

CLECs reflects, no such showing is possible. In my accompanying joint declaration with Nancy Dalton, I review in detail the many material defects in SWBT's OSS systems which have a discriminatory, anticompetitive effect on AT&T and other CLECs.

163. I will not repeat that extensive analysis here, but instead will focus on two particular issues affecting CLECs' ability to obtain access to UNE Loop hot cuts: (1) SWBT's failure to provide jeopardy notices on a uniform and timely basis, which exposes CLECs and their customers to unexpected service outages and delayed installations; and (2) SWBT's failure to timely post CLECs' completed orders to SWBT's legacy billing systems, which materially disrupts CLECs' relationships with their new customers by, among other things, exposing those customers to continued billing by SWBT and to the risk of double billing.

A. SWBT Fails To Uniformly Provide Jeopardy Notices

164. As the Commission has held, once a BOC has issued a FOC confirming the date and time for installation of service, it "is critical that the BOC provide the competing carrier with a timely jeopardy notice if the BOC, for any reason, can no longer meet that due date." Louisiana II ¶ 131. In Bell Atlantic, the Commission reaffirmed that jeopardy notices are "critical to the proper functioning of the hot cut process." Bell Atlantic ¶ 186.

165. Contrary to the Commission's rulings, however, SWBT fails to uniformly issue jeopardy notices whenever a confirmed hot cut order cannot proceed as scheduled -- as shown by the experience of AT&T and other CLECs and conceded by SWBT in its application. (See Conway Aff. ¶ 51.) Moreover, although SWBT ignores the issue, it is undisputed that SWBT has not adopted any performance measures addressing jeopardy notices and thus has not offered in support of its application (as the

Commission requires) “sufficient, reliable data to determine whether [SWBT] provides jeopardy notices to competing carriers in a timely and accurate manner”. Louisiana II ¶ 133.

166. Nevertheless, SWBT contends that it has exceeded its statutory obligations because SWBT not only supposedly provides CLECs with the same jeopardy notices as SWBT employs in its own retail operations, but has made other jeopardy codes available to CLECs. (Ham Aff. ¶¶ 151-52.) SWBT’s argument, however, misses the point.

167. The question is not (despite SWBT’s suggestion otherwise) whether SWBT provides CLECs with the same jeopardy notices as it provides itself (which, in any event, is an inapt analogy because SWBT does not perform hot cuts in its retail operations). Rather, the relevant question is whether SWBT’s failure to uniformly provide CLECs with timely jeopardy notices whenever a confirmed hot cut installation date is threatened denies AT&T (and all other CLECs) a meaningful opportunity to compete. The answer to that question is plainly yes. Indeed, CLECs’ need for jeopardy notices to be issued on a uniform basis is particularly pressing given the way SWBT conducts its operations.

168. Because the hot cut process necessarily requires that the customer lose service for a limited period, AT&T’s confirmation of the scheduled cutover with the customer (based on SWBT’s FOC) represents a serious commercial commitment, since the customer must reschedule his business affairs to accommodate the loss of service. At the same time, because SWBT issues a “blind” FOC – i.e., it confirms an installation date without first determining the availability of facilities (e.g., whether the customer’s loop is

served by an IDLC) -- there exists the substantial risk that a confirmed hot cut will have to be rescheduled.

169. Indeed, as SWBT proceeds with its announced plans under project Pronto to install fiber on 80% of its customers loops, the number of loops served by IDLC will likely increase astronomically -- as will the risk of installation delays. Moreover, as discussed above, SWBT recently announced a policy that orders requiring fieldwork on the day of installation will not qualify as CHC hot cuts (and thus confirmed cut times will not be honored). Accordingly, it is critical that AT&T obtain timely notice of such potential installation delays, so that it can provide advance warning to its customers and avoid substantial customer dissatisfaction.

170. Moreover, because SWBT often fails to perform the appropriate pre-installation test procedures (as discussed above), CLECs have no assurance that they will receive timely notice from the LOC of potential delays affecting the installation date -- which makes CLECs' need for jeopardy notices particularly pressing.

171. In addition, confirmed due dates may be threatened by problems other than facilities and engineering issues that the pre-installation test procedures (even if performed) might not capture. Thus, even though a FOC has been returned on an order, the absence of sufficient up-front edits in LASR and MOG (an issue discussed in detail in my accompanying joint declaration with Nancy Dalton) means that relevant information may still be required for SWBT to properly provision and process the order. Receipt of a timely jeopardy notice is important to permit the CLEC an opportunity to supply the missing information and permit the order to proceed as scheduled.

172. Furthermore, timely jeopardy notices are essential for FDT orders in order to avoid unexpected service outages. Because the FDT process lacks the

safeguards of the CHC process (particularly, the pre-cut authorization by the CLEC), SWBT's failure to timely issue a jeopardy notice may result in a CLEC activating the NPAC and thereby causing the customer to lose service, even though the order is in jeopardy and cannot be provisioned – a provisioning error which has unfortunately affected AT&T's recent FDT orders.¹⁰¹

173. Despite the importance of timely jeopardy notices, SWBT nevertheless fails to uniformly issue jeopardy notices for all post-FOC ordering problems that threaten a confirmed installation due date. Instead, as Ms. Conway concedes, where CLECs' orders "have 'errored out' from CLEC entry after the FOC has been returned", SWBT's "process was to reject those orders." (Conway Aff. ¶ 51.) Moreover, although Ms. Conway does not provide the volume of post-FOC rejects issued by SWBT, she suggests that the number is "dramatic."¹⁰² (Id.)

174. The use of such post-FOC rejects is entirely inappropriate. Thus, unlike a jeopardy notice, a post-FOC reject appears no different than a pre-FOC reject, and thus may be overlooked by CLEC provisioning personnel, resulting in the

¹⁰¹ For example, in late December, AT&T received a post-FOC reject on an FDT order 17 minutes after the scheduled frame due time -- and after AT&T had timely activated the NPAC and thereby placed the customer out of service. Upon investigation with SWBT, AT&T discovered that the reject was caused by an incorrect address on the order, which went undetected by LASR and MOG -- thus illustrating the problems caused by the lack of sufficient up-front edits -- and that the delay in issuing the reject was due to "high backlog" at the LSC. Notably, substantial delays by SWBT in issuing post-FOC rejects are not an isolated occurrence. To the contrary, as discussed in my accompanying joint declaration with Nancy Dalton, SWBT's performance data shows that the time required for SWBT to return manual rejects -- which include post-FOC rejects -- is prolonged.

¹⁰² Indeed, AT&T has frequently received post-FOC rejects canceling confirmed installation dates. For example, in December alone, post-FOC rejects amounted to approximately 7.2% of all manual rejects returned by SWBT to AT&T. Similarly, other CLECs have complained about the failure of SWBT to issue jeopardy notices. See CLEC Operational Issues Matrix at 6, Issue 13 [SWBT App. C at Tab 1779].

unfortunate consequence that a CLEC's customer does not receive timely notice of the delayed installation (or, on an FDT order, needlessly loses service). Furthermore, where the delay is attributable to a SWBT provisioning error (for example, engineering problems that were not timely identified due to SWBT's failure to perform the pre-installation test procedures), use of a post-FOC reject serves to distort SWBT's reported data under the appropriate performance measures. Thus, missed due dates that would otherwise be counted against SWBT are ignored where SWBT rejects the order rather than placing it in jeopardy status.

175. Apart from post-FOC rejects, yet another improper technique SWBT has used (rather than jeopardy notices) to reschedule hot cuts is to persuade AT&T's (and other CLECs') provisioning personnel to issue a supplemental order – even when the delayed installation was due to a SWBT-caused error. For example, during the AT&T/SWBT joint reconciliation of SWBT's reported performance data for measure 58 (which captures, among other things, hot cuts installed after the confirmed installation date), AT&T identified numerous orders that, due to SWBT's errors, would not have been installed by the confirmed due date but for SWBT convincing AT&T to issue a supplemental order.¹⁰³ Other CLECs have reported that SWBT has used the same approach with them.¹⁰⁴

¹⁰³ See, e.g., Joint Reconciliation Affidavit, Attachment 8 at 28-29 (orders DALY9900532, HOUY9900402, HOUY9900468, HOUY9900435); Attachment 9 at 1 (order HOUY9900389), 5 (orders DALY9900492, HOUY9900342), 10-11 (orders HOUY9900240, HOUY9900201); Attachment 11 at 14 (order HOUY9900374) [Attachment 22, hereto].

