not describe the fact that providing a retail ISDN service to a customer involves more than loop installation, it includes provisioning an ISDN port and customer premises equipment as well.

Chapman and Dysart also admit that SWBT has consistently been out of parity for **Percent Missed Due Dates (PM 58-04)**, **Percent Due Dates-Facilities (PM 60-03)**, and **Percent Missed Due Dates-Facilities >30 Days (PM 63-04)**. Once again, Chapman and Dysart blame the fact that CLEC interconnection agreements have a three day installation interval while SWBT sells retail ISDN service in five business days. Once again, Chapman and Dysart do not explain the fact that providing retail ISDN service to a customer involves more than providing a loop, it also includes an ISDN port and customer premises equipment. In general, SWBT's criticism of these performance measurements amounts to little more than second-guessing of the Texas Commission's installation intervals and performance reporting benchmarks.

SWBT directs its explanation for sub-parity performance with regard to BRI loop quality, installation and repair measurements **(PMs 59-03, 65-03, 67-03, and 69-03)** in several directions. SWBT first asks that the FCC accept its argument that the three day installation interval for BRI ISDN loops is simply too short.[37]

Chapman and Dysart also argue that "Incompatibility with IDSL" plays a significant role in SWBT's quality, maintenance and repair measurements. In particular, Chapman and Dysart describe "provisioning difficulties" that are related to how CLEC

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[37] *Id.* at ¶ 51. In particular, SWBT states BRI ISDN loop quality suffers because "SWBT lacks sufficient time" to install functional BRI loops within three days. This is close to saying that SWBT intentionally chooses to provide non-functional loops to data CLECs in order to avoid missing a loop delivery interval.

IDSL technology operates with certain SWBT digital loop carrier ("DLC") systems.[38] The attached Declaration of David Rosenstein rebuts these arguments. The Rosenstein Declaration shows that several of the statements made by Chapman and Dysart are factually incorrect and demonstrate a lack of understanding of the engineering issues involved. In particular—

- If a loop meets the appropriate industry standard, Covad's IDSL service will work over that loop;
- SWBT is contractually obligated to provide Covad (and other data CLECs) with unbundled loops that meet the relevant standard so as to support ISDN and IDSL services;
- Certain slots on a particular DLC system deployed by SWBT in Texas (the Marconi DISC*S) do not, in fact, provide a loop that meets the relevant industry standard to the point that IDSL technology will not function properly;
- The fact that SWBT has chosen to deploy a DLC system that does not always provide a compliant loop is SWBT's fault, not the fault of the CLEC; and
- A slot in the same DISC*S DLC system also does not support ISDN services as well, and incumbent LECs have already developed and implemented a "work around" for retail IDSN services that should be utilized for CLEC IDSL technology as well on a nondiscriminatory basis;

The Rosenstein Declaration provides a comprehensive discussion of these issues also discusses why the three "viable options" proposed by Chapman and Dysart in paragraphs 58-62 of their Supplemental Affidavit are indeed not viable. Rosenstein proposes a work-around for this issue that is nondiscriminatory, because it would treat

[38] *Id.* at ¶¶ 52-62.

CLEC IDSL technologies in the same manner that ILECs treat their own retail ISDN services, which face a similar issue with the Marconi DISC*S system.[39]

In general, the FCC should reject SWBT's invitation to pass blame for its record of poor BRI ISDN loop provisioning onto "unreasonable" installation intervals established by the Texas Commission or by "IDSL incompatibility" problems caused by equipment SWBT has chosen to deploy in its own local loop plant. Whether SWBT has the ability to meet the its contractual obligations is entirely within its control—and if SWBT cannot meet those obligations, SWBT should not be asking for interLATA authority. Similarly, SWBT is contractually obligated to provide digital loops that meet the relevant industry standard—and if SWBT chooses to deploy a DLC system that often does not cannot provide a compliant loop, SWBT must deal with the consequences of that decision.

IV. ADVANCED SERVICES AFFILIATE ISSUES

SWBT's supplemental filing has provided further information on the establishment and operational status of its advanced services affiliate, ASI. In general, Covad's position on whether this affiliate entitles SWBT to the presumption described in the *Bell Atlantic New York Order* remains the same as the position taken in opening and reply comments. In light of the April 7 *Public Notice*'s request, Covad will not restate those arguments here.

