

solve this problem.⁸⁴³ As suggested by Rhythms, SWBT is testing a new card for its digital loop carriers that will support IDSL service.⁸⁴⁴

302. Under these circumstances, we find that the differences reported in SWBT performance data between the way BRI loops are provisioned for SWBT's ISDN service and competing carrier IDSL service do not demonstrate discriminatory treatment. We note that the Department of Justice reaches the same conclusion.⁸⁴⁵ In light of SWBT's efforts to remedy this problem, reasonable questions regarding the appropriateness of a straightforward comparison between troubles following installation for IDSL and ISDN service, and SWBT's competing carrier xDSL-capable loop record overall, we conclude that SWBT demonstrates that it provisions BRI loops of a quality sufficient to meet the requirements of checklist item 4.

303. *Maintenance and Repair.* We conclude that SWBT demonstrates that it provides maintenance and repair functions for competing carrier xDSL-capable loops in a manner sufficient to meet the requirements of checklist item 4.

304. *xDSL Loops.* SWBT demonstrates that it provides maintenance and repair for competing carrier xDSL loops in substantially the same time and manner as it does for its own retail customers. With respect to timeliness of maintenance and repair, in both February and April 2000, the average time to repair competing carrier xDSL loops was substantially less than the average time SWBT took to repair its own retail xDSL loops.⁸⁴⁶ SWBT also demonstrates that it provides the same quality of xDSL loop repair service to competing carriers as it does for its own retail service. In the period from February through April, 2000, SWBT and competing carrier xDSL loops have experienced a comparable repeat trouble rate.⁸⁴⁷

305. *BRI Loops.* Like the Department of Justice, we acknowledge that some performance issues remain with respect to the timelines of BRI loop maintenance and repair. As

⁸⁴³ SWBT Chapman Texas II Reply Aff. at para. 31-32; Letter from Austin C. Schlick, Counsel, SBC, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 at 3 (filed June 6, 2000) (SWBT June 6 *Ex Parte* Letter) (describing xDSL-capable loop workshops addressing BRI loop performance issues, attended by SWBT, Covad, Rhythms, NorthPoint, and IP Communications).

⁸⁴⁴ Department of Justice Texas II Evaluation at 6; Rhythms Texas II Comments at 14; Rhythms Texas II Lopez Aff. at para 6; SWBT Texas II Chapman Reply Aff. at paras. 31, 33.

⁸⁴⁵ Department of Justice Texas II Evaluation at 6.

⁸⁴⁶ In February and April 2000, competing carrier xDSL loops were repaired in an average of 10.51 and 3.22 hours, while during the same months SWBT repaired its own retail loops in an average of 28.65 and 24.08 hours. In March 2000, competing carrier xDSL loops were repaired in an average of 14.37 hours, only marginally higher than the 11.17 hours it took SWBT, on average, to repair its own retail xDSL loops. SWBT Aggregated Performance Data, Measurement No. 67 ("Mean Time to Restore (Hours)-Dispatch") (DSL) at 271-No. 67c.

⁸⁴⁷ In February, March, and April 2000, competing carriers experienced repeat troubles on 11.7, 9.2, and 10.0 percent of their xDSL loops, while during the same period, SWBT retail experienced repeat troubles on 13.8, 11.1 and 8.9 percent of their xDSL loops. SWBT Aggregated Performance Data, Measurement No. 69 ("Repeat Reports (%)") (DSL) at 271-No. 69c.

discussed above with respect to BRI loop trouble rates, SWBT maintains that technical difficulties associated with supporting IDSL are responsible for the longer average repair times for competing carrier BRI loops.⁸⁴⁸ If SWBT discovers that a competing carrier intends to use a particular BRI loop to deliver IDSL services, the loop may need to be redesigned or reassigned to avoid using equipment and facilities that support ISDN services but are not compatible with IDSL technology.⁸⁴⁹ This can adversely impact the repair time for competing carrier BRI loops used for IDSL service, and it draws into question the reasonableness of comparing average IDSL repair time with the average time in which SWBT repairs its own retail BRI loops.⁸⁵⁰ At the same time, SWBT is working with competing carriers to improve its BRI loop performance.⁸⁵¹ Under these circumstances, we find that the differences reported in SWBT performance data between the average time to repair competing carrier BRI loops and SWBT retail BRI loops do not demonstrate discriminatory treatment.

306. At the same time, we find that SWBT demonstrates that it now provides the same quality of BRI loop repair service to competing carriers as it does for its own retail service. Although in the past SWBT has had some difficulty provisioning BRI loops without more repeat troubles than SWBT retail BRI loops, more recent data indicate that SWBT has since remedied this problem. In both March and April 2000, competing carrier BRI loops had fewer repeat troubles than did SWBT's own retail BRI loops.⁸⁵² In light of these performance data and SWBT's ongoing efforts to improve its BRI loop performance, as well as reasonable questions regarding the appropriateness of a straightforward comparison between time to repair IDSL and ISDN service, and SWBT's competing carrier xDSL-capable loop performance overall, we conclude that SWBT provides maintenance and repair for BRI loops provisioned to competing carriers in a manner sufficient to meet the requirements of checklist item 4.

(ii) **Separate Subsidiary**

307. SWBT's implementation of a separate subsidiary for advanced services in Texas is not a decisional factor regarding compliance with section 271 because, for reasons described in the xDSL section *supra*, SWBT has carried its burden of demonstrating nondiscrimination with an evidentiary showing of performance to its wholesale xDSL customers. In this section, however, we address commenters' allegations that SWBT's relationship with its separate

⁸⁴⁸ SWBT Dysart Texas II Reply Aff. at paras. 57, 59-60.

⁸⁴⁹ SWBT Dysart Texas II Reply Aff. at para. 60.

⁸⁵⁰ SWBT Dysart Texas II Reply Aff. at para. 60.

⁸⁵¹ SWBT Chapman Texas II Reply Aff. at para. 31-32; SWBT June 6 *Ex Parte* Letter (describing xDSL-capable loop workshops addressing BRI loop performance issues, attended by SWBT, Covad, Rhythms, NorthPoint, and IP Communications).

⁸⁵² In March and April 2000, competing carriers experienced repeat troubles on 13.5 and 15.7 percent of their BRI loops, while SWBT experienced troubles on 15.6 and 16.9 percent of their own retail BRI loops. SWBT Aggregated Performance Data, Measurement No. 69 ("Repeat Reports (%)") (BRI Loop with Test Access) at 271-No. 69b.

subsidiary for advanced services violates its nondiscrimination obligations under the Act. We disagree that these allegations constitute grounds either for finding noncompliance with checklist item 4 or for denying SWBT's section 271 application.

(a) Background

308. SWBT's parent company, SBC, is required as a result of the *SBC/Ameritech Merger Order* to set up a separate affiliate for advanced services throughout its 13-state region.⁸⁵³ The purpose of the separate affiliate structure is to ensure nondiscriminatory provisioning of key inputs for advanced services.⁸⁵⁴ In order to comply with the merger conditions, SBC has established SBC Advanced Solutions Inc. (ASI) to provide retail and wholesale advanced services in Texas and other SBC states (Arkansas, California, Connecticut, Kansas, Missouri, Nevada and Oklahoma).⁸⁵⁵

309. In order to minimize any disruption to the efficient and timely delivery of advanced services to customers, SWBT was permitted a reasonable period to transition to "steady state" provisioning of advanced services through ASI.⁸⁵⁶ ASI's interconnection agreement with SWBT in Texas, which is modeled after the T2A, became effective January 7, 2000. On March 13, 2000, ASI began processing all new requests for frame relay and cell relay services in Texas.⁸⁵⁷ Approximately 10 percent of these new requests require a UNE loop (4-wire

⁸⁵³ See *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141. Memorandum Opinion and Order, 14 FCC Rcd 14712, 14859-67, 14969-99 (1999) (*SBC/Ameritech Merger Order*), appeal docketed, No. 99-1441 (D.C. Cir. Nov. 8, 1999).

⁸⁵⁴ The merger conditions define advanced services as wireline services (e.g., ADSL, IDSL, xDSL, Frame Relay) that rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits per second in both directions. *SBC/Ameritech Merger Order*, App. C at para. 2. Circuit-switched services are not included, regardless of the technology, protocols or speed used for the transmission of such services. *Id.* ISDN also is not included because it is "not primarily based on packetized technology." *Id.*

⁸⁵⁵ SWBT Texas I Application App. A-3, Vol. 5, Tab 2. Affidavit of Lincoln Brown (SWBT Texas I Brown Aff.) at paras. 1, 3. SBC has in place another affiliate, Ameritech Advanced Data Services (AADS), to offer advanced services in Ameritech's service areas in Illinois, Indiana, Michigan, Ohio and Wisconsin. *Id.* at para. 6.

⁸⁵⁶ Steady state provisioning refers to provisioning in accordance with the *SBC/Ameritech Merger Order* conditions and after the expiration of an applicable transition period. See *SBC/Ameritech Merger Order*, App. C at para. 4. During this transition period, SBC may perform certain activities such as line sharing and network planning, engineering, design & assignment services on an exclusive basis with ASI. *SBC/Ameritech Merger Order*, App. C at paras. 3(c), 4(n)(1), 4(n)(4).

⁸⁵⁷ SWBT Texas II Application App. Vol. D, Tab 2. Affidavit of Lincoln Brown (SWBT Texas II Brown Aff.) at para. 21. ASI provides the following advanced services (in addition to ADSL): "Frame Relay, Cell Relay, Virtual Point of Presence Dial Access Service (VPOP/DAS) and Native LAN Plus." SWBT Texas I Brown Aff., Attach. A at 1, 3; SWBT Texas I Reply App. A, Vol. A-3, Tab 5, Reply Affidavit of Lincoln E. Brown (SWBT Texas I Brown Reply Aff.) at para. 5.

digital or DS-1 loop) to connect the customer premises to the frame relay/cell relay switch port.⁸⁵⁸ ASI has been processing LSRs in Texas to order these loops from SWBT using the same EDI interface that is available to competitive LECs to order unbundled loops.⁸⁵⁹ ASI submits an Access Service Request (ASR) for special access for the other 90 percent of orders where the 4-wire digital loop or DS-1 is used to connect the customer premises to a frame/cell switch port outside the wire center for the customer's local exchange service.⁸⁶⁰ ASI submits the ASR to SWBT utilizing the same processes, procedures, and interfaces as unaffiliated frame relay and ATM service providers.⁸⁶¹

310. As for ASI's ADSL services, ASI stated that it would continue to engage in "interim line sharing" until May 29, 2000, at which time SWBT would make line sharing generally available.⁸⁶² In order to address criticism in the Texas I record that ASI was not ordering xDSL-capable loops as its competitors were doing, ASI pledges in SWBT's Texas II application to order 280 unbundled loops per month that are capable of providing ADSL service.⁸⁶³ ASI stated that it would begin to order xDSL-capable loops on April 6, 2000 and would continue to do so until line sharing was made generally available, submitting LSRs to SWBT for processing in the same manner that SWBT provisions unbundled loops to competitive LECs.⁸⁶⁴ Furthermore, ASI asserts that when line sharing became available, ASI began ordering

⁸⁵⁸ SWBT Texas II Brown Aff. at para. 21.

⁸⁵⁹ SWBT Texas II Brown Aff. at para. 19. As of April 5, 2000, ASI had received more than 200 requests for new frame relay and cell relay services, and had processed approximately 20 LSRs to order UNE loops from SWBT. *Id.* at para. 21. ASI noted in reply comments dated May 19, 2000, that none of these orders had yet been provisioned, and that the circumstances under which such a service arrangement would be applicable are "very limited." SWBT Texas II Reply App. A, Vol. A-1, Tab 3, Reply Affidavit of Lincoln E. Brown (SWBT Texas II Brown Reply Aff.) at n.6. While ASI uses EDI, an application-to-application interface, to order 4-wire digital and DS-1 loops, xDSL providers generally use LEX, a graphical user interface, to order xDSL-capable and BRI loops.

⁸⁶⁰ SWBT Texas II Brown Aff. at para. 20.

⁸⁶¹ *Id.*

⁸⁶² SWBT Texas II Brown Aff. at para. 23. The term "interim line sharing" refers to the fact that under the *SBC/Ameritech Merger Order*, ASI is permitted to engage in line sharing with SWBT on an exclusive basis until line sharing is provided to unaffiliated providers of advanced services within the same geographic area. *SBC/Ameritech Merger Order*, App. C at para. 3(d). Where SWBT engages in interim line sharing, it is required to provide unaffiliated providers of advanced services within the same area discounted Line Sharing Surrogate Charges equal to 50 percent of the cost of a second loop. *See id.* at para. 8(b).

⁸⁶³ SWBT Texas II Brown Aff. at para. 22.

⁸⁶⁴ *Id.* In reply comments, ASI noted that it had ordered 282 unbundled loops in April for the purpose of providing ADSL services in Texas, and that as of May 19, 2000, ASI had ordered an additional 187 unbundled loops. SWBT Texas II Brown Reply Aff. at para. 7. ASI stated that ASI ordered the loops from SWBT utilizing the same interfaces and processes as are available to and used by unaffiliated providers. *Id.* at para. 8. For instance, ASI performed the pre-order function of obtaining loop qualification information for the 282 loops in April from the Complex Products Service Order System (CPSOS), which was made available to competitive LECs beginning April 5, 2000, and ASI performed the ordering function of submitting manual LSRs to SWBT's Local Service Center. *Id.*

the "HFPL UNE" (high frequency portion of the loop) from SWBT utilizing the same interfaces and paying an equivalent price as competitive LECs.⁸⁶⁵

(b) Discussion

311. AT&T and other commenters assert that SWBT has engaged in discrimination favoring its advanced services separate affiliate in a number of ways. These assertions fall into two broad categories: (1) those attacking the separate affiliate structure permitted under the merger conditions,⁸⁶⁶ and (2) those alleging that SWBT has improperly implemented the merger conditions, resulting in preferential treatment for ASI.⁸⁶⁷

312. As an initial matter, we reject AT&T and TRA's assertions that ASI must be deemed a "successor or assign" of SWBT.⁸⁶⁸ In the *SBC/Ameritech Merger Order*, we established a rebuttable presumption that SWBT's separate subsidiary for advanced services would not be considered a successor or assign of the incumbent LEC provided that the incumbent and its separate affiliate do not deviate from the requirements of section 272(b), (c), (e), and (g) other than in the manner explicitly provided for in the merger conditions.⁸⁶⁹ We incorporate by reference our legal reasoning in reaching this conclusion.⁸⁷⁰ As discussed below, there is no evidence in the record that SWBT is operating outside the strictures of the merger conditions. Accordingly, no commenters have rebutted the presumption we set forth in the *SBC/Ameritech Merger Order*. Moreover, we find it would be unfair to fault SWBT in the context of the instant proceeding for its adherence to the conditions with which it is obligated to comply under the terms of the *SBC/Ameritech Merger Order*.

313. Because we find that ASI is not subject to the obligations of section 251(c), we reject TRA's argument that SWBT violates its statutory obligation to make xDSL services

⁸⁶⁵ *Id.* at para. 9. ASI anticipated that its initial ordering volume would be approximately 450 HFPL UNEs per day in Texas (or 9,000 per month based on 20 working days). *Id.*

⁸⁶⁶ See AT&T Texas II Reply Comments at 17 ("[t]he merger conditions pursuant to which ASI was created include numerous provisions that allow SBC to discriminate in favor of its affiliate."); AT&T Texas II Comments at 64-70; IP Communications Texas II Minter Decl. at paras. 8-11; Sprint Texas II Comments at 19-22; @Link Texas II Comments at 10.

⁸⁶⁷ AT&T Texas II Pfau/Chambers Decl. at para. 84; AT&T Texas II Reply Comments at 17; IP Communications Texas II Minter Decl. at para. 9.

⁸⁶⁸ AT&T Texas II Comments at 64-70; TRA Texas I Comments at 24-30. We note that TRA filed an appeal of the Commission's *SBC/Ameritech Merger Order* in the D.C. Circuit (Docket No. 99-1441) challenging the determination that the separate advanced services affiliate required by merger conditions is not a successor or assign of the incumbent LEC for purposes of applying the resale obligation of section 251(c)(4). AT&T has intervened in the pending suit.

⁸⁶⁹ See 47 U.S.C. § 272(b), (c), (e), and (g); see also *SBC/Ameritech Merger Order* at para. 460, App. C. at para. 3.

⁸⁷⁰ See *SBC/Ameritech Merger Order* at paras. 446-76. Moreover, we note that AT&T has not explained how failure to treat ASI as an incumbent LEC has disadvantaged AT&T. See AT&T Texas II Comments at 65.

available at wholesale rates to resellers by providing the service through ASI, its wholly-owned subsidiary.⁸⁷¹ As an incumbent LEC, SWBT only has an obligation to offer for resale at wholesale rates those services that it provides to subscribers at retail.⁸⁷² SWBT does not provide xDSL services at retail, so it is not obligated to provide these services at wholesale rates.

