

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Application of SBC Communications Inc.,)
Southwestern Bell Telephone Company,)
And Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell Long)
Distance for Provision of In-Region)
InterLATA Services in Texas)

CC Docket No. 00-65

**SUPPLEMENTAL JOINT DECLARATION
OF SARAH DeYOUNG AND MARK VAN DE WATER**

INTRODUCTION AND SUMMARY

1. My name is Sarah DeYoung. I am Division Manager – Local Services for AT&T's Southwestern/Pacific Region Local Services and Access Management Organization, responsible for the business relationship with SBC Communications Inc. ("SBC"), including Southwestern Bell ("SWBT"), as it relates to supporting AT&T's plans for entering the local telephone service market.

2. In connection with SBC's 271 application for Texas, I previously submitted to the Commission a Declaration on UNE-Loop hot cut processes that was filed by AT&T on January 31, 2000, and a Reply Declaration that was filed by AT&T on February 22, 2000. I also attested to the accuracy of the facts in AT&T's March 6, 2000 Ex Parte on UNE-Loop issues, and personally reviewed and assisted in the preparation of AT&T's hot cut ex partes of March 13 and March 30, 2000. My full qualifications are set forth at length in my initial declaration.

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3. I continue to have responsibility for managing AT&T's UNE-Loop provisioning efforts, including developing provisioning process flows; negotiating operational agreements; conducting "root cause" analyses of recurring operational problems hindering AT&T's ability to obtain access to UNE-Loop hot cuts; identifying performance improvement plans; and personally participating in the reconciliation of performance measure data.

4. Since filing my Reply Declaration, I have reviewed the available evidence concerning AT&T and SWBT's ordering and provisioning of hot cut loops for the period of December 1999 to February 2000. I have personally participated in reconciling AT&T and SWBT data in face-to-face meetings between AT&T and SWBT personnel during the week of April 10, 2000, and in numerous telephone conversations with SWBT personnel, and, with Rhonda Huser and other SWBT personnel, participated in proceedings before the TPUC to discuss results of the data reconciliation.

5. My name is Mark Van de Water. I am employed with AT&T as Manager—Business Products, OSS Negotiations for AT&T's Southwestern/Pacific Region Local Services and Access Management Organization. In that position, I have responsibility for negotiating and implementing OSS requirements and interfaces and for resolving operational issues for AT&T Local Services. In particular, I have been actively involved with SWBT's personnel since August 1999 in reconciling AT&T's and SWBT's hot cut related data. I am a member of the UNE-L subgroup of the Provisioning Process and Improvements Group ("PPIG"), the task force of AT&T and SWBT representatives that was formed in 1999 to address operational issues affecting AT&T's UNE-P and UNE-L market entries. Since its formation, the UNE-L subgroup has met regularly to address hot cut provisioning issues and reconcile outage data. As a member of the PPIG, I participated in preparing the reconciled data that was submitted to the TPUC and

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was included as Attachment 8 to the initial DeYoung UNE-Loop Declaration. Since then, I have continued regularly to monitor data and developments concerning SWBT's provisioning of AT&T's orders for hot cut loops. I have participated in weekly conference calls with SWBT personnel to discuss hot cut provisioning issues, and I have continued to reconcile hot cut outage data with SWBT. During the month of April, 2000, I worked with SWBT personnel, both in face to face meetings during the week of April 10, 2000, and in numerous telephone conferences, to reconcile AT&T's and SWBT's December-February data concerning hot cut outages.

6. In the prior two declarations of Sarah DeYoung and the three AT&T ex partes addressing hot cut provisioning that AT&T submitted in connection with SWBT's first application, the facts concerning the two processes SWBT makes available for provisioning hot cuts (FDT and CHC) have been set forth at length. Those filings also document SWBT's failure to meet the minimally acceptable criteria the Commission has set forth in the Bell Atlantic-New York Order,¹ and explain that this failure reflects fundamental problems with SWBT's provisioning processes, its data collection, and its data reporting.

7. Although all of this background material is relevant to the matters addressed in this declaration, we will not burden the Commission by repeating it herein. Instead, in this supplemental declaration we will build on this prior record and address whether SWBT has put into the record any evidence that it has remedied problems previously identified and is now provisioning nondiscriminatory access to unbundled loops. In particular, we will consider the recently completed results of the AT&T and SWBT joint reconciliation efforts, as well as the evidence and arguments put forth in the Supplemental Joint Affidavit of Candy R. Conway and

¹ In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-285 (rel. Dec. 22, 1999)(hereafter "BANY").

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William R. Dysart. As set forth in detail below, SWBT's hot cut provisioning still does not allow AT&T and other CLEC's a meaningful opportunity to compete in the market for small to medium size business customers.

8. In Part I, we assess SWBT's performance in terms of the Commission's minimally acceptable criteria as developed in BANY, and review the outage data jointly agreed-to by SWBT and AT&T showing just how egregiously SWBT fails to meet the criteria established by the Commission. Although Conway and Dysart purported to look at these same criteria, they submitted their affidavit prior to the completion of the AT&T/SWBT reconciliation process. Reconciliation is crucial, however, because the final April reconciliation dramatically shows, just as did the reconciliation last fall, that SWBT's unreconciled data is not reliable. We also show that the descriptions of data are misleading in the Conway/Dysart Supplemental Affidavit, perhaps because neither Conway nor Dysart has personally participated in reconciliations, and thus neither has personal knowledge of the reconciliation process.

9. Part II then reviews SWBT's failure to establish the properly defined Performance Measures and accurate, mechanical data gathering processes needed to demonstrate nondiscriminatory provisioning of UNE loop hot cuts. We note there that the need to engage in laborious, resource- and time-intensive manual data reconciliations with SWBT is a direct result of both SWBT's continuing inability to collect or report its data accurately and reliably, and of the gaps inherent in SWBT's performance measures that leave unaddressed certain critical aspects of SWBT's performance. We explain that the need to engage such data reconciliations in order to obtain accurate performance reports in itself denies AT&T a meaningful opportunity to compete, because such comprehensive data reconciliation is not feasible for meaningfully competitive volumes of orders. We also discuss the problems with the revised performance

measures SWBT has recently proposed, as well as the issue of whether hot cut outages and on-time performance should be measured in terms of orders or individual loops. Finally, we note the importance of setting any standards for measuring provisioning performance in a way that compels BOCs to achieve the highest level of proficiency technically and commercially feasible, so that CLECs truly have a meaningful opportunity to compete.

I. SWBT'S SUPPLEMENTAL FILING FAILS TO SHOW THAT IT CAN PROVISION UNE LOOP HOT CUTS CONSISTENT WITH ITS SECTION 271 OBLIGATIONS

10. Section 271 requires that SWBT prove that they are providing AT&T and other CLECs with nondiscriminatory access to unbundled loops. See Section 271 (c)(2)(B)(ii) and (iv) and Section 251(c)(3). Under these checklist items, SWBT must show, inter alia, that it is provisioning stand-alone unbundled loops through the hot cut process on a nondiscriminatory basis. This is important because, as AT&T has previously set forth, hot cut loops are essential to the ability of AT&T and other CLECs to compete for small to medium size business customers. See Declaration of Clifford Holtz. In order to give AT&T a meaningful opportunity to compete for these customers, SWBT needs to provide AT&T with the best level of hot cut provisioning performance that it is technically and commercially feasible for SWBT to achieve.

