Covad's DSL loop orders for an absolutely critical performance measurement—Average Time to Install a DSL loop (PM 55.1).[61]

Even the limited data submitted by SWBT still demonstrates that for several measurements related to DSL loop provisioning, SWBT's performance is far from parity and appears to be getting worse. A set of Covad loop orders reconciled between Covad and SWBT at the request of the Texas Commission in November 1999 vividly demonstrates the flaws in SWBT's xDSL-capable loop ordering process that cause significant delays in eventual loop delivery.[62] Finally, Covad's own data of all of its Texas orders—described in the Wall and Smith Declarations—confirms that SWBT routinely fails to provide xDSL-capable loops on time and that its performance has gotten worse as Covad's orders have increased. Clearly, the preponderance of the evidence—both from SWBT's own submissions and the evidence in these Comments—reveals that in actual fact, data CLECs do not receive nondiscriminatory access to xDSL-capable loops in any commercially meaningful manner.

In addition, SWBT cannot at this time avail itself of the "separate affiliate" avenue of proof to save its application. SWBT's separate advances services affiliate (SBC Advanced Solutions Inc., or "ASI") is simply not "fully operational" in Texas.[63] When SWBT filed this application, the interconnection agreement between SWBT and ASI was incomplete, because it did not contain a detailed description of the Interim Line

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61 Wall Decl. ¶ 16.

62 *See* Smith Decl. ¶¶ 23-33.

63 *Bell Atlantic New York Order* at ¶ 330 (offering separate avenue of proof BOC shows a "fully operational" separate affiliate); Brown Aff. ¶ 5 (SBC's separate affiliate will not use CLEC OSS and other procedures in Texas until February 28, 2000); SWBT Brief at 44 (ASI will not become operational in Texas until February 28, 2000).

Sharing arrangements between SWBT and ASI, as required by the SBC/Ameritech Merger Conditions. In addition, the Commission should expect a sufficient level of structural separation between the BOC and the affiliate plus some actual operational experience with the affiliate arrangement before finding that BOC has satisfied Checklist Item (iv). A BOC should not be permitted to satisfy this avenue of proof simply by filing articles of incorporation in Delaware and promising to make the affiliate operational in a couple of months.

B. SWBT has not Proven that it Actually Provides Nondiscriminatory Access to xDSL-Capable Loops

SWBT's application and subsequent *ex parte* presentations present hundreds of pages of performance data, all designed to show that SWBT is providing nondiscriminatory access to loops and other unbundled network elements. But with regard to loops that support advanced services, SWBT's "showing" is nothing more than a skewed and manipulated set of data.[64] And what little insight the data does provide is disturbing—for advanced services, SWBT's own incomplete data still shows a considerable lack of parity. A set of data compiled by Covad at the request of the Texas Commission in October and November 1999 demonstrates that SWBT's ordering process for xDSL-capable loops introduces significant delay in processing Covad's orders. And finally, Covad's own data for the Fourth Quarter of 1999 show that SWBT habitually delivers FOCs and loops late and that SWBT's performance has deteriorated as Covad's orders have increased.

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[64] Covad has only examined SWBT's performance measurement filings for a few metrics of particular concern to Covad. That said, given the serious flaws Covad found in SWBT's data for these metrics (*see* Wall Decl. ¶¶ 12-18), the other data provided by SWBT in other reports should be viewed with great suspicion as well.

1. The "DSL Loop" Ordering Process in Texas

To fully understand the deficiencies of SWBT's DSL loop showing, it is important to clearly understand how "data CLECs" currently operate in Texas. The most important point to remember about this process is that to provide the full range of xDSL services in Texas, Covad and other data CLECs order two types of unbundled local loops from SWBT—"2-wire analog" loops to support (paradoxically) ADSL and SDSL services and "2-wire digital" loops to support IDSL services. Throughout the Application and relevant portions of the Telcordia Report, SWBT continually confuses this important distinction.[65]

One of the benefits of competition is that Covad and other data CLECs offer several "flavors" of xDSL service, depending on what customers want. In particular, Covad offers SDSL, ADSL and IDSL services.

SDSL stands for Symmetric Digital Subscriber Line technology, which supports services that require the same upload and download speeds. Covad offers 384 kbps, 768 kbps, and 1.1 Mbps synchronous services utilizing SDSL technologies. These different services are provided over a simple, non-loaded unbundled loop that does not have excessive bridge taps. The speed of the service depends upon the length of the loop. Typically, Covad can only provide SDSL services on lines that are 18,000 feet. When Covad receives an order for SDSL in Texas, Covad places an order with SWBT for a **2-**

[65] For instance, the Telcordia Report attempted to "test" the provision of SDSL service over two "ISDN loops." Covad does not provide SDSL services over "ISDN loops" but over a different loop type. Telcordia's confusion as to how a data CLEC would deploy SDSL services diminishes the miniscule utility of Telcordia's DSL findings even further. *See* Section II.B.3 (discussion of Telcordia Report).

wire analog loop and submits the particular power spectral density (PSD) mask appropriate for Covad's SDSL service.[66]