314. We also reject allegations that the structure of the separate affiliate permits SWBT to discriminate on behalf of ASI. For example, AT&T asserts that SWBT's provision of network planning and engineering functions, including use of SWBT employees to arrange for requested collocation space for ASI, allows SWBT to unlawfully favor its affiliate over competitors.⁸⁷³ SWBT is permitted, pursuant to the merger conditions, to engage in certain activities for a limited transition period. The Commission found in the *SBC/Ameritech Merger Order* that "because SBC/Ameritech had previously been performing these activities on an integrated basis, it [would] take some time, both logistically and technically, to remove these functions from the incumbent."⁸⁷⁴ Specifically, we concluded that a short transition period would "minimize any disruption to the efficient and timely delivery of [a]dvanced [s]ervices to customers."⁸⁷⁵ We also note that any differences in treatment between ASI and competitors that may occur during this transition period would be inherent in the integrated provision of advanced services. Moreover, at the end of the transition period, competitors will have greater protection against discrimination than they otherwise would be entitled to if SWBT had continued to provide advanced services on an integrated basis. We find no basis, therefore, for altering our conclusion that SWBT complies with the collocation requirements of checklist item 1.

315. Similarly, we also reject commenters' objections to ASI's access to non-transitional services such as OI&M, joint marketing and customer care services, exclusive access to line sharing for a limited period, and to our decision to permit the terms of an interconnection agreement to suffice for certain transaction disclosure requirements.⁸⁷⁶ These activities, like the transitional network planning activities described above, were explicitly permitted under the merger conditions.

⁸⁷¹ TRA Texas I Comments at 24-30. See also AT&T Texas II Comments at 64-70.

⁸⁷² 47 U.S.C. § 251(c)(4)(A).

⁸⁷³ AT&T Texas II Pfau/Chambers Decl. at para. 84.

⁸⁷⁴ *SBC/Ameritech Merger Order* at para. 475.

⁸⁷⁵ *SBC/Ameritech Merger Order*, App. C at para. 4(n). Recognizing SWBT's section 251 nondiscrimination obligations regarding unbundled network elements and collocation, the merger conditions provide that even during the transition period, SWBT and ASI were required to operate in a manner that was the "functional equivalent" of provisioning advanced services through a fully operational separate affiliate. *SBC/Ameritech Merger Order*, App. C at para. 6(g). For example, ASI was required to order from SWBT "facilities and/or services needed to provide [advanced services]" rather than having SWBT continue to operate on an integrated basis. *Id.* at para 6(g)(3).

⁸⁷⁶ AT&T Texas II Comments at 69-70; AT&T Texas II Pfau/Chambers Decl. at paras. 83-89; AT&T Texas II Reply Comments at 17-18; @Link Texas II Comments at 10; IP Communications Texas II Minter Decl. at para. 10; Sprint Texas II Comments at 20.

316. We concluded in the *SBC/Ameritech Merger Order* that the advanced services separate affiliate will not derive unfair advantages from any of the activities that it is permitted to engage in with the incumbent LEC.⁸⁷⁷ We disagree, therefore, that SWBT's engaging in these activities with ASI constitutes a violation of section 271. In any event, even if these commenters had presented a plausible claim of discrimination, which they have not, they have alleged no form of discrimination substantial enough to draw into question SWBT's overall compliance with the relevant checklist items.

317. Finally, we also reject allegations that SWBT, in implementing the merger conditions, has conducted activities outside the strictures of these conditions, resulting in preferential treatment of ASI.⁸⁷⁸ These claims generally appear to describe activity that is, in fact, contemplated by the merger conditions. For example, AT&T is troubled by a SWBT statement that it provides "certain customer care functions after the sale" of ASI's services.⁸⁷⁹ As stated above, however, we explicitly found that the sharing of customer care services on an exclusive basis is a permitted activity pursuant to the SBC/Ameritech merger conditions.⁸⁸⁰ Similarly, IP Communications alleges that SWBT has only recently made its Premis database available to competitive LECs because ASI needs access to it. Under the nondiscrimination requirement of section 272(c)(1), SWBT's obligation is to give all unaffiliated entities the same "goods, services, facilities, and information" that it gives to its affiliate.⁸⁸¹ Instead of showing potential discrimination, these facts indicate that SWBT is abiding by the relevant nondiscrimination obligations.

318. In addition, we note that even if this allegedly "discriminatory" activity were outside the strictures of the merger conditions, commenters do not describe how such activity violates any provision of the competitive checklist. It seems that, at best, such allegations could be relevant, if at all, only to the Commission's predictive judgment whether SWBT will comply with the section 272 requirements with respect to its long distance separate affiliate.⁸⁸² Because we find no evidence on this record that SWBT is acting outside the confines of the merger conditions, however, there is no need to evaluate these claims in the context of our section 272 analysis below.

⁸⁷⁷ *SBC/Ameritech Merger Order* at paras. 467-76.

⁸⁷⁸ *See, e.g.,* AT&T Texas II Pfau/Chambers Decl. at para. 84; AT&T Texas II Reply Comments at 17; IP Communications Texas II Minter Decl. at para. 9.

⁸⁷⁹ *See* AT&T Texas II Pfau/Chambers Decl. at para. 84 (citing SWBT Texas II Brown Aff. at para. 14).

⁸⁸⁰ *SBC/Ameritech Merger Order* at para. 469, App. C. at para. 3(a).

⁸⁸¹ 47 U.S.C. § 272(c)(1).

⁸⁸² 47 U.S.C. § 271(d)(3)(C); *see* section 272 section below.

c. High Capacity Loop Performance

319. We find, based on the evidence in the record, that SWBT demonstrates that it provides high capacity loops to competing carriers in a nondiscriminatory manner. With respect to average installation interval, the Texas Commission did not establish a retail analogue, but instead established a 3 day target for average order installation. Accordingly, we assess SWBT's performance on the basis of whether or not it offers efficient competitors a meaningful opportunity to compete. Although SWBT has had difficulty with meeting this target in the past, during March and April 2000, SWBT installed competing carrier DS1 loops in about 3 days, on average.⁸⁸³ Furthermore, with respect to missed installation due dates, in the period from February through April 2000, SWBT missed only slightly more due dates for competing carrier DS1 loops than it did for its own retail DS1 service.⁸⁸⁴ In addition, during the same period, the average time to repair competing carrier DS1 loops was only slightly higher for competing carriers than it was for SWBT.⁸⁸⁵ In light of the lack of commenting parties on these slight performance disparities, we do not find these differences competitively significant. Finally, during the period from February through April 2000, competing carriers DS1 loops experienced comparable or lesser repeat trouble report rates than did SWBT's own retail DS1 loops.⁸⁸⁶ Thus, we find that SWBT provides nondiscriminatory maintenance and repair services for the high capacity loops it provides to competing carriers.

320. WorldCom alleges that SWBT will not provide unbundled access to high capacity loops, such as OC-3 or OC-12 level facilities.⁸⁸⁷ SWBT, however, offers an optional amendment to the T2A that redefines the loop network element to include "DS1, DS3, fiber, and other high capacity loops to the extent required by applicable law."⁸⁸⁸ Because this language indicates that

⁸⁸³ In March and April 2000, SWBT installed competing carrier DS1 loops in an average of 3.0 and 3.5 days. SWBT Aggregated Performance Data, Measurement No. 55 ("Average Installation Interval (Days)") (DS1 Loop) at 271-No. 55a.

⁸⁸⁴ In February, March, and April 2000, SWBT missed 5.8, 13.8, and 12.8 percent of competing carrier DS1 installation due dates. During the same period, SWBT missed 4.9, 9.0, and 7.7 of the installation due dates for its own retail DS1 service. SWBT Aggregated Performance Data, Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") (DS1 Loop) at 271-No. 58b.

⁸⁸⁵ In February, March, and April 2000, SWBT repaired competing carrier DS1 loops in an average of 5.24, 7.01, and 3.96 hours. During the same period, SWBT repaired its own retail DS1 loops in an average of 3.01, 2.96, and 3.45 hours. SWBT Aggregated Performance Data, Measurement No. 67 ("Mean Time to Restore (Hours)-Dispatch") (DS1 Loop with Test Access) at 271-No. 67b.

⁸⁸⁶ In February, March, and April 2000, competing carrier DS1 loops experienced repeat trouble rates of 12.9, 22.2, and 8.5 percent, while SWBT's own retail DS1 loops experienced repeat trouble rates of 19.4, 17.9, and 21.8 percent. SWBT Aggregated Performance Data, Measurement No. 69 ("Repeat Reports (%)") (DS1 Loop with Test Access) at 271-No. 69b.

⁸⁸⁷ WorldCom Texas II Comments at 41-43.

⁸⁸⁸ SWBT Auinbauh Texas II Aff. at Attach. C (Amendment 6 to T2A at para. 4.1).

SWBT has a concrete and specific legal obligation to make available as broad a variety of high capacity loops as the law requires, and we reject WorldCom's arguments.

d. Line Sharing and Other Loop Related Issues

321. *Line Sharing.* For the purpose of evaluating whether this application satisfies section 271, we do not require SWBT to prove that it has implemented the loop facility and OSS modifications necessary to accommodate requests for access to the line sharing unbundled network element as required by our December 9, 1999 *Line Sharing Order*.⁸⁸⁹ Although that order became technically effective on February 9, 2000, we acknowledged that it could take as long as 180 days from release of our order for incumbent LECs to develop and deploy the modifications necessary to implement the new obligations.⁸⁹⁰ This 180 day period concluded on June 6, 2000, well after SWBT filed its application.⁸⁹¹ As with the aspects of the *UNE Remand Order's* revised rule 319 that were not yet in effect at the time SWBT filed its application, we conclude that it would be unfair to require SWBT to demonstrate full compliance with the requirements of the *Line Sharing Order* in its initial application, at a time well in advance of the implementation deadline established in the Order. Finally, requiring SWBT to supplement the record with new evidence demonstrating its compliance with its line sharing obligations on or after June 6, 2000, would necessitate an 11th hour review of fresh evidence and dispose of our well-established procedural framework.⁸⁹²

322. Although we set June 6, 2000 as an outside deadline for accommodating requests for access to this new line sharing network element, we also established that an incumbent LEC had clear obligations to work towards satisfying the line sharing requirements in the weeks leading up to this deadline.⁸⁹³ We find that SWBT demonstrates significant development and operational resources devoted to planning for competing carrier access to the high frequency portion of the loop.⁸⁹⁴ We find the depth and scope of this evidence sufficient to overcome the speculative concerns of some competing carriers regarding SWBT's line sharing readiness,⁸⁹⁵ and reject competing carrier arguments that the Commission should deny SWBT's section 271

⁸⁸⁹ *Line Sharing Order*, 14 FCC Rcd 20912.

⁸⁹⁰ *Line Sharing Order*, 14 FCC Rcd at 20982-83, para. 161.

⁸⁹¹ *Line Sharing Order*, 14 FCC Rcd at 20982-83, 21016, paras. 161, 230; 65 Fed. Reg. 1331 (Jan. 10, 2000).

⁸⁹² See section III.C.1, *supra*.

⁸⁹³ *Line Sharing Order*, 14 FCC Rcd at 20982-85, paras. 161-170.

⁸⁹⁴ SWBT Texas II Cruz Aff. at paras. 5-55; SWBT Texas II Auinbauh Aff. at paras. 3-9; SWBT Texas II Auinbauh Reply Aff. at paras. 4-6; SWBT Texas II Chapman Reply Aff. at paras. 41-43.

⁸⁹⁵ NorthPoint Texas II Comments at 7-12; Rhythms Texas II Comments at 3-10; Covad Goodpastor Texas II Decl. at paras. 14-20; NorthPoint Lewandowski Texas II Aff. at paras. 23-29; Rhythms Lopez Texas II Aff. at paras. 2-25.

application on the basis of its alleged failure to comply with the requirements of the *Line Sharing Order*.⁸⁹⁶

323. *Line Splitting*. Some commenters contend that SWBT has unlawfully hindered the ability of competing carriers to use the UNE-P to provide both xDSL and voice services.⁸⁹⁷ For instance, AT&T argues that SWBT has unlawfully denied AT&T access to SWBT's splitter and has thereby made it more difficult for AT&T to use the UNE-P to provide advanced services.⁸⁹⁸ The Department of Justice also noted this issue in passing, but it did not suggest that the issue casts doubt on the merits of this application.⁸⁹⁹

324. As a preliminary matter, we note that under the *Line Sharing Order*, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access.⁹⁰⁰ Thus, the situation that these commenters describe is not technically line sharing, because both the voice and data service will be provided by competing carrier(s) over a single loop, rather than SWBT. To avoid confusion, we characterize this type of request as "line splitting," rather than line sharing.

325. The Commission's rules require incumbent LECs to provide requesting carriers with access to unbundled loops in a manner that allows the requesting carrier "to provide any telecommunications service that can be offered by means of that network element."⁹⁰¹ As a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter.⁹⁰² The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P.⁹⁰³ For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to

⁸⁹⁶ Covad Texas II Comments at 2-3, 7-8; Covad Texas II Goodpastor Decl. at paras. 14-20; IP Texas II Comments at 2-4; NorthPoint Texas II Comments at 7-12; NorthPoint Texas II Lewandowski Aff. at paras. 23-29; Rhythms Texas II Lopez Aff. at paras. 4-15.

⁸⁹⁷ AT&T Texas II Reply Comments at 8-9; IP Communications Texas II Comments at 14; AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; IP Communications Texas I Comments at 5.

⁸⁹⁸ AT&T Texas II Pfau/Chambers Decl. at paras. 29-42.

⁸⁹⁹ Department of Justice Texas II Evaluation at 7 n.17.

⁹⁰⁰ *Line Sharing Order*, 14 FCC Rcd at 20941, para. 13; 47 C.F.R. § 51.319(h)(3).

⁹⁰¹ 47 C.F.R. § 51.307(c).

⁹⁰² We note, however, that nothing in our rules prohibits an incumbent LEC from voluntarily providing the splitter in this line splitting situation.

⁹⁰³ SWBT June 6 *Ex Parte* Letter at 2.

replace its UNE-P with a configuration that allows provisioning of both data and voice service.⁹⁰⁴ SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.⁹⁰⁵

326. AT&T also argues that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter.⁹⁰⁶ AT&T alleges that this is “the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive.”⁹⁰⁷ Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop.⁹⁰⁸ AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.⁹⁰⁹

327. We reject AT&T’s argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available.⁹¹⁰ As we stated in the *UNE Remand Order*, “with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity.”⁹¹¹ We separately determined that the DSLAM is a component of the packet switching unbundled network element.⁹¹² We observed that “DSLAM equipment sometimes includes a splitter” and that, “[i]f not, a separate splitter device separates voice and data traffic.”⁹¹³ We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished

⁹⁰⁴ SWBT June 6 *Ex Parte* Letter at 2.

⁹⁰⁵ For instance, when the UNE platform is part of a DLC or exceeds distance limitations for xDSL service, such loops would not be xDSL-capable and could not be provisioned as an xDSL-capable unbundled loop. In these circumstances, modifications to the existing loop or other alternatives would need to be provided. SWBT June 6 *Ex Parte* Letter at 2. In light of SWBT’s representations, we find moot concerns expressed by commenters regarding an earlier SWBT proposal to require competing carriers using the UNE-P to order a new loop in addition to the existing UNE-P loop in order to ultimately engage in line splitting over the UNE-P. AT&T Pfau/Chambers Texas II Decl. at paras. 29-36; IP Communications Texas I Comments at 5.

⁹⁰⁶ See AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; see also IP Communications at 12, 14.

⁹⁰⁷ AT&T Texas II Pfau/Chambers Decl. at para. 41.

⁹⁰⁸ AT&T Texas II Pfau/Chambers Decl. at paras. 40-42.

⁹⁰⁹ AT&T Texas II Pfau/Chambers Decl. at para. 40.

⁹¹⁰ See 47 U.S.C. § 251(d)(2); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

⁹¹¹ *UNE Remand Order*, 15 FCC Rcd at 3776, para. 175.

⁹¹² *UNE Remand Order*, 15 FCC Rcd at 3833, paras. 302-303.

⁹¹³ *UNE Remand Order*, 15 FCC Rcd at 3833, para. 303.

from being part of the packet switching element. That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding.

328. The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters. Indeed, the only discussion of the splitter appeared in a discussion of a network element (the packet switching element) that we decided not to unbundle, and that discussion at least suggested that the splitter, because it is often part of the DSLAM, might properly be considered part of that element as a general matter. In response to petitions for reconsideration of the *UNE Remand Order*, we have been asked to consider whether to impose on incumbent LECs a new obligation to provide access to the splitter, just as we are often asked to adjust our unbundling rules in light of industry developments. In this regard, we believe AT&T's arguments merit prompt and thorough consideration by the Commission, and we commit to resolving them expeditiously in our reconsideration of the *UNE Remand Order*. The fact remains, however, that SWBT had no such obligation during the period covered by this application and therefore, any SWBT failure to provide access to the splitter can provide no basis for denying this application.

