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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
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| Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance For Provision of In-Region InterLATA Services in Texas | ) | CC Docket No. 00-65 |

**SUPPLEMENTAL COMMENTS OF COVAD COMMUNICATIONS COMPANY**

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## SUMMARY

SWBT's supplemental filing simply presents more of the same verbal affirmations and excuses—affirmations that it will comply with legal requirements and excuses as to why its performance regarding unbundled xDSL-capable loops misses the mark. In these Supplemental Comments, Covad shows that a lot of work still needs to be done to ensure an open market in Texas for providers of advanced services. To wit—

- All technically feasible forms of line-sharing requested by Texas data CLECs must be operational by the FCC's June 6, 2000 deadline;
- DSL loop performance measures must still be established and implemented;
- The DSL loop ordering process must still be simplified and improved;
- *All* vestiges of SWBT's spectrum management policies that favored ADSL must be removed from SWBT's wholesale systems;
- SWBT must fully meet its milestones for the Advanced Services OSS enhancements; and
- The firewall ordered by the Texas Commission in the DSL Arbitration must be put in place.

Instead of showing true progress on these issues, the SWBT supplemental filing descends rapidly into rhetoric and promises. Covad describes in these Supplemental Comments how SWBT has still not fully implemented several of the legal requirements described in the Covad/Rhythms Arbitration Award, the *Line Sharing Award*, the *UNE Remand Order*, and SWBT's December 1999 commitments to the Texas Commission.

It is not impossible for SWBT to meet these steps. This month, Texas Commission staff has hosted several productive collaborative sessions on these and other DSL-related topics. SWBT should direct its efforts instead at solving the issues raised by Covad and other data CLECs in those collaborative sessions.

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**ATTACHMENTS**

Supplemental Declaration of Christopher V. Goodpastor

Declaration of David Rosenstein

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
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**SUPPLEMENTAL COMMENTS OF COVAD COMMUNICATIONS COMPANY**

Recognizing that its original January 10, 2000 application for interLATA authority was fundamentally flawed, on April 5, 2000, Southwestern Bell Telephone Company "supplemented" its application with several hundred pages of new affidavits, exhibits, affirmations, exhortations and proclamations that SWBT is *now* in compliance with the Telecommunications Act of 1996. Despite the fact that CLECs and the Department of Justice had already shown SWBT's lack of compliance, the supplemental filing tries to rebut these points. But a clear read of the supplemental evidence shows that it does little more than restate the same incomplete implementation that was the Achilles heel of SWBT's original application.

SWBT simply cannot wave a magic wand and will itself into compliance. SWBT appears to believe that if a process or procedure is in place, then the problem is solved—

and if the evidence shows that the problem remains, then the fault must lie with some other inconvenient process or the way CLECs do business.[1]

Covad's position in this proceeding remains the same: SWBT must fully implement the legal requirements of the *Line Sharing Order*, the Covad/Rhythms Arbitration Award, and *SBC-Ameritech Merger Order*, the *UNE Remand Order*, and the commitments SWBT made to the Texas Commission in December 1999. In the initial comment cycle, it became obvious to all that this application was premature and was filed before full and verifiable compliance with those legal requirements had been accomplished. All of these requirements are intermingled—for instance, requiring full implementation of line sharing is critical in ensuring a true "apples to apples" comparison in the performance measurement regime. Because of the Covad/Rhythms Arbitration Award and other legal requirements, SWBT is scheduled to implement significant upgrades to its Advanced Services OSS—but the first "upgrade" made on March 18 created significant problems that currently impact CLECs' ability to place xDSL-capable loop orders. While SWBT has agreed to implement changes to its xDSL-capable loop ordering process that might assist in analyzing whether nondiscriminatory access is being provided, those changes, and how those changes will interface with the new enhanced OSS, have yet to be implemented and analyzed.

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[1] One crystal clear example of this mentality is Chapman/Dysart's shocking attempt to explain away the clear lack of parity demonstrated by several key performance measurements, including PMs 58, 60, 62 and 63. Chapman and Dysart blame the fact that CLECs like Covad have contractual rights to a 3-5 installation interval, and that those CLECs "may simply select, and customarily does select the standard interval." Chapman/Dysart Supp. Aff. at ¶ 41. For its own retail ADSL service, SWBT apparently "checks to determine the next available due date based on the availability of an installation technician." *Id.* The implication is that due dates assigned to SWBT's retail orders are more likely to be met than orders for CLEC orders. Of course, if CLECs had complete nondiscriminatory access to those back-office functions (which they do not), SWBT's argument evaporates.