11. That is the level of performance that AT&T expects of its own personnel. With respect to hot cut provisioning, in particular, AT&T expects its service representatives and technical personnel to strive for a performance target of zero percent defects, and performance evaluation and compensation are based on their ability to meet that target. This reflects the *overwhelming competitive significance of avoiding, if at all possible, even a single unexpected service outage for customers*, and the equally important objective of preserving AT&T's reputation and the value of its brand as synonymous with the highest quality of telephone service.

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12. AT&T also expects its suppliers that compete for our business in a competitive market to strive for a performance target of zero percent defects. We are convinced that it is technically and commercially possible for SWBT to achieve a higher level of performance than it has currently demonstrated, and even a higher level than that the Commission has said is minimally acceptable. For example, we believe SWBT should aspire, as we do, to do everything possible not to put a single one of our customers out of service and, as discussed further below, should be expected to achieve a much higher level of performance than that accepted by the Commission.

13. Nevertheless, we are also aware that the Commission in its BANY Order has identified levels of performance it has deemed minimally acceptable: (1) orders cutover on-time 90 percent of the time or more; (2) BOC-caused service outages on 5 percent or less of orders; and (3) fewer than 2 percent of loops requiring trouble reports within 7 days. See BANY, ¶309. The Commission made it clear, moreover, that minimally acceptable performance of hot cut provisioning required a BOC show compliance on *each* of these standards. As the Commission put it: “We would . . . have serious concerns if the level of performance in any one of these three measures were to decline and would be prepared, in that event, to take whatever enforcement action is warranted.” Id.

14. In the balance of this section we will discuss evidence pertaining to each of these three measures and whether SWBT is in compliance with each of these. As we show, SWBT has failed to demonstrate that it has met even one of these standards, let alone all three.

A. SWBT Still Fails To Meet The Commission’s Minimally Acceptable Criteria Established in Bell Atlantic New York

15. Though all measures of performance are important, none is of more significance to competition than the measure of unexpected service outages. Although a brief interruption of

service is inevitable, an unexpected loss of service during a change of carrier is a matter of great concern to customers and a competitively significant problem for the CLEC. See BANY, ¶309.

16. Despite the competitive importance of monitoring and minimizing the number of service outages, SWBT still does not comprehensively monitor its outage performance. As we have previously discussed, from SWBT's unilateral performance reports alone, it is impossible for any observer to determine the rate at which SWBT is causing service outages. None of its Performance Measures captures defective cuts, and its self-reported data on those measures intended to capture premature or prolonged cutovers have been consistently unreliable. See DeYoung UNE-Loop Decl., ¶208 et seq. ("UNE-Loop Decl."); DeYoung Reply Decl., ¶56 et seq. ("Reply Decl."); AT&T 3/6 Hot Cut Ex Parte; pp.2-3.

17. For that reason, and in order to provide both the TPUC and the Commission with accurate data on the number of orders on which SWBT caused a service outage, AT&T and SWBT formed the PPIG in 1999 to reconcile AT&T's and SWBT's data with respect to SWBT's outages for AT&T's hot cut orders. Most recently, the AT&T and SWBT representatives met both in person and in telephone conference from April 10 through April 20, 2000, to compare and reconcile our mutual data to determine what the outage rates have been for December-February. The reconciliation process for the December-February orders,² though referred to by Conway and Dysart in their affidavit, was largely conducted after they had filed their affidavit.

² December FDT outages had been previously reconciled, but problems with the raw data for December, which did not fully come to light until the parties reconciled the CHC outages for that month, caused the parties to revisit the December FDT data. Specifically, the raw data that SWBT initially presented to AT&T included contact information for other carriers – Allegiance and Alltel. Although SWBT initially determined that these orders were inappropriately included in the raw data for AT&T, it later came to light that the orders, were in fact AT&T orders, but the raw data merely reflected the wrong carrier's name. This flaw in the data—one of the many that have been uncovered as a result of the reconciliation efforts—caused the parties to undertake another review of the December FDT orders.

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18. In the same time frames that the PPIG outage data was reconciled, pursuant to TPUC request, AT&T and SWBT also reconciled December – February performance data, for performance measures 114 and 114.1.³ TPUC Project 20400, Order No. 4. A similar effort was undertaken pursuant to a TPUC staff request in November regarding August and September data. See UNE-Loop Decl., ¶209 et seq.

19. The reconciliation process produced two affidavits, each jointly attested to by both SWBT and AT&T representatives, that set forth the final and agreed-to performance results for SWBT's handling of AT&T's orders during the months of December, January, and February. Specifically, AT&T and SWBT submitted to the TPUC two joint affidavits of Sarah DeYoung and Rhonda Huser conveying reconciled data for PMs 114 and 114.1, and a joint affidavit of Mark Van de Water and Robert Royer conveying PPIG reconciled data on the number of AT&T orders on which SWBT caused an unexpected loss of service. These are attached to this Supplementary Declaration as Attachments A, B, and C. Because this reconciled hot cut provisioning data has been subjected to careful review and has been verified as accurate both by AT&T and by SWBT, and because the reconciliation process has shown significant errors in SWBT's own self-reported data, we believe that the reconciled data should be the principal focus of any assessment of SWBT's hot cut provisioning performance.

1. Outages

a. SWBT/AT&T Jointly Reconciled Data on AT&T Orders

20. The reconciled outage data—which shows an order outage rate of 16.7 percent for December through February—indicates just how far SWBT falls far short of compliance with the minimally acceptable standard set in BANY. As noted above, the Commission there required

³ Performance Measure 115 was not reconciled because both AT&T and SWBT had determined that the measure, in its current form, had limited usefulness.

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that fewer than five percent of orders experience an unexpected loss of service over 3 months.⁴

BANY, ¶309. SWBT has not satisfied this requirement, as can be seen from the reconciled outage data summarized in the following table:

AT&T ORDERS WITH OUTAGES—Joint SWBT/AT&T PPIG Reconciled Data⁵

	December	January	February	3 Month Average
CHC	3.8%	0.0%	27.0%	11.1%
FDT	20.0%	16.9%	25.5%	20.8%
Combined	8.2%	16.4%	26.0%	16.7%
BANY ¶309 STANDARD: fewer than 5% orders with service outage reported over 3 months				

21. The reconciled data on SWBT-caused outages⁶ demonstrate conclusively, from any perspective, that SWBT is still causing service outages on many more orders than this

⁴ From the perspective of the business customer, “loss of service” necessarily includes the loss of incoming service experienced when the customer’s number has been ported but the loop has not yet been cutover. See UNE-Loop Decl., ¶¶26-27, 40(b). For example, a pizza parlor that loses incoming service is essentially out of business for the duration of that loss of service, and would certainly hold the CLEC responsible for such an outage, making it appropriate for the CLEC to be able to hold the ILEC accountable for an outage as well. Notably, throughout the PPIG’s last seven months of work on reconciliation, SWBT has consistently agreed with AT&T that the loss of inbound service should be considered a service outage.

⁵ The data for December through February continue the trend shown by the PPIG for prior months.

ORDERS WITH SERVICE OUTAGES—Joint SWBT/AT&T PPIG Reconciled Data

	August	September	October
CHC	5.1%	11.4%	9.3%
BANY ¶309 STANDARD: fewer than 5% service outages			

See UNE-Loop Decl., ¶87. Although not reconciled by PPIG, SWBT has never denied the fact that the FDT orders in August experienced a 53% outage rate, and AT&T reconciled data for November show an FDT outage rate of 7.7%. No FDT orders were sent by AT&T in September and October.

