problems that might have existed. With few exceptions, SBC has met or surpassed the performance measures established for each of these issues. And, without exception, the Texas PUC has correctly concluded, based on a full record, that SBC is in complete compliance with the checklist.

A. Interconnection

In the whole spectrum of interconnection issues covered by Checklist Item (i), only a single concern is voiced by any substantial contingent of commenters. That issue is SWBT's ability to provide timely interconnection trunks. This issue has been addressed head-on by the Texas PUC in special proceedings, and its successful resolution is confirmed in several ways.

SWBT has provisioned approximately 348,000 interconnection trunks for Texas CLECs, of which more than 200,000 were provisioned in 1999. Habeeb Aff. Attach. E; Habeeb Reply Aff. ¶ 27. SWBT conducts extensive performance monitoring of its interconnection trunking arrangements. Relevant measures track average installation intervals, missed due dates, the length of delays, trunk blockage, and trunk restoration intervals. Dysart Aff. ¶ 548. Across Texas, SWBT has bettered the parity levels and benchmarks for all measurements for most of the months for which results are available, thus demonstrating nondiscriminatory service. In the rare instance where the data have indicated performance issues, SWBT has investigated and added the necessary extra capacity or otherwise resolved the technical difficulties or performance calculation issues that have been discovered. See id. ¶¶ 549-559; Deere Aff. ¶¶ 51-63 (App. A, Part A-2, Tab 3). In addition, the Texas PUC has established a Trunking Forum, including the Texas PUC staff as well as SWBT and interested CLECs, to address both routine trunking issues and emergency situations on an ongoing, collaborative basis. Deere Aff. ¶ 50; Texas PUC Evaluation at 11-12.

The Texas PUC reviewed SWBT's performance data, as well as SWBT's trunk forecasting, ordering, and provisioning processes, during its supplemental proceedings in November and December 1999. At the conclusion of that extra review and after recommending numerous improvements (which SWBT promptly implemented), the Texas Commission confirmed that SWBT meets the checklist requirements in this area. Texas PUC Evaluation at 10-16; Southwestern Bell Br. at 78-81.

Trunk Provisioning. Raising an issue exhaustively considered by the Texas PUC, some CLECs maintain that that they have not received timely interconnection trunks, and their customers suffer blockage of calls as a result. See, e.g., ALTS Comments at 19-22 (citing Time Warner); CLEC Coalition Comments at 7-12 (citing Time Warner); e.spire Comments at 3-6; Allegiance Comments at 11-12.

The commenters themselves generally accept that these issues are now settled. For example, Time Warner complains of trunk blocking "from July through October 1999," Time Warner's Reeves Aff. ¶ 26, and that it "tr[ied] to order more trunks than SWBT was willing to provision for most of the year," id. Sprint similarly confines its trunk installation complaints to October 1999. Sprint Comments at 62-64. This careful wording by the commenters accords with what they are not saying in Texas. At about the same time they filed their comments on this Application, CLECs had the opportunity to raise any current concerns about trunk installation and blockage in a Texas Trunking Forum, but no such issues were raised by any of the CLECs in attendance. Deere Reply Aff. ¶ 4. To the contrary, the CLECs agreed that another meeting should not be held until April. Id. If alleged trunking problems truly were affecting competition in Texas, and if current problems were of sufficient magnitude to warrant excluding

Southwestern Bell from long distance, then the CLECs surely would have raised those problems in the Texas forum that was established to resolve them.

To the extent that they are in fact asserting the existence of current problems, the CLECs grossly exaggerate. And to the extent DOJ relies upon such exaggerations, it is incorrect, as Attachment 1 explains in detail. SWBT has implemented process improvements to address past problems in this area, as recognized by the Texas PUC's Evaluation of this Application.

In a 5-page discussion devoted specifically to this issue, the Texas Commission explains that:

- To resolve trunking issues, SWBT and CLECs have been meeting regularly in a trunking users group since January 1999.
- SWBT's trunk ordering guidelines are not discriminatory, and do not put a fixed cap on the number of trunks a CLEC may order.
- Although trunk blockage performance was deficient for SWBT end office trunks to CLEC end office trunks in August 1999, and this "concerned the Texas Commission," SWBT's performance has since improved and, in any event, "the vast majority of CLECs were not impacted by the lower performance" for this type of trunk.
- The Texas Commission "review[ed] the entire trunk utilization, forecasting, ordering and provisioning process, as well as plans to relieve blockage through proper cooperative planning between or among SWBT and CLECs." As a result of this review, SWBT agreed to changes relating to trunk forecasts, data collection, application of exclusions, and the process for ordering trunks.
- SWBT "made the needed process changes" to address missed due dates during September and October 1999 in Houston.

Texas PUC Evaluation at 11-16.[23]

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[23] The Texas PUC also considered and found nondiscriminatory a non-binding network management guideline suggesting that CLECs order no more than 12 DS1 trunks per day per Texas market area. See Texas PUC Evaluation at 13; Deere Reply Aff. ¶ 7; see also Response to DOJ.

The success of these state commission-supervised reforms can be seen in SWBT's performance reporting. Performance Measurement 78-01 (Average Interconnection Trunk Installation Interval) shows that statewide, SWBT met the Texas PUC's 20-day benchmark in four of the five months from August through December 1999. This benchmark interval compares favorably to the intervals against which Bell Atlantic's performance was tested in New York, which started at 18-30 days for forecasted trunks and went up from there. See Response to DOJ, at 22.

Similarly, SWBT has provided parity-or-better performance for missed due dates (Performance Measurement 73), average delay days for SWBT-caused missed due dates (Performance Measurement 74), and SWBT-caused missed due dates greater than 30 days (Performance Measurement 75) in all five of the relevant months, as noted by the Texas PUC. Texas PUC Evaluation at 15. The actual numbers underlying this measure are noteworthy. In December, SWBT missed more than half of the due dates for its own retail trunks, but made 90 percent of its due dates for CLEC trunks. Performance Measurement 73. Similarly, more than one-third of SWBT's retail trunks experienced SWBT-caused missed due dates of greater than 30 days, whereas less than 3 percent of CLEC trunks had such delays. Performance Measurement 75. The average delay for CLEC trunks is consistently about half as long as the delay for SWBT retail trunks. Performance Measurement 74.