Given this state of flux, three critical components of DSL entry in Texas—line sharing, performance measurements that measure xDSL and BRI ISDN loop installations, and Advanced Services OSS—simply cannot be completely reviewed in this proceeding at this time. As a result, the debate in this proceeding will be limited to the veracity and completeness of SWBT's promises to implement legal requirements, the suspect empirical nature of a performance measurement system that is about to be revamped, and the workings of an Advanced Services OSS system that is about to be scrapped and replaced.

Covad's supplemental comments will refrain from restating issues already addressed by Covad in opening comments, reply comments, and *ex parte* presentations. In addition, because this supplemental comment cycle occurs in the middle of the Texas Commission's review of several important aspects of SWBT's application, including DSL-related performance measurements and line sharing, it will be necessary for Covad to supplement the record on a periodic basis. These supplemental comments, and the attached declarations of Christopher V. Goodpastor and David Rosenstein, focus on the following areas of the Commission's review:

- SWBT is not implementing line sharing in good faith and is planning to miss the Commission's June 6 deadline for implementation (Section I, *infra*; Goodpastor Supp. Decl. ¶¶ 14-20);
- SWBT has not implemented necessary changes to its xDSL-capable loop ordering process (Section II, *infra*; Goodpastor Supp. Decl. ¶¶ 26-28);
- The performance measurement system must still be changed to incorporate xDSL-capable loop issues fully, pursuant to the

Covad/Rhythms Arbitration Award (Section II, *infra*; Goodpastor Decl. ¶¶ 21-25, 29, 60-63);

- Implementation of the Covad/Rhythms Arbitration Award, with particular regard to firewalls required by the Award, is incomplete in other critical matters (Section II, *infra*; Goodpastor Supp. Decl. ¶¶ 49-63);
- SWBT's actual performance still reveals a significant lack of parity and discriminatory conduct (Section III, *infra*; Rosenstein Decl., regarding IDSL technology); and
- SWBT cannot avail itself of any presumption that it is providing xDSL-capable loops on a nondiscriminatory basis by virtue of its advanced services affiliate (Section IV, *infra*).

## I. SWBT IS FAILING TO IMPLEMENT LINE SHARING

When the Commission ordered incumbent LECs to provide line sharing as an unbundled network element, it decided that ILECs should be able to provide line sharing within 180 days, or June 6, 2000. The Commission made the finding on the basis that ILECs were *currently* discriminating against data CLECs by refusing to provide shared line access, and that this discrimination was having adverse anticompetitive effects in the marketplace.

Covad began the process of negotiations with SWBT on November 18, 1999, immediately after the Commission announced its line sharing decision. As described in the attached Goodpastor Declaration, several negotiations have been held between Covad, SWBT and other data CLECs—but those discussions have not been fruitful. Today, Covad and Rhythms filed a Joint Complaint before the Texas Commission in

order to resolve these issues and to get line sharing fully operational in Texas before the June 6 deadline.

The Data CLECs have asked the Texas Commission for expedited resolution of the Joint Complaint. Indeed, SWBT has used every means available to delay implementation of line sharing. SWBT has, for instance—

- Refused to prepare the vast majority of its Texas central offices for line-sharing by the June 6, 2000 deadline;
- Refused to implement line sharing for loops operating over digital loop carrier ("DLC") systems;
- Refused to provide access for testing of line-shared loops;
- Insisted upon charging a monthly charge for the shared loop that greatly exceeds the costs attributed to SWBT in its federal ADSL tariff; and
- Refused to agree to appropriate provisioning intervals.

A complete description of SWBT's failures is contained in the Goodpastor Supplemental Declaration and Exhibit CGS-1, which contains a copy of this complaint. A few points are, however, worth noting here.

*SWBT will miss the June deadline in the vast majority of Texas offices.* Since its April 5, 2000 supplemental filing, SWBT has spent several weeks discussing its line sharing implementation plans with CLECs. What has become apparent is that SWBT does *not* seem to be in a position to support a technically feasible means of line sharing requested by CLECs throughout Texas (and indeed, throughout SBC's entire footprint).

SWBT's supplemental filing specifically states that it will meet the Commission's June deadline only if the competitive LEC will "own and have sole responsibility for"

purchasing, installing, and maintaining the splitter in its own collocation space.[2] The Commission empowered CLECs to request that SBC install and maintain the splitter,[3] and SBC has commited only to deploy line sharing capability by the end of August, 2000—or later if additional "unanticipated events" arise.[4]

It is important to note that SBC advocated a *different* network configuration for line sharing before the FCC last year. In its comments filed in response to the Commission's March 31, 1999 *Advanced Wireline Services Further Notice*, SBC clearly stated that any POTS splitter must be owned and installed by SBC and not by competitors. Indeed, SBC maintained that the law *required* this configuration.[5]

The FCC's Line Sharing Order described and clearly supports a line sharing architecture that would permit competitive LECs to ask the incumbent to install and maintain the splitter. The Commission concluded that ILECs "must *promptly* accommodate, in response to a competitive LEC request to do so, any line sharing technology that meets the deployment criteria established in this proceeding." The Commission stated that it expects that "the incumbent LEC will not delay its actions to

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2 Cruz Supp. Aff. at ¶ 25. As noted, this representation also assumes that the CLEC will require no additional wiring into its collocation space.