¹⁰⁴ See CLEC Operational Issues Matrix at 5, Issue 11 [SWBT App. C at Tab 1779]; Affidavit of Nancy Reed Krabill on Behalf of NEXTLINK Texas, Inc., sworn to Oct. 28, 1999, filed in TPUC Project No. 16251 ("Krabill Aff."), at 9-10 [SWBT App. C at Tab 1919].

176. Use of supplemental orders in those situations is plainly inappropriate because, like a post-FOC reject, it distorts SWBT's reported performance data by allowing SWBT to avoid recording a missed due date. Indeed, SWBT has conceded, both during the AT&T/SWBT reconciliation project¹⁰⁵ and in TPUC proceedings,¹⁰⁶ that SWBT's provisioning personnel should not request AT&T personnel to issue a supplemental order when a due date is threatened.

177. Perhaps anticipating AT&T (and other CLECs) raising SWBT's failure to uniformly issue jeopardy notices, SWBT, in its application, seeks to side-step the problem by proclaiming that it has adopted a "new jeopardy process" which "will require jeopardy notification after the FOC" and "will be implemented 1/15/00." (Conway Aff. ¶ 51.) SWBT's promises, however, are old news. Indeed, Mr. Dysart represented to AT&T (in an October 1 TPUC dispute resolution workshop¹⁰⁷) and Ms. Conway represented to the TPUC (at an October 20 Open Meeting¹⁰⁸) that SWBT would

¹⁰⁵ For example, with respect to each of the SWBT-requested supplemental orders identified in the joint reconciliation project, SWBT and AT&T acknowledged that the "order was supp'd inappropriately per SWBT request." See, e.g., Joint Reconciliation Affidavit, Attachment 8 at 28-29 (orders DALY9900532, HOUY9900402, HOUY9900468, HOUY9900435) [Attachment 22, hereto].

¹⁰⁶ See Statement of SWBT's Mr. Dysart, Oct. 1 Dispute Workshop Tr. at 9-10 ("There was some discussion that Southwestern Bell had requested the CLECs to change due dates on supplements. I think there's consensus that we shouldn't ask them to do that, and they shouldn't do it.") [Attachment 9].

¹⁰⁷ See *id.* at 9 ("[L]et me talk about the rejects that occur after FOC. We had agreed that going forward - instead of handling those via a reject, we would handle those via a jeopardy notice.").

¹⁰⁸ See Statement of SWBT's Ms. Conway, Oct. 20, 1999 TPUC Open Meeting Tr. at 238 to 240 (representing that SWBT would issue an "accessible" letter clarifying that its policy, consistent with the agreement it made with AT&T at the October 1, 1999 dispute resolution workshop, is to issue a jeopardy notice whenever a problem with a scheduled due date arises post-FOC)[Attachment 26, hereto].

cease using post-FOC rejects (and improper supplemental orders) and instead only employ jeopardy notices once a FOC has been issued.

178. As Ms. Conway concedes, however, SWBT had not fulfilled those past promises when it filed its pending application. Moreover, there is no reason to believe that SWBT will fulfill its current promises.¹⁰⁹ Indeed, it is for that very reason that the Commission has held that “a BOC’s promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271.” Bell Atlantic ¶ 37.

179. In sum, as of the date of its application, SWBT acknowledges that it fails to uniformly issue jeopardy notices whenever a confirmed hot cut installation due date is threatened. In light of the importance of such jeopardy notices to CLECs’ ability to timely and reliably service their customers through UNE Loop hot cuts -- and thus compete for their customers’ business -- SWBT’s failure to comply with this obligation should not be overlooked.

B. Substantial Delays By SWBT In Posting Completed Hot Cut Orders to Its Legacy Billing Systems Impede AT&T’s Ability to Compete

180. As the Commission has held, a BOC’s “OSS obligations also extend to the provision of nondiscriminatory access to billing functions.” Louisiana II ¶ 158. Non-discriminatory access includes the obligation to timely post CLECs’ completed orders to the BOC’s legacy billing systems (and remove the CLECs’ customers from the

¹⁰⁹ Indeed, while SWBT proposed in an early December change management meeting to implement additional jeopardy codes -- which presumably are the changes Ms. Conway is alluding to in her affidavit -- it cannot be determined on the present record (and in fact, cannot be determined until there has been sufficient provisioning activity) whether SWBT implemented those proposed codes on the schedule Ms. Conway describes and, most importantly, whether, if implemented, SWBT will abide by its promise to employ only jeopardy notices -- rather than continuing to use post-FOC rejects or improper supplemental orders.

BOC's retail billing records) to avoid impacting the CLEC's relationship with its customers. As the Commission has found, posting delays resulting in, for example, double billing "demonstrates that a BOC is not providing nondiscriminatory access to its billing functions." Bell Atlantic ¶ 228.

181. SWBT has represented that "under normal conditions," completed orders should post to its billing system within 24 hours of installation¹¹⁰ and has further represented that its "goal" is to ensure that all orders post "at least within five days."¹¹¹ AT&T's commercial experience (and the reported experience of other CLECs) demonstrates, however, that SWBT's OSS systems are incapable of meeting those targets. Indeed, AT&T's completed hot cut orders have experienced substantial delays, with up to 91% being delayed at least one day and 23% delayed for 5 or more days.

182. Those substantial delays caused by SWBT's OSS systems have a dramatic, adverse impact on AT&T's ability to compete because, among other things, the delayed posting results in SWBT continuing to bill AT&T's customers and exposes AT&T's customers to the risks of double billing -- results which, as the Department of Justice has found (and the Commission has agreed) are "a serious problem that directly impacts the competing carriers' relationships with end-user customers." Ameritech ¶ 202 (summarizing the Department of Justice's evaluation).¹¹²

¹¹⁰ Statement of SWBT's Ms. Grogan, Oct. 21, 1999 TPUC Open Meeting Tr. at 408-09 [Attachment 27, hereto].

¹¹¹ Testimony of SWBT's Ms. Conway, Nov. 2, 1999 TPUC Hearing Tr. at 80 [SWBT App. C at Tab 1968].

¹¹² Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997)(hereafter "Ameritech").

183. Notably, SWBT does not currently measure the amount of time it requires to post a completed order to its billing system and, unlike Bell Atlantic, has not even promised to create such a measure. Compare Bell Atlantic ¶ 190. Equally notable, SWBT ignores in its application the substantial posting delays that CLECs' orders are experiencing. Nevertheless, there is substantial evidence in the record of SWBT's extensive posting delays -- and its adverse impact on both AT&T and all CLECs.

184. One indicia of the delayed posting is SWBT's demonstrated failure to timely return service order completion notices ("SOCs"). To appreciate why that is so requires a brief overview of how SWBT's OSS processes hot cut orders after installation is completed. Thus, as internal service orders relating to a hot cut are completed,¹¹³ they are electronically submitted by the LOC to SORD in order to update the order's status. When all internal service orders relevant to a hot cut are logged with SORD, SORD is supposed to recognize the order as complete.¹¹⁴

185. Once that happens, two separate events are supposed to occur. First, SORD generates, through LASR, a SOC that is returned to the CLEC through the appropriate electronic interface – e.g., for AT&T's hot cut orders which are submitted through LEX, the SOC is returned through LEX. Second, SORD electronically forwards the completed order for posting to SWBT's legacy billing systems – i.e., CRIS, which controls SWBT's retail billing, and CABS, which controls SWBT's wholesale billing.

¹¹³ In general, SWBT's systems create two internal service orders – a "connect" and a "disconnect" order – to process a single UNE Loop hot cut order submitted by a CLEC.

¹¹⁴ Notably, unlike certain orders – such as retail service orders – UNE Loop hot cut orders do not automatically complete within SORD. Rather, because hot cut orders are deemed "design flow" service orders by SWBT, the LSC must manually intervene in SORD to have the system recognize the order as complete. See generally Ham Aff. ¶ 145.

The completed service order must post to both CRIS and CABS in order for the customer to be removed from SWBT's retail billing and for SWBT to begin billing the CLEC. (See Ham Aff. ¶ 146.)

186. Given the above processing flow, delays in SOC return necessarily reflect delays in posting -- and SWBT's own data reveals that those delays are extensive. Thus, while SWBT has not adopted a performance measure for timely posting, it has adopted a measure for SOC return -- i.e., measure 7.1 -- which requires that 97% of all SOCs be returned to CLECs within one day of order completion.¹¹⁵ SWBT's reported performance data, as set forth below for August through October, shows that SWBT has consistently failed to meet the 97% benchmark for all CLECs by substantial margins and, for AT&T, the figures are even worse:

| | <u>% Timely SOC Return (LEX)</u> | |
|--------------|----------------------------------|--------------------------------|
| <u>Month</u> | <u>All CLECS</u> ¹¹⁶ | <u>AT&T</u> ¹¹⁷ |
| August | 76.7% | 29.3% |
| September | 77.2% | 43.7% |
| October | 86.1% | 55.3% |

187. SWBT's reported performance data for SOC return plainly shows that a substantial percentage of CLECs' orders -- and for AT&T, the majority of its orders in August and September -- are not being distributed by SORD within one day of completion and thus cannot possibly be posting to SWBT's billing systems within the 24

¹¹⁵ See Business Rules for performance measure 7.1 [Dysart Aff., Attach. A].

