

opted into it a notice of termination. At the same time, however, SWBT made clear that if this Commission grants interLATA relief in Texas before July 12, 2000, those CLECs will have the right to continue to receive the benefits of their agreements for an additional three years, until October 2003. See Auinbauh Supp. Reply Aff. ¶¶ 23-25. Whether to stay in the agreement or terminate it in October 2000 will be solely up to the CLEC.

A. Checklist Item (i): Interconnection

Southwestern Bell's previous filings demonstrated that SWBT provides Texas CLECs nondiscriminatory interconnection. DOJ, which previously voiced concerns regarding SWBT's performance in provisioning interconnection trunks, has concluded that SWBT's performance has "improved sufficiently to alleviate concerns that competition from full facilities-based providers would be constrained." DOJ Supp. Eval. at 5. Indeed, only Sprint and CompTel raise any issues at all with regard to SWBT's timely provisioning of interconnection trunks and the blockage on those trunks. And their complaints are unavailing.

Sprint states that SWBT did not consistently meet benchmarks for SWBT end office to CLEC end office trunk blockage in Houston. Sprint Supp. at 45. Yet disaggregated performance data show zero blockage for these trunks in Houston for January, February, and March 2000. See App. B, Tab 3, PM 70-01 (no data were available for Houston for this measure in April 2000). Statewide, SWBT's blockage rates for these months have been excellent: of 0 percent for 24 of 32 data points, and only one data point with higher than 0.3 percent blockage for any market area. See id., PMs 70-01, 70-02. With a single exception (South Texas in April), these blockage rates are well below the Texas PUC's strict 1-percent benchmark. See id. Similarly, statewide data show zero blockage for SWBT end office to CLEC end office trunk blockage since January 2000, and blockage well below the benchmark for SWBT tandem to CLEC trunks

(0.1 percent for January and February, zero percent blockage for March, 0.5 percent blockage for April). See id. Tab 1, PMs 70-01, 70-02. In short, blockage levels for CLEC interconnection trunks have been consistently below the benchmark this year.

Sprint and CompTel also allege that SWBT is not consistently meeting due dates for the installation of interconnection trunks in Houston. Sprint Supp. at 46; CompTel Supp. at 2. In every month this year, SWBT has consistently performed at parity for this measure across Texas, whether viewed in aggregate across the entire state or for each individual market area, including Houston. See App. B, Tab 1, PM 78-01.

Sprint stresses that SWBT has not met its ambitious goal of delivering up to 12 DS1s (288 trunks) per CLEC per day in each major market area in Texas. Sprint Supp. at 46. But that goal is merely a guideline, filed with the Texas PUC in December 1999³⁵; it is not a Texas PUC requirement. See Deere Reply Aff. ¶ 9. Moreover, as a general matter, SWBT has met its provisioning goals. In January and early February, SWBT provisioned as many as 24 DS1s per day for individual CLECs in some market areas, and, on 18 different occasions, provided 12 or more DS1s to a CLEC in a single day. Deere Reply Aff. ¶ 8 & Attach. A.

Finally, Sprint points to missed interconnection trunk installation intervals during December 1999 and January 2000. Sprint Supp. at 46-47. But the important point is that SWBT's performance in this respect has improved dramatically, to the point that it met the 20

³⁵ Affidavit of Allan Samson and Susan Madden ¶ 4, Investigation Into Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project Nos. 16251, et al. (Tex. PUC filed Dec. 14, 1999) (Application App. C, Tab 2003).

day benchmark for all market areas in each of the last three months. See App. B, Tab 1, PM 78-01.³⁶

AT&T attempts to raise a policy issue, regarding interconnection in each local calling area, that is currently under review in arbitration proceedings before the Texas PUC. AT&T claims that (i) SWBT does not allow CLECs to interconnect at access tandems, rather than local tandems, and (ii) SWBT requires competing carriers to interconnect in each local exchange area in which they provide local service. AT&T's DeYoung Decl. ¶¶ 4-5; Letter from James L. Casserly, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo (Mar. 8, 2000) ("AT&T Mar. 8, 2000 Ex Parte").

With regard to the first claim, SBC explained in its April 26, 2000 ex parte that interconnection at local tandems is required under the arbitrated AT&T agreement (and the Texas 271 Agreement, which is based largely on the AT&T agreement). Indeed, this language was proposed by AT&T itself. See AT&T/SWBT Interconnection Agreement, Attach. 11:NIA, App. ITR, § 2.1.1 (Jan. 10 Appl. App. B, Tab 60). Nevertheless, as SBC has already made clear, if AT&T wishes to interconnect at an access tandem rather than a local tandem, SWBT will make such interconnection available in accordance with Commission Rule 51.305(a)(2), 47 C.F.R. § 51.305(a)(2), subject to negotiation or arbitration (if necessary) of prices and other terms and conditions pursuant to section 252. SBC Apr. 26, 2000 Ex Parte at 2; Auinbauh Supp. Reply Aff. ¶ 30.

³⁶ Pontio Communications (formerly Waller Creek Communications) claims that SWBT has refused to provision interconnection trunks until Pontio agrees to pay per-minute local switching charges. @Link, et al. Supp. at 22-23. That is incorrect. SWBT provisioned the trunks for Pontio on May 11 while its litigation regarding this issue is pending. Auinbauh Supp. Reply Aff. ¶ 28.

With respect to the requirement of interconnecting within each local calling area, SWBT's position is amply supported. Neither the 1996 Act nor Commission Rules specify the number of points of interconnection that a CLEC must have. The 1996 Act and Commission rules permit a CLEC to interconnect "at any technically feasible point within the carrier's network," and the Commission accordingly established a "minimum" set of technically feasible points at which "incumbent LECs must provide interconnection."³⁷ Neither the Act nor the Commission's rules and decisions, however, address the locations at which a CLEC may be required to interconnect.

In U S West Communications, Inc. v. Jennings, 46 F. Supp. 2d 1004 (D. Ar. 1999), the court relied on this fact in upholding a state commission determination that CLECs have no entitlement to interconnect at a single point within a LATA, so as to shift the costs of transporting traffic to the ILEC. The court noted that "[n]either the Act nor FCC regulations specify how many points of interconnection a carrier must have." Id. at 1021. Rather, "[t]he language in 47 U.S.C. § 251(c)(2) authorizing interconnection 'at any technically feasible point within the carrier's network answers only the question of whether a CLEC may interconnect at a given point, not how many points of interconnection a CLEC must (or may) have. If the word 'any' in § 251(c)(2) meant 'one,' as MCI and AT&T contend, then a CLEC could not establish more than one point of interconnection with U.S. West's network, which could lead to absurd results." Id.; see also U S West Communications, Inc. v. AT&T Communications of Pacific

³⁷ 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.302; First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15608, ¶ 210 (1996) ("Local Competition Order"), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

Northwest, Inc., 31 F. Supp. 2d 839, 852 (D. Or. 1998) (holding that the 1996 Act does not entitle a CLEC to interconnect at a single point of interconnection in a LATA.).

