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June 7, 2000

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Ex Parte Submission

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

Re: CC Docket No. 00-65, Application of SBC Communications Inc., et al.,
for Provision of In-region InterLATA Services in Texas

Dear Ms. Salas:

In response to the supplemental reply comments and affidavits of SBC Communications, Inc., et al. ("SBC"), and at the request of Commission staff, AT&T Corp ("AT&T") respectfully submits this letter, as well as the attached declaration[s] of C. Michael Pfau and Julie S. Chambers ("Pfau/Chambers Decl."), concerning SBC's newly explained change of position with respect to UNE-platform ("UNE-P") carriers and DSL.¹

¹ These submissions would not have been necessary at this stage had SBC complied with the Commission's "complete when filed" and other rules designed to ensure the creation of a complete record as early in the process as possible. But SBC has repeatedly violated those rules with respect to the xDSL/UNE-P issue. Although AT&T had raised this issue in Texas last fall, SBC did not address it in its initial application despite its obligation to do so. AT&T emphasized this issue in its comments on SBC's first application, but SBC attempted to deflect the Commission's attention from it by proclaiming that "AT&T is free to offer both voice and data service over the UNE Platform." SBC Reply Br. 37 n.19. When SBC refiled its application, SBC attached evidence that it had either abandoned or never intended to abide by this representation, see Auinbauh Supp. Decl. Att. C, but nowhere acknowledged or explained its change of position. Instead, SBC waited until the second round of reply comments to address the issue on the merits, and even then its belated comments raise more questions than they answer, as explained in the accompanying declaration. SBC apparently believes that its "hide the pea" strategy will prevent the Commission from addressing AT&T's claims in this proceeding. If that is so, the consequence should be rejection of SBC's application.

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Since the fall of 1999, SBC has refused to negotiate reasonable terms, conditions, and operating procedures to permit UNE-P carriers to provide both voice and data services over unbundled loops obtained as part of the UNE-platform. AT&T therefore pointed to SBC's intransigence as a principal ground for denying SBC's first Texas 271 application. See AT&T Comments at 9-27.

Indeed, SBC's attempt to block the use of UNE-P in conjunction with DSL service is merely the latest step in SBC's longstanding resistance to all forms of competition based on the UNE-platform. Thus, as AT&T also described in opposing SBC's first application, SBC initially raised a series of broad legal objections to UNE-P and attempted to impose numerous "poison pills" into interconnection agreements that would have restricted or entirely foreclosed competitors' use of UNE-P. See Tonge/Rutan Decl. ¶¶ 30-35. During the time that the FCC's Rule 315(b) was vacated, SBC flatly refused to provide UNE-P, and insisted that CLECs obtain access to combinations of UNEs exclusively through a collocation-based method that was patently discriminatory and in essentials is no different than what SBC is now trying to impose on CLECs seeking to add DSL to UNE-P. And when its legal objections were rejected, SBC proceeded to raise numerous technical and operational obstacles to CLECs' use of UNE-P which delayed and decreased CLECs' ability to rely on UNE-P to attract or retain customers. See Tonge/Rutan Decl. ¶¶ 36-53.

In connection with this application, SBC has further obstructed the use of UNE-P by asserting inconsistent positions on the use of UNE-P with DSL. Thus, in its initial 271 reply comments, SBC accepted, for the first time, its obligation to permit UNE-P carriers the ability to offer DSL services over the unbundled loops they obtain as part of the platform. Specifically, SBC stated that "*AT&T is free to offer both voice and data service over the UNE Platform or other UNE arrangements, whether by itself or with its xDSL partner, I[P] Communications.*" SBC Reply Br. at 37 n.19 (emphasis added).

But SBC's conduct outside of the Commission's proceeding reflected precisely the opposite position. SBC submitted a proposed amendment to the T2A stating that the high frequency portion of the loop needed for data services "is not available in conjunction with a combination of network elements known as the platform or UNE-P . . . or any arrangement where SBC is not the retail POTS provider."² SBC waited until its supplemental reply comments, however, to acknowledge and defend its new position. In those comments, SBC states categorically that it will refuse to provision one simple piece of equipment – the "splitter" – needed to enable CLECs to add data service to the voice service provided over the UNE-platform, even though it is willing to provide that equipment to data carriers. Instead, SBC now asserts that "*the UNE-P carrier must request that the platform be disconnected and then must order a DSL-capable loop and, if desired, UNE switching[,] and combine those elements with its collocated additional equipment (e.g., a splitter and a DSLAM)*" in order to provide both voice

² T2A section 4.7.4, submitted as Att. C to the Supplemental Affidavit of Michael Auinbauh.

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and data service to a customer. Auinbauh Supp. Reply Aff. ¶ 12 (emphasis added). SBC thus seeks to require CLECs to (1) dismantle the customer's existing arrangements that connect the customer's loop to the switch, (2) reroute the customer's voice circuit through the CLEC collocation space, and (3) then take that circuit back to SBC's switch. Such competition-defeating re-arrangements are required only because SBC refuses to place a splitter on the customer's existing line.

There is absolutely no technical or legal justification for SBC's "disconnect UNE-P" requirement. Indeed, SBC willingly *provides* a splitter for those data CLECs who are content to let SBC provide the customer with voice service. SBC's requirement is thus purely a policy decision that is applicable *only* when a CLEC attempts to provide *both* voice and data in competition with SBC. Accordingly, there is no legitimate business reason for SBC to refuse to provide the splitter to these CLECs, for the only explanation is that SBC is seeking to undermine the platform and prevent or impair CLECs from providing competition to SBC's voice services for customers using both voice and data. This refusal to deal with CLECs would constitute monopolization in violation of the Sherman Act if §§ 251(c)(3) and 271(c)(ii)(B) did not exist. See Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585 (1985). *A fortiori*, it violates the competitive checklist.

That is particularly so because SBC's policy position is not just starkly anticompetitive, but also will seriously constrain competition for both voice and data services in Texas. SBC's control over the local loop and unique ability to offer voice/DSL packages has already propelled it to a dominant market position, with 9 out of 10 DSL customers in Texas receiving service from SBC, and with projections of 300,000 customers by year end. SBC's policy of denying CLECs the ability to offer a competing voice/DSL package to residential customers using the UNE-platform will secure that dominant position indefinitely, because UNE-P is the only vehicle that AT&T and other CLECs currently have to offer voice service for residential customers on a scale that could provide meaningful competition with SBC and other ILECs. On its face, the alternative arrangement that SBC is imposing would greatly impair the ability of CLECs to offer a competing voice/data package; moreover, the full extent of the burden remains unknown because SBC has strategically withheld critical details of how it intends to implement this new "disconnect" requirement. By denying UNE-P to CLECs seeking to offer a package of voice and data services to residential customers, SBC will perpetuate its current monopoly for voice services to those customers – a large, growing, and economically very significant segment of the market – for the foreseeable future.

The remainder of this submission responds in more detail to SBC's attempted defense of its refusal to provide UNE-P CLECs with the reasonable and nondiscriminatory procedures they need, including the provision of loops with a splitter as part of the UNE-platform, so that they can provide residential customers with bundles of voice and DSL service in competition with SBC. Part I demonstrates that SBC's refusal to provide UNE-P CLECs with splitters, and with the procedures needed to implement access to loops that include splitters,

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violates SBC's duty to make available the full features, functions, and capabilities of the loop. This follows from the plain language of the Commission's rules and prior orders. SBC offers no analytical or policy support for its contrary view, but invokes language from various Commission orders that neither addresses nor was intended to address the issue.

Part II further shows that SBC's failure to provide UNE-P CLECs with splitters, and with the procedures needed to implement access to loops that include splitters, is also flatly discriminatory, and therefore is grounds for denying SBC's application. SBC is denying UNE-P CLECs the arrangements needed to compete effectively with SBC, while at the same time offering data CLECs comparable arrangements so long as they do not attempt to offer voice service in competition with SBC. SBC provides no legally cognizable reason for refusing to provide splitters exclusively to those CLECs who seek to compete with SBC to provide packages of voice and data service.

Finally, Part III explains why, as a matter of administrative law, this Commission may not decline to resolve this matter in this adjudication, and why it is also imperative as a policy matter for the Commission to require SBC to provide UNE-P CLECs with the access they seek as soon as possible. As set forth below, failure promptly to require SBC to implement reasonable and nondiscriminatory procedures for UNE-P CLECs to offer bundles of voice and data service will irreparably harm both CLECs and the prospects for meaningful local residential competition in Texas.

I. SBC May Not Refuse To Provide The Splitter, Because The Splitter Is Part Of The Unbundled Loop Element

It is undisputed that it is technically feasible for SBC to condition UNE-P loops by adding a splitter so that a requesting UNE-P CLEC could use those loops to provide not only voice but data service as well. Accordingly, SBC is obligated by law to do so. As AT&T demonstrated in its supplemental comments (at 13-14), the Act (§§ 153(29), 251(c)(3), 251(d)(2)), and the Commission's rules and orders require incumbent LECs to provide CLECs access to "all" of the functions of an unbundled network element (47 C.F.R. § 51.307(c)), and to allow them to provide "any" telecommunications service that can be offered by means of that element. *Id.* See also Local Competition Order ¶ 382 ("some modification of incumbent LEC facilities" is required by § 251(c)(3)); New York Order ¶ 271 (ILEC "must also provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible"); UNE Remand Order ¶ 167; 47 C.F.R. § 51.309(a) (ILEC may not impose "limitations, restrictions, or requirements on requests for, or the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends").

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SBC nowhere even addresses, let alone attempts to refute, this authority. Instead, SBC both misrepresents its own prior statements as well as AT&T's positions,³ and offers new arguments of its own that are either unsupported by any authority or rely solely on inapposite references to various Commission orders.

