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February 22, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W., Room TW-B-204  
Washington, D.C. 20554

ORIGINAL

Re: CC Docket No. 00-4

Dear Ms. Salas:

Pursuant to the Public Notice issued on January 10, 2000, please find enclosed the Reply Comments of AT&T in Opposition To SBC Communications' Section 271 Application for Texas. AT&T is submitting to your Office a redacted version, plus two copies, of the entire submission. If a document has been redacted, it bears the legend "Redacted - For Public Inspection." Documents that have not been redacted contain no such legend.

AT&T is also submitting to your Office the portions of its submission that are proprietary pursuant to the Commission's Protective Order in this matter. The proprietary material consists of pages of AT&T's Comments and supporting affidavits, as well as proprietary attachments. Each page of the submission that contains proprietary materials bears the legend "Confidential - Not for Public Inspection."

Finally, also enclosed is a CD-ROM that contains the portions of AT&T's redacted submission that exist in electronic form. If there are any questions concerning AT&T's submission in this matter, including matters relating to proprietary material, please contact Michael J. Hundseher, Esq. at Sidley & Austin, 1722 Eye Street, Washington, D.C. 20006 (Tel. (202) 736-8236). Thank you.

Sincerely,

John A. Redmon

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

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FEB 22 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Application of SBC Communications Inc., )  
Southwestern Bell Telephone Company, )  
And Southwestern Bell Communications )  
Services, Inc. d/b/a Southwestern Bell Long )  
Distance for Provision of In-Region )  
InterLATA Services in Texas )

CC Docket No. 00-4

**REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO  
SOUTHWESTERN BELL TELEPHONE COMPANY'S  
SECTION 271 APPLICATION FOR TEXAS**

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February 22, 2000

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TO SOUTHWESTERN BELL TELEPHONE COMPANY'S  
SECTION 271 APPLICATION FOR TEXAS**

**CC Docket No. 00-4**

<b>EXH.</b>	<b>AFFIANT</b>	<b>SUBJECT(S) COVERED</b>	<b>RELEVANT STATUTORY PROVISIONS</b>
O	C. Michael Pfau	Performance Measurements/ Backsliding	§271(c)(2)(B)(ii); §271(d)(3)(C)
P	Sarah DeYoung	UNE Loop Provisioning-Hot Cuts	§271(c)(2)(B)(iv), (xi)
Q	Daniel P. Rhinehart	Pricing (Glue Charges)	§271(c)(2)(B)(ii)
R	Nancy M. Dalton/ Sarah DeYoung	Operations Support Systems	§271(c)(2)(B)(ii), (iv), (x)

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<b>FCC Orders</b>	
<u>Ameritech Order</u>	Memorandum Opinion and Order, <u>Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan</u> , 12 FCC Rcd. 20543 (1997).
<u>BA-NY Order</u>	Memorandum Opinion and Order, <u>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York</u> , CC Dkt. No. 99-295, FCC 99-404, 1999 WL 1243135 (rel. Dec. 22, 1999).
<u>Local Competition Order</u>	First Report and Order, <u>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</u> , 11 FCC Rcd. 15499 (1996), <u>aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC</u> , 120 F.3d 753 (8th Cir. 1997), <u>aff'd in part and rev'd in part by AT&amp;T Corp. v. Iowa Utils. Bd.</u> , 119 S. Ct. 721 (1999).
<u>Louisiana II Order</u>	Memorandum Opinion and Order, <u>Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana</u> , 13 FCC Rcd. 20599 (1998).
<u>SBC/Ameritech Merger Order</u>	Memorandum Opinion and Order, <u>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</u> , CC Dkt. No. 98-141, FCC 99-279, 1999 WL 809551 (rel. Oct. 8, 1999), <u>app. pend. sub. nom. Telecommunications Resellers Ass'n v. FCC</u> , Case No. 99-1441 (D.C. Cir.).

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<b>AT&amp;T Comments and Declarations</b>	
AT&T Comments	Comments of AT&T Corp. In Opposition to Southwestern Bell Telephone Company's Section 271 Application for Texas, filed January 31, 2000 in CC Docket No. 00-4
Dalton/Connolly Decl.	Declaration of Nancy M. Dalton and Timothy M. Connolly, Exhibit J to AT&T Comments
Dalton/DeYoung Decl.	Declaration of Nancy M. Dalton and Sarah DeYoung, Exhibit I to AT&T Comments
Dalton/DeYoung Reply Decl.	Declaration of Nancy M. Dalton and Sarah DeYoung, Exhibit R to Reply Comments of AT&T Corp. In Opposition to Southwestern Bell Telephone Company's Section 271 Application for Texas, filed February 22, 2000 in CC Docket No. 00-4 ("AT&T Reply Comments")
Kelley/Turner Decl.	Declaration of A. Daniel Kelley and Steven E. Turner, Exhibit A to AT&T Comments
Mallows Decl.	Declaration of Colin L. Mallows, Exhibit L to AT&T Comments
Pfau/Chambers Decl.	Declaration of C. Michael Pfau and Julie S. Chambers, Exhibit C to AT&T Comments
Pfau/DeYoung Decl.	Declaration of C. Michael Pfau and Sarah DeYoung, Exhibit K to AT&T Comments
Pfau Reply Decl.	Declaration of C. Michael Pfau, Exhibit O to AT&T Reply Comments
Rhinehart Decl.	Declaration of Daniel P. Rhinehart, Exhibit G to AT&T Comments
Rhinehart Reply Decl.	Declaration of Daniel P. Rhinehart, Exhibit Q to AT&T Reply Comments

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Tonge/Rutan Decl.	Declaration of Phillip W. Tonge and Edwin P. Rutan II, Exhibit B to AT&T Comments
DeYoung Decl.	Declaration of Sarah DeYoung, Exhibit D to AT&T Comments
DeYoung Reply Decl.	Declaration of Sarah DeYoung, Exhibit P to AT&T's Reply Comments
<b>SWBT filings on behalf of its Application</b>	
SWBT Brief	Brief In Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas, filed January 10, 2000 in CC Docket No. 00-4
Conway Aff.	Affidavit of Candy R. Conway, Appendix A-4, Tab 3 to SWBT's Brief
Dysart Aff.	Affidavit of William R. Dysart, Appendix A-5, Tab 1 to SWBT's Brief
Habeeb Aff.	Affidavit of John S. Habeeb, Appendix A-1, Tab 1 to SWBT's Brief
Ham Aff.	Affidavit of Elizabeth A. Ham, Appendix A-4, Tab 1 to SWBT's Brief
<b>Affidavits/Declarations of Commenters</b>	
Barron Aff.	Affidavit of Lea J. Barron on behalf of Nextlink, on behalf of ICG Communications, Att. 3 to CLEC Coalition Comments
Beard/Mayo Decl.	Joint Declaration of Dr. T. Randolph Beard and Dr. John W. Mayo on behalf of MCI WorldCom, Vol. 4, Tab E. to MCI World Com Comments