¹¹⁶ See SWBT's aggregated reported performance data, measure 7.1 [Dysart Aff., Attach. B].

¹¹⁷ See SWBT's reported performance data for AT&T, measure 7.1, attached hereto as Attachment 28.

hour interval SWBT has targeted. Unfortunately, measure 7.1 does not reveal how much longer than the one-day interval it took for the delayed orders to complete in SORD -- and whether the orders experienced additional delays before posting to SWBT's legacy billing systems.

188. AT&T, however, has been able, to a limited extent, to develop that information for its own UNE loop orders (which consist primarily of hot cut orders) based on raw data provided by SWBT.¹¹⁸ After numerous requests and delays (which are discussed in more detail below in Section V.A.), AT&T obtained from SWBT the raw data supporting SWBT's reported performance for AT&T under performance measure 58 (which governs missed installation dates for UNE orders). As AT&T discovered in reviewing that data, SWBT reports orders under measure 58 only after the orders have posted to SWBT's legacy billing systems.

189. Moreover, in reviewing the raw data for August, AT&T found that it could determine, from the various information fields supplied, the extent of SWBT's posting delay by comparing the posting dates on the orders to the installation completion date.¹¹⁹ As the table below reflects, the posting delay is substantial:¹²⁰

¹¹⁸ Notably, although Ms. Conway asserts in her affidavit that SWBT provides CLECs with reports showing the extent of posting delays (Conway Aff. ¶ 55), SWBT has never supplied such reports to AT&T, despite its repeated requests.

¹¹⁹ Unfortunately, AT&T has been unable to perform the same analysis with the raw data for measure 58 for other months because certain necessary information fields were unavailable.

¹²⁰ AT&T's analysis of SWBT's August raw data on which these figures are based is attached hereto as Attachment 29.

August Posting Delays

| | XXXXXX loops | XXXX loops |
|------------------------|---------------------|-------------------|
| Total posted | XXXXXXX | XXXXXX |
| 1 day delayed | 91% | 47% |
| 5 days or more delayed | 23% | 34% |
| Longest delay | 17 days | 48 days |

190. As demonstrated by these August results, SWBT's OSS systems are plainly incapable of posting AT&T's completed orders (and likely the orders of all other CLECs¹²¹) to SWBT's legacy billing systems on a timely basis. Moreover, it is plain that SWBT's extensive posting delays continued well past August and through October. For example, in the course of the AT&T/SWBT joint reconciliation of SWBT's reported performance data for measure 58, AT&T uncovered orders that had been installed in the first week of August which were still pending in SORD. Moreover, as recently as mid-December 1999, AT&T learned in the course of a remedial action plan review meeting with SWBT that orders installed in mid-September were still sitting in SORD.

¹²¹ AT&T, of course, does not have access to SWBT's raw data concerning other CLECs and thus cannot perform for those CLECs the same posting delay analysis it has conducted for its own orders -- nor is it AT&T's burden on this application to conduct such an analysis. However, in light of SWBT's poor SOC return data, it is not unreasonable to assume that other CLECs are experiencing the same degree of posting delays as AT&T. Indeed, a number of CLECs have repeatedly complained about extensive posting delays. See, e.g., Affidavit of Rick Tidwell on Behalf of Birch Telecom of Texas, Ltd. L.L.P., sworn to Oct. 27, 1999, filed in TPUC Project No. 16251 ("Tidwell Aff."), at ¶ 16 ("Birch is seeing between 15% and 20% of its orders in error status for longer than 5 days.")[SWBT App. C at Tab 1916]; Krabill Aff. at 11 ("It has been NEXTLINK's experience that it is common for complex orders to remain in error status for 30 days or longer before SWBT corrects the errors and the orders post.")[SWBT App. C at Tab 1919]; CLEC Dec. 7 User Forum Minutes at 6 (reporting that SAGE, Birch and MCIW lodged complaints about posting delays affecting their orders)[Attachment 17, hereto].

191. SWBT's demonstrated failure to timely post completed orders has a direct and materially adverse impact on the ability of AT&T -- and all other CLECs -- to compete. Thus, one impact of the delayed posting is that completed service orders are not properly incorporated in SWBT's wholesale bills to AT&T (and other CLECs), thereby imposing on AT&T the additional (and wholly unnecessary) cost of constantly reconciling its internal billing with SWBT.

192. The extent of that delayed wholesale billing is reflected in performance measure 17, which addresses so-called "billing completeness" -- i.e., whether orders completed within a CLEC's billing cycle have been properly included within the CLEC's bill.¹²² SWBT's reported data for measure 17 shows that between August and October, 1999, SWBT has never provided CLECs -- or AT&T -- with completed bills on parity with SWBT's own retail billing:

| Month | <u>% Billing Completeness</u> | | |
|-----------|-------------------------------|---------------------|-------|
| | CLECs ¹²³ | AT&T ¹²⁴ | SWBT |
| August | 98.2% | 91.1% | 98.9% |
| September | 98.5% | 94.0% | 99.0% |
| October | 98.0% | 94.2% | 99.2% |

193. While incomplete wholesale bills are disruptive to AT&T's business (and impose unnecessary costs), SWBT's posting delays have an even more corrosive effect on AT&T's relationship with its customers by exposing them to

¹²² See Business Rule for performance measure 17 [Dysart Aff., Attach. A].

¹²³ See SWBT's aggregated reported performance data, measure 17 [Dysart Aff., Attach. B].

¹²⁴ See SWBT's reported performance data for AT&T, measure 17, attached hereto as Attachment 30.

continued (and incorrect) bills from SWBT as well as the risk of double billing. Continued billing by SWBT occurs because SWBT's posting delays prevent SWBT's legacy billing systems from timely transferring the customers from SWBT to AT&T (or other CLECs). Accordingly, SWBT continues to bill its former customers -- for services SWBT formerly provided at SWBT's former rates -- while the customer is receiving new (and possibly different) services from AT&T at different rates.

194. Although AT&T has been unable to determine every incident of continued billing, the evidence AT&T has developed suggests that such continued billing is extensive. Thus, AT&T compiled a random sample of customers' orders from August that its prior analysis showed had been posted at least 30 days late. AT&T forwarded those samples to SWBT and asked SWBT to determine when it had last billed the customer. As shown by SWBT's response (attached hereto as Attachment 31), in every instance SWBT continued to bill AT&T's customer after the customer's order had been installed -- and thus after AT&T had begun providing service to the customer.

195. Not only does the sampling demonstrate the extensive continued billing by SWBT, but it also shows the grave risk of double billing created by SWBT's delayed posting. That risk exists because, for hot cut orders, AT&T (like SWBT's retail operations), submits orders to its internal billing department as soon as orders are completed -- i.e., when SWBT completes (and AT&T accepts) the loop cutover. Thus, while SWBT continues to bill, AT&T may also begin sending bills to its customer. Indeed, it is only by pure happenstance that AT&T's and SWBT's customer billing

cycles will avoid overlapping and avert a double billing.¹²⁵ A number of CLECs have reported, however, that they have not been that fortunate and “are losing customers” as a result of double billing.¹²⁶

196. The confused billing -- and risk of double billing -- to which AT&T’s customers are subjected as a result of SWBT’s delayed posting has an obvious, adverse effect on AT&T. Although SWBT contends that the customers never lose money (because SWBT issues them a credit), the customers are nevertheless confronted with inaccurate bills which are confusing and needlessly burdensome. The annoyance these customers experience directly impacts their relationship with AT&T, who, as the new provider, is often blamed for the billing confusion, thereby damaging AT&T’s reputation as an efficient and reliable local service provider. In addition, billing complaints associated with changing service providers dissuades other potential customers against switching from SWBT.