Admittedly, there have been isolated instances of installation delays, as in Houston in late 1999, but SWBT has taken special steps to address them. SWBT now more closely monitors trunk orders and targets for completion those that are near the due date. The Houston Trunking Group has a new system for tracking orders. And effective with the January 2000 measurements, SWBT added a new performance measurement (PM 73.1), with heightened

payment requirements, to report on orders held longer than 90 calendar days. Dysart Aff. ¶¶ 557-558.[24]

Trunk Blockage. Some CLECs, including e.spire, Sprint, and Time Warner complain of excessive blocking levels on SWBT's interconnection trunks, disputing that SWBT's performance has improved. See Sprint Comments at 62-63; ALTS Comments at 18, 20-21; e.spire Comments at 3-6 & Wong Aff. In reality, performance data show that SWBT tandem to CLEC end office trunk blockage levels were within the Texas PUC's strict 1 percent benchmark for the past five consecutive months. Performance Measurement 70-2.[25]

For SWBT end office to CLEC end office trunks, past blockage problems have resulted in missed benchmarks. This performance shortfall resulted in a Texas PUC-supervised analysis of SWBT's "entire trunk utilization, forecasting, ordering and provisioning process," and the development of "plans to relieve blockage through proper cooperative planning between or among SWBT and CLECs." See Texas PUC Evaluation at 14. As a result of this review, SWBT

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[24] SWBT's performance reporting currently provides a complete picture by assessing trunk installation from two perspectives: how long SWBT takes to install trunks, and whether SWBT meets its commitments. Measurement 78 measures how long on average it takes SWBT to install interconnection trunks, regardless of whether facilities are available. There is no exclusion for situations where the facilities needed to install the trunks are unavailable. Dysart Reply Aff. ¶ n.21. Measurement 73 gauges how often SWBT meets its commitments to the CLEC; lack of facilities situations will be reflected in this measure only if they were not accounted for in the original commitment to the CLEC. The new measurement required by the Texas PUC (Measurement 73.1) complements Measurements 73 and 78 by reporting on the number of Interconnection Trunk Orders that are held more than 90 days from the customer-desired due date or the 20-day benchmark, whichever is later. See Texas PUC Evaluation at 15 (discussing new measure); Dysart Reply Aff. ¶¶ 57-61.

[25] The Texas PUC has explained that it set this benchmark below the target level for SWBT's retail network "to ensure that the CLECs' network traffic does not experience the same blockage as SWBT's network because of the disproportionate impact on new entrants." Texas PUC Evaluation at 14 n.49; see also Deere Aff. ¶¶ 37-40 (discussing blockage criteria for CLECs and SWBT).

has resolved the competitively significant problems that contributed to trunk blockage. See Deere Reply Aff. ¶¶ 3-5. For example, instead of relying solely on CLECs' own monitoring to determine when to add more trunks in order to prevent blockage, SWBT now monitors 2-way trunk usage on a daily basis, and issues Trunk Group Service Requests to CLECs as necessary. Id. ¶ 19. And, as noted above, the Texas PUC established its Trunking Forum to resolve new issues as they arise.

In part because of such improvements, SWBT met the blockage benchmark for SWBT end office to CLEC end office trunks in October, November, and December 1999. Performance Measurement 70-1.[26] Trunk restoral data show parity in all five relevant months as well. Performance Measurement 76. Furthermore, the Texas PUC has noted that "in view of SWBT's compliant performance for trunks extending from SWBT tandem office to CLEC end offices," and given that "the vast majority of CLEC traffic is passed on SWBT tandem to end office trunks," the past problems with end office to end office trunks had little competitive impact. Texas PUC Evaluation at 14.

Other Trunking Issues. Time Warner, through ALTS, complains that SWBT accepts trunk forecasts from CLECs every six months, rather than quarterly. ALTS Comments at 22. That is a purely semantic point, as the trunking users' group has met monthly (or as often as determined by the group) since January 1999, and CLECs can present their forecasting/trunking needs and concerns to SWBT in that forum. Deere Reply Aff. ¶¶ 4-5; Texas PUC Evaluation at

[26] These data exclude blockage conditions that are not the fault of SWBT, as defined in Version 1.6 of the Texas PUC-approved Performance Measurement Business Rules. See Deere Aff. Attach. A.

11-12. Moreover, if necessary, CLECs may submit forecasts more often than twice yearly. Id. ¶ 12.

Time Warner accuses SWBT of excluding data about that carrier's trunks that allegedly shows inadequate SWBT performance. Time Warner's Reeves Aff. ¶ 26. Time Warner fails to mention that it exceeded its trunking forecast by nearly 65 percent during 1999. Deere Reply Aff. ¶ 10. Because Time Warner thus bears responsibility for delays in provisioning its above-forecast number of trunks, the Texas PUC's business rules require exclusion of the data from SWBT's trunking performance measures. Id.

CompTel suggests that SWBT sometimes takes too long after an initial planning meeting to provide a Service Planning Document for interconnection trunks. CompTel Comments at 10-12; see also DOJ Evaluation at 45 n.124. This supposed delay is nothing more than timely contract preparation. SWBT meets with CLECs prior to implementing interconnection facilities to develop the architecture of the interconnection arrangement. Brosler Reply Aff. ¶ 10. SWBT cannot furnish a Service Planning Document until this network architecture is determined. Id. The Service Planning Document is sometimes delivered as soon as at the first meeting, but preparation of the document may take as long as several weeks in particularly complex arrangements. Id. ¶¶ 10-12.

Allegiance Telecom's accusation that SWBT refused to allow interconnection, Allegiance Comments at 11-12, has nothing to do with the local interconnection provisions of sections 251(c)(2) or Checklist Item (i). Where a facility is used exclusively to provide Internet

access – as with the Allegiance facility at issue – it falls outside the scope of section 251(c)(2).[27] Nevertheless, under an interim agreement with Allegiance (and subject to true-up), SWBT does not charge Allegiance for the interexchange access facility being used to deliver Internet-bound traffic to Allegiance. Auinbauh Reply Aff. ¶ 22. SWBT also has offered Allegiance the opportunity to interconnect its facilities with SWBT pursuant to section 251(a)(1).

Collocation. Relatively few parties raise collocation issues, which confirms the Texas PUC's success in establishing comprehensive, detailed ground rules for these arrangements – and SWBT's success in implementing those rules. See Southwestern Bell Br. at 73-78. After completion of 695 collocation arrangements in Texas, Habeeb Aff. Attach. E, this interconnection arrangement is routine.