<b>INDEX OF FULL CITATIONS</b>	
<b>Short Citation</b>	<b>Full Citation</b>
Draper Aff.	Affidavit of Michael L. Draper on behalf of Nextlink, on behalf of ICG Communications, Att. 1 to CLEC Coalition Comments
Elliot Aff.	Affidavit of Mitch Elliott on behalf of CapRock Communications, Ex. C to CompTel Comments
Rowling Aff.	Affidavit of Gwen M. Rowling on behalf of ICG Communications, Att. 7 to CLEC Coalition Comments
Smith Aff.	Affidavit of Carrie J. Smith on behalf of Nextlink, Att. 2 to CLEC Coalition Comments
Thompson Aff.	Affidavit of Jere Thompson on behalf of CapRock Communications, Ex. B to CompTel Comments
Tidwell/Kettler Aff.	Joint Affidavit of Richard L. Tidwell and Patricia Ann Kettler on behalf of Birch Telecom, Att. 6 to CLEC Coalition Comments
<b>Documents</b>	
TPUC Final Staff Report	Public Utility Commission of Texas, <u>Final Staff Status Report on Collaborative Process</u> (Nov. 18, 1998), filed in Project No. 16251, attached to SWBT Brief, Appendix C, Tab 1233
TFR	Telcordia Technologies, <u>The Public utility Commission of Texas: Southwestern Bell OSS Readiness Report</u> (Sept. 1999), attached to Ham Aff. as Attachment A

## INTRODUCTION AND SUMMARY

It is now clear that both the industry at large and the United States Department of Justice (“DOJ”) agree that SWBT’s Texas Section 271 Application (“Application”) should be denied. While different parties assert a variety of reasons for denial, there is virtual unanimity among the DOJ and affected CLEC commenters that (1) SWBT has failed to show that it is providing nondiscriminatory access to xDSL loops;<sup>1</sup> (2) SWBT has failed to provide nondiscriminatory access to the unbundled loop;<sup>2</sup> and (3) SWBT has failed to provide nondiscriminatory access to its OSS in multiple respects.<sup>3</sup>

Standing virtually alone in support of SWBT’s Application is the Texas Public Utilities Commission (“TPUC”), which identifies the following “three prongs” as forming the basis for its “getting to YES” on behalf of SWBT: (1) the TPUC’s Texas 271 Agreement (“T2A”), which the TPUC characterizes as a “Section 271-compliant interconnection agreement”; (2) “successful independent testing” of SWBT’s OSS; and (3) “comprehensive performance data” which supposedly demonstrate “that SWBT’s wholesale customers receive the same high level of treatment as do SWBT’s retail customers”. TPUC Comments 1.

However, none of these three prongs supports SWBT’s Application. First, the T2A is not, in fact, compliant with Section 271, because, inter alia, it authorizes SWBT to assess non-cost based glue charges for the hypothetical work involved in “combining” the already combined network

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<sup>1</sup> See, e.g., DOJ Eval. 10-27; Covad Comments 3-63; Rhythms Comments 13-60; Northpoint Comments 3-20; ALTS Comments 33-46; MCI WorldCom Comments 50-53; Sprint Comments 30-49.

<sup>2</sup> See, e.g., DOJ Eval. 27-44; ALTS Comments 29-33; CLEC Coalition Comments 41-43; CompTel Comments 13-18; MCI WorldCom Comments 27-29; Sprint Comments 49-57.

<sup>3</sup> See, e.g., DOJ Eval. 38-44; ALTS Comments 25-28; CLEC Coalition Comments 18-39; CompTel Comments 4-13; MCI WorldCom Comments 3-39; Sprint Comments 8-29. See also DOJ Eval. 49-53.

elements comprising the UNE-Platform (see Section IV below), and also because it authorizes SWBT to invoke the supposed “intellectual property” rights of third-party vendors as a barrier against CLECs seeking market entry through the use of unbundled network elements (“UNEs”) (see AT&T Comments 42-49; MCI WorldCom Comments 46-48).

Second, the testing of SWBT’s OSS by Telcordia Technologies (“Telcordia”) also cannot support the TPUC’s recommendation. The comments -- including those of the DOJ -- overwhelmingly confirm that the Telcordia testing was so fundamentally flawed that it is entitled to little, if any, weight.<sup>4</sup>

The third prong relied upon by the TPUC -- i.e. SWBT’s “comprehensive performance data” -- also cannot justify the TPUC’s support for SWBT’s Application. As the DOJ found in its Evaluation, Telcordia failed adequately to validate SWBT’s performance reporting, resulting in “uncertainty . . . regarding the validity of some of SBC’s performance reports. . . .” DOJ Eval. 4-5.<sup>5</sup> Indeed, there is ample evidence that SWBT’s reported performance data are, in fact, unreliable. The DOJ identifies in its Evaluation numerous specific instances in which it has determined that SWBT’s performance data are unreliable. Thus, the DOJ found that “key portions of the DSL performance data that SBC submitted to the Commission are seriously flawed” and expressed concern that these “deficiencies may be symptomatic of more serious problems in the reliability of SBC’s performance measure systems and processes”.<sup>6</sup> The DOJ also found that some SWBT performance data in other

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<sup>4</sup> See, e.g., DOJ Eval. 4-7; AT&T Comments 73-75 & Dalton/Connolly Decl. ¶¶ 11-111; Allegiance Comments 9-10; ALTS Comments 6-9; CLEC Coalition Comments 13-18; Covad Comments 44-48; MCI WorldCom Comments 39-46; Rhythms Comments 38-43; Sprint Comments 11-15; TRA Comments 16-18, 20, 22-23.

<sup>5</sup> DOJ Eval. 6. The DOJ points out that Telcordia failed to examine whether SWBT’s metrics, as defined, were meaningful, and that its review was “too dated and limited” to ensure the accuracy of current data, based, as it was, on an outdated version of SWBT’s business rules. Moreover, Telcordia identified important concerns about the integrity and auditability of the performance data. Id.

