of the CHC process. Finally, this incident is compelling evidence of the fact that a problem that was supposedly resolved can easily crop up again, making it important for the Commission to always hold a BOC accountable for the full spectrum of provisioning troubles it causes.

c. Lines versus Orders

72. The second "refinement" in the TPUC's outages presentation is its decision to report SWBT's results exclusively in terms of lines, rather than in terms of orders, as Bell Atlantic's performance was reported. Three points are significant here: (1) there is no reason to ignore all mention of orders; (2) orders is the preferable basis for analysis; and (3) if lines are to be used, then a different performance standard must also be used in order to permit a fair comparison to Bell Atlantic's order-based standard. Each of these is discussed below.

73. First, the TPUC should not have ignored the PPIG evidence that is reported on an order basis. The latter is directly comparable to the evidence considered in BA-NY. As the NYPSC has made clear, its "outages are computed on a per order basis." Brief of Intervenor-Appellee Public Service Commission of the State of New York to the United States Court of Appeals for the District of Columbia Circuit, Nos. 99-1538 and 99-1540, p.13 (citing Rubino Aff., ¶¶12-16 (defining outages on a per order basis)). The order-based PPIG data thus permits a direct evaluation of how SWBT's performance compares to the Bell Atlantic performance that was deemed minimally acceptable. Such a comparison is obviously important in its own right, regardless of what other analysis on the basis of lines might be made.

74. Second, neither reason advanced by the TPUC for measuring on the basis of lines is persuasive. The TPUC initially claims that it "worked diligently with SWBT and CLECs to develop performance measurements that work in Texas . . ." TPUC Comments at 3. Nevertheless, the fact is that the TPUC failed to develop any performance measurement that covers all outages, whether reported on the basis of lines or orders. This therefore is not a case

of a state commission preferring to rely on an alternative performance measure that demonstrably captures the equivalent of what this Commission looked at. Instead, this is a case where the state commission is altering the results of the parties' reconciliation that was designed to fill a gap in the state's performance measures, and that also reports the data on terms directly comparable to the BA-NY Order.

75. The TPUC also claims that "Texas is not New York, and performance measurements are not necessarily 'one size fits all.'" Id. While the non-identity of Texas and New York cannot be gainsaid, the question is whether the difference matters. For this purpose, it plainly does not. No business customer is indifferent to a service outage. Specifically, the TPUC has put forth no evidence that business customers in Texas accept the loss of service on their telephone lines more readily and happily than do business customers in New York. Indeed, the only evidence in the record is that business customers in Texas are furious with these outages and have blamed CLECs for them. See, e.g., DeYoung Aff. ¶¶ 99-102 & Att. 14-16.

76. The TPUC then offers a hypothetical example (p.12) to illustrate why measurement by lines is superior to orders. But this hypothetical is based on unrepresentative facts and does not explain why the Commission and the NYPSC erred in considering measurement by orders. The TPUC states (id.) that "loops more accurately reflect customers' dissatisfaction when their service is provisioned poorly (i.e. customers will likely be more upset if they suffer an outage of 9 lines out of a 10 line order versus 1 line out of a 10 line order)." To be sure, customers are likely to be even more upset in the former situation. But that does not mean that customers are at all "satisfied" when their orders are only partially as opposed to completely filled without incident. Business customers will be dissatisfied even if only one of their lines suffers an outage because their business will be adversely affected. Indeed, customers

demand service that is trouble-free, at least as compared to what the incumbent provides. Their experience with and opinion of a new entrant will be unsatisfactory even if their switch is only partly successful. That is why the parties and the state commission in New York performed the measurement based on orders. There is nothing different about Texas in this regard. See UNE-Loop Decl., ¶¶99-101 and Attach. 14, 15, and 16.

