34. What is the appropriate provisioning interval for cageless collocation?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[296]

36. Should SWBT be required to permit collocation of ATM cross-connect equipment?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[297]

VI. Costs, Rates and Prices

DPL Issue Nos. 26-32

26. Should rates associated with xDSL capable loops be TELRIC-based?

Parties' Positions

Rhythms asserts that the prices for UNEs should be set equal to TELRIC.[298] Rhythms believes that three features of TELRIC are particularly significant in this arbitration:[299] TELRIC is "based on the use of the most efficient telecommunications technology currently available;" a TELRIC study may not consider embedded costs; and unit costs developed consistently with TELRIC must be "divided by a reasonable projection of the sum total number of units of the

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[296] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

[297] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

[298] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 16 (Feb. 19, 1999).

[299] ACI Post Hearing Brief at 100 (Aug. 17, 1999).

element." Rhythms argues that SWBT's cost estimates have violated each of these requirements.[300]

Covad argues that the Commission and the FCC require that SWBT set its prices according to TELRIC principles. Covad believes SWBT's proposed prices do not comply with TELRIC requirements. Covad suggests that SWBT designed its cost studies to support the prices it wants to charge new entrants, rather than deriving its prices from valid cost analysis or using the TELRIC methodology.[301]

SWBT states that all proposed rates are based on TELRIC methodology. SWBT asserts that the cost studies for xDSL loops were the subject of the Mega-Arbitration in which the Commission adopted a TELRIC methodology. SWBT's proposed rates for the xDSL loops are those ordered for UNE loops in the Mega-Arbitration.[302]

Award

The Arbitrators find that, as previously decided by the Commission in other proceedings, all rates associated with UNEs, including xDSL loops, should be TELRIC-based.[303] This finding is consistent with FCC precedent, including the *Local Competition Order*, and FCC UNE Pricing Rules 47 C.F.R. §§ 51.501-515.[304]

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[300] ACI Post Hearing Brief at 101 (Aug. 17, 1999).

[301] Covad Post Hearing Brief at 52-53 (Aug. 17, 1999); *Local Competition Order* at ¶29; Mega Arbitration Award, November 7, 1996 at 25 and December 19, 1997 at 4. The Mega Arbitration consists of Docket Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781; ACI Exhibit 5, Direct Testimony of Terry L. Murray at 16 (Feb. 19, 1999); Tr. at 1216-1217 (June 5, 1999).

[302] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999).

[303] Mega-Arbitration Award, Nov. 7, 1996 at 25 and Dec. 19, 1997 at 4. (The rates for UNEs on Appendix B are based on the total long run incremental cost (TELRIC)).

[304] *Local Competition Order* at 682; Mega-Arbitration Award, Nov. 7, 1996 at 25 and Dec. 19, 1997 at 4.

27. What are the appropriate TELRIC-based xDSL rates?

Parties' Positions

Rhythms argues that SWBT's proposed rates for xDSL loops are inappropriately high. Rhythms explains that SWBT's proposed rates are higher than the cost based prices, in a absolute sense and relative to the adopted costs for basic analog loops, for any comparable element either proposed by another incumbent local exchange carrier or adopted by another Commission. Rhythms explains that the range of loop rates proposed by SWBT is much larger than in other states. For example, SWBT's proposed digital loop rate is 153% higher than SWBT's proposed analog loop rate. However, Rhythms continues, other states experience increments of 0% to 40%.[305]

Rhythms is particularly concerned with SWBT's proposed rate for digital loops and argues that the incorrect price could result in a price squeeze.[306] Rhythms urges the adoption of a proxy cost for the two-wire digital xDSL loop. Rhythms suggests an interim rate of $20.16. Rhythms contends that the proxy cost should remain in effect until SWBT provides a well documented cost study for two-wire digital xDSL loops, and all affected Parties have had an opportunity to review and comment on the costs.[307]

In regard to analog loops, Rhythms argues that the proxy cost should be the Commission-approved TELRIC-based cost result for the nearest unbundled loop type. Rhythms explains that this interim price would apply until such time as Parties have litigated a specific cost study for xDSL loops.[308]

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[305] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 49-52 (Feb. 19, 1999).

[306] ACI Exhibit 11, Rebuttal Testimony of Terry L. Murray at 11-14 (April 8, 1999); ACI Exhibit 11a, Rebuttal Testimony of Terry L. Murray at 11-17 (April 8, 1999).

[307] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 53 (Feb. 19, 1999); ACI Post Hearing Brief at 117-119 (Aug. 17, 1999).

[308] DPL at 62 (May 28, 1999).

Covad agrees with Rhythms' reasoning.[309] Covad states that SWBT's proposed rates for xDSL loops less than 18,000 feet in length are within an acceptable range. However, Covad argues, SWBT's proposed digital xDSL loop rates are too high. Covad argues that the digital loop rate would prevent the xDSL industry from reaching the industry "price point" of approximately $40-50 per month.[310] Covad concurs with Rhythms' proposal of adopting an interim rate of $20.16 for the two-wire digital xDSL loop.[311]

SWBT proposes xDSL loop rates based on the rates approved in the Mega-Arbitration. SWBT argues that Rhythms and Covad have not contested the recurring loop rates, having stated in the DPL that "until such time as Parties have litigated a specific cost study, the Commission approved TELRIC-based cost result for the nearest unbundled loop type should be used as a proxy."[312]

Award

A cost study to support analog and digital xDSL loop rates was not provided in this proceeding. Instead, SWBT proposed xDSL loop rates that were identical to the UNE loop rates adopted in the Mega-Arbitration. The Arbitrators find that reliance on the Mega-Arbitration UNE loop rates is not appropriate, particularly for digital xDSL loops. As a result, the Arbitrators order SWBT to file a new TELRIC-based cost study for analog and digital xDSL loops. The study should be based on TELRIC principles, designed to create an efficient xDSL network, and compute de-averaged xDSL loop rates. The geographic de-averaging should be consistent with the de-averaging of loop rates in the Mega-Arbitration. The cost study should not distinguish between loop lengths; all xDSL loops should be the same rate regardless of loop length. The Arbitrators invite Rhythms and Covad to file their own cost studies. Until new cost

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[309] *Id.*

[310] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 13 (Feb. 19, 1999).

[311] Covad Post Hearing Brief at 59 (Aug. 17, 1999); ACI Exhibit 5, Direct Testimony of Terry L. Murray at 50-52 (Feb. 19, 1999).

