

ordered shielded cable, and intends to order access to ADSL Loops within 60 days of receipt of the list of central offices. SWBT will establish Loop Qualification Process methods, procedures, and training, for CLEC's 3 highest central office priorities and will meet with CLEC to establish a schedule for the remaining identified locations, if any. In any event, CLEC shall be entitled to the loop qualification interval of 3-5 days associated with any SWBT central office(s), which SWBT has completely inventoried for another CLEC or for SWBT's own purposes. After the initial loop qualification and installation on behalf of any CLEC in a given central office, a standard loop qualification interval of 3-5 days will be established.

During cross-examination, SWBT witness Mr. Auinbaugh agreed that in the worst case, the maximum allowable qualification and conditioning interval could reach 30 working days, or six weeks.<sup>234</sup> Mr. Samson indicated that in addition to the number of central offices for which inventories had been requested by CLECs, an additional 271 central offices are expected to be inventoried for SWBT's own purposes before the end of 1999, thus reducing the qualification interval.<sup>235</sup>

#### Award

The process of providing loop information to CLECs is clearly a critical step in the provision of xDSL services. The long-term goal for this interval should be measured in minutes or seconds, rather than days. SWBT's current process includes two types of loop qualification: (1) pre-qualification, which consists of the red/yellow/green zone designation based on algorithms tailored for SWBT's ADSL product; and (2) and a process containing five or more elements, including theoretical loop length. As discussed in DPL Issue Nos. 15 and 17, the Arbitrators believe SWBT must provide actual, real-time loop makeup information to CLECs rather than a pre-qualification or loop qualification process because SWBT's back office personnel have the ability to access relevant actual loop makeup information in real time through the back office databases.

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<sup>234</sup> Tr. at 1846 (June 5, 1999).

<sup>235</sup> *Id.* at 1947.

The FCC agreed with this approach in the *UNE Remand Order*, concluding that:

access to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations. To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, *it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.* It would be unreasonable, for instance, if the requesting carrier had to wait several days to receive such information from the incumbent, if the incumbent's personnel have the ability to obtain such information in several hours. In order to provide local exchange and exchange access service, a competitor needs such information quickly to be able to determine whether a particular loop will support xDSL service.<sup>236</sup> (emphasis added.)

Until such a real-time system is implemented, however, the Arbitrators find that SWBT's pre-qualification system should provide a response to Petitioners' queries within four hours for those central offices that have been inventoried. If a CLEC chooses to employ SWBT's manual pre-qualification system in a central office that has not been inventoried, the interval for receiving the response should be no longer than 10 business days. If a CLEC elects to have SWBT provide actual loop makeup information through a manual process, then the interval should be established as 3 business days. If SWBT can provide its retail ADSL personnel with actual loop makeup information in a shorter time frame, then the interval for a CLEC should be parity with that timeframe. At the time an electronically interfaced loop makeup system is implemented, the objective interval for obtaining loop make-up information should become a part of the body of OSS performance measures.

**16. Upon request from Rhythms, is SWBT required to provide loop length and makeup data regarding specific central offices within a reasonable period of time from all central offices?**

Parties' Positions

Rhythms contends that SWBT should provide loop make-up information to CLECs, but is concerned that SWBT is requiring up to 60 days to implement the loop qualification process in

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<sup>236</sup> *UNE Remand Order* at ¶ 431.

each specific central office.<sup>237</sup> In addition, Rhythms disagrees with SWBT's request that CLECs submit a list of central offices, in priority order, where this process would be provided. Rhythms believes that such information is highly proprietary and should not be given to competitors.<sup>238</sup> Rhythms argues that Petitioners have already submitted over 100 collocation applications in Texas, and the loop inventory should be completed within the same time as the collocation request is completed.<sup>239</sup> According to Rhythms witness Mr. Kersh, SWBT's claim that it will take two months to perform an inventory for three offices is unreasonable, considering that it took Pacific Bell approximately three months to inventory 80 to 90 offices designated by CLECs in California.<sup>240</sup>

Rhythms' proposed contract language contains the following recommendation:

4.X.4. SWBT shall also provide to Rhythms the loop length and makeup of all loops served from Central Offices designated by Rhythms, within 60 days of submission of a request for each Central Office.

Covad does not provide evidence on this specific DPL issue. Covad reiterates its desire to receive computerized access to databases that contain loop make-up, repair, maintenance or billing information.<sup>241</sup>

Evidence submitted by SWBT does not address the issue of providing loop length and make-up of *all* loops in each central office designated by the CLEC. SWBT indicates that it has no obligation to supply detailed information about every loop in a central office. SWBT witness Mr. Deere asserts that loop makeup information is not contained in any single source, and that it would be very difficult and extremely expensive to compile for all central offices.<sup>242</sup> However,

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<sup>237</sup> ACI Exhibit 2, Direct Testimony of Jo Gentry at 13-14 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 20-21 (April 8, 1999); ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 4-5 (April 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 2-3, 5-6 (April 8, 1999).

<sup>238</sup> ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 20 (April 8, 1999).

<sup>239</sup> *Id.* at 21.

<sup>240</sup> ACI Exhibit 9, Rebuttal Testimony of Mike Kersh at 5 (April 8, 1999).

<sup>241</sup> DPL at 43 (May 28, 1999).

<sup>242</sup> SWBT Exhibit 2, Direct Testimony of William C. Deere at 14-17 (Feb. 19, 1999), SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 11-12 (April 8, 1999).