3 Frequently, a CLEC deploying a splitter in its cage will have to obtain additional cable pairs into its cage in order to provide advanced services over line shared loops. SBC has refused CLEC requests to adopt expedited intervals for such cable work, and instead has indicated that such work will be performed pursuant to the rollout schedule for its own splitters. Thus, SBC's implementation schedule fails to comply with the *Line Sharing Order* even for its favored network configuration (i.e., CLEC owned splitters).

4 SBC March 7 Letter at 2.

5 SBC stated that splitter equipment "should be provided and managed by the provider of traditional voice service ("POTS") in order to maintain the privacy, reliability, and security of the Lifeline voice service. Such equipment is necessary to comply with privacy laws on voice services." SBC Comments, CC Docket No. 98-147 (filed June 15, 1999) at 27.

procure the necessary equipment, and will inform the requesting carrier of what action it takes, and when the equipment can be installed."[6]

*OSS.* It also appears that SWBT will miss its obligation to provide Covad real-time, electronic access to its OSS for HFPL ("high frequency portion of the loop", or line sharing) UNE orders by June 6, 2000.

The Covad/Rhythms Arbitration Award clearly requires SWBT to develop and implement OSS to allow real-time electronic access to loop make-up information by May 30, 2000. The Award also requires SWBT to "develop and deploy enhancements to its existing Datagate and EDI interfaces to allow for ordering xDSL and other advanced services as soon as possible, but not to exceed six months from the Award in this Arbitration [May 30, 2000]. These enhancements are to ensure that orders for DSL-capable loops flow through at parity with comparable UNE orders, and SWBT's retail or advanced services affiliate's DSL orders." Covad/Rhythms Arbitration Award at 63.

Covad and the other Data CLECs strongly believe that this obligation extends to OSS to support line-sharing, which was ordered by the Commission in the *Advanced Wireline Services* proceeding on November 18, 1999—before the Texas PUC issued the Covad/Rhythms Arbitration Award. To date, *none* of the DSL OSS Plan of Record documents proposed or discussed by SWBT or SBC contemplate meeting this May 30 deadline.

*SWBT's Proposed Line Sharing Rates are Discriminatory.* Supplemental Affiant Auinbauh argues that SWBT's proposed price for HFPL UNE of 50% of the current monthly loop charge is "nondiscriminatory" because SWBT's affiliate ASI must attribute that cost to itself.

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6 *Line Sharing Order* at ¶ 77.

This pricing standard is flatly inconsistent with the *Line Sharing Order* and FCC rules. First, the 50% loop cost ignores the fact that SWBT's federal tariff for its retail ADSL product, which utilizes line sharing, attributed *zero* monthly cost to the loop. In the Line Sharing Order, the FCC concluded that it was "reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing xDSL on a loop already in use for voice services."[7]

The FCC found that this approach to pricing helps avoid a price squeeze in the provisioning of advanced services that would leave CLECs "at a significant competitive disadvantage. By requiring incumbent LECs to provide access to the shared local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services."[8]

Despite the clear relevance of the SWBT federal tariff cost support documentation to determining the forward-looking price of the HFPL UNE, SWBT has refused to disclose that cost support to data CLECs.

SWBT attempts to explain away their 50% loop cost proposal on the basis that its advanced services affiliate, ASI, now attributes that cost to its own services. However, there is no basis in the record to determine that the 50% loop cost has *any* basis in TELRIC pricing, which is clearly required by FCC rules.

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7 *See, e.g., Line Sharing Order* at ¶ 140.

8 *Id.* at ¶ 141.

*Other Issues.* In the *Line Sharing Order*, the FCC concluded that states should require "incumbent LECs to fulfill requests for line sharing within the same interval the incumbent provisions xDSL to its own retail or wholesale customers, regardless of whether the incumbent uses an automated or manual process."[9] In addition, the FCC required that ILECs unbundle the high frequency portion of the loop even where the voice customer is served by DLC facilities.[10] Finally, the FCC specifically stated that CLECs should have direct access to the loop facility for testing purposes.[11] SWBT's proposed line sharing amendment does not comply with these FCC mandates.