⁶ “Outage” was specified in the PPIG process to include, for CHC, all unexpected service outages resulting from defective cuts or premature cuts, and for FDT, all unexpected service outages resulting from defective, premature or prolonged cuts exceeding 30 minutes for FDT. Moreover, any CHC outages that lasted less than 1 hour were not counted against SWBT for purposes of determining the number of outages attributable to a prolonged duration. These times are already generous and represent a competitive hardship, given that they allow SWBT to leave a business customer without phone service for 30 minutes on an FDT cut or an hour if that customer wants to switch to service by a CLEC and the cut is

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Commission deemed minimally acceptable in the BANY Order. That is true whether the process used is FDT or CHC, whether the time period is late last year or early this year, and whether outages due to a certain allegedly one-time software problem are included or excluded from the calculations.⁷

22. SWBT's best performance came on CHC orders. However, even though, in December, it met the BANY standard with 3.8 percent, it could not sustain that performance. While the figures show "0.0" outages in January, AT&T submitted only XX CHC orders that month. In February, when AT&T resumed sending CHC orders, SWBT's performance plummeted dramatically. SWBT caused outages on 27 percent of AT&T's February CHC orders – that is, fully 1 out of every 4 orders. Moreover, even accepting SWBT's claim that outages due to what it contends was a one-time only software problem in its RCMAC legacy system should be excluded,⁸ SWBT still caused outages on 11.1 percent of AT&T's orders, or fully 1

not properly coordinated. Further, as the Commission has observed, a properly executed hot cut "will last no more than five minutes", BANY, ¶295 n.925, and Ms. Conway has conceded that, when pre-installation test procedures are properly performed, the hot cut itself should take a "2-second interval" and be "transparent to the customer." Conway Aff., ¶87.

⁷ It is also true whether the FDT provisioning interval is defined as 30 minutes or 1 hour. By mutual agreement, the PPIG treats all FDT orders that are not completed within the prescribed interval of 30 minutes as outages. Over the past three months, however, nearly all prolonged FDT cutovers lasted more than 60 minutes. Specifically, the data show that of the XXFDT outages, XX outages were due to prolonged FDT cutovers, and of those only XX lasted an hour or less. Thus, the number of outages due to prolonged FDT cutovers in recent months would not have changed significantly if the PPIG had used a 60 minute interval rather than a 30 minute interval.

⁸ If the RCMAC problem were removed from the calculations, SWBT would still have failed to meet the outage standard set in BANY. The RCMAC problem is the same as the SOAC problem referenced in the Conway/Dysart Supplemental Affidavit, ¶¶10-11. It involved a defect in a software upgrade to the Service Order Analysis and Control (SOAC) which caused a loss of service when customers' lines were disconnected prior to the scheduled due date. Excluding the RCMAC-related outages, SWBT still caused outages on 12.4 percent of orders in February—11.1 percent for CHC and 13.2 percent for FDT. SWBT's case is no stronger if the outage rate is based on loops rather than orders; the loop outage rate for the period was 15.3 percent—6.9 percent for December, 19.0 percent for January, and 20.6 percent for February. AT&T believes a loop-based measure is inferior to an order-based measure for reasons discussed below, and notes that if a loop-based metric is used on an interim basis, the order-based standard of fewer than 5 percent outages must be appropriately adjusted. Nevertheless, by any reasonable

out of every 10 orders. Such performance does not begin to comply with the Commission's fewer than 5 percent minimum standard.

23. SWBT's performance with respect to FDT cutovers was far worse. This is particularly ominous because, as the DOJ has noted, SWBT "has encouraged, if not required, CLECs to switch from CHC to FDT for smaller volume loops cuts," i.e. less than 20 loops, because SWBT believes "CHC is too resource-intensive to support commercial levels of demand for those lower loop volume orders." DOJ Eval. at 28.⁹ Although SWBT continues to tout its FDT process as the proper process for commercial competition,¹⁰ the reconciled data show consistently dreadful performance; SWBT caused outages on 20 percent of AT&T's orders in December, 16.9 percent of AT&T's orders in January, and 25.5 percent of AT&T's orders in February. Once again, even excluding the outages due to the RCMAC software problem, SWBT still caused outages on 13.2 percent of AT&T's FDT orders in February.¹¹

benchmark, SWBT's loop-based outage rate clearly reflects a failure to provide nondiscriminatory provisioning of hot cuts.

⁹ SWBT's position has been that FDT must play the central role in allowing CLECs to ramp up to commercial volumes. As Ms. Conway told the Commission, CHC is to be used in exceptional cases; otherwise FDT should be used as a rule. "SWBT recommends the use of the CHC process when 20 or more UNE loops are to be converted as a single end user's address or the conversion is to be worked with a DFDT outside normal business hours." Conway Affidavit, ¶79. See also September 20, 1999 Email from SWBT's Mr. Royer to Sarah DeYoung, Attachment 4 to UNE-Loop Decl.; UNE-Loop Decl., ¶¶46-47, Reply Decl., ¶27.

¹⁰ According to an April 11, 2000 letter from David E. Young (SBC Vice President-Industry Markets) to Sarah DeYoung (Attachment D), the FDT process in Texas is "stable," and not affected by a software problem that afflicted SWBT's California affiliate. Sarah DeYoung had written to express concern about the conflicting statements from SBC about the functionality of the FDT process, and to get clarification as to whether SWBT wanted CLECs to refrain from sending FDT orders, and had noted AT&T's intention to resume sending FDT orders unless otherwise directed by SWBT. See April 10, 2000 Letter from Sarah DeYoung to David E. Young (Attachment E).

¹¹ SWBT has claimed that this software error was a one-time occurrence. Significantly, this is but the latest of SWBT's many attempts to explain away gross performance problems. See Declaration of Michael Pfau and Sarah DeYoung; Reply Decl., ¶62 et seq. Although each individual cause of outages or other performance failures may be a one-time event, it is SBC's responsibility to demonstrate sustained nondiscriminatory performance without *any* such events, familiar or new. Thus, although it is immaterial

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24. Thus, the reconciled data, disaggregated by month and by type of provisioning process, show that, in the past three months, SWBT has been able to meet the Commission's standard only for one month and only for orders submitted for SWBT's most resource-intensive provisioning process. When the data for these three months are aggregated, the picture of noncompliance becomes, if anything, even clearer. While the Commission found that Bell Atlantic New York achieved an overall aggregated outage rate on orders of 4.5 percent (see BANY Order ¶302 n.961), SWBT's aggregated outage rate for the months of December, January, and February, for all of AT&T's hot cut orders (CHC and FDT), is 16.7 percent.

25. Accordingly, the reconciled data alone make clear that SWBT has not improved its hot cut provisioning performance to a level that meets the Commission's minimum standard. Indeed, that performance has deteriorated. SWBT's outage rate for August, September, and October orders was 8.2 percent. On this ground alone, SWBT has failed to provide CLECs a meaningful opportunity to compete.

b. Performance Measure Data

26. The reconciled data discussed above is not captured or reflected in SWBT's reported Performance Measures. Most notably, none of those measures captures outages due to defective cuts, or outages on CHC orders due to SWBT's failure to promptly notify the CLEC that SWBT has completed its cutover work.¹² Thus, unless SWBT reconstructs the record order by order with each affected CLEC, it has no way of reporting its outage performance.

to the result in this case whether the RCMAC errors are included or excluded, SWBT should be held accountable for those RCMAC errors at this time. Indeed, because this problem occurred in February – the most recent month of data on which SWBT relies – there is simply no basis in the record to support SWBT's promise that it will not recur. Coming as it did in February, rather than last fall, the problem is one for which SWBT must accept responsibility and must demonstrate – through consistently improved performance – that it will not recur.