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[39] Even taking SWBT's arguments about the impact of the Marconi DISC*S system at face value, it is very difficult to determine that the significant discrimination issues regarding BRI ISDN loops could be accounted for solely by virtue of this issue. This topic was discussed at an April 25, 2000 collaborative session before Texas Commission staff, and, as described in the Goodpastor Supplemental Declaration, SWBT admitted that the Marconi DISC*S DLC was deployed to only approximately 10% of Texas loops. Since the compatibility issue is manifest in less than half of the slots in the Marconi system, this issue should only account for less than 5% of CLEC BRI ISDN loops in Texas. *See* Goodpastor Supp. Decl. ¶ 66.

Covad does note the following issues raised by SWBT's supplemental filing and recent events:

- Covad agrees with sentiments expressed by Texas Commission staff during the April 13-14 collaborative process that the 280 "stand-alone" loop orders ASI pledges to place in Texas per month in the next few months (Brown Supplemental Aff. ¶ 22) will not be sufficient to demonstrate parity in SWBT's pre-ordering, ordering, and provisioning systems.[40]
- Even with ASI's commitment to order 280 stand-alone loops in April 2000, the FCC will not be in a position to examine whether SWBT actually provided those stand-alone xDSL-capable loops on a nondiscriminatory basis until after May 20, 2000[41]—after the supplemental comment cycle in this proceeding closes.
- Covad looks forward to examining and providing comment on SWBT's May 1, 2000 filing in response to the Texas Commission's Order No. 7 in the Covad/Rhythms Arbitration Docket.
- The unbundled loop experience of ASI in Texas is minimal. Paragraph 21 of the Brown Supplemental Affidavit indicates that ASI had processed 20 UNE loop orders in Texas for Frame and Cell Relay services, and that it estimated that it would submit approximately 20 more for those services.[42]

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[40] *See* Goodpastor Supp. Decl. ¶ 24, n.12.

[41] Covad understands, based upon the original Dysart Affidavit in this proceeding, that SWBT generates its performance measurement reports on the twentieth of each month.

[42] Brown Supp. Aff. ¶ 21 ("ASI has received in excess of 700 request [sic] for new Frame Relay and Cell Relay services, of which more than 200 are for Texas customers. ASI has processed 20 LSR's in

V. CONCLUSION

With regard to its checklist obligation to provide nondiscriminatory access to unbundled, xDSL-capable loops, SWBT was not in compliance on January 10, 2000, when it filed its original application. SWBT was not in compliance on February 22, 2000, when it filed its reply comments. And SWBT was not in compliance on April 5, when it filed its supplemental evidence.

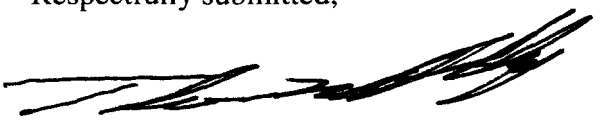
SWBT's April 5 supplemental filing simply presents more of the same verbal affirmations and excuses—affirmations that it will comply with its legal requirements and excuses as to why its performance to date has missed the mark. In these Supplemental Comments, Covad has shown that a lot of work still 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.

Texas for UNE loops . . . . Based on a preliminary estimate of initial Frame Relay and Cell Relay orders, approximately 10% of new requests for Frame Relay and Cell Relay service will require a UNE loop").

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. Rather than spend energy attempting to convince the FCC that the Texas Commission has required an "unreasonable" loop installation interval,[43] SWBT should direct its efforts instead at solving the issues raised by Covad and other data CLECs in those collaborative sessions.

Respectfully submitted,



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Dated: April 26, 2000

[43] *See* Section III.B, *supra.*

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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 DECLARATION OF CHRISTOPHER V. GOODPASTOR ON BEHALF OF COVAD COMMUNICATIONS COMPANY

SUPPLEMENTAL DECLARATION OF CHRISTOPHER V. GOODPASTOR

1. My name is Christopher V. Goodpastor. I am over 18 years of age and am competent to make this declaration. The statements in this declaration are true and correct. I am Senior Regional Counsel for Covad Communications Company, and my responsibilities include Covad's entry into Texas. I have previously filed two Declarations in this proceeding, attached to Covad's Opening Comments and Reply Comments.

2. The purpose of this Supplemental Declaration is to update the FCC record on recent filings and events before the Texas Public Utility Commission that relate to Southwestern Bell Telephone Company's ("SWBT's") implementation of various legal requirements.

3. It is clear that as of this writing, SWBT *has not* fully implemented all of the legal requirements of the Covad/Rhythms Arbitration Award, the *UNE Remand Order*, the *Line Sharing Order*, and the *SBC/Ameritech Merger Conditions*. Covad's position has been that all of these legal requirements must be fully implemented and SWBT must make a factual showing of actual, nondiscriminatory conduct for a period of at least three months before the FCC grants interLATA authority in Texas.