AT&T argues that SWBT's Texas PUC-approved collocation tariffs do not comply with the Act because they contain interim rates. AT&T's DeYoung Decl. ¶¶ 318-328. These interim rates are subject to true-up, the very approach urged by AT&T. Auinbauh Reply Aff. ¶¶ 27-29; see Order No. 52 Approving Revisions to Physical and Virtual Collocation Tariffs, Project No. 16251, at 79 (Tex. PUC Sept. 8, 1999) (App. C, Tab 1781) ("AT&T recommends that SWBT's rates be approved on an interim basis only, subject to true-up."). The Texas PUC established the interim rates to conform with this Commission's Advanced Services Order, while permanent rates are being developed in a full cost proceeding based on TELRIC principles. Auinbauh Reply Aff. ¶ 28. See New York Order ¶ 258.

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[27] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15598, ¶ 191 (1996); Order on Remand, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 et al., FCC 99-413, ¶ 38 (rel. Dec. 23, 1999) ("Advanced Services Remand Order").

AT&T, ALTS, and the CLEC Coalition complain about tariffed security charges for cageless collocation. AT&T's DeYoung Decl. ¶ 327 n.240; ALTS Comments at 24-25; CLEC Coalition Comments at 12-13. Charging for reasonable and cost-effective security measures is consistent with Texas PUC orders as well as the Advanced Services Remand Order. Auinbauh Reply Aff. ¶¶ 30-31; Auinbauh Aff. ¶¶ 74-78; Order No. 52 Approving Revisions to Physical and Virtual Collocation Tariffs, Project No. 16251 (Tex. PUC Sept. 8, 1999) (App. C, Tab 1781). But there is no genuine issue in any event, as the current security charge is zero pending completion of the Texas PUC's collocation cost docket. Auinbauh Reply Aff. ¶ 32; accord AT&T's DeYoung Decl. ¶ 332 n.240. This Commission noted and approved a similar arrangement in the Bell Atlantic New York proceeding. New York Order ¶ 79.

AT&T asserts that SWBT does not allow virtual collocation if space for physical collocation is available. AT&T's DeYoung Decl. ¶ 332. That is incorrect. Sections 25 and 26 of SWBT's Virtual Collocation Tariff make virtual collocation available to CLECs regardless of the availability of physical collocation; the restriction to which AT&T refers involves only a maintenance and repair option for virtually collocated equipment, and such language does not deny virtual collocation as alleged by AT&T. Auinbauh Reply Aff. ¶¶ 34-35; Virtual Collocation Tariff § 26 (Auinbauh Aff. Attach. D).

Metromedia complains about SWBT's failure to treat Metromedia's Competitive Alternate Transport Terminal ("CATT") product as a form of collocation. Metromedia Comments at 3-6. Metromedia seeks to use space and facilities that would otherwise be available to CLECs for their interconnection with SWBT and access to SWBT UNEs, solely for interconnection with other carriers. Auinbauh Reply Aff. ¶ 25; Metromedia Comments Ex. C (e-mail from Bob Riordan, Metromedia, describing CATT service as allowing Metromedia "to

provide dark fiber interoffice transport between central offices for our CLEC and carrier customers without the requirement to directly connect or resell SBC unbundled elements on [its] own behalf"). Under this Commission's rules, Metromedia has no such entitlement. Auinbauh Reply Aff. ¶ 26; see 47 C.F.R. § 51.323(b) and (h).

B. UNE Platform Order Processing

Market evidence proves that Southwestern Bell provides CLECs full and nondiscriminatory access to pre-combined network elements. SWBT has provisioned more than 125,000 local loops in conjunction with unbundled switching as part of a pre-assembled UNE Platform (i.e., use of SWBT's end-to-end local network to serve a particular line, at cost-based UNE rates) to CLECs in Texas. Habeeb Aff. Attach. E. Indeed, AT&T itself notes that the number of UNE Platforms provisioned in Texas is growing at a rate of about 21,000 per month. AT&T's Kelley & Turner Decl. ¶ 46. As these numbers suggest, Southwestern Bell offers terms for pre-combined UNEs that not only meet the checklist requirements, but exceed them. Southwestern Bell Br. at 35-39.

A few CLECs find fault with order-processing procedures Southwestern Bell uses to switch-over its existing retail customers to the CLECs' UNE Platform service. AT&T Comments at 63-64, 66-68; AT&T's Dalton & DeYoung Decl., generally; AT&T's Tonge & Rutan Decl. ¶¶ 37-38; MCI WorldCom Comments at 11-15; MCI WorldCom's McMillon & Sivori Decl. ¶¶ 95-112; ALTS Comments at 28. The CLECs' allegations involve SWBT's use of three separate order types to process such a service conversion:

1. SWBT mechanically generates and processes a "D" order to disconnect the customer from the CRIS billing system used in SWBT's retail operations.
2. SWBT mechanically generates and processes a new ("N") order to migrate the customer's directory and 911 listings to the CLEC on an expedited basis.

3. SWBT mechanically generates and processes a change ("C") order to provision the UNEs as specified by the CLEC and to establish CABS billing for the UNE element. CABS is the billing system that CLECs urged SWBT to adopt for UNE billing.

Ham Aff. ¶¶ 196-202.

The process was designed specifically to implement the Texas PUC's requirement that SWBT's billing be affirmatively and reliably stopped and the CLEC's billing affirmatively and reliably commenced, so that end users do not receive bills from both SWBT and the CLEC for the period while the service order is being processed. Id. ¶ 196. The D, N, and C orders are automatically associated through use of Field Identifiers ("FIDS"). Id. ¶ 197. Accordingly, under the normal OSS process, the "D" order does not result in a disconnect of dial tone to the CLEC's end user. Ham Reply Aff. ¶ 69; see Feb. 10, 2000 Ex Parte (detailed technical description of three-order process).

In their comments, CLECs do not attempt to prove specific performance failures as a result of the D, N, and C order process. Rather – after having SWBT successfully process tens of thousands of UNE Platform orders – AT&T weakly suggests the three-order process "creates an unnecessary risk of outages" due to possible disassociation of the three related orders. AT&T Comments at 67-68 (emphasis added). Similarly, MCI WorldCom suggests that there is a risk of "lost dial tone or double billing." MCI WorldCom Comments at 12-13. Even DOJ – which finds the CLECs' vague allegations "disturbing" – must in the end concede that CLECs have failed to establish "the magnitude of the current problem" they allege and their evidence is "inconclusive." DOJ Evaluation at 50, 51-52.