¹² See UNE-Loop Decl., ¶208 et seq.; Reply Decl., ¶56 et seq.; AT&T 3/6 Hot Cut Ex Parte; pp.2-3.

Nevertheless, the existing Performance Measures do shed some light on the number of outages attributable to premature cutovers (CHC or FDT) or prolonged FDT cutovers. That is because, in an FDT order, the CLEC sends the activate message to the NPAC for the customer at the beginning of the cutover period (i.e., the frame due time). From that point in time forward, that customer cannot receive inbound calls until the incumbent LEC finishes its cutover work.

Where that work is delayed beyond the prescribed interval, an outage occurs. Those are the outages captured in PM 114.1.

27. For example, because premature disconnects—captured in Performance Measure 114—necessarily create an unexpected service outage for both FDT and CHC orders,¹³ the premature disconnects in Performance Measure 114 are a direct measure of one subset of customer outages. Similarly, prolonged cuts—captured in PM 114.1—leave the customer with an unexpected service outage on all FDT orders.

28. SWBT's own reported industry-wide data for PM 114 shows non-compliance. In February, the most recent month for which SWBT provides a summary of its data, SWBT caused premature disconnects (and hence outages) on 11.2 percent of all-CLECs' CHC lines, and 4.2 percent of all-CLECs' FDT lines. Conway/Dysart Supp. Aff. ¶ 9. SWBT's PM 114 data show that it far exceeded the Commission's outages standard on premature CHC cuts alone. As for FDT, SWBT was already right at the Commission's maximum permitted level—and this is before any accounting for outages due to defective or prolonged cutovers.¹⁴

29. Moreover, these figures significantly overstate the quality of SWBT's true performance, for two reasons. First, SWBT has reported its PM 114 performance on the basis of

¹³ See BANY, ¶301 n.959.

¹⁴ See Dec-Jan Combined Root Cause Pie Chart (Attachment F), which shows the percentage of outages from various causes as revealed in the reconciliation worksheets.

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individual loops; had it reported its outages in terms of orders, as was done in the Bell Atlantic New York application, the outage percentages would have been significantly higher. See discussion in Part II.C, infra. Second, the figures assume that SWBT's self-reported, unreconciled, industry-wide data are accurate and do not understate the percentage of premature disconnects that SWBT caused. This is unrealistic, because the data reconciliation that AT&T and SWBT undertook with respect to PM 114 shows that SWBT significantly understated its poor performance. Specifically, SWBT reported none of the premature cuts it made in December and January, and only XX of the XX it made in February. See Performance Measure 114 Dec-Jan Summaries in Attachment A

30. Similarly, while SWBT's PM 114.1 is not a measure that was designed to report on service outages, the delayed FDT cutovers that PM 114.1 does capture reveal the FDT outages due to prolonged cutovers.¹⁵ Here, SWBT's reported industry-wide data for PM 114.1 similarly show that—even giving SWBT the benefit of every doubt—it is in violation of the outages standard for this one sub-type of outage alone. Specifically, SWBT reports cutovers that took longer than one hour (and hence caused an outage for the FDT customer of more than one hour) on 6.3 percent of FDT loops in January, and 11.1 percent of FDT loops in February. Conway/Dysart Supp. Aff., ¶ 13. Here again, SWBT's own industry-wide reports show unequivocally that it missed the Commission's standard of causing outages on fewer than 5 percent of orders by a wide margin. The length of time it took SWBT to restore service on outages in connection with AT&T's orders provides one measure of the degree of its problems; the average duration for reconciled outages for December through February for FDT was 8.42

¹⁵ Because FDT orders are not coordinated, when a CLEC ports the number at the frame due time but SWBT does not perform the cut, the customer is out of service, i.e., it will not be able to receive incoming calls.

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hours, and for CHC was 6.49 hours. Indeed, as these durations were calculated by excluding the 1 hour interval allowed for CHC and the half hour interval for FDT, the outage duration from the customer's perspective is actually much longer. See Duration Outage Summary (Attachment G).

31. Moreover, because PM 114.1 measures prolonged cutovers, it, of course, does not reflect the outages due to premature disconnects (PM 114) or defective cuts. Thus, SWBT's overall outage rate is substantially higher than the FDT outage percentage that can be gleaned from a review only of PM 114.1. Second, SWBT reports the data in terms of loops rather than orders, a kind of "grade inflation" that artificially lowers the outage percentage as compared to Bell Atlantic New York's benchmark performance. Third, it assumes that SWBT accurately reported all of the prolonged cutovers for the industry as a whole. Again, this is unrealistic. SWBT did not reconcile this data with the industry as a whole, but it did reconcile its PM 114.1 data with AT&T. And here again, that reconciliation showed that SWBT had significantly underreported the number of prolonged cutovers. For January and February, the two months in which it reported results, SWBT's Dallas area reports had incorrect data for FDT both months, missing as many as 3.7 percent of prolonged cuts, and had incorrect CHC data for February. Though much more limited in number, the Houston area reports were correct for FDT, but were incorrect both months for CHC—indeed, in January SWBT reported 100 percent performance on all CHC cuts when it turned out there were no CHC cuts made for AT&T in Houston that month. There is no reason to think that SWBT's reporting for the rest of the industry was any better than its reporting for AT&T.

32. Of course, SWBT has provided no industry-wide data or estimate of the number of outages it has caused due to defective cutovers—that is, cutovers where SWBT attached its jumper wires to the wrong cable and pair, or misattached the wires, or attached a defective wire,

or caused translation errors, and so forth. For that reason alone, it has not provided this Commission with a complete evidentiary showing that would be needed to demonstrate compliance with the standard of outages on fewer than 5 percent of orders. But even looking solely at the industry-wide data that SWBT has provided, it is apparent – on the face of SWBT’s submission – that SWBT has caused outages, due to premature and prolonged cutovers alone, on far more than 5 percent of all industry hot cut *loops*, let alone orders. This industry-wide self-reported data thus provides no safe haven for SWBT. It simply provides further confirmation – albeit with unverified data – of the non-compliance with the outages standard that is vividly captured in the reconciled and accurate data on AT&T’s orders discussed above.

c. Conway and Dysart’s Explanations

33. The Supplemental Affidavit of Conway and Dysart was filed well before the reconciliation process for December, January, and February was complete. That Affidavit, therefore, could not even consider, let alone attempt to explain away, the only verified data on SWBT’s hot cut provisioning performance for the time period it purports to address. For this reason alone, that Affidavit is of little value to any reasonable assessment of SWBT’s recent hot cut performance.

34. Instead, Conway and Dysart base their assessment of SWBT’s performance on data that they report, which they have drawn largely from SWBT’s unilaterally reported performance under several performance measures. While Conway and Dysart refer to “joint reconciled outage data,” that reference is misleading for several reasons. Outage percentages are derived by examining the number of outages (the numerator) as a percentage of of the total number of orders or lines (the denominator). However, as SWBT itself tacitly concedes, the total number of lines (the denominator) used to calculate the percentage of outages was based on its own “re-analyzed total[s].” Conway/Dysart Supplemental Affidavit ¶27. At the time that

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SWBT filed its supplemental declaration, AT&T and SWBT had not yet begun to reconcile the denominators for the months of December-February. As AT&T's prior submissions have shown, SWBT has repeatedly failed to report an accurate count of the hot cut orders it provisioned in a given month.¹⁶ Moreover, although Conway/Dysart state that they are presenting reconciled data for the number of outages (the "numerator"), that is not true. While the PPIG had begun to reconcile January data prior to SWBT's renewed 271 filing, as the Supplemental Affidavit itself notes (§35), reconciliation was not scheduled to be completed until the week *following* their Supplemental Affidavit. Of course, accurate performance data requires reconciliation of both the denominator (e.g. the number of orders and lines) as well as the numerator (e.g. the number of outages). Because SWBT filed its application before the completion of the reconciliation process, the unreconciled data it presents has now been superceded.