<sup>6</sup> DOJ Eval. 12-17. The DOJ specifically found unreliable SWBT’s reporting of data under PM 57 (SWBT’s time to provide loop make-up information); PMs 5 and 6 (SWBT’s time to return firm order

areas was unreliable, including inconsistencies in SWBT's data (id. 31 n.83), misclassifications of data (id. 38-39 n.105), and improper and belatedly "discovered" exclusions (id. 47 & n.133), all tending to improve the appearance of SWBT's performance. And the DOJ notes that the TPUC appears to have specifically relied, in some cases, on SWBT's misleading data in arriving at its conclusions (id. 13, 38 & n.105), and that, in other cases, more recent data has become available which tends to undercut the TPUC's conclusions (id. 31 n.83).

The DOJ's findings confirm AT&T's previously expressed concerns about the unreliability of SWBT's performance data. Pfau/DeYoung Decl. ¶¶14-72. In this regard, AT&T has collected in a schedule (Pfau Reply Decl. Att. 1) some of the extensive evidence that it has observed over the last year demonstrating that SWBT's performance data lacks reliability, stability and completeness. This schedule reflects repeated instances of SWBT's misclassifications of data (see, e.g., Pfau Reply Decl. Att. 1, PMs 5 & 6, 55.1), reporting of data in the wrong time periods (id. PMs 1 & 2), failures to capture key data (id. PMs 5 & 6, 35, 45, 114, 114.1, 115), internal inconsistencies within the reported data (id. PMs 5 & 6, 43, 55), failures to account for SWBT errors (id. PMs 9, 27-34), failures to comply with the TPUC's business rules (id. PMs 13, 27, 29, 56), failures to protect the integrity and auditability of performance measure data (id. subheading on "raw data instability"), retroactive restatements of performance results (id. PMs 27, 38, 70, 72, 78), and failures to implement proper data collection and reporting procedures (id. PMs 58, 114 & 115). The unreliability of SWBT's performance data -- coupled with the incompleteness of its performance measurements and SWBT's discriminatory performance on many of those measurements, even as reported -- prevents the third prong relied upon by the TPUC from being persuasive.

Accordingly, none of the three prongs identified by the TPUC in its Evaluation supports its

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confirmations for DSL loop orders); PM 62 (average delay days for SWBT caused missed due dates); PM 55.1 (average installation interval for DSL loops).

conclusions. Indeed, the overwhelming preponderance of the evidence presented in this proceeding demonstrates that the TPUC's conclusions are wrong. First, as to the state of local competition in Texas, the DOJ has found that SWBT has "substantially over-estimated" the number of lines served by facilities-based carriers in Texas (DOJ Eval. 8), and, as we show below (Section I), local competition in Texas is largely limited to businesses (principally Internet Service Providers) in urban areas (DOJ Eval. 9), with CLECs holding only a 0.2% share of facilities loops running to residential customers.

Second, as shown in Section II below, the TPUC's conclusion that SWBT is providing nondiscriminatory access to unbundled loops through its "coordinated hot cut" and "frame due time" processes must be rejected because -- as AT&T has shown, and as the DOJ has found -- SWBT's performance in providing unbundled loops falls well below the level that this Commission found to be "minimally acceptable" in its recent BA-NY Order.

Third, as the DOJ has found, SWBT has failed to provide nondiscriminatory access to the network elements needed to enable xDSL competition, and, as we show in Section III below, SWBT has also failed -- and, indeed, actively impaired -- AT&T's efforts to add xDSL capabilities to the exchange, exchange access and long distance services that it seeks to provide through the UNE-Platform.

Fourth, the TPUC's assertion that SWBT's phantom glue charges are cost-based, which, in turn, is based on the TPUC's newly articulated theory that the charges reflect some form of cost "averaging", must be rejected because (a) it is inconsistent with the TPUC's own repeated statements explaining its reasoning in authorizing the glue charges; (b) it is inconsistent with SWBT's different theory as to why the same charges are cost-based; and (c) it is inconsistent with the record in the TPUC's mega-arbitration. See Section IV below.

Fifth, the parties commenting in this proceeding are virtually unanimous in their view that

SWBT has failed to provide nondiscriminatory access to its OSS for a wide variety of reasons, including, among many other things, its failure to provide integrated pre-ordering and ordering capability; its failure to provide CLECs with nondiscriminatory error detection capabilities, thereby exposing them to the delays and risk of error associated with manual rejects and excessive levels of manual processing; and its failure to provide nondiscriminatory access to its billing and repair and maintenance systems. Moreover, SWBT's back-end ordering process (and possibly other unidentified problems) has caused an unacceptable level of service outages. Finally, SWBT has recently placed limits on the number of AT&T EDI transactions that it will process in an hour, thereby suggesting a capacity constraint that was not previously discovered by Telcordia in its testing or otherwise disclosed. See Section V below.

For all of these reasons, as well as those set forth in AT&T's opening Comments, the DOJ's Evaluation, and the comments of many other CLECs, SWBT's Application should be denied.

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

<b>In the Matter of</b>	)	
	)	
<b>Application of SBC Communications Inc.,</b>	)	<b>CC Docket No. 00-4</b>
<b>Southwestern Bell Telephone Company,</b>	)	
<b>And Southwestern Bell Communications</b>	)	
<b>Services, Inc. d/b/a Southwestern Bell Long</b>	)	
<b>Distance for Provision of In-Region</b>	)	
<b>InterLATA Services in Texas</b>	)	

**REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO  
SOUTHWESTERN BELL TELEPHONE COMPANY’S  
SECTION 271 APPLICATION FOR TEXAS**

**Argument**

**I. LOCAL COMPETITION IN TEXAS REMAINS LIMITED AND NARROWLY FOCUSED**

Although the TPUC characterizes the state of local competition in Texas as “robust” (TPUC Comments 101), the facts, even as reported by the TPUC, demonstrate the opposite. The little local competition that now exists in Texas is generally limited to businesses in urban areas and, even in those areas, is focused almost entirely on Internet Service Providers (“ISPs”). Based on data gathered by the TPUC directly from CLECs, the share of facilities loops provided by competitors to residential customers is a paltry 0.2%.<sup>7</sup> Even if one includes UNE-based competition, CLEC residential share is only 3.4% in Dallas/Fort Worth and Houston, and only 1.2% in other areas.<sup>8</sup> As of the end of 1999, Texas CLECs were adding only 20,000 UNE Platform (“UNE-P”) lines per month – less than 20% of the rate at which New York CLECs were adding UNE-P lines at the same

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<sup>7</sup> Kelley/Turner Decl. ¶ 13 & Table 1; Beard/Mayo Decl. ¶ 41.