4. This Supplemental Declaration will address the state of competition in Texas and several areas of current noncompliance by SWBT, including the following:

- SWBT is not "on track" to fully implement DSL line sharing by the June 6, 2000 deadline;
- Necessary revisions to SWBT's performance measurement system for xDSL-capable loop issues have not been put in place;

- SWBT has not implemented promised changes to its xDSL-capable loop ordering processes that would facilitate timely provisioning; and
- SWBT has not shown that it has implemented all aspects of the December 16, 1999 commitments it made to the Texas Commission, particularly with regard to its spectrum management policies and its ordering processes; and
- SWBT has not fully implemented the Covad/Rhythms Arbitration Award. In particular, SWBT has not implemented the "firewalls" required by the Texas Commission in that proceeding.

As a result, SWBT should not be granted interLATA authority at this time.

The Status of DSL Competition in Texas

5. Contrary to statements in SWBT's supplemental filing, the state of DSL entry in Texas remains precarious.

6. Covad does not dispute SWBT's contention that demand for xDSL-capable loops in Texas from CLECs is growing strongly.[1] However, Covad takes strong issue with Mr. Habeeb's overly broad contention that this is indicative of competition in "the high-speed data market"[2] and the statement in the Chapman/Dysart Supplemental Affidavit that data CLEC entry "has been made possible only by SWBT's provision of nondiscriminatory access to xDSL capable loops.[3]

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1 Habeeb Supp. Aff. ¶¶ 10-14.

2 Habeeb Supp. Aff. ¶ 10.

3 Chapman/Dysart Supp. Aff. ¶ 16.

7. Covad's growth in Texas has occurred *in spite of* SWBT's discriminatory practices. Indeed, the fact that customers still want Covad's DSL services—despite overly complicated and stifling manual OSS systems, despite a discriminatory provisioning process that favors ADSL, and despite repeated breaches of contract—is indicative of SWBT's clear failure to provide Texas consumers the bandwidth they have been demanding for years. An alternative way to interpret the same data described by Habeeb, Chapman and Dysart is to conclude that SWBT has been successful in choking off competitive entry for so long that consumer demand for broadband services in Texas has reached the breaking point.

8. SWBT's data also does not provide enough information for the FCC to make a complete competitive analysis. SWBT's data in no way compares the scope of Covad and CLEC entry to SWBT's provision of ADSL or other broadband services, so the Commission can perform a market share or similar comprehensive competitive analysis. SWBT's affiants also do not examine the scope of SWBT's ownership of bottleneck facilities, such as local loops, which is another *indicia* of market power and barriers to entry that the FCC has utilized in competitive analysis in the past. Most notably, while the supplemental affidavits claim that a certain number of xDSL-capable loops have been provided to data CLECs, the affidavits do not fully discuss the timeliness of SWBT's provisioning of those loops.[4] Clearly, in making an assessment as to whether data CLECs have a meaningful opportunity to compete in the market, the timeliness of provisioning is a critical factor.

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[4] Indeed, as discussed in Covad's Supplemental Comments, the Chapman/Dysart Supplemental Affidavit admits that several wholesale provisioning metrics reveal a lack of parity.

9. Without a complete competitive analysis to support their argument, Habeeb, Chapman and Dysart cite (but do not attach) a newspaper quote from Covad's Executive Vice President and General Counsel as proof that the market is competitive. A copy of that article, printed out from the Austin American Statesman's web site, is attached as Exhibit CGS-1 to this Supplemental Declaration. Far from being the rosy picture of DSL entry in Texas that SWBT would have you believe, the article also describes the true barriers Covad and other data CLECs face in Texas.

10. In particular, Covad's ability to provide residential consumers in Texas mass market broadband services has been stifled by SWBT's unilateral refusal to provide line sharing. The article clearly quotes Covad's general counsel as stating that "The (local phone companies) are cleaning our clocks in the residential area," because of incumbent LEC refusals to provide line sharing. The FCC recognized the clear anticompetitive impact of this discriminatory situation when it ordered that SWBT provide line sharing in the *Advanced Wireline Services* proceeding last November. As discussed below, it remains to be seen whether SWBT will fully and faithfully implement that order by the June 6, 2000 deadline.

11. To the extent the Commission wishes to rely upon anecdotal evidence in its assessment of competition in Texas, the Commission should also be aware of the real world impact the lack of competition is having in Texas. Independent ISPs in Texas are already feeling significant competitive pressure due to SWBT's overtly discriminatory practices. Exhibit CGS-2 contains a few press clippings which only begin to describe the instances of price squeeze and customer theft that SWBT is imposing on independent ISPs.