329. Finally, AT&T suggests in passing that SWBT "voluntarily" provides the line splitter functionality to competing carriers engaging in line sharing with SWBT voice services and that it has for that reason incurred an obligation to provide all UNE-P carriers with the same option.⁹¹⁴ Even if AT&T had fully developed this issue, this argument would lack merit and would in any event be unripe for our review here. What AT&T requests is not line sharing, but access to the entire loop and the splitter in order to provide both voice and advanced services. Line sharing and line splitting present two different scenarios under our rules. With respect to line sharing, we stated in the *Line Sharing Order* that incumbent LECs have discretion to maintain control over the splitter.⁹¹⁵ With respect to line splitting, as described above, we have not imposed any obligation on incumbent LECs to provide access to their splitters. AT&T presents no evidentiary or conceptual basis for concluding that SWBT's practices in these two different contexts somehow amount to "discrimination" against AT&T. In any event, the parties' entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas Commission.⁹¹⁶ In light of SWBT's overall compliance with the relevant checklist items, this newly arising dispute provides no basis for rejecting SWBT's application here.

330. *Other Issues.* We reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain

⁹¹⁴ AT&T Texas II Pfau/Chambers Decl. at para. 42.

⁹¹⁵ *Line Sharing Order*, 14 FCC Rcd at 20940, para. 76.

⁹¹⁶ SWBT recently affirmed that it is "interested in exploring the use of SWBT's splitters" in line splitting arrangements and that it views this "as a potential business opportunity." SWBT June 6 *Ex Parte* Letter at 2.

their voice service from a competitor that is using the UNE-P.⁹¹⁷ Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. In the *Line Sharing Order*, the Commission unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes. Furthermore, as described above, the UNE-P carrier has the right to engage in line splitting on its loop. As a result, a UNE-P carrier can compete with SWBT's combined voice and data offering on the same loop by providing a customer with line splitting voice and data service over the UNE-P in the same manner. In sum, we do not find this conduct discriminatory.

E. Checklist Item 5 – Unbundled Local Transport

1. Background

331. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”⁹¹⁸ The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.⁹¹⁹ Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.⁹²⁰ Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office

⁹¹⁷ AT&T Texas II Comments at 17-18; AT&T Texas I Comments at 12-13; AT&T Texas I Pfau/Chambers Decl. at paras. 27-46. AT&T specifically points out that when a SWBT customer who had been using SWBT's local voice service and xDSL service combined over a single copper loop chose to switch voice service to AT&T, SWBT informed the customer that its xDSL service would be disconnected unless the customer switched voice service back to SWBT. AT&T Texas I Comments at 12; AT&T Texas I Pfau/Chambers Decl. at para. 29.

⁹¹⁸ 47 U.S.C. § 271(c)(2)(B)(v).

⁹¹⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

⁹²⁰ *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels (*e.g.*, OC-3/12/48/96) that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.⁹²¹

2. Discussion

332. Based on the evidence in the record, we conclude that SWBT provides both shared and dedicated transport in compliance with the requirements of this checklist item.⁹²² The Texas Commission also finds that SWBT is in compliance with this checklist item.⁹²³

333. We are persuaded that SWBT's data concerning missed due dates for interoffice facilities shows that its provisioning of transport to competitive LECs is nondiscriminatory.⁹²⁴ We note that no commenters challenge SWBT's showing concerning the provision of dedicated or shared transport, except insofar as the commenters address OSS issues and matters concerning the provisioning of the UNE platform, which we address elsewhere.⁹²⁵

⁹²¹ *Id.* at 20719 n. 650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n. 652.

⁹²² SWBT Deere Texas I Aff. at paras. 111-128; SWBT Auinbauh Texas I Aff. at paras. 98-104.

⁹²³ Texas Commission Texas I Comments at 65-69.

⁹²⁴ The relevant state performance measures (disaggregated into various submeasures) indicate very few months and regions where more than 10 data points were recorded. SWBT Texas I Application at 102, SWBT Dysart Texas I Aff. at paras. 336, 345, 356, 359-360. Performance data for January through April generally indicate fewer than 10 data points. *See* SWBT Aggregated Performance Data January through April Measurement No. 58 ("Percent SWBT Caused Missed Due Dates") at 271-No. 58a. Under the performance remedy plan, SWBT is required to pay damages and assessments under Tier 2 for any substandard performance of this measure even if there are fewer than ten data points. Texas Commission Texas I Comments at 68. For PM 58 (percentage of missed due dates) a parity measure, the results for submeasure 58-07(DS1 dedicated transport) indicate a greater percentage of misses for competitive LECs than for SWBT for the months of January, February and March. For submeasure 58-14 (analog line ports) the data indicate a greater percentage of misses for competitive LECs than for SWBT for the months of February and April. SWBT states that competitive LECs may request dedicated transport with levels of capacity higher than OC-48 through the Special Request Process. SWBT Application at 100. As we noted in *Bell Atlantic New York* incumbent LECs must provide all technically feasible transmission capabilities, such as Optical Carrier levels (e.g. OC-3/12/48/96) that the competing provider could use to provide telecommunications service. *Bell Atlantic New York Order* at para. 337 n.1041. *See also* Texas Commission Texas I Comments at 16.

⁹²⁵ *See* part V.B.1, *infra*. MFNS asserts that SWBT failed to unbundle loops and interoffice transport with the provision of MFNS' dark fiber product. MFNS Comments at 12-15. *See* part V.A.1, *infra*, where we address MFNS comments. Z-Tel and Connect raised issues regarding SWBT's policies for adopting interconnection agreements pursuant to section 252(i) of the Act. SWBT disallowed both parties from opting into interconnection agreements on the basis that the relevant agreements were no longer available for adoption because they had expired or were in the notice period for renegotiation. Connect Texas I Comments at 2-6; Connect Texas II Comments at 2; (continued...)

334. We disagree with Global Crossing's assertion that SWBT fails to provide unbundled local transport.⁹²⁶ Global Crossing states that in Houston it has an Optical Carrier Level-3 (OC-3)⁹²⁷ from SWBT that it uses to carry access traffic to its point of presence. Global Crossing alleges that SWBT refused to process orders to carry local exchange traffic over the OC-3, but required Global Crossing instead to acquire a separate transport facility to carry purely local traffic. Global Crossing claims that this was an illegal use restriction that constituted a refusal by SWBT to provide unbundled local transport.

335. As we found in the *Bell Atlantic New York Order*, we do not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance.⁹²⁸ We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some form of the same physical facilities as a checklist item.⁹²⁹ The fact that the competitive LECs can use interstate special access service in lieu of the EEL, a combination of unbundled loops and transport, and can convert special access service to EELs, does not persuade us that we should alter our approach and consider the provision of special access for purposes of checklist compliance.⁹³⁰ Nevertheless, to the extent that parties are experiencing problems in the provisioning of special access services ordered from SWBT's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process.⁹³¹

F. Checklist Item 6 – Unbundled Local Switching

1. Background

336. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.”⁹³² In the *Second*

(Continued from previous page) _____

Z-Tel Texas I Comments at 2-9; Z-Tel Texas II Comments at 5-6; SWBT Auinbauh Texas I Reply Aff. at paras. 16-18. Z-Tel alleged that the policies affect Z-Tel's ability to purchase shared transport. While Z-Tel's allegation is not directly applicable to this checklist item, we caution SWBT that if it fails to recognize the rights of a carrier seeking to opt-in, that carrier, in addition to available state remedies, may seek expedited relief from this Commission pursuant to section 208. *Local Competition Order*, 11 FCC Rcd. at 16141, para.1321; 47 U.S.C. § 208.

⁹²⁶ Global Crossing Texas I Comments at 6-7, Global Crossing Laurie Larson Texas I Aff. at para. 12.

⁹²⁷ An Optical Carrier level is a SONET optical signal. OC-1 is 51.840 million bits per second. OC-3 equals three times OC-1. NEWTON'S TELECOM DICTIONARY 534 (14th ed. 1998).

⁹²⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340.

⁹²⁹ *Id.* at para. 340. To the extent that Global Crossing is seeking to use combinations of unbundled network elements in lieu of tariffed special access services, we have addressed the requirements associated with such use in several orders. See part V.B.2, *infra*, for discussion of Access to the Enhanced Extended Link.

⁹³⁰ See *Bell Atlantic Order*, 15 FCC Rcd at 4126-27, para. 340.

⁹³¹ *Id.* at para. 341.

⁹³² 47 U.S.C. § 271(c)(2)(B)(vi); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722.

BellSouth Louisiana Order, the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.⁹³³ The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.⁹³⁴ Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.⁹³⁵

337. Moreover, in the *Second BellSouth Louisiana Order*, the Commission required BellSouth to permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.⁹³⁶ The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.⁹³⁷ Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.⁹³⁸ Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.⁹³⁹

338. In the *Second BellSouth Louisiana Order*, the Commission stated that to comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.⁹⁴⁰ The Commission also stated that a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.⁹⁴¹

⁹³³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

⁹³⁴ *Id.*

⁹³⁵ *Id.* at 20722-23, para. 207.

⁹³⁶ *Id.* at 20723, para. 208.

⁹³⁷ *Id.* at 20723, para. 208 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

⁹³⁸ *Id.*

⁹³⁹ *Id.*

⁹⁴⁰ *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

⁹⁴¹ *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

2. Discussion

339. Based on the evidence in the record, we conclude that SWBT demonstrates that it complies with checklist item 6.⁹⁴² Specifically, SWBT demonstrates that it provides: (1) line-side and trunk side facilities;⁹⁴³ (2) basic switching functions;⁹⁴⁴ (3) vertical features;⁹⁴⁵ (4) customized routing;⁹⁴⁶ (5) shared trunk ports;⁹⁴⁷ (6) unbundled tandem switching;⁹⁴⁸ (7) usage information for billing exchange access,⁹⁴⁹ and (8) usage information for billing for reciprocal

⁹⁴² SWBT Texas I Application at 103 (SWBT furnishes more than 125,000 unbundled switch ports in Texas, mostly in combination with unbundled loops.); SWBT Deere Texas I Aff. at para. 140; SWBT Auinbauh Texas I Aff. at para. 105.

⁹⁴³ Line-side facilities include, but are not limited to, the connection between a loop termination at a main distribution frame, and a switch line card. Trunk-side facilities include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20724 nn.679-680. See SWBT Deere Texas I Aff. at paras. 130-131.

⁹⁴⁴ The basic switching function includes, but is not limited to: connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as the same basic capabilities that are available to the BOC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20726 n.690. See SWBT Deere Texas I Aff. at para. 132.

⁹⁴⁵ *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20726. Vertical features provide end-users with various services such as custom calling, call waiting, call forwarding, caller ID and Centrex. *Id.* See SWBT Deere Texas I Aff. at paras. 132, 139.

⁹⁴⁶ An incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible. *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20728 n.705. Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from requesting carriers' customers. See *Id.* at 20728-29, para. 221. Customized routing is also referred to as selective routing. *Id.* at 20728 n.704. See SWBT Deere Texas I Aff. at paras. 134-137.

⁹⁴⁷ *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12475-79; *Ameritech Michigan Order*, 12 FCC Rcd at 20716-17; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20732, para. 228. See SWBT Deere Texas I Aff. at para. 135.

⁹⁴⁸ The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and, (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733 n. 732. See SWBT Deere Texas I Aff. at paras. 142-146.

⁹⁴⁹ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733-35, paras. 230-31. See SWBT Auinbauh Texas I Aff. at para. 107.

compensation.⁹⁵⁰ The Texas Commission concludes that SWBT is in compliance with checklist item 6.⁹⁵¹

340. We reject Z-Tel's argument that SWBT has failed to meet this checklist requirement. Z-Tel stated that it is effectively foreclosed from Line Class Code customized routing (LCC) because, as stipulated in the T2A interconnection agreement, if a competing carrier requests LCC in any local switch where Advanced Intelligent Network custom routing (AIN) is implemented, SWBT may establish a rate for the requested LCC, and only if the rate is disputed will the Texas Commission set a TELRIC rate.⁹⁵² Z-Tel argued that, given this pricing uncertainty, SWBT cannot show that it is providing LCC in accordance with the 271 standard, and therefore fails to meet checklist item 6.⁹⁵³ To support this conclusion, Z-Tel pointed to the *Ameritech Michigan Order* in which the Commission stated that "[t]o be 'providing' a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement that sets forth prices and other terms and conditions for each checklist item."⁹⁵⁴ Z-Tel also cited the *Second BellSouth Louisiana Order*, in which the Commission stated that the features, functions, and capabilities of the switch include any technically feasible customized routing functions.⁹⁵⁵

341. Z-Tel appeared to conflate two standards – the “sets forth prices, terms, and conditions for each checklist item” standard from the *Ameritech Michigan Order*, and the “any technically feasible” standard from the *Second BellSouth Louisiana Order* – to place an unreasonable burden on SWBT. Carried to its logical conclusion, Z-Tel's argument would require BOCs to stand ready with fixed prices and terms for any and all technically feasible methods of providing a function of a network element. We find that SWBT meets its obligation to provide the customized routing function, because SWBT provides, at fixed prices, terms, and conditions, the routing system SWBT itself uses, and makes LCC available, upon request, as well.⁹⁵⁶

342. Z-Tel may consider LCC essential to its business plan. Taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by Z-Tel or acquiring an alternative from a third-party supplier, Z-Tel may decide

⁹⁵⁰ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20735-37, paras. 232-34. See SWBT *Auimbau Texas I Aff.* at para. 107.

⁹⁵¹ Texas Commission Texas I Comments at 69-72. See Final Staff Report at 71-75.

⁹⁵² Z-Tel Texas I Comments at 10-11; T2A Attach. 6 § 5.2.3.4.

⁹⁵³ Z-Tel Texas I Comments at 11. See *Ameritech Michigan Order*, 12 FCC Rcd at 20601, para. 110.

⁹⁵⁴ Z-Tel Texas I Comments at 11. See *Ameritech Michigan Order*, 12 FCC Rcd at 20601, para., 110.

⁹⁵⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722-24, paras. 207-209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705).

⁹⁵⁶ T2A Attach. 6 §§ 5.2.4.2 and 5.2.3.4.

that SWBT's customized switching offering materially diminishes Z-Tel's ability to provide the services it seeks to offer.⁹⁵⁷ If Z-Tel believes we should include LCC among the specific attributes of the switching element, we note that there are venues better suited to airing the issue.⁹⁵⁸

G. Checklist Item 7

1. 911 and E911 Access

a. Background

343. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]ondiscriminatory access to – (I) 911 and E911 services.”⁹⁵⁹ In the *Ameritech Michigan Order*, the Commission found that “section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity.”⁹⁶⁰ Specifically, the Commission found that a BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”⁹⁶¹ For facilities-based carriers, the BOC must provide “unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier’s switching facilities to the 911 control office at parity with what [the BOC] provides to itself.”⁹⁶²

b. Discussion

344. Based on the evidence in the record, we conclude that SWBT demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item 7.⁹⁶³ We note that no commenter disputes SWBT’s compliance with this portion

⁹⁵⁷ See *UNE Remand Order* 15 FCC Rcd at 3725, para. 51 (47 U.S.C. § 251(d)(2) impairment standard); *Id.* at para. 253 *et seq.* (Applying impairment standard to switching element).

⁹⁵⁸ Z-Tel may file a petition for rulemaking, or may seek to include its argument in our pending *UNE Remand Order* reconsideration proceeding. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Public Notice*, rel. Feb. 28, 2000, 65 FR 12004 (Mar. 7, 2000).

⁹⁵⁹ 47 U.S.C. § 271(c)(2)(B)(vii).

⁹⁶⁰ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

⁹⁶¹ *Id.*

⁹⁶² *Id.*

⁹⁶³ SWBT Texas I Application at 105-108; SWBT Deere Texas I Aff. at paras. 166-72, 178-81, 184-85, 606-618 and Attach. A at 124-126 (PM 102-104).

of checklist item 7, and that the Texas Commission concludes that SWBT is providing nondiscriminatory access to 911/E911.⁹⁶⁴

2. Directory Assistance/Operator Services

a. Background

345. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to “directory assistance services to allow the other carrier’s customers to obtain telephone numbers” and “operator call completion services,” respectively.⁹⁶⁵ Section 251(b)(3) of the Act imposes on each LEC “the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”⁹⁶⁶ The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*.⁹⁶⁷

346. We concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).⁹⁶⁸ In the *Local Competition Second*

⁹⁶⁴ Texas Commission Texas I Comments at 72-76. See also SWBT Texas I Application, App. C, Tab 1233 (Texas Commission Final Staff Report at 76-84).

⁹⁶⁵ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

⁹⁶⁶ 47 U.S.C. § 251(b)(3).