ADSL stands for Asymmetric Digital Subscriber Line technology, which supports services that require larger download speeds than upload speeds. Covad's residential DSL product—TeleSurfer—utilizes ADSL technology. Like SDSL, ADSL functions on a simple, non-loaded unbundled loop that does not have excessive bridge taps. Once again, Covad can provide ADSL services on lines that are 18,000 feet. When Covad receives an order for ADSL in Texas, Covad places an order with SWBT for a **2-wire analog loop** and submits the the particular PSD appropriate for Covad's ADSL service.[67]

IDSL stands for ISDN Digital Subscriber Line technology, which supports the provision of 144 kbps service over loops longer than 18,000 feet. Covad routinely provides IDSL service to customers served by loops that are 20,000 to 40,000 feet long. In addition, Covad provides IDSL services to customers who are served by a fiber-fed Digital Loop Carrier ("DLC") system. Covad offers IDSL service in order to provide *all* consumers with a broadband, DSL choice. When provided over loops greater than 18,000 feet, IDSL utilizes non-loaded loops in which ISDN repeaters are placed every 4,000 feet. When provided over fiber-fed DLC loops, the insertion of an ISDN "BRITE" card at the DSL is necessary. This card permits Covad's collocated equipment to interface with the DLC system and communicate with the IDSL router at the customer's

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66 Wall Decl. ¶ 5; Michael Smith Decl. ¶ 13.

67 For the vast majority of loops, there is no physical difference between a loop utilized for analog, voice-grade service and a DSL service—most analog loops are nonloaded twisted copper pairs that do not have excessive bridge taps. The Texas Commission Arbitration Panel recognized as such in ordering that the loop rate for "DSL loops" be the same as the loop rate for an "analog loop."

premises. When Covad receives an order for IDSL service in Texas, Covad places an order with SWBT for a **2-wire digital loop**.[68]

To avoid confusion, for purposes of these Comments and the attached Declarations, Covad will refer to loops ordered to support its SDSL or ADSL service as "SDSL/ADSL loops." Loops ordered by Covad to support IDSL services will be referred to as "BRI ISDN loops."[69] Where appropriate, when Covad refers to "xDSL-capable loops", it is referring to both SDSL/ADSL and IDSL loops. To gauge SWBT's provision of loops to support advanced, DSL services accurately, the Commission cannot simply take SWBT's claims of "DSL loop" performance at face value, because it must look at the manner in which SWBT provides all types of xDSL-capable loops, both SDSL/ADSL and BRI ISDN loops.[70]

2. Performance Indicates Significant Discrimination

In the *Bell Atlantic New York Order*, the Commission stressed "[t]he need for *unambiguous* performance standards and measures" in reviewing 271 applications.[71] With specific regard to the xDSL-capable loop showing, the Commission advised that if

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[68] Wall Decl. ¶ 6. Covad Declarant Michael Smith provides a complete review of the pre-ordering and ordering processes Covad undertakes to obtain xDSL-capable loops from SWBT, including copies of the required forms and "job aids" provided by SWBT to Covad. Michael Smith Decl. ¶¶ 4-20.

[69] Covad makes this distinction solely because SWBT treats orders for these services differently in its pre-qualification, qualification, and provisioning process. For the vast majority of loops, there is no physical difference between an "SDSL/ADSL loop", an "IDSL loop" and a simple analog voice loop—the loop is a single, twisted copper pair built to applicable industry guidelines with no load coil or excessive bridge tap. Covad believes that "a loop is a loop" and that under TELRIC pricing, there is no justifiable reason for pricing a "digital" loop differently than an "analog" loop, because an efficient, forward-looking local network design would most certainly account for DSL services over the local plant.

[70] As described in the Wall Declaration, approximately one-third of Covad's demand for advanced services loops in Texas to date has been for BRI ISDN loops. Wall Decl. ¶ 11. As a result, simply by excluding BRI ISDN loops from its "DSL loop" showing, SWBT gives the incorrect impression that orders for "advanced services" loops in Texas are lower than they are.

[71] *Bell Atlantic New York Order* at ¶ 334.

the BOC had an analogue retail DSL service (which SWBT does in Texas), the BOC must prove "that it provides xDSL-capable loops to competitors either in substantially the same average interval in which it provides xDSL service to its retail customers."[72] In particular, the Commission said that it "expected" BOCs to establish "that it meets substantially the same number of installation appointments for the customers of competing carriers that it meets for its retail customers." In addition, the Commission expects "a showing that the quality of the loops provisioned to competing carriers is substantially the same as the quality of the lines used for the BOC's provision of retail advanced services."[73]

Far from being "unambiguous," the performance data submitted by SWBT raise more questions than they answer. Indeed, for xDSL-capable loops, SWBT's application is all hat and no cattle—for example, while Chapman does a fine job of laying out the installation intervals for DSL provisioning,[74] the Application provides no evidence at to whether SWBT is actually meeting those intervals!

In addition, Covad shows below that there are enormous flaws in SWBT's data collection processes—flaws that cause the majority of Covad loop orders to "fall" out of the analysis of key performance metrics. Yet, even with these significant flaws, SWBT's submissions show that CLECs receive clearly inferior service for DSL-related metrics in

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72 *Id.* at ¶ 335.