The Texas PUC heard exactly the same comments during the collaborative process on Southwestern Bell's Application, and put them to the test. At the PUC's direction, AT&T and SWBT jointly analyzed trouble report data for AT&T's orders during August and September. As the Commission explains in its Evaluation, this joint reconciliation of actual data showed that

the problem of disassociated D, N, and C orders occurred on 78 of 37,000 UNE Platform orders. Texas PUC Evaluation at 54; see Conway Aff. ¶¶ 58-59; Ham Aff. ¶¶ 198-202; Conway Reply Aff. ¶ 40; Ham Reply Aff. ¶¶ 67-71. Moreover, as explained in the Conway Affidavit, 70 of the 78 disassociations occurred as the result of AT&T's own failure to use accurate address information that was available from SWBT's on-line systems, an error that would prevent accurate processing of any service order. Conway Aff. ¶ 58; Conway Reply Aff. ¶ 40; Ham Reply Aff. ¶¶ 67-71, 74. As the Commission noted, SWBT has timely addressed all actual operational limitations caused by the three order process. Texas PUC Evaluation at 54. See also Ham Reply Aff. ¶ 74 (SWBT to implement software changes in April 2000 that will fatally reject an invalid address and will not permit associated orders to be created for LSRs that are rejected for an address mismatch).

All told, only 8 of the 37,000 UNE Platform orders (or 0.02 percent) experienced a problem attributable to the three-order process. In these 8 disassociations, the appropriate FIDs were not properly placed on the service order by SWBT's Local Service Center representatives after the orders fell out for manual handling. Conway Aff. ¶ 58. SWBT has provided its service representatives additional training on the appropriate use of these FIDs, and has reinforced this training through additional service order review. Conway Reply Aff. ¶ 16.

SWBT's Application provided not only the results of the Texas PUC-supervised data reconciliation, but also additional performance data bearing on this issue. The Ham Affidavit showed that for August through October 1999, trouble reports after 10 days for UNE Platform conversions (using the three-order process) were lower (at about 1.5 percent) than for CLEC orders as a whole (about 1.9 percent). This is better than parity with retail, as more than two percent of SWBT retail orders have trouble reports after 10 days. Ham Aff. ¶¶ 200-201.

Performance data for November and December likewise show trouble rates of less than 2 percent for UNE Platform conversions, as compared to trouble rates above 2 percent for SWBT's own retail orders. Id.; Feb. 1, 2000 Ex Parte (aggregated performance charts for January 1999 and December 1999).

The three-order process, it should be remembered, was developed in response to a specific Texas PUC requirement that when a CLEC resold line is converted to UNE platform-based service, the customer does not lose service, they are billed properly, and their directory listing and E911 information remains in SWBT's systems. Ham Aff. ¶ 196; see Texas PUC Evaluation at 54-55. Although this process is not perfect, it has met the Texas PUC's goals and resolved problems that can arise when other procedures (including one-order processes) are used. As the Texas PUC concluded, "SWBT has acted quickly to address CLEC concerns regarding outages on conversion" and "any potential problems identified by the CLECs in this proceeding have been sufficiently addressed." Texas PUC Evaluation at 55.

C. Pricing of Network Elements

As discussed in Southwestern Bell's initial filing and the Texas PUC's evaluation, SWBT's prices for network elements (including non-recurring charges) are based on cost studies and testimony presented in the Texas PUC's Mega-Arbitration proceeding. Southwestern Bell Br. at 37-38; Smith Aff. ¶ 9; Auinbauh Aff. ¶¶ 137, 140; Texas PUC Evaluation at 26. With very few exceptions, CLECs reveal – through their silence on this issue – contentment with the Texas PUC's pricing. Indeed, some commenters actually base their complaints on SWBT's failure to offer the Texas PUC's prices for various facilities and services in other states. See, e.g., MCI WorldCom Comments at 64-66 (directory listings); see also Smith Reply Aff. ¶¶ 15-16.

Only three commenters dispute the Texas PUC's UNE rates in any respect. Their arguments are factually and legally unfounded. Nevertheless, as discussed in more detail below, Southwestern Bell has gone well beyond its statutory and regulatory obligations by reducing contested non-recurring charges to zero in the UNE Platform context, pending the conclusion of current Texas PUC proceedings on this issue.

The Central Office Access Charge ("COAC"). As explained in Southwestern Bell's Application, SWBT does not charge the COAC in circumstances where the CLEC requests currently combined UNEs; the COAC is only levied when SWBT is asked to assemble a new combination of elements for a CLEC. See Southwestern Bell Br. at 37-38 & n.15. The Texas PUC specifically determined that Southwestern Bell should be compensated for voluntarily providing CLECs with new combinations of network elements, and that the COAC is "reasonable compensation" for SWBT's efforts. Smith Reply Aff. ¶ 13; Texas PUC Dec. 1, 1997 Open Meeting Tr. at 33.

MCI WorldCom, Birch Telecom, and AT&T insist that the COAC should be TELRIC-based. MCI WorldCom's Price Decl. ¶¶ 13-18; AT&T Comments at 55-56; AT&T's Rhinehart Decl. ¶¶ 56-63; Birch Telecom's Tidwell & Kettler Aff. ¶¶ 60-61 (attached to CLEC Coalition Comments). But this Commission itself has recognized that there currently is no requirement that incumbent LECs provide new combinations under sections 251 and 252, and accordingly has asked the U.S. Court of Appeals for the Eighth Circuit to "reinstate the Commission's network element combination rules" and thereby establish such a duty. Brief for Respondents at 23, Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir. filed Aug. 16, 1999) (emphasis added). Under current law, therefore, the combination service for which the COAC is charged does not fall within the 1996 Act's requirements and is provided voluntarily for the benefit of CLECs.

Accordingly, the COAC is not subject to the pricing requirements of sections 251 and 252, or this Commission's TELRIC rules. The CLECs' argument fails for that reason alone.