<sup>8</sup> Kelley/Turner Decl. Att. 3. CLECs received less than 3% of all minutes (business and residential) terminated by MCI WorldCom in Texas. MCI WorldCom Comments 60-61. Approximately 91% of CLEC business lines and 98 % of CLEC residential lines are in the largest five cities in Texas.

time.<sup>9</sup> Finally, any claim of robust local competition is belied by the remarkable fact -- never mentioned by the TPUC -- that nearly 90% of all local traffic handled by CLECs in Texas is for ISPs. MCI Worldcom Comments 58-59; Kelley/Turner Decl. ¶ 43.

The picture of “robust” local competition in Texas is founded in large measure on SWBT’s claims that CLECs currently serve 1.3 million lines, 70% of which are served by facilities-based carriers. However, as the DOJ has stated, SWBT has “substantially over-estimated the number of lines served by facilities-based carriers, about which it has no direct evidence.” DOJ Eval. 8. Indeed, the comments demonstrate that SWBT has more than double-counted the number of lines served by facilities-based competitors in Texas.<sup>10</sup> In its Application, SWBT estimated that, as of October 1999, CLECs served 887,480 pure facilities-based lines.<sup>11</sup> By comparison, CLEC data gathered by the TPUC reflected only 317,865 facilities-based lines as of September 1999.<sup>12</sup> SWBT now estimates facilities-based lines served by CLECs increased to 920,140 as of November 1999 (DOJ Eval. 8 & n.14), while the DOJ estimates the number to be only 350,000 to 400,000 lines.<sup>13</sup> In

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Beard/Mayo Decl. ¶ 46.

<sup>9</sup> Kelley/Turner Aff. ¶ 46. The UNE-P is the principal vehicle by which CLECs in Texas and New York are providing competitive residential services.

<sup>10</sup> DOJ Eval. 8-9; Allegiance Comments 13; MCI WorldCom Comments 59-61; Sprint Comments 7, 74-79; Kelley/Turner Decl. ¶¶ 36-39. SWBT’s estimation of facilities-based lines provided to residential customers is particularly overstated. MCI WorldCom Comments 60; Sprint Comments 76-77; Kelley/Turner Decl. ¶¶ 23-25.

<sup>11</sup> SWBT’s estimate was derived by multiplying the 322,720 interconnection trunks it reported in its service territory by a factor of 2.75 ( $2.75 \times 322,720 = 887,480$ ). Habeeb Aff. ¶¶ 27, 30.

<sup>12</sup> TPUC Comments 102; Kelley/Turner Decl. ¶ 13 & Table 1; Beard/Mayo Decl. ¶ 41.

<sup>13</sup> DOJ Eval. 9. The principal cause of SWBT’s overstated estimates is its assumption that every CLEC interconnection trunk serves, on average, 2.75 lines, (Habeeb Aff. ¶ 27), when, as the comments demonstrate, CLEC interconnection trunks serve only about one line on average. DOJ Eval. 9 & n.15; Kelley/Turner Decl. ¶¶ 20-22; MCI WorldCom Comments 59-60; Sprint Comments 75-76. Although the TPUC comments that “SWBT’s method of calculating the number of facilities-based customers appears reasonable” (TPUC Comments 102), it provides no analysis to support that conclusion which, in any event, conflicts with the TPUC’s acknowledgement that it “has no way of determining” whether the lower facilities-based lines directly reported by CLECs or the higher numbers of such lines estimated by SWBT are more accurate. Id. 103. SWBT itself acknowledged that it “cannot provide an exact count of access lines served by CLECs over their own facilities.” Habeeb Aff. ¶ 22. The TPUC provides no

sum, the TPUC's own data show that only a small sliver of customers in Texas have a realistic choice of local carriers.

## **II. SWBT FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO UNE LOOPS**

In its comments, the TPUC, focusing almost exclusively on SWBT's coordinated hot cut ("CHC") process, "verified" that SWBT is properly provisioning hot cuts. In addition, the TPUC reported that SWBT is providing CLECs with nondiscriminatory access to its OSS systems for UNE Loops, noting that SWBT has implemented electronic jeopardy notices and that SWBT timely posts CLECs' completed orders to SWBT's legacy billing systems. Furthermore, the TPUC found that SWBT has complied with its statutory collocation obligations. In reaching these conclusions, however, the TPUC relied solely on the evidence marshaled by SWBT in its Application and on SWBT's interpretation of that evidence. Thus, like SWBT, the TPUC rested its analysis on SWBT's reported performance data and on Telcordia's conclusions from its OSS testing.

The TPUC was alone in supporting SWBT's claimed UNE Loop performance. To the extent that other CLECs commenting on SWBT's Application have addressed these issues, their filings have uniformly concluded that SWBT has not met its statutory obligations with respect to UNE Loops.<sup>14</sup> Similarly, the DOJ has determined, based on its review of the evidence presented by both SWBT and all commenters, that SWBT's Application should be denied because of SWBT's inadequate hot cut performance and its failure to provide nondiscriminatory access to its OSS systems for UNE Loops. DOJ Eval. 27-44.

As discussed below, the TPUC's uncritical embrace of SWBT's Application renders its

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explanation why SWBT's estimate could possibly be more accurate than the numbers of facilities-based lines that CLECs themselves reported.

<sup>14</sup> See CompTel Comments 15-17 & Elliott Aff. ¶¶ 17-22, Thompson Aff. ¶¶ 18-21; CLEC Coalition Comments 32-33, 41-42 & Barron Aff. ¶¶ 26-27, Draper Aff. ¶ 37 & Att. C; Rowling Aff. ¶¶ 23-24, 27, 34, 37; Smith Aff. ¶ 5, Tidwell/Kettler Joint Aff. ¶¶ 46, 71-79, 91, 107; ALTS Comments 32-

conclusions no more persuasive than SWBT's own deficient filing. Thus, the TPUC's failure to consider omissions in SWBT's Application -- such as its silence with respect to the frame due time ("FDT") hot cut process and customer outages caused by defective hot cuts -- is an enormous gap in its analysis. Similarly, the TPUC's reliance on SWBT's reported performance data undermines its conclusion because that data are either materially inaccurate or fail to capture SWBT's discriminatory performance. Furthermore, like SWBT, the TPUC has ignored commercial evidence which directly contradicts its conclusion. Once the totality of the evidence is considered and properly scrutinized, the only conclusion -- as AT&T, other CLECs and the DOJ have found -- is that SWBT has not satisfied its statutory obligations.