First, SBC invokes the UNE Remand Order and claims that splitters "do not meet the impair threshold required by section 251(d)(2) for unbundled access and are not unbundled elements." Auinbauh Supp. Reply ¶ 8; SBC Supp. Reply Br. 22. AT&T's position, however, is that the splitter is a part of the unbundled loop element that is subject to the unbundling requirement under prior Commission orders. Moreover, as Part II of this submission and AT&T's previously filed comments and affidavits make plain, CLECs would be severely impaired in their ability to provide both the voice and the data services that they seek to offer if the Commission were to adopt SBC's view that it may lawfully refuse to provide splitter-equipped loops with UNE-P. On this record, therefore, the Commission could properly conclude that the "impair standard" of section 271(d)(2)(B) is met with respect to a loop that includes a splitter.

Nevertheless, the Commission need not reach that impair analysis, because the incumbent LECs' obligation to provide a splitter as part of the unbundled loop is plainly established by the Commission's rules and prior orders. See, e.g., page 4, supra; AT&T Supp. Comments at 13-14. The splitter is properly considered part of the loop, moreover, because it plainly constitutes "attached electronics" necessary to provide CLECs the ability to take advantage of the full functions, features, and capabilities of the loop. See UNE Remand Order ¶ 167. Conversely, the splitter – particularly the stand-alone splitter (not integrated into a DSLAM) that AT&T seeks here – is not equipment "used for the provision of advanced services, such as a DSLAM." Id. Unlike a DSLAM, which is used exclusively for the provision of advanced services, a splitter is a passive piece of equipment that – like the loop itself – is necessary to enable a carrier to provide *both* voice and data services on the same loop. See

³ For example, SBC baldly misrepresents³ its prior written statement concerning its willingness to let AT&T add DSL to UNE-P. Compare SBC Supp. Reply Br. 22 ("As Southwestern Bell has previously explained, AT&T currently can offer both voice and data service, whether alone or in conjunction with another CLEC, *over a single unbundled loop*. See SWBT Reply Br. at 37 n.19") with SBC Reply Br. at 37 n.19 ("AT&T is free to offer both voice and data service *over the UNE Platform*") (both emphases added). SBC also wrongly implies that AT&T believes it "should not be responsible for ensuring that [its] loop is DSL-capable" (Auinbauh Supp. Reply Aff. ¶ 13), and that AT&T does not want to connect its UNE-P loops with its own, or a third party's, collocated DSLAM (id. ¶ 16). These unsupported assertions are incorrect, for AT&T has not objected to qualifying loops for DSL service nor to using its own (or a partner's) collocated DSLAMs. See Pfau/Chambers Decl. ¶ 5. AT&T's point is simply that there is no technical justification for requiring CLECs to disconnect the UNE-platform and reroute the voice circuit through collocated space. See also note 6, infra (misrepresentation concerning line sharing).

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Pfau/Chambers Decl. ¶¶ 13-14.⁴ This Commission has already concluded, in the context of the SBC/Ameritech Merger, that stand-alone voice splitters are not used exclusively to provide advanced services and may not even be transferred from SBC to ASI.⁵ Accordingly, such splitters do not fall into the exception for advanced services equipment. Moreover, adding a splitter to a loop involves procedures that are analogous, in all relevant technical respects, to the adding or removing of other loop electronics (such as bridge taps or load coils) that incumbent LECs routinely provide and are obligated to provide as part of loop conditioning. See Pfau/Chambers Decl. ¶ 17. And adding a splitter is necessary to provide voice service when a customer also requests advanced data service over the same line, a configuration that is crucial to the development of a competitive market for advanced services, as the Commission found in the Line Sharing Order. For all these reasons, the splitter plainly falls within the definition of the loop element.

Second, SBC further attempts to evade its obligations to provide access to the full functions of the loop by claiming that it is not required “to do all of the work to reconfigure network elements that had been obtained as the so-called UNE platform into a new configuration which AT&T characterizes as line sharing on UNE-P.”⁶ Auinbauh Supp. Reply ¶ 13. In SBC’s view, the FCC has “define[d] the platform as ‘combinations of loop, switching and transport unbundled networks used to provide circuit-switched voice service,’” and this “definition” somehow relieves SBC of duties it otherwise would have to provision those same elements to CLECs to enable them to provide data as well as voice service. Id. (quoting Line Sharing Order ¶ 72 n.161).

⁴ Notably, the FCC has “define[d] packet switching as the routing of individual data units, or ‘packets,’ based on address or other routing information contained in the packets.” UNE Remand Order ¶ 304. The DSLAM functionality is included in packet switching, because the DSLAM provides routing based on address information. Id. ¶¶ 303, 304. Conversely, the splitter performs no such “routing” function; it simply separates the signals it receives based on the frequencies of those signals, without regard to the content of the signals. See Line Sharing Order ¶ 66; Pfau/Chambers Decl. ¶ 13. This separating of signals is the essence of the splitter rather than the DSLAM. Thus, the Commission was careful to note that, although “DSLAM equipment sometimes includes a splitter,” it need not, in which case “a separate splitter separates the voice and data traffic.” UNE Remand Order ¶ 303.

⁵ See SBC/Ameritech Merger Order ¶ 365 & n.682, App. C at ¶ 3(d).

⁶ Of course, AT&T did not “characterize” its request in this way. At the very paragraphs SBC cites, AT&T used the phrase “line splitting,” not “line sharing,” (see Pfau/Chambers Supp. Decl. ¶¶ 40-41), and did so precisely to maintain the very distinction between AT&T’s request and line sharing that AT&T emphasized throughout its supplemental comments. See, e.g., AT&T Supp. Comments 18 (“far from wanting to ‘share’ the line with SBC, AT&T wants the whole line to itself, voiceband and high frequency”). SBC’s suggestion otherwise is at best sloppiness and at worst deliberate mischaracterization.

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In the footnote relied upon by SBC, however, the Commission was merely referencing a prior, and entirely accurate, description of the UNE-platform. The fact that the UNE-platform has been used thus far “to provide circuit-switched service” does not preclude its use for providing other telecommunications services. To the contrary, this Commission’s unbundling rule 309(a) specifically prohibits incumbent LECs from imposing “limitations, restrictions, or requirements on requests for, or the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.” Indeed, the reason that the UNE-platform has thus far been used by CLECs solely for circuit-switched service is that SBC refuses to allow its use to provide any other service.

Third, SBC claims that incumbent LECs “are under no obligation to provide [the splitter]” to UNE-P CLECs because the FCC granted incumbent LECs “discretion” to retain control of the splitter when providing line-sharing to data-only LECs in the Line Sharing Order. SBC Reply at 22, citing Line Sharing Order ¶ 76. Paragraph 76 of the Line Sharing Order, however, cannot bear the weight SBC places upon it.

Nowhere in paragraph 76 does the Commission even mention, let alone purport to distinguish, the authority relied upon by AT&T concerning the incumbent LECs’ duty to “modif[y]” their loop and other UNE facilities to enable requesting carriers to provide any telecommunications service they wish, including DSL. Local Competition Order ¶ 382. That is because the Line Sharing Order is directed at a separate issue. Paragraph 76 does not represent the Commission’s attempt to define (or redefine) an incumbent LEC’s obligations to respond to a UNE-P carrier’s request for access to the full functionality of a loop to provide both voice and data service. Rather, paragraph 76 addresses an incumbent LEC’s obligations with respect to a request for access solely to the high-frequency portion of the loop – which the Commission established as a separate network element in that Order. Indeed, that Order expressly acknowledged, and placed beyond dispute the fact that “requesting carriers could obtain combinations of network elements and use those elements to provide circuit-switched voice service as well as data services.” Id. ¶ 47. Because paragraph 76 does not purport to address SBC’s obligations outside the context of line-sharing, it does not and cannot rescind obligations that the statute and the Commission’s prior rules and orders have separately imposed.

Moreover, by its own terms, paragraph 76 simply acquiesces in the request of incumbent LECs that they be allowed to “maintain control over the loop and splitter equipment” as against the claims of certain data CLECs who also argued “for the right to control the splitter” in the line sharing context. Line Sharing Order ¶ 76. Indeed, the Order goes on to emphasize that an incumbent LEC’s ability to retain control over the splitter depends upon its willingness “to accommodate the competitive LEC’s preferred technology”; the Order thus precludes incumbent LECs from exercising control over the splitter to deny CLECs the access arrangements they prefer. Id. ¶ 79; see id. ¶¶ 77-79. Thus, the Commission limited the discretion that it afforded incumbent LECs with respect to the splitter in the line-sharing context,

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and that SBC now relies upon, precisely to ensure that incumbent LECs would not abuse that control in ways directly analogous to what SBC is attempting here. Thus, the Line Sharing Order not only fails to hold that incumbent LECs may refuse to provide CLECs with splitter-equipped loops outside the context of line sharing, it imposes limits on incumbent LEC discretion in the line-sharing context that are inconsistent with the position that SBC espouses here.

Finally, SBC argues that “no mandate” has been imposed that would require SBC “to conduct physical work and add equipment” such as a splitter to the elements of the platform “after those elements have been furnished to the CLEC.” Auinbauh Supp. Reply ¶ 19. This assertion is unsupported by citation to any authority, and it is simply incorrect. A CLEC has a right to the full and exclusive use of the loop it purchases from the ILEC (47 C.F.R. § 51.309(c)), and is entitled to OSS functions (Local Competition Order ¶ 520; UNE Remand Order ¶¶ 425-426), loop conditioning (UNE Remand Order ¶¶ 172-173), and cross-connects (UNE Remand Order ¶¶ 178-179) to assure that it continues to receive nondiscriminatory access to UNEs and interconnection, as required by Section 251(c).