This Commission has confirmed that state commissions have the authority to determine the geographic scope of a local area, and that traffic between local areas is properly carried as access traffic. Local Competition Order, 11 FCC Rcd at 16013-14, ¶ 1035. SBC's practice of requiring a point of interconnection in every local exchange area reflects the state-regulated distinction between local traffic and intraLATA toll traffic, which is subject to intrastate access charges. AT&T's position, by contrast, would preempt the states' ability to maintain the distinction between local and intraLATA toll calling for purposes of interconnection by requiring the payment of reciprocal compensation – rather than sharing of access charges – for intraLATA toll calls. See Deere Supp. Reply Aff. ¶ 11 (App. A, Vol. A-4, Tab 1).

AT&T argues that requiring interconnection at a single point in a LATA would “prevent incumbent LECs from imposing inefficient interconnection terms on new entrants that preclude [new entrants] from configuring their local service networks in the most efficient way.” AT&T's DeYoung Decl. ¶ 11. AT&T, however, is not interested in efficiency; it is interested in minimizing its own costs at SBC's expense. Because AT&T can target a concentrated base of business customers located in close proximity to its point of interconnection, AT&T can avoid the expense associated with transporting calls to widely dispersed customers. Incumbent LECs, of course, have no such option. For this reason, requiring a single point of interconnection would actually discourage competition in all but the most concentrated areas of a LATA, precisely where competition is already strongest. Moreover, in any case where a CLEC customer is located in a local exchange area remote from the single point of interconnection, the proposal for a single point of interconnection would require both the CLEC and SBC to transport

the call clear across the LATA, even though the calling party and the called party may be located across the street from one another. SBC's requirement that CLECs interconnect in each local exchange area avoids these inefficient detours, thus minimizing the total cost (i.e., the cost to both SBC and CLECs) of CLEC interconnection and maximizing economic efficiency. See Deere Supp. Reply Aff. ¶ 11.

This "economic efficiency" approach to interconnection is consistent with the procompetitive objectives of the 1996 Act. See Local Competition Order, 11 FCC Rcd at 15608, ¶ 209. The court in Jennings agreed, holding that the state commission should consider total cost in determining whether a CLEC should establish more than one point of interconnection. 46 F. Supp. 2d at 1021-22 ("In determining whether a CLEC should establish more than one point of interconnection in Arizona, the [Arizona Corporation Commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another.").

In any event, AT&T has no grounds to complain about the appropriate number of interconnection points. AT&T negotiated, without arbitration, language in its current interconnection agreement that provides for a point of interconnection in each exchange area. Deere Supp. Reply Aff. ¶ 11. No party contested the inclusion of this same language in the Texas 271 Agreement. Id. Moreover, AT&T recently raised this issue before the Texas

Commission as part of the arbitration proceeding on a new SWBT/AT&T contract.³⁸ This Commission should not attempt to create a new federal rule in this proceeding, particularly where AT&T is presenting the same issue to the state commission in an arbitration, and has agreed to SWBT's currently effective terms.

B. Checklist Item (ii): SWBT Has Met All Requirements Relating to Unbundling of Network Elements

In Part II, above, we discussed two related OSS issues (integration and reject rates) that have been prominent in this proceeding and arise under checklist item (ii). This section addresses the opponents' remaining claims relating to this checklist item.

1. SWBT Provides NonDiscriminatory Access to OSS

The Three-Order Process. Several commenters persist in their criticisms of SWBT's three-order process for UNE Platform conversions. However, these commenters offer no response to SWBT's showing that this process, which was developed at the prompting of the Texas PUC, results in efficient, reliable service conversions. Specifically:

- The Texas PUC has concluded that SWBT has timely addressed all actual operational limitations caused by the three-order process. See Ham Supp. Reply Aff. ¶ 88.
- SWBT has successfully provisioned 243,922 UNE Platforms in Texas, Habeeb Supp. Reply Aff. Attach. A, using the three-order process.
- End users lose dialtone for any reason in significantly less than one percent of conversions using the three-order process. Id. ¶ 31. SWBT's upcoming elimination of the end user service address requirement, moreover, will dramatically reduce "invalid address" rejections related to the three-order process. Id.

³⁸ AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications, Inc.'s Response to Southwestern Bell Tel. Co.'s Petition for Arbitration at 13-17, Docket No. 22315 (Tex. PUC filed Apr. 17, 2000) ("A fundamental issue that must be resolved is the point at which AT&T and SWBT must interconnect to hand off the traffic if the parties cannot mutually agree to the number and location of interconnection points.").

Notwithstanding these showings, some CLECs continue to allege that the three-order process leads to excessive service outages and service degradation. See MCI WorldCom Supp. at 22-24; AT&T's Chambers/DeYoung Supp. Decl. ¶¶ 136-145; CompTel Supp. at 5. The facts are that the three-order process was identifiable as a cause of trouble in only 0.02 percent of the orders submitted by AT&T during August and September 1999. Noland/Dysart Supp. Reply Aff. ¶ 77. Only 0.7 percent of AT&T's UNE Platform conversions in December 1999 and 0.8 percent in January 2000 resulted in loss of dialtone. Ham Supp. Aff. ¶ 31. While AT&T and MCI WorldCom suggest that these numbers – less than one percent – are unacceptably high, see AT&T's Chambers/DeYoung Supp. Decl. ¶ 140; MCI WorldCom Supp. at 22-23, they are not significantly greater than the percentage of outages experienced by SWBT's own retail customers, see Ex Parte Letter from Austin C. Schlick, Kellogg, Huber, Hansen, Todd & Evans (Mar. 24, 2000).

CompTel's allegation that Network Intelligence has experienced service-affecting trouble in 16 percent of UNE Platform conversions as a result of the three-order process is similarly without merit. See CompTel Supp. at 3-5. This claim is based on CompTel's March 31, 2000 Ex Parte filing in Docket No. 00-4, in which Network Intelligence provided information on a small percentage of all the orders it submitted between October and December 1999. Noland/Dysart Supp. Reply Aff. ¶ 79. Only about one-fourth of the Network Intelligence orders that supposedly experienced problems were the subject of a trouble report. Id. ¶ 80. The trouble report records for these orders show that none of the troubles related to the three-order process. Id. ¶ 81. In most cases, SWBT did not cause the trouble, and there were only two service outages. Id. ¶ 82. Similarly, records for the orders without associated trouble reports showed that where the supposed trouble could be identified, the cause was never related to the three-

order process. Id. ¶ 83. SWBT is working with Network Intelligence to investigate further its claimed outages. Id. ¶¶ 83-85. Indeed, SWBT and Network Intelligence agreed on May 9, 2000, to reconcile the same information Network Intelligence subsequently provided this Commission – in unreconciled form – through an ex parte submission on May 12. Id. ¶ 84.