Moreover, SWBT's attempt to bolster its deficient Application by submitting ex parte data supposedly summarizing its hot cut performance for December (SWBT's "Hot Cut Ex Parte") is as unpersuasive as it is untimely. Even assuming that SWBT's December data were reliable (a dubious proposition), those data show that SWBT continues -- as it has since August -- not to meet the "minimally acceptable" level of hot cut performance required by the Commission in its BA-NY Order to demonstrate checklist compliance.

**A. The TPUC Ignored Evidence Demonstrating that SWBT's FDT and CHC Hot Cut Processes Are Not Commercially Viable.**

1. **The FDT Process.** Perhaps the most obvious flaw in the TPUC's analysis is its failure to address the material defects in SWBT's FDT process. As AT&T showed, SWBT concedes that its FDT process offers the only potentially viable means for switch-based CLECs to obtain commercial access to the small business and residential markets. Nevertheless, SWBT failed to submit any evidence concerning its ability to perform FDT hot cuts at even a "minimally acceptable" level. Moreover, AT&T's experience proved that SWBT's FDT process was not

commercially viable because, as SWBT acknowledged, SWBT-caused provisioning errors on AT&T's FDT orders resulted in substantial numbers of AT&T's customers -- 53% in August and 33% in December -- unexpectedly losing service for prolonged periods. See DeYoung Decl. ¶¶ 44-48, 53-74.

As the DOJ observed, SWBT's failure to present evidence of its FDT performance is "cause for concern", especially given CLECs' increasing use of the FDT process as reported in SWBT's Hot Cut Ex Parte. DOJ Eval. 34. The TPUC, however, neither addressed the obvious, competitive importance of the FDT process nor SWBT's inability to properly perform FDT hot cuts. Indeed, the TPUC mentions SWBT's FDT process only in passing, noting simply that performance measures for the FDT process "will be addressed at the six-month PM review."<sup>15</sup> TPUC Comments 59. Promises of future performance measures, however, are plainly no substitute for evidence of SWBT's present compliance with its statutory obligations, especially where, as discussed below, the promised measures are inadequate. The TPUC's decision to support SWBT's Application based on such promises ignores the standard mandated by Congress in the Act.

**2. The CHC Process.** Although devoting more attention to SWBT's CHC process, the TPUC's analysis is no more persuasive, because the TPUC (a) relies upon SWBT's untrustworthy performance data; (b) ignores undisputed commercial evidence demonstrating that SWBT failed to meet the "minimally acceptable" level for hot cut performance set by the Commission in its BA-NY Order; and (c) adopts Telcordia's OSS test conclusions despite test results demonstrating that SWBT cannot perform hot cuts in a commercially reasonable manner.<sup>16</sup>

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<sup>15</sup> Although the TPUC also noted that "various aspects of performance" for FDT orders "are currently captured under existing PMs" (TPUC Comments 59), the only performance measures relating directly to the FDT process which SWBT had adopted at the time of its Application concern SWBT's porting of the customer's number -- not the cutover of the customer's loop -- and several of those measures have not yet even been implemented. DeYoung Decl. ¶ 55 n.39.

<sup>16</sup> The TPUC's "verification" that SWBT has complied with its statutory collocation obligations

a. **The TPUC's reliance on SWBT's reported performance data is inappropriate.** A basic flaw in the TPUC's analysis is its extensive reliance upon SWBT's reported hot cut performance data (TPUC Comments 58-59) because, as AT&T has shown, that reported data for August through November (and possibly through today) are untrustworthy. DeYoung Decl. ¶¶ 209-43. Notably, although acknowledging that it had concerns over the accuracy of SWBT's performance data, the TPUC asserts that it resolved those concerns through a "two-track evaluation" which persuaded it that SWBT's data were reliable. TPUC Comments 58.

One of the "tracks" the TPUC cites, however, is the results of the AT&T/SWBT joint reconciliation project, which examined SWBT's August and September reported performance data for AT&T for PMs 58, 114 and 115. Far from validating SWBT's reported data, the reconciliation project confirmed that SWBT's reported data materially understated SWBT's poor performance. Even more important, the joint reconciliation project established not only that SWBT's performance was not acceptable, but also that, throughout the period of August through at least November (and possibly today), SWBT's manual procedures for collecting and reporting hot cut performance data were fundamentally flawed. Thus, SWBT's reported data -- both for AT&T and all CLECs -- were wholly unreliable. DeYoung Decl. ¶¶ 209-43.

The second "track" the TPUC relies upon is a comparison performed by Telcordia of the log notes kept by SWBT and MCI Worldcom for 18 CHC loop cuts performed during Telcordia's OSS

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also does not withstand scrutiny. Thus, while acknowledging that the rates on SWBT's Revised Physical and Virtual Collocation Tariffs have been approved on an interim basis only (and that the final rate hearing is not scheduled till mid-June), the TPUC fails (as did SWBT) to point to any evidence to "minimize" the "uncertainty" created by its interim rates -- as the Commission required in its BA-NY Order -- and ignores the fact that the interim rates for caged collocation fail to comply with TELRIC methodology and that the TPUC's own orders permit not only the rates, but the terms of the collocation offerings themselves to be materially amended in the final rate hearing. See DeYoung Decl. ¶¶ 320-27. Moreover, the TPUC also ignores the fact that SWBT's Revised Virtual Collocation Tariff gives SWBT the unlimited option to deny access to virtual collocation in its central offices and other eligible structures where physical collocation is available -- which directly contravenes the Commission's rules. Id. ¶¶ 331-32.

retest. As AT&T has shown, however, Telcordia's comparison shed no light on the accuracy of SWBT's reported performance data, as Telcordia itself conceded.<sup>17</sup> DeYoung Decl. ¶¶ 276-77. Moreover, the DOJ has found that Telcordia's "review is too dated and limited to ensure the accuracy of current data". DOJ Eval. 6. That is particularly true with respect to hot cut performance data because Telcordia did not consider the results of the subsequently performed AT&T/SWBT joint reconciliation project nor did Telcordia's analysis take into account the subsequent admissions by SWBT that it recorded the start and stop times on CHC hot cuts -- *i.e.*, the critical times for PMs 114 and 115 -- on only a "random" basis "due to varying proficiency levels among technicians responsible for recording this information." See Dysart Aff. ¶ 653; Hot Cut Ex Parte 1. Thus, its extensive reliance on SWBT's hot cut performance data undermines the TPUC's conclusions.