SWBT witness Mr. Samson, testifies that SWBT expects to inventory 271 central offices for its own purposes prior to the end of 1999.<sup>243</sup>

SWBT presents evidence describing its loop pre-qualification plan that is being implemented in central offices in Texas, beginning with Austin, Dallas, and Houston.<sup>244</sup> For those central offices that have been inventoried for the purpose of loop pre-qualification, SWBT indicates that it will provide the results to CLECs in 3–5 business days. In areas that have not been inventoried, only the maximum loop qualification interval of 15 business days is available. Regarding the potential delay in conducting inventories, SWBT witness Mr. Auinbaugh testified that the 60 day interval for the office inventory could be running during the time in which the CLEC's collocation request is being provisioned.

#### Award

The Arbitrators view this issue as containing three major elements. The first is whether SWBT should be required to provide loop length and makeup information for individual loops as requested. The Arbitrators responded to this issue in the affirmative in DPL Issue No. 15.

The second element is whether CLECs will be required to furnish a prioritized list of areas in which they will serve, and the time interval within which SWBT is expected to inventory the central office. The Arbitrators find that CLECs should not be required to provide SWBT with a prioritized listing of central offices in which they plan to provide service. The CLECs already provide notification to SWBT when they order collocation, and SWBT should use that process as the signal to perform necessary inventories. The Arbitrators view further disclosure as unnecessary and contrary to the need for competitive confidentiality. Evidence in this proceeding shows that SWBT has already shared with its Retail ADSL Core Team members a listing of central offices in which CLECs have collocated or those in which CLECs are seeking

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<sup>243</sup> Tr. at 1947 (June 5, 1999).

<sup>244</sup> SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 9 (April 8, 1999); Tr. at 1945-1948 (June 5, 1999).

deployment.<sup>245</sup> The Arbitrators believe such disclosure of competitive information to SWBT retail ADSL employees is inappropriate, disadvantages competitors and must stop immediately.

The third component of this issue is whether or not SWBT should be required to provide loop makeup information for all existing or vacant loops within *all* its central offices. The Arbitrators find that in those central offices in which SWBT has completed its inventory, either in response to a CLEC request or for its own retail deployment, or for its separate advanced services subsidiary deployment, SWBT must provide the requested loop makeup information for all loops in the central office within three business days. For those central offices that have not yet been inventoried, the Arbitrators agree that “blanket” requests for immediate loop makeup details should not be supported at this time, but that such central offices should be inventoried according to a schedule based on collocation requests. SWBT has agreed to inventory the central offices within 60 calendar days of a request from a CLEC, and the Arbitrators find that such an interval is reasonable, so long as it is allowed to run concurrently with the collocation request in that central office.

In the *UNE Remand Order*, the FCC found that an incumbent LECs should not be required to “catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself.” In those instances where an incumbent LEC has not compiled such information for itself, the FCC does not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. The FCC did find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-discriminatory basis. The FCC further stated that it expects that ILECs will be updating their electronic databases for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.<sup>246</sup>

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<sup>245</sup> See Covad Exhibit 34; Covad Post-Hearing Brief at 59 - 61 (Aug. 17, 1999).

<sup>246</sup> *UNE Remand Order* at ¶ 429.

However, this issue heightens the Arbitrators' concerns regarding the equality of information transfer between SWBT's retail and wholesale operations. Evidence shows that SWBT's ADSL Retail Core Team personnel have had access to network assignment databases that could easily allow SWBT's retail operations to gain significant advantage over their competitors.<sup>247</sup> The Arbitrators need further assurance that competitively beneficial information is not being passed from SWBT's network provisioning operations to its retail service operations. An arms-length separation, e.g., a separate advanced service subsidiary as proposed in the SBC-Ameritech merger conditions,<sup>248</sup> would be one solution to the Arbitrators' concerns. Until such separation is accomplished, however, the Arbitrators instruct SWBT to prepare a plan for approval by the Commission within 45 calendar days of this Award, whereby "firewalls" are constructed between SWBT's retail and wholesale organizations, the purpose of which is to restrict the flow of competitively beneficial information.

**17. What data should be included in the makeup data?**

Parties' Positions

Rhythms contends that it must be provided with information about the physical makeup of the xDSL loop; including loop length, wire gauge, presence and number of repeaters, load coils and bridged tap and existence of DLC systems or DAMLs.<sup>249</sup> Because different xDSL technologies are best suited for different loop conditions, Rhythms needs the loop makeup information in order to adapt the type of xDSL service to the available loop.<sup>250</sup>

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<sup>247</sup> ACI Exhibit 149A, Deposition of Victoria Bird at 48-49, 130-134 (May 6, 1999); ACI Exhibit 19, Supplemental Direct Testimony of Eric H. Geis at 14-15 (May 24, 1999).

<sup>248</sup> *In re Applications of Ameritech Corp., Transferor, And SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion And Order (rel. Oct. 8, 1999) (*SBC-Ameritech Merger Order*).

<sup>249</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at 34 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 7-8 (Feb. 19, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 6-7 (April 8, 1999); ACI Exhibit 20, Supplemental Direct Testimony of Jo Gentry at 6-9 (confidential) (May 24, 1999).

<sup>250</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at 35 (Feb. 19, 1999).