Order Status Notifications. Some commenters suggest that SWBT takes too long to return manual rejection notices. See, e.g., AT&T's Chambers/DeYoung Supp. Decl. ¶¶ 101-103; MCI WorldCom Supp. at 29. AT&T relies on the Texas PUC's stringent benchmark of returning 97 percent of manual rejection notices within five hours. AT&T's Chambers/DeYoung Supp. Decl. ¶¶ 101-102; see also Sprint Supp. at 42-43. Given the work involved in preparing a manual rejection notice, requiring virtually every notice to be sent within five hours is simply unrealistic. Noland/Dysart Supp. Reply Aff. ¶ 71. Nor, as the New York Order made clear, is that extraordinary level of performance necessary for CLECs to compete. Bell Atlantic-New York showed nondiscriminatory performance in New York by returning 71 to 91 percent of manually processed order rejection notices within the New York Public Service Commission's "strict benchmark standard" of 24 hours. New York Order, 15 FCC Rcd at 4035-37, ¶ 164 & n.504; see also id. at 4033, ¶ 160 (finding that New York benchmarks "provid[e] an efficient competing carrier with a meaningful opportunity to compete.").

Looking at the Texas performance results themselves, SWBT's mean times for return of manual rejection via LEX or EDI were 7.5 hours, 6.4 hours, and 4.9 hours for all orders in February, March, and April, respectively, including complex orders. Noland/Dysart Supp. Reply Aff. ¶ 69; PM 11.1. SWBT thus is providing CLECs with quick and consistently improving turn-around, even as CLEC order volumes increase. See, e.g., Noland/Dysart Supp. Reply Aff. ¶ 70.

Some CLECs also challenge SWBT's performance in providing other order status notifications, citing selected results for submeasures under PM 5 (% FOCs Received Within x Hours). See Nextlink's Koch/Smith Aff. ¶ 11; AT&T's Chambers/DeYoung Supp. Decl. ¶ 111; Sprint Supp. at 43. There are 38 levels of disaggregation for FOC performance. Noland/Dysart Supp. Reply Aff. ¶ 58. Given this level of disaggregation, and varying order volumes for individual submeasures, it is to be expected that some of the submeasures will be out of statistical parity from time to time. See id. To assess the CLECs' opportunity to compete, the submeasures must be put in the context of overall performance in returning FOCs. See id. On an aggregated basis, SWBT is returning FOCs on time (under the Texas PUC's rigid benchmarks of 5 or 24 hours for most orders) between 96 and 99 percent of the time. Id.; see also App. B, Tab 1, at 1 (listing PM 5 benchmarks).

While noting SWBT's strong performance in returning timely FOCs via EDI, NEXTLINK claims it experiences a high rate of jeopardy notices after such FOCs. NEXTLINK at 1 & Koch/Smith Aff. ¶ 12. The data show, however, that the vast majority of SWBT-caused jeopardies are due to a lack of facilities. Noland/Dysart Supp. Reply Aff. ¶ 76. The rate of jeopardy notices received by NEXTLINK thus reflects the outcome of nondiscriminatory provisioning, not any failure of the ordering or provisioning processes. Id.

MCI WorldCom maintains that its launch of residential service in Texas has been impacted by problems encountered with FOC and SOC return. MCI WorldCom Supp. at 32 & MCI's McMillon/Sivori/Lichtenberg Supp. Decl. ¶¶ 92-98. Yet only an extremely small percentage of MCI WorldCom's FOCs and SOCs were actually delayed. See Noland/Dysart Supp. Reply Aff. ¶¶ 65-67. Such isolated imperfections in returning order status notifications do not show "a systematic problem" or noncompliance with section 271. See New York Order, 15

FCC Rcd at 4045-46, ¶ 176 & n.557 (rejecting complaints that AT&T and MCI WorldCom had not received FOCs for 1 to 9 percent of orders).

Change Management. As Telcordia found in its independent review, SWBT follows its CMP, any inconsistencies within the process do not undermine achievement of its purpose, and the process is effective. CMP Report at 5; Supplemental CMP Report at ES-1 (Ham Aff. Attachs. LL & MM). The allegations of some CLECs to the contrary are baseless.³⁹

Just as in the Bell Atlantic New York proceeding, some CLECs express concern about adherence to notification timelines and allege that there have been too many changes under the “exception” process. See, e.g., AT&T’s Chambers/DeYoung Supp. Decl. ¶ 14; see also New York Order, 115 FCC Rcd at 4004-05, ¶ 112. As SWBT has explained, however, compliance with numerous regulatory mandates and CLEC requests issued at the end of 1999 and in early 2000 has required massive and complex programming efforts, which have been consistent with the CMP guidelines for exception releases. Ham Supp. Aff. ¶¶ 55-59. All exception releases were announced to CLECs through accessible letters and each CLEC individually was given the opportunity to halt any exception releases that were not mandated by regulators. Id. & Attach. S (CMP § 6.2). Thus, for example, AT&T specifically agreed to the very same schedule for eliminating the service address requirement that it now suggests is too short. See AT&T’s Dalton/DeYoung Supp. Decl. ¶ 69; Ham Supp. Aff. ¶ 26.

³⁹ Moreover, contrary to Rhythms’ claims, the requirements of the SBC/Ameritech merger conditions relating to development and deployment of enhancements to DataGate and EDI for pre-ordering and ordering xDSL and other advanced services, have been and are being followed precisely. See Rhythms Supp. at 15-18. The few disputed issues are being resolved under the supervision of the Chief of the Common Carrier Bureau. See generally Ramsey Supp. Reply Aff.

AT&T maintains that regulators have not required SWBT to make changes with such speed “that it would be impossible for SWBT to make them without being freed of the regular notice requirements of the CMP.” AT&T’s Chambers/DeYoung Supp. Decl. ¶ 18. AT&T cannot dispute, however, that all regulatory mandates may properly be fulfilled under the exception process to ensure that SWBT is able to control its own compliance with its legal obligations. See Ham Supp. Aff. ¶¶ 57-58 & Attach. S, §§ 6.2.1, 6.2.4. And AT&T has failed to provide any concrete evidence that use of the exception process has prejudiced AT&T or other CLECs.