*Conclusion: Line Sharing has not been Fully Implemented in Texas.* Absent swift regulatory action by the Texas Commission or the FCC, SWBT is on track to miss, by significant measure, its legal obligation to provide line sharing by June 6, 2000. SWBT's posture—combined with the need for Covad and other CLECs to file for arbitration of this point in several other SBC states—clearly demonstrates that SBC will only implement line sharing when it has to.

It is clear that SBC's statement in the supplemental filing to provide line sharing "to affiliated and unaffiliated providers" by May 29 is a hollow commitment. It is clear to Covad that the Section 271 process is the *only* reason why SWBT even continues to talk about line sharing implementation. Unless events dramatically change course in the next few weeks, the Commission will be faced with a most undesirable choice in July—

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9 *Line Sharing Order* at ¶ 143.

10 *Id.* at ¶ 91.

11 The FCC ruled that "incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed to provide physical access for testing purposes." *Id.* at ¶ 118.

whether it should approve interLATA authority for a BOC that is in violation of an explicit FCC Order.

## II. SWBT HAS NOT FULLY IMPLEMENTED NECESSARY CHANGES TO ITS ORDERING PROCESSES, THE COVAD/RHYTHMS ARBITRATION AWARD, AND OTHER COMMITMENTS

A complete review of the record recently gathered by the CLECs and the Texas Commission clearly reveal that SWBT still must take several steps to fully implement necessary and required changes to its processes. [12] Since SWBT's supplemental filing, the Texas Commission has convened several collaborative sessions to discuss a variety of xDSL-capable loop issues, advanced services OSS, and implementation of SWBT's December 1999 commitments and the Covad/Rhythms Arbitration Award. The attached Supplemental Declaration of Christopher V. Goodpastor describes in detail several of the issues that must still be resolved.

### A. Revisions to the Performance Measurement System

The Covad/Rhythms Arbitration Award clearly required changes to the Texas performance measurement reporting system to encompass fully xDSL-capable loop issues. As Covad has previously stated in this docket, that process began earlier this year and continues to this day.

The Goodpastor Supplemental Declaration describes the results of collaborative sessions held in April 13-14, 2000. During this session, Texas Commission staff indicated their opinion that SWBT's performance under new DSL-related performance measurements should be based upon benchmarks, and not upon the "parity" standard (on

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[12] Several legal requirements overlap significantly. As a result, this discussion lumps together issues that may in part relate to implementation of SWBT's December 1999 commitments and in other part relate to the Covad/Rhythms Arbitration Award.

which the Chapman/Dysart Supplemental Affidavit rely). Concern was expressed that the number of "stand-alone" DSL loop orders that SWBT's advanced services affiliate, ASI, had committed to order in Texas would be insufficient to make or infer a finding of nondiscriminatory access.[13] The Texas Commission has not yet established what those benchmarks will be, let alone receive and review actual performance reports from SWBT on its compliance with those benchmarks.[14]

One DSL-related performance measurement that still needs to be addressed is FOC performance for DSL loops. One of the major flaws in SWBT's original application, pointed out by the DOJ and CLECs, is that SWBT simply failed to monitor its FOC performance for DSL loops. SWBT has now unilaterally begun to track its delivery of FOCs to CLECs, through new PM 5.1. However, the business rules for that measurement have not been finally approved by the Texas Commission, and there are significant problems in how SWBT currently tracks its performance.[15]

Finally, with regard to performance measurements for line sharing, remote terminal access, and subloops, even SWBT admits that its own processes for access to those UNEs is not "defined clearly enough" so as to develop performance measurements.[16]

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13 Goodpastor Supp. Decl. ¶ 24.

14 Goodpastor Supp. Decl. ¶¶60-63.

15 Goodpastor Supp. Decl. ¶¶ 29-30. In particular, the business rule SWBT is using tracks FOC performance from the time SWBT's engineer provides a loop qualification result to SWBT's Local Service Center, or LSC. There is no means for CLECs or regulators to monitor or track when one division of SWBT provides information to another division of SWBT. At best, PM 5.1 tracks how efficient one division of SWBT is in processing a loop order—but it does not track how SWBT's process works in the aggregate.

16 Goodpastor Supp. Decl. n.11 (quoting SWBT witness Chapman at April 13 collaborative).

In short, although Chapman and Dysart claim that SWBT has made the Covad/Rhythms Arbitration Award "the basis of SWBT's xDSL-related performance measurements" and that the "intervals established by the arbitrators" are now used by SWBT to measure its Texas performance,[17] that is simply not the case. Even a casual glance at the 800-page transcript of the April 13-14, 2000 collaborative session in the Arbitration docket reveals that a lot of work must still be done to establish appropriate benchmarks, let alone begin to measure and judge SWBT's actual performance.