[312] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999); SWBT Post Hearing Brief at 66 (Aug. 17, 1999).

studies are approved by the Commission, the Arbitrators find that the interim xDSL loop rates, as described below, will apply.[313]

The underlying loop facility used for xDSL services is equivalent to an analog or digital loop. With regard to analog loops, the Arbitrators find the de-averaged rates adopted for unbundled analog loops in the Mega-Arbitration are appropriate on an interim basis. The Arbitrators find the de-averaged rates to be appropriate, rather than statewide average rates for unbundled loops, because the Commission has implemented the intrastate USF mechanism.[314]

The Arbitrators do not accept the digital loop rates established in the Mega-Arbitration as interim rates for digital xDSL loop rates. It is unclear to the Arbitrators whether the digital loop rates established in the Mega-Arbitration include conditioning costs.[315] This uncertainty could result in over recovery of costs by SWBT, since separate conditioning charges apply to xDSL loops on which the CLEC has requested conditioning.[316] Because the Arbitrators cannot verify whether, and to what extent, the conditioning charges are included in the digital loop rates established by the Mega-Arbitration, the Arbitrators adopt the interim rate proposed by Rhythms and Covad for a 2-wire digital xDSL loop. The Arbitrators double the proposed interim rate for a 2-wire digital loop in order to compute the interim rate for a 4-wire digital xDSL loop.

The Arbitrators find that the appropriate interim rates for analog and digital xDSL loops are the following:

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[313] *See* Implementation Schedule in Section VIII of this Award.

[314] Section 1.5 of Appendix Pricing – UNE to Attachment 6 of the AT&T/SWBT interconnection agreement states:

> Where a statewide average appears on Appendix Pricing UNE Schedule of Prices, that price will prevail until the Commission's implementation of the intrastate USF mechanism scheduled for Spring 1998 or as specified in such other further order of the Commission. Thereafter, pricing will be by Zone where applicable (loops) and by Level, where applicable (ports) as shown on Appendix Pricing UNE - Schedule of Prices.

See Docket No. 18515, Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan, for implementation of the Texas Universal Service Fund (TUSF).

[315] Mega Arbitration Award, Appendix A, UNE Costing and Pricing DPL Issues Award Table, Issue 148 (Dec. 19, 1997).

[316] *See* DPL at 65 (May 28, 1999).

	Recurring	Nonrecurring	
		Initial	Additional
2-Wire Analog Loop			
Zone 1	$18.98	$15.03	$6.22
Zone 2	$13.65	$15.03	$6.22
Zone 3	$12.14	$15.03	$6.22
2-Wire Digital Loop			
Zone 1	$20.16	$15.03	$6.22
Zone 2	$20.16	$15.03	$6.22
Zone 3	$20.16	$15.03	$6.22
4-Wire Analog Loop			
Zone 1	$36.06	$15.03	$6.22
Zone 2	$21.52	$15.03	$6.22
Zone 3	$15.86	$15.03	$6.22
4-Wire Digital Loop			
Zone 1	$40.32	$15.03	$6.22
Zone 2	$40.32	$15.03	$6.22
Zone 3	$40.32	$15.03	$6.22

One of the conditions in the SBC/Ameritech merger is that SBC/Ameritech will develop and deploy common electronic OSS interfaces across all 13 SBC/Ameritech states to be used by any telecommunications carrier, including the merged firm's advanced services affiliates, for pre-ordering and ordering facilities used to provide advanced services.[317] The FCC found that, "until SBC/Ameritech has developed and deployed the advanced services OSS enhancements, interfaces, and business requirements described above, and the SBC/Ameritech separate advanced services affiliate uses the EDI interface for pre-ordering and ordering a substantial majority of the facilities it uses to provide advanced services, SBC/Ameritech will offer

[317] *SBC/Ameritech Merger Order* at ¶ 371.

telecommunications carriers a 25-percent discount from the recurring and nonrecurring charges for unbundled loops used in the provision of advanced services. This discount is intended to compensate other carriers for the unenhanced OSS and to provide SBC/Ameritech with an incentive to improve the systems and processes as quickly as possible."[318] The Arbitrators find that this same discount shall apply to this Award.

Until such time as permanent xDSL loop rates are approved, SWBT shall offer Petitioners xDSL loops at the interim prices above. The interim xDSL loops rates are subject to refund/surcharge upon approval of permanent xDSL loop rates, back to the date the Interconnection Agreements resulting from this Award become effective.

28(a). Is it appropriate to charge a rate for shielded cross connect that is higher than the rate for unshielded cross connect?

28(b). If so, what are the appropriate rates for xDSL Shielded Cross Connect to Collocation?

Parties' Positions

Rhythms does not anticipate utilizing shielded cross connects.[319] Rhythms asserts that shielded cross connects are not necessary when provisioning xDSL services,[320] and further argues that SWBT's proposed charge for shielded cross-connects should be rejected. Rhythms notes that SWBT's proposed rates for shielded cross connects are significantly higher than those for basic voice-grade cross connects. Rhythms contends that the higher rates represent a barrier to entry.[321] Rhythms believes that SWBT cannot charge differently for the two types of cross connects.[322] Rhythms argues that the difference in the shielded cable cost and labor involved, if

[318] *Id.* at ¶ 372 and Appendix C at ¶ 18.

[319] Tr. at 1320-1321 (June 4, 1999).

[320] *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray (Feb. 19, 1999); ACI Exhibit 3, Direct Testimony of Rand Kennedy (Feb. 19, 1999); ACI Exhibit 4, Direct Testimony of Phil Kyees (Feb. 19, 1999).

[321] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 27 (April 4, 1999).

[322] ACI Exhibit 6, Rebuttal Testimony of Eric Geis at 27 (April 4, 1999).

any, is minimal.[323] Therefore, Rhythms urges the Arbitrators to find that the costs and rates for shielded and basic voice-grade cross connects are identical.[324] Accordingly, Rhythms proposes that the appropriate rates for shielded cross connects are the rates adopted for voice-grade cross connects in the Mega-Arbitration;[325] $1.24 recurring charge, $4.72 non-recurring charge.[326]

Covad does not anticipate utilizing shielded cross connects. [327] Covad does not believe that shielded cross connects are necessary when provisioning xDSL services.[328] Covad argues that it should not be required to pay the additional cost for shielded cross connects. Instead, Covad believes that SWBT should bear all additional costs for shielded cabling.[329] In the alternative, Covad argues that SWBT's proposed rates for shielded cross connects are unreasonable and should be modified. [330]

SWBT does not require CLECs to utilize shielded cross connects.[331] However, SWBT testifies that a higher rate for shielded cross connects is appropriate in order to compensate SWBT for the additional material and labor costs involved in installing and testing the circuit. SWBT asserts that, unlike a non-shielded cross connect, a shielded cross connect requires a manual test process, must be grounded, and utilizes a dedicated shielded cable. SWBT cites these three differences when justifying its proposed higher cost for shielded cross connects.[332]

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[323] Tr. at 1417-1420 (June 4, 1999).