35. Neither Conway nor Dysart have personally participated in the recent joint reconciliation meetings, and they lack personal knowledge of the reconciliation process; this may explain their confusion. They reveal the same confusion in ¶ 35, where they seemingly conflate the blended data in their affidavit for the fully reconciled data produced by the joint reconciliation process and the PPIG.¹⁷ However, both AT&T and SWBT have committed substantial resources to the *full* reconciliation of this data, and that fully reconciled data demonstrates the inaccuracy of SWBT's self-reported data.

36. Nevertheless, the now-superseded data that Conway/Dysart have submitted is notable, because even that data fails to show compliance with the Commission's standard of

¹⁶ See AT&T 3/13 Hot Cut Ex Parte, pp.2-3.

¹⁷ As AT&T has previously noted that the performance measure data on which SWBT was relying was unreconciled. See AT&T 3/13 Hot Cut Ex Parte, p.2.

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outages on fewer than 5 percent of hot cut loop orders. That is true for two reasons. First, Conway/Dysart do not attempt to provide any data whatsoever on the number of orders on which SWBT caused an outage. Instead they submit data that purports to show only the percentage of “lines” on which an outage occurred. As we discuss in more detail below, SWBT’s assumption that lines and orders are interchangeable for purposes of this measurement is unfounded.

37. Second, even if it were proper to “mix and match” the Commission’s standard of “fewer than 5 percent” outages on orders to SWBT’s unreconciled data on number of outages per line, SWBT’s data would still show noncompliance. That is true for both CHC and for FDT lines.

38. For CHC lines, for example, SWBT’s data shows an outage rate per line of 6.7 percent in February, far in excess of the 4.5 percent outage rate on orders that Bell Atlantic New York achieved and that the Commission deemed minimally acceptable. Conway/Dysart Supp. Aff., ¶ 27. Moreover, while SWBT reports a “0%” outage rate for AT&T’s CHC lines in January (*id.*), what SWBT does not tell the Commission is that AT&T submitted only XX CHC orders in January. The relevant hot cut performance for January, therefore, is reflected in SWBT’s FDT performance.

39. For FDT lines, SWBT’s unreconciled data shows massive non-compliance in each of the three months on which SWBT now relies. Specifically, SWBT’s reported data show that SWBT caused outages on 12.9 percent of AT&T’s lines in December, 17.6 percent of AT&T’s lines in January, and 15.7 percent of AT&T’s lines in February. See Conway/Dysart Supp. Aff., ¶27. It is therefore obvious, on the face of the Conway/Dysart Supplemental Affidavit, that SWBT has not met the FCC’s standard for minimally acceptable outage performance.

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40. Having set forth data that do not prove compliance, Conway/Dysart proceed to offer a series of explanations for SWBT's poor performance. None of these explanations is sufficient to excuse SWBT's results.

41. First, Conway/Dysart suggest that "half of the outages attributed to SWBT" in the month of January "were a result of a 'Cut Outside the Window,'" that is, "a premature disconnect or a late cut." Conway/Dysart Supp. Aff., ¶29. Conway/Dysart then claim that "many" of these cuts outside the window occurred on IDLC loops. *Id.* Requests for cutovers of IDLC loops should no longer be a problem, they suggest, because the "process breakdown" that caused the outages has now been remedied by a series of "Flash" notices delivered to SWBT's processing centers (the LOC and the LSC) in October, December, March, and April. *Id.*, ¶30.

42. This explanation is inadequate. To begin with, SWBT provides no data to support its assertion that "many" of the cuts outside the window involved IDLC. But AT&T's data suggest that the number is very small. Specifically, it appears that only XX XXX XXXX XXX XXX XXX in December, XX XXX XXXX XXX XXX XXX in January, and XX XXX XXXX XXX XXX in February were subjected to an outage because the customers were served on SWBT's IDLC facilities. Thus, even if SWBT's promise that it had cured the "process breakdown" for IDLC loops were to be accepted at face value, it would not appear to have a significant impact on SWBT's future performance. Moreover, there does not appear to be any reason to accept that promise. It is evident that the "Flashes" that SWBT issued in October and December did not cure the problem, and SWBT offers no explanation of why the March and April flashes should work when the prior ones did not. Indeed, because the number of cutovers involving IDLC facilities is likely to increase in the future given SWBT's rapid roll-out of Project Pronto, it will only become more important in the future that SWBT demonstrate – rather

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than merely predict – that it has solved the “process breakdown” that has caused outages to date on IDLC cutovers.

43. Indeed, it is important to note that the excuse that many outages relate to IDLC problems is simultaneously an admission that SWBT is failing to perform the pre-installation procedures the day before the cut that are designed to identify precisely this sort of problem. See UNE-Loop Decl., ¶37. The failure to perform vital testing the day prior to the cut also manifests itself in the excessive number of provisioning errors involving wiring problems. SWBT has supposedly been retraining on this issue, and sustained, root cause analysis is necessary to determine why this retraining has been unsuccessful, and corrective action plans need to be documented.¹⁸

44. Second, the Conway/Dysart Affidavit claims (¶29) that “half of the remaining outages” that SWBT caused in January were the “result of ordering errors at the LSC.” Specifically, they claim (at ¶ 31) that these outages were covered by two related kinds of “process breakdown[s],” in which SWBT’s order processing personnel at the LSC mistakenly called SWBT’s LOC to schedule a CHC hot cut for an order that AT&T had designated as FDT.

¹⁸ See UNE-Loop Decl., ¶169 (explaining the critical need for adherence to jointly agreed pre-installation procedures). SWBT and the CLECs also will need to work with the TPUC to ensure that SWBT’s performance measures accurately capture SWBT’s provisioning performance here. Given that SWBT hopes to install fiber on 80 percent of its customer loops, it will distort any understanding of the competitive process to drop these orders out of the hot cut process entirely and treat them as a new loop, as SWBT has recently proposed. The customer, whose perspective should always be the critical yardstick for assessing competitive impacts, simply wants timely and non-disruptive access to competitive local exchange services. Accordingly, requests for cutovers involving IDLC loops need to be provisioned on a nondiscriminatory basis, and this provisioning must be reflected in the performance measures. AT&T’s recommendations for a process that will achieve these objectives are described in the Action Item List prepared by Sarah DeYoung and filed with the TPUC (Attachment H herein), discussed in Section II.A, *infra*.

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45. Once again, Conway/Dysart do not identify the particular orders or specify the number of outages involved.¹⁹ Though they again claim that retraining will resolve this problem, they have previously promised that retraining would eliminate service order problems, yet these problems continue to crop up. And, once again, the promise of future behavior in compliance with Section 271 obligations is no substitute for demonstrating actually existing compliance.

46. Conway/Dysart offer only these two explanations for SWBT's poor hot cut provisioning, and claim, without providing any supporting data, that both account for all but 2 percent of outages in January. Not only are these explanations inadequate on their face to guarantee nondiscriminatory performance in the future, but SWBT's conclusion that they account for 98% of the outages cannot be true for several reasons. First, as noted above, only XX XXX XXXX in January involved IDLC, and the service order problems of treating AT&T's FDT orders as CHC orders appear to have affected only XX orders. Second, neither of the explanations even attempts to confront the problem of defective cutovers, which the reconciled data show account for about 45 percent of all SWBT-caused outages in January. See Dec-Feb CHC/FDT Root Cause Pie Charts (Attachment F). Thus, the evidence and the explanations offered in the Conway/Dysart supplemental affidavit ultimately serve only to confirm SWBT's failure to demonstrate compliance with this Commission's minimally acceptable performance standard for outages.

