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PROJECT NO. 16251

INVESTIGATION OF SOUTHWESTERN BELL TELEPHONE COMPANY'S ENTRY INTO THE TEXAS INTERLATA TELECOMMUNICATIONS MARKET  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
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FILING CLERK'S OFFICE

# Final Staff Status Report on Collaborative Process

/ NOVEMBER 18, 1998

**Commission Recommendation No. 2:**

The physical collocation tariff should be amended to be made available to any CLEC that wants to physically collocate in SWBT's facilities. A CLEC should be allowed to use the tariff without going through the MFN process in Section 252(i) of FTA96.

**SWBT's Proposal:**

SWBT has filed in the arbitration dockets an amended physical collocation tariff that makes that tariff generally available to all CLECs. By filing that tariff, SWBT has subjected those amendments to the approval authority of the Commission.

**Supplemental Information:**

*SWBT advised that only one office in Texas does not currently have space for CLEC physical collocation (Farmers Branch - Dallas) and that it expects to make physical collocation space available in this office during 1999.*

*SWBT filed a letter on November 13, 1998, in response to Staff's request for the underlying data on the percentage of collocations that have been completed in a timely manner by SWBT. In the letter SWBT stated that, as of September 30, 1998, 18 CLEC customers have been provided with a total of 166 operational collocation spaces in 70 wire centers in Texas. 60 more cages are either under construction or have been recently completed during the 4th quarter of 1998. SWBT stated that it had successfully completed the construction of 94 cages between March and September 30, 1998, with each one being delivered on or before the construction interval agreed upon by SWBT and the CLEC. The average build-out interval for this period is 63 days.*

**CLECs' Comments:**

CLECs asked some general questions relating to transitioning from the terms of a CLEC's existing agreement to the tariff terms. In response, SWBT stated that a CLEC can transition to the new tariff. The rates would be those that the collocation was created under; however, any alterations can be governed by the intervals in the tariff.

**Supplemental Information:**

*AT&T and TCG expressed concerns regarding implementation of SWBT's tariff and whether uniform procedures and practices are well established within SWBT. WinStar and e.spire expressed concerns regarding intervals (implementation, repair and maintenance) for physical collocation as well as virtual collocation. TCG raised two implementation concerns regarding the Physical Collocation Tariff. First, that the technical publication and tariff appear to be in conflict, and second, that processes, particularly timeframes, reflected in the tariff are not being met. However, TCG indicated SWBT had made a commitment to make the tariff and technical manuals compliant and to work with them on improved processes. The CLEC Coalition expressed its concern regarding SWBT's prohibition of collocation equipment which provides switching or enhanced services functions, and believes any equipment which is state-of-the-art and meets the established criteria for collocation, provision of access to UNEs and access service, should be allowed.*

*Nextlink and the CLEC Coalition expressed concerns about the transition of equipment from virtual collocation to physical collocation. Nextlink does not want to move equipment which it has established at SWBT offices to a new caged or segregated location if that is established by SWBT as a result of these proceedings. NextLink did note however that it had been very satisfied with its SWBT Collocation Account representative's "creative" solutions to problems they'd encountered while arranging collocation implementation with SWBT. The CLEC Coalition also requested that a CLEC be able to, at the time space becomes available, convert any existing virtual collocation arrangement into a physical arrangement. Title to the equipment would be transferred back to the CLEC. The issue of which charges and terms in the Physical Collocation Tariff should apply should be resolved. CLECs should not be required to go through the same timeline and to pay nonrecurring charges again for the same functions when converting from virtual to physical collocation arrangements.*

*The CLEC Coalition expressed concern that every page of the Physical Collocation Tariff contains a twelve line statement that the tariff is filed by SWBT "under protest" and SWBT reserves its rights and does not waive its legal arguments regarding the Commission's mega-arbitration ruling. The CLEC Coalition believes the language is inappropriate if SWBT is relying on the tariff to demonstrate compliance with Section 271, and should be removed.*

**Staff Recommendation:**

Met if approved in Docket No. 19000. By filing the amended language and subjecting that language to the Commission's approval authority it appears as if SWBT has taken all the steps it can to meet this recommendation. Moreover, SWBT's clarification that a CLEC's alterations to preexisting collocation arrangements would be governed by the tariff intervals is consistent with the intent behind this recommendation.

**Supplemental Staff Recommendation and Follow-Up:**

*On July 16, 1998, SWBT's proposed physical collocation tariff was approved in compliance with the Commission's arbitration awards and modifications related to the Motion for Clarification submitted by Teleport Communications Group, Inc. (TCG). On September 10, 1998, SWBT filed revisions to comply with the Commission's recommendations in this proceeding (Project No. 16251). On October 2, 1998, the Order Approving SWBT's Modification to Physical Collocation Tariff was issued in Docket No. 19000, approving the tariff with the September 10, 1998, modifications.*

*However, Staff believes that the concerns of Nextlink and the CLEC Coalition relating to the transition of equipment from virtual collocation to physical collocation must be addressed before this recommendation is satisfied. Staff notes that SWBT must resolve the issue of transition of equipment from virtual collocation to physical collocation before this recommendation is met.*

*Staff is also concerned about SWBT's prohibition of collocation equipment which is capable of providing switching or enhanced services functions, and believes any equipment which is state-of-the-art and meets the established criteria for collocation, provision of access to UNEs and access service, should be allowed. Staff notes that SWBT must resolve the issue of types of equipment that can be collocated before this recommendation is met. This issue is addressed further under the Supplemental Commission Recommendation for Item No. 1. Staff is also concerned that the tariff contains "protest" or appeal language by SWBT, which creates unnecessary risk and uncertainty for CLECs who are required to invest in collocation.*

*Finally, Staff notes that the issue regarding timeframes, policies, and methods and procedures for ordering, engineering, procuring, and provisioning of physical and virtual collocation must also be resolved before checklist item one is met. The processes to be addressed include reservation of space, use of third party engineers, SWBT's use of CLEC forecasts in planning out the need for future space for collocation, and SWBT's internal guidelines for review of collocation applications.*

*Staff notes that this item was originally under the Public Interest section, but was moved to the collocation recommendations due to timing of various work sessions.*

*Met if SWBT agrees to and implements the following:*

- 1. SWBT's shall file a plan (methods, procedures, pricing) that is acceptable to the Commission for the handling of equipment already collocated at SWBT offices, i.e., conversion from virtual to physical collocation;*
- 2. Resolution under the Supplemental Commission Recommendation for Item No. 1 of the issue of types of equipment that can be collocated;*
- 3. The following actions, which were discussed and agreed to at the October 29, 1998 work session:*
  - a. By November 16, 1998, CLECs will file a response to SWBT's November 9, 1998 filing on timeframes, policies, and methods and procedures for collocation;*
  - b. SWBT and CLECs shall meet before Thanksgiving to discuss the timeframes, policies, and methods and procedures for ordering, engineering, procuring, and provisioning of physical and virtual collocation and shall file a joint report on the meeting by December 4, 1998;*
- 4. Once the timeframes, policies, and methods and procedures for collocation are agreed upon by SWBT and CLECs, SWBT shall place the information on its website so that it is available to all CLEC customers and notify the Commission of the date when the information will be available on the website; and*
- 5. SWBT's removal of the protest/appeal language in the Physical Collocation Tariff.*

**Supplemental Commission Recommendation for Item No. 1:**

Alternative physical collocation arrangements and an alternative physical collocation tariff shall be addressed during the collaborative process.

**SWBT's Proposal:**

SWBT will voluntarily make a proposal for an alternative physical collocation tariff. The proposal will be made in writing on or about September 21, 1998, and discussed at the October 2, 1998 work session.

**Supplemental Information:**

*As an alternative arrangement, SWBT proposes the establishment of a separate conditioned location within each central office provided with a separate entrance and security as requested by the CLECs (shared space collocation). This separate room would be available for CLECs to use as they see fit including as a cageless environment wherein they may collocate among themselves, and sub-lease facilities.*

*SWBT contends that shared collocation is possible under the existing Physical Collocation Tariff in that CLECs are able to sublease space within their caged environment to other CLECs.*

*SWBT stressed its concern regarding the reliability of its network and its ability to serve its own customers, including the CLECs. SWBT proposes to explore the option of the separate conditioned space for collocators provided there is demand for such a common area and that there are rates which have been worked out in the Physical Collocation Tariff, and in the Virtual Collocation Tariff in Docket No. 19000 for such an arrangement. SWBT is reluctant to initiate such activities until such time as CLEC demand can be ascertained. SWBT offered an example, for discussion purposes, of specific rate applications for the development of a shared separate conditioned CLEC space.*

*SWBT maintains that the "extended link" exists in many of its Texas Interconnection Agreements in as much as multiplexers are provided with transport; however, SWBT regards this as an unbundling issue and not one related to collocation. SWBT notes that the CLEC without a specific provision for such bundling in its interconnection agreement still has the option of combining these elements itself.*

*SWBT states that the Virtual Collocation Tariff in Docket No. 19000 recognizes the option for collocators to obtain their equipment from SWBT through buy-back and that this will allow a smooth transition for the CLEC from virtual to physical collocation and vice versa.*

*SWBT believes the FCC has made it clear that the ILEC is not required to allow collocation of switching equipment or equipment for enhanced services, but states it allows collocation of remote switching modules in Texas and allows voice and non-voice transmission equipment to be collocated.*

*To support its concerns relating to central office security, its ability to provide service and its ability to meet Commission service quality requirements, SWBT presented anecdotal examples of incidents of security infractions by CLEC employees/contractors.*

**CLECs' Comments:**

*CLEC participants propose "cageless collocation," also referred to as "common space collocation," wherein their facilities and SWBT's will occupy the same conditioned space within Central Offices. The participants maintain that the cageless, non-segregated environment works in other venues (e.g., internet facilities, long distance providers, and multiple CLECs) and that SWBT's fears for security in a cageless common collocation environment are unwarranted and may be handled via card entry or log entry by CLEC personnel, as well as certification of technicians. CLECs stated that cageless collocation significantly reduces the cost of collocation, increases its availability, and gives CLECs better control of maintaining, repairing and upgrading their equipment.*

*Westel notes that only "common space collocation" resolves the CLECs' concerns regarding problems with SWBT's interpretation of its physical and virtual collocation tariffs. MCI noted that "cageless" collocation is available in U.S. West territory today and that other states, such as New York are looking into this.*

*CLECs are willing to waive SWBT's liability on performance measures that would be affected by any actions of CLEC technicians in a cageless collocation environment. Nextlink has carriers collocated in its offices and the collocators are located separately from Nextlink in a walled area, except that Nextlink absorbs the cost of the partitioning/separation, and does not require a collocator to pay for the separation. Taylor Communications stated that it offers collocation recurring rates that are similar to those proposed by SWBT, but it does not impose a nonrecurring charge like SWBT.*

**Enhanced Extended Loop (EEL)**

*In addition, CLECs propose bundling of the loop to the transport/multiplexer UNE for the creation of a UNE which would be called the "extended link" (also referred to as the "extended loop," the "enhanced extended loop" and the "expanded extended loop" (EEL)). The extended link option will make it possible for CLECs to avoid the need for multiple collocations -- allowing collocation at one Central Office which then accesses numerous others. Because the Commission has allowed the bundling of the transport and multiplexer, the participants believe the next step is the creation of the bundled extended link. The extended link would eliminate the need for facilities-based CLECs to collocate at every SWBT central office within an exchange, and therefore provides an alternative to collocation.*

*AT&T and TCG note that arrangements under current interconnection agreements which provide for the "extended link" would appear to expire with those contracts terms. AT&T and TCG want to make certain that there will continue to be a rate for CLECs to order unbundled network elements combinations but acknowledged there is legal controversy (pending appeals) related to this.*

**Transition from Virtual to Physical Collocation**

*Further the CLEC Coalition is concerned about the lack of information relating to the transition from virtual collocation to physical collocation. The CLEC Coalition suggested that the Commission ensure that virtually collocated CLECs are able to convert to a physical arrangement on a timely basis without the imposition of non-cost based charges.*

Costs and Security Measures

*Nextlink stated that it was encouraged by SWBT's willingness to accept some form of cageless collocation but believed the CLEC should not be burdened with additional costs for the creation of a separate conditioned space and that the option should be generally available.*

*CompTel stated that the level of security that SWBT insists upon for its offices, which prohibits the "common" space arrangement desired by CLECs, is not consistent with industry standards and should not entail additional costs for the CLECs - the costs should be SWBT's. The CLEC Coalition also stated that CLECs should not be required to pay for this higher level of security which SWBT demands, but which the industry does not. The cost for "partitioning the CLECs" should be viewed as the cost to "isolate SWBT," and, like any other carrier desiring a "caged" environment to secure its equipment, SWBT should be required to bear the cost.*

*Nextlink notes that many of the concerns SWBT expresses regarding the presence of CLEC personnel in its offices already exist in that central offices are subject to cleaning crews and other personnel's presence today. CLECs also noted that SWBT does not require that it supervise collocation on poles, ducts and conduits. e.spire noted that the level of security SWBT is proposing is higher than that required for the White House telecommunications office.*

*Nextlink, e.spire, Intermedia, Sprint, Covad, Westel, AT&T, TEXALTEL, and MCI all agreed, as long as they have input into the criteria, language, and development of the following, that SWBT's security concerns relating to cageless common collocation can be alleviated:*

- 1. If a CLEC employee/contractor technician follows the same rules and standards that SWBT technicians must follow;*
- 2. If a CLEC agrees with SWBT on procedures, etc., relating to what would happen if there are central office security/safety infractions by CLEC technicians, e.g., type of disciplinary action for violation, disciplinary action of CLEC (repeated offenses may result in revocation of CLEC's right to collocate);*
- 3. If there is agreed language in the interconnection agreements with SWBT that the CLEC agrees to indemnify SWBT from any damage the CLEC technician may cause in the central office by a breach of safety/security rules (e.spire requested that similar indemnification be given by SWBT to the CLEC in case a SWBT technician's infraction harms a CLEC).*

SWBT's Policy on Reservation of Space

*The CLEC Coalition expressed concerns relating to the reservation of central office space by SWBT and the potential for abuse. The CLEC Coalition recommended that the Commission ensure SWBT's compliance with the FCC's order on reservation of space by an ILEC.*

*Timeframes and Procedures*

*The CLEC Coalition also suggested that the timeframes and procedures for ordering and provisioning of collocation space be addressed by the Commission, since there is currently a lack of detail and a great deal of uncertainty relating to those issues.*

*Types of Equipment to be Collocated*

*The CLECs also expressed concerns relating to unnecessary restrictions on the type of equipment that competing carriers may collocate in a SWBT central office. For example, the collocation of remote switching modules (RSMs), Digital Subscriber Line Access Multiplexers (DSLAMS), ATMs and routers (which can include packet switching equipment) should be permitted.*