[324] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 43-44 (Feb. 19, 1999).

[325] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 43 (Feb. 19, 1999).

[326] *Id.* at 44.

[327] Tr. at 1320-1321 (June 4, 1999).

[328] Covad Exhibit 4, Direct Testimony of Anjali Joshi at 16-18 (Feb. 19, 1999).

[329] *Id.* at 18.

[330] *Id.*

[331] DPL at 64 (May 28, 1999).

[332] Tr. at 1324-1326, 1417-1420 (June 4, 1999).

SWBT provided a shielded cross connect cost study.[333] SWBT proposes rates for shielded cross connects: $0.60 recurring charge; $57.75 non-recurring charge.[334] SWBT states that its proposed rates are based on pricing principles established by the Commission in the Second Mega-Arbitration[335] and are not significantly different than non-shielded varieties.[336]

Award

The Arbitrators first note that SWBT has stated that it does not require CLECs to use shielded cross connects when provisioning xDSL services. The Arbitrators agree that SWBT cannot require CLECs to use shielded cross connects when provisioning xDSL services. However, the Arbitrators find that should a CLEC request shielded cross connects, SWBT should be compensated, using TELRIC principles, for the costs associated with provisioning shielded cross connects. The *UNE Remand Order* requires the costs for cross connects to be recovered in accordance with the FCC rules governing the costs of interconnection and unbundling.[337]

The Arbitrators find that in addition to the expenses associated with a non-shielded cross connect, the record supports the additional expenses associated with the material cost of the shielded cable and the labor associated with grounding the shielded cross connect. In order to establish rates for shielded cross connects, the Arbitrators modify the recurring and nonrecurring costs associated with non-shielded cross connects adopted in the Mega-Arbitration. The Arbitrators note that the Mega-Arbitration rates include testing of the non-shielded cross connects. [338] Therefore, the Arbitrators find that since both shielded and non-shielded cross-

[333] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 4 (April 8, 1999).

[334] SWBT Exhibit 4, Direct Testimony of Barry A. Moore at Schedule 4 (Feb. 19, 1999).

[335] The Second Mega-Arbitration consists of the December 1997 Award in Docket Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781.

[336] SWBT Exhibit 2, Direct Testimony of William C. Deere at 22 (Feb. 19, 1999). Rates for (non-shielded) cross connects were established in the Mega-Arbitration.

[337] *UNE Remand Order* at ¶ 178.

[338] The Mega-Arbitration adopted a recurring rate of $1.24 and a non-recurring rate of $4.72 for basic (non-shielded) analog and digital two wire cross connects. The Mega-Arbitration adopted a recurring rate of $2.48

connects must be tested, additional compensation for testing of shielded cross connects is not warranted beyond that already provided in the non-shielded cross connect rates established in the Mega-Arbitration.

To establish the rates for shielded cross connects, the Arbitrators incorporate the additional material costs associated with shielded cross connects into the non-shielded cross connect recurring rate. The Arbitrators find the record supports an additional expense of $35.00 per one hundred feet of 100 pair shielded cable.[339] Therefore, the Arbitrators add $0.35 per shielded 2-wire cross connect and $0.70 per shielded 4-wire cross connect to the non-shielded cross connect recurring rate. In order to calculate the nonrecurring rate for shielded cross connects the Arbitrators incorporate the additional labor expenses into the non-shielded cross connect nonrecurring rate. *See* Attachment B, Paragraph C. After the appropriate recurring and nonrecurring rates for shielded cross connects were determined, a 13.1% Common Cost Allocation Factor was applied.[340] Therefore, the Arbitrators find the following rates to adequately compensate for all costs associated with the provisioning of shielded cross connects.[341]

Shielded Cross Connects

	Recurring	Nonrecurring
2-Wire Analog Shielded Cross Connect	$1.64	$17.29
4-Wire Analog Shielded Cross Connect	$3.28	$42.13
2-Wire Digital Shielded Cross Connect	$1.64	$17.29
4-Wire Digital Shielded Cross Connect	$7.46	$51.62

and a non-recurring rate of $29.56 for basic (non-shielded) analog four wire cross connects and a recurring rate of $6.67 and a non-recurring rate of $39.05 for basic (non shielded) digital four wire cross connects. *See* Mega-Arbitration Award at Appendix B (Dec. 19, 1997).

[339] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 44 (Feb. 19, 1999); ACI Exhibit 5a, Direct Testimony of Terry L. Murray at 45-46 (Feb. 19, 1999).

[340] Because the common cost allocation factor is already included in the rates for (non-shielded) cross connects, the Arbitrators *only* apply the common cost allocation factor to the additional expenses associated with shielded cross connects.

[341] *See* Appendix C for revised cost study.

29. Should SWBT be allowed to charge additional ADSL "Conditioning" charges?

Parties' Positions

Rhythms contends that SWBT should not be allowed to charge additional xDSL conditioning charges.[342] However, Rhythms argues that should the Arbitrators find that conditioning charges are appropriate, SWBT's xDSL conditioning cost studies should be modified to reflect reasonable and efficient costs for xDSL loop conditioning.[343] Rhythms argues that SWBT's study of xDSL conditioning costs is inconsistent with the TELRIC methodology[344] and the recurring cost studies that were adopted in the Mega-Arbitration. Rhythms explains that assuming, as SWBT did, a different network for purposes of calculating recurring and non-recurring costs can result in double counting of costs.[345] More specifically, Rhythms argues that SWBT proposed cost study is incorrect because it does not propose unit costs, calculates costs using inefficient practices, utilizes unsupported task times, and inappropriately bundles the costs for removing and re-installing bridged tap.[346] Rhythms provides adjusted proposed conditioning charges that correct the above concerns with SWBT's proposed cost study.[347]

Covad suggests that SWBT's proposed conditioning charges are nothing more than an anticompetitive barrier to Covad's entry into the xDSL market. Covad concurs with Rhythms

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[342] Rhythms only uses the term "conditioning charges" to simplify the discussion. However, Rhythms feels the term may be misleading as the term has traditionally been used in telecommunications to refer to situations in which equipment must be *added* to a circuit. In contrast, DSL-capable loops require that unnecessary equipment be *removed* from the circuit. *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray at 19 (Feb. 19, 1999).