12. Finally, Exhibit CGS-3 contains an affidavit of an end-user of DSL services in Texas. This affidavit demonstrates that SWBT appears to have placed third-party (non-SWBT) DSL orders "on hold" in March 2000, until all Internet customers requesting SWBT's retail $39.95 promotional rate were connected to SWBT's retail ISP. Covad has raised this issue before the Texas Commission, and SWBT may still be practicing this overtly discriminatory conduct today.

13. In short, the Texas market is far from competitive. SWBT has not provided "unequivocal proof that the xDSL market is open in Texas."[5] By its actions in the market, SWBT has shown its willingness to utilize its market power over local loop facilities not only to delay and impede Covad's competitive entry but also to gain market share in the ISP business.

Delayed Implementation of Line Sharing

14. SWBT spends a considerable amount of effort in its Supplemental Filing describing the efforts it is making to meet the June 6, 2000 line sharing deadline. Covad's experience in implementation of the *Line Sharing Order* with SBC is far from the picture painted in the Cruz and Auinbauh Supplemental Affidavits.

15. Today, Covad and Rhythms (two of the three largest data CLECs) filed a joint Complaint for Post-Interconnection Dispute Resolution and Request for Interim Ruling against SWBT (and GTE) before the Texas Commission. In that complaint, the data CLECs argued that SWBT's proposal to implement line sharing does not meet the FCC's *Line Sharing Order.*

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[5] Chapman/Dysart Supp. Aff. ¶ 18.

16. The data CLECs have asked for expedited consideration of this Joint Complaint. Pursuant to Texas Commission rules, it is anticipated that the Texas Commission will hold a hearing on the merits on May 11 – 12, 2000.

17. The Joint Complaint spells out the significant resistance data CLECs have faced with SBC in implementing line sharing. Covad initiated negotiations with SBC region-wide on November 18, 1999, immediately after the FCC announced its decision ordering line sharing. The Joint Complaint lists the following significant issues in which SWBT's proposal fails to meet its legal requirements:

- SWBT has only agreed to make a technically feasible and preferred form of line-sharing available in only a minority of Texas central offices for line-sharing by the June 6, 2000 deadline.
- SWBT has refused to implement line-sharing for loops operating over digital loop carrier ("DLC") systems;
- SWBT has refused to allow access to testing of the line-shared loop, despite the clear requirement found in ¶ 118 of the FCC *Line Sharing Order* that it do so;
- SWBT insists that data CLECs pay a price for the shared loop of 50% of the monthly "stand-alone " loop rate.[6] This rate greatly exceeds the cost that SWBT has attributed to the line-shared loop in its federal ADSL tariff; and
- SWBT has refused to agree to appropriate provisioning intervals.

More detail on these significant failings may be found in the Joint Complaint.

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[6] SWBT has proposed monthly recurring rates of $9.49 (rural), $6.83 (suburban), and $6.07 (urban).

18. Compared to other incumbent LECs, Covad's line sharing negotiations with SWBT have shown SWBT to be almost uniquely intransigent. For instance, Covad has requested that SWBT provide Covad a copy of the cost support SWBT filed with the FCC in conjunction with its federal ADSL tariff. As recognized by the FCC, this cost support is obviously relevant to determining the long-run, incremental cost of the line sharing element.[7] SWBT has refused to provide access to this cost support to Covad in violation of SWBT's duty to negotiate in good faith.[8]

19. Last month, SBC forced Covad and other data CLECs to file in California in order to contest SWBT's sister ILEC's (Pacific Bell's) line sharing offer. Except for state-by-state variables related to pricing, the terms and conditions of *all* of SBC's line sharing proposals are substantially similar (if not identical) in Texas, California, and the other SBC states.[9]

20. Since the FCC's date for decision on this application comes after the June 6 line sharing implementation deadline, it is incomprehensible to think that the FCC would legally be able to approve SWBT's application if it misses the implementation date in Texas. In the past two years, the Commission has placed a heavy focus on the competitive availability of broadband services "to all Americans," and ensuring full and faithful compliance with the *Line Sharing Order* is a critical part in making that vision a reality.

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[7] *See, e.g., Line Sharing Order* ¶ 139.

[8] *See First Local Competition Order* at ¶ 155 ("an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because we conclude that such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable.").

[9] Nevada, Oklahoma, Kansas, Missouri, Arkansas, Michigan, Wisconsin, Illinois, Indiana, Ohio, and Connecticut.

The Texas Performance Measurement System Still Needs to be Revised

21. One fact became painfully evident to all parties during the "first round" of comment in this 271 proceeding: SWBT's performance measurement system, as it relates to xDSL-capable loops, is simply incomplete and does not provide sufficient basis for a ruling of nondiscriminatory access to unbundled xDSL-capable loops.