AT&T also complains that SWBT has failed to implement versioning, challenging SWBT’s so-called “flash cut implementation,” in which support for a current interface version is discontinued at the time that support for a new version is activated. AT&T’s Chambers/DeYoung Supp. Decl. ¶¶ 19, 32-35. As a preliminary matter, SWBT has repeatedly made clear that it is committed to support versioning in EDI in advance of industry versioning guidelines by adopting the versioning proposed by the CLECs at the July and August 1999 CMP meetings. Ham Aff. ¶¶ 352-354 (Jan. 10 Appl. App. A, Part A-4, Tab 1); Ham Reply Aff. ¶¶ 162-164 (Feb. 22 Reply App A., Vol. A-2, Tab 1); Ham Supp. Aff. ¶ 61 (Apr. 5 Supp. Appl. Vol. B, Tab 1); Ham Supp. Reply Aff. ¶¶ 119-121. In doing so, SWBT has agreed to go beyond the versioning approved for Bell Atlantic in New York, by continuing to support the previous version of an interface even when the new interface is only a “dot” rather than a “major” release. See Ham Supp. Reply Aff. ¶¶ 121-122; New York Order, 15 FCC Rcd at 4004, ¶ 110.⁴⁰

⁴⁰ A “dot” release is a release that provides only a SWBT-upgraded EDI/LSOG version. A “major” release is a release that provides a basic, industry-upgraded EDI/LSOG version. Ham Supp. Reply Aff. ¶ 121 n. 26.

Additionally, the fact that versioning has not yet been implemented has caused no prejudice to AT&T or other CLECs. SWBT's retail operations are upgraded in exactly the same "flash cut" manner of which AT&T complains, and, even for flash cut implementation, SWBT provides ample time for testing. Ham Supp. Reply Aff. ¶ 123. Moreover, even if SWBT had implemented the Bell Atlantic approach to versioning in January 2000, as some CLECs have suggested, CLECs would still have been subject to flash cut implementation for all the 2000 releases. Id. ¶ 122. All these releases have been (or will be) "dot" releases, for which versioning is not available under Bell Atlantic's plan. Id.

AT&T also maintains that SWBT has made completely unannounced changes to local calling scope changes that need to be filed in its tariffs. AT&T's Chambers/DeYoung Supp. Decl. ¶¶ 28-31. Given the substantial legal notice requirements for any such change, AT&T's claim is disingenuous at best. Nevertheless, SWBT agreed to notify CLECs in advance of making any such changes in Accessible Letters, issuing the first such Accessible Letter on April 3, 2000. Id. ¶ 31.

Finally, AT&T continues to complain that SWBT does not provide CLECs with a testing environment that mirrors the production environment. AT&T's Dalton/DeYoung Supp. Decl. ¶ 43-47. SWBT provides test environments so that CLECs may test updates prior to their use in production. Ham Reply Aff. ¶¶ 166-168. These environments are designed to test application functionality, not to emulate production or test specific response times. Id. ¶ 168. As such, they enable SWBT to identify potential problems in implementing a new interface and to begin immediate resolution. See Ham Reply Aff. ¶¶ 166-168. Although errors are rare (as can be seen by the very low number of SWBT application problems discovered/reported in release testing), SWBT considers it a good business practice to identify errors as early as possible. See id.

Moreover, SWBT's test environment is consistent with the environment AT&T itself defined in its comments to the Bell Atlantic filing. See Ham Supp. Reply Aff. ¶ 124 n.27.⁴¹

Billing. AT&T cites a one-month decline in daily usage feed timeliness (PM 19-01) in February 2000 as evidence of discriminatory performance. AT&T Supp. at 60; AT&T's Dalton/DeYoung Supp. Decl. ¶¶ 132-133. However, as the Reply Affidavit of John Locus (filed February 22, 2000) explained and the Supplemental Reply Affidavit of Weldon McLaughlin further details, the dip below the 95 percent on-time benchmark in that one month was the result of a project to recover records that were not sent due to a systems problem in 1999. See McLaughlin Supp. Reply Aff. ¶¶ 4-7; Locus Reply Aff. ¶¶ 17-18 (Feb. 22 Reply App. A, Vol. A-2, Tab 3). SWBT's timeliness performance was above 98 percent (and as high as 99.8 percent) in January, March, and April 2000. Even in the anomalous month of February, better than 91 percent of usage feed records were sent on time. See McLaughlin Supp. Reply Aff. ¶ 7.

Similarly, AT&T cites results from PM 18-01 (Billing Timeliness (Mechanized Bill)) for March 2000. AT&T's Chambers/DeYoung Supp. Decl. ¶ 134. In March, SWBT delayed its first-of-the-month bills by one day to ensure that a problem with a state-mandated billing system change had been corrected. This one-day delay affected retail and wholesale customers alike. McLaughlin Supp. Reply Aff. ¶ 9. In February and April, performance was 100 percent on time. Id.; App. B, Tab 1, at 15, 18. Mechanized billing accuracy (PM 15-01) has been uniformly high as well. McLaughlin Supp. Reply Aff. ¶ 9.

⁴¹ Citing Crafton/Connolly Aff. ¶¶ 231, 233, 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. 99-259 (FCC filed Oct. 19, 1999).

Finally, AT&T claims that SWBT erroneously included end-user billing records for interLATA toll calls in its daily usage files. AT&T's Chambers/DeYoung Supp. Decl. ¶ 135. At least 60 percent of the records identified as incorrect by AT&T were in fact correct and required no corrective action by SWBT; while investigation continues, thus far, only 11 percent of the records identified by AT&T have required actual corrective action by SWBT. McLaughlin Supp. Reply Aff. ¶ 12.

Miscellaneous Issues. CLECs raise other, miscellaneous arguments regarding SWBT's OSS, none of which has merit.⁴²

AT&T rehashes assertions that SWBT's OSS lacks the capacity to meet demand. AT&T's Chambers/DeYoung Supp. Decl. ¶¶ 126-151. AT&T fails even to address the extensive evidence on this point that already is in the record. See Ham Reply Aff. ¶¶ 115-128. AT&T likewise fails to acknowledge the limitations of its own systems and procedures, which underlie many of its expressed concerns. See id. ¶ 86.