SBC cites to nothing in the language of the Act, or in the Commission’s rules and orders, that even hints that an incumbent LEC’s duty to permit access to the full functionality of network elements is limited to the initial provisioning of those elements.⁷ Such a limitation, moreover, would be plainly discriminatory and anticompetitive, for it would deny CLECs the same ability that incumbent LECs have to use their network elements to meet customers’ evolving service needs. It would mean, for example, that an incumbent LEC could refuse to process a request for a feature change for a CLEC’s existing UNE-P customer, because the switching element for that customer had already been provisioned. SBC’s unsupported attempt to discriminate against CLECs by denying them full use of unbundled network elements after they are initially provisioned thus lacks any merit.

⁷ SBC’s rhetorical suggestion, in a footnote, that AT&T does not “really” want access to the full functionality of the loop because it is willing to accept SBC’s continued provision of DSL service when AT&T wins a UNE-P voice customer is absurd. It is obviously SBC, by refusing to allow AT&T to provide voice service in that context, that is restricting AT&T’s ability to access all of the loop’s functions and provide voice services to a customer that wants both voice and data service on his loop. See also Pfau/Chambers Decl. ¶ 22. Notably, SBC has yet to challenge on the merits AT&T’s argument that SBC’s refusal to provide its DSL service to customers for whom AT&T provides voice service over UNE-P is unjust, unreasonable, and unjustly and unreasonably discriminatory (in violation of § 201(b)) and an unreasonable restriction on the availability of a network element (in violation of § 251(c)).

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II. SBC's Selective Refusal To Provide Splitters To UNE-P CLECs Is Discriminatory

SBC's proposal also blatantly discriminates against UNE-P CLECs. SBC is willing to provide splitters to data-only CLECs, who do not threaten SBC's voice monopoly or even compete with SBC in the provision of bundles of voice/data services. Auinbauh Supp. Reply Aff. ¶ 9. UNE-P CLECs, on the other hand, get no such choice. SBC requires them to provide their own splitter, regardless of whether that approach best suits their business plans. *Id.* ¶¶ 13, 19. This is stark discrimination. SBC's selective approach to providing the splitter makes it easier for data-only CLECs to offer data services than for AT&T do so, and easier for data-only CLECs to partner with SBC than with AT&T.

The anticompetitive consequences of SBC's discrimination are significant. Despite months of attempted negotiations, SBC has yet to provide AT&T or other UNE-P CLECs with procedures needed for a CLEC either (1) to order both UNE-P voice and DSL service for a new customer, or (2) to add DSL service for an existing UNE-P customer. Even in this filing, SBC continues to withhold basic and vital information about implementation and thereby denies commenters the ability to assess fully the implications of its requirements, while also failing to prove that its alternative is nondiscriminatory. Nevertheless, significant disadvantages are inherent in SBC's "disconnect UNE-P" approach. These disadvantages demonstrate that AT&T and other CLECs are severely impaired by SBC's failure to provide access to the procedures and the splitters needed to provision DSL over the UNE-platform. They also demonstrate that -- quite apart from SBC's failure to comply with its checklist obligations (§ 271(c)(2)(B)(ii), (iv)) -- SBC's selective denial of such access to UNE-P CLECs is classic anticompetitive discrimination that independently requires denial of SBC's application as inconsistent with the public interest (§ 271(d)(3)(C)).

First, to add DSL for an existing UNE-P customer, the CLEC is required "to disconnect its UNE-P arrangement and order an unbundled DSL-capable loop, and an unbundled switch port combined with shared transport to be connected to its collocation arrangement." Auinbauh Supp. Reply Aff. ¶ 15; *see id.* ¶ 17 (CLEC must "disconnect the UNE-P and obtain separate UNE elements (a UNE loop and a UNE switch port)."⁸ The CLEC would then be responsible for "combin[ing]" the separately obtained UNE loop and UNE switch port with the splitter and DSLAM functionality in the CLEC's collocation cage. *Id.* ¶ 17.

This ripping apart of the customer's existing loop/switch port connection and forced re-routing through the CLEC's collocation cage is entirely unnecessary and enormously

⁸ SBC nowhere refers to procedures for ordering both voice and data service for a new customer. For purposes of this submission, AT&T assumes that the process would involve essentially the same steps, with the initial step being the "disconnect" not of UNE-P but of the customer's existing voice connections with SBC, and continuing with the re-routing of the voice circuit through the CLEC collocation space and then back to the SBC voice switch.

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anticompetitive. Pfau/Chambers Decl. ¶¶ 9-11, 25-26. For example, by introducing new and unnecessary cross-connects and demanding coordination between SBC and CLECs regarding circuit facility assignments, SBC's proposal would significantly increase the risk that CLEC customers would suffer a significant voice service outage as the cost of switching to CLEC voice/DSL service. Pfau/Chambers Decl. ¶ 28. SBC's approach also would dramatically raise the costs of UNE-P provisioning, by artificially creating a basis for SBC to seek to impose network assembly (glue) charges, cutover coordination charges, and other non-recurring charges that would not be needed if SBC provided the splitter. *Id.* ¶ 27. And SBC's apparent multiple-order requirement would, at a minimum, introduce numerous opportunities for OSS-related delays and disconnects, as past experience with UNE-P and UNE-L ordering has shown. *Id.* ¶ 28.

SBC's requirement would also create a powerful -- and entirely unnecessary -- incentive for data-only CLECs to partner with SBC rather than AT&T or other CLECs. Only SBC would be able to offer such data-only CLECs the benefits of a splitter that is owned, operated, and maintained by the same entity (*i.e.*, the incumbent) that is responsible for the remainder of the loop. Pfau/Chambers Decl. ¶ 33. And if AT&T wished to provide voice service for a customer that received data service from a data-only CLEC and voice service from SBC, SBC's approach would require a hugely disruptive, cumbersome, and expensive rearrangement of cross-connections in the central office, when all that would be technically required is the electronic processing of a flow-through UNE-P order. *Id.* ¶ 25. Thus SBC's approach would doubly secure its position as the only carrier able to provide voice service to residential customers who want advanced services as well, just as its Chairman has boasted.

Of course, depending on the details of how SBC chose to implement this "disconnect" approach, the negative impact on CLECs could be far greater still. See *id.* ¶¶ 34. But even assuming that SBC attempted to minimize cost and disruption, SBC's insistence on disconnecting existing voice arrangements and re-routing them through CLEC collocation cages will doom any efforts by CLECs to use UNE-P to serve customers that also wish to obtain data service. Those customers may have a choice of data service provider (if line sharing is ultimately fairly implemented), but their only option for voice service will remain SBC.

As this Commission recognized in the UNE Remand Order, non-discriminatory access to the platform is essential if CLECs are to bring meaningful competition to the residential market. UNE Remand Order ¶¶ 253, 273, 296. By forcing CLECs to disconnect the platform in order to add data service, SBC is denying AT&T access to the principal vehicle for offering local service to residential customers. Pfau/Chambers ¶¶ 25-26. SBC's approach will thus perpetuate its monopoly position as the sole provider of local voice service for all of those customers that seek a package of voice and data services.

Indeed, the Commission already has already determined that a similar scheme with respect to UNE combinations used to provide voice services was unlawful, and required the

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Commission to reject a BOC's section 271 application. See Second BellSouth Louisiana Order ¶¶ 161-70; BellSouth South Carolina Order ¶¶ 195-209.⁹ Specifically, during the time that Rule 315(b) was vacated, BellSouth and other incumbent LECs, including SBC, refused to provide UNE-P for CLECs to provide competing voice services, and instead insisted upon disconnecting already combined network elements, and then requiring CLECs to obtain collocation space to recombine those elements. The Commission rejected two of BellSouth's section 271 applications because of that policy, "emphasiz[ing]" that "the use of combinations of network elements is an important entry strategy into the local telecommunications market" (BellSouth South Carolina Order ¶¶ 195-96) and that a BOC failed to comply with its obligations under section 251(c)(3) if it offer[ed] "collocation as the sole method for combining unbundled network elements." Second BellSouth Louisiana Order ¶¶ 168-70.¹⁰ For these same reasons, SBC's "disconnect UNE-P" approach and its failure to establish and implement the detailed and reasonable procedures necessary to permit CLECs to use unbundled network elements to provide both voice and data services over a single line requires a finding that SBC, like BellSouth, has failed to prove that it has fully implemented the competitive checklist.

III. The Commission May Not Approve SBC's Application Without Resolving The Legal Issue Addressed Here

At bottom, the question presented here is one of law: whether SBC may – consistent with its duties to fully implement the competitive checklist and otherwise satisfy the requirements specified in § 271(d)(3) – refuse to provide CLECs access to the procedures and the splitters they need to provision DSL service with unbundled network elements, including UNE-P. The law is settled that the Commission may not "postpone" consideration of this or related legal issues (such as whether nondiscriminatory access to the full functions, features and

⁹ Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd. 20599, ¶¶ 161-70 (1998) ("Second BellSouth Louisiana Order"); Memorandum Opinion and Order, Application of BellSouth Corp., et al. Pursuant to Section 271 to Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd. 539, ¶¶ 195-209 (1997) ("BellSouth South Carolina Order").

¹⁰ Notably, in both, the Commission found that the BOC must demonstrate, with specific "evidence of actual commercial usage" or testing, that its methods for providing access to UNE combinations were consistent with the Act and Commission's Rules. See id. ¶¶ 166-67; BellSouth South Carolina Order ¶¶ 197-98, 202-09. Just as SBC has refused to provide details regarding how it will provide access to combinations for providing voice and data services, BellSouth "fail[ed] to include definite terms and conditions" (id. ¶ 197) for access to UNE combinations and was deemed not to comply with the statute for that reason, as well as for its "refusal to heed the requirement" of showing, through actual commercial usage or thorough testing, that the procedures it offered were truly nondiscriminatory and could support meaningful competition. Second BellSouth Louisiana Order ¶ 166.