### B. Revisions to the xDSL-Capable Loop Ordering Process

There is no need for Covad to belabor this document with yet another recitation of the "one-step", "two-step", "supplement" and "as-is" methods of ordering xDSL-capable loops in Texas. Suffice it to say—these processes are confusing, do not meet the business needs of data CLECs like Covad that are seeking to scale their business, and complicate the current performance measurement system to the point that wholesale categories of Covad and data CLEC loops orders are simply not tracked.[18]

In the April 14 collaborative, SWBT (through Ms. Chapman) orally agreed to develop an ordering process that would permit CLECs to place a loop order without having that loop subjected to SWBT's loop qualification review and that would permit the CLEC to pre-authorize any conditioning that would be needed on this loop.[19] Such a process—when implemented—would finally provide Covad a mechanism to place an order with SWBT that would not need further supplementation if Covad needed conditioning on a loop that SWBT considered to be "non-standard" (i.e., the loop would

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[17] Chapman/Dysart Supp. Aff. ¶ 99.

[18] Those keenly interested in a further education on this topic can read the Goodpastor Supp. Decl. ¶¶ 26-28, 44, and *passim*.

not support internal SWBT spectrum management principles). None of the processes currently available to CLECs offer this functionality: The "two-step" process requires at least two entries by the CLEC; the "one-step" process oftentimes requires two entries by the CLEC, based upon SWBT's loop qualification examination; and the "as is" process will frequently provide CLECs with nonconditioned loops, thereby requiring the CLEC to supplement the order or place a trouble ticket.

Although SWBT has now orally agreed to change this process, that change has not yet been implemented. Only after this important change is made (in conjunction with changes to the performance reports) will the FCC be in a position to fully understand and analyze SWBT's xDSL-capable loop performance.

### C. Elimination of SWBT's Spectrum Management Policies

As part of SWBT's December 1999 commitments and its compliance with the Covad/Rhythms Arbitration Award and the *Line Sharing Order*, SWBT is required to dismantle all elements of its selective feeder distribution and binder group management systems. SWBT's supplemental filing (the Meierhoff Affidavit) describes changes SWBT claims to have made in December 1999 to its LFACS system in Texas.

However, SWBT's discriminatory spectrum management policy was always about more than designating particular loops in LFACS. As Covad discovered in the DSL Arbitration, SWBT's spectrum management system was part of an overall corporate policy to favor the deployment of ADSL services over other forms of DSL. Since SWBT's retail focus is upon ADSL services, while data CLECs also provide other DSL flavors, this built-in preference for ADSL deployment is discriminatory in its intent and effect.

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[19] Goodpastor Supp. Decl. ¶ 28.

Even today, SWBT's DSL loop ordering process favors orders for DSL loops that will be equipped with ADSL technology over DSL loops that will be equipped with other DSL technologies.[20] SWBT accomplishes this objective by requiring CLECs to attach PSD masks for "one-step" and "as is" loop orders and by screening those orders with its red/yellow/green loop pre-qualification tool. For loops that test "green"—i.e., orders that meet SWBT's retail ADSL parameters—SWBT will begin provisioning. For loops that test "yellow" or "red", SWBT will require the CLEC to supplement the order (if the CLEC uses the "one-step" process) or will provide the CLEC with a nonconditioned loop (if the CLEC uses the "as is" process), which leaves the CLEC in limbo as to whether it will obtain a functional loop. These screens and qualification processes are undertaken in part by reference to draft spectrum management standards, despite the ruling in the Covad/Rhythms Arbitration Award that "national standards or industry-wide accepted standards shall govern the provisioning of xDSL services"[21] And that CLEC PSD information shall be used by SWBT solely "for inventory purposes."

The end result is that regardless of the method used to order a DSL loop, orders for loops that will be equipped with ADSL technology receive preferential treatment.[22] This is the core of the discrimination manifest in SWBT's spectrum management policy.

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[20] Goodpastor Supp. Decl. ¶¶ 33-38.

[21] Covad/Rhythms Arbitration Award at 38. The Award also requires that SWBT not depend on internal Technical Publications for accepting or rejecting orders until those publications have been approved by the Texas Commission. During the April 13-14 collaborative session, the parties discussed a SWBT publication that indicated that SWBT uses its internal Technical Publications as part of its loop qualification process. Those Technical Publications have not approved by the Texas Commission and appear to be another remnant of SWBT's spectrum management policies. *See* April 13-14 Collaborative Session, Exhibit 2; April 13-14 Tr. at 695-733.