[343] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 23-36 (Feb. 19, 1999); ACI Exhibit 5a, Direct Testimony of Terry L. Murray at 23-36 (Feb. 19, 1999).

[344] "The assumption of a network in which repeaters, bridged taps, and load coils must be removed from certain loops to make those loops DSL capable is fundamentally incompatible with the least-cost, most efficient technology assumptions of a forward looking economic cost study." *See* ACI Exhibit 5, Direct Testimony of Terry L. Murray at 20-21 (Feb. 19, 1999).

[345] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 20 (Feb. 19, 1999).

[346] *Id.* at 24 - 25; ACI Exhibit 5, Direct Testimony of Terry L. Murray at 24-25 (Feb. 19, 1999).

[347] ACI Post Hearing Brief at 109 (Aug. 17, 1999); ACI Exhibit 5, Direct Testimony of Terry L. Murray at 30-32 (Feb. 19, 1999).

and argues that SWBT's proposed conditioning charges would only add to the customers' costs.[348]

SWBT argues that the need to compensate it for loop conditioning was recognized by the *Local Competition Order*.[349] Nevertheless, SWBT only proposes to charge conditioning charges on xDSL loops greater than 12,000 feet.[350] SWBT concedes that over time, load coils, repeaters, and bridged tap will be slowly migrated out of SWBT's network.[351] Therefore, most loop conditioning will not be necessary in the future. Nevertheless, SWBT explains that some loops in today's network will require conditioning in order to provision xDSL services. SWBT explains that the conditioning activities will be performed by SWBT at the direct request of a CLEC. Therefore, SWBT contends, it should be fairly compensated for the work that it would otherwise not have performed. SWBT supplies a TELRIC-based xDSL conditioning cost study that calculates SWBT's proposed conditioning charges.[352]

Award

The Arbitrators find that SWBT should be fairly compensated for the work it performs when conditioning analog and digital xDSL loops at the request of a CLEC. The Arbitrators also find that SWBT's conditioning charges should be based on forward looking cost principles.

The Arbitrators find that on a forward-looking basis, xDSL loops less than 18,000 feet in length should rarely require conditioning. The Arbitrators believe there is sufficient evidence to support the conclusion that the retention or existence of repeaters or load coils on loops that are less than 18,000 feet in length is not consistent with the TELRIC principles as applied to develop a forward-looking network design. SWBT testifies that the presence of load coils and repeaters

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[348] Covad Exhibit 1, Direct Testimony of Charles A. Haas at 14 (Feb. 19, 1999); Covad Post Hearing Brief, at 57-58 (Aug. 17, 1999).

[349] *Local Competition Order* at ¶ 382.

[350] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7-8 (April 8, 1999).

[351] *Id.* at 6.

[352] *Id.* at 4, 6.

will be relatively rare. SWBT asserts that in most cases repeaters will not be on the loop unless ISDN is being provisioned.[353] Moreover, the forward looking cost studies utilized in the Mega-Arbitration did not assume the existence of load coils or repeaters on loops less than 18,000 feet in length; instead loops in excess of 12,000 feet in length were fiber.[354] In addition, SWBT's revised resistance design rules for loop plant only place disturbers on loops at 18,000 feet in length and beyond.[355] The Arbitrators find that on a forward-looking basis, load coils or repeaters should not be present on loops less than 18,000 feet in length. The Arbitrators find that the record suggests that the existence of bridged tap may be included in a forward looking network design.[356] Therefore, the Arbitrators believe that conditioning charges for the removal of repeaters and load coils should only apply to xDSL loops at or beyond 18,000 feet in length. This is 6,000 feet greater than SWBT's proposal to only charge conditioning charges on xDSL loops greater than 12,000 feet in length.[357]

However, the Arbitrators recognize that the FCC has recently found that the incumbent, in this instance SWBT, should be able to charge for conditioning on loops at or less than 18,000 feet in length.[358] Therefore, the Arbitrators find that appropriate TELRIC-based conditioning

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[353] Tr. at 1328 (June 4, 1999).

[354] *Id.* at 1222-1225.

[355] *Id.* at 1229-1230.

[356] Tr. at 1237-1238, 1303-1305, 1328-1329 (June 4, 1999).

[357] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7-8 (April 8, 1999).

[358] *UNE Remand Order* at ¶¶ 192-194. The FCC states in paragraphs 193 and 194:

> We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.
>
> We recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these costs may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits. We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for nonrecurring costs.
> (Footnotes omitted.)

charges for the removal of repeaters, bridged taps, and/or load coils shall apply to loops of any length greater than 12,000 feet.

SWBT's proposed conditioning cost study only considers the costs associated with conditioning loops less than 17,500 feet in length. SWBT did not supply any cost information with respect to conditioning loops in excess of 17,500 feet in length.[359] When questioned during the hearing, SWBT did not provide a cost basis for choosing 17,500 feet for a cutoff.[360] However, the Parties agree that "...17.5 is not a magic cutoff where the cost characteristics become radically different...."[361] Rhythms asserts that there are generally no differences between loops less than or in excess of 17,500 feet in length.[362] SWBT witness Deere explained that with some technologies, loops require repeaters after reaching 18,000 feet in length; in his words, "that's why the distance was kept below that."[363]

The Arbitrators acknowledge that the Parties testified that the cost studies utilized in the Mega-Arbitration were completed according to TELRIC principles and designed to create an efficient POTS network.[364] Therefore, the designed network did not normally include load coils or repeaters on loops less than 18,000 feet in length.[365] However, this network design is contrary to the network modeled in SWBT's proposed xDSL non-recurring cost studies for conditioning, which does assume the existence of disturbers on loops less than 18,000 feet in length. The Arbitrators find that the network design inconsistencies in the recurring and non-recurring cost studies do not result in correct xDSL costs and rates and consequently render the proposed charges invalid. Therefore, the Arbitrators order SWBT to file new TELRIC-based cost studies for conditioning of analog and digital xDSL loops at or in excess of 18,000 feet in length. The

[359] Tr. at 1226 (June 4, 1999).

[360] *Id.* at 1241.

[361] *Id.* at 1243, 1403.

[362] ACI Exhibit 1, Direct Testimony of Eric H. Geis at 41 (Feb. 19, 1999).

[363] Tr. at 1243 (June 4, 1999).

[364] *Id.* at 1222.

[365] *Id.* at 1237, 1303, 1305.