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capabilities of the loop element requires access to loops equipped with splitters) on the ground that it intends to address the issue in “a rulemaking” or other subsequent proceeding. AT&T v. FCC, 978 F.2d 727, 729, 732 (D.C. Cir. 1992). Rather, where, as here, the Commission is acting as an “adjudicator” (determining a BOC’s compliance with its statutory duties) rather than in the “quasi-legislative” role of “rulemaking,” the Commission must reach a determination whether the BOC’s conduct is in fact “violating the law.” Id. at 732; see also MCI v. FCC, 10 F.3d 842, 846-47 (D.C. Cir. 1993) (same).

Indeed, the Commission’s duty to decide such legal issues is especially clear in the context of a section 271 application. That is because the Act requires the Commission to make “a written determination” of whether, inter alia, the BOC has “fully implemented” the competitive checklist (thus leaving no possibility of approval for partial implementation) (§ 271(d)(3)(A)(i)), and also because the Act specifies that the Commission may not “limit or extend” the terms of the checklist (§ 271(d)(4)) or “forbear from applying the requirements of Section 251(c) or 271” (§161(d)). Thus, not only is there no principled line to be drawn between the legal issues that the Commission must resolve before approving a section 271 application and those it may defer to a later proceeding, but the statute also expressly precludes the Commission from attempting to draw any such lines.

There is also no valid procedural or policy reason for this Commission to defer resolution of these issues. This issue has been pending since the inception of SBC’s application, and it is SBC that chose to delay joining issue.¹¹ The relevant issues are questions of law that can be readily resolved by consideration of this Commission’s rules and prior orders. For the Commission to refuse to decide these issues now while simultaneously approving SBC’s application as fully in compliance with all statutory duties is effectively to decide the issues in SBC’s favor. Absent the incentive of § 271 relief, CLECs would have no effective means of enforcing SBC’s obligation to provide CLECs the splitter and reasonable implementation procedures even if, in some future order, this Commission or a state commission were to require SBC to do so. Past experience with both Ameritech and SBC confirms that, in all likelihood, SBC would simply litigate incessantly the question of its obligation to provide the splitter, resist adoption of reasonable implementation procedures, and refuse to comply with interim orders to the contrary, at least until its last appeal was denied.

¹¹ Resolution of this issue should certainly have been possible in the six months since SBC filed its initial application. Compare § 251(d)(1) (requiring release of the Local Competition Order and implementing regulations “[w]ithin 6 months after the date of enactment of the Telecommunications Act of 1996”). If there is any impediment to the Commission doing so, it is attributable solely to SBC’s failure present its case until its most recent reply comments, and its continued refusal to respond in detail to AT&T’s claims. If the Commission believes that it cannot resolve the issue on the current record in the time remaining, then it should deny SBC’s application on that basis.

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There is also no basis in this record to find that this issue can or will be promptly resolved at the state level. In this regard, SBC's statement that "the Texas PUC examined and addressed each of the complaints that CLECs have raised in their comments on SWBT's application" (SBC Reply Br. 9) is false. The TPUC has declined to address in state proceedings the issue of how UNE-P CLECs may get access to DSL, and has also made no mention of it in any of its filings before this Commission. In any event, reliance on the state commission to resolve this issue of federal law is inappropriate and necessarily will lead to extended delay.¹²

Finally, it is critical to the future of meaningful residential competition in Texas that this Commission reject SBC's position and insist, as grounds for obtaining 271 relief, that SBC provide CLECs with an equal opportunity to offer packages of voice and data service to residential customers. Today, nine out of 10 DSL customers in Texas receives that service from SBC. See Pfau/Chambers Decl. ¶ 42. Moreover, the pace of SBC's market entry grows monthly, with SBC likely to be self-provisioning about 2700 DSL orders per business day by the end of this year, with a base by then of over 300,000 customers. Id. ¶ 41.

AT&T, by contrast, is currently unable to offer a package of voice and DSL service to even a single residential customer in Texas. And unlike SBC, AT&T cannot now project any growth – even to one customer – by the end of this year. This is not for want of effort. AT&T first sought to establish the necessary procedures to add DSL service to UNE-P last fall, shortly after SBC announced its plans to rapidly roll out its own residential voice/DSL service offering. Pfau/Chambers 1/31 Decl. ¶ 29. AT&T is in the process of establishing arrangements with data-only CLECs to provide the DSL portion of the service, and is making plans to roll out a combined voice/data service offer in several key Texas cities. And AT&T is moving aggressively to complete the work needed to offer a package of voice and data services over cable facilities, even though these facilities will allow AT&T to reach no more than about 20% of the Texas market. See Tonge/Rutan Decl. ¶ 17(a). But for now, that is as far as AT&T can go. AT&T cannot take the further steps needed to introduce a new service -- such as the development of operations support systems and market readiness testing -- unless and until SBC provides the necessary access to its network elements and defines in detail the procedures that CLECs can use to obtain that access and the cost of doing so. Id.

Any further delay in resolving this issue will thus provide SBC with an insuperable first-mover advantage that will foreclose meaningful residential voice competition

¹² In particular, SBC's scorched-earth approach to arbitration, the only vehicle that the TPUC has made available for AT&T to pursue its claim at the state level, ensures that this will not provide AT&T an effective means of relief in any time frame that would permit AT&T a meaningful opportunity to compete with SBC. For example, the TPUC's failure, more than one year after the Supreme Court's decision in Iowa Utilities Bd., to eliminate SBC's glue charges illustrates how long it can take to get relief through arbitration even after the Supreme Court has definitively resolved the outstanding federal law issue.

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for customers who also want data service and seriously impair competition in the markets for data service and for long distance service as well. Indeed, such delay will effectively guarantee that SBC achieves its announced goal of using its unique control over the local loop to become the only carrier in Texas able to offer consumers the package of local, long distance, and advanced services they desire. Such a result – achieved while denying competitors a reasonable opportunity to compete – would render superfluous much of the accomplishments of the TPUC over the last three years and preclude in Texas, for the foreseeable future, fulfillment of the procompetitive promise of the Act.

An original and one copy of this letter are being submitted pursuant to Section 1.1206 (b) of the Commission's rules. Please insert one copy into the public record of CC-Docket No. 00-65.

Respectfully submitted,



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

REC'D
JUN - 7 2000
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Application of SBC Communications Inc.)
Pursuant to Section 271 of the) CC Docket No. 00-65
Telecommunications Act of 1996)
To Provide In-Region, InterLATA Services)
in Texas)

**SUPPLEMENTAL RESPONSIVE DECLARATION OF
C. MICHAEL PFAU AND JULIE S. CHAMBERS
ON BEHALF OF
AT&T CORP.**

June 7, 2000

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**SUPPLEMENTAL RESPONSIVE DECLARATION OF
C. MICHAEL PFAU AND JULIE S. CHAMBERS
ON BEHALF OF AT&T CORP.**

I. QUALIFICATIONS

A. C. Michael Pfau

1. My name is C. Michael Pfau. I am employed by AT&T Corp. ("AT&T") as Division Manager, AT&T Public Policy. My responsibilities at AT&T and qualifications for submitting this Supplemental Responsive Declaration are detailed in the declarations that accompany AT&T's comments on SBC's pending application (and its prior application) for authority to offer interLATA services in Texas.

B. Julie S. Chambers

2. My name is Julie S. Chambers. I am employed by AT&T as District Manager, AT&T/SWBT Account Team. My responsibilities at AT&T and qualifications for submitting this Supplemental Responsive Declaration are detailed in the declarations that accompany AT&T's comments on SBC's pending application (and its prior application) for authority to offer interLATA services in Texas.

3. We have prepared this Supplemental Responsive Declaration in order to address various points set forth in SBC's reply comments of May 19, 2000 and the accompanying affidavits, particularly the Supplemental Reply Affidavit of Michael C. Auinbauh.

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II. SBC CAN AND SHOULD PROVIDE AT&T WITH NONDISCRIMINATORY ACCESS TO THE LOOPS AND SUPPORT NEEDED TO PERMIT AT&T EFFICIENTLY TO PROVIDE VOICE AND ADVANCED SERVICES OVER THE LOOP FACILITIES IT PURCHASES AS PART OF UNE-P.

4. Detailed discussion on digital subscriber line (“DSL”) issues should not obscure the central issue in dispute. We begin, therefore, by restating the question: must SBC provide nondiscriminatory access to the loops and operations support systems (“OSS”) needed to permit AT&T efficiently to provide voice and advanced services over the loops it purchases as part of the UNE Platform? AT&T says yes. SBC previously said yes (see ¶ 24 *infra*) but now says no.¹

5. All AT&T seeks is access to the same network capabilities -- and to the same efficiencies and reliability -- that result when SWBT provides voice and data in conjunction with ASI (its advanced services affiliate) or shares its loop with a data CLEC. Whether AT&T deploys all of its own assets (digital subscriber line access multiplexers (“DSLAMs”) and other packet switches) to provide advanced services or obtains those capabilities through voluntary commercial arrangements with a third party, what AT&T needs is simple: access to the same configuration, functionalities, and support utilized when SBC shares its loops with either ASI or a data CLEC.