**b. The TPUC ignores commercial evidence of SWBT's inadequate hot cut performance.** As AT&T reported in its initial comments, jointly reconciled performance data and SWBT's own reported data showed that from August to October, SWBT's CHC performance failed to meet the "minimally acceptable" level of performance on each of the three relevant criteria identified by the Commission in its BA-NY Order -- *i.e.*, service outages, "on-time" cutover performance and initial trouble reports. DeYoung Decl. ¶¶ 75-160. The TPUC's comments either ignore this evidence or fail to recognize its significance.

**Service Outages.** The TPUC reports that its analysis of SWBT-caused service outages was limited to (a) SWBT's reported performance data under PM 114 (premature loop cuts) and (b) SWBT's "on-time" loop cutover performance, which was based on a sampling of CHC hot cuts supposedly compiled consistent with SWBT's recently adopted PM 114.1. TPUC Comments 58-59.

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<sup>17</sup> Indeed, the only thing that Telcordia's comparison established was that substantial differences existed between the parties' log notes with respect to the time when cuts supposedly were authorized and completed -- differences that point to the very flaws in SWBT's data collection processes found by the AT&T/SWBT joint reconciliation project. DeYoung Decl. ¶¶ 278-82.

The TPUC thus ignored the findings of the AT&T/SWBT PPIG task force, which showed that systemic defects in SWBT's CHC process consistently caused over 5% -- and up to at least 11.4% -- of AT&T's customers (and likely other CLECs' customers as well) to unexpectedly lose service for prolonged intervals, thereby demonstrating SWBT's failure to meet the "minimally acceptable" level of performance required by the Commission. DeYoung Decl. ¶¶ 75-119.

The TPUC's narrow review is flawed for two reasons. First, as shown above, SWBT's reported performance data for PM 114 are unreliable. Second, contrary to the TPUC's assumption, SWBT's PM 114.1 fails to capture service outages caused by SWBT's premature or defective loop cuts. *Id.* ¶¶ 85-86, DeYoung Reply Decl. ¶¶ 12-20. Accordingly, by restricting its analysis to SWBT's reported data under PM 114 and sampled data under PM 114.1 -- and ignoring the more complete (and accurate) analysis conducted by the PPIG task force which identified service outages caused by both premature and defective loop cuts -- the TPUC failed to consider the relevant hot cut performance criteria. DeYoung Reply Decl. ¶¶ 21-27.

**On-Time Cutover Performance.** AT&T showed in its initial comments that SWBT's cutover performance data (supposedly compiled consistent with its PM 114.1) -- although materially flawed and understating SWBT's poor performance -- nevertheless confirmed that SWBT failed to satisfy the Commission's 90% "on-time" cutover interval standard for 2 of the 3 months SWBT relies upon in support of its Application. DeYoung Decl. ¶¶ 140-58. In reviewing that same data, the TPUC reached the opposite conclusion due not only to its mistaken assumption about the scope of PM 114.1 (as discussed above), but also to its adoption of the same flawed analysis of SWBT's performance data that SWBT presented in its Application.

First, the TPUC asserted that SWBT's data showed above 90% performance for orders "with an average conversion interval within one hour." TPUC Comments 59. As AT&T has shown, however, the use of an "average conversion interval" -- rather than a percentage of orders completed

within one hour -- serves to mask discriminatory performance and is contrary to the cutover measure relied upon by the Commission in its BA-NY Order. See DeYoung Decl. ¶¶ 142-44.<sup>18</sup>

Second, the TPUC contends that SWBT's data also show above 90% performance for cutovers completed within 2 hours -- a statistic that the TPUC suggests is relevant based on SWBT's PM 114.1, which was adopted at the December 16 Open Meeting. TPUC Comments 59. The record of that meeting, however, clearly shows that the TPUC approved SWBT's PM 114.1 without any public discussion or debate and, most importantly, without allowing CLECs the opportunity to comment on a measure that is plainly inconsistent with the type of cutover measure that CLECs had been unsuccessfully requesting since 1998. DeYoung Reply Decl. ¶ 13 n.4.

Moreover, PM 114.1 is inconsistent with the TPUC's own criteria for an appropriate cutover measure. For example, while the TPUC recognizes that a proper cutover interval should "measure the entire provisioning interval for CHCs" (TPUC Comments 59), PM 114.1 prematurely ends the cutover interval before the CLEC receives notice of the cutover completion from SWBT and thus ignores additional SWBT-caused delay. See DeYoung Decl. ¶¶ 155-56. Similarly, the TPUC's adoption of a 2 hour interval contradicts its own staff's finding that a 1 hour interval is more appropriate, and is inconsistent with the findings of other regulatory agencies. Id. ¶¶ 152-53. Thus, while it may sometimes be appropriate for this Commission to defer to a State commission which has "collaboratively" developed a given performance measure (BA-NY Order ¶ 56), such deference is inappropriate here.

Even leaving aside the manner in which the 2 hour measure was adopted, such a prolonged

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<sup>18</sup> Notably, in adopting SWBT's above 90% performance rate, the TPUC failed to consider the material flaws in SWBT's data which likely overstated its reported performance -- if not rendering it completely unreliable -- such as the questionable statistical methodology SWBT employed (including the use of possibly non-randomized data samples) to generate its performance figures and SWBT's premature termination of the cutover interval, which understates the time SWBT actually required to complete the cutover. DeYoung Decl. ¶¶ 155-58, DeYoung Reply Decl. ¶¶ 46-48.

interval would be unacceptable under any circumstances. Because there is no technical justification for a 2 hour cutover interval (since the cutover itself requires, according to SWBT, no more than 2 seconds and the CHC process already allows SWBT a 1 hour window), PM 114.1 invites inefficiency and delay in a process that SWBT admits is already capacity constrained. DeYoung Decl. ¶ 148. Equally important, PM 114.1's 2 hour interval will impede CLECs' ability to compete in the local service market, since many potential business customers will balk at the prospect of losing service for 25% of a normal business day in order to switch local service providers. Id. ¶¶ 149-51.