Arbitrators also order SWBT to file a new TELRIC-based cost study for the removal of bridged tap, load coils, and repeaters on xDSL loops greater than 12,000 feet in length but less than 18,000 feet in length.

The Arbitrators order that both cost studies be based on the same network used to calculate xDSL loop rates,[366] incorporate the actual percentage of loops that require conditioning based on actual field experience, utilize efficient conditioning, and include a future discount. The Arbitrators find that evidence in the record suggests that over time, load coils, repeaters, and bridged tap will be migrated out of SWBT's network.[367] Therefore, most loop conditioning will not be necessary in the future. The Arbitrators also order SWBT to take into account any current plans and work in progress to rearchitect its network to push fiber deeper into the network structure, thereby reducing the likelihood that accreted devices, *e.g.*, load coils, would be present on loops. The Arbitrators order that this reduction in the likelihood of conditioning be reflected in the cost studies through a future discount. The Arbitrators also order that the modifications adopted below be addressed in the new cost studies. The Arbitrators invite Rhythms and Covad to file their own cost studies. Until new cost studies are approved by the Commission, the Arbitrators' interim conditioning rates shall apply.[368]

The Arbitrators adopt SWBT's proposed conditioning charges, with modification, on an interim basis. Specifically, the Arbitrators have removed the bridged tap re-installation from the cost of removing a bridged tap. The Arbitrators find, based upon the evidence in the record, that the CLEC should not be considered the appropriate "cost causer" for re-installing bridged taps.[369] *See* Attachment B, Paragraph D. The interim rates are based on TELRIC pricing principles. After the appropriate rate for each conditioning activity was determined, a 13.1% Common Cost Allocation Factor was applied.

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[366] *See* DPL at 62 (May 28, 1999).

[367] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 6 (April 8, 1999).

[368] *See* Implementation Schedule, Section VIII of this Award.

[369] Tr. at 1347-1349 (June 4, 1999); SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 6 (April 8, 1999).

The Arbitrators also modify the cost studies to reflect the costs of efficient conditioning. SWBT states that it does not intend to condition more loops than the CLEC requests.[370] For example, if a CLEC requests conditioning on one loop in a binder group of 50 pairs, SWBT would dispatch a technician to condition only the single loop. However, SWBT's more efficient internal practice is to condition at least 50 loops at a time when it is necessary to dispatch a technician.[371] Therefore, the Arbitrators modify SWBT's xDSL conditioning cost study to reflect the more efficient practice of conditioning several loops, or entire binder groups, when a technician is dispatched and the cable splice is entered. Because of the smaller sized binder groups used in longer cabling, the Arbitrators find an appropriate unit size for the purpose of calculating conditioning charges for loops at or in excess of 18,000 feet in length to be 25. The Arbitrators use a unit size of 50 when calculating the charges for removing load coils, bridged taps, and/or repeaters on xDSL loops greater than 12,000 feet in length but less than 18,000 feet in length.[372]

Furthermore, the Arbitrators clarify that the additional charges for any mixed conditioning shall be the additional charge for the specific disturber unless an additional incidence of both disturbers exists on the loop. For example, when removing both bridged tap and load coils from a loop, the initial charge of $59.35 would apply. The $53.72 additional charge would only apply if the loop also necessitated the removal of additional bridged taps and additional load coils. If the loop *only* required the removal of additional bridged taps, the $18.81 additional bridged tap charge would then apply.

The Arbitrators stress that conditioning of xDSL loops shall only be performed at the request of the CLEC. The Arbitrators note for the record that SWBT could not testify that it has charged any SWBT retail ADSL customers the $900 conditioning charge listed in its federal

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[370] SWBT Exhibit 8, Rebuttal Testimony of Jerry Fuess at 7 (April 8, 1999); ACI Exhibit 171, Staff Reserved RFI Responses (SWBT responses to ACI RFI 3-24) (June 5, 1999).

[371] ACI Exhibit 5, Direct Testimony of Terry L. Murray at 25-27 (Feb. 19, 1999); ACI Exhibit 171, Staff Reserved RFI Responses (June 5, 1999).

[372] *See* Appendix D for revised cost study.

tariff.[373] This appears to constitute a barrier to CLECs' offering of xDSL services, *i.e.*, charging wholesale customers conditioning charges, while excusing retail customers. Moreover, the likelihood of SWBT applying conditioning charges to a retail customer is lower because SWBT has segregated "clean loops" for ADSL service, which is the type of xDSL service it initially intends to provision.[374] The record reflects that SWBT even considered pre-grooming loops for its own retail service, but has not pursued that option.[375]

The Arbitrators find that SWBT must make those "clean loops" available for all xDSL services and use by all xDSL providers. The Arbitrators find that opening access to the segregated binder groups to all xDSL providers for all xDSL services will help ameliorate the imbalance created by SWBT and decrease the likelihood of other xDSL providers incurring conditioning charges.[376] Therefore, when a CLEC orders an xDSL loop, SWBT must make available for use on a nondiscriminatory basis one of the segregated loops that does not need

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[373] Tr. at 1327, 1401 (June 4, 1999).

[374] Tr. at 1379, ll. 23-25-1380, ll. 1-24; 1382, ll. 8-12 (June 4, 1999):

A (Deere) Yes, it is. What we have done -- now, don't get confused between designating binding groups to be used for ADSL and preconditioning.
Q (Farroba) What's the difference?
A (Deere) Designating just says we have picked a binder group that does not have other digital services in it, and hopefully not adjacent to it, and designated it to be used for POTS and ADSL services.
Q (Farroba) Are you going to have to condition those designated fiber groups?
A (Deere) Again, as we've said before, we don't offer, on a retail basis, ADSL where the cables are loaded, and so we do not -- you know, we do not go out and remove load coils because we don't offer it where they're loaded because the POTS service isn't going to work, and we have not removed bridged taps, that I'm aware of anywhere. Again --
Q (Malone) So, Mr. Deere, you stated that Southwestern Bell has predetermined some binder groups that they will reserve for POTS and ADSL service?
A (Deere) They have designated, yes.
Q (Malone) Those are just for ADSL, not for any other flavor of DSL?
A (Deere) That is correct. We have said as part of the plan that we have put forth is that all other cable binder groups will be available for those services.
Q (Malone) Do you know how many wire centers you've already reserved binder groups in?
A (Deere) There are wire centers in the major metropolitan areas; a hundred plus. I don't have a number right off the top of my head.

See also Tr. at 1780-1785, 1793-1803 (June 5, 1999).

[375] ACI Exhibit 171, Staff Reserved RFI Responses (SWBT responses to ACI RFI 3-22, 3-23) (June 5, 1999); Tr. at 1381-1385 (June 4, 1999).

