreement § 1.0.

process for identifying and resolving issues related to the change management process in a timely manner.²⁹² Unresolved change management disputes could impede a carrier's ability to access the BOC's OSS, which, in turn, hampers that carrier's ability to serve its customers.²⁹³ It, therefore, is critically important that change management disputes are handled expeditiously. We would be hesitant to find that a BOC has an adequate change management process in place if the change management plan does not define a mechanism for change management disputes to be handled in a timely manner. Finally, we note that the change management plan includes a requirement that SWBT support the current and most recent versions of software for its EDI Ordering and EDI/CORBA pre-ordering interfaces (*i.e.*, "versioning").²⁹⁴ Although versioning has not yet been implemented in Texas, the record indicates that versioning will be implemented in connection with the next EDI release, which is expected to occur in August 2000.²⁹⁵

113. Some commenters argue that SWBT cannot rely on the change management plan described above to demonstrate compliance with section 271 because it has not been used in connection with a "major" EDI release,²⁹⁶ and has not been fully implemented.²⁹⁷ These commenters argue that section 271 compliance must be based on the two different change management plans SWBT actually has used over the past year. As noted above, the current plan became effective in September 1999. Any EDI releases that were implemented prior to this time were governed by a process that initially became effective in June 1998.²⁹⁸ According to some carriers, SWBT's former change management plan was inadequate because it failed to include several elements that competing carriers regard as critical to their ability to modify and test changes on its side of the interface.²⁹⁹ WorldCom further maintains that SWBT should be

²⁹² Change Agreement §§ 7.0-7.5 (defining outstanding issue resolution process).

²⁹³ Birch Tidwell/Kettler Texas I Aff. at para. 160.

²⁹⁴ Change Agreement § 3.4. These rules provide that the most recent prior release will be maintained in service after a new release, allowing competitive LECs to transition to the newest release at their own pace (or alternatively, wait to transition to the subsequent release). SWBT Texas I Application at 34; SWBT Ham Texas I Aff. at paras. 352-354. SWBT adopted this versioning policy in response to competitive LEC requests during change management meetings. *Id.* SWBT will make available one version of a GUI at any given time. *Id.* § 3.5.

²⁹⁵ See SWBT Accessible Letter No. CLECSS00-084 (dated June 5, 2000), Attach. 1 to AT&T June 14, 2000 OSS *Ex Parte* Letter.

²⁹⁶ A release is considered "major" if a change in the Local Service Ordering Guidelines (LSOG) version occurs, or substantial new functionality is introduced. See WorldCom McMillon/Sivori Texas I Decl. at para. 221.

²⁹⁷ AT&T and WorldCom point out, for example, that contrary to the documented change management plan, SWBT has not implemented versioning. AT&T Dalton/DeYoung Texas I Decl. at paras. 37-44; WorldCom McMillon/Sivori Texas I Decl. at para. 224.

²⁹⁸ SWBT Ham Texas I Aff. at para. 307 (noting that its former change management plan was made available to competing carriers from June 1998 to August 1999).

²⁹⁹ See AT&T Dalton/DeYoung Texas I Decl. at para. 56 & n.26; WorldCom McMillon/Sivori Texas I Decl. at para. 218.

required to implement performance measurements to ensure that SWBT will comply with the Change Agreement in the future.³⁰⁰

114. We reject each of the foregoing claims. First, contrary to these carriers' assertions, the record indicates that SWBT has followed the procedures outlined in its current change management plan since September 1999. In fact, this process was successfully used in connection with the EDI releases that were implemented on October 23, 1999, January 15, 2000 releases.³⁰¹ Although the evidence indicates that these releases were not substantial, we note that the timelines, processes, and procedures set forth in the Change Agreement must be followed regardless of the scope of the release. We thus find that SWBT's successful use of the current change management plan in connection with any EDI release is instructive in determining whether the change management plan in place in Texas affords competing carriers a meaningful opportunity to compete. We recognize that there may be circumstances in which it is necessary to assess a BOC's ability to implement at least one significant software release.³⁰² Indeed, given the nature and scope of the change management issues that could arise in connection with major software releases, we find that such a demonstration may be critical to another section 271 applicant's demonstration that the change management plan it has in place is adequate. The evidence presented in this proceeding, including that SWBT's change management plan was used successfully for at least two EDI releases, and Telcordia's findings that SWBT's change management process is effective, provides a sufficient basis upon which to determine whether the methods and procedures SWBT employs to communicate with competing carriers regarding OSS system performance and changes is adequate.

115. We recognize, as some commenters point out that, contrary to the documented change management plan, SWBT has not yet implemented versioning. As we previously have recognized, versioning is one of the most effective means of ensuring that system changes and enhancements do not adversely affect a carrier's ability to access the BOC's OSS.³⁰³ Given its importance, we find that versioning is integral to a section 271 applicant's demonstration that the change management plan it has in place affords competing carriers a meaningful opportunity to compete. We do not find, however, that the lack of versioning has deprived carriers of a meaningful opportunity to compete in Texas, or otherwise demonstrates that the SWBT's change

³⁰⁰ WorldCom McMillon/Sivori Decl. at para. 219, 223.

³⁰¹ We further note that the current change management process was used in connection with the May 27, 2000 release. SWBT Ham Texas II Aff. at para. 55 (noting that the current agreed-upon change management plan was used for all releases implemented in 2000); *see also* Telcordia Dec. 1999 Change Management Report at 2, 6-8 9 (concluding that SWBT generally followed the current change management process for the October 23, 1999 release). According to SWBT, except for the dates and timeframes that had already passed when it became effective, the current change management plan was effective for the October 23, 1999 release. Specifically, SWBT states that joint testing was carried out in a manner consistent with the current change management plan, and the go/no-go vote policy was in effect for the October 23, 1999 release. SWBT Ham Texas I Aff. at para. 314.

³⁰² Letter from Lawrence E. Strickling, Chief, Common Carrier Bureau, to Nancy E. Lubamersky, Executive Director, Regulatory Planning, U S WEST, at 2-3 (Sept. 27, 1999) (*U S WEST Sept. 27, Letter*).

³⁰³ *Bell Atlantic New York Order* at 4002-03, para. 110; U S WEST Sept. 27 Letter at 2.

management process is inadequate. We reach this conclusion on the basis of evidence demonstrating that SWBT has employed a number of other mechanisms to ensure the timely and effective transition from one EDI release to another. Should future evidence demonstrate that the resources SWBT makes available to assist carriers in EDI implementation and release testing become less effective before versioning is implemented, this may serve as a basis for concluding that its change management plan is inadequate, thus leading to a conclusion that the requirements of section 271 are not satisfied.

116. As noted above, SWBT has in place a number of mechanisms to ensure that releases are implemented in a timely and effective manner. Indeed, as we explain more fully below, SWBT notifies competing carriers of all system changes and enhancements well in advance of the target implementation date.³⁰⁴ In addition, SWBT provides numerous other information and human resources to competing carriers to ensure successful EDI implementation.³⁰⁵ We further note that the go/no-go vote procedure that has been in effect in Texas since July 1999.³⁰⁶ We find that this procedure, which permits any carrier that will be adversely affected by the implementation of a release to request that it be delayed, minimizes any adverse consequences associated with the lack of versioning.³⁰⁷ Given the effectiveness of these tools in ensuring the orderly implementation of EDI releases in the past, we reject AT&T's contention that the lack of versioning in Texas exposes competing carriers and their customers to an "unreasonable risk."³⁰⁸ Should the facts reveal at a later time that carriers are forced to transition to a new release prematurely, thereby impeding their ability to access SWBT OSS, enforcement action may be appropriate. Indeed, we find that scrutiny of SWBT's change management procedures is particularly important until versioning is fully implemented.³⁰⁹

³⁰⁴ See *infra* part V.B.1.d(i)(a)(iii).

³⁰⁵ In its Documentation Analysis report, Telcordia noted that competing carriers cited SWBT's human resources as the most significant resources for EDI implementation, and that competing carriers were particularly impressed by the assignment of numerous, knowledgeable SWBT subject matter experts with wide-ranging areas of expertise during the implementation process. Other resources cited by competing carriers as being helpful for EDI implementation included a daily conference call routine, SWBT's "Mapping Matrix" and LSOR, and the competing carrier website. *Id.* at 11.

³⁰⁶ SWBT Texas I Application, App. G, Vol. 9, Tab 631 (Modification to the Southwestern Bell EDI/LSR Change Control Process-Arkansas, Kansas, Missouri, Oklahoma, Texas, Accessible Letter CLEC 99-097 (July 21, 1999)).

³⁰⁷ While we continue to believe that the existence of a go/no-go vote policy minimizes the need for versioning, we agree with AT&T that such a policy does not obviate the need for versioning altogether because, as AT&T explains, "new releases impact different CLECs differently." AT&T Dalton/DeYoung Decl. at para. 38. For example, as AT&T points out, "[a] defect in a release that will cripple one CLEC's ability to convert and support customers may have little impact on another CLEC, thus creating the possibility that a 'go/no go' vote will not delay the release." *Id.*

³⁰⁸ AT&T Dalton/DeYoung Texas I Decl. at para. 43.

³⁰⁹ We note that the issue of the availability of versioning was specifically raised before the Texas Commission. The Texas Commission ordered SWBT to implement versioning by January 15, 2000, see Texas Commission Order No. 5-Re: EDI Version Control (filed July 23, 1998, in Texas Commission Project No. 19000, Attach. 2 to (continued...))

117. Second, while we agree with competing carriers that the change management plan that was in place prior to September 1999 was deficient in a number of respects,³¹⁰ this plan is not relevant to our determination of whether SWBT presently satisfies the requirements of section 271. Indeed, in determining section 271 compliance, we review the adequacy of the change management plan that is in place at the time the section 271 application is filed. We further review whether the BOC has demonstrated a pattern of compliance with this plan. As noted above, SWBT has adhered to an adequate change management plan in connection with the past three EDI releases. We do not expect any change management process to remain static. Rather, a key component of an effective change management process is the existence of a forum in which both competing carriers and the BOC can work collaboratively to improve the method by which changes to the BOC's OSS are implemented. This certainly is the case in Texas where, as a result of concerns raised by competing carriers and to accommodate process improvements recommended by Telcordia, SWBT's change management process has evolved over time. We believe it would be unreasonable to evaluate SWBT's section 271 compliance based on a change management process that it no longer follows.

118. Finally, we disagree that the existence of performance measurements is the only basis upon which to ensure that a BOC will comply with the requirements of section 271, including the requirement that it adhere to its documented change management plan. Indeed, we note that, the Texas Commission has been extensively involved in the development of the Texas change management plan, and continues to handle disputes related to the change management process effectively and expeditiously.³¹¹ Moreover, pursuant to section 271(d)(6), the Commission retains the authority to enforce the requirements of section 271, even after such authority has been granted. Given the extensive oversight of the Texas Commission, and this Commission's continuing enforcement authority under section 271(d)(6), we have no reason to

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AT&T Dalton/De Young Decl.). Due to subsequent discussions with the Texas Commission, however, SWBT currently will not implement versioning until August 2000. *See* Letter from Mark A. Haddad, Counsel for AT&T, to Magalie Roman Salas, Secretary, FCC (dated June 14, 2000 (AT&T June 14, 2000 OSS *Ex Parte* Letter), Attach. 1, SWBT Accessible Letter, CLECSS00-84 (dated June 5, 2000) (requesting input from competing carriers on its proposal to implement the versioning release in August 2000). We reiterate that, until versioning is fully implemented in Texas, the efficacy of SWBT's change management will be carefully scrutinized.

³¹⁰ For example, the evidence demonstrates that this change management process was developed with minimal input from competing carriers and failed to include certain key safeguards that competing carriers believe are essential to their ability to modify and test changes on their side of the interface. In particular, the former change management plan did not require SWBT to complete internal testing of the release prior to the commencement of the competing carrier testing period, did not permit competing carriers to request that the implementation of the release be delayed if problems were encountered during testing (*i.e.*, go/no go vote), failed to include documentation with respect to the entrance, exit, and success criteria associated with testing, did not require SWBT to extend the testing period to fix errors found during testing, and did not provide for versioning. *See* AT&T Dalton/DeYoung Aff. at para. 56 n.26 & Attach. 6.

³¹¹ The Texas Commission has been actively involved in handling various change management issues through Project Numbers 16251 (proceeding addressing SWBT compliance with 271), 19000 (proceeding addressing the implementation of the AT&T/SWBT and WorldCom/SWBT interconnection agreements) and 20400 (proceeding established to handle change management issues).

believe that SWBT will disregard its obligation to maintain in Texas a change management plan that affords competing carriers a meaningful opportunity to compete. Evidence that SWBT fails to adhere to the agreed-upon change management process, thereby depriving competing carriers of a meaningful opportunity to compete, may result in an enforcement action under section 271(d)(6).

(ii) Documentation Adequacy

119. We conclude that SWBT makes available sufficiently detailed interface design specifications to enable competing carriers to modify or design their systems in a manner that will enable them to communicate with the SWBT's systems and any relevant interfaces.³¹² We, therefore, conclude that the EDI implementation and design specifications that SWBT makes available afford an efficient competitor a meaningful opportunity to compete. Competing carriers raise various arguments with respect to the adequacy of SWBT's EDI interface development documentation.³¹³ We believe that many of the issues cited by commenters (such as SWBT's failure to provide a comprehensive, customized set of SWBT-specific EDI documentation) are important, and under a different set of circumstances, could seriously undermine a section 271 applicant's assertion that it provides nondiscriminatory access to its OSS.

120. Under the facts of this proceeding, however, we find that SWBT's documentation is adequate for the purpose of building an EDI gateway, and therefore affords an efficient competing carrier of a meaningful opportunity to compete.³¹⁴ As an initial matter, we agree with SWBT and the Texas Commission that the adequacy of SWBT's documentation is demonstrated by the fact that several competing carriers have constructed and are using EDI interfaces in a

³¹² *Ameritech Michigan Order*, 12 FCC Rcd. at 20616-17, para. 137.

³¹³ Some commenters point out that SWBT does not provide a set of SWBT-specific EDI interface documentation. Instead, SWBT relies on industry standard documents such as the Telecommunications Industry Forum (TCIF) EDI Guidelines to notify competing carriers of the requirements necessary to build to its OSS. SWBT notifies competing carriers of the differences between its EDI interface requirements and industry standards through documents entitled "Accessible Letters." Several carriers argue that Accessible Letters are an ineffective method of communicating to competing carriers the requirements necessary to build to SWBT's systems. For example, these commenters claim that these Accessible Letters do not offer a comprehensive view of all of the differences between industry standards and SWBT-specific EDI interface requirements. *See AT&T Dalton/ DeYoung Texas I Decl.* at para. 83 (arguing that Accessible Letters "do not provide a comprehensive view of all differences between industry standards interface guidelines and those consistent with SWBT's EDI interface"); *see also AT&T Chambers/DeYoung Texas II Decl.* at paras. 39-42 (describing deficiencies with respect to SWBT's EDI documentation). Other commenters contend that that these letters often fail to include critical change management information, are not easily accessible, and often are not made available to competing carriers in a timely fashion. *See Birch Tidwell/Kettler Texas I Aff.* at paras. 163-66.

³¹⁴ Several commenters suggest ways in which SWBT could improve the quality of its EDI documentation. *See AT&T Chambers/DeYoung Texas II Decl.* at para. 42. We are confident that any issues concerning the adequacy of SWBT's EDI documentation will be resolved expeditiously and effectively by SWBT through the normal change management process.

commercial environment.³¹⁵ As SWBT explains, sixteen carriers are in production using SWBT's EDI interface gateway, and additional carriers are in the process of testing EDI requirements.³¹⁶ The fact that many of these carriers are placing high volumes of orders via EDI with relatively few rejects significantly undermines the assertion that these carriers' EDI implementation efforts have been unsuccessful. Indeed, these carriers' actual commercial experiences indicate that SWBT's EDI documentation is sufficient.

121. We further note that SWBT makes available to competing carriers a vast number of resources for the purpose of EDI implementation.³¹⁷ For example, each competing carrier operating in Texas is assigned an SWBT Account Manager, who is responsible for managing and assisting with all activities pertaining to the carrier's working relationship with SWBT for local service.³¹⁸ In addition, through its Information Services (IS) Call Center and OSS CLEC Support Team, SWBT is able to offer personalized assistance to carriers that experience OSS-related problems.³¹⁹ Other resources provided by SWBT include interactivational, OSS-related websites.³²⁰ Although not decisional in this case, we note that SWBT recently engaged the services of General Electric Global Exchange Services (GXS) to provide to competing carriers several hours of OSS-related technical assistance at no charge to the competing carrier.³²¹

122. Telcordia's findings provide additional support for our conclusion that the

³¹⁵ As the Texas Commission explains, in carrier-to-carrier testing, the ability of a competing carrier to build an EDI interface capable of pass orders to the BOC is one indicator of the sufficiency of the BOC's documentation. Texas Commission Comments at 46. In this regard, the Texas Commission notes that, "any deficiencies in documentation appear through the identification of errors." *Id.*

³¹⁶ SWBT Ham Texas II Reply Aff. at paras. 16, 131.

³¹⁷ SWBT Brainard Texas I Aff. at para. 6.

³¹⁸ SWBT Ham Texas I Aff. at para. 19.

³¹⁹ SWBT Ham Texas I Aff. at paras. 20-21. The IS Call Center answers questions regarding access to SWBT's systems and applications, and assists in the resolution of information technology problems experienced by competing carriers. SWBT Ham Texas I Aff. at para. 20. SWBT's OSS CLEC Support team is available to discuss with competing carriers such issues as hardware and software requirements, training needs, and implementation strategies. SWBT Ham Texas I Aff. at para. 30.

³²⁰ SWBT Ham Texas I Aff. at para. 36. The competing carrier website address is <<https://clec.sbc.com>>. *Id.* Examples of OSS-related sites that can be accessed by competing carriers include: (1) Customer Education Website, which presents an overview of OSS classes available for competing carriers; (2) IS Call Center Website, which assists carriers in the resolution of problems that may arise while accessing SWBT's OSS; (3) Performance Measurements Website, from which carriers may view performance reports; and (4) FOC/SOC Online Application, which provides carriers currently receiving FOCs and SOC's manually an alternative means for accessing these notices.

³²¹ SWBT Ham Texas II Aff. at para. 15; SWBT Ham Texas II Reply Aff. at para. 30. According to SWBT, GXS will assess each individual competing carrier's situation, make recommendations relating to inter interface architecture and strategy, offer high level requirements, and issue a report detailing the above information to the competing carrier. SWBT Ham Texas II Aff. at para. 15.

documentation and resources provided by SWBT enable competing carriers to implement successfully EDI. As part of the Texas Commission's third-party test, Telcordia performed an assessment of the usefulness of the documentation and related materials SWBT makes available to competing carriers for the purpose of implementing EDI.³²² In its Documentation Analysis Report, Telcordia concluded that the resources made available by SWBT for the purpose of EDI implementation are "clear and comprehensive, and conform to applicable OBF pre-order and ordering guidelines."³²³ Telcordia further found that the resources SWBT provides to competing carriers are easy to use and readily available to competing carriers.³²⁴ According to Telcordia, these findings were confirmed by the competing carriers it interviewed in connection with its documentation review.³²⁵ Indeed, in its Documentation Report, Telcordia noted that competing carriers consistently commented upon the responsiveness of SWBT employees to their concerns and issues raised during EDI implementation.³²⁶

123. Moreover, many of the issues related to EDI implementation, including the adequacy of SWBT's EDI documentation, are discussed fully and openly during regularly scheduled meetings between SWBT and competing carriers. The record indicates that, when a competing carrier expresses a concern about SWBT's EDI documentation, SWBT responds to their concerns in an effective and timely manner.³²⁷ Given these findings, we are convinced that any problems associated with SWBT's EDI documentation are minimal, and can be easily overcome.

³²² See SWBT Ham Texas I Aff., App. A-4, Attach. T, Telcordia Technologies, Southwestern Bell EDI/LSR Documentation Analysis (filed Dec. 13, 1999 in Texas Commission Project No. 20000) (Telcordia Documentation Report). Telcordia's analysis consisted of three parts. First, Telcordia compared documentation made available by SWBT to general industry resources (*e.g.*, OBF Guidelines with respect to pre-order and order procedures, Telecommunications Industry Forum (TCIF) EDI Guidelines with respect to EDI mapping). *Id.* at ES-1. Second, Telcordia utilized documentation and resources provided by SWBT to create LSRs and their associated EDI records. Telcordia then utilized SWBT's "How Am I Doing" service to assess and analyze the accuracy of the data created. *Id.* at 3. Finally, Telcordia interviewed four competing carriers to validate its own findings and identify any strengths and weaknesses perceived by those carriers. *Id.* at ES-1. The competing carriers that were interviewed by Telcordia were selected by the Texas Commission. *Id.* at 1.

³²³ Telcordia Documentation Report at 8.

³²⁴ Telcordia Documentation Report at ES-1, 1.

³²⁵ Telcordia Documentation Report at 1.

³²⁶ Telcordia Documentation Report at 11(outlining some of the strengths noted by competing carriers). Although some of the competing carriers identified areas in which the EDI implementation process could be improved, Telcordia concluded no competing carrier had identified a persistent problem. Telcordia Documentation Report at 12. Indeed, Telcordia noted that all of the carriers errors were corrected after an initial communication to SWBT. *Id.*

³²⁷ In its Documentation Report, for example, Telcordia noted that "CLEC representatives consistently commented on the responsiveness of SWBT employees to their concerns and issues raised during EDI implementation." Telcordia Documentation Report at 11. In fact, Telcordia stated that its analysis revealed that all of the competing carriers' errors were corrected after initial email or voice conversation with SWBT representative. Telcordia Documentation Report at 12.

124. We further note that, other than AT&T, no carrier claims that its EDI implementation efforts were unreasonably complicated, or accompanied by unreasonable expense and delay. With respect to AT&T, we are persuaded by SWBT's claim that many of the problems associated with AT&T's development efforts are unique to AT&T. Indeed, although AT&T claims that it took several years for it to construct an EDI gateway, other competing carriers were able to establish connectivity with SWBT's EDI ordering gateway within a few months after receiving the EDI implementation documentation. In fact, SWBT explains that Allegiance Telecom implemented electronic bonding within 90 days of commencing the EDI implementation process.³²⁸ Moreover, there is some evidence in the record that suggests that AT&T itself is at least partially responsible for some of the problems it experienced during the early stages of its EDI implementation.³²⁹

125. Finally, SWBT has convincingly explained that many of the problems associated with the EDI documentation utilized by AT&T have been resolved,³³⁰ and therefore should not similarly limit another carrier's gateway development efforts. Indeed, we note that, through functionality testing, Telcordia indirectly tested the OSS documentation SWBT supplies to competing carriers.³³¹ When testing activities revealed the need for improvements to the documentation, Telcordia verified SWBT's implementation of those changes.³³² Telcordia's functionality review, therefore, provides additional indirect evidence that most of the problems related to SWBT's EDI documentation have been resolved. We further note that, on April 11, 2000, SWBT initiated a documentation meeting with competing carriers.³³³ As a result of the concerns expressed by competing carriers during this meeting, SWBT implemented various

³²⁸ See SWBT Ham Texas I Aff. at para. 111 & Attach. U (announcing that SWBT and Allegiance Telecom were able to establish electronic bonding between their two companies within 90 days).

³²⁹ See SWBT Ham Mar. 2, 1998 Aff. in Texas Commission Project No. 16251 at para. 62 (noting that "AT&T has experienced considerable system and training problems within its own operations which have impaired its ability to send correct service orders."); *id.* at para. 63 (noting that "AT&T has demonstrated an inability to correct known order entry problems which have unduly extended the [service readiness testing] time-frames"); see also SWBT Application, App. C, Tab. 613, SWBT Ham Apr. 17, 1998 Aff. in Texas Commission Project No. 16251 at paras. 40-42 (arguing that one reason that AT&T's EDI implementation plans were delayed is that AT&T initially planned to develop a national interface, but then abandoned those plans to develop a regional system).

³³⁰ Ham Texas II Reply Aff. at paras. 9-16 & Attach. A.

³³¹ SWBT Ham Aff., Attach. A, Telcordia Technologies, SWBT OSS Readiness Report at 24 (filed Oct. 7, 1999 in Texas Commission Project No. 20000). As Telcordia explained:

This test provides an indirect test of the documentation and may not catch all the ambiguous situations. However, the documentation will be much improved since several CLECs used it to implement their interfaces. Thus, the implementation improvements provide for enhancements for the CLEC community.

³³² Telcordia Final Report at 24; SWBT Ham Texas I Aff. at paras. 284-87 (noting that every instance of inadequate or unclear documentation reported by Telcordia during the course of the third-party test has been addressed by SWBT); see also SWBT Ham Texas I Aff. Attach. KK (listing each documentation change made by SWBT during the course the Telcordia test).

³³³ SWBT Ham Texas II Aff. at para. 9.

improvements to assist carriers in accessing and utilizing its system documentation.³³⁴ Under our procedural framework, the process improvements that resulted from this meeting are not relevant to our determination of whether SWBT satisfies the requirements of section 271. We do note, however, that we are supportive of these and other steps taken by SWBT to facilitate entry into its local markets by competing carriers.

(iii) Notification Adequacy and Timeliness

126. It is critical that a BOC provide timely, complete, and accurate notice of alterations to its systems and processes. Indeed, without timely notification and documentation, competing carriers are unable to modify their existing systems and procedures or develop new systems to maintain access to a BOC's OSS, which, in turn, impedes a carrier's ability to serve its customers.³³⁵ Previously, in reviewing a BOC's change management process, we examined whether the BOC "established a pattern of compliance with the relevant notification and documentation intervals in its Change Agreement."³³⁶ In making this determination, we relied, in part, on the performance measurements associated with the BOC's compliance with the dates and timelines set forth in its Change Agreement. In this application, however, there are no performance measurements associated with SWBT's compliance with its documented change management process. We thus limit our analysis of SWBT's compliance with the change management process to competing carriers' actual commercial experiences. As noted above, we do not rely on the processes and procedures set forth in SWBT's former change management plan in evaluating SWBT's compliance with the requirements of section 271 because we find that this plan is inadequate. We further note, however, that the notification intervals set forth in the former and current change management plans are essentially the same.³³⁷ Thus, in evaluating whether SWBT provides change management notification and documentation in a reasonable and timely manner, we assess whether SWBT has demonstrated a pattern of compliance with the intervals associated with both the current and former change management plans.

127. Based on the evidence presented in the record, we conclude that SWBT has demonstrated a pattern of compliance with its documented change management processes and procedures. As a preliminary matter, we find that the change management notification and documentation intervals set forth in SWBT's change management plan are reasonable because they provide competing carriers with sufficient time to prepare for changes to SWBT's interfaces and systems.³³⁸ Given our finding, as explained more fully below, that SWBT has demonstrated a

³³⁴ *Id.* at paras. 9-10; *see also* SWBT Ham Texas II Reply Aff., Attach. A (providing a summary of the items discussed at the documentation meeting and SWBT's responses to these items).

³³⁵ *Bell Atlantic New York Order* at 4005, para. 113.

³³⁶ *Bell Atlantic New York Order* at 4005, para. 114.

³³⁷ *Compare* SWBT Competitive Local Exchange Carrier (CLEC) Interface Change Management Process (dated Sept. 1, 1999) *with* SWBT Change Agreement (dated Sept. 23, 1999).

³³⁸ SWBT's Change Agreement sets forth a timeline for changes to existing interfaces and the introduction of new interfaces. *See* Change Agreement §§ 3.3.1-3.3.16 (timeline for changes to existing application-to-application (continued....))

pattern of compliance with these reasonable intervals, we conclude that SWBT provides competing carriers with change management notification and documentation in a manner sufficiently timely to allow an efficient competitor a meaningful opportunity to compete.

128. Our conclusion that SWBT generally has adhered to the reasonable timeframes set forth in its change management plan is based on the evidence in the record and Telcordia's findings. As part of the Texas Commission's third-party test, Telcordia assessed whether SWBT adhered to the notification intervals set forth in the change management plan in connection with the August and October 1999 EDI releases.³³⁹ With respect to these releases, Telcordia found that SWBT generally followed the documented change management process.³⁴⁰ More specifically,

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interfaces); *id.* §§ 3.5.1-3.5.10 (timeline for changes to graphical-user interfaces); *id.* §§ 4.2.1-4.2.18 (timeline for the introduction of new application-to-application interfaces); *id.* §§ 4.3.1-4.3.12 (timeline for the introduction of new graphical-user interfaces). Changes are divided into two different categories: "Category One," which refers to changes to application-to-application interfaces; and "Category Two," which refers to changes to graphical-user or proprietary interfaces. The Change Agreement specifies the timelines associated with each type of change. In general, SWBT shares its plans for changes to its interfaces at change management meetings approximately 9 to 12 months prior to the target implementation date. SWBT Ham Texas I Aff. at para. 310; Change Agreement § 3.3.2. SWBT also provides a high-level view of upcoming Category One changes in a "Release Announcement," which is delivered to competing carriers via an Accessible Letter approximately 180 days prior to the implementation of the change. SWBT Ham Texas I Aff. at para. 310; Change Agreement § 3.3.3. SWBT must distribute the initial requirements associated with Category One changes within 152 to 172 days prior to the scheduled implementation, and 21 days prior to the implementation of a Category Two change. Change Agreement § 3.3.8, 3.3.9. Final release requirements must be issued approximately 110 to 130 prior to the implementation of Category One changes, and 14 days prior to the implementation of a Category Two change. Release testing, which is conducted in connection with Category One changes, typically occurs at least 30 days prior to the implementation of the release. Change Agreement §§ 3.3.14., 4.2.16. SWBT explains that the process for Category Two changes is different from the process followed for Category One changes because the latter requires programming by both SWBT and competing carriers and the former does not. SWBT Ham Texas I Aff. at para. 317.

³³⁹ Telcordia issued two reports relative to SWBT's adherence to its change management plan. SWBT Ham Texas I Aff., App. A-4, Vol. 6, Attach. LL, Telcordia Technologies, SWBT Change Control Process Validation Report (dated Sept. 1999) (Telcordia Sept. 1999 Change Management Report); *id.*, Attach. MM, Telcordia Technologies, SWBT Change Control Process Validation Report (dated Dec. 1999) (Telcordia Dec. 1999 Change Management Report). The first report, which was issued in September 1999, assessed whether SWBT followed its documented change management process in connection with the August 1999 release. *See* Telcordia Sept. 1999 Change Management Report at 6. The second report, which was issued in December 1999, assessed whether SWBT followed its documented change management process in connection with the October 1999 release, and whether SWBT had implemented the corrective measures Telcordia recommended in its September 1999 change management report. Telcordia Dec. 1999 Change Management Report at ES-1, 2.

³⁴⁰ Telcordia September 1999 Change Management Report at 5; Telcordia December 1999 Change Management Report at ES-1. Specifically, in its September 1999 Change Management Report, Telcordia noted that the initial requirements associated with the August 14, 1999 release were available on February 19, 1999, which was 178 days before the actual release. Telcordia Sept. 1999 Change Management Report at 11. The final requirements were issued to competing carriers on March 31, 1999, which was 136 days prior to the actual release date. *Id.* Telcordia noted that minor changes to the final requirements were proposed by SWBT via Accessible Letter on June 17, 1999, which was approximately 60 days prior to the implementation of the release. Telcordia stated, however, that, given the scope of this release, it appeared that competing carriers "had adequate time to review, comment and prepare testing for the changes." Telcordia Sept. 1999 Change Management Report at 12. In its Dec. 1999 Change Management Report, Telcordia again found that SWBT generally adhered to the timelines set (continued...)

Telcordia found that SWBT distributed change management notification and documentation in a manner consistent with the intervals set forth in the Change Agreement,³⁴¹ and that other activities outlined in the Change Agreement were carried out by SWBT in a reasonable and timely manner.³⁴²

129. We disagree with AT&T and WorldCom that SWBT's failure to follow strictly the intervals set forth in the Change Agreement has deprived competing carriers of a meaningful opportunity to compete.³⁴³ As an initial matter, we note that, whenever SWBT has introduced changes outside the intervals set forth in the change management plan, it has followed the "exceptions process," which is specifically defined and provided for in the *agreed-upon* change management plan.³⁴⁴ Pursuant to the exceptions process, each change SWBT has sought to

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forth in its formal change management plan. See Telcordia Dec. 1999 Change Management Report at ES-1. In particular, Telcordia found that SWBT issued an Accessible Letter on March 5, 1999, announcing its plans to implement a release in October 1999. *Id.* at 6. The initial requirements associated with the October 23, 1999 release were made available to competing carriers on April 26, 1999, approximately 166 days prior to the date of implementation. *Id.* Final requirements relative to the October 23, 1999 release were issued by SWBT on June 23, 1999, which was 122 days prior to the implementation date. *Id.* The testing environment relative to this release was made available by SWBT from September 20, 1999 through October 18, 1999. *Id.* at 7.

³⁴¹ Telcordia Sept. 1999 CMP Report at 11-12.

³⁴² In its reports relative to the August 1999 and October 1999 releases, Telcordia noted that SWBT deviated from certain aspects of the formal change management plan. For example, in its September 1999 Change Management Report, Telcordia noted: (1) SWBT's failure to comply with the timeframes set forth in the Change Agreement with respect to competing carriers' responses to change management notices; (2) SWBT's failure to provide a test plan in connection with the Final Requirements associated with the August 1999 release; (3) a lack of evidence demonstrating that competing carriers had input into the development of test cases and a testing schedule; (4) a lack of documentation with respect to the entrance and exit criteria associated with release testing; and (5) a lack of documentation concerning SWBT's identification and resolution of issues encountered during testing. Telcordia Sept. 1999 Change Management Report at 5, A-28, A-29. In its December 1999 Change Management Report, Telcordia noted that, contrary to the documented change management plan, SWBT did not support versioning. Telcordia Dec. 1999 Change Management Report at 6 n.2. Telcordia noted, however, that such deviations did not undermine the achievement of the general objectives set forth in the documented change management plan. Telcordia Sept. 1999 Change Management Report at 5; Telcordia Dec. 1999 Change Management Report at ES-1.

³⁴³ AT&T maintains that SWBT has failed to demonstrate a pattern of compliance with its documented change management procedures, and has introduced numerous changes outside the change management process. See AT&T Dalton/DeYoung Texas I Decl. at paras. 54-73 (providing examples of SWBT's failure to follow documented change management plan); *id.* at paras. 45-53 (outlining instances in which SWBT implemented coding changes outside of the documented change management process). AT&T and WorldCom further maintain that SWBT improperly introduces a substantial number of changes pursuant to the "exceptions process" outlined in the Change Agreement in order to evade the standard 120-day notification interval set forth in the change management plan. See AT&T Chambers/DeYoung Texas II Reply Decl. at para. 47; WorldCom Texas I McMillon/Sivori Decl. at para. 221.

³⁴⁴ The Change Agreement, under the heading "Exceptions," provides that:

[A]ny agreement to deviate from the normal [change management plan] shall be agreed to unanimously by qualified CLECs and SWBT. If SWBT wishes to propose that a specified change, introduction of a new interface or retirement of an interface be handled on an exception basis, it will issue a Release (or Retirement) (continued...)

introduce under an expedited timeframe was discussed fully and openly at change management and other meetings held between SWBT and competing carriers. In addition, competing carriers were notified of the proposed changes via Accessible Letter.³⁴⁵ Thus, competing carriers were provided with timely notice of each exceptions change, and were given reasonable opportunity to comment and object.³⁴⁶ The record indicates that, when competing carriers express concerns about particular changes, SWBT has shown a willingness to accommodate their concerns.³⁴⁷

130. Moreover, any carrier that would be affected by the change could have delayed the implementation of the release by invoking the “go/no-go vote” policy. Given that no carrier objected to SWBT’s implementation of the exceptions changes, we give little weight to the assertion that SWBT’s implementation of such changes impeded competing carriers’ ability to compete. Finally, we note that, in many instances, the changes implemented by SWBT pursuant to the exceptions process were for the purpose of accommodating system changes or enhancements specifically requested by competing carriers, or mandated by regulatory authorities.³⁴⁸ Accordingly, we find that, despite its use of the exceptions process, SWBT is implementing its change management plan in a way that provides adequate and timely notice to competing carriers. The evidence further demonstrates that SWBT sufficiently accommodates competing carriers’ change management concerns. At the same time, we expect SWBT’s use of the exceptions process should decrease as the changes requested by competing carriers and mandated by regulatory authorities are successfully implemented.

131. We caution BOCs against the use of any process that would effectively nullify the

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Requirements Exception Accessible Letter, which indicated that it seeks an exception following the conclusion of a reply and comment cycle.

Change Agreement § 6.2.

³⁴⁵ Since December 20, 1999, SWBT has issued thirteen Exception Accessible Letters. *See* SWBT Ham Texas II Aff. at para. 57. WorldCom admits that SWBT is permitted to make these change pursuant to the exceptions process, but states that it is concerned that “SWBT will make the exception into the rule.” WorldCom McMillon/Sivori Texas I Decl. at para. 221.

³⁴⁶ SWBT Ham Texas I Aff. at para. 311. For example, SWBT discussed these changes at change management meetings, and/or issued Accessible Letters seeking comment on such proposed changes. SWBT Ham Texas I Aff. at para. 316. No competing carrier objected to the implementation of the changes either in the change management meetings or in response to the associated Accessible Letter. SWBT Ham Texas I Aff. at para. 314.

³⁴⁷ For example, the record indicates that a particular edit was removed from the May 27, 2000 release due to competing carriers objections. SWBT Ham Texas II Aff. at para. 58.

³⁴⁸ SWBT Ham Texas II Aff. at paras. 55, 57. Specifically, SWBT states that:

[C]ompliance with the numerous regulatory mandates issued at the end of 1999 and in January 2000 (e.g., LIDB programming, ling sharing, and UNE Remand) have involved massive and complex programming efforts on SWBT’s part. In order to meet the timing requirements of these orders, SWBT has had no choice but to schedule its releases according to the exception process spelled out in the CMP.

Id. at para. 55.

standard procedures outlined in the formal change management documentation. Indeed, as several commenters point out, part of the problem with deviating from the standard timelines set forth in the Change Agreement is that it requires competing carriers to make substantial changes to their systems within a significantly abbreviated timeframe, which could increase the risk of error.³⁴⁹ There is no evidence in this proceeding, however, that SWBT's use of the exceptions process has adversely affected competing carriers' ability to access SWBT's OSS after new releases were implemented. Indeed, in view of the number of competing carrier-requested and regulatory-mandated changes SWBT has had to implement over the past year, we find that SWBT's use of the exceptions process was limited to instances in which it was both necessary and unavoidable. We further find that SWBT's exceptions process is reasonable given that that competing carriers are afforded an adequate opportunity to comment upon and object to each exceptions change.

(iv) Testing Environment

132. As part of a sufficient change management process, a BOC must provide competing carriers with access to a stable testing environment to certify that their OSS will be capable of interacting smoothly and effectively with the BOC's OSS.³⁵⁰ In addition, prior to issuing a new software release or upgrade, the BOC must provide a testing environment that mirrors the production environment in order for competing carriers to test the new release.³⁵¹ If competing carriers are not given the opportunity to test new releases in a stable environment prior to implementation, they may be unable to process orders accurately and provision new customer services without delays.³⁵² Moreover, the failure to provide a testing environment that mirrors production can result in competing carriers' transactions succeeding in the testing environment but failing in production.³⁵³

133. SWBT's current test environment was made available to competing carriers on November 1, 1999.³⁵⁴ SWBT represents that that its current testing environment is sufficiently stable because it dedicated solely to testing by competing carriers.³⁵⁵ More specifically, SWBT

³⁴⁹ WorldCom McMillon/Sivori Texas I Decl. at para. 221.

³⁵⁰ A stable testing environment means that no changes by the BOC are permitted after the testing period commences. *See Bell Atlantic New York Order* at 4002-03, para. 109 & n.301.

³⁵¹ *Id.* at para. 109.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ SWBT Ham Texas I Aff. at para. 338. SWBT explains that competing carriers were notified of the new test environment via Accessible Letter CLECSS99-150. *See id.* Attach. SS.

³⁵⁵ SWBT Ham Texas I Reply Aff. at para. 170. Specifically, in contrast to the test environment that existed prior to November 1999 where the testing environment was shared between SWBT developers and testers and competing carriers, the current testing environment is physically separate from the production environment and is made available for the exclusive use of competing carriers for the purposes of testing.

explains that, in contrast to the testing environment that existed prior to November 1999, where the testing environment was shared between SWBT developers and testers and competing carriers, the current testing environment is physically separate from the production environment and is made available for the exclusive use of competing carriers.³⁵⁶ SWBT asserts that the stability of its testing environment is further demonstrated by the fact that internal testing of the release is completed before it is made available to competing carriers.³⁵⁷ According to SWBT, its testing environment adequately mirrors the production environment because “the functionality of the test environment is the same as the production environment and returns data in the identical fields and format.”³⁵⁸ In further support of its assertion that its testing environment is adequate, SWBT points out that its test plan defines a process whereby SWBT and competing carriers jointly develop testing scenarios and timeframes.

134. We conclude that SWBT’s test environment affords competing carriers an adequate opportunity to test SWBT OSS changes prior to implementation. We, therefore, find that the testing environment SWBT makes available provides competing carriers with a meaningful opportunity to compete. Specifically, we find that the record demonstrates that SWBT’s testing environment is stable, adequately mirrors the production environment, affords competing carriers an opportunity to develop test decks of representative pre-ordering and ordering transactions, and offers the extended testing periods that competing carriers need for EDI implementation and new release testing. We base this conclusion on the experience of the competing carriers that used the current testing environment to implement EDI and to test the January 15, 2000 release. The record indicates that three carriers that used the new test environment for EDI implementation achieved production status,³⁵⁹ and that two carriers used the new testing environment without substantial difficulty to test the requirements associated with the January 15, 2000 release.³⁶⁰ Thus, we find that the recent evidence from commercial usage suggests that SWBT’s testing environment works in the manner represented in its application.

135. In concluding that SWBT’s testing environment is adequate, we recognize that SWBT’s testing environment was not tested by a third party. Although such a test would have provided us with useful evidence concerning the adequacy of the testing environment SWBT makes available to competing carriers, we reject AT&T’s assertion that the absence of third party test is basis for concluding that SWBT’s section 271 application is deficient. Indeed, we find that the commercial evidence, as described above, is sufficient for the purpose of evaluating the

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.* at para. 168.

³⁵⁹ *See* SWBT Ham Texas I Reply Aff. at para. 171.

³⁶⁰ *See* SWBT Ham Texas II Reply Aff. at para. 131. As discussed more fully in paragraphs 139-140, *infra*, although some problems arose in connection with the January 15, 2000 release, the record demonstrates that these problems were isolated, were resolved by SWBT in a timely fashion, and did not significantly impede any carrier’s ability to test adequately the release prior to its implementation.

adequacy of the testing environment SWBT makes available to competing carriers.

136. AT&T is the only commenter that raises several specific concerns with respect to the adequacy of SWBT's EDI testing environment. One of its primary arguments is that SWBT's EDI testing environment is deficient because it does not mirror the production environment. In support of this assertion, AT&T maintains that, in SWBT's EDI testing environment, test orders do not flow-through as they would during production, but instead are manually monitored by SWBT as they progress through the testing process.³⁶¹ AT&T claims that this approach is problematic because it denies competing carriers an opportunity to assess how the release will affect new or existing flow-through capability, and deprives competing carriers of an opportunity to assess how the relevant systems will actually respond in a production environment.³⁶² AT&T further states that, because SWBT's test environment does not take orders through the posting cycle in billing, but only through service order creation, it fails to predict adequately problems that could occur in production. In support of this claim, AT&T points to evidence suggesting that certain problems are discovered only after competing carriers have moved into production.³⁶³

137. We agree with AT&T that a BOC's failure to provide a testing environment that adequately mirrors production may deny competing carriers a meaningful opportunity to compete. Such a failure is of particular concern in this case in view of the fact that SWBT has not yet implemented versioning. As AT&T explains, an inadequate test environment coupled with the lack of versioning is particularly problematic because it forces competing carriers to use a new EDI release in the production environment without any assurance that they can submit orders successfully, and without the ability to continue using the previous release.³⁶⁴

138. The record demonstrates that there are two notable differences between SWBT's testing and production environments. First, SWBT's test environment does not test flow through or response times, but only evaluates application functionality.³⁶⁵ Second, the record indicates that SWBT's test environment does not evaluate the ability of an order to post to billing.³⁶⁶ With

³⁶¹ AT&T Chambers/DeYoung Texas II Decl. at para. 43.

³⁶² AT&T Dalton/DeYoung Texas I Decl. at para. 77.

³⁶³ AT&T Chambers/DeYoung Texas II Decl. at para. 44; *see also* Letter from John A. Redmon & David F. Werthheimer, Counsel, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, at 9-10 (filed Mar. 8, 2000) (AT&T Mar. 8 *Ex Parte* Letter).

³⁶⁴ Letter from Mark E. Haddad, Counsel, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65, at 2-3 (filed June 14, 2000) (AT&T June 14 OSS *Ex Parte* Letter).

³⁶⁵ SWBT Ham Texas II Reply Aff. at para 127. More specifically, SWBT acknowledges that it manually monitors orders as they enter and exit the testing environment, and that its testing environment does not emulate production response times. SWBT Ham Texas I Reply Aff. at para. 168.

³⁶⁶ *See* AT&T Mar. 8 *Ex Parte* Letter, Attach. D, Final Minutes for February 8, 2000 Change Management Meeting Process Meeting—Arkansas, Kansas, Missouri, Oklahoma, Texas, at 5-6 (Final Minutes for Feb. 8, 2000 Change Management Process Meeting). During this meeting, SWBT acknowledged that competing carrier joint (continued....)

respect to the first issue, AT&T appears to argue that, for purposes of demonstrating compliance with the requirements of section 271, a BOC must provide a testing environment that is identical to its production environment. The record indicates, however, that competing carriers are able to test adequately OSS changes prior to their implementation as long as the testing and production environments perform the same key functions. In this regard, we note that, although SWBT's testing and production environments are not identical, the vast majority of carriers are able to achieve production status and test new releases without substantial difficulty. Thus, despite any differences between the testing and production environments, the totality of the evidence indicates that SWBT's testing environment is adequate. We further agree with SWBT that this approach to managing its testing environment does not harm, but ultimately benefits competing carriers because it allows SWBT to quickly identify and resolve errors found during testing.³⁶⁷

139. As noted above, we find that another notable difference between SWBT's testing and production environments is that the testing environment does not evaluate the ability of an order to post to billing. The record further indicates, however, that this practice has not significantly impeded any carrier's ability to submit orders, or otherwise access SWBT's OSS after the new release has been implemented. The record indicates that there were some problems associated with the January 15, 2000 release.³⁶⁸ Specifically, the record indicates that after the January 15 release was implemented, orders that were pending at the time the release was implemented failed to post.³⁶⁹ In addition, LVAS, a downstream system, did not properly populate product tables.³⁷⁰ AT&T argues that these problems could have been discovered if SWBT conducted end-to-end testing (*i.e.*, testing from order creation to posting to billing).

140. SWBT explains, however, that these problems were not due to its failure to conduct end-to-end testing environment, but instead occurred because the production system did not update certain tables in a timely manner.³⁷¹ The record indicates that corrective measures were implemented within four days of the release being implemented.³⁷² On the basis of these findings, we conclude that the problems that occurred in connection with the January 15, 2000 release do not represent a systemic failure in SWBT's ability to provide access to its OSS.

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testing goes through service order creation, but not through to billing and provisioning. Final Minutes for Feb. 8, 2000 Change Management Process Meeting at 6.

³⁶⁷ See SWBT Ham Texas I Reply Aff. at paras. 165-69.

³⁶⁸ SWBT Ham Texas II Reply Aff. at para. 130. For example, in the first change management meeting subsequent to the implementation of the January 15, 2000 release, Birch noted that it lost a week's worth of revenue due to problems with the release. Final Minutes for Feb. 8, 2000 Change Management Process Meeting at 6.

³⁶⁹ Final Minutes for Feb. 8, 2000 Change Management Process Meeting at 6.

³⁷⁰ *Id.*

³⁷¹ SWBT Ham Texas II Reply Aff. at para. 130.

³⁷² See Final Minutes for Feb. 8, 2000 Change Management Process Meeting at 6.

Rather, we find that SWBT has convincingly demonstrated that the problems associated with the January 15, 2000 release were isolated, did not significantly impede any carrier's ability to serve its customers, and should not recur in connection with future releases.

141. We are further encouraged by the fact that SWBT has expressed a willingness to run a test through to the billing cycle.³⁷³ Although not decisional to our analysis, we note that end-to-end testing should provide further assurance that SWBT's testing environment affords competing carriers an adequate opportunity to assess whether the new release will function as intended. We emphasize that the adequacy of a BOC's testing environment is a critically important area for demonstrating compliance with the requirements of section 271. Thus, if the evidence demonstrates that SWBT's testing environment is inadequate for the purpose of EDI implementation and release testing, thereby depriving competing carriers of a meaningful opportunity to compete, enforcement action under section 271(d)(6) may be appropriate.

142. In arguing that SWBT's test environment is deficient, AT&T further claims that SWBT fails to provide a standard validation test deck, and that, as a result, competing carriers must compile new test accounts each time a new release is implemented.³⁷⁴ We find, however, that the evidence in the record simply does not support this claim. To the contrary, the evidence indicates that SWBT provides competing carriers a reasonable opportunity to develop test transactions that will enable them to determine whether the new release produces expected results. SWBT points out, for example, that the test plan permits competing carriers to develop their own test scenarios based upon their own business requirements.³⁷⁵ SWBT further states that, upon request, it will provide a competing carrier with test scripts that are specific to the new functionalities it wishes to implement.³⁷⁶ Although SWBT requests that competing carriers provide information on their test scenarios before new release testing begins, this appears to be a reasonable method of managing test transactions because it affords SWBT an opportunity to access whether the appropriate types of accounts are available before testing begins.³⁷⁷ SWBT further explains that this practice is beneficial because it helps to minimize the delay that may be caused when a carrier submits a test order that does not have the required characteristics.³⁷⁸ Given these findings, which indicate that these practices ultimately benefit competing carriers, we reject AT&T's contention that the test deck SWBT offers for the purpose of testing is deficient.

³⁷³ In response to concerns raised by competing carriers with respect to the testing environment, SWBT stated that it would "check into the possibility of running a test through to the billing cycle." *Id.*

³⁷⁴ AT&T Chambers/DeYoung Texas II Decl. at para. 45.

³⁷⁵ SWBT Ham Texas II Reply Aff. at para. 132 & Attach. RR (Pacific Bell, Nevada Bell, Southwestern Bell and Competitive Local Exchange Carrier (CLEC) Joint Release Test Plan Template for Local Service Request (LSR) Electronic Date Interchange (EDI), Version 3.0, § 2.2 (SWBT/CLEC Joint Release Test Plan)).

³⁷⁶ SWBT Ham Texas II Reply Aff. at para. 132.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

143. Other than AT&T, the only comments in the record concerning the adequacy of SWBT's test environment were raised by the Department of Justice. In its evaluation of the Texas I Application, the Department of Justice noted that competing carriers had complained about the lack of a stable testing environment.³⁷⁹ Although the Department of Justice opined that SWBT's performance may have been flawed in this area, it stated that it lacked sufficient evidence to determine the extent to which this, and other issues, may impede competition in the future.³⁸⁰ It, therefore, recommended that the Commission reserve judgment on this issue.³⁸¹ Unlike the circumstances that existed with respect to the Texas I Application, we find that there is sufficient evidence in the instant record to determine whether SWBT's testing environment is sufficiently stable. Indeed, as noted above, SWBT implemented a new testing environment in November 1999, which, according to SWBT, is much more stable than the testing environment it used prior to this time.³⁸²

(v) Training, Technical Assistance, and Help Desk Support

144. We conclude that SWBT demonstrates that it provides the technical assistance and help desk support necessary to give competing carriers nondiscriminatory access to its OSS. SWBT has created a Local Service Center (LSC) that provides competing LECs with a single point of contact for issues regarding ordering, billing, and collections related to interconnection facilities, resold services and UNEs.³⁸³ The LSC assigns a work group to each competitive LEC customer to provide competing LECs with access to service representatives and managers to handle service requests and any associated issues for pre-order, order and billing.³⁸⁴ Service representatives in these groups undergo several months of training.³⁸⁵

145. In addition, SWBT's Local Operations Center (LOC) supports the provisioning of UNEs, interconnection with SWBT's local network, and resold services as well as any maintenance and repair functions requested by competing carriers.³⁸⁶ Within the LOC there is a

³⁷⁹ Department of Justice Texas I Evaluation at 49-50.

³⁸⁰ *Id.* at 51-52.

³⁸¹ *Id.* at 52-53.

³⁸² SWBT Ham Texas I Reply Aff. at para. 170.

³⁸³ SWBT Texas I Application at 25; SWBT Ham Texas I Aff. at 19; SWBT Conway Texas I Aff. at paras 5, 12. SWBT states that the LSC executes complex transactions that are performed manually for both SWBT retail customers and competing carriers, as well as other transactions for competing carriers that prefer to use manual processes. SWBT Application at 25; SWBT Conway Texas I Aff. at paras. 5, 34, 38.

³⁸⁴ SWBT Conway Texas I Aff. at para. 18.

³⁸⁵ SWBT Application at 25; SWBT Conway Texas I Aff. at paras. 6, 25. The LSC has a staff of approximately 600 employees. *Id.*

³⁸⁶ SWBT Application at 26; SWBT Conway Texas I Aff. at paras 7, 15. The LOC has 148 employees and is available to competing carriers 24 hours a day, 7 days a week. SWBT Conway Texas I Aff. at paras. 15-17.

Customer Action Support Team, (CAST) that provides competing LECs with additional technical support and assists in the resolution of operational issues pertaining to pre-ordering, ordering, provisioning, maintenance and OSS.³⁸⁷ SWBT states that it tracks incoming trouble volumes on an hourly basis that allow it to ensure that the LOC is always adequately staffed.³⁸⁸ In addition, the evidence demonstrates that SWBT trains its carrier-customers on the LSC/s procedures, and engages in ongoing consultation with competing carriers regarding operational practices and service issues.³⁸⁹ SWBT has also established an Information Services (IS) Call Center that serves as the “Help Desk,” answering questions regarding access to SWBT systems and applications and helping to resolve information technology problems.³⁹⁰ SWBT also SWBT provides extensive training for competitive LEC employees,³⁹¹ and provides on-line assistant through its Internet site.³⁹²

146. In view of the foregoing evidence, which demonstrates that SWBT provides efficient competitors a meaningful opportunity to compete by enabling them to understand how to implement and use all of the OSS functions available to them, we reject claims that SWBT’s training, technical assistance and helpdesk support is inadequate.³⁹³ We agree with commenters that a third-party test that includes an evaluation of BOC support organizations and personnel would provide us with additional assurance that these resources are available and commercially ready to support competing carriers seeking access to the BOC’s network. In this proceeding, however, there is sufficient evidence to evaluate SWBT’s support organizations without the need for a third party test. Moreover, there is no evidence of poor performance by SWBT’s support personnel. Nor does the record indicate that SWBT support organizations provide discriminatory treatment to competing carriers. For these reasons, we disagree with those commenters who claim that the lack of a third party evaluation of SWBT’s technical assistance and help functions indicate that SWBT’s section 271 application is deficient.

³⁸⁷ Competing carriers can contact the CAST through a “hotline” that is operational 24 hours a day, 7 days a week. SWBT Conway Texas I Aff. at 10.

³⁸⁸ SWBT Conway Texas I Aff. at para 107.

³⁸⁹ SWBT Application at 25; SWBT Conway Texas I Aff. at paras. 6, 114-117.

³⁹⁰ SWBT Application at 24; SWBT Ham Texas I Aff. at paras. 20-28. The IS call center is open 24 hours per day, 7 days per week. *Id.*

³⁹¹ SWBT offers classes on using its electronic OSS interfaces as well as a free workshop that covers both manual and electronic ordering processes. SWBT Ham. Texas I Aff. at paras. 370-74; SWBT Auinbauh Texas I Aff. at paras. 154-170.

³⁹² SWBT Texas I Application at 24-25; SWBT Ham Texas I Aff. at para. 18; *see also* SWBT Auinbauh Texas I Aff. at paras. 171-173.

³⁹³ Several parties assert that SWBT’s LSC is inadequately staffed and that the personnel is inadequately trained. CLEC Coalition Comments at 35-36. Some commenters further argue that the Telcordia test did not adequately address support organizations such as the Help Desk, and Information Services Call Center. CLEC Coalition Comments at 5; *But see* Texas Commission Evaluation at 46-47 (describing training and documentation.)

e. Pre-Ordering

147. Based on the evidence in the record, we conclude that SWBT demonstrates that it provides nondiscriminatory access to OSS pre-ordering functions. Specifically, we find that SWBT demonstrates that: (i) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions; (ii) competing carriers are able to integrate pre-ordering and ordering interfaces; (iii) its pre-ordering systems provide reasonably prompt response times; (iv) these interfaces are consistently available in a manner that affords competitors a meaningful opportunity to compete; and (v) SWBT offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies.³⁹⁴

(i) Discussion

148. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.³⁹⁵ Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.³⁹⁶ Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, SWBT must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.³⁹⁷ For those pre-ordering functions that lack a retail analogue, SWBT must provide access that affords an efficient competitor a meaningful opportunity to compete.³⁹⁸ In prior orders, we have emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time

³⁹⁴ As explained below, this does not include an evaluation of new loop qualification obligations under rule 319 that became effective in May, 2000. *See* section III.D, *infra*.

³⁹⁵ *See Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd. at 20660, para. 94 (referring to “pre-ordering and ordering” collectively as “the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof”). In prior orders, the Commission has identified the following five pre-order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4015, para. 132; *Second BellSouth Louisiana Order*, 13 FCC Rcd. at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd. at 619, para. 147.

³⁹⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

³⁹⁷ *Id.*; *see also BellSouth South Carolina Order*, 13 FCC Rcd. at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

³⁹⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.³⁹⁹

149. *Pre-Ordering Functionality.* We find that SWBT offers requesting carriers access to an application-to-application interface, DataGate, for the pre-ordering functions that SWBT provides to itself. The DataGate interface is based on SWBT's proprietary pre-ordering functionality, and allows competing carriers to acquire pre-ordering information using their own software programs or applications. SWBT states that it provides competing carriers with access to all of the necessary technical specifications and documentation for its DataGate interface.⁴⁰⁰ The DataGate interface allows competing carriers to perform a wide range of pre-ordering functions for both resale services and UNEs. Specifically, carriers are able to use DataGate to: (1) retrieve CSRs; (2) validate addresses; (3) select and reserve telephone numbers; (4) determine services and features available to a customer; (5) obtain due date availability; (6) access loop qualification information; (7) view a customer's directory listing; (8) determine dispatch requirements; (9) retrieve local primary intraLATA carrier (LPIC) and primary interexchange carrier (PIC) list; (10) access the Common Language Location Identifier (CLLI) for the serving central office; and (11) verify channel facility assignment.⁴⁰¹

150. SWBT also offers access to pre-ordering functions through EDI and CORBA interfaces, which are based on industry standards.⁴⁰² The availability of these interfaces is beneficial to competing carriers in Texas and we encourage SWBT to continue to develop them and promote their use. These interfaces do not form the basis of our decision that SWBT meets the nondiscrimination requirements for OSS pre-ordering functions, however, because SWBT's evidentiary showing in this proceeding is insufficient to allow such a determination. Although SWBT offers evidence on the functionality available through EDI and CORBA,⁴⁰³ there is insufficient evidence to find that, in Texas, these interfaces: (i) can be used in a commercial

³⁹⁹ See *id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

⁴⁰⁰ See SWBT Texas I Application at 82; SWBT Texas I Ham Aff. at para. 53.

⁴⁰¹ See SWBT Texas I Ham Aff. at paras. 52 and 54. These 11 functions go beyond the seven pre-ordering functions previously identified by the Commission. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4015, para. 132 (discussing the first seven functions listed above).

⁴⁰² See SWBT Texas I Application at 82; SWBT Texas I Ham Aff. at para. 68 (explaining that, in addition to allowing direct access to DataGate, it is "front-ending" DataGate, thereby providing an interface that can be used by competing carriers that conforms to existing national standards for EDI and CORBA). According to SBC, this allows competing carriers to build their interfaces to national standards, while preserving the background application functionality, data content, and performance standards that SWBT has established for DataGate. *Id.*

⁴⁰³ See SWBT Texas I Ham Aff. at paras. 69-70; *but see* AT&T Texas I Dalton/DeYoung Reply Decl. at 16 (explaining that, unlike DataGate, EDI and CORBA do not return certain pre-ordering information – CLLI codes and NC/NCI information – that is necessary for completing a UNE-P order).

setting; (ii) are stable and reliable; and (iii) provide nondiscriminatory response times.⁴⁰⁴

151. With respect to actual commercial usage, SWBT demonstrates that competing carriers successfully have built their systems to connect with SWBT's DataGate interface. SWBT states that at least five carriers are in production in Texas using DataGate for pre-ordering.⁴⁰⁵ A review of performance data submitted by SWBT confirms that carriers currently are using DataGate to perform six of the pre-ordering transactions listed above.⁴⁰⁶ While Telcordia did not test the functionality of SWBT's pre-ordering interfaces,⁴⁰⁷ we note that the evidence of actual commercial usage supports SWBT's claim that these functions are made available to competing LECs. Moreover, we reject commenters' claims that SWBT's pre-ordering interfaces are functionally deficient. First, AT&T complains that a particular pre-ordering function – SWBT's telephone number assignment system – has the potential to discriminate against competing LECs.⁴⁰⁸ AT&T does not claim, however, and the record does not suggest, that such discrimination actually takes place, and thus we do not conclude competing LECs are denied nondiscriminatory access to this pre-ordering function. Should we receive evidence of such discrimination in the future, we shall take appropriate enforcement action under section 271(d)(6). We address commenters' claims relating to integration and loop qualification information in the following subsections.