73 *Id.*

74 Chapman 64 (5 business days if no conditioning; 10 business days if conditioning), 66. However, these installation intervals stem from the Covad/Rhythms Arbitration Award—an award SWBT is currently appealing. Thus, it is legally questionable whether the Commission can rely upon these intervals in consider in Checklist Item (iv).

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Texas. Covad's own data, submitted below and contained in the Smith and Wall Declarations, show far worse performance.

a. SWBT's DSL Showing is Based on a Subset of Loop Data that Excludes Large Numbers of Orders

SWBT's performance measurements—as provided in the aggregate to the Commission in the Application and the January 14, 2000 *ex parte* presentation and as provided individually to Covad—examine SWBT's performance on only a minority of Covad's loop orders. Although Covad has some indications as to why this is occurring, it is incumbent upon SWBT to explain fully these serious flaws in data collection.

In this section, Covad deconstructs three of SWBT's performance measurements that are absolutely critical for advanced service providers like Covad. The timely receipt of a Firm Order Commitment from the ILEC, the actual time it takes to receive a functional line from the ILEC, and the average response time to a loop qualification query are all crucial for CLECs to meet customer service delivery expectation. For these important performance measurements, SWBT fails to analyze the large numbers of Covad's orders.

UNE Loop-Manual FOC (PMs 5-17 and 6-17). As shown in the Wall Declaration, the performance data submitted by SWBT fail to include approximately *58% of Covad's orders*.[75] Since an entire class of Covad's orders are excluded from this metric, the Commission simply cannot rely upon this system to support SWBT's claims of nondiscriminatory treatment.

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[75] Wall Decl.¶ 15. Throughout 1999, Covad submitted all of its orders manually via facsimile. Michael Smith Decl. ¶¶ 6, 9. Covad requested passcodes for LEX on November 7, 1999 and finally received those passcodes on January 21, 2000. Michael Smith Decl. ¶¶ 8-9. As a result, all orders submitted by Covad up to the January 10, 2000 application date were submitted manually.

The impact of excluding the majority of Covad's orders looms large. According to the January 14 *ex parte*, SWBT has not been "at parity" in PM 5-17 for five of the last six months, and performance has been deteriorating since September (incidentally, since Covad began to order loops in significant quantity). Table 1, compiled from data in the attached Wall Declaration, compares SWBT's *reported* aggregate performance to all CLECs, its *reported* specific performance to Covad, and Covad's *actual* experience for this metric.

Table 1. PM 5-17 (UNE Loop FOCs Received – Manual)/Actual Covad Results

Month	SWBT Report % Rec'd < 24 hrs Claimed performance to all CLECs	SWBT Report % Rec'd < 24 hrs Claimed performance to Covad	**Covad Actual % Rec'd < 24 hrs**
Sept 99	94.7%	94.6%	**58.00%**
Oct 99	88.7%	93.5%	**64.66%**
Nov 99	80.7%	63.5%	**28.42%**
Dec 99	N/A[76]	97.0%	**11.47%**

Sources: SWBT January 14, 2000 *ex parte*, Wall Decl. ¶¶ 15, 24.

Somehow, by excluding 58% of Covad's orders from this measurement, SWBT's performance to Covad magically improves.[77] Only SWBT fully knows what its true performance, taking into account all carriers, really is for this metric.[78]

[76] Covad does not believe that SWBT has put into the record any evidence of its performance in December 1999. As made clear in the Wall Declaration, Covad's orders ramped significantly in December 1999, and SWBT's FOC performance deteriorated considerably in that month. Wass Decl., ¶ 24, Exhibit MW-1. This is very concerning, as SWBT's own data shows that performance in this metric markedly deteriorated in November 1999 as well. SWBT Affiant Dysart has attempted to pass off SWBT's nonperformance based upon one-time events in the Summer 1999 and October 1999, and implied that SWBT had overcome those problems. Dysart Aff. ¶¶ 133, 147.

While Covad is, of course, not fully aware as to why the majority of its loop orders are not analyzed, it has some guesses. For example, as discussed in the Michael Smith and Goodpastor Declarations,[79] SWBT has deployed a pre-qualification and spectrum management system for DSL loops that discriminates in favor of ADSL services and against SDSL services.[80] While SWBT is under legal mandate by the Texas Commission and the FCC to dismantle these systems, the methods and procedures of these systems require Covad to re-submit dozens of orders for loops that violate SWBT's discriminatory spectrum and binder group management systems.[81] Covad suspects that SWBT's performance measurements may not include any of these "supplemented" orders. Only SWBT knows how many CLEC loop orders it has rejected (and continues to reject) because of its spectrum management and binder group reservation policies.

Average Installation Interval-DSL (PM 55.1). SWBT also excludes almost half of Covad's SDSL/ADSL loop orders in Performance Measurement 55.1. The Wall Declaration shows that the number of DSL loops SWBT *claims* to have provided Covad

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77 The same number of Covad orders are excluded from Performance Metric 6-17 (average time to return FOC) as well.

78 At this point, it is appropriate to remind the reader once again that the burden of proof is upon the applicant to show nondiscriminatory access.

79 Michael Smith Decl. ¶¶ 21-22; Goodpastor Decl. ¶¶ 33-35.

80 SWBT developed this system because its own retail plans include only ADSL services. This is not surprising and is typical of ILEC DSL deployments nationwide, because SDSL and IDSL services directly threaten to undercut the substantial revenues ILECs derive from T1, frame relay and ISDN services.