[376] *See* DPL at 30 (May 28, 1999).

conditioning. If no more clean loops are available for use, then the conditioning charges stated below apply. The Arbitrators stress that SWBT's retail and/or advanced services affiliate shall not be given preferential access to such segregated clean loops, nor shall such clean loops be reserved exclusively for ADSL services.

The Arbitrators find that the interim conditioning charges, listed below, are applicable to every xDSL loop greater than 12,000 feet in length but less than 18,000 feet in length, in which the CLEC requests the removal of bridged tap, load coils, and/or repeaters.

	Nonrecurring	
	Initial	Additional
Removal of Repeater	$10.82	$9.41
Removal of Bridged Tap and Repeater	$27.08	$24.19
Removal of Bridged Tap	$17.62	$14.79
Removal of Bridged Tap and Load Coil	$40.44	$37.62
Removal of Load Coil	$25.66	$22.83
Removal of Repeater and Load Coil	$35.06	$32.23

The Arbitrators find that the interim conditioning charges, listed below, are applicable to every xDSL loop, at or in excess of 18,000 feet in length, that requires the specific conditioning listed.

	Nonrecurring	
	Initial	Additional
Removal of Repeater	$16.25	$13.42
Removal of Bridged Tap and Repeater	$37.89	$32.23
Removal of Bridged Tap	$24.46	$18.81
Removal of Bridged Tap and Load Coil	$59.35	$53.72
Removal of Load Coil	$40.55	$34.89
Removal of Repeater and Load Coil	$53.99	$48.34

Until such time as permanent conditioning charges are approved, SWBT shall condition xDSL loops, at the request of Petitioners, at the interim charges above. The conditioning charges are subject to refund/surcharge upon approval of permanent conditioning charges, back to the date the Interconnection Agreements resulting from this Award become effective.

30. Should SWBT be allowed to charge for a Loop Qualification Process?

Parties' Positions

See DPL Issue No. 18.

Award

The Arbitrators find that SWBT cannot impose a loop qualification process rather than provide information concerning loop makeup. Therefore, finding an appropriate charge for a loop qualification process is not necessary. *See* DPL Issue No. 18.

31. Is it appropriate to charge for loop makeup information?

Parties' Positions

Rhythms states the forward-looking cost of providing loop makeup information is $0. Rhythms notes that the *Local Competition Order* requires SWBT to offer its competitors access to the information existing in its OSS and related databases using mechanisms comparable to those available to its own personnel for accessing such information.[377] Additionally, Rhythms argues that the *Advances Services Order* concludes that new entrants should have full access to specific loop technical and engineering data as to "...the number of loops using advances services technology within the binder and type of technology deployed on those loops."[378] Rhythms states that the record reflects that SWBT can and will use its access to loop information

[377] ACI Post-Hearing Brief at 112 (Aug. 17, 1999); *Local Competition Order* at § 51.313(c).

[378] ACI Post-Hearing Brief at 112 (Aug. 17, 1999); *Advanced Services Order* at ¶ 73 (footnote omitted).

to tailor a fully electronic loop qualification process for its own retail ADSL operations. Thus, Rhythms argues, pursuant to FCC requirements, SWBT is obligated to offer Rhythms electronic access to this same loop makeup information.[379]

Rhythms believes that the cost of the loop makeup information should reflect the forward-looking economic cost of providing the information to Rhythms via an electronic interface. Rhythms argues that the cost for such a process would be *de minimis* because it involves no more than a small incremental use of SWBT's processor capacity.[380]

Covad agrees with Rhythms' rationale and argues that SWBT should provide CLECs with a computerized interface with its databases that will eliminate the need for SWBT to incur any expenses in providing loop makeup information to CLECs.[381]

SWBT offers to provide CLECs loop make-up information free of charge via the pre-qualification process.[382] The free information consists of one of three indicators that will identify the loop as a copper-based facility less than 12,000 feet, a copper based facility between 12,000 and 17,500 feet, or a copper based facility in excess of 17,500 feet, or a noncopper based facility.[383] SWBT states that it will negotiate a rate along with terms and conditions for providing additional information on a manual basis.[384]

Award

The Arbitrators find that SWBT should be fairly compensated for the real time access to its OSS functionalities required by DPL Issue No. 15. Because the OSS functionalities have not

[379] ACI Post-Hearing Brief at 112 (Aug. 17, 1999).

[380] *Id.*

[381] DPL at 68-69 (May 28, 1999).

[382] SWBT Post Hearing Brief at 42 (Aug. 17, 1999).

[383] SWBT Exhibit 7, Rebuttal Testimony of William C. Deere at 9 (April 8, 1999). The pre-qualification has been referred to as "red, yellow, green."

[384] *Id.*

been created, the Arbitrators cannot adopt a cost-based rate for loop makeup information. However, during the interim, the Arbitrators find the non-recurring "dip charge" below to be appropriate. The Arbitrators find the "dip charge" to be in addition to any established service order charges applicable to Petitioners. The "dip charge" will apply on a per loop basis.

The Arbitrators order SWBT to file a cost study for the loop makeup information charge within one month after the implementation of its fully mechanized, real time, OSS functionalities as ordered in DPL Issue. No. 15. Until the Commission has approved a cost study, the Arbitrator's interim "dip charge" will apply. Until such time that a permanent loop make-up information charge is approved, SWBT shall provide Petitioners loop make-up information at the interim "dip charge" below. The interim "dip charge" is subject to refund/surcharge upon approval of a permanent loop make-up information charge back to the date the Interconnection Agreements resulting from this Award become effective.

The Arbitrators' decision is consistent with the terms of the SBC/Ameritech merger, in which the FCC found that "SBC/Ameritech is not required to eliminate extra charges for manual processing of service orders, provided that an electronic means of processing such orders is available to carriers. If, however, no electronic interface for processing orders of 30 lines or less is available to a carrier, SBC/Ameritech will eliminate any extra charge for manual processing and shall charge instead the rate for processing similar orders electronically."[385]

	Nonrecurring "Dip Charge"
Loop Makeup Information (Per Loop)	$0.10

32. If SWBT is permitted to require shielded cable for xDSL technologies, is there any additional cost associated with shielded intraoffice versus non-shielded cable?

Parties' Positions

[385] SBC/Ameritech Merger Order at ¶ 384.

See DPL Issue Nos. 7, 28(a), and 28(b).