Additionally, this same issue is currently pending before the U.S. Court of Appeals for the Fifth Circuit. See Southwestern Bell Br. at 38 n.15; Smith Reply Aff. ¶ 14. Both the Texas 271 Agreement and other negotiated and arbitrated agreements in Texas include a procedure for conforming the agreement to changes in law. E.g., Texas 271 Agreement § 18.3. That provision would apply if the Fifth Circuit were to disagree with Southwestern Bell on this issue and require the Texas PUC to establish new rates, or if the Eighth Circuit were to reinstate this Commission's previously vacated rules regarding new UNE combinations.

Non-Recurring Charges. MCI WorldCom and AT&T also challenge SWBT's non-recurring charges for unbundled loops, loop/switch port cross connects, and analog line ports. AT&T Comments at 50-55; AT&T's Rhinehart Decl. ¶¶ 11-16; MCI WorldCom Comments at 53-54; MCI WorldCom's Price Aff. ¶¶ 4-12.

Southwestern Bell believes that the non-recurring charges established by the Texas PUC in the Mega-Arbitration fully comply with the Act, and support approval of this Application. See Southwestern Bell Br. at 38 n.15. Nevertheless, the Commission may wish to note that, in order to remove controversy regarding the non-recurring charges as they apply to pre-existing combinations, SWBT is setting (effective March 1, 2000) its interim non-recurring charge for migration of existing SWBT POTS service to the so-called UNE Platform at a level that recovers only the applicable service order charge; this charge is subject to true-up to the ultimate outcome of the Texas PUC's Docket No. 21622. See Auinbauh Reply Aff. ¶ 42. Accordingly, until the Texas PUC completes the expedited review it has committed to perform, when a CLEC requests a 2-wire analog loop, 2-wire analog switch port, and the analog loop to switch port cross connect

that collectively comprise a pre-existing combination, the non-recurring charges for each of these individual unbundled network elements will be set at zero. See id.

This reduces the non-recurring charges by $20.47, the amount that AT&T disputes as "phantom glue charges." AT&T's Rhinehart Decl. ¶¶ 44-45. To convert a new customer who currently has these three SWBT UNEs interconnected and functional, the CLEC will pay charges totaling only $2.56 for a mechanized service order, Auinbauh Reply Aff. ¶ 42, one-third less than the $3.73 that would apply to this same type of transaction in Bell Atlantic-New York's territory. See AT&T's Rhinehart Decl. ¶ 51. This pricing is announced in an electronic Accessible Letter to all CLECs, which also is posted on SBC's CLEC web site. See Auinbauh Reply Aff. ¶ 42 & Attach. B.

Elimination of the non-recurring charges for access to the so-called UNE Platform, pending completion of an ongoing Texas PUC proceeding on this issue, necessarily addresses any complaints the CLECs could have on this issue.

Nor is there any basis for the claim, made in AT&T's Rhinehart Declaration (¶ 11 n.2), that SWBT's non-recurring charges involve double-counting of costs recovered through recurring charges. These non-recurring charges reflect distinct costs incurred after the physical construction and installation of the element occurs and the element is made ready for service. See Smith Reply Aff. ¶¶ 11-14. The Texas PUC, moreover, reviewed these costs in the Mega-Arbitration and adjusted Southwestern Bell's rates to address AT&T's double-counting argument. See id.

D. Nondiscriminatory Access to OSS

There can be no doubt about the real-world capabilities of SWBT's OSS. Those capabilities have been tested and proved in the course of processing 3.7 million electronic and

manual service orders. Habeeb Aff. Attach. E; Conway Aff. ¶¶ 5, 33, 36. As gauged by Texas PUC-approved performance measures, these orders are being processed through SWBT's systems in an unequivocally nondiscriminatory fashion. For example, a representative CLEC using SWBT's DataGate preorder interface and EDI ordering interface between August and December 1999 would have found that:

- DataGate was available 100 percent of the scheduled time from August through November, and 99.7 percent of the time in December. (Performance Measurement 4-01.1)
- Nearly 100 percent of the time in most months, DataGate would respond within the Texas PUC's benchmark interval to queries for information on such matters as verification of the customer's address and appointment scheduling. A telephone number request, for instance, elicited a response from SWBT in about three seconds. (Performance Measurements 1 & 2)
- When the CLEC was ready to place an order, EDI was available 100 percent of the time it was supposed to be available, in every month. (Performance Measurement 4-01.4)
- Every month, the CLEC's orders were more likely to flow through EDI for mechanized processing than SWBT's retail orders – and they did so as much as 99 percent of the time. (Performance Measurement 13-03)
- The CLEC received a timely FOC roughly 95 percent of the time, depending upon the nature of its orders. (Performance Measurement 5-07)
- Virtually every time, the CLEC received a mechanized completion notification from SWBT within one hour. (Performance Measurement 7-02)

Given this practical and statistical evidence of CLECs' nondiscriminatory access to SWBT's OSS, the Texas Commission's exhaustive review of this subject is in some ways redundant. Nevertheless, that review has met every standard of rigorous investigation suggested by this Commission, the Department of Justice, and the CLEC industry. SWBT's systems were subjected to months of functional and capacity testing by Telcordia, supervised by the Texas PUC. Telcordia found, and the Texas PUC agreed, that SWBT's systems process CLEC transactions in a nondiscriminatory fashion, and can do so at reasonably foreseeable levels of

demand. The tested systems were the very same ones now being used by SWBT and CLECs in their commercial operations, providing an extra degree of assurance not available from tests of "pseudo-CLEC" systems. See Southwestern Bell Br. at 27-31.

To assure nondiscrimination in the future, the Texas PUC incorporated dozens of OSS-related performance measurements into its performance payment plan. The state commission also supervised implementation of a change management process ("CMP"), in advance of industry guidelines. Telcordia verified Southwestern Bell's compliance with the CMP in Texas after examining three separate EDI upgrades between May and October 1999. Id. at 31-35. Finally, the Texas PUC oversaw the implementation of mechanisms, such as a CLEC escalation process, CLEC users group, and open OSS docket, for resolving new issues that arise in the future. See Texas PUC Evaluation at 27-28.