81 Michael Smith describes no fewer than eleven steps that must be taken to place an order for a loop for a service that does not match SWBT's ADSL retail offering. Michael Smith Decl. ¶ 10. Placing orders through the LEX electronic interface does not change the overall process substantially. *Id.*

in Covad's carrier-specific report represents only 51.14% of the total number of SDSL/ADSL loops Covad had received from SWBT during the relevant time period.[82]

More importantly, SWBT's Application already shows that this metric is "out of parity,"[83] but Affiant Dysart tries to explain this condition claiming that only a few orders were included in the measurement of PM 55.1. Dysart explains that SWBT underreports this metric because only orders with the T2A intervals are included and that many CLECs "request due dates later than the seven or 15-day interval."[84] In short, SWBT would have this Commission ignore this metric based on the dubious claim that data CLECs like Covad do not really want their loops all that quickly after all.[85]

Once again, Covad can only testify to how it orders loops, and it appears that SWBT's discriminatory loop qualification process may be one of the causes for this disparity. As described by in the attached Michael Smith Declaration, when a Covad order is initially rejected (illegally) because of SWBT's loop qualification system for spectrum management reasons, Covad must supplement and re-submit that order. When Covad supplements that order, the *only* way SWBT will accept the order is if Covad *changes the original due date* to correspond to a *new* installation interval that is 15

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82 Wall Decl. ¶ 16. For this figure, Covad only calculated SWBT's delivery of SDSL/ADSL loops. The delivery of BRI ISDN loops—which Covad uses to provide ISDL service—is not reported by SWBT in Performance Measurement 55.1. Because of this reason, as currently constituted, PM 55.1 can only track, at best, approximately two-thirds of Covad's orders for xDSL-capable loops.

83 Dysart ¶ 331.

84 Dysart Aff. ¶ 332.

85 The failings of PM 55.1 are particularly important because the Commission has observed on several occasions that the Average Completion Interval is one of the "most probative" measurements "in assessing whether an incumbent LEC processes and completes orders from competing carriers in the same time frame in which it processes and completes its own retail orders." *Bell Atlantic New York Order* at ¶ 195, *citing OSS Performance Measures NPRM*, 12 FCC Rcd 12842-43.

business days *after* SWBT receives the supplement. As a result, most of Covad's orders are delayed by up to 10 business days simply because they do not comply with SWBT's internal spectrum management standards. And since SWBT procedures require that Covad insert new "due dates" to avoid an automatic rejection, the appearance is given that Covad has in fact actually asked for this longer interval.[86]

In short, because this Rube Goldberg OSS *forces* Covad and other CLECs to request due dates outside of the standard window, SWBT's actual installation performance for nearly half of Covad's orders are not examined in PM 55.1

Average Response Time for Loop Make-Up Information (PM 57). Once again, this metric fails to measure a significant number of Covad's requests. Covad request loop makeup information for *all* of its SDSL/ADSL loop orders (utilizing the "one-step" process described by Affiant Chapman ¶¶ 39-46). Yet, the Performance Metric Tracking Report provided to Covad by SWBT shows that SWBT is only tracking approximately 71% of Covad's requests for this information.[87] In addition, as described in the Michael Smith Declaration, Covad's actual experience in response time exceeds the response time contained in SWBT's tracking report.[88] Covad cannot explain the strong inconsistency between the requests it has made for loop makeup information and SWBT's tracking report.

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86 Michael Smith Decl. ¶ 19.

87 Wall Decl. ¶ 17.

88 Michael Smith Decl. ¶¶ 31-32 (5.8 day loop makeup information response interval for SDSL orders; 6.7 day loop makeup information response interval for ADSL orders).

b. Covad Data Proves that SWBT is Not Providing Loops to Covad in a Nondiscriminatory Manner

Covad has been operational in SWBT territory in Texas since August 2, 1999. In the Michael Smith and Wall Declarations, Covad provides analysis of SWBT's actual performance to Covad, based on Covad's own data collection efforts.

i. Data Collection for the Texas Commission

The Michael Smith Declaration describes a set of data collected by Covad in October 1999 at the request of the Texas Commission.[89] What is important about this analysis is that in November 1999, again at the request of the Texas Commission, Covad and SWBT "reconciled" based upon the records of both parties.[90] This Covad/SWBT reconciled information was provided to the Texas Commission. Covad also submitted additional data to the Texas Commission on the ordering process that SWBT did not agree to include in the reconciled data submission.

This set of data provides the following insights—

- Over 74% of Covad's SDSL/ADSL loop orders were initially rejected by SWBT, requiring Covad to supplement the order before SWBT would process it;

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[89] The Texas Commission requested data for orders placed during two specific periods of time, September 28 – October 8, 1999 and October 25 – October 27, 1999. Michael Smith Decl. ¶ 24. Telcordia was invited to visit Covad's offices to monitor Covad's collection of this data, but declined. *Id.* at 24.