197. Moreover, no solution to SWBT’s posting delays is in sight. While the delays could be caused either by orders not completing or distributing in SORD (thus causing the late SOCs) or by post-SORD errors causing the orders not to post in SWBT’s legacy billing systems -- or by a combination of both -- SWBT has

¹²⁵ Because AT&T’s internal billing systems receive new customers’ orders upon installation, the supposed benefits of SWBT’s OSS which Ms. Ham repeatedly touts -- *i.e.*, that SWBT’s OSS systems permit CLECs to check on pending order completion and posting status (*e.g.* Ham Aff. ¶¶ 47, 115, 122, 146) -- offer no solution to the posting delay problem AT&T is experiencing -- or to the impact of that delay on AT&T’s customers. Thus, the fact that SWBT’s OSS supposedly allows AT&T to check on order status offers AT&T no ability to prevent SWBT from continuing to bill AT&T’s customers. Moreover, the only way for AT&T to protect its customers from the risk of double billing posed by SWBT’s posting delays would be for AT&T to delay billing its own customers. Such a solution, however, would be as competitively harmful as the problems posed by SWBT’s posting delay.

¹²⁶ See CLEC Dec. 7 User Forum Minutes at 6 [Attachment 17].

claimed that the delays affecting AT&T's orders appear to be caused primarily by problems with LASR and SORD. During AT&T/SWBT account team meetings held in November, SWBT explained that the SOC delay was related to the fact that manual intervention in SORD is required for the system to complete hot cut orders. According to SWBT, its LSC personnel had failed to monitor pending orders in SORD and thus had not taken the steps necessary for the backlogged orders to complete.

198. More recently, in a December AT&T/SWBT remedial action plan review meeting, SWBT proffered an updated explanation (based on its further analysis) for the delays affecting most of the orders. SWBT now claimed that AT&T's orders had completed in SORD, but that a programming defect prevented the completed orders from being distributed by SORD through LASR to both AT&T and to SWBT's legacy systems.¹²⁷

199. Based on its most recent analysis of the SOC delay problem, SWBT has proposed various solutions. Among other things, SWBT has reported to me that its LSC personnel can manually intervene in SORD and force the system to distribute the completed orders. SWBT also represented that it will attempt to solve the programming defects in SORD that prevent the orders from distributing.

200. Of course, whether SWBT has correctly identified the cause for the posting delays (i.e., delayed SOCs as opposed to post-SORD errors), whether its proposed solutions will prove effective and when such solutions will be implemented are

¹²⁷ It appears that SWBT has offered these same explanations to other CLECs who have been experiencing posting delays. See Tidwell Aff. ¶ 18 [SWBT App. C at Tab 1916].

all questions which SWBT cannot presently answer. But, what is clear is that the problems are not yet fixed.¹²⁸

201. Indeed, the only evidence before the Commission is that SWBT's OSS systems do not – and until an appropriate solution is implemented and validated, its OSS systems will not – post orders to its legacy billing systems in a timely manner. Moreover, the evidence further shows that SWBT's posting delays are presently having a material, adverse impact on AT&T's (and other CLECs') customer relationships and thereby impeding their ability to compete.

* * * *

202. As the Commission has repeatedly recognized, non-discriminatory access to a BOC's OSS – including its order status notification and billing functions – is essential to provide CLECs with a meaningful opportunity to compete. Indeed, as the Commission has held, “without nondiscriminatory access to the BOC's OSS, a competing carrier ‘will be severely disadvantaged, if not precluded altogether, from fairly competing’ in the local exchange market.” Bell Atlantic ¶ 83.

203. As shown above, SWBT's own reported data – as well as the commercial experience of AT&T and other CLECs -- demonstrates that SWBT fails to uniformly provide jeopardy notices and is unable to provide CLECs with timely access to SWBT's billing functions. These defects in SWBT's OSS systems prevent AT&T from properly provisioning its customers' orders, adversely impact AT&T's relationship with its customers, damage its reputation in the market, dissuade potential customers from

¹²⁸ In fact, as of late December, SWBT reported to the CLEC User Forum that it was still “investigating” the problem of posting delays and the appropriate solution. See CLEC Dec. 21 User Forum Minutes at 4 [Attachment 18, hereto].

switching local service providers and impose material and wholly unnecessary costs upon AT&T. In short, SWBT's failure to provide non-discriminatory access to its OSS systems is currently impeding – and for the foreseeable future, will continue to impede – AT&T's and all CLECs' ability to compete.

V. SWBT'S REPORTED PERFORMANCE DATA IS UNRELIABLE AND DOES NOT DEMONSTRATE THAT SWBT IS PROVIDING NON-DISCRIMINATORY ACCESS TO UNE LOOP HOT CUTS

204. Despite the many flaws in SWBT's provisioning and processing of UNE Loop hot cut orders – as demonstrated by both AT&T/SWBT reconciled data and SWBT's reported performance measure data -- SWBT nevertheless attempts to demonstrate compliance with its Section 271 obligations by relying upon its reported performance measure data. SWBT makes essentially two claims with respect to this data.

205. First, SWBT contends that the accuracy and reliability of the methods it employs to collect and report performance data have been independently validated by testing conducted by Telcordia as reported in Telcordia's final report to the TPUC. (SWBT Brief at 16-17.) Second, SWBT contends that the performance data it has reported for the three month period of August through October demonstrates that it is complying with each of the Section 271 checklist items, including its obligation to provide non-discriminatory access to UNE Loop hot cuts. (Id. at 17-18.)

206. SWBT's claims, however, do not withstand scrutiny -- either generally or particularly with respect to UNE Loop hot cuts. In my accompanying joint declaration with C. Michael Pfau, I discuss in detail the reasons why SWBT's reported data does not support its present application. Among other things, we show that, contrary to SWBT's claim, even its self-reported performance data fails to demonstrate that SWBT is complying with its statutory obligations.

207. That general conclusion is equally applicable to SWBT's reported aggregate performance data for UNE Loops and hot cuts. Indeed, SWBT's reported data shows that it has failed to demonstrate "parity" performance on several important measures, failed to implement other measures and, for a sizable number of measures, been unable to report sufficient data to support any conclusions about its performance.¹²⁹

208. Taken together, this assortment of failed, inconclusive and unimplemented performance measures rebut SWBT's claim that its data supports its present application. Significant as these issues are, however, SWBT's performance measure data is permeated by even more substantial flaws that, as discussed below, foreclose SWBT's reliance on that data to support its present application:

- First, a joint reconciliation by AT&T and SWBT of SWBT's reported performance data for August and September on 3 critical hot cut measures – i.e., measures 58, 114 and 115 – revealed that SWBT's procedures for collecting and reporting performance data are riddled with systemic errors. Those procedural errors, which remained uncorrected through at least October, render SWBT's reported data -- for AT&T and all CLECs -- wholly unreliable;
- Second, SWBT's current set of performance measures omit measures which are essential to evaluate critical, customer affecting problems caused by SWBT's hot cut provisioning. The absence of such measures precludes any finding that SWBT is providing non-discriminatory access to UNE Loop hot cuts; and

¹²⁹ Attached hereto as Attachment 32 is a listing of the various failed, non-implemented and inconclusive performance measures relating to UNE Loops and hot cuts which SWBT has reported for August through October, as reflected in the aggregate performance data set forth in Attachment B to Mr. Dysart's Affidavit and, with respect to certain measures, as SWBT has

- Third, contrary to SWBT's claim, Telcordia's test of SWBT's performance measures failed to validate the integrity of SWBT's reported data. Indeed, the AT&T/SWBT reconciliation project presents objective evidence that SWBT's performance measures are not reliable.

Because SWBT has failed to show that its data is trustworthy and because, in any event, SWBT has failed to implement critical performance measures, SWBT may not rely upon its reported data to demonstrate compliance with its Section 271 obligations.

A. The AT&T/SWBT Joint Reconciliation of SWBT's Performance Data Proves That SWBT's Reported Performance Data Is Unreliable

209. Since shortly after AT&T began ordering UNE Loop hot cuts, AT&T became concerned that the SWBT caused provisioning errors affecting its customers orders were not being reported by SWBT even in the limited set of hot cut related performance measures that SWBT had adopted. Indeed, AT&T first noted the problem in July 1999 when SWBT published the results of AT&T's June hot cut orders and AT&T became increasingly alarmed as the omissions continued in SWBT's reported performance data over the next several months.

210. AT&T raised its concerns directly with SWBT in various account team meetings and, when SWBT proved unresponsive,¹³⁰ AT&T alerted the TPUC that

continued to report in its published performance data through December (see <https://clec.sbc.com>).