Z-Tel complains that SWBT's electronic OSS are not available 24 hours a day, seven days a week. Z-Tel at 4. See also MCI WorldCom at 26. The system downtime of which Z-Tel complains allows SWBT to perform necessary system maintenance and backup. Ham Reply Aff. ¶¶ 144-146. SWBT's OSS are available every day of the week for up to 17 hours per day, depending on the interface and the day of the week. Ham Reply Aff. Attach. E. These hours of

⁴² MCI WorldCom's claim regarding the ability to have two different orders for a customer be processed on the same day has already been addressed in this proceeding. MCI WorldCom Supp. at 25. If a CLEC desires two (or more) MOGable orders to be related (and processed on the same day), the CLEC will need to populate the RPON and CHC fields on every related service request (and the FDT field if a desired frame due time is requested). Ham Reply Aff. ¶¶ 155-158. This was explained to all CLECs in Accessible Letter CLECSS99-147 (November 3, 1999), provided as Attachment Q to the Ham Reply Affidavit.

system availability are substantially the same as those for SWBT's own retail operations and provide the "prime time" availability approved in the New York Proceeding. Id. ¶¶ 144-145; see also New York Order, 15 FCC Rcd at 4030, ¶ 155. SWBT has an outstanding record of system availability during the scheduled hours, ensuring that the scheduled down time is virtually the only time its systems are unavailable. See App. B, Tab 2, at 3a-4a (PM 4); see also New York Order, 15 FCC Rcd at 4030-31, ¶ 156 (finding important that "Bell Atlantic's interfaces were generally available as scheduled").

AT&T cites SWBT's failure to accept a single LSR for multiple-line customers with two or more existing SWBT accounts. AT&T's Chambers/DeYoung Supp. Decl. ¶¶ 121-125. This same limitation applies to SWBT's retail operations. Ham Supp. Reply Aff. ¶ 103. For both CLECs and SWBT's retail operations, a single service order can be used for multiple-line customers if (but only if) the lines are at the same address and are billed together. Id.

2. Terms for Access to UNEs

SBC established in its January 10 Application that it was in full compliance with the unbundling requirements of section 251(c)(3) that existed at that time. Additional unbundling obligations have taken effect since SWBT's last filing, and SWBT is in full compliance with those requirements as well. In particular, as SWBT promised in its earlier filing, see SWBT Br. at 36, SWBT is complying with each and every requirement in the UNE Remand Order that went into effect on May 17, 2000. The terms of the Texas 271 Agreement have always made available dark fiber dedicated interoffice transport, dark fiber loops, subloop unbundling, and access to all presently required call-related databases. Auinbauh Supp. Aff. ¶ 13. The optional amendment to the T2A incorporates new subloop and dark fiber requirements, as well as new loop qualification OSS offerings. Id. SWBT also offers the OSS contract amendments in the

standard Line Share Amendment to the T2A, in case a CLEC chooses to opt into that amendment without opting into the UNE Remand Amendment. Id.

SWBT will also fully comply with the FCC's recent order requiring incumbent LECs to use their best efforts to obtain coextensive third-party intellectual property rights for CLECs using UNEs.⁴³ The Texas 271 Agreement already holds SWBT to following the industry rules enacted in that proceeding. See T2A § 7.3.5 (“The Parties agree that the provisions of the [Intellectual Property Order] shall control over the terms of Sections 7.3.2 through 7.3.4 above, upon the effective date of the FCC Order, unless subsequently stayed.”) (Application App. B, Tab 68). Thus, AT&T's claim that SWBT offers only a “gratuitous commitment” (AT&T Supp. at 57-58) is unfounded. See Auinbauh Supp. Reply Aff. ¶¶ 37-38. The Texas 271 Agreement already accounts for the recent orders and further provides that “[a]ny disputes between SWBT and CLEC regarding the implementation of the FCC Order will be subject to expedited dispute resolution procedures before the Texas Commission.” T2A § 7.3.5; see also Auinbauh Supp. Reply Aff. ¶ 37. In addition, the Commission's Intellectual Property Order makes clear (at ¶ 15) that incumbent LECs cannot unilaterally extend third-party intellectual property rights to competing carriers, which AT&T suggests SWBT must do. Rather, the Commission requires only that incumbent LECs use their best efforts to ensure that their intellectual property rights are lawfully extended to competing carriers – and SWBT will fully comply with that mandate.

⁴³ See Memorandum Opinion and Order, Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements, CC Docket No. 96-98, CCB Pol. 97-4, FCC 00-139 (rel. Apr. 27, 2000) (“Intellectual Property Order”); see also Order on Reconsideration, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket No. 96-237, FCC 00-140 (rel. Apr. 27, 2000).

AT&T, along with MCI WorldCom, also mistakenly claims that SWBT is continuing to seek unlawful glue charges for the UNE platform. See AT&T Supp. at 39-43; MCI WorldCom Supp. at 33-36.⁴⁴ Both companies simply repeat arguments that they made in early filings, which SWBT has already addressed. See Auinbauh Supp. Reply Aff. ¶ 35. Specifically, as SWBT previously explained, SWBT has agreed to waive all of the nonrecurring charges for pre-existing loop and port combinations that are being challenged in the ongoing Texas PUC proceeding on this issue, subject to true-up. Auinbauh Supp. Aff. ¶¶ 16-18. The rates being challenged by AT&T and MCI WorldCom are currently zero, and any true-up would be solely as determined by the Texas PUC. Id. ¶ 16. To the extent the companies challenge SWBT's nonrecurring charges for new loop and port combinations, however, there is simply no requirement to provide those combinations at cost-based rates. Thus, SWBT properly assesses Texas PUC-approved charges on new combinations. Id. ¶ 17; see also SWBT Br. 55-58; March 17, 2000 UNE Pricing Ex Parte.

MCI WorldCom objects to SWBT's terms for access to enhanced extended links ("EELs"). MCI WorldCom Supp. at 37-41.⁴⁵ SWBT's requirements fully comply with the Commission's orders. In compliance with the UNE Remand Supplemental Order,⁴⁶ SWBT provides three options for CLECs to demonstrate that a circuit meets the FCC's mandate of

⁴⁴ See also Ex Parte Letter from Keith L. Seat, Senior Counsel for Competitive Strategies, MCI (May 8, 2000).

⁴⁵ See also Ex Parte Letter from Keith L. Seat, Senior Counsel for Competitive Strategies, MCI (May 5, 2000).