*Effect of Appeals*

*The CLEC Coalition expressed concern that every page of the Physical Collocation Tariff contains a twelve line statement that the tariff is filed by SWBT “under protest” and SWBT reserves its rights and does not waive its legal arguments regarding the Commission’s mega-arbitration ruling. The CLEC Coalition believes the language is inappropriate if SWBT is relying on the tariff to demonstrate compliance with Section 271, and should be removed.*

**Staff Recommendation:**

*Staff concurs with CLECs’ concerns that the requirement to train SWBT technicians under the Virtual Collocation Tariff is problematic and expensive especially when a CLEC plans to provide advanced services using highly specialized equipment. Staff agrees that a CLEC will not have any control over SWBT’s technicians for whom the CLEC would have to provide training at its own expense. SWBT’s proposal of creating a segregated location for the CLEC community is problematic because CLECs are required to pay for the separate area so that SWBT can provide a secure and more reliable service to SWBT’s own end use customers.*

*Staff understands the CLECs’ concerns relating to the availability of SWBT-combined loop and transport UNEs after the expiration of the current interconnection agreements, in addition to the legal uncertainty looming over the combining issue. Staff notes that one of the CLECs’ primary concerns is that the physical collocation of specialized equipment that occupies a limited space in a rack or a bay and the fact that such collocation does not justify paying for an entire 100 square ft. of caged or walled space.*

*Staff believes the Commission has the authority to designate the extended link as a UNE. The Eighth Circuit’s decision in Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523 (8th Cir., 1998) upheld the FCC’s determination that shared transport constitutes a network element. In that decision, the Court stated:*

*the statutory definition of “network element” contained in § 153(29) expressly includes both individual network facilities and the functions which those facilities provide, either individually or in consort.*

*153 F.3d at 543. There is also additional precedent for defining multiple network facilities and functions as a single UNE. For example, the FCC defines the loop UNE as consisting of both the loop cable and the NID, notwithstanding the fact that the NID is defined as a network element. Also, many states,*

*including Texas, define the loop UNE to include the feeder plant, concentration equipment, distribution plant, and the NID facilities and functionalities, even though they also have designated these subloop elements as individual network elements in their own right.*

*When a portion or certain bandwidth or channels of a shared transport or dedicated transport facility is connected from the line side of a CLEC's switch to loop facilities that extend to customer premises via multiplexers, the functionality of that portion of the transport is similar to a feeder that is connected to a distribution segment via remote multiplexing or digital loop carrier facilities. Therefore the extended link can be defined as an element that is made up of feeder from the line side of a CLEC switch, multiplexer, and loop facilities that extend to a subscriber location. The rates for this UNE should be TELRIC-based. Even if the Commission chooses not to designate the extended link as a UNE, Staff believes the loop, multiplexer and transport should be provided in combination with virtual collocation of the cross connect.*

*The current structure of payment and prorated rebate for physical collocation space does not offer a commercially viable alternative for small facilities-based CLECs interested in less than 100 sq. ft. of space. Staff also understands SWBT's concern that the requirement to meet the service quality obligations under this Commission's substantive rules may be at risk if unfettered access is provided to a CLEC. Staff points out that the issue of alternate physical collocation arrangements has risen due to the aforementioned concerns of CLECs and SWBT. In view of the above concerns, Staff proposes the following options.*

**I. Enhanced Extended Loop (EEL) / Extended Link:**

*The Commission shall define the extended link (loop, transport and multiplexer) as a single UNE that SWBT must make available to CLECs. [SWBT agreed under Checklist Item Five Recommendation No. 1 to make available as a single UNE unbundled dedicated transport and the multiplexer.]*

*Applicable recurring and nonrecurring charges shall be based on Commission-approved rates in the mega-arbitration for the subcomponents of the EEL UNE; namely, the loop, transport and multiplexer. For example, if a loop is connected to a DS1 transport, the associated costs include the cost of the loop, cross-connects, the cost of DS1 transport and multiplexer. Cost associated with an additional loop shall be added to the base EEL on an incremental basis until the full bandwidth of the transport facility is utilized. The recurring and nonrecurring charges shall be the sum total of each component of the EEL; the loop component shall be added on an incremental basis until the bandwidth of the transport component of the EEL is exhausted. If a loop component is disconnected from the transport component of the EEL, the disconnect charges shall be the same as that approved for the disconnect of a loop in the mega-arbitration.*

*The extended link UNE should be available on an unrestricted basis and not artificially limited, e.g., available for circuit switched and packet switched services, analog and digital.*

**II. Cageless Collocation -- Common Space Collocation:**

*SWBT should designate a properly conditioned common collocation space that is segregated from the rest of the central office by tape on the floor or other markings, but is not physically closed off from the rest of the central office. CLEC facilities and SWBT's will occupy the same conditioned space within Central Offices.*

*CLEC costs for collocation in this common space should not include any costs for physically segregating the area (i.e., costs would not include cage or wall costs or costs for conditioning additional space due to the segregation such as those found in caged or walled physical collocation). However, SWBT should be compensated by CLECs for use of conditioned space and power for a single rack or a bay. This space should be available to CLECs in increments of 10 square feet, and CLECs should not be required to coordinate their requests for space with other CLECs, and should be allowed to request space in the segregated area individually. To enable SWBT to plan the size of the segregated space, CLECs should be required to give SWBT collocation space forecasts every six months.*

*Even though this collocation option shall be made available, a CLEC shall still have the ability to choose caged physical collocation as an alternative, even in a central office where a cageless alternative exists.*

III. Types of Equipment to be Collocated:

*SWBT should not prohibit a CLEC from physically or virtually collocating telecommunications equipment or systems because such systems are capable of providing switching and/or enhanced services, provided that such devices or systems are predominantly used for transmission, e.g., hubbing, multiplexing, and routing functionalities. To the extent that such systems are proven to this Commission to detrimentally affect the operations of other network devices or services in regard to physical space, EMI or RFI interference, SWBT may propose to restrict physical or virtual collocation of such a device. The restriction as related to physical space should be such that for an equivalent number of loops the physical size of the collocated equipment should not be greater than the physical size of an RSM.*

*[Note: Under the SWBT/MCI and SWBT/AT&T interconnection agreements, SWBT has agreed to physical collocation of RSMs without the requirement of disabling the switching functionality inherent in that equipment. Under the SWBT/Waller Creek interconnection agreement, SWBT does not require Waller Creek to disable the switching functionality of the virtually collocated RSM.]*

III. Security Measures:

*The type of cageless collocation allowed relates directly to the mix and level of security procedures that are appropriate for central offices where collocation will take place.*

*Security options include:*

- 1) background checks*
- 2) certification of CLEC technicians and/or third party technicians by SWBT*
- 3) disciplinary procedures agreed upon by SWBT and CLECs for infractions by technicians*
- 4) installation of security devices (e.g., identification swipe cards, keyed access, cameras, and/or logs)*
- 5) indemnification and reparation for damages caused by technicians*

*SWBT may recover up to 50% of the costs, both recurring and nonrecurring, associated with the security measures.*

**Follow-Up:**

*SWBT and the participants are requested to file information addressing the issue of whether cost studies are necessary for the security measures described, and for the cageless collocation option generally, or whether cost information already exists from the mega-arbitration. Staff would like to see specific recommendations quantifying costs included in the filings.*

*To enable Staff to evaluate the magnitude of the security issues described by SWBT, SWBT shall provide the underlying data and percentages on incidents of safety infractions by technicians in SWBT central offices. The information shall be disaggregated to comparative data and percentages for SWBT employees/contractors and CLEC employees/contractors, and also disaggregated by central office.*

**CHECKLIST ITEM TWO:** Has SWBT provided nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1) of FTA, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

**Commission Recommendation No. 1:**

SWBT shall offer at least the following three methods to allow CLECs to recombine UNEs. These three methods attempt to balance SWBT's security concerns with the desire of CLECs to combine UNEs:

- virtual collocation of cross-connects at cost-based rates;
- access to recent change capability of the switch to combine loop port combinations; and
- electronic access such as Digital Cross Connect (DCS) for combining loop and port at cost based rates, where available.

**SWBT's Proposal:**

*SWBT stated that it intends to offer the five methods of access to combine the UNE network as proposed in its affidavit filed in this proceeding. SWBT insisted that it is not legally required to offer recent change capability of the switch or the virtual collocation of the cross-connect to combine UNE loop and port. Regarding electronic access such as digital cross connect (DCS), SWBT stated that the DCS or electronic MDF solutions are prohibitively expensive at this time.*

*SWBT is skeptical of the estimate of two to three million dollars for the use of the "Fast Flow" system for recent change or a firewall system of accessing recent change by a vendor that has not fully developed a product, and is doubtful if they will be able to fully develop and implement the system within six to nine months. SWBT also stated that recent change will work only where a line is already connected or if SWBT is required to combine the loop and switch physically for a new line or an additional line.*

**CLECs' Comments:**

**Recent Change Method of Combination**

*Comptel and Comtech demonstrated a prototype system designed to invoke the recent change capability of an electronic switch for combining and separating UNE loop and port. The demonstrated system (called "Fast Flow") included a prototype firewall for recombining and separating UNE loop and port by invoking the recent change capability of a remotely located switch. Comptel and Comtech also demonstrated the network security protection feature of the system by showing that if some unauthorized user tried to come in and do a recent change on a line, the firewall would block that capability from that unauthorized user.*

*The demonstration sponsored by AT&T and Comptel disconnected all capabilities for a customer except 911 (although the system can do a complete disconnect). The purpose for leaving 911 capability was that the CLECs feel that a customer should not be punished simply because he wants to change his local service provider. If this Commission requires a complete functional separation of a customer's loop from the switch, then 911 is not required. It is just as easy to completely disconnect from the switch and then do a complete reconnect under the system. Disconnect and reconnect functions should normally take place during the off hours, and the time it takes for this operation is just a few seconds. If a*

*customer is using the phone line at the time, the Fast Flow system sends in a command via MARCH to disconnect (it has a feature called "stable call" which can suspend the disconnect command and hold it in a queue until the line becomes inactive). The demonstrated system used the Line Class Code functionality of the switch; however, if SWBT intends to implement AIN, the system can be modified to take AIN triggers.*

*Comptel stated that it is technically feasible to recombine or separate UNE loop and port by installing a system as demonstrated by Comtech. Comptel stated that the Fast Flow system is a firewall gateway that would interface with the ILEC's MARCH system. The MARCH system is currently used by SWBT in the downstream provisioning flow of its legacy OSS system in order to generate recent changes. Currently, SWBT also gives access to MARCH to its Centrex customers so they can use the recent change function themselves. MARCH is connected to every switch in SWBT's network. MARCH generates recent changes to the appropriate switch to do the desired activity such as disconnect the customer, add a customer or change a feature. Comptel stated that the proposed Fast Flow firewall will interface at the MARCH system, and give the same type of instructions to MARCH that it is accustomed to getting from its legacy systems.*

*Comptel stated that this system has not been tested for commercial volumes. However, the Fast Flow system is of a modular type and it can grow to meet commercial volumes. A CLEC will need feedback from SWBT as to the locations and protocols of its MARCH and OSS systems for UNEs in order to optimally locate and design the proposed firewall system. Comtech estimated the approximate cost of the installed system may run from two to three million dollars. The implementation time for the system may vary from six to eight months depending upon how cooperative SWBT will be in providing inputs to design and implement the system. Comptel stated that Comtech is not the only vendor, there are other vendors who are capable of designing firewalls and software solutions for combining and disconnecting loop and port UNEs.*

*If a customer is served off of an integrated digital loop carrier, the proposed system of recent change would not require the replacement of IDLCs with UDLCs. Replacing IDLCs with UDLCs is an expensive proposition in comparison to recent change, and UDLCs result in degradation of quality and are therefore not parity access. SWBT's proposed five methods are labor intensive and far more expensive than the recent change and in addition they gate the broad scale entry into local exchange competition. One advantage of using a recent change system such as Fast Flow is that the system only has to be deployed once and then it handles the entire state.*

*AT&T stated that the issue of whether the requirement currently articulated by the Eighth Circuit that the CLEC take action to combine the elements and that the ILEC provide the elements to the CLEC in such a way that enables the CLEC to combine the elements means physical or functional (logical/electronic) separation/combination is a legal issue. What is clear from the recent change demonstration is that in order to take the next step and implement the Commission's recommendation that recent change be made available, SWBT has to work together with CLECs. AT&T's understanding of SWBT's position is that SWBT has a legal objection to the Commission's recommendation, and that SWBT is not willing to move forward with recent change at this time.*

*MCI stated that the SWBT proposed methods of combining introduce additional points of failure and are discriminatory. Recent Change addresses the combining of loop and port and the issue of combining UNE loop to transport and other combinations are not addressed by RCMAC. MCI stated that virtual*

*collocation of the cross connect is an acceptable solution for combining elements that do not involve UNE switch port.*

*TEXALTEL stated that under SWBT's proposal a CLEC has to use 5 jumpers to connect a customer, whereas SWBT has to use one or two jumpers at the most to connect the customer. Also, there should not be any additional cost to a CLEC to use RCMAC; any system upgrade that is required is already covered under the \$3,200 a CLEC pays monthly for OSS access.*

*In response to a question by Staff that if AT&T is willing to pay an amount that is equal to the avoided cost of deploying the recent change firewall system, if SWBT voluntarily offers not to separate the switch and port UNEs, AT&T stated that there is no work involved if SWBT decides to leave the UNE loop and port as is and therefore there should not be any cost. However, AT&T stated that this issue is on appeal.*

*Comptel stated that the automated MDF or DLC solution for combining UNEs is the most expensive, and that is not worth pursuing at this time.*

**Staff Recommendation and Follow-Up:**

*Staff notes that SWBT has disagreed with the Commission's recommendation for combining UNEs stating that it does not comport with the Eighth Circuit Court decision, and has continued to offer the five methods of access to combine the UNE network as proposed in its affidavit filed in this proceeding. Staff continues to believe these five methods are inadequate because all of the methods require some form of collocation. Staff notes that the FCC has recently made clear, in its denial of BellSouth's Louisiana interLATA entry application, that ILECs "can not limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements." ¶ 164, FCC Second Louisiana Order.*

*Accordingly, Staff finds that SWBT will meet this recommendation if it agrees to and offers the following methods for combining UNEs:*

- 1. Offers access to recent change capability of the switch to combine UNE loop and Port. In offering access to recent change, SWBT must cooperate with the CLECs in designing and implementing a firewall system that interfaces with its OSS system and downstream MARCH system, AIN system, and other systems that are required to access the Recent Change capability of the system to functionally, logically, and electronically disconnect and recombine. (In lieu of this method, SWBT could choose to offer an unseparated UNE loop and port combination, on an ongoing basis to all CLECs without any restriction, for a glue charge that is equivalent to the cost (yet to be determined) of implementing a software solution that accesses recent change capability in a secured manner); and*
- 2. Offers virtual collocation of the cross connect for combining UNE loop and Transport, or UNEs that do not involve UNE switch port. The NRC charges for the virtual cross connect shall be same as those established in the mega-arb. However, the monthly recurring charge that is required to maintain the integrity of the virtually collocated cross connects shall be based on cost. The interim recurring rate for virtual collocation of the cross connect shall be no more than \$ 0.50 subject to refund or surcharge upon final approval of the rate by the Commission.*

*Staff recommends that the DLC or electronic MDF option for combining UNE loop and port be withdrawn at this time.*

**Commission Recommendation No. 2:**

SWBT, Commission Staff, and the participants to this proceeding shall explore the following issues during the collaborative process:

- additional methods for recombining UNEs or for allowing CLECs to combine UNEs and the costs associated with such methods;
- whether SWBT is providing any and all individual UNEs required by FTA96.