[22] As Goodpastor points out, this issue will become even more important from a competitive perspective because when SWBT's advanced services affiliate, ASI, begins to use the DSL loop ordering process, ASI's orders are more likely to flow through without subsequent manual intervention because

As discussed above, it now appears that SWBT may begin to change its ordering process to avoid the Hobson's Choice CLECs must now face. However, that change has yet to be implemented. Until that change is made, and until SWBT stops using PSD masks and the red/yellow/green tool to screen CLEC loop orders, the remnants of SWBT's discriminatory spectrum management policy remain in place.

### D. Other Loop Qualification, Ordering and Acceptance Issues

Paragraphs 39-48 of the Goodpastor Supplemental Declaration describe other facets of SWBT's December 1999 commitments as they relate to Covad's ability to access xDSL-capable loops on a nondiscriminatory basis. This discussion, based upon the April collaboratives hosted by the Texas Commission, demonstrates further the points made above that SWBT's processes favor ADSL deployment over other forms of DSL, that SWBT's planned upgrades to its Advanced Services OSS continue to have significant bugs, and that several issues related to acceptance testing still need to be worked out.

### E. SWBT's Planned Advanced Services OSS Deployment

One of the most important requirements of the Covad/Rhythms Arbitration Award was the Texas Commission's requirement that SWBT provide real-time, electronic access to loop makeup information.[23] SWBT has indicated in its supplemental filing and before the Texas Commission that it plans to launch these required upgrades on schedule. As described in the Goodpastor Supplemental Declaration, Covad is very concerned that the scheduled OSS changes will not be fully functional upon this launch.

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SWBT's wholesale red/yellow/green pre-qualification tool was designed with ASI's ADSL technology in mind. Goodpastor Supp. Decl. ¶ 36.

[23] *See* Goodpastor Supp. Decl. ¶¶ 50-52.

As discussed in other filings in this proceeding, significant problems have already been encountered with SWBT's March 18 scheduled upgrade to its loop qualification OSS. At the April 13, 2000 collaborative, SWBT witness Chapman admitted to these difficulties and stated that "I don't know if we are going to be able" to correct the problems because SWBT is "still isolating the issues to make sure that everything gets taken care of."[24]

This experience is a clear example of the need for the FCC to "look before it leaps." Changes to OSS are complicated and do not always go as planned. The FCC must closely monitor the implementation milestones SWBT has committed to in this proceeding that are approaching and examine fully whether those OSS "enhancements" actually have the effect intended by the regulatory requirements.

### F. SWBT's Failure to Implement Firewall Required by the Award

Yesterday, the Texas Commission issued Order No. 7 in the Covad/Rhythms Arbitration proceeding, in which the Texas Commission ordered SWBT to file a new proposed "firewall" plan by May 1, 2000. In doing so, the Texas Commission has decided that SWBT's proposed firewall (described in the Chapman/Dysart Supplemental Affidavit ¶ 98) inadequately implements the Arbitration Award.

As discussed by Covad in its opening comments and the Goodpastor Supplemental Declaration ¶ 54, the Covad/Rhythms Arbitration uncovered several instances of actual discrimination and misuse of wholesale CLEC information. It was to remedy these instances of actual discrimination and misuse that the Texas Commission ordered SWBT to submit a comprehensive firewall proposal that would ensure that no

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[24] Goodpastor Supp. Decl. ¶ 51 (quoting Chapman at TX Collaborative).

SWBT employees be assigned to both wholesale and retail tasks and that would restrict the flow of information between those wholesale and retail operations.

SWBT's response to this order was to file a "draft" letter that reiterated *existing* SWBT corporate policies. At the April 14 collaborative session, SWBT argued that this pre-Arbitration Award policy was sufficient to meet the Award's requirements. However, SWBT's existing corporate policy clearly did not prevent the actual instances of discrimination and abuse discovered in the arbitration from happening, and it is clear that the Texas Commission intended SWBT to change the manner it handled CLEC information and SWBT's wholesale and retail operations.[25]

Covad looks forward to commenting on SWBT's May 1, 2000 filing, to see whether it will fully implement SWBT's obligations under the Award. In the meantime, SWBT is clearly not in compliance with the Award.

### G. Failure to Implement the DLC Workaround Required by the Award

The Chapman/Dysart Supplemental Affidavit does not discuss a significant change in SWBT's process ordered in the Covad/Rhythms Arbitration Award and the *UNE Remand Order*—the "DLC workaround" process.