Covad maintains that loop makeup information, at a minimum, should include the loop length, existence and length of bridged taps, existence of load coils, average wire gauge, presence and type of DLC, and ISDN readiness.<sup>251</sup> Covad argues that SWBT's databases have all this information.<sup>252</sup>

SWBT witness Mr. Phillips indicates that SWBT will soon implement a pre-qualification system, accessible through VERIGATE, that will provide the loop length stated as 26 gauge equivalent, the wire center, an indication if the pair is loaded or non-loaded, the taper code, and the red/green/yellow qualification indicator.<sup>253</sup> In addition, SWBT witness Mr. Auinbaugh indicates that SWBT will soon implement modifications to its LEX/EDI ordering gateway that will provide the loop length stated as 26 gauge equivalent or as actual gauge makeup, the absence or presence of load coils, the presence of bridged tap, repeaters, and or DLC.<sup>254</sup>

#### Award

The Arbitrators find that the loop makeup data should include the following: (a) the actual loop length; (b) the length by gauge; and (c) the presence of repeaters, load coils, or bridged taps; and shall include, if noted on the individual loop record, (d) the approximate location, type, and number of bridged taps, load coils, and repeaters; (e) the presence, location, type, and number of pair-gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. The Arbitrators find that SWBT should provide to the CLEC any other relevant information listed on the individual loop record but not listed above.

The Arbitrators' position is consistent with the decision of the FCC in the recent *UNE Remand Order*. With respect to this issue, the FCC found that:

“an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that

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<sup>251</sup> Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 3 (May 24, 1999).

<sup>252</sup> *Id.* at 8.

<sup>253</sup> Tr. at 1877 (June 5, 1999).

<sup>254</sup> SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 14 (Feb. 19, 1999).

is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or other internal records. For example, the incumbent LEC must provide to requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. Consistent with our nondiscriminatory access obligations, the incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself.”<sup>255</sup>

In that same decision, the FCC clarified that “the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent’s back office and can be accessed by any of the incumbent LEC’s personnel. Denying competitors access to such information, where the incumbent (or an affiliate, if one exists) is able to obtain the relevant information for itself, will impede the efficient deployment of advanced services. To permit an incumbent LEC to preclude requesting carriers from obtaining information about the underlying capabilities of the loop plant in the same manner as the incumbent LEC’s personnel would be contrary to the goals of the Act to promote innovation and deployment of new technologies by multiple parties.”<sup>256</sup>

**18. Can SWBT impose a loop qualification process rather than provide information concerning loop makeup?**

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<sup>255</sup> *UNE Remand Order* at ¶ 427.

<sup>256</sup> *Id.* at ¶ 430.

Parties' Positions

Rhythms opposes SWBT's proposal for a loop qualification process to be used in place of the provision of loop make-up information.<sup>257</sup> Rhythms argues that SWBT's pre-qualification process (red/green/yellow) is based on the acceptability of a loop to SWBT's own retail ADSL services, and may not apply to the services to be provided by CLECs. Rhythms seeks to determine for itself whether a particular loop is capable of supporting xDSL service.<sup>258</sup> Rhythms argues that SWBT should not be permitted to substitute its judgment for that of a CLEC regarding the xDSL loop characteristics.<sup>259</sup>

Covad reiterates its arguments made in DPL Issue Nos. 15 and 17. Covad argues that it should have instantaneous access to the information necessary to determine whether xDSL services can be provisioned across a loop. Covad argues that SWBT should only determine whether a spare pair is available for lease to the CLEC.<sup>260</sup>

SWBT states that its pre-qualification process is entirely optional, and need not be utilized by a CLEC.<sup>261</sup> SWBT also provides "loop qualification" or "loop makeup" information on a manual basis to CLECs upon request for an xDSL loop.<sup>262</sup> SWBT states that it does not know the design parameters of the CLEC service or equipment; therefore, SWBT cannot make a determination of required conditioning of the CLEC service.<sup>263</sup>

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<sup>257</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at 36 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 15-19 (Apr. 8, 1999); ACI Exhibit 7, Rebuttal Testimony of Jo Gentry at 2-5 (Apr. 8, 1999).

<sup>258</sup> ACI Exhibit 2, Direct Testimony of Jo Gentry at 10 (Feb. 19, 1999).

<sup>259</sup> *Id.*

<sup>260</sup> Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 3, 5 (May 24, 1999).

<sup>261</sup> SWBT Exhibit 28, Supplemental Rebuttal Testimony of George R. Phillips, Jr. at 4 (May 28, 1999).

<sup>262</sup> *Id.* at 3.

<sup>263</sup> SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 12 (May 28, 1999).

Award

The Arbitrators find in DPL No. 15 that SWBT's pre-qualification and loop qualification systems as currently described are *not* a reasonable substitute for the provision of actual loop makeup information. To the extent that SWBT's retail operations or separate advanced services affiliate is able to access pre-qualification indicators such as the current red/green/yellow methodology, CLECs should have the same access. However, the indicators and reports obtained thus far from SWBT's pre-qualification and loop qualification programs are based on SWBT's ADSL service offering, and will be of only limited value to the Petitioners. The Arbitrators find that competitive parity can only be reached with respect to loops used to provide xDSL services if CLECs are provided with real-time access to actual loop makeup information that they can then use to provide their services to their customers.

The Arbitrators' finding is consistent with the *UNE Remand Order*. In that Order, the FCC found that :

"an incumbent LEC should not be permitted to deny a requesting carrier access to loop qualification information for particular customers simply because the incumbent is not providing xDSL or other services from a particular end office. We also agree with commenters that an incumbent must provide access to the underlying loop information and may not filter or digest such information to provide only that information that is useful in the provision of a particular type of xDSL that the incumbent chooses to offer. For example, SBC provides ADSL service to its customers, which has a general limitation of use for loops less than 18,000 feet. In order to determine whether a particular loop is less than 18,000 feet, SBC has developed a database used by its retail representatives that indicates only whether the loop falls into a "green, yellow, or red" category. Under our nondiscrimination requirement, an incumbent LEC can not limit access to loop qualification information to such a "green, yellow, or red" indicator. Instead, the incumbent LEC must provide access to the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer. Otherwise, incumbent LECs would be able to discriminate against other xDSL technologies in favor of their own xDSL technology."<sup>264</sup>

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<sup>264</sup> *UNE Remand Order* at ¶ 428.