**SWBT's Proposal:**

*SWBT stated that it stands by its proposed five methods of combining as stated in its affidavit.*

**CLECs' Comments:**

*MCI noted that it had experienced a variety of problems with SWBT's provision of UNE combinations to MCI trial customers, including (1) loss of dial tone, (2) loss of access to directory assistance, and (3) incorrect branding of directory assistance and operator services. MCI stated that SWBT had explained that the cause was human error and that the problem was fixed, but provided no explanation of how it was addressed. MCI has concerns that SWBT's provision of UNE combinations make it difficult for CLECs to use the method for providing retail service, and the use of UNE combinations for any type of mass market offering is unworkable at this time.*

*MCI also raised billing issues encountered in its market trial for UNE combinations in the Houston area. Some problems include: (1) missing bill data on customers in service; (2) missing charges; (3) discrepancies in customer information; and (4) SWBT's rating of intraLATA and Directory Assistance calls at resale rather than UNE prices. SWBT stated that it is taking steps to correct the intraLATA toll billing problem.*

*MCI also raised numerous issues relating to Performance Measure reports on billing measures and SWBT's provision of billing information to MCI.*

**CLECs' Comments Regarding Methods of Combination and Provision of UNEs**

*The CLECs offered the following options listed in order of their preference:*

*All CLECs would prefer that SWBT leave UNEs together or at least leave them together and CLECs would then pay SWBT a "reasonable"/cost-based nonrecurring charge for connecting the UNEs. However, CLECs were asked to list methods for combining UNEs that they would support, and responded as follows:*

**AT&T / Comptel**

1. Recent change
2. Virtual Collocation of cross connects (low option)
3. Direct access by CLEC technician to MDF w/o escort (low option)

*For IDLC, keep option 1. so service is not degraded. Nothing else works unless you leave UNEs together or use recent change.*

*Comptel (for switch-based providers)*

- 1. Extended loop/link is best option*
- 2. 2nd best is CLEC supplies wire & virtual collocation of cross connect w/ option of SWBT or CLEC technician doing maintenance & CLEC technicians doing the cross connect*
- 3. Digital cross connect is distant third option*
- 4. If have specialized equipment, unfettered access & integrated equipment with SWBT*

*MCI*

*Non-switch-based provider*

- 1. Recent change*
- 2. Direct Access to MDF (unfettered access to CO when use SWBT switch)*

*Switch based provider*

- 1. Extended loop/link*
- 2. Cageless collocation*

*Intermedia, ChoiceCom, Nextlink, e.spire (Facilities-based / Switch-based Carriers)*

- 1. Extended loop/link for DS0 on up.*
- 2. Option for Virtual or Physical Collocation of cross connect; want option to use own technicians w/o escorts to install & maintain.*
- 3. Cageless Collocation*

**Staff Recommendation and Follow-Up:**

*Staff notes that SWBT has continued to offer only the five methods of access to combine the UNE network as proposed in its affidavit filed in this proceeding. Staff continues to believe these five methods are inadequate because all of the methods require some form of collocation. Staff notes that the FCC has recently made clear, in its denial of BellSouth's Louisiana interLATA entry application, that ILECs "can not limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements." ¶ 164, FCC Second Louisiana Order. Additional methods of access are also important in light of MCI's experiences with SWBT's provision of UNE combinations to MCI trial customers.*

*Staff recommends that SWBT offer the following options to CLECs:*

**Non switch-based providers**

- 1. Leave together with NRC/glue charge (recent change is subsumed under this option)*
- 2. Direct Access to MDF with security monitoring. Staff recommends that only 50 % of the cost of monitoring should be recovered by SWBT from a CLEC, because the cost is necessary to ensure both SWBT's and CLEC's network. The structure for recovery shall be 50% of the recoverable amount on an NRC basis and the remainder on monthly recurring basis.*

**Switch-based providers**

1. *Extended Link*
2. *Virtual Collocation of the cross connect that provides the functionality of extended loop. Virtual collocation of the cross connect for combining UNE loop and Transport, or UNEs that do not involve UNE switch port. The NRC charges for the virtual cross connect shall be same as those established in the mega-arb. However, the monthly recurring charge that is required to maintain the integrity of the virtually collocated cross connects shall be based on cost. The interim recurring rate for virtual collocation of the cross connect shall be no more than \$ 0.50 subject to refund or surcharge upon final approval of the rate by the Commission.*
3. *Cageless alternative collocation as recommended by Staff.*

*Billing issues relating to provision of UNE combinations should be addressed in OSS testing.*

**CHECKLIST ITEM FOUR:** Does the access and interconnection provided by SWBT include local loop transmission from the central office to the customer's premises, unbundled from local switching or other services in accordance with the requirements of section 271(c)(2)(B)(iv) of FTA96 and applicable rules promulgated by the FCC?

**Commission Recommendation No. 1:**

SWBT shall publish a technical manual showing CLECs how to use the unbundled loops to provide Asymmetric Digital Subscriber Line (ADSL) and High-Speed Digital Subscriber Line (HDSL) services. Spectrum management of available cable space shall be conducted by SWBT in an expedited manner, upon request from a CLEC who intends to use the unbundled loop for high speed ADSL and/or HDSL services.

**SWBT's Proposal:**

1. SWBT provided the following ADSL technical publications: ADSL Based Service Network Interface Specification, TP 76330, Issue 3, July 1998, and Unbundled Analog, Asymmetrical Digital Subscriber Line, and Digital Facilities, technical interface and performance specifications, TP 76860, Issue 2, June 1998. Moreover, this publication will be updated with the revised ANSI standards (T1.413) before the end of September. The HDSL publication will be provided to all parties after it is published. The document T1 E1.4/98-030, which addresses spectrum compatibility, has been ratified by the committee and it will be out in 30 days.
2. Standard allows both Frequency Division Multiplexed (FDM) and Echo-Canceled (EC) types of ADSL. The modulation techniques that are recognized by the standard include Discrete Multi Tone (DMT) and Carrier Amplitude Phase Modulation (CAP). SWBT believes the FDM-CAP-type of ADSL used by COVAD will not be a problem since CAP is moving closer to the range developed by ANSI, *i.e.*, CAP and DMT will both work with the "masks" developed by SWBT in accordance with the upcoming ANSI standards for Spectrum Management.
3. However, echo-canceled ADSL does interfere with other echo-canceled systems such as ISDN, TI-AMI, SDSL, and HDSL.
4. SWBT will employ the same manual process for qualifying ADSL loops as part of the spectrum management process that it uses for itself. Information regarding the availability of a loop for ADSL will be provided within 48 hours; the same time that SWBT has been giving its retail side during its ADSL trial. If that time period is reduced as SWBT gains greater experience, the time will be similarly reduced for CLECs.
5. Apart from this recommendation, there was some discussion about the bona fide request process being available when a CLEC does not have adequate terms for a new service.
6. SWBT concurs with COVAD that Near End Cross Talk (NEXT) is more problematic than the Far End Cross Talk (FEXT) in terms of interference with other digital services provided over copper wires of the same binder group.
7. UNE digital loop rates do not include ADSL conditioning and spectrum management costs.

8. SWBT clarified that the 4-wire digital UNE and rates may be used for an HDSL loop.
9. SWBT will provide the results and the associated data of its ADSL trial to all parties for further discussions on the spectral compatibility issue. This information will be provided five days before the meeting to be held with all industry representatives and the Commission staff.

**Supplemental Information:**

*SWBT provided an initial summary of its meeting with the parties to discuss spectrum management issues, and Binder Group Management Issues. SWBT stated that it is investigating whether or not it is possible to move the threshold distance limit of 8,000 feet to 12,000 feet to allow Unbundled Loops to be used for providing xDSL services without any restrictions. SWBT held an industry-wide meeting in San Francisco, on October 27, 1998 to explore issues related to other DSL services.*

*SWBT stated that it does not have adequate data from its trial to offer to parties. However, its policies as to spectrum mask, and binder group management are based on the trial in the laboratories operated by SBC's research group, Technology Research Institution (TRI).*

*SWBT reiterated that it will not allow echo-canceled ADSL systems. SWBT stated CAP and DMT systems are allowed. SWBT stated that it plans to implement a separate binder group in the feeder portion of its network for handling DSL services.*

*SWBT stated that if an existing loop is at a distance less than 8,000 feet, it falls into the "Green" category, meaning no restrictions for providing CAP or ADSL services that meet the ANSI standard T1.413 specified spectrum mask, with an exception for echo-canceled type ADSL.*

*SWBT stated that ADSL will not interfere with POTS service.*

*SWBT stated that it will be able to provide loop lengths through MLT testing, with a caveat that the results of MLT test may yield a longer loop length than the actual. SWBT will follow up on whether or not a CLEC can access the MLT and loop characteristics through its electronic OSS interface.*

*SWBT stated that if loop lengths are between 8,000 and 17,500 feet, SWBT will not guarantee any minimum or maximum speed for ADSL services.*

*SWBT stated that the mathematical model gives the best possible arrangement, as opposed to going out into the field where you get real live tables that are not as good as the mathematical model.*

*SWBT stated that the rationale behind the binder group management will allow a CLEC or SWBT to reach the most customers at the highest speed.*

**CLECs' Comments:**

1. COVAD: CAP and DMT should not be deemed to be mutually exclusive.
2. COVAD: does not have a problem with SWBT's position on "echo-cancellation," but objects to the process not being open since future unilateral decisions by SWBT could be harmful to COVAD and other CLECs.
3. COVAD and MCI want to participate with SWBT as SWBT develops its loop qualification procedures. MCI suggests that these determinations are somewhat subjective since there is the potential of moving the cable that is being interfered.
4. COVAD provided mathematical models of interference for numerous scenarios, such as ISDN, TI AMI, SDSL, RDSL, and HDSL services being provided with ADSL through the copper pairs of the same binder group. A copy of a technical paper titled, "Spectral Compatibility of DSL systems," by Massimo Sorbara, was distributed to all parties.
5. COVAD stated that: 1) ADSL works with voice on the same line; 2) ADSL is compatible with ADSL; and 3) ADSL causes less interference for ISDN than other ISDN lines in the same binder group.
6. COVAD and MCI stated that SWBT must not unilaterally impose policies, SWBT must share studies and information, SWBT must be technologically neutral, Spectrum Management Programs should not "ration" loops, CLECs need advance notice of network changes, and that everyone uses the public switched network and the network needs to be managed together.
7. TISPA raised an issue about ISPs being prevented from obtaining dry wires to do xDSL. TISPA argues that they used to be able to use such loops to provide ADSL. SWBT responded that: (1) this is an end-user issue, not 271; (2) its ISP affiliate has the same restrictions; and (3) the restriction is related to spectrum management.

**Supplemental Information:**

*MCI stated that it would like to have the criteria and the supporting data behind SWBT's decision for placing distance limitations and instituting a binder group management policy.*

*CLECs are concerned that the binder group management policy (1) will unnecessarily raise costs, (2) may result in unavailability of unbundled loops, and (3) may result in service interruption to an existing customer if SWBT decides to move an existing ADSL loop to a separate binder group.*

*ACI stated that it has made significant progress in its negotiations with SWBT to obtain ADSL loops. MCI stated that they are pleased to hear that SWBT is developing a wholesale product for ADSL. COVAD stated that although they are encouraged by SWBT's willingness to consider mathematical models, they have not received anything from SWBT to indicate what model they might be following or whose research they are following.*

**Staff Recommendation:**

Needs follow-up. Staff finds that Echo-Canceled ADSL systems interfere with other echo-canceled and non-echo canceled systems, thus reducing the reach of the DSL services. Staff finds that SWBT should provide the revised technical documents that reflect ANSI standards. SWBT will hold a meeting by mid-October to provide information on its ADSL trial. CLECs can make recommendations as to other issues that should be on the agenda including, but not limited to, facility availability criteria and spectrum management. Staff also recommends that SWBT should allow CLECs to participate in the decision-making process as it relates to exclusion of services through UNE loops with respect to spectral interference.

**Follow-Up:**

CLECs to supply written details of issues they wish to address during the October meeting with SWBT.  
Written status reports on Spectrum Management meeting.  
SWBT to provide updated ADSL manual and HDSL manual.