1. Telcordia's Test of SWBT's OSS

CLECs highlight differences between the Telcordia-supervised, carrier-to-carrier OSS testing in Texas, and the third-party test executed by KPMG in New York. AT&T Comments at 72-75; MCI WorldCom Comments at 48; Sprint Comments at 121-25; CLEC Coalition Comments at 13-16. This Commission, however, has made clear that there is no single national model for OSS testing. New York Order ¶ 100. The question is whether testing allows a reliable assessment of "the real world impact of a BOC's OSS on competing carriers," in light of the particular circumstances in the relevant state. Id. The Texas test was designed specifically to reflect and to complement existing commercial usage of electronic OSS in Texas, which was far

more extensive than Bell Atlantic had experienced prior to its testing in New York.[28] See Ham Aff. ¶¶ 249-251; Ham Reply Aff. ¶¶ 8, 23; Texas PUC Evaluation at 28. Although different from the New York model in some ways, the resulting tests were at least as comprehensive, blind, and inclusive of CLEC input and participation as KPMG's testing, and at least as reliable.

The Texas carrier-to-carrier approach, moreover, had important benefits not achievable through the New York, pseudo-CLEC model. The Telcordia testing relied upon actual, live orders submitted by actual, operational CLECs. As a practical matter, using existing systems made it unnecessary for a tester to duplicate work already done by CLECs, or to revisit issues already resolved in the Texas Collaborative Process. Ham Reply Aff. ¶¶ 23-25; Texas PUC Evaluation at 28. Using live systems also allowed the participants, especially CLECs, to detect and resolve problems with their systems during the course of the test, thus benefiting the participants. Ham Reply Aff. ¶ 27; Texas PUC Evaluation at 28; Telcordia Final Report at 16. Finally, and perhaps most importantly, the carrier-to-carrier approach produced results that were inherently more probative of Checklist compliance. Rather than showing that the incumbent LEC could assist a tester to use the incumbent's systems successfully, the Texas test showed that actual CLECs, using actual systems, have nondiscriminatory access to SWBT's OSS. See Response to DOJ at 5.

Telcordia's Independence. Some commenters suggest that Telcordia's testing was not reliable because SBC is a Telcordia customer in other contexts. See, e.g., Rhythms Comments at 42; AT&T Comments at 73. The Texas PUC – not SBC – selected Telcordia over other bidders

[28] Thus, for example, it was unnecessary to test maintenance and repair interfaces that were already being used to process commercial volumes of transactions. See Ham Reply Aff. ¶ 110 (responding to AT&T's Dalton & DeYoung Decl. ¶ 113).

such as KPMG. See Texas PUC Evaluation at 29. This selection was made with input from CLECs as well as SBC. Ham Reply Aff. ¶ 18. Telcordia reported to the Texas PUC, not SBC, and, as DOJ notes, Telcordia did in fact "overs[ee] the test in accordance with its instructions" from the Texas PUC. DOJ Evaluation at 4 n.4; see New York Order ¶ 99. Moreover, far from giving SWBT's systems a rubber stamp, Telcordia worked through the resolution of hundreds of issues that arose during the testing, and at the end of the testing identified seven issues that still required the Texas Commission's attention. Ham Aff. ¶ 266 & Attach. II; Telcordia Final Report at 11.

Blindness. Although completely blind OSS testing is "virtually impossible," New York Order ¶ 99, Telcordia and the Texas PUC took extensive precautions to maintain blindness whenever possible. Ham Reply Aff. ¶¶ 14-16; Ham Aff. ¶¶ 252-253. The Texas test was in fact more blind than KPMG's New York test, because of the manner in which transactions were sent to SWBT and because use of CLECs' actual systems made it impossible for SWBT to provide the tester "better treatment" than would have been afforded to a competitor. New York Order ¶ 135; see Ham Reply Aff. ¶¶ 16-17; Response to DOJ at 5.

CLEC Participation. The Texas PUC, with SWBT's cooperation, ensured CLECs' participation in all phases of the planning and execution of the Texas tests. Ham Reply Aff. ¶¶ 9-13; Ham Aff. ¶ 257. Because they had done the most development of OSS, AT&T and MCI WorldCom were centrally involved throughout the test. But smaller CLECs were invited to participate and did so. For example, several smaller CLECs served on the Technical Advisory Group that collaboratively steered the testing process. Ham Reply Aff. ¶¶ 10-12; see Telcordia Final Report at 5.

Military-Style Testing. Some CLECs dispute the military-style, test-until-you-pass nature of the Telcordia testing. MCI WorldCom Comments at 48-49; Sprint Comments at 14-15; CLEC Coalition Comments at 13-16. However, Telcordia's Master Test Plan, Interim Report, and Final Report all describe in explicit detail the retesting that would (and, indeed, did) occur should a particular activity fail to achieve expected results. Ham Reply Aff. ¶¶ 19, 21; Ham Aff. ¶ 254; Telcordia Final Report at 4. Issues were not left open during the test, nor were they closed under suspicious circumstances. AT&T's Dalton & Connolly Decl. ¶ 22; Sprint Comments at 14; MCI WorldCom's McMillon & Sivori Decl. ¶¶ 247-249; CLEC Coalition Comments at 15-16. Rather, all open issues were resolved to the Texas PUC's satisfaction. Ham Reply Aff. ¶ 22; Ham Aff. Attach. JJ (listing Telcordia's Seven "Next Steps;" describing SWBT's resolution of these issues and Texas PUC closure).

Comprehensiveness. The Texas PUC, not Telcordia or SWBT, determined the scope of the Texas test. Texas PUC Evaluation at 5-6. That focus, moreover, was on resolving issues not already resolved to the satisfaction of CLECs and the Texas PUC during the Collaborative Process. The Texas test was not intended to duplicate work already done in sessions before the Texas PUC. Ham Reply Aff. ¶ 30. Thus, Telcordia did not review issues relating to SWBT's Help Desk and account managers, for example, because these support systems were fully addressed and approved in the Collaborative Process – to the extent CLECs raised them as an issue at all. See id. ¶ 30; Ham Aff. ¶ 264; see also, e.g., Final Staff Report at 162-212 (identifying issues regarding wholesale support for resolution in collaborative process).

2. *Change Management Process*

A negotiated CMP governs new releases of CLEC OSS interfaces. See Southwestern Bell Br. at 31-35. The CMP was developed in collaboration with all interested CLECs and with

the participation and supervision of the Texas Commission staff. The CLECs approved the plan, and have the ability to propose and vote for modifications to it if they become dissatisfied in the future.[29] See Ham Aff. ¶¶ 302-354.

