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Redacted –For Public Inspection

April 5, 2000

CC Docket No. 00-65

VIA HAND DELIVERY

RECEIVED
APR - 5 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (d/b/a Southwestern Bell Long Distance) for Authority to Provide In-Region InterLATA Services in Texas,* CC Docket No. 00-4

Dear Ms. Salas:

Enclosed for filing are one original and one copy of confidential attachments to today's supplemental filing of Southwestern Bell. Some of the material we are submitting includes confidential information relating to Southwestern Bell's wholesale and resale operations in Texas, as well as other information containing trade secrets. As such, we are requesting that these portions of the Supplement receive confidential treatment under the existing protective order in this proceeding.

Please date-stamp the extra copy of this letter and return it to the individual delivering this package.

If you have any questions, please call me at 202-326-7907.

Sincerely,

Austin Schlick

Enclosures

cc: Ms. Stephens
Ms. Wright
Ms. Heisler
Ms. Farroba
ITS

April 5, 2000

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00-65

***Ex Parte* Submission**

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re. *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-4

Dear Ms. Salas:

SBC's Application for long-distance relief in Texas has received exhaustive review before the Texas PUC and this Commission. Hundreds, if not thousands, of issues have been resolved to the apparent satisfaction of all parties. Only a handful of issues remain in any genuine dispute. SBC strongly believes that it has carried its burden on *all* these issues. We recognize, however, that some parties, including the Department of Justice ("DOJ"), continue to have concerns about the evidence currently in the record. We want to address those concerns and assure the Commission that the complete facts demonstrate that SBC is satisfying section 271's requirements in each and every respect. Accordingly, SBC is today supplementing its Application.

The eight affidavits accompanying this letter provide new evidence responding to issues and arguments that have emerged in this proceeding since submission of reply comments on February 22.[1] The affidavits respond particularly to DOJ's March 20 submission regarding DSL and hot cuts and Chairman Kennard's April 3 statement identifying three key issues. They also describe new policies and practices that further support SBC's prior demonstration of checklist compliance and ensure SBC's satisfaction of additional Commission requirements (including line sharing and the offering of new UNEs) that will soon take effect. The affidavits additionally update the Commission on local competition in Texas, including the accelerated pace of entry by major interexchange carriers and DSL providers.

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[1] AT&T, for instance, has filed numerous *ex parte* letters in flagrant disregard of page limitations on uninvited *ex partes*. *See* Public Notice, *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, 14 FCC Rcd 16128 (1999) ("*Updated Filing Requirements*").

SBC recognizes that this new evidence cannot receive full consideration in the few days remaining before the original deadline for a decision. But it would serve no good purpose to start the process all over again when the current application is on file and has been the subject of such extensive briefing and consideration. Commencing an entirely new proceeding would only cause needless delay and lead the parties to refile hundreds of thousands of pages of material that is already in this record. Accordingly, as indicated in SBC's *ex parte* letter of March 31, 2000, we are submitting the new affidavits with a request that the Commission "restart the clock" in accordance with its prior orders, and provide all interested parties an opportunity to comment on the record as it stands after this submission.

This option of "restarting the clock" is established by the Commission's routine section 271 procedures. *Updated Filing Requirements*, 14 FCC Rcd at 16130. It was used in the *Second Louisiana* proceeding, where the Chief of the Common Carrier Bureau extended the time for a Commission decision beyond the original 90 days, following correction of BellSouth's application.[2] And it was reiterated in the recent *New York Order*.[3] Nevertheless, if the Commission deems it more appropriate, we alternatively request that this supplemental filing formally be treated as (1) a withdrawal of the January 10 application and (2) a resubmission of the entire record of Docket 00-4 (including this filing, which updates the record and shows compliance with upcoming Commission requirements) as a new application. Particularly given the hundreds of thousands of pages of material already filed by SBC and commenters, as well as the fact that this massive record was filed within the last three months and therefore is fresh, such a procedure would be squarely within the Commission's discretion. Indeed, the Commission has specifically noted its power to establish appropriate procedures "on a case-by-case basis," in order to process section 271 applications efficiently while also allowing all parties a fair opportunity to comment.[4]

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[2] Public Notice, *Revised Comment Cycle on Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 22124 (1998).

[3] Memorandum Opinion and Order, *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*, CC Docket No. 99-295, FCC 99-404, ¶ 34 (rel. Dec. 22, 1999) ("*New York Order*").

[4] *Updated Filing Requirements*, 14 FCC Rcd at 16133; *see also Union of Concerned Scientists v. NRC*, 920 F.2d 50, 53-54 (D.C. Cir. 1990) (agency has authority to determine its own operating procedures unless statute specifically states otherwise); *FCC v. Schreiber*, 381 U.S. 279, 289 (1965) (holding that 47 U.S.C. § 154(j) "delegates broad discretion . . . to make *ad hoc* procedural rulings in specific instances"). Section 1.746(a) of the Commission's rules expressly empowers the Commission to waive filing requirements that would otherwise be applicable to a new application. *See Updated Filing Requirements*, 14 FCC Rcd at 16131 & n.7 (incorporating 47 C.F.R. § 1.746 by reference).

Given the very narrow scope of this additional material, we respectfully suggest that a Commission decision could be reached in substantially less than the full 90 days allowed under section 271(d)(3).