77. In addition, the TPUC's hypothetical is based on factual assumptions that do not correspond to real-world experience. Ten line orders are rare; for most customers it is more economical to purchase a T-1 line than to purchase 10 or more individual loops. The reconciled data show that AT&T's orders average XXX loops per order. See DeYoung/Van De Water Supp. Aff. ¶ 106. Thus, if XXX is provisioned poorly on AT&T's order, the customer has typically lost service on at least XXX of only XXX lines. As a practical matter, this usually means that either the customer's XXX or the customer's XXX is out. Either way, these small-business customers, who are typically very dependent on having all of their lines in good working order, are going to be very dissatisfied. See, e.g. AT&T 3/6 Hot Cut Ex Parte, pp.6-7. Small and medium size business customers have just the number of lines they need; they cannot afford to do otherwise. So, for example, AT&T has recently dealt with a small business customer who depends on received phoned-in solicitations for contractors to bids on millworking jobs, who lost service on one of four lines and ended up nearly out business for the 2 day duration of the outage. Like many business customers, this millworks has a main line they advertise, from which a hunting sequence of other lines is accessed, e.g. an incoming call on the main line rolls over to other lines when the main line is busy. Since the one line that went down was the main line, no calls could be received on any line, and it was if the business had entirely lost service.

78. Ironically, the TPUC conceded the logic of order-based analysis in its Reply Comments on SWBT's initial application. There, the TPUC suggested that although missing one loop in a 23-loop order might not disrupt normal business functions, missing one loop on a three-line order means "the customer is more likely to suffer immediate consequences." TPUC Reply Comments 9 n.13. Because XXX line orders are the average for AT&T, and because even SWBT's data suggest that AT&T's averages are representative,[26] the TPUC has failed to put forth any evidence to support its hypothetical about lines-based measures being a more accurate gauge of customer satisfaction.

79. Third, the TPUC has made no effort to defend its assumption that the same standard of performance that this Commission used for orders is appropriate to use for lines. For example, although the TPUC acknowledges (at 12) that "AT&T does not agree that the same benchmarks should apply to both loops and orders," the TPUC does not offer any justification or explanation for why it nevertheless proceeds to use, for measuring outages on lines, the same "fewer-than-5-percent" benchmark that this Commission established for orders.

80. The facts – overlooked by the TPUC – show that in December and February (the two months in which AT&T submitted appreciable numbers of CHC orders), measuring the CHC outage percentage by lines results in a lower outage rate than measuring by orders. Specifically, for December, SWBT caused outages on 3.8% of AT&T's CHC orders, but only 2.8% if measured by lines; similarly, for February, SWBT's outage rate was 27% for CHC orders, but only 17.4% for lines, and there were no CHC outages (on a base of X CHC orders) in January. Thus, this evidence shows that measuring CHC outages by lines overstates SWBT's

[26] See UNE-Loop Decl., ¶146; Dysart Aff., ¶ 653.

performance as compared to measuring by orders.[27] Given these facts, there is simply no factual basis to support the TPUC's unexplained conclusion that a "fewer than 5 percent" standard is appropriate for loops as well as for orders.

d. Outages Lasting Fewer Than 60 Minutes

81. Finally, the TPUC purports to make a fourth adjustment to the reconciled CHC outage data. As discussed below, however, this adjustment affects only FDT outages, not CHC. Moreover, its impact on FDT is negligible.

82. In explaining the refinements made to the reconciled AT&T/SWBT outages data, the TPUC claims (p. 17) that the "following chart" (which show CHC outages of 1.68%) "does not contain outages that occurred within the first sixty minutes of the cut." Id. The TPUC explains that this adjustment is appropriate in light of the 60 minute interval for completing hot cut orders of fewer than 10 loops applicable in New York. Id. Later in its comments, the TPUC notes that the same adjustment was made to the FDT outages chart. Id. at 21.

83. The TPUC's reference to this adjustment in connection with CHC outages is a non-sequitur. Under PM 114.1, SBC is allowed 60 minutes for a cutover of a CHC order up to 10 loops. Accordingly, the PPIG did not count any outage of fewer than 60 minutes as an outage in reporting outage results for CHC. Thus, no such outages were included in the CHC reconciled data in the first place, and hence no adjustments could properly have been made by SBC.