⁹⁶⁷ 47 C.F.R. § 51.217; *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999); see also, *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, CC Docket No. 99-273 (rel. Sept. 9, 1999) (*Directory Listings Information NPRM*).

⁹⁶⁸ While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to “directory assistance,” section 251(b)(3) refers to nondiscriminatory access to “operator services,” while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to “operator call completion services.” 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term “operator call completion services” is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term “operator services” was defined as meaning “any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.” *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of “operator services,” because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, we concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, “operator call completion services” is a subset of or equivalent to “operator service.” *Second* (continued....)

Report and Order, the Commission held that the phrase “nondiscriminatory access to directory assistance and directory listings” means that “the customers of all telecommunications service providers should be able to access each LEC’s directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.”⁹⁶⁹ The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.⁹⁷⁰ The Commission specifically held that the phrase “nondiscriminatory access to operator services” means that “. . . a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.”⁹⁷¹

347. Competing carriers may provide operator services and directory assistance by either reselling the BOC’s services or by using their own personnel and facilities to provide these services. Our rules require BOCs to permit competitive LECs wishing to resell the BOC’s operator services and directory assistance to request the BOC to brand their calls.⁹⁷² Competing carriers wishing to provide operator services or directory assistance using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a “read only” or “per dip” basis from the BOC’s directory assistance database, or by creating their

(Continued from previous page)

BellSouth Louisiana Order, 13 FCC Rcd 20740 at n.763. As a result, we use the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

⁹⁶⁹ 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order*’s interpretation of section 251(b)(3) is limited “to access to each LEC’s directory assistance service.” *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC’s systems but requires “nondiscriminatory access to . . . directory assistance to allow the other carrier’s customers to obtain telephone numbers.” 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission’s conclusion that “incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible,” *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)’s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer’s local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. *Directory Listings Information NPRM*.

⁹⁷⁰ *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

⁹⁷¹ *Id.* at para. 112.

⁹⁷² 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as “thank you for using XYZ Telephone Company.” Competing carriers may use the BOC’s brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

own directory assistance database by obtaining the subscriber listing information in the BOC's database.⁹⁷³

348. Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required unbundled network elements in the *Local Competition Third Report and Order*.⁹⁷⁴ Checklist item obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the requirements of sections 251 and 252, including the requirement that rates be based on forward-looking economic costs.⁹⁷⁵ Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.⁹⁷⁶

b. Discussion

349. Based on the evidence in the record, we conclude that SWBT demonstrates that it provides directory assistance services in accordance with the requirements of checklist item 7.⁹⁷⁷ The Texas Commission concludes that SWBT has satisfied the requirements of this checklist item.⁹⁷⁸

350. SWBT's showing withstands the arguments of its opponents regarding this checklist item. With regard to directory assistance, WorldCom asserts that SWBT violates the checklist by charging competitive LECs non-cost-based rates for access to directory assistance listings of customers that reside within its region, but outside of Texas (*i.e.* Arkansas, Kansas,

⁹⁷³ 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44.

⁹⁷⁴ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Reulmaking (rel. Nov. 5, 1999) (*Local Competition Third Report and Order*) at paras. 441-442.

⁹⁷⁵ *Local Competition Third Report and Order* at para. 470. See generally 47 U.S.C. §§ 251-52. See also 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element").

⁹⁷⁶ *Local Competition Third Report and Order* at paras. 470-73. See also 47 U.S.C. §§ 201(b), 202(a).

⁹⁷⁷ SWBT Texas I Application at 108-110. SWBT Rogers Texas I Aff. at paras. 3-39; see also SWBT Dysart Texas I Aff. at paras. 525-542 and Attach. A at 101-108 (measurements 79-86).

⁹⁷⁸ Texas Commission Texas I Comments at 72. The Texas Commission notes that SWBT has obligated itself to provide access to directory assistance and operator services on an unbundled basis at UNE prices to business customers for two years and to residential customers for three years, even though the Commission removed these items from the required UNE list. *Id.* at 74-74.

Missouri, and Oklahoma).⁹⁷⁹ SWBT denies that it violates this checklist item, because the Commission and some state commissions have determined that directory assistance is a competitive service subject to market-based pricing, not cost-based pricing.⁹⁸⁰

351. We find WorldCom's assertions unpersuasive. WorldCom's argument that SWBT's *out-of-state* directory assistance services are priced at an anticompetitive level is not relevant to a determination of whether SWBT meets checklist item 7 in Texas. For purposes of the instant application, we consider only whether SWBT meets the requirements of section 271 in the State of Texas.⁹⁸¹ No commenter has challenged SWBT's rate for directory assistance in Texas, and the Texas Commission conclude that SWBT meets this checklist item.⁹⁸² We therefore conclude that SWBT meets this checklist item.

H. Checklist Item 8 – White Pages Directory Listings

1. Background

352. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.”⁹⁸³ Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.⁹⁸⁴

353. In the *Second BellSouth Louisiana Order*, the Commission concluded that, “consistent with the Commission’s interpretation of ‘directory listing’ as used in section 251(b)(3), the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange

⁹⁷⁹ WorldCom Texas I Comments at 56, 57 n.31 (stating that SWBT’s rate for in-region, out-of-state directory listings is \$.0583). However, in an *ex parte* letter, WorldCom informs the Commission that it made a factual error and should have reported this rate as \$.0585. See Letter from Keith L. Seat, Senior Counsel for Competitive Strategies, MCI (WorldCom) Communications Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (filed Mar. 14, 2000).

⁹⁸⁰ SWBT Rogers Texas I Reply Aff. at paras. 11-12.

⁹⁸¹ For the same reason, we find that the National ALEC’s argument that SWBT’s directory assistance services in California are priced at an anticompetitive level is not relevant to a determination of whether SWBT meets checklist item 7 in Texas. See National ALEC Texas I Comments at 10-11. See also *Bell Atlantic New York Order* 15 FCC Rcd at 4151, paras. 398-399 (claim that Bell Atlantic violated Commission rules in other states is not relevant to determination of whether Bell Atlantic meets its section 271 obligations in New York).

⁹⁸² Texas Commission Texas I Comments at 72-73.

⁹⁸³ 47 U.S.C. § 271(c)(2)(B)(viii).

⁹⁸⁴ 47 U.S.C. § 251(b)(3).

provider.”⁹⁸⁵ We further concluded, “the term ‘directory listing,’ as used in this section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”⁹⁸⁶

354. In the *Second BellSouth Louisiana Order*, the Commission found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provided white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.⁹⁸⁷

2. Discussion

355. Based on the evidence in the record, we find that SWBT satisfies the requirements of checklist item 8.⁹⁸⁸ The Texas Commission concludes that SWBT complies with this checklist item.⁹⁸⁹

356. We reject allegations that SWBT does not meet this checklist item. ALTS and the CLEC Coalition state that competitive LECs in Texas have experienced problems with SWBT’s processes for altering customer listings and incorporating changes into the white pages directory.⁹⁹⁰ ALTS and the CLEC Coalition also state that some listings are “falling out” or failing to appear for no apparent reason. In addition, both parties express concern that SWBT’s performance measurements fail to capture the problems that their members report.⁹⁹¹ The

⁹⁸⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

⁹⁸⁶ *Id.* We note that in the *Second BellSouth Louisiana Order*, we stated that the definition of “directory listing” was synonymous with the definition of “subscriber list information.” *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the Commission’s decision in a recent proceeding obviates this comparison, and supports the definition of directory listing delineated above. *See Implementation of the Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

⁹⁸⁷ *Id.*

⁹⁸⁸ SWBT Texas I Application at 110-111; SWBT Rogers Texas I Aff. at paras. 40-44, 51-52; SWBT Dysart Texas I Aff. at paras. 640-641, 646-648 and Attach. A at 133-136 (PM 110-113). SWBT demonstrates that it is providing white pages directory listings for customers of competitive LECs that are nondiscriminatory in appearance and integration, and have the same accuracy and reliability that SWBT provides for its own customers. SWBT Rogers Texas I Aff. at paras. 40-44 (nondiscriminatory appearance, e.g., same size, font, and typeface), and paras. 51-52; SWBT Dysart Texas I Aff. at paras. 640-641, 646-648 and Attach. A at 133-136 (PM 110-113) (comparable accuracy and reliability).

⁹⁸⁹ Texas Commission Texas I Comments at 76-78; *see* Final Staff Report at 85-89.

⁹⁹⁰ ALTS Texas I Comments at 46; CLEC Coalition Texas I Comments at 42-44.

⁹⁹¹ ALTS Texas I Comments at 46; CLEC Coalition Texas I Comments at 42-43.

Association of Directory Publishers (ADP) support ALTS and the CLEC Coalition, and note that inaccurate or incomplete listings in the incumbent's database harmed its members as well.

357. SWBT explains that, at the direction of the Texas Commission, SWBT leaves listings unchanged during the resale or UNE provisioning process. Unless the competitive LEC submits a Directory Service Request form stating otherwise, SWBT assumes the white pages listing is to remain unchanged.⁹⁹² ALTS, the CLEC Coalition, and ADP did not rebut SWBT's explanation in their reply comments.⁹⁹³

358. We conclude there is no evidence to support that the difficulties some competing carriers may have encountered with SWBT's processes for altering white pages listings reflect systemic defects within SWBT's white pages directory listings procedures. It appears likely that competing carriers' perception that listings are "falling out" may reflect misunderstanding or miscommunication between carriers rather than actual failure to list customers in SWBT's white pages directory. We agree with the CLEC Coalition and ADP, however, that irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes.⁹⁹⁴ Although we do not hold SWBT to a standard of perfection, we note that, if there were a systemic problem involving a significant number of listings, it would warrant a finding of noncompliance.⁹⁹⁵

I. Checklist Item 9 – Numbering Administration

1. Background

359. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering

⁹⁹² See Letter from Austin C. Schlick, Kellogg, Huber et al., Counsel for Applicants, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 at 2 (Feb. 4, 2000) (Austin C. Schlick Feb. 4 *Ex Parte* Letter). SWBT further explains that "the Dysart Affidavit's characterization of the UNE disconnect (D) order as 'drop[ping]' listing information out of the database is . . . incorrect. See Dysart Texas I Aff. ¶ 640. For clarity of the record, all after the first sentence of paragraph 640 of Mr. Dysart's affidavit should be stricken." *Id.* Accordingly, we take no notice of that portion of the Dysart Texas I Affidavit.

⁹⁹³ *But see* ALTS/CLEC Coalition Texas II Joint Comments at 14. NEXTLINK states that customers' listings are being dropped out of the database. NEXTLINK states that the problems appear to be related to orders falling out of the automated systems and not being completed by SWBT's back end office systems. SWBT states that it is working with NEXTLINK to investigate any errors in directory listings that may have occurred in connection with NEXTLINK's orders but has yet to receive details from NEXTLINK that would allow SWBT to investigate the particular orders affected. SWBT Texas II Reply Comments at 71. We note that NEXTLINK withdrew its opposition to SWBT's application on May 23, 2000. See Letter To Magalie Roman Salas, Secretary, FCC, from NEXTLINK Communications, Inc., dated May 23, 2000.

⁹⁹⁴ CLEC Coalition Texas I Comments at 43; ADP Texas I Reply at 5.

⁹⁹⁵ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4045, para. 176.

administration, guidelines, plan, or rules are established.”⁹⁹⁶ The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.⁹⁹⁷

360. SWBT does not assign telephone numbers to itself or competitive LECs. The Commission has designated NeuStar, Inc. (NeuStar) as the North American Numbering Plan Administrator.⁹⁹⁸ NeuStar is responsible for assigning blocks of 10,000 telephone numbers (NXX Codes) to carriers within each area code, and for coordinating area code relief planning efforts with state commissions.⁹⁹⁹ SWBT must demonstrate that it adheres to industry numbering administration guidelines and Commission rules, including provisions requiring the accurate reporting of data to the code administrator.¹⁰⁰⁰

2. Discussion

361. Based on the evidence in the record, we find that SWBT satisfies the requirements of checklist item 9.¹⁰⁰¹ The Texas Commission concluded that SWBT meets the requirements of checklist item 9, and no commenter alleges that SWBT has failed to meet such requirements.¹⁰⁰²

J. Checklist Item 10 – Databases and Associated Signaling

1. Background

362. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”¹⁰⁰³ In the *Second BellSouth Louisiana Order*, we required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the

⁹⁹⁶ 47 U.S.C. § 271(c)(2)(B)(ix).

⁹⁹⁷ *Id.*

⁹⁹⁸ *In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, CC Docket No. 92-237, Order, FCC 99-346 (rel. Nov. 17, 1999). See generally 47 C.F.R. §§ 52.7-52.19.

⁹⁹⁹ *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2615; *NANP Third Report and Order*, 12 FCC Rcd at 23042-46; see SWBT Adair Texas I Aff. at paras. 15-18.

¹⁰⁰⁰ See *Second Bell South Louisiana Order*, 13 FCC Rcd at 20752. See also, e.g., Central Office Code (NXX) Assignment Guidelines (INC 95-0407-008) (revised August 1999).

¹⁰⁰¹ SWBT Texas I Application at paras. 111-112; SWBT Adair Texas I Aff. at paras. 15-18.

¹⁰⁰² Texas Commission Texas I Comments at 80 and at n.445 (agreeing with SWBT Adair Texas I Aff., para. 18, that SWBT supports and adheres to all relevant rules, regulations, and guidelines established by regulatory agencies and industry groups). See Final Staff Report at 90.

¹⁰⁰³ 47 U.S.C. § 271(c)(2)(B)(x).

signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS).”¹⁰⁰⁴ We also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).¹⁰⁰⁵

363. In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.¹⁰⁰⁶ At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.¹⁰⁰⁷ In the *UNE Remand Order*, we clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”¹⁰⁰⁸

2. Discussion

364. Based on the evidence in the record, we find that SWBT satisfies the requirements of checklist item 10.¹⁰⁰⁹ The Texas Commission also concludes that SWBT meets this checklist item.¹⁰¹⁰

365. We reject Pilgrim’s assertions that SWBT refuses to provide competitors with real-time access to information regarding 900/976 blocking, billing name and address (BNA), and credit history, and therefore, SWBT does not fulfill the call-related database requirement of item 10.¹⁰¹¹ Pilgrim argues that, because it provides “casual calling services”¹⁰¹² it must make

¹⁰⁰⁴ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

¹⁰⁰⁵ *Id.* at 20755-56, para. 272.

¹⁰⁰⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

¹⁰⁰⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15741-42, para. 484.

¹⁰⁰⁸ *UNE Remand Order* 15 FCC Rcd at 3875, para. 403.

¹⁰⁰⁹ SWBT Texas I Application at 112-115; SWBT Texas I Deere Aff. at paras. 186-226 (describing SS7 interconnection at paras. 190-194; toll free “800” service database at paras. 198-208; AIN network architecture and call-related databases at paras. 209-218); SWBT Texas I Rogers Aff. at paras. 58-71 (describing SWBT’s Line Information Database (LIDB), Calling Name delivery (CNAM), and Line Validation Administrative System (LVAS)). Competitive LECs access databases through SWBT’s signal transfer points in the same manner and by the same signaling links that SWBT uses. SWBT Texas I Deere Aff. at para. 218.

¹⁰¹⁰ Texas Commission Texas I Comments at 80. *See also* Final Staff Report at 91.

¹⁰¹¹ Pilgrim Texas I Comments at 19. *See also* Pilgrim Texas II Reply Comments. Pilgrim is an interstate, interexchange carrier that offers, among other services, pay-per-call services. Pilgrim Texas I Comments at 2.

¹⁰¹² By “casual calling services” Pilgrim means that the consumer does not establish a business relationship and subscriber account with the service provider. Pilgrim Texas I Comments at 3-4.

snap decisions whether or not a call should be accepted and transmitted.¹⁰¹³ Therefore, Pilgrim maintains, the nature of its business requires real-time access to call blocking, billing name and address (BNA), and credit information in order to validate and bill the call.¹⁰¹⁴

366. SWBT states that, regarding 900/976 blocking information, Pilgrim is incorrect, and that in fact SWBT's LIDB does provide real-time access to call-blocking information.¹⁰¹⁵ SWBT describes in detail the capabilities of the LIDB system.¹⁰¹⁶ Therefore we conclude that, contrary to Pilgrim's assertion, SWBT makes call-blocking information available on a nondiscriminatory basis.¹⁰¹⁷

367. SWBT further states that it has no obligation to release end-users' BNA or credit history to Pilgrim.¹⁰¹⁸ We agree with SWBT that checklist item 10 does not require SWBT to share with other carriers the customer-credit information that SWBT has accumulated in the course of its business dealings with its customers. Such information would be considered customer proprietary network information (CPNI).¹⁰¹⁹ Pilgrim has not established that SWBT is under any obligation to share such CPNI with Pilgrim, or that such information is necessary for Pilgrim to "initiate, render, bill, and collect for telecommunications services."¹⁰²⁰

368. Pilgrim appears to assert, correctly, that BNA is a call-related database which must be unbundled pursuant to section 251(c)(3) of the Act. As stated above, the Commission has defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.¹⁰²¹ Because the BNA database contains the billing

¹⁰¹³ Pilgrim Texas I Comments at 7-8.