DISCUSSION

1. Voice and Data CLECs Are Proving Their Ability To Compete in Texas

Developments since SBC filed its Application on January 10, 2000, irrefutably demonstrate the openness of the local market in Texas. Data for three additional months of local activity in Texas are now available. They show that:

- *CLECs have won 300,000 more lines from SWBT.* Habeeb Supp. Aff. ¶ 4. Based upon the SBC methodology found reasonable by the Texas Commission, CLECs now serve 1.7 million local lines in Texas. Texas PUC Evaluation at 102. The lowest conceivable estimate of CLEC penetration in Texas would be approximately 1 million lines.[5]

- *CLECs have expanded their business customer base by 25 percent and their residential customer base by 9 percent.* Habeeb Supp. Aff. ¶ 7 (data for October 1999-February 2000).

- *CLECs' overall line growth was 20 percent in three months – or 80 percent per year. Id.* ¶ 4.

- *The number of UNE Platform loop/port combinations in service increased by 62 percent. Compare* Habeeb Aff. Attach. E *with* Habeeb Supp. Aff. ¶ 5 Attach A.

- *33 more CLECs received certification to provide local service in Texas – an increase of 11 percent over the three months. Compare* Habeeb Aff. Attach. E *with* Habeeb Supp. Aff. Attach. A. There are now 336 certificated CLECs in Texas. Habeeb Supp. Aff. Attach. A.

- *The Texas PUC has approved 31 more interconnection agreements between SWBT and CLECs.* Habeeb Supp. Aff. Attach. A; Habeeb Aff. Attach. E. SWBT now has 268

[5] DOJ's assumption of one facilities-based line per interconnection trunk dramatically undercounts actual lines, as explained in the Reply Affidavit of John Habeeb (¶ 9). Still, even under this approach, the count of CLEC lines in Texas would be over 966,000. *See* Habeeb Supp. Aff. ¶ 4; DOJ Evaluation at 9.

approved agreements, *id.*, more than three times as many as Bell Atlantic had when it filed for section 271 relief in New York, *see New York Order* ¶ 23.

- *15 different data CLECs are purchasing DSL loops from SWBT.* Habeeb Supp. Aff. ¶ 10. Data CLECs increased their usage of unbundled DSL loops by 45 percent in the month of February 2000 alone. *Id.* ¶ 13 & Table 2.

The torrid pace of entry shows no signs of cooling. In SBC's headquarters city of San Antonio, three start-up companies announced virtually simultaneously in late March their intentions to build fiber optic networks to offer local and long distance service, cable television, and high-speed Internet access. The combined investments of the three firms (Western Integrated Networks, WideOpenWest, and Grande Communications) could exceed $2 billion.[6]

Ignoring such realities, opponents of SBC's Application gamely insist they are not yet able to compete and that the Commission should therefore deny Texans a full choice of long distance providers for additional months or years. But the facts in Texas disprove what these opponents are saying in Washington.

MCI WorldCom has represented to the Commission that "[l]ocal competition in Texas cannot yet succeed." MCI Reply Comments at 1. Meanwhile, in Texas, MCI increased its number of local lines in service by 31 percent between October 1999 and February 2000. Habeeb Supp. Aff. ¶ 8.

Similarly, AT&T insists that "competition in Texas remains *de minimis*." AT&T Comments at 4. Meanwhile, in Texas, AT&T increased its already-large local service base by 51 percent from October to February. Habeeb Supp. Aff. ¶ 8. As noted, the total number of CLEC lines has climbed to 1.7 million.

MCI WorldCom further represents that "SBC/Southwestern Bell's operations support systems ("OSS") cannot handle commercial scale launch." MCI WorldCom March 9, 2000 *Ex Parte*. Yet MCI WorldCom stated in a group *ex parte* contact with this Commission that it plans a major marketing campaign in the next few weeks in Texas – something no carrier would do if it believed SWBT could not effectively process the orders. Habeeb Supp. Aff. ¶¶ 6, 9. Sprint has begun its own mass-market initiative, confirming its conviction that SWBT is ready and able to support mass-market entry. *Id.* ¶ 9.

The data CLECs are equally schizophrenic. In this proceeding, Covad maintains that SBC has "stalled and stonewalled Covad's entry into Texas." Covad Comments at iv. But Covad's Executive Vice President and General Counsel reports that his company is "cleaning

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[6] S. Nowlin, *New Phone Services Planned; Other Telecom Firms On Way*, San Antonio Express-News, Mar. 24, 2000 at 1E.

[SBC's] clocks" in the Texas business market. Habeeb Supp. Aff. ¶ 16. Likewise, while Rhythms complains here of "blatant unmitigated discrimination compared to SBC's retail DSL operations" and of its supposed inability to obtain "necessary UNEs," Rhythms Comments at i-ii, Rhythms simultaneously purports to offer its customers " 'unsurpassed service levels, and value unparalleled.' " Habeeb Supp. Aff. ¶ 15. Indeed, Covad, NorthPoint, and Rhythms have experienced explosive growth. Between August 1999 and February 2000, each of these three data CLECs' DSL line counts increased by between 133 and 948 percent. *Id.* ¶ 14.

Nothing speaks more eloquently than the facts.

2. SBC Is Providing Nondiscriminatory Access to OSS

The facts also speak directly to the issue of OSS integration, which Chairman Kennard identified as being of special interest in his April 3 statement on this Application.

This issue arises because some CLECs assert that "SBC rejects too many orders." MCI WorldCom March 15, 2000 *Ex Parte* at 5. As the *New York Order* established, the relevant question is whether CLECs have a nondiscriminatory *opportunity* to submit valid Local Service Requests ("LSRs"), not whether they have devoted the resources necessary to do so. *See New York Order* ¶¶ 167, 175. In its Application and subsequent submissions, SBC showed that CLECs have that opportunity.