84. As for FDT, the PPIG did include those outages on FDT orders of 10 or fewer loops that lasted between 30 and 60 minutes. This reflects the recognition, by both SWBT's representatives and AT&T's, that with FDT, a thirty minute interval provides sufficient time to

[27] Indeed, it is only possible for the loop-based measure to be higher than the order-based measure in the circumstance where a BOC "misses" all of the loops on many large volume orders, but correctly provisioned most loops on many small volume orders. See DeYoung/Van de Water Decl., ¶108 and n.43.

complete the necessary tasks, and the importance of completing the cut in a timely manner because the uncoordinated nature of the FDT process means that delayed cuts will result in prolonged outages.. According to Ms. Conway's own description of the FDT process to this Commission, "[t]he CLEC should inform the customer that work will be performed on their line within a 30-minute window of the FDT." Conway Aff., ¶86. Indeed, SWBT has repeatedly demonstrated that it has the capability, if it properly follows its procedures, to meet or even substantially beat this interval. There is thus no reason not to count outages of more than 30 minutes as outages.

85. Nevertheless, excluding outages of less than 60 minutes does not materially affect the assessment of SBC's performance. When SWBT causes an outage, it tends to be a long one. Of the XXX outages that the PPIG concluded were caused by SWBT on the XXX FDT orders between December and February, only XXX of these lasted fewer than 60 minutes.[28] Thus, if these were excluded from the calculation of outages, SWBT's outage rate for the three-month period would decline only slightly, from 20.8 percent to 19.3 percent. See FDT Outages Chart (Attachment 12 hereto).

e. Outages Captured As Trouble Reports Should Be Included To Make The PPIG Data Comparable To That In The BA-NY Order.

86. If the TPUC and this Commission are interested in refinements to the reconciled data that make the comparison to the BA-NY Order more meaningful, an important step would be to include outages that would have been captured in the BA-NY proceeding but were excluded in the PPIG process. In particular, the PPIG did not count as outages those provisioning problems which were captured as trouble reports, while the reconciled data

[28] December order XXX , January order XXX , and February orders XXX and XXX .

generated by the NYPSC for BA-NY included those as outages.[29] If this refinement were made, a true comparison would be possible, and SWBT's performance would look even worse.

87. In the Bell Atlantic-New York Section 271 proceeding, the NYPSC Staff conducted a review of hot cut loop outages and included as part of that review orders that were either early cuts or I-codes (hot cut provisioning problems reported more than one hour after completion of the hot cut). BA-NY Order, ¶ 302. The NYPSC Staff's outages review considered whether a BA-NY provisioning error was responsible for a customer's service outage during the loop cutover. See Rubino Aff., ¶¶ 12-13. The NYPSC Staff reviewed the orders for two separate provisioning problems causing outages: (1) an early cut by BA-NY prior to the frame due time and/or (2) a defective cut by BA-NY causing a customer outage. BA-NY Order, ¶ 302 n.959. These defective cuts in turn included two separate types of errors reported separately in the NYPSC's metric reporting system: (1) defective cuts or loss of service reported within one hour of the completion of the loop cutover, which together with the early cuts were counted in the NYPSC's metric system as a "missed appointment" under metric PR4-02, and (2) defective cuts or loss of service reported later than one hour after the completion of the loop cutover, which were reported as an "installation trouble" (or "I-code") under PR6-02. Id.

88. The NYPSC Staff's outages review found that 66 AT&T orders resulted in outages that were the result of BA-NY provisioning errors. The NYPSC Staff exhibits setting forth these results show on their face that both early cuts and I-Codes were included in the set of orders reviewed by the NYPSC Staff. Exhibit 6 to the Rubino Affidavit is a listing of the August orders that AT&T claimed were outages and includes in the second to last column the NYPSC

[29] The same outage could be captured as a provisioning problem under a PM, a defective cut (not currently captured by SWBT's PMs), or a trouble report, depending on when reported, and whether or not the order was closed. (Once an order has been closed, problems will show up as a trouble report.)