Because DSL can only work over "plain copper" wires, the presence of a fiber-fed digital loop carrier ("DLC") system in a loop limits the types of DSL that may be provisioned over such loops.[26] Covad's interconnection agreement clearly states:

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[25] Indeed, the Award clearly states that these issues "must be further addressed," Covad/Rhythms Arbitration Award at 61, which indicates that the arbitrators were not satisfied with SWBT's methods of doing business.

[26] Covad seeks to provide IDSL services where fiber-fed loops are the only option. IDSL offers, however, limited bandwidth of 144 kbps.

> In locations where SWBT has deployed (1) Digital Loop Carrier ("DLC") systems and an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop; (2) Digital Added Main Line ("DAML") technology to derive two voice grade POTS circuits from a single copper pair; or (3) entirely fiber optic facilities to the end user, SWBT will make the following options available to CLEC...
>
> [(1) W]here spare copper facilities are available . . . CLEC has the option of requesting that SWBT make copper facilities available . . .
>
> [(2)] In addition, CLEC has the option of collocating a [DSLAM] in SWBT's RT . . . .
>
> [(3)] Where CLEC is unable to install a DSLAM at the RT or obtain spare copper loops necessary to provision an xDSL service, and SWBT has placed a DSLAM in the RT, SWBT must unbundle and provide access to its DSLAM.
> Para. 4.1.5 of Covad IA.

Shortly after the Interconnection Agreement became effective, Covad requested the DLC workaround for several DSL-capable loop orders the SWBT had initially rejected because of the presence of DLC. SWBT initially refused to honor Covad's request. SWBT recently agreed orally to provide the DLC solutions contained in Covad's interconnection agreement, but implementation has still not occurred.

### H. Summary and Conclusion

A lot more work must still be done before the Commission can find that SWBT has fully implemented its current legal obligations. Final performance measures for xDSL-capable loops have yet to be defined—let alone be refined enough to support a finding of nondiscriminatory access. Significant questions remain as to whether SWBT has in fact dismantled all elements of its pre-existing corporate policy that favored ADSL deployment over other xDSL technologies. A promised change to the ordering process has not been implemented at this time. SWBT has yet to file a firewall plan that meets the letter and spirit of the Covad/Rhythms Arbitration Award. Significant and major

changes to SWBT's Advanced Services OSS are scheduled to be made in the next month—changes that will significantly change the method in which CLECs order xDSL-capable loops in Texas. And SWBT, along with its other SBC ILEC compatriots, does not appear ready to fully implement the Commission's *Line Sharing Order* statewide by the June 6 deadline.

Covad's position is simple: these issues need to be resolved before granting SWBT interLATA authority.

## III. SWBT'S PERFORMANCE REPORTS STILL REVEAL SIGNIFICANT DISCRIMINATION

In the initial round of comments in this proceeding, Covad, other CLECs, and the DOJ described several instances in which SWBT's own performance reports indicated significant discrimination in the provision of unbundled loops to advanced service providers. As the Department of Justice observed, "these performance reports show a service environment in which CLECs attempting to compete against SBC's retail DSL services are *seriously disadvantaged* at present by SBC's *inadequate wholesale performance*, and may well *face greater disadvantages in the future* if SBC's performance continues to decline in the face of higher volumes of CLEC orders."[27]

SWBT's supplemental filing once again relies on these "fundamentally flawed" performance reporting systems in an attempt to make the case (once again) that it is providing nondiscriminatory access to unbundled, xDSL-capable loops.[28]

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[27] DOJ Evaluation at 23 (emphasis added).

[28] Keeping in mind the Commission's advice in the April 7 *Public Notice* in this proceeding that parties "not reiterate comments previously filed," Covad simply points out that the same significant DSL loop data collection and compilation issues that undermined SWBT's first four sets of performance reports (October 1999, November 1999, December 1999, and January 2000) that were filed in this docket are equally applicable to the February 2000 performance reports (discussed in the Chapman/Dysart Supplemental Declaration). These criticism will no doubt apply to the March 2000 report and to all future

### A. SWBT's Discriminatory Provision of DSL Loops

In particular, Chapman and Dysart discuss SWBT's performance with regard to **PM 55.1, Average Installation Interval**. However, that measure still does not capture all of the DSL loops provided to CLECs in Texas. In particular, SWBT Affiant Habeeb states that SWBT has provided 2617 DSL loops in Texas,[29] yet PM 55.1 only reports SWBT's performance on 1573 of those loops, approximately 60%.[30] Covad's carrier-specific report (Confidential Exhibit CGS-9) reveals that a significant number of Covad's loops are not tracked by this measurement. In addition, the business rule for PM 55.1 is currently being reviewed by the Texas Commission as part of the DSL Arbitration Implementation proceeding. As a result, no reliable conclusion should be drawn from this metric at this time.