6. If a single loop can be efficiently shared when SBC and its affiliate provide voice and data services, or when SBC provides voice services and a data-only CLEC provides advanced services, simple nondiscrimination principles require that the same efficiency must be available to a carrier that wishes to provide both voice and advanced services over a UNE-P loop. Yet AT&T has been wholly unsuccessful in obtaining the necessary cooperation from SBC that would enable AT&T to provide advanced services in the high-frequency spectrum (“HFS”) of the local loops that AT&T leases from SBC. Accordingly, AT&T remains unable to

¹ Meanwhile, the TPUC has simply ignored the issue. Although SBC claims that the TPUC has “examined and addressed each of the [DSL] complaints that CLECs have raised,” SBC 5/19 Reply at 9, this is false, as evidenced by the fact that the TPUC does not even mention AT&T’s concerns in its comments to the FCC. In truth, the TPUC repeatedly has failed to examine or address AT&T’s complaints regarding SBC’s refusal to enable the efficient provision of DSL over UNE-P.

provide an integrated bundle of voice and data services to retail customers through the UNE-P architecture.

7. SBC incorrectly argues that when AT&T buys a UNE-P loop in combination with the switch and other UNEs AT&T has purchased only the voice band of that loop. In particular, SBC asserts that the UNE Platform may only be used to deploy voice grade service. Auinbauh Supp. Reply Aff. ¶¶ 12, 13. This assertion is foreclosed by the Act and the Commission's rules. The Act itself defines the term "network element" to include the "features, functions, and capabilities that are provided by means of such [network element.]" 47 U.S.C. § 153(29). The Act also requires ILECs to provide "nondiscriminatory access" to their network elements so that CLECs can provide the "telecommunications service" they seek to offer. 47 U.S.C. § 251(c)(3). Synthesizing these statutory requirements, the FCC's unbundling rule 307(c) states that:

An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with *all of the unbundled network element's features, functions, and capabilities*, in a manner that allow the requesting telecommunications carrier to provide *any* telecommunications service that can be offered by means of that network element. 47 C.F.R. § 51.307 (emphasis added).

The FCC has repeatedly held that this duty applies directly to CLECs' use of unbundled loops to provide advanced services. Since August 1996, SBC, like all other ILECs, has been under an obligation to provide unbundled access to loops capable of transmitting digital signals, such as digital subscriber line (DSL). Local Competition Order, 11 FCC Rcd 15499, 15691 ¶ 380.

8. Because SBC has chosen to enable the efficient addition of DSL capabilities to the loops it uses to provide its own voice services, its refusal to permit AT&T to enjoy comparable efficiencies on loops over which AT&T provides voice services as part of UNE Platform is plainly discriminatory. The Line Sharing Order does not (and cannot) authorize this discrimination. Indeed, the Commission explicitly recognized in the Line Sharing Order that competitive carriers are entitled to "obtain combination of network elements and use those elements to provide circuit switched voice service *as well as data services*." Line Sharing Order ¶ 47 (emphasis added).

9. In order to enable AT&T to provide voice and advanced services over a UNE-P loop in a prompt, efficient and nondisruptive manner, AT&T needs SBC to insert a splitter into the UNE-P loop/port combination. Splitter insertion simply involves terminating the loop on the splitter and wiring the high-frequency (DSL) output of the splitter to a cross-connect running to the DSLAM, and wiring the low-frequency (analog voice) output of the splitter to the UNE-P local switching element. SBC must also provide nondiscriminatory operational support to facilitate the provision of voice and data services over a UNE-P loop -- just as it did when SWBT provided both voice and data service, now does when ASI provides data services and SWBT provides the voice service, and will soon do when data CLECs provide data service while SWBT provides the voice service.

10. From a technical perspective, there are no physical differences between ILEC-provided “line-sharing” that enables a data CLEC to provide data service over a loop on which SWBT provides voice service and the “line-splitting” required to enable a UNE-P carrier to provide both voice and data service on the same loop.² In both cases, SWBT’s deployment of the splitter is essential to permit the efficient delivery of services on a single loop.³

11. Without the ILEC insertion of the splitter, the CLEC is faced with the rip-it-apart scenario or use of a second line if it is to compete with a voice and data offer. As noted below, in the former case, the FCC has found that the costs of collocation and the prospects of hot cuts represent a service impairment. In the latter case, the FCC found in the Line Sharing Order that

² SBC falsely claims that AT&T seeks to acquire “line-sharing” over UNE-P. Auinbauh Supp. Reply Aff. at ¶ 13 & n.15, citing AT&T’s Pfau/Chambers Supplemental Declaration. But that Declaration refers (at ¶¶ 40-41) to “line-splitting,” not line-sharing. AT&T has generally used the term “line sharing” as the Commission does, to refer to an arrangement where a CLEC that does not otherwise have rights to the use of a loop purchases from the ILEC the right to use only the HFS portion of the loop, while the incumbent provides voice services over the low-frequency spectrum of the loop. Under the arrangement sought by AT&T, the CLEC would purchase (or already has purchased) the entire loop from SBC, which would then be used to provide both voice and data services, consistent with the legal requirement that the purchaser of an unbundled network element must be permitted to exploit the full features, functions, and capabilities of that element.

³ Contrary to SBC’s claim, Auinbauh Supp. Reply Aff. at ¶ 13, AT&T does not claim that the splitter is itself an unbundled network element. Rather, as demonstrated below, such splitters are part of the loop element.

competing via a second line represented an impairment. Thus, all options that SBC has offered have previously been found to have significant impairments for the prospects of competition.

12. SBC's affiant Michael C. Auinbauh makes several erroneous statements in defense of SBC's refusal to provide AT&T access to line splitters. First, Auinbauh erroneously asserts that the analysis that the Commission applied to DSLAMs and packet switching "applies equally to splitters." Auinbauh Supp. Reply Aff. at ¶ 8. But this misrepresents the UNE Remand Order. Indeed, that order determined that "attached electronics," with the exception of DSLAMs, should be regarded as part of the loop. UNE Remand Order at ¶ 175.

13. As AT&T has previously explained, the splitter is a passive electronic filter that is attached to the loop in order to split or separate signals on the basis of their transmission frequencies. The functions of frequency splitting and packet switching are entirely different. The splitter enables the low-frequency voice signals on the loop to be directed to a circuit switch and the high-frequency data signals on that loop to be delivered to a packet switching network (including DSLAMs).⁴ In contrast, packet switching refers to protocols in which messages are broken up into small packets before they are sent. Each packet contains header information about the source, destination, sequencing, etc., that governs the process in which packets of information are independently transmitted from point to point between source and destination and reassembled into proper sequence at the destination. A splitter is incapable of reading a header, or even of distinguishing between analog and digital transmissions, and does not implement routing instructions based upon transmitted information from the customer. The fact that a splitter *can*, as a matter of design convenience, be combined with a DSLAM does not mean that stand-alone splitters are involved in packet switching.⁵

⁴ Supp. Pfau/Chamber Decl. ¶¶ 40-42 n.31.

⁵ SBC's position taken in a pending proceeding relating to implementation of the SBC/Ameritech merger conditions underscores this point. In conjunction with its request for interpretation of the SBC/Ameritech merger conditions, SBC argued that it should be entitled to retain control and ownership of line cards placed in remote terminals that have an integrated splitter functionality because the equipment "is not used solely in the provision of Advanced Services." See Letter from Paul K. Mancini, Vice President and Assistant General Counsel for SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau, Federal Communications Commission at 4 (Feb. 15, 2000).

14. Second, SBC's assertion that AT&T should not be entitled to the splitter functionality because splitters "are deployed exclusively to provide advanced services over a customer's existing loop" (Auinbauh Supp. Reply Aff. ¶ 8) is similarly flawed. The Commission has repeatedly recognized that the splitter is used not only to isolate data signals traversing the loop, but also to separate the voice signals for routing to the local carrier's voice switch. As described by the Commission in the Line Sharing Order, "[a] splitter bifurcates the digital *and voiceband* signals concurrently traversing the local loop, *directing the voiceband signal through a pair of copper wires to the Class 5 switch*, and directing the digital traffic through another pair of copper wires to a DSLAM attached to the packet-switched network."⁶ Thus, unlike the DSLAM, which is used "exclusively to provide advanced services," the splitter plays a role in the provision of both voice and advanced services.

15. SBC -- of all parties -- should recognize this distinction, given the care the Commission took in the SBC/Ameritech Merger Order to differentiate between equipment used entirely for advanced services and splitters used for both voice and data. That order permitted SBC's ILECs to transfer DSLAMs to their "separate affiliate" and also to transfer other equipment that is used solely to provide data services, but it specifically prohibited SBC's ILECs from transferring to their affiliate the splitters used to separate the voice and data signals on a customer's loop.⁷

16. Indeed, even subsequent to its reply comments in this proceeding, SBC in a different proceeding was invoking the merger order to argue that splitters used to separate voice and data signals are not "advanced services equipment" and are properly the province of the ILEC rather than any separate affiliate.⁸

17. Third, SBC's argument that the splitter is not part of the loop is inconsistent with principles of telephone engineering. It is indisputable that a bridge tap may be part of a loop, and

⁶ Line Sharing Order ¶ 66 (emphasis supplied).

⁷ See SBC/Ameritech Merger Order ¶ 365 & n.683, App. C at ¶ 3(d).

⁸ Letter from Paul K. Mancini, SBC, to Carol E. Matthey, FCC, CC Docket No. 98-141, at 2-3 (June 2, 2000).

the Commission has expressly recognized the right of a purchaser of a loop element to insist that bridged taps be removed, even where the ILEC does not ordinarily perform such removals for itself, because it is not providing advanced services to those customers. It is likewise indisputable that load coils -- which in fact are nothing but low-pass filters -- may be part of a loop, and the Commission has expressly recognized the right of a purchaser of a loop element to insist that load coils be removed.⁹ Yet SBC denies its obligation to provide a splitter, claiming it cannot be part of a loop, even though the insertion of a splitter is effectively nothing more than a bridge tap that derives two transmission paths from a single copper facility and provides electrical protection for the transmissions on each derived path.