**19(a). Should SWBT be required to deploy a mechanized loop makeup information process for DSL capable loops?**

Parties' Positions

Rhythms maintains that it must have access to electronic, automated systems pre-ordering system that allow rapid and efficient access to the technical make-up of a potential customer's loop within six months of the effective date of this arbitrated agreement.<sup>265</sup> Rhythms asserts that SWBT must be required to provide to CLECs access to the same mechanized loop makeup information, or any portion of loop makeup information that becomes mechanized, that SWBT provides to itself in connection with offering its own xDSL retail services.

Covad argues that SWBT maintains databases that contain all of the information necessary to determine whether a loop is capable of transmitting xDSL signals.<sup>266</sup> To achieve true parity, Covad contends, CLECs must have equal, instantaneous access to the same information.<sup>267</sup> Covad asserts that SWBT must provide mechanized access to the loop makeup information.

SWBT states its understanding that it is required to offer parity access to the OSS systems that exist for service ordering and pre-ordering. To the extent SWBT deploys new, mechanized systems that contain loop makeup information, SWBT agrees that it should, and intends to, make that system available to CLECs. SWBT's proposed modifications have been discussed in DPL Issue No. 17.

Award

As discussed in DPL Issue No. 15, the Arbitrators find that SWBT must provide real time, electronic access to all systems needed for efficient provision of advanced services such as xDSL. To the extent SWBT is technically able to access the following in its own operations,

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<sup>265</sup> ACI Exhibit 2, Direct Testimony of Jo Gentry at 10 (Feb. 19, 1999).

<sup>266</sup> Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 8 (May 24, 1999).

<sup>267</sup> Covad Exhibit 45, Supplemental Rebuttal Testimony of Dhruv Khanna at 4 - 5 (May 28, 1999).

SWBT will develop and deploy mechanized and integrated OSS that will permit real-time CLEC access through an electronic gateway to a database that contains the loop makeup information. SWBT should not be allowed to delay the provision of the mechanized loop qualification process for competitors to a date uncertain. The Arbitrators require SWBT to meet the implementation schedule in Section VIII of this Award.

**19(b). Until SWBT deploys the mechanized loop makeup information process, what should the process be for a manual process?**

Parties' Positions

Rhythms contends that the manual request process should consist of the CLEC submitting requests for loop make-up information via facsimile and SWBT returning the information in the same manner. According to Rhythms witness Ms. Gentry, SWBT currently provides loop make-up information for its own retail operations in three to five days.<sup>268</sup>

Covad maintains that SWBT should be required to develop a mechanized interface for loop makeup information, and does not provide evidence on the manual process.

SWBT states that the centers that handle tariffed ADSL service requirements are required to manually type ADSL service orders.<sup>269</sup> SWBT witness Mr. Deere indicates that when a CLEC requests qualification for an xDSL loop, SWBT manually performs the engineering work to determine the loop makeup and provides the information to the CLEC.<sup>270</sup>

Award

Until a real-time loop makeup database is operational, the Arbitrators find that SWBT shall provide CLECs with manually-derived loop makeup information upon request at no charge.

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<sup>268</sup> ACI Exhibit 2, Direct Testimony of Jo Gentry at 11 (Feb. 19, 1999).

<sup>269</sup> SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 16 (April 8, 1999).

<sup>270</sup> SWBT Exhibit 26, Supplemental Rebuttal Testimony of William C. Deere at 12 (May 28, 1999).

Transmittals and responses between CLECs and SWBT should be by the quickest means practical; facsimile, telephone, or e-mail. As indicated in response to DPL Issue No. 15(a), if a CLEC chooses to employ SWBT's manual pre-qualification system in a central office that has not been inventoried, the interval for CLEC receiving the response should be no longer than 10 business days. If a CLEC elects to have SWBT provide actual loop makeup information through a manual process, then the interval should be established as 3 business days.

**20(a). Should the CLEC be allowed to make the business decision as to the need for loop conditioning based on information provided by SWBT?**

**20(b). Should SWBT be allowed to make all determinations regarding loop conditioning for CLEC needs within its sole discretion?**

Parties' Positions

Rhythms reasons that only the particular CLEC knows the parameters of the services it seeks to deploy, and therefore should be able to request the specific type of conditioning required for a particular loop.<sup>271</sup> Rhythms argues that SWBT has the opportunity to see the total outside plant inventory for retail services, thus allowing SWBT the opportunity to find spare or alternative loop facilities that may not need conditioning.<sup>272</sup> Rhythms believes that SWBT should not make business judgements regarding the technical capabilities of CLECs; the CLEC will be in the best position to make decisions regarding conditioning depending on the technology to be used.<sup>273</sup>

Covad asserts, based on the revised contract language proposed by SWBT, that SWBT appears to conceptually agree with this point. Covad maintains, however, that the contract language proposed by SWBT is not acceptable for other reasons. Covad points out that SWBT's

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<sup>271</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at 39-40 (Feb. 19, 1999); ACI Exhibit 2, Direct Testimony of Jo Gentry at 18 (Feb. 19, 1999).

<sup>272</sup> ACI Exhibit 2, Direct Testimony of Jo Gentry at 19 (Feb. 19, 1999).