¹³⁰ For example, to investigate the apparent material discrepancy between SWBT's reported data and AT&T's commercial experience, AT&T, in August asked SWBT to provide the raw data underlying its reported performance results for several critical hot cut related measures, including measures 58, 114 and 115. In response, SWBT agreed to provide the raw data, but claimed that it would require at least a month to assemble and format the data. In fact, it took substantially longer for SWBT to provide the initial data run (indeed, SWBT first began to

SWBT's reported performance data appeared to be materially inaccurate.¹³¹ Notably, the TPUC initially attempted to reconcile the conflicting claims about SWBT's data integrity, but found that it could not complete that task due to the divergent raw data AT&T and SWBT provided.¹³² Thus, contrary to SWBT's claim (SWBT Brief at 16), the TPUC never "validated" SWBT's reported hot cut performance data -- nor any other reported SWBT performance data, as far as I am aware.¹³³

211. Unable to independently reconcile SWBT's reported hot cut performance data, the TPUC, at a meeting held on November 4, 1999, requested that AT&T and SWBT engage in a joint reconciliation of SWBT's August and September reported data for AT&T on a limited set of hot cut related measures -- specifically,

provide the raw data in late October) and even then, the data it provided was formatted in such a way as to impede AT&T's reconciliation efforts. SWBT's delay in providing usable raw data was among the reasons that compelled AT&T to seek relief from the TPUC.

¹³¹ See, e.g., AT&T Communications of the Southwest, Inc.'s Comments on Attachment J to Telcordia's Interim Report, dated Sept. 1, 1999, filed in TPUC Project No. 16251, at 9 ("The experience of AT&T and other CLECs with premature cutovers and other UNE loop cutover problems is increasingly at odds with SWBT's self-reported performance data.") [SWBT App. D at Tab 56].

¹³² See Statement of TPUC Staff Mr. Srinivasa, Nov. 2, 1999 TPUC Open Meeting Tr. at 112-13 [SWBT App. C at Tab 1968].

¹³³ In fact, the only detailed review by the TPUC Staff of SWBT's reported performance data of which I am aware consists of the TPUC Staff Evaluation [see SWBT App. C at Tab 1942]. As that document plainly shows, however, the TPUC did not purport to "validate" SWBT's performance data -- at least not in the sense of conducting a detailed examination of SWBT's raw data to determine if it was being accurately collected and reported consistent with the applicable business rules. To the contrary, the TPUC Staff's evaluation mostly assumed the accuracy of SWBT's reported data and proceeded to determine whether the scope of the existing performance measures captured significant issues currently affecting competition and whether reported "non-parity" performance by SWBT was impeding CLECs' ability to compete. In addition, while SWBT claims that the TPUC "validated" SWBT's August through October data (SWBT Brief at 16), the TPUC Staff Evaluation plainly shows that the Staff's review was limited to July through August data, with the Staff also analyzing "the September performance data for some of the key measures" where SWBT had previously failed to show "parity" performance. TPUC Staff Evaluation at 1 [SWBT App. C at Tab 1942].

measures 58 (missed installation due dates), 114 (premature CHC cuts) and 115 (delayed start of CHC cuts).¹³⁴

212. Pursuant to the TPUC's request, AT&T and SWBT proceeded to engage in a reconciliation of the specified measures, focusing specifically on SWBT's reported data for UNE Loop hot cuts for measures 114 and 115 and UNE Loops and UNE Loop hot cuts for measure 58.¹³⁵ As part of that reconciliation project, SWBT provided AT&T with the raw data supporting its reported results and the two companies exchanged provisioning logs for those orders where either company believed that SWBT had failed to satisfy the applicable performance measure. In addition, on November 17 and 18, I (and members of my staff) met with SWBT's account team to review the data and I held additional discussions with the SWBT account team thereafter to address outstanding issues. The results of the AT&T/SWBT reconciliation effort were summarized in a joint affidavit by myself and SWBT's account team representative, Rhonda Huser, which was filed with the TPUC (the "Joint Reconciliation Affidavit").¹³⁶

213. As discussed below, the information uncovered during the reconciliation effort demonstrates that SWBT's reported performance data for UNE loop hot cuts -- both for AT&T and all CLECs -- is wholly unreliable and more generally,

¹³⁴ See Nov. 4, 1999 TPUC Open Meeting Tr. at 110-26, 382-86 [Attachment 23, hereto]. The TPUC's request was subsequently set forth in a memorandum issued by the TPUC staff. See TPUC Staff Memorandum, dated Nov. 5, 1999 at item 2 [SWBT App. C at Tab 1957].

¹³⁵ Notably, measures 114 and 115 cover additional types of cuts, including LNP, INP and loops with INP and measure 58 covers numerous types of unbundled elements beyond loops and loops with LNP (i.e., hot cuts). See Business Rules for measures 58, 114 and 115 [Dysart Aff., Attach. A].

¹³⁶ The Joint Reconciliation Affidavit and its related attachments are attached hereto as Attachment 22.

raises grave doubts about the integrity of all SWBT's manually collected and reported data.

1. **The reconciliation project established that SWBT materially misstated its reported performance for AT&T.**

214. As discussed briefly above (see Section III.B.3.a.), the joint reconciliation project showed that SWBT's reported performance data had materially understated its poor provisioning performance for AT&T in August and September. After reviewing SWBT's raw data and the companies' respective provisioning logs, AT&T and SWBT agreed that the performance data SWBT had reported for measures 58, 114 and 115 in both August and September was inaccurate and had to be restated.¹³⁷

215. The Joint Reconciliation Affidavit summarizes the extensive nature of SWBT's restatement.¹³⁸ As discussed above, the joint reconciliation project showed that SWBT's reported data for measure 115 understated SWBT's poor performance by 560% in August and 2,800% in September. The restatement for measure 114 was, in a sense, even more dramatic since SWBT had previously reported XXXXX premature cuts in August, but now acknowledged having made XXXX premature cuts. Similarly, on measure 58, whereas SWBT had originally reported XXX missed due dates

¹³⁷ Notably, even before the mid-November reconciliation meeting, SWBT had uncovered (due perhaps to AT&T's requests for raw data) an erroneous double counting of hot cuts for measures 114 and 115 which served to inflate the total number of hot cuts performed (and thus potentially undercount the percentage of early and late cuts). Independent of the reconciliation project, SWBT corrected this reporting error by restating prior reported volume figures for July, August and September. See Southwestern Bell Telephone Company's Affidavit of Terry R. Hoeven, sworn to Dec. 14, 1999, filed in TPUC Project No. 16251 ("Hoeven Aff."), at 7 [SWBT App. C at Tab 2004]. Significantly, SWBT's restatement did not purport to examine or change the number of premature or delayed cuts previously reported under measures 114 and 115.

¹³⁸ See Joint Reconciliation Affidavit at 6-8 [Attachment 22].

for 5 db loops in September, the restated figures showed that XXXX of AT&T's total hot cut orders had been installed after the due date (which, on a geographically disaggregated basis, resulted in SWBT revising its reports to show XXX missed due dates for orders in the Dallas/Ft. Worth area).¹³⁹

216. While these changes are material by any standard, the extensive nature of the restatement is perhaps best illustrated by the fact that it caused SWBT to report discriminatory performance (or, in the case of measure 114, a material increase in the percentage of early cuts). Attachment 33 to my declaration contains the originally reported performance data for AT&T for measures 58, 62, 114 and 115 (reported as of October and published on November 20).¹⁴⁰ Attachments 34 and 35 include the performance data SWBT later published (in December and January 2000¹⁴¹) restating the

¹³⁹ Furthermore, although not discussed in the Joint Reconciliation Affidavit, the restatement of measure 58 also required SWBT to restate the previously reported figures for measure 62, which is directly related to measure 58 and addresses the average number of days that orders were delayed past their confirmed installation due date. For example, whereas SWBT had originally reported XXXXX delays under measure 62 for 5 db loops in Dallas/Ft. Worth for September, its restated figures showed XXXX delayed orders. Compare SWBT October reported performance data for AT&T, measure 62, Dallas/Ft. Worth (published by SWBT in November) [Attachment 33, hereto] with SWBT November reported performance data for AT&T, measure 62, Dallas/Ft. Worth (published by SWBT in December), attached hereto as Attachment 34.

¹⁴⁰ SWBT waits until 20 days following the end of a month to publish on its Website the performance data for that prior month.