¹⁹ SWBT attempts to evade responsibility for some outages by twice vaguely claiming "[o]ne example of such an occurrence is represented by an LSR that was submitted to SWBT by AT&T requesting a CHC, but that was worked by AT&T as FDT." Conway/Dysart Supp.Aff., ¶¶16 n.5, 17 n.6. Though SWBT has not identified this order in the Affidavit, AT&T has investigated and believes the order which they are referring to actually involved an error by SWBT's LSC. (There was only one Houston order where an error was initially attributed to AT&T, and that actually proved to be a situation where the LSC had mistakenly labeled an FDT order as CHC.) Though, in the abstract, AT&T agrees that CLEC-caused errors should be excluded under the business rules, AT&T orders have involved few such errors, and SWBT has not come forward with any data suggesting higher rates at other CLECs, and its supposition and speculation cannot substitute for proof in these matters.

2. On-Time Performance

47. In the BANY Order (¶309) the Commission held that a second category of minimally acceptable performance is for orders to be provisioned on-time 90 percent of the time or more for orders of fewer than 10 loops.

48. The principal Texas measure which corresponds to the BANY measure of on-time performance is 114.1. This measure indicates instances when SWBT has failed to complete a cutover within the interval specified because the cutover went too long. However, as SWBT itself has acknowledged, PM 114 is also relevant, because it captures cutovers which are not completed within the cutover window because the cutover started too early.²⁰ Because no single, combined measure has been created to capture all of the orders that SWBT failed to provision within the scheduled interval, Measures 114 and 114.1 must be looked at together to assess on-time performance.

a. PM 114.1—Completion Interval

49. Reconciled data on PM 114.1 for AT&T's orders reveals that SWBT can only hope to even approach the TPUC benchmark when volumes are low. SWBT's cutovers in the Dallas area, the only area with significant volume, have met the generous 2 hour TPUC benchmark only for CHC orders in January, the month in that area with the fewest number of cutovers by far. Even in the low volume Houston area, SWBT has missed the 2 hour deadline as much as 25 percent of the time (in December), and still managed only 95.6 percent in February.

²⁰ The on-time performance measure in BANY looked at both provisioning within a prescribed time interval and premature cuts. See BANY, ¶296 n.946. As the Commission itself has noted, a premature cut can be "scored as a 'miss'" under the on-time category and also result in an outage. Similarly, a cut can be on-time and still result in an outage; such a defective cut would be picked up as a trouble report. BANY, ¶301 n.959.

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SWBT consistently misses the benchmark by its widest margins when the volumes are highest, hardly a comforting prospect for CLECs seeking to expand their commercial activities.

50. SWBT claims of timely provisioning are also belied by the disputed industry-wide PMs 114 and 114.1 on which it wants to rely.²¹ In the very period it selected, on this second go-round, as indicative of its ability to comply with its Section 271 obligations, SWBT fails to demonstrate compliance. Instead, SWBT reports inescapable evidence of non-compliance, supplemented by unconvincing excuses and promises of future compliance.

Performance Measure 114.1—Completion Interval (Industry-wide)²²

	December			January			February		
	Cutovers	% ≤ 1 hr	% ≤ 2 hr	Cutovers	% ≤ 1 hr	% ≤ 2 hr	Cutovers	% ≤ 1 hr	% ≤ 2 hr
CHC	2,127	83.3	93.5	1,349	85.5	93.0	1,896	78.5	93.4
FDT	2,083	94.1	96.0	1,293	93.6	95.3	2,258	89.9	92.1
TPUC Benchmark: Interim –100% within 120 minutes: Final - to be determined									

51. First, SWBT plainly fails to meet the Commission’s standard for on-time performance with respect to CHC loops in both January and February. As the above chart, which is taken directly from SWBT’s reported data in the Conway/Dysart Supp. Aff. ¶ 13, shows, in January, SWBT reports on-time performance for only 85.5 percent of CHC loops, while for February that performance deteriorated to 78.5 percent -- far below the 90 percent minimum that this Commission required for on-time performance in the BANY Order. And

²¹ Although Conway/Dysart also discusses PM 115, which was intended to measure late cuts, that measure is of no practical utility. See UNE-Loop Decl., ¶131-32. For this reason, the data have not been reconciled by PPIG, and the Measure is going to be supplanted by an entirely new measure when the next round of changes to SWBT’s Performance Measures is implemented. See discussion below.

²² December data from SWBT 3/2 Ex Parte, p.4; January and February data from Conway/Dysart Supp. Aff., ¶13.

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although SWBT's performance for FDT was somewhat better than for CHC, even for FDT SWBT manages to report only 89.9 percent on-time for February.

52. This self-reported data for PM 114.1 significantly overstates the quality of SWBT's performance. As stated above, it is not only unreconciled – and the reconciliation shows that SWBT underreports its misses – but it is based on loops, rather than orders, which further understates the percentage of late cutovers as compared to the order-based reporting evaluated in the BANY Order.²³

53. But all of SWBT's self-reported PM 114.1 data is overstated and entirely worthless for yet one further, fundamental reason. Measure 114.1 is defined in a way that inexplicably excludes a critical step in the hot cut process, rendering its concept of “completion” useless. The business-rule defines the CHC disconnect/cross-connect interval as beginning with the initial coordinating call between SWBT and the CLEC, and ending when the SWBT frame technician calls the SWBT LOC, ignoring completely the final and crucial step in the process, SWBT's concluding coordinating call to the CLEC, which tells the CLEC to port the number and end the customer's loss of service. See UNE-Loop Decl., ¶¶155-56.

54. There is commonly a gap between when the frame technician closed out and the time the LOC contacted AT&T. With this gap, the data “are not sufficient to show that SBC is completing its hot cuts with the same degree of timeliness” as was found minimally acceptable in BANY. See DOJ 3/20/00 Ex Parte, p.9. This gap would not be captured by the existing business rule, but the gap between the technician's close out and the LOC's notification of the CLEC may well push the order beyond the on-time interval. More importantly, there is a serious potential for

²³ As discussed in Section II.C. below, it is only possible for the loop-based measure to be higher than the order-based measure in the unusual circumstance where a BOC “misses” all of the loops on many large volume orders, but correctly provisioned most loops on many small volume orders.

SWBT an extra (and entirely unnecessary) hour to complete its cutovers, the TPUC understandably demanded that SWBT meet that unduly generous interval 100 percent of the time. Contrary to SWBT's assertion, this most assuredly is not a "standard of absolute perfection." Conway/Dysart Supp. Aff., ¶15. It does not demand perfection, because it builds in an entirely gratuitous one-hour cushion for every order – even for an order for only one loop! For this reason, to the extent that SWBT seeks to rely on its compliance with the two-hour cutover interval set by the TPUC, it is only fair and reasonable that it be required to show compliance with the 100 percent standard that the TPUC simultaneously set to govern that interval.