<sup>273</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at 39-40 (Feb. 19, 1999).

own retail loop qualification flows automatically into the loop provisioning interval so that SWBT does not suffer the same delays as Covad.<sup>274</sup>

SWBT responds that it has committed to let CLECs make their own business decisions with regard to loop conditioning, consistent with the *Advanced Services Order*.<sup>275</sup> However, SWBT explains that if the CLEC does not request the conditioning suggested by SWBT, then SWBT will not guarantee the service, and performance measures should not apply to that individual xDSL loop.<sup>276</sup> If the CLEC requests SWBT to perform the suggested conditioning, SWBT asserts that it is entitled to cost recovery for the work performed.

#### Award

Parties reached agreement on this issue during the arbitration proceeding.<sup>277</sup> The Arbitrators agree with the Parties resolution that all conditioning shall be performed at the request of the CLEC.

**21. Should SWBT be permitted to limit availability to loops over 17.5k ft only on an ICB basis?**

#### Parties' Positions

Rhythms claims that CLECs can provision viable xDSL services over loops in excess of 17,500 feet and should be permitted to do so at their own service quality risk.<sup>278</sup> Rhythms' witness Geis argues that all loops should be available, regardless of length. Mr. Geis also testified that over 20% of Rhythms' xDSL customers are on loops in excess of 18,000 feet in length.<sup>279</sup> Rhythms testifies that there are generally no differences between analog loops less

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<sup>274</sup> Tr. at 1955 (June 5, 1999).

<sup>275</sup> SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 15 (April 8, 1999).

<sup>276</sup> *Id.* at 18.

<sup>277</sup> Covad's Post Hearing Brief at 5 (Aug. 17, 1999).

<sup>278</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at (Feb. 19, 1999).

<sup>279</sup> *Id.* at 41.

than or in excess of 17,500 feet in length.<sup>280</sup> Rhythms contends that it is unreasonable to require a competitor to await lengthy ICB (individual case basis) provisioning and pricing decisions from SWBT.<sup>281</sup>

Covad affirms that it offers xDSL services, including IDSL that are provisioned over loops longer than 17,500 feet in length. Covad argues that SWBT should fill xDSL loop orders regardless of loop length and then allow Covad to determine what services can be provided across the loop consistent with other provisions of the Interconnection Agreement.<sup>282</sup>

SWBT's initial proposal was to limit the availability of loops in excess of 17,500 feet in length only on an ICB basis. However, subsequent to its initial filing, SWBT revised its proposal to establish a separate price for each additional work operation required to condition a loop beyond 17,500 feet in length.<sup>283</sup> SWBT does not propose limiting the provision of xDSL loops over 17,500 feet in length.<sup>284</sup>

#### Award

SWBT states that it will allow CLECs to order loops over 17,500 feet in length without individual case basis (ICB) provisioning and pricing.<sup>285</sup> The Arbitrators find that SWBT should not be permitted to limit availability of xDSL loops in excess of 17,500 feet in length to an ICB basis. When questioned during the hearing, SWBT did not provide a cost basis for choosing 17,500 feet for a cutoff.<sup>286</sup> SWBT witness Deere explained that with some technologies, loops

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<sup>280</sup> Tr. at 1397 (June 4, 1999).

<sup>281</sup> ACI Exhibit 1, Direct Testimony of Eric H. Geis at 41 (Feb. 19, 1999); ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 21 (April 8, 1999).

<sup>282</sup> Covad Exhibit 43, Supplemental Direct Testimony of Sandee Turner at 5-6 (May 24, 1999).

<sup>283</sup> SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 11-12 (April 8, 1999).

<sup>284</sup> *Id.*

<sup>285</sup> SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at 11 (April 8, 1999).

<sup>286</sup> *Id.* at 1241.

require repeaters after reaching 18,000 feet in length; in his words, “that’s why the distance was kept below that.”<sup>287</sup> The Arbitrators note that the Parties agree that “...17.5 is not a magic cutoff where the cost characteristics become radically different...”<sup>288</sup> Loop rates and conditioning charges are addressed in Section VI of this Award.

**22. What is the appropriate provisioning interval for 2-Wire xDSL capable loops?**

Parties’ Positions

Rhythms supports a 7-day provisioning interval for a 2-Wire xDSL loop, or the analogous level at parity with retail xDSL services offered by SWBT, whichever is less.<sup>289</sup>

Covad points out that Pacific Bell, SWBT’s affiliate, agreed to provide xDSL loops to Covad within 7 days, if no conditioning is required; within 10 days if conditioning is required; and within 15 days if there are no facilities. Covad argues that SWBT should be held to the same standards. Covad maintains that longer intervals will give SWBT an unfair competitive advantage by allowing SWBT to provide actual xDSL services to its customers before the CLECs can.<sup>290</sup>

SWBT’s proposed contract language indicates that the provisioning and installation interval for xDSL loops that do not require conditioning is 5 to 7 business days after the loop qualification process is complete. The specific contract language proposed by SWBT is as follows:

A. The provisioning and installation interval for an ADSL, 2-Wire or 4-Wire MS Capable Loop or other DSL-Capable loops that are materially the same, as defined above, where no conditioning is requested, will be 5-7 business days after the Loop Qualification process is complete, or the provisioning and installation interval

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<sup>287</sup> Tr. at 1243 (June 4, 1999).

<sup>288</sup> *Id.* at 1243, 1403.

<sup>289</sup> ACI Exhibit 2, Direct Testimony of Jo Gentry at 19 – 20 (Feb. 19, 1999).