The record reflects that average reject rates for CLECs using SWBT's EDI system have been in the 16 to 30 percent range over the last six months. *See* March 23, 2000 *Ex Parte* (statewide tracking/chart results for Performance Measurement ("PM") 9-02). This includes all rejects, including rejects that SWBT can do nothing about – such as a CLEC's request to connect a new customer (not previously served by SWBT) at a street address that does not exist, or a request for a due date that has already passed at the time the LSR is submitted. *See* Ham Supp. Aff. ¶¶ 41-43. Significantly, the average reject rate for EDI users has gradually declined since November 1999, even as the volume of CLEC orders has increased by two-thirds. *Id.* ¶ 33. This confirms that CLECs are able to eliminate errors as their service representatives become more familiar with both CLEC and SWBT systems. *See New York Order* ¶ 59 ("A steady improvement in performance over time may provide us with an indication that problems are being resolved.").

Comparisons between SWBT's systems and Bell Atlantic's systems must be made carefully, because Bell Atlantic's systems were designed to allow more invalid LSRs to enter the system for processing, whereas CLECs and the Texas PUC agreed that SWBT should return invalid LSRs as early as possible in the order-processing process. *See* Ham Supp. Aff. ¶¶ 45-54. Nevertheless, even though this difference should lead to *higher* reject rates in Texas, users of SWBT's EDI system are actually experiencing *lower* reject rates than users of Bell Atlantic's

systems experienced in New York. *Id.* ¶ 53; *see New York Order* ¶¶ 175, 183 (27-34 percent UNE reject rate and 23-31 percent resale reject rate).

Indeed, when a CLEC sends a valid LSR that is supposed to be processed mechanically, it flows through EDI for mechanical order generation about 97 percent of the time, far above the flow through rate for SWBT's retail systems. *See* March 23, 2000 *Ex Parte* (statewide tracking/chart results for PM 13-03). Even looking at the universe of all valid LSRs, whether eligible for mechanized processing or not, 85 percent or better of UNE LSRs and about 50 to 80 percent of resale LSRs flow through. Ham Supp. Aff. ¶ 52; Ham Aff. Attach. X-2; Ham Reply Aff. Attach. F. Bell Atlantic, by comparison, had a flow-through rate of about 60 percent for UNEs and 50 percent for resale orders. *New York Order* ¶ 166 nn.512, ¶181 n.569.

Bell Atlantic argued that its flow through rates were not indicative of actual performance, because Bell Atlantic would sometimes correct invalid orders. But Bell Atlantic's adjusted UNE flow through rate, taking this correction into account, was 75 percent. *New York Order* ¶166 n.516. Again, SWBT's *actual* flow through for UNE orders over EDI is at least 85 percent and close to 100 percent in some months. Ham Supp. Aff. ¶ 52.

In past decisions, the Commission has cited the ability to integrate the BOC's pre-ordering and ordering systems with CLEC systems as a key factor in ensuring nondiscriminatory reject rates and flow through. *New York Order* ¶ 137; Memorandum Opinion and Order, *Application of BellSouth Corp. et al. For Provision of In-Region, InterLATA Servs. in Louisiana*, 13 FCC Rcd at 20599, 20661-62, ¶ 96 (1998). SBC explained in past filings that such integration of its electronic systems is possible, and indeed has been done. *See* Ham Aff. ¶¶ 56, 60, 68, 93; Ham Reply Aff. ¶¶ 49-62; Feb. 18, 2000 Confidential *Ex Parte* at Tab 2. This supplemental filing goes much further, and should leave no room for doubt about SBC's satisfaction of all legitimate requirements regarding OSS integration, rejects, and flow through.

First, the Ham Supplemental Affidavit explains that CLECs' reject rates continue to decline,[7] Ham Supp. Aff. ¶¶ 33-44, and CLECs themselves have now confirmed successful integration of pre-ordering and ordering functions, *id.* ¶ 3 & Attachs. A, B. Sage Telecom states that it "has been able to integrate information between SBC's pre-ordering and ordering interfaces," including integration of parsed address information from the customer service record to an LSR. *Id.* Attach. A. Sage further indicates that "SWBT provided the necessary documentation and technical support to write a program to integrate pre-ordering and ordering functions in Texas." *Id.* Navigator likewise reports that it has integrated DataGate and EDI, including parsing of the customer service record, for 80 to 90 percent of its LSRs, and that the integration was a success "because of the cooperation between Navigator and SWBT." *Id.* Attach. B. Other CLECs that are using different systems, and have chosen not to perform

[7] Seven of the eight EDI users improved their reject rates from January to February 2000. Ham Supp. Aff. ¶ 34.

integration, recently have placed on the record expressions of satisfaction with the SWBT OSS they are using.[8]

What is particularly striking is that small-to-mid-sized CLECs have done exactly what the giants AT&T and MCI WorldCom say they have been unable to do, using exactly the same SWBT and industry-standard resources available to AT&T and MCI WorldCom. Once again, the facts in Texas do not match the rhetoric in Washington.

Second, SWBT has taken an important new step in recognition of the fact that not all CLECs have the massive resources of an AT&T or MCI WorldCom. SWBT has retained General Electric ("GE") Global Exchange Services (formerly General Electric Information Services) to assist CLECs in defining the appropriate architecture and strategy for using and/or integrating SWBT's interfaces. Upon a CLEC's request, SWBT will fund a two-week consulting engagement under which GE will make recommendations relating to interface architecture and strategy; offer high-level requirements; and issue a report detailing this information for the CLEC. Ham Supp. Aff. ¶ 15. Through these engagements, GE will develop a diverse base of experience with SWBT's systems and CLECs' needs, allowing it to provide particularly valuable assistance to the CLECs. *Id.* This extra outside assistance for CLECs – which to our knowledge is an unprecedented offer by an incumbent LEC – directly responds to suggestions that some CLECs need additional technical support to achieve the sort of OSS integration already accomplished by four other CLECs.