To confirm SWBT's compliance with the CMP, Telcordia (working at the Texas PUC's direction) observed SWBT's implementation of one EDI release and validated two others by reviewing documentation and interviewing CLECs. Telcordia found that SWBT's CMP was effective and that SWBT generally followed all requirements. Telcordia also made recommendations for improvements, which SWBT has implemented. Ham Aff. ¶¶ 307, 316, 333; see id. Attachs. LL (Change Control Process Validation Report), MM (Supplemental Assessment of the SWBT CMP).

This verified record of performance meets the standard set forth in the New York Order, where the FCC cited "a pattern of compliance with the relevant notification and documentation intervals" even though Bell Atlantic had not followed every guideline in every case. See New York Order ¶¶ 113-118. Moreover, unlike the New York plan, a "go/no go" vote gives CLECs the ability to postpone SWBT's introduction of new releases of the EDI interface. See Ham Aff. ¶¶ 345-351. Under this plan, a quorum of 50 percent of the CLECs affected by the release is required to call a vote. Ham Reply Aff. ¶ 161. A majority of the quorum can postpone the release. Id. This means that a minority of one-fourth of the CLECs impacted by a release could

[29] SWBT also provides CLECs extensive assistance and advice to ensure successfully testing their orders, Ham Reply Aff. ¶¶ 165-171. Since introduction of SWBT's updated test environment in November 1999, three CLECs have used the test environment successfully to implement EDI ordering gateways on a commercial basis. Id. ¶ 171. All changes made to the test environment have been effected in accordance with the CMP, and SWBT has received no specific complaints from CLECs regarding these changes. Id. Finally, there is extra assurance

potentially postpone a release by their "no go" votes – making it impossible as a practical matter for SWBT to force a release on reluctant CLECs. Id. As with the rest of the CMP, these procedures were deemed appropriate by the CLECs themselves. Id. Significantly, CLECs now have had the opportunity to invoke a "go/no go" vote against two EDI releases, but no CLEC has ever voted to delay any release. Id.

Some CLECs argue that performance measures are necessary to ensure SWBT's compliance with the CMP. MCI WorldCom Comments at 17; Sprint Comments at 16. Over the course of two years, CLECs and the DOJ participated in the development of SWBT's 131 performance measurement categories, under the supervision of the Texas PUC. Dysart Aff. ¶ 4. At no point did CLECs or the DOJ urge the addition of measures covering change management. Ham Reply Aff. ¶ 172. Nor are such measures necessary. As discussed above, CLECs are protected against harm from interface changes by the "go/no go" vote and by opportunities for testing, and SWBT has an independently verified track record of compliance with change management procedures. Finally, there is an established forum for considering modifications to SWBT's list of performance measures. If CLECs do decide to propose CMP-related measures in Texas, they can do so as early as April 2000, when SWBT, CLECs, and the Texas PUC will meet to address performance monitoring issues. Ham Reply Aff. ¶ 172; see generally Dysart Aff. ¶ 45 (discussing semi-annual reviews).[30]

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of the ongoing sufficiency and stability of the test environment, as the Texas PUC has charged Telcordia with independently validating SWBT's test environment. Ham Aff. ¶ 344.

[30] Alleging an actual failure to follow Texas PUC change management requirements, AT&T claims that SWBT was ordered to implement versioning (i.e., maintaining a current and a prior version of the same interface simultaneously) by January 15, 2000. AT&T's Dalton & DeYoung Decl. ¶ 43. SWBT is implementing the type of versioning sought by CLECs in accordance with PUC requirements. Ham Reply Aff. ¶¶ 162-164.

3. *Pre-Ordering: Parsed Address Information*

During pre-ordering, SWBT returns customer address information to CLECs via the Concatenated Address Information field, a method that complies with industry standards. Ham Reply Aff. ¶ 49. In New York, Bell Atlantic provided this information to CLECs via the "parsed CSR" method, also in compliance with industry standards. See New York Order ¶¶ 133-138. SWBT's EDI/CORBA pre-order interface supports the parsed CSR alternative. Ham Reply Aff. ¶¶ 49, 56. AT&T and MCI WorldCom, however, suggest that they have been unable fully to integrate EDI with DataGate, because they cannot obtain parsed address information through DataGate. AT&T's Dalton & DeYoung Decl. ¶ 94; MCI's McMillon & Sivori Decl. ¶ 58.

Neither AT&T, nor MCI WorldCom, nor any other CLEC pursued this issue during the Collaborative Process in Texas. Ham Reply Aff. ¶¶ 49-62. That is the best possible evidence that their claims of competitive urgency have been crafted specifically for this proceeding. In any event, however, at least one other CLEC has integrated DataGate and EDI to achieve the same functionality AT&T and MCI claim to desire. Id. ¶ 52. The issue, then, is not the capabilities of Southwestern Bell's systems, but rather the motives of Southwestern Bell's opponents.

4. *Ordering: Flow Through and Rejections*

CLECs argue that SWBT relies excessively on manual ordering processes. AT&T Comments at 66-67; AT&T's Dalton & DeYoung Decl. ¶¶ 138-143; ALTS Comments at 26; see also DOJ Evaluation at 37-38. Although "excessiveness" is obviously a relative term, the facts are that – from September through December 1999 – 80 percent of all orders submitted via either

EDI or LEX, and 92 percent of all orders submitted via EDI, were eligible to flow through SWBT's systems without manual intervention.[31] Ham Reply Aff. ¶ 76.

CLECs further complain that SWBT fails to provide flow through for key order types. MCI WorldCom Comments at 143-144; ALTS Comments at 26-28; CLEC Coalition Comments at 19; NorthPoint Comments at 13-14. SWBT continues to increase the (already excellent) flow-through capabilities of its systems. Ham Aff. ¶ 126; Ham Reply Aff. ¶¶ 82-87. Development of additional capabilities is prioritized by the types of orders that CLECs forecast will be requested at the highest volumes. Ham Aff. ¶ 126. If a CLEC desires flow through for a particular order type that is not heavily used according to CLECs' forecasts, it can request flow through development pursuant to SWBT's CMP. Ham Reply Aff. ¶ 82; see also id. ¶¶ 83-87 (discussing flow through of particular order types).