18. Just as the Commission has recognized that competitors must be able to access the loop and all of its “features, functions, and capabilities” by requesting the removal of accreted filtering devices from the loop, UNE Remand Order ¶ 173, so too must competitors be entitled to request that filtering devices (*i.e.*, the splitter) be added to the loop to enable a requesting carrier to use the full functionality of the loop. In either case, the removal or attachment of filtering devices that are necessary to enable voice and data transmission over a single loop simply gives effect to the Commission’s determination that that Section 251(c)(3) requires ILECs to provide modifications to their facilities to the extent necessary to accommodate access to network elements. Local Competition Order ¶ 198. Thus, the question of whether the ILEC performs such modifications for itself is irrelevant to this determination.¹⁰

19. SBC seems to think that when it provides the UNE Platform its obligation is solely to deliver the existing combination of elements as is; if any modification or adjustment is required, the UNE-P must be disassembled and individual network elements must be reordered and connected by the CLEC. See Auinbauh Supp. Reply Aff. at ¶¶ 12, 13, 15, 19. But even as SBC resists allowing AT&T to access additional features, functions, and capabilities of the *loop*

⁹ UNE Remand Order ¶¶ 172-173.

¹⁰ In any event, SBC has been careful not to represent that it has never performed a splitting function for its own offering of voice and data services on a single loop. Further, the only way it could do so is by relying on the fiction that its 100 percent owned and controlled “affiliate,” ASI, is a “separate” entity.

obtained as part of UNE-P, SBC does not deny the right of a CLEC to order additional features, functions, and capabilities of the *switch* that is provided as part of that same combination of network elements. UNE-P carriers routinely order vertical features (*e.g.*, call waiting, Caller ID, call blocking) for their customers, and, where necessary, SBC quite properly accommodates such requests by doing the “physical work” (*see id.* at ¶ 19) of modifying software instructions of the switch to ensure that the additional features, functions, and capabilities are activated.

20. In addition, SBC suggests that AT&T must break up existing UNE-P combinations to provide both voice and data services over a single loop because it has not obtained a DSL-capable loop. Auinbauh Supp. Reply Aff. ¶ 15. This suggestion, however, is meritless for several reasons. First, SBC ignores the fact the large majority of its existing loops are, in fact, already DSL-capable.¹¹ Second, SBC can and does perform any loop conditioning that is necessary to make the loop DSL-capable without requiring disconnection of the voice service it provides its own customers; certainly it does not detach the loop from the switch and require new orders for the loop and switching. Accordingly, there is no reason to require AT&T to break apart a UNE-P combination and place a new loop order before SWBT will perform loop conditioning. Third, Auinbauh’s suggestion is completely irrelevant in instances where CLECs place an order for a new UNE-P that uses a line that has already been qualified as DSL-capable.

21. In any event, the work that AT&T is seeking to have SBC perform is precisely the same work that SWBT will perform for data CLECs seeking to “line share” with SWBT’s voice service. With the exception of the number of cross-connections required, it is precisely the same work that SWBT has performed for ASI under virtual collocation arrangements and may continue to perform for ASI in the future.¹² The diagrams attached to the Supplemental Cruz Affidavit illustrate the essential sameness of the configurations needed by ASI, data CLECs, and AT&T. *See Cruz Supp. Aff., Attachment B, Figs. 2, 4.* Thus, SBC’s refusal to do this for UNE-

¹¹ There is little, if any, reason that any SBC copper loop under 18,000 feet in length is not DSL-capable today.

¹² To the extent that ASI employs a DSLAM with an integrated splitter, SWBT would not be cross-connecting the data output to the DSLAM. SWBT would still run the cross-connect to the voice/data input of the DSLAM and run the cross-connect from the voice output of the DSLAM to the switch port appearance of SWBT.

P CLECs is not based on any legitimate technical or other reason, but rather upon a staunch determination to undermine the utility of the UNE Platform and to hinder competition by anyone who seeks to compete with SWBT's voice services.

22. Finally, SBC mischaracterizes AT&T's argument concerning SBC's refusal to provide data service when the customer switches to AT&T's voice service. SBC 5/19 Reply at 21 n.17. There is nothing "incompatible" about AT&T's contentions that (1) SBC must meet its legal obligation of enabling CLECs to provide both voice and data over a single UNE-P loop, and (2) so long as SBC is failing to meet this duty, by denying its own DSL service to customers who choose AT&T's voice service, SBC engages in unreasonable discrimination. Both arguments address the same problem: SBC's use of its monopoly position to undermine competition for voice services provided to customers who also want data service. Notably, SBC has yet to challenge on the merits AT&T's argument that SBC's denying its DSL service to customers AT&T serves via UNE-P is unjust, unreasonable, and unjustly and unreasonably discriminatory (in violation of Section 201(b)) and also represents an unreasonable restriction on the availability of a network element (in violation of Section 251(c)).¹³

III. SBC CONTINUES ITS "HIDE-THE-BALL" STRATEGY IN ORDER TO FORESTALL COMPETITION IN THE VOICE AND BUNDLED SERVICE MARKET.

23. Despite its claims of having embraced competition and opened its market, SBC's conduct in this proceeding tells a different story. At every turn, SBC has sought to confuse the

¹³ In March of this year the Public Utilities Commission of Nevada held hearings on the Certificate of Public Convenience and Necessity sought by SBC Advanced Solutions, Inc. ("ASI") within Nevada. During the hearings, representatives from AT&T and other companies explained that ASI sought to offer its data services only to customers who selected Nevada Bell as their local exchange voice provider. See In the Matter of SBC Advanced Solutions, Inc. for Authority to Operate as a Competitive Provider of Telecommunications Services, Public Utilities Commission of Nevada, Docket No. 99-10009 ¶ 38 (May 23, 2000). In its Order granting ASI's application the Nevada Commission found, "SBC Advanced Solutions, Inc. shall not require customers to bundle SBC Advanced Solutions Inc.'s services with Nevada Bell's services." In doing so, the Nevada Commission stated that "CLECs should be able to offer voice service to customers that receive data service from ASI, and CLECs should be able to offer data service to consumers that receive voice service from Nevada Bell. To require customers to receive services from just one provider, flies in the face of competition and is inconsistent with the Act." *Id.* ¶ 67.

issues, distort the record, and generally seek to prevent the Commission from obtaining a clear picture of what SBC is permitting and what it isn't and why.

24. In its initial application, SBC ignored AT&T's concerns regarding SBC's refusal to provide UNE-P carriers the ability to offer DSL services over their unbundled loops, even though AT&T had raised this issue in Texas. AT&T also emphasized SBC's refusal in its initial comments on SBC's application, and in other proceedings before this Commission, but until now, SBC has only addressed this issue in cursory fashion. Perhaps the most telling example of this strategy is SBC's vacillation (or worse) regarding its willingness to cooperate in enabling the combination of voice and data services over UNE-P. In reply comments filed in conjunction with its first Texas application, SBC unequivocally stated, "AT&T is free to offer both voice and data services over the UNE Platform." SBC Reply Comments at 37 n.19. AT&T discovered this representation to be false some time ago,¹⁴ but SBC waited until now, after 90 more days of delay and obfuscation, before confirming that it has no intention of honoring that commitment. SBC now says that AT&T must forego the UNE Platform if it wishes to provide data as well as voice services.¹⁵ SBC 5/19 Reply at 21; Auinbauh Supp. Reply at ¶¶ 10-13.¹⁶ Obviously, if SBC had merely honored its prior commitment, all the subsequent discussion and the current controversy could have been avoided.

25. SBC likewise misrepresented its true position with its claims that a CLEC that wishes to provide voice as well as data services "could share the voice line in precisely the same

¹⁴ See Letter from James L. Casserly, on behalf of AT&T Corporation, to Magalie Roman Salas, FCC, CC Docket No. 00-4 (Mar. 3, 2000).

¹⁵ Indeed, if a UNE-P CLEC seeks to provide a voice and data offer employing a single loop, regardless of whether or not a Project Pronto type architecture is employed, SBC requires the voice path to transit CLEC collocation. This requirement does not arise out of any technical requirement but is simply an SBC strategy to defeat the utility of UNE-P. As the Commission correctly noted, "collocation imposes materially greater costs on requesting carriers than use of the incumbent LEC's switching." UNE Remand Order ¶ 263. The Commission likewise expressed concerns that the combined impacts of extending a loop to collocation (hot cut process) stating that "the coordinated loop cutover process impairs the ability of a requesting carrier to provide timely service." Id. ¶ 271.

¹⁶ Even now, SBC does not squarely face up to the inconsistency; SBC cites its prior statement but falsely represents it as having been a statement about a "single unbundled loop" rather than the UNE Platform." Compare SBC 5/19 Reply at 21 with SBC 2/22 Reply at 37 n.19.

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way as SBC.” SBC 2/22 Reply at 25 n.11; Auinbauh Supp. Reply Aff. at ¶ 18. This, of course, is precisely what AT&T wants to do, precisely what SBC refuses to permit AT&T to do, and precisely what the Commission must require SBC to do before allowing SBC to offer long distance services in Texas. There is no evidence in this record that SBC’s approach to adding data services to its own lines is to saddle itself, its affiliate, or, any other data CLEC with a “rip-it-apart-and-then-rebuild-it” mandate. Yet SBC has now made clear that, when AT&T wishes to add data service to the loops on which it is currently providing voice service, SBC’s first step is to force AT&T to “disconnect its UNE-P network arrangement,” and then require AT&T to reorder the loop and switch port as separate network elements, and reconnect them after first running cross-connects to collocation space. Auinbauh Supp. Reply Aff. at ¶ 15. There is no evidence that this approach provides “nondiscriminatory” access to the unbundled loop or SBC’s OSS and no basis for any inference of nondiscrimination.