Third, SWBT is developing additional OSS workshops specifically to address integration issues. *Id.* ¶ 16. SWBT has advised CLECs that the first of these workshops will be held on June 21, 2000. *Id.* These workshops will be in addition to the technical materials and other SWBT resources already available to (and used successfully by) CLECs to assist them in accomplishing integration of SWBT's OSS. *See* Ham Supp. Aff. ¶¶ 7-11, 14. In the *New York Order*, the Commission gained "confidence" from Bell Atlantic's commitment to establish new CLEC workshops to address flow through issues. *New York Order* ¶ 170.

Fourth, and going beyond merely assisting CLECs in using its systems, SWBT is changing its own systems to reduce the number of errors on CLEC LSRs by about 14 percent on average, and closer to 20 percent for the largest EDI user. Ham Supp. Aff. ¶¶ 26-27. In recent *ex parte* submissions, a few CLECs have indicated concern about rejects related to entries in the end

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[8] *See* MaxCom March 29, 2000 *Ex Parte* (SWBT's OSS "easy to use and to navigate and they are available when I need them"); A-CBT March 30, 2000 *Ex Parte* (SWBT's OSS interfaces and support have "enabled us to enter the resale market with minimal difficulties and succeed in the competitive local resale market"); Shell Offshore Services April 3, 2000 *Ex Parte* ("SBC has been both helpful and instrumental in SOSCo entering the local exchange business"); Tele-One April 3, 2000 *Ex Parte* ("The Account Team has been very helpful in answering questions and has been very responsive to our needs, including assisting us on-site with implementing OSSs.").

user address field on the LSR. *See* MCI WorldCom March 17, 2000 *Ex Parte* at 2-4; AT&T March 17, 2000 *Ex Parte* at 4. On March 29, 2000, however, SWBT notified CLECs through an Accessible Letter that the end user's address information will no longer be required when converting a SWBT retail or resale customer to UNE-based service for basic loop, port, and loop with port request types. Because SWBT will itself retrieve the address for the conversion process, CLECs will no longer receive fatal rejects related to invalid addresses. Ham Supp. Aff. ¶¶ 24-26. Moreover, eliminating the end user service address requirement will eliminate any need for CLECs to utilize parsed address information on the LSR for conversion activity. *Id.* ¶ 29. This system change is scheduled to be tested and operational in May 2000, subject to CLEC approval in the Change Management Process. *Id.* ¶ 30.[9]

Relatedly, a few parties persist in the claim that there is a substantial outage problem associated with the three-order process for UNE Platform conversions. *See* MCI WorldCom March 17, 2000 *Ex Parte* at 4-5; MCI WorldCom March 30, 2000 *Ex Parte* at 2-3; AT&T March 8, 2000 *Ex Parte* at 6-7; CompTel March 31, 2000 *Ex Parte*. The truth is that end users lose dialtone for *any* reason in significantly less than one percent of conversions using this Texas PUC-prompted process. Ham Supp. Aff. ¶ 31. Eliminating the end user service address requirement, moreover, will dramatically reduce "invalid address" rejections related to the three-order process for UNE Platform conversions, and eliminate the possibility of a service disruption caused by erroneous population of the end user service address. *Id.*

3. SBC Meets the Commission's Hot Cut Requirements

By their very nature, hot cuts require close coordination between the incumbent LEC and the CLEC. A brief service outage will occur even if this coordination is executed perfectly, and longer service disruptions can occur due to CLEC miscues as well as the incumbent's errors. *See* Conway Aff. ¶¶ 80-99; *see also New York Order* ¶ 291 n.925.

But only about 10 to 15 percent of unbundled local loops are provisioned using the hot cut process. CLECs overwhelmingly are using the UNE Platform rather than hot cut, new, or moved loops. *See* Conway/Dysart Supp. Aff. ¶ 39. For the small fraction of loops that are provisioned using the hot cut process, moreover, CLECs have their choice of two alternative processes in every case, allowing them to pick the process that best fits their resources and priorities. *See* Conway Aff. ¶ 86.

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[9] AT&T maintains that SWBT has not followed the Change Management Process since submission of the Application. *See* AT&T March 17, 2000 *Ex Parte* at 2-3; AT&T March 8, 2000 *Ex Parte* at 9-10. The Ham Supplemental Affidavit confirms that SWBT's implementation of new capabilities recently required to meet regulatory obligations has been consistent with the exceptions provisions of the Change Management Process. *See* Ham Supp. Aff. ¶¶ 55-63.

SBC has previously provided full performance data for months through December 1999, which covered both of the two alternative processes (coordinated hot cuts ("CHC") and the more recent frame due time ("FDT") method) and showed that SBC is satisfying the Commission's standards in each of the three areas of hot-cut performance identified in the *New York Order*. The data show: completion of hot cuts within the Texas PUC's interval of 2 hours at least 90 percent of the time; SWBT-caused unexpected outages on less than 5 percent of hot cuts; and a trouble report rate consistent with the *New York Order*'s standard of 2 percent after 7 days. *See New York Order* ¶ 309. This showing was detailed in SBC's Reply Brief (at pages 38-42) and in SBC's *ex parte* filing of March 2, 2000.