¹⁰¹⁴ Pilgrim Texas I Comments at 2-4, 10, 18-19. *See also* Pilgrim Texas II Reply Comments.

¹⁰¹⁵ SWBT Texas I Rogers Reply Aff. at para. 14 ("All records in SWBT's LIDB are designated so that they will indicate non-acceptance of alternately billed 900/976 charges"). *See* SWBT Texas I Auinbauh Aff. Attach. A at Attach 7 (T2A Ordering and Provisioning), 4.2 (Parties to the T2A agreement have access to a pre-order electronic gateway "that provides Real Time access to SWBT's information systems."). *See also* discussion of access to LIDB under checklist item II.

¹⁰¹⁶ SWBT Texas I Rogers Reply Aff. at para. 14; SWBT Texas I Auinbauh Aff. Attach. A at Attach. 6 (T2A Unbundled Network Elements) 9.4 *et seq.* (describing LIDB).

¹⁰¹⁷ *Id.*

¹⁰¹⁸ SWBT Texas I Rogers Reply Aff. at para. 14; SWBT Texas I Auinbauh Aff. Attach. A at Attach. 7 (T2A Ordering and Provisioning), 4.2. (Parties to the T2A have "Real Time" access to SWBT's BNA through a pre-order electronic gateway).

¹⁰¹⁹ 47 U.S.C. § 222(f)(1)(B).

¹⁰²⁰ 47 U.S.C. § 222(d)(1).

¹⁰²¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n. 1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

name and address to validate and bill a telephone call, it clearly meets this definition.¹⁰²² Unlike customer-credit information, BNA information is available to competitive LECs that participate in the T2A interconnection agreement.¹⁰²³ SWBT provides real-time access through a pre-order electronic gateway to SWBT's BNA to these competitive LECs.¹⁰²⁴ Pilgrim, therefore, could opt into the T2A and gain access to BNA, pursuant to section 252(i) of the Act.¹⁰²⁵ Consequently, we find that Pilgrim's allegations do not warrant a finding of noncompliance with this checklist item.

K. Checklist Item 11 – Number Portability

1. Background

369. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.¹⁰²⁶ Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."¹⁰²⁷ The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."¹⁰²⁸ In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."¹⁰²⁹

¹⁰²² Section 51.319(e)(2)(ii) of the Commission's rules list certain databases that meet this definition, such as "Line Information Database" and "Toll Free Calling database," but also states that the list "is not limited to" these examples. 47 C.F.R. § 51.319(e)(2)(ii).

¹⁰²³ SWBT Texas I Auinbauh Aff. Attach. A.7, 4.2 & 4.2.1.

¹⁰²⁴ SWBT also makes BNA generally available under Tariff No. 73, Section 13 and Texas Access Service Tariff, Section 8. If a customer chooses to receive SWBT's response to the customer's request via data tape, the tape is mailed on the next business day. If a customer chooses electronic data transmission (Network Data Mover (NDM)), SWBT processes requests up to six times daily. The data are made available for electronic recovery within 24 hours of SWBT's receipt of a customer's request. Letter from Austin C. Schlick, Kellogg, Huber et al., Counsel for Applicants, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 at 2 (filed March 10, 2000) (Austin C. Schlick March 10 *Ex Parte* Letter).

¹⁰²⁵ 47 U.S.C. § 252(i).

¹⁰²⁶ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁰²⁷ *Id.* at § 251(b)(2).

¹⁰²⁸ *Id.* at § 153(30).

¹⁰²⁹ *Id.* at § 251(e)(2); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number* (continued....))

370. Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability “to the extent technically feasible.”¹⁰³⁰ The Commission also requires LECs to gradually replace interim number portability with permanent number portability.¹⁰³¹ The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,¹⁰³² and created a competitively neutral cost-recovery mechanism for long-term number portability.¹⁰³³

2. Discussion

371. Based on the evidence in the record, we conclude that SWBT complies with the requirements of checklist item 11. SWBT provides permanent number portability in conformance with Commission regulations and provides interim number portability to competing carriers through remote call forwarding, direct inward dialing, and directory number routing indexing.¹⁰³⁴ SWBT is presently converting all interim number portability lines to permanent number portability and expects that this conversion will be complete by year-end.¹⁰³⁵ The Texas Commission also concludes that SWBT satisfies this checklist item.¹⁰³⁶

372. We reject Global Crossing and the CLEC Coalition’s assertions that SWBT fails to provide local number portability in a reliable manner.¹⁰³⁷ Global Crossing describes occasions

(Continued from previous page)

Portability Order); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, at paras. 1, 6-9 (Jun. 23, 1999) (*Fourth Number Portability Order*).

¹⁰³⁰ *Fourth Number Portability Order* at para. 10; *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-116 (1996) (*First Number Portability Order*); see also 47 U.S.C. § 251(b)(2).

¹⁰³¹ See 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355 and 8399-8404, paras. 3 and 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

¹⁰³² See 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-140.

¹⁰³³ See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at para. 9.

¹⁰³⁴ SWBT Deere Texas I Aff. at paras. 220-226; Texas Commission Texas I Comments at 84.

¹⁰³⁵ SWBT Fleming Texas I Aff. at para. 30.; Texas Commission Texas I Comments at 84.

¹⁰³⁶ Texas Commission Texas I Comments at 82-86. We also note that the Texas Commission established performance measures to capture SWBT provision of both permanent and interim number portability. In nearly all months, SWBT meets the benchmarks established by the Texas Commission for both these measurements. See Texas Commission Comments at 85; SWBT Aggregated Performance Measurement Data, Measurement No. 100 (“Average Time Out of Service for LNP Conversions”) at 271-No. 99-101, Measurement No. 101 (“Percent Out of Service Less than 60 Minutes”) at 271-No. 99-101; SWBT Texas I Dysart Aff., Att. A at 122-123 (listing Texas Commission benchmarks for Measurements 100 and 101).

¹⁰³⁷ Global Crossing Texas I Comments at 8; CLEC Coalition Texas I Comments at 44-46.

where it believes SWBT failed to update its switch translations properly so that calls to Global Crossing customers with a ported number were unable to be completed.¹⁰³⁸ Similarly, the CLEC Coalition claims that a SWBT local number portability database outage delayed its members orders.¹⁰³⁹ Because Global Crossing and the CLEC Coalition's claim appear to be anecdotal and unsupported by any persuasive evidence, we conclude that they do not warrant a finding of noncompliance of this checklist item.

L. Checklist Item 12 – Local Dialing Parity

1. Background

373. Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”¹⁰⁴⁰ Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”¹⁰⁴¹ Section 153(15) of the Act defines “dialing parity” as follows:

... a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation ...¹⁰⁴²

374. Our rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.¹⁰⁴³ Moreover, customers of competing carriers must not otherwise suffer

¹⁰³⁸ Global Crossing Texas I Comments at 8.

¹⁰³⁹ CLEC Coalition Texas I Comments at 44.

¹⁰⁴⁰ Based on the Commission's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (i.e., international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

¹⁰⁴¹ 47 U.S.C. § 251(b)(3).

¹⁰⁴² *Id.* at § 153(15).

¹⁰⁴³ 47 C.F.R §§ 51.205, 51.207.

inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.¹⁰⁴⁴

2. Discussion

375. Based on the evidence in the record, we find that SWBT demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of checklist item 12.¹⁰⁴⁵ The Texas Commission concluded that SWBT meets the requirements of this checklist obligation.¹⁰⁴⁶

376. We reject Pilgrim's argument that because SWBT allegedly denies Pilgrim real-time access to call-blocking databases, Pilgrim cannot offer its customers the call-blocking feature that is available to SWBT's customers, and SWBT thus fails to provide dialing parity as required by section 271 of the Act.¹⁰⁴⁷ Because a customer may place a call through Pilgrim, rather than directly through SWBT's switch, it is possible for that customer (or anyone with access to the customer's telephone) to circumvent the blocking intelligence in SWBT's switch, and thereby reach the type of pay-per-call services the customer has asked SWBT to block.¹⁰⁴⁸ Thus, Pilgrim argues, the customer suffers inferior quality service by using Pilgrim.¹⁰⁴⁹

377. The Commission's dialing parity rules and orders have concerned the ease with which a customer may dial an outgoing call, rather than the ease with which customers may block the ability to dial calls.¹⁰⁵⁰ Pilgrim would have us find an ease-of-blocking requirement in

¹⁰⁴⁴ See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 at 19400, 19403 (1996) (*Local Competition Second Report and Order*), vacated in part sub nom. *People of the State of Cal. v. Federal Communications Commission*, 124 F.3d 934 (8th Cir. 1997), rev'd, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹⁰⁴⁵ SWBT Texas I Application at 118; SWBT Deere Texas I Aff. at paras. 227-230.

¹⁰⁴⁶ Texas Commission Texas I Comments at 85-86; Final Staff Report at 97-98.

¹⁰⁴⁷ Pilgrim Texas I Comments at 19-20; Pilgrim Texas II Reply Comments; 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁰⁴⁸ Pilgrim Texas I Comments at 20 (“[i]f a consumer who has requested blocking decides to use one of Pilgrim’s casual calling services, the consumer may unwittingly make calls that could not have been dialed over SWBT’s network because Pilgrim would not know that the customer wanted those calls blocked.”).

¹⁰⁴⁹ *Id.*

¹⁰⁵⁰ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan, Third Order on Reconsideration and Memorandum Report and Order*, CC Docket No. 96-98, FCC 99-243, para. 37 (1999) (recognizing that “‘dialing parity’ is a defined term in the Act that requires that a customer be able to access the carrier of his or her choice without having to use any access codes”); see also 47 U.S.C. § 153(15).

the *Local Competition Second Report and Order*'s phrase "must not otherwise suffer inferior quality service."¹⁰⁵¹ We are not persuaded that Commission precedent requires such an interpretation. Accordingly, we reject Pilgrim's assertion that SWBT fails to meet this checklist requirement.

M. Checklist Item 13 – Reciprocal Compensation

1. Background

378. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."¹⁰⁵² In turn, pursuant to section 252(d)(2)(A), "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."¹⁰⁵³ The Commission has held that "ISP-bound traffic is non-local interstate traffic" and that "the reciprocal compensation requirements of section 251(b)(5) of the Act . . . do not govern inter-carrier compensation for this traffic."¹⁰⁵⁴ The Commission specified that state commissions may impose reciprocal compensation obligations for ISP-bound traffic, or may decline to require the payment of reciprocal compensation and may adopt another compensation mechanism while the Commission developed final rules in an ongoing proceeding.¹⁰⁵⁵ On March 24, 2000, the D.C. Court of Appeals vacated this ruling and remanded it for a fuller explanation of why ISP-bound traffic is not subject to section 251(b)(5)'s reciprocal compensation requirements.¹⁰⁵⁶

2. Discussion

379. Based on the evidence in the record, we conclude that SWBT demonstrates that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2), and thus satisfies the requirements of checklist item 13. SWBT demonstrates that it (1) has in place reciprocal compensation arrangements in accordance with section

¹⁰⁵¹ Pilgrim Texas I Comments at 20; *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403, para. 15.

¹⁰⁵² 47 U.S.C. § 271(c)(2)(B)(xiii).

¹⁰⁵³ 47 U.S.C. § 252(d)(2)(A).

¹⁰⁵⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic; Declaratory Rulemaking and Notice of Proposed Rulemaking*, CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, n.87 (1999) (*Inter-Carrier Compensation for ISP-Bound Traffic Order*).

¹⁰⁵⁵ *Id.*

¹⁰⁵⁶ *Bell Atlantic v. FCC*, No. 99-1094 (D.C. Cir. Mar. 24, 2000).

252(d)(2),¹⁰⁵⁷ and (2) is making all required payments in a timely fashion.¹⁰⁵⁸ In its brief, SWBT states that the Texas Commission established rates for transport and termination in the Mega-Arbitration,¹⁰⁵⁹ using a forward-looking TELRIC methodology that complies with Commission rules.¹⁰⁶⁰ SWBT states that pursuant to the T2A, its agreements contain clearly defined arrangements for each party to compensate the other for traffic exchanged between their networks.¹⁰⁶¹ SWBT's interconnection agreements include each party's obligation to account for local traffic, as well as any applicable charges.¹⁰⁶²

380. In the T2A, SWBT offers competitive LECs three opportunities for establishing the terms and conditions for reciprocal compensation.¹⁰⁶³ First, a competitive LEC may obtain the arbitrated terms in the then-effective SWBT/AT&T interconnection agreement.¹⁰⁶⁴ That agreement expired January 2, 2000.¹⁰⁶⁵ If a competitive LEC chose this option prior to that date, the provisions of the SWBT/AT&T agreement continue to apply until the competitive LEC agreement expires.¹⁰⁶⁶ After the competitive LEC agreement expires, the compensation arrangements become bill-and-keep while SWBT and the competitive LEC negotiate and/or arbitrate new terms.¹⁰⁶⁷ SWBT states that the Texas Commission established transport and

¹⁰⁵⁷ SWBT provides reciprocal compensation to competing carriers for the termination of local calls from SWBT customers under approved interconnection agreements and tariffs. *See* SWBT Texas I Application at 118-119.

¹⁰⁵⁸ With regard to the second requirement, we note that section 271(c)(2)(A)(i) requires a showing that a BOC "is providing access and interconnection pursuant to one or more agreements . . . or . . . is generally offering access and interconnection pursuant to [an SGAT]." 47 U.S.C. § 271(c)(2)(A)(i).

¹⁰⁵⁹ In its application, SWBT explains that the Texas Commission consolidated arbitration's involving several of the largest competitive LECs into a single "Mega-Arbitration" proceeding, which addressed pricing, interconnection, unbundling, and resale issues. The Mega-Arbitration also served as a forum for SWBT to negotiate with competitive LECs and the Texas Commission, and subsequently the Department of Justice, the framework for SWBT's performance monitoring program. SWBT Texas I Application at 3-4.

¹⁰⁶⁰ SWBT Texas I Application at 119.

¹⁰⁶¹ SWBT Texas I Auinbauh Aff. at para. 111.

¹⁰⁶² SWBT Texas I Application at 119; SWBT Texas I Auinbauh Aff. at para. 111.

¹⁰⁶³ SWBT Texas I Auinbauh Aff. at para. 19.

¹⁰⁶⁴ *Id.* at para. 113.

¹⁰⁶⁵ *Id.*

¹⁰⁶⁶ *Id.*; *see also* SWBT Texas I Auinbauh Aff. T2A Attach. 12, Compensation-TX at 2, § 1.2.1.

¹⁰⁶⁷ SWBT Texas I Auinbauh Aff. T2A Attach. 12, Compensation-TX at 2-3. "Bill-and-keep" arrangements are those in which neither of two interconnecting carriers charges the other to terminate traffic that originated on the other carrier's network. Rather, each carrier recovers from its own end users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network. *Local Competition First Report and Order*, 11 FCC Rcd at 16,045, para. 1096.

termination rates using a TELRIC methodology.¹⁰⁶⁸ Under the second alternative, competitive LECs and SWBT may mutually exchange local traffic on a bill-and-keep basis pursuant to terms approved by the Texas Commission.¹⁰⁶⁹ Finally, the competitive LEC may choose to negotiate and, if needed, arbitrate the terms for reciprocal compensation while operating under the other terms of the T2A.¹⁰⁷⁰ SWBT says that while it is negotiating or arbitrating a reciprocal compensation agreement with a competitive LEC, the parties exchange local and internet traffic under an interim bill-and-keep arrangement, subject to true-up, as approved by the Texas Commission.¹⁰⁷¹ The Texas Commission concludes that SWBT meets this checklist item.¹⁰⁷² The Texas Commission states that rates for both tandem- and end-office transport and termination are based on a TELRIC methodology.¹⁰⁷³

381. SWBT's showing withstands the arguments raised by its opponents. We find unpersuasive the claims of the CLEC Coalition and e.spire that SWBT's reported usage data for traffic passed between SWBT's and their respective networks is unreliable and incorrect.¹⁰⁷⁴ SWBT says it provides competitive LECs that use unbundled local switching with detailed records needed to obtain reciprocal compensation for calls originating from SWBT and other unbundled switch-based competitive LECs.¹⁰⁷⁵ SWBT notes that the Texas Commission has concluded that SWBT's usage record method is adequate.¹⁰⁷⁶ The Texas Commission notes that if competitive LECs do not wish to use SWBT's particular type of record exchange, they are free to choose one of the other two reciprocal compensation options.¹⁰⁷⁷

382. SWBT notes that due to technological limitations, it currently cannot track calls originating from a third-party facilities-based carrier and terminating to a customer served by a

¹⁰⁶⁸ SWBT Texas I Auinbau Aff. at paras. 19, 113-122.

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ *Id.* at para. 120.