22. The DOJ, Covad, and several other data CLECs have already filed extensive comments in this proceeding that substantially undermine the current performance measurement ("PM") system in Texas. There is little need to restate those issues here. As Covad has described in comments and *ex parte* letters, the Texas Commission has begun to investigate and re-write DSL-related PMs. That proceeding—required by the Covad/Rhythms Arbitration Award—is ongoing. It is Covad's opinion that interLATA entry should not be granted until this proceeding has been completed and SWBT shows—through *revised and complete* performance reports—that it has provided nondiscriminatory access for at least three consecutive months. Any lower standard would eviscerate the FCC's stated desire to review "clear and unambiguous" performance reports in the context of a 271 application.[10]

23. On April 13-14, 2000, the Texas Commission convened a collaborative session to discuss xDSL-capable loop revisions to the performance reporting system. In the course of this collaborative session, it was apparent that significant changes to SWBT's performance measurement system would be needed not only to meet the terms of the Covad/Rhythms Arbitration, but also to track SWBT's compliance with the *Line Sharing Order* and the *UNE Remand Order*. With regard to performance measurements

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[10] *See* ¶¶ 58-62, *infra*, for further discussion of this point.

for line sharing, remote terminal access, and subloops, it is readily apparent that this process has only begun.[11]

24. During the collaborative session, Texas Commission staff indicated on several occasions that SWBT's performance under the new DSL-related performance measurements should be based upon benchmarks, and not on a "parity" standard, at least until SWBT's advanced services affiliate, ASI, had achieved sufficient volume for a parity measurement to be useful.[12] Concern was expressed that the number of "stand-alone" DSL loop orders that ASI has committed to order in Texas (described in SWBT's Supplemental Filing) would not be enough to make a finding of nondiscriminatory access.[13] Covad agrees with that assessment.

25. It is clear from the collaborative sessions that are being held in Texas that several significant issues related to the performance measurement system still need to be resolved. In particular, the Texas Commission has not made a final decision as to what benchmarks it would use for critical DSL-related performance measurements, such as installation interval, missed due dates, etc. In the April 13-14 session, Texas Commission staff solicited SWBT's comment on certain benchmarks.

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[11] Transcript of Proceedings before the Public Utility Commission of Texas, *Section 271 Compliance Monitoring*, PUC Project No. 20400, and *Implementation of Docket Numbers 20226 and 20272*, PUC Project NO. 22165, Workshop, April 13-14, 2000 at 200-201 ("April 13-14 Tr.") (quoting SWBT witness Chapman, stating that "I really don't think we have the processes defined quite clearly enough" to define performance measurements for subloop and remote terminal access requirements).

[12] *See, e.g.*, April 13-14 Tr. at 140 ("the reason the Staff wants benchmarks now is that we feel once there has been some experience with the separation of the DSL into ASI, it might be more appropriate to look at parity as a measurement. But in the short term, I think we would feel more comfortable getting some test data on actual performance and holding everybody to those types of [benchmark] levels rather than a parity measure"), 149, 173-74 (indicating use of benchmarks from Covad/Rhythms Arbitration Award as interim benchmark for DSL loop installation measurement, with potential migration to parity at next 6 month review), 342-43, 411. SWBT opposes the use of benchmark measures. *See* April 13-14 Tr. at 383-84.

[13] April 13-14 Tr. at 336, 342-43.

The xDSL-Capable Loop Ordering Process Needs to be Changed

26. One of Covad's principal issues in this proceeding has been SWBT's complicated and clunky DSL loop ordering process. As described in numerous pleadings before the FCC and the Texas Commission, SWBT's current DSL loop ordering process often requires CLECs to supplement orders for loops that do not meet SWBT's internal design parameters (which appear to be based upon draft ANSI ADSL standards that have not yet been adopted). This supplement process serves to extend the installation dates for Covad's orders, and perhaps may be responsible for the fact that a great deal of Covad's DSL loop orders are not tracked by SWBT in PM 55.1 (Average Loop Installation Interval).

27. Before the FCC and the Texas Commission, SWBT witnesses have said that this supplement process could be avoided if CLECs utilize the "as is" ordering process. SWBT claims that when a loop order is marked with the "as is" SPEC code (UALNQX), SWBT will not qualify the loop according to its internal standards. It became clear during the April 13-14 session that CLECs, including Covad, were not comfortable using the "as is" process because that ordering process would result in the delivery of loops to CLECs that contained excessive bridge taps or load coils.[14] In that event, the CLEC would then be required to either supplement that order later or cancel the loop order entirely and order a new loop using a SPEC code that would permit the CLEC to order conditioning.