**Supplemental Staff Recommendation:**

*Staff recommends, based on SBC's representations at the California meeting, that SWBT should increase the threshold from 8,000 ft. to 12,000 ft. before a recommendation can be made that it has met the Commission's recommendation. (For PacBell the threshold is 12,000 ft.) SWBT should also develop its wholesale offering in an expedited manner. SWBT should provide access to MLT testing in the same manner as it has access in its retail offering, in order for a CLEC to obtain loop characteristics.*

*Staff recommends the use of power spectral density (PSD) as one component of a sound spectrum management plan designed to minimize service-to-service interference. Staff further supports limiting permissible equipment/technologies to only those which comply with national standards for PSD masks. The prevailing standards are those of the ANSI T1E1 committee and the international ITU-T Study Group 15, Question 4.*

*Staff concurs that spectral management procedures for advance planning and minimum noise interference between all services are necessary. Staff notes that the placement of compliant emerging services, such as xDSL is necessary to provide high speed data connectivity in the evolving information age. Staff also believes that the ILEC is currently in the best position to perform the spectral management function for its copper cable plant. However, this responsibility does not bring with it a unilateral decision-making authority with respect to spectral management procedures. The Spectrum Management process must encompass an industry-accepted definition and not a local ILEC's interpretation of Spectrum Management requirements. The Spectrum Management process must include a clear definition of trouble resolution and rectification, including a procedure that will create additional available cable spectrum when existing cables reach their design fill.*

*Because of the potential widespread implications in early stages of xDSL implementation, it is necessary to assure the best interests of all parties are served to the greatest extent possible. Accordingly, Staff recommends that SWBT should modify its spectral management process by including CLECs in the decision making process. The Staff-recommended process as described below will allow for better utilization of the copper cable plant and permit the advanced data services market to reach its fullest*

*potential, thus achieving a positive result without increasing the burden upon SWBT and with minimal existing customer service disruption.*

*As with implementation of any “new technology,” management and upgrading of the existing base is an issue. This issue must be dealt with, not so much because of spectral interference between PSD mask compliant services, but because previously placed services within the cable, particularly repeater-based T1 services (i.e., non-HDSL service) would present and experience cross-talk interference. As a result, the spectrum management procedures must make provisions for migration of this type of service to its own binder group, in accordance with prevailing T1 standards. Staff notes that SWBT is currently maintaining a separate binder group for T1 services. 4-Wire HDSL services can also co-exist in the same binder group as the T1. As this activity will cause service disruptions, it would need to be undertaken on a scheduled basis with advanced customer releases well in advance of the expected exhaust of xDSL capable pairs within the cable. Staff notes that the new xDSL services should be afforded the maximum growth opportunity, which is not afforded in the current SWBT proposal.*

*Staff observed that the SBC Spectrum Management proposal, as stated during the work session held in California, attempts to address the inside (intra-office tie) cables in the ILEC Central Office (CO). The SBC proposal requires shielded cable to be exclusively installed by SBC at an additional cost to the CLECs. Staff proposes that, at the choice of the CLEC, shielded cable, high twist copper, standard twisted pairs, or other reasonable transmission media be provided between the Main Distribution Frame (MDF) and the collocation space of the CLEC. Staff concurs with the CLEC Coalition that the CLEC should have the option to furnish such cable to be installed by SWBT, on a virtual collocation basis, between the MDF and the CLEC’s collocation space. In the alternative, if a CLEC wishes to install this cable SWBT should permit such installation in the presence of an escort, or SWBT should extend such cable to the cageless collocation area. Only 50% of the cost associated with the security measures should be paid for by a CLEC. SWBT shall be required to provide site access and all information necessary to properly engineer the work available without any undue delays.*

*Staff recommends that as a part of spectrum management, SWBT maintain an inventory and be able to report on the existing services provisioned on the cable, and manage the spectrum in a non-discriminatory manner regardless of whether the service is provided by a CLEC or by the ILEC. Staff recommends that the spectrum management procedures be applied in a nondiscriminatory manner, and where disputes arise, such disputes shall be resolved in a timely manner. As a part of the dispute resolution process, Staff recommends that the involved parties should be able to audit in order to examine the deployment of services within the affected loop plant. In addition to Spectrum Management, Staff recommends that SWBT should provide parity access to general loop qualification as a part of the preorder process in obtaining unbundled loop. Staff recommends that SWBT immediately meet with the CLEC community to identify how and in what timeframe the required level of detail will be provided to the requesting CLEC, allowing the CLECs the same nondiscriminatory access to a loop’s technical makeup and data as SWBT experiences. Staff also recommends that SWBT establish cost-based nonrecurring costs for such loop qualification data. Staff recommends an interim rate of \$2.56 subject to refund or surcharge upon the final approval of the rates.*

**Staff Recommended Spectrum Management Proposed Process:**

- 1. SWBT will maintain separate binder groups for interfering legacy services, e.g., repeater-based T1s, according to an appropriate prevailing standards body, e.g., ANSI T1E1.*

2. *A transition plan should be instituted to move repeater-based T1 services to a separate binder group in order to accommodate xDSL based services or migrate to a non-interfering technology. Other legacy technologies (such as ISDN) that impact or can be impacted upon by new xDSL technology deployment should have a similar plan for replacement or movement to dedicated cables.*
3. *All pre-existing repeater-based T1 services and non-standards based xDSL services in a cable, that cannot be shown to operate within the parameters of PSD established by a generally recognized standards body, must be placed in a separate binder group within 5 years unless no requests have been denied for placements of new xDSL service and no service degradation is experienced by existing xDSL services within the cable.*
4. *Assignment or rearrangements to the designated binder group shall be made so that the fill rate of the dedicated binder group reflects maximum levels recommended within prevailing T1 standards. After the 5-year period expires, no xDSL assignment may be denied, due to spectral interference unless all services have been rearranged and the designated binder groups for the non-conforming services reflect efficient fill rates.*
5. *Any repeater-based T1 service, or non-standards based xDSL service, that is not located within the designated binder group, which is affected by a repair, maintenance or grooming activity, that reasonably permits rearrangement to the designated binder group, shall be moved to the designated binder group at that time. Within a five-year transition period most non-conforming services should be migrated to the designated groups.*
6. *On a going-forward basis, no digital service may be assigned within a cable unless it demonstrates compliance with approved PSD established by a generally recognized standards body.*
7. *Assignment of conforming services shall be on a random basis within the cable and within binders, provided that no assignments of xDSL services shall be made to binder groups containing repeater-based T1 or non-conforming xDSL services, without adequate notice to and input from a CLEC acquiring the loop.*

*Staff also recommends that SWBT should inform CLECs as to how it will address the following during future user group meetings to be held on a monthly basis:*

1. *Loop Qualification Data for various spectrum masks as they become available through a national standard making body (TIE1, or ITU).*
2. *Presence of digital loop carrier between the customer's network interface device and the point of termination for the CLECs collocation space. If DLC is present what type?*
3. *Presence of intervening active or passive electronics on the loop?*
4. *Presence of bridge taps on the loop? If so, what are the locations, length and gauge of each?*
5. *Total loop resistance measured in ohms?*
6. *What is the overall quality of the loop? To the extent that the ILEC keeps records that permit the CLEC to understand the quality of the loop, they should be provided. This includes any overall*

*quality indicator that may be retained with the loop record, even if it is subjective in nature. Likewise any baseline test results recorded for the loop and/or any history of trouble tickets logged for the loop under consideration should be made available.*

- 7. How many "disturbers," based on the list in T1.413 Issue 2, are present within the same binder group in which the loop (under consideration) is located and what is the nature of each disturber?*
- 8. What loop design strategy was used for the loop? (E.g., Resistance Design (RD), Long-Route Design (LRD) or Unigauge (UG), which were largely employed prior to 1980, and Revised Resistance Design (RRD), Modified Long-Route Design (MLRD) and Concentrated Range Extender with Gain (CREG), which are employed primarily on a going-forward basis.)*

*Staff also recommends that SWBT should not delay UNE loop offering for xDSL services in any exchange or wirecenter because of its own delay in its retail offering.*

**Supplemental Follow Up:**

*SWBT should file a written update on the supplemental recommendations by December 1, 1998.*

**Commission Recommendation No. 3:**

SWBT must demonstrate (1) it is complying with its development/reporting obligations for digital subscriber loops and (2) that CLECs using recombined UNEs will have access to mechanized line testing (MLT) at parity with SWBT before the Commission can recommend that SWBT be found to have met this checklist item. Moreover, to the extent SWBT provides virtual collocation of the cross-connect and/or disconnection by recent change order, the MLT issue may be resolved. (Subsection numbers were added for clarity even though they were not contained in the Commission-approved recommendation.)

**SWBT's Proposal:**

1. Provided the report required in the first mega-arbitration. (That report was filed by ACSI in the 271 hearing). Will file an updated report consistent with SWBT's ADSL trial.
2. SWBT will provide the recommended MLT capability when the CLEC does its own combining. However, it was SWBT's understanding that information will be required from the requesting CLEC so SWBT can populate the appropriate database.

**Supplemental Information:**

*SWBT stated that when a CLEC combines UNE port and loop MLT testing capability is not available. However, when SWBT combines the UNE loop and port access to MLT test is available. In order to have the MLT testing capability, the information related to loop and port should reside in the LMOS database. When a CLEC originates a loop and port order the information related to the identification of the loop and port are entered into WFA database. The MLT testing capability of a switch does not interact with the WFA database.*

*SWBT also stated that there is nothing that would prohibit a CLEC from installing their own testing equipment, in order to have the capability for them, when any of the five SWBT proposed combining methodology.*

*SWBT stated that the MLT might not be used to qualify loops for providing ADSL or any xDSL services. SWBT stated that their ADSL people were not present during the October 13 work session and therefore they could not provide any answers.*

*On October 7, 1998, SWBT stated, in the ADSL forum, that a CLEC who wishes to use UNE loop to provide ADSL services might use MLT testing to qualify or obtain loop lengths. Although the loop length information obtained via MLT may be greater than the actual loop lengths, the issue of qualifying the loop will not be adversely affected. SWBT said they do not agree to develop a new service order process called UNE-A which associates a loop order with a switch port indicating both the circuit ID and the office equipment ID and thus enabling the MLT capability.*

*SWBT confirmed that when a loop and port is purchased by a CLEC regardless of who does the combining the ALIT capability would not be affected.*

*SWBT stated that the national standard has been issued from ECIC for testing. SWBT will have those implemented into their electronic bonding interface by the end of this year. The actual release date is in the mid-November time frame. Currently, SWBT has an electronic bonding interface up with MCI and*

*MCI would be able to send across the message set with a ten-digit telephone number and they would perform that test on either a resold POTS or on a UNE loop and port.*

*On November 4, 1998, SWBT faxed a letter providing additional information on MLT testing. SWBT stated that the software updates to the LMOS MLT software for Local Number Portability have enhanced the system to allow a test against the telephone number without having a line record in LMOS and without knowing the loop facility information. SWBT anticipates having this MLT testing functionality available by March 31, 1999. SWBT stated that this functionality will allow a CLEC the access to MLT testing on UNE Port and Loop Combinations where CLEC combines the elements.*

**CLECs' Comments:**

1. e.spire contends that the report provided pursuant to the first mega-arbitration was not complete in all material respects. However, e.spire will work under the assumption that the follow-up report will address these deficiencies.
2. CLECs raised some concerns about the need to provide additional data to SWBT. In other words, if a CLEC provides a loop and port order, SWBT should have the information in its database to coordinate the specific loop with the specific port.

**Supplemental Information:**

*AT&T stated that the issue with the MLT for loop and port combination orders requires construction or building of a new database that would interact with the MLT capability of the switch. If such a database is constructed the CLECs will have access to do MLT testing when they do their own combining. It is CLECs understanding that it would not be the case and therefore, the quality of the loop and port UNE when combined by a CLEC will not be in parity with SWBT-combined loop and port. AT&T stated that it will file information concerning this issue when it has had an opportunity to contact its subject matter experts.*

*AT&T stated that a due date should be established for SWBT to respond on UNE-A associated orders where the loop and port orders are associated to each other. In addition, a due date should be established for SWBT to respond on the CIP issue as related SWBT combining the UNE loop and port.*

*MCI stated that it has concerns over obtaining information on circuit ID and the office equipment ID number in order to create the UNE-A orders. MCI suggested that SWBT should provide the OE ID and Loop ID information as part of the preorder functionality of the OSS.*

*e.spire stated that it would not be easy to replicate the functionality one gets with MLT by using one's own testing. The issue has to do with the industry standard, which really suggests MLT and electronic bonding. So if a CLEC wants a standardized multi-jurisdictional approach to loop testing issues it would be using MLT not doing its own box as suggested by SWBT.*

**Staff Recommendation:**

Further development is necessary. Regarding the reporting, Staff believes it would be appropriate to wait for the revised report before making a recommendation. As to the MLT issue, further discussion is necessary when SWBT has its OSS personnel available to address the database issues.

This recommendation will be addressed at the October 13, 1998 OSS work session.

**Supplemental Staff Recommendation:**

*Staff concurs that the quality of loop and port UNEs when combined by a CLEC will not be in parity with SWBT-combined loop and port, if access to MLT is not available. Staff agrees with e.spire that it would not be easy to replicate the functionality one gets with MLT by using one's own testing. Staff recommends that in order to meet the Commission recommendation, SWBT must do the following:*

1. *Construct or build a new database that would interact with the MLT capability of the switch. This database should be constructed and demonstrated by SWBT to ensure that the CLECs have access to do MLT testing when they do their own combining. [Based on the additional information filed by SWBT on November 4, 1998, Staff finds that if SWBT can demonstrate satisfactory operation of the MLT testing functionality during the third party testing of OSS, it will be able to meet the Commission recommendation under this option]; or*

*SWBT should provide the Office Equipment (OE) ID and Loop ID information as part of the preorder functionality of the OSS, so that a CLEC can generate a UNE-A associated order for loop and port combination; or*

*SWBT should offer to continue combining the UNE ports for a nominal fee as stated in its interconnection agreement with AT&T and MCI as part of the CIP or any future interconnection agreement.*

2. *SWBT must provide parity access to MLT for determining the loop qualification, such as loop length, when a CLEC intends to use the UNE loop for providing xDSL services.*



Decision **DRAFT DECISION OF ALJ REED** (Mailed 12/1/98)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003  
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002  
(Filed April 7, 1993)

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.

Investigation 95-04-044  
(Filed April 26, 1995)

## OPINION

### Summary

By this decision, the Commission concludes a comprehensive seven-month review and analysis of Pacific Bell's (Pacific) Draft Application For Authority To Provide InterLATA Services in California (draft 271 application). Pacific's draft 271 application represented its showing of compliance with the 14 checklist requirements of Section 271 of the Federal Telecommunications Act of 1996 as of March 31, 1998. As such, the review process captured a snapshot.

This proceeding began with six weeks of technical meetings involving the Telecommunications Division staff (staff), Pacific and numerous competitive local exchange carriers. Soon after, Pacific moved to enter into a collaborative process with staff and the competitors, and staff issued an initial report identifying the problems with Pacific's compliance with 11 of the 14 checklist requirements. Following five weeks of workshops, staff filed its Final Staff Report (FSR) proposing compliance solutions and implementation goals.

Overall, this proceeding reinforces our commitment to fully opening the local exchange market to competition. By guiding Pacific in its quest for long distance authority, this Commission moves towards the "irreversibly open market" which would support Pacific's 271 application before the Federal Communications Commission (FCC). Herein, we modify some of the recommendations of the FSR, establish dates by when Pacific shall demonstrate that it has implemented the prescribed actions, and adopt the complete FSR as modified. Appendix B of this decision sets out the modified and originally proposed FSR recommendations that we adopt. We also adopt staff's recommendation that Pacific has shown evidence of compliance with 4 of the 14 checklist requirements. We set out goals for attaining compliance with not only

the remaining 10 checklist items but also with Pacific's Operations Support Systems (OSS) and the other multiple-issue items. While we adopt the FSR's Section 272 findings, we decline to adopt the recommendations at this time. Finally, we set forth a 60-day streamlined, yet substantive, compliance process to address the next impending Section 271 filing in this docket.

## **I. Background**

### **A. Statutory Framework**

Section 271 of the Federal Telecommunications Act of 1996 (FTA96 or Act) deals with the Bell Operating Companies' (BOC) entry into in-region<sup>1</sup> interLATA service. Section 271(d) provides that a BOC may apply to FCC for authority to provide in-region originating interLATA or long distance, service for a particular state. The FCC shall then consult with the state to verify the BOC's compliance with § 271(c). The FCC shall also promptly notify and consult with the Department of Justice (DOJ), which shall evaluate the application using any standard the DOJ deems appropriate.

Once the BOC files for in-region authorization, the FCC must issue its decision on the application within 90 days, and shall not approve the application unless: (1) the BOC has met the requirements of § 271(c)(1) fully implementing the competitive checklist of § 271(c)(2)(B) either by interconnection agreement(s) or by a statement of generally available terms; (2) the BOC implements the authorization in accordance with § 272 (separate affiliate)

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<sup>1</sup> The Act defines the "in-region state" as the state which has authorized a BOC or any of its affiliates to provide wireline telephone exchange service under the reorganization plan approved by the AT&T Consent Decree.