For all these reasons, the TPUC's conclusion that SWBT has shown satisfactory on-time cutover performance should be rejected.

**Trouble Report Rate.** Like SWBT, the TPUC confined its discussion of trouble reports to comparing the trouble report rates for SWBT and CLECs under PM 59 (trouble reports on new and converted UNE Loops within 30 days of installation). TPUC Comments 53.<sup>19</sup> Thus, contrary to the analysis in the BA-NY Order, the TPUC failed to consider the absolute rate of trouble reports on CLECs' hot cut orders. Indeed, the TPUC ignored the fact that SWBT failed to separately disclose its trouble report rate on CHC and FDT hot cuts (which are mixed with other types of UNE Loop orders in PM 59). Similarly, by inappropriately relying on PMs 114 and 114.1 (as discussed above), the TPUC's evaluation of SWBT's loop provisioning quality failed to consider the extent of service outages caused by SWBT's provisioning errors. Furthermore, as indicated by SWBT's trouble report rate for AT&T -- which has ordered over 90% of its UNE Loops through FDT and CHC hot

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<sup>19</sup> The TPUC's analysis focused on downplaying SWBT's reported non-parity performance and essentially repeated the conclusory discussion contained in Mr. Dysart's Affidavit (which he based on SWBT's internal, undisclosed trouble report data). Remarkably, the TPUC emphasized Mr. Dysart's review of trouble reports where no trouble was found, despite the fact that many of the troubles Mr. Dysart described involved wiring errors which likely occurred during provisioning. See DeYoung Decl. ¶ 127 n.86.

cuts since August -- SWBT's hot cut loop provisioning is unacceptably poor, with SWBT's trouble report rate far exceeding the Commission's "fewer than 2%" benchmark (BA-NY Order ¶ 309).<sup>20</sup>

**c. The TPUC's reliance on Telcordia's conclusions is unreasonable.**

As AT&T has shown, Telcordia's OSS testing found that SWBT's hot cut process caused the same type of customer affecting problems as AT&T (and other CLECs) have experienced in their commercial orders, including SWBT provisioning errors resulting in unexpected service outages and prolonged cutover intervals. DeYoung Decl. ¶¶ 289-90. The TPUC acknowledged Telcordia's findings that manual "coordination" issues affect SWBT's hot cut process, but nevertheless adopted Telcordia's perfunctory dismissal of those manual provisioning issues as "inherent to the loop ordering process" and thus apparently not relevant to SWBT's ability to perform hot cuts.<sup>21</sup> TPUC Comments 57.

The TPUC's adoption of Telcordia's conclusions is no more acceptable than Telcordia's own flawed analysis. As AT&T previously explained, the fact that the hot cut process is "inherently" manual does not excuse SWBT from complying with its statutory obligations. Indeed, the Commission plainly recognized in its BA-NY Order that a BOC's manual processes must support provisioning of hot cuts "in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption." BA-NY Order ¶ 291. Given the small number of hot cut orders tested, Telcordia's failure to consider whether the numerous manual "coordination" issues it identified prevent SWBT from satisfying the Commission's standards undermines the validity of its

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<sup>20</sup> In the 4 months since September, SWBT's 30-day trouble report rate for AT&T has proved excessively high (ranging from 3.5% to 9.9%) and in the 3 months since October, SWBT's data shows a 7-day trouble report rate of 3% to 7%. DeYoung Decl. ¶¶ 123-25, DeYoung Reply Decl. ¶¶ 54-55.

<sup>21</sup> The TPUC also accepted Telcordia's various attempts to downplay the significance of the manual coordination issues by, for example, contending that certain problems (such as mislabeled circuits) occur in SWBT's retail environment and that other problems were due to CLECs' lack of training. TPUC Comments 57. As AT&T previously showed, Telcordia's explanations are wholly disingenuous and fail to excuse SWBT's demonstrably poor hot cut provisioning. See DeYoung Decl. ¶¶ 291-93.

conclusion. See DOJ Eval. 4 (Telcordia test fails to provide evidence of operational readiness because Telcordia did not “assess the impact of [major problems encountered during the test] on CLECs”).

**B. SWBT’s Unverified December Data Confirm That SWBT Remains Unable To Provision Hot Cuts In a Commercially Reasonable Manner.**

SWBT’s unverified December hot cut performance data provided in its Hot Cut Ex Parte submission offer no hint that SWBT’s demonstrably poor hot cut provisioning has improved with time. To the contrary, SWBT’s performance data (even assuming it is accurate) confirm that SWBT cannot satisfy the “minimally acceptable” level of performance the Commission requires.

Significantly, the value of SWBT’s ex parte disclosures is substantially diminished by SWBT’s failure to reveal the extent of service outages caused by its provisioning errors. Thus, like its Application, SWBT’s ex parte submission (a) for FDT orders, provides no data on service outages caused by premature and defective loop cuts; and (b) for CHC orders, fails to disclose outages caused by defective loop cuts, and the accuracy of its reported performance data for premature loop cuts (under PM 114) remains questionable. DeYoung Reply Decl. ¶¶ 25, 28-29.

Moreover, the data SWBT does provide in its ex parte submission simply confirm the prior proof of its unacceptably poor hot cut provisioning. Thus, SWBT reports (in its first disclosure of FDT performance data) that it failed to complete at least 9.8% of all FDT loop cutovers within 30 minutes, resulting in unexpected service outages far exceeding the Commission’s “fewer than 5%” outage benchmark.<sup>22</sup> SWBT also reveals an 82.2% “on-time” cutover performance for CHC loops, which again fails to meet the Commission’s 90% performance standard. Id. ¶¶ 37-38, 45-49. Similarly, in its first disclosure of trouble report rates specifically for CHC and FDT hot cuts,

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<sup>22</sup> Unlike a CHC hot cut, on an FDT hot cut a customer loses service from the scheduled start of the hot cut and remains out of service until the loop cutover is completed. Accordingly, a late FDT cutover (i.e., a cutover lasting longer than 30 minutes from the scheduled start time) means the customer has experienced an unexpected service outage. DeYoung Reply Decl. ¶¶ 39-43.