⁴⁶ Supplemental Order, Implementation of the Local Competition Provision of the Telecommunications Act of 1996, 15 FCC Rcd 1760 (1999) ("UNE Remand Supplemental Order").

significant local traffic. Auinbauh Supp. Reply Aff. ¶ 32. First, a carrier can demonstrate that it is the exclusive provider of local exchange service to the served end user. The FCC specifically mentioned this option in its Supplemental Notice. Id.; UNE Remand Supplemental Order, 15 FCC Rcd at 1762, ¶ 5 n.9. Second, SWBT allows a carrier handling at least one-third of a customer's local dial tone lines to convert that customer's special access circuits to UNEs if modest local traffic thresholds are met. Auinbauh Supp. Reply Aff. ¶ 32. The FCC also cited this option with approval. UNE Remand Supplemental Order, 15 FCC Rcd at 1762, ¶ 5 n.9. Third, SWBT permits a CLEC that is not the exclusive provider of local exchange service to the customer, and has not even won a significant percentage of the customer's local dial tone lines, to convert an existing loop/transport access combination if that particular facility carries significant local voice traffic. Auinbauh Supp. Reply Aff. ¶ 32. SWBT provides this third option to assist small CLECs that seek to serve the largest business customers. Id. ¶ 32 n.37. Thus, two of SWBT's three certification options come directly from this Commission, and the third is even more generous to CLECs. MCI WorldCom's complaint against this certification is nothing more than a complaint about the UNE Remand Supplemental Order. MCI WorldCom Supp. at 40-41; see also AT&T Supp. at 59-62 (expressly arguing that it believes the UNE Remand Supplemental Order is unlawful). BOCs, however, are entitled to rely upon this Commission's orders when establishing checklist compliance.

MCI WorldCom also claims that SWBT unlawfully requires a CLEC to terminate all EELs at a collocation cage. MCI WorldCom Supp. at 39. This requirement is fully in accord with the UNE Remand Order's definition of an EEL. As the Commission there explained, "the EEL allows requesting carriers to serve a customer by extending a customer's loop from the end

office serving that customer to a different end office in which the competitor is already collocated.” UNE Remand Order, 15 FCC Rcd at 3828, ¶ 288 (emphasis added).

MCI WorldCom further complains that SWBT denies CLECs the ability to combine a UNE with an access service. MCI WorldCom Supp. at 39-40. There is no rule or statutory requirement that mandates permitting such combinations. Indeed, the Texas PUC reached the opposite conclusion from the one argued by MCI WorldCom, holding in its Mega-Arbitration that UNEs “may not be connected to or combined with SWBT access services.” Second Mega-Arbitration App. B at 17 (Application App. F, Tab 16); see also Auinbauh Supp. Reply Aff. ¶ 33. To allow such combinations would undermine the access charge regime and threaten universal service; in fact, these same concerns prompted the Commission in its UNE Remand Supplemental Order to impose a local service requirement on the use of EELs to displace access services. As SBC explained in its comments in the Fourth Further Notice of Proposed Rulemaking in the UNE Remand Order, allowing carriers to substitute UNEs for special access and private line services would subject ILECs to an immediate and dramatic loss of revenues.⁴⁷ Irrespective of whether special access services house universal service subsidies per se, it is an inescapable reality that the revenues from this service help finance low-cost consumer rates – for example, by contributing to the recovery of an ILEC’s overall overhead, which is excluded from TELRIC rates. Moreover, any sharp reduction in the price of special access will concomitantly lower the point at which carriers decide to use special access in place of switched access, resulting in the conversion of switched access services that indisputably house universal service

⁴⁷ SBC Comments at iii-iv, CC Docket No. 96-98 (FCC filed Jan. 19, 2000).

subsidies. A reduction in these subsidies would be inconsistent with both the goals of the 1996 Act and with sound public policy.

For its part, Level Three argues that the Commission concluded in the Local Competition Order that incumbents must provide combinations as long as they are “ordinarily combined” under 47 C.F.R. § 51.315(b). Level Three completely ignores that the Commission recently rejected this same argument in the UNE Remand Order:

A number of commenters argue that we should reaffirm the Commission’s decision in the Local Competition Order. In that order the Commission concluded that the proper reading of “currently combines” in rule 51.315(b) means “ordinarily combined within their network, in the manner which they are typically combined.” Incumbent LECs, on the other hand, argue that rule 51.315(b) only applies to unbundled network elements that are currently combined and not to elements that are “normally” combined. Again, because this matter is currently pending before the Eighth Circuit, we decline to address these arguments at this time.

UNE Remand Order, 15 FCC Rcd at 3908, ¶ 479 (footnotes omitted). The Commission refused to “interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are ‘ordinarily combined’.” Id. at 3909, ¶ 480.

The Commission was right to reject these requests in the UNE Remand Order and should do so again. In Iowa Utilities Board, the Eighth Circuit vacated sections 51.315(c)-(f) of the Commission’s rules, which required ILECs to combine network elements that are not already combined. Although the Commission did not appeal that decision, it has asked the Eighth Circuit to review whether those rules should be reinstated in light of the Supreme Court’s decision. Level Three simply asks the Commission to disregard the Eighth Circuit’s mandate vacating these rules.

Nor is Level Three’s argument consistent with the text of the relevant Commission Rules. Rule 315(b) provides that “an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.” 47 C.F.R. § 51.315(b). Thus, Rule 315(b), by its

express terms, governs elements that are already actually combined and prevents incumbents from taking the affirmative step of separating them. Vacated Rule 315(c), however, required new combinations “even if those elements are not ordinarily combined.” *Id.* § 51.315(c) (emphasis added). Rule 315(c) thus covered the situation where elements are not already combined, whether they are ordinarily combined or not. Level Three’s argument that Rule 315(b) addresses a situation covered by Rule 315(c) – where elements of types that are ordinarily combined are not in fact combined – would make Rule 315(b) redundant of Rule 315(c) and render the “even if” clause of Rule 315(c) meaningless.

The Supreme Court’s decision merely affirmed what the plain language of Rule 315(b) makes clear. The Court stated that “Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor.” *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 393 (1999) (emphasis added). The Court, therefore, understood Rule 315(b) to govern only those elements currently and actually combined – not those “ordinarily” combined. Indeed, the Court stated that, “[a]s the Commission explains, [Rule 315(b)] is aimed at preventing incumbent LECs from disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants.” *Id.* at 395 (internal quotation marks omitted). This rationale for the rule underscores that Rule 315(b) governs those elements that have been “previously connected” and addresses the “wasteful” act of separating them; it has no bearing on elements that have yet to be combined.

The Commission has recognized all this before the Eighth Circuit, noting that Rule 315(b) “prohibited an incumbent LEC from separating already-combined network elements against the new entrant’s wishes.” Brief for Respondents at 80, *Iowa Utils Bd v. FCC*, No. 96-

3321 (8th Cir. filed Aug. 16, 1999) (emphasis added). Indeed, there would be no point in the Commission's pending request for reinstatement of vacated Rule 315(c) if Rule 315(b) could be read to allow the same thing.