¹⁴¹ SWBT's delay in publishing the restated performance data is simply one more example of its lack of control over the entire performance measure reporting process. Thus, at the conclusion of the reconciliation project in November, SWBT represented that it would publish the restated performance data in its next set of reports scheduled to be released in December. When SWBT published those reports (on December 20), however, it only restated the data for measures 58 and 62 -- not 114 and 115. See Attachment 34. Subsequently, on January 20, 2000 (SWBT's next scheduled performance measure publication date), SWBT published the restated figures for measures 114 and 115. See Attachment 35. Although SWBT claimed that its failure to timely publish the restated data was due to a clerical oversight, that oversight speaks volumes as to the reliability of its performance measure reporting.

performance measure figures based on the results of the reconciliation project. Some of the highlights are set forth below:

Measure 115 -- Houston
August 1999

| | No. of cutovers | % Del. | % Del. >30 Min. | Benchmark "Z-Value" | % Del. >60 Min. | Benchmark "Z-Value" | % Del. >120 Min. | Benchmark "Z-Value" |
|----------|-----------------|--------|-----------------|---------------------|-----------------|---------------------|------------------|---------------------|
| Original | XXX | XX | XXX | XXX | XXX | XXXX | XXXX | XXXX |
| Restated | XXX | XX | XXX | XXX | XXX | XXXX | XXXX | XXXX |

Measure 115 -- Houston
September 1999

| | No. of cutovers | % Del. | % Del. >30 Min. | Benchmark "Z-Value" | % Del. >60 Min. | Benchmark "Z-Value" | % Del. >120 Min. | Benchmark "Z-Value" |
|----------|-----------------|--------|-----------------|---------------------|-----------------|---------------------|------------------|---------------------|
| Original | XXX | XX | XXX | XXXX | XXX | XXXX | XXXX | XXXX |
| Restated | XXX | XX | XXX | XXXX | XXX | XXXX | XXXX | XXXX |

Measure 114 -- Dallas/Ft. Worth
August 1999

| | No. of Cutovers | % Premature Disconnects | Benchmark "Z Value" |
|----------|-----------------|-------------------------|---------------------|
| Original | XXX | XXXX | XXXXXX |
| Restated | XXX | XXXX | XXXXXX |

Measure 58 -- Dallas/Ft. Worth
September 1999

| | AT&T circuits | AT&T missed due dates | SWBT missed due dates | z-value |
|----------|---------------|-----------------------|-----------------------|---------|
| Original | XXX | XXXX | XXXXXX | XXXXXX |
| Restated | XXX | XXXXXX | XXXXXX | XXXXXX |

217. As is evident, the significance of the restated numbers virtually speak for themselves. The swing in the restated numbers alone -- for example, for measure 115 in September, from XX% delayed for 60 minutes to XXX% delayed and from a XXXXX Z value to a XXXXX Z value -- illustrates the significant errors affecting SWBT's data collection and reporting processes.

percentage of orders that experience unexpected service outages -- which the PPIG reconciliation project showed was extensive.

221. Finally, with respect to measure 58, the restated September figures

XXXXX XXXXX XXXXXXXX XXXXXXXXX XXXXXXXXXXXXX XXXXXXX XXXXX
XX XXXXXXXXXXX XXXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXXXXX XXX
XXXXXXXX XXXXXXX XXXXXXXXXXXXXXX XXXXXXXX XXXXXXXX XXXX
XXXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX XXXXX XXX
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XXXXX XXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX.

222. While the joint reconciliation project established (as AT&T had always contended) that SWBT was providing far worse performance than its reported data reflected, the significance of the reconciliation project's findings go far beyond SWBT's reported data for August and September -- and far beyond AT&T. As described below, the reconciliation project determined that SWBT's procedures for collecting and reporting performance data for measures 58, 114 and 115 (and by inference, most likely for at least all of SWBT's UNE-related measures) were materially flawed and thus SWBT's aggregate reported performance data for August through at least October -- the very data SWBT submits in support of its application -- is completely untrustworthy.

2. **The reconciliation project established that SWBT's procedures for collecting and reporting hot cut performance data are materially flawed.**

223. As SWBT acknowledged in the Joint Reconciliation Affidavit, the companies' review of SWBT's reported performance data included not only an analysis

of the reported figures, but also an evaluation of SWBT's procedures for collecting that data.¹⁴² That evaluation established that SWBT's procedures for collecting and reporting hot cut performance data are materially flawed.

224. To appreciate the defects in SWBT's procedures requires a brief overview of the procedures themselves.¹⁴³ SWBT relies almost exclusively on its LOC personnel to manually collect and report data for the examined hot cut measures. During a scheduled hot cut, the SWBT frame technician performing the cut reports to SWBT's LOC personnel on the status of the cut. The LOC staff, in turn, records the information received into provisioning logs (known as an "OSSLOG") which are maintained on a SWBT database known as the work force administration ("WFA") database. In addition, the LOC staff assigns a particular code to each order which is supposed to identify whether the due date for the hot cut was missed and, if so, why it was missed and whether the delay should be counted against SWBT.¹⁴⁴

225. The performance measure data is gathered from the information recorded in the provisioning logs. For measures 114 and 115, the provisioning logs are

¹⁴² See Joint Reconciliation Affidavit at 8 [Attachment 22, hereto].

¹⁴³ The basic procedures reviewed below were also documented by Telcordia in its final report and acknowledged by SWBT during a hearing before the TPUC. See Telcordia Technologies, Tests of Southwestern Bell Operations Support Systems (September 1999)(hereafter, the "Telcordia Report"), Attachment J at J-81 and J-112 [Ham Aff, Attach. A]; Statements of SWBT's Ms. Beavers, Ms. Conway and Mr. Dysart, Oct. 21, 1999 TPUC Open Meeting at 351-54 [Attachment 21].

¹⁴⁴ As the reconciliation project discovered, SWBT's LOC personnel have an assortment of codes from which they can choose in order to both categorize the results of a hot cut and determine whether the cut will be counted against SWBT in the reported performance measure. For example, code "A28" describes delays caused by a CLEC's request for extraordinary testing which are excluded from measure 58, "N25" describes delays attributable to SWBT and "Y88" describes missed due dates where the cause is unknown and thus the delay is not counted against SWBT.

manually reviewed to identify early cuts (measure 114) and delayed cut starts (measure 115), which are individually tallied on sheets of notebook paper and then provided to the SWBT performance data coordinator. For measure 58, missed due dates are identified from a computer search of the WFA, based on the particular codes which were input by the LOC personnel at the time the hot cut was performed.

226. As discussed below, the reconciliation project determined that these manual procedures suffered from a variety of flaws.

227. Defects affecting measures 114 and 115. With respect to measures 114 and 115, two fundamental defects were identified. First, despite the fact that both measures are time sensitive – i.e., measure 114 captures cuts begun prematurely and 115 captures delayed cut starts -- SWBT failed to ensure that its LOC personnel recorded the time of the hot cut start in the provisioning logs. Indeed, not only had SWBT failed to implement mechanized procedures to guarantee that the cut time was entered,¹⁴⁵ but it had failed to create procedures or train its personnel to record the start time. Accordingly, as Mr. Dysart concedes, “the LOC technicians input both the start and stop times on a random basis.” (Dysart Aff. ¶ 653.) Because the logs failed to contain relevant time points, SWBT was unable to identify whether a hot cut was prematurely begun or excessively delayed under the applicable performance measures.

228. The second principal defect affecting measures 114 and 115 concerned SWBT’s manual review of the provisioning logs to identify the premature and

¹⁴⁵ For example, SWBT had not programmed its WFA database to offer a field for its LOC staff to enter the authorized cut times and the times when the central office technician actually began the cut. Notably, as discussed below, SWBT has reported that, as a result of process improvements recommended by the joint reconciliation project, SWBT intends to have implemented and deployed such a mechanical data collection process by January 2000. See Hoeven Aff. at 4 [SWBT App. C at Tab 2004].

delayed cuts and tally them for reporting to the SWBT performance measure coordinator. Thus, the reconciliation project found that, even when the provisioning logs included the relevant cut start time, SWBT's manual review frequently missed untimely cuts and thus failed to record them on the tally sheet, thereby excluding them from the reported performance data.¹⁴⁶

229. Defects affecting measure 58. With respect to measure 58, the reconciliation project also discovered two basic flaws. First, AT&T learned that SWBT included within measure 58 only those hot cut orders which had posted to SWBT's legacy billing system during the relevant month – rather than those hot cuts which had been installed during the month. Accordingly, due to the substantial delay in SWBT's posting of hot cut orders (which is discussed above), the universe of hot cut orders reported for each month under measure 58 was substantially distorted. For example, orders which had been provisioned in June and July were reported in the August data and similarly, the September reported data included orders provisioned in prior months.¹⁴⁷

¹⁴⁶ Examples of both types of procedural defects can be found in the detailed reconciliation spreadsheets for measures 114 and 115 attached to the Joint Reconciliation Affidavit. The explanation for the errors appears under the spreadsheet column labeled "Result of Reconciliation". See, e.g., Attachment 5 (reconciliation of measure 114 for September) at 1 (order HOUY9900745, "Not reported as premature cutover in performance measurement reports due to data collection and training issue in LOC."); Attachment 4 (reconciliation of measure 115 for August) at 1 (order HOUY9900471 "Not reported as delayed cutover in performance measurement reports due to data collection and training issue in LOC."); Attachment 6 (reconciliation of measure 115 for September) at 1 (order DALY9900966 "Not reported as delayed cutover in performance measurement reports due to data collection and training issue in LOC.") [Attachment 22, hereto].