Daily, he settled procedural disputes and kept the collaborative process on course.

On August 5, 1998, the Coordinating Commissioner and the assigned ALJ held another PHC midway in the process to monitor the progress, to encourage the parties to continue the discussions, and to ascertain whether the Commission could provide any additional support to the collaborative workshops. Overall, the parties contended that the process was going as well as could be expected under the time constraints and the concomitant litigation surrounding many of the issues. They stated that at that juncture they were reaching few agreements. However, they wanted to continue meeting. See Tr. 1019-1058.

Following the conclusion of the collaborative sessions, staff prepared and distributed to the workshop participants notes memorializing the technical discussions held and agreements reached over the five-week period. Parties submitted comments to staff on its notes. On October 5, 1998, staff filed its the FSR.

## **II. The Initial Staff Report (ISR)**

### **A. Criteria**

Issues included within the collaborative process fit one or more of the following criteria:

- Ubiquitous. More than one CLC identified the issue as a problem. Or, if identified by only one CLC, it appeared to have a more general impact.
- Timely. The issue was a continuing problem that was neither a one-time occurrence nor one that the company had resolved.

- Significant. The issue presented a barrier to entry, significantly impacted the ability of one or more CLCs to compete, or evinced discriminatory behavior.

Still, certain issues which parties raised, such as the pricing of unbundled network elements (UNEs) and reciprocal compensation to CLCs with Internet Service Provider customers, were not a part of the collaborative process because the Commission was addressing them in other proceedings.

The ISR identified the goal of the collaborative process as three-fold: (1) to develop solutions for identified problem areas, (2) to establish implementation goals, and (3) to provide safeguards (e.g., penalties and assurance mechanisms) that will ensure that corrective measures will not deteriorate over time. The report followed the guidelines for the 271 process codified within §§ 271 and 272 of the Act. It traced the FCC's four orders addressing prior applications of BOCs for § 271 authority. Since § 271 makes numerous references to ' ' 251 and 252, and the FCC has addressed these sections in the first three Reports and Orders on Interconnection, as well as in other orders, the ISR's analysis included references to them. In addition, the ISR considered the evaluations that the DOJ gave the BOC in its reports on four prior BOCs' requests for interLATA authority.

The ISR sought to analyze and assess Pacific's draft application in terms of what the FCC stated it was considering when determining compliance with each checklist item. Staff noted that it examined the voluminous record with an eye toward the checklist compliance precepts that the FCC set out in its Ameritech/Michigan Order:

**1. Available as a Practical and Legal Matter**

In its Ameritech/Michigan 271 order, the FCC provided a yardstick to use in determining what it means to "provide" a particular checklist

- Testing of Interfaces

The FCC has stated that it expects a BOC seeking in-region interLATA authorization to demonstrate the adequacy of its OSS interfaces through actual commercial usage. If such data is not available, the BOC may substitute the results of an independent third party analysis of its OSS interfaces. Prior to submitting its application, Pacific hired Coopers and Lybrand to undertake such an analysis. Pacific's draft application included the results of the analysis. As several commenters noted in their April 30, 1998 filings, the FCC has emphasized that "third-party reviews 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 conduct business utilizing the incumbent's OSS access."<sup>26</sup>

The ISR summarized the competitors' substantial critiques of Pacific's tests of its OSS systems and Pacific's deep-felt rebuttal. staff stated its opinion that any testing methodology developed should include tests for all order types that an interface is designed to accommodate. The initial report set for collaborative discussion the appropriate testing methodology for conducting independent tests of Pacific's OSS interfaces. *Id.* at 33-34.

## **2. Collocation**

Has Pacific provided collocation in accordance with the requirements of § 251(c)(6), and pursuant to § 271(c)(2)(B)(i) and § 271(c)(2)(B)(ii)?

In the March 31, 1998 draft 271 application, Pacific declared that it had erected and turned over 280 collocation cages to CLCs as of February

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<sup>26</sup> Ameritech Michigan Application, Paragraph. 216

1998, with 143 additional cages under construction.<sup>27</sup> However, Pacific has denied CLCs physical collocation in some key offices because there was no space. The ISR detailed that on January 30, 1998, Pacific sent a letter to all CLCs listing 59 central offices that had no available space. Pacific later reassessed the central offices determined to have had no available space, and found that it could create additional space in 51 previously exhausted central offices.

By letter on April 24, 1998, Pacific advised the CLCs that collocation space was available and established a lottery process for CLCs to obtain space. Since Pacific's tariff required that physical collocation be on a "first come, first served" basis, the CLCs objected to the lottery process. Staff intervened, and established with the parties a "first come, first served" process, based on CLCs' original requests to collocate at specific central offices. At present, Pacific is implementing that process. *Id.* at 35.

To satisfy FCC directives, staff determined that Pacific must prove that it provides collocation space to competitors in an expeditious and nondiscriminatory manner. In order to comply with Section 251 (c)(6), Pacific must demonstrate to this Commission that space is not available for physical collocation. To that end in April 1998, Pacific gave staff floor plans of central offices where it had determined that floor space was exhausted. There appears to have been no further demonstration that space was validly unavailable. While Pacific has a policy of reserving space for two years for future needs, this Commission has not ruled on it. Significantly, Pacific's interconnection agreements with AT&T and MCI permit space reservation for specific uses up to

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<sup>27</sup> Curtis L. Hopfinger Affidavit at 46, March 31, 1998 filing.

one year.<sup>28</sup> At the other end, Pacific reported instances in which CLCs have requested collocation cages, but have not utilized the space.

The ISR found that Pacific made no showing of actual commercial usage of physical collocation to recombine network elements, as the FCC required in its Bell South/South Carolina order.<sup>29</sup> Documents filed in the 271 proceeding indicated that only one company, MCI, was using collocation to combine network elements as a test. Since MCI is not yet offering retail service based on the combined UNEs, this option is not yet commercially available. Consequently, Pacific was not able to demonstrate that combined UNEs were available on a commercial basis by means of its physical collocation. The ISR also found that Pacific made unilateral changes to its collocation policies after it filed the draft 271 application. Many of the instituted changes were positive, such as re-surveying offices to find additional collocation space. Still, the process used for implementing both virtual and physical collocation was not clear and nondiscriminatory. It was a moving target.

After analyzing the filings on record, the supplementary information gleaned from the ILEC and competitors' informal meetings, the Act and the FCC orders, staff determined that Pacific had not demonstrated that its

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<sup>28</sup> Interconnection agreement between Pacific Bell and AT&T, December 19, 1996, Attachment 10, § 3.2.4 and interconnection agreement between Pacific Bell and MCI, February 3, 1997, § 2.5.

<sup>29</sup> FCC, In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, InterLATA Services in South Carolina, Docket No. at. 182.

process for implementing physical and virtual collocation was in compliance with the Act. The ISR summarized the key collocation problems as follows:

- 1) Pacific's denial of physical collocation space;
- 2) Pacific's prohibition on collocation of Remote Switching Modules (RSMs);
- 3) Pacific's lateness in installing collocation cages;
- 4) Prices for collocation;
- 5) Not being offered adequate alternatives to physical collocation;
- 6) Pacific's policies of reserving space for itself or its affiliates;
- 7) Delay in negotiating virtual collocation;
- 8) Inadequate detail on quotes for virtual collocation.

The ISR deferred the pricing of collocation to the Commission's generic costing proceeding, OANAD, rather than to this focused proceeding. The issues<sup>30</sup> selected for the collaborative sessions included:

- A policy needs to be established for reservation of space in central offices.
- Pacific's rules for implementation of physical and virtual collocation are unclear and have undergone unilateral changes in recent months. The process should be clarified and made nondiscriminatory in all aspects.
- A process needs to be developed for Pacific to prove and the Commission to evaluate that space is not available for physical collocation in a particular central office.

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<sup>30</sup> *Id.* at 37.

- Pacific must prove that collocation is being used to combine UNEs for the commercial offering of service. Pacific must prove that competitors are able to use the platform to provide service.
- Pacific must also prove that competitors are able to use all methods it proposes to access and combine UNEs ordered from Pacific, since only physical collocation has been implemented to date.
- A nondiscriminatory policy should be adopted for the collocation of RSMs.
- Timetables must be set for implementation of physical and virtual collocation.

### **C. Item Competitive Checklist**

#### **1. Interconnection**

Has Pacific provided interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1), and pursuant to § 271(c)(2)(B)(i)?

The Act provides for interconnection in a non-discriminatory manner that:

- a) meets the same technical and service standards that Pacific provides itself and its affiliates;
- b) allows interconnection at any technically feasible point;
- c) offers terms and conditions that are just, reasonable and cost-based.

Staff found that Pacific had not demonstrated that it provides interconnection in accordance with these requirements.

Pacific reported that it had provisioned approximately 122,000 interconnection trunks for CLCs in California and was providing interconnection to at least 14 facilities-based competitors. The ISR detailed the significant

construction of the "Santa Monica Project," thus, requiring AT&T to install its own.<sup>59</sup>

In considering the allegations, staff determined that many were either untimely, not ubiquitous, or insignificant. Staff found that Pacific had were either adequately refuted the issues, or they were one-time occurrences and were less indicative than if they had happened repeatedly. Regarding the assertions stemming from Interconnection Agreements, staff found that the agreed upon terms did not appear to be the result of Pacific having exerted undue market power in ROW negotiations. ISR at 48.

Staff determined that Pacific was providing nondiscriminatory access to the three necessary ROW elements outlined in the FCC's Ameritech/ Michigan decision: by providing access to maps and records; by employing a nondiscriminatory methodology for assigning spare capacity between competing carriers; and by ensuring comparable treatment in completing the steps for access to these items.

#### **4. Unbundled Local Loop Transmission**

*Has Pacific Bell provided access and interconnection to local loop transmission from the central office to the customer's premises, unbundled from local switching or other services?*

Staff reported in the ISR that Pacific had not demonstrated that unbundled local loops are being provided in accordance with the Act.

Pacific's draft application stated that it had provided nearly 34,000 unbundled loops to California CLCs. However, although loops are available, the record in this proceeding indicated that CLCs have experienced

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<sup>59</sup> Parks Affidavit on behalf of AT&T at 20-29 (April 30, 1998).

significant problems in obtaining unbundled loops from Pacific. Specific problems include: (1) untimely and inaccurate provisioning of loops, especially those with number portability; (2) lack of clear and consistent guidelines for requesting loops for services other than "plain old telephone service" (POTs); and (3) provisioning of Integrated Digital Loop Carriers (IDLCs) or equivalent loops.

For CLCs to have a meaningful opportunity to compete, unbundled local loops must be provided in a timely and consistent manner. CLCs maintained that Pacific had not been timely or accurate in delivering unbundled loops.<sup>60</sup> Pacific had missed committed due dates and failed to expeditiously notify CLCs that a jeopardy situation existed. When the loop cutover needed to be coordinated with installation of number portability, the situation became especially problematic for CLCs. The consequence was that customers lost dial tone or could not receive calls. The record failed to show that Pacific was utilizing a clear and consistent process to coordinate loop cutovers. In response, Pacific maintained that promised dates for provisioning had not been met because certain facilities were unavailable or damaged.<sup>61</sup> Pacific made no indication that it had mitigated the problem of missing due dates and improper provision of notification.

On a similar issue, TCG asserted that loops which had been provisioned incorrectly and were not functional became a repair issue as

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<sup>60</sup> MCI, Nextlink, Covad and TCG Reply (April 30, 1998) and AT&T Response, (March 31, 1998).

<sup>61</sup> Pacific Brief at 56 (May 20, 1998).

opposed to a provisioning issue.<sup>62</sup> TCG, declared that it would notify Pacific of a non-functioning loop and would be referred to the repair process which required the initiation of a trouble ticket and significant delays in solving the problem. TCG argued that the shifting of the non-functioning loop from the provisioning process to the maintenance process, violated its Interconnection Agreement's requirement that functional loops be delivered.

CLCs contended that, with the exception of POTS Pacific had not made technical specifications for loops available, including the specifications for conditioning loops to have the ability for high speed data transmission.<sup>63</sup> While Pacific offered those types of loops to its own retail customers, CLCs were unable to compete for that segment of business customers. Pacific provided no evidence that the specifications for the desired loops were unavailable. Instead the company asserted that CLCs had to use the Interconnection Network Element Request (INER) process to request special loop types. There appeared to be no clear understanding on how to use the INER process, as stated in the Interconnection discussion above. CLCs insisted that the INER process was ineffective.

Loops provisioned with IDLCs were among the unbundled loops that CLCs had requested. Pacific asserted that it could not separate IDLCs into switch and loop elements. Therefore, it could not provide IDLCs to CLCs.<sup>64</sup> on an unbundled basis. Pacific explained that if there was an alternative method of providing service in parallel to IDLC, Pacific could move the customer to the

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<sup>62</sup> TCG Reply at 16 (April 30, 1998).

<sup>63</sup> AT&T Response, Attachment A (March 31, 1998).

<sup>64</sup> Deere Rebuttal Affidavit , at Paragraph 44.

alternative service, e.g. copper wire. If facilities were not available, CLCs would have to use the INER process.<sup>65</sup> Pacific also stated that the problem was not a major concern since Pacific served less than two percent of its loops on IDLC<sup>66</sup>.

Various CLCs have ordered xDSL capable unbundled loops from Pacific. CLCs contended that Pacific required xDSL loops to comport with its company specifications rather than industry standards. However, Pacific maintained that it had to protect against interference with other services and damage to the network. Consequently, CLCs had to purchase specific equipment that comported with Pacific-only specifications. MCI noted that Pacific had introduced a Spectrum Management program to prevent interference with other services. MCI questioned whether Pacific's Spectrum Management program would treat all forms of DSL technology in a competitively neutral manner.<sup>67</sup>

For the workshops, staff proposed<sup>68</sup> that participants should:

- establish a process to ensure timely provisioning and adequate coordination of loop cutovers;
- determine how loops which are not functioning after installation should be treated;
- develop a process for CLCs to obtain technical specifications for unbundled loops, including an effective

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<sup>65</sup> *Id.* at ¶ 45.

<sup>66</sup> *Id.* at ¶ 44.

<sup>67</sup> MCI Comments at 29 (April 30, 1998).

<sup>68</sup> ISR at 53.

use of the INER process to request particular types of unbundled loops;

- outline requirements for how Pacific provisions IDLC and equivalent loops.
- address the implications regarding the use of Pacific's specifications, as opposed to industry standards, for xDSL loop provisioning;
- review Pacific's Spectrum Management program to determine if it is competitively neutral.

## 5. Local Transport

*Does the access and interconnection provided by Pacific include local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services in accordance with the requirements of § 271(c)(2)(B)(v) of FTA96 and applicable rules promulgated by the FCC?*

Staff stated that it needed further information to evaluate Pacific's compliance with this checklist item. Thus, the ISR made no determination as to whether Pacific had met the local transport requirement. The initial report regarded the 271 collaborative process as a means of gathering necessary information.