C. Checklist Item (vii): SWBT Provides Nondiscriminatory Access to Operator and Directory Assistance Services

Southwestern Bell's January 10 Application demonstrated that SWBT provides CLECs nondiscriminatory access to operator services ("OS") and directory assistance ("DA") services, including call branding, in the same manner that SWBT provides these services to its own retail customers. SWBT Br. at 108, 110; Rogers Aff. ¶ 22 (Jan. 10 Appl. App. A, Part A-2, Tab 6). MCI WorldCom alone disputes SWBT's compliance with this checklist item's requirements. MCI WorldCom Supp. at 20.

MCI WorldCom refers to isolated instances where four of its customers in Texas received incorrect branding. *Id.* MCI WorldCom has not yet provided any specific details on these four orders that would allow resolution of its concerns. Rogers Supp. Reply Aff. ¶ 14 (App. A, Vol. A-4, Tab 4). In any event, the Commission has repeatedly stated it does not accord much weight in its section 271 evaluations to the kind of isolated and anecdotal evidence MCI Worldcom offers here. See New York Order, 15 FCC Rcd at 3973, ¶ 50, 4045-46, ¶ 176, 4135-36, ¶ 361.

D. Checklist Item (viii): SWBT Provides Nondiscriminatory Access to White Pages Directory Listings

NEXTLINK complains that it is experiencing problems with some of its customers being dropped out of SWBT's white pages directory listing database. ALTS & CLEC Coalition Joint Supp. at 14. As explained in Jan Rogers' original and reply affidavits, however, SWBT implemented a system in December 1998 that keeps an end user's listing intact when the end

user migrates from SWBT to a CLEC via resale or unbundled switch ports. Rogers Aff. ¶ 51; Rogers Reply Aff. ¶ 6. In October 1999, this service was extended to cover end users who leave SWBT's network and migrate to a CLEC via local number portability ("LNP"). Rogers Reply Aff. ¶ 7; Rogers Supp. Reply Aff. ¶ 3. SWBT is working with NEXTLINK to investigate any errors in directory listings that may have occurred in connection with NEXTLINK's orders. Rogers Supp. Aff. ¶ 4. NEXTLINK, however, has yet to provide details that would allow SWBT to investigate the particular orders NEXTLINK claims were affected. Id.

E. Checklist Item (x): SWBT Provides Nondiscriminatory Access to Signaling and Its LIDB

MCI WorldCom suggests that SWBT is not meeting its obligation of providing nondiscriminatory access to its Line Information Database ("LIDB"), under checklist item (x). SBC's January 10 Application explained that CLECs have nondiscriminatory access to SWBT's LIDB. SWBT Br. at 113-14; Rogers Aff. ¶¶ 59-62. SWBT provides unbundled access to its LIDB database through two electronic interfaces, the Service Order Entry Interface and the Interactive Interface, to allow CLECs to access, create, modify, or view their customers' line information. SWBT Br. at 114; Rogers Aff. ¶¶ 67-68. In response to requests by CLECs and the Texas PUC, moreover, SWBT implemented an enhancement on January 15, 2000, that gave CLECs an additional method to populate their LIDB records in SWBT's database, simply by specifying on the LSR the particular information they would like changed in the LIDB when converting a SWBT customer to UNE-based service. See Rogers Reply Aff. ¶ 16.

Although MCI WorldCom applauds SWBT's January 15 deployment of the new LSR option for updating LIDB records, MCI WorldCom nevertheless faults SWBT's method for processing LIDB updates that are sent by CLECs. MCI WorldCom Supp. at 18. MCI WorldCom's principal argument arises from a single MCI WorldCom report, made on April 21,

2000, of a few instances where there were delays in presubscribed interexchange carrier (“PIC”) updates in the LIDB database. Id. Those isolated occurrences were attributable to typing errors and a failure by three SWBT service representatives to type in the toll file guide portion of MCI WorldCom’s request in a timely manner. Rogers Supp. Reply Aff. ¶¶ 6-7; Nolan Supp. Aff. ¶ 59. Since the toll file guide also updates the PIC field in the LIDB database, the late entry of the order also resulted in an untimely update of the LIDB database. Id. ¶ 6.

After MCI WorldCom brought the issue to SWBT’s attention, SWBT promptly addressed the problem by specifically instructing the service representatives handling MCI WorldCom orders on the correct order-typing process, and reminding all other service representatives of the proper procedures. Nolan Supp. Reply Aff. ¶ 58. SWBT has also enhanced the processes used by the error resolution team to properly monitor error reports. Id. ¶ 59. The problems with MCI WorldCom’s delayed orders have since been resolved. Id. ¶ 58.

Importantly, a late update of the PIC in the LIDB database does not in any way affect the provision of interLATA or intraLATA services of the end user based upon its PIC selection. Id. ¶ 8. This is because the PIC information that governs the end user’s interLATA or intraLATA carrier is determined in the end office switch and not the LIDB database. Id. ¶ 7. Therefore, the PIC designation in the LIDB database has no effect on the PIC selected by the end user. Id. Indeed, the delay in updating the PIC in the LIDB database affects only PIC information that will be used for future LIDB services. Id. Thus, MCI WorldCom’s concerns about service disruptions are unfounded. Id.; see MCI WorldCom Supp. at 19.

MCI WorldCom also suggests that SWBT does not provide an adequate method for transmitting LIDB updates subsequent to an initial service order. MCI WorldCom Supp. at 20-21. That is simply wrong. First, contrary to its assertions, MCI WorldCom has never chosen to

fax updates, nor has it been compelled to do so. Rogers Supp. Reply Aff. ¶14. Instead, MCI WorldCom has selected to use SWBT's Interactive Interface for LIDB updates. Id. This interface also provides CLECs with status information on LIDB update requests – the same kind of status information available to SWBT when it makes update requests. Id. ¶ 11; see also Rogers Aff. ¶ 65; Rogers Reply Aff. ¶ 17. SWBT's second electronic interface, the Service Order Interface, provides MCI WorldCom with what it says it needs – an opportunity to rely on its existing record to create an LIDB update. Rogers Supp. Reply Aff. ¶ 12.

Relatedly, MCI WorldCom complains about the timing of further enhancements to the LIDB update process. MCI WorldCom at 22. In an open meeting before the Texas PUC on October 8, 1999, the Texas CLECs, including MCI WorldCom, all agreed with SWBT that the second phase of the LSR enhancement – which will include updates to CLECs' LIDB records – will occur in December 2000. Rogers Supp. Reply Aff. ¶ 12. This collaborative decision, memorialized by the Texas PUC in Order 55, was made to allow other OSS system changes to take precedence. Id. Thus, MCI WorldCom has no grounds for insinuating that SWBT is dragging its feet on this issue.