¹⁴⁷ Examples of these late posted orders can be found in the Joint Reconciliation Affidavit, Attachment 8 (August 5 db loop reconciliation) at 8 (order DALY9900231 installed in June), 17 (order DALY9900145 installed in June), 25 (order DALY9900303 installed in July) and Attachment 10 (September 5 db loop reconciliation) at 9 (order DALY9900529 installed in July), 10 (order DALY9900402 installed in July)[Attachment 22, hereto]. Notably, these attachments only reflect orders where provisioning issues were identified rather than the entire universe of orders included in the August and September reported data and thus the late posted

Because measure 58 is based on the percentage of orders with a missed due date, SWBT's failure to accurately capture the universe of orders installed each month creates a substantial risk of distorting its reported performance and allowing discriminatory provisioning to go undetected.

230. The second defect identified in SWBT's data collection for measure 58 concerned the misuse by LOC personnel of applicable provisioning codes used to identify whether a hot cut was installed late as a result of a SWBT provisioning error. Specifically, the reconciliation project determined that SWBT had failed to properly train and monitor its LOC staff with respect to the definition, significance and application of the various codes which they could apply to a hot cut order. Accordingly, the reconciliation project found that the LOC personnel often applied the wrong code to a hot cut order -- as thus failed to identify (and report in SWBT's published data) missed installation dates caused by a SWBT provisioning error.¹⁴⁸

3. The reconciliation project demonstrates that SWBT's reported performance data for all CLECs is unreliable.

231. As noted above, SWBT contends that the reconciliation project "confirmed the accuracy of SWBT's data" and that "existing data ... establish that SWBT consistently performs coordinated conversions of loops with number portability in

orders identified in the attachments are simply illustrative of the substantial delays caused by SWBT's OSS systems as discussed above. See Section IV.B.

¹⁴⁸ For example, two of the orders SWBT improperly failed to report as missed installation dates under measure 58 were clearly shown as SWBT caused provisioning errors on SWBT's own logs, as the PPIG task force subsequently discovered during its reconciliation project. Those particular orders -- C030707 and C127891 -- can be found both in Attachment 11 to my declaration and in the Joint Reconciliation Affidavit, Attachment 11 at 12, 13 [Attachment 22, hereto]. The numerous additional examples of misapplied codes can be found under the column labeled "Results of Reconciliation" on the detailed reconciliation spreadsheets created for the measure 58 orders. See Joint Reconciliation Affidavit, Attachments 8-11.

a timely manner and without disconnecting customers before the CLEC is ready to initiate service.” (SWBT Brief at 98-99.) The findings of the joint reconciliation project prove that these statements are false.

232. Indeed, contrary to SWBT’s claims, the joint reconciliation project’s findings lead to one non-debatable conclusion: that **all** of SWBT’s reported performance measure data relevant to the provisioning of UNE Loop hot cuts -- including not only measures 58, 62, 114 and 115, but also measures 55, 56, 60, 61 and 63 -- for **all** CLECS is wholly unreliable for the following reasons.

233. First, although AT&T and SWBT engaged in a reconciliation of SWBT’s reported August and September data for AT&T’s hot cut orders, no similar reconciliation was performed for hot cuts ordered by all other CLECs. Given the fundamental defects found in SWBT’s procedures for collecting and reporting performance data, it is only reasonable to conclude that SWBT’s August and September reported data for all other CLECs is as materially misstated as was AT&T’s reported performance data.

234. Indeed, Mr. Dysart effectively admits that very point. As discussed above (see Section III.B.3.a.), Mr. Dysart concedes in his affidavit that the “random” log procedures employed by SWBT’s LOC technicians resulted in their recording start and stop times on only 29%, 6% and 19% of all hot cut orders in August, September and October, respectively. (Dysart Aff. ¶ 653.) Given the absence of relevant time points on the vast majority of CLECs’ hot cuts, which even Ms. Conway concedes

are “critical” to the hot cut measures (Conway Aff. ¶ 84), it is evident that SWBT’s reported data for all CLECs cannot possibly have any integrity.¹⁴⁹

235. Second, although AT&T and SWBT did not address SWBT’s October reported performance data, the defects in SWBT’s procedures for collecting and reporting performance data found by the joint reconciliation project (and conceded by Mr. Dysart) continued to plague SWBT’s data reporting throughout at least November (and possibly through today). Accordingly, SWBT’s reported hot cut performance data for October (and, at a minimum, November as well) -- for AT&T and all CLECs -- is unreliable.

236. Notably, Ms. Conway seeks to cast doubt on that conclusion by claiming that SWBT, “in direct response” to Telcordia’s Report, instituted “several improvements in its CHC procedures,” including log procedures to record the time when a CLEC calls to authorize the hot cut and the time when the cut actually commences. (Conway Aff. ¶ 84.) The evidence in the record, however, belies Ms. Conway’s assertion.

237. For example, Mr. Dysart admits that the “random” log procedures employed by SWBT’s LOC technicians continued throughout the August through October “timeframe.” (Dysart ¶ 653.) Moreover, the evidence is clear that Telcordia did not uncover the fundamental defects affecting SWBT’s collection and reporting of performance data identified by the joint reconciliation project (as discussed in more detail below in Section V.C.). Indeed, Telcordia could not have vouched for the accuracy of

¹⁴⁹ As discussed above in Section III.B.3.a., the flaws in SWBT’s aggregate reported data undermines SWBT’s claim that it provided “parity” performance despite the reconciled AT&T

SWBT's performance measure reporting had it discovered the woefully inadequate log procedures Mr. Dysart concedes existed and the potential for material error those procedures created.

238. It is also clear that SWBT did not take any affirmative steps to address the procedural defects found by the joint reconciliation project -- including implementation of the log procedures Ms. Conway describes -- until at least mid-November. Thus, based on the findings of the reconciliation project, SWBT agreed (in late November) to implement various improvements in the collection and reporting of its performance data to address the flaws in its procedures which contributed to its inaccurate reports. These procedural improvements included, among others, the following:¹⁵⁰

- "SWBT will enhance raw data for Measures 114 and 115 going-forward to include cutover start and stop times";
- "SWBT will enhance raw data for Measures 114 and 115 going-forward to add column indicating whether cutover was premature/delayed and another column indicating if/why excluded";
- "SWBT and AT&T will stress importance of correctly and comprehensively logging information in provisioning logs"; and
- "SWBT and AT&T will document and implement joint agreements on use of Missed Function Codes (MFCs)".

239. The mere identification of process improvements steps, of course, did not render SWBT's reported data either accurate or reliable, but was simply the first step towards that goal. Indeed, as SWBT has acknowledged, most of the steps it planned

data -- because SWBT's argument improperly assumes that the aggregate reported data is 100% accurate.

¹⁵⁰ The list of process improvements is appended to the Joint Reconciliation Affidavit as Attachment 13 [Attachment 22, hereto].

to take in response to the identified list of improvements would not be implemented until either December or January 2000.¹⁵¹ Moreover, although SWBT claimed to have increased its LOC staff training pending implementation of its proposed permanent solutions,¹⁵² the efficacy of these “quick fixes” has never been independently validated and thus cannot be relied upon.

240. Most importantly, as shown both by SWBT’s own improvement implementation schedule and the fact that the identified improvements were not developed until late November, none of the procedural improvements had been effected by SWBT at the time it collected and reported its hot cut performance data for October -- or even November. As a result, the very procedural flaws that corrupted SWBT’s reported August and September performance data have materially distorted SWBT’s reported performance data for October (and, for that matter, will continue to distort SWBT’s reported data until its promised process improvements are fully implemented and validated).¹⁵³

¹⁵¹ For example, SWBT’s Mr. Hoeven submitted an affidavit to the TPUC reporting that SWBT planned to improve its data collection process for measure 115 by developing a computer database into which LOC personnel would be required to input relevant hot cut start and stop times. Mr. Hoeven reported, however, that the database procedures were still being tested as of December and not expected to be functional until January 2000. Similarly, Mr. Hoeven reported that, to improve performance reporting on measure 114, SWBT would be instituting an “internal website database”, but that the website would not be operational until “the end of December 1999.” Finally, to improve the accuracy of SWBT’s reporting for measure 58, Mr. Hoeven stated that SWBT had adopted certain new function codes for the LOC personnel to employ, but that the LOC personnel were still being trained on the new codes in December and additional codes would not even be adopted until January 2000. See Hoeven Aff. at 3-4 (item 2), 6 (item 9) and 7 [SWBT App. C at Tab 2004].