<sup>290</sup> Covad Exhibit 1, Direct Testimony of Charles A. Haas at 10 (Feb. 19, 1999).

applicable to SWBT's tariffed DSL-based services, whichever is less. The provisioning and installation intervals for the ADSL, 2-Wire or 4-Wire MS Capable Loops where conditioning is requested will be 15 business days for loops up to 17,500 feet, or the provisioning and installation interval applicable to SWBT's tariffed DSL-based services where conditioning is required, whichever is less. An ADSL, 2-Wire or 4-Wire MS Capable Loop in excess of 17,500 feet where conditioning is requested will have a provisioning and installation interval agreed upon by the Parties for each instance of special construction. VLS Capable Loops will be provisioned under the terms of the 2-Wire Digital Loop as described in Appendix UNE of this Agreement.

B. Subsequent to the initial order for an ADSL, 2-Wire or 4-Wire MS Capable Loop or other DSL-Capable loops that are materially the same, as defined above, additional conditioning may be requested on such loop at the rates set forth below and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received within 24 hours of the initial order for an ADSL, 2-Wire or 4-Wire MS Capable Loop, no service order charges shall be assessed, but may be due date adjusted as necessary. The provisioning interval for additional requests for conditioning pursuant to this subsection will be the same as set forth above.

SWBT maintains that this schedule is completely at parity with what SWBT is providing for its retail xDSL operations.<sup>291</sup>

#### Award

The Arbitrators find that the provisioning and installation interval for a xDSL loop, where no conditioning is requested, on orders for 1-20 loops per order or per end-user location, will be 3 - 5 business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL services, or its affiliate's, whichever is less. The provisioning and installation intervals for xDSL loops where conditioning is requested, on orders for 1-20 loops per order or per end-user customer location, will be 10 business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL services or its affiliate's xDSL services where conditioning is required, whichever is less. Orders for more than 20 loops per order or per end-user location, where no conditioning is requested, will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. Orders for more than 20 loops per order which

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<sup>291</sup> SWBT Exhibit 1, Direct Testimony of Michael C. Auinbauh at 15-16 (Feb. 19, 1999).

require conditioning will have a provisioning and installation interval agreed by the Parties in each instance. The Arbitrators find that the provisioning intervals are applicable to every xDSL loop regardless of the loop length.

## V. Collocation<sup>292</sup>

DPL Issue Nos. 33-34, 36

### 33. Should SWBT be required to offer cageless collocation?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.<sup>293</sup>

#### 33(a). Should SWBT be required to provide collocation at a remote terminal site?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.<sup>294</sup>

#### 33(b). Should the interconnection agreement include new collocation provisions that reflect the requirements of the FCC's March 31, 1999 First Order in CC Docket No. 97-147?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.<sup>295</sup>

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<sup>292</sup> The Arbitrators note that subsequent to the Parties' agreement, the Commission approved the revised physical and virtual collocation tariffs of SWBT. These revised tariffs provide the rates, terms and conditions for collocation for providers using Attachment 25 – DSL of the T2A.

<sup>293</sup> Tr. at 467-541 (April 15, 1999).

<sup>294</sup> Tr. at 467-541 (April 15, 1999).

<sup>295</sup> Tr. at 467-541 (April 15, 1999).

**34. What is the appropriate provisioning interval for cageless collocation?**

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.<sup>296</sup>

**36. Should SWBT be required to permit collocation of ATM cross-connect equipment?**

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.<sup>297</sup>

## **VI. Costs, Rates and Prices**

### **DPL Issue Nos. 26-32**

**26. Should rates associated with xDSL capable loops be TELRIC-based?**

Parties' Positions

Rhythms asserts that the prices for UNEs should be set equal to TELRIC.<sup>298</sup> Rhythms believes that three features of TELRIC are particularly significant in this arbitration:<sup>299</sup> TELRIC is “based on the use of the most efficient telecommunications technology currently available;” a TELRIC study may not consider embedded costs; and unit costs developed consistently with TELRIC must be “divided by a reasonable projection of the sum total number of units of the

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<sup>296</sup> Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

<sup>297</sup> Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

<sup>298</sup> ACI Exhibit 5, Direct Testimony of Terry L. Murray at 16 (Feb. 19, 1999).

<sup>299</sup> ACI Post Hearing Brief at 100 (Aug. 17, 1999).

element.” Rhythms argues that SWBT’s cost estimates have violated each of these requirements.<sup>300</sup>

Covad argues that the Commission and the FCC require that SWBT set its prices according to TELRIC principles. Covad believes SWBT’s proposed prices do not comply with TELRIC requirements. Covad suggests that SWBT designed its cost studies to support the prices it wants to charge new entrants, rather than deriving its prices from valid cost analysis or using the TELRIC methodology.<sup>301</sup>

SWBT states that all proposed rates are based on TELRIC methodology. SWBT asserts that the cost studies for xDSL loops were the subject of the Mega-Arbitration in which the Commission adopted a TELRIC methodology. SWBT’s proposed rates for the xDSL loops are those ordered for UNE loops in the Mega-Arbitration.<sup>302</sup>

#### Award

The Arbitrators find that, as previously decided by the Commission in other proceedings, all rates associated with UNEs, including xDSL loops, should be TELRIC-based.<sup>303</sup> This finding is consistent with FCC precedent, including the *Local Competition Order*, and FCC UNE Pricing Rules 47 C.F.R. §§ 51.501-515.<sup>304</sup>

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<sup>300</sup> ACI Post Hearing Brief at 101 (Aug. 17, 1999).