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[14] Indeed, SWBT's CLEC Handbook specifically states that if the "as is" SPEC code is used, the CLEC agrees to "accept a non-qualified loop 'as is' (without conditioning)".

28. As a result of this discussion, on April 14, SWBT's witness, Ms. Chapman, agreed that SWBT will change its DSL loop ordering process to permit CLECs to place a loop order without having that loop subjected to SWBT's internal loop qualification standards and that would permit the CLEC to pre-authorize any conditioning that would be needed on this loop.[15] Covad supports such an ordering process because it avoids as much manual intervention—both by SWBT and Covad—as possible, because such intervention creates delay and increase the chance of errors. However, SWBT has not yet implemented that fundamental and important change to its ordering process.[16] Only after this important change to SWBT's ordering process is made will the FCC be in a position to fully understand and analyze critical DSL-capable loop ordering and installation performance measurements.

SWBT's Proposed DSL Loop FOC Measurement Does Not Meet Data CLEC Business Needs

29. Another major fault the DOJ and CLECs found with SWBT's original application was its failure to track FOCs for DSL loops. SWBT has now unilaterally begun, through PM 5.1, to track its delivery of FOCs to CLECs. However, the method SWBT has proposed to measure PM 5.1 makes it entirely impossible for CLECs like Covad to independently verify this data. As it became clear in the April 13 collaborative session, SWBT's PM 5.1 tracks the interval from when SWBT's engineer completes the manual loop qualification and returns that loop qualification information to SWBT's Local Service Center, or LSC.[17] CLECs, of course, are not privy to when one SWBT

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[15] April 13-14 Tr. at 728 (Chapman).

[16] April 13-14 Tr. at 729 (Chapman: "I can't give you a date it is going to be ready. I don't think it would be very long.").

[17] April 13-14 Tr. at 596-98.

employee sends information to another SWBT employee. At best, PM 5.1 serves as a method of tracking the efficiency of SWBT's LSC—not SWBT's entire loop qualification and ordering process. In particular, PM 5.1 does not track the basic, critical piece of information that a data CLEC and its customers require—an answer to the simple question, "After I submit a complete and valid order, how long does it take to get an order commitment from SWBT?"

30. It is particularly important to note that SWBT's tracking of the "new" PM 5.1 has been of its own unilateral action—the Texas Commission has not approved this business rule through the process envisioned by the Texas 271 Investigation and the Covad/Rhythms Arbitration Award. Covad and Rhythms proposed on February 22, 2000 a different means of tracking DSL FOC returns, and the Texas Commission has not decided whether the SWBT or Covad/Rhythms proposal should be accepted. Indeed, at the April 13 session, Texas Commission staff tabled resolution of this business rule issue for resolution at a future date.[18]

Implementation of December 16, 1999 Commitments

31. In this section of this Supplemental Declaration, I rebut several of the points made in paragraphs 71-90 of the Chapman/Dysart Supplemental Affidavit and the Meierhoff Affidavit, regarding SWBT's implementation of the December 16, 1999 commitments SWBT made to the Texas Commission. On April 14, 2000, the Texas Commission hosted a collaborative forum to address these points. Along with Michelle DePoy, I attended this session for Covad.

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[18] April 13-14 Tr. at 598.

32. *Has SWBT Dismantled the Selective Feeder Separation System?* Covad believes that until SWBT revises its "as is" ordering process as promised by Ms. Chapman on April 14, 2000, remnants of SWBT's spectrum management system, SFS, remain in place.

33. SWBT's supplemental filing—in particular, the Meierhoff Affidavit—describes the changes SWBT claims to have made in December 1999 to its LFACs system. However, SFS is more that just codes in the LFACs system that label or reserve particular loops for ADSL service. As Covad discovered in the Covad/Rhythms Arbitration, SWBT's binder group reservation policy was part of an overall corporate policy at SWBT to favor the deployment of ADSL services over other forms of DSL. Since SWBT's retail focus is upon ADSL services, building in a preference for ADSL deployment over other forms of DSL is overtly discriminatory, both in intent and effect. Binder group segregation is merely one manifestation of this corporate policy.

34. SWBT's current DSL loop ordering process is another manifestation of SWBT's built-in preference for ADSL. As Covad has described, when a CLEC does not use the "as is" ordering process, SWBT will examine the particular PSD submitted with that loop order against its internal spectrum qualification standards, and if the loop does not meet this standard, SWBT will ask the CLEC to supplement the order in order to confirm that the CLEC still wants that loop. As a result, since SWBT's standards focus and prefer deployment of ADSL, CLEC orders for non-ADSL loops are more likely to face this cumbersome accept-reject process.