MCI WorldCom additionally raises a concern about branding of OS/DA services, which is discussed in Part C, above.

The “Private Payphone Providers” argue that SWBT has failed to provide nondiscriminatory access to databases and associated signaling. Their arguments are legally and factually baseless. As a threshold matter, because payphone providers are not “telecommunications carriers” as defined in the 1996 Act, the provision of databases and signaling to private payphone providers is not a checklist requirement. See 47 U.S.C. § 153(44) (excluding “aggregators of telecommunications services” – including payphone providers – from

the definition of “telecommunications carrier”); id. § 271(c)(2)(B) (establishing the fourteen checklist requirements for providing or generally offering access or interconnection “to other telecommunications carriers”).

In any event, the Private Payphone Providers’ claims are factually incorrect and misleading. The payphone providers complain first that SWBT is “no longer providing Sit Tones” for their payphones. Private Payphone Providers’ ¶ B. That is simply not correct. As detailed in the Supplemental Reply Affidavit of William Deere, Sit Tones – which are associated with messages such as “all circuits are busy” and “the number you have dialed is no longer in service” – are generated by the end office serving the called party and therefore have nothing to do with the payphone line. Deere Supp. Reply Aff. ¶ 6 (App. A, Vol. A-4, Tab 1). SWBT end offices do generate these tones, and SWBT does nothing to interfere with receipt of those tones by payphone providers. Id. While SWBT generally uses “dumb” payphones – which rely on central office signaling rather than recognition of Sit Tones for coin control – this same signaling feature is available under tariff to private payphone providers. Id. ¶ 7. There is no discrimination.

Next, the Private Payphone Providers claim that SWBT is placing unwanted vertical features on their lines and placing the wrong automatic number identification (“ANI”) coding digits on the lines. Private Payphone Providers ¶¶ D-F. But these payphone providers are not SWBT customers. Rather, they are served by CLECs that have purchased UNEs from SWBT. Vidal Aff. at 1. Generally, these CLECs simply purchase business lines from SWBT in order to serve both their payphone service provider customers and their other business customers, but they do not identify which of the lines are payphone lines. Accordingly, SWBT has no way of knowing when to remove vertical features or when to assign payphone-specific ANI coding

digits to a particular line. Deere Aff. ¶¶ 8-10 (Appl. App. A). Quite simply, the payphone providers' complaint is with their local carrier, not SWBT. Indeed, the Private Payphone Providers admit that where SWBT has been made aware that a line is serving a private payphone, it has removed the unwanted vertical features. Vidal Aff. at 2. Although the payphone providers complain that the correction has been made on a "line-by-line" basis but not "for all private payphone lines," that is because SWBT has no way of knowing which lines are serving payphones, until SWBT is so informed by the CLEC. Deere Aff. ¶ 10.

V. SOUTHWESTERN BELL'S SATISFACTION OF THE PUBLIC INTEREST STANDARD IS ESSENTIALLY UNDISPUTED

As Southwestern Bell explained in its prior briefs and supporting affidavits, interLATA relief for SWBT will bring lower prices and wider choice for long distance services, as well as even faster local entry by CLECs. See SWBT Br. at 47-62; SWBT Reply Br. at 74-88. Indeed, no commenter has taken issue with the FCC's recent conclusion "that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist."⁴⁸

⁴⁸ New York Order, 15 FCC Rcd at 4164, ¶ 428; see also Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, 20741-42, ¶ 381 (1977) ("BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets."). The Commission also has considered performance monitoring as an aspect of its public interest analysis. See New York Order, 15 FCC Rcd at 4166-67, ¶ 433. Although few commenters dispute the efficacy of the Texas plan, AT&T claims that because SWBT has made Tier 2 payments under the plan, the incentives created by the plan are somehow insufficient. AT&T Supp. at 43-45. Of course, had SWBT not made any payments, the plan surely would have been derided as toothless. The plan is working as designed, by calling attention to deficiencies and creating substantial incentives to correct them. See Dysart Supp. Reply. Aff. ¶ 88.

For confirmation of these benefits, one need only look to the local entry and the new toll plans since Bell Atlantic received section 271 relief in New York. Five months after Bell Atlantic filed its application, AT&T went from having a few thousand local customers in that State, to having more than 175,000.⁴⁹ MCI WorldCom has more than 200,000 local residential customers in New York.⁵⁰ And Bell Atlantic is now offering New York residential customers long distance plans that will save them 10 to 50 percent or more off most of the advertised rates of Bell Atlantic's competitors.⁵¹ These price reductions will likely soon be enjoyed by all consumers, as interexchange carriers attempt to compete with lower plans of their own.⁵²

No one seriously disputes that the public would benefit from increased competition in the interLATA market. Granting the Application will bring to the consumers of Texas the kinds of choices and competitive benefits that New Yorkers have already begun to enjoy. Further delay would be wholly inconsistent with the public interest.

⁴⁹ Compare Comments of AT&T Corp. in Opposition to Bell Atlantic's Section 271 Application for New York at 20, CC Docket No. 99-295 (FCC filed Oct. 19, 1999) (indicating that AT&T had no local customers until August 1999) with Time Warner Cable Press Release, AT&T and Time Warner Cable Announce Joint Marketing Agreement (Mar. 8, 2000) ("[w]ith 175,000 customers, AT&T's One Rate New York all-distance calling plan is booming").

⁵⁰ National Press Club Luncheon with Bernard Ebbers, President and CEO, MCI WorldCom, Washington, D.C., Federal News Service (Jan. 12, 2000).

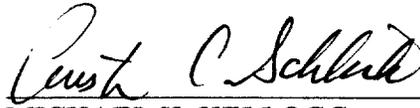
⁵¹ Consumers Union Press Release, Bell Atlantic Offers NY Customers Flat-Rate Long-Distance Plan (Jan. 4, 2000) ("Bell Atlantic deserves credit for offering New York consumers real cost savings. Since these plans are free of monthly fees and minimum charges, those who do not do a lot of long distance calling will finally begin receiving some of the benefits of competition.").

⁵² See V. Hua, Telephone Battle May Be Brewing, The San Francisco Examiner, Apr. 9, 2000, at B-1 (quoting Dan Alcazar, a spokesman for Sprint: "Once a (local telephone company) is allowed to sell long-distance, we'd want to respond in kind. They get a running head-start, and we're going to respond aggressively in kind").

CONCLUSION

The Application should be granted.

Respectfully submitted,



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