¹⁰⁷¹ *Id.* Pursuant to this option, interexchange traffic, including traffic to a third party, is compensated based on applicable access charges. Internet-bound traffic is specifically recognized as traffic that is bound for a third party, and is to be handled as meet-point billed interexchange traffic. Each party would bill the third party any applicable access charges for its portion of the call. However, internet service providers are exempt from meet-point billing under the Commission's Enhanced Service Provider access charge exemption. *Id.* at paras. 111, 118-19.

¹⁰⁷² Texas I Commission Comments at 86-87.

¹⁰⁷³ *Id.* at 87.

¹⁰⁷⁴ CLEC Coalition Texas I Rowling Decl. at para. 46; e.spire Texas I Comments at 6; e.spire Texas I Falvey Aff. at para. 5.

¹⁰⁷⁵ SWBT Texas I Auinbau Aff. at para. 122.

¹⁰⁷⁶ SWBT Texas I Auinbau Reply Aff. at paras. 45-46.

¹⁰⁷⁷ Texas I Commission Reply Comments at 28.

competitive LEC using SWBT's unbundled local switches.¹⁰⁷⁸ In response to the Texas Commission's concerns regarding this problem, SWBT and other carriers have implemented an interim traffic reporting and compensation mechanism.¹⁰⁷⁹ SWBT notes that this interim compensation mechanism was agreed to by AT&T, WorldCom, and Sage Telecom, approved by the Texas Commission, and is included in the T2A.¹⁰⁸⁰ This interim mechanism will remain in effect until a permanent industry solution is found.¹⁰⁸¹ SWBT also notes that the carriers' interconnection agreements provide procedures for addressing billing disputes, and that neither commenter has presented its claims to the Texas Commission.¹⁰⁸²

383. The 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.¹⁰⁸³ Although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions. We believe that e.spire and the CLEC Coalition should bring this fact-specific dispute before the Texas Commission. Additionally, we believe that SWBT has made a concerted effort to resolve this traffic reporting dispute, has continued to exchange traffic records with e.spire during the course of this dispute, and has implemented a reasonable interim traffic reporting mechanism while industry groups work toward a permanent industry-wide solution.¹⁰⁸⁴ We find that e.spire's and the CLEC Coalition's allegations are insufficient to rebut SWBT's case.

384. Nor are we persuaded by WorldCom's allegations that SWBT's Extended Area Service (EAS) additive charge is a non-cost-based fee intended to compensate SWBT for lost revenues, in violation of our rules.¹⁰⁸⁵ EAS enables residential and business customers to extend the coverage of their flat-rate local calling area for a set monthly fee.¹⁰⁸⁶ A customer subscribing to EAS pays a higher monthly flat rate in order to have a larger non-toll calling area.¹⁰⁸⁷ Under

¹⁰⁷⁸ SWBT Texas I Auinbauh Aff. at para. 122.

¹⁰⁷⁹ Texas I Commission Comments at 88.

¹⁰⁸⁰ *Id.*

¹⁰⁸¹ Texas I Commission Comments at 88.

¹⁰⁸² SWBT Texas I Auinbauh Reply Aff. at para. 46.

¹⁰⁸³ 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹⁰⁸⁴ *Id.*

¹⁰⁸⁵ WorldCom Texas I Comments at 49-50; WorldCom Texas I Price Decl. at paras. 19-25.

¹⁰⁸⁶ See, e.g., *In re Public Utility Commission of Texas*, CC Docket No. 96-13, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3536, n.384 (1997) (*Texas Memorandum Opinion and Order*) citing Newton's Telecom Dictionary at 221 (1991); see also *United States v. Western Electric*, 569 F.Supp. 990, 1002 n.54 (D.D.C. 1983).

¹⁰⁸⁷ See, e.g., *Texas Memorandum Opinion and Order*, 13 FCC Rcd at 3536, n.384.

one-way EAS, a SWBT customer would be able to call another SWBT customer within its extended area without paying a toll. Under two-way EAS, the SWBT subscriber pays a higher fee to allow other SWBT customers within the extended calling area to call in without paying toll charges.

385. When either the originating or terminating end user is not a SWBT customer, however, EAS will not work. If a SWBT EAS customer calls a competitive LEC customer in the extended area, the competitive LEC ordinarily would charge SWBT terminating access, which SWBT would pass on to its SWBT customer. Similarly, when a competitive LEC customer in the extended area calls a SWBT customer, SWBT would charge the competitive LEC terminating access, which the competitive LEC would pass on to its customer. Carriers, however, may agree to waive toll charges that would otherwise be assessed. In the alternative, carriers may agree to bill each other a per-minute charge. WorldCom asserts that the additive charge of between 2 and 4 cents per minute is a non-cost-based charge intended to compensate SWBT for revenues it once received from EAS customers that have moved to a new entrant.¹⁰⁸⁸ As the Texas Commission explains, however, the additive charges are designed to compensate the carriers in exchange for their agreement to waive the terminating access they otherwise would have received.¹⁰⁸⁹ The Texas Commission notes that such EAS additives are reciprocal in nature and entirely optional.¹⁰⁹⁰ Therefore, we conclude that WorldCom has not demonstrated that the EAS additive violates the section 271 provisions applicable to reciprocal compensation.¹⁰⁹¹

386. Allegiance requests that the Commission determine the appropriate compensation arrangement for local and ISP-bound traffic.¹⁰⁹² Allegiance asserts that the Commission should set compensation rates for inter-carrier traffic in accordance with TELRIC.¹⁰⁹³ The Texas Commission has determined that Internet-bound traffic from an end user is to be treated under the applicable interconnection agreements as if it were local traffic for purposes of reciprocal compensation.¹⁰⁹⁴ SWBT has appealed this determination but states that it will continue to apply

¹⁰⁸⁸ WorldCom Texas I Comments at 49-50; WorldCom Texas I Price Decl. at paras. 22-25.

¹⁰⁸⁹ Texas I Commission Reply Comments at 29; *see also* SWBT Texas I Auinbau Reply Aff. at para. 48.

¹⁰⁹⁰ Texas I Commission Reply Comments at 29.

¹⁰⁹¹ We note that SWBT contends that the EAS additive is not a form of reciprocal compensation and is therefore not subject to the requirements of section 252(d)(2), but rather is a tool to facilitate retail arrangement options between terminating carriers and their end users. SWBT Texas I Auinbau Reply Aff. at para. 48. For the purpose of this analysis, we assume, but do not decide, that these EAS charges constitute a reciprocal compensation arrangement.

¹⁰⁹² *Allegiance Texas I Reply Comments Attach. 1, Petition of Allegiance Telecom of Texas, Inc. for Arbitration at 4 (Allegiance Texas I Reply Comments Attach. 1).*

¹⁰⁹³ *Allegiance Texas I Reply Comments Attach. 1 at 4.*

¹⁰⁹⁴ SWBT Texas I Auinbau Aff. at para. 111.

this method of compensation while required to do so.¹⁰⁹⁵ We note that Allegiance does not allege that SWBT fails this checklist item, but merely requests that the Commission reconsider its previous decision to allow states to make determinations regarding reciprocal compensation. As noted above, the D.C. Court of Appeals remanded the Commission's ruling that ISP-bound traffic is not subject to section 251(b)(5)'s reciprocal compensation requirements.¹⁰⁹⁶ Because Allegiance does not allege that SWBT fails this checklist item, and also because this issue is before us again due to the court's remand, we do not address it in the context of a 271 application.

N. Checklist Item 14 – Resale

1. Background

387. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."¹⁰⁹⁷ Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."¹⁰⁹⁸ Section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."¹⁰⁹⁹ Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A).¹¹⁰⁰ Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and non-discriminatory.¹¹⁰¹ If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.¹¹⁰² If a state creates such a limitation, it must do so consistent with

¹⁰⁹⁵ *Id.*

¹⁰⁹⁶ *Bell Atlantic v. FCC*, No. 99-1094 (D.C. Cir. Mar. 24, 2000).

¹⁰⁹⁷ 47 U.S.C. § 271(c)(2)(B)(xiv).

¹⁰⁹⁸ 47 U.S.C. § 251(c)(4)(A).

¹⁰⁹⁹ 47 U.S.C. § 252(d)(3).

¹¹⁰⁰ 47 U.S.C. § 251(c)(4)(B).

¹¹⁰¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission's authority to promulgate such rules, and specifically upheld the sections of the Commission's rules concerning resale of promotions and discounts in *Iowa Utilities Board v. FCC*, 120 F.3d at 818-19, *aff'd in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). See also 47 C.F.R. §§ 51.613-51.617.

¹¹⁰² 47 U.S.C. § 251(c)(4)(B).

requirements established by the Federal Communications Commission.¹¹⁰³ In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.¹¹⁰⁴

2. Discussion

388. Based on the evidence in the record, we conclude that SWBT demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements of checklist item 14. SWBT states that it is in compliance with the requirements of this checklist item,¹¹⁰⁵ and the Texas Commission agrees.¹¹⁰⁶ SWBT says that it commits in its interconnection agreements and the T2A to making its retail services available to competing carriers at wholesale rates.¹¹⁰⁷ In 1995, the Texas Commission established a resale tariff to make retail local exchange telecommunications services available to resellers at a 5 percent discount.¹¹⁰⁸ In its Mega-Arbitration proceeding, conducted after the 1996 Act was implemented, the Texas Commission used an avoided-cost calculation method consistent with the Commission's pricing rules to establish a generally-available discount of 21.6 percent off SWBT's retail rates.¹¹⁰⁹ Competing carriers may thus obtain services from SWBT's tariff at a 5 percent discount, or from the T2A or through interconnection agreements at a 21.6 percent discount.¹¹¹⁰ Competing carriers may purchase SWBT's promotional offerings of 90 days or less at the promotional rate, and its promotional offerings of greater than 90 days at the 21.6 percent discount.¹¹¹¹ Competing carriers may purchase existing customer specific arrangements (CSAs) at either a 5.62 percent or 8.04 percent discount, depending on the type of contract.¹¹¹² Additionally, competing carriers may purchase at the 21.6 percent discount CSAs to resell to new

¹¹⁰³ *Id.*

¹¹⁰⁴ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

¹¹⁰⁵ SWBT Texas I Application at 120-122; SWBT Texas I Auinbauh Aff. at paras. 126-134, 152.

¹¹⁰⁶ Texas I Commission Comments at 90.

¹¹⁰⁷ SWBT Texas I Auinbauh Aff. at para. 20.

¹¹⁰⁸ *Id.* at para. 128.

¹¹⁰⁹ *Id.* at para. 152.

¹¹¹⁰ *Id.* at paras. 128, 152.

¹¹¹¹ *Id.* at para. 130. Pursuant to Commission rules, incumbent LECs do not need to offer for resale short-term promotions of 90 days or less, as long as such short-term promotions are not used to evade the wholesale rate obligation. 47 C.F.R. § 51.613(a)(2)(ii).

¹¹¹² SWBT Texas I Auinbauh Aff. at para. 134.

customers.¹¹¹³ Pursuant to the terms of the SBC/Ameritech merger, SWBT also offers a discount of 32 percent off its retail rate for resold service to residential customers.¹¹¹⁴

389. SWBT also states that it makes its retail telecommunications services available for resale without unreasonable or discriminatory conditions or limitations.¹¹¹⁵ The Texas Commission agrees.¹¹¹⁶ According to SWBT, the telecommunications services it offers competing carriers for resale are identical to the services it furnishes its own retail customers, and competing carriers are able to sell these services to the same customer groups, in the same manner.¹¹¹⁷ Competing carriers may also take over existing contracts by purchasing CSAs without triggering termination liability charges or contract transfer fees to the end user.¹¹¹⁸ SWBT permits competing carriers that resell CSAs to meet minimum volume requirements by aggregating the traffic of multiple end-user customers, provided that those customers are similarly situated to the customer(s) of SWBT's original contract.¹¹¹⁹

390. SWBT's case withstands the arguments of its opponents. We are not persuaded by the National ALEC Association/Prepaid Communications Association (NALA)'s unsubstantiated contention that SWBT's resale contracts contain onerous contract terms.¹¹²⁰ Specifically, NALA asserts that SWBT's resale contracts: indemnify SWBT against resellers' customer claims, limiting that liability to a credit or refund if SWBT negligently performs its resale services; lack meaningful penalties if SWBT fails to perform its contract obligations; make resellers responsible for all sales and related taxes; compel arbitration rather than litigation in cases of dispute; fail to guarantee that SWBT's third-party vendor arrangements will not result in higher reseller fees; permit SWBT to terminate reseller agreements on an annual basis; and require large deposits from resellers.¹¹²¹ The Texas Commission provides multiple procedural vehicles to address such concerns, and NALA should have first raised these concerns there,

¹¹¹³ *Id.*

¹¹¹⁴ SWBT Texas I Application at 120; SWBT Texas I Auinbauh at Aff. para. 132. *See also SBC/Ameritech Merger Order*, 14 FCC Rcd 14712, App. C, Conditions at 15,018-19, paras. 47-49. These carrier-to-carrier promotions were created as a result of the SBC/Ameritech merger. We concluded in the *SBC/Ameritech Merger Order* that such promotions are beneficial because they encourage the "rapid development of local competition in residential and less dense areas." *Id.* at 14874, para. 390. Additionally, we found that the promotions are not discriminatory because they are offered to competitors in a nondiscriminatory fashion, allowing all competitive LECs in SBC/Ameritech's region to participate. *Id.* at 14916, para. 497.

¹¹¹⁵ SWBT Texas I Auinbauh Aff. at para. 20.

¹¹¹⁶ Texas I Commission Comments at 91-92.

¹¹¹⁷ SWBT Texas I Application at 120; SWBT Texas I Auinbauh Aff. at paras. 133-34.

¹¹¹⁸ SWBT Texas I Auinbauh Aff. at para. 133.

¹¹¹⁹ SWBT Texas I Application at 121; SWBT Texas I Auinbauh Aff. at paras. 133-34.

¹¹²⁰ NALA Texas I Comments at 7-10.

¹¹²¹ *Id.*

preferably when it was contemplating entering into the contracts.¹¹²² For example, if NALA does not care for one of SWBT's contract provisions, it may negotiate or arbitrate such provision, or otherwise work with the Texas Commission to find an interim solution until a final resolution is reached.¹¹²³ Additionally, NALA has not produced evidence to substantiate its claim. We therefore find that SWBT's application withstands this allegation.

391. Nor are we persuaded by NALA's argument that SWBT's resale-related OSS charges are discriminatory. NALA resells SWBT's local service to residential customers with poor credit histories in the form of prepaid, flat-rate local telephone service.¹¹²⁴ SWBT offers a virtually identical prepaid package.¹¹²⁵ NALA alleges that SWBT offers its prepaid home service "at a price below what NALA . . . members charge," and that "it appears that this rate does not impute all the charges that SBC's competitors must pay."¹¹²⁶ Specifically, NALA contends that SWBT charges Texas resellers OSS costs, and that "it is far from clear whether these OSS charges are included in SBC's rates for its Prepaid Home Service."¹¹²⁷ SWBT responds that the charge NALA refers to is not OSS.¹¹²⁸ Rather, it is a "conversion order charge" that SWBT assesses when a competing carrier converts existing SWBT retail POTS service into a resold service.¹¹²⁹ Alternately, SWBT assesses a "service connection charge" when a competing carrier establishes a new service using resold SWBT service.¹¹³⁰ The service connection charge, SWBT asserts, is the same charge it assesses its retail customers, but resellers receive a 21.6 per cent discount.¹¹³¹ SWBT asserts that these charges recover the cost of customer service labor associated with processing service orders.¹¹³² The Texas Commission has authorized both of these charges.¹¹³³ SWBT also disputes NALA's assertion that it cannot compete with SWBT for

¹¹²² See, e.g., SWBT Texas I Auinbauh Aff., Attach. A, T2A, General Terms and Conditions at § 9.0 (Dispute Resolution).

¹¹²³ *Id.*

¹¹²⁴ NALA Texas I Comments at 5.

¹¹²⁵ *Id.*

¹¹²⁶ *Id.*

¹¹²⁷ *Id.*

¹¹²⁸ Letter from Austin C. Schlick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Counsel to SBC, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (filed March 17, 2000) (*Schlick March 17 Ex Parte Letter*), Attach. 2 at 1.