35. The "as is" process—lauded by SWBT supplemental witnesses Chapman and Dysart—does not solve this fundamental discrimination issue. Pursuant to its own

written procedures that have already been submitted in the record of this proceeding, SWBT performs loop qualification tests for loops ordered through the "as is" process.[19] According to SWBT's 1/4/00 Accessible Letter, when a CLEC orders a loop "as is", SWBT will apply its red/yellow/green pre-qualification test upon that order. [20] If the loop tests "green", the order will be processed "as is." If the loop tests "yellow" or "red"—the case for all loops longer than 12,000 feet or those that do not meet SWBT's internal ADSL standards—SWBT will process the order pursuant to the "standard one-step" process, but apparently will not perform any conditioning services on the loop.[21]

36. The net result of this process is that *regardless* of the method used to order a DSL loop (either by designating a particular PSD or through the "as is" process), orders for loops to support ADSL services receive preferential treatment compared to orders for loops that will support other DSL services. This issue will become an even more important competitive issue once SWBT's advanced services affiliate, ASI, begins to

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[19] *See* SWBT Jan. 4, 2000 Accessible Letter (attached to Chapman Affidavit) at 5. The Accessible Letter clearly states that when a CLEC enters the SPEC Code "UALNQX" for an "as is" loop, the CLEC "is requesting a non-qualified loop 'as-is' (*without conditioning*)." *Id.* at 11 (emphasis added). At the April 14 session, SWBT's witness stated that SWBT utilizes "draft" ANSI standards in this loop qualification review. April 13-14 Tr. at 668.

[20] In the Covad/Rhythms Arbitration Award, the Texas Commission stated that SWBT's red/yellow/green system is "*not* a reasonable substitute for the provision of actual loop makeup information." Covad/Rhythms Arbitration Award at 74 (emphasis in original). This result is consistent with the FCC's *UNE Remand Order*, ¶ 428, which singled out SBC's system in ruling that ILECs "can not limit access to loop qualification information to such a 'green, yellow, or red' indicator." The FCC ordered that ILECs "provide access to the underlying loop qualification information contained in its engineering records, plant records . . . ." The FCC correctly pointed out that if such information were not available, "incumbent LECs would be able to discriminate against other xDSL technologies in favor of their own xDSL technology." *UNE Remand Order* at ¶ 428.

[21] "If the pre-qualification result [for an as-is loop order] is 'Yellow' or 'Red,' a loop qualification will be performed and the order will be processed using the standard one-step process described above." 1/4/00 Accessible Letter. In describing the "one-step process", the Accessible Letter clearly states: "If the loop does not meet the specifications indicated by the CLEC, the LSR will be rejected. The CLEC then has the option of canceling the request if the loop does not meet its needs, or supplementing the LSR to revise the specifications."

utilize this ordering process for its ADSL service. Since SWBT wholesale has built-in a preference for ADSL loop orders, it should be expected that ASI's orders will flow through faster and more reliably than data CLECs.[22]

37. In Covad's opinion, this built-in preference for ADSL orders is simply another manifestation of SWBT's unlawful and discriminatory spectrum management policy. The FCC and the Texas Commission have both decided that ILECs should not be permitted to discriminate between particular "flavors" of DSL technologies—yet SWBT's current ordering process does precisely that.

38. As discussed above, SWBT orally promised on April 14 to change its ordering process in the manner suggested by Covad. Until that change is made, however, Covad strongly believes that SWBT has not entirely eliminated all aspects of its spectrum management system.

39. *No Manual Loop Qualification Required for Loops <12,000 Feet.* SWBT claims that it implemented this process by January 4, 2000. SWBT appears to have implemented this process by using the "red/yellow/green" pre-qualification tool that it has developed for its own retail ADSL product—if the loop tests "green" on this tool, the loop is supposed to be less than 12,000 feet and SWBT claims that it will process the order without resort to a manual loop qualification (a process that can take up to three business days). SWBT calls this system "green-to-go."

40. However, the April 14 session brought to light certain "bugs" in the red/yellow/green tool utilized by SWBT to implement this obligation.[23] As a result,

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[22] And since it appears that SWBT's PMs do not track loops subject to the "supplement" process, the PM system currently in place will not detect this discrimination.

[23] *See* April 13-14 Tr. at 737 (Chapman: "We, perhaps, were a little too ambitious . . . we didn't get all the bugs worked out of it, and the colors are one thing we're addressing on a maintenance basis right

several CLECs expressed concern with utilizing the "green-to-go" process because a CLEC would have to commit to process *all* of its orders in this manner.