<sup>301</sup> Covad Post Hearing Brief at 52-53 (Aug. 17, 1999); *Local Competition Order* at ¶29; Mega Arbitration Award, November 7, 1996 at 25 and December 19, 1997 at 4. The Mega Arbitration consists of Docket Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781; ACI Exhibit 5, Direct Testimony of Terry L. Murray at 16 (Feb. 19, 1999); Tr. at 1216-1217 (June 5, 1999).

<sup>302</sup> SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999).

<sup>303</sup> Mega-Arbitration Award, Nov. 7, 1996 at 25 and Dec. 19, 1997 at 4. (The rates for UNEs on Appendix B are based on the total long run incremental cost (TELRIC)).

<sup>304</sup> *Local Competition Order* at 682; Mega-Arbitration Award, Nov. 7, 1996 at 25 and Dec. 19, 1997 at 4.

**27. What are the appropriate TELRIC-based xDSL rates?**

Parties' Positions

Rhythms argues that SWBT's proposed rates for xDSL loops are inappropriately high. Rhythms explains that SWBT's proposed rates are higher than the cost based prices, in an absolute sense and relative to the adopted costs for basic analog loops, for any comparable element either proposed by another incumbent local exchange carrier or adopted by another Commission. Rhythms explains that the range of loop rates proposed by SWBT is much larger than in other states. For example, SWBT's proposed digital loop rate is 153% higher than SWBT's proposed analog loop rate. However, Rhythms continues, other states experience increments of 0% to 40%.<sup>305</sup>

Rhythms is particularly concerned with SWBT's proposed rate for digital loops and argues that the incorrect price could result in a price squeeze.<sup>306</sup> Rhythms urges the adoption of a proxy cost for the two-wire digital xDSL loop. Rhythms suggests an interim rate of \$20.16. Rhythms contends that the proxy cost should remain in effect until SWBT provides a well documented cost study for two-wire digital xDSL loops, and all affected Parties have had an opportunity to review and comment on the costs.<sup>307</sup>

In regard to analog loops, Rhythms argues that the proxy cost should be the Commission-approved TELRIC-based cost result for the nearest unbundled loop type. Rhythms explains that this interim price would apply until such time as Parties have litigated a specific cost study for xDSL loops.<sup>308</sup>

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<sup>305</sup> ACI Exhibit 5, Direct Testimony of Terry L. Murray at 49-52 (Feb. 19, 1999).

<sup>306</sup> ACI Exhibit 11, Rebuttal Testimony of Terry L. Murray at 11-14 (April 8, 1999); ACI Exhibit 11a, Rebuttal Testimony of Terry L. Murray at 11-17 (April 8, 1999).

<sup>307</sup> ACI Exhibit 5, Direct Testimony of Terry L. Murray at 53 (Feb. 19, 1999); ACI Post Hearing Brief at 117-119 (Aug. 17, 1999).

<sup>308</sup> DPL at 62 (May 28, 1999).

Covad agrees with Rhythms' reasoning.<sup>309</sup> Covad states that SWBT's proposed rates for xDSL loops less than 18,000 feet in length are within an acceptable range. However, Covad argues, SWBT's proposed digital xDSL loop rates are too high. Covad argues that the digital loop rate would prevent the xDSL industry from reaching the industry "price point" of approximately \$40-50 per month.<sup>310</sup> Covad concurs with Rhythms' proposal of adopting an interim rate of \$20.16 for the two-wire digital xDSL loop.<sup>311</sup>

SWBT proposes xDSL loop rates based on the rates approved in the Mega-Arbitration. SWBT argues that Rhythms and Covad have not contested the recurring loop rates, having stated in the DPL that "until such time as Parties have litigated a specific cost study, the Commission approved TELRIC-based cost result for the nearest unbundled loop type should be used as a proxy."<sup>312</sup>

#### Award

A cost study to support analog and digital xDSL loop rates was not provided in this proceeding. Instead, SWBT proposed xDSL loop rates that were identical to the UNE loop rates adopted in the Mega-Arbitration. The Arbitrators find that reliance on the Mega-Arbitration UNE loop rates is not appropriate, particularly for digital xDSL loops. As a result, the Arbitrators order SWBT to file a new TELRIC-based cost study for analog and digital xDSL loops. The study should be based on TELRIC principles, designed to create an efficient xDSL network, and compute de-averaged xDSL loop rates. The geographic de-averaging should be consistent with the de-averaging of loop rates in the Mega-Arbitration. The cost study should not distinguish between loop lengths; all xDSL loops should be the same rate regardless of loop length. The Arbitrators invite Rhythms and Covad to file their own cost studies. Until new cost

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<sup>309</sup> *Id.*

<sup>310</sup> Covad Exhibit 1, Direct Testimony of Charles A. Haas at 13 (Feb. 19, 1999).

<sup>311</sup> Covad Post Hearing Brief at 59 (Aug. 17, 1999); ACI Exhibit 5, Direct Testimony of Terry L. Murray at 50-52 (Feb. 19, 1999).