152. *Integration.* SWBT has demonstrated that its application-to-application interfaces allow competing carriers to integrate successfully pre-ordering information obtained from the DataGate interface into the ordering process and the carriers' back office systems.⁴⁰⁹ The

⁴⁰⁴ SWBT's performance metrics measure the timeliness and availability only of the DataGate and VeriGate pre-ordering interfaces. *See* SWBT Texas I Dysart Aff. at paras. 95-114.

⁴⁰⁵ *See* SWBT Texas I Ham Aff. at paras. 66 and 70.

⁴⁰⁶ *See* SWBT Aggregated Performance Data, Measurement No. 1 ("Average Response Time for OSS Pre-Order Interfaces") at 271-1a. Specifically, the data reflect a significant volume of the following types of pre-order transactions: retrieve CSRs; validate addresses; select and reserve telephone numbers; determine services and features available to a customer; obtain due date availability; and retrieve local primary intraLATA carrier (LPIC) and primary interexchange carrier (PIC) list. The ability to access loop qualification information at the pre-ordering stage is discussed separately, below.

⁴⁰⁷ *See* SWBT Texas I Ham Aff. at para. 268 (recognizing that, rather than test the application-to-application DataGate pre-ordering interface as part of its UNE-P functionality test, Telcordia only looked at the VeriGate GUI). We note, however, that Telcordia did assess the ability of the DataGate system to handle a high volume of transactions as part of its capacity test. *See id.* at para. 290.

⁴⁰⁸ *See* AT&T Texas I Dalton/DeYoung Decl. at paras. 104-105 (suggesting that SWBT has the ability to label some numbers as "available for ILEC" and "available for non-ILEC" and thus would have the ability, if it chose, to favor its own operations).

⁴⁰⁹ SWBT also asserts that three carriers, using software developed by third party vendors, have successfully integrated two other pre-ordering interfaces, EDI and CORBA, with EDI for ordering. *See* SWBT Texas II Comments at 38; SWBT Texas II Ham Aff. at paras. 27-29, and Att. F and G. There is no corroborating evidence in the record (such as commercial usage or statements from these carriers) that these integration efforts have been successful. Moreover, as noted above, SWBT does not demonstrate that its EDI and CORBA interfaces satisfy all (continued...)

Commission has explained previously that a BOC with integrated pre-ordering and ordering functions for its retail operations must provide competing carriers with access to the same capability. Indeed, we have noted that the inability to integrate may place competitors at a disadvantage and significantly impact a carrier's ability to serve its customers in a timely and efficient manner.⁴¹⁰ Thus, in order to demonstrate compliance with checklist item 2, the BOC must enable competing carriers to transfer pre-ordering information (such as a customer's address or existing features) electronically into the carrier's own back office systems and back into the BOC's ordering interface. We do not simply inquire whether it is possible to transfer information from pre-ordering to ordering interfaces – we assess whether the BOC enables *successful* integration.⁴¹¹ We clarify that a BOC has enabled “successful integration” if competing carriers may, or have been able to, automatically populate information supplied by the BOC's pre-ordering systems onto an order form (the “local service request” or “LSR”) that will not be rejected by the BOC's OSS systems.

153. As an initial matter, we note that our analysis of integration is complicated in this instance by the fact that SWBT has chosen not to provide “parsed” address information at the preordering stage, but instead returns this information to competing LECs in an undifferentiated (or “concatenated”) string of alphanumeric characters.⁴¹² In order to transfer seamlessly the unparsed address information onto an order, competing LECs must first write a program which “parses” the undifferentiated string of numbers and words into the specific fields required on the order form. Because successful parsing is thus a necessary component of successful integration, we must determine whether SWBT enables carriers to implement a parsing program that allows the seamless transfer of information from pre-ordering to the ordering stage.⁴¹³ Of course, a BOC

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necessary aspects of our pre-ordering analysis. We do not need to rely on SWBT's assertions regarding EDI and CORBA, however, because we find that SWBT's DataGate interface may be integrated.

⁴¹⁰ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4019, para. 137 (“[w]ithout an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error.”).

⁴¹¹ See *id.* at para. 138 (discussing Bell Atlantic's evidence that carriers were able to “successfully” integrate in a commercial setting); see also *WorldCom Texas II McMillon/Sivori/Lichtenberg Reply Decl.* at para. 14 (conceding that “CLECs can build some form of ‘integrated’ pre-order and order interface,” but indicating that parsing and integration difficulties lead to a high reject rate which negates the benefits of integration).

⁴¹² See *SWBT Texas II Ham Reply Aff.* at para. 21; see also *AT&T Texas I Dalton/DeYoung Decl.* at para. 14. Specifically, SWBT explains that, in response to a competing LEC's request for a customer's information via the DataGate pre-ordering interface, it returns address information (including street number, apartment number, street name, thoroughfare type and community name) as a string of numbers and words. Each of these pieces of information must be populated in separate fields on the LSR, in accordance with the incumbent LEC's pre-ordering and ordering business rules. Other information, including the customer name, telephone number and zip code are returned in a “parsed” format – that is, each separate piece of information is identified by a particular code that can be matched to a field on the LSR.

⁴¹³ Contrary to AT&T's interpretation of the *Bell Atlantic New York Order*, see *AT&T Texas I Dalton/DeYoung Decl.* at para. 95, we have not previously stated that a BOC must perform parsing on its side of the interface. Rather, we consider whether integration has been shown to be possible (or has actually been achieved).

that provides address information in a parsed format would not need to make this complicated showing.⁴¹⁴

154. We conclude, based on the totality of evidence in the record, that SWBT's DataGate pre-ordering interface can be successfully integrated with SWBT's EDI ordering functions. In reaching this conclusion, we rely primarily on evidence, submitted both by competing LECs active in Texas and by SWBT, that carriers have been able to successfully integrate certain pre-ordering and ordering functions in a commercial setting. Specifically, while several carriers in this proceeding claim to have encountered substantial difficulties in achieving full, successful integration, the record contains statements from at least two carriers indicating that they have been able to integrate pre-ordering and ordering functions. We also rely on the results of a customized third party review conducted in April 2000, in which Telcordia found that documentation and other information provided by SWBT enabled it to mechanically integrate address information received in a pre-ordering inquiry into the ordering process. Finally, we recognize that SWBT has hired GE Global eXchange Services to provide additional technical assistance relating to integration, free of charge, to any competing LEC that requests this additional help.⁴¹⁵

155. In terms of commercial usage, SWBT submits that at least two competing LECs, Sage Telecom and Navigator Telecommunications, have successfully integrated pre-ordering functions.⁴¹⁶ Both of these competing LECs have confirmed on the record in this proceeding that, by interfacing with SWBT's DataGate system, they are able to transfer information received electronically from SWBT directly into their internal systems and into the ordering process. Specifically, Sage reports that, using documentation and technical support from SWBT, it has designed its systems to electronically transfer information contained in the CSR, including address information, directly onto an order.⁴¹⁷ Similarly, Navigator reports that it has developed systems to electronically transfer information from the CSR to the ordering process, including service and feature codes, but not address information.⁴¹⁸ Because service address information is not required for orders that migrate customers from SWBT retail to resale service, this level of integration apparently allows Navigator to complete orders for resale service with "minimal human intervention."⁴¹⁹ AT&T apparently also has developed a program that parses address information

⁴¹⁴ Indeed, we note that the level of detailed analysis required in this instance was not necessary in the *Bell Atlantic New York Order* because Bell Atlantic returned address information in a parsed format. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4020, para. 138.

⁴¹⁵ *See* SWBT Texas II Ham Aff. at para. 15.

⁴¹⁶ *See* SWBT Texas II Ham. Aff. at para. 3; Sage March 29 *Ex Parte* Letter; Navigator March 30 *Ex Parte* Letter. The Texas Commission observed that other competing LECs may have undertaken steps to integrate these functions, but have not come forward. *See* Texas Commission Texas II Comments at 6.

⁴¹⁷ *See* Sage March 29 *Ex Parte* Letter at 1. Sage has been submitting orders via EDI for at least ten months.

⁴¹⁸ *See* Navigator March 30 *Ex Parte* Letter at 1; Navigator June 14 *Ex Parte* Letter at 1.

drawn from DataGate, and integrates pre-ordering information directly into its ordering process.⁴²⁰ Unlike Sage and Navigator, however, AT&T does not characterize its integration efforts as a “success.”

156. An analysis of these carriers’ order rejections indicates that they have achieved substantial success in their parsing and integration efforts. We note that a high reject rate may indicate that a carrier has not successfully integrated its pre-ordering and ordering functions, particularly where rejects are attributable to integration or parsing difficulties.⁴²¹ In this instance, however, we note that Sage and AT&T have been able to achieve low reject rates – 50 percent lower than any other carrier using EDI for ordering in Texas.⁴²² Most significantly, data submitted by SWBT indicates that, for the past three months, a relatively low percentage of orders submitted by both Sage and AT&T are rejected for address-related reasons.⁴²³ These data indicate that both Sage’s and AT&T’s parsing and integration efforts have enabled them to submit orders that generally survive address edits.

157. We disagree with AT&T that the problems it has encountered in a commercial setting indicate that SWBT’s systems cannot be integrated. AT&T explains that, due to deficiencies in the documentation SWBT makes available to assist carriers in integrating their systems, it has had to devote substantial resources to correcting parsing problems on its orders.⁴²⁴ Specifically, AT&T states that it must take the unnecessary step of carefully pre-screening orders before they are transmitted to SWBT, and that it must spend an inordinate amount of time and resources processing and resolving address-related rejects.⁴²⁵ Nevertheless, we reject AT&T’s

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⁴¹⁹ See Navigator March 30 *Ex Parte* Letter at 1. While WorldCom has not provided a clear explanation of its integration efforts in this proceeding, the Texas Commission noted that WorldCom has previously stated that it has integrated several fields, including the account telephone number. See Texas Commission Texas II Comments at 6.

⁴²⁰ Although AT&T does not provide a detailed description of the process by which it takes address information obtained through pre-ordering and completes an order, AT&T does not suggest that it re-types such information, but instead it has “endeavored to integrate DataGate with its EDI ordering system.” See AT&T Texas I Dalton/DeYoung Decl. at paras. 92-94. Also, WorldCom confirms that it has integrated certain pre-order fields (including “account telephone number”), but apparently has not attempted to integrate the address fields and instead manually re-types them. See WorldCom Texas II McMillon/Sivori/Lichtenberg Reply Decl. at para. 8.

⁴²¹ We understand that, if a competing carrier places an incorrectly-parsed address on an order (*i.e.*, a segment of the address is placed into an inappropriate field) it will result in a reject with an address-related reject code. There are many other reasons for rejects which have nothing to do with parsing addresses, as evidenced by the hundreds of reject codes that correspond to the hundreds of mechanized and manual edits in SWBT’s ordering systems. See SWBT Ham Texas II Aff., Att. H.

⁴²² SWBT Texas II Ham Reply Aff. at para. 61 and Att. D-1 (listing carrier-specific reject rates for April 2000).

⁴²³ SWBT Texas II Ham Aff., Att. H (listing the percentage of orders that receive each type of reject code, for certain carriers and for all carriers in the aggregate).

⁴²⁴ See AT&T Texas I Dalton/DeYoung Reply Decl. at paras. 11, 18-23.

⁴²⁵ See *id.*

assertion that SWBT is substantially responsible for its integration difficulties.⁴²⁶ As an initial matter, Sage's commercial experience indicates that successful integration is possible. There also is evidence in the record that AT&T's address-related rejects are relatively low, and that some of AT&T's address-related rejects may be unrelated to parsing problems.⁴²⁷ This suggests that, contrary to AT&T's assertions, its integration efforts have in fact been successful.

158. In addition to the evidence pointing towards successful integration in a commercial setting, we also rely on the customized integration test performed by Telcordia. The Texas Commission explains that Telcordia was retained in April 2000 to review the documentation and other information available to competing LECs and determine whether this information enables a competing LEC to parse and integrate information obtained from SWBT's pre-ordering systems into the ordering process.⁴²⁸ Telcordia reports that it used documentation and other information obtained from SWBT to develop a program that automatically parsed and transferred information, including address information, obtained through the pre-ordering process directly onto an LSR.⁴²⁹ We conclude that this supplemental functionality test, performed at the specific request of the Texas Commission in order to augment the record in this proceeding, provides us with additional assurance that competing LECs should be able to write a parsing program which enables integration efficiencies.

159. We disagree with AT&T and WorldCom, who argue that Telcordia's conclusions merit little weight in this analysis. AT&T and WorldCom suggest that Telcordia's test is unreliable because it did not involve the actual submission of orders, and did not appear to test a broad range of address scenarios.⁴³⁰ While this type of additional testing would certainly have bolstered Telcordia's conclusion, and in fact may be critical to another BOC's section 271 application, we note that Telcordia's test does not stand alone in this instance and supplements evidence of integration in a commercial setting.⁴³¹ AT&T and WorldCom also note that Telcordia

⁴²⁶ See AT&T Texas II Chambers/DeYoung Decl. at paras. 48 and 55.

⁴²⁷ See SWBT Texas II Ham Reply Decl. at paras. 21 and 45 (suggesting that address-related rejects also may result from mismatches between SWBT's two internal address databases, PREMIS and CRIS).

⁴²⁸ See Texas Commission Texas II Comments at 7 and Att. 5 ("Telcordia Pre-order/Order Integration Analysis").

⁴²⁹ We note that Telcordia required oral clarification from SWBT on several points in order to complete its work. See Telcordia Pre-Order/Order Integration Analysis at 7. Telcordia "recommend[ed] several improvements to the documentation so that others will similarly receive such clarification." *Id.* SWBT reports that it has already implemented these documentation changes. See SWBT Ham Texas II Reply Aff. at para. 36.

⁴³⁰ See AT&T Texas II Chambers/DeYoung Decl. at para. 23. Telcordia explains that, while it did not actually send test orders through the editing process, it *visually* "confirmed that each [address] element was in fact populated in its correct field." See Telcordia June 13, 2000 *Ex Parte* Letter at 2. Telcordia further explained that it formulated 20 testing scenarios, and also used different combinations of the elements of an address, to ensure that the concatenated address information could be parsed correctly. *Id.*

⁴³¹ A comprehensive third party test of integration functions that includes an assessment of the various steps a competitive LECs would take in order to accomplish integration of pre-ordering and ordering functions would provide compelling evidence that a BOC's interfaces can be integrated. In this regard, substantial weight may be given to a test where the tester (i) submits a pre-order query; (ii) receives data from the BOC; (iii) auto-populates (continued....)

tested whether it could integrate address information received via the *EDI pre-ordering interface*, rather than the DataGate interface upon which SWBT relies to demonstrate nondiscriminatory access to pre-ordering functions.⁴³² Telcordia subsequently explained, in a submission in this proceeding, that the task of parsing and integrating address information obtained via EDI is functionally the same as parsing address information received directly from DataGate.⁴³³ We thus find that Telcordia's evaluation is useful to demonstrate that effective parsing can occur with respect to information provided by SWBT through its pre-ordering interfaces.

160. As noted above, we base our conclusion that SWBT's systems can be integrated on carriers' actual commercial experiences and Telcordia's findings. As further evidence that successful integration can continue to occur in the future, we are encouraged by the recent steps SWBT has taken in this area. Specifically, we note that SWBT has recently implemented a programming change which will virtually eliminate address-related rejects received by competing LECs on most types of orders.⁴³⁴ As of May 2000, SWBT no longer requires carriers to populate the service address fields on orders that convert a retail or resale customer to UNE-P service. Even the relatively low levels of address-related rejects received by AT&T and Sage should thus be reduced even further. Although this enhancement occurred after it filed this application, and therefore is not decisional, it provides assurances that carriers that have yet to attempt integration should be able to avoid the burden of receiving and processing a large number of address-related rejects.⁴³⁵ To the extent that competing carriers, in the future, present evidence that undermines

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the data into an LSR; and (iv) submits the LSR to the BOC. SWBT itself identified these four key elements of "integration testing." See SWBT Texas II Ham Aff. at para. 14 (outlining steps that typically would be taken by a competitive LEC to accomplish integration of pre-ordering and ordering functions).

⁴³² See AT&T Texas II Chambers/DeYoung Decl. at para. 23.

⁴³³ Telcordia explained that "Datagate . . . concatenated address information is similar to the EDI concatenated values. In both situations, the methodology is the same. The only difference is in the different coding language used. Telcordia concludes that the programming concept used for the script in parsing EDI files, both non-concatenated and concatenated values, can also be applied to Datagate . . . files." See Telcordia June 13, 2000 *Ex Parte* letter at 2-3; see also SWBT Texas II Ham Reply Aff. at para. 33. We accept Telcordia's explanation and find that, in this limited instance, its findings relating to EDI have relevance in assessing whether information obtained directly from DataGate can be integrated into the ordering process.

⁴³⁴ See SWBT Texas II Ham Aff. at paras. 24-32 and Att. I (SWBT Accessible Letter No. CLECSS00-051, March 29, 2000). For these orders, SWBT will suppress the address edits and itself will populate the service address contained in the CSR onto competing LECs' orders. SWBT suggests that this change would have eliminated 99.8% of AT&T's address-related rejects in January 2000. See SWBT Texas II Ham Aff. at para. 27. Several commenters have agreed that this change would likely reduce rejects, particularly those associated with address-related errors. See AT&T Texas II Reply at paras. 73-74; WorldCom Texas II McMillon/Sivori/Lichtenberg Decl. at para. 40 (but suggesting that this change may have negative consequences as well); see also Sage March 29 *Ex Parte* Letter at 2.

⁴³⁵ We note that the "TN Ordering" change will not altogether eliminate the need for carriers to parse address information. See WorldCom Texas II McMillon/Sivori/Lichtenberg Decl. at paras. 35-38; but see SWBT Texas II Ham Reply Aff. at paras. 81-83 (explaining that WorldCom overstates the instances in which carriers will have to use addresses). Nonetheless, as noted above, SWBT enables carriers to perform this parsing.

our finding that SWBT's pre-ordering and ordering systems may be integrated – such as evidence that they are unable to avoid rejects attributable to inadequacies in SWBT's documentation or systems – then we may consider an enforcement action under section 271(d)(6).⁴³⁶

161. Finally, we recognize that SWBT has engaged GE Global eXchange Services (GXS) as a third party expert to provide high-level consulting advice to competing carriers that seek to integrate pre-ordering and ordering functions.⁴³⁷ We believe that GXS may provide valuable assistance to competing LECs seeking to design or improve their ordering systems to maximize the functionality offered by SWBT.

162. *Interface Response Times and Availability.* We find that SWBT demonstrates that it provides requesting carriers access to pre-ordering functionality in a manner that allows an efficient competitor a meaningful opportunity to compete. Specifically, we have held previously that an interface that provides responses in a prompt timeframe, and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality that SWBT provides to itself.⁴³⁸ With respect to the timeliness of pre-ordering responses using DataGate, we note that the Texas Commission established benchmark standards rather than identifying a retail analogue.⁴³⁹ We accept the Texas Commission's determination regarding these time intervals, which were established with input from competing carriers, and conclude that performance satisfying these benchmarks would provide competing carriers a meaningful opportunity to compete.

163. Performance data from January 2000 to April 2000 demonstrate that SWBT consistently satisfies the Texas Commission's benchmark standards for timeliness of various

⁴³⁶ The Department of Justice described this system enhancement as one of several "significant steps" taken recently by SWBT to alleviate concerns related to pre-ordering and ordering integration. See Department of Justice June 13 *Ex Parte* Letter at 18.

⁴³⁷ See SWBT Texas II Ham Aff. at para. 15; SWBT Texas II Ham Reply Aff. at para. 30. SWBT explains that GXS "is familiar with SWBT's systems and ordering rules because they have developed an integrated solution for a CLEC in SWBT's region GXS has the experience and know-how to evaluate a CLEC's technological platform and strategy and provide the CLEC with recommendations to insure successful integration." SWBT Texas II Ham Reply Aff. at para. 30.

⁴³⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029, paras. 145 and 154.

⁴³⁹ See Texas Commission Texas I Comments at 34. For example, the benchmark for responding to DataGate address verification queries is 4.7 seconds; for requests for telephone numbers, 4.5 seconds; for requests for CSRs, 6.6 seconds; and for PIC information, 28 seconds. See SWBT Texas I Dysart Aff., Att. A at 8-9. We note that commenters do not argue that these standards are improperly lenient, although AT&T does suggest that a "parity" comparison would be preferable. See AT&T Texas I Pfau/DeYoung Decl. at n.102.

pre-order inquiries.⁴⁴⁰ Correspondingly, commenters have not argued that SWBT fails to provide timely responses to pre-ordering inquiries.

164. We further conclude that SWBT's interfaces are available in a stable and consistent manner, which affords an efficient competitor a meaningful opportunity to compete. SWBT reports the percentage of time its DataGate interface is available based on its "scheduled available hours."⁴⁴¹ SWBT has satisfied the Texas Commission's benchmark of 99.5% availability for five of the last six months.⁴⁴² The one exception was March 2000, where the DataGate interface was available 98.5% of the time. While interface outages may substantially inconvenience competing carriers and harm competition, we conclude that the March performance appears to be an isolated incident, when viewed against the backdrop of performance that consistently satisfies the Texas Commission's benchmark. Moreover, we note that commenters generally do not assert that SWBT's DataGate interface is unreliable.⁴⁴³

165. *Access to Loop Qualification Information.* We find that SWBT demonstrates that it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies.⁴⁴⁴ As discussed above, for the purposes of this proceeding, we evaluate whether SWBT is in compliance with the regulatory requirements in place on the date of its section 271 filing, and do not consider whether SWBT complies with the new loop qualification requirements that took effect on May 18, 2000.⁴⁴⁵ In this regard, as in the *Bell Atlantic New York Order*,⁴⁴⁶ we will consider whether SWBT provides

⁴⁴⁰ See SWBT Aggregated Performance Data, Measurement No. 1 ("Average Response Time for OSS Pre-Order"), and Measurement No. 2 ("Response Received Within 'X' Seconds") at 271-No. 1a to 2d. SWBT has satisfied the benchmarks for average response time, as well as percent within "X" seconds, for each of seven DataGate pre-order functions for each of the last six months.

⁴⁴¹ See SWBT Texas I Dysart Aff. at para. 111. We note, however, that SWBT does not specify what the hours of availability for its DataGate interface.

⁴⁴² See SWBT Aggregated Performance Data, Measurement No. 4 ("OSS Interface Availability – DataGate") at 271-No. 4a (100%, 99.7%, 100%, 100%, 98.5% and 99.7% for November 1999 to April 2000, respectively).

⁴⁴³ AT&T notes that SWBT's performance data would not reflect outages or unavailability of an *underlying database*, from which DataGate must obtain data. AT&T indicates that such an event occurred in November 1999, and effectively made it impossible for it to perform pre-ordering functions during the period of outage. See AT&T Texas I Dalton/DeYoung Decl. at paras. 106-108. We do not find that there is evidence to suggest that the problem of subtending database outage is systemic, however, and conclude that SWBT's evidence adequately demonstrates the reliability of its DataGate interface.

⁴⁴⁴ As we have explained in the prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4021, para. 140.

⁴⁴⁵ See section III.B, *supra*; see also *UNE Remand Order*, 15 FCC Rcd at 3926, para. 527.

⁴⁴⁶ See *Bell Atlantic New York*, 15 FCC Rcd at 4021-22, paras. 140-141.

requesting carriers equivalent access to the loop qualification functionality that it provides to itself.

166. SWBT provides three avenues for competing carriers to obtain loop make-up information. First, SWBT provides carriers real-time electronic access, through the Verigate and DataGate interfaces, to its database containing “theoretical” loop make-up information that is based upon the standard loop design for the longest loop in the end user’s distribution area.⁴⁴⁷ Second, for actual loop make-up information stored in SWBT’s electronic systems, SWBT enables carriers to submit requests via fax or email. SWBT explains that its retail representatives request loop qualification information from SWBT operations via email as well.⁴⁴⁸ Third, to access loop make-up information that is not stored by SWBT in an electronic format, competing LECs may request a manual search of engineering records.⁴⁴⁹ Requests for a manual look-up are submitted via Verigate or DataGate directly to SWBT’s engineering operations, and no longer involve SWBT’s local service center (“LSC”) as an intermediary. Once the manual search has been completed, the information will be updated in the mechanized loop qualification system, and the competing LEC will have the option of receiving the loop qualification results via email at this point, or may instead query the mechanized loop qualification system using Verigate or DataGate.⁴⁵⁰

167. We find that these mechanized and manual processes provide competing carriers access to loop qualification functionality in substantially the same time an manner as SWBT’s retail operations. Specifically, where loop make-up information resides in an electronic format within SWBT’s systems and is accessible by SWBT’s retail operations, SWBT enables competing LECs to request access to this information via the same channels as SWBT’s retail operations.⁴⁵¹ Where this information resides in engineering records, and is accessible by SWBT’s retail operations only via a manual look-up, competing LECs also may request a manual look-up. Moreover, SWBT’s performance data reflect that it provides responses to competing LEC requests for loop information in substantially the same time as for itself. In three of the last four months, SWBT has returned competing LEC loop qualification requests, on average, in less time than it takes to respond to requests from its retail operations.⁴⁵²

⁴⁴⁷ See SWBT Texas II Brown Aff. at para. 18 and Att. D (SWBT Accessible Letter No. CLECSS00-043); see also SWBT Texas II Cruz Aff. at para. 33 and Att. E at 1 (SWBT Accessible Letter No. CLEC00-062).

⁴⁴⁸ See SWBT Texas I Chapman Aff. at para. 26. We recognize that, as of April 29, 2000, SWBT also began providing *real-time* access via Verigate and DataGate/EDI to this actual loop make-up information. See SWBT Texas II Reply at 17; SWBT Texas II Cruz Aff. at para. 38.

⁴⁴⁹ See *id.* at para. 37.

⁴⁵⁰ See *id.*

⁴⁵¹ See SWBT Texas II Cruz Aff. at para. 33; SWBT Texas I Chapman Aff. at para. 26.

⁴⁵² SWBT reports that it returned competitive LEC requests for loop make-up information, on average, in 4.34, 2.63 and 1.72 days in February, March and April, 2000, compared to 3.99, 5.39 and 2.15 days for the same (continued....)

168. We applaud the Texas Commission's ongoing efforts in resolving issues emerging from the Covad/Rhythms DSL arbitration in Texas, including issues relating to access to information used by carriers at the pre-ordering stage. Specifically, we note that the Texas Commission is overseeing implementation of the internal "firewall" that SWBT was required to establish under the Covad/Rhythms Arbitration Award as a means to ensure nondiscriminatory access to competitively significant information.⁴⁵³ SWBT has submitted several versions of its "firewall" plan and the Texas Commission has twice instructed SWBT to modify these plans.⁴⁵⁴ Most recently, on June 23, 2000, the Texas Commission required SWBT to make two minor adjustments to its latest "firewall" plan, which the Commission had previously approved on May 8, 2000.⁴⁵⁵ We disagree with Covad's suggestion that full compliance with this aspect of the Covad/Rhythms Arbitration Award is a prerequisite of satisfying the competitive checklist.⁴⁵⁶ Indeed, in requiring SWBT to make modifications in its June 23, 2000 Order, the Texas Commission did not indicate that SWBT fails to provide competing carriers equivalent access to the loop qualification functionality it provides to itself. Rather, this modification indicates that the Texas Commission is still in the process of ensuring that SWBT "fully satisf[ies] the concerns" identified in the Covad/Rhythms Arbitration Award.⁴⁵⁷ As stated above, the evidence before us in the instant proceeding demonstrates that SWBT provides nondiscriminatory access to its OSS, in compliance with the statute and our rules.

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requests submitted by its retail operations. See SWBT Aggregated Performance Data, Measurement No. 57 ("Average Response Time for Loop Make-Up Information") at 271-No. 57.

⁴⁵³ See SWBT Texas II Reply at 18; Arbitration Award, Petitions of Rhythms Links, Inc. and Dieca Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company, Docket Nos. 20226 and 20272 (Nov. 30, 1999) ("Covad/Rhythms Arbitration Award"); Texas Commission January 27, 2000 Open Meeting Transcript at 63-67 (Jan. 27 Open Meeting Tr.) (affirming November 30, 1999 decision of Texas Commission arbitrator).

⁴⁵⁴ See SWBT May 11 *Ex Parte* Letter at Att. 2; Covad June 23 *Ex Parte* Letter at 2-4.

⁴⁵⁵ See Covad June 23 *Ex Parte* Letter at Att. A (*Implementation of Docket Numbers 20226 and 20272*, Order No. 13, Docket No. 22165 (Texas PUC, June 23, 2000) ("*June 23 Arbitration Order*"). In granting reconsideration of its May 8, 2000 order approving SWBT's firewall plan, the Texas Commission arbitrators explained that the existing firewall plan "help[s] to ensure competitive neutrality within SBC," but nonetheless ordered SWBT to make two minor adjustments: (i) to "explicitly state the restriction of assigning employees to both wholesale and retail responsibilities"; and (ii) to "explicitly state that the term 'Competitor Information' . . . includes any information received from a CLEC, including CLEC customer information, that if provided to SWBT's retail operators or affiliates, would place SWBT's retail operations or affiliates at a competitive advantage." *Id.* at 3-4.

⁴⁵⁶ See Covad June 23 *Ex Parte* Letter at 3.

⁴⁵⁷ See *June 23 Arbitration Order* at 2; see also Covad/Rhythms Arbitration Award at 70 (explaining that the firewall plan would provide "further assurance that competitively beneficial information is not being passed from SWBT's network provisioning operations to its retail service operations.").

f. Ordering

169. In this section we address SWBTs' ability to provide access to its OSS ordering functions to competing carriers. We conclude that, based on all the evidence in the record, SWBT demonstrates that it provides nondiscriminatory access to its ordering systems in accordance with the requirements of section 271.

(i) Discussion

170. We find that SWBT demonstrates, with performance data and other evidence, that it provides nondiscriminatory access to the key aspects of a BOC's ordering systems, as identified in our prior section 271 orders.⁴⁵⁸ Specifically, SWBT has shown that: (i) it is able to return timely order confirmation and rejection notices; (ii) its systems flow-through a high percentage of orders without manual handling, at a rate that is comparable overall to the flow-through rate for its retail services; (iii) the mechanized orders that do not flow-through are handled in a reasonably prompt and accurate manner; (iv) the mechanized and manual components of its ordering systems are scalable to accommodate increasing demand; (v) it provides jeopardy notices in a nondiscriminatory manner; and (vi) it provides timely order confirmation notices.⁴⁵⁹ Because most of these ordering functions lack a direct retail analogue, our standard of review is to determine whether SWBT's systems and performance allow an efficient carrier a meaningful opportunity to compete. For those functions of the ordering systems for which the Texas Commission has identified a retail analogue, we shall assess whether SWBT provides competing carriers with access to its OSS systems in substantially the same time and manner as it provides to its retail operations.

(a) Order Confirmation Notices

171. We conclude that SWBT is providing timely order confirmation to competing LECs in Texas. The Commission, in prior section 271 orders, has held that the functionality encompassed by order confirmation notices is a very important element of the ordering process, and that data demonstrating that they are provided in a timely manner is a key consideration for assessing whether competitors are allowed a meaningful opportunity to compete.⁴⁶⁰ We find that SWBT is providing timely order confirmation notices to competing LECs in Texas that use EDI and LEX for resale and UNE-P ordering. For both types of orders, SWBT has consistently met the Texas Commission's standard of returning 95% of confirmation notices within five hours of

⁴⁵⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4035, para. 163; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20677, para. 117.

⁴⁵⁹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-4039, paras. 163-166.

⁴⁶⁰ See *id.* at paras. 163-164 (discussing order confirmation notices); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20680, para. 120. In this instance, as in the *Bell Atlantic New York Order*, we are not presented with a retail analogue for order confirmation notices, and thus assess whether the process and performance offered by the applicant enables an efficient competitor a meaningful opportunity to compete.

submission of the order (and within 24 hours for complex business orders).⁴⁶¹ These data indicate that, in only one month, April 2000, did SWBT's performance for EDI orders drop below the benchmark to 94.1 percent.⁴⁶² Because this performance is barely below the benchmark, and because SWBT had satisfied the standard for the preceding seven straight months, we conclude that SWBT's performance in this area satisfies the nondiscrimination standard and provides competitors with a meaningful opportunity to compete.⁴⁶³

172. We also conclude that SWBT's performance with respect to order confirmation notice timeliness for unbundled loop orders submitted electronically meets the nondiscrimination requirement. SWBT is required to report its performance in this area separately for orders submitted via EDI and those submitted via LEX, and also is required to divide loops into those ordered with a ported number, and those without, and a separate category for xDSL-capable loops. SWBT's performance with respect to stand-alone loops has been consistently above the 95 percent benchmark for the last five months, for both the EDI and LEX interfaces.⁴⁶⁴ Moreover, the average time to return confirmation notices for stand-alone loop orders generally has been under two hours for these months.⁴⁶⁵ The percentage of confirmation notices returned within five

⁴⁶¹ SWBT is required to return 95% of order confirmations (both manually- and mechanically-processed) within 5 hours of order submission. *See* SWBT Texas I Dysart Aff., Att. A at A-13. For the past five months (December 1999 to April 2000), SWBT has returned over 95% of order confirmation notices within five hours for "Residence and Simple Business" orders submitted via both LEX and EDI, with only one exception. *See* SWBT Aggregated Performance Data, Measurement No. 5 ("Percent FOCs Received Within 'X' Hours – Mechanized") (Residence and Simple Business) at 271-No. 5a and 5c. While "Residence and Simple Business" orders include both UNE-P and resale POTS orders, SWBT has shown that the vast majority of these orders submitted via EDI are for UNE-P. *See* SWBT Texas I Ham Aff., Att. X-2; *see also* SWBT Feb. 14 *Ex Parte* Letter, Att. 2 (showing that, from September to December 1999, order confirmation timeliness for UNE-P orders ranged from 96.48 to 99.13 percent). As in New York, complex business orders and loop orders over a certain size (10 lines in New York and 50 lines in Texas) are given a longer processing standard; these orders are relatively low in volume and are not addressed separately here.

⁴⁶² SWBT Aggregated Performance Data, Measurement No. 5, at 271-No. 5c.

⁴⁶³ The Texas Commission also concluded that SWBT provides timely order confirmation notices. *See* Texas Commission Texas I Comments at 39-40. Although the Department of Justice expressed concern in the Texas I proceeding that SWBT's late-1999 performance on order completion notices appeared to be deteriorating as volumes increased, *see* Department of Justice Texas I Evaluation at 38-39, we note that SWBT's performance has been satisfactory in this calendar year, notwithstanding considerably heightened order volumes.

⁴⁶⁴ For December 1999 to April 2000, SWBT returned 85.8, 96.2, 98.4, 98.1 and 98.8 percent of confirmation notices on orders for stand-alone loops submitted via EDI within 5 hours, with corresponding LEX performance at 97.5, 97.5, 92.9, 98.1 and 97.6 hours. *See* SWBT Aggregated Performance Data, Measurement No. 5 ("Percent FOCs Received Within 'X' Hours – Mechanized") (UNE Loop 1-49) at 271-No. 5b and 5d. Although SWBT's performance in this area was slightly below the benchmark for EDI in December 1999 and for LEX in February 2000, we note that it surpassed the benchmark for four of the other five months for both interfaces, and thus conclude that the single shortfalls do not appear to reflect a systemic problem.

⁴⁶⁵ For the months of December 1999 to April 2000, SWBT returned order confirmation notices for unbundled loop orders in an average of 0.9, 1.2, 2.0, 1.4 and 1.4 hours for LEX, and 2.3, 1.6, 1.1, 1.2 and 1.3 hours for orders submitted via EDI. *See* SWBT Aggregated Performance Data, Measurement No. 6 ("Average Time to Return FOC (Hours) – Mechanized") (UNE Loop 1-50) (LEX) at 271-No. 6b, and (EDI) at 271-No. 6d. SWBT's performance (continued....)

hours for orders of loops with a ported number also has been generally satisfactory, and has consistently been near or above the 95 percent benchmark during the last three months.⁴⁶⁶ Finally, as discussed in more detail below in part V.D, we conclude that SWBT provides satisfactory performance for xDSL capable loop orders, returning 96 percent of order confirmation notices within 24 hours for orders submitted via EDI, and 94 percent within 24 hours for LEX orders.⁴⁶⁷

173. Furthermore, we do not find that SWBT's order confirmation process itself is flawed, as urged by several commenters. ALTS/CLEC Coalition, for example, argues that SWBT sends an unacceptably high volume of jeopardies after sending an order confirmation notice, and that this is evidence that SWBT's systems send order confirmation notices prematurely, before fully checking on the availability of facilities and due dates.⁴⁶⁸ We conclude that there is insufficient evidence in the record to indicate that SWBT's process is discriminatory. Moreover, SWBT explains that it uses the same systems to check facilities availability for retail orders as it does for competing carriers' orders.⁴⁶⁹ Accordingly, we conclude that SWBT's system for returning order confirmation notices allows competing carriers a meaningful opportunity to compete.

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for these months with respect to order confirmation notices for UNE-P and resale orders averaged 1.2, 1.0, 1.0, 0.6 and 0.6 hours for LEX orders, and 0.7, 0.7, 0.8, 5.6 and 1.4 hours for EDI orders. See SWBT Aggregated Performance Data, Measurement No. 6 ("Average Time to Return FOC (Hours) – Mechanized") (Residence and Simple Business) (LEX) at 271-No. 6a, and (EDI) at 271-No. 6c. We note that, considering the loop and UNE-P orders together, this performance is several hours faster than the average performance reported by Bell Atlantic (8.48, 8.84, 6.16 and 6.46 hours for loops and UNE-P combined in June to September, 1999). *Bell Atlantic New York Order*, 15 FCC Rcd at 4037, para. 164, n.506. In the *Bell Atlantic New York Order*, we concluded that "Bell Atlantic's ability to process nearly all competing carrier UNE orders in under 24 hours, and a majority of such orders within two hours of submission, provides an efficient competing carrier with a meaningful opportunity to compete." *Id.* at para. 164. We caution that the comparison of performance data between BOCs can be misleading, because the measurement methodologies, statistical approaches, definitions, and exclusions may vary in significant ways. In this instance, however, we determine that the comparison is a meaningful one.

⁴⁶⁶ For the months of December 1999 to April 2000, SWBT satisfied the five-hour standard for 77.7, 92.9, 95.0, 95.0 and 94.1 percent of loop with ported number orders submitted via LEX, and 93.2, 98.2, 97.1, 96.4 and 96.1 percent for EDI orders. See SWBT Aggregated Performance Data, Measurement No. 94 ("Percent FOCs Received Within 'X' Hours) (Residence and Simple Business With Loop 1-19) at 271-No. 94a and 94c. In the *Texas I Proceeding*, SWBT explained that its sub-standard performance at the end of 1999, for loops with a ported number, was attributable to inadequate training and staffing, and would be cured by retraining and reallocating its workforce. See SWBT Texas I Dysart Aff. at paras. 595, 598.

⁴⁶⁷ See SWBT Aggregate Performance Data, Measurement No. 5.1 ("Percent Firm Order Confirmations Relating to xDSL-capable Loops Returned within 'X' Hours") at 271-No. 5.1a.

⁴⁶⁸ ALTS/CLEC Coalition Texas I Reply at 17.

⁴⁶⁹ See SWBT Texas I Ham Aff. at para. 151.

(b) Reject Notices

174. We conclude that SWBT provides competing carriers with timely order rejection notices in a manner that allows competing LECs a reasonable opportunity to compete. SWBT provides carriers with two types of rejects: mechanically-generated reject notices, which are returned over the same interface used to submit the order, and manually-generated rejects, which are returned via a separate graphical user interface.⁴⁷⁰ SWBT's performance data demonstrates that it consistently has satisfied the Texas Commission's one-hour standard for timely return of mechanically-generated reject notices.⁴⁷¹ Prompt return of these reject notices by SWBT minimizes delays associated with order rejections, and enables competing carriers to correct and resubmit these orders in a timely manner.

175. We also conclude that SWBT's performance with respect to manually-generated rejects satisfies the nondiscrimination standard. SWBT has returned manually-generated rejects, on average, in under eight hours for February, March, and April 2000, and its performance has shown improvement during this period even as overall order volumes have increased.⁴⁷² We recognize that SWBT has satisfied the Texas Commission's strict five hour standard in this area only once in the last three months. We nonetheless conclude that SWBT's ability to return manually-generated rejects in an average of five to eight hours provides efficient competing carriers a meaningful opportunity to compete, particularly in light of the fact that most rejects are mechanically-generated and are returned in under an hour.⁴⁷³ Finally, we agree with SWBT that the long average processing time reported in December 1999 and January 2000 do not accurately

⁴⁷⁰ See SWBT Ham Texas I Decl. at para. 147. Errors detected by mechanized edits automatically result in rejects that are returned electronically via LEX or EDI, while errors detected during manual processing result in manually-generated rejects returned electronically via the "LASR GUI" interface. *Id.*

⁴⁷¹ For the months of December 1999 to April 2000, SWBT reports that the average duration between receiving an order and returning a mechanically-generated reject notice ranged from 20 to 28 minutes (0.34 to 0.47 hours) for orders submitted via EDI – with one exception, March 2000, where the mean time to return was 6.03 hours. See SWBT Aggregated Performance Data, Measurement No. 11 ("Mean Time to Return Mechanized Rejects") at 271-No. 10-11. SWBT explains that the aberrant performance in March 2000 related only to AT&T's orders and suggests that the ultimate root cause of the delays was a programming change on AT&T's side of the interface. See SWBT Texas II Ham Reply Aff. at para. 104. AT&T has not contested SWBT's explanation, and thus we have no reason to conclude that this anomalous performance in March 2000 reflects discrimination against AT&T or a systemic problem with SWBT's reject notification process.

⁴⁷² For the months of December 1999 to April 2000, SWBT reports that it returned manually-generated rejects in an average of 35.65, 28.47, 7.55, 6.41 and 4.93 hours, respectively. See SWBT Aggregated Performance Data, Measurement No. 10.1 ("Mean Time to Return Manual Rejects Received Electronically Via LEX/EDI"); see also SWBT Ham 2 Reply Aff. at para. 36.

⁴⁷³ We thus disagree with AT&T's contention that SWBT's failure to satisfy the Texas Commission's strict five-hour standard proves that SWBT's performance is unsatisfactory. See AT&T Texas II Chambers/DeYoung Decl. at paras. 101-102. We further note that, while the Texas Commission did not comment on SWBT's improved reject processing times in this proceeding, it concluded that SWBT's reject processing performance was satisfactory in its *Texas I* Comments. See Texas Commission Texas I Comments at 25.

reflect average performance for live orders submitted in those months, and had little or no competitive impact.⁴⁷⁴

176. We disagree with several commenters who suggest that SWBT's reject rate indicates that it fails to provide nondiscriminatory access to its ordering systems.⁴⁷⁵ We note that the Texas Commission did not establish a reject rate standard, and neither has this Commission previously engaged in a parity or direct benchmark analysis of a carrier's overall reject rate. We have, however, indicated that we will not hold a BOC accountable for rejects that occur for reasons within a competing LEC's control.⁴⁷⁶ As in the *Bell Atlantic New York Order*, we note that order rejections in this instance vary widely by individual carrier, from 10.8 percent to higher than 60 percent.⁴⁷⁷ We find that such a wide variation in the individual reject rates strongly implies that the care a competing carrier takes in submitting its orders makes a significant difference in the rate at which its orders are rejected. In light of this variation, we conclude that the overall reject rates faced by competing carriers in this instance on orders submitting via the EDI interface do not appear to indicate flaws in SWBT's OSS systems or processes.⁴⁷⁸

177. In reaching the foregoing conclusion, we note that some commenters argue that address-related rejects delay orders and impose additional costs on competing carriers, and are largely attributable to SWBT. Specifically, competing carriers argue that these unavoidable address-related rejects can be attributed to two causes: parsing/integration difficulties, and mismatches between SWBT's two primary address databases – PREMIS and CRIS.⁴⁷⁹ As noted above, SWBT denies that any address-related rejects are related to parsing/integration difficulties.

⁴⁷⁴ SWBT provided a detailed analysis of reject notices provided during these months, demonstrating that the long processing times were largely attributable to a handful of extremely tardy reject notices which related to "duplicate" orders that had already been filled months earlier. *See* SWBT Texas II Ham Aff. at para. 36; SWBT Texas I Conway Aff. at paras. 27-28; SWBT March 31 *Ex Parte* Letter; *see also* AT&T Texas II Chambers DeYoung Decl. at para. 104.

⁴⁷⁵ *See* AT&T Texas II Chambers/DeYoung Decl. at paras. 85 and 98 (arguing that the combined rejection rate of 30% for LEX and EDI orders in February 2000 is "unreasonable by any standard," and that even "a rejection rate of approximately 20 percent is . . . excessive").

⁴⁷⁶ *See Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20673-74, paras. 111-112.

⁴⁷⁷ *See* SWBT June 12 *Ex Parte* Letter, Att. 1; *see also* Texas II Ham Reply Aff. at Att. D (listing carrier-specific reject rates).

⁴⁷⁸ *See* SWBT Aggregated Performance Data, Measurement No. 9 ("Percent Rejects") at 271-No. 9a. We recognize that a small portion of the recent decline in overall and carrier-specific reject rates may be attributable to SWBT's conversion, in mid-January, of certain "rejects" into "jeopardies." *See* AT&T Texas II Chambers/DeYoung Decl. at para. 93. We agree with the Texas Commission, however, that the effect of this change on overall reject rates appears to be minimal. *See* Texas Commission Texas II Comments at 9; SWBT Texas II Noland/Dysart Reply Aff. at paras. 73-76.

⁴⁷⁹ *See* AT&T Texas II Chambers/DeYoung Decl. at paras. 48 and 58; WorldCom Texas II McMillon/Sivori/Lichtenberg Decl. at paras. 17 and 41-48.

SWBT does not dispute, however, that some address-related rejects may be due to discrepancies between PREMIS and CRIS.⁴⁸⁰ Even assuming that some of the responsibility for address-related rejects may be attributed to SWBT, we do not find that competing carriers have been deprived of a meaningful opportunity to compete. Indeed, evidence in the record indicates that fewer than five percent of carriers' orders are rejected for address-related reasons, which suggests that, despite any address-related rejects, carriers have been largely successful in submitting their orders. In view of our finding that reject rates correlate to the care a carrier takes in submitting its orders, and given that the low level of address-related rejects in Texas does not deprive an efficient competitor of a meaningful opportunity to compete, we decline to further address carriers' numerous and specific claims regarding the nature and scope of address-related rejects in SWBT's systems.

178. We recognize that SWBT and several commenters agree that an order process enhancement implemented by SWBT in May 2000 – the “TN Ordering” change – will reduce the number of rejects.⁴⁸¹ Specifically, this change obviates the need for carriers to list an end user's address on orders involving the migration of an end-user from retail or resale to UNE-P service. This provides us with additional assurances that competing LECs will be able to further reduce their reject rates and avoid the potentially time-consuming task of resolving address-related rejects. We note that this enhancement should be particularly beneficial to carriers such as WorldCom who plan to increase volumes considerably in offering service to the mass market.⁴⁸² Although several carriers have expressed concern that the “TN Ordering” change will shift the burden of manually resolving database mismatches from competing LECs to SWBT (thus creating the potential for delays, if SWBT is unable to handle the workload), the evidence in the record does not indicate that the increased burden on SWBT will be substantial.⁴⁸³

(c) Flow-through Rate

179. In prior section 271 orders, the Commission used order “flow-through”⁴⁸⁴ as a potential indicator of a wide range of problems that we consider in determining whether a BOC

⁴⁸⁰ See SWBT Texas II Ham Reply Aff. at para. 45 (referring to the “PREMIS/CRIS mismatch problem” and indicating that this “problem” may be responsible for certain address-related rejects).

⁴⁸¹ See SWBT Texas II Ham Aff. at paras. 24-32; AT&T Texas II Reply at paras. 73-74; WorldCom Texas II McMillon/Sivori/Lichtenberg Decl. at para. 40.

⁴⁸² We thus believe that WorldCom's concerns about processing a high level of address-related rejects will not likely be realized. See WorldCom Texas II Comments at 3; WorldCom Texas II McMillon/Sivori/Lichtenberg Reply Decl. at para. 7.

⁴⁸³ SWBT's data indicate that fewer than five percent of all carriers' orders submitted via EDI are rejected for address-related reasons, which would include orders rejected due to database mismatches. See SWBT Texas II Ham Reply Aff. at Att. H.

⁴⁸⁴ A competing carrier's orders “flow-through” if they are submitted electronically and pass through SWBT's ordering OSS into its back office systems without manual intervention. See SWBT Texas I Ham Aff. at para. 125; *Bell Atlantic New York Order*, 15 FCC Rcd at 4033, n. 488.

provides nondiscriminatory access to its OSS.⁴⁸⁵ We have not considered flow-through rates as the sole indicia of parity, however, and thus have not limited our analysis of a BOC's ordering processes to a review of its flow-through performance data. Instead, we have held that factors such as a BOC's overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems are relevant and probative for analyzing a BOC's ability to provide access to its ordering functions in a nondiscriminatory manner.⁴⁸⁶ Moreover, we have consistently stated that a BOC is not accountable for orders that are rejected or fail to flow through due to competing carriers' mistakes.⁴⁸⁷

180. We conclude that the flow-through rate reported by SWBT indicates that SWBT's systems are capable of achieving high overall levels of order flow-through.⁴⁸⁸ Specifically, SWBT reports a higher than 96 percent flow-through rate for orders submitted via EDI.⁴⁸⁹ In other words, over 96 percent of EDI orders that are designed to flow through, and that are not rejected, are processed through the ordering systems without manual intervention. Even when considering all orders (and not just orders designed to flow-through), SWBT demonstrates that a high percentage of its orders are processed without manual intervention.⁴⁹⁰

181. We disagree with commenters who argue that SWBT's performance with respect

⁴⁸⁵ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4034, para. 162 ("Flow-through rates . . . are not so much an end in themselves, but rather are a tool used to indicate a wide range of possible deficiencies in a BOC's OSS.").

⁴⁸⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4034-4035, paras. 161-163.

⁴⁸⁷ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20673-76, paras. 111-115.

⁴⁸⁸ We note that SWBT's flow-through rate reflects only those orders that are not rejected, and thus does not alter our findings regarding reject rates.

⁴⁸⁹ See SWBT Aggregated Performance Data, Measurement No. 13 ("Order Process % Flow Through") at 271-No. 13. We place greater weight on the flow-through capability of SWBT's EDI interface than we do on the less-sophisticated LEX graphical user interface because EDI is an industry-standard application-to-application interface, and thus disagree with AT&T's suggestion that SWBT should not be allowed to rely primarily on EDI to demonstrate that it provides nondiscriminatory access to its OSS ordering functions. See *AT&T Texas II Chambers/DeYoung Decl.* at paras. 108-109. In any case, we note that SWBT's flow through rate for orders submitted via the LEX interface has ranged from 87.3 to 92.5 percent for December 1999 to April 2000, and achieved a better-than-parity rate for the past two months. SWBT Aggregated Performance Data, Measurement No. 13 ("Order Process % Flow Through") at 271-No.13.

⁴⁹⁰ Several commenters suggest that SWBT's Measurement 13 overstates its actual flow-through rate and that the measurement should be viewed with respect to *all orders* and not just *orders designed to flow through*. See *AT&T Texas I Dalton/DeYoung Decl.* at paras. 154-155. Even under such a "total" flow-through approach, however, we note that SWBT's OSS flow through a high percentage of orders submitted via EDI: for the months of August to December 1999, for example, an average of 84 to 97 percent of all service orders submitted via EDI were able to flow through the ordering systems without manual intervention. *SWBT Texas I Ham Aff.*, Att. X; *SWBT Texas I Ham Reply Aff.*, Att. F.

to flowing through UNE loop orders is inadequate.⁴⁹¹ We recognize that additional data submitted by SWBT confirms that UNE loop orders flow through at a considerably lower rate than UNE-P or resale orders submitted via EDI. As noted above, however, the Texas Commission established a method of comparing retail and competing LEC flow-through rates in the aggregate (combining all resale and UNE orders), and SWBT has satisfied this level of performance. While we may conclude that failure to provide parity or benchmark performance for a single sub-category of service constitutes a failure to provide nondiscriminatory access to OSS, we do not find this to be the case here with respect to flow-through. As we have stated in prior section 271 orders, a BOC's ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems is more relevant and probative for analyzing the BOC's ability to provide access to its ordering functions than a simple flow-through analysis. Indeed, as explained in this section, the record before us supports a finding that SWBT is able to perform these key ordering functions in a timely and accurate manner. We thus find that the relatively low flow-through rate for UNE-loop orders is not, in itself, an indication that competing carriers are denied nondiscriminatory access to SWBT's ordering systems and processes.

182. Several competing LECs assert that manual order processing by SWBT, including the manual creation of service orders, can inject errors into the process which causes delays and may lead to provisioning errors.⁴⁹² Although SWBT does not provide performance data regarding the accuracy of orders created and handled manually by SWBT,⁴⁹³ evidence in the record indicates that SWBT has procedures in place to ensure the accuracy of these manual processes.⁴⁹⁴ In addition, Telcordia concluded that SWBT employs a "comprehensive approach for the detection and analysis of manual data entry errors, with a goal of reducing manual data entry errors."⁴⁹⁵ We also note that the performance data concerning trouble reports within 10 or 30 days of installation suggests that SWBT is provisioning orders accurately.⁴⁹⁶ Thus, while some commenters allege generally that orders are provisioned inaccurately, the evidence does not support a conclusion that such inaccuracies are attributable to processing errors by SWBT personnel. Moreover, we

⁴⁹¹ See AT&T Texas I Comments at 67.

⁴⁹² See CLEC Coalition Texas I Tidwell/Kettler Aff. at para. 22.

⁴⁹³ SWBT's PM 12 ("Mechanized Provisioning Accuracy") *excludes* mechanized orders that were entered manually into SWBT's ordering systems, and no other measurement picks up these orders that did not flow through. See SWBT Texas I Application, Appendix C, Tab 1815 at 54. In any case, we note that SWBT's performance regarding fully-mechanized orders has generally been better than parity. See SWBT Aggregated Performance Data, Measurement No. 12 ("Mechanized Provisioning Accuracy") at 271-No. 12. While SWBT's performance slipped noticeably in February and March 2000, SWBT has provided better than parity performance on this metric for all other months since August 1999, and achieved 99 percent accuracy in April 2000. *Id.*

⁴⁹⁴ See SWBT Texas I Conway Reply Aff. at paras. 18-19 (explaining internal processes that monitor individual employees' processing errors).

⁴⁹⁵ Telcordia Final Report, Sec. 4.5.4.5.

⁴⁹⁶ See section V.B.1.g., *infra*.

recognize that SWBT demonstrates a high overall flow-through rate, which necessarily means that relatively few mechanically-submitted orders will fall out for manual processing. Where an applicant is unable to demonstrate a high flow-through rate, and thus manual processing of mechanized orders is more common, we may require more extensive data with respect to this issue.

183. Finally, we disagree with commenters' contentions that, notwithstanding the relatively high flow-through rates and low overall level of manual processing, SWBT's OSS will be unable to accommodate reasonably foreseeable increases in commercial order volumes. We note that Telcordia tested the capacity of SWBT's OSS systems in July 1999 and determined that SWBT could handle projected first quarter 2000 volumes.⁴⁹⁷ This conclusion is generally supported by SWBT's performance data, which indicates that SWBT has maintained on-time performance for key functions notwithstanding steadily-increasing daily order volumes.⁴⁹⁸ We recognize, as AT&T points out, that SWBT employed a policy in January and February 2000 of manually processing only 500 of AT&T's orders per hour.⁴⁹⁹ We reject AT&T's assertion, however, that this policy indicates that SWBT is unable to handle reasonably foreseeable commercial order volumes. Indeed, SWBT explains that it instituted this policy in direct response to actions taken by AT&T. Specifically, for several days in January and February 2000, AT&T altered its normal practice of submitting orders on a real time basis, and instead saved its orders and submitted them all at once – thus sending more than ten times its order volume in a single hour.⁵⁰⁰ SWBT states that, although AT&T's practice did not cause its systems to fail, its ability to process orders "efficient[ly]" was impeded.⁵⁰¹ There is no evidence in the record indicating that SWBT's policy has impeded any carrier's ability to compete. Moreover, we note that AT&T no longer uses the ordering practice that triggered SWBT's policy.⁵⁰² We thus find that SWBT's policy for processing AT&T's orders, under these circumstances and in light of these findings, was a reasonable method of ensuring that its ability to provide nondiscriminatory access to all

⁴⁹⁷ Telcordia concluded that SWBT's major OSS systems had the capacity at the time of the test to process projected first quarter 2000 volumes, or 220,000 orders per month. Telcordia Final Report at 105-131. As part of this test, Telcordia also concluded that SWBT's systems could handle a "peak" volume of 2,000 orders per hour. Telcordia Final Report at 130.

⁴⁹⁸ See generally, SWBT Aggregated Performance Data, Measurement No. 13 ("Flow Through") at 271-No. 13 (indicating that competing LEC orders submitted via EDI and LEX more than doubled between January and April 2000); see also, e.g., *id.* at 271-No. 5c and 5d (timely order confirmation notices), 271-No. 10.1, 11.1 (improving performance for returning manual reject notices).

⁴⁹⁹ See AT&T Texas II Chambers/DeYoung Decl. at paras. 146-151; AT&T Texas I Dalton/DeYoung Reply Decl. at paras. 52-53. SWBT explains that it no longer applies this limitation to AT&T's orders. See SWBT Texas II Ham Reply Aff. at para. 94.

⁵⁰⁰ According to AT&T, it decided to submit all of its orders in once- or twice-daily batches to allow for a final internal due date "check point" that "ensure[s] that its outbound EDI files contained valid due dates." AT&T Texas I Dalton/DeYoung Reply Decl. at para. 53 and Att. 25; see also SWBT Texas I Ham Reply Aff. at para. 121.

⁵⁰¹ *Id.* at paras. 117-118.

⁵⁰² SWBT Texas II Ham Reply Aff. at paras. 93-94.

competing carriers is not impaired, and is not a basis for finding that SWBT's OSS is not scalable.

(d) Jeopardy Notices

184. We conclude that SWBT provides "jeopardy" notices (*i.e.*, notice that a service installation due date will be missed) to competing carriers in a nondiscriminatory manner. SWBT provides two types of jeopardy notifications to competing carriers. First, SWBT provides mechanized jeopardy notifications to competing carriers via LEX or EDI if it determines, after a service appointment is scheduled, that the necessary facilities are unavailable.⁵⁰³ SWBT explains that this "no facilities available" jeopardy notice is the only type of jeopardy notification it provides within its retail operations. SWBT provides a second type of electronic jeopardy notification in certain instances other than "no facilities available," and sends these notices over a web-based GUI. SWBT explains that these GUI jeopardies include, for example, instances where a dispatch technician is unable to access an end user's property or discovers that additional driving instructions are needed.⁵⁰⁴ SWBT states that there is no retail equivalent for this second type of jeopardy notice.

185. We conclude that SWBT provides "no facilities" jeopardy notices to competing carriers and to its own operations in the same time and manner. SWBT demonstrates that it utilizes the same databases and returns the notices real-time using the electronic ordering interface used to submit the order.⁵⁰⁵ Commenters do not provide any indication that these "no facilities" electronic jeopardy notices are not created and returned promptly after SWBT determines that facilities are unavailable. We also conclude that SWBT's process for returning other jeopardy notifications via GUI provides efficient carriers with a meaningful opportunity to compete.⁵⁰⁶ We disagree with carriers who suggest that flaws in SWBT's jeopardy process – specifically, that too many orders receive jeopardies and that jeopardies are sent too late in the ordering process – deny carriers a meaningful opportunity to compete.⁵⁰⁷ First, the record does not support carriers' claims that SWBT returns an unreasonably high number of jeopardy notifications. SWBT has submitted data indicating that less than five percent of all carriers' orders result in the issuance of jeopardy notices.⁵⁰⁸ While we recognize that jeopardies may lead to delays in the ordering process, the record does not indicate that competing carriers' customers feel the impact of such

⁵⁰³ See SWBT Texas I Ham Aff. at para. 151.

⁵⁰⁴ See *id.* at para. 152; SWBT Texas I Conway Reply Aff. at para. 22 and Att. B.

⁵⁰⁵ See SWBT Texas I Ham Aff. at para. 151.

⁵⁰⁶ SWBT explains that its process for returning these "GUI" jeopardies was introduced last year, and has been amended through the change management process. See *id.* at para. 152; SWBT Texas I Conway Reply Aff. at para. 22. As noted above, there is no analogous retail process for returning these "GUI" jeopardy notices.

⁵⁰⁷ See AT&T Texas II Chambers/DeYoung Decl. at para. 112; WorldCom Texas II Sivori/Lichtenberg Decl. at paras. 58-65.

⁵⁰⁸ See SWBT Texas II Noland/Dysart Reply Aff. at para. 74 and Att. N (showing that the number of jeopardies as a percentage of orders (LSRs) ranged from 3.2 to 5.2 percent in January to March 2000).

delays in Texas. Moreover, SWBT is held accountable, through its performance measurements, for instances where SWBT-caused jeopardy situations result in missed due dates. As discussed below in section V, SWBT misses fewer due dates for competing LECs than it does for its own retail operations, across almost all categories of service.

186. Carriers also contend that SWBT's "GUI" jeopardies include errors that should have been identified earlier in the ordering process, before an order confirmation notice is returned and before a due date is established.⁵⁰⁹ We note, however, that many of the "GUI" jeopardies reflect circumstances that could only be detected at the provisioning stage – such as a situation where a technician is unable to access the end user's premises, or requires additional driving directions. Moreover, we agree with SWBT that carriers may seek process changes to implement additional up-front edits, where possible, to reduce the number of jeopardies received by competing LECs.⁵¹⁰

(e) Completion Notices

187. We conclude that SWBT provides order completion notification in a nondiscriminatory manner.⁵¹¹ In this case, SWBT has not indicated whether it provides completion notification information to its retail operations. The Texas Commission did not identify a retail analogue, but instead established a benchmark against which SWBT's performance in this area is to be compared.⁵¹² We accept the Texas Commission's approach and will assess whether SWBT provides completion notification sufficient to allow an efficient competitor a meaningful opportunity to compete.⁵¹³ We have recognized that such a notice can play the crucial role of informing the carrier that it can begin billing the customer for service and addressing any maintenance problems experienced by the customer.⁵¹⁴ The timely provision of

⁵⁰⁹ See AT&T Texas II Chambers/DeYoung Decl. at para. 112; WorldCom McMillon/Sivori/Lichtenberg Reply Decl. at para. 60.