¹¹²⁹ *Id.*

¹¹³⁰ *Id.*

¹¹³¹ *Id.*

¹¹³² *Id.*

¹¹³³ *Id.*

prepaid home telephone service because SWBT is able to underprice the service.¹¹³⁴ SWBT notes that resellers may purchase its prepaid home telephone service for resale at a discount of either 21.6 per cent or 32 per cent.¹¹³⁵ Alternatively, resellers may purchase SWBT's POTS, along with those options that constitute a prepaid home service option identical to SWBT's, at a discount.¹¹³⁶ We find that NALA provides insufficient information to show that SWBT's service offering is discriminatory.¹¹³⁷

392. We find unpersuasive the claims of Adelphia,¹¹³⁸ Allegiance,¹¹³⁹ e. spire,¹¹⁴⁰ and KMC¹¹⁴¹ that the Commission should allow customers in long-term contracts to switch to competing telecommunications carriers without termination penalties under a "fresh look" argument. These commenters assert that their customers are reluctant to change carriers if they are required to pay termination penalties.¹¹⁴² SWBT responds that competitive LECs may resell its CSAs without triggering termination liability to the end user.¹¹⁴³ Additionally, the Commission has previously held that although termination liabilities could, in certain circumstances, be unreasonable or anticompetitive, they do not on their face cause a carrier to fail checklist item 14.¹¹⁴⁴ The Commission further found that the absence of a "fresh look" requirement is not a basis for rejecting a section 271 application.¹¹⁴⁵ KMC contends that the Commission should impose a "fresh look" requirement on public interest grounds, that is, as part of our analysis under section 271(d)(3)(C).¹¹⁴⁶ We note that KMC raised an identical issue in a Petition for Declaratory Ruling, which is currently pending.¹¹⁴⁷ We find, as we did in the *Bell*

¹¹³⁴ *Id.* at 1-2.

¹¹³⁵ *Id.*

¹¹³⁶ *Id.* NALA states that its members purchase SWBT's POTS for resale. NALA Texas I Comments at 2-3.

¹¹³⁷ See section V.D.2 for a discussion of TRA's assertion that SWBT does not make xDSL services available to resellers at wholesale rates.

¹¹³⁸ Adelphia Texas I Comments at 1-2.

¹¹³⁹ Allegiance Texas I Comments at 20-23; Allegiance Texas II Comments at 2.

¹¹⁴⁰ e.spire Texas I Comments at 7-10.

¹¹⁴¹ KMC Texas I Comments at 2-4.

¹¹⁴² See, e.g., KMC Texas I Comments at 2.

¹¹⁴³ SWBT Texas I Application at 121; SWBT Texas I Auinbauh Aff. at para. 133; SWBT Texas I Auinbauh Reply Aff. at paras. 49-50.

¹¹⁴⁴ *Bell Atlantic New York Order*, 15 FCC Rcd at 4147-48, paras. 389-390.

¹¹⁴⁵ *Id.*

¹¹⁴⁶ KMC Texas I Comments at 3-4.

¹¹⁴⁷ See *In re Establishment of Rules to Prohibit the Imposition of Unjust, Onerous Termination Penalties on Customers Choosing to Partake of the Benefits of Local Exchange Telecommunications Competition*, Petition for (continued...)

Atlantic New York Order, that this issue is best addressed in the context of that pending petition, and we decline to resolve the issue here.¹¹⁴⁸ In any event, our resolution of this issue would not cast doubt on SWBT's overall compliance with checklist item 14 because SWBT meets our existing resale requirements.

393. *Provisioning*. Based on evidence in the record, we find that SWBT satisfies the provisioning requirements of checklist item 14. As discussed above, SWBT is provisioning competitive LECs' orders for resale in substantially the same time and manner as for its retail customers.¹¹⁴⁹

VI. SECTION 272 COMPLIANCE

A. Background

394. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."¹¹⁵⁰ The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.¹¹⁵¹ Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and

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Declaratory Ruling, CC Docket No. 99-142 (filed Apr. 26, 1999) (requesting that the Commission declare unlawful termination penalties imposed by incumbent LECs, to prohibit enforcement of incumbent LEC termination penalties, and to require the removal of incumbent LEC termination penalties from state tariffs until more competition develops).

¹¹⁴⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4148, para. 391.

¹¹⁴⁹ See sections V.B.1 and 2, *supra*.

¹¹⁵⁰ 47 U.S.C. § 271(d)(3)(B).

¹¹⁵¹ See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. SBC Communications v. FCC, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

its section 272 affiliate.¹¹⁵² In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.¹¹⁵³

395. As we stated in the *Ameritech Michigan Order*, compliance with section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.¹¹⁵⁴ The Commission’s findings regarding section 272 compliance constitute independent grounds for denying an application.¹¹⁵⁵ Past and present behavior of the BOC applicant provides “the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272.”¹¹⁵⁶

B. Discussion

396. Based on the record, we conclude that SWBT has demonstrated that it will comply with the requirements of section 272. We address each section 272 requirement below.

1. Structural, Transactional, and Accounting Requirements of Section 272

397. *Section 272(a) – Separate Affiliate.* Section 272(a) requires BOCs and their local exchange carrier affiliates that are subject to section 251(c) to provide certain competitive services through structurally separate affiliates.¹¹⁵⁷ For the reasons described in the subsequent section below, we conclude that SBC demonstrates that it will operate in accordance with section 272(a).

398. The parent company, SBC Communications, Inc., has established one primary section 272 affiliate to provide in-region interLATA services in Texas upon gaining section 271 approval: Southwestern Bell Communications Services, Inc. (“SBCS”), which does business as Southwestern Bell Long Distance.¹¹⁵⁸ At this time, SBCS conducts no business aside from the

¹¹⁵² *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

¹¹⁵³ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

¹¹⁵⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20725; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹¹⁵⁵ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-20786 at para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹¹⁵⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹¹⁵⁷ Section 272(a) states that a BOC may not provide certain services except through one or more affiliates that meet the requirements of section 272(b). See 47 U.S.C. § 272(a)(1)(B).

¹¹⁵⁸ For the purposes of its application to provide in-region interLATA services in Texas, we only address SWBT’s section 272 showing with respect to one affiliate, SBCS. We note that SWBT has several other section 272 (continued....)

company's calling card operations. Once earning section 271 approval, SBCS plans to provide in-region interLATA services in Texas by reselling wholesale network services of one or more unaffiliated providers.¹¹⁵⁹ In its application, SWBT demonstrates that it has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with section 272.¹¹⁶⁰

399. *Section 272(b)(1) – Operate Independently.* Based on the evidence in the record, SWBT has demonstrated that its section 272 affiliate will comply with section 272(b)(1), which requires a section 272 affiliate to “operate independently from the Bell operating company.”¹¹⁶¹ The Commission has interpreted the “operate independently” requirement to impose four important restrictions on the ownership and operations of a BOC and its section 272 affiliate: (1) no joint ownership of switching and transmission facilities; (2) no joint ownership of the land and buildings on which switching and transmission facilities are located; (3) no provision by the BOC (or other non-section 272 affiliate) of operation, installation, and maintenance services (OI&M) with respect to the section 272 affiliate's facilities; and (4) no provision of OI&M by the section 272 affiliate with respect to the BOC's facilities. We note that our review of SBCS's Internet postings, as well as SWBT's cost allocation manual (CAM) and independent auditor's reports, support our finding.

400. *Section 272(b)(2) – Books, Records, and Accounts.* Based on the evidence in the record, SWBT demonstrates that section 272 affiliate will comply with the its requirement to “maintain books, records, and accounts in a manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOCs].”¹¹⁶² Although initially unclear whether the section 272 affiliate maintained its books, records, and accounts in accordance with Generally Accepted Accounting Principles (GAAP), SWBT submitted

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affiliates as a result of its mergers: Southern New England Telephone Enhanced Services, Inc. (SNET Enhanced Services); Ameritech Communications, Inc. (ACI); Ameritech Communications, Inc. of Illinois (ACol); and Ameritech Communications, Inc. of Wisconsin (ACoW). Our findings do not apply to Advanced Services, Inc. (ASI) because ASI is not a section 272 affiliate. See Rhythms Comments at 62-63. For a complete description of SWBT's corporate affiliates and an organizational chart, see SBC Communications, Inc., COST ALLOCATION MANUAL, § IV (Dec. 16, 1999).

¹¹⁵⁹ SWBT Weckel Aff. at para. 20.

¹¹⁶⁰ SWBT Application at 69-70; SWBT Rehmer Aff. at paras. 51-57 (describing SWBT's section 272 compliance efforts, such as a centralized Oversight Team, corporate policies, and training programs), Attach. E (submitting corporate memoranda outlining section 272 compliance requirements), F (submitting corporate memoranda describing compliance oversight team), and G (submitting section 272 training video), and H (submitting corporate section 272 compliance program); SWBT Weckel Aff. at para. 70, Attach. U (submitting compliance policy of SBCS). In addition, SWBT states that it will provide refresher training on section 272 compliance upon earning section 271 approval. SWBT Application at 69-70.

¹¹⁶¹ SWBT Application at 63-64 (citing SWBT Rehmer Aff. at paras. 9-19; SWBT Weckel Aff. at paras. 17-21).

¹¹⁶² 47 U.S.C. § 272(b)(2); 47 C.F.R. 53.203(b); *Accounting Safeguards Order*, 11 FCC Rcd at 17617-18, para. 167; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20786-89, paras. 323-29; see SWBT Application at 64.

additional evidence to demonstrate consistency with GAAP and compliance with the Commission's rules.¹¹⁶³ In addition, we note that no party challenges SWBT's showing.

401. *Section 272(b)(3) – Separate Officers, Directors, and Employees.* Based on the evidence in the record, SWBT has demonstrated that its section 272 affiliate will comply with the "separate officers, directors, and employees" requirement of section 272(b)(3).¹¹⁶⁴ We note that no party challenges SWBT's showing.

402. *Section 272(b)(4) – Credit Arrangements.* Based on the evidence in the record, SWBT has demonstrated that its section 272 affiliate will comply with section 272(b)(4), which prevents a section 272 affiliate from obtaining "credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of [any SBC BOC]."¹¹⁶⁵ We note that no party challenges SWBT's showing.

403. *Section 272(b)(5) – Affiliate Transactions.* Based on our review of its application, we conclude that SBC demonstrates that it will comply with the arm's length and public disclosure requirements of section 272(b)(5) for transactions between its BOCs and its section 272 affiliate.¹¹⁶⁶ Section 272(b)(5) requires that a section 272 affiliate conduct all transactions with its affiliated BOCs on an arm's length basis, with all such transactions reduced to writing and made publicly-available.¹¹⁶⁷ Consistent with the Commission's *Accounting Safeguards Order*, all transactions between SWBT's section 272 affiliates and any affiliated BOC are posted

¹¹⁶³ SWBT Ex parte (Jan. 19, 2000). In its ex parte filing, SWBT stated that its section 272 affiliate shares its chart of accounts with other non-BOC SBC affiliates. In addition, SWBT describes the security measures and other internal controls to show restricted access to the books, records, and accounts of its section 272 affiliate. See SWBT Larkin Aff. at paras. 9-12.

¹¹⁶⁴ 47 U.S.C. § 272(b)(3); 47 C.F.R. § 53.203(c); *Ameritech Michigan Order*, 12 FCC Rcd at 20730-31, para. 360; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20789-90, paras. 329-30; SWBT Application at 64; SWBT Rehmer Aff. at para. 19, Attach. B (submitting names of corporate officers and directors); SWBT Weckel Aff. at paras. 31-41, Attach. D-Q (listing names of relevant officers and directors), Attach. R (submitting corporate policy prohibiting loans of employees).

¹¹⁶⁵ 47 U.S.C. § 272(b)(4); 47 C.F.R. § 53.203(d); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21995, paras. 189-90; see SWBT Application at 65; SWBT Weckel Aff. at paras. 42-44; SWBT Rehmer Aff. at paras. at 20-21.

¹¹⁶⁶ Because SBC Communications owns and controls eight BOCs (i.e., SWBT, Pacific Bell, Nevada Bell, and the five Ameritech Operating Companies) and a total of five section 272 affiliates, we clarify that our analysis in this order is limited only to SWBT, which is the BOC operating in Texas, and SBCS, which is the section 272 affiliate through which SBC Communications plans to provide in-region interLATA services in Texas. We note, however, that SBC must comply with all section 272 safeguards with respect to any transactions between any SBC-owned or controlled BOC and any section 272 affiliate. This would require, for example, SBCS to ensure that any transactions with Pacific Bell or the Ameritech operating companies are reduced to writing and made available for public inspection in accordance with the Commission's rules. See ARMIS 43-02 USOA Report, Table I-2 (demonstrating that Pacific Bell provided SBCS with approximately \$5.27 million worth of services in 1999).

¹¹⁶⁷ 47 U.S.C. § 272(b)(5); 47 C.F.R. § 53.203(e).

on the company's Internet homepage within 10 days of the transaction.¹¹⁶⁸ To ensure that all transactions occur at arm's length, SWBT must abide by the Commission's affiliate transactions rules.¹¹⁶⁹ As noted in previous Orders addressing section 271 applications, the Commission evaluates the sufficiency of a BOC's Internet disclosures by referring to its ARMIS filings, its cost allocation manuals (CAMs), and its CAM audit workpapers.¹¹⁷⁰

404. SWBT persuades us that its section 272 affiliate will comply with the section 272(b)(5) public disclosure requirements, including the obligation to post all transactions between the BOC and its section 272 affiliate within 10 days of the transaction.¹¹⁷¹ Although our preliminary analysis revealed a potentially significant discrepancy between the relevant Internet disclosures and SWBT's accounting data, SWBT adequately demonstrated that the discrepancies did not adversely impact the timely posting of information on the Internet.¹¹⁷² We further note that, for certain transactions, SWBT provided additional assurances to show that it met its obligations under section 272(b)(5).¹¹⁷³ Finally, SWBT demonstrates that its section 272 affiliate

¹¹⁶⁸ *Accounting Safeguards Order*, 11 FCC Rcd at 17593-94, para. 122; *Ameritech Michigan Order*, 12 FCC Rcd at 20734-37, paras. 366-73; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20790-95, paras. 331-40.

¹¹⁶⁹ See 47 C.F.R. § 32.27; *Accounting Safeguards Order*, 11 FCC Rcd at 17616-17, para. 166; see *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20790-95, paras. 331-39.

¹¹⁷⁰ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20791-92, para. 335; *Bell Atlantic New York Order* at paras. 411-12. In their Automated Reporting Management Information System (ARMIS) reports, the BOCs provide summary information about their transactions with nonregulated affiliates. See ARMIS 43-02 USOA Report, Table I-2, B-4. In their CAMs, the BOCs disclose the nature, terms, and frequency of their anticipated affiliate transactions. See 47 C.F.R. § 64.903; see also SBC Communications, Inc., COST ALLOCATION MANUAL, § V (Dec. 16, 1999). Pursuant to the Commission's Part 64 accounting safeguards, all the BOCs receive annual audits of their ARMIS data performed by an independent auditor. 47 C.F.R. § 64.904. In addition, the Commission regularly reviews the CAMs and the audit materials related to the independent audits, which show the actual dollar amount of affiliate transactions that occurred during the audited period.

¹¹⁷¹ SWBT Application at 65; SWBT Larkin Aff. at paras. 15-24; SWBT Weckel Aff. at paras. 45-70; see ARMIS 43-02 USOA Report, Table I-2 (demonstrating that SWBT provided SBCS with approximately \$ 3.44 million worth of services in 1999).

¹¹⁷² SWBT Ex parte (Mar. 3, 2000). To review an applicant's showing for section 272(b)(5), the Commission examines publicly-available accounting and financial data, as well as confidential material obtained through the course of routine audits of a BOC's Part 64 CAM. Our preliminary review of these materials revealed a potential discrepancy between the dollar amounts of certain services posted on the Internet and disclosed through the audit materials. In response to Commission inquiry, SWBT explained that there is a lag time in the true-up process it uses to reconcile its accounting records, more detailed billing records, and its Internet postings. More importantly, SWBT demonstrated that the transactions at issue were properly posted, and that the discrepancy applied only to the total dollar value of the services. We therefore conclude that the discrepancy did not affect the fundamental showing of compliance with the section 272(b)(5) disclosure requirements.

¹¹⁷³ SWBT Ex parte (Mar. 7, 2000) (submitting additional information to show that SBCS posted the transfer of \$25 million worth of switching equipment to the BOC).

meets the Commission's 10-day posting requirement and maintains an audit trail of past Internet postings.¹¹⁷⁴

405. Although we are concerned about the specific examples cited by AT&T, we conclude that the Internet disclosures of SWBT's section 272 affiliate are, on the whole, sufficiently detailed to evaluate compliance with the Commission's rules and to facilitate the detection of potential anticompetitive conduct.¹¹⁷⁵ As AT&T points out, however, the Internet posting for "Temporary Projects" services provided by SBC to its section 272 affiliate fails to provide a comprehensible description of the services at issue,¹¹⁷⁶ and several other Internet postings contain a similar lack of detail.¹¹⁷⁷ Despite these flaws, our in-depth review of the relevant Internet disclosures shows that the majority contain sufficient detail, as specified in the *Accounting Safeguards Order*, the *Ameritech Michigan Order*, and the *Second BellSouth Louisiana Order*.¹¹⁷⁸ Finally, we note that SWBT's Internet postings will undergo a thorough and systematic review in the section 272(d) biennial audit, which will ensure that any failure to post sufficient detail are identified in time for appropriate remedial action.