62. As SWBT's self-reported data reveal, SWBT has not come close to meeting the TPUC on-time standard. For example, for FDT orders alone, and even excluding CLEC-caused misses, SWBT shows that it fell short of the 100 percent standard on 3.7 percent of loops in January and by an even larger 7.7 percent in February. Thus, whether judged against the BANY standard or the TPUC's on-time standard, SWBT's on-time performance falls far short of what is required to give CLECs a meaningful opportunity to compete using hot cut loops.

b. Performance Measure 114 – Premature Disconnects

63. SWBT also points to its performance as measured by PM 114 as evidence that it is providing CLECs with on-time performance. See Conway/Dysart Supp. Aff., ¶9-11. Certainly PM 114 is relevant to on-time performance. It is intended to capture those cutovers that SWBT starts more than 10 minutes ahead of schedule, and thus picks up those SWBT failures to provision on-time that are the result of an early, rather than a prolonged, cut. But contrary to SWBT's claims, the data for PM 114 only provide further, and thus cumulative, proof that SWBT is not providing on-time performance.

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64. To begin with, the reconciled data on SWBT's performance for AT&T orders shows that something has recently gone seriously wrong, with the premature cut rate for Dallas soaring in February to 20.2 percent for CHC and 10.5 percent for FDT. It is obviously disturbing that SWBT's performance in AT&T's currently most significant market area is so far out of compliance. Furthermore, while SWBT may have been in compliance in December and January, it originally reported that it had no premature cuts, whereas the reconciled results show 1.6 percent premature CHC cuts and 1.7 percent for FDT in the Dallas area for December, and 1.2 percent for FDT in January.

65. SWBT also fails to meet the TPUC benchmark with regard to premature disconnections. While the TPUC set a benchmark of 2 percent or fewer disconnects starting 10 minutes prior to the scheduled time, the SWBT PM 114 data in the Conway/Dysart Supplemental Affidavit (at ¶9) show that it fails to meet this standard two out of three months for CHC and 1 out of three months for FDT.

Performance Measure 114—% of Premature Disconnects (Industry-wide)²⁴

	December		January		February	
	Cutovers	% Premature	Cutovers	% Premature	Cutovers	% Premature
CHC	2,129	0.5%	1,349	3.9%	1,896	11.2%
FDT	2,083	0.7%	1,293	1.0%	2,258	4.2%
TPUC Benchmark: 2% or less premature disconnects starting 10 minutes before scheduled time.						

66. Thus, as was the case with outages, SWBT has failed to show that it provides CLECs with a minimally acceptable level of on-time performance. That is plainly shown in the reconciled data, and is evident even in SWBT's self-reported data. For this additional, independent reason, SWBT has yet to provide CLECs a meaningful opportunity to compete.

²⁴ See Conway/Dysart Supp. Aff., ¶9.

an outage as well. As discussed further below, it is essential that a more accurate and realistic definition of this measure is developed.

55. Nevertheless, even taken at face value, SWBT's self-reported PM 114.1 data does not prove compliance with the Commission's minimum standard. Instead, it shows consistent untimely performance.

56. SWBT tries to buff up its inadequate PM 114.1 performance by reporting it in a second, non-standard way. Thus, it reports figures that purport to "exclude CLEC Caused Misses for Base of Cuts." Conway/Dysart Supp. Aff., ¶13. In some instances, though not in all, this has the effect of raising SWBT's on-time performance by several percentage points in a given month.

57. This is improper. As AT&T has previously explained, the business rules for PM 114.1 do not provide for any exclusions for CLEC-caused misses. Equally important, SWBT has never provided any evidence that CLECs have caused any significant number of cutovers to miss the targets in PM 114.1. The Conway/Dysart Supplemental Affidavit does not remedy this problem.

58. To begin with, the Conway/Dysart Affidavit fails to provide any analytical foundation or evidentiary support for its allegation that CLECs have caused a significant number of missed intervals. The only support it offers is an unverified citation to a single AT&T order on which SWBT claims AT&T was the cause of the late cutover. Conway/Dysart Supp. Aff., ¶17 n.6. SWBT does not identify this order by PON or otherwise, and thus AT&T (and this Commission) cannot confirm whether AT&T in fact caused that one delay as SWBT has alleged.

59. Apart from this one order, Conway/Dysart merely appeal to the "experience of the PPIG" for support. However, after reconciling all of AT&T's orders with SWBT for the months

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of December, January, and February, the PPIG identified no orders on which AT&T was deemed to be the cause of a late cutover. Based on this experience, SWBT's estimates of the number of CLEC-caused misses industry-wide – which are unreconciled and unaccompanied by any analysis or data – cannot be considered anything other than unverified, wildly exaggerated, and deserving of no weight.

60. SWBT also attempts to get around its non-compliant on-time data by pointing to the percentage of time that it has completed cutovers within 2 hours, rather than within the one-hour standard deemed minimally acceptable in the BANY Order. AT&T has previously set forth in detail the reasons why a 2-hour interval for all hot cut orders is commercially unrealistic and technically unnecessary, and has explained that the TPUC's adoption of that standard was done peremptorily without hearing or considering any CLEC commentary whatsoever. Most notably, since the vast majority of CLEC hot cut orders are for fewer than 10 loops, there is simply no basis for allowing SWBT to put the customer out of service for up to two full hours when the cutover easily can and should be completed within one hour. Indeed, the reconciled data leave no doubt that – when SWBT performs its job properly – it can meet the one hour window without any difficulty. Perhaps for this reason, as discussed further below, the revised PM 114.1 now under consideration in Texas would require SWBT to meet a one-hour interval for orders of fewer than 10 loops. SWBT itself proposed in the 6 month review a disaggregation that would allow for a one hour interval for 1-10 loops. See SWBT's Proposed Revisions to Performance Measures (Attachment I).

61. Nevertheless, even accepting SWBT's claim that it should be judged by the two-hour interval originally adopted by the TPUC, there is simply no reason not to apply the standard that the same TPUC adopted to determine compliance with that two-hour interval. Having given

3. Trouble Reports

67. In BANY, the Commission mandated that minimally acceptable performance required that the BOC show that it received trouble reports on fewer than 2 percent of loops within 7 days from installation (referred to in the industry as an “I-7” measure). The data make it clear that SWBT has not demonstrated compliance under this standard either.

**Troubles within 7 days—excluding NTF/CC/TOK (AT&T data)²⁵
(derived from raw data for PMs 59 and 65 for Dallas and Houston)**

	December	January	February
Total	2.8%	2%	4%
<u>BANY</u> Standard: trouble on fewer than 2% of loops within 7 days			

68. These results continue the pattern AT&T pointed out to the Commission in a March 6, 2000 ex parte; SWBT’s I-7 rate “far exceeds both Bell Atlantic’s 0.7% average trouble report for the three month period examined by the Commission as well as the highest trouble report rate of 1.26% which Bell Atlantic reported during that period.” AT&T Ex Parte (March 6, 2000), p.10.

69. AT&T calculated an I-7 measure based on SWBT’s self-reported data, because SWBT itself nowhere attempts to demonstrate compliance with the third BANY requirement on its own terms.²⁶ The 30-day standard originally established by the TPUC was set without the guidance of the BANY Order, and, in any event, AT&T agrees that a 30-day measure has value. But certainly for purposes of comparison with the BANY standard, SWBT could voluntarily have reported trouble data on a 7-day basis. Instead, it decided once again to ignore the standard

²⁵ When NTF (“no trouble found”), etc., are included, the I-7 rates are 3 percent for January and 5 percent for February. To be conservative, AT&T has used the number most favorable to SWBT.

²⁶ The methodology for this calculation is the same as that AT&T previously has used to calculate SWBT’s I-7 performance in prior months. See UNE-Loop Decl., ¶124 and nn. 78 and 79. (explaining methodology). Apart from claiming that NTF should be excluded, SWBT has not disputed the validity of AT&T’s methodology.

established in BANY and confuse the Commission's deliberations by relying on a new measure of its own invention.