Award

The Arbitrators find that SWBT is not permitted to require shielded cable for xDSL technologies. The Arbitrators add that all cross connect facilities, shielded or non-shielded, must be provided in a reasonable and non-discriminatory manner.[386]

35. How should cageless collocation be priced?

Parties reached agreement on this issue in the arbitration proceedings on April 15, 1999.[387]

VII. Miscellaneous

DPL Issue Nos. 23-25, 37-39

23. Should all performance measures and penalties adopted in SWBT's §271 proceeding be incorporated into the Interconnection Agreement?

Parties' Positions

Rhythms believes the inclusion of all meaningful and effective performance measures and penalties is crucial to ensuring SWBT's ongoing compliance with the terms of the interconnection agreement. Rhythms views the performance measurements and penalties adopted in the §271 proceeding as a minimum standard and requests the opportunity to negotiate additional measurements if necessary. Rhythms argues that all of the performance measurements and penalties established in the § 271 proceeding must be incorporated into the resulting Interconnection Agreements (including the measurements and penalties related to loops in excess of 17,500 feet in length and loops less than 17,500 feet in length), in those instances

[386] *UNE Remand Order* at ¶ 178.

[387] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Interconnection Agreements as contained in SWBT Exhibit 6, Rebuttal Testimony of Michael C. Auinbauh at Schedule 1 (April 8, 1999).

where SWBT recommends conditioning and the CLEC declines conditioning or chooses partial conditioning of the xDSL loop.[388]

Covad does not dispute this issue.

SWBT offers to provide most of the performance measures agreed to during the §271 proceeding. However, SWBT identifies two situations in which it believes certain performance measures are not appropriate. SWBT asserts that maintenance and repair measurement should not apply for loops in excess of 17,500 feet in length. SWBT also argues that performance measures should not apply to loops in which SWBT recommends conditioning and the CLEC declines the conditioning.[389]

SWBT does not offer to provide the performance penalties associated with the measurements. SWBT witness Auinbauh testified that it "has agreed to language in the negotiation process and in those draft agreements that come out of the 271 process. I believe that that language was drafted specifically excluding the penalty portion of that."[390] SWBT explains that it would be willing to apply the penalties in the context of "MFNing" into an agreement that included the penalties.[391]

Award

The Arbitrators find that all performance measures and penalties adopted in the §271 proceeding, except as discussed below, shall be incorporated into the resulting Interconnection Agreements. The performance measurement penalties should be a minimum standard. The Arbitrators encourage the Parties to negotiate additional performance measures and penalties if desired. The Arbitrators find that SWBT shall not be required to guarantee that the xDSL loop(s) ordered will perform (with regard to transmission speed) as desired by CLEC for xDSL

[388] Rhythms Post-Hearing Briefs at 132 (Aug. 17, 1999).

[389] SWBT Post-Hearing Brief at 80 - 81 (Aug. 17, 1999); SWBT Exhibit 5, Rebuttal Testimony of Michael C. Auinbauh at 17 - 18 (April 8, 1999).

[390] Tr. at 402 (April 15, 1999).

[391] *Id.* at 403.

services, but instead shall guarantee basic metallic loop parameters, including continuity and pair balance. All other performance measures and penalties applicable to the provisioning of xDSL capable loops, including those added to the § 271 agreement as a result of this Award[392], will fully apply to all xDSL loops without regard to the loop length.

24. Should ACI be permitted to incorporate into the interconnection agreement the results, agreements and decisions reached in the § 271 proceeding?

Parties' Positions

Rhythms proposes contract language that would allow either Party, upon request, to adopt and incorporate into the resulting Interconnection Agreements the results, agreements and/or decisions reached in the §271 proceeding.[393] *See* DPL Issue No. 23.

Covad does not dispute this issue.

SWBT states that it will make available to requesting CLECs any service or network element arrangement from a Commission-approved agreement, provided that the CLECs also accept all legitimately related terms and conditions. SWBT clarifies that any agreed-to actions it undertakes in connection with obtaining interLATA relief may not be available generally to all CLECs.[394]

Award

The Arbitrators find that Rhythms should be permitted to incorporate into the resulting Interconnection Agreements any results, agreements and decisions reached in the §271 proceeding that are included in the T2A, provided that Rhythms also accept any legitimately related terms and conditions. The Arbitrators find that agreements reached in the §271

[392] *See* Implementation Schedule in Section VIII of Award.

[393] ACI's Post-Hearing Brief at 133 (Aug. 17, 1999).

[394] SWBT Post-Hearing Brief at 81 (Aug. 17, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael Auinbauh at 18 (April 8, 1999).

proceeding should be available to all CLECs in order to further competition in Texas. *See* DPL Issue No. 25.

25. Should Rhythms be entitled to "pick and choose" on a piecemeal basis rates and conditions from other, already approved, interconnection contracts?

Parties' Positions

Rhythms claims that it must have the right to incorporate provisions from existing interconnection agreements into its resulting Interconnection Agreement with SWBT. Rhythms argues that the right to "pick and choose" is grounded in FTA § 252(i). Rhythms contends that the FCC's interpretation of this section in the *Local Competition First Report and Order* supports its position. The FCC stated that "a carrier may obtain access to individual elements such as unbundled loops at the same rates, terms and conditions as contained in any approved agreement."[395]

Covad does not dispute this issue.

SWBT states that it will make available to requesting CLECs any service or network element arrangement from a Commission-approved agreement, provided that CLECs also accept all legitimately related terms and conditions.[396]

Award

The Arbitrators find that Rhythms is entitled to "pick and choose" rates and conditions from other, already approved, interconnection agreements. The Arbitrators find that Rhythms may "pick and choose" individual elements and rates when it agrees to adopt the legitimately

[395] ACI's Post-Hearing Brief at 134 (Aug. 17, 1999); *Local Competition First Report and Order* at ¶ 1314.

[396] SWBT Post-Hearing Brief at 81 (Aug. 17, 1999); SWBT Exhibit 6, Rebuttal Testimony of Michael Auinbauh at 18 (April 8, 1999).

related terms and conditions. The Arbitrators direct Rhythms and SWBT to follow the interim "pick and choose" process established by the Commission in Docket No. 21100.[397]

37. Given that xDSL is a newly developing service, should SWBT be required to give to Rhythms analogous preferential rates adopted after this proceeding?