26. These misrepresentations aside, an additional problem is SBC’s deliberate and continuing lack of clarity in answering some of the fundamental questions about how it contemplates accommodating AT&T’s need to combine voice and data over unbundled loops. While it is now clear that SBC would require AT&T to forego the UNE Platform, it remains unclear precisely how inconvenient, disruptive, and expensive SBC’s preferred alternative will be. Based on experience with UNE loops and other facilities, AT&T has no doubt that SBC’s approach will be more inconvenient, more disruptive, and more expensive than necessary, but SBC alone knows precisely how inconvenient, how disruptive, and how expensive. Details on these points, despite AT&T’s effort to obtain clarification, are all in SBC’s unique possession and have yet to be laid on the public record. If the process SBC envisions were defensible, surely it would have disclosed it to AT&T and other parties.

27. Certainly one set of additional burdens that will be imposed on AT&T will be unnecessary costs. Instead of being charged simply for loop qualification, UNE-P feature changes, and the cross-connections associated with inserting a splitter on the UNE-P loop, AT&T will potentially face the need to pay for up to five jumpers (when three would suffice if

the splitter were frame mounted), “glue charges” for connecting UNEs, and the cost of coordination to better assure the orders are working in a sequence that minimizes customer disruption.¹⁷ In addition, AT&T would potentially incur cost for collocation space and cabling from the collocation space to SBC-ILEC frame appearances for the sole reason of satisfying the SBC mandate that the voice portion of the service pass through collocation. There is certainly no reason to believe that, if SWBT persuades a customer to add ASI’s data service, SWBT will charge itself (or ASI) the nonrecurring charges associated with ordering a new loop, port, and shared transport.¹⁸

28. Unnecessary and extended interruption of the customer’s service is another likely consequence of SBC’s approach. SBC has not specified what procedures would apply or what intervals would be applicable, but it has said that the UNE-P arrangement would need to be dismantled before the new combination could be constructed. To reduce service outages for the customer, it would be necessary to coordinate the following procedures: (1) disconnection of the UNE-P, (2) connection of the loop to collocation, (3) connection of the switch port to collocation, and (4) associating the switch port with shared transport.¹⁹ If any of these steps becomes disassociated from the others, or is worked at a different time than the others, the customer will suffer.²⁰ If such events occur with any regularity (as has occurred with SBC’s

¹⁷ Raising the possibility that SBC may seek to apply these charges is by no means an acknowledgement by AT&T that such charges are appropriate or that their current levels are cost-based. While SBC’s deliberate refusal to provide any information that would enable AT&T to provide a more complete response, a few examples further illustrate the potential for economic harm. First, if SBC’s approach results in a change between a mechanized (simple) order to a non-mechanized (complex) order, the order charge would change from \$2.56 to \$62.56. Second, if an existing UNE-P combination is disassembled and then reassembled, SBC may seek to apply illegal glue charges. Such charges would drastically change the economics of UNE-P.

¹⁸ Moreover, any agreement by SWBT to charge itself (or ASI) the nonrecurring charges associated with such orders is simply a paper transaction that lacks real economic significance and will not minimize the discriminatory cost impact incurred by UNE-P CLECs.

¹⁹ Although SWBT provides few details regarding this procedure, it appears that CLECs would be required to submit not merely one LSR (as AT&T currently does for UNE-P orders) but *separate* LSRs for the xDSL loop and for the unbundled switch port with shared transport -- and, quite possibly, a third, separate LSR to disconnect the existing UNE-P arrangement. Although a CLEC could itself physically disconnect the UNE-P network arrangement, SWBT might well insist on performing the disconnection itself (pursuant to the CLEC’s request).

²⁰ While it is theoretically possible to utilize a second loop to the customer’s premises, from a practical standpoint the option is not viable. SBC itself testified that the lack of a second loop to

three-order process for UNE-P), the customer's carrier will be destined for failure in the marketplace.

29. SBC has not shown that it stands ready to provide all of the necessary coordination, with a sufficient degree of reliability, to avoid such problems. Nor has it shown that the process SBC proposes would be remotely as reliable as those that are followed when a SWBT voice customer adds ASI's data service, or even when a SWBT voice customer adds a data CLEC's data service. SBC has certainly never provided evidence that it had developed procedures to insure that these steps are properly coordinated.

30. Other related problems are suggested by experience with the initial offerings of UNE-P by SBC and other ILECs. Although the conversion of an ILEC's POTS customer to a UNE-P carrier's POTS service is largely a matter of recordkeeping rather than physical rearrangement, experience has taught that these conversions were plagued by problems like customers losing their telephone numbers, directory listings being dropped, and E-911 databases being populated with incorrect information. The record in this proceeding points to customer-impacting problems resulting from multiple but related orders failing to be executed in their proper sequence. SBC has not provided operational evidence, nor could it, that the same sorts of problems (or even new ones) will not arise if UNE-P arrangements need to be torn down and then reassembled with new orders of individual network elements, using new procedures that have yet to be disclosed, much less tested.

31. SBC's insistence on disconnecting existing voice arrangements and rerouting them through CLEC collocation cages and back to the switch presents the same problems here for UNE-P as it did during the time that the FCC's Rule 315(b) was vacated. During that time, SBC flatly refused to provide UNE-P, and insisted that CLECs obtain access to combinations of UNEs exclusively through a collocation-based method that was patently discriminatory and in essentials no different than what SBC is now trying to impose on CLECs seeking to add DSL to

customers' premises that is DSL capable is a major barrier to the data CLECs' ability to compete. See Pfau/Chambers Supp. Decl. at ¶¶ 33-34, citing 4/13 TPUC Workshop Transcript at 347, Chapman/Dysart Supp. Aff. ¶¶ 35-36, 38.

UNE-P. Now, as then, SBC is attempting to destroy the viability of UNE-P by forcing the UNE-P CLECs into a collocation method for recombining unbundled elements that (1) increases the degree of coordination and manual work that is necessary and, accordingly, increases likelihood of service interruptions and risk of extended outage for customers; (2) inhibits a voice carrier's ability to compete by introducing delays because of the time needed to apply for space, to construct collocation space, and then to install equipment (in this case, the splitter); (3) unnecessarily wastes central office and frame space, both of which are scarce and valuable resources; (4) degrades the quality of the service that a CLEC's customer will receive by increasing the overall number of points of connection (or "points of failure") where the loop connection is most likely to fail due to human error; and (5) imposes wasteful, unnecessary, and uncertain costs on CLECs.

32. AT&T is also concerned that SBC's approach would affect its ability to ensure the reliability of the voice service. When AT&T obtains UNE-P from SBC, SBC assumes responsibility for maintaining the integrity of the voice path -- loop, switch, and transport. When problems arise, AT&T can secure Mechanized Loop Testing from SBC, which enables sectionalization -- and more rapid remediation -- of faults. SBC may refuse to provide MLT access for loops that traverse collocation space and equipment supplied by a competitor, a position initially taken with the data CLEC when they requested such access in a line sharing configuration. Clearly there will be an opportunity for finger pointing because the collocation requirement creates the potential for unnecessary and expensive technician dispatches to definitely isolate trouble sources. Again, because SBC has chosen not to disclose the details regarding how its alternative for UNE-P CLECs will operate, there is no evidence or assurances that UNE-P carriers' customers will be afforded the same treatment as customers who obtain both voice and data from SBC, or voice service from SWBT and data service from a data CLEC.

33. In contrast to all these problems that can be expected if SBC's rip-it-apart-and-rebuild-it approach were to be permitted, these problems would all be minimized if SBC merely cooperated to permit UNE-P CLECs to fully utilize their loops in an efficient manner. Another

virtue of the approach AT&T advocates is that ILEC provision of the splitters facilitates additional customer choice in the future. When SBC provides the splitter used in a line sharing situation, the DSL supplier can be changed by moving a single jumper and the voice service need not be disrupted at all. On the other hand, if the splitter is integrated in the DSLAM or the splitter is separate but owned by the data CLEC, change of the DSL provider (or change of the voice provider) requires both services to be disrupted. Clearly this is a disincentive for change by customers who have existing voice and data service.

34. Effects on customers will also be negative. For example, a customer receiving SBC's voice service and a data CLEC's data service via an ILEC/data CLEC line sharing arrangement (in which the ILEC owns the splitter) would not be able to migrate to such services provided over the loop purchased by AT&T from SBC in a prompt, efficient, and nondisruptive manner, even though it is technically feasible to do so. The SBC/data CLEC service arrangement would utilize the network configuration set forth in Attachment B, Figs. 2 & 4 of the Supplemental Cruz Affidavit. An AT&T service arrangement would utilize exactly the same logical configuration. Yet, in order for the customer to migrate to AT&T as a voice carrier, while retaining data service provided through the use of the same data CLECs' facilities, SBC's approach would: (1) require AT&T to place an order to disconnect the working combination; (2) permit SBC to remove the ILEC-owned splitter; (3) force AT&T to provide its own splitter (or obtain the functionality from a DCLEC); and (4) require AT&T to reconfigure the service by ordering an unbundled DSL-capable loop, an unbundled switch port, shared transport, and the necessary cross-connects between the collocation space and both the switch and the distribution frame.

35. In short, competition will be seriously hindered if competitive voice providers (using UNE-P) are required to own splitters and purchase collocation, thereby needlessly engaging in the destruction of the UNE-P combination. The Commission must address and resolve this issue immediately in order to avoid the further delay in enabling meaningful

competition in the bundled and voice services markets and, accordingly, increased choices for Texas residents.