⁵¹⁰ See SWBT Texas II Ham Reply Aff. at paras. 76-78.

⁵¹¹ An order completion notice informs a competing carrier that SWBT has completed the installation of the service requested by the particular order. See OSS Appendix for additional details of the SOC process.

⁵¹² See Texas Commission Texas I Comments at 40 (benchmark for PM 7); SWBT Texas I Dysart Aff., Att. A at A-16 (benchmark for PM 7.1).

⁵¹³ In the Bell Atlantic New York Section 271 proceeding, Bell Atlantic represented that it did not provide completion notification to its own retail representatives, and the New York Commission concluded that order completion notification lacks a retail analogue. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4052, para. 187, n.591. Accordingly, rather than assess whether Bell Atlantic provided order completion notification in "substantially the same time and manner" as it provides such information to its retail operations, we assessed whether Bell Atlantic provided completion notification sufficient to allow an efficient competitor a meaningful opportunity to compete. See *id.* To avoid uncertainty on this issue in future applications, we strongly urge applicants to indicate whether they provide completion information to their retail operations.

⁵¹⁴ See *id.* at 4052, para. 187 ("Until the competing carrier receives a completion notice, the carrier does not know that the customer is in service, and cannot begin billing the customer for service or addressing any maintenance problems experienced by the customer.").

such notices thus can directly impact a competing carrier's ability to serve its customers at the same level of quality that SWBT provides to its retail customers.

188. We base our finding that SWBT provides sufficient order completion notification on SWBT's provision on "Service Order Completion" notices to competing carriers. The Texas Commission established a performance standard requiring SWBT to return 97 percent of completion notices within one day of work completion.⁵¹⁵ SWBT has satisfied this standard for each of the last three months for orders submitted via EDI.⁵¹⁶ SWBT's performance for LEX orders has not met the Texas Commission's standard for these months, but has been improving and was only 0.2 percent below the benchmark in April 2000.⁵¹⁷ Moreover, considering EDI and LEX orders together, SWBT's performance exceeded 97 percent in April 2000. Based on the level of overall performance, and the steady improvement in LEX performance, we agree with the Texas Commission that SWBT's provision of completion notices allows competing LECs a reasonable opportunity to compete.⁵¹⁸ Finally, although AT&T argues that SWBT's performance with respect to AT&T's UNE loop orders is lower than these aggregate figures, we do not find that this demonstrates a systemic problem with SWBT's OSS or that competing carriers are denied a meaningful opportunity to compete.⁵¹⁹

(f) Other Issues

189. *LIDB*. We conclude that SWBT enables carriers to update customer information contained in SWBT's Line Information Database ("LIDB") in substantially the same time and manner as its retail operations. LIDB contains end user information that is used to enable calling card and collect calls, information used for branding operator and directory assistance calls, and also customers' interLATA and intraLATA PIC.⁵²⁰ SWBT provides carriers two ways to update LIDB records: first, a carrier may use the initial LSR requesting service to trigger a LIDB update; and second, where a carrier must update LIDB records for an existing customer, updates

⁵¹⁵ See SWBT Texas I Dysart Aff., Att. 2 at 16.

⁵¹⁶ For the months of December 1999 through April 2000, SWBT returned 97.1, 98.2, 98.6, 97.2 and 98.7 percent of SOC's within one day of work completion for orders submitted via EDI. SWBT Aggregated Performance Data, Measurement No. 7.1 ("Percent Mechanized Completions Returned Within 1 Day of Work Completion") at 271-No. 7.1.

⁵¹⁷ For the months of December 1999 through April 2000, SWBT returned 87.5, 91.1, 92.9, 95.5 and 96.8 percent of SOC's within one day of work completion for orders submitted via LEX. *Id.*

⁵¹⁸ See Texas Commission Texas I Reply at 25-26.

⁵¹⁹ See AT&T Texas II Chambers/DeYoung Decl. at para. 118 (indicating that SWBT returned completion notices within one day of completing its UNE loop orders only 80 percent of the time in January and February 2000).

⁵²⁰ See SWBT Texas I Rogers Aff. at para. 59.

may be batched and submitted to SWBT via one of two electronic interfaces.⁵²¹

190. WorldCom asserts that SWBT's "LSR" process for updating carriers' LIDB records is flawed. Specifically, based on its initial experience in sending live orders, WorldCom reports that SWBT consistently fails to complete the LIDB updates in a prompt and accurate manner.⁵²² While we share the concern expressed by the Department of Justice on this issue,⁵²³ we conclude that the record does not support a finding that SWBT fails to provide a mechanism for updating LIDB records in a nondiscriminatory manner. As an initial matter, we note that there is no indication that these particular LIDB updating errors actually harmed WorldCom's customers in any way.⁵²⁴ Furthermore, SWBT explains that the delays and incorrect updates identified by WorldCom were caused by a particular type of manual error committed by SWBT personnel.⁵²⁵ SWBT states that it has resolved this problem, having retrained its LSC representatives and implemented other safeguards to protect against a recurrence of these mistakes.⁵²⁶ We rely on SWBT's assertion that it has correctly identified the root cause of this problem, and thus expect that the changes SWBT has implemented remedy the problem and essentially eliminate errors in

⁵²¹ See SWBT Texas I Rogers Reply Aff. at para. 20. SWBT implemented the process allowing competing carriers to update an end user's LIDB records through the initial order establishing service on January 15, 2000. *Id.* We conclude that this new process adequately addresses carriers' assertions that SWBT's system used to be discriminatory, because carriers may now update new customers' records promptly at the time of the order, and no longer need to submit the same customer information twice (once on the LSR and again to update LIDB). See WorldCom Texas I McMillon/Sivori Decl. at para. 83; CLEC Coalition Texas I Tidwell/Kettler Decl. at paras. 86-89.

⁵²² See WorldCom Texas II McMillon/Sivori/Lichtenberg Decl. at paras. 66-73 (reporting that it had found LIDB processing errors for 19 orders, out of a sample of 60); WorldCom Texas II McMillon/Sivori/Lichtenberg Reply Decl. at paras. 26-40 (reporting that it had found LIDB processing errors for 157 orders, out of an additional sample of 360). Most of the "errors" identified by WorldCom were instances where the customers' LIDB records contained the wrong intraLATA and/or long distance carrier ("PIC"). In some cases, WorldCom was denied access to its customers' LIDB records, indicating that SWBT had failed to promptly transfer "ownership" of the records. *Id.*

⁵²³ See Department of Justice June 13 *Ex Parte* at 18-19.

⁵²⁴ SWBT indicates that end users are not affected by this particular LIDB problem – delays in updating "PIC" information, which lists the customer's long distance carrier. Specifically, SWBT explains that the "PIC" listed in LIDB has no impact on an end user's service, and WorldCom has not disputed this contention or otherwise alleged that their customers have been impacted by incorrect "PIC" updates. See SWBT Texas II Rogers Reply Aff. at paras. 7-8; WorldCom Texas II McMillon/Sivori/Lichtenberg Reply Decl. at paras. 35-38. WorldCom has also suggested that errors in updating another LIDB field (the "Account Owner" field) *could* cause their customers to receive incorrect branding on directory assistance and operator calls, but alleges only three instances in which this actually has occurred. See WorldCom Texas II Comments at para. 72. We agree that incorrect branding can harm competing carriers, but the record does not reflect that this problem actually has affected competition in Texas.

⁵²⁵ Specifically, SWBT explains that certain service representatives "contrary to [SWBT's] processes failed to type the Toll File Guide portion (referred to as the "N" order) of the competitive LEC's request in a timely manner. As a result, the portions of the LIDB record which are updated based on the Toll File Guide order also were not updated in a timely manner." See SWBT Texas II Noland/Dysart Aff. at para. 88.

⁵²⁶ See *id.* at paras. 87-92.

processing LIDB updates. If a carrier were to demonstrate, in the future, that SWBT continues to cause LIDB records to be updated incorrectly or late, and that

these problems are competitively harmful, SWBT may be subject to enforcement action under section 271(d)(6).⁵²⁷

191. *Posting Process.* We also conclude that SWBT “posts” competing LECs’ orders to its billing systems in a manner that gives efficient competitors a meaningful opportunity to compete. This “posting” process involves establishing the end user’s new billing relationship and, for orders involving the transfer of an existing customer from SWBT to a competing carrier, it also involves terminating the existing billing relationship. The Texas Commission has established a performance metric to measure the percentage of competing carriers’ orders posted to SWBT’s billing systems prior to the competing carrier’s next bill period, and compares SWBT’s performance in this area for competing carriers to its performance in posting orders on the retail side.⁵²⁸ According to the performance data, SWBT has consistently posted over 98 percent of carriers’ orders to its billing systems in time for the next billing cycle.⁵²⁹ While commenters note that SWBT’s performance was slightly out-of-parity in the first two months of this year, they do not establish that the slight difference reflected in the performance data is competitively significant or reflects a systemic problem in SWBT’s OSS.⁵³⁰ We thus conclude that SWBT provides nondiscriminatory performance in this area.

192. Several carriers nonetheless complain that double billing has occurred in isolated instances, and that they are harmed by such billing mistakes.⁵³¹ The Commission previously has

⁵²⁷ Finally, we disagree with WorldCom’s contention that the process for updating existing customers’ LIDB records is discriminatory. *See* WorldCom Texas I Comments at 4, 14-17; WorldCom Texas I McMillon/Sivori/Lichtenberg Reply Decl. at paras. 30-32; *see also* AT&T Texas I Dalton/DeYoung Reply Decl. at n.6. WorldCom has not demonstrated that the GUI process offered by SWBT is unreasonably burdensome or *per se* discriminatory, and we conclude that this process provides carriers with access to LIDB in substantially the same time and manner as SWBT provides for itself.

⁵²⁸ *See* SWBT Texas I Dysart Aff. at 521 and Att. A at A-28. While this performance data provides some indication that SWBT’s systems post completed orders to the billing systems in a timely manner, it does not reflect how long (*i.e.*, how many days) it takes most orders to post. We note with approval that SWBT has committed to implement a performance measurement that tracks the average time it takes to post all orders. Such a measure was implemented recently by Bell Atlantic in New York. *See Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Acct. No. X32080004, Order and Consent Decree.

⁵²⁹ SWBT’s data for the last five months indicate that it posts an average of 98.15 percent of competing carriers’ orders within the correct billing period, compared to 98.95 percent of its own orders. SWBT Aggregated Performance Data, Measure No. 17 (“Billing Completeness”) at 271-No. 15, 16, 17.

⁵³⁰ *See, e.g.*, AT&T Texas II Chambers/DeYoung Reply Decl. at para. 74-77.

⁵³¹ AT&T explains that it reviewed a sample of six orders that had posted late in August 1999 and found that, for all six, the customer received a SWBT bill after the order completion date. *See* AT&T Texas I DeYoung Decl. at paras. 193-196. It is unclear whether such situations were examples of “double billing” for the same time period or, as suggested by SWBT, were simply cases involving a final SWBT bill covering a prior period before the end user switched carriers. *See* SWBT Texas I Locus Reply Aff. at paras. 10-13. In the end, the evidence presented in the record does not indicate that SWBT’s process of updating its billing systems, or its overall performance in this area, deprives an efficient competitor a meaningful opportunity to compete.

found that double billing, which results from failure to terminate promptly the BOC's existing billing relationship, is compelling evidence that a BOC's OSS for ordering and provisioning of wholesale services is not operationally ready.⁵³² SWBT has established procedures for automatically updating its billing systems – and manual processes to attend to orders that do not update properly.⁵³³ The Texas Commission concluded that SWBT has adequate billing processes in place which minimize the likelihood of double billing.⁵³⁴ While we do not discount the potential harm of double-billing on affected customers, there is insufficient evidence of double billing in this instance to indicate that SWBT's systems process for updating its billing records is discriminatory.

193. *Loss Notification Reports.* AT&T also reports that it recently has discovered instances in which SWBT fails to provide timely “loss notification reports,” which signal competing carriers that a customer has migrated to another LEC.⁵³⁵ AT&T explains that this failure caused it improperly to continue billing 99 customers in April 2000 who apparently had switched to back to SWBT or to another LEC. We note that AT&T is entitled to receive these loss notification reports pursuant to its interconnection agreement with SWBT, which sets out in detail the procedure by which AT&T is able to request these reports.⁵³⁶ While we recognize that failure to provide loss notification reports may impact customers and impede a competitive carriers' ability to compete, we also recognize that AT&T does not indicate whether it has registered to receive these reports as necessary under the interconnection agreement. There is thus no basis for finding that SWBT has failed to follow the loss notification procedures contained in its interconnection agreement, or is otherwise at fault for these missing loss notification reports. Also, because no other carrier suggests that SWBT fails to provide these notices, there is nothing to suggest that this is a systemic problem. We reject AT&T's claim, then, that these circumstances warrant a finding that SWBT has failed to provide nondiscriminatory access to its OSS.

g. Provisioning

194. In this section we conclude that, overall, SWBT provisions competing LEC customers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.⁵³⁷ Consistent with our approach in prior section

⁵³² *Ameritech Michigan Order*, 13 FCC Rcd at 20618, para. 203.

⁵³³ See SWBT Texas I Locus Reply Aff. at paras. 10-13; SWBT Texas I Conway Aff. at para. 55 (describing the specialized “Error Response Team” which focuses solely on clearing errors on orders that have been completed but fail to post to billing. SWBT explains that this team prioritizes its work by age of the error and bill dates.).

⁵³⁴ Texas Commission Texas I Comments at 43.

⁵³⁵ See AT&T Texas II Chambers/DeYoung Reply Decl. at paras. 78-82.

⁵³⁶ See SWBT Texas I Application, App. B, Tab 60 (SWBT/AT&T Interconnection Agreement) at Att. 5, sec. 7 (loss notification reports associated with resale services) and Att. 10, sec. 7 (loss notification reports associated with UNEs).

⁵³⁷ We discuss loop provisioning below. See section V.D., *infra*.

271 orders, we examine SWBT's provisioning processes, as well as its performance with respect to provisioning timeliness (*i.e.*, missed due dates and average installation intervals) and provisioning quality (*i.e.*, service problems experienced at the provisioning stage).⁵³⁸ We note, however, that SWBT's electronic processes for provisioning UNE-P orders may falter when handling orders that contain address-related discrepancies that are not resolved by SWBT's front-end edits. SWBT concedes that mismatched addresses can disrupt the normal order process flow, but indicates that its process for manually catching and correcting such errors are adequate to minimize the occurrence of service outage. We note that customer-affecting problems arising from these address discrepancies appear to be rare, and conclude that these process failures, standing alone, do not warrant a finding that SWBT fails to provide nondiscriminatory access to its provisioning functions.

195. *Provisioning Processes.* Based on the evidence in the record, we conclude that SWBT demonstrates that it provides nondiscriminatory access to its provisioning processes. Specifically, we find that SWBT provides competitive LECs and its retail operations with equivalent access to information on available service installation dates.⁵³⁹ For orders that do not require a dispatch technician to complete, SWBT asserts that it makes available the same set of standard provisioning intervals for competing carriers and its retail representatives.⁵⁴⁰ "Dispatch" orders, on the other hand, are routed to SWBT's provisioning systems and assigned a technician in the same manner as SWBT retail orders requiring a technician.⁵⁴¹ We also find that SWBT's processes provide requesting carriers with the same level of confidence as its own retail operations that the due date promised to customers will be the actual due date that the BOC assigns to the order when it is processed.⁵⁴²

196. We conclude that SWBT provisions orders for resale "POTS" and "specials" to competitors in substantially the same time and manner that it provisions equivalent orders to itself. Specifically, SWBT provides performance data showing that it provisions resale service at parity with its own retail operations. First, SWBT demonstrates that it misses fewer competitive LEC customer appointments for installing resale POTS and special services, and provisions such service within equivalent average intervals, compared to appointments and service for its own retail customers.⁵⁴³ Second, SWBT demonstrates that the quality of installations provided to

⁵³⁸ See *Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196.

⁵³⁹ See *SWBT Texas I Ham Aff.* at para. 187.

⁵⁴⁰ See *id.*

⁵⁴¹ See *id.*

⁵⁴² See *id.* at para. 189 (noting that SWBT changed the "Customer Desired Due Date" field on the FOC on only 3.67% of orders in October 1999).

⁵⁴³ For timely provisioning of "Resale POTS" orders, we consider the following measurements: SWBT Aggregated Performance Data, Measure Nos. 27-01 to 27-04 ("Mean Installation Interval") (POTS – Resale) at 271-No. 27a; *id.*, Measure Nos. 29-01 to 29-04 ("Percent SWBT Caused Missed Due Dates") (POTS – Resale) at 271-No. 29-a. For timely provisioning of "Resale Specials" orders, we considered primarily the following measurements: SWBT Aggregate Performance Data, Measure Nos. 43-01 to 43-08 ("Average Installation (continued....)

competitors' customers is very close to parity, or above parity, compared to similar work performed for its own retail customers.⁵⁴⁴ We further note that the Texas Commission concludes, based on this performance data, that SWBT provisions resale services in a nondiscriminatory manner.⁵⁴⁵

197. Based on a review of corresponding performance measurements for UNE-P service, we conclude that SWBT also provisions competing LEC orders for these network combinations in the same time and manner as it provisions equivalent retail services. Specifically, the record evidence demonstrates that SWBT is meeting the service installation dates for competitive LEC customers at higher rates than for its own retail customers, and completes these competing LECs' orders, on average, in less time than it completes analogous retail orders.⁵⁴⁶ SWBT's performance data also indicates that it provisions UNE-P orders at generally the same level of quality (*i.e.*, with a comparably low level of troubles reported within the first ten days after installation) as it provisions analogous retail service.⁵⁴⁷ Specifically, while SWBT reported slightly more installation-related troubles associated with UNE-P orders requiring no field work than for analogous retail orders in February 2000, it reported better than parity performance for

(Continued from previous page) _____
Interval") (Specials – Resale) at 271-No. 43a-b; *id.*, Measure Nos. 45-01 to 45-08 ("Percent SWBT Caused Missed Due Dates") (Specials – Resale) at 271-No. 45a-b. These data indicate that SWBT satisfied the parity standards in the several sub-categories (residential and business orders, POTS and specials orders, orders requiring field work and those requiring no field work) for each of the past five months (December 1999 – April 2000), with only isolated exceptions. We thus conclude that SWBT provisions competing carriers' orders for resale services, overall, in substantially the same time as its provisions equivalent retail services.

⁵⁴⁴ For provisioning quality of "Resale POTS" orders, we look to SWBT performance data reflecting the number of trouble tickets submitted within the first ten days after service is provisioned. *See* SWBT Aggregate Performance Data, Measure Nos. 35-01 to 35-08 ("Percent Trouble Reports on N and T Orders within 10 Days" and "Percent Trouble Reports on C Orders within 10 Days") (POTS – Resale) at 271-No. 35a-b. SWBT's performance on these measurements was generally better than parity. For provisioning quality of "Retail Specials" orders, we focus on the following performance measurements: SWBT Aggregate Performance Data, Measure Nos. 46-01 to 46-08 ("Percent Trouble Reports on N, T, C Orders within 30 Days") (Specials – Resale) at 271-No. 46a-b. SWBT's performance was above parity for each type of resale specials service, with only isolated exceptions.

⁵⁴⁵ Texas Commission Texas I Comments at 93-94.

⁵⁴⁶ SWBT's "Percent Missed Due Dates" performance metric demonstrates that, for the last five months, SWBT has consistently met a higher percentage of installation appointments for competing carriers' resale and UNE-P orders than it has for analogous retail orders. *See* SWBT Aggregate Performance Data, Measure Nos. 29-05 and 29-06 ("Percent SWBT Caused Missed Due Dates") at 271-No. 29b. SWBT's performance data also indicates that it provisions competing LECs' UNE-P orders, on average, in the same or shorter period of time than it does for its own analogous services. *See* SWBT Aggregate Performance Data, Measure Nos. 27-05 and 27-06 ("Mean Installation Interval") at 271-No. 27b. We recognize that these "average completed interval" metrics reflect only a portion of competing LEC orders, as they exclude orders for which competing carriers request longer-than-standard completion intervals. Combined with the missed due dates metric described above, however, this measurement provides an additional indication that SWBT is provisioning UNE-P and resale service in a timely manner, when compared to its retail operations.

⁵⁴⁷ *See* SWBT Aggregated Performance Data, Measure Nos. 35-09 to 35-12 ("Percent Trouble Reports Within 10 Days") at 271-No. 35c.

March and April 2000.⁵⁴⁸ We also note that SWBT's performance with respect to UNE-P orders requiring field work reflects an installation-related trouble rate that is very slightly higher than the analogous retail rate.⁵⁴⁹ We conclude that this level of disparity is minimal, however, and does not indicate that SWBT fails to provision competing LEC orders in the same time and manner as its own.

198. *Address Discrepancies and Service Outages.* Evidence submitted by SWBT and various commenters indicates that the normal order flow may be disrupted if a UNE-P order contains an address discrepancy that is not detected during the initial editing process.⁵⁵⁰ Specifically, SWBT uses a "three order process" under which it splits a carrier's LSR into three separate sub-orders, each of which performs different tasks – such as provisioning and billing functions – in SWBT's back office systems. SWBT explains that it populates one of the orders with the address submitted by the competing LEC, and takes the address for the remaining two orders from one of its internal address databases. If these addresses are not exactly consistent (and SWBT has explained scenarios where they may not be consistent),⁵⁵¹ SWBT's process for automatically relating these three service orders fails and the three orders become "disassociated."⁵⁵² SWBT explains that one of these disassociated orders will act as a "disconnect" order and cut off the customer's dial tone unless SWBT promptly intervenes and manually reunites the three orders.⁵⁵³ SWBT does not dispute that the potential exists for order disassociation leading to service outage, but explains that it has implemented a manual process to monitor for disassociated orders, which enables it to manually re-associate orders and prevent outages.⁵⁵⁴

⁵⁴⁸ See *id.* at 271-No. 35c.

⁵⁴⁹ Specifically, for March and April 2000, 4.01 and 5.02 percent of UNE-P orders experienced a trouble report within 10 days of installation, compared to 3.13 and 3.68 percent for analogous retail orders. See *id.*

⁵⁵⁰ See Appendix B ("OSS Appendix") for a more detailed description of SWBT's provisioning process.

⁵⁵¹ An address mismatch could occur for two reasons. First, there could be a problem with the address submitted by the competing LEC that was not picked up by SWBT's up-front edits. Second, a mismatch could result from an inconsistency between SWBT's two address databases. See Appendix B.

⁵⁵² See *id.*; SWBT Texas I Ham Reply Aff. at para. 73.

⁵⁵³ See *id.* (if the C and D orders have different addresses, "the two service orders will flow through all provisioning systems as independent service orders The D order will flow on Due Date and disconnect the [customer's] service.").

⁵⁵⁴ See *id.*; SWBT March 10 *Ex Parte* Letter at Att. 4 (explaining that orders that become disassociated due to an address mismatch are routed to the local service center (LSC) for resolution). SWBT's minutes from a December 21, 1999 "CLEC User's Forum" suggest that SWBT planned to implement a new process to address address mismatches on January 14, 2000, under which it would create a mechanized report listing UNE-P orders that had become disassociated and check the report three times daily. See AT&T Texas 1 Dalton/DeYoung Reply Aff., Att. 21 (SWBT Accessible Letter No. CLEC00-002) at 3. SWBT placed a copy of this mechanized report ("an internal report currently used by SWBT to detect orders that are at risk of an outage") on the record on March 13, 2000. SWBT March 13 *Ex Parte* Letter, Att. 1.

199. We conclude, based on evidence submitted by SWBT and commenting parties, that service outages attributable to problems with the “three order process” are very rare, and thus do not warrant a finding that SWBT fails to provision UNE-P orders in substantially the same time and manner as it provisions equivalent retail services. We recognize that the Texas Commission has reviewed allegations and evidence of UNE-P outages and concluded that the occurrence of such outages is “minimal.”⁵⁵⁵ We agree with the Texas Commission in this matter: evidence submitted by carriers in this proceeding indicates that, at present, service outages associated with UNE-P conversions are relatively infrequent, and thus does not lead us to a different conclusion. We recognize that one commenter alleges that 5.6 percent of UNE-P orders experience a loss of service at installation, and another claims a 2.8 percent outage rate.⁵⁵⁶ SWBT disputes these figures, however, and offers evidence indicating that, for these two carriers, the occurrence of outages resulting from errors in its OSS was actually less than one percent.⁵⁵⁷ While it is difficult to resolve conclusively these disputed claims, we find that SWBT’s evidence, along with the prior determination of the Texas Commission, sufficiently refutes these claims. If, however, such outages rise to a level that impedes a carrier’s opportunity to compete, we will take appropriate enforcement action under section 271(d)(6).

200. In addition, we note that several commenters raise other complaints about problems which they attribute to the three-order process. The CLEC Coalition, for example, blames imperfections in SWBT’s three-order process for other service-affecting problems such as “loss of long distance service, loss of vertical features, loss of outbound calling, double billing and inability to call certain local numbers.”⁵⁵⁸ While we do not discount the impact such problems would have on customers, we find that commenters did not document some of these problems, while others appear to be infrequent. We thus conclude that these problems do not warrant a

⁵⁵⁵ Texas Commission Texas I Comments at 18; *see also* CLEC Coalition Texas I Tidwell/Kettler (Birch Telecom.) Aff. at 63-70 and Att. AA at 3 (explaining to the Texas Commission in November 1999 that the “volume of loss of dial tone is fairly small”).

⁵⁵⁶ *See* CompTel May 11 *Ex Parte* Letter at 1-2 (reporting service disruptions for January to April, 2000); AT&T Texas I Dalton/DeYoung Reply Decl. at para. 41 (reporting lost dial tone for August to November 1999). Birch Telecommunications filed an informal complaint with the Texas Commission in September 1999, arguing that service outages during the UNE-P conversion process were adversely affecting its ability to compete – but did not quantify the frequency of these outages. *See* CLEC Coalition Texas I Comments at 27-28.

⁵⁵⁷ SWBT claims that AT&T’s figure is too high, instead suggesting that fewer than one percent of AT&T’s UNE-P conversions in December 1999 and January 2000 resulted in lost dial tone. *See* SWBT Texas II Ham Aff. at para. 31; SWBT March 24 *ex parte* Letter. SWBT further claims that, based on its own review of trouble tickets submitted by Network Intelligence, that none of the service problems identified by Network Intelligence were attributable to the three-order process: SWBT either found no problem to exist, or determined that the problem was attributable to the customer’s wiring, or SWBT’s central office or cable facilities. *See* SWBT Texas II Noland/Dysart Reply Aff. at paras. 78-83.

⁵⁵⁸ *See* CLEC Coalition Texas I Tidwell/Kettler (Birch) Aff. at paras. 81-90. Birch Telecom complained of other problems relating to the UNE-P three-order process which are addressed elsewhere in this Order. *See* CLEC Coalition Texas I Tidwell/Kettler (Birch) Aff. at paras. 76-91; *see* section V.B.1.d.1.f, *supra* (addressing delays in posting to billing, double-billing and LIDB update issues).

finding that SWBT fails to provide nondiscriminatory access to its provisioning systems and processes. Finally, several commenters, including CompTel, argue that the “three order process” is inherently discriminatory, as it unlawfully splits already-combined elements apart and puts them back together.⁵⁵⁹ We disagree with this characterization of SWBT’s three-order process – SWBT does not require carriers to order or pay for the network elements separately, nor does SWBT physically separate and reassemble the network elements. SWBT has explained that the three orders simply correspond to different functions that must be completed in its back office systems.

h. Maintenance & Repair

201. We conclude that SWBT demonstrates that it provides nondiscriminatory access to maintenance and repair OSS functions. First, we find that SWBT has deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions that SWBT provides to itself. We then conclude that SWBT’s systems allow carriers to access those functions in substantially the same time and manner as SWBT’s retail operations. We further find that SWBT restores service to customers of competing carriers in substantially the same time and manner as it restores service to its own customers. Finally, we conclude that SWBT performs maintenance and repair work for customers of competing carriers at substantially the same level of quality that it provides to its own customers.

(i) Background

202. As part of its obligation to provide nondiscriminatory access to OSS functions, SWBT must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.⁵⁶⁰ A competing carrier that provides service through resale or unbundled network elements remains dependent upon the incumbent LEC for maintenance and repair. Because SWBT performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions “in substantially the same time and manner” as SWBT provides its retail customers.⁵⁶¹ Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to SWBT personnel.⁵⁶² Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with SWBT’s network as a problem with the competing carrier’s own network.⁵⁶³

⁵⁵⁹ See CompTel Texas II Comments at 3-4; Global Crossing Texas II Reply Comments at 2.

⁵⁶⁰ *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

⁵⁶¹ *Bell Atlantic New York Order* at 4067, para. 212; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

⁵⁶² *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212.

⁵⁶³ See *id.*

(ii) Discussion

203. *Functionality.* We conclude that SWBT offers maintenance and repair interfaces and systems that enable a requesting carrier to access all the same functions that are available to SWBT's retail representatives. SWBT provides competing carriers with several options for requesting maintenance and reporting troubles. Competing carriers may electronically access SWBT's maintenance and repair functions for UNE-Loop, UNE-Platform, and resale through the Graphical User Interface Toolbar Trouble Administration interface (Toolbar) or the application-to-application Electronic Bonding Trouble Administration interface (EBTA).⁵⁶⁴ Both the EBTA and Toolbar interfaces flow directly into SWBT's back-end OSS systems and enable competing carriers to perform the same functions, in the same manner, that SWBT's retail operations perform.⁵⁶⁵ SWBT also offers requesting carriers non-electronic access to its maintenance and repair functions through the SWBT Local Operations Center (LOC).⁵⁶⁶ The LOC handles all competing carrier repair and maintenance requests for UNEs, resale, and interconnection.⁵⁶⁷

204. WorldCom complains that it is precluded from accessing SWBT's EBTA interface for a new customer until that customer's order has posted to SWBT's wholesale billing systems.⁵⁶⁸ Without this ability, WorldCom notes that it cannot use EBTA to submit trouble tickets or perform loop tests on the day service is provisioned, and possibly for several days thereafter. WorldCom has the option of using the Toolbar interface for these installation-related

⁵⁶⁴ SWBT Texas I Ham Aff. at para. 217; *see* SWBT Texas I Conway Aff. at paras. 66-68.

⁵⁶⁵ SWBT Texas I Ham Aff. at 218, 222 and 229. The Toolbar interface enables carriers to perform the the same functions that SWBT's retail operations perform, including: (1) issue trouble reports; (2) conduct a mechanized loop test; (3) determine that status of an opened trouble report; (4) check history; (5) view a list of open trouble reports; (6) view a list of trouble reports closed within the last 120 days. *Id.* at para. 219. Although the EBTA interface provides only functions 1 to 4, this does not reflect a deficiency in SWBT's OSS. The Commission previously has determined that a BOC is not required, for the purpose of satisfying checklist item 2, to implement an application-to-application interface for maintenance and repair functions – provided it demonstrates that it provides equivalent access to its maintenance and repair functions in another manner. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4068, para. 215.

⁵⁶⁶ SWBT Texas I Conway Aff. at para. 65; *see* SWBT Texas I Ham Aff. at 217. The LOC is staffed by 165 employees and is available through a hotline number 24 hours a day, seven days a week. SWBT Texas I Conway Aff. at para. 15, 28, 31.

⁵⁶⁷ *See* SWBT Texas I Conway Aff. at para. 65-66. Since 1996, the LOC has processed over 195,600 POTS maintenance reports in Texas and an additional 66,900 reports in the remainder of SWBT's region. *Id.* at para. 65.

⁵⁶⁸ *See* WorldCom Texas II McMillon/Sivori/Lichtenberg Reply Decl. at paras. 53-56. We note that carriers raised a similar concern in the *Texas I* proceeding, explaining that SWBT's Toolbar system had the same limitation. *See, e.g.,* AT&T Texas I Dalton/DeYoung Decl. at para. 200; WorldCom Texas I McMillon/Sivori Decl. at paras. 191-92. SWBT implemented a change on March 18, 2000, however, which removed this restriction on the use of Toolbar and enabled carriers to use the interface's normal functions for telephone number formatted resale and UNE-P services on or after the provisioning due date. SWBT Texas I Ham Reply Aff. at para. 111 & Attach. K (SWBT Feb. 18, 2000 Accessible Letter, No. CLECSS00-018).

trouble situations, or may call SWBT's Local Operations Center ("LOC") to report troubles in such circumstances.⁵⁶⁹ While reliance on these alternative means of accessing SWBT's maintenance and repair OSS undermines the efficiency and convenience of using EBTA, we conclude that these alternative processes are adequate and enable carriers that rely on EBTA to access SWBT's OSS in substantially the same time and manner as SWBT retail.⁵⁷⁰ In addition, SWBT reports that, as of June 20, 2000, it has lifted this restriction on access to EBTA, thereby enabling WorldCom to submit trouble tickets on the completion date prior to posting of the order.⁵⁷¹ We expect that SWBT will implement this change for other carriers using EBTA as well.

205. *Interface Response Times.* We further conclude that SWBT's maintenance and repair interfaces and systems process trouble inquiries from competing carriers in substantially the same time and manner as SWBT processes inquiries concerning its own retail customers.⁵⁷² To compete effectively in the local exchange market, competing carriers must be able to diagnose and process customer trouble complaints with substantially the same speed and accuracy that SWBT diagnoses and processes complaints from its retail customers. A slower process can lead to customer perception that the competing carrier is a less efficient service provider than the BOC. SWBT has provided evidence of the transaction times for its Toolbar interfaces that indicates it responds to competing carrier requests for maintenance and repair inquiries in substantially the same time as it does for itself.⁵⁷³ Moreover, we note that no commenter has asserted otherwise.

206. *Time to Restore.* We conclude that SWBT repairs reported troubles competing carriers in substantially the same time and manner that it repairs troubles reported by its own customers. The Commission has stressed that a BOC is obligated to repair troubles for a customer of a requesting carrier in substantially the same time that it takes to repair problems experienced by its own customers.⁵⁷⁴ For example, because a reliable telephone line may be crucial for a business customer to conduct its business, the Commission has emphasized the importance of timely resolution of trouble reports from a competing carrier's business customers.⁵⁷⁵

⁵⁶⁹ *Id.* at para. 224-226; SWBT Texas I Ham Reply Aff. at para. 112.

⁵⁷⁰ Indeed, SWBT's performance data indicates that carriers have been confronted with a very low number of trouble reports within ten days of provisioning, and we would expect the number of troubles occurring before an order posts to billing and triggers EBTA availability (which certainly should occur in under ten days) to be even lower. *See, e.g.,* SWBT Aggregated Performance Data, Measurement No. 35 ("Percent Trouble Reports on C Orders Within 10 Days") (UNE-P) at 271-No.35b (indicating that competing LECs received "installation related" trouble reports on less than one percent of UNE-P orders in March and April 2000).

⁵⁷¹ *See* SWBT June 23 *Ex Parte* Letter at 9.

⁵⁷² *See* SWBT January 21 *Ex Parte* Letter (maintenance & repair interface response times), Tab 1.

⁵⁷³ *See id.*

⁵⁷⁴ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20693, para. 147.

⁵⁷⁵ *Id.*

207. We base our finding of nondiscriminatory restoration time on SWBT's performance data. SWBT's performance data for December 1999 through April 2000 indicates that, for both resale and unbundled network elements, SWBT repaired troubles reported by customers of competing carriers, on average, in substantially the same time that it repaired troubles reported by its own retail customers.⁵⁷⁶ In addition to SWBT's performance with respect to average restoration intervals, we note that SWBT is able to meet a comparable number of repair commitments for competing carriers (in the "resale POTS" and "UNE-P" service categories) as for its own customers.⁵⁷⁷ This level of performance is substantial evidence that SWBT responds to trouble reports and restores service in substantially the same time and manner for competing carriers as for itself. Accordingly, we find that the performance measurements provide compelling evidence that SWBT responds to competitors' trouble complaints in substantially the same time and manner that it responds to its own customers' complaints.

208. The one service category for which SWBT has not consistently performed repair functions for competing LECs and its retail operations in substantially the same time and manner is resale specials – particularly SWBT's resold Voice Grade Private Line service and ISDN products.⁵⁷⁸ SWBT's performance data indicates that, for these two services, SWBT generally has taken two or three hours longer to perform repairs for competing LEC customers than for its own customers.⁵⁷⁹ In this instance, however, we conclude that this difference in repair time is not

⁵⁷⁶ For resale POTS, SWBT took less time to repair end user troubles reported by its competitors than those involving its own retail customers for virtually all disaggregated sub-categories—for business and residential customers, for "dispatch" and "nondispatch" repair jobs, and for troubles "affecting service" and those taking a customer "out of service." SWBT Aggregated Performance Data, Measurement No. 39 ("Receipt to Clear Duration") at 271-No. 39a-39b. The only exceptions were SWBT's performance in February and April, in which it reported slightly longer-than-parity intervals to resolve business customers' "affecting service" troubles that did not require dispatch. *Id.* at 271-No. 39a. We conclude that these exceptions, particularly when viewed in the context of the related metrics that reflect parity performance, do not reflect a systemic problem with SWBT's OSS. Similarly, for UNE-P, SWBT reports shorter repair intervals for its competitors' customers than for its own retail customers in every sub-category during this same time period. *See* SWBT Aggregated Performance Data, Measurement No. 39 ("Receipt to Clear Duration") at 271-No. 39c.

⁵⁷⁷ For the months of December 1999 through April 2000, SWBT met substantially the same percentage of repair commitments for troubles on competing LECs' resold and UNE-P lines as it did for comparable retail repair commitments. *See* SWBT Aggregated Performance Data, Measurement No. 38 ("% Missed Repair Commitments") at 271-No. 38a-b. The only exceptions occurred in April 2000, with respect to business POTS troubles (no dispatch) and UNE-P troubles (no dispatch). Because SWBT has reported satisfactory performance for the preceding four months in these two areas, however, we do not conclude that this April performance represents a systemic problem.

⁵⁷⁸ SWBT has achieved parity with respect to VGPL troubles for only one of the last five months and reported that, in March 2000, it took an average of 12 hours longer to repair or restore competing LECs' VGPL troubles than for its own customers. SWBT Aggregated Performance Data, Measurement No. 52 ("Mean Time to Restore") at 271-No. 52a. Similarly, SWBT achieved parity with respect to ISDN (BRI) troubles for only one of the last five months and reported that, in March 2000, it took an average of almost 14 hours longer to repair or restore competing LECs' ISDN troubles than for its own customers. *Id.* at 271-No. 52b.

⁵⁷⁹ Calculations using SWBT's reported performance data indicates that, for the last five months other than March 2000, the parity gap averaged 2.5 hours for Measurement 52-01, and 3.0 hours for Measurement 52-06.

competitively significant because it is so slight. In addition, we view these two performance measurements in the context of SWBT's strong overall maintenance and repair performance for resale services (described above). We thus conclude that SWBT's performance with respect to these two service offerings does not indicate that SWBT fails to repair troubles in substantially the same time and manner for retail and wholesale customers.

209. *Quality of Work Performed.* We also find that SWBT demonstrates that it performs maintenance and repair work for customers of competing carriers at the same level of quality as it performs for its retail customers. A competing carrier's customer may become dissatisfied if the customer experiences frequent service problems, especially repeated troubles. In determining the quality of maintenance and repair work performed by SWBT for competing carriers, we examine the rate of trouble reported by customers of competing carriers as compared with SWBT's own retail customers, as well as the rate of repeat reports of trouble. SWBT's performance data reveals that competing carriers' customers generally reported the same or lower rate of troubles, for both resold services and UNE-P, as SWBT's retail customers.⁵⁸⁰ Similarly, performance data on the rate of *repeat* trouble reports submitted by competing carriers are generally lower than for SWBT's retail customers.⁵⁸¹ Based on the foregoing, we conclude that SWBT provides nondiscriminatory access to its maintenance and repair functions.

i. Billing

210. We conclude that SWBT provides nondiscriminatory access to its billing functions, based on an assessment of its billing processes and its Texas performance data. Competing carriers need access to billing information to provide accurate and timely bills to their customers.⁵⁸² SWBT is obligated to provide competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that SWBT provides such information to itself. To do so, SWBT provides competing carriers with billing information through the Usage Extract process and carrier bills.⁵⁸³ The Usage

⁵⁸⁰ See SWBT Aggregated Performance Data, Measurement No. 37 ("Trouble Report Rate") (Resale POTS and UNE-P) at 271-No.37, and Measurement No. 54 ("Failure Frequency") (Resale Specials) at 271-No. 54a-b. In only a handful of instances did SWBT report a higher trouble rate for competitors than for its retail operations: Residence POTS (February 2000), UNE-P (December 1999), resold DSL (December 1999) and UNE-P ISDN (April 2000). *Id.* We do not find these scattered discrepancies to be competitively significant for this metric in this instance.

⁵⁸¹ See SWBT Aggregated Performance Data, Measurement No. 41 ("Percent Repeat Reports") (Resale POTS and UNE-P) at 271-No. 41, and Measurement No. 53 ("Repeat Reports") (Resale Specials) at 271-No. 53a-b. These performance data reveal a statistically-significant disparity in only two instances: a higher number of repeat reports for competitive LECs than for its retail operations for UNE-P in December 1999, and for resold DS1 service in January 2000. We do not find that these results, particularly when viewed against the above-parity performance for the other months, indicate a competitively-significant disparity.

⁵⁸² *Bell Atlantic New York Order*, 15 FCC Rcd at 4075, para. 226; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20698, paras. 158-160.

⁵⁸³ See SWBT Texas I Locus Aff. at paras. 10-11.

Extract itemizes usage records for competing carrier customers, while carrier bills serve as a monthly invoice that incorporates charges for all of the products and services provided to a competing carrier by SWBT. Similar mechanisms are used to provide billing information to SWBT's retail operations.⁵⁸⁴

211. We find that the performance standards and measurements established by the Texas Commission and developed in conjunction with SWBT and competing carriers are appropriate measures of SWBT's ability to provide competing carriers with usage data in substantially the same time and manner that SWBT provides such information to itself.⁵⁸⁵ SWBT's performance data indicate that, during the period from December 1999 to April 2000, SWBT's actual commercial performance consistently satisfied these standards for usage data timeliness and accuracy.⁵⁸⁶ The one exception occurred in February 2000, when SWBT returned only 91.3 percent of daily usage feed records within six days, falling short of the 95 percent standard.⁵⁸⁷ SWBT explains that its performance in this month was affected by the one-time recovery and return of "missing records" from September, October and November 1999.⁵⁸⁸ We recognize that lost records, and even late records, can cause direct financial harm to competing carriers. In this instance, however, we note that SWBT claims to have fixed the underlying problem,⁵⁸⁹ and further note that carriers do not dispute that the problem has been fixed. Based on these factors, and because SWBT's performance was satisfactory for the two preceding and two subsequent months, we conclude that SWBT does not discriminate in the provision of usage feeds to competing carriers.

212. Although several commenters complain that SWBT's performance with respect to wholesale bills is inadequate, the record does not indicate that SWBT's performance in this area deprives carriers a reasonable opportunity to compete. As noted by the National ALEC Association and other commenters, we recognize that SWBT has failed to satisfy the standard for timeliness of wholesale bills sent to resellers for three of the last five months.⁵⁹⁰ SWBT offers a

⁵⁸⁴ See *id.* at paras. 6 and 9.

⁵⁸⁵ Specifically, the standard adopted by the Texas Commission requires that SWBT transmit 95 percent of its Daily Usage Feeds for resale and UNEs to competing carriers within six business days after creation, and 95 percent of its wholesale bills within six work days of the bill date. SWBT Texas I Dysart Decl. at para. 510 and Att. A at A-30 and A-31. The Texas Commission also established standards regarding the percent of usage records transmitted correctly (95% correct).

⁵⁸⁶ See SWBT Aggregated Performance Data, Measurement No. 14 ("Billing Accuracy"), Measurement No. 16 ("Percent of Usage Records Transmitted Correctly") and Measurement No. 19 ("Daily Usage Feed Timeliness") at 271-No. 14, 271-No. 15/16/17, and 271-No. 18/19/20.

⁵⁸⁷ See *id.*, Measurement No. 19 at 271-No. 18/19/20; see also AT&T Texas II Chambers/DeYoung Aff. at para. 133.

⁵⁸⁸ See SWBT Texas II McLaughlin Reply Aff. at paras. 5-7.

⁵⁸⁹ See *id.*

⁵⁹⁰ See National ALEC Association / Prepaid Communications Association Texas I Comments at 6; AT&T Texas II Chambers/DeYoung Reply Decl. at paras. 134-135. For the months of December 1999 to April 2000, SWBT (continued....)

separate explanations for each failure, suggesting that unique one-time occurrences caused the disparate results, and that the incident in March also delayed SWBT's own retail bills.⁵⁹¹ Commenters have not disputed SWBT's explanations, and we recognize that SWBT reported 100 percent on-time performance for February and April 2000. AT&T further complains that SWBT does not report whether it provides timely "wholesale bills" for its UNE-P orders.⁵⁹² Neither AT&T, nor any other competing LEC (other than the resellers discussed above) suggests that it actually receives such bills late or has been harmed by late bills. While we do not minimize the importance to carriers of receiving wholesale bills in a timely manner, the record does not reflect that carriers, overall, are not receiving wholesale bills in a timely manner. We thus conclude that SWBT does not discriminate against competing carriers in the provision of wholesale bills.

2. UNE Combinations and Other Issues

213. In this section, we conclude that SWBT provides nondiscriminatory access to combinations of unbundled network elements. We also reject allegations that SWBT imposes unreasonable and discriminatory restrictions on certain types of combinations. Finally, we reject allegations that SWBT places restrictions on intellectual property associated with UNEs that contravene its obligations under the Act.

a. Background

214. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3)"⁵⁹³ Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . 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"⁵⁹⁴ Section 251(c)(3) of the Act also

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 returned 76.3, 92.2, 100, 65.7 and 100 percent of mechanized carrier bills (resale carriers only) within six days of the end of the bill cycle. SWBT Aggregated Performance Data, Measurement No. 18 ("Billing Timeliness") at 271-No. 15/18.

⁵⁹¹ See SWBT March 15 *Ex Parte* Letter (explaining December 1999 and January 2000 performance); SWBT Texas II McLaughlin Reply Aff. at para. 9.

⁵⁹² SWBT's Measure 18 – "Billing Timeliness (Wholesale Bill)" – covers only resale carriers receiving bills electronically (*i.e.*, it covers only those wholesale bills processed through the CRIS system and supplied to competing carriers via EDI). SWBT Application, App. C, Tab 1815 at 59. Although this document suggests that "[a] separate measure is produced" for carriers ordering UNEs and UNE-P, *see id.*, the record does not reflect that such a measure exists. The Texas Commission did not address the issue of whether carriers are receiving timely wholesale bills in its Comments in this proceeding. See Texas Commission Texas I Comments at 42-45 (discussing other aspects of SWBT's billing functions and performance). We note that Telcordia's conclusion that the "majority" of paper and mechanized bills were timely is too vague to merit any weight. Telcordia Final Report at 8; *see also id.* at 112 ("mechanized and paper bills were generally sent/transmitted in a timely manner").

⁵⁹³ 47 U.S.C. § 271(c)(2)(B)(ii).

⁵⁹⁴ 47 U.S.C. § 251(c)(3).

requires incumbent LECs to provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.⁵⁹⁵

215. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.⁵⁹⁶ Using combinations of unbundled network elements provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.⁵⁹⁷ Moreover, combining the incumbent's unbundled network elements with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.⁵⁹⁸ Because the use of combinations of unbundled network elements is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, we examine section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.⁵⁹⁹

b. Discussion

(i) Combinations of Unbundled Network Elements

216. Based on the evidence in the record, SWBT demonstrates that it provides requesting telecommunications carriers with nondiscriminatory access to unbundled network elements (UNEs) at any technically feasible point. We also conclude that SWBT provides access to UNEs in a manner that allows requesting carriers to combine those elements, and that SWBT provides access to preexisting combinations of network elements. We base our conclusion on evidence of actual commercial usage, and also on SWBT's legal obligation to provide such access as established in the T2A.

217. The record indicates that SWBT, as required by the Texas Commission, provides a variety of methods that allow competitive carriers to combine unbundled network elements. For example, in addition to the standard physical and virtual collocation arrangements, SWBT provides alternative collocation arrangements such as shared collocation cages, common cage, and cageless collocation arrangements.⁶⁰⁰ Where space for physical collocation is not available,

⁵⁹⁵ *Id.*

⁵⁹⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

⁵⁹⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 646. *See also Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

⁵⁹⁸ *Bell Atlantic New York Order* at para. 230.

⁵⁹⁹ *Id.*

⁶⁰⁰ SWBT Texas I Application at 38; SWBT Texas I Deere Aff. at para. 164; SBC Texas I Application App. A-3, Vol. 1, Tab 1, Affidavit of Michael C. Auinbauh at paras. 40, 95-97 (SWBT Texas I Auinbauh Aff.); Texas 271 (continued....)

SWBT also permits competing LECs to collocate their equipment in adjacent controlled environmental vaults or huts. Moreover, competitive LECs may request other technically feasible methods of combining UNEs that are consistent with the provisions of the 1996 Act and other governing statutes and decisions.⁶⁰¹ For example, SWBT will provide interested competitive LECs access to a secured frame room (or cabinet, where space constraints require) that is set aside for accomplishing the necessary connections.⁶⁰²

218. The record also indicates that SWBT provides access to combinations of network elements in compliance with our UNE rules.⁶⁰³ SWBT has a legal obligation, under certain existing interconnection agreements and the T2A to provide access to preassembled combinations of network elements, including the loop-switch port platform combination (known as the UNE platform or UNE-P) and the Enhanced Extended Loop (EEL), a combination of loop and transport facilities.⁶⁰⁴

219. We disagree with arguments of several competing carriers that SWBT's ordering

(Continued from previous page) _____

Agreement Attach. 6. The terms and conditions for access to unbundled network elements through physical collocation arrangements are set forth in the T2A, which was approved by the Texas Commission. SWBT Texas I Application at 39; SWBT Texas I Deere Aff. at paras. 151-163. SWBT has provided 655 physical and 40 virtual collocation arrangements to requesting carriers. It has 683 physical and 158 virtual arrangements still pending. SWBT Texas I Deere Aff. Attach. E. Texas 271 Agreement Attach. 6, § 2.4. Competing carriers can obtain tariffed collocation pursuant to FCC Tariff No. 73, through SWBT's Texas Collocation Tariffs, or by negotiating the terms and conditions for collocation in their interconnection agreements. SWBT Texas I Auinbauh Aff. at paras. 40-79; 95-97 and Attachments C, D, E.

⁶⁰¹ SWBT Texas I Application at 39; SWBT Texas I Deere Aff. at 80-84; SWBT Texas I Auinbauh Aff. at para. 66; Texas 271 Agreement Attach. 6, § 2.22.

⁶⁰² SWBT Texas I Auinbauh Aff. at paras. 40, 64, 95-97. Collocation is not required in order to use this option for combining network elements. Texas Commission Texas I Evaluation at 24. Furthermore, when competitors order UNEs for combining at the secured frame or cabinet, SWBT is required to cross-connect those elements to the frame or cabinet at no additional charge. *Id.* at 24-25.

⁶⁰³ See SWBT Texas I Auinbauh Aff. at para. 86.

⁶⁰⁴ SWBT Texas I Auinbauh Aff. at paras. 87-93; Texas 271 Agreement Attach. 6, §§ 14.2 - 14.4, 14.7. In addition, under the terms of the Texas 271 Agreement, SWBT will unbundle local loops with unbundled local switch ports for competitive LECs to provide service to business customers until at least October 13, 2001 using elements that are not currently combined. SWBT Texas I Application at 35 ("Texas 271 Agreement obligates SWBT to assemble previously uncombined network elements for [competitive LECs] . . ."); SWBT Texas I Auinbauh Aff. at paras. 88, 91-94; Texas 271 Agreement Attach. 6, §§ 2.4, 14.7; SWBT/AT&T Agreement Attach. 6, § 2.4. After October 13, 2001, in those SWBT central offices where there are four or more competitive LECs collocated and where SWBT has provided unbundled network elements, SWBT may elect not to combine unbundled network elements for a competitive LEC's business customers when the same UNEs are not already combined in that central office. If SWBT makes such an election, it will provide the requesting carrier with access to a secured frame where the competitive LEC can perform its own combining of those elements. SWBT will provide new combinations of unbundled local loop and switching not currently interconnected and functional in SWBT's network for the competitive LEC to provide service to residential customers through the full term of the Texas 271 Agreement.

process for UNE-P is *per se* discriminatory and violates rule 315(b)'s prohibition against separating individual network elements that are already combined.⁶⁰⁵ These parties assert that rather than migrating pre-existing combinations of elements "as is," SWBT's ordering process functionally disconnects the existing service configuration in the switch and replaces it with a new configuration established by the competitive LEC's local service request. According to these parties, SWBT's "three-order" process results in service outages and disruptions for their customers, negatively impacting the competitive carriers' ability to compete in the local market.⁶⁰⁶

220. Rule 315(b) forbids an incumbent LEC from separating network elements that are already combined to provide a service.⁶⁰⁷ SWBT is not separating network elements in this context. Instead, SWBT engages in a billing software change in order to establish service on behalf of a competitive LEC. In particular, for SWBT to migrate a customer to a requesting carrier using the UNE platform, it must enter a software change that instructs its systems that the customer no longer belongs to SWBT, identifies the new provider for that customer, and changes billing instructions accordingly. We find that SWBT's ordering process that converts its retail customer to a requesting carrier's UNE platform customer through a software change does not involve separation of combined network elements, and therefore is not prohibited by rule 315(b).

221. For the same reason, we find that SWBT's ordering process is not *per se* discriminatory. The record shows that SWBT's ordering system is designed to link orders to flow through its systems together. Thus, if SWBT's ordering process operates as SWBT claims it is intended to operate, the three orders would be processed simultaneously and the change would be imperceptible to the end-user customer. As described in the OSS section *supra*, SWBT is providing nondiscriminatory access to OSS ordering functions as evidenced by its performance data. Therefore, we conclude that SWBT is meeting its statutory obligation of providing nondiscriminatory access regardless of the specific type of ordering process it has chosen to implement.

222. Finally, we note that the Department of Justice expressed concern about two recent "disturbing allegations" by competing LECs regarding limitations on the availability of

⁶⁰⁵ See, e.g., CompTel Texas I Comments at 5-6; CompTel Texas I Comments, Exhibit A, Affidavit of Burk (CompTel Texas I Burk Aff.) at paras. 1-24; CompTel Texas I Comments, Exhibit B, Affidavit of Thompson (CompTel Texas I Thompson Aff.) at para. 26; AT&T Texas I Comments at 57-58; AT&T Texas I Comments, App. Vol. IIIA, Tab D, Declaration of DeYoung (AT&T DeYoung Decl.) at paras. 301-302. See also CLEC Coalition Texas I Comments at 26-27.

⁶⁰⁶ See discussion *supra* in OSS section. SWBT's ordering system separates the requesting carrier's local service request into three separate orders: (1) a disconnect or "D" order instructs SWBT's systems to disconnect the service presently installed at the customer location; (2) a new or "N" order is created that instructs SWBT's systems to install new service at the customer location; and (3) a change or "C" order is created, instructing SWBT's system to modify billing for the line.

⁶⁰⁷ Rule 51.315(b) reads: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315. This rule was challenged but upheld by the Supreme Court. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

UNE-P.⁶⁰⁸ Based on our review of these allegations and evidence in the record, we conclude that SWBT satisfies its statutory obligation to provide access to UNE-P on a nondiscriminatory basis. First, AT&T alleges that SWBT refuses to provide “fiber-to-the-curb” lines originating from a central office in Richardson, Texas to competitive LECs on a UNE-P basis, making them available only on a resale basis.⁶⁰⁹ While SWBT concedes that some orders for UNE-P over “fiber-to-the-curb” architecture were improperly rejected, it states that it completed other orders and that the improper rejections have not recurred since February 2000.⁶¹⁰ Moreover, SWBT explains that these rejections resulted from mistakes made by individual personnel and do not reflect its official policy. SWBT also submitted copies of internal procedures for completing such orders.⁶¹¹

223. Second, Global Crossing alleges that SWBT has “stonewalled” Global Crossing’s request to convert its resale customers in Texas to UNE-P service.⁶¹² We have previously stated that we will not withhold section 271 authorization on the basis of isolated instances of alleged unfair dealing or discrimination under the Act.⁶¹³ In this instance, we do not find that the incident cited by Global Crossing constitutes a pattern of discriminatory conduct or undermines our overall conclusion that SWBT provides nondiscriminatory access to combinations of network elements.⁶¹⁴ Moreover, we note that SWBT now acknowledges that “resale-to-UNE-P conversions” are covered by Global Crossing/Frontier’s current interconnection agreement in Texas, and SWBT suggests that it is willing to resolve this issue promptly.⁶¹⁵

⁶⁰⁸ See Department of Justice June 13 *Ex Parte* Letter at n.54.

⁶⁰⁹ See AT&T Texas II Chambers/DeYoung Reply Decl. at paras. 55-62.

⁶¹⁰ See SWBT July 23 *Ex Parte* Letter at 4.

⁶¹¹ See SWBT June 23 *Ex Parte* Letter at 4 and Att. 13 (confidential). Although we recognize that earlier remarks made by SWBT personnel in a workshop convened by the Texas Commission appear inconsistent with this policy, (see AT&T Texas 2 Chambers/DeYoung Reply Aff. at para. 59 and Att. 9), we rely on SWBT’s clarification provided in its June 23 *ex parte* letter.

⁶¹² See Global Crossing Texas II Reply Comments at 2-3 (accusing SWBT of refusing to allow Global Crossing to provide UNE-P service in Texas even though “existing agreements expressly provide for the availability of unbundled network elements”).

⁶¹³ See *Bell Atlantic New York Order* at para. 444; *Ameritech Michigan Order*, 12 FCC Rcd at 20749.

⁶¹⁴ SWBT concedes that one of its account representatives caused this delay by initially insisting that Global Crossing/Frontier could not convert its Texas resale customers to UNE-P. See SWBT June 23 *Ex Parte* Letter at 4. We further note that Global Crossing may choose to address disputes, such as this one, arising out of its interconnection agreement with the Texas Commission. See Texas Commission June 19 *Ex Parte* Letter at 4 (“welcom[ing] the opportunity to work with [Global Crossing] to resolve any potential issues”).

⁶¹⁵ See SWBT June 23 *Ex Parte* Letter at 4.

(ii) Access to the Enhanced Extended Link

224. Section 251(c)(3) of the Act imposes on incumbent LECs such as SWBT the obligation to provide nondiscriminatory access to unbundled network elements.⁶¹⁶ AT&T and other commenters assert that SWBT places unreasonable and discriminatory restrictions on a combination of the loop and transport network elements (also known as an enhanced extended link or “EEL”) in violation of this statutory requirement.⁶¹⁷ We disagree.

225. In a further notice of proposed rulemaking that accompanied the *UNE Remand Order*, we requested comment on the legal and policy implications of allowing interexchange carriers to gain access to the EEL solely for the purpose of providing special access to their customers at UNE-based rates, thereby avoiding an incumbent LEC’s tariffed special access service.⁶¹⁸ We were specifically concerned that such access would imperil the universal service subsidies implicit in the access services provided by incumbent LECs.⁶¹⁹ In our *Supplemental Order* in the same proceeding, we exercised our authority to protect universal service during periods of regulatory transition by issuing a substantive rule temporarily conditioning an interexchange carrier’s access to the EEL on the interexchange carrier’s provision of a significant amount of local exchange service, in addition to exchange access service, to given customers.⁶²⁰

226. On June 2, 2000, we clarified and extended that interim measure in a *Supplemental Order Clarification*, establishing safe harbor guidelines for what constitutes a “significant amount

⁶¹⁶ 47 U.S.C. § 251(c)(3).

⁶¹⁷ AT&T Texas II Comments at 59-60; Level 3 Texas II Comments at 7-8; WorldCom Texas II Comments at 37.

⁶¹⁸ *UNE Remand Order*, 15 RCC Rcd at 3914-15, paras. 494-496. Special access service typically consists of: (1) “entrance facilities,” which are dedicated transport links from an interexchange carrier’s point of presence to an incumbent LEC’s switch or serving wire center (SWC); (2) a dedicated transport link from the serving wire center to an end office (i.e., interoffice transport); and (3) a channel termination facility from the end office to the end user (i.e., the local loop). *Id.* at 3912-13, paras. 485, 489.

⁶¹⁹ *Id.* at 3912-13, 3915, paras. 485-489, 496; *see also id.* at 3915, para. 496 (seeking comment on the policy implications for our universal service program of a significant reduction in special access revenues).