[90] *Id.* at ¶ 25. Covad and SWBT reconciled issues such as the date of the initial order (called a Local Service Request, or LSR), the date of SWBT's response (either a "reject" or a FOC), and the date Covad received SWBT's rejection or FOC. The parties agreed on most of the information. In addition, the data reconciliation process excluded loops in which Covad delayed the process (such as downgrading an order or submitting incorrect supplements, etc.) *Id.* at ¶¶ 27-28.

- For over 35% of Covad's orders for SDSL, SWBT stated that conditioning was needed, extending Covad's installation interval for these loops to 15 business days;
- SWBT took an average of 5.8 days to provide loop makeup information for Covad's SDSL orders; for Covad's ADSL orders in which SWBT contended that loop makeup information was necessary, SWBT took an average of 6.7 days to provide that loop makeup information;
- For Covad's SDSL orders, SWBT took an average of 8.6 days from the submission of a complete and correct LSR to provide Covad a FOC; for Covad's ADSL orders, SWBT took an average of 7.6 days to provide Covad FOC;
- For Covad's SDSL orders, the average interval between SWBT's receipt of a Covad LSR and SWBT's promised FOC date was 23.6 days;
- For Covad's ADSL orders, the average interval between SWBT's receipt of a Covad LSR and SWBT's promised FOC date was 24.3 days.[91]

A more complete description of how this data set was collected and analysis of this data set is contained in the Michael Smith Declaration, paragraphs 23-33, and attached Exhibits MS-11 and MS-12.

Although the data provided to the Texas Commission in October and November 1999 is not a complete analysis of all Covad orders, the data set is important because both

[91] Michael Smith Decl. ¶¶ 30-32. The data does not analyze when these loops were actually installed. As described in Wall Decl. ¶ 26 and Goodpastor Decl. ¶ 26, it is difficult for Covad to determine the actual date an ILEC provides a loop in the absence of acceptance testing. SWBT did not agree to perform acceptance testing on all of Covad's loops until December 16, 1999, and SWBT has still not fully implemented that procedure for Covad. *See* Goodpastor Decl. ¶¶ 25-29.

Covad and SWBT reviewed and reconciled this data set in order to remove delays in the ordering process that were caused by Covad. As a result, Covad believes that the Commission should examine the results of this project carefully.

ii. Analysis of All Covad Orders and Installs

The Wall Declaration reviews all of Covad's orders and installations for xDSL-capable loops (both SDSL/ADSL loops and BRI ISDN loops) for Calendar Year 1999. Covad benchmarks ILEC performance on several "customer affecting" issues in order to determine where particular points of failure may or may not be for particular ILECs in particular regions. The Wall Declaration describes how he compiled this data for the purpose of these Comments.

For this Application, Covad has analyzed in detail its loop orders from September through December 1999, which are the months in which Covad has had enough orders to draw significant generalizations.[92] In general, Covad's own analysis reveals that as Covad's orders for xDSL-capable loops have increased during this period, SWBT's performance has deteriorated dramatically. These findings indicate that SWBT's processes are not capable of providing nondiscriminatory access to xDSL-capable loops at actual and reasonably foreseeable commercial volumes.

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[92] In addition, Exhibits MW-1 and MW-2, attached to the Wall Declaration, contain information on the number of loops Covad ordered and received in Texas in 1999. SWBT's xDSL-capable loop section does not provide a clear period of time in which SWBT claims it has provided nondiscriminatory access (originally submitting data through October 1999, then later submitting data through November 1999). Covad requests that the Commission clarify that for future applications, a BOC should submit comprehensive performance data for at least the full six months prior to the Application date. In addition, BOCs should be required to file all performance data they have in their possession at the time of the Application. Such a policy would avoid the submission and re-compilation via the *ex parte* process that has characterized this Application.

SWBT Continually Returns FOCs for xDSL-Capable Loops Late. Table 1 summarizes Covad's internal measurements on SWBT FOCs for Covad's loop orders.[93]

Table 2. Summary of Covad Internal Performance Results: FOC Returns

Measurement	Sep-99	Oct-99	Nov-99	Dec-99
FOCs Received < 1 business day	58.00%	64.66%	28.42%	11.47%
FOCs Received < 2 business days	64.00%	69.83%	51.05%	24.77%
FOCs Received < 3 business days	72.00%	72.41%	61.05%	40.60%
FOCs Received < 4 business days	76.00%	74.14%	69.47%	52.98%
FOCs Received < 5 business days	80.00%	75.86%	76.32%	59.17%

Source: Wall Declaration ¶ 24

These results on FOC returns are, frankly, staggering. It shows a disturbing trend that SWBT's return of FOCs to Covad has fallen off dramatically over these four months as Covad's loop orders have grown.[94] SWBT's performance in December 1999 shows that SWBT missed its 24-hour FOC return interval 88.53% of the time. Equally important is the number of times that Covad is simply left hanging on a loop order for four or more days—to the point that in December, more than 40% of Covad's orders were waiting for a FOC for more than five business days.

[93] For this measurement, Covad, like SWBT in PM 5-17, draws no distinction between SDSL/ADSL loops and BRI ISDN loops.

[94] Exhibit MW-1 provides the number of loops Covad has ordered in each of these months.