In the Ameritech/Michigan decision,<sup>69</sup> the FCC determined that incumbent LECs were to comply with the transport requirements in the Local Competition Third Reconsideration Order. Specifically, ILECs were to provide "shared transport among all end offices or tandem switches in the incumbent LEC's network (i.e., between end offices, between tandems, and

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<sup>69</sup> Ameritech/Michigan Order at ¶ 300.

commented that Pacific's draft 271 application was in the public interest because it would increase overall competition in the long distance market to the benefit of small businesses and low-income customers.

In light of the general assessment of Pacific's draft 271 application presented in the ISR, staff deferred its thorough evaluation of the state of competition until after Pacific has resolved the identified deficiencies.

### III. The Final Staff Report (FSR)

Staff submitted the FSR, its second major evaluative report of the draft application, as "a comprehensive list of corrective actions most likely to aid Pacific in complying with Section 271 requirements." FSR at 1. The document acknowledges and reflects the commitment and hard work of the staff, Pacific and the competitive carriers that participated in the collaborative workshops.

In assessing what came out of the collaborative process, staff distilled the results into five principal findings from which its overall recommendations for individual checklist items flow.

- Interconnection Agreement Performance

Staff found that ICAs are not performing as intended by either this Commission or the parties to the specific agreements. Consequently, the agreements have not performed as the self-executing commercial contracts which exist in a competitive market.

- Wholesaler/Retailer Communication

Staff observed that Pacific and the CLCs do not deal with each other as wholesaler and customers, but as competitors in the midst of litigation. The FSR encouraged all the parties to communicate information, expectations and requirements clearly, directly and productively.

- Allowing Mass Market Competition

Staff concluded that Pacific has not opened its market to an extent that allows CLCs a reasonable expectation of serving the mass market. As a

consequence, competition will not reach all the segments of the telecommunications market that we and Congress intended.

- Solutions That Meet Needs

Staff found that Pacific needs to regard opening the local market to competition and meeting the § 271 requirements as one objective and not two distinct goals. If proposals do not promote competition, they are not solutions to the identified problems.

- Application Requires Quantitative Support

Staff asserted that Commission-adopted performance measures can best prove Pacific's compliance with the § 271 requirements. Quantitative measures can provide Pacific incontrovertible proof that its systems and processes are nondiscriminatory and fair to competitors. Assertions of compliance and commitments to undertake future actions will not provide incontrovertible proof that Pacific's systems and processes are nondiscriminatory and fair to CLCs. Only a rigorous and independent test will be probative.

Overall, we see the FSR, with modifications, as a solid blueprint for a future 271 request that this Commission could earnestly and enthusiastically support with the expectation that the FCC would confirm our assessment and grant Pacific's application. To be effective and credible in our recommendation to the FCC, we must center our evaluation of Pacific's eventual ' 271 application on a comprehensive technical assessment of the California local telecommunications market undergirded by quantitative performance data. We believe that anything less would be inadequate.

This Commission has set forth for Pacific those requirements which we have determined must be present for a productive local competitive market as well as a successful § 271 filing. We establish here the expectation of standards that will not be augmented or altered between today and whenever Pacific makes its compliance filing. In addition, we delineate a process and timeline for review which is anticipated within 60 days of Pacific's filing, and which is streamlined, yet substantive. Nevertheless, we have declined to order Pacific to

implement and alter a number of business practices that are significant to the development of competition the California telecommunications market and satisfying the § 271 requirements. At this time, we choose not to mandate changes to these business practices, but rather caution Pacific that its prior failure to observe many of those business practices have shaped competitors' perceptions of discriminatory treatment. Ultimately, the FCC will determine if Pacific's business practices are consistent with § 271 requirements. We urge Pacific to carefully review and consider changes to these practices to address the overall findings made by staff in the FSR and ultimately, the FCC will decide.

In our advisory role to the FCC, we perceive little value in affirming a § 271 filing that the extensive record presently before us and prior FCC orders indicate do not meet the requirements under the Act. Those parties who have suggested in comments on the draft application and the FSR that this Commission should base its recommendation to the FCC on little more than the theory that more competition is better than less in the long distance arena do not advance Pacific's professed objective.

To Pacific's credit, the company realized and acknowledged in June that its draft application fell considerably short of meeting § 271. Consequently, Pacific proposed the collaborative process as a way to work cooperatively with staff and the parties to resolve the problems in its application. Pacific sought a list or "map" of what it had to do to enlist the Commission's support for its long distance bid. The FSR candidly concedes that there were complex matters at issue going into the collaborative, severe time constraints and ongoing legal disputes. Although the parties reached a number of agreements, none were on the major issues.

Following the October 5, 1998 issuance of the FSR, 17 parties filed opening and reply comments on October 13, and October 22, 1998, respectively. Pacific

either proposed or agreed to the majority of recommendations set forth in the FSR. On its part, Pacific vehemently rails in its opening comments at what it characterizes as “the unwarranted negative tone of the Executive Summary,” while the company declares that it “agrees without modification... [to] approximately 70% of all of the recommendations.” Pacific’s FSR Opening Comments (OC) at 5. Pacific further appends to its comments the FSR recommendations that it proposes the Commission modify to some extent or clarify. Most of the other commenters, while agreeing with the majority of FSR recommendations, also propose modifications and clarifications of their own.

By this decision, we shall modify some of the recommendations of the FSR, establish dates by when Pacific shall demonstrate that it has implemented the prescribed actions, and adopt the complete FSR as modified. Appendix B attached to this decision sets out those recommendations from the FSR which we adopt without change as well as the modified FSR recommendations that we adopt. Tracking the FSR’s layout, we discuss below parties’ comments and the modifications that we make to staff’s FSR recommendations.

**A. Multiple-Issue Items**

**1. OSS**

**a) IS OSS A § 271 REQUIREMENT?**

Pacific agrees with the issues that staff identified as the key elements Pacific must address to improve its OSS: 1) flow through; 2) integration of E911 and listings information into the order entry process for resale services and UNE combinations; 3) automated notification for order rejects and jeopardies; 4) “useful” implementation of interfaces; and 5) compliance with the Change Management Process. However, Pacific asserts that these issues need to be addressed but are not required by § 271. Pacific OC at 6.

Performance Measurement recommendations by eliminating the proposed requirement...” ORA RC at 15. Sprint and MCI, among others, argue that Pacific has a greater incentive to comply with § 271 requirements prior to receiving approval. Sprint RC at 12 and MCI RC at 9. AT&T notes that the FCC in its Ameritech Michigan Order explicitly articulated the need for performance incentives in the § 271 context and argues that the Commission must reject Pacific’s proposed modification. AT&T RC at 12.

### **Discussion**

We concur with the FSR and the various commenters that Pacific has a greater incentive to comply with § 271 requirements prior to receiving approval than after its approval. Moreover, the Act has no clear mechanism that either the FCC or state commissions could use to ensure ongoing compliance with § 271. It also appears that the parties may be close to agreeing on a compliance mechanism in the OSS OII/OIR. Therefore, since Pacific offers no discernible rationale for why an incentive structure cannot be adopted in the OSS OII prior to Pacific refileing its application, we shall adopt the FSR’s recommendation on the compliance mechanism.

## **2. Collocation**

### **a) CLEC Handbook**

Pacific proposes changes to the process recommended in the FSR for indicating changes in the Collocation Handbook. Pacific OC at 18. Pacific asks to prospectively date each section/subsection of the Handbook as the company revises it because the different paginating styles of the various web browsers mean that Pacific cannot effectively put the date on each page. It further states that the company’s website is in a Hypertext Markup Language (HTML) format that does not allow for lines in the margins as staff proposed.

Pacific also suggests that the “What’s New” section of the Handbook include changes made within the past 60 days, double the current time frame, rather than the six months recommended by staff. Including a full six months would require CLCs to go through multiple pages of changes. Pacific OC at 19. Pacific advises that it will make the alterations starting at the end of October.

AT&T, MCI, and NorthPoint comment that Pacific should not have the unilateral right to change the terms and conditions of collocation through its Handbook or Accessible Letters. AT&T OC at 15; MCI OC at 25; NorthPoint RC at 7. AT&T asserts that collocation terms and conditions must appear in a CLC’s ICA, so Pacific cannot impose the terms of the Handbook, if the terms differ from those in the ICA. Pacific responds that revisions to the collocation service handbook become effective under the tariff 45 business days after Pacific releases the revision, except for those to which the collocator objects within 30 business days. If the parties are unable to negotiate a resolution, either party may go to the Commission. Pacific RC at 13. Still, in its reply comments, MCI criticizes Pacific’s attempts to minimize the quality and timeliness of communications regarding collocation practices. MCI RC at 11.

### **Discussion**

We find Pacific’s proposed changes to the process recommended in the FSR for noting Collocation Handbook changes to be reasonable, and shall adopt the modified language. The modified recommendation shall read:

- Pacific shall institute a revision system that prospectively shows, on each subsection, the date of the latest change.
- Pacific shall keep the Handbook on the Website up to date. The Website should include a summary of all Handbook changes made over the preceding two months, unless the industry agrees to a longer prior of time.

We would expect that any collocater that finds a change in the terms of the Collocation Handbook that differs from the terms of its ICA, and objects to the Handbook revision, will either negotiate a resolution with Pacific or come to the Commission to resolve the dispute. Thus, we see no need to add any additional requirements.

**b) Cageless Collocation**

The FSR proposed that cageless collocation be explored in the Local Competition proceeding. Pacific opposes cageless collocation because of security concerns. Pacific states that it is offering several types of collocation, and that CLCs rejected common cage collocation because of concerns about other CLCs' technicians working around their equipment. Pacific OC at 19. FirstWorld/ACI respond that Pacific mischaracterizes the situation. CLCs turned the proposal down because Pacific had no specifics for its common collocation proposal: no cost data, no proposed rates, no implementation timeline. Consequently, CLCs didn't know how long it would take to implement. FirstWorld/ACI RC at 8.

Various carriers urge the Commission to require Pacific to offer cageless physical collocation. Covad OC at 10; Nextlink/ICG at 25; FirstWorld/ACI OC at 21; and CompTel OC at 31. Covad declares that the party requesting the additional security measure, in this case Pacific, should pay for the costs. Nextlink/ICG ask that the Commission order Pacific to report on obstacles to cageless collocation and the steps necessary to overcome them, and propose language to that effect. Nextlink/ICG OC at 26. In reply comments, they recommend that the Commission schedule a workshop and require Pacific to report on steps that can be taken to overcome security problems associated with cageless collocation. Nextlink/ICG RC at 11. MCI wants cageless

collocation but supports examining the issue in the Local Competition proceeding. MCI OC at 25.

CompTel maintains that other RBOCs, Internet providers and long distance providers have addressed security issues by having clearly identified equipment, locking cabinets, card access, and escorted access. CompTel OC at 32. Agreeing, NorthPoint asserts that Pacific's security concerns are illusory since USWest has implemented cageless collocation and dealt with any necessary security issues. NorthPoint RC at 5. FirstWorld/ACI recommends that CLCs have security escorts whenever a CLC technician must attend a pIXCe of equipment in the cageless environment, with CLCs paying for those escorts.. FirstWorld/ACI RC at 7.

First World/ACI also refutes Pacific's assertion that virtual collocation is an equivalent form of cageless collocation. With virtual collocation CLCs do not have ownership and access to their equipment. CLCs cannot guarantee a certain level of service, if they have no control over the servicing of their equipment. First World/ACI RC at 9. MCI insists that if Pacific is offering affiliates but not CLCs cageless collocation, it is a violation of the Act's requirement that physical collocation be offered on a nondiscriminatory basis. MCI RC at 10.

### **Discussion**

We find the FSR's recommendation, that the Local Competition proceeding should explore the issue of cageless collocation, to be reasonable since that docket has already addressed several collocation policy issues. Therefore, we shall adopt the FSR recommendation as proposed.

**c) Process for Denial of Space**

Pacific proposes amending the FSR's statement on walkthroughs of exhausted COs, to add a statement that the walkthrough would be conducted by the staff or an independent third party. Pacific OC at 19. Nine competitors and ORA discuss CLC walkthroughs and where the Commission should address the matter.

**Discussion**

ACI/FirstWorld and others express concern that this proceeding would simply send this issue back to the Local Competition proceeding where it might languish. They urge that the issue be resolved before the Commission grants § 271 authority. We fully expect to address this issue in the Local Competition docket before year end.

**d) Pacific's Deployment of ADSL Technology out of Exhausted COs**

In the FSR, staff proposed:

- If Pacific does not have space for collocators in a particular CO, Pacific should not be permitted to provide space in that CO for any of its affiliates. FSR at 66.
- Pacific should not deploy ADSL technology out of any exhausted CO in which competitors are not able to collocate to offer their own xDSL service. FSR at 70.

Covad, FirstWorld/ACI and MCI agree that Pacific should not deploy ADSL out of any exhausted COs in which competitors are not able to collocate to offer their own xDSL service. Covad OC at 10; FirstWorld/ACI OC at 20; and MCI OC at 26.

However, Pacific modifies the recommendations with two provisos, that: 1) they apply prospectively, so that Pacific would not have to remove existing facilities and terminate its ADSL service to customers in an office where there is no room for collocators; and 2) all options for collocation Pacific offers, including virtual collocation, have been exhausted. Virtual collocation is available in all COs where physical collocation has been denied because of space constraints. Pacific contends that virtual collocation places the CLC in the same position as Pacific for placement of xDSL equipment because there is no requirement for a cage. Pacific OC at 20.

A number of parties respond that the Commission should reject Pacific's proposals in two areas: 1) that the curtailment of Pacific's DSL offering be applied only prospectively, and not retroactively, and 2) that the rule should only apply when all collocation options, including virtual collocation, have been exhausted. CLCs dislike virtual collocation because it does not permit them to have access to their own equipment. Sprint RC at 13; Nextlink/ICG RC at 9; ELI RC at 11; FirstWorld/ACI RC at 10. ELI declares that under Pacific's definition, no CO would be designated exhausted. Moreover, virtual collocation is more expensive and prevents CLCs from exercising control over the type of equipment they want to use. Pacific has its own list of equipment that it will support for virtual collocation. If a CLC's preferred equipment is not on the list, they have to switch.

FirstWorld/ACI argue that if Pacific denies physical collocation in a particular CO, the Commission should not allow it to offer ADSL out of that CO, even if Pacific is currently offering ADSL from that office. They note that since Pacific initially deployed ADSL in 87 desirable offices, it has already covered the most important markets. FirstWorld/ACI RC at 11. Pacific responds that it did not gain a competitive advantage deploying its ADSL

service while denying Covad physical collocation in the same COs. Covad had the option to use virtual collocation. Pacific RC at 12. It further maintains that the federal district court in Covad's complaint case pointed to the existence of "workable alternatives." Virtual collocation most closely approximates Pacific's deployment of its own ADSL equipment: there is no cage or 100 square foot requirement. *Id.* at 13.