With regard to **Average Response Time for Loop Make-Up Information (PM 57)**, SWBT's average response time since changing the business rule to the proper measurement has been 4.14 business days.[31] What is important about this calculation is that this average response time is substantially longer than the three business day interval established in the Covad/Rhythms Arbitration Award.

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reports until the changes to the DSL-loop related performance measurements required by the Covad/Rhythms Arbitration Award are incorporated into the performance reporting system.

[29] Habeeb Supp. Aff. at ¶ 10.

[30] Indeed, there is internal discrepancy between SWBT's reports and Habeeb's figure. The February 2000 report for PM 65-08 indicates that since September, SWBT has provided 5953 DSL circuits. If that is the correct number of DSL loops provided to data CLECs, then PM 55.1 only tracks 26% of CLEC DSL loop orders. Habeeb's figure is close to the number of DSL circuits reported in PMs 58-09, 60-08 and 63-09 (2618 since August 1999). However, a different DSL loop number is found in PM 59-08 (2582 DSL circuits since August 1999).

[31] The average response time reported by SWBT for January and February 2000. Chapman and Dysart improperly calculate an "average response time" of 2.9 business days by including months August-December 1999—months in which SWBT calculated this metric incorrectly.

As discussed above and in paragraphs 29-30 of the Goodpastor Supplemental Declaration, SWBT's *proposed* business rule for **xDSL-Capable Loop FOCs (PM 5.1)** does not meet CLEC business needs.

Several of SWBT's performance reports contain considerable *indicia* of discrimination for DSL loops. **Percent SWBT Caused Missed Due Dates (PM 58-09)** reveals that CLECs are 2.5 times more likely to have SWBT miss a due date than SWBT retail—and that this performance deteriorated in February 2000. The report for **Percent Trouble Reports within 30 Days (PM 59-08)** reveals a similar deterioration in service quality. Indeed, since August 1999, data CLECs have been **twelve times more likely** to have a DSL loop due date missed than SWBT retail **(PM 60-08)**—performance that has significantly deteriorated from November 1999 through February 2000.

These are not "limited exceptions", as Chapman and Dysart claim.[32] PM 60-08 was based upon upon a DSL loop sample size of over 2600 loops. Chapman and Dysart argue that their non-parity performance for PMs 58-09 and 60-08 are in part the result of "apples-to-oranges" comparison because SWBT's retail operations provide services through line-sharing.[33] This argument does not address the point that the measure clearly shows that SWBT's provisioning of "stand-alone" loops under these measures has significantly deteriorated over the last several months.

Chapman and Dysart also attempt to explain away these significant performance problems by arguing that CLECs actually expect due dates SWBT promises to them through the installation interval provided in their interconnection agreement—due dates

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32 Chapman/Dysart Supp. Aff. ¶ 31.

33 *Id.* at ¶¶ 33-39.

that SWBT apparently cannot always meet due to work force availability.[34] Of course, this argument begs the question as to whether SWBT has assigned sufficient personnel to installing loops in general. In addition, this argument also reveals that SWBT's retail operation continues to have superior access to SWBT's wholesale "work force availability" information in a manner that SWBT is able to provide its retail operations more accurate due dates than it provides to CLECs. Indeed, paragraph 40 of the Chapman/Dysart Supplemental Affidavit presents a good case study as to why full, nondiscriminatory access to OSS and wholesale operations is absolutely critical to maintaining a level playing field between CLEC and ILEC retail operations—and also provides a strong argument in support of analyzing ILEC performance not simply against "parity" but also against some minimum quality-of-service benchmarks.

### B. SWBT's Discriminatory Provision of BRI ISDN Loops

SWBT's performance reports continue to make clear arguments raised by CLECs and the DOJ earlier in this proceeding that CLECs receive discriminatory access to BRI ISDN loops.

Chapman and Dysart admit that SWBT does not meet its **BRI ISDN installation interval benchmark** found in PM 55-03 and PM 56-03.[35] Chapman and Dysart attempt to turn these two benchmark performance measures on their head by comparing them to the retail provisioning of ISDN service to SWBT customers.[36] Chapman and Dysart do

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34 *Id.* at ¶ 40.

35 Chapman and Dysart call the Texas Commission's BRI ISDN loop benchmark "unreasonably ambitious." Chapman/Dysart Supp. Aff. ¶ 46. It would appear from this comment that SWBT is asking the FCC to substitute its judgment for the Texas Commission's as to the reasonableness of this important benchmark.

36 Chapman/Dysart Supp. Aff. ¶¶ 44-46.