70. Rather disingenuously, the Conway/Dysart Supp.Aff. says that:

[i]n order to provide the FCC with a more manageable comparison to Bell Atlantic, which measures its trouble reports on a 7 day basis, SWBT undertook a manual breakdown of its I-30 report for December into reports received on CHC and FDT conversions within 10 days of installation.

Conway/Dysart Supp. Aff., ¶19. The question that SWBT leaves unanswered, however, is why it took the time to manually re-process the data only to generate an I-10 measure, rather than simply calculate an I-7 measure that would genuinely promote a "more manageable comparison to Bell Atlantic." AT&T is not aware of any state mandate that requires a 10-day measure, nor is there any retail regulatory reporting requirement. The only apparent reason why SWBT invented this new, idiosyncratic measure is to create a new excuse for its non-compliant performance, that is, that its higher trouble percentages reflect the fact that it is capturing 10, rather than 7, days of troubles.²⁷ But that excuse is entirely a manufactured one, and should be ignored.

71. Moreover, SWBT's performance has consistently failed to meet the TPUC's I-30 measure. Indeed, for many months now, SWBT has not demonstrated parity performance under the TPUC's I-30 benchmark, and thus fails to demonstrate nondiscriminatory treatment under that standard as well.

²⁷ Stated another way, it must be the case that SWBT's I-7 data is not any better than its I-10 data; otherwise it just would have reported I-7 data.

Troubles within 30 days (Industry-wide data)

	December		January		February	
	8db loops	5db loops	8db loops	5db loops	8db loops	5db loops
Industry-wide	5.8%	4.9%	8.0%	28.9%	5.6%	2.9%
SWBT	3.1%	2.2%	3.0%	2.0%	3.1%	2.0%
TPUC Benchmark: parity						

72. AT&T's orders also experienced an alarming rate of troubles within 30 days: 9.9 percent in December, 4.0 percent in January, and 7.4 percent in February. Indeed, the February I-30 rate for Houston was a disturbingly high 16.9 percent.²⁸

73. The Conway/Dysart Supplemental Affidavit concedes what it calls "a higher than normal I-30 rate," and promises process improvements under which its I-30 results "are expected to improve." Conway/Dysart Supp. Aff., ¶¶23, 24. Once again, however, these promises of future improvement are no substitute for the demonstration of existing compliance.

II. SWBT Still Has Not Established The Properly Defined Performance Measures and Accurate, Mechanical Data Gathering And Reporting Processes Needed To Demonstrate Nondiscriminatory Provisioning Of UNE Loop Hot Cuts

74. The preceding section of this affidavit demonstrated SWBT's failure to demonstrate compliance with any of the three measures of minimally acceptable performance set forth in the BANY Order. As noted above, non-compliance with any one of those measures is grounds for enforcement action by the Commission and thus indicative of a failure to fully implement the duty to provide CLECs with a meaningful opportunity to compete. But there are

²⁸ SWBT has stated that I-30 data is not representative of its trouble rate on hot cut loops because it includes categories of loops other than hot cut loops (new and "moved" loops). However, given that overwhelming majority of AT&T's loops are hot cut, the measure is a good indicator of hot cut troubles, at least with respect to AT&T's orders. SWBT has not shown why AT&T's data would be unrepresentative of the industry as a whole.

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two additional, and vitally important, reasons why SWBT has not yet provided CLECs with a meaningful opportunity to compete.

75. First, SWBT has not yet proven that it can reliably provide accurate reports of its performance. Time and again, on measure after measure, and month after month, the reconciliation process has exposed numerous errors in SWBT's processes for gathering and reporting data that have required correction and that have resulted in material changes to SWBT's reported performance.

76. Second, SWBT's performance measures, as currently defined, do not require SWBT to report on all of the aspects of its provisioning performance that are relevant to the evaluation of whether it meets the Commission's minimally acceptable standards. For example, none of the measures, as currently defined, requires SWBT to report on defective cuts, and PM 114.1, which reports on cutover intervals, excludes the crucial step of having the LOC call the CLEC which, when delayed, directly increases the length of time that the customer is out of service. Once again, only by sitting down and manually reconciling SWBT's raw data, order by order and loop by loop, with the CLECs' raw data, can a record be created on which to fully evaluate SWBT's performance.

77. Simply put, subjecting CLECs to a manual reconciliation process as the price of receiving accurate information on SWBT's provisioning performance is itself a complete denial of a meaningful opportunity to compete. The process is extraordinarily resource-intensive, and cannot possibly be performed for more than a relatively small number of orders. As long as manual data reconciliations are required, CLECs will be condemned to placing only the small volume of orders that they can manage to track and reconcile on an individual basis.

78. To provide CLECs with the ability to move beyond this “boutique” level of market entry and give them a truly meaningful opportunity to compete—i.e., the ability to compete for significant volumes of new customers—it is absolutely imperative that SWBT make further comprehensive data reconciliations unnecessary. As explained further below, to accomplish that SWBT must first establish properly defined performance measures, and must implement accurate and, wherever possible, mechanized data gathering and reporting processes to ensure that its performance reports truly reflect the level of service that it is providing to CLECs.

A. Until SWBT’s self-reported data is consistently accurate and reliable, SWBT cannot be deemed to provide CLECs a meaningful opportunity to compete.

79. In our own reconciliation work with SWBT’s representatives, we have each spent countless hours and days manually sifting through AT&T’s and SWBT’s provisioning logs and raw data in an effort to get to the bottom of every order on which a question has arisen. Our counterparts at SWBT have similarly put in many hours. And as a result, AT&T has been able to present this Commission with jointly attested-to data that fairly reflects SWBT’s performance for AT&T on the measures this Commission has deemed relevant.

80. In the course of this reconciliation work, it has become clear that SWBT lacks the internal processes needed to capture and reported data accurately. These problems affect a large range of issues on which SWBT is required to report. Each of these problems is a serious and fundamental one that must be addressed before CLECs can ramp up their volumes to competitive levels.

81. As discussed in Sarah DeYoung’s initial declaration, SWBT relies almost exclusively on its LOC personnel to manually collect and report data for its 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. The performance measure data is gathered from the information recorded in the provisioning logs. For measure 114, the provisioning logs are manually reviewed to identify early cuts, which are individually tallied on sheets of notebook paper and then provided to the SWBT performance data coordinator (this becomes SWBT's "raw data" for purposes of the performance measures). See UNE-Loop Decl., ¶¶224-25. For measure 114.1, the start and stop times are noted in a "close out comments" module within WFA, which are then summarized for purposes of performance measures reporting.

82. **Defects Affecting All Outages:** In the prior outage reconciliation efforts, SWBT had led AT&T to believe that its LOC technicians open a "pseudo trouble ticket"—which AT&T understood to be a form that captures all of the data on outages that occur during the provisioning process and is akin to the trouble tickets that are submitted after the order has been closed out. Thus, AT&T believed that these reports could be tallied to determine how many outages were associated with SWBT's hot cut provisioning. During the latest reconciliation effort, however, it became clear that this is not the case. Moreover, although the fact that an outage occurred is embedded in the log notes, there are no fields within the provisioning logs that capture whether an outage occurred, and hence no systematic mechanism for tracking the number of outages. As a result, many outages do not get captured by the SWBT PPIG team members that review the logs. Indeed, in every month for which AT&T has received SWBT's raw data on its outages, AT&T has reported more outages to SWBT than SWBT has identified to AT&T. The most dramatic example of the differences in AT&T's and SWBT's raw data