⁶²⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 at paras. 4-5 (rel. Nov. 24, 1999) (*Supplemental Order*); *see Competitive Telecommunications Association v. FCC*, 117 F.3d 1068, 1073-75 (8th Cir. 1997) and *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135, 140 (D.C. Cir. 1984)). The *Supplemental Order* extended the terms of the temporary constraint imposed in the *UNE Remand Order* beyond merely the “entrance facility” portion of special access because we had originally underestimated the extent of the policy implications associated with temporarily constraining interexchange carriers only from substituting entrance facilities for incumbent LECs’ special access service. *Supplemental Order* at para. 4 & n.5 (extending temporary constraint to include combinations of unbundled loops and dedicated interoffice transport network elements). *See* WorldCom Texas II Comments at 38 (noting that our provisional use restriction on UNEs as a substitute for access services was “carefully tailored” in an effort to preserve requesting carriers’ rights to use UNE combinations for all other telecommunications purposes).

of local exchange service.”⁶²¹ In that order, we explained that, in addition to the universal service concerns underlying the *Supplemental Order* itself, we had not conducted an “impairment” analysis under section 251(d)(2) specifically addressing a carrier’s access to the EEL for purposes of competing in the exchange access market.⁶²² The need for such an analysis, we observed, was particularly important in light of the Supreme Court’s recent invalidation of our previous implementation of the “impairment” standard as insufficiently rigorous.⁶²³ We found that we needed additional time to complete that empirical inquiry, and we explained that incumbent LECs have no statutory obligation to provide the EEL solely or primarily for use in the exchange access market unless and until we exercise our legislative rulemaking authority under section 251(d)(2) to impose that obligation.⁶²⁴ We specifically rejected, on the basis of our long-standing experience in this area, the contention that this temporary constraint on access to the EEL would enable incumbent LECs to engage in “price squeezes” or other anticompetitive conduct once they enter the long-distance market.⁶²⁵

227. We disagree with WorldCom’s claim that SWBT has imposed discriminatory and unreasonable restrictions on access to EELs.⁶²⁶ WorldCom points to three requirements that SWBT places on access to EELs: (1) collocation; (2) refusal to permit “commingled” traffic; and (3) certification by the competitive LEC that the leased UNEs will carry only certain patterns of traffic.⁶²⁷ First, as we indicated in the *UNE Remand Order* and in the *Supplemental Order Clarification*, collocation is a reasonable requirement for access to EELs.⁶²⁸ Secondly, under the three safe harbor circumstances described in the *Supplemental Order Clarification*, incumbent LECs are allowed to prohibit commingling. As we stated in that order, we are not persuaded that removing the prohibition in those local usage options would not lead to the use of unbundled network elements by interexchange carriers solely or primarily to bypass special access services.⁶²⁹ Finally, certification is not an unreasonable requirement for implementing the *Supplemental Order*, where we expressly stated that competing carriers using EELs must provide a significant

⁶²¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 at paras. 1, 21-23 (rel. June 2, 2000) (*Supplemental Order Clarification*).

⁶²² See *Supplemental Order Clarification* at paras. 13-17.

⁶²³ *Id.*

⁶²⁴ *Id.* at paras. 15-16 & n.50.

⁶²⁵ *Id.* at paras. 19-20. The Eighth Circuit upheld a similar determination by this Commission in *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 548 (8th Cir. 1998).

⁶²⁶ WorldCom Texas II Comments at 37.

⁶²⁷ *Id.* at 39-41.

⁶²⁸ See *UNE Remand Order* at para. 486; *Supplemental Order Clarification* at paras. 22-24.

⁶²⁹ See *Supplemental Order Clarification* at para. 28.

amount of local exchange service.⁶³⁰ In fact, all three of the safe harbor circumstances described in the *Supplemental Order Clarification* for determining whether a requesting carrier is providing a “significant” amount of local exchange service call for certification by the requesting carrier.⁶³¹

228. There is no indication in the record that SWBT has imposed any restriction on access to EELs that conflicts with our specific guidance in the *Supplemental Order*. Because the substantive interim rules we have adopted in our orders on this subject define the nature of SWBT’s statutory obligations, SWBT’s adherence to them cannot constitute a basis for finding noncompliance with the checklist. It would be quite unfair to a BOC applicant to deny it approval to compete in the long-distance market on the basis of conduct that, in other proceedings, we have explicitly authorized. For the section 271 process to work, potential BOC applicants must have a reasonable degree of certainty about what they need to do to bring themselves in compliance with the statutory requirements, and they therefore need to be able to rely on our rules for appropriate guidance.

(iii) Intellectual Property Rights for UNEs

229. We reject AT&T’s assertion that SWBT places restrictions on intellectual property associated with UNEs in violation of sections 251(c)(3) and 252(d)(1) of the Act.⁶³² Furthermore, AT&T appears to believe that SWBT has an obligation to protect competitive LECs that lease network elements from intellectual property liability.⁶³³ AT&T notes that SWBT could “eliminate the problem” by agreeing to indemnify competitive LECs using UNEs in a manner equivalent to SWBT against any intellectual property liabilities that competitive LECs may incur from that use.⁶³⁴

230. We recently addressed the intellectual property rights surrounding UNEs in our *Intellectual Property Order* released April 27, 2000.⁶³⁵ In that order, we declared that section 251(c)(3) requires an incumbent LEC such as SWBT to use its best efforts to obtain coextensive intellectual property rights associated with UNEs from a vendor on terms and conditions that are equal in quality to the terms and conditions under which the incumbent LEC has obtained its

⁶³⁰ *Supplemental Order* at para. 5 & n.9 (noting that allowing requesting carriers to “self-certify” that they are providing a significant amount of local exchange service would not delay their ability to convert facilities to unbundled network element pricing).

⁶³¹ *Id.* at paras. 22-23.

⁶³² AT&T Texas II Comments at 57.

⁶³³ *See id.*; Letter from Mark E. Haddad, Counsel for AT&T Corp., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 at 1-2 (filed June 27, 2000).

⁶³⁴ AT&T Texas II Comments at 58.

⁶³⁵ *Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements*, CCBPOL. 97-4 & CC Docket No. 96-98, Memorandum Opinion and Order, FCC 00-139 (rel. Apr. 27, 2000) (*Intellectual Property Order*).

rights.⁶³⁶ SWBT has stated that it will fully comply with the *Intellectual Property Order's* requirement to use best efforts to obtain coextensive third-party intellectual property rights for competitive LECs using UNEs.⁶³⁷ Additionally, the T2A provides that the terms of the *Intellectual Property Order* control over language in the T2A that AT&T asserts is discriminatory.⁶³⁸ We therefore find that SWBT does not insist on language in its interconnection agreements that violates its obligation to provide nondiscriminatory access to UNEs under section 251(c)(3) or 252(d)(1) of the Act, as AT&T argues. Moreover, the *Intellectual Property Order* did not require that incumbent LECs indemnify competitive LECs for any intellectual property liability associated with their use of UNEs, and we do not find that unwillingness to provide such indemnification would necessarily constitute a violation of the Act. All that the nondiscrimination principle requires in this context is that the incumbent LEC utilize its best efforts to obtain coextensive third party intellectual property rights for competitive LECs in the use of unbundled network elements.

3. Pricing of Network Elements

a. Background

231. Checklist item 2 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.⁶³⁹ Section 251(c)(3) requires local incumbent LECs to provide “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.”⁶⁴⁰ 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.⁶⁴¹ Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost of providing those

⁶³⁶ *Id.* at para. 2. The Commission reasoned that the “nondiscriminatory access” obligation in section 251(c)(3) requires incumbent LECs to use their best efforts to provide all features and functionalities of each unbundled network element they provide, which includes any associated intellectual property rights that are necessary for the requesting carrier to use the network element in the same manner as the incumbent LEC. *Id.* at para. 9.

⁶³⁷ SWBT Texas II Reply at 64.

⁶³⁸ *Id.*; AT&T Texas I Comments, Vol. 4, Tab F, Declaration of Mark Witcher and Daniel P. Rhinehart at para. 16 (objecting to sections 7.3.2 through 7.3.4 of the T2A). Section 7.3.5 of the T2A provides that the provisions of the *Intellectual Property Order* “shall control over” the terms of sections 7.3.2 through 7.3.4. *Id.* Furthermore, any disputes between SWBT and the other party to the T2A regarding implementation of the *Intellectual Property Order* are subject to expedited dispute resolution procedures before the Texas Commission. *Id.*

⁶³⁹ 47 U.S.C. § 271(B)(ii).

⁶⁴⁰ 47 U.S.C. § 251(c)(3).

⁶⁴¹ 47 U.S.C. § 252(d)(1).

elements.⁶⁴² The Commission also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.⁶⁴³ Starting in September 1996, the U.S. Court of Appeals for the Eighth Circuit stayed and then vacated the Commission's pricing rules, and in 1997 it vacated Rule 51.315(b).⁶⁴⁴ The Supreme Court restored these rules, however, on January 25, 1999.⁶⁴⁵

232. SWBT's initial application noted that it assessed a number of nonrecurring charges on UNE orders. SWBT assesses a \$2.56 nonrecurring service order charge for each UNE order.⁶⁴⁶ SWBT also assesses a separate, nonrecurring charge for each stand-alone element ordered.⁶⁴⁷ When a requesting carrier orders UNEs that are already combined in SWBT's network, SWBT assesses the sum of the nonrecurring charges for the applicable UNEs. Thus, in an order for a pre-combined residential platform containing a two-wire analog loop, the applicable charges were: 1) a \$2.56 nonrecurring service order charge, 2) a \$15.03 nonrecurring two-wire analog loop charge, 3) a \$1.27 nonrecurring port charge, and 4) a \$4.17 nonrecurring cross-connect charge, for a total of \$23.03 in nonrecurring charges.⁶⁴⁸ In an order for a combination of elements not already assembled in SWBT's network, SWBT assessed an additional \$16.35

⁶⁴² *Local Competition Order*, 11 FCC Rcd at 15844-46; 47 C.F.R. §§ 51.501. *See also Line Sharing Order* (Commission concluded that states should set the prices for line sharing, as a new network element, in the same manner as the state sets prices for other UNEs).

⁶⁴³ *See* 47 C.F.R. § 51.315(b).

⁶⁴⁴ *Iowa Utilities Board v. FCC*, 96 F. 3d 1116 (8th Cir. 1996) (per curiam) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay); *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied*, 117 S. Ct. 429 (1996); *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) (vacating the Commission's pricing and combination rules).

⁶⁴⁵ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁶⁴⁶ SWBT Auinbauh Texas I Aff. App. Pricing UNE, Schedule of Prices.

⁶⁴⁷ SWBT Auinbauh Texas I Aff. at para. 140; SWBT Auinbauh Texas I Reply Aff. at para. 141.

⁶⁴⁸ SWBT Auinbauh Texas I Aff., App. Pricing UNE, Schedule of Prices. We note that SWBT's nonrecurring charges are substantially higher than those charged by incumbent LECs in other states, as the following table indicates:

STATE	RESIDENTIAL LOOP-TO-PORT COMBINATION RATES
Florida	\$1.46
New York	\$3.73
Connecticut	\$1.78
Texas	\$23.03

nonrecurring central office access charge (COAC).⁶⁴⁹

233. While the Eighth Circuit decision invalidating our rule 315(b) was in effect, the Texas Commission approved these charges.⁶⁵⁰ AT&T and WorldCom appealed to a federal district court in Texas the state commission's decision on the nonrecurring charges, including the COAC, contending that they constituted non-cost based "glue charges."⁶⁵¹ The district court affirmed the Texas Commission's decision, also while the Eighth Circuit's decision was in effect.⁶⁵² AT&T and WorldCom then appealed to the Fifth Circuit.⁶⁵³ On February 24, 2000, the U.S. Court of Appeals for the Fifth Circuit remanded AT&T and WorldCom's appeal to the Texas Commission for further proceedings in light of the Supreme Court's decision in *Iowa Utilities Board*.⁶⁵⁴ The Eighth Circuit and the Texas Commission are currently considering whether the Supreme Court's decision in *Iowa Utilities Board* and our rules obligate SWBT to combine UNEs in new combinations as ordered by competitors.⁶⁵⁵ The Texas Commission is also considering whether SWBT is entitled to impose the nonrecurring charges on competitive LEC orders for existing UNE combinations and whether SWBT's current nonrecurring charges are adequately supported by cost documentation as required by the Telecommunications Act and our rules.⁶⁵⁶

⁶⁴⁹ SWBT Auinbauh Texas I Aff., App. Pricing UNE, Schedule of Prices.

⁶⁵⁰ Texas Commission Texas I Comments at 26; SWBT Auinbauh Texas I Aff. at para. 142. Rule 315(b) provides that an incumbent LEC shall not separate network elements that the incumbent LEC currently combines except upon request. 47 C.F.R. § 51.315(b). Although the Supreme Court's review of the Commission's rules in *Iowa Utilities Board* revived rule 315(b), the Court did not review the Eighth Circuit's decision regarding rules 315(c) through (f). See *Iowa Utilities Board*, 525 U.S. 366.

⁶⁵¹ Texas Commission Texas I Comments at 26; SWBT Auinbauh Texas I Aff. at para. 142; AT&T Rhinehart Texas I Aff. at para. 11; WorldCom Price Texas I Aff. at para. 4. Glue charges are charges competitors pay to compensate the incumbent LEC for combining network elements. We have expressed skepticism regarding the lawfulness of such charges in certain circumstances. See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4092, para. 262.

⁶⁵² AT&T Rhinehart Texas I Reply Aff. at para. 29; SWBT Auinbauh Texas I Aff. at para. 142.

⁶⁵³ SWBT Auinbauh Texas I Aff. at para. 142.

⁶⁵⁴ *Southwestern Bell Telephone Co. v. AT&T Communications*, No. 99-50073, (5th Cir. Feb. 24, 2000).

⁶⁵⁵ See *Iowa Utilities Board*, 525 U.S. 366; Texas Commission, Docket No. 21622, Order No. 1 and Docket No. 22290, Order No. 5, Consolidating Two Dockets Setting Forth the List of Issues and Schedule for Phase I of the Proceeding (April 4, 2000).

⁶⁵⁶ See Texas Commission, Docket No. 21622, Order No. 1 and Docket No. 22290, Order No. 5, Consolidating Two Dockets Setting Forth the List of Issues and Schedule for Phase I of the Proceeding (April 4, 2000).

b. Discussion

234. *COAC*. SWBT states that the COAC is assessed on UNE combinations and enhanced extended loops (EELs) that do not already exist in combined form in SWBT's network, and thus require work by SWBT.⁶⁵⁷ SWBT argues that the COAC is not subject to sections 251 and 252 of the Act,⁶⁵⁸ and opposed the remand to the Texas Commission on this issue.⁶⁵⁹ According to SWBT, the COAC is not subject to the Commission's forward-looking methodology because the Supreme Court held only that incumbent LECs cannot separate already combined elements before providing them, not that they must combine separate UNEs.⁶⁶⁰ AT&T and WorldCom challenge the COAC as a non-cost-based glue charge.⁶⁶¹ They state that the COAC is not based on the cost of combining UNEs, but has its basis in a retail tariff that SWBT charges to cover central office activity to its retail customers.⁶⁶² AT&T and WorldCom contend that the COAC double-recovers costs recouped through the nonrecurring charges assessed on the individual elements,⁶⁶³ as well as the retail fees for central office.⁶⁶⁴

235. In its 1997 ruling, the Eighth Circuit invalidated rules 315(c) through (f), which required incumbent LECs to provide network elements in new combinations requested by a competing carrier. The Supreme Court did not specifically review that aspect of the Eighth Circuit's holding, which is, therefore, binding on us unless and until it is vacated. We are also precluded by the Eighth Circuit's holding from denying this application on the ground that SWBT has somehow violated the Act by setting particular pricing conditions on the provision of UNE combinations that, under the Eighth Circuit's decision, it need not provide at all. For this reason, we have not examined the prices associated with the UNE combinations that SWBT is not required to provide. The Eighth Circuit is currently considering whether to revive rules 315(c) through (f) on remand from *Iowa Utilities Board*, and the Texas Commission has been asked to consider the underlying "new combinations" issue on remand from the Fifth Circuit.

⁶⁵⁷ SWBT Texas I Comments at 37-38; SWBT Auinbau Texas I Aff. at para. 141; SWBT Texas I Reply at 56-57; Texas Commission Texas I Comments at 25; SWBT Auinbau Texas I Reply Aff. at para. 43.

⁶⁵⁸ SWBT Auinbau Texas I Aff. at para. 142; SWBT Auinbau Texas I Reply Aff. at para. 43.

⁶⁵⁹ SWBT Smith Texas I Reply Aff. at para. 9; SWBT Auinbau Texas I Aff. at para. 142.

⁶⁶⁰ SWBT Texas I Comments, App. A-3, Tab 1; SWBT Auinbau Texas I Aff. at para. 142; SWBT Texas I Reply at 56-57. *See also* AT&T Rhinehart Texas I Reply Aff. at para. 27.

⁶⁶¹ WorldCom Texas II Comments at 35.

⁶⁶² AT&T Rhinehart Texas I Aff. at paras. 57-58, 60; AT&T Rhinehart Texas I Reply Aff., Att. 2 at paras. 25, 27; WorldCom Price Texas I Aff. at para. 16.

⁶⁶³ AT&T Rhinehart Texas I Aff. at para. 60; WorldCom Price Texas I Aff. at paras. 17-18; WorldCom Texas II Comments at 35.

⁶⁶⁴ AT&T Rhinehart Texas I Reply Aff. at para. 25.

Given the current state of the law, those proceedings are the appropriate forums for resolving disputes such as the one at issue here.⁶⁶⁵

236. *Nonrecurring charges other than the COAC.* As previously discussed, we are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors and the relevant state commission, which has primary jurisdiction over the matter, is currently considering the matter.⁶⁶⁶ Instead, as we have explained, interim rate solutions are a sufficient basis for granting a 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set. SWBT's 271 application easily meets that standard.

237. The dispute over the nonrecurring charges other than the COAC has evolved significantly since SWBT filed its initial application.⁶⁶⁷ The practice that AT&T now challenges is a policy under which SWBT withholds collection of the relevant charges, effectively imposing an interim charge of zero on the nonrecurring items that form the basis of AT&T's complaints, if the competing carrier agrees to be bound by any true-up the Texas Commission might order on remand from the Fifth Circuit.⁶⁶⁸ That interim solution, which AT&T chose to reject, is reasonable given the legal uncertainty that has surrounded these charges since the Supreme Court's 1999 decision in *Iowa Utilities Board*. SWBT has agreed to an interim solution that gives its competitors the current benefit of the doubt on these rates, subject only to the possibility that the Texas Commission, and ultimately the federal courts, might someday find that a charge greater than zero is required by the Act or our rules. AT&T is poorly positioned to complain about that solution. Because the Texas Commission and the federal courts must be presumed to apply the law correctly, those carriers face uncertainty about the imposition of a true-up only to the extent that they reasonably believe that they may in fact have a legal obligation to pay something greater than a charge of zero. No carrier is immune from the effect of future

⁶⁶⁵ WorldCom contends that competitive LECs do not have access to SWBT's network to combine elements and it is apparently on that premise that WorldCom infers a requirement that the COAC must be cost-based. That premise is belied by the provision in SWBT's T2A that allows competitive LECs to combine individually ordered network elements. WorldCom Texas II Comments at 35-36; *see* SWBT Auinbauh Texas I Aff., Att. A, Attachment UNE-TX at 2. Because SWBT's interconnection agreement includes such a provision, competitors have a method, other than the COAC, of combining elements that are not previously combined in SWBT's network.

⁶⁶⁶ *See also* part V.A.2 *infra*, Pricing of Interconnection.

⁶⁶⁷ AT&T Texas II Comments at 39-42; WorldCom Texas II Comments at 33-34. AT&T and WorldCom have challenged the nonrecurring charges that apply to the pre-existing two-wire analog, loop-to-switch port combination. The application of nonrecurring charges to other combinations of UNEs was not raised by the parties as an issue in this proceeding.

⁶⁶⁸ AT&T Texas II Reply Comments at 37; AT&T June 14, 2000 *Ex Parte* Letter to Magalie Roman Salas, FCC Secretary, from Mark E. Haddad, Counsel for AT&T. *See* SWBT June 27, 2000 *Ex Parte* Letter to Magalie Roman Salas, FCC Secretary, from Eduardo Rodriguez, Jr., SBC Federal Regulatory Executive Director; SWBT Auinbauh Texas II Reply Aff. at paras. 41-42.

resolutions of disputed issues, and, under the circumstances, the objection of AT&T on this point is entirely insufficient to warrant a denial of SWBT's application.

238. In light of the Fifth Circuit remand and SWBT's offer to impose an effective interim rate of zero for the nonrecurring charges in dispute, therefore, we need not preempt the Texas Commission's ongoing inquiry into whether those charges comply with section 251 of the Act or our pricing rules. The Texas Commission has established a schedule to set permanent rates for all nonrecurring charges, and has indicated to the parties that the interim rates are subject to a true-up. The Texas Commission is currently reviewing whether SWBT is entitled to impose nonrecurring charges for existing UNE combinations and whether there is adequate cost support for SWBT's proposed nonrecurring charges as required by the Telecommunications Act of 1996 and our rules.⁶⁷⁰ Interested parties will have an opportunity to challenge the cost-based nature of the rates proposed by SWBT in the proceeding before the Texas Commission.⁶⁷¹

239. The situation we confront here is similar to the situation we confronted in the *Bell Atlantic New York Order* on the issue of interim rates.⁶⁷² As in that proceeding, the rate dispute here is fairly new, the relevant state commission has demonstrated a commitment to TELRIC, and provision will be made for retrospective rate adjustments once permanent rates are set. Moreover, SWBT has agreed to set an effective interim rate of zero, subject to true-up, pending resolution of this dispute. Because we are confident that the Texas Commission will reach an appropriate result consistent with our rules, we conclude that SWBT has met its obligations under this checklist item. We also observe that in any context in which prices are not set in accordance with our rules and the Act, we retain the ability to take a variety of enforcement actions and will not hesitate to do so.⁶⁷³

240. *xDSL Rates*. Covad argues that SWBT has not met the requirements of checklist item (ii) because it does not have final, TELRIC-based rates for charges relating to the installation and conditioning of xDSL-capable loops.⁶⁷⁴ The Texas Commission, in the Mega-Arbitration, set permanent charges for xDSL-capable loops.⁶⁷⁵ After reviewing the permanent rates set in the Mega-Arbitration, the arbitrator for the Covad/Rhythms' arbitration agreement set interim

⁶⁶⁹ See SWBT Texas I Reply at 50; SWBT Auinbauh Texas I Reply Aff. at paras. 27-29.

⁶⁷⁰ See Texas Commission, Docket No. 21622, Order No. 1 and Docket No. 22290, Order No. 5, Consolidating Two Dockets Setting Forth the List of Issues and Schedule for Phase I of the Proceeding (April 4, 2000).

⁶⁷¹ AT&T Texas II Comments, Exh. G, at 3 (SWBT's April 5, 2000 brief before the Texas Commission).

⁶⁷² *Bell Atlantic New York Order* 15 FCC Rcd at 4091, para. 259; see also Section V.A.2, Pricing of Interconnection.

⁶⁷³ See 47 U.S.C. § 271(d)(6).

⁶⁷⁴ Covad Texas I Comments at 15.

⁶⁷⁵ SWBT Texas I Application at 96; SWBT Auinbauh Aff. at para. 144.

charges, subject to true-up, that are the exact xDSL rates that Covad proposed.⁶⁷⁶ The Texas Commission is now conducting a proceeding to set permanent xDSL rates based on cost studies that SWBT submitted at the direction of the Texas Commission arbitrator.⁶⁷⁷

241. As discussed previously, interim rate solutions are a sufficient basis for granting a section 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, where the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set. It is evident from a review of the Covad/Rhythms arbitration proceeding that the interim xDSL rates are a reasonable interim solution to this fairly recent dispute, the Texas Commission has established a track record of setting interim xDSL rates that are cost-based, and the rates are subject to a retroactive rate adjustment.⁶⁷⁸ We are confident that the Texas Commission will ultimately set permanent, cost-based xDSL rates that comply with our rules. Under these circumstances, we find that SWBT has met the requirements of checklist item 2 with respect to its xDSL rates.

242. *Promotional Discounts.* AT&T also asserts that promotional discounts on unbundled loop and platform orders for telecommunications carriers serving residential customers that SWBT offers are discriminatory and in violation of the Act.⁶⁷⁹ These promotions arise out of SBC's merger with Ameritech.⁶⁸⁰ We found in the *SBC/Ameritech Merger Order* that these promotions will bring more competitive offerings to residential customers.⁶⁸¹ We also found that these promotional offerings are offered to all telecommunications carriers on a nondiscriminatory basis.⁶⁸² Our findings in that order answer AT&T's concerns here, and in any event, it would be quite unfair to penalize SWBT in this proceeding for acting in accordance with those findings.⁶⁸³

⁶⁷⁶ Covad Texas I Comments, Tab 5, Final Arbitration Award, Docket Nos. 20226, 20272, at 87-88. See SWBT Auinbau Aff. at para. 144; SWBT April 5 *Ex Parte* Letter at 14.

⁶⁷⁷ Covad Texas I Comments, Tab 5, Final Arbitration Award, Docket Nos. 20226, 20272 at 86-87. The xDSL cost study for loop conditioning was due on March 31, 2000 and for loop make-up information was due on May 30, 2000.

⁶⁷⁸ Covad Texas I Comments, Tab 5, Final Arbitration Award, Docket Nos. 20226, 20272, at 86-88.

⁶⁷⁹ AT&T Texas II Comments at 64, n. 62.

⁶⁸⁰ *Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14874 at paras. 390-391 (1999) (*SBC/Ameritech Merger Order*).

⁶⁸¹ *Id.* at 14915-15, para. 494.

⁶⁸² *Id.* at 14916 at para. 497.

⁶⁸³ At the time SWBT filed its application, SWBT offered competing carriers a second voice grade loop for the provision of advanced services at 50 percent of its lowest rate for a voice grade loop. Because the Commission found that this was a reasonable approach until the line sharing requirements took effect, we reject AT&T's arguments otherwise. *SBC/Ameritech Merger Order*, 14 FCC Rcd at 14987-92, App. C., paras. 8, 14; SWBT (continued....)

C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

1. Background

243. Section 271(c)(2)(B)(iii) requires BOCs to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.”⁶⁸⁴ In the *Local Competition First Report and Order*, the Commission interpreted section 251(b)(4) as requiring nondiscriminatory access to LEC poles, ducts, conduits, and rights-of-way for competing providers of telecommunications services in accordance with the requirements of section 224.⁶⁸⁵ In addition, we interpreted the revised requirements of section 224 governing rates, terms, and conditions for telecommunications carriers’ attachments to utility poles in the *Pole Attachment Telecommunications Rate Order*.⁶⁸⁶ Section 224(f)(1) states that “[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”⁶⁸⁷ Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”⁶⁸⁸

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Texas II Auinbauh Aff. at para. 5; AT&T Texas II Comments at 21; AT&T Texas II Pfau/Chambers Decl. at para. 13.

⁶⁸⁴ 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, n.574.

⁶⁸⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 16073, para. 1156.

⁶⁸⁶ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998) (*Pole Attachment Telecommunications Rate Order*), vacated in part, *Gulf Power Company v. FCC*, 208 F.3d 1263 (11th Cir. 2000).

⁶⁸⁷ 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines “utility” to include any entity, including a LEC, that controls “poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a)(1).

⁶⁸⁸ 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

244. Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for “pole attachments.”⁶⁸⁹ Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are “just and reasonable.”⁶⁹⁰ Notwithstanding this general grant of authority, section 224(c)(1) states that “[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State.”⁶⁹¹ As of 1992, nineteen states had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.⁶⁹² However, none of the five states in which SWBT is a LEC, including Texas, has elected to regulate poles, ducts, conduits, and rights-of-way.⁶⁹³

2. Discussion

245. Based on the evidence in the record, we conclude that SWBT provides nondiscriminatory access to the poles, ducts, conduits, and rights-of-way at just and reasonable rates in compliance with section 271(c)(2)(B)(iii), and thus satisfies the requirements of checklist item 3.⁶⁹⁴ The Texas Commission concludes that SWBT provides nondiscriminatory access to

⁶⁸⁹ Section 224(a)(4) defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” 47 U.S.C. § 224(a)(4).

⁶⁹⁰ 47 U.S.C. § 224(b)(1).

⁶⁹¹ 47 U.S.C. § 224(c)(1). Texas does not regulate the rates, terms, and conditions for pole attachments. *See In re Marcus Cable Associates, L.P. v. Texas Utilities Electric Company*, P.A. No. 96-002, 12 FCC Rcd 10362, 10365, para. 10 (1997); *see also States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992). The 1996 Act extended the Commission’s authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

⁶⁹² *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

⁶⁹³ SWBT Hearst Texas I Aff. at para. 32.

⁶⁹⁴ SWBT states that, pursuant to section 224 of the Act, it has negotiated agreements with cable providers for access to poles, ducts, conduits, and rights-of-way. SWBT Texas I Application at 92. The product of these negotiations is contained in SWBT’s Master Agreement, which has been incorporated in interconnection agreements approved by the Texas Commission. *Id.* at 92. SWBT states that the Master Agreement is available to any competitive LEC, and that it will negotiate modifications to the Master Agreement upon request. *Id.* at 92-93. SWBT states that its Master Agreement and its state-approved interconnection agreements incorporate rates that were negotiated with cable operators and comply with the methodology set out in section 224(d)(1) of the Act, as well as the cost formula and methodology specified by the Commission. *Id.* at 93; *see also* SWBT Hearst Texas I (continued....)

poles, ducts, conduits, and rights-of-way at just and reasonable rates that comply with the Act and Commission rules.⁶⁹⁵ No commenter raised allegations challenging SWBT's compliance with this checklist item.

D. Checklist Item 4 – Unbundled Local Loops

1. Background

246. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”⁶⁹⁶ The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises.⁶⁹⁷ This definition includes different types of loops, including “two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.”⁶⁹⁸

247. In order to establish that it is “providing” unbundled local loops in compliance with section 271(c)(2)(B)(iv), a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality.⁶⁹⁹

248. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.⁷⁰⁰ Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility

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Aff. at para. 32; SWBT Texas I Application App. C, Tab 1233 at 57 (Final Staff Status Report on Collaborative Process, Investigation of Southwestern Bell Telephone Company’s Entry into the Texas InterLATA Telecommunications Market, TX PUC Nov. 18, 1998).

⁶⁹⁵ Texas Commission Texas I Comments at 48-50.

⁶⁹⁶ 47 U.S.C. § 271(c)(2)(B)(iv).

⁶⁹⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

⁶⁹⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167.

⁶⁹⁹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 54.

⁷⁰⁰ *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20712-13, para. 185.

to support the particular functionality requested.⁷⁰¹ In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, with the competing carrier bearing the cost of such conditioning.⁷⁰² The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier (IDLC) technology⁷⁰³ or similar remote concentration devices for the particular loops sought by the competitor. Again, the costs associated with providing access to such facilities may be recovered from competing carriers.⁷⁰⁴

249. SWBT states that through February 2000, it provisioned to competing carriers more than 54,000 loops on a stand-alone basis and over 203,000 loops as part of pre-assembled loop/port combinations.⁷⁰⁵ In order to demonstrate that it provides nondiscriminatory access to these loops, SWBT submitted performance data relating to its loop provisioning and maintenance and repair functions for competing carriers. These data are disaggregated by loop type into several categories for both voice grade loops and loops capable of transmitting the digital signals necessary to support high-speed data services. In light of the variety of SWBT performance data, our analysis of checklist item 4 does not focus on any single performance measurement or any single type of loop. Instead, we examine the data for all the various loop performance measurements, as well as the factors surrounding the development of these performance measurements, in order to evaluate in the aggregate whether SWBT provides local loops in accordance with the requirements of checklist item 4.

250. The focus of our analysis in this section is on the provisioning and maintenance and repair of stand-alone loops. In particular, we address voice grade loops provisioned both as hot cut loops and as new stand-alone loops. We also address xDSL-capable loops and high capacity loops (*e.g.*, DS1 loops). Because provisioning and maintenance and repair functions for pre-assembled loop/port combinations are more similar to processes used to provide resale than

⁷⁰¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4095-96, para. 271; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713, para. 187.

⁷⁰² *Bell Atlantic New York Order*, 15 FCC Rcd at 4095-96, para. 271.

⁷⁰³ IDLC technology permits a carrier to multiplex and demultiplex loop traffic at a remote concentration point and to deliver that combined traffic directly to the switch without first separating the individual loops. *Local Competition First Report and Order*, 11 FCC Rcd at 15692, para. 383; *UNE Remand Order*, 15 FCC Rcd at 3793, para. 217.

⁷⁰⁴ *Local Competition First Report and Order*, 11 FCC Rcd at 15692-93, para. 384.

⁷⁰⁵ See *SWBT Texas II Habeas Aff.* at para. 5, Attach. A; *but see* Department of Justice Texas I Evaluation at 8-9 (alleging that SWBT overstates its facilities-based estimates); *Allegiance Texas I Comments* at 2; *Allegiance Texas I Howland Decl.* at paras. 1-2 (alleging SWBT overstates competing carrier volumes); *SWBT Texas I Habeas Reply* at paras. 3-10 (refuting Department of Justice and competing carrier allegations regarding SWBT's estimations of the volume of competition in Texas).

those used to provide unbundled loops, we address loop/port combination issues in our discussion of checklist item 2.

2. Discussion

251. Like the Department of Justice and Texas Commission,⁷⁰⁶ we conclude that SWBT demonstrates that it provides unbundled local loops in accordance with the requirements of section 271.⁷⁰⁷ Specifically, we find that SWBT demonstrates that it provides voice grade unbundled loops through “hot cut” conversions⁷⁰⁸ in a manner that offers an efficient competitor a meaningful opportunity to compete. Similarly, we find that SWBT provides competing carriers with voice grade unbundled loops through new stand-alone loops in substantially the same time and manner as it does for its own retail service. We also conclude that SWBT demonstrates that it provides xDSL-capable loops and high capacity loops to competing carriers in a nondiscriminatory manner.

252. To reach these conclusions, we evaluate a variety of SWBT performance measurement data disaggregated by loop type. From these data,⁷⁰⁹ we calculate that in February,

⁷⁰⁶ Department of Justice Texas II Evaluation at 1; Texas Commission Texas II Comments at 11-36.

⁷⁰⁷ As a preliminary matter, we note that SWBT also demonstrates that it has a concrete and specific legal obligation to provide unbundled local loops to competing carriers. Through various interconnection agreements, SWBT provisions a full range of unbundled loops, including 2-wire analog loops with 8.0 dB or 5.0 dB loss, 4-wire analog loops, 2-wire ISDN digital-grade lines, 4-wire DS1 digital grade lines, and various 2- and 4-wire loops capable of offering xDSL services. In addition, competing carriers may request loops capable of carrying DS3 signals. SWBT provides access to stand-alone loops through cross-connects that run from the SWBT distribution frame to competing carriers’ collocation space. *See* SWBT Texas I Deere Aff. at paras. 86-88, 151-165; *see also* Interim Award, petitions of IP Communications Corp. to Establish Expedited Public Utility Commission of Texas Oversight Concerning Line Sharing Issues, and Covad Communications Co., and Rhythms Links, Inc. against SWBT and GTE for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions, and Related Arrangements for Line Sharing, Docket Nos. 22168, 22469 (Texas PUC June 6, 2000) (setting forth interim interconnection terms and conditions for the high frequency portion of the loop).

⁷⁰⁸ A hot cut entails manually disconnecting the customer’s loop in the SWBT central office and reconnecting the same loop at the competing carrier’s collocation space. It also involves coordinated switch software changes at both SWBT’s switch and the competing carrier’s switch and the implementation of local number portability. The customer is taken out of service while the hot cut is in progress, thereby making the cut “hot,” although if the cut is successful, the service disruption will last no more than a few minutes. Thus, ensuring that a hot cut is provisioned correctly with coordination between SWBT and the competing carrier is critical because problems with the cutover could result in extended service disruption for the customer. *Bell Atlantic New York Order*, 15 FCC Rcd at 4104-05, para. 291 n.925.

⁷⁰⁹ *See* SWBT Aggregated Performance Data, Measurement No. 59 (“Percent Trouble Reports on N, T, C Orders within 30 days”) (8.0 dB Loop, 5.0 dB Loop, BRI Loop, DS1 Loop, DSL) at 271-No. 59a-c (calculated from total volumes listed on a per loop basis, combining 8.0 dB and 5.0 dB loop performance data to calculate mass market voice grade loops which may be provisioned by hot cuts or through new stand-alone loops, and BRI and DSL loop performance data to calculate xDSL-capable loops); Letter from Frank S. Simone, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-04 (filed (continued....))

March, and April 2000, mass market voice grade loops, which may be provisioned by hot cuts or through new stand-alone loops,⁷¹⁰ were 77, 74, and 71 percent of all unbundled stand-alone loops ordered by competing carriers. During the same period, xDSL-capable loops increased from 19 percent of all unbundled stand-alone loops ordered by competing carriers in February 2000 to 23 and 27 percent of all unbundled stand-alone loops ordered by competing carriers in March and April 2000. At the same time, DS1 high capacity loops have remained between 1 and 4 percent of all unbundled loops ordered by competing carriers in Texas. Although we examine unbundled loops in this disaggregated way, we base our conclusion on SWBT's unbundled stand-alone loop provisioning overall. Thus, even if SWBT's performance appears lacking in a particular area, we examine the circumstances surrounding any shortfall, as well as SWBT's performance in aggregate, to reach our conclusion that checklist item 4 is met.

253. As described above, the Texas Commission developed SWBT's performance measurements and standards in a collaborative state proceeding with substantial input from competing carriers.⁷¹¹ When possible, the Texas Commission elected to compare SWBT's service to competing carriers using unbundled loops directly to the level of service provided to SWBT's retail operations.⁷¹² Thus, where the Texas Commission determined that a retail analogue is appropriate and uses this analogue in its evaluation, we examine SWBT's performance by determining whether it provides unbundled local loops to competing carriers in substantially the same time and manner as it does to its retail customers.⁷¹³ Where, however, the Texas Commission determined that no comparable retail function exists, the level of SWBT service provided to competing carriers is tested against benchmarks developed in the collaborative state proceeding.⁷¹⁴ In these instances, we examine SWBT's service to competing carriers in terms of whether its performance affords efficient competitors a meaningful opportunity to compete.⁷¹⁵

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Mar. 27, 2000) (AT&T Mar. 27 *Ex Parte* Letter) (indicating that Performance Measurement No. 59 is reported on a per loop basis for all loop types, including 8.0 dB loops).

⁷¹⁰ Well over 50 percent of the stand-alone loops competing carriers purchase from SWBT are hot cut loops. Department of Justice Texas II Evaluation at 9. *Compare* volumes in SWBT Aggregated Performance Data, Measurement No. 59 ("Percent Trouble Reports on N, T, C Orders within 30 Days") (8.0 dB Loop, 5.0 dB Loop (combined)) at 271-No. 59a-c with Measurement No. 114.1 ("Loop Disconnect/Cross Connect Interval") (Local Number Portability with Loop-CHC, Local Number Portability with Loop-FDT) at 271-No. 114.1a-b.

⁷¹¹ *See supra* Part III.D.2; *see also* Texas Commission Texas I Comments at 1-2.

⁷¹² SWBT Texas I Application at 15.

⁷¹³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20655, para. 87; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4098, para. 279.

⁷¹⁴ SWBT Texas I Application at 15. *See generally Bell Atlantic New York Order*, 15 FCC Rcd at 4098, para. 279.

⁷¹⁵ *See Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 141.

254. In determining that SWBT satisfies checklist item 4, we rely, among other factors, on performance data collected and submitted by SWBT. Several commenters challenge the validity of SWBT's performance data generally, and loop performance data in particular.⁷¹⁶ As described above,⁷¹⁷ we reject this general contention because the data submitted by SWBT in this proceeding have been subject to substantial scrutiny and review by interested parties. Where commenters dispute specific data, we discuss these challenges in our analysis. In such instances, we look to the availability of data reconciled under the auspices of the Texas Commission, specific evidence presented by commenters, and the record as a whole, in order to determine the appropriate weight to accord the challenged data.

a. Voice Grade Stand-Alone Loops

255. SWBT provisions unbundled voice grade local loops to competing carriers in three distinct forms. First, SWBT provisions stand-alone loops to competing carriers through conversions of active loops to the carriers' collocation space. These loop cutovers, or hot cuts, make it possible to transfer an active SWBT customer's service to a competing carrier. Second, if SWBT does not presently service the customer on the lines in question, a competing carrier may obtain a "new" loop from SWBT. In this case, the customer receives service on a second loop from a competitive carrier and not from SWBT, while it may choose to retain SWBT on the original line. For both new loops and conversions of existing customers, when loops are provisioned on a stand-alone basis, the competing carrier obtains only the transmission facility between SWBT's central office and the customer's premises. Third, SWBT provisions loops as part of a platform of network elements. What follows below is a discussion of the provisioning and maintenance and repair of hot cut loops and new stand-alone loops. Because provisioning and maintenance and repair functions for loops provisioned as part of a platform are more similar to processes used to provide resale than those used to provide unbundled loops, we address them in checklist item 2.

(i) Hot Cut Loop Provisioning

256. Like the Department of Justice, we find that SWBT demonstrates that it provides unbundled hot cut loops through the conversion of active customers from SWBT to competing carriers, in accordance with the requirements of checklist item 4.⁷¹⁸ The ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period.⁷¹⁹ Moreover, the failure to provision hot cut loops

⁷¹⁶ AT&T Texas II Comments at 37-39; AT&T Texas II Reply at 15, 23-36; AT&T Texas I Pfau/De Young Decl. at paras. 15, 25, 56-58; WorldCom Texas I Comments at 34.

⁷¹⁷ See *supra* III.D.2.

⁷¹⁸ Department of Justice Texas II Evaluation at 1, 11.

⁷¹⁹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4109, para. 299.

effectively has a particularly significant adverse impact on mass market competition because they are a critical component of competing carriers' efforts to provide service to the small- and medium-sized business markets.⁷²⁰

257. At the outset, we reject the argument made by some commenters that SWBT fails to meet the "standards" we developed in the *Bell Atlantic New York Order*.⁷²¹ With each application we are presented with a different set of circumstances: new and differently defined performance measurements, state proceedings with different histories, new processes by which BOCs perform necessary functions for competing carriers, and new competing carrier concerns. Although the hot cut timeliness and quality issues we assess remain consistent, the evidence presented will vary from one application to the next. For instance, unlike Bell Atlantic, SWBT's hot cut processes are divided into two methods, and these two methods are reflected in separate performance measurements. As described in more detail below, some of SWBT's performance measurements are reported on a per loop basis, rather than the per order basis used by Bell Atlantic with some of its performance measurements. In many cases, such differences are the product of state proceedings where provisioning processes and performance measurements were developed and refined with input from both the BOC and competing carriers. These differences can make direct comparison with the performance discussed in prior orders difficult, if not impossible. As a result, although our hot cut inquiry here examines the same criteria as our inquiry in the *Bell Atlantic New York Order*, we necessarily base our conclusion on the evidence presented in this application. In particular, we evaluate SWBT's hot cut process, and the timeliness and quality of the hot cuts it provides to competing carriers.

258. The Texas Commission reasonably determined that there is no retail equivalent to a hot cut, and no commenter contends otherwise. Thus, as in the *Bell Atlantic New York Order*, the appropriate standard is whether the BOC provides unbundled loops through hot cuts in a manner that offers an efficient competitor a meaningful opportunity to compete.⁷²² In a footnote in one of its comments, AT&T proposes an ostensibly different standard, under which a BOC would be required to demonstrate that it has provided "the fewest number of outages and best on-time performance that it is technically feasible and commercially reasonable for the BOC to achieve."⁷²³ Because AT&T does not explain how such a test would operate in practice or how, if at all, it would differ from our traditional standard for BOC activities that lack a retail analogue,

⁷²⁰ Department of Justice Texas II Evaluation at 9; Connect! Texas II Comments at 6; AT&T Texas II Depkiewicz Reply Decl. at paras. 16-21, Attach. 1-3; Department of Justice Texas I Evaluation at 27; Allegiance Texas I Comments at 5; AT&T Texas I DeYoung Decl. Vol. IIIA at paras. 11, 99-102, Attach. 14-16; Letter from Mark E. Haddad, Counsel, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 at 10 (filed June 8, 2000) (AT&T June 8 *Ex Parte* Letter).

⁷²¹ @Link Texas II Comments at 3-4, 6; AT&T Texas II Comments at 26-27, 29; Connect! Texas II Comments at 4-5; RCN Texas II Comments at 5, 7; AT&T Texas II DeYoung/Van de Water Decl. at paras. 13-25; 51; ALTS Texas II Reply at 10-11; AT&T Texas II Reply at 19, 33, 35; AT&T Texas II DeYoung/Van de Water Reply Decl. at para. 9; Department of Justice Texas I Evaluation at 33.

⁷²² See *Bell Atlantic New York Order*, 15 FCC Rcd 4104, para. 291.

⁷²³ AT&T Texas II Comments at 28 n.34.

we conclude that AT&T's passing reference to this issue provides no basis for departing from our traditional approach.⁷²⁴

259. *Hot Cut Process.* SWBT makes available two hot cut processes: the fully coordinated hot cut (CHC) process and the frame due time (FDT) hot cut process. CHC orders are manually handled in SWBT's order processing center and require intensive coordination and communication between SWBT and the competing carrier during the actual cutover from SWBT to the competing carrier.⁷²⁵ FDT hot cuts require both SWBT and the competing carrier to perform necessary work at pre-arranged times, with no communication required at the time of the hot cut.⁷²⁶ Unlike CHC orders, FDT orders are capable of flowing through SWBT's order processing center without manual work by SWBT's representatives.⁷²⁷ Although in the past SWBT has represented that the CHC process is too resource-intensive to support commercial levels of demand for lower volume loop orders,⁷²⁸ SWBT now states that it has sufficient resources to process competing carriers' orders in a timely and efficient manner, regardless of which method they choose.⁷²⁹ Thus, competing carriers "have their choice of two alternative processes in every case, allowing them to pick the process that best fits their resources and priorities."⁷³⁰ At present, slightly more than half of all hot cuts are performed with the FDT process; the remainder are performed with the CHC process.⁷³¹

⁷²⁴ Indeed, AT&T appears to overlook the significance of the lack of a retail analogue in this context. It appears to rely, for example, on the language of section 51.311(b) of the Commission's rules, which requires an incumbent LEC, "to the extent technically feasible," to afford new entrants with a "quality of access" to network elements that is "at least equal in quality to that which the incumbent LEC provides to itself." 47 C.F.R. § 51.311(b). But the "equality" standard of this rule, which varies in application from incumbent to incumbent, applies in contexts where (unlike here) there is some retail analogue. The rule does not impose a general standard of performance.

⁷²⁵ SWBT Texas I Ham Aff. at para. 134; SWBT Texas I Conway Aff. at paras. 78-79.

⁷²⁶ SWBT Texas I Conway at para. 76.

⁷²⁷ Department of Justice Texas I Evaluation at 27.

⁷²⁸ SWBT Texas I Conway Aff. at para. 79; AT&T Texas I DeYoung Decl. IIIA at paras. 44-47 (citing SWBT letters, e-mails, and statements presented to the Texas Commission and Nov. 2, 1999 Texas Commission Hearing Tr. at 267 (Gwen Rowling of ICG Communications testified before the Texas Commission that "Frame due time, we have been asked by Southwestern Bell to start using it. We didn't come to Bell to do it. They asked us to start doing it . . ."). See also AT&T Texas II Reply at 23; @Link et al. Texas II Reply at 5; AT&T June 8 *Ex Parte* Letter at 6-7.

⁷²⁹ SWBT Texas II Application at 10; SWBT Texas II Noland/Dysart Reply Aff. at para. 54; SWBT June 23 *Ex Parte* Letter at 3.

⁷³⁰ SWBT Texas II Application at 8; SWBT Texas II Noland/Dysart Reply Aff. at para. 54.

⁷³¹ In February, March, and April 2000, SWBT performed 1890, 1998, and 1500 CHCs and 2296, 2119, and 1637 FDT hot cuts. SWBT Aggregated Performance Data, Measurement No. 114.1 ("Loop Disconnect/Cross Connect Interval") (Local Number Portability with Loop—CHC, Local Number Portability with Loop—FDT) at 271-No. 114.1a-b.

260. Upon review of SWBT's present representations regarding CHC availability and the lack of recent competing carrier evidence suggesting otherwise, we conclude that competing carriers may freely choose between the CHC and FDT hot cut processes.⁷³² Although some commenters maintain that SWBT cannot handle high volumes of CHC orders, they offer little or no current evidence to demonstrate that this continues to be true.⁷³³ With respect to the more recent evidence that AT&T offers to support this conclusion, namely AT&T's experience with erroneous CHC order rejections for invalid due dates, we conclude that it is insufficient to warrant a determination that the CHC process is not capable of handling current demand. The only evidence AT&T provides is a statement by SWBT in an e-mail regarding CHC rejections that SWBT cannot provide a "limitless" number of CHC orders.⁷³⁴ In light of its stated commitment in the same e-mail to "make[] every effort to accommodate all requested dates and times for CHC orders," this is not, by itself, substantial evidence that SWBT's process cannot manage competing carrier demand for CHCs.⁷³⁵ Moreover, the e-mail indicates that SWBT actively is working with AT&T to resolve its CHC rejection problem. In any event, should future SWBT hot cut capacity constraints limit competing carrier access to unbundled voice grade loops, we shall take appropriate enforcement action at that time.

261. We emphasize that competing carriers can now choose freely between the CHC and FDT hot cut processes, because we conclude that the evidence in this proceeding indicates that it is only through the CHC process that SWBT is able to provision unbundled hot cut loops in accordance with the requirements of checklist item 4. In the discussion that follows, we find that SWBT demonstrates it provisions CHCs in a timely manner and at an acceptable level of quality, with a minimal service disruption and a minimum number of troubles following installation. We also find that SWBT demonstrates that it provisions FDT hot cuts in a timely manner and with a minimum number of troubles following installation. Problems, however, remain with respect to FDT hot cut service disruptions, and therefore we do not find that SWBT provisions hot cut loops through the FDT process in accordance with the requirements of checklist item 4. Yet, because the FDT process is still chosen by competing carriers in significant numbers, we discuss the FDT process in conjunction with the CHC process below.

262. *Hot Cut Timeliness.* We conclude that SWBT demonstrates that it can complete a substantial percentage of CHCs and FDT hot cuts it provisions within a reasonable time

⁷³² We note that the Department of Justice requested that the Commission make this determination. See Department of Justice Texas II Evaluation at 14. See also Texas Commission June 19 *Ex Parte* Letter at 3 n.7; SWBT June 23 *Ex Parte* Letter at 3..

⁷³³ @Link Texas II Comments at 5; Connect! Texas II Comments at 7; RCN Texas II Comments at 8; AT&T Texas II Reply Comments at 24; AT&T June 8 *Ex Parte* Letter at 6 (citing SWBT statements from September and November 1999 regarding the availability of the FDT hot cut process and/or the limits of the CHC process).

⁷³⁴ See generally AT&T June 8 *Ex Parte* Letter at 7, Attach. 8 (e-mail from Bob Bannecker, SWBT, to Sarah DeYoung, AT&T (sent May 26, 2000)).

⁷³⁵ AT&T June 8 *Ex Parte* Letter at Attach. 8 (e-mail from Bob Bannecker, SWBT, to Sarah DeYoung, AT&T (sent May 26, 2000)).

interval.⁷³⁶ Under the performance measurement developed by the Texas Commission, and approved at its December 16, 1999 open meeting, SWBT hot cut performance is measured according to the percentage of hot cut loops in orders of less than 25 lines that SWBT completes within a specified time window.⁷³⁷ The Texas Commission adopted an interim benchmark, under which 100 percent of these cutovers must be completed within 2 hours of the scheduled start time.⁷³⁸ This standard applies to both CHC and FDT hot cuts.⁷³⁹ The performance data SWBT submitted with its application indicate that SWBT completed between 98 and 99 percent of all CHCs within 2 hours from February through April 2000.⁷⁴⁰ During the same time period, these data indicate that SWBT completed between 92 and 99 percent of FDT hot cuts within 2 hours.⁷⁴¹

263. In response to criticism regarding the accuracy of SWBT's hot cut data, the Texas Commission issued orders requesting SWBT and competing carrier reconciliation of various SWBT self-reported hot cut performance measurement data.⁷⁴² Because we believe data reconciled under the auspices of a state commission, with the participation of both competing carriers and the BOC, to be reliable evidence of a BOC's performance, we accord these data substantial weight.⁷⁴³ Moreover, the reconciled data include information on SWBT's ability to perform both CHCs and FDT hot cuts within a 1 hour interval.⁷⁴⁴ In addition to these reconciled

⁷³⁶ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4114-15, para. 309 (finding that Bell Atlantic was able to complete at least 90 percent of competing carrier hot cut orders of fewer than 10 lines within a one-hour interval).

⁷³⁷ Texas Commission Texas II Comments at 13.

⁷³⁸ Texas Commission Texas II Comments at 13.

⁷³⁹ See, e.g., SWBT Aggregated Performance Data, Measurement No. 114.1 ("Loop Disconnect/Cross Connect Interval") (Local Number Portability with Loop-CHC, Local Number Portability with Loop-FDT) at 271-No. 114.1a-b.

⁷⁴⁰ SWBT Aggregated Performance Data, Measurement No. 114.1 ("Loop Disconnect/Cross Connect Interval") (Local Number Portability with Loop-CHC) at 271-No. 114.1a.

⁷⁴¹ SWBT Aggregated Performance Data, Measurement No. 114.1 ("Loop Disconnect/Cross Connect Interval") (Local Number Portability with Loop-FDT) at 271-No. 114.1b.

⁷⁴² Order No. 4, *Section 271 Compliance Monitoring of Southwestern Bell Tel. Co. of Texas*, Project No. 20400 (Texas PUC Mar. 28, 2000) (Texas Commission Mar. 28 Order); Order No. 9, *Section 271 Compliance Monitoring of Southwestern Bell Tel. Co. of Texas*, Project No. 20400 (Texas PUC May 5, 2000) (Texas Commission May 5 Order).

⁷⁴³ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4106-07, paras. 294-95. See also SWBT Texas II Application at 31; SWBT Texas II Noland/Dysart Reply Aff. at para. 19. But see AT&T Texas II DeYoung/Van de Water Reply Decl. at para. 15; AT&T June 8 *Ex Parte* Letter at 15 (alleging that SWBT overstates the Texas Commission's involvement in fact finding).

⁷⁴⁴ AT&T has criticized the 2 hour interval as overly generous. AT&T Texas II Comments at 35-36; AT&T Texas II DeYoung/Van de Water at paras. 60, 105-109. The Texas Commission is revising its hot cut interval measurement. Loops in orders with less than 11 lines will be assessed using a 1 hour interval and loops in larger orders will be tracked against a longer time. SWBT Texas II Noland/Dysart Reply Aff. at para. 45.

data, SWBT presented data from competing carriers that were reconciled, combined with SWBT data from competing carriers that did not participate in the reconciliation. Because we find that this aggregated presentation is the most accurate overall picture of SWBT performance in Texas, we use it to evaluate SWBT's hot cut loop timeliness.

264. We find that the aggregated data demonstrate that SWBT can provision a substantial percentage of competing carrier CHC and FDT hot cut loops within a 1 hour interval. These aggregated data indicate that during December 1999, and January and February 2000, SWBT completed an average of 90 percent of all CHC loops from orders with less than 11 lines within 1 hour and an average of 94 percent of all FDT hot cut loops from orders with less than 11 lines within 1 hour.⁷⁴⁵ Moreover, in its reply comments, SWBT developed similar data for March and April 2000, that demonstrate that during these two months, SWBT completed an average of 93 percent of all CHC loops from orders with less than 11 lines within 1 hour and an average of 96 percent of all FDT hot cut loops from orders with less than 11 lines within 1 hour.⁷⁴⁶ We find this evidence sufficient to overcome the claims of competing carriers that SWBT's hot cut provisioning is not performed in a timely manner and therefore affects their ability to obtain and retain customers.⁷⁴⁷

265. We acknowledge that some commenters raise concerns with respect to the way SWBT measures the interval for its completion of hot cut loops. First, some competing carriers criticize SWBT and the Texas Commission for using a measurement based on individual loops, rather than orders.⁷⁴⁸ Although these commenters insist that a loop-based measurement⁷⁴⁹ is a more charitable representation of SWBT's performance than a measurement based on orders, we do not find their arguments persuasive. A measurement based on loops and not orders is not systematically more generous to the BOC, because it is possible for the percentage of loops completed within an interval to be lower than the percentage of orders completed within the same interval. As SWBT points out, whether one approach is stricter than the other depends upon the

⁷⁴⁵ SWBT Apr. 25 *Ex Parte* Letter at Attach. 2 ("PM 114.1 Reconciled/Reported Results Summary").

⁷⁴⁶ These data were developed pursuant to a May 5, 2000 Texas Commission order requesting reconciliation of certain SWBT March and April 2000 hot cut data. We acknowledge, however, they do not reflect the final reconciliation. See SWBT Texas II Noland/Dysart Reply Aff. at para. 15, Attach. B ("PM 114.1 Reconciled/Reported Results Summary") (averaging together March and April 2000 data). See also Texas Commission May 5 Order; AT&T June 8 *Ex Parte* Letter at 1-2 (criticizing SWBT's unilateral presentation of hot cut timeliness data for March and April 2000).

⁷⁴⁷ CLEC Coalition Texas I Comments at 41-42; RCN Texas II Comments at 11; ALTS Texas I Comments at 33; AT&T Texas I DeYoung Vol. IIIA Decl. at paras. 75-81, 128-130.

⁷⁴⁸ AT&T Texas II Comments at 34; AT&T Texas II DeYoung/Van de Water Decl. at paras. 22, 31, 52; AT&T Texas II DeYoung/Van de Water Reply Decl. at paras. 72-81; Department of Justice Texas I Evaluation at 32 n.85; Allegiance Texas I Comments at 5-7; ALTS Texas I Comments at 33; AT&T Texas I DeYoung Vol. IIIA Decl. at paras. 14, 55, 131-159.

⁷⁴⁹ By loop-based measurement, we mean data reported on an individual line basis.

extent to which delays occur on multiple lines in the same order.⁷⁵⁰ Moreover, we agree with the Texas Commission that performance measurements are not necessarily “one size fits all,” and conclude that it is the more prudent course for this Commission to recognize reasonable measurements adopted by state commissions as a part of a state proceeding that included both BOC and competing carrier input.⁷⁵¹

266. Finally, some commenters criticize SWBT’s interim hot cut timeliness performance measurement because the business rules indicate that the interval ends when the SWBT technician completes the hot cut, excluding the time it takes for the SWBT technician to call the competing carrier to indicate that SWBT completed work on the CHC cutover.⁷⁵² At the outset, we note that this criticism does not apply to FDT hot cuts, because no such call is required when this process is used. With respect to CHCs, we find that this concern is misplaced, because communication between SWBT and the competing carrier is already required at the time of the CHC.⁷⁵³ Although beyond the scope of this order, we note that SWBT and competing carriers recently agreed to revise the business rules so that the conversion interval will end after the SWBT technician has notified the competing carrier that the cutover is complete.⁷⁵⁴

267. *Hot Cut Quality.* We further conclude that SWBT demonstrates that it provisions CHCs at a level of quality that offers efficient competitors a meaningful opportunity to compete. Upon review of the evidence in the record regarding hot cut installation quality, and specifically the outage rate associated with failed SWBT CHCs, and the trouble rate following CHC installation, we find that SWBT demonstrates that it provisions CHCs to competitors in a manner that meets the requirements of the checklist. Although we find that SWBT’s performance with respect to troubles following FDT hot cut installation meets the requirements of the checklist, we find that the outage rate associated with failed SWBT FDT hot cuts does not.

268. *Outages.* We conclude that the record demonstrates that the CHC process SWBT makes available to competing carriers minimizes service disruptions that may significantly affect

⁷⁵⁰ SWBT Texas II Reply at 34; SWBT Texas II Noland/Dysart Reply Aff. at para. 47 (demonstrating that changing from reporting a measurement in loops to reporting a measurement in orders has no consistent impact), Attach. K (comparing SWBT hot cut timeliness data for December 1999 through March 2000, finding that of the eight reported results (CHC and FDT for the four months), two showed no change when recalculated on a per order basis, three showed improvement, and three showed deterioration in SWBT performance).

⁷⁵¹ Texas Commission Texas II Comments at 3.

⁷⁵² AT&T Texas II Comments at 39; AT&T Texas II DeYoung/Van de Water Decl. at paras. 54, 102; AT&T Texas II DeYoung/Van de Water Reply Decl. at para. 92; Department of Justice Texas I Evaluation at 31-32 n.84; Department of Justice Mar. 9 *Ex Parte* Letter at 9; AT&T June 8 *Ex Parte* at 11-13.

⁷⁵³ SWBT Texas I Conway Aff. at para. 84.

⁷⁵⁴ SWBT Texas II Reply at 33; SWBT Texas II Noland/Dysart Reply Aff. at paras. 11-13; Department of Justice Texas II Evaluation at 10 n.26; Department of Justice Texas I Evaluation at 31-32 n.84. AT&T also contends that SWBT’s interim performance measurement fails to capture certain delays in switch activation. AT&T, however, presents no data to indicate that this is a recurrent problem. AT&T June 8 *Ex Parte* Letter at 13.

competing carriers' end-user customers. As a result, we conclude that SWBT demonstrates that the level of outages competing carriers may experience as a result of failed SWBT CHCs is sufficiently small to provide an efficient competitor with a meaningful opportunity to compete.

269. A comprehensive reconciliation of AT&T's hot cut outage data conducted under the auspices of the Texas Commission demonstrates that SWBT's CHC process minimizes service disruptions experienced by competing carrier customers who are provisioned service via hot cut loops. Because no performance measurement exists to capture all SWBT-caused hot cut outages, the Texas Commission developed the Provisioning Process Improvement Group (PPIG) to reconcile SWBT and competing carrier data relating to unexpected hot cut service outages.⁷⁵⁵ As a result of PPIG efforts, a joint affidavit was filed with the Texas Commission by SWBT and AT&T with reconciled outage data for December 1999, and January and February 2000.⁷⁵⁶ In addition, SWBT filed an affidavit with the Texas Commission reflecting the PPIG reconciliation for March 2000 that is consistent with AT&T's representation of the March 2000 PPIG data in its reply comments.⁷⁵⁷ Furthermore, the Texas Commission filed an *ex parte* letter with this Commission indicating the results of the April 2000 PPIG data reconciliation.⁷⁵⁸ As with our discussion of SWBT's hot cut timeliness data, we review these reconciled data on a per loop basis.⁷⁵⁹

270. Because the PPIG data reveal that during the period from December 1999 through April 2000, an average of less than 5 percent of all CHC loops that SWBT provisioned to AT&T resulted in end-user service outages caused by SWBT provisioning failures, we conclude that SWBT makes available a hot cut process that provides efficient competitors with a meaningful

⁷⁵⁵ Texas Commission Texas II Comments at 16; SWBT Texas II Conway/Dysart Aff. at para. 25; SWBT Apr. 25 *Ex Parte* Letter at Attach. 3 (Joint Affidavit of Mark Van de Water and Robert Royer, Investigation of Southwestern Bell Telephone Co.'s Entry Into the Texas InterLATA Telecommunications Market, Section 271 Compliance Monitoring of Southwestern Bell Telephone Co., Project Nos. 16251, 20400 at 2 (filed with Texas PUC Apr. 21, 2000) (PPIG Van de Water/Royer Aff.)).