SWBT Delivers Late and Faulty Loops to Covad. The Wall Declaration also examines the timeliness and quality of the loops Covad obtained from SWBT from October 1999 through December 1999.[95]

In examining this data, the Commission must understand that it is oftentimes difficult for Covad to determine when SWBT *actually* provides a functioning xDSL-capable loop to Covad. Until very recently, SWBT had not agreed to notify Covad when it actually delivered a loop.[96] As a result, it was incumbent upon Covad to test the loop after the promised FOC date had passed to determine whether a loop had actually been cross-connected to Covad equipment. Because these tests are time consuming—and because ILECs are frequently late in delivering loops—Covad does not run these tests until one day after the ILEC-provided FOC date.[97] The "FOC +1" test simply tests whether the ILEC has cross-connected a loop from the Main Distribution Frame in the appropriate central office to the assignment pair Covad designated in its order.

As a result, the "FOC +1" test gives the ILEC considerable "benefit" of the doubt. In particular—

- This test utilizes the FOC date provided by SWBT, even if that FOC date is outside the 5 or 10 business day interval to which Covad is entitled.[98]

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[95] Exhibit MW-2 provides the total number of loops Covad received from SWBT in these months. The period October-December 1999 was reviewed in detail because it was the period in which Covad received a significant number of loops from SWBT to begin to draw generalizations.

[96] *See* Wall Decl. ¶¶ 26, 33; Goodpastor Decl. ¶¶ 25-29 (regarding SWBT's resistance to providing Covad acceptance testing on all Covad loops).

[97] Wall Decl. ¶ 26.

[98] Covad would be wasting its time and money to test a loop on the contractually-obligated date if the ILEC has already said that it will be late.

- This test only tests for connectivity between Covad's equipment and "some loop" on the Main Distribution Frame. As a result, the test does not determine—
  - Whether the loop actually goes to the appropriate customer address;
  - Whether the loop is properly conditioned, if conditioning is necessary;
  - Whether the loop is capable of supporting advanced services (e.g., loop is free from electrical imbalance or electronics such as a DLC system).

Even with these considerable "benefits of the doubt", approximately one-third of the loops ordered by Covad fail the "FOC +1" test. In particular, in October 1999, 32.7% of the loops failed this test; in November 1999, 28.4% of the loops failed, and in December 1999, 36.00% of the loops failed this test.[99]

As described above, the "FOC +1" test does not test whether the loop cross-connected at the central office would actually support DSL services. Covad also tracks "failed dispatches", which indicate how frequently Covad's attempt to install a customer's DSL line fails for a variety of reasons. In order to determine how many of Covad's "failed dispatches" are the result of delivery of a non-functional loop, Wall has manually examined Covad's records of each loop provided to Covad by SWBT in Texas in these three months. Once again, this measurement gives SWBT considerable benefit of the doubt. For instance, Covad will not dispatch an installation technician until Covad

[99] Wall Decl. ¶ 27.

determines that "a loop" is cross-connected at the central office to Covad equipment. This means that an already-late loop may still pass the "failed dispatch" metric.[100]

The result of this manual review and verification indicate that over these three months, the rate of failed Covad dispatches due to faulty or non-functioning loops provided by SWBT is increasing dramatically.

- In October 1999, 16.4% of Covad's dispatches failed because SWBT did not deliver a functional loop;
- In November 1999, 22.1% of Covad dispatches failed because SWBT did not deliver a functional loop;
- In December 1999, 30.2% of Covad's dispatches failed because SWBT did not deliver a functional loop.[101]

These numbers confirm the same trend evident in other measurements—as Covad's loop orders increased during 4Q99, SWBT's delivery of xDSL-capable loops has deteriorated significantly. SWBT has consistently failed to provide nondiscriminatory access to loops throughout this entire period, and its performance is getting worse.

c. Other DSL-Related Metrics Provided by SWBT Indicate Lack of Parity

Even if SWBT's own performance measurements are taken at face value—a highly dubious activity, given Covad's findings discussed above—analysis of several of SWBT's performance metrics relevant to advanced services that were submitted in SWBT's January 14 *ex parte* presentation reveal a disturbing lack of parity.

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[100] Wall Decl. ¶¶29-30. If the ILEC provides a functioning loop "late" (either because the FOC date was late or because the loop initially failed the "FOC +1" test), that loop would still pass the "failed dispatch" measurement.

[101] Wall Decl. ¶ 30.

For example, the measurement of **Percent SWBT Caused Missed Due Dates-DSL (PM 58-09)** has shown a lack of parity statewide since its inception. Under SWBT's own data, SWBT is 2.5 times more likely to miss a due date for a CLEC-ordered DSL loop than it is for its retail DSL service. The November 1999 data (not discussed in the Dysart Affidavit) ratifies this disturbing fact, by measuring a much larger number of DSL loops than prior months.

The **Percent SWBT Caused Missed Due Dates-Dark Fiber (PM 58-13)** should also be cause for concern. SWBT was required to provide provided dark fiber to CLECs prior to the *UNE Remand Order*, and provided dark fiber to CLECs throughout 1999. SWBT's own data shows that SWBT is routinely late in providing dark fiber to CLECs. The metric has not been in parity since June and SWBT's performance worsened in the Fall of 1999.