<sup>312</sup> SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999); SWBT Post Hearing Brief at 66 (Aug. 17, 1999).

studies are approved by the Commission, the Arbitrators find that the interim xDSL loop rates, as described below, will apply.<sup>313</sup>

The underlying loop facility used for xDSL services is equivalent to an analog or digital loop. With regard to analog loops, the Arbitrators find the de-averaged rates adopted for unbundled analog loops in the Mega-Arbitration are appropriate on an interim basis. The Arbitrators find the de-averaged rates to be appropriate, rather than statewide average rates for unbundled loops, because the Commission has implemented the intrastate USF mechanism.<sup>314</sup>

The Arbitrators do not accept the digital loop rates established in the Mega-Arbitration as interim rates for digital xDSL loop rates. It is unclear to the Arbitrators whether the digital loop rates established in the Mega-Arbitration include conditioning costs.<sup>315</sup> This uncertainty could result in over recovery of costs by SWBT, since separate conditioning charges apply to xDSL loops on which the CLEC has requested conditioning.<sup>316</sup> Because the Arbitrators cannot verify whether, and to what extent, the conditioning charges are included in the digital loop rates established by the Mega-Arbitration, the Arbitrators adopt the interim rate proposed by Rhythms and Covad for a 2-wire digital xDSL loop. The Arbitrators double the proposed interim rate for a 2-wire digital loop in order to compute the interim rate for a 4-wire digital xDSL loop.

The Arbitrators find that the appropriate interim rates for analog and digital xDSL loops are the following:

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<sup>313</sup> See Implementation Schedule in Section VIII of this Award.

<sup>314</sup> Section 1.5 of Appendix Pricing – UNE to Attachment 6 of the AT&T/SWBT interconnection agreement states:

Where a statewide average appears on Appendix Pricing UNE Schedule of Prices, that price will prevail until the Commission's implementation of the intrastate USF mechanism scheduled for Spring 1998 or as specified in such other further order of the Commission. Thereafter, pricing will be by Zone where applicable (loops) and by Level, where applicable (ports) as shown on Appendix Pricing UNE - Schedule of Prices.

*See Docket No. 18515, Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan, for implementation of the Texas Universal Service Fund (TUSF).*

<sup>315</sup> Mega Arbitration Award, Appendix A, UNE Costing and Pricing DPL Issues Award Table, Issue 148 (Dec. 19, 1997).

<sup>316</sup> See DPL at 65 (May 28, 1999).

	<u>Recurring</u>	<u>Nonrecurring</u>	
		Initial	Additional
<u>2-Wire Analog Loop</u>			
Zone 1	\$18.98	\$15.03	\$6.22
Zone 2	\$13.65	\$15.03	\$6.22
Zone 3	\$12.14	\$15.03	\$6.22
<u>2-Wire Digital Loop</u>			
Zone 1	\$20.16	\$15.03	\$6.22
Zone 2	\$20.16	\$15.03	\$6.22
Zone 3	\$20.16	\$15.03	\$6.22
<u>4-Wire Analog Loop</u>			
Zone 1	\$36.06	\$15.03	\$6.22
Zone 2	\$21.52	\$15.03	\$6.22
Zone 3	\$15.86	\$15.03	\$6.22
<u>4-Wire Digital Loop</u>			
Zone 1	\$40.32	\$15.03	\$6.22
Zone 2	\$40.32	\$15.03	\$6.22
Zone 3	\$40.32	\$15.03	\$6.22

One of the conditions in the SBC/Ameritech merger is that SBC/Ameritech will develop and deploy common electronic OSS interfaces across all 13 SBC/Ameritech states to be used by any telecommunications carrier, including the merged firm's advanced services affiliates, for pre-ordering and ordering facilities used to provide advanced services.<sup>317</sup> The FCC found that, "until SBC/Ameritech has developed and deployed the advanced services OSS enhancements, interfaces, and business requirements described above, and the SBC/Ameritech separate advanced services affiliate uses the EDI interface for pre-ordering and ordering a substantial majority of the facilities it uses to provide advanced services, SBC/Ameritech will offer

<sup>317</sup> SBC/Ameritech Merger Order at ¶ 371.

telecommunications carriers a 25-percent discount from the recurring and nonrecurring charges for unbundled loops used in the provision of advanced services. This discount is intended to compensate other carriers for the unenhanced OSS and to provide SBC/Ameritech with an incentive to improve the systems and processes as quickly as possible."<sup>318</sup> The Arbitrators find that this same discount shall apply to this Award.

Until such time as permanent xDSL loop rates are approved, SWBT shall offer Petitioners xDSL loops at the interim prices above. The interim xDSL loops rates are subject to refund/surcharge upon approval of permanent xDSL loop rates, back to the date the Interconnection Agreements resulting from this Award become effective.

**28(a). Is it appropriate to charge a rate for shielded cross connect that is higher than the rate for unshielded cross connect?**

**28(b). If so, what are the appropriate rates for xDSL Shielded Cross Connect to Collocation?**

Parties' Positions

Rhythms does not anticipate utilizing shielded cross connects.<sup>319</sup> Rhythms asserts that shielded cross connects are not necessary when provisioning xDSL services,<sup>320</sup> and further argues that SWBT's proposed charge for shielded cross-connects should be rejected. Rhythms notes that SWBT's proposed rates for shielded cross connects are significantly higher than those for basic voice-grade cross connects. Rhythms contends that the higher rates represent a barrier to entry.<sup>321</sup> Rhythms believes that SWBT cannot charge differently for the two types of cross connects.<sup>322</sup> Rhythms argues that the difference in the shielded cable cost and labor involved, if

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<sup>318</sup> *Id.* at ¶ 372 and Appendix C at ¶ 18.

<sup>319</sup> Tr. at 1320-1321 (June 4, 1999).

<sup>320</sup> See ACI Exhibit 5, Direct Testimony of Terry L. Murray (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy (Feb. 19, 1999); ACI Exhibit 4, Direct Testimony of Phil Kyees (Feb. 19, 1999).

<sup>321</sup> ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 27 (April 4, 1999).

<sup>322</sup> ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 27 (April 4, 1999).