¹⁵² Id. at 5 (item 3)(LOC personnel given a “checklist and manual tally sheet” that “reinforces the necessity to log certain information on the OSSLOG Notes screen”).

¹⁵³ Indeed, obvious errors continue to plague SWBT’s reported performance data. For example, in November, SWBT reported under both measures 114 and 115 that no hot cuts had been performed for AT&T in the Houston area -- whereas the truth is that XXXXXXXXX loops

241. Third, the procedural defects rendering SWBT's reported data under measures 58 and 62 unreliable also serve to corrupt SWBT's reported performance data for **all** CLECS on **all** of SWBT's other hot cut related provisioning measures. Thus, as even Telcordia recognized in its report, the data collection and reporting procedures SWBT employs for measures 58 and 62 —i.e., manual entry by LOC personnel of various provisioning codes — are used for reporting the results of all its other hot cut provisioning measures, including measures 55, 56, 60, 61 and 63.¹⁵⁴

242. In light of the findings of the reconciliation project that SWBT had failed to train (and monitor) its LOC personnel on the definition, significance and application of the various provisioning codes, it is reasonable to conclude that the numerous errors identified by the reconciliation project in the LOC personnel's application of those codes for measure 58 also occurred in the LOC personnel's reporting of performance data for all the other hot cut provisioning measures. Accordingly, the conclusion is inescapable that all of SWBT's reported data for its various hot cut provisioning measures is wholly unreliable.

had been cutover that month. See SWBT November reported performance data for AT&T, measures 114 and 115 for Houston, attached hereto as Attachment 35.

As a result of the continuing flaws in SWBT's performance measure reporting, SWBT's claims to have improved its hot cut processes are not credible. Thus, while Ms. Conway proudly notes that SWBT's reported performance data under measure 115 improved markedly between *September and October (with the number of reported delayed cut starts dropping from 34 to 4)*, see Conway Aff. ¶ 94, the more reasonable explanation for the sudden improvement is that the August and September figures included the restated AT&T results, while SWBT's October data does not (because no reconciliation has been performed). Moreover, it is impossible to conduct any trend analysis using SWBT's aggregate reported performance data given the inherent unreliability of the information.

¹⁵⁴ See Telcordia Report, Attachment J at J-81 [Ham Aff, Attach. A].

243. In fact, as discussed more fully in my accompanying joint declaration with C. Michael Pfau, the AT&T/SWBT reconciliation project's findings with respect to SWBT's defective manual collection procedures not only precludes reliance on SWBT's reported hot cut performance measure data, but, at the very least, casts strong doubt on the accuracy of **all** SWBT's reported performance measure data that depends, in the first instance, on SWBT's manual collection and evaluation of raw performance data.

B. SWBT Has Failed To Implement Critical Performance Measures To Detect Discriminatory Conduct

244. As the Commission has held, a BOC's implementation of appropriate performance measures "are a necessary prerequisite to demonstrating compliance with the Commission's "nondiscrimination" and "meaningful opportunity to compete standards."'" Ameritech ¶ 204. Moreover, the Commission has warned that a BOC may not rely upon proffered performance measures to support its Section 271 application unless they "actually measure performance in a manner that shows whether the access provided to OSS functions is nondiscriminatory. Otherwise, discriminatory conduct may be masked or go undiscovered." Id. ¶ 211.

245. SWBT's current set of performance measures reflect these types of problems. Thus, apart from SWBT's failure to offer reliable data on the performance measures it has adopted, SWBT's pending application should be denied because SWBT has failed to implement performance measures addressing – and thus failed to report data on -- critical, customer affecting issues relevant to the provisioning of UNE Loop hot cuts.

246. As discussed above, AT&T's commercial experience shows that its hot cut orders (and those of other CLECs) have been plagued by SWBT caused ordering and provisioning errors. Despite the substantial impact that these SWBT caused errors have had on AT&T's ability to maintain and attract customers, none of these errors is specifically (or, in the case of SWBT's proposed measure 114.1, appropriately) captured by SWBT's current set of hot cut-related performance measures.

247. To the contrary, SWBT's current measures effectively hide SWBT's poor performance. The majority of SWBT's implemented measures which track hot cut provisioning -- e.g., measures 55, 56, 58, 60, 61, 62 and 63 -- all address whether the hot cut was properly completed by the confirmed due date.¹⁵⁵ These measures, therefore, completely ignore SWBT caused customer outages or prolonged cutover intervals so long as the hot cut is ultimately completed on the due date. For example, if a hot cut is scheduled to commence at 9 a.m. but is not completed until 5 p.m. -- e.g., because a SWBT provisioning error causes a loss of service or because SWBT fails to notify AT&T that the cut has been completed (which prevents the customer from receiving calls) -- SWBT will nevertheless count the hot cut as successfully completed under its measures, even though AT&T's customer has been out of service for 8 hours.¹⁵⁶

248. Moreover, although SWBT's two remaining TPUC approved hot cut provisioning measures do not hide the SWBT provisioning errors identified above,

¹⁵⁵ The business rules defining each of these performance measures can be found in Attachment A to Mr. Dysart's Affidavit.

¹⁵⁶ As SWBT's Mr. Dysart acknowledged before the TPUC, "one clarification with [measure] 58, that technically doesn't measure the time out of service. That's whether or not Southwestern Bell met the due date." Nov. 4, 1999 TPUC Open Meeting Tr. at 119 [Attachment 23].

they also do not capture such poor performance, because those two measures only address whether the hot cut began on time. Thus, neither measure 114 (early cuts) nor measure 115 (delayed cut starts) capture the amount of time SWBT requires to complete the loop cutover or whether defects in the loop cut caused a customer to unexpectedly lose service.

249. In addition, because both these measures apply only to CHC hot cuts, SWBT fails entirely to measure early or delayed cuts on FDT hot cut orders.¹⁵⁷ Indeed, as discussed above (see Section III.A.), SWBT concedes that it has failed to adopt any performance measures addressing the loop cutover portion of an FDT order -- the only type of order that SWBT says will support commercial volumes.

250. Furthermore, with respect to SWBT's proposed measure 114.1 for loop cutover intervals on CHC orders, that measure is wholly inadequate. As discussed in detail above (See Section III.B.3.b.), SWBT's proposed measure inappropriately defines the cutover as ending when the frame technician informs the LOC that the cutover has been completed -- rather than when the LOC notifies the CLEC of the completed cut -- and inappropriately given SWBT an extended 2 hour grace period for completing the cutover.

251. Finally, SWBT has failed to adopt any performance measures addressing its issuance of jeopardy notices.

252. Indeed, in order to demonstrate that it is providing non-discriminatory access to UNE Loop hot cuts, it is my opinion that SWBT should

¹⁵⁷ See, e.g., Southwestern Bell Telephone Company's Affidavit of William R. Dysart, sworn to Dec. 14, 1999, filed in TPUC Project No. 16251, at 6 (noting that SWBT will "agree to

implement, validate and report compliant data -- using either a parity standard or an appropriately set benchmark -- under the following measures:

- percent of CHC hot cuts completed within one hour measured from the authorized cut start to the LOC's call to the CLEC;
- percent of SWBT caused customer outages on CHC hot cuts occurring after the LOC's notification of the completed cutover and the average time to restore service to such customers;
- percent of early cuts and cuts not successfully completed within 30 minutes on FDT hot cuts; and
- percent of timely issued jeopardy notices.

253. The importance of requiring SWBT to implement and report data under these (or comparable) measures is illustrated by the fact that SWBT's current measures fail to directly capture (and indeed, ignore) all of the substantial, customer affecting SWBT provisioning errors identified above that AT&T and other CLECs have experienced.

254. While SWBT has promised to "agree to discuss" new performance measures for FDT orders during the TPUC's 6 month review¹⁵⁸ -- and the TPUC has generally stated that new measures (such as services outages on CHC hot cuts) can be raised during its 6 month review¹⁵⁹ -- there is no assurance that any new measures will be adopted and, if adopted, will be appropriately tailored to identifying and reporting

discuss" adding FDT orders to measures 114 and 115 during the TPUC's 6 month review of performance measures in April 2000)[Dysart Aff., Attach. W].

¹⁵⁸ See Southwestern Bell Telephone Company's Affidavit of William R. Dysart, sworn to Dec. 14, 1999, filed in TPUC Project No. 16251, at 6 [Dysart Aff., Attach. W].

¹⁵⁹ See Sept. 23, 1999 TPUC Staff Memorandum commenting on SWBT's proposed Business Rules Version 1.6 and CLECs responses, filed in TPUC Project No. 16251, Matrix at 66 [SWBT App. C at Tab 1808].