Even SWBT's own, skewed data for **Average Installation Interval-DSL (PM 55.1)** (discussed above) shows that SWBT routinely misses the installation intervals in the T2A or the Covad/Rhythms Arbitration Award and is not in parity.[102]

The measurement **Percent Trouble Reports on N, T, C Orders within 30 days-BRI Loop (PM 59-03)** is designed to measure the quality of a BRI ISDN loop provided to CLECs.[103] A concern of CLECs is that ILECs may "rush" its installations and provide poor quality loops, so as to give the appearance of compliance with the 1996 Act. If

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[102] The installation intervals in the T2A are 7 business days for loops that need no conditioning and 15 business days for loops that require conditioning. The Jan. 14 *ex parte* presentation evidence shows that the average installation interval is 8.15 and 17.11 business days, respectively (compared to 6.73 and 10.90 for SWBT retail). The Covad/Rhythms Arbitration Award establishes 3-5 and 10 business days interval for orders xDSL-capable loops, regardless of loop length. Covad/Rhythms Arbitration Award (CG-5) at 81-82.

[103] Covad and other data CLECs utilize BRI ISDN loops to support IDSL service.

trouble is reported on a loop within the first month, it is indicative that the ILEC may not be able to install working loops in a meaningful manner.

SWBT's own report shows that Performance Measurement 59-03 was not at parity in October 1999 and November 1999 on a statewide basis. In October 1999, CLEC BRI ISDN loops were twice as likely to have a trouble report than SWBT's retail service. In November, CLEC BRI ISDN loops were more than *three times* more likely to have a trouble. In November 1999, no fewer than 18.5% of unbundled BRI ISDN loops provided reported a trouble within thirty days, compared to only 5% for SWBT retail service.

The measurements for **Percent Missed Due Dates Due to Lack of Facilities-BRI Loop (PM 60-03)** and **Percent Missed Due Dates Due to Lack of Facilities-DSL (PM 60-08)** are designed to ensure that SWBT does not discriminate against CLECs when it claims that it cannot provide a line because sufficient stand-alone loop facilities are unavailable.[104] Even taking SWBT's numbers at face value, it appears that CLEC advanced service loop orders are much more likely to face "lack of facilities" claims than SWBT retail services. CLEC SDSL/ADSL loop orders are four times more likely to encounter a "facilities" issue than SWBT retail, and CLEC BRI ISDN loop orders are

[104] Until SWBT makes line-sharing available to data CLECs as ordered by the FCC in the *Third Advanced Wireline Services Order*, data CLECs must order separate, stand-alone loops to provide services even though it is technically feasible to provide certain forms of DSL over the same loop that carries analog voice service. The need to obtain these separate stand-alone loops is a significant barrier to entry for data CLECs—especially for customers for which "spare" loops are not available. Therefore, SWBT's argument that CLECs have the "economic equivalent of line sharing" by operation of the Surrogate Line Sharing Charges mandated by the FCC in the SBC-Ameritech Merger Conditions (SWBT Brief at 44-45) does not address the real *operational* hurdle and discriminatory access that Covad and other CLECs face even when they order loops subject to the discount because of the problems associated with obtaining a stand-alone loop.

nearly five times more likely to be delayed because of a facilities issue.[105] For BRI ISDN loop orders, according to SWBT's January 14 *ex parte* compilation, parity has not been met on the hundreds of CLEC loop orders since SWBT began to track its own retail offerings in August 1999.

Despite the fact that the November 1999 data was at SWBT's disposal on December 20, 1999,[106] SWBT claimed on January 10, 2000 that the "sample size" for many performance metrics were insufficient to make any reliable conclusions about parity provision. One important example is **Trouble Report Rate-BRI ISDN loops (PM 65-03)**.[107] On January 10, 2000, Dysart explained away an "out of parity" result from this metric in October by claiming that "the sample size [for this metric] needs to be significantly larger to yield reliable statistical scores."[108]

The November 1999 performance data (in SWBT's possession at the time the Application was filed) *did* contain statistically relevant numbers—indeed, twice as many loops than SWBT reported in October 1999. And those numbers revealed a disturbing trend in this metric. According to data submitted at the request of Commission staff by SWBT in the January 14, 2000 *ex parte* presentation, in November 1999, the number of

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105 In November 1999, CLEC BRI ISDN orders were nearly seven times more likely to be delayed for this reason. *See* SWBT Jan. 14 *ex parte* presentation.

106 According to the procedure described in the Dysart Affidavit at ¶ 15, the November 1999 data would have been generated on December 20, 1999, and therefore was presumably available to him and SWBT at the time he filed his affidavit on January 10, 2000. The fact that this data was subsequently filed with the Commission on January 13 and 14 (without public disclosure until a week later) indicates that this data was at SWBT's ready disposal at the time of filing.

107 As discussed above, Covad orders BRI ISDN loops to support its IDSL service. SWBT's performance for BRI ISDN loops is of significant importance to Covad's business.

108 Dysart Aff. ¶ 482.

BRI ISDN loops provided to CLECs in Texas increased 68% that month,[109] but the number of reported troubles increased *185%*. The trouble report rate for CLEC BRI ISDN loops of 9.1% for November 1999 was more than three times the trouble report rate SWBT claims for its own retail comparable service.