IV. SBC'S FAILURE TO PROVIDE AT&T WITH THE FUNCTIONALITIES AND PROCESSES NECESSARY TO PROVIDE VOICE AND DATA SERVICES OVER UNE-P HARMS COMPETITION FOR BOTH SERVICES.

36. What AT&T is seeking is entirely consistent with the Commission's prior decisions and with the Commission's (and the Telecommunications Act's) overarching goals. As the Commission has previously recognized, "For effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services that they seek to offer" UNE Remand Order ¶ 13. The Commission has expressly recognized the importance of the UNE Platform in enabling competitors to address the residential mass market. UNE Remand Order ¶ 12. The Commission has an explicit statutory duty to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" Section 706(a) of the Telecommunications Act. All of these goals and findings will be jeopardized if AT&T is precluded from providing both voice and data services over UNE-P.

37. AT&T is committed to providing residential consumers throughout Texas with a competitive choice for voice services. Tonge/Rutan Decl. at ¶¶ 14-22. In the near-term, the use of UNE-P is the only vehicle by which that objective can reasonably be pursued. SBC, however, has precluded CLECs from offering a competing voice/DSL package to residential customers using the UNE-platform. This action by SBC has positioned it to take advantage of the new marketplace reality that a growing number of consumers, especially the ones most desirable from the standpoint of a carrier, seek more than just local service. If SBC remains the only carrier that can supply "all the pieces" that consumers want and need, the prospects for competition will necessarily dim.

38. Indeed, it has always been AT&T's goal to offer customers both long distance services and high-speed data services. Providing a variety of services will help ensure that AT&T can meet the need of consumers to obtain not just local services, but the convenience of

receiving all of the telecommunications services they desire from a single source. To attain that goal, and satisfy customer demand, AT&T needs to be able to provide data service in addition to voice service. Thus, in addition to its efforts (unsuccessful thus far) to negotiate the necessary arrangements with SBC, AT&T has been working with a number of data CLECs that can provide the necessary functionalities that AT&T currently lacks itself. These agreements will enable it to respond to the demand in Texas for one-stop shopping that includes data service. However, AT&T cannot implement and test these arrangements, much less offer services under them, absent SBC's cooperation. If AT&T receives that cooperation, it will proceed as expeditiously as possible to add DSL service to the bundle of services it seeks to provide Texas consumers.²¹

39. The DSL market is set to explode from 300,000 lines in 1999 to 2.5 million lines by the end of this year.²² This exponential growth is due, in large part, to consumer demand for increasing speeds of Internet access. It is also due in part to SBC's aggressive pursuit of a strategy calculated to ensure that SBC -- and no one else -- can offer "all the pieces" that consumers want.²³ In its comments and supplemental comments on SBC's Texas 271

²¹ The prospect for such cooperation, however, seems dim. Despite the level of prominence that AT&T has afforded this issue and despite the repeated communications of its needs to SBC, the company still acts as if the need is only newly revealed and then only makes a vague statement about possibly addressing the need at some future date:

SWBT is interested in exploring the use of SWBT's splitters to facilitate line sharing arrangements between two CLECs, where SWBT is not providing the voice service. SWBT views this as a potential business opportunity and intends to evaluate how it can respond to this market opportunity once SWBT's successful implementation of the line sharing arrangement mandated by the Commission is sufficiently well-established to ensure a consistent, quality product for SWBT's customers. SBC 6/6 Ex Parte Letter at 2.

²² Business Wire, April 12, 2000, "Three of Nation's Largest Cities to Experience Major New DSL Rollout." By the end of 2004, the Yankee Group estimates that cable industry's market share in high-speed Internet access services is expected to shrink to about 42 percent, as DSL services become more widely available. Id.

²³ SBC Communications, Inc., "SBC Launches \$6 Billion Initiative To Transform it into America's Largest Single Broadband Provider," SBC News Release at 5 (Oct. 18, 1999) ("SBC Pronto Press Release")(quoting SBC Chairman Edward E. Whitacre, Jr.).

applications, AT&T demonstrated that SBC's Project Pronto initiative is designed to maintain its first-mover advantage and to further SBC's well-documented efforts to smother competition.²⁴

40. As AT&T previously reported, SBC had announced that it is spending \$6 billion to ensure that, by year-end 2002, 77 million customers in its service territories will be able to order bundled local voice and high-speed data services from SBC. Pfau/Chambers Supp. Decl. ¶ 57. SBC's plans calls for it to sell and install a million DSL connections by the end of this year, up from 139,000 on January 1, 2000.²⁵ By year-end 2001, SBC's Chairman and Chief Executive Officer Edward Whitacre estimates, SBC will capture 2 million DSL customers.²⁶

41. It has become clearer than ever that Texas, the nation's second most populous state with 20 million people, has become a key component of SBC's strategy. In the six-month period from October 1999 through March 31, 2000, SBC received more than 36,000 orders for DSL service in Texas. SBC 4/21 Ex Parte Letter (report on PM 58-09). In March, SBC received an average of more than 500 orders for DSL service in Texas per business day. *Id.* Extrapolating (conservatively) from SBC's current DSL statistics in the Texas marketplace through the remainder of the year, we estimate that SBC will capture about 300,000 Texas DSL subscribers by the end of 2000.²⁷ At this pace, SBC can expect to receive at least 2700 requests for DSL service in Texas per business day in the month of December 2000. If one reasonably assumes that SBC's DSL market in Texas will experience a growth rate that is proportional to Chairman Whitacre's expectations for region-wide DSL subscribership, SBC will have captured approximately 600,000 DSL subscribers in Texas by the end of 2001.

²⁴ CC Docket 00-4, Comments of AT&T Corp. at 9-26; CC Docket 00-65, Supp. Comments of AT&T Corp. 10-12.

²⁵ Fortune, June 12, 2000, "Why the Biggest Baby Bell Is Wild About Broadband," ("Wild About Broadband").

²⁶ *Id.*

²⁷ This estimate is based upon a log-linear regression analysis of the monthly order volume from October through March. See SBC 4/21 Ex Parte Letter (report on PM 58-09). The coefficient of determination for the regression is .84, indicating the projected results reasonably match with the actual results. The projection assumes no subscriber disconnections during the period which although unlikely, at the same time, the disconnection rate during the first year of service delivery will be extremely lower particularly given the lack of competitive options and the possibility the customers must maintain service for a minimum period to avoid termination liabilities.

42. SBC's rapid deployment of advanced services gives it a huge first-mover advantage in the residential marketplace. As SBC's own data shows, it is SBC, and not the CLECs, that is "cleaning [everybody else's] clocks" in Texas. Currently, 9 out of every ten DSL subscribers in SBC's territory in Texas receives their DSL service from SBC. SBC 4/21 Ex Parte Letter (report on PM 58-09). In March, SBC received more DSL orders in 4 days than all other DSL providers, combined, received for the entire month. *Id.* Even more significantly, *every* customer that receives both DSL and voice service over a single loop in SBC's territory in Texas currently receives his or her voice service from SBC -- and SBC continues not to cooperate with UNE-P carriers who threaten SBC's voice monopoly. Thus, SBC continues to be uniquely positioned to serve millions of Texas homes with bundles of voice and advanced services.

43. In light of these statistics, it is not difficult to understand why SBC has denied, and continues to deny, AT&T the ability to satisfy consumers' demand for bundled voice and advanced services via UNE-P. It is certainly not a matter of technology limitation or lack of efficient operational processes. As discussed above, the feasibility of adding ILEC-deployed splitters, with minimal interruption of voice service, is beyond dispute. Indeed, this is what SBC will do for data CLECs that wish to line-share. Rather, it is a matter of simple economics. SBC clearly recognizes the demand for advanced service capabilities, as well as the need to engineer a considerable "first-mover" advantage. As Chairman Whitacre recently explained: "Broadband will be indispensable, and it's going to happen pretty quickly, . . . It will be as basic as telephone service."²⁸ SBC also recognizes the strategic significance of providing "one-stop shopping" for the range of services that consumers want and expect.²⁹

44. Meanwhile, AT&T's market share for DSL in Texas is zero. But the adverse effects of SBC's conduct are not limited to the data market. SBC's refusal to accommodate the addition of DSL to UNE-P necessarily hinders AT&T from competing in the markets for data

²⁸ Wild About Broadband.

²⁹ See, e.g., SBC Communications, Inc., "SBC Launches \$6 Billion Broadband Initiative," SBC News Release at 4 (Oct. 18, 1999) ("SBC Pronto Press Release").

services, voice services, and bundles of services. By insisting on a “rip-it-apart-and-rebuild-it” approach to the existing loop-port-transport combination, SBC is necessarily discriminating in favor of its ILECs and against companies like AT&T that wish to compete with the voice services SWBT provides, and the bundles that only SWBT can now efficiently offer and provide. The value of UNE-P as an entry strategy will be seriously undermined if a UNE-P carrier such as AT&T cannot efficiently add advanced services to its voice offering.

V. CONCLUSION

45. SBC’s behavior constitutes a breach of its obligation to provide the functionalities and processes needed to enable UNE-P carriers to provide voice and advanced services using the full features, functions, and capabilities of the loop. SBC’s recent statements on DSL do not change the fact that SBC has once again failed to carry its burden of proof regarding DSL issues in the context of UNE-P. To the contrary, SBC’s recent statements regarding the DSL-over-UNE-P issue are remarkable for the degree to which they confirm SBC’s anticompetitive intent. Accordingly, the Commission cannot find that SBC has met its obligation to fully implement checklist items 2 and 4.

CC DOCKET 00-65

I declare under penalty of perjury that the foregoing is true and correct. Executed
on June 7, 2000.


C. Michael Pfau

CC DOCKET 00-65

I declare under penalty of perjury that the foregoing is true and correct. Executed
on June 17, 2000.



Julie S. Chambers