Thus, for the 10 to 15 percent of loops that are provisioned through hot cuts, SWBT misses perfection with respect to timeliness, unexpected outages, and trouble reports only about 2 to 10 percent of the time – within the Commission's standards for nondiscriminatory performance. Hot cut performance could hardly be a basis for finding that SBC fails to provide nondiscriminatory access to unbundled loops under Checklist Item (iv).

Unable to assail the performance results themselves, AT&T has tried to circumvent SBC's performance results by questioning their accuracy. *See* AT&T March 13, 2000 *Ex Parte* at 2-5; *see also* DOJ March 20 Letter at 8-10. But the newest data – most of which was collected through routine performance reporting or a joint reconciliation process with AT&T – shows that SWBT's already nondiscriminatory performance has actually improved.

New CHC data show significant improvement over SBC's prior, compliant performance:

Timeliness. Performance Measurement 114.1-02 reveals that in both January and February 2000, 99 percent of coordinated hot cuts were completed within the 2-hour interval set by the Texas PUC.[10] *See* Conway/Dysart Supp. Aff. ¶ 14.

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[10] DOJ has questioned the Texas performance reports on the basis that they report on lines cut-over, rather than hot cut orders. DOJ March 20 Letter at 9. Per-line performance is far more revealing of actual customer experience than aggregated order information. *See* Conway/Dysart Supp. Aff. ¶45-46; Conway Reply Aff. ¶ 13. But in any event, 99 percent timeliness is so far in excess of the 90 percent standard, and so fully sufficient to allow CLECs to compete, that this reporting difference is of no consequence. And while the Texas PUC-approved measure does not include notification of the CLEC, *see* DOJ March 20 Letter at 9 & n.33, the CLEC is involved in every step of the coordinated process. Conway/Dysart Supp. Aff. ¶ 48; *see also* Conway Aff. ¶¶ 78-79. Moreover, the standard procedures for FDT conversions provide that the CLEC will check for completion of the conversion at regular intervals though line testing or simply by calling its customer. *See* Conway Aff. ¶ 76 & Attach. J at 4-5.

Outages. Outage data obtained through the SWBT/AT&T "PPIG" reconciliation shows SWBT-caused unexpected outages on just 1.6 percent of hot cuts in December, 0 percent of hot cuts in January, and 6.6 percent of hot cuts in February. *See id.* ¶ 27. If adjusted to exclude an extraordinary event, *see id.* ¶ 10, outages in February were only 2.7 percent – below the *New York Order*'s 5 percent standard once again. *id.* ¶ 27.

Trouble Reports. Trouble reports for January and February 2000 confirm that SWBT meets the *New York Order*'s standard of 2 percent trouble reports after 7 days. SWBT uses a longer interval of 10 days to count the number of reports received, which produces higher trouble percentages than the 7-day measure used in New York. *See New York Order* ¶ 300 nn.956, 957. Still, troubles on loops converted using the CHC method in Texas were 2 percent or less in January and February, in satisfaction of the New York yardstick. Conway/Dysart Supp. Aff. ¶ 20.

Recent performance for FDT timeliness also has been excellent:

Ninety-two to 96 percent of FDT cut-overs were completed within the 2-hour interval in January and February. *Id.* ¶ 13. Likewise, just 2.0 and 3.3 percent of lines cut-over using the FDT process were the subject of trouble reports within 10 days. *Id.* ¶ 20. This performance at or near the *New York Order*'s standard for reports after 7 days indicates nondiscriminatory loop quality for the FDT method, as well as for the CHC method.

Of all the relevant hot cut measures, the only significant departure from the standard set in New York is in the area of unexpected SWBT-caused outages for the FDT method (but not, as explained above, the CHC method). *See id.* ¶ 27. The reasons for these FDT outages, and the steps SWBT is taking to avoid similar occurrences in the future, are described in the Conway/Dysart Supplemental Affidavit. *Id.* ¶¶ 28-36. Critically, however, any CLEC that is concerned about possible outages on a particular hot cut need only select the CHC method.[11] Conway Aff. ¶ 86; Conway Reply Aff. ¶ 12. As the Conway/Dysart Supplemental Affidavit explains, SWBT has sufficient resources to process CLECs' orders in a timely and efficient manner, regardless of which method they choose. Conway/Dysart Supp. Aff. ¶¶ 4-7.

Because the data continue to demonstrate nondiscriminatory performance so powerfully, CLECs may persist in attacking the reliability of that data. To the extent there are any remaining concerns, they can be raised before the Texas PUC, which has directed SWBT and interested CLECs to reconcile hot cut data by April 14, 2000. *See id.* ¶¶ 35-36. This confirms once again

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[11] Bell Atlantic, by contrast, offered CLECs only coordinated conversions. *New York Order* ¶ 291. Merely having the choice of methods is a benefit to CLECs, over what was found nondiscriminatory in New York.

the observation of Texas Commissioner Judy Walsh that "There's not a single problem that's been brought up that we don't have a procedure and policy to address in Texas."[12]

4. SBC Provides Nondiscriminatory Access to Unbundled xDSL-Capable Loops

As mentioned above, data CLECs in Texas are thriving. SBC has provisioned approximately 5000 local loops for xDSL providers in Texas since August 1999. From January to February 2000, CLEC usage of xDSL-capable loops jumped by 33 percent, Chapman/Dysart Supp. Aff. ¶ 14 and CLEC usage of BRI loops jumped by 20 percent, *id.* ¶ 15.[13] CLECs have made these rapid gains under the supervision of a state commission that has been out front in establishing rules, testing, and performance requirements for xDSL-related offerings. *See* SBC Br. at 39-43; SBC Reply Br. at 13-18.