⁷⁵⁶ PPIG Van de Water/Royer Aff. at Attach. (CHC and FDT December 1999, and January and February 2000 outage data charts).

⁷⁵⁷ Affidavit of Terry R. Hoeven, Section 271 Compliance Monitoring of Southwestern Bell Telephone Co., Project No. 20400 (filed with Texas PUC May 18, 2000) (PPIG Hoeven Aff.) (SWBT filing listing PPIG data from March 2000 reconciliation); SWBT Texas II Noland/Dysart Reply Aff. at Attach. C; AT&T Texas II De Young/Van de Water Reply Decl. at Attach. 1 (March 2000 PPIG data summary).

⁷⁵⁸ We note that the Department of Justice requested that the Commission confirm the accuracy of the April 2000 CHC outage data. Department of Justice Texas II Evaluation at 14. We find the Texas Commission's endorsement of these data, as described in its June 9, 2000 *ex parte* letter, and as filed by SWBT with the Texas Commission in a June 15, 2000 affidavit, is substantial evidence of its accuracy. Texas Commission June 19 *Ex Parte* Letter at 3.

⁷⁵⁹ As described above with respect to hot cut timeliness data, we reject the argument of commenters who contend that a measurement based on loops rather than orders is systematically more generous to the incumbent than a measurement based on orders. *See supra* para. 266.

opportunity to compete.⁷⁶⁰ We find this outage rate low enough to reject competing carrier arguments that high CHC outage rates caused by SWBT provisioning failures make it difficult for them to obtain and retain customers.⁷⁶¹ We acknowledge, however, that this average excludes outages directly related to a one-time Telcordia software problem (SOAC) that affected outage rates in February 2000. Although some commenters criticize this exclusion,⁷⁶² we find that these outages were an unusual one-time problem based on a vendor's software defect.⁷⁶³ The Texas Commission concludes that "this problem has been rectified and will not affect SWBT's future performance."⁷⁶⁴ Furthermore, AT&T acknowledged the scope of the SOAC outage problem and its impact on the PPIG data in the joint affidavit.⁷⁶⁵

271. We acknowledge that the reconciled PPIG data demonstrate a higher outage rate associated with the FDT hot cut process than the CHC process.⁷⁶⁶ Furthermore, we acknowledge that in the past SWBT has encouraged competing carriers to use the FDT process for all but large volume loop orders, or orders provisioned outside of normal business hours.⁷⁶⁷ At present, however, SWBT makes both the CHC and FDT hot cut processes equally available to competing carriers.⁷⁶⁸ Moreover, SWBT provides the FDT process to competing carriers free of charge, despite the fact that FDT conversions require most of the same SWBT labor as CHC conversions.⁷⁶⁹ In addition, the mechanized nature of the FDT process makes it a less labor-intensive option for competing carriers than the CHC process.⁷⁷⁰ If, despite these conveniences, any competing carrier finds FDT outage rates too high, they are free to use the alternative CHC

⁷⁶⁰ PPIG Van de Water/Royer Aff. at Attach. (CHC and FDT December 1999, and January and February 2000 PPIG outage charts); PPIG Hoeven Aff. (CHC and FDT March 2000 outage charts); AT&T Texas II DeYoung/Van de Water Reply Decl. at Attach. 1 (outages summary, March 2000 data); Texas Commission June 19 *Ex Parte* Letter at 3 (CHC outages from PPIG April 2000 data).

⁷⁶¹ See SWBT Texas II Conway/Dysart Aff. at paras. 10-11; AT&T Texas II DeYoung/Van de Water Decl. at paras. 23, 55-59 n.11. See generally *Bell Atlantic New York Order*, 15 FCC Rcd at 4110-11, paras. 302-03.

⁷⁶² See, e.g., AT&T Texas II Comments at 31 n.38; AT&T Texas II Reply at 28-29.

⁷⁶³ SWBT Texas II Conway/Dysart at paras. 10-11 (SWBT performance results for February irreversibly affected by Telcordia software defect); SWBT Texas II Noland/Dysart Reply Aff. at paras. 23-24 (describing SWBT testing procedures to ensure this sort of software problem does not happen in the future).

⁷⁶⁴ Texas Commission Texas II Comments at 18; SWBT Texas II Conway Aff. at para. 34.

⁷⁶⁵ PPIG Van de Water/Royer Aff. at Attach. (CHC and FDT February 2000 outage charts).

⁷⁶⁶ PPIG Van de Water/Royer Aff. at Attach. (FDT December 1999, and January and February 2000 outage charts).

⁷⁶⁷ See SWBT Texas I Conway Aff. at paras. 79, 86. AT&T Texas II Reply at 23; @Link et al. Texas II Reply at 5; See also AT&T Texas I DeYoung Decl. Vol. IIIA at paras. 44-47; AT&T June 8 *Ex Parte* Letter at 6-7.

⁷⁶⁸ SWBT Texas II Application at 8-10; SWBT June 23 *Ex Parte* Letter at 3.

⁷⁶⁹ SWBT Texas II Reply at 36-37.

⁷⁷⁰ SWBT Texas II Reply at 36-37.

process.

272. Because we find that the CHC process affords efficient competitors a meaningful opportunity to compete, and that this process is now widely available to all competing carriers, we do not find the fact that SWBT has developed an alternative, mechanized process with a higher incidence of competing carrier end-user customer outages to be fatal to this application. The record reflects that SWBT is working to further refine the FDT process so that it becomes a viable option for more competing carriers in the near future.⁷⁷¹ We do not wish to discourage SWBT, or any other incumbent, from developing new processes to provision unbundled loops. As the Texas Commission points out, no one is benefited if this Commission discourages incumbents from developing potentially more efficient systems or processes, just before or during the pendency of their section 271 application.⁷⁷²

273. Finally, we commend the Texas Commission for developing a new “outages on conversion” performance measurement in its April 2000 work sessions with SWBT and competing carriers.⁷⁷³ This measurement will capture the percentage of CHC and FDT circuits for which competing carriers submit a provisioning trouble report on the day of the conversion, or by noon on the following day.⁷⁷⁴ The Texas Commission’s action effectively provides an outage measure that AT&T and other competing carriers have indicated is important to them.⁷⁷⁵ This addition to the Texas performance measurements also will render it unnecessary to perform the sort of manual, time-consuming review and assessments that have been performed under the auspices of the PPIG and are described above.⁷⁷⁶ We believe this measurement will be a useful, standardized way for competing carriers to assess FDT and CHC outage rates in the future and will enable competing carriers to determine which method better suits their business plans.

274. Installation Troubles. We conclude that SWBT demonstrates that competing carrier end users experience only very low rates of installation troubles on lines provisioned by CHCs and FDT hot cuts. From December 1999 through March 2000, competing carriers

⁷⁷¹ SWBT Texas II Noland/Dysart Reply Aff. at para. 26 (describing “considerable effort” SWBT has devoted to improving its FDT hot cut performance).

⁷⁷² Texas Commission Texas II Comments at 14; AT&T June 8 *Ex Parte* Letter at 2 (acknowledging that FDT hot cuts require “less coordination” than CHCs, with “fewer steps and fewer time consuming hand-offs”).

⁷⁷³ SWBT Texas II Noland/Dysart Reply Aff. at para. 45, Attach. J.

⁷⁷⁴ SWBT Texas II Noland/Dysart Reply Aff. at para. 45, Attach. J.

⁷⁷⁵ See ALTS/CLEC Coalition Texas II Comments at 3-5; AT&T Texas II Comments at 32-33; AT&T Texas II DeYoung/Van de Water Decl. at para. 26; AT&T Texas II DeYoung/Van de Water Reply Decl. at paras. 86-90; see also AT&T June 8 *Ex Parte* Letter at 8-9 (expressing concern about the exclusion of outages captured as trouble reports following installation); AT&T Texas II Reply at 20; AT&T Texas II DeYoung/Van de Water Decl. at para. 96 (expressing concern that defective cuts are not captured in existing performance measurements).

⁷⁷⁶ See AT&T Texas II DeYoung/Van de Water Decl. at para. 77 (characterizing the manual reconciliation process as “extraordinarily resource-intensive”).

experienced troubles within 7 days after installation on an average of only 1.5 percent of CHCs and 2.3 percent of FDT hot cuts.⁷⁷⁷ When the CHC and FDT processes are combined, competing carriers experienced troubles within 7 days following installation on an average of only 1.9 percent of all hot cut loops.⁷⁷⁸ As a result, we find that SWBT installs hot cuts of quality sufficient to provide an efficient competitor with a meaningful opportunity to compete.⁷⁷⁹

275. *Other Hot Cut Issues.* We reject AT&T's allegation that SWBT fails checklist 4 because of problems with the pricing of the CHC hot cut process.⁷⁸⁰ The Department of Justice concludes that SWBT passes this checklist item.⁷⁸¹ It states, however, that it has "continuing concern" regarding SWBT's CHC charges because they are "significant in amount" and notes that "the record does not contain any justification of them as appropriately cost-based."⁷⁸² AT&T asserts that: (1) SWBT fails to identify relevant time and materials charges imposed during the CHC process; (2) fails to identify its cost studies to support these charges; (3) fails to prove that the Texas Commission considered or approved these charges; and (4) does not impose these charges for all hot cuts, which proves that the CHC charges are actually penalties.⁷⁸³

276. SWBT disputes each of AT&T's allegations. First, SWBT asserts that it has adequately identified its time and material charges imposed during the CHC process, and that the terms of these charges are contained in both the UNE price schedule of AT&T's interconnection contract and in the T2A agreement.⁷⁸⁴ SWBT also responds that these rates are cost-based and

⁷⁷⁷ We note that SWBT presents these data only for December 1999 through March 2000, and as in the *Bell Atlantic New York Order*, they are loop-based data (rather than order-based data). SWBT Texas II Noland/Dysart Reply Aff. at Attach. I. The Texas Commission established a performance measurement to assess the quality of a variety of loops provisioned by SWBT to competing carriers that captures the percentage of troubles within 30 days after installation. Because this is a much longer period than the 7 day period we used to evaluate hot cut quality in our *Bell Atlantic New York Order* and because the data for this performance measurement also includes new loops that are not provisioned by hot cuts, SWBT reviewed the underlying data for these measurements and submitted data specifically for hot cut loops within 10 days after installation. In response to AT&T criticism questioning SWBT's decision to use a 10 day measurement period, SWBT submitted trouble data for the 7 day period following installation identical to the standard discussed in the *Bell Atlantic New York Order*. See SWBT Texas II Noland/Dysart Reply Aff. at paras. 41-44, Attach. I; AT&T Texas II Comments at 37; AT&T Texas II DeYoung/Van de Water Decl. at para. 70.

⁷⁷⁸ SWBT Texas II Noland/Dysart Reply Aff. at Attach. I.

⁷⁷⁹ See generally *Bell Atlantic New York Order*, 15 FCC Rcd at 4109, para. 301.

⁷⁸⁰ AT&T Texas II Reply Comments at 24-25; AT&T Texas II DeYoung/Van de Water Reply Aff. at paras. 27-28; AT&T June 8 *Ex Parte* Letter at 4-6.

⁷⁸¹ Department of Justice Texas II Evaluation at 14-15.

⁷⁸² Department of Justice Texas II Evaluation at 15 n.42.

⁷⁸³ AT&T Texas II DeYoung/Van de Water Reply Aff. at paras. 27-28; AT&T June 8 *Ex Parte* Letter at 5.

⁷⁸⁴ SWBT Texas II Noland/Dysart Reply Aff. at para. 50; SWBT June 23 *Ex Parte* Letter at 3.

were arbitrated by the Texas Commission as part of its Mega-Arbitration.⁷⁸⁵ Additionally, SWBT asserts that as part of its rate case, the Texas Commission considered SWBT's cost studies relating to the CHC process.⁷⁸⁶ SWBT also disputes AT&T's allegation that the CHC rates are imposed in a punitive manner. SWBT states that it has waived the Texas Commission-approved charges for its alternative hot cut method, FDT, in order to make that process "an attractive optional offering" for competitive LECs.⁷⁸⁷ SWBT contends, however, that offering one hot cut method free does not make the alternative method punitive, as both options are equally available.⁷⁸⁸

277. Because of its demonstrated commitment to our pricing rules, the Texas Commission's determinations are entitled to a presumption of legitimacy.⁷⁸⁹ AT&T provides no basis for disputing SWBT's observation that the CHC charges were arbitrated by the Texas Commission as part of its Mega-Arbitration proceeding. Thus, AT&T's challenge to the cost basis of these charges (and there could be no other legally relevant type of challenge) is in reality a challenge to the pricing determinations of the Texas Commission. AT&T has altogether failed to establish a record for challenging the Texas Commission's rulings on this point or to explain with particularity how it believes the Texas Commission may have erred. In short, AT&T has not laid a proper foundation that would justify this Commission in second-guessing the Texas Commission's exercise of its pricing jurisdiction.

(ii) New Stand-Alone Loop Provisioning

278. We find that SWBT demonstrates that it provisions new unbundled stand-alone voice grade loops in accordance with the requirements of checklist item 4. As described above, when SWBT does not presently service the customer on the line in question, a hot cut loop is not required. Instead, a competing carrier may obtain a new loop from SWBT, which requires that a technician be dispatched to the customer's premises in order to complete the installation.

279. First, we find that SWBT systems afford competing carriers access to appointment dates that is equivalent to the access provided to SWBT representatives serving retail customers. SWBT represents that SORD provides competing carriers with the same access to available due dates as that afforded to SWBT's retail operations.⁷⁹⁰ SWBT also represents that the same due date database is used for both competing carrier and SWBT retail orders.⁷⁹¹ No commenters

⁷⁸⁵ SWBT Texas II Noland/Dysart Reply Aff. at para. 50; SWBT June 23 *Ex Parte* Letter at 3.

⁷⁸⁶ SWBT June 23 *Ex Parte* Letter at 3.

⁷⁸⁷ SWBT Texas II Noland/Dysart Reply Aff. at para. 50.

⁷⁸⁸ SWBT Texas II Noland/Dysart Reply Aff. at para. 51; SWBT June 23 *Ex Parte* Letter at 3.

⁷⁸⁹ See section V.A.2.

⁷⁹⁰ SWBT Texas I Ham Aff. at para. 186.

⁷⁹¹ SWBT Texas I Ham Aff. at para. 187.

claim otherwise.

280. We also conclude that SWBT provisions new unbundled stand-alone loops to competing carriers in substantially the same time and manner as it does for its own retail service. From February through April 2000, SWBT missed a lower percentage of 8.0 dB loop installation due dates requiring field work for competing carriers than it did for its own retail service.⁷⁹² With respect to loop quality, during the same period of time, the 8.0 dB loops that SWBT installed for competing carriers experienced a comparable percentage of trouble reports as SWBT's own 8.0 dB loops.⁷⁹³ Although these performance data do not exclusively address the provisioning of new stand-alone 8.0 dB loops, they do include the provisioning of such loops. Moreover, we note that no commenter has criticized this aspect of SWBT's performance. Therefore, we find that SWBT provisions new voice grade loops in accordance with the requirements of checklist item 4.

(iii) Maintenance and Repair of Voice Grade Loops

281. Like the Department of Justice, we conclude that SWBT demonstrates that it provides maintenance and repair functions for unbundled local loops provisioned to competing carriers in substantially the same time and manner as it does for its own retail customers.⁷⁹⁴ During the period from December 1999 through April 2000, SWBT met a greater percentage of unbundled loop repair due dates for customers of competing carriers than for its own retail customers.⁷⁹⁵ In addition, during the same period, the average time to repair unbundled loops for

⁷⁹² In February, March, and April 2000, SWBT missed 3.4, 5.8, and 9.9 percent of competing carrier 8.0 dB loop installation due dates involving field work. During the same time period, SWBT missed 11.3, 11.4, and 12.0 of the same installation due dates for its retail service. SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (8.0 dB Loop-Field Work) at 271-No. 58a.

⁷⁹³ In February, March, and April 2000, competing carriers experienced troubles within 30 days following installation on 5.6, 5.3, and 4.9 of their 8.0 dB loops. During the same period SWBT retail customers experienced troubles within 30 days following installation on 3.1, 3.3, and 3.5 percent of their 8.0 dB loops. We acknowledge that while the trouble rates are comparable, the competing carrier rate is marginally higher. In light of SWBT's unbundled voice grade loop provisioning overall, and the fact that no commenter criticizes this aspect of SWBT's performance, we do not find this small difference competitively significant. SWBT Aggregated Performance Data, Measurement No. 59 ("Percent Trouble Reports on N, T, C Orders within 30 Days") (8.0 dB Loop) at 271-No. 59a.

⁷⁹⁴ In this section, we discuss maintenance and repair functions for unbundled hot cut and new stand-alone loops, but not xDSL-capable loops and high capacity loops, which are separately addressed in discussions specific to those loop types. See *infra* at paras. 303-06, 319-20.

⁷⁹⁵ In December 1999 and January and February 2000, SWBT missed only 2.6, 0.8, and 1.7 percent of competing carrier repair due dates, but 8.3, 7.3, and 6.8 percent of such appointments for its own retail customers. Although in March 2000, SWBT missed 11.1 percent of repair due dates for competing carriers, and only 7.7 percent of such appointments for its own retail customers, this proved to be an aberration, because in April 2000, SWBT missed only 3.3 percent of competing carrier repair due dates and 7.1 percent of such due dates for its own retail customers. SWBT Aggregate Performance Data, Measurement No. 66 ("Missed Repair Commitments") (2 Wire Analog-8.0 dB Loop) at 271-No. 65d-66. SWBT does not measure missed repair due dates for 5.0 dB loops, which are used much less frequently than 8.0 dB loops. For instance, in April 2000, competing carriers were provisioned 5783 8.0 dB loops and only 228 5.0 dB loops. SWBT Aggregated Performance Data, Measurement No. 59 (continued....)

competing carriers was consistently and significantly lower than the time that SWBT took to repair such loops for its own customers.⁷⁹⁶ Furthermore, during the same period, competing carriers and SWBT experienced a comparable percentage of repeat trouble reports for unbundled loops.⁷⁹⁷ Thus, we find that SWBT provides nondiscriminatory maintenance and repair services for the unbundled loops that it provides to competing carriers.⁷⁹⁸

b. xDSL-Capable Loops

282. We conclude that SWBT demonstrates that it provides unbundled local loops for the provision of xDSL services in a nondiscriminatory manner. At the outset, we note that xDSL-capable loops are a substantial and growing portion of all unbundled loops provisioned by SWBT to competing carriers.⁷⁹⁹ We also note that in our *Bell Atlantic New York Order*, we stated that we would “find it most persuasive if future applicants under section 271 . . . make a separate and comprehensive evidentiary showing with respect to the provision of xDSL-capable loops.”⁸⁰⁰ In (Continued from previous page) _____ (“Percent Trouble Reports on N, T, C Orders within 30 Days”) (8.0 dB Loop, 5.0 dB Loop) at 271-No. 59a (reporting total volumes on a per loop basis).

⁷⁹⁶ In February, March, and April 2000, the average time to repair competing carrier unbundled 8.0 dB loops requiring dispatch was 5.95, 14.02, and 5.47 hours, respectively. During the same period, the average time to repair SWBT retail 8.0 dB loops requiring dispatch was 24.03, 27.26, and 30.48 hours, respectively. SWBT Aggregated Performance Data, Measurement No. 67 (“Mean Time to Restore (Hours)-Dispatch”) (8.0 dB Loop with Test Access) at 271-No. 67a. During the same period, SWBT took a nearly comparable amount of time to repair the less frequently used 5.0 dB loops requiring dispatch for competing carriers as it did to repair 5.0 dB loops requiring dispatch for its own retail customers. For instance, in February, March, and April 2000, SWBT repaired competing carrier 5.0 dB loops in 5.72, 9.39, and 4.08 hours, respectively. During the same period, SWBT repaired its own retail 5.0 dB loops in 4.68, 5.34, and 6.14 hours, respectively. SWBT Aggregated Performance Data, Measurement No. 67 (“Mean Time to Restore (Hours)-Dispatch”) (5.0 dB loops with Test Access) at 271-No. 67a.

⁷⁹⁷ In February, March, and April 2000, competing carriers experienced repeat troubles on 13.3, 10.3, and 7.9 percent of their 8.0 dB loops, while SWBT experienced repeat troubles during the same period on 12.0, 12.2, and 12.9 percent of its own retail 8.0 dB loops. SWBT Aggregated Performance Data, Measurement No. 69 (“Repeat Reports (%)”) (8.0 dB Loop with Test Access) at 271-No. 68-69a. In February, March, and April 2000, competing carriers experienced repeat troubles on 16.1, 9.3, and 5.9 percent of their 5.0 dB loops, while SWBT experienced repeat troubles during the same period on 13.2, 13.3, and 13.0 percent of their retail 5.0 dB loops. SWBT Aggregated Performance Data, Measurement No. 69 (“Repeat Reports (%)”) (5.0 dB Loops with Test Access) at 271-No. 68-69a. We note that for both 8.0 dB and 5.0 dB loops, in the last two months competing carriers have experienced fewer repeat troubles on their loops than SWBT has experienced on its own retail loops.

⁷⁹⁸ See Texas Commission Texas I Comments at 50, 54 (reviewing missed repair appointments).

⁷⁹⁹ In February 2000, xDSL-capable loops were only 19 percent of all unbundled stand-alone loops ordered by competing carriers. By April 2000, xDSL capable loops were 27 percent of all such loops. See SWBT Aggregated Performance Data, Measurement No. 59 (“Percent Trouble Reports on N, T, C Orders within 30 Days”) (8.0 dB Loop, 5.0 dB Loop, BRI Loop, DS1 Loop, DSL) at 27-No. 59a-c (calculated from total volumes listed on a per loop basis and combining BRI and DSL loop performance data to calculate xDSL-capable loops).

⁸⁰⁰ *Bell Atlantic New York Order*, 15 FCC Rcd at 4122, para. 330. We did not require such a showing in New York because of the “unique circumstances” associated with the Bell Atlantic New York application, including the fact that the Commission’s previous section 271 orders did not address the ordering or provisioning of xDSL- (continued...)

doing so, we set forth the evidence that an applicant may use to demonstrate that it provides xDSL-capable loops to competing carriers in a nondiscriminatory manner. First, the Commission stated that 271 applicants could demonstrate that they are providing nondiscriminatory access to xDSL-capable loops through comprehensive and accurate reports of performance measures.⁸⁰¹ As we noted in our *Bell Atlantic New York Order*:

we emphasize our strong preference for a record that contains data measuring a BOC's performance pursuant to state-adopted standards that were developed with input from the relevant carriers and that include clearly-defined guidelines and methodology . . . Accordingly, we encourage state commissions to adopt specific xDSL loop performance standards measuring, for instance, the average completion interval, the percent of installation due dates missed as a result of the BOC's provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions.⁸⁰²

Second, the Commission indicated that the establishment of a "fully operational" separate affiliate for advanced services "may provide significant evidence" of nondiscrimination.⁸⁰³

283. We commend the Texas Commission for its extensive consideration of xDSL-capable loop issues and development of specific xDSL-capable loop performance standards before SWBT filed its application. We also commend the Texas Commission for its efforts to include competing carriers in this process. As a result, we have for the first time in a section 271 application a complete record of a BOC's xDSL-capable loop performance from which to assess the provisioning of nondiscriminatory access to xDSL-capable loops.

(i) xDSL-Capable Loop Performance

284. Like the Department of Justice, we conclude that SWBT demonstrates that it provides nondiscriminatory access to xDSL-capable loops through its existing performance measurement data and other evidence it presents in its application.⁸⁰⁴ Consistent with our statements in the *Bell Atlantic New York Order*, we analyze competing carrier access to SWBT xDSL-capable loops on the basis of performance measurements and standards adopted by the Texas Commission in a state proceeding. Specifically, we review SWBT's xDSL-capable loop order processing timeliness, the timeliness of SWBT's xDSL capable loop installation and percentage of SWBT-caused missed due dates, the quality of the xDSL-capable loops SWBT (Continued from previous page) _____ capable loops. SWBT has not argued that such "unique circumstances" exist in Texas. *See also* Department of Justice Texas I Evaluation at 10 n.19.

⁸⁰¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4123-24, paras. 333-35.

⁸⁰² *Bell Atlantic New York Order*, 15 FCC Rcd at 4123-24, para. 334.

⁸⁰³ *Bell Atlantic New York Order*, 15 FCC Rcd at 4122, para. 331.

⁸⁰⁴ Department of Justice Texas II Evaluation at 1.

installs, and the timeliness and quality of the maintenance and repair functions SWBT provides to competing carrier xDSL-capable loops. In nearly all areas, recent performance data indicate that SWBT offers competing carrier nondiscriminatory access to xDSL-capable loops. Viewed as a whole, the recent performance data confirm that SWBT, although it has not yet achieved perfection, has met its general obligation to provide competing carriers with nondiscriminatory access to xDSL-capable loops and has satisfied the requirements of the checklist. If in the future, however, SWBT performance deteriorates and restricts competing carrier access to unbundled xDSL-capable loops in a discriminatory manner, we note that we may take appropriate enforcement action pursuant to section 271(d)(6).

285. As a preliminary matter, we note that competing carriers in Texas rely principally on two types of unbundled xDSL-capable loops: the xDSL loop and the BRI ISDN loop.⁸⁰⁵ The Texas Commission developed separate loop-type performance measurement categories for xDSL loops (including, but not limited to, loops provisioned for ADSL, HDSL, and SDSL services) and BRI ISDN loops, which are used by competing carriers to provide ISDSL services. For the discussion of SWBT performance that follows, we refer to xDSL loops and BRI ISDN loops collectively as xDSL-capable loops. When discussing the separate categories of performance measurements, we refer to xDSL loops and BRI loops.

286. *Order Processing Timeliness.* We conclude that SWBT demonstrates that it provides order processing for xDSL-capable loops in a timely manner that provides an efficient competitor with a meaningful opportunity to compete. We reach this conclusion on the basis of the nondiscriminatory access to loop qualification information that SWBT provides competing carriers, SWBT's ability to process competing carrier FOCs in a timely manner, and SWBT's substantial implementation of xDSL-capable loop processing changes required by the Texas Commission.

287. First, we find that SWBT demonstrates that it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL technologies.⁸⁰⁶ As described in greater detail in our discussion of checklist item 2, we find that the mechanized and manual processes in place at the time SWBT filed its application enable requesting carriers to access loop qualification information in substantially the same time an

⁸⁰⁵ An xDSL loop is a continuous copper line from the collocation site in SWBT's central office to the end user, which is not equipped with "repeaters," the equipment used to increase the transmitted signal. The ISDN BRI loop may include a section of fiber optic cable and should include ISDN repeaters for long loops. BRI loops are sometimes used by competing carriers to provide a slower speed ISDSL service where xDSL loops are not available. Covad Texas II Rosenstein Decl. at para. 30. In April 2000, SWBT installed 1445 xDSL loops and 923 BRI loops. SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (DSL, BRI Loop) at 271-No. 58b-c.

⁸⁰⁶ Because characteristics of a loop, such as its length and the presence of various impediments to digital transmission can hinder certain advanced services technologies, carriers often seek to access basic loop make-up information that will assist carriers in ascertaining whether the loop, without the removal of impediments, can support a particular advanced service. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4021, para. 140; *UNE Remand Order*, 15 FCC Rcd at 3884-85, paras. 426-27.

manner as SWBT's retail operations. In fact, in the period from February through April 2000, the average time for SWBT to return competing carrier loop qualification requests was consistently lower than the average time for SWBT to return such requests to its own retail operations.⁸⁰⁷

288. Second, we find that performance data demonstrate that SWBT processes competing carrier LSRs for xDSL-capable loops in a timely manner that provides efficient competitors with a meaningful opportunity to compete. For instance, in both March and April 2000, SWBT returned 94 percent of competing carrier FOCs within 24 hours for xDSL-capable loops ordered via LEX and 96 percent of competing carrier FOCs within 24 hours for xDSL-capable loops ordered via EDI.⁸⁰⁸

289. In large part, our finding that SWBT processes competing carrier xDSL-capable loop orders in a timely fashion is the product of the Texas Commission's comprehensive review of SWBT's methods and procedures for offering xDSL-capable loops in the Covad/Rhythms arbitration.⁸⁰⁹ The Covad/Rhythms arbitration award culminated a year-long effort to resolve interconnection disputes related to SWBT's xDSL-capable loop ordering practices for competing carriers, consolidated by the Texas Commission under section 252(g) of the Act.⁸¹⁰ In the course of this arbitration, the Texas Commission ordered SWBT to implement substantial changes to its

⁸⁰⁷ In February, March, and April 2000, SWBT, on average, returned competing carrier loop makeup requests in 4.34, 2.63, and 1.72 days, while returning similar requests for its own retail operations in 3.99, 5.39, and 2.15 days. SWBT Aggregate Performance Data, Measurement No. 57 ("Average Time for Loop Make-Up Information") at 271-No. 57. We also note that in January 2000, the performance measurement was redefined in response to Department of Justice criticism, to include the entire time between SWBT's receipt from the competing carrier of a request for information relating to loop qualification and the time that such information is returned to the competing carrier. SWBT Texas II Application at 12; SWBT Texas II Chapman/Dysart Aff. at para. 28.

⁸⁰⁸ SWBT Aggregate Performance Data, Measurement No. 5.1 ("Percent Firm Order Confirmations (FOCs) Relating to xDSL-capable Loops Returned within "X" Hours) (Mechanized LSRs-LEX (1-20 Loops), Mechanized LSRs-EDI (1-20 Loops) at 271-No. 5.1a. This performance measurement is relatively new, and not yet approved by the Texas Commission, so only March and April 2000 data are available. See SWBT Chapman/Dysart Texas II Aff. at Attach. A; Covad Goodpastor Texas II Decl. at para. 30. The Department of Justice characterizes SWBT's present measuring and reporting of competing carrier FOCs as a "significant improvement" over SWBT's first Texas application. Department of Justice Texas II Evaluation at 2.

⁸⁰⁹ Arbitration Award, petitions of Rhythms Links, Inc. and Dieca Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company, Docket Nos. 20226 and 20272 (Texas PUC Nov. 30, 1999) (Covad/Rhythms Arbitration Award); Texas Commission January 27, 2000 Open Meeting Transcript at 63-67 (Jan. 27 Open Meeting Tr.) (affirming November 30, 1999 decision of Texas Commission arbitrator).

⁸¹⁰ 47 U.S.C. § 252(g); Covad/Rhythms Arbitration Award at 1. The Texas Commission affirmed its decision on January 27, 2000 and on February 4, 2000, approved both Covad and Rhythms' interconnection agreements with SWBT based on the principles established in the arbitration. Order Approving Interconnection Agreements, petitions of Rhythms Links, Inc. and Dieca Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company, Docket No. 20272 (Texas PUC Feb. 4, 2000); Jan. 27 Open Meeting Tr. at 63-67.

xDSL-capable loop ordering process.⁸¹¹ In addition, at the Texas Commission's December 16, 1999 open meeting, SWBT made a series of related commitments to implement xDSL-capable

⁸¹¹ Covad/Rhythms Arbitration Award 11-17, 34-36, 40, 42-52, 56-65, 78-80 (ordered changes include requiring SWBT to provide xDSL-capable loops on demand for xDSL services of the competing carrier's own choosing; drop arbitrary length and transmission speed restrictions on competing carriers' xDSL-capable loops; provide competing carriers equivalent access to the loop qualification information available to SWBT retail personnel; and eliminate its efforts to segregate and reserve the best loops for SWBT retail customers with its Selective Feeder System binder group management).

loop ordering process changes in order to secure the support of the Texas Commission for its section 271 application.⁸¹²

290. We conclude that SWBT performance data demonstrate that in recent months, with the substantial implementation of these changes, competing carriers can order xDSL-capable loops in a timely manner.⁸¹³ Through numerous affidavits and supporting attachments, SWBT demonstrates step-by-step how it complied with the requirements of the arbitration and put in place the terms and conditions the Texas Commission found necessary to provide competing carriers with nondiscriminatory access to xDSL-capable loops.⁸¹⁴ Notably, SWBT describes how it has dismantled the binder group management system it had developed to mechanically segregate ADSL-based services from other data services.⁸¹⁵ Although some commenters contend that more work needs to be done by SWBT before the Commission can find that it has fully complied with its legal obligations, we find that these allegations are insufficient

⁸¹² Dec. 16 Open Meeting Tr. at 12-14, 16-17 (changes committed to include eliminating rejection of competing carrier xDSL-capable loop orders lacking information categorizing the request in one of seven SWBT Power Spectral Density masks; taking requests for loop qualification information via e-mail or fax; developing streamlined two-step ordering process for xDSL-capable loops; making available acceptance testing after provisioning; offering xDSL-capable loops “as is” to competing carriers who do not wish to have performed the conditioning SWBT recommends; offering loops of less than 12,000 feet without requiring competing carriers to go through the loop qualification process; and reaffirming commitment to eliminate the Selective Feeder System).

⁸¹³ We acknowledge that a recent Texas Commission order required a limited modification to the “firewall” plan developed to ensure competing carriers equivalent access to the loop qualification information available to SWBT retail personnel. Order No. 13, Order Granting Covad’s Motion to Reconsider Order No. 10; requiring Further Modification to SWBT’s Modified Plan to Ensure Competitive Neutrality; Requesting Comment; Requesting Additional Information Regarding TP 76869 Tx; and Notice of Workshop, Docket Nos. 20226, 20272 (Texas PUC June 21, 2000); Letter from Thomas M. Koutsky, Vice President—Regulatory Affairs, Covad, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed June 23, 2000). Because these modifications involve further safeguards to ensure the competitive neutrality required by the Covad/Rhythms Arbitration Award, and do not reflect a determination by the Texas Commission that SWBT is presently discriminating against competing carriers by restricting access to loop qualification information, we conclude that the Texas Commission’s recent action does not in any way undermine our conclusions in this section.

⁸¹⁴ *See generally* SWBT Meierhoff Texas II Aff. at paras. 8-30 (describing dismantling of selective feeder system binder group management designed to reserve binder groups for ADSL); SWBT Chapman/Dysart Texas II Aff. at paras. 71-91, SWBT Chapman Texas I Aff. at Attach. F (Jan. 4, 2000 Accessible Letter) (describing modifications to ordering process, including, no longer requiring manual loop qualification for xDSL-capable loops under 12,000 feet, allowing competing carriers to request loop make-up information prior to the submission of an LSR, allowing competing carriers to order a loop before the loop qualification process is complete, allowing competing carriers to provision xDSL services that do not comply with industry standards, removing xDSL transmission speed limitations for competing carriers, and removing requirement that competing carriers provide a PSD number when requesting loop qualification).

⁸¹⁵ SWBT Meierhoff Texas II Aff. at paras. 8-30.

to rebut the strong combination of performance data and affidavit evidence that SWBT presents to demonstrate its order processing timeliness.⁸¹⁶

291. *Average Installation Interval.* We find that SWBT installation interval data demonstrate that it provisions xDSL loop orders in substantially the same time and manner as it does for its own retail service. We also find that SWBT installation interval data demonstrate that it provisions BRI loop orders in a sufficiently timely manner for an efficient competitor to have a meaningful opportunity to compete.

292. *xDSL Loops.* In February, March, and April 2000, SWBT generally provisioned competing carrier orders for xDSL loops in less time than it did for its own retail customers, regardless of whether or not loop conditioning was required.⁸¹⁷ Covad, however, questions the accuracy of these performance data, claiming that many of its loop orders are missing from this performance measurement.⁸¹⁸ Yet, Covad fails to acknowledge that the business rules associated with this measurement expressly permit the exclusion of competing carrier loop orders requesting an installation interval longer than the standard offered interval.⁸¹⁹ In addition, earlier problems with the accuracy of the data in this performance measurement were corrected after SWBT discovered a “minor processing error” resulting in accidental exclusions.⁸²⁰ Finally, we find further confirmation of the timeliness of SWBT xDSL loop provisioning in other performance data demonstrating a low rate of missed installation due dates for competing carrier xDSL loops.⁸²¹

⁸¹⁶ Covad Texas II Comments at 3, 10-18; NorthPoint Texas II Comments at 6, 9-12; Rhythms Texas II Comments at 14; Sprint Texas II Comments at 23-25; Covad Texas II Goodpastor Decl. at paras. 21-63; Covad Texas II Reply Comments at 6-10.

⁸¹⁷ In February, March, and April 2000, SWBT provisioned competing carrier orders for xDSL loops that did not require conditioning in an average of 6.65, 6.02, and 4.98 days, respectively. During the same period, SWBT provisioned orders for xDSL loops that did not require conditioning for its own retail service in an average of 7.63, 7.78, and 11.36 days, respectively. In February, March, and April 2000, SWBT provisioned competing carrier orders for xDSL loops that required conditioning in an average of 16.34, 10.19, and 10.27 days. During the same period, SWBT provisioned orders for xDSL loops that required conditioning for its own retail service in an average of 14.40, 10.67, and 31.50 days. SWBT Aggregated Performance Data, Measurement No. 55.1 (“Average Installation Interval-DSL”) (Requires No Conditioning, Requires Conditioning) at 271-No. 55.1.

⁸¹⁸ Covad Texas II Comments at 20.

⁸¹⁹ See SWBT Performance Measurement Business Rules, Measurement No. 55.1 (“Average Installation Interval-DSL”). See also SWBT Texas II Dysart Reply Aff. at paras. 25-26 (refuting Covad’s claims of measurement inaccuracy); Covad Texas I Comments at 31 (alleging that SWBT systems force Covad to adjust installation dates on its xDSL-capable loop order to extend beyond the average interval in order to avoid automatic rejections on orders requiring supplements); SWBT Texas I Dysart Reply Aff. at paras. 24-25 (denying Covad allegations).

⁸²⁰ SWBT Texas II Dysart Reply Aff. at 18, 22-35 (correction of exclusion of NorthPoint and Covad data); Department of Justice Texas II Evaluation at 3.

⁸²¹ See generally SWBT Aggregated Performance Data, Measurement No. 58 (“SWBT Caused Missed Due Dates”) (DSL) at 271-No. 58c.

293. BRI Loops. With respect to BRI loops, the Texas Commission did not establish a retail analogue, but instead established a 3 day target interval for order installation.⁸²² Accordingly, we assess SWBT's performance on the basis of whether or not it offers efficient competitors a meaningful opportunity to compete. As the Department of Justice notes, in recent months, SWBT has provisioned competing carrier BRI loop orders in progressively fewer and fewer days.⁸²³ In fact, in April 2000, when volumes of BRI loop orders were more than twice as high than in any previous month, SWBT was able to provision such orders in an average of 2.8 days, within the 3 day target established by the Texas Commission.⁸²⁴ This represents substantial improvement from January 2000, when the average was 6.7 days.⁸²⁵ Furthermore, we note that the shortest installation interval offered to SWBT's retail for BRI loops is 5 days and may be as long as 10 days if loop conditioning is required.⁸²⁶ This is substantially longer than the 3 day interval that applies for competing carriers. Thus, we conclude that recent performance indicates that efficient competitors have a meaningful opportunity to compete.

294. Covad, however, urges the Commission to recognize that it has a contractual right to a 3 day installation period and that historically SWBT has not met this interval.⁸²⁷ Our inquiry, for purposes of this application, is whether SWBT provides competing carriers with a meaningful opportunity to compete. SWBT's failure to meet this 3 day interval with Covad does not preclude a finding of overall compliance with item 4 of the checklist, in light of SWBT's improving performance in this area and the longer installation interval SWBT provides for its own retail service.

295. *Percentage of Installation Due Dates Missed Due to BOC Provisioning Error*. We find that SWBT demonstrates with its missed due date performance data that it installs xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail service. This finding further buttresses our conclusion regarding SWBT installation intervals that is described above.

296. xDSL Loops. As a preliminary matter, although the Texas Commission originally established SWBT DS1 loops as the appropriate retail analogue for competing carrier xDSL loops

⁸²² SWBT Chapman/Dysart Texas II Aff. at para. 44. *See generally* SWBT Aggregated Performance Data, Measurement No. 55 ("Average Installation Interval (Days)") (BRI Loop) at 271-No. 55a.

⁸²³ *See generally* SWBT Aggregated Performance Data, Measurement No. 55 ("Average Installation Interval (Days)") (BRI Loop) at 271-No. 55a; Department of Justice Texas II Evaluation at 5-6 (characterizing recent SWBT BRI loop performance as demonstrating "impressive progress").

⁸²⁴ SWBT Aggregated Performance Data, Measurement No. 55 ("Average Installation Interval (Days)") (BRI Loop) at 271-No. 55a.

⁸²⁵ SWBT Aggregated Performance Data, Measurement No. 55 ("Average Installation Interval (Days)") (BRI Loop) at 271-No. 55a.

⁸²⁶ SWBT Texas II Dysart Reply Aff. at para. 47.

⁸²⁷ Covad Texas II Comments at 25.

in this performance measurement, neither the Texas Commission, nor any carriers participating in this proceeding encourage us to use the DS1 analogue.⁸²⁸ Accordingly, we confine our review to the standard presented in SWBT's performance data: a straightforward comparison between xDSL loops provisioned to competing carriers and xDSL loops provisioned to SWBT's own retail service. We note that this is the comparison used in the Texas Commission's evaluation, and addressed by the commenters.

297. Although in the past SWBT had some difficulty meeting competing carrier xDSL loop due dates,⁸²⁹ more recent data indicate that SWBT has since remedied this problem. In March 2000, SWBT missed a comparable percentage of xDSL loop due dates for competing carriers as it did for its own retail services, and in April 2000, SWBT missed less than 3 percent of competing carrier due dates, and 11 percent of the due dates for its own retail service.⁸³⁰ Thus, we find that SWBT now meets installation due dates for competing carriers in a nondiscriminatory manner.

298. BRI Loops. Although in the past SWBT had some difficulty meeting competing carrier BRI loop due dates,⁸³¹ more recent data indicate that SWBT has since remedied this problem. In both March and April 2000, SWBT missed fewer competing carrier BRI loop due dates for competing carriers than for its own retail service.⁸³² Notably, in April 2000, SWBT missed 20 percent of its own retail service BRI loop due dates and only 9 percent of such due dates for competing carrier BRI loops.⁸³³

299. Loop Quality. We find that SWBT demonstrates that it provisions xDSL-capable loops to competing in a manner sufficient to meet the requirements of checklist item 4. As the Commission has noted in the past, trouble reports within 30 days are "indicative of the quality of network components supplied by the incumbent LEC."⁸³⁴ Moreover, advanced services customers that experience substantial troubles in the period following installation of a xDSL-

⁸²⁸ We note also that in a recent workshop before the Texas Commission carriers agreed the DS1 analogue was not appropriate. Texas Commission Texas II Comments at 29; SWBT Performance Measurement Business Rules, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (listing retail analogues).

⁸²⁹ Covad Texas II Comments at 21 (describing problems with xDSL loop missed installation due dates).

⁸³⁰ In March 2000, SWBT missed 7.7 percent of xDSL loop installation due dates for competing carriers and 6.5 percent of xDSL loop installation due dates for its own retail service. SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (DSL) at 271-No. 58c.

⁸³¹ Covad Texas II Comments at 23 (describing problems with BRI loop missed installation due dates).

⁸³² In March 2000, SWBT missed 15.9 percent of competing carrier BRI loop installation due dates and 16.7 percent of BRI loop installation due dates for its own retail service. SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (BRI Loop) at 271-No. 58b.

⁸³³ SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (BRI Loop) at 271-No. 58b.

⁸³⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4073-74, para. 222 n.711.

capable loop are unlikely to remain with a competing carrier.

300. xDSL Loops. For reasons described above with respect to missed installation due dates, we confine our review of xDSL loop quality to the standard presented in SWBT's performance data: a straightforward comparison between xDSL loops provisioned to competing carriers and xDSL loops provisioned to SWBT's own retail service.⁸³⁵ Although in the past SWBT has had some difficulty provisioning xDSL loops without more troubles following installation than their own retail xDSL loops,⁸³⁶ more recent data indicate that SWBT has since remedied this problem. In both March and April 2000, SWBT provisioned xDSL loops to competing carriers with comparable trouble rates in the 30 days following installation.⁸³⁷ For instance, in April 2000, just over 4 percent of both SWBT and competing carrier xDSL loops experienced troubles in the 30 day period after installation.⁸³⁸

301. BRI Loops. Like the Department of Justice, we acknowledge that some performance issues remain with respect to troubles following the installation of competing carrier BRI loops.⁸³⁹ We find that these issues arise from the fact that competing carriers use BRI loops for ISDSL service,⁸⁴⁰ which makes provisioning work more difficult than that required for the ISDN service that SWBT provisions using BRI loops.⁸⁴¹ SWBT maintains that these technical difficulties associated with supporting ISDSL, combined with the short 3 day installation interval, are responsible for trouble rates greater than those SWBT experiences with its retail ISDN service.⁸⁴² We also find that SWBT is working with competing carriers and equipment vendors to

⁸³⁵ Texas Commission Texas II Comments at 29; SWBT Performance Measurement Business Rules, Measurement No. 59 ("Percent Troubles on N, T, C Orders within 30 Days") (citing to list of retail analogues in Measurement No. 58).

⁸³⁶ Covad Texas II Comments at 21 (describing problems with xDSL loop troubles within 30 days after installation).

⁸³⁷ SWBT Aggregated Performance Data, Measurement No. 59 ("Percent Troubles on N, T, C Orders within 30 Days") (DSL) at 271-No. 59c.

⁸³⁸ SWBT Aggregated Performance Data, Measurement No. 59 ("Percent Troubles on N, T, C Orders within 30 Days") (DSL) at 271-No. 59c.

⁸³⁹ See generally Department of Justice Texas II Evaluation at 4-6.

⁸⁴⁰ ISDSL modems combine the three ISDN circuits into a single 144 kbs data stream, and in order to support this use of BRI loops, SWBT central office technicians must avoid using some incompatible slots with certain digital loop carriers. SWBT Chapman Texas II Reply Aff. at para. 31.

⁸⁴¹ SWBT Dysart Texas II Reply Aff. at paras. 59-60.

⁸⁴² SWBT Dysart Texas II Reply Aff. at para. 59.

solve this problem.⁸⁴³ As suggested by Rhythms, SWBT is testing a new card for its digital loop carriers that will support IDSL service.⁸⁴⁴

302. Under these circumstances, we find that the differences reported in SWBT performance data between the way BRI loops are provisioned for SWBT's ISDN service and competing carrier IDSL service do not demonstrate discriminatory treatment. We note that the Department of Justice reaches the same conclusion.⁸⁴⁵ In light of SWBT's efforts to remedy this problem, reasonable questions regarding the appropriateness of a straightforward comparison between troubles following installation for IDSL and ISDN service, and SWBT's competing carrier xDSL-capable loop record overall, we conclude that SWBT demonstrates that it provisions BRI loops of a quality sufficient to meet the requirements of checklist item 4.

303. *Maintenance and Repair.* We conclude that SWBT demonstrates that it provides maintenance and repair functions for competing carrier xDSL-capable loops in a manner sufficient to meet the requirements of checklist item 4.

304. xDSL Loops. SWBT demonstrates that it provides maintenance and repair for competing carrier xDSL loops in substantially the same time and manner as it does for its own retail customers. With respect to timeliness of maintenance and repair, in both February and April 2000, the average time to repair competing carrier xDSL loops was substantially less than the average time SWBT took to repair its own retail xDSL loops.⁸⁴⁶ SWBT also demonstrates that it provides the same quality of xDSL loop repair service to competing carriers as it does for its own retail service. In the period from February through April, 2000, SWBT and competing carrier xDSL loops have experienced a comparable repeat trouble rate.⁸⁴⁷

305. BRI Loops. Like the Department of Justice, we acknowledge that some performance issues remain with respect to the timelines of BRI loop maintenance and repair. As

⁸⁴³ SWBT Chapman Texas II Reply Aff. at para. 31-32; Letter from Austin C. Schlick, Counsel, SBC, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 at 3 (filed June 6, 2000) (SWBT June 6 *Ex Parte* Letter) (describing xDSL-capable loop workshops addressing BRI loop performance issues, attended by SWBT, Covad, Rhythms, NorthPoint, and IP Communications).

⁸⁴⁴ Department of Justice Texas II Evaluation at 6; Rhythms Texas II Comments at 14; Rhythms Texas II Lopez Aff. at para 6; SWBT Texas II Chapman Reply Aff. at paras. 31, 33.

⁸⁴⁵ Department of Justice Texas II Evaluation at 6.

⁸⁴⁶ In February and April 2000, competing carrier xDSL loops were repaired in an average of 10.51 and 3.22 hours, while during the same months SWBT repaired its own retail loops in an average of 28.65 and 24.08 hours. In March 2000, competing carrier xDSL loops were repaired in an average of 14.37 hours, only marginally higher than the 11.17 hours it took SWBT, on average, to repair its own retail xDSL loops. SWBT Aggregated Performance Data, Measurement No. 67 ("Mean Time to Restore (Hours)-Dispatch") (DSL) at 271-No. 67c.

⁸⁴⁷ In February, March, and April 2000, competing carriers experienced repeat troubles on 11.7, 9.2, and 10.0 percent of their xDSL loops, while during the same period, SWBT retail experienced repeat troubles on 13.8, 11.1 and 8.9 percent of their xDSL loops. SWBT Aggregated Performance Data, Measurement No. 69 ("Repeat Reports (%)") (DSL) at 271-No. 69c.

discussed above with respect to BRI loop trouble rates, SWBT maintains that technical difficulties associated with supporting IDSL are responsible for the longer average repair times for competing carrier BRI loops.⁸⁴⁸ If SWBT discovers that a competing carrier intends to use a particular BRI loop to deliver IDSL services, the loop may need to be redesigned or reassigned to avoid using equipment and facilities that support ISDN services but are not compatible with IDSL technology.⁸⁴⁹ This can adversely impact the repair time for competing carrier BRI loops used for IDSL service, and it draws into question the reasonableness of comparing average IDSL repair time with the average time in which SWBT repairs its own retail BRI loops.⁸⁵⁰ At the same time, SWBT is working with competing carriers to improve its BRI loop performance.⁸⁵¹ Under these circumstances, we find that the differences reported in SWBT performance data between the average time to repair competing carrier BRI loops and SWBT retail BRI loops do not demonstrate discriminatory treatment.

306. At the same time, we find that SWBT demonstrates that it now provides the same quality of BRI loop repair service to competing carriers as it does for its own retail service. Although in the past SWBT has had some difficulty provisioning BRI loops without more repeat troubles than SWBT retail BRI loops, more recent data indicate that SWBT has since remedied this problem. In both March and April 2000, competing carrier BRI loops had fewer repeat troubles than did SWBT's own retail BRI loops.⁸⁵² In light of these performance data and SWBT's ongoing efforts to improve its BRI loop performance, as well as reasonable questions regarding the appropriateness of a straightforward comparison between time to repair IDSL and ISDN service, and SWBT's competing carrier xDSL-capable loop performance overall, we conclude that SWBT provides maintenance and repair for BRI loops provisioned to competing carriers in a manner sufficient to meet the requirements of checklist item 4.

(ii) Separate Subsidiary

307. SWBT's implementation of a separate subsidiary for advanced services in Texas is not a decisional factor regarding compliance with section 271 because, for reasons described in the xDSL section *supra*, SWBT has carried its burden of demonstrating nondiscrimination with an evidentiary showing of performance to its wholesale xDSL customers. In this section, however, we address commenters' allegations that SWBT's relationship with its separate subsidiary for

⁸⁴⁸ SWBT Dysart Texas II Reply Aff. at paras. 57, 59-60.

⁸⁴⁹ SWBT Dysart Texas II Reply Aff. at para. 60.

⁸⁵⁰ SWBT Dysart Texas II Reply Aff. at para. 60.

⁸⁵¹ SWBT Chapman Texas II Reply Aff. at para. 31-32; SWBT June 6 *Ex Parte* Letter (describing xDSL-capable loop workshops addressing BRI loop performance issues, attended by SWBT, Covad, Rhythms, NorthPoint, and IP Communications).

⁸⁵² In March and April 2000, competing carriers experienced repeat troubles on 13.5 and 15.7 percent of their BRI loops, while SWBT experienced troubles on 15.6 and 16.9 percent of their own retail BRI loops. SWBT Aggregated Performance Data, Measurement No. 69 ("Repeat Reports (%)") (BRI Loop with Test Access) at 271-No. 69b.

advanced services violates its nondiscrimination obligations under the Act. We disagree that these allegations constitute grounds either for finding noncompliance with checklist item 4 or for denying SWBT's section 271 application.

(a) Background

308. SWBT's parent company, SBC, is required as a result of the *SBC/Ameritech Merger Order* to set up a separate affiliate for advanced services throughout its 13-state region.⁸⁵³ The purpose of the separate affiliate structure is to ensure nondiscriminatory provisioning of key inputs for advanced services.⁸⁵⁴ In order to comply with the merger conditions, SBC has established SBC Advanced Solutions Inc. (ASI) to provide retail and wholesale advanced services in Texas and other SBC states (Arkansas, California, Connecticut, Kansas, Missouri, Nevada and Oklahoma).⁸⁵⁵

309. In order to minimize any disruption to the efficient and timely delivery of advanced services to customers, SWBT was permitted a reasonable period to transition to "steady state" provisioning of advanced services through ASI.⁸⁵⁶ ASI's interconnection agreement with SWBT in Texas, which is modeled after the T2A, became effective January 7, 2000. On March 13, 2000, ASI began processing all new requests for frame relay and cell relay services in Texas.⁸⁵⁷ Approximately 10 percent of these new requests require a UNE loop (4-wire digital or DS-1

⁸⁵³ See *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 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14859-67, 14969-99 (1999) (*SBC/Ameritech Merger Order*), appeal docketed, No. 99-1441 (D.C. Cir. Nov. 8, 1999).

⁸⁵⁴ The merger conditions define advanced services as wireline services (e.g., ADSL, IDSL, xDSL, Frame Relay) that rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits per second in both directions. *SBC/Ameritech Merger Order*, App. C at para. 2. Circuit-switched services are not included, regardless of the technology, protocols or speed used for the transmission of such services. *Id.* ISDN also is not included because it is "not primarily based on packetized technology." *Id.*

⁸⁵⁵ SWBT Texas I Application App. A-3, Vol. 5, Tab 2, Affidavit of Lincoln Brown (SWBT Texas I Brown Aff.) at paras. 1, 3. SBC has in place another affiliate, Ameritech Advanced Data Services (AADS), to offer advanced services in Ameritech's service areas in Illinois, Indiana, Michigan, Ohio and Wisconsin. *Id.* at para. 6.

⁸⁵⁶ Steady state provisioning refers to provisioning in accordance with the *SBC/Ameritech Merger Order* conditions and after the expiration of an applicable transition period. See *SBC/Ameritech Merger Order*, App. C at para. 4. During this transition period, SBC may perform certain activities such as line sharing and network planning, engineering, design & assignment services on an exclusive basis with ASI. *SBC/Ameritech Merger Order*, App. C at paras. 3(c), 4(n)(1), 4(n)(4).

⁸⁵⁷ SWBT Texas II Application App. Vol. D, Tab 2, Affidavit of Lincoln Brown (SWBT Texas II Brown Aff.) at para. 21. ASI provides the following advanced services (in addition to ADSL): "Frame Relay, Cell Relay, Virtual Point of Presence Dial Access Service (VPOP/DAS) and Native LAN Plus." SWBT Texas I Brown Aff., Attach. A at 1, 3; SWBT Texas I Reply App. A, Vol. A-3, Tab 5, Reply Affidavit of Lincoln E. Brown (SWBT Texas I Brown Reply Aff.) at para. 5.

loop) to connect the customer premises to the frame relay/cell relay switch port.⁸⁵⁸ ASI has been processing LSRs in Texas to order these loops from SWBT using the same EDI interface that is available to competitive LECs to order unbundled loops.⁸⁵⁹ ASI submits an Access Service Request (ASR) for special access for the other 90 percent of orders where the 4-wire digital loop or DS-1 is used to connect the customer premises to a frame/cell switch port outside the wire center for the customer's local exchange service.⁸⁶⁰ ASI submits the ASR to SWBT utilizing the same processes, procedures, and interfaces as unaffiliated frame relay and ATM service providers.⁸⁶¹

310. As for ASI's ADSL services, ASI stated that it would continue to engage in "interim line sharing" until May 29, 2000, at which time SWBT would make line sharing generally available.⁸⁶² In order to address criticism in the Texas I record that ASI was not ordering xDSL-capable loops as its competitors were doing, ASI pledges in SWBT's Texas II application to order 280 unbundled loops per month that are capable of providing ADSL service.⁸⁶³ ASI stated that it would begin to order xDSL-capable loops on April 6, 2000 and would continue to do so until line sharing was made generally available, submitting LSRs to SWBT for processing in the same manner that SWBT provisions unbundled loops to competitive LECs.⁸⁶⁴ Furthermore, ASI

⁸⁵⁸ SWBT Texas II Brown Aff. at para. 21.

⁸⁵⁹ SWBT Texas II Brown Aff. at para. 19. As of April 5, 2000, ASI had received more than 200 requests for new frame relay and cell relay services, and had processed approximately 20 LSRs to order UNE loops from SWBT. *Id.* at para. 21. ASI noted in reply comments dated May 19, 2000, that none of these orders had yet been provisioned, and that the circumstances under which such a service arrangement would be applicable are "very limited." SWBT Texas II Reply App. A, Vol. A-1, Tab 3, Reply Affidavit of Lincoln E. Brown (SWBT Texas II Brown Reply Aff.) at n.6. While ASI uses EDI, an application-to-application interface, to order 4-wire digital and DS-1 loops, xDSL providers generally use LEX, a graphical user interface, to order xDSL-capable and BRI loops.

⁸⁶⁰ SWBT Texas II Brown Aff. at para. 20.

⁸⁶¹ *Id.*

⁸⁶² SWBT Texas II Brown Aff. at para. 23. The term "interim line sharing" refers to the fact that under the *SBC/Ameritech Merger Order*, ASI is permitted to engage in line sharing with SWBT on an exclusive basis until line sharing is provided to unaffiliated providers of advanced services within the same geographic area. *SBC/Ameritech Merger Order*, App. C at para. 3(d). Where SWBT engages in interim line sharing, it is required to provide unaffiliated providers of advanced services within the same area discounted Line Sharing Surrogate Charges equal to 50 percent of the cost of a second loop. *See id.* at para. 8(b).

⁸⁶³ SWBT Texas II Brown Aff. at para. 22.

⁸⁶⁴ *Id.* In reply comments, ASI noted that it had ordered 282 unbundled loops in April for the purpose of providing ADSL services in Texas, and that as of May 19, 2000, ASI had ordered an additional 187 unbundled loops. SWBT Texas II Brown Reply Aff. at para. 7. ASI stated that ASI ordered the loops from SWBT utilizing the same interfaces and processes as are available to and used by unaffiliated providers. *Id.* at para. 8. For instance, ASI performed the pre-order function of obtaining loop qualification information for the 282 loops in April from the Complex Products Service Order System (CPSOS), which was made available to competitive LECs beginning April 5, 2000, and ASI performed the ordering function of submitting manual LSRs to SWBT's Local Service Center. *Id.*

asserts that when line sharing became available, ASI began ordering the “HFPL UNE” (high frequency portion of the loop) from SWBT utilizing the same interfaces and paying an equivalent price as competitive LECs.⁸⁶⁵

(b) Discussion

311. AT&T and other commenters assert that SWBT has engaged in discrimination favoring its advanced services separate affiliate in a number of ways. These assertions fall into two broad categories: (1) those attacking the separate affiliate structure permitted under the merger conditions;⁸⁶⁶ and (2) those alleging that SWBT has improperly implemented the merger conditions, resulting in preferential treatment for ASI.⁸⁶⁷

312. As an initial matter, we reject AT&T and TRA’s assertions that ASI must be deemed a “successor or assign” of SWBT.⁸⁶⁸ In the *SBC/Ameritech Merger Order*, we established a rebuttable presumption that SWBT’s separate subsidiary for advanced services would not be considered a successor or assign of the incumbent LEC provided that the incumbent and its separate affiliate do not deviate from the requirements of section 272(b), (c), (e), and (g) other than in the manner explicitly provided for in the merger conditions.⁸⁶⁹ We incorporate by reference our legal reasoning in reaching this conclusion.⁸⁷⁰ As discussed below, there is no evidence in the record that SWBT is operating outside the strictures of the merger conditions. Accordingly, no commenters have rebutted the presumption we set forth in the *SBC/Ameritech Merger Order*. Moreover, we find it would be unfair to fault SWBT in the context of the instant proceeding for its adherence to the conditions with which it is obligated to comply under the terms of the *SBC/Ameritech Merger Order*.

⁸⁶⁵ *Id.* at para. 9. ASI anticipated that its initial ordering volume would be approximately 450 HFPL UNEs per day in Texas (or 9,000 per month based on 20 working days). *Id.*

⁸⁶⁶ *See* AT&T Texas II Reply Comments at 17 (“[t]he merger conditions pursuant to which ASI was created include numerous provisions that allow SBC to discriminate in favor of its affiliate.”); AT&T Texas II Comments at 64-70; IP Communications Texas II Minter Decl. at paras. 8-11; Sprint Texas II Comments at 19-22; @Link Texas II Comments at 10.