### **Discussion**

We shall partially modify the FSR's recommendations to address Pacific's concern about prospective application; however, we shall not modify the recommendation to include virtual collocation as an option in an exhausted CO. Accordingly, we shall modify and adopt the requirements that:

- In any CO in which all options for physical collocation offered by Pacific have been exhausted, Pacific shall not be permitted to provide additional space in that CO for any of its affiliates.
- As of the date of this decision, Pacific shall demonstrate that it has not prospectively deployed ADSL technology out of any CO in which all options for physical collocation offered by Pacific have exhausted, and competitors are not able to collocate to offer their own xDSL service.

#### **e) Reservation of contiguous cages**

Pacific wants to clarify that if another carrier wants a space, it will get the space "reserved" for contiguous growth. However, Pacific also does not want to notify the carrier that the space is being assigned to another carrier. Pacific OC at 21. ELI takes exception to Pacific's unwillingness to notify CLCs that will lose the contiguous growth space. CLCs might voluntarily cooperate with one another to solve such space problems. ELI RC at 5.

### **Discussion**

There is merit in the initial portion of Pacific's comment; however, for the sake of efficiency and as a courtesy, Pacific should notify the CLC that it has

assigned the space to another. Therefore, we shall modify the recommendation as follows:

- To the extent possible, Pacific should not fill cages consecutively but fill in cages in a manner that would allow for contiguous growth. However, if other carriers want to collocate in that CO and the unassigned contiguous space is needed, the space will be granted to the first carrier filing an application and submitting the requisite deposit or bond. Pacific should notify the carrier which requested reservation of contiguous space that the contiguous space is no longer available.

**f) Timetable for Implementation of Physical and Virtual Collocation**

After reviewing the outcome of the 60 collocation requests Pacific received from CLCs in April 1998, staff determined in the FSR that the current collocation workload precluded instituting a shorter time frame.

- staff recommends that the issue be addressed by the Commission outside the 271 docket.

While staff found the record to examine the time interval for implementing collocation to be inadequate, it stated that we should hold Pacific to its 120-day tariffed interval. Staff declared that the provisioning interval serves as one of the performance measures proposed in this docket, which measures Pacific's timeliness in turning over collocation cages.

Pacific does not object to reviewing the timeframe, but asserts that such a process should not be an obstacle to its 271 application. Pacific OC at 21. Covad suggests that there should be discussion of the timeline in the 271 proceeding, and proposes that the cage delivery timeline be shortened to 90 days for caged physical collocation and 45 days for cageless collocation. It argues that Pacific should not be allowed to turn space over to affiliates in less time than it does to CLCs. Covad recommends penalizing Pacific if a cage is not

timely delivered, so that Pacific would either pay a penalty or reimburse the CLC 50% of the cost of the cage. Covad OC at 11.

NorthPoint submits that Pacific is understaffing collocation efforts, and also recommends that the timeframe be shortened to 90 days. NorthPoint OC at 9. FirstWorld/ACI agrees with NorthPoint and maintains that Pacific should be required to demonstrate it has adequately staffed all duties for its wholesale services, including collocation, in its compliance filing. FirstWorld/ACI RC at 14. AT&T wants the Commission to require that Pacific not take more than its tariffed 120 days for making a cage available. AT&T OC at 18.

FirstWorld/ACI declares that CLCs cannot market to end users because the provisioning process is unreliable. They urge the Commission to track and address collocation delays before Pacific makes its compliance filing. FirstWorld/ACI proposes that if Pacific falls behind in the provisioning process, the Commission should require it to issue weekly status reports to the requesting carrier. FirstWorld/ACI OC at 25. In reply comments, they propose that the provisioning interval be shortened to 60 days. FirstWorld/ACI RC at 14. Worldcom recommends that we reduce the 120-day period by 2-3 weeks since Pacific beats the interval for its affiliates. Worldcom OC at 5. MCI reminds the Commission that Pacific guaranteed to have collocation implemented in 90 days for the resurveyed offices, and recommends that the 120-day interval be shortened. MCI suggests that Pacific should demonstrate that the shortened interval is the shortest that may reasonably be offered. MCI OC at 27.

### **Discussion**

We find it best to address the collocation time frame issue in the Local Competition proceeding, and adopt staff's recommendation that in its

compliance filing Pacific should demonstrate that it completes physical collocation installations within the 120-day provisioning time frame established in its 175-T tariff. Given Pacific's most recent collocation workload, we find merit in, and adopt FirstWorld/ACI's suggestion that if Pacific falls behind in the physical collocation process, it should issue weekly status reports to the requesting carrier.

**g) Floor plan content**

Covad, NorthPoint and MCI want Pacific to provide CO floor plans to CLCs. Those floor plans should include square footage as well as an indication of whether equipment is in use, idle or obsolete. They should also show all available space in the CO, not only collocation "eligible" space. Covad OC at 12; NorthPoint RC at 6; and MCI OC at 29. AT&T also asks for floor plans to show which equipment is idle or obsolete. AT&T OC at 17. While Nextlink/ICG agree that floor plans need not be modified, they maintain that desired information cannot be obtained in a walk-through. They would not have time to measure square footage or document use of all equipment in the CO. Pacific has the information and should provide it to the CLC prior to the walkthrough. Nextlink/ICG OC at 29.

**Discussion**

We find parties' requests for floor plan content to be reasonable. Therefore, Pacific's floor plans should include square footage as well as note the location of its equipment used to provide ADSL service and an indication of whether equipment is in use, idle or obsolete.

**h) Cage-to-cage interconnection**

In the FSR, staff reported that Pacific currently offers DS1 and DS3 and is negotiating with one carrier on DS0 interconnection. Pacific

**Discussion**

We decline to expand the list of physical collocation alternatives recommended in the FSR.

**I) Reservation of space**

FirstWorld/ACI notes in opening comments that the FSR does not directly address Pacific's ability to reserve space, and prompts us to correct the omission. They argue that CLCs must have the right to reserve space, if Pacific is allowed to reserve space for itself. Further, they insist that there must be parity between Pacific and the CLCs on the issue. FirstWorld/ACI OC at 24. MCI submits that it is an open question whether Pacific reserves space for its own future use on terms more favorable than those it offers to CLCs. MCI OC at 26.

**Discussion**

The Initial Staff Report pointed to the need to establish a clear policy for reservation of space in Central Offices. This reservation policy would have a significant impact on how much space is available for collocation at a particular time.

During the collaborative, Pacific apparently submitted supplemental information or "homework" on its reservation policy which indicated that the company reserves space for dissimilar equipment, e.g., switching equipment, Main Distributing Frames and power for five years. However, in the workshop Pacific amended that statement, indicating that it had an unlimited reservation policy for dissimilar equipment. Pacific indicated that it does not reserve space for affiliates.

Pacific reserves space for its own transmission equipment, (which is equipment similar to that used by CLCs and other collocators) for no more than

two years. In the workshop, it appears that CLCs presented various proposals on how Pacific should be allowed to reserve space. Proposals from CLCs ranged from 6 months (Covad), the one year time period stated in the MCI and AT&T interconnection agreements (ACI), to a parity policy which would allow CLCs to reserve space in the same manner that Pacific does. (AT&T/MCI).

Parties do not agree on a reservation policy for Central Office space. Staff reports that in the course of the workshop, several parties cited the rules relating to Standards for Physical Collocation and Virtual Collocation in the FCC's First Report and Order on Interconnection. § 51.323(f)(4) provides that:

“an incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future needs.”

The FCC's rule does not differentiate between “similar” and “dissimilar” equipment. It precludes ILECs from reserving space on terms which are different from those offered to CLCs. Accordingly, we shall require that:

1. Pacific shall reserve space for dissimilar equipment for no more than five years.
2. Pacific shall reserve space for similar equipment (e.g., transmission equipment) for no longer than 9 months, but only if collocators are also permitted to reserve space for the same length of time.
3. Pacific, CLECs and Pacific's affiliates shall all have the right to reserve space for a nine month planning horizon.
4. Any entity, including Pacific Bell, which wants to reserve space shall provide Pacific with a \$2,000 nonrefundable deposit. In the case of CLECs or other non-affiliated companies, the \$2,000 shall be applied against the collocation

construction fee. Any entity, including Pacific Bell, which does not use the reserved space within the nine month time-frame will forfeit its deposit. Such forfeitures shall be applied against the collocation charges of the next entity to collocate in that CO.

**m) Collocation pricing**

In reply comments, ORA asserts that the Act requires that collocation prices be based on incremental costs. Consequently, says ORA, Pacific's current embedded cost based prices are not in compliance. ORA RC at 8.

**Discussion**

We will not establish a compliance requirement on this issue since the OANAD proceeding is addressing it.

**3. Interconnection Network Element Request Process (INER)**

INER is Pacific's procedure to address CLCs' requests for new elements which are not provided for in their ICAs. The FSR proposed eight recommendations under this section. Pacific agrees with three of the recommendations and proposes modifications to the other five.

- *Pacific provide a "no" response in 15 days. For "no" responses, Pacific will provide a reason for the response, e.g., not required by law, not technically feasible, or will refer the CLC to an alternative to the UNE desired with the proviso that Pacific is able to provide that alternative.*

The FSR states that if Pacific were to recommend an alternative service or element in its INER response it should be able to provide that alternative to the CLC. Pacific advocates using ICA processes to provision the alternative. Therefore, it may take more time than that allotted in the INER process. MCI recommends adding a requirement that Pacific provide a statement of technical feasibility in response to every INER. It cites the FCC's First Report & Order Appendix B as requiring a statement of technical feasibility.

#### 4. Expedited Dispute Resolution

Pacific objects to all the expedited dispute resolution processes (EDR) proposed in the FSR. Pacific asserts that interconnection agreements approved by this Commission contain alternative dispute resolution (ADR) provisions, and the Commission has its own ADR rules. Pacific maintains that the FSR's recommended EDR process goes beyond anything proposed in the collaborative process, is inconsistent with the Act, and is impractical. Pacific OC at 23. It asserts that the Act is based on voluntary negotiations, but the FSR recommendations seek to overturn that Congressional scheme based on staff's perception that CLCs have "unequal bargaining power" and "no recourse to a neutral third party."

Pacific argues that existing ADR processes provide the CLCs with a neutral third party. In fact, even in cases where ADR processes are not defined, CLCs may still use the Commission's processes. Pacific OC at 24. Pacific further contends that the FSR recommendations, if adopted, will lead to more litigation and regulation, in contrast to the FSR's recommendation that ICAs should function as closely as possible to private contracts. In reply comments, Pacific declares that the Act requires CLCs to renegotiate terms to ICAs, if they want to change dispute resolution clauses. Finally, Pacific maintains that changes to existing Commission dispute resolution processes must be accomplished through a rulemaking, not in this docket. Pacific RC at 14.

The CLCs emphatically support having an EDR process and encourage Commission involvement in resolving disputes. AT&T OC at 20; CCTA OC at 13; ELI OC at 4; and Nextlink/ICG OC at 30. Many CLCs echo Sprint's observations that current ADR processes are resource intensive, protracted, and do not guarantee review by arbitrators with a background in the detailed technical and legal issues raised. Sprint RC at 16. AT&T and MCI

disagree with Pacific's assertion that the EDR proposal in the FSR extends beyond proposals made in the collaborative workshops. MCI notes that staff's EDR recommendations are actually narrower than the CLCs' workshop proposals. AT&T RC at 15 and MCI RC at 13.

MCI rebuts Pacific's interpretations of recent court cases. According to MCI, a recent federal district court case affirmed that the Commission has discretion regarding the mechanism it uses to enforce interconnection agreements. MCI RC at 13. CCTA argues that the FSR's proposed EDR process is consistent with the Act because Section 252 (e)(2)(A)(ii) allows states to reject portions of ICAs found to be inconsistent with the public interest. CCTA RC at 11. ORA supports having an EDR process because end users should receive quality service. ORA interprets Pacific's opening comments to indicate that Pacific does not think service outages to end users require speedier resolution than it currently offers.

Along with supporting an EDR process, CLCs propose modifications to make the process more expedited or broaden its applicability. AT&T and others recommend that the good faith negotiation period be changed to a maximum of five days to prevent unnecessary delay. AT&T OC at 20; CCTA RC at 11; and ORA RC at 18. Several carriers urge the Commission to shorten the entire time for the EDR process. CCTA OC at 13 and TRA/Working Assets OC at 11. MCI and Nextlink/ICG argue for a broader array of issues to be handled by the expedited process. MCI OC at 19 and Nextlink/ICG OC at 30. AT&T and MCI contend that CLCs should have an ability to resolve disputes using either EDR, a streamlined formal complaint process at the Commission, or commercial arbitration. AT&T OC at 21 and MCI OC at 18.

## **Discussion**

While Pacific is adamant in its objections to the proposed EDR process, it fails to substantiate its assertion that current ADR processes facilitate the expedited resolution of complaints that affect an end-user's service. The FSR reports that in the workshops, CLCs provided extensive examples of how cumbersome, unresponsive and slow the current ADR process is. It appears that an EDR process is necessary to protect end-users' service quality.

Pacific maintains that staff's recommended EDR process will lead to additional litigation and delay; however, we note that two of the proposed solutions already exist in many ICA's: commercial arbitration and Commission dispute resolution. The last EDR recommendation specifically targets an extremely limited set of complaints. In the face of the significant documentation that staff has reviewed and evaluated which indicate that dispute resolution in the local competitive market is in shambles, we would be ill-serving end users and the public interest by simply looking away.

In its March 31 and April 30, 1998 comments, AT&T related that Pacific has directly refused to comply with an arbitrator's award which found for AT&T on a local terminating traffic bill and keep dispute.<sup>121</sup> The order directed Pacific to refund the access charges improperly assessed and directed that bill and keep be used for all local calls on a going forward basis. We do not consider defiance of a ICA agreed-upon arbitration award to be a small matter. Clearly, alternative

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<sup>121</sup> This arbitration was heard on January 6, 1998 and the arbitrator decided in favor of AT&T in Award of Arbitrator Reference No. 1100021238 dated February 12, 1998. AT&T Answers to Appendix B Questions, Book 2, Attachment C: Alternative Dispute Resolution, March 31, 1998. AT&T Comments, Affidavit of Rosalie E. Johnson at 26 and Exhibit 5 (April 30, 1998).

dispute resolution as it currently stands pursuant to the ICAs is not a straight and effective path.

We agree with the commenters that the Act does not prevent this Commission from adopting EDR processes that are not currently contained in ICAs. However, we believe that individual CLCs should determine which dispute resolution processes will work best in their ICAs. Thus, we shall direct Pacific to allow the CLCs to re-negotiate their ICAs to incorporate any or all of the dispute resolution processes in any current ICA.

In addition, early next year we will initiate a rulemaking to establish an expedited formal complaint process consistent with SB960 requirements in order to address the targeted service complaints. We reject the suggestions of AT&T, MCI and Nextlink/ICG that the Commission should handle on an expedited basis any complaint in which they are dissatisfied with Pacific's pricing or business practices which then result in a CLC choosing not to offer a service.