Carriers such as Covad, Rhythms, and NorthPoint plainly are confident of their ability to serve as many mass-market customers as they can win. They are advertising heavily in Texas, *see, e.g.,* Habeeb Supp. Aff. Attach. C-23 ("PDQ DSL is the fastest way to the Internet from home"), C-75 (OnRamp Access, a Covad partner, offering instant DSL qualification at their website), and they are winning thousands of new high-speed lines.

At the same time, however, data loops continue to "represent only a small fraction of the entirety of unbundled loops provisioned." *New York Order* ¶ 321. The 2600 xDSL-specific loops are less than 5 percent of the 54,000 stand-alone unbundled loops provisioned in Texas, and less than 0.2 percent of all loops provisioned. *See* Habeeb Supp. Aff. Attach. A (updating SWBT's checklist provisioning). In this respect, SBC's Application remains in a posture comparable to Bell Atlantic's, which was approved without specific consideration of xDSL loops. But unlike Bell Atlantic, SBC is able to show nondiscrimination in both of the ways suggested in the *New York Order* – through performance data and through its establishment of a separate advanced services subsidiary. *See New York Order* ¶ 330.

A. Performance Results

Current performance results support a finding of nondiscriminatory access to xDSL-capable loops, if such a DSL-specific showing were required despite similarities to the *New York* proceeding. Since the filing of its Application, SWBT has continued to report on its performance in each of the categories suggested by the *New York Order*: average installation intervals, missed

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[12] Habeeb Supp. Aff. ¶ 17 (quoting *FCC May Reject Southwestern Bell's Long-Distance Plans for Texas*, Dallas Morning News, Mar. 30, 2000).

[13] Approximately 90 percent of BRI loops in Texas are now used to provide IDSL service. Habeeb Supp. Aff. ¶ 13.

installation appointments, loop quality, maintenance and repair, and access to pre-ordering and ordering functions. *See New York Order* ¶ 335. In three of the five categories, SWBT has continued to meet the parity or benchmark level for most or all monthly reports as order volumes have increased, right through February 2000. In the remaining two categories, new evidence provided in the Chapman/Dysart Supplemental Affidavit confirms what SBC has said all along, that the full facts underlying the performance results show that CLECs are competing on a level field.

1. xDSL-Capable Loops

For xDSL-capable loops, the performance results are as follows:

Average provisioning intervals (PM 55.1) have been in parity for 8 of 11 monthly reports. SWBT provisioned loops without conditioning at parity with retail in every month from October 1999 to February 2000. Indeed, the installation interval for xDSL loops ordered without conditioning has generally been shorter than the interval for SBC's retail DSL customers. These unconditioned loops represent about 86 percent of all xDSL-capable loops. Chapman/Dysart Supp. Aff. ¶¶ 23-24.

Conditioned loops represent only 14 percent of all xDSL loops, *id.* ¶ 24, and a minute percentage of the 257,000 loops provisioned in Texas, *see* Habeeb Supp. Aff. Attach. A. Moreover, there is no significant base of retail orders against which to compare retail provisioning. Chapman/Dysart Supp. Aff. ¶ 24. Even for these conditioned loops, however, SWBT met parity in two of the last three months. *Id.*

Maintenance and repair reports (PMs 65-08, 67-08, and 69-08) have consistently been in parity or show overall superior performance for CLECs. Id. ¶ 26.

Access to loop make-up information (PM 57-01) has been in parity for 5 of 6 months. This includes January 2000, when the measure was redefined in accordance with DOJ recommendations and CLECs still received loop make-up information days faster than SBC retail. *See* Chapman/Dysart Supp. Aff. ¶ 28; DOJ Evaluation at 12-13. Performance in February was 4 days for SBC retail and 4.3 days for CLECs, which is not a competitively significant difference. *See* March 23, 2000 *Ex Parte* (PM 57-01); *see also* Chapman/Dysart Supp. Aff. ¶ 28 (SWBT's overall response time was approximately 2.9 days as compared to 3.9 days for SWBT's retail customers). SBC will report on firm order confirmations for DSL loops in its next monthly performance reports, thus addressing a major concern of DOJ. *Id.*; *see* DOJ Evaluation at 13-14.

Results for missed due dates (PMs 58-09, 60-08, 60-21, 60-34, 61-08, 62-09, 63-09) are often in parity, but are systematically skewed due to SBC's nondiscriminatory use of interim line sharing for its retail ADSL services. Chapman/Dysart Supp. Aff. ¶¶ 31-42. The Commission held in the *SBC/Ameritech Merger Order* that interim line sharing for affiliates is

nondiscriminatory.[14] Thus, the asymmetry in this temporary arrangement (which will be replaced by generally available line sharing in Texas by the end of May) cannot be a basis for finding discrimination under section 271. See Part 4C, infra. Nor do CLECs suffer any real-world disadvantage with respect to installation of DSL loops. They can obtain a 50 percent discount on loops specifically to offset the lack of generally available line sharing, *see* 14 FCC Rcd at 14908-09, ¶ 476, and receive preference over SBC retail in selecting due dates, Chapman/Dysart Supp. Aff. ¶ 40. CLECs are not competitively disadvantaged by somewhat higher percentages of missed due dates where they: (1) pay much less for the loop than the cost-based price; (2) can reduce the likelihood of a missed due date by selecting a due date that is closer to what would be available from SBC retail; and (3) can opt into the Tier 1 direct payment provisions of the Texas PUC-approved performance plan. *See id.* ¶ 35.[15]

Installation quality for DSL loops (PMs 59-08, 65-08, 69-08) has been in parity for better than half of the monthly reports. Out-of-parity results, moreover, reflect in part that CLECs are permitted to use DSL loops for non-standard service arrangements, which are more likely to have troubles than the standard line-shared offerings available from SBC's retail operations. Chapman/Dysart Supp. Aff. ¶¶ 41-42.