⁸⁶⁷ AT&T Texas II Pfau/Chambers Decl. at para. 84; AT&T Texas II Reply Comments at 17; IP Communications Texas II Minter Decl. at para. 9.

⁸⁶⁸ AT&T Texas II Comments at 64-70; TRA Texas I Comments at 24-30. We note that TRA filed an appeal of the Commission’s *SBC/Ameritech Merger Order* in the D.C. Circuit (Docket No. 99-1441) challenging the determination that the separate advanced services affiliate required by merger conditions is not a successor or assign of the incumbent LEC for purposes of applying the resale obligation of section 251(c)(4). AT&T has intervened in the pending suit.

⁸⁶⁹ *See* 47 U.S.C. § 272(b), (c), (e), and (g); *see also SBC/Ameritech Merger Order* at para. 460, App. C. at para. 3.

⁸⁷⁰ *See SBC/Ameritech Merger Order* at paras. 446-76. Moreover, we note that AT&T has not explained how failure to treat ASI as an incumbent LEC has disadvantaged AT&T. *See* AT&T Texas II Comments at 65.

313. Because we find that ASI is not subject to the obligations of section 251(c), we reject TRA's argument that SWBT violates its statutory obligation to make xDSL services available at wholesale rates to resellers by providing the service through ASI, its wholly-owned subsidiary.⁸⁷¹ As an incumbent LEC, SWBT only has an obligation to offer for resale at wholesale rates those services that it provides to subscribers at retail.⁸⁷² SWBT does not provide xDSL services at retail, so it is not obligated to provide these services at wholesale rates.

314. We also reject allegations that the structure of the separate affiliate permits SWBT to discriminate on behalf of ASI. For example, AT&T asserts that SWBT's provision of network planning and engineering functions, including use of SWBT employees to arrange for requested collocation space for ASI, allows SWBT to unlawfully favor its affiliate over competitors.⁸⁷³ SWBT is permitted, pursuant to the merger conditions, to engage in certain activities for a limited transition period. The Commission found in the *SBC/Ameritech Merger Order* that "because SBC/Ameritech had previously been performing these activities on an integrated basis, it [would] take some time, both logistically and technically, to remove these functions from the incumbent."⁸⁷⁴ Specifically, we concluded that a short transition period would "minimize any disruption to the efficient and timely delivery of [a]dvanced [s]ervices to customers."⁸⁷⁵ We also note that any differences in treatment between ASI and competitors that may occur during this transition period would be inherent in the integrated provision of advanced services. Moreover, at the end of the transition period, competitors will have greater protection against discrimination than they otherwise would be entitled to if SWBT had continued to provide advanced services on an integrated basis. We find no basis, therefore, for altering our conclusion that SWBT complies with the collocation requirements of checklist item 1.

315. Similarly, we also reject commenters' objections to ASI's access to non-transitional services such as OI&M, joint marketing and customer care services, exclusive access to line sharing for a limited period, and to our decision to permit the terms of an interconnection agreement to suffice for certain transaction disclosure requirements.⁸⁷⁶ These activities, like the

⁸⁷¹ TRA Texas I Comments at 24-30. *See also* AT&T Texas II Comments at 64-70.

⁸⁷² 47 U.S.C. § 251(c)(4)(A).

⁸⁷³ AT&T Texas II Pfau/Chambers Decl. at para. 84.

⁸⁷⁴ *SBC/Ameritech Merger Order* at para. 475.

⁸⁷⁵ *SBC/Ameritech Merger Order*, App. C at para. 4(n). Recognizing SWBT's section 251 nondiscrimination obligations regarding unbundled network elements and collocation, the merger conditions provide that even during the transition period, SWBT and ASI were required to operate in a manner that was the "functional equivalent" of provisioning advanced services through a fully operational separate affiliate. *SBC/Ameritech Merger Order*, App. C at para. 6(g). For example, ASI was required to order from SWBT "facilities and/or services needed to provide [advanced services]" rather than having SWBT continue to operate on an integrated basis. *Id.* at para 6(g)(3).

⁸⁷⁶ AT&T Texas II Comments at 69-70; AT&T Texas II Pfau/Chambers Decl. at paras. 83-89; AT&T Texas II Reply Comments at 17-18; @Link Texas II Comments at 10; IP Communications Texas II Minter Decl. at para. 10; Sprint Texas II Comments at 20.

transitional network planning activities described above, were explicitly permitted under the merger conditions.

316. We concluded in the *SBC/Ameritech Merger Order* that the advanced services separate affiliate will not derive unfair advantages from any of the activities that it is permitted to engage in with the incumbent LEC.⁸⁷⁷ We disagree, therefore, that SWBT's engaging in these activities with ASI constitutes a violation of section 271. In any event, even if these commenters had presented a plausible claim of discrimination, which they have not, they have alleged no form of discrimination substantial enough to draw into question SWBT's overall compliance with the relevant checklist items.

317. Finally, we also reject allegations that SWBT, in implementing the merger conditions, has conducted activities outside the strictures of these conditions, resulting in preferential treatment of ASI.⁸⁷⁸ These claims generally appear to describe activity that is, in fact, contemplated by the merger conditions. For example, AT&T is troubled by a SWBT statement that it provides "certain customer care functions after the sale" of ASI's services.⁸⁷⁹ As stated above, however, we explicitly found that the sharing of customer care services on an exclusive basis is a permitted activity pursuant to the SBC/Ameritech merger conditions.⁸⁸⁰ Similarly, IP Communications alleges that SWBT has only recently made its Premis database available to competitive LECs because ASI needs access to it. Under the nondiscrimination requirement of section 272(c)(1), SWBT's obligation is to give all unaffiliated entities the same "goods, services, facilities, and information" that it gives to its affiliate.⁸⁸¹ Instead of showing potential discrimination, these facts indicate that SWBT is abiding by the relevant nondiscrimination obligations.

318. In addition, we note that even if this allegedly "discriminatory" activity were outside the strictures of the merger conditions, commenters do not describe how such activity violates any provision of the competitive checklist. It seems that, at best, such allegations could be relevant, if at all, only to the Commission's predictive judgment whether SWBT will comply with the section 272 requirements with respect to its long distance separate affiliate.⁸⁸² Because we find no evidence on this record that SWBT is acting outside the confines of the merger conditions, however, there is no need to evaluate these claims in the context of our section 272 analysis below.

⁸⁷⁷ *SBC/Ameritech Merger Order* at paras. 467-76.

⁸⁷⁸ *See, e.g.,* AT&T Texas II Pfau/Chambers Decl. at para. 84; AT&T Texas II Reply Comments at 17; IP Communications Texas II Minter Decl. at para. 9.

⁸⁷⁹ *See* AT&T Texas II Pfau/Chambers Decl. at para. 84 (citing SWBT Texas II Brown Aff. at para. 14).

⁸⁸⁰ *SBC/Ameritech Merger Order* at para. 469, App. C. at para. 3(a).

⁸⁸¹ 47 U.S.C. § 272(c)(1).

⁸⁸² 47 U.S.C. § 271(d)(3)(C); *see* section 272 section below.

c. High Capacity Loop Performance

319. We find, based on the evidence in the record, that SWBT demonstrates that it provides high capacity loops to competing carriers in a nondiscriminatory manner. With respect to average installation interval, the Texas Commission did not establish a retail analogue, but instead established a 3 day target for average order installation. Accordingly, we assess SWBT's performance on the basis of whether or not it offers efficient competitors a meaningful opportunity to compete. Although SWBT has had difficulty with meeting this target in the past, during March and April 2000, SWBT installed competing carrier DS1 loops in about 3 days, on average.⁸⁸³ Furthermore, with respect to missed installation due dates, in the period from February through April 2000, SWBT missed only slightly more due dates for competing carrier DS1 loops than it did for its own retail DS1 service.⁸⁸⁴ In addition, during the same period, the average time to repair competing carrier DS1 loops was only slightly higher for competing carriers than it was for SWBT.⁸⁸⁵ In light of the lack of commenting parties on these slight performance disparities, we do not find these differences competitively significant. Finally, during the period from February through April 2000, competing carriers DS1 loops experienced comparable or lesser repeat trouble report rates than did SWBT's own retail DS1 loops.⁸⁸⁶ Thus, we find that SWBT provides nondiscriminatory maintenance and repair services for the high capacity loops it provides to competing carriers.

320. WorldCom alleges that SWBT will not provide unbundled access to high capacity loops, such as OC-3 or OC-12 level facilities.⁸⁸⁷ SWBT, however, offers an optional amendment to the T2A that redefines the loop network element to include "DS1, DS3, fiber, and other high capacity loops to the extent required by applicable law."⁸⁸⁸ Because this language indicates that

⁸⁸³ In March and April 2000, SWBT installed competing carrier DS1 loops in an average of 3.0 and 3.5 days. SWBT Aggregated Performance Data, Measurement No. 55 ("Average Installation Interval (Days)") (DS1 Loop) at 271-No. 55a.

⁸⁸⁴ In February, March, and April 2000, SWBT missed 5.8, 13.8, and 12.8 percent of competing carrier DS1 installation due dates. During the same period, SWBT missed 4.9, 9.0, and 7.7 of the installation due dates for its own retail DS1 service. SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (DS1 Loop) at 271-No. 58b.

⁸⁸⁵ In February, March, and April 2000, SWBT repaired competing carrier DS1 loops in an average of 5.24, 7.01, and 3.96 hours. During the same period, SWBT repaired its own retail DS1 loops in an average of 3.01, 2.96, and 3.45 hours. SWBT Aggregated Performance Data, Measurement No. 67 ("Mean Time to Restore (Hours)-Dispatch") (DS1 Loop with Test Access) at 271-No. 67b.

⁸⁸⁶ In February, March, and April 2000, competing carrier DS1 loops experienced repeat trouble rates of 12.9, 22.2, and 8.5 percent, while SWBT's own retail DS1 loops experienced repeat trouble rates of 19.4, 17.9, and 21.8 percent. SWBT Aggregated Performance Data, Measurement No. 69 ("Repeat Reports (%)") (DS1 Loop with Test Access) at 271-No. 69b.

⁸⁸⁷ WorldCom Texas II Comments at 41-43.

⁸⁸⁸ SWBT Auinbauh Texas II Aff. at Attach. C (Amendment 6 to T2A at para. 4.1).

SWBT has a concrete and specific legal obligation to make available as broad a variety of high capacity loops as the law requires, and we reject WorldCom's arguments.

d. Line Sharing and Other Loop Related Issues

321. *Line Sharing*. For the purpose of evaluating whether this application satisfies section 271, we do not require SWBT to prove that it has implemented the loop facility and OSS modifications necessary to accommodate requests for access to the line sharing unbundled network element as required by our December 9, 1999 *Line Sharing Order*.⁸⁸⁹ Although that order became technically effective on February 9, 2000, we acknowledged that it could take as long as 180 days from release of our order for incumbent LECs to develop and deploy the modifications necessary to implement the new obligations.⁸⁹⁰ This 180 day period concluded on June 6, 2000, well after SWBT filed its application.⁸⁹¹ As with the aspects of the *UNE Remand Order's* revised rule 319 that were not yet in effect at the time SWBT filed its application, we conclude that it would be unfair to require SWBT to demonstrate full compliance with the requirements of the *Line Sharing Order* in its initial application, at a time well in advance of the implementation deadline established in the Order. Finally, requiring SWBT to supplement the record with new evidence demonstrating its compliance with its line sharing obligations on or after June 6, 2000, would necessitate an 11th hour review of fresh evidence and dispose of our well-established procedural framework.⁸⁹²

322. Although we set June 6, 2000 as an outside deadline for accommodating requests for access to this new line sharing network element, we also established that an incumbent LEC had clear obligations to work towards satisfying the line sharing requirements in the weeks leading up to this deadline.⁸⁹³ We find that SWBT demonstrates significant development and operational resources devoted to planning for competing carrier access to the high frequency portion of the loop.⁸⁹⁴ We find the depth and scope of this evidence sufficient to overcome the speculative concerns of some competing carriers regarding SWBT's line sharing readiness,⁸⁹⁵ and reject competing carrier arguments that the Commission should deny SWBT's section 271

⁸⁸⁹ *Line Sharing Order*, 14 FCC Rcd 20912.

⁸⁹⁰ *Line Sharing Order*, 14 FCC Rcd at 20982-83, para. 161.

⁸⁹¹ *Line Sharing Order*, 14 FCC Rcd at 20982-83, 21016, paras. 161, 230; 65 Fed. Reg. 1331 (Jan. 10, 2000).

⁸⁹² See section III.C.1, *supra*.

⁸⁹³ *Line Sharing Order*, 14 FCC Rcd at 20982-85, paras. 161-170.

⁸⁹⁴ SWBT Texas II Cruz Aff. at paras. 5-55; SWBT Texas II Auinbauh Aff. at paras. 3-9; SWBT Texas II Auinbauh Reply Aff. at paras. 4-6; SWBT Texas II Chapman Reply Aff. at paras. 41-43.

⁸⁹⁵ NorthPoint Texas II Comments at 7-12; Rhythms Texas II Comments at 3-10; Covad Goodpastor Texas II Decl. at paras. 14-20; NorthPoint Lewandowski Texas II Aff. at paras. 23-29; Rhythms Lopez Texas II Aff. at paras. 2-25.

application on the basis of its alleged failure to comply with the requirements of the *Line Sharing Order*.⁸⁹⁶

323. *Line Splitting*. Some commenters contend that SWBT has unlawfully hindered the ability of competing carriers to use the UNE-P to provide both xDSL and voice services.⁸⁹⁷ For instance, AT&T argues that SWBT has unlawfully denied AT&T access to SWBT's splitter and has thereby made it more difficult for AT&T to use the UNE-P to provide advanced services.⁸⁹⁸ The Department of Justice also noted this issue in passing, but it did not suggest that the issue casts doubt on the merits of this application.⁸⁹⁹

324. As a preliminary matter, we note that under the *Line Sharing Order*, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access.⁹⁰⁰ Thus, the situation that these commenters describe is not technically line sharing, because both the voice and data service will be provided by competing carrier(s) over a single loop, rather than SWBT. To avoid confusion, we characterize this type of request as "line splitting," rather than line sharing.

325. The Commission's rules require incumbent LECs to provide requesting carriers with access to unbundled loops in a manner that allows the requesting carrier "to provide any telecommunications service that can be offered by means of that network element."⁹⁰¹ As a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter.⁹⁰² The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P.⁹⁰³ For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a

⁸⁹⁶ Covad Texas II Comments at 2-3, 7-8; Covad Texas II Goodpastor Decl. at paras. 14-20; IP Texas II Comments at 2-4; NorthPoint Texas II Comments at 7-12; NorthPoint Texas II Lewandowski Aff. at paras. 23-29; Rhythms Texas II Lopez Aff. at paras. 4-15.

⁸⁹⁷ AT&T Texas II Reply Comments at 8-9; IP Communications Texas II Comments at 14; AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; IP Communications Texas I Comments at 5.

⁸⁹⁸ AT&T Texas II Pfau/Chambers Decl. at paras. 29-42.

⁸⁹⁹ Department of Justice Texas II Evaluation at 7 n.17.

⁹⁰⁰ *Line Sharing Order*, 14 FCC Rcd at 20941, para. 13; 47 C.F.R. § 51.319(h)(3).

⁹⁰¹ 47 C.F.R. § 51.307(c).

⁹⁰² We note, however, that nothing in our rules prohibits an incumbent LEC from voluntarily providing the splitter in this line splitting situation.

⁹⁰³ SWBT June 6 *Ex Parte* Letter at 2.

configuration that allows provisioning of both data and voice service.⁹⁰⁴ SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.⁹⁰⁵

326. AT&T also argues that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter.⁹⁰⁶ AT&T alleges that this is “the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive.”⁹⁰⁷ Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop.⁹⁰⁸ AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.⁹⁰⁹

327. We reject AT&T’s argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available.⁹¹⁰ As we stated in the *UNE Remand Order*, “with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity.”⁹¹¹ We separately determined that the DSLAM is a component of the packet switching unbundled network element.⁹¹² We observed that “DSLAM equipment sometimes includes a splitter” and that, “[i]f not, a separate splitter device separates voice and data traffic.”⁹¹³ We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from

⁹⁰⁴ SWBT June 6 *Ex Parte* Letter at 2.

⁹⁰⁵ For instance, when the UNE platform is part of a DLC or exceeds distance limitations for xDSL service, such loops would not be xDSL-capable and could not be provisioned as an xDSL-capable unbundled loop. In these circumstances, modifications to the existing loop or other alternatives would need to be provided. SWBT June 6 *Ex Parte* Letter at 2. In light of SWBT’s representations, we find moot concerns expressed by commenters regarding an earlier SWBT proposal to require competing carriers using the UNE-P to order a new loop in addition to the existing UNE-P loop in order to ultimately engage in line splitting over the UNE-P. AT&T Pfau/Chambers Texas II Decl. at paras. 29-36; IP Communications Texas I Comments at 5.

⁹⁰⁶ See AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; see also IP Communications at 12, 14.

⁹⁰⁷ AT&T Texas II Pfau/Chambers Decl. at para. 41.

⁹⁰⁸ AT&T Texas II Pfau/Chambers Decl. at paras. 40-42.

⁹⁰⁹ AT&T Texas II Pfau/Chambers Decl. at para. 40.

⁹¹⁰ See 47 U.S.C. § 251(d)(2); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

⁹¹¹ *UNE Remand Order*, 15 FCC Rcd at 3776, para. 175.

⁹¹² *UNE Remand Order*, 15 FCC Rcd at 3833, paras. 302-303.

⁹¹³ *UNE Remand Order*, 15 FCC Rcd at 3833, para. 303.

being part of the packet switching element. That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding.

328. The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters. Indeed, the only discussion of the splitter appeared in a discussion of a network element (the packet switching element) that we decided not to unbundle, and that discussion at least suggested that the splitter, because it is often part of the DSLAM, might properly be considered part of that element as a general matter. In response to petitions for reconsideration of the *UNE Remand Order*, we have been asked to consider whether to impose on incumbent LECs a new obligation to provide access to the splitter, just as we are often asked to adjust our unbundling rules in light of industry developments. In this regard, we believe AT&T's arguments merit prompt and thorough consideration by the Commission, and we commit to resolving them expeditiously in our reconsideration of the *UNE Remand Order*. The fact remains, however, that SWBT had no such obligation during the period covered by this application and therefore, any SWBT failure to provide access to the splitter can provide no basis for denying this application.

329. Finally, AT&T suggests in passing that SWBT "voluntarily" provides the line splitter functionality to competing carriers engaging in line sharing with SWBT voice services and that it has for that reason incurred an obligation to provide all UNE-P carriers with the same option.⁹¹⁴ Even if AT&T had fully developed this issue, this argument would lack merit and would in any event be unripe for our review here. What AT&T requests is not line sharing, but access to the entire loop and the splitter in order to provide both voice and advanced services. Line sharing and line splitting present two different scenarios under our rules. With respect to line sharing, we stated in the *Line Sharing Order* that incumbent LECs have discretion to maintain control over the splitter.⁹¹⁵ With respect to line splitting, as described above, we have not imposed any obligation on incumbent LECs to provide access to their splitters. AT&T presents no evidentiary or conceptual basis for concluding that SWBT's practices in these two different contexts somehow amount to "discrimination" against AT&T. In any event, the parties' entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas Commission.⁹¹⁶ In light of SWBT's overall compliance with the relevant checklist items, this newly arising dispute provides no basis for rejecting SWBT's application here.

330. *Other Issues.* We reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain their

⁹¹⁴ AT&T Texas II Pfau/Chambers Decl. at para. 42.

⁹¹⁵ *Line Sharing Order*, 14 FCC Rcd at 20940, para. 76.

⁹¹⁶ SWBT recently affirmed that it is "interested in exploring the use of SWBT's splitters" in line splitting arrangements and that it views this "as a potential business opportunity." SWBT June 6 *Ex Parte* Letter at 2.

voice service from a competitor that is using the UNE-P.⁹¹⁷ Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. In the *Line Sharing Order*, the Commission unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes. Furthermore, as described above, the UNE-P carrier has the right to engage in line splitting on its loop. As a result, a UNE-P carrier can compete with SWBT's combined voice and data offering on the same loop by providing a customer with line splitting voice and data service over the UNE-P in the same manner. In sum, we do not find this conduct discriminatory.

E. Checklist Item 5 – Unbundled Local Transport

1. Background

331. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”⁹¹⁸ The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.⁹¹⁹ Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.⁹²⁰ Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office

⁹¹⁷ AT&T Texas II Comments at 17-18; AT&T Texas I Comments at 12-13; AT&T Texas I Pfau/Chambers Decl. at paras. 27-46. AT&T specifically points out that when a SWBT customer who had been using SWBT's local voice service and xDSL service combined over a single copper loop chose to switch voice service to AT&T, SWBT informed the customer that its xDSL service would be disconnected unless the customer switched voice service back to SWBT. AT&T Texas I Comments at 12; AT&T Texas I Pfau/Chambers Decl. at para. 29.

⁹¹⁸ 47 U.S.C. § 271(c)(2)(B)(v).

⁹¹⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

⁹²⁰ *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels (*e.g.*, OC-3/12/48/96) that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.⁹²¹

2. Discussion

332. Based on the evidence in the record, we conclude that SWBT provides both shared and dedicated transport in compliance with the requirements of this checklist item.⁹²² The Texas Commission also finds that SWBT is in compliance with this checklist item.⁹²³

333. We are persuaded that SWBT's data concerning missed due dates for interoffice facilities shows that its provisioning of transport to competitive LECs is nondiscriminatory.⁹²⁴ We note that no commenters challenge SWBT's showing concerning the provision of dedicated or shared transport, except insofar as the commenters address OSS issues and matters concerning the provisioning of the UNE platform, which we address elsewhere.⁹²⁵

⁹²¹ *Id.* at 20719 n. 650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n. 652.

⁹²² SWBT Deere Texas I Aff. at paras. 111-128; SWBT Auinbauh Texas I Aff. at paras. 98-104.

⁹²³ Texas Commission Texas I Comments at 65-69.

⁹²⁴ The relevant state performance measures (disaggregated into various submeasures) indicate very few months and regions where more than 10 data points were recorded. SWBT Texas I Application at 102, SWBT Dysart Texas I Aff. at paras. 336, 345, 356, 359-360. Performance data for January through April generally indicate fewer than 10 data points. *See* SWBT Aggregated Performance Data January through April Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") at 271-No. 58a. Under the performance remedy plan, SWBT is required to pay damages and assessments under Tier 2 for any substandard performance of this measure even if there are fewer than ten data points. Texas Commission Texas I Comments at 68. For PM 58 (percentage of missed due dates) a parity measure, the results for submeasure 58-07(DS1 dedicated transport) indicate a greater percentage of misses for competitive LECs than for SWBT for the months of January, February and March. For submeasure 58-14 (analog line ports) the data indicate a greater percentage of misses for competitive LECs than for SWBT for the months of February and April. SWBT states that competitive LECs may request dedicated transport with levels of capacity higher than OC-48 through the Special Request Process. SWBT Application at 100. As we noted in *Bell Atlantic New York* incumbent LECs must provide all technically feasible transmission capabilities, such as Optical Carrier levels (e.g. OC-3/12/48/96) that the competing provider could use to provide telecommunications service. *Bell Atlantic New York Order* at para. 337 n.1041. *See also* Texas Commission Texas I Comments at 16.

⁹²⁵ *See* part V.B.1, *infra*. MFNS asserts that SWBT failed to unbundle loops and interoffice transport with the provision of MFNS' dark fiber product. MFNS Comments at 12-15. *See* part V.A.1, *infra*, where we address MFNS comments. Z-Tel and Connect raised issues regarding SWBT's policies for adopting interconnection agreements pursuant to section 252(i) of the Act. SWBT disallowed both parties from opting into interconnection agreements on the basis that the relevant agreements were no longer available for adoption because they had (continued....)

334. We disagree with Global Crossing's assertion that SWBT fails to provide unbundled local transport.⁹²⁶ Global Crossing states that in Houston it has an Optical Carrier Level-3 (OC-3)⁹²⁷ from SWBT that it uses to carry access traffic to its point of presence. Global Crossing alleges that SWBT refused to process orders to carry local exchange traffic over the OC-3, but required Global Crossing instead to acquire a separate transport facility to carry purely local traffic. Global Crossing claims that this was an illegal use restriction that constituted a refusal by SWBT to provide unbundled local transport.

335. As we found in the *Bell Atlantic New York Order*, we do not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance.⁹²⁸ We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some form of the same physical facilities as a checklist item.⁹²⁹ The fact that the competitive LECs can use interstate special access service in lieu of the EEL, a combination of unbundled loops and transport, and can convert special access service to EELs, does not persuade us that we should alter our approach and consider the provision of special access for purposes of checklist compliance.⁹³⁰ Nevertheless, to the extent that parties are experiencing problems in the provisioning of special access services ordered from SWBT's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process.⁹³¹

F. Checklist Item 6 – Unbundled Local Switching

1. Background

336. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide “[l]ocal

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expired or were in the notice period for renegotiation. Connect Texas I Comments at 2-6; Connect Texas II Comments at 2; Z-Tel Texas I Comments at 2-9; Z-Tel Texas II Comments at 5-6; SWBT Auinbauh Texas I Reply Aff. at paras. 16-18. Z-Tel alleged that the policies affect Z-Tel's ability to purchase shared transport. While Z-Tel's allegation is not directly applicable to this checklist item, we caution SWBT that if it fails to recognize the rights of a carrier seeking to opt-in, that carrier, in addition to available state remedies, may seek expedited relief from this Commission pursuant to section 208. *Local Competition Order*, 11 FCC Rcd. at 16141, para.1321; 47 U.S.C. § 208.

⁹²⁶ Global Crossing Texas I Comments at 6-7, Global Crossing Laurie Larson Texas I Aff. at para. 12.

⁹²⁷ An Optical Carrier level is a SONET optical signal. OC-1 is 51.840 million bits per second. OC-3 equals three times OC-1. NEWTON'S TELECOM DICTIONARY 534 (14th ed. 1998).

⁹²⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340.

⁹²⁹ *Id.* at para. 340. To the extent that Global Crossing is seeking to use combinations of unbundled network elements in lieu of tariffed special access services, we have addressed the requirements associated with such use in several orders. See part V.B.2, *infra*, for discussion of Access to the Enhanced Extended Link.

⁹³⁰ See *Bell Atlantic Order*, 15 FCC Rcd at 4126-27, para. 340.

⁹³¹ *Id.* at para. 341.

switching unbundled from transport, local loop transmission, or other services.”⁹³² In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.⁹³³ The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC’s customers.⁹³⁴ Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.⁹³⁵

337. Moreover, in the *Second BellSouth Louisiana Order*, the Commission required BellSouth to permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.⁹³⁶ The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.⁹³⁷ Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.⁹³⁸ Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.⁹³⁹

338. In the *Second BellSouth Louisiana Order*, the Commission stated that to comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC’s switch, as necessary to provide access to shared transport functionality.⁹⁴⁰ The Commission also stated that a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier’s point of presence to a dedicated trunk port on the local switch.⁹⁴¹

⁹³² 47 U.S.C. § 271(c)(2)(B)(vi); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722.

⁹³³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

⁹³⁴ *Id.*

⁹³⁵ *Id.* at 20722-23, para. 207.

⁹³⁶ *Id.* at 20723, para. 208.

⁹³⁷ *Id.* at 20723, para. 208 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

⁹³⁸ *Id.*

⁹³⁹ *Id.*

⁹⁴⁰ *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

⁹⁴¹ *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

2. Discussion

339. Based on the evidence in the record, we conclude that SWBT demonstrates that it complies with checklist item 6.⁹⁴² Specifically, SWBT demonstrates that it provides: (1) line-side and trunk side facilities;⁹⁴³ (2) basic switching functions;⁹⁴⁴ (3) vertical features;⁹⁴⁵ (4) customized routing;⁹⁴⁶ (5) shared trunk ports;⁹⁴⁷ (6) unbundled tandem switching;⁹⁴⁸ (7) usage information for billing exchange access,⁹⁴⁹ and (8) usage information for billing for reciprocal

⁹⁴² SWBT Texas I Application at 103 (SWBT furnishes more than 125,000 unbundled switch ports in Texas, mostly in combination with unbundled loops.); SWBT Deere Texas I Aff. at para. 140; SWBT Auinbauh Texas I Aff. at para. 105.

⁹⁴³ Line-side facilities include, but are not limited to, the connection between a loop termination at a main distribution frame, and a switch line card. Trunk-side facilities include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20724 nn.679-680. See SWBT Deere Texas I Aff. at paras. 130-131.

⁹⁴⁴ The basic switching function includes, but is not limited to: connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as the same basic capabilities that are available to the BOC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20726 n.690. See SWBT Deere Texas I Aff. at para. 132.

⁹⁴⁵ *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20726. Vertical features provide end-users with various services such as custom calling, call waiting, call forwarding, caller ID and Centrex. *Id.* See SWBT Deere Texas I Aff. at paras. 132, 139.

⁹⁴⁶ An incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible. *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20728 n.705. Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from requesting carriers' customers. See *Id.* at 20728-29, para. 221. Customized routing is also referred to as selective routing. *Id.* at 20728 n.704. See SWBT Deere Texas I Aff. at paras. 134-137.

⁹⁴⁷ *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12475-79; Ameritech Michigan Order, 12 FCC Rcd at 20716-17; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20732, para. 228. See SWBT Deere Texas I Aff. at para. 135.

⁹⁴⁸ The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and, (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733 n. 732. See SWBT Deere Texas I Aff. at paras. 142-146.

⁹⁴⁹ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733-35, paras. 230-31. See SWBT Auinbauh Texas I Aff. at para. 107.

compensation.⁹⁵⁰ The Texas Commission concludes that SWBT is in compliance with checklist item 6.⁹⁵¹

340. We reject Z-Tel's argument that SWBT has failed to meet this checklist requirement. Z-Tel stated that it is effectively foreclosed from Line Class Code customized routing (LCC) because, as stipulated in the T2A interconnection agreement, if a competing carrier requests LCC in any local switch where Advanced Intelligent Network custom routing (AIN) is implemented, SWBT may establish a rate for the requested LCC, and only if the rate is disputed will the Texas Commission set a TELRIC rate.⁹⁵² Z-Tel argued that, given this pricing uncertainty, SWBT cannot show that it is providing LCC in accordance with the 271 standard, and therefore fails to meet checklist item 6.⁹⁵³ To support this conclusion, Z-Tel pointed to the *Ameritech Michigan Order* in which the Commission stated that "[t]o be 'providing' a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement that sets forth prices and other terms and conditions for each checklist item."⁹⁵⁴ Z-Tel also cited the *Second BellSouth Louisiana Order*, in which the Commission stated that the features, functions, and capabilities of the switch include any technically feasible customized routing functions.⁹⁵⁵

341. Z-Tel appeared to conflate two standards – the “sets forth prices, terms, and conditions for each checklist item” standard from the *Ameritech Michigan Order*, and the “any technically feasible” standard from the *Second BellSouth Louisiana Order* – to place an unreasonable burden on SWBT. Carried to its logical conclusion, Z-Tel's argument would require BOCs to stand ready with fixed prices and terms for any and all technically feasible methods of providing a function of a network element. We find that SWBT meets its obligation to provide the customized routing function, because SWBT provides, at fixed prices, terms, and conditions, the routing system SWBT itself uses, and makes LCC available, upon request, as well.⁹⁵⁶

342. Z-Tel may consider LCC essential to its business plan. Taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by Z-Tel or acquiring an alternative from a third-party supplier, Z-Tel may decide

⁹⁵⁰ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20735-37, paras. 232-34. See SWBT Aunibauh Texas I Aff. at para. 107.

⁹⁵¹ Texas Commission Texas I Comments at 69-72. See Final Staff Report at 71-75.

⁹⁵² Z-Tel Texas I Comments at 10-11; T2A Attach. 6 § 5.2.3.4.

⁹⁵³ Z-Tel Texas I Comments at 11. See *Ameritech Michigan Order*, 12 FCC Rcd at 20601, para. 110.

⁹⁵⁴ Z-Tel Texas I Comments at 11. See *Ameritech Michigan Order*, 12 FCC Rcd at 20601, para., 110.

⁹⁵⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722-24, paras. 207-209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705).

⁹⁵⁶ T2A Attach. 6 §§ 5.2.4.2 and 5.2.3.4.

that SWBT's customized switching offering materially diminishes Z-Tel's ability to provide the services it seeks to offer.⁹⁵⁷ If Z-Tel believes we should include LCC among the specific attributes of the switching element, we note that there are venues better suited to airing the issue.⁹⁵⁸

G. Checklist Item 7

1. 911 and E911 Access

a. Background

343. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]ondiscriminatory access to – (I) 911 and E911 services.”⁹⁵⁹ In the *Ameritech Michigan Order*, the Commission found that “section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity.”⁹⁶⁰ Specifically, the Commission found that a BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”⁹⁶¹ For facilities-based carriers, the BOC must provide “unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier’s switching facilities to the 911 control office at parity with what [the BOC] provides to itself.”⁹⁶²

b. Discussion

344. Based on the evidence in the record, we conclude that SWBT demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item 7.⁹⁶³ We note that no commenter disputes SWBT’s compliance with this portion

⁹⁵⁷ See *UNE Remand Order* 15 FCC Rcd at 3725, para. 51 (47 U.S.C. § 251(d)(2) impairment standard); *Id.* at para. 253 *et seq.* (Applying impairment standard to switching element).

⁹⁵⁸ Z-Tel may file a petition for rulemaking, or may seek to include its argument in our pending *UNE Remand Order* reconsideration proceeding. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Public Notice*, rel. Feb. 28, 2000, 65 FR 12004 (Mar. 7, 2000).

⁹⁵⁹ 47 U.S.C. § 271(c)(2)(B)(vii).

⁹⁶⁰ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

⁹⁶¹ *Id.*

⁹⁶² *Id.*

⁹⁶³ SWBT Texas I Application at 105-108; SWBT Deere Texas I Aff. at paras. 166-72, 178-81, 184-85, 606-618 and Attach. A at 124-126 (PM 102-104).

of checklist item 7, and that the Texas Commission concludes that SWBT is providing nondiscriminatory access to 911/E911.⁹⁶⁴

2. Directory Assistance/Operator Services

a. Background

345. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to “directory assistance services to allow the other carrier’s customers to obtain telephone numbers” and “operator call completion services,” respectively.⁹⁶⁵ Section 251(b)(3) of the Act imposes on each LEC “the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”⁹⁶⁶ The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*.⁹⁶⁷

346. We concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).⁹⁶⁸ In the *Local Competition Second*

⁹⁶⁴ Texas Commission Texas I Comments at 72-76. See also SWBT Texas I Application, App. C, Tab 1233 (Texas Commission Final Staff Report at 76-84).

⁹⁶⁵ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

⁹⁶⁶ 47 U.S.C. § 251(b)(3).

⁹⁶⁷ 47 C.F.R. § 51.217; *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999); see also, *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, CC Docket No. 99-273 (rel. Sept. 9, 1999) (*Directory Listings Information NPRM*).

⁹⁶⁸ While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to “directory assistance,” section 251(b)(3) refers to nondiscriminatory access to “operator services,” while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to “operator call completion services.” 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term “operator call completion services” is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term “operator services” was defined as meaning “any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.” *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of “operator services,” because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, we concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, “operator call completion services” is a subset of or equivalent to (continued....)

Report and Order, the Commission held that the phrase “nondiscriminatory access to directory assistance and directory listings” means that “the customers of all telecommunications service providers should be able to access each LEC’s directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.”⁹⁶⁹ The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.⁹⁷⁰ The Commission specifically held that the phrase “nondiscriminatory access to operator services” means that “. . . a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.”⁹⁷¹

347. Competing carriers may provide operator services and directory assistance by either reselling the BOC’s services or by using their own personnel and facilities to provide these services. Our rules require BOCs to permit competitive LECs wishing to resell the BOC’s operator services and directory assistance to request the BOC to brand their calls.⁹⁷² Competing carriers wishing to provide operator services or directory assistance using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a “read only” or “per dip” basis from the BOC’s directory assistance database, or by creating their

(Continued from previous page)

“operator service.” *Second BellSouth Louisiana Order*, 13 FCC Rcd 20740 at n.763. As a result, we use the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

⁹⁶⁹ 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order*’s interpretation of section 251(b)(3) is limited “to access to each LEC’s directory assistance service.” *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC’s systems but requires “nondiscriminatory access to . . . directory assistance to allow the other carrier’s customers to obtain telephone numbers.” 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission’s conclusion that “incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible,” *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)’s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer’s local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. *Directory Listings Information NPRM*.

⁹⁷⁰ *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

⁹⁷¹ *Id.* at para. 112.

⁹⁷² 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as “thank you for using XYZ Telephone Company.” Competing carriers may use the BOC’s brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

own directory assistance database by obtaining the subscriber listing information in the BOC's database.⁹⁷³

348. Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required unbundled network elements in the *Local Competition Third Report and Order*.⁹⁷⁴ Checklist item obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the requirements of sections 251 and 252, including the requirement that rates be based on forward-looking economic costs.⁹⁷⁵ Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.⁹⁷⁶

b. Discussion

349. Based on the evidence in the record, we conclude that SWBT demonstrates that it provides directory assistance services in accordance with the requirements of checklist item 7.⁹⁷⁷ The Texas Commission concludes that SWBT has satisfied the requirements of this checklist item.⁹⁷⁸

350. SWBT's showing withstands the arguments of its opponents regarding this checklist item. With regard to directory assistance, WorldCom asserts that SWBT violates the checklist by charging competitive LECs non-cost-based rates for access to directory assistance listings of customers that reside within its region, but outside of Texas (*i.e.* Arkansas, Kansas,

⁹⁷³ 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44.

⁹⁷⁴ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Reulmaking (rel. Nov. 5, 1999) (*Local Competition Third Report and Order*) at paras. 441-442.

⁹⁷⁵ *Local Competition Third Report and Order* at para. 470. See generally 47 U.S.C. §§ 251-52. See also 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element").

⁹⁷⁶ *Local Competition Third Report and Order* at paras. 470-73. See also 47 U.S.C. §§ 201(b), 202(a).

⁹⁷⁷ SWBT Texas I Application at 108-110. SWBT Rogers Texas I Aff. at paras. 3-39; see also SWBT Dysart Texas I Aff. at paras. 525-542 and Attach. A at 101-108 (measurements 79-86).

⁹⁷⁸ Texas Commission Texas I Comments at 72. The Texas Commission notes that SWBT has obligated itself to provide access to directory assistance and operator services on an unbundled basis at UNE prices to business customers for two years and to residential customers for three years, even though the Commission removed these items from the required UNE list. *Id.* at 74-74.

Missouri, and Oklahoma).⁹⁷⁹ SWBT denies that it violates this checklist item, because the Commission and some state commissions have determined that directory assistance is a competitive service subject to market-based pricing, not cost-based pricing.⁹⁸⁰

351. We find WorldCom's assertions unpersuasive. WorldCom's argument that SWBT's *out-of-state* directory assistance services are priced at an anticompetitive level is not relevant to a determination of whether SWBT meets checklist item 7 in Texas. For purposes of the instant application, we consider only whether SWBT meets the requirements of section 271 in the State of Texas.⁹⁸¹ No commenter has challenged SWBT's rate for directory assistance in Texas, and the Texas Commission conclude that SWBT meets this checklist item.⁹⁸² We therefore conclude that SWBT meets this checklist item.

H. Checklist Item 8 – White Pages Directory Listings

1. Background

352. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.”⁹⁸³ Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.⁹⁸⁴

353. In the *Second BellSouth Louisiana Order*, the Commission concluded that, “consistent with the Commission’s interpretation of ‘directory listing’ as used in section 251(b)(3), the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange

⁹⁷⁹ WorldCom Texas I Comments at 56, 57 n.31 (stating that SWBT’s rate for in-region, out-of-state directory listings is \$.0583). However, in an *ex parte* letter, WorldCom informs the Commission that it made a factual error and should have reported this rate as \$.0585. See Letter from Keith L. Seat, Senior Counsel for Competitive Strategies, MCI (WorldCom) Communications Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (filed Mar. 14, 2000).

⁹⁸⁰ SWBT Rogers Texas I Reply Aff. at paras. 11-12.

⁹⁸¹ For the same reason, we find that the National ALEC’s argument that SWBT’s directory assistance services in California are priced at an anticompetitive level is not relevant to a determination of whether SWBT meets checklist item 7 in Texas. See National ALEC Texas I Comments at 10-11. See also *Bell Atlantic New York Order* 15 FCC Rcd at 4151, paras. 398-399 (claim that Bell Atlantic violated Commission rules in other states is not relevant to determination of whether Bell Atlantic meets its section 271 obligations in New York).

⁹⁸² Texas Commission Texas I Comments at 72-73.

⁹⁸³ 47 U.S.C. § 271(c)(2)(B)(viii).

⁹⁸⁴ 47 U.S.C. § 251(b)(3).

provider.”⁹⁸⁵ We further concluded, “the term ‘directory listing,’ as used in this section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”⁹⁸⁶

354. In the *Second BellSouth Louisiana Order*, the Commission found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provided white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.⁹⁸⁷

2. Discussion

355. Based on the evidence in the record, we find that SWBT satisfies the requirements of checklist item 8.⁹⁸⁸ The Texas Commission concludes that SWBT complies with this checklist item.⁹⁸⁹

356. We reject allegations that SWBT does not meet this checklist item. ALTS and the CLEC Coalition state that competitive LECs in Texas have experienced problems with SWBT’s processes for altering customer listings and incorporating changes into the white pages directory.⁹⁹⁰ ALTS and the CLEC Coalition also state that some listings are “falling out” or failing to appear for no apparent reason. In addition, both parties express concern that SWBT’s performance measurements fail to capture the problems that their members report.⁹⁹¹ The

⁹⁸⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

⁹⁸⁶ *Id.* We note that in the *Second BellSouth Louisiana Order*, we stated that the definition of “directory listing” was synonymous with the definition of “subscriber list information.” *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the Commission’s decision in a recent proceeding obviates this comparison, and supports the definition of directory listing delineated above. *See Implementation of the Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

⁹⁸⁷ *Id.*

⁹⁸⁸ SWBT Texas I Application at 110-111; SWBT Rogers Texas I Aff. at paras. 40-44, 51-52; SWBT Dysart Texas I Aff. at paras. 640-641, 646-648 and Attach. A at 133-136 (PM 110-113). SWBT demonstrates that it is providing white pages directory listings for customers of competitive LECs that are nondiscriminatory in appearance and integration, and have the same accuracy and reliability that SWBT provides for its own customers. SWBT Rogers Texas I Aff. at paras. 40-44 (nondiscriminatory appearance, e.g., same size, font, and typeface), and paras. 51-52; SWBT Dysart Texas I Aff. at paras. 640-641, 646-648 and Attach. A at 133-136 (PM 110-113) (comparable accuracy and reliability).

⁹⁸⁹ Texas Commission Texas I Comments at 76-78; *see* Final Staff Report at 85-89.

⁹⁹⁰ ALTS Texas I Comments at 46; CLEC Coalition Texas I Comments at 42-44.

⁹⁹¹ ALTS Texas I Comments at 46; CLEC Coalition Texas I Comments at 42-43.

Association of Directory Publishers (ADP) support ALTS and the CLEC Coalition, and note that inaccurate or incomplete listings in the incumbent's database harmed its members as well.

357. SWBT explains that, at the direction of the Texas Commission, SWBT leaves listings unchanged during the resale or UNE provisioning process. Unless the competitive LEC submits a Directory Service Request form stating otherwise, SWBT assumes the white pages listing is to remain unchanged.⁹⁹² ALTS, the CLEC Coalition, and ADP did not rebut SWBT's explanation in their reply comments.⁹⁹³

358. We conclude there is no evidence to support that the difficulties some competing carriers may have encountered with SWBT's processes for altering white pages listings reflect systemic defects within SWBT's white pages directory listings procedures. It appears likely that competing carriers' perception that listings are "falling out" may reflect misunderstanding or miscommunication between carriers rather than actual failure to list customers in SWBT's white pages directory. We agree with the CLEC Coalition and ADP, however, that irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes.⁹⁹⁴ Although we do not hold SWBT to a standard of perfection, we note that, if there were a systemic problem involving a significant number of listings, it would warrant a finding of noncompliance.⁹⁹⁵

I. Checklist Item 9 – Numbering Administration

1. Background

359. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering

⁹⁹² See Letter from Austin C. Schlick, Kellogg, Huber et al., Counsel for Applicants, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 at 2 (Feb. 4, 2000) (Austin C. Schlick Feb. 4 *Ex Parte* Letter). SWBT further explains that "the Dysart Affidavit's characterization of the UNE disconnect (D) order as 'drop[ping]' listing information out of the database is . . . incorrect. See Dysart Texas I Aff. ¶ 640. For clarity of the record, all after the first sentence of paragraph 640 of Mr. Dysart's affidavit should be stricken." *Id.* Accordingly, we take no notice of that portion of the Dysart Texas I Affidavit.

⁹⁹³ But see ALTS/CLEC Coalition Texas II Joint Comments at 14. NEXTLINK states that customers' listings are being dropped out of the database. NEXTLINK states that the problems appear to be related to orders falling out of the automated systems and not being completed by SWBT's back end office systems. SWBT states that it is working with NEXTLINK to investigate any errors in directory listings that may have occurred in connection with NEXTLINK's orders but has yet to receive details from NEXTLINK that would allow SWBT to investigate the particular orders affected. SWBT Texas II Reply Comments at 71. We note that NEXTLINK withdrew its opposition to SWBT's application on May 23, 2000. See Letter To Magalie Roman Salas, Secretary, FCC, from NEXTLINK Communications, Inc., dated May 23, 2000.

⁹⁹⁴ CLEC Coalition Texas I Comments at 43; ADP Texas 1 Reply at 5.

⁹⁹⁵ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4045, para. 176.

administration, guidelines, plan, or rules are established.”⁹⁹⁶ The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.⁹⁹⁷

360. SWBT does not assign telephone numbers to itself or competitive LECs. The Commission has designated NeuStar, Inc. (NeuStar) as the North American Numbering Plan Administrator.⁹⁹⁸ NeuStar is responsible for assigning blocks of 10,000 telephone numbers (NXX Codes) to carriers within each area code, and for coordinating area code relief planning efforts with state commissions.⁹⁹⁹ SWBT must demonstrate that it adheres to industry numbering administration guidelines and Commission rules, including provisions requiring the accurate reporting of data to the code administrator.¹⁰⁰⁰

2. Discussion

361. Based on the evidence in the record, we find that SWBT satisfies the requirements of checklist item 9.¹⁰⁰¹ The Texas Commission concluded that SWBT meets the requirements of checklist item 9, and no commenter alleges that SWBT has failed to meet such requirements.¹⁰⁰²

J. Checklist Item 10 – Databases and Associated Signaling

1. Background

362. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”¹⁰⁰³ In the *Second BellSouth Louisiana Order*, we required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling

⁹⁹⁶ 47 U.S.C. § 271(c)(2)(B)(ix).

⁹⁹⁷ *Id.*

⁹⁹⁸ *In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, CC Docket No. 92-237, Order, FCC 99-346 (rel. Nov. 17, 1999). *See generally* 47 C.F.R. §§ 52.7-52.19.

⁹⁹⁹ *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2615; *NANP Third Report and Order*, 12 FCC Rcd at 23042-46; *see* SWBT Adair Texas I Aff. at paras. 15-18.

¹⁰⁰⁰ *See Second Bell South Louisiana Order*, 13 FCC Rcd at 20752. *See also, e.g.*, Central Office Code (NXX) Assignment Guidelines (INC 95-0407-008) (revised August 1999).

¹⁰⁰¹ SWBT Texas I Application at paras. 111-112; SWBT Adair Texas I Aff. at paras. 15-18.

¹⁰⁰² Texas Commission Texas I Comments at 80 and at n.445 (agreeing with SWBT Adair Texas I Aff., para. 18, that SWBT supports and adheres to all relevant rules, regulations, and guidelines established by regulatory agencies and industry groups). *See* Final Staff Report at 90.

¹⁰⁰³ 47 U.S.C. § 271(c)(2)(B)(x).

transfer point linked to the unbundled database; and (3) Service Management Systems (SMS).”¹⁰⁰⁴ We also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).¹⁰⁰⁵

363. In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.¹⁰⁰⁶ At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.¹⁰⁰⁷ In the *UNE Remand Order*, we clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”¹⁰⁰⁸

2. Discussion

364. Based on the evidence in the record, we find that SWBT satisfies the requirements of checklist item 10.¹⁰⁰⁹ The Texas Commission also concludes that SWBT meets this checklist item.¹⁰¹⁰

365. We reject Pilgrim’s assertions that SWBT refuses to provide competitors with real-time access to information regarding 900/976 blocking, billing name and address (BNA), and credit history, and therefore, SWBT does not fulfill the call-related database requirement of item 10.¹⁰¹¹ Pilgrim argues that, because it provides “casual calling services”¹⁰¹² it must make snap

¹⁰⁰⁴ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

¹⁰⁰⁵ *Id.* at 20755-56, para. 272.

¹⁰⁰⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

¹⁰⁰⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15741-42, para. 484.

¹⁰⁰⁸ *UNE Remand Order* 15 FCC Rcd at 3875, para. 403.

¹⁰⁰⁹ SWBT Texas I Application at 112-115; SWBT Texas I Deere Aff. at paras. 186-226 (describing SS7 interconnection at paras. 190-194; toll free “800” service database at paras. 198-208; AIN network architecture and call-related databases at paras. 209-218); SWBT Texas I Rogers Aff. at paras. 58-71 (describing SWBT’s Line Information Database (LIDB), Calling Name delivery (CNAM), and Line Validation Administrative System (LVAS)). Competitive LECs access databases through SWBT’s signal transfer points in the same manner and by the same signaling links that SWBT uses. SWBT Texas I Deere Aff. at para. 218.

¹⁰¹⁰ Texas Commission Texas I Comments at 80. *See also* Final Staff Report at 91.

¹⁰¹¹ Pilgrim Texas I Comments at 19. *See also* Pilgrim Texas II Reply Comments. Pilgrim is an interstate, interexchange carrier that offers, among other services, pay-per-call services. Pilgrim Texas I Comments at 2.

¹⁰¹² By “casual calling services” Pilgrim means that the consumer does not establish a business relationship and subscriber account with the service provider. Pilgrim Texas I Comments at 3-4.

decisions whether or not a call should be accepted and transmitted.¹⁰¹³ Therefore, Pilgrim maintains, the nature of its business requires real-time access to call blocking, billing name and address (BNA), and credit information in order to validate and bill the call.¹⁰¹⁴

366. SWBT states that, regarding 900/976 blocking information, Pilgrim is incorrect, and that in fact SWBT's LIDB does provide real-time access to call-blocking information.¹⁰¹⁵ SWBT describes in detail the capabilities of the LIDB system.¹⁰¹⁶ Therefore we conclude that, contrary to Pilgrim's assertion, SWBT makes call-blocking information available on a nondiscriminatory basis.¹⁰¹⁷

367. SWBT further states that it has no obligation to release end-users' BNA or credit history to Pilgrim.¹⁰¹⁸ We agree with SWBT that checklist item 10 does not require SWBT to share with other carriers the customer-credit information that SWBT has accumulated in the course of its business dealings with its customers. Such information would be considered customer proprietary network information (CPNI).¹⁰¹⁹ Pilgrim has not established that SWBT is under any obligation to share such CPNI with Pilgrim, or that such information is necessary for Pilgrim to "initiate, render, bill, and collect for telecommunications services."¹⁰²⁰

368. Pilgrim appears to assert, correctly, that BNA is a call-related database which must be unbundled pursuant to section 251(c)(3) of the Act. As stated above, the Commission has defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.¹⁰²¹ Because the BNA database contains the billing name and address

¹⁰¹³ Pilgrim Texas I Comments at 7-8.

¹⁰¹⁴ Pilgrim Texas I Comments at 2-4, 10, 18-19. *See also* Pilgrim Texas II Reply Comments.

¹⁰¹⁵ SWBT Texas I Rogers Reply Aff. at para. 14 ("All records in SWBT's LIDB are designated so that they will indicate non-acceptance of alternately billed 900/976 charges"). *See* SWBT Texas I Auinbauh Aff. Attach. A at Attach 7 (T2A Ordering and Provisioning), 4.2 (Parties to the T2A agreement have access to a pre-order electronic gateway "that provides Real Time access to SWBT's information systems."). *See also* discussion of access to LIDB under checklist item II.

¹⁰¹⁶ SWBT Texas I Rogers Reply Aff. at para. 14; SWBT Texas I Auinbauh Aff. Attach. A at Attach. 6 (T2A Unbundled Network Elements) 9.4 *et seq.* (describing LIDB).

¹⁰¹⁷ *Id.*

¹⁰¹⁸ SWBT Texas I Rogers Reply Aff. at para. 14; SWBT Texas I Auinbauh Aff. Attach. A at Attach. 7 (T2A Ordering and Provisioning), 4.2. (Parties to the T2A have "Real Time" access to SWBT's BNA through a pre-order electronic gateway).

¹⁰¹⁹ 47 U.S.C. § 222(f)(1)(B).

¹⁰²⁰ 47 U.S.C. § 222(d)(1).

¹⁰²¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n. 1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

to validate and bill a telephone call, it clearly meets this definition.¹⁰²² Unlike customer-credit information, BNA information is available to competitive LECs that participate in the T2A interconnection agreement.¹⁰²³ SWBT provides real-time access through a pre-order electronic gateway to SWBT's BNA to these competitive LECs.¹⁰²⁴ Pilgrim, therefore, could opt into the T2A and gain access to BNA, pursuant to section 252(i) of the Act.¹⁰²⁵ Consequently, we find that Pilgrim's allegations do not warrant a finding of noncompliance with this checklist item.

K. Checklist Item 11 – Number Portability

1. Background

369. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.¹⁰²⁶ Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”¹⁰²⁷ The 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁰²⁸ In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”¹⁰²⁹

¹⁰²² Section 51.319(e)(2)(ii) of the Commission's rules list certain databases that meet this definition, such as “Line Information Database” and “Toll Free Calling database,” but also states that the list “is not limited to” these examples. 47 C.F.R. § 51.319(e)(2)(ii).

¹⁰²³ SWBT Texas I Auinbauh Aff. Attach. A.7, 4.2 & 4.2.1.

¹⁰²⁴ SWBT also makes BNA generally available under Tariff No. 73, Section 13 and Texas Access Service Tariff, Section 8. If a customer chooses to receive SWBT's response to the customer's request via data tape, the tape is mailed on the next business day. If a customer chooses electronic data transmission (Network Data Mover (NDM)), SWBT processes requests up to six times daily. The data are made available for electronic recovery within 24 hours of SWBT's receipt of a customer's request. Letter from Austin C. Schlick, Kellogg, Huber et al., Counsel for Applicants, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 at 2 (filed March 10, 2000) (Austin C. Schlick March 10 *Ex Parte* Letter).

¹⁰²⁵ 47 U.S.C. § 252(i).

¹⁰²⁶ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁰²⁷ *Id.* at § 251(b)(2).

¹⁰²⁸ *Id.* at § 153(30).

¹⁰²⁹ *Id.* at § 251(e)(2); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, at paras. 1, 6-9 (Jun. 23, 1999) (*Fourth Number Portability Order*).

370. Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability “to the extent technically feasible.”¹⁰³⁰ The Commission also requires LECs to gradually replace interim number portability with permanent number portability.¹⁰³¹ The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,¹⁰³² and created a competitively neutral cost-recovery mechanism for long-term number portability.¹⁰³³

2. Discussion

371. Based on the evidence in the record, we conclude that SWBT complies with the requirements of checklist item 11. SWBT provides permanent number portability in conformance with Commission regulations and provides interim number portability to competing carriers through remote call forwarding, direct inward dialing, and directory number routing indexing.¹⁰³⁴ SWBT is presently converting all interim number portability lines to permanent number portability and expects that this conversion will be complete by year-end.¹⁰³⁵ The Texas Commission also concludes that SWBT satisfies this checklist item.¹⁰³⁶

372. We reject Global Crossing and the CLEC Coalition’s assertions that SWBT fails to provide local number portability in a reliable manner.¹⁰³⁷ Global Crossing describes occasions where it believes SWBT failed to update its switch translations properly so that calls to Global

¹⁰³⁰ *Fourth Number Portability Order* at para. 10; *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-116 (1996) (*First Number Portability Order*); see also 47 U.S.C. § 251(b)(2).

¹⁰³¹ See 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355 and 8399-8404, paras. 3 and 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

¹⁰³² See 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-140.

¹⁰³³ See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at para. 9.

¹⁰³⁴ SWBT Deere Texas I Aff. at paras. 220-226; Texas Commission Texas I Comments at 84.

¹⁰³⁵ SWBT Flemming Texas I Aff. at para. 30.; Texas Commission Texas I Comments at 84.

¹⁰³⁶ Texas Commission Texas I Comments at 82-86. We also note that the Texas Commission established performance measures to capture SWBT provision of both permanent and interim number portability. In nearly all months, SWBT meets the benchmarks established by the Texas Commission for both these measurements. See Texas Commission Comments at 85; SWBT Aggregated Performance Measurement Data, Measurement No. 100 (“Average Time Out of Service for LNP Conversions”) at 271-No. 99-101, Measurement No. 101 (“Percent Out of Service Less than 60 Minutes”) at 271-No. 99-101; SWBT Texas I Dysart Aff., Att. A at 122-123 (listing Texas Commission benchmarks for Measurements 100 and 101).

¹⁰³⁷ Global Crossing Texas I Comments at 8; CLEC Coalition Texas I Comments at 44-46.

Crossing customers with a ported number were unable to be completed.¹⁰³⁸ Similarly, the CLEC Coalition claims that a SWBT local number portability database outage delayed its members orders.¹⁰³⁹ Because Global Crossing and the CLEC Coalition's claim appear to be anecdotal and unsupported by any persuasive evidence, we conclude that they do not warrant a finding of noncompliance of this checklist item.

L. Checklist Item 12 – Local Dialing Parity

1. Background

373. Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”¹⁰⁴⁰ Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”¹⁰⁴¹ Section 153(15) of the Act defines “dialing parity” as follows:

. . . a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation
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374. Our rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.¹⁰⁴³ Moreover, customers of competing carriers must not otherwise suffer

¹⁰³⁸ Global Crossing Texas I Comments at 8.

¹⁰³⁹ CLEC Coalition Texas I Comments at 44.

¹⁰⁴⁰ Based on the Commission's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (i.e., international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

¹⁰⁴¹ 47 U.S.C. § 251(b)(3).

¹⁰⁴² *Id.* at § 153(15).

¹⁰⁴³ 47 C.F.R §§ 51.205, 51.207.

inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.¹⁰⁴⁴

2. Discussion

375. Based on the evidence in the record, we find that SWBT demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of checklist item 12.¹⁰⁴⁵ The Texas Commission concluded that SWBT meets the requirements of this checklist obligation.¹⁰⁴⁶

376. We reject Pilgrim's argument that because SWBT allegedly denies Pilgrim real-time access to call-blocking databases, Pilgrim cannot offer its customers the call-blocking feature that is available to SWBT's customers, and SWBT thus fails to provide dialing parity as required by section 271 of the Act.¹⁰⁴⁷ Because a customer may place a call through Pilgrim, rather than directly through SWBT's switch, it is possible for that customer (or anyone with access to the customer's telephone) to circumvent the blocking intelligence in SWBT's switch, and thereby reach the type of pay-per-call services the customer has asked SWBT to block.¹⁰⁴⁸ Thus, Pilgrim argues, the customer suffers inferior quality service by using Pilgrim.¹⁰⁴⁹

377. The Commission's dialing parity rules and orders have concerned the ease with which a customer may dial an outgoing call, rather than the ease with which customers may block the ability to dial calls.¹⁰⁵⁰ Pilgrim would have us find an ease-of-blocking requirement in the

¹⁰⁴⁴ See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 at 19400, 19403 (1996) (*Local Competition Second Report and Order*), vacated in part sub nom. *People of the State of Cal. v. Federal Communications Commission*, 124 F.3d 934 (8th Cir. 1997), rev'd, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹⁰⁴⁵ SWBT Texas I Application at 118; SWBT Deere Texas I Aff. at paras. 227-230.

¹⁰⁴⁶ Texas Commission Texas I Comments at 85-86; Final Staff Report at 97-98.

¹⁰⁴⁷ Pilgrim Texas I Comments at 19-20; Pilgrim Texas II Reply Comments; 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁰⁴⁸ Pilgrim Texas I Comments at 20 (“[i]f a consumer who has requested blocking decides to use one of Pilgrim’s casual calling services, the consumer may unwittingly make calls that could not have been dialed over SWBT’s network because Pilgrim would not know that the customer wanted those calls blocked.”).

¹⁰⁴⁹ *Id.*

¹⁰⁵⁰ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan*, Third Order on Reconsideration and Memorandum Report and Order, CC Docket No. 96-98, FCC 99-243, para. 37 (1999) (recognizing that “‘dialing parity’ is a defined term in the Act that requires that a customer be able to access the carrier of his or her choice without having to use any access codes”); see also 47 U.S.C. § 153(15).

Local Competition Second Report and Order's phrase "must not otherwise suffer inferior quality service."¹⁰⁵¹ We are not persuaded that Commission precedent requires such an interpretation. Accordingly, we reject Pilgrim's assertion that SWBT fails to meet this checklist requirement.