SWBT's explanation of PM 65-03 should signals the Commission to investigate why SWBT chose not to explain its November 1999 data in its original application. In the January 10 Application, in which SWBT's witness Dysart only provided explanations for data through October 1999, SWBT argued that it needed a "significantly larger" sample size to draw conclusions on this metric. But SWBT already had in its possession significantly more data for November 1999, and that data showed a fact SWBT probably did not want to acknowledge—that the trouble reports rate on BRI ISDN loops was increasing as CLECs ordered more BRI ISDN loops. PM 65-03 indicates that SWBT has not scaled its advanced services loop provisioning processes in Texas adequately to meet commercial demand by Covad and other data CLECs.

Unfortunately, PM 65-03 is not the only example where the November 1999 data provides more insight into SWBT's provisioning of loops to advanced service providers. In several other metrics that impact advanced services, the Dysart affidavit argues that small sample sizes or a lack of data prevents him from drawing any conclusions on parity or discrimination.[110] For example, in **Percent of FOCs Received within 24 Hours-**

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[109] From, according to SWBT, 240 to 405.

[110] *See, e.g.,* Dysart Aff. at ¶¶ 330 (PM 55.01-1), 331 (PM 55.01-2), 333, 344 (PM 57-01), 352 (PM 58-04), 358 (PM 58-09), 368 (PM 59-03), 372 (PM 59-08), 379 (PM 60-03), 383 (PM 60-08), 389 (PM 62-04), 397 (PM 63-04), 401 (PM 63-09), and 487 (PM 65-08) . In addition, no where does Dysart explain the failure to provide any explanation of PM 62-09 (Average Delay Days for SWBT Missed Due Dates-DSL Loops).

Manual UNE Loop (PM 5-17) (discussed above), the November 1999 data submitted by SWBT shows that SWBT's performance steadily worsened. Indeed, according SWBT's own numbers, SWBT's thinks it has missed this benchmark five of the last six months, with November 1999 being the worst (at 80.7%).[111]

The Dysart Affidavit tried to explain away SWBT's poor performance through October 1999 by pointing to a reorganization of the LSC (the group that processes these orders) in July and August 1999[112] and by discussing a problem with software and additional "training" that occurred in October 1999.[113] But those problems cannot explain why SWBT's performance on this metric in November 1999 continued to degrade.[114]

The point here is not simply that SWBT's routinely returns FOCs late. It is that on January 10, 1999, SWBT had data in its possession that showed that its FOC performance measured in PM 5-17 was getting worse through November 1999. SWBT chose to analyze the data through October 1999 and tried to explain away its substandard performance through that month with apparently one-time excuses like a corporate reorganization, software glitches, and additional training. To explain SWBT's continued failures through November 1999, that dog won't hunt.

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111 Covad's own internal tracking indicates even worse performance and shows a similar downard trend that continued through December 1999. *See* Section II.B.2.b, *supra.*.

112 *See also* SWBT Brief at 97-98 (lack of parity in FOC returns were "due to a reorganization in the LSC").

113 Dysart Aff. ¶ 147. Of course, ensuring that SWBT handles corporate reorganizations, software glitches, and training issues efficiently in their relationship with CLECs is one of the reasons this performance measurement process exists.

114 Nor can it explain the poor performance through December 1999 that Covad's own data shows. *See* Section II.B.2.b *supra.*

3. *Telcordia did not Adequately Examine SWBT's xDSL-capable Loop OSS*

SWBT cites the Telcordia Report as further evidence in its effort to prove compliance with regard to this checklist item.[115] For several reasons, the Telcordia Report is simply insufficient to show that SWBT's xDSL-capable loop provisioning processes are sufficient to meet the checklist.

As discussed above, in Covad's discussion of Checklist Item (ii), the most important point to remember in analyzing a BOC's OSS is to determine whether the OSS "is handling current demand and will be able to handle reasonably foreseeable demand volumes."[116] The Commission has stated that the most probative evidence is "actual commercial usage."[117] The Commission has stated several times that it will consider the results of "independent third-party testing" of a BOC's OSS if it does not have evidence of actual commercial usage.[118]

As shown clearly in Section II.B.2 above, actual commercial experience shows that SWBT is not capable of handing commercial volumes of orders for xDSL-capable loops. In particular, Covad's data shows that as Covad's orders for DSL and ISDN loops has increased over the Q499, SWBT's performance fell off dramatically. Even SWBT's fundamentally-flawed performance metrics indicate a similar trend, beginning with

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115 SWBT Brief at 40.

116 *Bell Atlantic New York Order* at ¶ 89; *BellSouth South Carolina Order*, 13 FCC Rcd at 593; *Ameritech Michigan Order*, 12 FCC Rcd at 20618.

117 *Bell Atlantic New York Order* at ¶ 89; *Second bellSouth Louisiana Order*, 13 FCC Rcd at 20655; *BellSouth South Carolina Order*, 13 FCC Rcd at 593; *Ameritech Michigan Order*, 12 FCC Rcd at 20618.

118 *Bell Atlantic New York Order* at ¶ 89; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20655, *BellSouth South Carolina Order*, 13 FCC Rcd at 593; *Ameritech Michigan Order*, 12 FCC Rcd at 20601-02, 206618.