2. BRI Loops

In addition to xDSL-capable loops for various types of xDSL services, CLECs are using BRI loops for their IDSL services. DOJ expresses concern about missed due dates and trouble reports for BRI loops. DOJ March 20 Letter at 2 & n.5. In its reply, SBC explained the nondiscriminatory reason for these results – that SWBT has been working with CLECs to match BRI loops as closely as possible to the data CLECs' requirements, outside the normal provisioning process. This cooperative effort between SWBT and CLECs has resulted in less reliable installation times and higher trouble reports than would have been the case had SWBT provided only its standard BRI loop without making special arrangements. *See* Conway Reply Aff. ¶¶ 12-21.

DOJ responded that these issues "would be difficult to resolve in the limited time following SBC's Reply." DOJ March 20 Letter at 4 n.9. That is exactly the point of this

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[14] Memorandum Opinion and Order, *Application of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control*, 14 FCC Rcd at 14712, 14908-09, ¶ 476 (1999) ("*SBC/Ameritech Merger Order*").

[15] DOJ has suggested that reporting issues could be reduced if retail DS1 service, rather than retail DSL service, were used for installation parity comparisons. DOJ March 20 Letter at 4. That is not the case. As the Chapman/Dysart Supplemental Affidavit explains, both installation intervals and technologies are very different for CLEC DSL and retail DS1 services. Chapman/Dysart Supp. Aff. ¶ 33.

supplemental filing. To assist in this process, the Chapman/Dysart Supplemental Affidavit provides additional proof that shortfalls in reported performance are substantially attributable to industry-wide technological problems involving incumbent LECs' digital loop carrier equipment and CLECs' ISDL equipment. Far from discriminating against CLECs, SWBT is working with CLECs, vendors, and regulators to resolve these issues. *See* Chapman/Dysart Supp. Aff. ¶¶ 52-62.

With respect to installation timeliness, the Chapman/Dysart Supplemental Affidavit also explains that while performance reports for PM 56 (Percentage of BRI Loops Installed Within 3 Days) show consistent "misses" by SWBT, the 3-day interval used in this measure is much shorter than SWBT's *minimum* retail provisioning interval of 5 days for BRI loops. *Id.* ¶ 47. Even if SWBT provisioned BRI loops for CLECs a day faster than the minimum retail interval for ISDN service, SWBT still would fail to meet this measure. *Id.* From August 1999 through February 2000, average provisioning intervals were 5.1 days for CLECs' BRI loops and 9.6 days for SWBT's retail ISDN service, showing that CLECs have a generous advantage in timeliness. *Id.* ¶ 45.

The facts are similar for maintenance and repair measures. Reported performance in the most recent months has been affected by technical differences between CLECs' ISDL and retail ISDN service, while CLECs have received better-than-parity service when performance in prior months is considered. *Id.* ¶¶ 21-35.

The point of the foregoing analysis is not that failures to meet performance standards should be excused. They are not excused under the Texas PUC's performance remedy plan or enforcement dockets, and SBC is taking extraordinary steps to end reported performance deficiencies in this area, regardless of their root cause. *Id.* ¶¶ 19-24. Rather, this analysis confirms the wisdom of the Commission's rule that it is necessary to "examine the evidence further" when one encounters an apparently significant performance disparity. *New York Order* ¶ 59.

B. SBC Has Implemented the Texas PUC's Covad/Rhythms Arbitration Award

In an *ex parte* letter dated March 20, 2000, Covad suggested that SBC has not yet implemented the requirements of the Texas PUC's Covad/Rhythms arbitration award. That claim had already been disproved by SBC in an *ex parte* filing of March 10, which detailed record evidence of SBC's implementation of the arbitration award. Covad's argument was further rebutted in a March 24 *ex parte.*

Nevertheless, to provide the Commission as complete a record as possible on this issue, the Chapman/Dysart Supplemental Affidavit (at ¶¶ 91-99), and the Meierhoff Supplemental Affidavit, and supporting attachments detail, step-by-step, how SBC has complied with the requirements of the arbitration award. SBC has thereby put in place the terms and conditions

necessary, in the Texas PUC's view, to provide data CLECs nondiscriminatory access to unbundled loops. *See* Texas PUC Evaluation at 50-51. Covad itself says that the contract approved by the Texas PUC "was a good one." Chapman/Dysart Supp. Aff. ¶ 17. By implementing its terms, SWBT has provided Covad and other interested data CLECs everything they say they need to compete successfully.

C. SBC's Separate Advanced Services Affiliate is Fully Operational

Finally, DOJ questioned whether SBC's separate advanced services affiliate in Texas, ASI, is "fully operational" for purposes of demonstrating nondiscriminatory access to local loops for advanced services under the *New York Order*. *See* DOJ March 20 Letter at 5-8; *New York Order* ¶¶ 330-332. The Supplemental Affidavit of Lincoln Brown should resolve that concern.