M. Checklist Item 13 – Reciprocal Compensation

1. Background

378. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."¹⁰⁵² In turn, pursuant to section 252(d)(2)(A), "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."¹⁰⁵³ The Commission has held that "ISP-bound traffic is non-local interstate traffic" and that "the reciprocal compensation requirements of section 251(b)(5) of the Act . . . do not govern inter-carrier compensation for this traffic."¹⁰⁵⁴ The Commission specified that state commissions may impose reciprocal compensation obligations for ISP-bound traffic, or may decline to require the payment of reciprocal compensation and may adopt another compensation mechanism while the Commission developed final rules in an ongoing proceeding.¹⁰⁵⁵ On March 24, 2000, the D.C. Court of Appeals vacated this ruling and remanded it for a fuller explanation of why ISP-bound traffic is not subject to section 251(b)(5)'s reciprocal compensation requirements.¹⁰⁵⁶

2. Discussion

379. Based on the evidence in the record, we conclude that SWBT demonstrates that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2), and thus satisfies the requirements of checklist item 13. SWBT demonstrates that it (1) has in place reciprocal compensation arrangements in accordance with section

¹⁰⁵¹ Pilgrim Texas I Comments at 20; *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403, para. 15.

¹⁰⁵² 47 U.S.C. § 271(c)(2)(B)(xiii).

¹⁰⁵³ 47 U.S.C. § 252(d)(2)(A).

¹⁰⁵⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic; Declaratory Rulemaking and Notice of Proposed Rulemaking*, CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, n.87 (1999) (*Inter-Carrier Compensation for ISP-Bound Traffic Order*).

¹⁰⁵⁵ *Id.*

¹⁰⁵⁶ *Bell Atlantic v. FCC*, No. 99-1094 (D.C. Cir. Mar. 24, 2000).

252(d)(2),¹⁰⁵⁷ and (2) is making all required payments in a timely fashion.¹⁰⁵⁸ In its brief, SWBT states that the Texas Commission established rates for transport and termination in the Mega-Arbitration,¹⁰⁵⁹ using a forward-looking TELRIC methodology that complies with Commission rules.¹⁰⁶⁰ SWBT states that pursuant to the T2A, its agreements contain clearly defined arrangements for each party to compensate the other for traffic exchanged between their networks.¹⁰⁶¹ SWBT's interconnection agreements include each party's obligation to account for local traffic, as well as any applicable charges.¹⁰⁶²

380. In the T2A, SWBT offers competitive LECs three opportunities for establishing the terms and conditions for reciprocal compensation.¹⁰⁶³ First, a competitive LEC may obtain the arbitrated terms in the then-effective SWBT/AT&T interconnection agreement.¹⁰⁶⁴ That agreement expired January 2, 2000.¹⁰⁶⁵ If a competitive LEC chose this option prior to that date, the provisions of the SWBT/AT&T agreement continue to apply until the competitive LEC agreement expires.¹⁰⁶⁶ After the competitive LEC agreement expires, the compensation arrangements become bill-and-keep while SWBT and the competitive LEC negotiate and/or arbitrate new terms.¹⁰⁶⁷ SWBT states that the Texas Commission established transport and

¹⁰⁵⁷ SWBT provides reciprocal compensation to competing carriers for the termination of local calls from SWBT customers under approved interconnection agreements and tariffs. *See* SWBT Texas I Application at 118-119.

¹⁰⁵⁸ With regard to the second requirement, we note that section 271(c)(2)(A)(i) requires a showing that a BOC "is providing access and interconnection pursuant to one or more agreements . . . or . . . is generally offering access and interconnection pursuant to [an SGAT]." 47 U.S.C. § 271(c)(2)(A)(i).

¹⁰⁵⁹ In its application, SWBT explains that the Texas Commission consolidated arbitration's involving several of the largest competitive LECs into a single "Mega-Arbitration" proceeding, which addressed pricing, interconnection, unbundling, and resale issues. The Mega-Arbitration also served as a forum for SWBT to negotiate with competitive LECs and the Texas Commission, and subsequently the Department of Justice, the framework for SWBT's performance monitoring program. SWBT Texas I Application at 3-4.

¹⁰⁶⁰ SWBT Texas I Application at 119.

¹⁰⁶¹ SWBT Texas I Auinbau Aff. at para. 111.

¹⁰⁶² SWBT Texas I Application at 119; SWBT Texas I Auinbau Aff. at para. 111.

¹⁰⁶³ SWBT Texas I Auinbau Aff. at para. 19.

¹⁰⁶⁴ *Id.* at para. 113.

¹⁰⁶⁵ *Id.*

¹⁰⁶⁶ *Id.*; *see also* SWBT Texas I Auinbau Aff. T2A Attach. 12, Compensation-TX at 2, § 1.2.1.

¹⁰⁶⁷ SWBT Texas I Auinbau Aff. T2A Attach. 12, Compensation-TX at 2-3. "Bill-and-keep" arrangements are those in which neither of two interconnecting carriers charges the other to terminate traffic that originated on the other carrier's network. Rather, each carrier recovers from its own end users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network. *Local Competition First Report and Order*, 11 FCC Rcd at 16,045, para. 1096.

termination rates using a TELRIC methodology.¹⁰⁶⁸ Under the second alternative, competitive LECs and SWBT may mutually exchange local traffic on a bill-and-keep basis pursuant to terms approved by the Texas Commission.¹⁰⁶⁹ Finally, the competitive LEC may choose to negotiate and, if needed, arbitrate the terms for reciprocal compensation while operating under the other terms of the T2A.¹⁰⁷⁰ SWBT says that while it is negotiating or arbitrating a reciprocal compensation agreement with a competitive LEC, the parties exchange local and internet traffic under an interim bill-and-keep arrangement, subject to true-up, as approved by the Texas Commission.¹⁰⁷¹ The Texas Commission concludes that SWBT meets this checklist item.¹⁰⁷² The Texas Commission states that rates for both tandem- and end-office transport and termination are based on a TELRIC methodology.¹⁰⁷³

381. SWBT's showing withstands the arguments raised by its opponents. We find unpersuasive the claims of the CLEC Coalition and e.spire that SWBT's reported usage data for traffic passed between SWBT's and their respective networks is unreliable and incorrect.¹⁰⁷⁴ SWBT says it provides competitive LECs that use unbundled local switching with detailed records needed to obtain reciprocal compensation for calls originating from SWBT and other unbundled switch-based competitive LECs.¹⁰⁷⁵ SWBT notes that the Texas Commission has concluded that SWBT's usage record method is adequate.¹⁰⁷⁶ The Texas Commission notes that if competitive LECs do not wish to use SWBT's particular type of record exchange, they are free to choose one of the other two reciprocal compensation options.¹⁰⁷⁷

382. SWBT notes that due to technological limitations, it currently cannot track calls originating from a third-party facilities-based carrier and terminating to a customer served by a

¹⁰⁶⁸ SWBT Texas I Auinbauh Aff. at paras. 19, 113-122.

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ *Id.* at para. 120.

¹⁰⁷¹ *Id.* Pursuant to this option, interexchange traffic, including traffic to a third party, is compensated based on applicable access charges. Internet-bound traffic is specifically recognized as traffic that is bound for a third party, and is to be handled as meet-point billed interexchange traffic. Each party would bill the third party any applicable access charges for its portion of the call. However, internet service providers are exempt from meet-point billing under the Commission's Enhanced Service Provider access charge exemption. *Id.* at paras. 111, 118-19.

¹⁰⁷² Texas I Commission Comments at 86-87.

¹⁰⁷³ *Id.* at 87.

¹⁰⁷⁴ CLEC Coalition Texas I Rowling Decl. at para. 46; e.spire Texas I Comments at 6; e.spire Texas I Falvey Aff. at para. 5.

¹⁰⁷⁵ SWBT Texas I Auinbauh Aff. at para. 122.

¹⁰⁷⁶ SWBT Texas I Auinbauh Reply Aff. at paras. 45-46.

¹⁰⁷⁷ Texas I Commission Reply Comments at 28.

competitive LEC using SWBT's unbundled local switches.¹⁰⁷⁸ In response to the Texas Commission's concerns regarding this problem, SWBT and other carriers have implemented an interim traffic reporting and compensation mechanism.¹⁰⁷⁹ SWBT notes that this interim compensation mechanism was agreed to by AT&T, WorldCom, and Sage Telecom, approved by the Texas Commission, and is included in the T2A.¹⁰⁸⁰ This interim mechanism will remain in effect until a permanent industry solution is found.¹⁰⁸¹ SWBT also notes that the carriers' interconnection agreements provide procedures for addressing billing disputes, and that neither commenter has presented its claims to the Texas Commission.¹⁰⁸²

383. The 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.¹⁰⁸³ Although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions. We believe that e.spire and the CLEC Coalition should bring this fact-specific dispute before the Texas Commission. Additionally, we believe that SWBT has made a concerted effort to resolve this traffic reporting dispute, has continued to exchange traffic records with e.spire during the course of this dispute, and has implemented a reasonable interim traffic reporting mechanism while industry groups work toward a permanent industry-wide solution.¹⁰⁸⁴ We find that e.spire's and the CLEC Coalition's allegations are insufficient to rebut SWBT's case.

384. Nor are we persuaded by WorldCom's allegations that SWBT's Extended Area Service (EAS) additive charge is a non-cost-based fee intended to compensate SWBT for lost revenues, in violation of our rules.¹⁰⁸⁵ EAS enables residential and business customers to extend the coverage of their flat-rate local calling area for a set monthly fee.¹⁰⁸⁶ A customer subscribing to EAS pays a higher monthly flat rate in order to have a larger non-toll calling area.¹⁰⁸⁷ Under

¹⁰⁷⁸ SWBT Texas I Auinbauh Aff. at para. 122.

¹⁰⁷⁹ Texas I Commission Comments at 88.

¹⁰⁸⁰ *Id.*

¹⁰⁸¹ Texas I Commission Comments at 88.

¹⁰⁸² SWBT Texas I Auinbauh Reply Aff. at para. 46.

¹⁰⁸³ 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹⁰⁸⁴ *Id.*

¹⁰⁸⁵ WorldCom Texas I Comments at 49-50; WorldCom Texas I Price Decl. at paras. 19-25.

¹⁰⁸⁶ See, e.g., *In re Public Utility Commission of Texas*, CC Docket No. 96-13, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3536, n.384 (1997) (*Texas Memorandum Opinion and Order*) citing Newton's Telecom Dictionary at 221 (1991); see also *United States v. Western Electric*, 569 F.Supp. 990, 1002 n.54 (D.D.C. 1983).

¹⁰⁸⁷ See, e.g., *Texas Memorandum Opinion and Order*, 13 FCC Rcd at 3536, n.384.

one-way EAS, a SWBT customer would be able to call another SWBT customer within its extended area without paying a toll. Under two-way EAS, the SWBT subscriber pays a higher fee to allow other SWBT customers within the extended calling area to call in without paying toll charges.

385. When either the originating or terminating end user is not a SWBT customer, however, EAS will not work. If a SWBT EAS customer calls a competitive LEC customer in the extended area, the competitive LEC ordinarily would charge SWBT terminating access, which SWBT would pass on to its SWBT customer. Similarly, when a competitive LEC customer in the extended area calls a SWBT customer, SWBT would charge the competitive LEC terminating access, which the competitive LEC would pass on to its customer. Carriers, however, may agree to waive toll charges that would otherwise be assessed. In the alternative, carriers may agree to bill each other a per-minute charge. WorldCom asserts that the additive charge of between 2 and 4 cents per minute is a non-cost-based charge intended to compensate SWBT for revenues it once received from EAS customers that have moved to a new entrant.¹⁰⁸⁸ As the Texas Commission explains, however, the additive charges are designed to compensate the carriers in exchange for their agreement to waive the terminating access they otherwise would have received.¹⁰⁸⁹ The Texas Commission notes that such EAS additives are reciprocal in nature and entirely optional.¹⁰⁹⁰ Therefore, we conclude that WorldCom has not demonstrated that the EAS additive violates the section 271 provisions applicable to reciprocal compensation.¹⁰⁹¹

386. Allegiance requests that the Commission determine the appropriate compensation arrangement for local and ISP-bound traffic.¹⁰⁹² Allegiance asserts that the Commission should set compensation rates for inter-carrier traffic in accordance with TELRIC.¹⁰⁹³ The Texas Commission has determined that Internet-bound traffic from an end user is to be treated under the applicable interconnection agreements as if it were local traffic for purposes of reciprocal compensation.¹⁰⁹⁴ SWBT has appealed this determination but states that it will continue to apply this method of compensation while required to do so.¹⁰⁹⁵ We note that Allegiance does not allege

¹⁰⁸⁸ WorldCom Texas I Comments at 49-50; WorldCom Texas I Price Decl. at paras. 22-25.

¹⁰⁸⁹ Texas I Commission Reply Comments at 29; *see also* SWBT Texas I Auinbauh Reply Aff. at para. 48.

¹⁰⁹⁰ Texas I Commission Reply Comments at 29.

¹⁰⁹¹ We note that SWBT contends that the EAS additive is not a form of reciprocal compensation and is therefore not subject to the requirements of section 252(d)(2), but rather is a tool to facilitate retail arrangement options between terminating carriers and their end users. SWBT Texas I Auinbauh Reply Aff. at para. 48. For the purpose of this analysis, we assume, but do not decide, that these EAS charges constitute a reciprocal compensation arrangement.

¹⁰⁹² Allegiance Texas I Reply Comments Attach. 1, Petition of Allegiance Telecom of Texas, Inc. for Arbitration at 4 (Allegiance Texas I Reply Comments Attach. 1).

¹⁰⁹³ Allegiance Texas I Reply Comments Attach. 1 at 4.

¹⁰⁹⁴ SWBT Texas I Auinbauh Aff. at para. 111.

¹⁰⁹⁵ *Id.*

that SWBT fails this checklist item, but merely requests that the Commission reconsider its previous decision to allow states to make determinations regarding reciprocal compensation. As noted above, the D.C. Court of Appeals remanded the Commission's ruling that ISP-bound traffic is not subject to section 251(b)(5)'s reciprocal compensation requirements.¹⁰⁹⁶ Because Allegiance does not allege that SWBT fails this checklist item, and also because this issue is before us again due to the court's remand, we do not address it in the context of a 271 application.

N. Checklist Item 14 – Resale

1. Background

387. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."¹⁰⁹⁷ Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."¹⁰⁹⁸ Section 252(d)(3) requires state commissions to "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."¹⁰⁹⁹ Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A).¹¹⁰⁰ Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and non-discriminatory.¹¹⁰¹ If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.¹¹⁰² If a state creates such a limitation, it must do so consistent with requirements established by the Federal Communications Commission.¹¹⁰³ In accordance with sections 271(c)(2)(B)(ii) and

¹⁰⁹⁶ *Bell Atlantic v. FCC*, No. 99-1094 (D.C. Cir. Mar. 24, 2000).

¹⁰⁹⁷ 47 U.S.C. § 271(c)(2)(B)(xiv).

¹⁰⁹⁸ 47 U.S.C. § 251(c)(4)(A).

¹⁰⁹⁹ 47 U.S.C. § 252(d)(3).

¹¹⁰⁰ 47 U.S.C. § 251(c)(4)(B).

¹¹⁰¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission's authority to promulgate such rules, and specifically upheld the sections of the Commission's rules concerning resale of promotions and discounts in *Iowa Utilities Board v. FCC*, 120 F.3d at 818-19, *aff'd in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also* 47 C.F.R. §§ 51.613-51.617.

¹¹⁰² 47 U.S.C. § 251(c)(4)(B).

¹¹⁰³ *Id.*

271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.¹¹⁰⁴

2. Discussion

388. Based on the evidence in the record, we conclude that SWBT demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. SWBT states that it is in compliance with the requirements of this checklist item,¹¹⁰⁵ and the Texas Commission agrees.¹¹⁰⁶ SWBT says that it commits in its interconnection agreements and the T2A to making its retail services available to competing carriers at wholesale rates.¹¹⁰⁷ In 1995, the Texas Commission established a resale tariff to make retail local exchange telecommunications services available to resellers at a 5 percent discount.¹¹⁰⁸ In its Mega-Arbitration proceeding, conducted after the 1996 Act was implemented, the Texas Commission used an avoided-cost calculation method consistent with the Commission's pricing rules to establish a generally-available discount of 21.6 percent off SWBT's retail rates.¹¹⁰⁹ Competing carriers may thus obtain services from SWBT's tariff at a 5 percent discount, or from the T2A or through interconnection agreements at a 21.6 percent discount.¹¹¹⁰ Competing carriers may purchase SWBT's promotional offerings of 90 days or less at the promotional rate, and its promotional offerings of greater than 90 days at the 21.6 percent discount.¹¹¹¹ Competing carriers may purchase existing customer specific arrangements (CSAs) at either a 5.62 percent or 8.04 percent discount, depending on the type of contract.¹¹¹² Additionally, competing carriers may purchase at the 21.6 percent discount CSAs to resell to new customers.¹¹¹³ Pursuant to the terms of the SBC/Ameritech merger, SWBT also offers a discount

¹¹⁰⁴ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

¹¹⁰⁵ SWBT Texas I Application at 120-122; SWBT Texas I Auinbauh Aff. at paras. 126-134, 152.

¹¹⁰⁶ Texas I Commission Comments at 90.

¹¹⁰⁷ SWBT Texas I Auinbauh Aff. at para. 20.

¹¹⁰⁸ *Id.* at para. 128.

¹¹⁰⁹ *Id.* at para. 152.

¹¹¹⁰ *Id.* at paras. 128, 152.

¹¹¹¹ *Id.* at para. 130. Pursuant to Commission rules, incumbent LECs do not need to offer for resale short-term promotions of 90 days or less, as long as such short-term promotions are not used to evade the wholesale rate obligation. 47 C.F.R. § 51.613(a)(2)(ii).

¹¹¹² SWBT Texas I Auinbauh Aff. at para. 134.

¹¹¹³ *Id.*

of 32 percent off its retail rate for resold service to residential customers.¹¹¹⁴

389. SWBT also states that it makes its retail telecommunications services available for resale without unreasonable or discriminatory conditions or limitations.¹¹¹⁵ The Texas Commission agrees.¹¹¹⁶ According to SWBT, the telecommunications services it offers competing carriers for resale are identical to the services it furnishes its own retail customers, and competing carriers are able to sell these services to the same customer groups, in the same manner.¹¹¹⁷ Competing carriers may also take over existing contracts by purchasing CSAs without triggering termination liability charges or contract transfer fees to the end user.¹¹¹⁸ SWBT permits competing carriers that resell CSAs to meet minimum volume requirements by aggregating the traffic of multiple end-user customers, provided that those customers are similarly situated to the customer(s) of SWBT's original contract.¹¹¹⁹

390. SWBT's case withstands the arguments of its opponents. We are not persuaded by the National ALEC Association/Prepaid Communications Association (NALA)'s unsubstantiated contention that SWBT's resale contracts contain onerous contract terms.¹¹²⁰ Specifically, NALA asserts that SWBT's resale contracts: indemnify SWBT against resellers' customer claims, limiting that liability to a credit or refund if SWBT negligently performs its resale services; lack meaningful penalties if SWBT fails to perform its contract obligations; make resellers responsible for all sales and related taxes; compel arbitration rather than litigation in cases of dispute; fail to guarantee that SWBT's third-party vendor arrangements will not result in higher reseller fees; permit SWBT to terminate reseller agreements on an annual basis; and require large deposits from resellers.¹¹²¹ The Texas Commission provides multiple procedural vehicles to address such concerns, and NALA should have first raised these concerns there, preferably when

¹¹¹⁴ SWBT Texas I Application at 120; SWBT Texas I Auinbauh at Aff. para. 132. *See also SBC/Ameritech Merger Order*, 14 FCC Rcd 14712, App. C, Conditions at 15,018-19, paras. 47-49. These carrier-to-carrier promotions were created as a result of the SBC/Ameritech merger. We concluded in the *SBC/Ameritech Merger Order* that such promotions are beneficial because they encourage the "rapid development of local competition in residential and less dense areas." *Id.* at 14874, para. 390. Additionally, we found that the promotions are not discriminatory because they are offered to competitors in a nondiscriminatory fashion, allowing all competitive LECs in SBC/Ameritech's region to participate. *Id.* at 14916, para. 497.

¹¹¹⁵ SWBT Texas I Auinbauh Aff. at para. 20.

¹¹¹⁶ Texas I Commission Comments at 91-92.

¹¹¹⁷ SWBT Texas I Application at 120; SWBT Texas I Auinbauh Aff. at paras. 133-34.

¹¹¹⁸ SWBT Texas I Auinbauh Aff. at para. 133.

¹¹¹⁹ SWBT Texas I Application at 121; SWBT Texas I Auinbauh Aff. at paras. 133-34.

¹¹²⁰ NALA Texas I Comments at 7-10.

¹¹²¹ *Id.*

it was contemplating entering into the contracts.¹¹²² For example, if NALA does not care for one of SWBT's contract provisions, it may negotiate or arbitrate such provision, or otherwise work with the Texas Commission to find an interim solution until a final resolution is reached.¹¹²³ Additionally, NALA has not produced evidence to substantiate its claim. We therefore find that SWBT's application withstands this allegation.

391. Nor are we persuaded by NALA's argument that SWBT's resale-related OSS charges are discriminatory. NALA resells SWBT's local service to residential customers with poor credit histories in the form of prepaid, flat-rate local telephone service.¹¹²⁴ SWBT offers a virtually identical prepaid package.¹¹²⁵ NALA alleges that SWBT offers its prepaid home service "at a price below what NALA . . . members charge," and that "it appears that this rate does not impute all the charges that SBC's competitors must pay."¹¹²⁶ Specifically, NALA contends that SWBT charges Texas resellers OSS costs, and that "it is far from clear whether these OSS charges are included in SBC's rates for its Prepaid Home Service."¹¹²⁷ SWBT responds that the charge NALA refers to is not OSS.¹¹²⁸ Rather, it is a "conversion order charge" that SWBT assesses when a competing carrier converts existing SWBT retail POTS service into a resold service.¹¹²⁹ Alternately, SWBT assesses a "service connection charge" when a competing carrier establishes a new service using resold SWBT service.¹¹³⁰ The service connection charge, SWBT asserts, is the same charge it assesses its retail customers, but resellers receive a 21.6 per cent discount.¹¹³¹ SWBT asserts that these charges recover the cost of customer service labor associated with processing service orders.¹¹³² The Texas Commission has authorized both of these charges.¹¹³³ SWBT also disputes NALA's assertion that it cannot compete with SWBT for

¹¹²² See, e.g., SWBT Texas I Auinbauh Aff., Attach. A, T2A, General Terms and Conditions at § 9.0 (Dispute Resolution).

¹¹²³ *Id.*

¹¹²⁴ NALA Texas I Comments at 5.

¹¹²⁵ *Id.*

¹¹²⁶ *Id.*

¹¹²⁷ *Id.*

¹¹²⁸ Letter from Austin C. Schlick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Counsel to SBC, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (filed March 17, 2000) (*Schlick March 17 Ex Parte Letter*), Attach. 2 at 1.

¹¹²⁹ *Id.*

¹¹³⁰ *Id.*

¹¹³¹ *Id.*

¹¹³² *Id.*

¹¹³³ *Id.*

prepaid home telephone service because SWBT is able to underprice the service.¹¹³⁴ SWBT notes that resellers may purchase its prepaid home telephone service for resale at a discount of either 21.6 per cent or 32 per cent.¹¹³⁵ Alternatively, resellers may purchase SWBT's POTS, along with those options that constitute a prepaid home service option identical to SWBT's, at a discount.¹¹³⁶ We find that NALA provides insufficient information to show that SWBT's service offering is discriminatory.¹¹³⁷

392. We find unpersuasive the claims of Adelphia,¹¹³⁸ Allegiance,¹¹³⁹ e. spire,¹¹⁴⁰ and KMC¹¹⁴¹ that the Commission should allow customers in long-term contracts to switch to competing telecommunications carriers without termination penalties under a "fresh look" argument. These commenters assert that their customers are reluctant to change carriers if they are required to pay termination penalties.¹¹⁴² SWBT responds that competitive LECs may resell its CSAs without triggering termination liability to the end user.¹¹⁴³ Additionally, the Commission has previously held that although termination liabilities could, in certain circumstances, be unreasonable or anticompetitive, they do not on their face cause a carrier to fail checklist item 14.¹¹⁴⁴ The Commission further found that the absence of a "fresh look" requirement is not a basis for rejecting a section 271 application.¹¹⁴⁵ KMC contends that the Commission should impose a "fresh look" requirement on public interest grounds, that is, as part of our analysis under section 271(d)(3)(C).¹¹⁴⁶ We note that KMC raised an identical issue in a Petition for Declaratory Ruling, which is currently pending.¹¹⁴⁷ We find, as we did in the *Bell Atlantic New York Order*, that this

¹¹³⁴ *Id.* at 1-2.

¹¹³⁵ *Id.*

¹¹³⁶ *Id.* NALA states that its members purchase SWBT's POTS for resale. NALA Texas I Comments at 2-3.

¹¹³⁷ See section V.D.2 for a discussion of TRA's assertion that SWBT does not make xDSL services available to resellers at wholesale rates.

¹¹³⁸ Adelphia Texas I Comments at 1-2.

¹¹³⁹ Allegiance Texas I Comments at 20-23; Allegiance Texas II Comments at 2.

¹¹⁴⁰ e.spire Texas I Comments at 7-10.

¹¹⁴¹ KMC Texas I Comments at 2-4.

¹¹⁴² See, e.g., KMC Texas I Comments at 2.

¹¹⁴³ SWBT Texas I Application at 121; SWBT Texas I Auinbauh Aff. at para. 133; SWBT Texas I Auinbauh Reply Aff. at paras. 49-50.

¹¹⁴⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4147-48, paras. 389-390.

¹¹⁴⁵ *Id.*

¹¹⁴⁶ KMC Texas I Comments at 3-4.

issue is best addressed in the context of that pending petition, and we decline to resolve the issue here.¹¹⁴⁸ In any event, our resolution of this issue would not cast doubt on SWBT's overall compliance with checklist item 14 because SWBT meets our existing resale requirements.

393. *Provisioning.* Based on evidence in the record, we find that SWBT satisfies the provisioning requirements of checklist item 14. As discussed above, SWBT is provisioning competitive LECs' orders for resale in substantially the same time and manner as for its retail customers.¹¹⁴⁹

VI. SECTION 272 COMPLIANCE

A. Background

394. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."¹¹⁵⁰ The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.¹¹⁵¹ Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and

(Continued from previous page) _____

¹¹⁴⁷ See *In re Establishment of Rules to Prohibit the Imposition of Unjust, Onerous Termination Penalties on Customers Choosing to Partake of the Benefits of Local Exchange Telecommunications Competition*, Petition for Declaratory Ruling, CC Docket No. 99-142 (filed Apr. 26, 1999) (requesting that the Commission declare unlawful termination penalties imposed by incumbent LECs, to prohibit enforcement of incumbent LEC termination penalties, and to require the removal of incumbent LEC termination penalties from state tariffs until more competition develops).

¹¹⁴⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4148, para. 391.

¹¹⁴⁹ See sections V.B.1 and 2, *supra*.

¹¹⁵⁰ 47 U.S.C. § 271(d)(3)(B).

¹¹⁵¹ See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

its section 272 affiliate.¹¹⁵² In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.¹¹⁵³

395. As we stated in the *Ameritech Michigan Order*, compliance with section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.¹¹⁵⁴ The Commission’s findings regarding section 272 compliance constitute independent grounds for denying an application.¹¹⁵⁵ Past and present behavior of the BOC applicant provides “the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272.”¹¹⁵⁶

B. Discussion

396. Based on the record, we conclude that SWBT has demonstrated that it will comply with the requirements of section 272. We address each section 272 requirement below.

1. Structural, Transactional, and Accounting Requirements of Section 272

397. *Section 272(a) – Separate Affiliate.* Section 272(a) requires BOCs and their local exchange carrier affiliates that are subject to section 251(c) to provide certain competitive services through structurally separate affiliates.¹¹⁵⁷ For the reasons described in the subsequent section below, we conclude that SBC demonstrates that it will operate in accordance with section 272(a).

398. The parent company, SBC Communications, Inc., has established one primary section 272 affiliate to provide in-region interLATA services in Texas upon gaining section 271 approval: Southwestern Bell Communications Services, Inc. (“SBCS”), which does business as Southwestern Bell Long Distance.¹¹⁵⁸ At this time, SBCS conducts no business aside from the

¹¹⁵² *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

¹¹⁵³ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

¹¹⁵⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20725; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹¹⁵⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-20786 at para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹¹⁵⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹¹⁵⁷ Section 272(a) states that a BOC may not provide certain services except through one or more affiliates that meet the requirements of section 272(b). See 47 U.S.C. § 272(a)(1)(B).

¹¹⁵⁸ For the purposes of its application to provide in-region interLATA services in Texas, we only address SWBT’s section 272 showing with respect to one affiliate, SBCS. We note that SWBT has several other section 272 (continued....)

company's calling card operations. Once earning section 271 approval, SBCS plans to provide in-region interLATA services in Texas by reselling wholesale network services of one or more unaffiliated providers.¹¹⁵⁹ In its application, SWBT demonstrates that it has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with section 272.¹¹⁶⁰

399. *Section 272(b)(1) – Operate Independently.* Based on the evidence in the record, SWBT has demonstrated that its section 272 affiliate will comply with section 272(b)(1), which requires a section 272 affiliate to “operate independently from the Bell operating company.”¹¹⁶¹ The Commission has interpreted the “operate independently” requirement to impose four important restrictions on the ownership and operations of a BOC and its section 272 affiliate: (1) no joint ownership of switching and transmission facilities; (2) no joint ownership of the land and buildings on which switching and transmission facilities are located; (3) no provision by the BOC (or other non-section 272 affiliate) of operation, installation, and maintenance services (OI&M) with respect to the section 272 affiliate's facilities; and (4) no provision of OI&M by the section 272 affiliate with respect to the BOC's facilities. We note that our review of SBCS's Internet postings, as well as SWBT's cost allocation manual (CAM) and independent auditor's reports, support our finding.

400. *Section 272(b)(2) – Books, Records, and Accounts.* Based on the evidence in the record, SWBT demonstrates that section 272 affiliate will comply with the its requirement to “maintain books, records, and accounts in a manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOCs].”¹¹⁶² Although initially unclear whether the section 272 affiliate maintained its books, records, and accounts in accordance with Generally Accepted Accounting Principles (GAAP), SWBT submitted

(Continued from previous page) _____

affiliates as a result of its mergers: Southern New England Telephone Enhanced Services, Inc. (SNET Enhanced Services); Ameritech Communications, Inc. (ACI); Ameritech Communications, Inc. of Illinois (ACoI); and Ameritech Communications, Inc. of Wisconsin (ACoW). Our findings do not apply to Advanced Services, Inc. (ASI) because ASI is not a section 272 affiliate. *See* Rhythms Comments at 62-63. For a complete description of SWBT's corporate affiliates and an organizational chart, *see* SBC Communications, Inc., COST ALLOCATION MANUAL, § IV (Dec. 16, 1999).

¹¹⁵⁹ SWBT Weckel Aff. at para. 20.

¹¹⁶⁰ SWBT Application at 69-70; SWBT Rehmer Aff. at paras. 51-57 (describing SWBT's section 272 compliance efforts, such as a centralized Oversight Team, corporate policies, and training programs), Attach. E (submitting corporate memoranda outlining section 272 compliance requirements), F (submitting corporate memoranda describing compliance oversight team), and G (submitting section 272 training video), and H (submitting corporate section 272 compliance program); SWBT Weckel Aff. at para. 70, Attach. U (submitting compliance policy of SBCS). In addition, SWBT states that it will provide refresher training on section 272 compliance upon earning section 271 approval. SWBT Application at 69-70.

¹¹⁶¹ SWBT Application at 63-64 (citing SWBT Rehmer Aff. at paras. 9-19; SWBT Weckel Aff. at paras. 17-21).

¹¹⁶² 47 U.S.C. § 272(b)(2); 47 C.F.R. 53.203(b); *Accounting Safeguards Order*, 11 FCC Rcd at 17617-18, para. 167; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20786-89, paras. 323-29; *see* SWBT Application at 64.

additional evidence to demonstrate consistency with GAAP and compliance with the Commission's rules.¹¹⁶³ In addition, we note that no party challenges SWBT's showing.

401. *Section 272(b)(3) – Separate Officers, Directors, and Employees.* Based on the evidence in the record, SWBT has demonstrated that its section 272 affiliate will comply with the “separate officers, directors, and employees” requirement of section 272(b)(3).¹¹⁶⁴ We note that no party challenges SWBT's showing.

402. *Section 272(b)(4) – Credit Arrangements.* Based on the evidence in the record, SWBT has demonstrated that its section 272 affiliate will comply with section 272(b)(4), which prevents a section 272 affiliate from obtaining “credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of [any SBC BOC].”¹¹⁶⁵ We note that no party challenges SWBT's showing.

403. *Section 272(b)(5) – Affiliate Transactions.* Based on our review of its application, we conclude that SBC demonstrates that it will comply with the arm's length and public disclosure requirements of section 272(b)(5) for transactions between its BOCs and its section 272 affiliate.¹¹⁶⁶ Section 272(b)(5) requires that a section 272 affiliate conduct all transactions with its affiliated BOCs on an arm's length basis, with all such transactions reduced to writing and made publicly-available.¹¹⁶⁷ Consistent with the Commission's *Accounting Safeguards Order*, all transactions between SWBT's section 272 affiliates and any affiliated BOC are posted on the

¹¹⁶³ SWBT Ex parte (Jan. 19, 2000). In its ex parte filing, SWBT stated that its section 272 affiliate shares its chart of accounts with other non-BOC SBC affiliates. In addition, SWBT describes the security measures and other internal controls to show restricted access to the books, records, and accounts of its section 272 affiliate. *See* SWBT Larkin Aff. at paras. 9-12.

¹¹⁶⁴ 47 U.S.C. § 272(b)(3); 47 C.F.R. § 53.203(c); *Ameritech Michigan Order*, 12 FCC Rcd at 20730-31, para. 360; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20789-90, paras. 329-30; SWBT Application at 64; SWBT Rehmer Aff. at para. 19, Attach. B (submitting names of corporate officers and directors); SWBT Weckel Aff. at paras. 31-41, Attach. D-Q (listing names of relevant officers and directors), Attach. R (submitting corporate policy prohibiting loans of employees).

¹¹⁶⁵ 47 U.S.C. § 272(b)(4); 47 C.F.R. § 53.203(d); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21995, paras. 189-90; *see* SWBT Application at 65; SWBT Weckel Aff. at paras. 42-44; SWBT Rehmer Aff. at paras. at 20-21.

¹¹⁶⁶ Because SBC Communications owns and controls eight BOCs (i.e., SWBT, Pacific Bell, Nevada Bell, and the five Ameritech Operating Companies) and a total of five section 272 affiliates, we clarify that our analysis in this order is limited only to SWBT, which is the BOC operating in Texas, and SBCS, which is the section 272 affiliate through which SBC Communications plans to provide in-region interLATA services in Texas. We note, however, that SBC must comply with all section 272 safeguards with respect to any transactions between any SBC-owned or controlled BOC and any section 272 affiliate. This would require, for example, SBCS to ensure that any transactions with Pacific Bell or the Ameritech operating companies are reduced to writing and made available for public inspection in accordance with the Commission's rules. *See* ARMIS 43-02 USOA Report, Table I-2 (demonstrating that Pacific Bell provided SBCS with approximately \$5.27 million worth of services in 1999).

¹¹⁶⁷ 47 U.S.C. § 272(b)(5); 47 C.F.R. § 53.203(e).

company's Internet homepage within 10 days of the transaction.¹¹⁶⁸ To ensure that all transactions occur at arm's length, SWBT must abide by the Commission's affiliate transactions rules.¹¹⁶⁹ As noted in previous Orders addressing section 271 applications, the Commission evaluates the sufficiency of a BOC's Internet disclosures by referring to its ARMIS filings, its cost allocation manuals (CAMs), and its CAM audit workpapers.¹¹⁷⁰

404. SWBT persuades us that its section 272 affiliate will comply with the section 272(b)(5) public disclosure requirements, including the obligation to post all transactions between the BOC and its section 272 affiliate within 10 days of the transaction.¹¹⁷¹ Although our preliminary analysis revealed a potentially significant discrepancy between the relevant Internet disclosures and SWBT's accounting data, SWBT adequately demonstrated that the discrepancies did not adversely impact the timely posting of information on the Internet.¹¹⁷² We further note that, for certain transactions, SWBT provided additional assurances to show that it met its obligations under section 272(b)(5).¹¹⁷³ Finally, SWBT demonstrates that its section 272 affiliate

¹¹⁶⁸ *Accounting Safeguards Order*, 11 FCC Rcd at 17593-94, para. 122; *Ameritech Michigan Order*, 12 FCC Rcd at 20734-37, paras. 366-73; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20790-95, paras. 331-40.

¹¹⁶⁹ *See* 47 C.F.R. § 32.27; *Accounting Safeguards Order*, 11 FCC Rcd at 17616-17, para. 166; *see Second BellSouth Louisiana Order*, 13 FCC Rcd at 20790-95, paras. 331-39.

¹¹⁷⁰ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20791-92, para. 335; *Bell Atlantic New York Order* at paras. 411-12. In their Automated Reporting Management Information System (ARMIS) reports, the BOCs provide summary information about their transactions with nonregulated affiliates. *See* ARMIS 43-02 USOA Report, Table I-2, B-4. In their CAMs, the BOCs disclose the nature, terms, and frequency of their anticipated affiliate transactions. *See* 47 C.F.R. § 64.903; *see also* SBC Communications, Inc., COST ALLOCATION MANUAL, § V (Dec. 16, 1999). Pursuant to the Commission's Part 64 accounting safeguards, all the BOCs receive annual audits of their ARMIS data performed by an independent auditor. 47 C.F.R. § 64.904. In addition, the Commission regularly reviews the CAMs and the audit materials related to the independent audits, which show the actual dollar amount of affiliate transactions that occurred during the audited period.

¹¹⁷¹ SWBT Application at 65; SWBT Larkin Aff. at paras. 15-24; SWBT Weckel Aff. at paras. 45-70; *see* ARMIS 43-02 USOA Report, Table I-2 (demonstrating that SWBT provided SBCS with approximately \$ 3.44 million worth of services in 1999).

¹¹⁷² SWBT Ex parte (Mar. 3, 2000). To review an applicant's showing for section 272(b)(5), the Commission examines publicly-available accounting and financial data, as well as confidential material obtained through the course of routine audits of a BOC's Part 64 CAM. Our preliminary review of these materials revealed a potential discrepancy between the dollar amounts of certain services posted on the Internet and disclosed through the audit materials. In response to Commission inquiry, SWBT explained that there is a lag time in the true-up process it uses to reconcile its accounting records, more detailed billing records, and its Internet postings. More importantly, SWBT demonstrated that the transactions at issue were properly posted, and that the discrepancy applied only to the total dollar value of the services. We therefore conclude that the discrepancy did not affect the fundamental showing of compliance with the section 272(b)(5) disclosure requirements.

¹¹⁷³ SWBT Ex parte (Mar. 7, 2000) (submitting additional information to show that SBCS posted the transfer of \$25 million worth of switching equipment to the BOC).

meets the Commission's 10-day posting requirement and maintains an audit trail of past Internet postings.¹¹⁷⁴

405. Although we are concerned about the specific examples cited by AT&T, we conclude that the Internet disclosures of SWBT's section 272 affiliate are, on the whole, sufficiently detailed to evaluate compliance with the Commission's rules and to facilitate the detection of potential anticompetitive conduct.¹¹⁷⁵ As AT&T points out, however, the Internet posting for "Temporary Projects" services provided by SBC to its section 272 affiliate fails to provide a comprehensible description of the services at issue,¹¹⁷⁶ and several other Internet postings contain a similar lack of detail.¹¹⁷⁷ Despite these flaws, our in-depth review of the relevant Internet disclosures shows that the majority contain sufficient detail, as specified in the *Accounting Safeguards Order*, the *Ameritech Michigan Order*, and the *Second BellSouth Louisiana Order*.¹¹⁷⁸ Finally, we note that SWBT's Internet postings will undergo a thorough and systematic review in the section 272(d) biennial audit, which will ensure that any failure to post sufficient detail are identified in time for appropriate remedial action.

406. Based on the record evidence, we conclude that SWBT demonstrates that it will comply with the affiliate transactions rules, which is necessary to ensure that all transactions between a BOC and its section 272 affiliate comply with the statutory "arm's length" requirement.¹¹⁷⁹ Our review of SWBT's ARMIS data, its CAM, its independent auditor's workpapers, and the Internet disclosures supports SWBT's showing of compliance with the affiliate transactions rules. Neither the Commission's review of SWBT's accounting information nor the audits conducted by independent auditors have revealed discrepancies with SWBT's corporate accounting procedures for affiliate transactions in the past three years. We note that the section 272(d) joint Federal-State audit will provide an appropriate mechanism for detecting potential anticompetitive or otherwise improper conduct.

407. As a final matter, we are concerned about the confidentiality agreement raised by

¹¹⁷⁴ *Id.*

¹¹⁷⁵ AT&T Kargoll Aff. at paras. 17-23.

¹¹⁷⁶ AT&T Kargoll Aff. at para. 21 (citing SWBT Temporary Projects at <<http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/affdocs/1619-2.doc>>).

¹¹⁷⁷ *See id.* at paras. 18-20 (addressing the lack of detail contained in Official Communications Services and General Agreement for Support Services).

¹¹⁷⁸ Almost all of SBCS's Internet postings contain the detail required by the Commission's rules, including the rates, terms, conditions, frequency, the number and type of personnel, and the level of expertise of the personnel performing the services. *See Accounting Safeguards Order*, 11 FCC Rcd at 17593-94, para. 122; *Ameritech Michigan Order*, 12 FCC Rcd at 20734-37, paras. 366-73; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20790-95, paras. 331-39; *see also* SWBT Reply at 71.

¹¹⁷⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20794-95, paras. 338-40; *Accounting Safeguards Order*, 11 FCC Rcd at 17592, para. 119; 47 C.F.R. § 32.27.

AT&T, but we are persuaded that the agreement does not preclude a showing of compliance for SWBT.¹¹⁸⁰ AT&T argues that SWBT's nondisclosure agreement¹¹⁸¹ restricts the ability of unaffiliated third parties to obtain information about affiliate transactions and to report potential noncompliance to the appropriate authorities.¹¹⁸² We agree with AT&T that restricting third party access to regulatory authorities is improper and that SWBT's nondisclosure agreement might deter unaffiliated third parties from notifying the Commission about potential violations of our rules. SWBT persuades us, however, that its current nondisclosure agreement has not adversely affected its ability to comply with section 272(b)(5) to date because all transactions were properly posted on the Internet.¹¹⁸³ Competing carriers and others are always entitled to raise potential problem areas and seek redress with the appropriate authorities, and that a BOC should not attempt to restrict such rights through nondisclosure agreements or other means.

408. *Section 272(c)(2) – Accounting Principles.* Based on the evidence in the record, SWBT demonstrates that it accounts for all transactions with its section 272 affiliates in accordance with the accounting principles designated or approved by the Commission.¹¹⁸⁴ In the *Accounting Safeguards Order*, the Commission concluded that complying with the Part 32 affiliate transactions rules satisfies the accounting requirements of section 272(c), which pertain to the BOC's "dealings" with its separate affiliate. We agree with SBC that its section 272 affiliates may share services (except OI&M) provided to its affiliated BOCs by a "shared services affiliate," but we emphasize that such services are subject to the appropriate non-structural safeguards.¹¹⁸⁵

409. *Section 272(d) – Biennial Audit.* Based on the evidence in the record, we conclude that SWBT demonstrates that it will comply with section 272(d), which requires an independent audit of a BOC's compliance with section 272 after receiving interLATA

¹¹⁸⁰ AT&T Kargoll Aff. at paras. 32-37.

¹¹⁸¹ See SWBT Larkin Reply Aff. at para. 8.

¹¹⁸² AT&T Kargoll Decl. at paras. 32, 36-37 (citing SWBT Larkin Aff. at Attachment C, para. 5). Specifically, SWBT requires third parties to sign a nondisclosure agreement in order to review SWBT's detailed billing information. See AT&T Kargoll Decl. at para. 32. SWBT's nondisclosure agreement, however, prohibits any party that identifies potential discrimination from disclosing the evidence to a regulatory agency until SWBT has had 30 days to explain "and/or make any changes." *Id.* at para. 36.

¹¹⁸³ SWBT Larkin Reply Aff. at para. 8 (stating that the nondisclosure agreement has addressed two third party reviews of the Internet postings, and that neither such review has resulted in complaints to regulatory agencies).

¹¹⁸⁴ 47 U.S.C. § 272(c)(2).

¹¹⁸⁵ SWBT has a "shared services affiliate" that provides services to members of the corporate family. SWBT Rehmer Aff. at para. 29, Attach. C (describing services provided by SWBT's shared services affiliate to the SWBT section 272 affiliate). The Commission's accounting safeguards allow certain accounting treatment for services provided by a shared services affiliate to members of the corporate family, so long as the shared services affiliate only conducts business with members of the corporate family. See *Accounting Safeguards Order*, 11 FCC Rcd at 17607-608, para. 148.

authorization.¹¹⁸⁶ The section 272(d) biennial audit involves a thorough and systematic evaluation of a BOC's compliance with section 272 and its affiliate relationships performed by an independent auditor working under the direction of the Commission and state commissions.¹¹⁸⁷ As noted in the *Accounting Safeguards Order*, once a BOC obtains section 271 approval, the Chief of the Common Carrier Bureau will form a joint Federal/State audit team to review the conduct of the audit and oversee the activities of the independent auditor.¹¹⁸⁸ We view the active participation of the state commissions as critical to the success of the biennial audit at ensuring a BOC's compliance with section 272. As noted in previous orders, the section 272(d) biennial audit entails an examination into a BOC's affiliate relationships to ensure the company does not use its corporate affiliates as improper tools for circumventing statutory obligations.¹¹⁸⁹ We stress that a BOC cannot circumvent legal and regulatory requirements through its affiliate structure.¹¹⁹⁰

a. Nondiscrimination Safeguards of Section 272

410. *Section 272(c)(1) – Nondiscrimination Safeguards.* Based on the evidence in the record, we conclude that SWBT demonstrates that it will comply with section 272(c)(1), which prohibits a BOC from discriminating in favor of its section 272 affiliates in the “provision or procurement of goods, services, facilities, and information, or in the establishment of standards.”¹¹⁹¹ The Commission's nondiscrimination safeguards require a BOC to, among other things, “provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions.”¹¹⁹² Our review of SWBT's internal controls and standard operating procedures shows that SWBT requires its section 272 affiliate to adhere to the same procedures for obtaining collocation space required of unaffiliated third parties, and that SWBT has procedures to ensure that unaffiliated entities have access to information for, among other things, the development of company-internal standards

¹¹⁸⁶ 47 U.S.C. § 272(d); 47 C.F.R. § 53.209-213; see SWBT Application at 67-68; SWBT Larkin Aff. at paras. 38-44; SWBT Weckel Aff. at paras. 71-73.

¹¹⁸⁷ 47 U.S.C. § 272(d)(1).

¹¹⁸⁸ *Accounting Safeguards Order*, 11 FCC Rcd at 17629, para. 198.

¹¹⁸⁹ *Accounting Safeguards Order*, 11 FCC Rcd at 17631, para. 203; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20794, para. 338; *Bell Atlantic New York Order* at para. 416.

¹¹⁹⁰ See Covad Reply at 19 (raising concerns about the relationship between SWBT's affiliates).

¹¹⁹¹ 47 U.S.C. § 272(c)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21997-17, para. 195; *Second BellSouth Louisiana Order*, 13 FCC Rcd 20796-800, paras. 341-50. The Commission found that the nondiscrimination safeguards extend to any good, service, facility, or information that a BOC provides to its section 272 affiliate, including administrative services and other non-telecommunications goods and services. *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22003-04, para. 210. The Commission interprets the section 272(c) nondiscrimination safeguards broadly. See *id.* at 22003, 22007, 22012, 22015-016.

¹¹⁹² *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22000-01, para. 202.

and processes.¹¹⁹³ In addition, we note SWBT's OSS showing demonstrates that it meets the requirements of section 272(c)(1) regarding nondiscriminatory provision of information.¹¹⁹⁴

411. Although we agree with AT&T that section 272(c)(1) establishes an "unqualified prohibition" against discrimination, we find that its arguments regarding SWBT's proposed intrastate switched access tariffs are moot.¹¹⁹⁵ In its comments, AT&T contends that SWBT's pricing plan for switched access service discriminates against larger interexchange carriers.¹¹⁹⁶ The Texas Commission, however, rejected SWBT's proposed intrastate switched access tariff as unlawful for the reasons presented by AT&T.¹¹⁹⁷ Because SWBT's proposed tariff is not (and will not) be effective, we conclude that AT&T's argument regarding a violation of the section 272(c)(1) nondiscrimination safeguards is moot.

412. *Section 272(e) – Fulfillment of Certain Requests.* Based on the evidence in the record, SWBT demonstrates that it will comply with section 272(e), which requires SWBT to fulfill requests for, among other things, telephone exchange and exchange access services from unaffiliated entities within the same time period SWBT fulfills such requests for its own retail operations.¹¹⁹⁸ In addition, section 272(e) also provides that a BOC "shall not provide any facilities, services, or information concerning its provision of exchange access to the [section 272 affiliate] unless such facilities, services or information are made available to other providers of interLATA services in that market on the same terms and conditions."¹¹⁹⁹ Finally, section 272(e) places certain accounting and nondiscrimination requirements on BOCs with respect to exchange access and facilities or services provided to their section 272 affiliates.¹²⁰⁰ Except for one issue, we note that no party challenges SWBT's showing.

¹¹⁹³ SWBT Rehmer Aff. at paras. 17 (noting that SBCS may negotiate at arm's length to obtain collocation space), 31 (describing procedures for the establishment of company-specific standards), Attach. G (addressing, in training video, procedures for collocation and establishing internal standards for products and services).

¹¹⁹⁴ See discussion *supra* Sections IV.B.1.c, e-f; *Second BellSouth Louisiana Order*, 13 FCC Rcd 20799, para. 346.

¹¹⁹⁵ AT&T Kargoll Aff. at para. 39 (citing *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21998, para. 197).

¹¹⁹⁶ AT&T Comments at 87; AT&T Kargoll Aff. at para. 38, n.33. AT&T contends that SWBT's proposed intrastate switched access tariff violated the nondiscrimination safeguards of section 272(c)(1) by allowing a series of discounts targeted to small volume interexchange carriers. AT&T Kargoll Aff. at paras. 338-48.

¹¹⁹⁷ SWBT Reply at 74.

¹¹⁹⁸ 47 U.S.C. § 272(e)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22018-22, paras. 239-45; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20800-01, paras. 348-50; see SWBT Application at 68-69. SWBT demonstrates that it will provide accurate data regarding actual service intervals so that unaffiliated parties can evaluate the performance SWBT provides itself and its affiliates and compare such performance to the service quality SWBT provides to competing carriers. SWBT Rehmer Aff. at 33-39, Attach. D (submitting report format for section 272(e)(1) reporting requirements).

¹¹⁹⁹ 47 U.S.C. § 272(e)(2).

¹²⁰⁰ 47 U.S.C. § 272(e)(3), (e)(4); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20802-03, paras. 353-55; see SWBT Application at 68-69; SWBT Rehmer Aff. at paras. 40-47; SWBT Larkin Aff. at paras. 15-24.

413. As discussed above in the context of the section 272(c)(1) nondiscrimination safeguards, AT&T alleges that a SWBT-proposed intrastate switched access tariff violates the nondiscrimination safeguards of section 272(e)(3) because it provides volume discounts to a limited number of interexchange carriers.¹²⁰¹ Although AT&T correctly points out that the Commission's section 272(e)(3) rules require a BOC to "make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers," its argument is moot because the Texas Commission rejected SWBT's proposed intrastate switched access tariffs as unlawful for the reasons presented by AT&T.¹²⁰² Because SWBT's proposed tariff is not (and will not) be effective, we conclude that AT&T's argument regarding a violation of the section 272(e)(3) nondiscrimination safeguards is moot.

b. Joint Marketing Provisions of Section 272

414. *Section 272(g)(1) – Affiliate Sales of Telephone Exchange Access Services.* Based on the evidence in the record, we conclude that SWBT has demonstrated that it will comply with the joint marketing provisions of section 272(g)(1).¹²⁰³ We note that no party challenges SWBT's showing.

415. *Section 272(g)(2) – Bell Operating Company Sales of Affiliate Services.* We conclude that SWBT demonstrates that it will comply with section 272(g)(2), which prevents a BOC from marketing or selling within its region any interLATA service provided by a section 272 affiliate absent authorization obtained pursuant to section 271(d).¹²⁰⁴ We note that no party challenges SWBT's showing.

VII. PUBLIC INTEREST ANALYSIS

A. Overview

416. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.¹²⁰⁵ We conclude that approval of this application is consistent with the public interest. In reaching this determination, we find that compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the

¹²⁰¹ AT&T Kargoll Aff. at para. 40.

¹²⁰² SWBT Reply at 74.

¹²⁰³ 47 U.S.C. § 272(g)(1); *see* SWBT Application at 69; SWBT Rehmer Aff. at para. 50; SWBT Weckel Aff. at para. 80.

¹²⁰⁴ 47 U.S.C. § 272(g)(2); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20804, para. 357; *see* SWBT Application at 69; SWBT Rehmer Aff. at para. 50; SWBT Weckel Aff. at para. 80.

¹²⁰⁵ 47 U.S.C. § 271(d)(3)(C).

Commission's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

417. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.¹²⁰⁶ Thus, we view the public interest requirement as 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. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this application.¹²⁰⁷ Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. As discussed below, we conclude that the public interest would be met by grant of this application.

418. Finally, we note that a strong public interest showing cannot overcome a failure to demonstrate compliance with one or more checklist items. The Commission is specifically barred from "limit[ing] . . . the terms used in the competitive checklist,"¹²⁰⁸ or forbearing from requiring compliance with all statutory conditions under section 271.¹²⁰⁹

B. Competition in Local Exchange and Long Distance Markets

419. As set forth below, we conclude that approval of this application is consistent with promoting competition in the local and long distance telecommunications markets. Consistent with our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We disagree with commenters' arguments that the public interest would be disserved by granting SWBT's application because the local market in Texas has not yet truly been opened to competition.¹²¹⁰

¹²⁰⁶ In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-366; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

¹²⁰⁷ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

¹²⁰⁸ 47 U.S.C. § 271(d)(4).

¹²⁰⁹ 47 U.S.C. § 160(d).

¹²¹⁰ *See, e.g., AT&T Texas I Comments at 89; WorldCom Texas I Comments at 57-61; Sprint Texas I Comments at 74-78; Sprint Texas II Comments at 48.*

Commenters cite an array of evidence which, they argue, demonstrates that the local telecommunications market is not open and that competition has not sufficiently taken hold in Texas. For example, commenters allege that the local market in Texas is characterized by: the low percentage of total access lines served by competitive LECs;¹²¹¹ the concentration of competition in Dallas, Fort Worth, Houston and other urban areas;¹²¹² minimal competition for residential services;¹²¹³ modest facilities-based investment;¹²¹⁴ and prices for local exchange service at the maximum permissible levels under the price caps.¹²¹⁵ We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here.¹²¹⁶ We further find that the record confirms our view, as noted in the *Bell Atlantic New York Order*, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.¹²¹⁷

C. Assurance of Future Compliance

420. As set forth below, we find that SWBT's performance remedy plan provides additional assurance that the local market will remain open after SWBT receives section 271 authorization. The Commission previously has explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue to satisfy the requirements of section 271 after entering the long distance market.¹²¹⁸ Although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval.¹²¹⁹ The Commission has stated that the fact that a BOC will be subject to performance

¹²¹¹ See Sprint Texas I Comments at 74-78; Allegiance Texas I Comments at 13; AT&T Texas I Comments at 89; WorldCom Texas I Comments at 57-61.

¹²¹² See AT&T Texas I Comments at 89; *but see* SWBT Texas II Reply at 76.

¹²¹³ See AT&T Texas I Comments at 89; WorldCom Texas I Comments at 60; Sprint Texas I Comments at 75-76; Sprint Texas II Comments at 48-49.

¹²¹⁴ See WorldCom Texas I Comments at 58-59.

¹²¹⁵ *Id.* at 61.

¹²¹⁶ See *Bell Atlantic New York Order* 15 FCC Rcd at 4163, para. 427. This is consistent with the Commission's approach in prior section 271 orders. See *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

¹²¹⁷ See *Bell Atlantic New York Order* 15 FCC Rcd at 4164, para. 428.

¹²¹⁸ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806; *see Ameritech Michigan Order*, 12 FCC Rcd at 20747.

¹²¹⁹ These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6). Moreover, in this instance, we find that the extensive collaborative process by which these mechanisms were developed and modified in Texas has itself helped to bring SWBT into checklist compliance.

monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.¹²²⁰

421. We believe that it is not necessary that a state monitoring and enforcement mechanism alone provide full protection against potential anti-competitive behavior by the incumbent. Most significantly, we recognize that the Commission's enforcement authority under section 271(d)(6) already provides incentives for SWBT to ensure continuing compliance with its section 271 obligations. We also recognize that SWBT may be subject to payment of liquidated damages through many of its individual interconnection agreements with competitive carriers.¹²²¹ Furthermore, SWBT risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner.¹²²²

1. Performance Remedy Plan

422. SWBT's Performance Remedy Plan is part of the T2A standard interconnection contract and is available through that agreement.¹²²³ Under the Plan, SWBT monitors 131 performance measurements according to set definitions and business rules.¹²²⁴ The Performance Remedy Plan provides for two classes or "tiers" of performance penalties. Tier-1 penalties apply to customer-affecting measurements, such as how long it takes to install or restore service. Penalties for failure to comply with standards corresponding to these performance measurements are paid to competitive LECs receiving the substandard performance and that sign the T2A.¹²²⁵ Tier-2 penalties apply to competition-affecting measurements such as OSS availability, and are paid to the Texas State Treasury.¹²²⁶ For both tiers the penalties accrue "per-occurrence," which means that SWBT's damages or fines are calculated according to the number of incidents that SWBT delivers non-compliant performance for a particular measurement.¹²²⁷ Each measurement also is ranked low, medium or high, with the size of the per-occurrence payment tailored accordingly. Tier-1 damages are assessed if a performance measure is out of compliance for a

¹²²⁰ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806.

¹²²¹ See *Bell Atlantic New York Order* 15 FCC Rcd at 4165, para. 430. The Commission's enforcement powers include, among other penalties, suspension or revocation of section 271 approval. 47 U.S.C. § 271(d)(6)(A).

¹²²² See *Bell Atlantic New York Order* 15 FCC Rcd at 4165, para. 430; SWBT Texas I Application at 45-47.

¹²²³ SWBT Dysart Texas I Aff. at para. 25.

¹²²⁴ Since the Texas I Application was filed more measurements have been added, notably in measuring performance relating to DSL-capable loops and interconnection. See Texas Commission Texas II *ex parte* letter of June 19, 2000 at 1-5; Texas Commission Texas II Reply Comments at 1-3.

¹²²⁵ SWBT Dysart Texas I Aff. at para. 46.

¹²²⁶ SWBT Dysart Texas I Aff. at para. 46. The performance measurements in the two tiers overlap substantially, with 41 of the 47 Tier-2 measurements also counted as Tier-1 measurements. SWBT Texas I Reply Comments at 86.

¹²²⁷ SWBT Dysart Texas I Aff. Attach. H at 9.

single month, but Tier-2 fines apply only if a measurement is missed for three consecutive months.¹²²⁸

2. Key Elements of the Enforcement Plan

423. Although the details of mechanisms developed at the state level may vary widely, we have examined certain key aspects of these plans to determine whether they fall within a zone of reasonableness, and are likely to provide incentives that are sufficient to foster post-entry checklist compliance.¹²²⁹ In our *Bell Atlantic New York Order*, for example, we predicted that the enforcement mechanisms developed in New York would be effective in practice.¹²³⁰ Plans may vary in their strengths and weaknesses, and there is no one way to demonstrate assurance.¹²³¹ Through a lengthy collaborative process, the Texas Commission, SWBT and involved competitive LECs have arrived at workable measures to sufficiently capture SWBT's wholesale performance.¹²³² The measures, coupled with a self-executing performance remedy plan (Plan), are designed to prevent backsliding. The Texas Commission was aware of the need to fashion a remedy plan that produced sufficient incentives for SWBT to maintain a high level of wholesale service, and sufficient disincentives for SWBT to engage in anti-competitive behavior after section 271 relief is granted.¹²³³ As explained below, we conclude the Texas Commission established a performance remedy plan that would discourage anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business.¹²³⁴

424. *Total Liability At Risk.* We conclude that the total of \$289 million in potential penalties placed at risk, on an annual basis, under the performance plans represents a meaningful incentive for SWBT to maintain a high level of performance.¹²³⁵ We thus disagree with

¹²²⁸ SWBT Dysart Texas I Aff. Attach. H at 15.

¹²²⁹ *Bell Atlantic New York Order* 15 FCC Rcd at 4166-67, para. 433.

¹²³⁰ *Bell Atlantic New York Order* 15 FCC Rcd at 4166-67, para. 433. This prediction was based on five characteristics: potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; a reasonable structure that is designed to detect and sanction poor performance when it occurs; a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and reasonable assurances that the reported data is accurate. *Id.* at 433.

¹²³¹ See *Ameritech Michigan Order*, 12 FCC 20741-51, para. 393.

¹²³² See Texas Commission Texas I Evaluation at 98-111.

¹²³³ See Texas Commission Texas I Evaluation at 106.

¹²³⁴ *Id.* at 106.

¹²³⁵ SWBT Dysart Texas I Aff. at para 52. SWBT set the cap at \$289 million annually in response to concerns that SWBT's earlier cap was too low. The cap is based on 36% of SWBT's net return, and will be recalculated annually, but will never exceed \$289 million or go below \$225 million. The cap is comparable to the cap we deemed adequate for Bell Atlantic in New York. See *Bell Atlantic New York Order* at para. 436 n.1332.

commenters that suggest that this amount is insufficient and fails to provide adequate assurance of SWBT's compliance in the future.¹²³⁶ Most fundamentally, we disagree with a basic assumption made by several commenters: that liability under the Plan must be sufficient, *standing alone*, to completely counterbalance SWBT's incentive to discriminate.¹²³⁷ The performance plans adopted by the Texas Commission do not represent the only means of ensuring that SWBT continues to provide nondiscriminatory service to competing carriers. In addition to the \$289 million at stake under this Plan, as noted above, SWBT faces other consequences if it fails to sustain a high level of service to competing carriers, including: federal enforcement action pursuant to section 271(d)(6); liquidated damages under dozens of interconnection agreements; and remedies associated with antitrust and other legal actions.