Parties' Positions

Rhythms claims that it must have the right to incorporate provisions from subsequent interconnection agreements into its agreement with SWBT. Because xDSL is a new technology, Rhythms testifies that it would be appropriate to permit Rhythms to opt into more favorable rates, terms or conditions from future contracts without the necessity to terminate its Interconnection Agreement with SWBT. Rhythms asserts that the FCC recognized the importance if this "opt-in" ability in its *Local Competition First Report and Order*. The FCC stated that "unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions – including rates – negotiated by large IXCs...." Rhythms notes that the U.S. Supreme Court has affirmed this interpretation.[398]

Covad does not dispute this issue.

SWBT asserts that Rhythms may apply the FCC rules to receive "more favorable" terms as long as it takes all legitimately related terms and conditions of the "more favorable" agreement. SWBT explains that Rhythms would have three options: (1) adopt the "more favorable" agreement under the "Other Available Agreements" clause of the underlying agreement; (2) request that SWBT negotiate an amendment to Rhythms' current agreement; or (3) terminate its agreement and negotiate another agreement.[399]

Award

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[397] *Application of Metro Access Networks, Inc. for Approval of Interconnection Agreements under PURA and the Telecommunications Act of 1996,* Order on Appeal of Order No. 4, Docket No. 21100 (Aug. 27, 1999).

[398] ACI's Post-Hearing Briefs at 133-134 (Aug. 17, 1999); *Local Competition First Report and Order* at ¶ 1313; *AT&T Corp. v. Iowa Utilities Board,* 119 S. Ct. at 738.

[399] SWBT Post-Hearing Brief at 82 (Aug. 17, 1999).

The Arbitrators find that SWBT is not required to automatically give Rhythms analogous preferential rates adopted after this proceeding. However, providing Rhythms accepts the legitimately related terms and conditions, the Arbitrators find that Rhythms must be able to "opt in" to other SWBT agreements. The Arbitrators require SWBT to negotiate in good faith should Rhythms request to utilize its right to "pick and choose," or any of the three options detailed above by SWBT. *See* DPL Issue No. 25.

38. Should the interconnection agreement continue to require dispute resolution before the Commission in light of the Supreme Court's recent decision in *Iowa Utilities Board v. AT&T Corp.?*

Covad and SWBT reached agreement on this issue during the arbitration proceedings.[400] The issue is not disputed by Rhythms.[401]

39. Should agreed-to commercial arbitrations alternate between SWBT's home and Covad's?

Covad and SWBT reached agreement on this issue during the arbitration proceedings.[402] The issue is not disputed by Rhythms.[403]

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[400] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Covad and SWBT Interconnection Agreement as contained in Covad's Post-Hearing Brief at Exhibit 2 (Aug. 17, 1999).

[401] Covad Post-Hearing Brief at 5 (Aug. 17, 1999); SWBT Post-Hearing Brief at 84 (Aug. 17, 1999); Tr. at 770 (June 2, 1999).

[402] Tr. at 467-541 (April 15, 1999); Provisions are adopted and should be incorporated into the resulting Covad and SWBT Interconnection Agreement as contained in Covad's Post-Hearing Brief at Exhibit 2 (Aug. 17, 1999).

[403] Covad Post-Hearing Brief at 5 (Aug. 17, 1999); SWBT Post-Hearing Brief at 84 (Aug. 17, 1999); Tr. at 770 (June 2, 1999).

VIII. Implementation Schedule

Pursuant to FTA §252(c)(3), the Arbitrators provide the following "schedule for implementation of the terms and conditions" of this Award and the Parties' resulting Interconnection Agreements. This schedule incorporates the deadlines for: (1) the filing and approval of Interconnection Agreements consistent with this Award; (2) the filing of a new xDSL loop cost study; (3) the filing of new cost studies for conditioning of xDSL loops; (4) the implementation of enhancements to SWBT's existing Datagate and EDI interfaces for pre-ordering (including electronic access to loop make-up information) and ordering of DSL-capable loops; (5) availability of and access to trouble reports for any function or capability of the accessed loop element; (6) the filing of a loop make-up information cost study; (7) the finalizing of performance measures for xDSL; and (8) the filing of a plan to ensure that SWBT's retail ADSL employees (and employees of any advanced services affiliate) do not have access to competitive information or other information at SWBT that creates a competitive advantage for SWBT's retail xDSL deployment. The schedule is, and should be considered, an integral part of the Award in this proceeding.

Parties file Interconnection Agreements that comply with Award	December 30, 1999
Parties file proposed performance measures for xDSL[404] (DPL Issue No. 23)	December 30, 1999
SWBT makes available access to trouble reports for any function or capability of the accessed loop element in compliance with Award (DPL Issue No. 15)	December 30, 1999
SWBT files Plan to Ensure Competitive Neutrality and Nondiscrimination in Access to Competitively Relevant Information (DPL Issue No. 16)	January 14, 2000
SWBT files new xDSL Loop Cost Study (DPL Issue No. 27)	March 1, 2000

[404] As required by Section 10.3, Attachment 25 of the T2A:

10.3 Performance measurements for xDSL will be finalized within thirty (30) days after the final Order in the xDSL Arbitration.

SWBT files new Conditioning Cost Study (DPL Issue No. 29)	March 1, 2000
SWBT implements Datagate and EDI enhancements, including electronic pre-ordering of Loop Make-up Information (DPL Issue Nos. 15 and 19a)	May 30, 2000
SWBT files Loop Make-up Information Cost Study (DPL Issue No. 31)	June 30, 2000
Deadline for Parties to: (1) file negotiated permanent rates; and/or (2) request further arbitration on rate issues	July 30, 2000

IX. Conclusion

The Arbitrators conclude that the foregoing Arbitration Award, including the attached appendices, resolves the disputed issues presented by the Parties for arbitration. The Arbitrators further find that this resolution complies with the standards set in FTA §252(c), the relevant provisions of PURA99, and P.U.C. PROC. Rs. 22.301-22.310.

SIGNED AT AUSTIN, TEXAS the _____ day of November, 1999.

FTA § 252 ARBITRATION PANEL

_____
KATHERINE D. FARROBA
ARBITRATOR

_____
ROWLAND L. CURRY
ARBITRATOR

Commission Staff Arbitration Advisors

Jennifer Kambhampati
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Melanie M. Malone
Elango Rajagopal

Attachment A

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Confidential Attachment B

(One page under seal)

Confidential References in Award

Confidential Attachment C

(3 pages under seal)

Revised Shielded Cross Connect Cost Study

Confidential Attachment D

(2 pages under seal)

Revised Conditioning Cost Study for xDSL Loops greater than 12,000 feet but less than 18,000 feet in Length

Confidential Attachment E

(2 pages under seal)

Revised Conditioning Cost Study for xDSL Loops at or in Excess of 18,000 feet in Length