406. Based on the record evidence, we conclude that SWBT demonstrates that it will comply with the affiliate transactions rules, which is necessary to ensure that all transactions between a BOC and its section 272 affiliate comply with the statutory "arm's length" requirement.¹¹⁷⁹ Our review of SWBT's ARMIS data, its CAM, its independent auditor's workpapers, and the Internet disclosures supports SWBT's showing of compliance with the affiliate transactions rules. Neither the Commission's review of SWBT's accounting information nor the audits conducted by independent auditors have revealed discrepancies with SWBT's corporate accounting procedures for affiliate transactions in the past three years. We note that the section 272(d) joint Federal-State audit will provide an appropriate mechanism for detecting potential anticompetitive or otherwise improper conduct.

407. As a final matter, we are concerned about the confidentiality agreement raised by AT&T, but we are persuaded that the agreement does not preclude a showing of compliance for

¹¹⁷⁴ *Id.*

¹¹⁷⁵ AT&T Kargoll Aff. at paras. 17-23.

¹¹⁷⁶ AT&T Kargoll Aff. at para. 21 (citing SWBT Temporary Projects at <<http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/affdocs/1619-2.doc>>).

¹¹⁷⁷ *See id.* at paras. 18-20 (addressing the lack of detail contained in Official Communications Services and General Agreement for Support Services).

¹¹⁷⁸ Almost all of SBCS's Internet postings contain the detail required by the Commission's rules, including the rates, terms, conditions, frequency, the number and type of personnel, and the level of expertise of the personnel performing the services. *See Accounting Safeguards Order*, 11 FCC Rcd at 17593-94, para. 122; *Ameritech Michigan Order*, 12 FCC Rcd at 20734-37, paras. 366-73; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20790-95, paras. 331-39; *see also* SWBT Reply at 71.

¹¹⁷⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20794-95, paras. 338-40; *Accounting Safeguards Order*, 11 FCC Rcd at 17592, para. 119; 47 C.F.R. § 32.27.

SWBT.¹¹⁸⁰ AT&T argues that SWBT's nondisclosure agreement¹¹⁸¹ restricts the ability of unaffiliated third parties to obtain information about affiliate transactions and to report potential noncompliance to the appropriate authorities.¹¹⁸² We agree with AT&T that restricting third party access to regulatory authorities is improper and that SWBT's nondisclosure agreement might deter unaffiliated third parties from notifying the Commission about potential violations of our rules. SWBT persuades us, however, that its current nondisclosure agreement has not adversely affected its ability to comply with section 272(b)(5) to date because all transactions were properly posted on the Internet.¹¹⁸³ Competing carriers and others are always entitled to raise potential problem areas and seek redress with the appropriate authorities, and that a BOC should not attempt to restrict such rights through nondisclosure agreements or other means.

408. *Section 272(c)(2) – Accounting Principles.* Based on the evidence in the record, SWBT demonstrates that it accounts for all transactions with its section 272 affiliates in accordance with the accounting principles designated or approved by the Commission.¹¹⁸⁴ In the *Accounting Safeguards Order*, the Commission concluded that complying with the Part 32 affiliate transactions rules satisfies the accounting requirements of section 272(c), which pertain to the BOC's "dealings" with its separate affiliate. We agree with SBC that its section 272 affiliates may share services (except OI&M) provided to its affiliated BOCs by a "shared services affiliate," but we emphasize that such services are subject to the appropriate non-structural safeguards.¹¹⁸⁵

409. *Section 272(d) – Biennial Audit.* Based on the evidence in the record, we conclude that SWBT demonstrates that it will comply with section 272(d), which requires an independent audit of a BOC's compliance with section 272 after receiving interLATA

¹¹⁸⁰ AT&T Kargoll Aff. at paras. 32-37.

¹¹⁸¹ See SWBT Larkin Reply Aff. at para. 8.

¹¹⁸² AT&T Kargoll Decl. at paras. 32, 36-37 (citing SWBT Larkin Aff. at Attachment C, para. 5). Specifically, SWBT requires third parties to sign a nondisclosure agreement in order to review SWBT's detailed billing information. See AT&T Kargoll Decl. at para. 32. SWBT's nondisclosure agreement, however, prohibits any party that identifies potential discrimination from disclosing the evidence to a regulatory agency until SWBT has had 30 days to explain "and/or make any changes." *Id.* at para. 36.

¹¹⁸³ SWBT Larkin Reply Aff. at para. 8 (stating that the nondisclosure agreement has addressed two third party reviews of the Internet postings, and that neither such review has resulted in complaints to regulatory agencies).

¹¹⁸⁴ 47 U.S.C. § 272(c)(2).

¹¹⁸⁵ SWBT has a "shared services affiliate" that provides services to members of the corporate family. SWBT Rehmer Aff. at para. 29, Attach. C (describing services provided by SWBT's shared services affiliate to the SWBT section 272 affiliate). The Commission's accounting safeguards allow certain accounting treatment for services provided by a shared services affiliate to members of the corporate family, so long as the shared services affiliate only conducts business with members of the corporate family. See *Accounting Safeguards Order*, 11 FCC Rcd at 17607-608, para. 148.

authorization.¹¹⁸⁶ The section 272(d) biennial audit involves a thorough and systematic evaluation of a BOC's compliance with section 272 and its affiliate relationships performed by an independent auditor working under the direction of the Commission and state commissions.¹¹⁸⁷ As noted in the *Accounting Safeguards Order*, once a BOC obtains section 271 approval, the Chief of the Common Carrier Bureau will form a joint Federal/State audit team to review the conduct of the audit and oversee the activities of the independent auditor.¹¹⁸⁸ We view the active participation of the state commissions as critical to the success of the biennial audit at ensuring a BOC's compliance with section 272. As noted in previous orders, the section 272(d) biennial audit entails an examination into a BOC's affiliate relationships to ensure the company does not use its corporate affiliates as improper tools for circumventing statutory obligations.¹¹⁸⁹ We stress that a BOC cannot circumvent legal and regulatory requirements through its affiliate structure.¹¹⁹⁰

a. Nondiscrimination Safeguards of Section 272

410. *Section 272(c)(1) – Nondiscrimination Safeguards.* Based on the evidence in the record, we conclude that SWBT demonstrates that it will comply with section 272(c)(1), which prohibits a BOC from discriminating in favor of its section 272 affiliates in the “provision or procurement of goods, services, facilities, and information, or in the establishment of standards.”¹¹⁹¹ The Commission's nondiscrimination safeguards require a BOC to, among other things, “provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions.”¹¹⁹² Our review of SWBT's internal controls and standard operating procedures shows that SWBT requires its section 272 affiliate to adhere to the same procedures for obtaining collocation space required of unaffiliated third parties, and that SWBT has procedures to ensure that unaffiliated entities have access to information for, among other things, the development of company-internal standards

¹¹⁸⁶ 47 U.S.C. § 272(d); 47 C.F.R. § 53.209-213; *see* SWBT Application at 67-68; SWBT Larkin Aff. at paras. 38-44; SWBT Weckel Aff. at paras. 71-73.

¹¹⁸⁷ 47 U.S.C. § 272(d)(1).

¹¹⁸⁸ *Accounting Safeguards Order*, 11 FCC Rcd at 17629, para. 198.

¹¹⁸⁹ *Accounting Safeguards Order*, 11 FCC Rcd at 17631, para. 203; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20794, para. 338; *Bell Atlantic New York Order* at para. 416.

¹¹⁹⁰ *See* Covad Reply at 19 (raising concerns about the relationship between SWBT's affiliates).

¹¹⁹¹ 47 U.S.C. § 272(c)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21997-17, para. 195; *Second BellSouth Louisiana Order*, 13 FCC Rcd 20796-800, paras. 341-50. The Commission found that the nondiscrimination safeguards extend to any good, service, facility, or information that a BOC provides to its section 272 affiliate, including administrative services and other non-telecommunications goods and services. *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22003-04, para. 210. The Commission interprets the section 272(c) nondiscrimination safeguards broadly. *See id.* at 22003, 22007, 22012, 22015-016.

¹¹⁹² *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22000-01, para. 202.

and processes.¹¹⁹³ In addition, we note SWBT's OSS showing demonstrates that it meets the requirements of section 272(c)(1) regarding nondiscriminatory provision of information.¹¹⁹⁴

411. Although we agree with AT&T that section 272(c)(1) establishes an "unqualified prohibition" against discrimination, we find that its arguments regarding SWBT's proposed intrastate switched access tariffs are moot.¹¹⁹⁵ In its comments, AT&T contends that SWBT's pricing plan for switched access service discriminates against larger interexchange carriers.¹¹⁹⁶ The Texas Commission, however, rejected SWBT's proposed intrastate switched access tariff as unlawful for the reasons presented by AT&T.¹¹⁹⁷ Because SWBT's proposed tariff is not (and will not) be effective, we conclude that AT&T's argument regarding a violation of the section 272(c)(1) nondiscrimination safeguards is moot.

412. *Section 272(e) – Fulfillment of Certain Requests.* Based on the evidence in the record, SWBT demonstrates that it will comply with section 272(e), which requires SWBT to fulfill requests for, among other things, telephone exchange and exchange access services from unaffiliated entities within the same time period SWBT fulfills such requests for its own retail operations.¹¹⁹⁸ In addition, section 272(e) also provides that a BOC "shall not provide any facilities, services, or information concerning its provision of exchange access to the [section 272 affiliate] unless such facilities, services or information are made available to other providers of interLATA services in that market on the same terms and conditions."¹¹⁹⁹ Finally, section 272(e) places certain accounting and nondiscrimination requirements on BOCs with respect to exchange access and facilities or services provided to their section 272 affiliates.¹²⁰⁰ Except for one issue, we note that no party challenges SWBT's showing.

¹¹⁹³ SWBT Rehmer Aff. at paras. 17 (noting that SBCS may negotiate at arm's length to obtain collocation space), 31 (describing procedures for the establishment of company-specific standards), Attach. G (addressing, in training video, procedures for collocation and establishing interal standards for products and services).

¹¹⁹⁴ See discussion *supra* Sections IV.B.1.c, e-f; *Second BellSouth Louisiana Order*, 13 FCC Rcd 20799, para. 346.

¹¹⁹⁵ AT&T Kargoll Aff. at para. 39 (citing *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21998, para. 197).

¹¹⁹⁶ AT&T Comments at 87; AT&T Kargoll Aff. at para. 38, n.33. AT&T contends that SWBT's proposed intrastate switched access tariff violated the nondiscrimination safeguards of section 272(c)(1) by allowing a series of discounts targeted to small volume interexchange carriers. AT&T Kargoll Aff. at paras. 338-48.

¹¹⁹⁷ SWBT Reply at 74.

¹¹⁹⁸ 47 U.S.C. § 272(e)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22018-22, paras. 239-45; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20800-01, paras. 348-50; see SWBT Application at 68-69. SWBT demonstrates that it will provide accurate data regarding actual service intervals so that unaffiliated parties can evaluate the performance SWBT provides itself and its affiliates and compare such performance to the service quality SWBT provides to competing carriers. SWBT Rehmer Aff. at 33-39, Attach. D (submitting report format for section 272(e)(1) reporting requirements).

¹¹⁹⁹ 47 U.S.C. § 272(e)(2).

¹²⁰⁰ 47 U.S.C. § 272(e)(3), (e)(4); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20802-03, paras. 353-55; see SWBT Application at 68-69; SWBT Rehmer Aff. at paras. 40-47; SWBT Larkin Aff. at paras. 15-24.

413. As discussed above in the context of the section 272(c)(1) nondiscrimination safeguards, AT&T alleges that a SWBT-proposed intrastate switched access tariff violates the nondiscrimination safeguards of section 272(e)(3) because it provides volume discounts to a limited number of interexchange carriers.¹²⁰¹ Although AT&T correctly points out that the Commission's section 272(e)(3) rules require a BOC to "make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers," its argument is moot because the Texas Commission rejected SWBT's proposed intrastate switched access tariffs as unlawful for the reasons presented by AT&T.¹²⁰² Because SWBT's proposed tariff is not (and will not) be effective, we conclude that AT&T's argument regarding a violation of the section 272(e)(3) nondiscrimination safeguards is moot.

b. Joint Marketing Provisions of Section 272

414. *Section 272(g)(1) – Affiliate Sales of Telephone Exchange Access Services.* Based on the evidence in the record, we conclude that SWBT has demonstrated that it will comply with the joint marketing provisions of section 272(g)(1).¹²⁰³ We note that no party challenges SWBT's showing.

415. *Section 272(g)(2) – Bell Operating Company Sales of Affiliate Services.* We conclude that SWBT demonstrates that it will comply with section 272(g)(2), which prevents a BOC from marketing or selling within its region any interLATA service provided by a section 272 affiliate absent authorization obtained pursuant to section 271(d).¹²⁰⁴ We note that no party challenges SWBT's showing.

VII. PUBLIC INTEREST ANALYSIS

A. Overview

416. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.¹²⁰⁵ We conclude that approval of this application is consistent with the public interest. In reaching this determination, we find that compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the

¹²⁰¹ AT&T Kargoll Aff. at para. 40.

¹²⁰² SWBT Reply at 74.

¹²⁰³ 47 U.S.C. § 272(g)(1); *see* SWBT Application at 69; SWBT Rehmer Aff. at para. 50; SWBT Weckel Aff. at para. 80.

¹²⁰⁴ 47 U.S.C. § 272(g)(2); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20804, para. 357; *see* SWBT Application at 69; SWBT Rehmer Aff. at para. 50; SWBT Weckel Aff. at para. 80.

¹²⁰⁵ 47 U.S.C. § 271(d)(3)(C).

Commission's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

417. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.¹²⁰⁶ Thus, we view the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this application.¹²⁰⁷ Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. As discussed below, we conclude that the public interest would be met by grant of this application.

418. Finally, we note that a strong public interest showing cannot overcome a failure to demonstrate compliance with one or more checklist items. The Commission is specifically barred from "limit[ing] . . . the terms used in the competitive checklist,"¹²⁰⁸ or forbearing from requiring compliance with all statutory conditions under section 271.¹²⁰⁹

B. Competition in Local Exchange and Long Distance Markets

419. As set forth below, we conclude that approval of this application is consistent with promoting competition in the local and long distance telecommunications markets. Consistent with our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We disagree with commenters' arguments that the public interest would be disserved by granting SWBT's application because the local market in Texas has not yet truly been opened to competition.¹²¹⁰ Commenters cite an array of evidence which, they argue, demonstrates that the

¹²⁰⁶ In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-366; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

¹²⁰⁷ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

¹²⁰⁸ 47 U.S.C. § 271(d)(4).

¹²⁰⁹ 47 U.S.C. § 160(d).

¹²¹⁰ *See, e.g.*, AT&T Texas I Comments at 89; WorldCom Texas I Comments at 57-61; Sprint Texas I Comments at 74-78; Sprint Texas II Comments at 48.

local telecommunications market is not open and that competition has not sufficiently taken hold in Texas. For example, commenters allege that the local market in Texas is characterized by: the low percentage of total access lines served by competitive LECs;¹²¹¹ the concentration of competition in Dallas, Fort Worth, Houston and other urban areas;¹²¹² minimal competition for residential services;¹²¹³ modest facilities-based investment;¹²¹⁴ and prices for local exchange service at the maximum permissible levels under the price caps.¹²¹⁵ We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here.¹²¹⁶ We further find that the record confirms our view, as noted in the *Bell Atlantic New York Order*, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.¹²¹⁷

C. Assurance of Future Compliance

420. As set forth below, we find that SWBT's performance remedy plan provides additional assurance that the local market will remain open after SWBT receives section 271 authorization. The Commission previously has explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue to satisfy the requirements of section 271 after entering the long distance market.¹²¹⁸ Although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval.¹²¹⁹ The Commission has stated that the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that

¹²¹¹ See Sprint Texas I Comments at 74-78; Allegiance Texas I Comments at 13; AT&T Texas I Comments at 89; WorldCom Texas I Comments at 57-61.

¹²¹² See AT&T Texas I Comments at 89; *but see* SWBT Texas II Reply at 76.

¹²¹³ See AT&T Texas I Comments at 89; WorldCom Texas I Comments at 60; Sprint Texas I Comments at 75-76; Sprint Texas II Comments at 48-49.

¹²¹⁴ See WorldCom Texas I Comments at 58-59.

¹²¹⁵ *Id.* at 61.

¹²¹⁶ See *Bell Atlantic New York Order* 15 FCC Rcd at 4163, para. 427. This is consistent with the Commission's approach in prior section 271 orders. See *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

¹²¹⁷ See *Bell Atlantic New York Order* 15 FCC Rcd at 4164, para. 428.

¹²¹⁸ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20806; see *Ameritech Michigan Order*, 12 FCC Rcd at 20747.

¹²¹⁹ These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6). Moreover, in this instance, we find that the extensive collaborative process by which these mechanisms were developed and modified in Texas has itself helped to bring SWBT into checklist compliance.