425. *Performance Measurements and Standards.* Performance measurements are intended to ensure that the reporting mechanism provides a “benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service rendered to new entrants.”¹²³⁸ Several commenters contend that the performance measurements fail to capture certain problems competitive LECs experience in their relations with SWBT.¹²³⁹ In reply, SWBT defends the scope and meaningfulness of its measurements.¹²⁴⁰ Through a collaborative process SWBT has increased the number of performance measurements from 66 at the time of its initial filing before the Texas Commission to the 131 measurements in place at the time of filing this section 271 application.¹²⁴¹ Moreover, the plan is not static, and we recognize that the Texas Commission presently is considering modifying existing measurements, and adding new measurements based on input from both SWBT and competitive LECs. For example, SWBT and competitive LECs are developing additional performance measurements for

¹²³⁶ See ALTS Texas I Comments at 49-50, 57; AT&T Texas I Comments at 96; WorldCom Texas I Comments at 66-67, 74-75 (Overall cap is meaningless gesture because it can't be reached short of SWBT shutting down or disconnecting every actual or potential competitive LEC customer.) See also *Bell Atlantic New York Order* 15 FCC Rcd at 4168-69, para. 437 (“[A]n overall liability amount would be meaningless if there is no likelihood that payments would approach this amount, even in instances of widespread performance failure.”). We note that SWBT may commence a show-cause proceeding if SWBT's Tier 1 payments to an individual competitive LEC exceed \$3 million in a month, or payments exceed \$10 million to all competitive LECs in a given month. Texas Commission Texas I Comments at 108. See also ALTS Texas II Reply Comments at 18-19.

¹²³⁷ See *Bell Atlantic New York Order* 15 FCC Rcd at 4167, para. 435.

¹²³⁸ *Bell Atlantic New York Order* 15 FCC Rcd at 4169, para. 438; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806, para. 363.

¹²³⁹ See, e.g., ALTS Texas I Comments at 56; AT&T Texas I Comments at 97; AT&T Pfau/DeYoung Decl. at 167-68; CLEC Coalition Texas I Comments at 42-44; Covad Texas I Comments at 63; WorldCom Texas I Comments at 73-74; NorthPoint Texas I Comments at 2, 9.

¹²⁴⁰ SWBT Texas I Reply at 19-27; SWBT Dysart Texas I Reply Aff. at paras. 11, 18, 21, 22; Austin C. Schlick Feb. 4 *Ex Parte* Letter.

¹²⁴¹ Texas Commission Texas I Comments at 111. As of January 10, 2000 SWBT tracked data in 1,874 submeasures. SWBT Texas I Brief Attach. 2 at 5.

provision of DSL-related services.¹²⁴² In addition, in response to competitive LEC concerns that aspects of interconnection trunking measurements give an incomplete portrayal of SWBT's actual performance, the Texas Commission has implemented a new measurement, PM 73.1 (concerning missed due dates), and is considering modifications to PM 78 (concerning average installation intervals) during its April 2000 performance review.¹²⁴³ This continuing ability of the measurements to evolve is an important feature because it allows the Plan to reflect changes in the telecommunications industry and in the Texas market.¹²⁴⁴

426. *Structural Elements of the Plan.* The structural elements of the Plan appear reasonably designed to detect and sanction poor performance when it occurs. Commenters have raised specific criticisms, arguing, for example, that the Plan fails to deter targeted discrimination directed against individual competing carriers,¹²⁴⁵ and does not include penalties that escalate with the magnitude or duration of the performance shortfall.¹²⁴⁶ These criticisms do not undermine our overall conclusion that the Plan provides a meaningful incentive to provide nondiscriminatory performance in the future. We find it significant that the Texas Commission considered and rejected most of these arguments.¹²⁴⁷

427. *Self-Executing Mechanism.* The performance monitoring and enforcement mechanisms appear to be reasonably self-executing, and are generally comparable to the mechanisms we found satisfactory in the *Bell Atlantic New York Order*.¹²⁴⁸ Specifically, we note that SWBT is required to provide performance data by the 20th day of the month following the reporting month, and is required to make payments, if necessary, by the 30th day following the due date of the performance measurement report for the month in which the obligation arose.¹²⁴⁹

¹²⁴² Covad Goodpastor Texas I Reply Decl. at 4. *See also* Texas Commission Texas II Comments at 1-4; Texas Commission Texas II Reply Comments

¹²⁴³ *See* discussion under checklist item 1. The Texas Commission provides a forum for ongoing modification and improvement of the performance metrics. The Texas Commission reports that "a six month review process is in place to assure that the plan is not static in nature. The Texas Commission, in conjunction with SWBT and the competitive LECs, will engage in comprehensive review of the performance measures to determine if commercial experience indicates that changes are necessary." Texas Commission Texas I Comments at 105. The six-month review process began in April 2000. *See* Texas Commission Texas II Comments at 1-4; Texas Commission Texas II Reply Comments at 1-3. *Cf. Bell Atlantic New York Order* at para. 438 and nn.1338-1339 (New York Commission's steps to ensure that metrics will continue to be developed and refined).

¹²⁴⁴ *See Bell Atlantic New York Order* 15 FCC Rcd at 4169, para. 438.

¹²⁴⁵ *See, e.g.,* WorldCom Texas I Comments at 69.

¹²⁴⁶ *Id.* at 69-70.

¹²⁴⁷ *See* Texas Commission Texas I Comments at 106-111; *see also Bell Atlantic New York Order* 15 FCC Rcd at 4170-71, para. 440.

¹²⁴⁸ *See* SWBT Dysart Texas I Aff. at para. 53; *Bell Atlantic New York Order* 15 FCC Rcd at 4171, para. 441.

¹²⁴⁹ *See* SWBT Dysart Texas I Aff. Attach. H at 12-13.

We further note that the Plan provides for expedited dispute resolution in certain carefully designated circumstances.¹²⁵⁰ AT&T argues that because the Texas Commission has not provided guidance regarding waiver terms comparable to that set forth by the New York Commission, the Plan invites litigation by SWBT.¹²⁵¹ We have said that a waiver process, if not narrowly limited to a discrete set of circumstances and subject to time constraints, could have such an impact.¹²⁵² Should the Texas Commission suspect any party of abusing the dispute-resolution procedures provided in the Plan, we are confident the Texas Commission will take appropriate action.

428. *Data Validation and Audit Procedures.* The Department of Justice states, and we agree, that the reliability of reported data is critical, and that properly validated metrics must be meaningful, accurate, and reproducible.¹²⁵³ In particular, the raw data underlying a performance measurement must be stored in a secure, stable, and auditable file if we are to accord a remedy plan significant weight.¹²⁵⁴

429. Several commenters allege that SWBT's performance data is generally unreliable.¹²⁵⁵ SWBT states that its performance data collection, storage, and reporting practices are verifiable, and are conducted according to contemporaneously published business rules. Further, SWBT replies that its data collection methods and procedures were verified by Telcordia, and that Telcordia confirmed that SWBT collects and reports data in a manner consistent with the state-approved business rules.¹²⁵⁶ While Telcordia did make several recommendations regarding SWBT's data control mechanisms, we note that SWBT has agreed to implement each of these measures.¹²⁵⁷ We also note that the Texas Commission, in collaboration with competitive LECs and SWBT, is currently reviewing a document concerning SWBT's internal data collection

¹²⁵⁰ Texas Commission Texas I Comments at 108. If SWBT delivers non-compliant performance for three consecutive months on at least 20% of the measures reported, but SWBT has not incurred more than \$1 million in damages payable to the competitive LEC, the competitive LEC may commence an expedited dispute resolution proceeding to demonstrate why additional damages are appropriate. If SWBT's Tier 1 payments to an individual competitive LEC exceed \$3 million in a month, or payments exceed \$10 million to all competitive LECs in a given month, upon timely completion of a show-cause proceeding, SWBT must pay the balance of damages owed. *Id.*; see also SWBT Texas I Dysart Aff. Attach. H at 8.

¹²⁵¹ AT&T Texas I Comments at 96; see also CompTel Texas I Comments at 19-20.

¹²⁵² *Bell Atlantic New York Order* 15 FCC Rcd at 4171, para. 441.

¹²⁵³ Department of Justice Texas I Evaluation at 5.

¹²⁵⁴ Department of Justice Texas I Evaluation at 5; AT&T Texas I Comments at 78.

¹²⁵⁵ See Allegiance Texas I Comments at 13; AT&T Pfau & DeYoung Aff. at para. 15, 25, 56-58; BlueStar Texas I at 5-6; WorldCom Texas I Comments at 33-34; Sprint Texas I Comments at 74-76.

¹²⁵⁶ SWBT Texas I Reply Comments at 81.

¹²⁵⁷ SWBT Dysart Texas I Aff. at para. 76.

procedures.¹²⁵⁸ Because the Performance Remedy Plan rests entirely on SWBT's performance as captured by the measurements, the credibility of the performance data should be above suspicion.¹²⁵⁹

430. *Accounting Requirements.* Consistent with our accounting rules, antitrust damages¹²⁶⁰ and certain other penalties paid by carriers,¹²⁶¹ SWBT should not reflect any portion of penalties paid out under the Plan as expenses in the revenue requirement for interstate services. As we noted in the *Bell Atlantic New York Order*, such accounting treatment ensures that ratepayers do not bear, in the form of increased rates, the costs of penalties paid out under the Plan in the event that SWBT fails to provide adequate service quality to competitive LECs.¹²⁶²

D. Other Arguments

431. We recognize that commenters raise several other concerns which, they contend, support a finding that grant of this application is not in the public interest. These arguments do not convince us that grant of this application would be inconsistent with the public interest. Several commenters offer specific allegations that SWBT has engaged in anti-competitive behavior.¹²⁶³ We have previously stated that we will not withhold section 271 authorization on the basis of isolated instances of allegedly unfair dealing or discrimination under the Act.¹²⁶⁴ In this instance, we do not find that the various incidents cited by commenters constitute a pattern of discriminatory conduct that undermines our confidence that SWBT's local market is open to

¹²⁵⁸ Texas Commission Texas I Evaluation at 105, n.607. We applaud the Texas Commission's ongoing commitment to strengthening the Plan, and do not interpret such efforts to call into question the Texas Commission's endorsement of the Plan as filed.

¹²⁵⁹ See SWBT Dysart Texas I Aff. Attach. H at 1.0 (providing for SWBT to collect, analyze, and report performance data).

¹²⁶⁰ See *Accounting for Judgments and Other Costs Associated with Litigation*, 12 FCC Rcd 5112 (1997); 47 C.F.R. § 7370(d). As a general matter, a carrier's operating expenses recovered through its rates must be legitimate costs of providing adequate service to ratepayers. See, e.g., *West Ohio Gas Co. v. PUC*, 294 U.S. 63, 74 (1935); *Mountain States Tel. and Tel. Co. v. FCC*, 939 F.2d 1035, 1044 (D.C. Cir. 1991).

¹²⁶¹ In the *SBC/Ameritech Merger Order*, the Commission held that bill credits provided under the performance assurance plan arising from that order "shall not be reflected in the revenue requirement of an SBC/Ameritech incumbent LEC." *SBC/Ameritech Merger Order* App. C at para. 34.

¹²⁶² *Bell Atlantic New York Order* 15 FCC Rcd at 4172-73, para. 443.

¹²⁶³ For example, several commenters suggest that misconduct of SWBT, such as intransigence, delaying tactics, perpetual litigation (and sanctionable tactics during litigation, such as destruction of or withholding documents), and the refusal to pay reciprocal compensation, undermines confidence in SWBT's post-grant conduct. See Sprint Texas I Comments at 78; BlueStar Texas I Comments at 6; Allegiance Texas I Comments at 14-16; Connect Texas I Comments at 6-8; e.spire Texas I Comments at 6; CompTel Texas I Comments at 9; AT&T Texas I Comments at 89-95; WorldCom Texas I Comments at 62-63; Covad Texas I Comments at 49-50, 58, 60-62; NALA/PCA Texas I Comments at 3.

¹²⁶⁴ See *Ameritech Michigan Order*, 12 FCC Rcd at 20749, para. 396.

competition and will remain so after SWBT receives interLATA authority.¹²⁶⁵

432. Several commenters urge the Commission to deny SWBT's application on the grounds that SBC's investment in a network architecture commonly known as "Project Pronto" is discriminatory because it favors the business plans of ASI.¹²⁶⁶ For example, competing carriers claim that SWBT's Project Pronto architecture will deploy digital loop carrier systems in remote terminals fed by fiber optic cables and will not permit competing carriers to line share the loops served by those remote terminals.¹²⁶⁷ At the same time, SWBT contends that the investments of its parent company will bring broadband services to the vast majority of residential and small business customers in its operating area and that the benefits of these infrastructure changes will be available to all xDSL service providers on equal terms.¹²⁶⁸ We acknowledge the importance of competing carrier concerns regarding Project Pronto and the impact that Project Pronto may ultimately have on a number of the section 271 checklist items (e.g., interconnection, unbundled local loops). The record before us, however, does not demonstrate that Project Pronto has resulted in a showing of noncompliance with any checklist item.¹²⁶⁹ To the extent that SWBT utilizes Project Pronto in such a way that it results in non-compliance in the future, however, we may take appropriate enforcement action pursuant to section 271(d)(6).

433. We disagree, as stated above, with commenters that believe that a section 271 application is an appropriate forum to consider instituting a "fresh look" policy (to provide an opportunity for retail and wholesale customers to exit without penalty long term contracts that the carriers have voluntarily entered into with SWBT).¹²⁷⁰ Moreover, we also reject concerns that the

¹²⁶⁵ We emphasize that grant of this application *does not* reflect any conclusion that SWBT's conduct in the individual instances cited by commenters is nondiscriminatory and complies with the company's obligations under the Communications Act.

¹²⁶⁶ "Project Pronto" is a SBC network upgrade that will employ fiber optic cable and remote terminals to provide xDSL-capable services to customers that are out of reach of a central office digital subscriber line access multiplexers (DSLAMs). SWBT represents that it will offer competitors nondiscriminatory access to the xDSL facilities being deployed in remote terminals. SWBT Texas II Reply Brief at 26-27; CompTel Texas II Comments at 5-8; AT&T Texas II Comments at 23-24; AT&T Texas II Pfau/Chambers Decl. at paras. 54-69; AT&T Reply Comments at 15-18; Rhythms Texas II Comments at 9-10.

¹²⁶⁷ Rhythms Comments at 9.

¹²⁶⁸ SWBT Auinbauh and Lube Texas II Reply Aff. at paras. 6-8, 22-35.

¹²⁶⁹ A number of parties have raised issues concerning Project Pronto in a number of proceedings before us. *See, e.g., Line Sharing Order*, 14 FCC Rcd 20912 (recons. pending); *UNE Remand Order*, 15 FCC Rcd 3696 (recons. pending); Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau (Feb. 15, 2000) ("SBC Waiver Request"); Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, Public Notice, DA 00-335 (rel. Feb. 18, 2000).

¹²⁷⁰ *See* ALTS Texas I Comments at 62-65; e.spire Texas I Comments at 8-10; Allegiance Texas I Comments at 20-23 urging "fresh look" for retail customers only. *See also* part V.N, *infra*, for discussion of "fresh look" argument.

Texas Commission has limited regulatory authority over SWBT because of legislation enacted by the Texas Legislature in 1999.¹²⁷¹ The Texas Commission notes that the legislation

¹²⁷¹ See Allegiance Texas I Comments at 17-18; ALTS Texas I Comments at 50-55; DSL.net Texas I Comments at 9; ALTS Texas II Reply Comments at 20-22.

does not limit the Texas Commission's authority or any competitor's ability to challenge rate changes or service offerings by SWBT.¹²⁷²

VIII. SECTION 271(D)(6) ENFORCEMENT AUTHORITY

434. Section 271 approval is not the end of the road for SWBT in Texas. The statutory regime makes clear that SWBT must continue to satisfy the "conditions required for ... approval"¹²⁷³ after it begins competing for long distance business in Texas. To this end, Congress gave the Commission additional post-approval enforcement powers to address possible "backsliding" by SWBT and other BOCs. This authority is critical to the statutory design that local market are – and remain – open to competition, and evidences Congress's recognition that a BOC's incentives to cooperate with its local service competitors may diminish in a given state once the BOC obtains section 271 approval in that state.¹²⁷⁴ As we stated in the *Bell Atlantic New York Order*, "[s]wift and effective post-approval enforcement of section 271's requirements ... is essential to achieve Congress's goal of maintaining conditions conducive to achieving durable competition in local markets."¹²⁷⁵

435. We described the post-approval enforcement framework, as well as our various section 271(d)(6) enforcement powers, in detail in the *Bell Atlantic New York Order*.¹²⁷⁶ Among other things, section 271(d)(6) provides for Commission receipt and review of complaints filed by persons concerning alleged failure by a BOC to meet conditions required for long distance approval. It also specifies several enforcement actions that the Commission can take on its own motion to address BOC backsliding. These include monetary forfeitures, as well as suspension or revocation of authority to provide long distance service. We envision exercising our section 271(d)(6) suspension power, when appropriate, through a "standstill" order that could prohibit a non-compliant BOC from enrolling additional subscribers and from marketing and promoting interLATA service – in essence, freezing the BOC's subscriber base as of the date of the order.¹²⁷⁷

436. Working in concert with the Texas Commission, we intend to monitor closely

¹²⁷² Texas Commission Texas I Reply Comments at 27. The Texas Commission states that the legislation adopts a more aggressive timeframe, allowing an offering to go into the market after a 10 day notice to the Texas Commission and to all companies that have an effective interconnection agreement with SWBT. The Texas Commission believes that this procedural change is consistent with a more competitive marketplace and has accelerated its review of such offerings in order to reflect this change. *Id.* at 27.

¹²⁷³ 47 U.S.C. § 271(d)(6).

¹²⁷⁴ See generally *U S WEST Communications, Inc. v. FCC*, 177 F.3d 1057, 1060 (D.C. Cir. 1999) (noting that a central purpose of section 271 is to create incentives for BOCs to open local markets to competition), *cert. denied*, 120 S.Ct. 1240 (2000).

¹²⁷⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, para. 446.

¹²⁷⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4174-77, paras. 446-453.

¹²⁷⁷ See 47 U.S.C. § 271(d)(6)(A)(iii); *Bell Atlantic New York Order*, 15 FCC Rcd at 4175-76, paras. 448-451.

SWBT's post-approval compliance. We require that SWBT provide us with the monthly Texas Aggregated Performance Measurement Reports that it provides to the Texas Commission for at least one year from the date of the release of this order, so that we can review SWBT's performance to ensure continued compliance with the statutory requirements. We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Texas. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to SWBT's entry into the Texas long distance market.¹²⁷⁸

IX. CONCLUSION

437. For the reasons discussed above, we grant SWBT's application for authorization under section 271 of the Act to provide in-region, interLATA services in the state of Texas.

X. ORDERING CLAUSES

438. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, SWBT's application to provide in-region interLATA service in the State of Texas filed on April 5, 2000, IS GRANTED.

439. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE July 10, 2000.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

¹²⁷⁸ In New York, for example, the New York Public Service Commission and the Commission responded quickly with a coordinated, two-pronged enforcement response when Bell Atlantic developed performance problems associated with lost or mishandled orders for unbundled network elements submitted electronically by its local service competitors. See *Order Directing Market Adjustments and Amending Performance Assurance*, Case OO-C-0008/9 and Case 99-C-0949 (New York PSC, Mar. 23, 2000); *Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Order, 15 FCC Rcd 5413 (2000) (adopting consent decree between Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of \$3,000,000 to the United States Treasury, additional payments if Bell Atlantic failed to meet specified performance standards, and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems); Letter from David H. Solomon, Chief, FCC Enforcement Bureau to Edward D. Young, III, Senior Vice President – Regulatory, Bell Atlantic, dated June 20, 2000 (advising Bell Atlantic that it appears to the Commission to have met the requisite performance standards and that, in the absence of new information indicating that Bell Atlantic's performance reports are materially inaccurate, Bell Atlantic's obligations under the Consent Decree have terminated).

Secretary

APPENDIX A**SBC Communications Inc, Southwestern Bell Telephone Company
Southwestern Bell Communications Services
271 Application to provide In-region, InterLATA services in Texas****CC Docket No. 00-65****Comments**

Allegiance Telecom, Inc (Allegiance)
Association for Local Telecommunications Services
(ALTS) & CLEC Coalition (CLEC) Joint Comments
Alliance for Public Technology
AT&T Corp.
CCCTX, Inc. d/b/a "Connect"
Competition Policy Institute
Campaign for Telecommunications Access and 33 Participating Companies
COVAD Communications Company
Competitive Telecommunications Association
Department of Justice
IP Communications
Joint Comments of: Bluestar Network Services, DSLNET, Inc.
MGC Communications d/b/a MPOWERCommunications, Waller Creek Communications d/b/a
Pontio Communications Corp
Level 3 Communications L.L.C.
MCI
NorthPoint
Public Utilities Commission of Texas
RCN Telecom Services Inc.
Rhythms Net Connections
Southwestern Tel-Com
Sprint Communications Co.
Telecommunications Resellers Associations
Z-TEL Communications

**SBC Communications Inc, Southwestern Bell Telephone Company
Southwestern Bell Communications Services
271 Application to provide In-region, InterLATA services in Texas
CC Docket No. 00-65**

Reply Comments

Allegience
Association of Local Telecommunications Services (ALTS)
AT&T
COVAD Communications Company
Department of Justice
Global Crossing Local Services, Inc.
Joint Comments of: Bluestar Network Services, LINK Network, Inc.
DSLNET, Inc MGC Communications d/b/a MPOWERCommunications
Waller Creek Communications d/b/a Pontio Communications Corp
MCI/WorldCom
Pilgrim Telephone, Inc.
Public Utilities Commission of Texas
RCN Telecom Services, Inc.
Southwestern Bell Corporation
Telecommunication Resellers Association

**SBC Communications Inc, Southwestern Bell Telephone Company
Southwestern Bell Communications Services
271 Application to provide In-region, InterLATA services in Texas
CC Docket No. 00-4**

Comments

Adelphia Business Solutions (Adelphia)
Allegiance Telecom, Inc. (Allegiance)
Alliance for Public Technology
Association for Local Telecommunications Services (ALTS)
AT&T Corp. (AT&T)
Bluestar Communications (Bluestar)
Campaign for Telecommunications Access and 33 Participating Companies
CCCTX, Inc. d/b/a "Connect"
CLEC Coalition
Communications Workers of America
Competitive Telecommunications Association
COVAD Communications Company
Department of Justice
DSL, Inc.
E.spire Communications, Inc.
Global Crossing
IP Communications
KMC Telecom Inc.
MCI WorldCom, Inc.
Metromedia Fiber Network Services, Inc.
National ALEC Association/Prepaid Communications Association
NorthPoint Communications, Inc.
Pilgrim Telephone, Inc.
Public Utilities Commission of Texas
Rhythms Net
Sprint Communications Co.
Telecommunications Resellers Association
Texas Office of Public Utility Counsel (Texas OPC)
Z-Tel Communications Inc.

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Competition Policy Institution
Competitive Telecommunications Association
Consumer Federation of America
COVAD Communications Company
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Global Crossing
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Metromedia Fiber Network Services, Inc.
North Point Communications
Public Utilities Commissions of Texas
Rhythms Net Connections Inc.
SBC
Sprint Communications Co.
Texas Internet Service Providers Association

APPENDIX B

Overview of SWBT's OSS Operations.

1. The process of obtaining resold local services or unbundled network elements from SWBT begins with the submissions of a Local Service Request (LSR) by a competing carrier. Upon the submission of an LSR, there are a series of transaction that must take place between SWBT and the competing carrier to ensure that the order is completed on time and in the manner contemplated by the competing carrier. For example, SWBT must inform a competing carrier of the status of the order as it progresses through its system, and a new entrant must have a means of notifying SWBT if the service or network element is not properly installed. Competing carriers may submit LSRs and conduct the various other transactions associated with obtaining service or network elements from SWBT through either manual or electronic access to SWBT's OSS. Manual access means that the competing carrier may place an order via facsimile and monitor the status of an order by placing a phone call to SWBT. Electronic access, in contrast, means that information is exchanged, and transactions are conducted, between SWBT and the competing carrier through the use of electronic interfaces.

2. SWBT provides competing carriers with access to six primary electronic interfaces to access its pre-ordering, ordering and provisioning, maintenance and repair, and billing functions.¹ These interfaces are either application-to-application interfaces or graphical user interfaces (GUIs).² Application-to-application interfaces are based on industry guidelines and require software development by both SWBT and the competing carrier. An application-to-application interface may be integrated with the competing carrier's own ordering systems, thereby allowing it to control how the application appears to its own sales representatives. A GUI interface, in contrast, is a proprietary interface that may not be integrated with the competing carrier's own systems. Thus, when a competing carrier obtains information from SWBT's GUI-based interfaces, it must retype that information into its own systems.

3. Pre-Ordering. Before placing an actual order for service, a competing carrier can obtain pre-ordering information from SWBT that assists the competing carrier's negotiations with its end-user customer.³ Such preordering information, which is often accessed while the customer

¹ SWBT Ham Aff. at paras. 10-17, 51-247; Texas Commission OSS Evaluation Master Test Plan § 2.2.

² SWBT provides competitive LECs with several application-to-application interfaces based on an SWBT proprietary protocol or on the Electronic Data Interchange/Common Object Request Broker Architecture (EDI/CORBA) protocol, as well as graphical user interfaces (GUIs), available from SWBT's Toolbar Platform (Toolbar). SWBT Ham. Aff. at paras. 46-48. SWBT's Toolbar Platform provides access to multiple GUI applications using a single standard User ID and password. *Id.* Specifically, SWBT's Toolbar provides access to Verigate (for preordering), LEX (for ordering), Order Status (for checking status of orders), Provisioning Order Status (for checking provisioning status of pending orders), Trouble Administration (for repair and maintenance) and Bill Information (for billing). The Toolbar provides for automated software updates over the user's network connection. *Id.*

³ SWBT Ham Aff. at para. 52; Master Test Plan at § 4.3.5.1. Pre-ordering functions that SWBT makes available to competitive LECs include: address verification; access to customer service records, customer service inquiries, directory listings and Directory Assistance; service and feature availability, access to telephone number (continued....)

is on the line, typically includes a customer's address and service history, services and features available to that customer, telephone numbers, and dates that various services and facilities required by the competing carrier will be available.⁴ Competitive carriers can exchange preordering information with SWBT by sending a request manually, or by using one or more of SWBT's four electronic interfaces that provide access to SWBT's pre-ordering capabilities:⁵ Easy Access Sales Environment (EASE) for resale services,⁶ DataGate,⁷ Verigate,⁸ and Electronic Data Interchange (EDI)/CORBA interface.⁹

4. Ordering and Provisioning. Using the information obtained in the pre-ordering process, the competing carrier submits a Local Service Request (LSR) using any of four electronic interfaces for access to SWBT's OSS ordering/provisioning capabilities: EASE, Southwestern Order Retrieval and Distribution (SORD);¹⁰ Local service request EXchange

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assignment, due date availability, dispatch requirements, Primary Interexchange Carrier (PIC) and Local Primary IntraLATA Carrier (LPIC) list, Access to Common Language Location Identifier for the serving central office; Channel facility assignment verification for UNEs. *Id.*

⁴ SWBT Ham Aff. at 51-53

⁵ SWBT Ham Aff. at para. 53. SWBT provides a table listing which preordering functions and the capabilities that are available in each system. *Id.*

⁶ EASE is SWBT's proprietary interface that competing LECs can use for preordering and ordering of resale services for residential customers with up to five lines and for business customers with up to thirty lines. It is the same system used by SWBT's own retail service representatives. SWBT Application at 82; SWBT Ham Aff. at paras. 5, 31-32. According to SWBT, EASE integrates ordering and pre-ordering functions into a single application and provides competitive LEC resellers the same access to ordering capabilities for resale services that are available to SWBT's retail service representatives. SWBT Ham Aff. at para. 55.

⁷ DataGate is an application-to-application electronic interface that provides competing carriers with pre-ordering functionality for resale services and UNEs. SWBT designed DataGate to be used by competing LECs that have their own software programs or applications. It allows competing LECs to connect their mechanized OSS directly to SWBT's systems, thereby minimizing the need for manual entry of data. SWBT Ham Aff. at para. 60. SWBT states that the competing LECs can integrate DataGate with SWBT's EDI Gateway to provide an integrated pre-ordering and ordering system. *Id.* For a discussion of the integratability of these interfaces, *see* discussion *infra* at Section V.B.1.

⁸ Verigate is a graphical user interface (GUI) operating on Windows.™ Verigate provides competitive LECs access to pre-ordering functions available from SWBT's "back office" systems (those systems not directly accessed by service SWBT's or competitive LEC representatives, but are accessed only through the systems used by those representatives). SWBT Ham Aff. at para. 57. SWBT states that Verigate was designed for competing carriers that want to use the EDI or LEX ordering interfaces, but do not want to develop their own software programs required for use of DataGate or EDI/CORBA.

⁹ Like DataGate, SWBT's EDI/CORBA is an application-to-application interface that supports both resale services and UNEs.⁹ According to SWBT, EDI/CORBA for pre-ordering can be integrated with SWBT's EDI Ordering Gateway. SWBT Application at 82l. *See* SWBT Texas Model Interconnection Agreement Attach. 2 § 2, Attach 7 §§ 2,4; SWBT Ham Aff. at paras. 51-70.

¹⁰ SORD is the same electronic interface that SWBT's retail service representatives use to create, edit distribute, and control requests for changes to customer's services and account records. SORD enables competing carriers to (continued....)

(LEX);¹¹ or SWBT's EDI Gateway.¹² SWBT reports that, as of the filing date of this application, seven carriers were using EDI for ordering and another 15 have tentatively scheduled production in the first quarter of 2000.¹³ For those competing LECs that do not choose to utilize an electronic interface for ordering, SWBT also accepts service requests by facsimile, courier, U.S. Mail, or telephone. Such manually-submitted LSRs would be processed by a SWBT Local Service Center (LSC) service representative.¹⁴

5. Before an actual service order is created in SWBT's systems, the LSR submitted by a competing carrier through LEX or EDI must pass a set of edits that check for valid data entries and formats, as well as for agreement between various data fields.¹⁵ An LSR requesting unbundled network elements enters through SWBT's EDI Gateway to Local Access Service Request (LASR), which edits the LSR for the validity of data and conditions.¹⁶ If the LSR fails the LASR edits, LASR electronically returns an error message to the competing LEC via LEX or the EDI Gateway, and the competing LEC must correct the error and resubmit the LSR.¹⁷ Once a

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perform all ordering functions for resold services and unbundled network elements. SWBT Ham Aff. at paras. 85-88. These functions include certain complex ordering functions for those resold services and unbundled network elements that EASE, EDI, and LEX cannot handle. *Id.* SORD, however, is a more complex system because it is not English language-based. *Id.* at para. 87.

¹¹ LEX is a graphical user interface (GUI) that is based upon national Ordering and Billing Forum (OBF)/LSR guidelines. It allows competing LECs to electronically submit requests to SWBT for both local resale service and UNEs. LEX supports UNE combinations LEX also enables competitive LECs to receive acknowledgments and notification of error details from SWBT, and to track the status of their orders. *See* SWBT Ham Aff. at paras. 74-99. SWBT provides a list of ordering/provisioning functions and the capabilities available in each system. *Id.* at para. 75.

¹² SWBT's EDI Gateway provides an electronic interface that conform to the Ordering and Billing Forum/Telecommunications Interface Forum (OBF/TCIF) national guidelines. It supports the ordering and provisioning of both resale and UNEs and can be integrated with either DataGate or EDI/CORBA to provide an integrated preordering and ordering system. Both EDI and LEX support the same types of orders for resale services and UNEs. For resale services, LEX and EDI enables the competitive LECs to perform conversions, new connects, changes of service, disconnects, and suspend order requests. For unbundled network elements, LEX and SWBT's EDI Gateway allows competing carriers to submit conversions, new connects, changes of service, disconnects, outside moves, and record changes orders for unbundled local loops, interim number portability, number portability and switch ports. SWBT Ham. Aff. at paras. 90, 96. SWBT states that additional electronic interfaces are available to order local interconnection trunks, unbundled dedicated transport, and to check the status of service orders. SWBT Ham Aff. at para. 74.

¹³ *See* SWBT Ham Aff. at para. 98.

¹⁴ SWBT Ham Aff. at para. 74. SWBT provides a list of ordering/provisioning functions and the capabilities available in each system. *Id.* at para 75.

¹⁵ SWBT Conway Aff. at para. 48.

¹⁶ SWBT Ham. Aff. at paras. 138, 166-167. SWBT Conway Aff. at para. 48. LASR edits are based on LSR field entries as required by OBF and SWBT's internal business rules. SWBT Ham Aff. at para. 138.

¹⁷ SWBT Ham Aff. at para. 138. If the LSR contains a "Super Fatal" error such as a missing "Company Code" or "Purchase Order Number," the competing LEC is required to send a new request with corrections. *Id.* If the LSR (continued....)

service request passes the LASR edits, LASR sends the LSR to FOLDERS,¹⁸ SLR/Decision Support System (DSS),¹⁹ and to the “Mechanized Order Generator” (MOG) if the order is MOG-eligible.

6. An LSR is MOG-eligible if SWBT’s systems are supposed to generate a service order automatically, without manual intervention.²⁰ Upon receiving a MOG-eligible order, MOG performs another series of edits and attempts to create a service order.²¹ If MOG cannot create a mechanical service order because of a fatal error, the LASR electronically returns an error message to the requesting LEC.²² As with a LASR fatal error, the requesting LEC must correct the error and resend the LSR. If MOG cannot create a service order because of a non-fatal error, LASR sends the LSR to the MOG error report in FOLDERS and LSR/DSS, and the LSR falls out for manual processing by an LSC service representative for creation of a manually-generated reject notice.²³

7. If the LSR fails LASR or MOG fatal edits, SWBT returns a reject notification on LSRs submitted via LEX or EDI. When an LSR falls out because of a SORD error or non-fatal MOG error, a SWBT local service representative manually inputs a reject notification into LASR GUI to produce an electronic notification via LEX or EDI.²⁴ SWBT sends jeopardy notices to the

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contains a “Fatal Error” the competing LEC can correct the error via a supplemental request. *Id.* An LSR containing errors is sent back to the competitive LEC across the same mechanism it was received. MASTER TEST PLAN at § 2.2.2.3.

¹⁸ FOLDERS stores the LSR and displays a MOG indicator if the LSR was also sent to the MOG. FOLDERS is used by LSC service representatives to view LSRs and reports generated during the processing of competing carriers’ requests. SWBT Ham. Aff. at para. 168.

¹⁹ LSR/DSS is a workload distribution tool utilized by the LSC for handling manual processes. SWBT Ham. Aff. at para. 169.

²⁰ SWBT Ham Aff. at para. 169. *See* SWBT Ham Aff., Attachment X-1 for a list of MOG-eligible service.

²¹ SWBT Ham Aff. at para. 140. SWBT states that for LSRs that cannot be mechanically generated, competing carriers can use SORD, the same system that the LSC service representatives would use on behalf of the competitor to manually create those orders that are not currently MOG-eligible. SWBT Ham Aff. at para. 143.

²² SWBT Ham. Aff. at para 170. A list of MOG fatal errors are listed in the LSOR.

²³ SWBT Conway Aff. at para. 48. SWBT Ham Aff. at para. 170. If the non-fatal error was caused by the competing LEC, the LSC service representative manually inputs a reject notification via the LASR GUI. If the non-fatal error was caused by SWBT’s internal processes that do not impact competing LEC entries on the LSR, the LSC service representative will create the service order in EASE (if resale) or in SORD. SWBT Ham Aff. at para. 170.

²⁴ SWBT Ham Aff. at para. 148. SWBT states that it developed a graphical user interface to allow LSC to electronically return manual rejects as an interim measure until it can move LSR resolvable error detection capability to LASR. *Id.*

requesting carrier in the same manner.²⁵

8. If the LSR passes all LASR and MOG edits, MOG creates a service order which is sent to Service Order Retrieval and Distribution (SORD) for processing.²⁶ SORD performs additional edits which may also cause an order to drop out for manual processing.²⁷ Once an order successfully flows through SORD, SORD distributes the orders to the appropriate back-office system.²⁸ Once an order reaches SWBT's back office systems, it is mixed in and processed along with SWBT retail orders.²⁹ When all orders for a request are created and distributed through SORD, SWBT returns a Firm Order Confirmation (FOC) to the competing LEC.³⁰

9. The FOC contains critical information such as the assigned telephone number and the date on which the service will be installed. If SWBT is unable to fulfill the order by the date confirmed on the FOC, it will send either an electronic or manual jeopardy notice to the competing carrier.³¹ Electronic jeopardy notification via LEX or EDI is limited to jeopardy situations relating to "no facilities available."³² In all other jeopardy situations, SWBT will manually input the jeopardy code into LASR GUI, which then sends an electronic notification to the competing carrier via LEX or EDI.³³ A manual jeopardy notice is sent for reasons such as

²⁵ *Id.* at para. 152.

²⁶ Master Test Plan at § 2.2.2.4 SORD provides the service order distribution and assignment processing and associated information. SORD also provides the FOC and SOC notification to the competing carrier via LASR or EDI or LEX, whichever mechanism in which it was received. *Id.* at § 2.2.2.6

²⁷ When a SORD error prevents SORD from distributing the order, the LSC representative electronically sends a reject notification to the requesting carrier. SWBT Ham Aff. at para. 147.

²⁸ SWBT Ham Aff. at 140-142. SORD has a separate editing process for service orders. Those edits that are translated and programmed in LASR and MOG as fatal edits can also be programmed by the competing carrier into its own side of the EDI Gateway.

²⁹ SWBT Ham Aff. at para 121.

³⁰ SWBT Ham Aff. at paras. 141, 144, 154. A typical LSR creates multiple orders. For example, the process to convert a retail/resale end user to UNE-P requires the creation of three separate orders from the LSR: The "D" order is issued to disconnect the CRIS billing for either the SWBT end user or the competitive LEC resale customer; the "C" order is issued to provision the UNE element(s) as the competing carrier specifies on the LSR; and establishes CABS billing for the UNE element. A CRIS "N" order is issued to keep Directory Listings and E911 in sync and to migrate those listings to competing LECs.³⁰ All firm order confirmation (FOC) criteria must be met before a FOC is returned to the competing carrier. This would include matches on the following fields: the LSR number, telephone numbers, circuit IDs, or ported numbers. *Id.*

³¹ Conway Aff. at para. 42; Ham Aff. at para. 151.

³² Ham. Aff. at para. 151; *see also* Southwestern Bell Accessible Letter—Jeopardy Notification Mapping Update, No. CLESS00=035 (dated Mar. 12, 1999) (SWBT Mar. 12, 1999 Accessible Letter). SWBT implemented this electronic jeopardy notification process in May 1999.

³³ SWBT implemented this manual jeopardy notification process on January 15, 2000. Prior to this time, if a jeopardy condition occurred after a FOC had been sent back to the competing LEC, SWBT would send a post-FOC reject to the competing carrier via LASR GUI.

additional information is needed with respect to the service address or a SWBT technician attempting to install the service cannot obtain access to the premises (i.e., no access).³⁴

10. After an order is successfully entered into SORD, SWBT begins the process of provisioning the order, or activating the requested service or feature, which may involve assigning facilities, updating translations in a switch, and dispatching technicians. An order flows from SORD to the Service Order Analysis and Control (SOAC) system which controls the progress of service orders through the provisioning process by distributing the service order to other necessary provisioning systems and updating SORD. From the SOAC, most orders flow automatically through the assignment systems, including the Loop Facility Assignment and Control System (LFACS), where the appropriate facilities are assigned or reserved for the order. Technicians at the central office receive the order and perform any wiring work associated with the order. Orders that require work performed outside are sent via Trunk Integrated Record Keeping System (TIRKS) to the Work Force Administration (WFA) systems for dispatch of a field technician. Once the work for the service order is physically completed, a Service Order Completion (SOC) notification is sent to the competing carrier.³⁵

11. A competing carrier can monitor the status of an order using SWBT's Provisioning Order Status (POS), which provides a read-only view of the current provisioning status for pending service orders.³⁶ In addition, SWBT's Order Status, a graphical user interface application available to competing carriers from the SWBT's Toolbar.³⁷ Order Status displays the status of orders relative to the SORD distribution process and enables competing carriers to check the status of service orders, view a service order, verify that a service order has been completed, or verify that a pending service order has been posted.³⁸ The Order remains in

³⁴ Ham Aff. at paras. 151-152; Southwestern Bell Accessible Letter—Final Requirements Exception Request for January 15, 2000 Release at 1 & Attach. 2 (dated Dec. 20, 1999) (SWBT Dec. 20, 1999 (Accessible Letter); *see also* Southwestern Bell Accessible Letter—Final Requirements for June 26th Release (dated Mar. 31, 1999) (SWBT Mar. 31, 1999 Accessible Letter). Other manual jeopardy codes include: (1) verify address or provide nearby TN; (2) account already converted—send cancel; (3) invalid CFA; (4) invalid feature detail; (5) invalid TN; (6) invalid due date; (7) duplicate LSR; (8) account not eligible for conversion; (9) invalid feature; (10) EU name and TN do not match; (11) provide driving instructions; (12) duplicate circuit ID; (13) busy cable ID and channel pair.

³⁵ SWBT Ham Aff. at para. 159. The completion phase is accomplished mechanically by SORD when all orders for a request are completed and the SOC criteria are met, including matches for LSR number, telephone numbers, circuit IDs, or ported numbers. *Id.*

³⁶ SWBT Ham Aff. at para. 122. POS is a graphical user interface application that is launched from SWBT's toolbar. *Id.* POS displays the status of an order as it relates to the provisioning/dispatching process. *Id.* at para. 123.

³⁷ SWBT Ham Aff. at para. 122. SWBT provides competing carriers access to its OSS systems through its Toolbar that serves as a single launching point for access to multiple application using a single standard User ID and password. *Id.* at para 47. The Toolbar provides for automated software updates over the user's network connection. *Id.*

³⁸ SWBT Ham Aff. at para. 115.

Originating (O) status until the date the order is physically completed.³⁹ Once the work is physically completed, the order is sent over SORD distribution, which puts the order into Completion (C) status.⁴⁰

12. SWBT sends a Service Order Completion notice (“SOC”) when SWBT has completed the provisioning work associated with an order.⁴¹ The SOC is sent to the carrier over the EDI interface if the order was submitted via EDI, and over the LEX interface if the order was submitted via LEX. Carriers using EASE for ordering resale services do not receive order completion notices. While the SOC represents notification that *provisioning* has been completed, it is not a notice that the billing systems, or the maintenance and repair systems, have actually been updated. Indeed, the SOC actually is issued *before* the order is posted to SWBT’s billing systems, and *before* the maintenance and repair systems are updated to allow the competing LEC full access.

13. UNE-P Three-Order Process. As explained above, at a certain point in the ordering process, SWBT transforms a competing carrier’s order (either automatically or manually) into one or more “service orders” which perform different functions in SWBT’s downstream provisioning and billing systems. For most resale services and unbundled network elements (*e.g.*, an order for a new loop), a single service order is created. SWBT uses a three-order process, however, for UNE-P migrations: a “D” order, to disconnect and remove the customer from the retail billing systems; a “C” order, to initiate service and add the customer to a different billing system; and an “N” order, to migrate the directory and E911 listings to the competing LEC.⁴² The provisioning function for UNE-P migration orders is performed by the “D” and “C” orders. SWBT explains that, for its UNE-P provisioning process to perform as designed, these two orders must proceed in tandem. A “related order” field on each of these orders is used to keep these orders together. This field is populated automatically on service orders created mechanically but, for service orders that are typed manually by SWBT personnel (*i.e.*, that do not flow through), SWBT personnel must remember to type this field manually.

14. SWBT explains that orders nonetheless become disassociated under two circumstances. First, SWBT may simply fail to populate the “related order” field on service orders that are typed manually, causing the “D” and “C” orders to be processed as stand-alone orders.⁴³ Because the vast majority of UNE-P orders “flow through” SWBT’s systems without

³⁹ SWBT Ham Aff. at para. 144.

⁴⁰ SWBT Ham Aff. at para. 145.

⁴¹ See SWBT Ham Aff. at paras. 145 and 159 (the SOC is sent “once the work for the service order is physically completed”).

⁴² See SWBT Ham Decl. at para. 197; see also SWBT Ham Reply Aff. at para. 73 (the “D” order “will disconnect the old service.”).

⁴³ SWBT identified this as the cause for 8 end users losing dial tone while being converted to AT&T UNE-P service in August and September 1999. See SWBT Ham Reply Aff. at para. 71 (for these UNE-P orders, “the [related field identifiers] were not properly placed on the service order by SWBT’s Local Service Center . . . representatives after the orders fell out for manual handling.”).

such manual handling,⁴⁴ however, we note that few orders run the risk of this mistake. Second, SWBT's system is designed to *override* the related order field (and thus to disassociate the orders) if the address on the "C" order is not identical to the address on the "D" order.⁴⁵ The address on the "C" order is the address provided by the carrier and has passed through edits to ensure that it is consistent with the PREMIS address database. The address on the "D" order is taken from the CRIS address database.

15. There appear to be two different reasons why the "C" and "D" orders would contain different addresses – neither of which would be detected until the provisioning stage. First, the discrepancy may stem from a mismatch between the addresses contained in the PREMIS database and the CRIS database. Competing LECs explain that, for certain orders, they have found that the address verified by the PREMIS database is not consistent with the address contained in CRIS.⁴⁶ SWBT does not dispute that mismatches exist between its PREMIS and CRIS databases.⁴⁷ That SWBT's internal databases contain inconsistencies is not fatal to its application: we note that database inconsistencies may affect SWBT's retail operations as well. It is the fact that these inconsistencies result in rejections, delays and service outages, however, that causes us concern.

16. A second reason for an address mismatch between "D" and "C" orders is that a carrier may enter the wrong address on its order (*e.g.*, 4 Elm Street, rather than 44 Elm Street). This type of mistake will not be detected until the provisioning stage because the mechanized PREMIS edits only check the address listed on the order, and do not verify that the address matches the customer's name and telephone number.⁴⁸ While this mistake necessarily would derive from a competing LEC's typographical error, we believe that the failure of SWBT's OSS edits to detect such a mistake places a heavy burden on competing LECs to "pre-edit" their orders to ensure that they are accurate. Indeed, we note that this type of name/address mismatch would not be likely to occur on SWBT's retail side. The system used by SWBT for the bulk of its retail orders, EASE, contains detailed up-front address edits that would detect these name/address mismatches. We thus disagree with SWBT that competing carriers are to blame for these order

⁴⁴ SWBT reports that over 95% of UNE-P orders submitted electronically via EDI "flow through" its ordering systems without manual handling. *See* [discussion in Ordering section].

⁴⁵ *See* SWBT Ham Reply Decl. at para. 73 (point 7, bullet 3); *see also* SWBT Ham Decl. at para. 198 ("If the end user address on the LSR [which is placed on the "C" order] does not match the address on the existing records in the CRIS database, the orders become disassociated.")

⁴⁶ For example, AT&T notes that the two databases may simply have addresses that are formatted differently (*e.g.*, PREMIS lists a street name as "Jackson-Keller Road" and CRIS lists the street without the hyphen as "Jackson Keller Road").

⁴⁷ *See* Ham Reply Decl. at para. 73 ("If the service address provided by the competing LEC on the LSR is a valid address [*i.e.*, is consistent with the PREMIS database], but is different from the service address contained on the SWBT CSR for the end-user [*i.e.*, the address obtained from the CRIS database], the C and D orders will have different addresses.")

⁴⁸ *See* WorldCom McMillon/Sivori/Lichtenberg Reply Decl. at para. 26.

disassociations and resultant service outages.

17. Maintenance and Repair. SWBT provides competing carriers with several options for requesting maintenance and reporting trouble for resold local services and unbundled network elements. If a competing carrier's customer experiences service disruptions, the carrier can call the LOC where a customer service representative enters a trouble report into SWBT's Enhanced Customer Report System (ECRS), which interfaces with SWBT's back-office systems involved in maintenance and repair.⁴⁹ The customer service representative then performs a mechanized line test (MLT) and provides the results to the competing LEC, along with a due date for service repair.⁵⁰

18. A competing carrier can also create and monitor trouble tickets, access trouble history for a line, and request/initiate a test of the customer's circuit by submitting electronic inquiries through SWBT's proprietary graphic user interface, Toolbar Trouble Administration (TBTA),⁵¹ or through SWBT's Electronic Bonding Trouble Administration Interface (EBTA), an application-to-application interface.⁵² The TBTA electronic interface offers the competing carrier the same capabilities as SWBT's retail ECRS, the system SWBT retail representatives utilize for maintenance and repair activity. TBTA provides competing carriers with the ability to issue trouble reports, request and receive MLTs for POTS services and POTS-like UNE combinations without initiating a trouble report,⁵³ check status on an opened trouble report, obtain trouble histories, view a list of open trouble reports, and view a list of closed trouble reports within the last 120 days.⁵⁴ Using the TBTA, a competing carrier can issue a trouble report without manual intervention.⁵⁵ EBTA offers the same capabilities as ECRS and TBTA, with the exception of

⁴⁹ SWBT Conway Aff. at para. 69.

⁵⁰ SWBT Conway Aff. at para. 69.

⁵¹ TBTA is a GUI used by SWBT's retail business customers and IXCs for maintenance and repair administration that offers competing carriers access to SWBT's back office systems. SWBT Ham Aff. at paras. 218-220.

⁵² EBTA is an application-to-application interface that the competing carrier can integrate into its own back office systems. SWBT Ham Aff. at para 218. SWBT states that due to the complexity and the information technology resource requirements of developing an EBTA, larger competitors are the most likely candidates to utilize the SWBT EBTA. SWBT Ham Aff. at para. 229.

⁵³ SWBT states that the MLT capability is not available for other forms of unbundled network elements combinations because MLT is capable of testing only POTS and POTS-like combinations. SWBT Ham Aff. at para. 220.

⁵⁴ SWBT Ham Aff. at para. 219-220. A user of Trouble Administration can test or report trouble on a line on the same day that the order posts to the Customer Access Billing System (CABS). If a service order has been created but errors out prior to posting to CABS a competing carrier attempting to test the line using TBTA will receive an "Unauthorized to Access" error message. In this situation, the "CLEC Handbook" instructs the carriers to manually report trouble to the LOC. *Id.* at paras. 223-225.

⁵⁵ SWBT Ham Aff. at para. 222.

checking trouble history and viewing the lists of open and closed trouble reports.⁵⁶ Both of these electronic interfaces flow into SWBT's back end systems.⁵⁷

19. Billing. In order for competing carriers to bill their customers, SWBT provides carriers with usage billing information and a process for adjusting or correcting invalid or incorrect data.⁵⁸ SWBT provides competing carriers with a choice of five options for obtaining

⁵⁶ *Id.* at para. 219. Currently, EBTA is used by AT&T, WorldCom, and Sprint for interexchange access service and by WorldCom and Sprint for local service. SWBT Texas I Ham Aff. at para. 230.

⁵⁷ *Id.* Thus, when a competing carrier issues a trouble report or requests the current status of an existing report, the trouble ticket or status request will be sent to SWBT's back office system with no manual intervention by SWBT. SWBT Ham Aff. at paras. 222, 229.

⁵⁸ *See* SWBT Ham Aff. at para. 234.

electronic access to billing information: Bill Plus™;⁵⁹ EDI for billing;⁶⁰ Carrier Access Billing System (CABS); Bill Data Tape (BDT) for UNES;⁶¹ Bill Information;⁶² and Usage Extract feed.⁶³ These interfaces can be used to view SWBT's bill to competitive LECs and specific information available from these interfaces can also be used by a competing carrier to bill its end user

⁵⁹ Bill Plus™ is an electronic telephone bill that provides a competing carrier with the same information contained on its paper bill. Bill Plus's™ various reporting options allow carriers with the capability to analyze its billing data. In addition, a carrier can extract the billing data to their internal systems. *See* SWBT Ham Aff. at para. 236.

⁶⁰ EDI for billing is an interface that enables competing carriers to receive their resale services billing data in an industry standard electronic format. The billing data consists of the same information that appears on the competing carrier's paper bill for resale service. SWBT Ham Aff. at para. 238.

⁶¹ Bill Data Tape provides to competing carriers, in an electronic format from SWBT's CABs database, the same information that would appear on the competing carrier's paper bill for unbundled net work elements. The data is offered electronically via direct connection, on tape, on floppy disks, or on microfiche. SWBT Ham Aff. at para. 242.

⁶² Bill Information is a graphical user interface available from SWBT's Toolbar platform that allows competing carriers to view billing data and other information regarding a competing carrier's resale services or unbundled network elements. SWBT Ham Aff. at para 243.

⁶³ Usage Extract is a process by which a competing carrier can receive its usage sensitive messages on a daily basis for resale services or unbundled network elements.

customers.⁶⁴ In addition, SWBT makes available to competing carriers that are reselling SWBT products or services, its Customer Record Information System (CRIS), the system SWBT uses to bill its own retail products to residential and business customers and create bills for competitive LECs.⁶⁵ Competing carriers can also utilize CRIS to bill a few UNE-related services such as Interim Number Portability and operator-handled calls.

⁶⁴ SWBT Ham Aff. at para 234.

⁶⁵ See Aff. of John A. Locus, App. A-4, Tab 4.

**CONCURRING STATEMENT OF COMMISSIONER HAROLD W.
FURCHTGOTT-ROTH**

*In the Matter of 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 Texas, CC Docket No. 00-65*

I concur in the decision to grant this application by Southwestern Bell Telephone Company (SWBT) to provide in-region, inter-LATA services in the State of Texas. I write separately, however, in order to apply my understanding of the statute.

Application of Sections 251, 252, and 271

As I explained in the decision on Bell Atlantic's application to offer long distance service in New York, the relationship between the regulatory approval process under section 271 and the procedures regarding private interconnection agreements established by sections 251 and 252 is a critical one. Unfortunately, the Commission has not paid close attention to this relationship, and its failure to do so has caused the section 271 review process to morph into something quite different from the original statutory plan. The process has turned into a general federal regulatory scheme, instead of tracking the contract-based, State-centric model of sections 251, 252, and 271. *See generally* Concurring Statement of Commissioner Harold W. Furchtgott-Roth, *In the Matter of 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 (rel. Dec. 22, 1999) ("*New York Statement*").

I will briefly reiterate those points that pertain to my analysis here. *First*, the text of section 271 makes clear that the relevant universe of BOC conduct to be tested in a "Track A" application is not its commercial performance generally, as the Order supposes, but its fulfillment of specific interconnection agreements:

With respect to a BOC that "is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)," as here, it is "*such* access and interconnection [that must] meet[] the requirements of" the competitive checklist. *Id.* section 271(c)(2)(A) (emphasis added). Similarly, the statute defines the Commission's administrative task under Track A as determining whether the petitioning BOC "with respect to access and interconnection provided pursuant to subsection c(1)(A) has fully implemented the checklist." *Id.* section 271(d)(3)(A)(i).

New York Statement at para. 6.

Second, in analyzing the RBOC's fulfillment of the checklist under its approved interconnection agreements, one should consider the existence of complaints to enforce those

agreements filed by interconnecting parties with the State Commission. If CLECs are receiving seriously inadequate service under those agreements, one would expect to see them invoke the rights and remedies guaranteed to them by sections 251 and 252, including the right to arbitration and federal court review. Accordingly, it has seemed to me that

the most probative evidence of compliance with the checklist – perhaps even *prima facie* proof -- is the absence of disputes arising under section 252 contracts. Conversely, the best evidence of noncompliance is the presence of such disputes. Record documentation of these disputes, such as complaints filed with State Commissions pursuant to section 252, would only strengthen that showing.

Id. at para. 23.

In sum, the best case for noncompliance with section 271 under Track A is to be made by parties: (1) with approved interconnection agreements described in section 271(c)(1)(A); (2) who legitimately allege that the RBOC is not providing them service pursuant to the actual terms and conditions of those agreements; and (3) who have pursued those alleged violations with State Commissions pursuant to section 252.

On this record, we have evidence that approaches, but does not meet, this standard. Covad Communications, which opposes the instant application, receives interconnection and access from SWBT pursuant to a final, “Track A” interconnection agreement that was arbitrated and approved under section 252. And that agreement appears to provide for the non-discriminatory provisioning of x-DSL capable loops to Covad. *See Ex Parte Submission of Covad Communications (June 27, 2000) (attaching interconnection agreement on DSL)*. So far, so good.

That interconnection agreement, however, was not finalized and operative until February of this year. Although Covad points to findings by Texas arbitrators related to discriminatory provisioning of loops by SWBT, those findings were *not* made in the context of a controversy arising under a section 252 contract – that is, in a dispute over the adequacy of SWBT’s service under the terms of an existing interconnection agreement. Rather, they were made in the context of a petition for arbitration to establish an interconnection agreement and terms thereunder with SWBT.¹ Covad never alleged a breach of performance under a Track A agreement, at the State Commission or anywhere else, and the arbitrators’ findings do not go to SWBT’s actual performance of an agreement but to the proper drafting of a future agreement. Such findings, then, are not probative of a failure to provide access and interconnection pursuant to a Track A agreement.

¹ Indeed, the arbitration award relied upon so heavily by Covad as evidence of actual discrimination in violation of section 251 and 271 is captioned “Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company and Petition of Dieca Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company.”

AT&T, which also takes service from SWBT under an approved interconnection agreement, also opposes the grant of this application. It argues in this proceeding that SWBT is, in various ways, violating the terms and conditions of its interconnection agreement. *See Ex Parte Submission of AT&T* (June 23, 2000). For example, AT&T says that SWBT is discriminating against it in the provision of unbundled, DSL-capable loops obtained as part of the UNE-platform, and that this conduct violates the non-discrimination and other provisions of their agreement and section 251. *See id.* at page 2 (citing section 55.1 of agreement, providing that “[a]t the request of AT&T and pursuant to the requirements of the Act, SWBT will offer . . . Network Elements to AT&T on an unbundled basis on rates, terms, and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory”). Thus, AT&T well demonstrated that the conduct that it alleges as a problem under section 271 is conduct to which its interconnection agreement directly speaks. Again, so far so good.

What AT&T has not done, however, is adduce evidence that it has sought enforcement of its contractual right to nondiscrimination with the State Commission. Like Covad, it has participated in hearings regarding the content of new, not-yet-entered-into interconnection agreements. *See AT&T Ex Parte Submission* (June 27, 2000). But the record does not reflect that AT&T has ever asserted that SWBT’s provision of access and interconnection under an operative agreement was in breach. As with respect to Covad, there is no showing here that AT&T has ever attempted to enforce its contractual rights.

As noted above, CLEC action to enforce an alleged breach of an interconnection agreement is evidence of significantly inadequate provisioning of access and interconnection under section 252 contracts, which, as I read section 271, is the relevant universe of access and interconnection. Accordingly, while both Covad and AT&T make legitimate points here, I still “view with skepticism assertions of inadequate BOC performance lodged for the first time in the section 271 approval process.” Concurring Statement, *New York Order*. That is what we have with respect to both Covad and AT&T, and I thus find no record evidence of failure by SWBT to perform as required under the terms of section 252 contracts.

SBC/Ameritech Merger Conditions

As I stated at the time of the Commission’s approval of SBC and Ameritech’s application to transfer licenses and authorizations under sections 309 and 214 of the Communications Act, I believe that some of the conditions applied to the license transfer conflict with specific sections of the Act. In particular, I believe that

of especial legal concern are those related to carrier-to-carrier promotions. These conditions limit the number of services and facilities that may be offered to competitive local exchange carriers (CLECs) on a promotional basis. Once the caps are reached, some CLECs will be unable to obtain the same promotional deals as other CLECs. Quite simply, carrier-to-carrier promotions will not be available on an equal basis to all requesting carriers. In this way, then, the conditions violate the "nondiscriminatory access"

requirement of section 251(c)(3), as well as the resale non-discrimination requirement of 251(c)(4)(B).

Moreover, the caps directly conflict with the "pick-and-choose" provision of section 252. Section 252(i) requires incumbent LECs to "make available [to a CLEC] any . . . service, or network element" provided to any other CLEC "upon the same terms and conditions," regardless of the level of offering to others. For the reasons given above, the guarantee of that section will be unfulfilled as a result of the caps.

Apart from the caps themselves, the underlying discounts on loop rates also offend sections 252(i) and 251(c)(3). These discounts discriminate among CLECs -- in terms of prices and offerings -- by creating a situation in which a CLEC that uses an ILEC's unbundled switch gets one rate for the loop, but a CLEC that uses its own switch gets a discount on the very same loop.

Separate Statement of Commissioner Harold W. Furchtgott-Roth, Concurring in Part and Dissenting in Part, *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 98-141 (rel. Oct. 8, 1999).

I personally solicited further comment on the effect of these merger conditions on SWBT's section 271 application. *See* Separate Statement of Commissioner Harold W. Furchtgott-Roth, *In the Matter of 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 Texas*, CC Docket No. 00-4 (rel. April 6, 2000).

Some parties addressed this issue. *See* Comments of AT&T at 62-64. As I review the record, no party submitted information revelatory of the actual effects of the loop discounts required in the Commission's merger Order. Specifically, the record is ambiguous as to whether the cap has been reached or not; and if the cap has not been reached, then price discrimination is, at this point in time, just a theoretical possibility. If, in future long distance applications, a party can show that the cap has been reached and differential prices are actually being charged, this issue would be live and I would be most willing to pursue it further. At this point, however, the record does not support it.

* * *

Because I believe that SBWT is providing access and interconnection pursuant to Track A agreements as required by those contracts, which in turn incorporate rights available to CLECs under sections 251 and 252, I concur in the grant of its application to offer long distance service in Texas.