41. It is also important to note that the green-to-go process once again enshrines a preference for ADSL loop orders over other forms of DSL. Because SWBT utilizes a pre-qualification tool designed to expedite its retail ADSL processes, the effect of the green-to-go process is to further advantage SWBT's retail ADSL service over CLEC services. The "green-to-go" can be seen as a Trojan Horse for ASI's retail plans, because it provides ASI a "fast track" because ASI's retail ADSL product is the same product used by the previously-integrated SWBT to design the red/yellow/green tool.

42. *Option of Obtaining Loop Qualification Information on a Pre-Order Basis.* SWBT claims that it is in the process of bringing its OSS into compliance with the Covad/Rhythms Arbitration Award, the *UNE Remand Order*, the *Line Sharing Order*, and the *SBC/Ameritech Merger Conditions*. A further update to that OSS is scheduled for April 29, 2000.

43. Providing real-time, electronic access to loop makeup information through this OSS is important in ensuring that CLECs have nondiscriminatory access to unbundled, xDSL-capable loops. As Covad described in its March 20, 2000 *ex parte* letter, SWBT's first scheduled upgrade to this OSS on March 18, 2000 (which was supposed to provide loop design information) has not gone smoothly. Even during the April 13-14 sessions, SWBT acknowledged that this enhancement was still not functioning as expected. Covad urges the FCC to examine these scheduled enhancements closely in the next several weeks.

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now to get that fixed. However, as far as the green-to-go, if you want to use that option, and, if you would like, I wasn't aware of the colors had been messed up until just this week, earlier this week.").

44. *Implementation of "As Is" Process.* As described above, Covad has several issues with the "as is" ordering process. In short, if a loop ordered "as is" needs conditioning, the process does not speed up provisioning and indeed introduces another level of complexity and manual intervention to provide a working, xDSL-capable loop to a CLEC. In addition, the "as is" process implemented by SWBT enshrines use of the red/yellow/green loop pre-qualification tool that both the FCC and the Texas Commission have ruled to be discriminatory. Until SWBT changes this process (as promised on April 14) to permit CLECs to pre-authorize conditioning, and until real-time, electronic access to actual loop makeup information is available to CLECs, the "as is" ordering process will not be of much value to Covad or other CLECs.

45. *Not Require PSD Number when Requesting Loop Qualification.* As described above, Covad and CLECs are still required to submit PSD masks with their loop orders, and when a data CLEC uses the "one-step" process without including the "as is" SPEC code, SWBT will still utilize those PSDs to "qualify" loops for CLEC service. As a result, Covad's ability to provide what SWBT calls a "non-standard" DSL service is harmed. Covad believes that this use of the PSD in the qualification process does not comply with this December 16, 1999 commitment.

46. Chapman and Dysart argue in paragraph 86 of their Supplemental Affidavit that CLECs are not required to go through this process if they use the "two step" process. However, when placing orders through the "one step" process, CLECs have to designate a PSD for that loop. It was clear in the April 13-14 collaborative session that data CLECs in general (including Covad) prefer to utilize the one-step

process, as it minimizes the number of instances in which CLECs and SWBT have to "touch" the order during the qualification and ordering process.

47. As a result, a generally utilized method—the "one step" process—still requires data CLECs to designate a particular PSD mask for a loop qualification and order request. SWBT will use this PSD to determine whether the loop will meet ANSI or draft ANSI standards. Under the Arbitration Award, SWBT is supposed to use this information "solely for inventory purposes."

48. *Acceptance Testing.* During the April 13-14 collaborative process, it became clear that several CLECs and SWBT were confused and experiencing problems with acceptance testing in Texas. For example, SWBT acknowledged that it is "trying to work through" a discrepancy between SWBT's results and the results of Covad's Harris tests during the acceptance testing process.[24] That process is ongoing. NorthPoint raised concerns that the method in which SWBT has implemented acceptance testing is forcing NorthPoint to accept "bad" loops, or face a cancellation.[25]

Implementation of Covad/Rhythms Arbitration Award

49. The purpose of this portion of this Supplemental Declaration is to respond to paragraphs 91-99 of the Chapman/Dysart Supplemental Affidavit. On April 14, 2000, the Texas Commission hosted a collaborative session that discussed the status of implementation of the Covad/Rhythms Arbitration Award. Prior to this session, Covad filed two pleadings discussing several issues. Those two pleadings are attached as Exhibit CGS-4 and CGS-5 and discuss other issues not described in this Supplemental Declaration.

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[24] April 13-14 Tr. at 553.