SWBT's December data show an unacceptably poor quality of loop provisioning, with 2.88% and 2.18% of FDT and CHC loops, respectively, experiencing trouble within 10 days of installation -- a rate that not only exceeds the Commission's "fewer than 2%" standard, but is consistent with the poor loop provisioning AT&T has experienced on FDT and CHC hot cuts for the past several months. *Id.* ¶¶ 50-55.

SWBT's present poor performance cannot, of course, be excused by the promises it makes in its *ex parte* submission to implement new performance measures for its FDT hot cuts. Moreover, its proposed FDT measures are inadequate to capture discriminatory performance.<sup>23</sup>

While SWBT's own December data are revealing, the proven material flaws in SWBT's prior hot cut performance data caution against relying upon SWBT's recent data. Indeed, not only have SWBT's purported improvements in its data collection process (supposedly implemented in late November) not been verified, but the minor manual "quick-fixes" SWBT contends it effected offer little comfort of substantially increased reporting accuracy. Moreover, conceded material errors in SWBT's November hot cut volume figures (which its process improvements did not address), render SWBT's claims of December data integrity simply not credible. *Id.* ¶¶ 62-74. In sum, SWBT's December hot cut performance data provide no basis to alter the conclusion reached by AT&T, other CLECs and the DOJ that SWBT has failed to demonstrate compliance with its statutory obligations.

**C. The TPUC Ignored Undisputed Evidence That SWBT Fails To Provide NonDiscriminatory Access To Its OSS Systems for UNE Loops.**

As AT&T showed in its initial comments, undisputed evidence confirms that CLECs are denied nondiscriminatory access to SWBT's OSS systems because (a) SWBT fails to provide timely

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<sup>23</sup> SWBT's proposed PM 115 addresses only delayed cuts starts and thus is inadequate to fully capture the extent of service outages affecting CLECs' customers on an FDT cutover. As for SWBT's proposed PM 114.1, it is not only ill-defined, but its proposed 2 hour grace period will prove competitively harmful by undermining the supposed efficiencies of the FDT process. Moreover, like SWBT's CHC measures, none of SWBT's proposed FDT measures address service outages due to SWBT's defective loop cuts. DeYoung Reply Decl. ¶¶ 56-61.

jeopardy notices on a uniform basis and (b) SWBT's OSS systems are unable to timely post CLECs' completed orders to SWBT's legacy billing systems. See DeYoung Decl. ¶¶ 161-201. The TPUC does not mention these issues in its comments.

With respect to jeopardy notices, the TPUC simply notes that SWBT has now implemented mechanized interfaces to send jeopardy notifications to CLECs. TPUC Comments 36. However, the TPUC ignores undisputed evidence that SWBT, as of the date of its Application, had repeatedly failed to provide jeopardy notices, but instead had employed "post-FOC rejects" and improper supplemental order requests when confronted with problems threatening a confirmed due date, thereby subjecting CLECs' customers to unexpected delays and unnecessary service outages and distorting SWBT's reported performance data. See DeYoung Decl. ¶¶ 164-79. Moreover, since SWBT implemented its new jeopardy policy in mid-January, AT&T has been receiving "jeopardies" that are more properly classified as order errors (e.g., "invalid due date") and illustrate SWBT's failure to implement appropriate up-front edits in its ordering systems. Dalton/DeYoung Reply Decl. ¶¶ 33-34.

The TPUC also disregards extensive evidence showing SWBT's inability to post CLECs' completed orders to SWBT's legacy billing systems in a timely manner. Thus, the TPUC ignores SWBT's reported performance data for PM 7.1 (SOC returns within one day of order completion), which show that SWBT has consistently failed to return SOCs on a timely basis and indicates a substantial posting delay problem. See DeYoung Decl. ¶¶ 184-87. Similarly, it ignores additional evidence presented by AT&T and other CLECs of prolonged delays in the posting of their completed orders, thereby subjecting their customers to the risk of double billing. DeYoung Decl. ¶¶ 188-200.

Instead of addressing these serious problems, the TPUC simply claims that SWBT can timely post CLECs' completed orders and points to Telcordia's testing and SWBT's reported data for PM 17 (wholesale bill completeness) in support of that proposition. TPUC Comments 43-45. In fact,

however, Telcordia discovered evidence of SWBT's substantial posting delays, but ignored the impact of those delays on CLECs' customer billing by relying, as the TPUC does, on SWBT's timely processing of CLECs' wholesale bills.<sup>24</sup> The flaw in that analysis is two-fold. First, PM 17 captures only completed orders that fail to post within a CLEC's 30 day billing cycle. Thus, a completed order could fail to post for a substantial period yet not be reflected in PM 17. Second, SWBT's own reported data for PM 17 show that, since August, SWBT has never delivered parity performance. Accordingly, a substantial number of CLECs' customers are exposed to the risk that SWBT will continue to bill them for periods well beyond 30 days after their orders have been completed, thereby subjecting them to misleading bills and the risk of double billing.<sup>25</sup>

### **III. SWBT HAS FAILED TO DEMONSTRATE THAT IT HAS SATISFIED THE 271 CHECKLIST WITH RESPECT TO XDSL PROVISIONING**

The record is compelling that SWBT has failed to provide nondiscriminatory access to the network elements needed to enable meaningful competition in xDSL services. As the DOJ recognizes, enforcing SWBT's nondiscrimination obligation in this area is "vitaly important." DOJ Eval. 10. Yet SWBT's performance in providing unbundled loops for advanced services is "clearly deficient," the performance data SWBT's relies upon to show compliance are "fundamentally flawed" in some cases and "reveal significant discrimination" in others, and SWBT provides "no explanation" of how its separate affiliate proposal would cure existing problems of discrimination. DOJ Eval. 2, 10-27.

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<sup>24</sup> See TFR 25, 54, 74. Notably, Telcordia found that under SWBT's current OSS systems, the posting delay interval "cannot be truncated" -- thereby virtually assuring that CLECs' customers will be exposed to improper billing.

<sup>25</sup> Except for the rare "win-back" customer, SWBT's new customers never face the risk of double billing or continued billing by the wrong carrier. Thus, the arguments by the TPUC (and SWBT) about SWBT's "near-parity" performance reflected by PM 17 are largely irrelevant. What is relevant about SWBT's reported performance under PM 17 is that, on an aggregate basis, nearly 2% of CLECs' completed orders consistently fail to post to SWBT's legacy systems within 30 days, thereby exposing CLECs' customers to improper SWBT billing.