Despite the fact that this Commission has found that order rejections in many cases may be properly attributed to CLECs, see New York Order ¶ 167, and both Telcordia and the Texas PUC have found this to be the case in Texas, see Telcordia Final Report § 4.3.1.2; Texas PUC Evaluation at 54, several CLECs contend that SWBT's reject rates prove discrimination. AT&T Comments at 61-66; MCI WorldCom Comments at 29. AT&T, in particular, distorts the facts, doubling SWBT's actual rate of order rejections in its rhetoric. See Ham Reply Aff. ¶¶ 89-90. The actual reject rate for EDI and LEX combined – about 27 percent, see Ham Reply Aff. ¶ 90 –

[31] Whether or not the LSR actually does flow through is determined by the CLEC's accuracy in entering the order. See Ham Reply Aff. ¶¶ 77-79 (discussing AT&T's ordering inaccuracy). Flow through rates are lower for LEX than for EDI largely because of the types of orders LEX users choose to pass over that system. Id. ¶ 80. Order volumes for LEX are much less than for EDI, and the Texas PUC has noted that this disparity in usage of the two interfaces is likely to grow. Id. ¶ 75; Texas PUC Evaluation at 39. Covad's accusation that SWBT has hindered

is substantially lower than the 40 percent reject rate Bell Atlantic reported for UNE orders in New York. See New York Order ¶ 166 n.512.

DOJ makes much of its belief that, at least for UNE loop orders, "processing problems appear to be growing with . . . increasing order volume," thus creating a risk of overburdened manual processes. DOJ Evaluation at 43. This does not square with the data for order rejections, however. Only about 10 percent of orders are rejected through manual processes. Ham Reply Aff. ¶ 91. Rather than increasing with climbing order volumes, moreover, the percentage of orders requiring manual handling has stayed relatively stable. Id. The recent month with the lowest manual rejection rate, September 1999, was actually the same month in which SWBT's systems processed the largest volume of orders. Id.[32]

5. Double Billing

Double billing was one of the issues resolved during the collaborative process. As described in the November 1998 Final Staff Report, SWBT undertook a number of steps to minimize the likelihood of double billing. Telcordia reviewed these new processes as part of its OSS functionality test and "did not uncover any major issues." Telcordia Final Report § 4.5.4.5 (Ham Aff. Attach. A). Performance data show that SWBT posts orders on time and bills correctly approximately in the 97 percent to 98 percent range. Dysart Aff. Attach. B, Measurement 17.

Covad's access to LEX is rebutted in the Reply Affidavit of Michael Brosler. Brosler Reply Aff. ¶¶ 7-9.

[32] Issues relating to SWBT's provision of FOCs and other notifications to CLECs in Texas are discussed in the Reply Affidavits of Elizabeth A. Ham and Candy Conway. See Ham Reply Aff. ¶¶ 108 (FOCs), 107 (jeopardy notification), 109, 138 (SOCs), 136 ("complex" completion notification), 137 (billing completion notification), 143 (loss notification); Conway Reply Aff. ¶ 29 (SOCs).

Nevertheless, a number of CLECs complain of problems with double billing. AT&T Comments at 67-68; AT&T's DeYoung Hot Cuts Decl. ¶¶ 194-195; MCI WorldCom Comments at 11-14; ALTS Comments at 28-29. These CLECs discuss this issue almost exclusively in terms of there being a "risk" of double billing, rather than presenting specific evidence of actual occurrences. The actual number of double-billing problems is in fact vanishingly small. For instance, in late 1999 AT&T/TCG and SWBT jointly investigated 42 AT&T/TCG UNE accounts for supposed double billing. The investigation revealed that SWBT had issued the appropriate credit with the final bill for each of this handful of disputed accounts. This data reconciliation is described in the December 14, 1999 Affidavit of Elizabeth Ham, filed with the Texas PUC (App. C, Tab 2004).

As explained in detail in the Reply Affidavit of John Locus, there is almost always some overlap in billing when a customer changes providers. After the new carrier assumes the service, the customer's old carrier must reconcile the amounts previously billed and charges pending against payments received. Locus Reply Aff. ¶ 11. SWBT has in place the proper processes to mechanically handle this overlap of two carriers' billing. Id. ¶ 13.

When true double billing does occur, SWBT reconciles it quickly and issues the proper credits in a timely manner. Id. Telcordia thoroughly reviewed these processes for bill correction and found that they work properly. Id.

E. Miscellaneous Checklist Issues

Most of the other checklist items are not subject to any serious dispute. The Texas PUC has verified that SWBT is in compliance with all requirements of checklist items (iii) – poles, ducts, conduits, and rights-of-way; (v) – unbundled transport; (vi) – unbundled switching; (vii) – E911, directory assistance, and directory listings; (viii) – white pages; (ix) – access to telephone

numbers; (x) – call-related databases and associated signaling; (xi) – number portability; (xii) – local dialing parity; (xiii) – reciprocal compensation; and (xiv) – resale.

Individual CLECs raise isolated complaints and rehash isolated disputes with respect to some of these items. But none seriously attempts to refute the Texas PUC's finding of compliance or SWBT's showing of such compliance in its initial filing. We respond to each of the individual CLEC complaints and disputes in affidavits attached to these comments.[33] But we will not discuss them further in the brief.

IV. SOUTHWESTERN BELL HAS SHOWN THAT IT WILL COMPLY WITH THE REQUIREMENTS OF SECTION 272

Southwestern Bell's Application demonstrates that when providing authorized interLATA services in Texas, Southwestern Bell will comply with the structural separation and nondiscrimination requirements of section 272. See Southwestern Bell Br. at 62-70. Of all the commenters, only AT&T disputes Southwestern Bell's showing in this regard. AT&T makes two allegations: (1) that Southwestern Bell Communications Services, Inc. ("SBCS") fails to provide full public disclosure of its transactions with SWBT, and (2) that a proposed pricing plan for intrastate switched access service discriminated in favor of SBCS. AT&T Comments at 84-88; see AT&T's Kargoll Aff., generally. There is no merit to either of these allegations.

[33] See, e.g., Fleming Reply Aff. (number portability); Deere Reply Aff. ¶¶ 34-35 (number portability); Rogers Reply Aff. ¶¶ 5-12 (directory listings); Auinbauh Reply Aff. ¶ 38 (unbundled transport); Deere Reply Aff. ¶¶ 26-27 (unbundled switching); Deere Reply Aff. ¶¶ 28-32 (E911); Rogers Reply Aff. ¶¶ 13-24 (call-related databases); Auinbauh Reply Aff. ¶¶ 45-48 (reciprocal compensation); Auinbauh Reply Aff. ¶¶ 19-20 (resale); Deere Reply Aff. ¶ 28 (resale); see also Response to DOJ (response to DOJ).