As Mr. Brown describes, ASI and SWBT are doing business on an arm's-length basis under the terms of their Texas-PUC approved interconnection agreement. Brown Supp. Aff. ¶¶ 7-8. ASI also is using interfaces for pre-ordering, ordering, provisioning, and maintenance and repair that are equally available to unaffiliated CLECs. *Id.* ¶¶ 18-20. ASI submits applications for collocation to SWBT in the same manner as any other CLEC. *Id.* ¶ 11.

ASI has processed customer requests for frame and cell relay services through its ordering, provisioning, and maintenance systems since March 13, 2000. Brown Supp. Aff. ¶¶ 10, 19. ASI employees also are performing trouble isolation and resolution related to ASI's services. *Id.* ¶ 9. With respect to its ADSL services, ASI currently line shares with SWBT on an exclusive basis as permitted by the SBC/Ameritech Merger Conditions. *See id.* ¶ 11. Although DOJ suggests that this "confers a significant competitive advantage on ASI," DOJ March 20 Letter at 7, this Commission has found that "the incumbent's provision of line sharing exclusively to the affiliate does not confer an unfair advantage upon the affiliate," in part because "competing providers will receive the economic equivalent of this 'interim line sharing' through a 50 percent discount on the use of a second loop to provide advanced services." *SBC/Ameritech Merger Order*, 14 FCC Rcd at 14908-09, ¶ 476. Moreover, nothing in the *New York Order* can be read as supporting DOJ's suggestion that the separate affiliate option for showing nondiscriminatory access to DSL loops was, when announced, intended to be unavailable for nearly half a year after that decision, until BOCs could "accommodate requests for access" to line sharing. Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, ¶ 161 (rel. Nov. 5, 1999).

In any event, however, ASI is ordering unbundled local loops as a CLEC even while it is permitted to line share. For its frame and cell relay services, ASI is ordering 4-wire digital or DS1 loops in Texas, via the generally available SWBT EDI interface. Brown Supp. Aff. ¶¶ 20-21. ASI anticipates that approximately ten percent of its new frame and cell relay services will require an unbundled loop to connect the customer premises to the frame relay/cell relay switch

port. *Id.* ¶ 21. For ADSL service, interim line sharing is both permitted and feasible, yet ASI has adopted a policy of ordering from SWBT at least 280 xDSL-capable loops per month for the provision of ADSL service in Texas. *Id.* ¶ 22. This is a substantial number. If ASI had ordered 280 loops in February, for example, it would have placed 25 percent of all orders for such loops. *See* Chapman/Dysart Supp. Aff. ¶ 7. The loops ASI will use are the same xDSL-capable loops used by unaffiliated CLECs for their advanced services. ASI's loops will be obtained using the same manual processes available to unaffiliated data CLECs for pre-order information and ordering. Brown Supp. Aff. ¶ 22 & Attach. C. ASI will continue to operate in this manner until SWBT makes line sharing available to both affiliated and unaffiliated providers of advanced services in Texas. *Id.* ¶ 22.

SBC is taking the necessary steps for timely implementation of line sharing before the Commission's June deadline, as the Auinbauh and Cruz Supplemental Affidavits explain.[16] In that regard, it should be noted that the fact that ASI will line share at the same time and in the same way as CLECs ensures that SBC *today* has the incentive to establish systems and processes for line sharing that are workable and efficient from the first day. No other Bell company has such an incentive, because no other Bell company has a separate advanced services affiliate in place.

This new evidence responds directly to DOJ's concerns about ASI's operations. ASI and unaffiliated CLECs "use identical processes to order loops," DOJ March 20 Letter at 5, as the same systems for loop pre-ordering, *see id.* at 7. And while SBC's advanced services affiliate may not offer every service offered by every data CLEC, *see id.* at 5-6,[17] the loop types it is ordering are the same loop types other data CLECs may want. That is the relevant question for purposes of showing nondiscriminatory access. *See* Brown Supp. Aff. ¶ 10.

Conclusion

Congress and this Commission have made plain that when the BOC's local markets are open, long distance relief under section 271 benefits the public. *See New York Order* ¶¶ 422-428. After its two years of proceedings, the Texas PUC satisfied itself that local markets in

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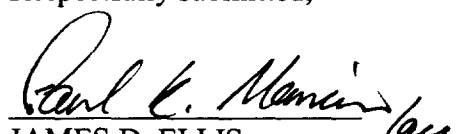
[16] The Auinbauh Supplemental Affidavit also describes SBC's timely steps to implement the new requirements of the *UNE Remand Order*. Auinbauh Supp. Aff. ¶¶ 8-12. Finally, Mr. Auinbauh addresses specific concerns that have been raised regarding SWBT's voluntary interim waiver of certain nonrecurring charges that are being reviewed in Texas, and the availability of physical collocation in small space increments. *Id.* ¶¶ 13-16.

[17] Contrary to DOJ's suggested expansion of the Commission's separate affiliate option, DS1 loops are not subject to the special rule for showing nondiscriminatory access to xDSL-capable loops, *see New York Order* ¶ 289, and ISDN and DS1 services are not Advanced Services as defined in paragraph 2 of the SBC/Ameritech Merger Conditions.

Texas are open, and SBC's interLATA entry would indeed benefit Texans. This Commission has had to answer the same questions in a much shorter period of time. With this supplemental filing, however, SBC is providing evidence that proves once and for all that the Texas PUC's conclusion was correct. This evidence should be admitted into the record and the Commission should commence an appropriately compressed supplemental briefing cycle, leading to approval of the Application.

Respectfully submitted,



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Attachment A

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Supplemental Appendix
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Volume A-2