We intend the expedited process to apply to such situations as, where the CLC was currently serving a customer and impending or recently implemented Pacific changes would substantially impair that customer's service or its quality. Other serious situations would include, but not be limited to, complaints involving service termination, changing directory assistance formats without proper notice, and forcing carriers to change customers from DNCF to LNP. In developing this process, we shall carefully consider Pacific's legitimate concern about the re-litigation of issues. Accordingly, we shall modify and adopt staff's EDR recommendations set forth in Appendix B.

facilities. CCTA OC at 2. MCI contends that Pacific's reservation of capacity in its arbitrated ICA with MCI as well as its advocacy position in the ROW proceeding demonstrate that Pacific has failed to meet the ROW checklist requirement and violated its duty to provide nondiscriminatory access under the Act. MCI OC at 22.

### **Discussion**

We issued our ROW decision, D.98-10-058, on October 22, 1998. Having done so, we have no reason to assume that Pacific will not fully comply with that order. While AT&T urges us to wait until we complete OANAD before we make any determination of Pacific's compliance under § 271, we note that compliance under the Act does not hinge on whether or not forward- looking costs are yet in place. In addition, we find CCTA's comments do not lead us to conclude other than staff did: that its overall allegations in this area are neither significant, ubiquitous nor ongoing. In sum, none of the comments or allegations put forth suggest that there is a substantive basis for determining that Pacific has not met the ROW checklist requirement. Thus, we shall adopt staff's assessment.

#### **4. Unbundled Local Loop**

##### **a) K1023**

Pacific had no opening comments on the K1023 process. In its reply comments, Pacific asserts that APTOS does not provide on-line responses to pre-qualification requests. Pacific RC at 3. Pacific describes the K1023 process emphasizing the need for active retrieval of information as opposed to automated notification and the parallel between the wholesale and retail processes. Pacific RC at 3-4. Further, Pacific maintains that the CLCs incorrectly claim that it will deploy the capability of limited loop qualification information for DSL services in only those COs where Pacific is providing ADSL

services. Pacific states that it has notified CLCs that it will update tables to include the pre-qualification information for wirecenters where CLCs plan to offer xDSL services, if a CLC provides written notification. Three CLCs have submitted such requests.

Other parties suggest that the loop length indicator and manual K1023 process recommended in the FSR are not enough: competitors need equivalent electronic access to loop quality information that Pacific's retail representatives have. ACI/FirstWorld OC at 12; Covad OC at 10; MCI OC at 9; Nextlink/ICG OC at 12; NorthPoint OC at 5 and Sprint OC at 10. These parties argue that Pacific's loop length indicator (a) provides only one portion of the information they need and (b) is tailored to Pacific's ADSL offering and not necessarily appropriate for the other forms of xDSL competitors plan to offer.

ACI/FirstWorld stress that they only request that they have the ability to query loop characteristic information in Pacific's databases. ACI/FirstWorld assert that the loop length indicator is important, but not sufficient because (1) CLCs may use varieties of xDSL that have different characteristics than Pacific's ADSL offering and (2) other factors affect a loop's ability to carry DSL. ACI/FirstWorld OC at 13. In addition to the loop length indicator, ACI/FirstWorld suggest that Pacific should be required to develop an electronic K1023 process for other types of loop information and that the provisioning interval for this information should be the same as for Pacific's retail xDSL service. ACI/FirstWorld OC at 13-14. They also support the FSR's proposal that the staff continue to investigate access to Pacific's systems.

AT&T asserts that Pacific has not yet made some changes in the K1023 process or documented the changes in the CLEC Handbook. AT&T OC at 11. It also reports that Pacific made conflicting, confusing representations in a recent meeting with CLCs regarding xDSL capable

loops. Covad argues that the current fax-based K1023 process adds unnecessary delays and increases the chance for errors. Covad OC at 6. MCI cautions that loop length is only one factor that determines the availability of xDSL compatible facilities and that other factors such as load coils and bridge taps could also be determinative. MCI OC at 9.

Nextlink/ICG believe that CLC sales support personnel could have access to loop quality information present in PREMIS and LFACs. Nextlink /ICG OC at 9. They contend that at a minimum Pacific must be required to provide CLCs with access to the relevant loop facility information contained in these databases on a basis equivalent to that provided to its retail sales and sales support operations. Providing an electronic K1023 process in place of the current fax process is insufficient, instead Pacific must provide direct electronic access to the data contained in PREMIS and LFACs. Nextlink /ICG OC at 10.

Nextlink /ICG assert that Pacific should already know where each CLC plans to provide xDSL service due to collocation requests and forecasts which include Digital Subscriber Loop Access Multiplexing (DSLAM) equipment and that it should not need any additional identification of these COs for the purpose of implementing its loop length indicator. Further, they allege that the process that Pacific has proposed for CLCs to indicate which COs they plan to offer xDSL services is unnecessary and that the delay necessary to implement represents “outright discrimination” against CLCs deploying competing data communications services over unbundled loops. Nextlink /ICG OC 10.

NorthPoint disagrees with the FSR recommendation that only the manual K1023 process should be offered to CLCs at this time. It also argues that the CLCs use of a manual, fax-based K1023 system is not at

parity with the ILECs use of a superior mechanized system. NorthPoint further contends that Pacific's proposed loop length indicator is designed to support Pacific's ADSL product which differs from the CLCs' xDSL offerings. It concludes that the Commission cannot find that Pacific is offering nondiscriminatory, parity access unless and until the APTOS system is modified to allow CLC DSL providers to use it. NorthPoint OC at 5.

Sprint asserts that it is critically important that CLCs have parity access to information regarding facility availability. Sprint OC at 10. Sprint questions whether loading a loop length indicator will result in parity access and states there is uncertainty about the information to be provided by Pacific to CLCs so they can identify the COs where they intend to offer xDSL. In reply comments, Sprint contends that it remains unclear what level of automation is available to Pacific's retail representatives and agrees with MCI that Pacific must provide a clearer description of its pre-ordering capabilities.

### **Discussion**

It appears that the FSR may have underestimated the need for access to loop quality information and electronic access to the K1023 process. While the competitors appear generally to want the same type of thing: electronic access to information about loops, the differences in the particulars of their demands suggest continuing uncertainty about Pacific's systems. For example, NorthPoint and Sprint want "automated" access while other parties want access to underlying databases.

The FSR recommended that staff acquire further information on this topic. However in the interest of efficiency, we think that it would be better to direct Pacific to make this information available. Therefore, we modify the FSR recommendation to state:

- Pacific shall provide a detailed report on the prospects for electronic access to loop quality information and the K1023 process.
- the type of information that it has in APTOS, LFACs and any other system that indicate relevant information on the length, quality and availability of loops
- how its marketing and retail representatives make use of this information to determine the availability of loops for its ADSL products
- the K1023 process comparing the retail and wholesale processes. Pacific should note where electronic systems are accessed and the degree of automation
- how it could provide CLCs with electronic access to APTOS, LFACs and any other relevant system for determining loop quality and availability as well as electronic processing of K1023 requests.

**b) IDLC**

In opening comments, Pacific does not discuss the FSR's IDLC recommendations. However, it proposes modifications to the staff recommendations in an appendix to its initial comments. The effect of these modifications is to sunset the reporting requirement suggested in the FSR. Specifically, Pacific suggests that the Commission add the following statement to the staff recommendation concerning quarterly reporting: "Pacific should provide the report for two years unless renewed by Commission action." Pacific OC at Appendix 2.

In its reply comments, Pacific asserts that MCI's suggestion of an investigation into grooming loops of IDLC using TR303 is inappropriate because Pacific has not deployed TR303 DLC in its network. In addition, operational support for TR303 is not available. Pacific further argues that routing IDLC loops through a digital cross connect system would destroy the economic advantages of using IDLC. *Id.* RC at 21. Pacific also submits that

the Commission has held that it is not required to provide subloop unbundling, despite MCI's reliance on the GTEC arbitration to support this requirement. Further, Pacific contends that MCI's comments have various technical errors and misstatements of fact. Finally, Pacific asserts that: (1) IDLC is not a UNE; (2) IDLC is the wrong vehicle for high-speed services; and (3) UDLC is not necessarily an inferior service platform to IDLC. *Id.*

Several CLCs take issue with the FSR's conclusion that it is premature to act on the IDLC issue. ACI/FirstWorld OC 27; ELI OC at 5; and MCI OC at 26-29. These parties also argue that UDLC is an inferior service platform. One CLC, Covad, supports the staff's recommendation to defer the issue, but urges the Commission to take immediate action when the FCC issues its final order. Covad OC at 13. ELI and MCI contend that the FCC's recent Advanced Services Order (FCC 98-188) has implications for OSS. MCI asserts that this FCC order "requires" ILECs to provide sub-loop unbundling and collocation at remote terminals. MCI OC at 48. ELI states that the same FCC order suggests that the Commission requires unbundling "DLC high-speed data compatible loops." ELI OC at 5.

### **Discussion**

The FCC has not established any definitive requirement with respect to these issues. Consequently, we find parties' arguments urging the Commission to order Pacific to perform any additional sub-loop unbundling as part of § 271 compliance, to be unpersuasive. However, we believe that the FSR recommendation needs bolstering. Thus, we modify it and shall require Pacific to:

- provide CLCs with functioning unbundled loops, using copper or ULDC, where customers must be moved from IDLC loops. Where Pacific provisions this loop to a CLC using ULDC, Pacific should not

require that an INER be filed, since the UDLC technology already exists in the network.

- provide quarterly reports to the Director of the Telecommunications Division on its deployment of IDLC loops so that the Commission can monitor IDLC penetration in Pacific's network. Pacific should provide the report for three years unless renewed by Commission action.
- demonstrate that the quality of service that is provided to CLCs on UDLC or alternative technology is equivalent to the quality that Pacific's customers receive on IDLC.

**c) xDSL and Spectrum Management**

**(1) Adoption of ANSI National Standards**

Pacific agrees to the FSR recommendation on national standards with modification. It asserts that in the national standards process, there are many different iterations of proposed standards that ANSI does not adopt. The Commission should hold Pacific only to what ANSI actually adopts. Pacific also asserts that network reliability is an issue because there are cases where ANSI standards have caused interference. They will work with ANSI's Spectral Compatibility project to ensure that standards adopted will not affect network reliability. Pacific OC at 30.

Several CLCs assert that they should be allowed to deploy any vendor's technology for xDSL as long as it comports with national non-proprietary standards. MCI OC at 27; NorthPoint OC at 8; and Covad OC at 15. ACI/FirstWorld agrees with adoption of national standards but proposes that there be a Commission resolution on the current spectral management programs because they are a barrier to entry today. ACI/FirstWorld OC at 29.

In reply comments, AT&T maintains that if Pacific is adopting a proprietary xDSL modality (ADSL) prior to adoption of national standards for xDSL and spectrum management, the company runs the

risk of not being compliant when standards are adopted. Consequently, the adoption will frustrate competition by forcing a standard that is discriminatory. AT&T RC at 24. ACI/FirstWorld comments that the adoption of national standards should be broadened to include standards by any competitive neutral body including ANSI and the FCC. ACI/FirstWorld RC at 15. MCI suggests a third party spectrum management model for competitive neutrality. MCI RC at 17.

### **Discussion**

Pacific recommends deleting the word "proposed" and replacing it with "adopted" in this FSR recommendation. We concur that the word "adopted" is the more pragmatic word choice. However, we find little basis for Pacific's other suggestion. While it is Pacific's responsibility to safeguard the network, the company and other BOCs participate in the national standard setting forums so it is unlikely that a standard that potentially harms the BOCs would be adopted. Thus, we shall adopt the national standards FSR recommendation as modified by deleting the word "proposed" and replacing it with "adopted."

#### **(2) Spectrum Management Program**

Pacific asserts that CLCs must divulge the type of xDSL they wish to deploy in order for it to accurately report to the Commission on the success of xDSL technology and binder group management as the tool for managing spectral interference.

AT&T argues that Pacific should use the change management policies developed during the collaborative, and garner CLC concurrence before implementing the binder group management process. AT&T OC at 25. Sprint contends that the FSR does not make firm recommendations. Sprint OC at 26. MCI notes that at the FSR-suggested industry meetings, Pacific

has not made engineering or field data available that would support the use of binder group management as the spectrum management tool. MCI OC at 27. NorthPoint expresses concerns about the proprietary nature of the binder group model and impartiality in light of its experience with a similar spectral management program in an SBC jurisdiction which limited the deployment ability of xDSL. NorthPoint OC at 8.

Covad asserts that the Commission should require Pacific to justify any spectrum management program before it begins to implement its program in the field. It maintains that staff was not able to determine if the program was competitively neutral because Pacific refuses to provide the technical justification for its spectrum management to anyone, including the CPUC. Covad expressed concern that any spectrum management program have some rational technical basis; it believes that Pacific's program limits ADSL deployment without any tangible benefit in spectrum management. Covad OC at 14. ACI/FirstWorld states that it will accept Pacific's binder group management program on an interim basis if the Commission can ensure: (1) that the process is non-discriminatory in application; (2) includes all types of xDSL (3) is performed at no cost; and (4) will not delay provisioning of xDSL loops. ACI/FirstWorld OC at 29.

Pacific disagrees with AT&T's suggestion to use the OSS change management process to administer spectral management. It asserts that as the guardian of network security its binder group management process serves the widest audience of competing concerns. Pacific also declares that while there may be industry standards for xDSL equipment, there is no industry standard on binder administration within a cable. Pacific disputes the contention that it does not allow equipment that comports with national standards. Instead, CLCs are using 2-wire SDSL, which have no current

standards and an unknown impact on the network. Finally, Pacific argues that CLCs have no input into the design of the binder group management process because they are not forthcoming with information on the type of xDSL they are deploying. Pacific RC at 19.

Several CLCs reply that Pacific has not supported the claims that its spectrum management policy would protect network reliability. Pacific has not provided any data on why the binder group management should be unilaterally accepted without industry input. Sprint RC at 18; Covad RC at 4; and ACI/FirstWorld RC at 15. NorthPoint submits that Pacific's spectrum management process will limit the use of SDSL even though the spectral interference is the same as exists with its own services. It recommends that until national standards are adopted Pacific should not limit xDSL deployment without providing evidence of interference. NorthPoint RC at 8.

### **Discussion**

We shall modify and adopt as modified, the FSR recommendation to require Pacific to demonstrate in a compliance filing, through test data as well as all supporting data and assumptions, that the spectral management program that it employs to administer the deployment of xDSL services in the network is competitively neutral for both Pacific's retail operations and CLCs. Further, we shall also require CLCs to designate the type of DSL they intend to deploy, at the time that they place an order with Pacific. Pacific needs this information to make its spectrum management program more efficient and responsive. To preclude use of the information for marketing purposes, Pacific shall treat such information as proprietary.