Staff's determination whether a BA-NY provisioning error was responsible for the outage. The final column of Exhibit 6 lists the metric scoring for each order, which reflects the results of separate reconciliations conducted by AT&T, BA-NY, and the NYPSC Staff.[30] As Exhibit 6 makes clear, several of the outages resulting from BA-NY provisioning errors (noted by "Y" in the second to last column) are listed in the metric scoring column as "MET/I-code."[31] In addition, a number of the outages that are listed for metric scoring purposes as a "Miss" have "early cut" identified as the issue giving rise to the outage.[32]

89. Exhibit 6 is limited to August orders, but the Table included as Attachment 13 hereto lists the XXX orders that the NYPSC found to be caused by BA-NY provisioning errors,[33] the scoring of those orders based on the prior reconciliations, and the source of the scoring information. This Table demonstrates that both early cuts and I-Codes were included in the outages analysis conducted by the NYPSC Staff.

90. Thus, to make the comparison to the BA-NY Order, SWBT-caused outages captured as trouble reports should be included as outages. For December 1999, for example,

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[30] These reconciliations included the review of June 21-July 16 orders set forth in the Letter/Ruling Accepting Staff Analysis and Closing the Technical Conference Process (Aug. 16, 1999) BA-NY Section 271 Application, Appendix C to Brief Attachment C, Tab 925 ("8/16 AT&T/BA Loop Recon."); the reconciliation of July AT&T orders, set forth at Rubino Aff., Exhibit 3; and the reconciliation of August AT&T orders, set forth at Rubino Aff., Exhibit 4. In thesereconciliations, if BA-NY and AT&T agreed on the metric scoring of an order, then that scoring was used, and the NYPSC Staff did not review the order as part of the reconciliation process. If AT&T and BA-NY disagreed on the metric scoring, then the NYPSC Staff reviewed the supporting documentation and made a metric scoring determination. As the attached Table shows, AT&T and BA-NY agreed on the metric scoring in many instances.

[31] E.g., XXX , XXX , XXX , XXX , and XXX .

[32] E.g., XXX , XXX , XXX , XXX , XXX , XXX .

[33] The source of this information is Exhibit 5 of the Rubino Affidavit, which lists all orders for the June-August period that the NYPSC Staff reviewed.

there were XXX CHC orders with SWBT-caused outages reflected in the I-7 data[34] which were raised as outages in the PPIG Work Group but not counted as outages because trouble reports had been opened on them.[35] If at least these X orders were added to the existing reconciled CHC outage data for December, SWBT's CHC outage rate would have been 9.1 percent (XXX out of X) rather than 3.8 percent (XX out of XX), and its overall outage rate for the month would have been 12.1 percent instead of 8.2 percent.. Were this calculation to be made across the three months of data on which SWBT's application is based, and expanded to include both CHC and FDT, SWBT's already bad performance on outages would be seen to be far worse. Thus, the most appropriate refinement to the reconciled data would only make it more obvious that SWBT had failed to meet the minimally acceptable standards established in the BA-NY Order.

B. The TPUC Also Overstates SWBT's On-Time Performance

91. The TPUC's analysis of SWBT's on-time performance also is flawed. The TPUC focuses exclusively on SWBT's reported performance for CHC cutovers under PM 114.1. This is an error, for two reasons.

92. First, the TPUC fails to acknowledge that PM 114.1, as currently defined, has a gap: it does not measure the time it takes for the LOC technician to call the CLEC and tell the CLEC that SWBT has completed its work on the cutover. This is a critical step in the CHC provisioning process, because the CLEC does not activate the customer's switch translations until it receives the "all-done" call from SWBT. Despite the fact that both AT&T and DOJ have

[34] Calculated by AT&T from SWBT's I-30 raw data. See DeYoung/Van de Water Supp. Decl., ¶67-68 and nn. 25 and 26.

[35] These XXX do not represent the entire universe of outages in trouble reports, only the ones that happened to be raised in the PPIG process. AT&T has recently found out that XXX of these XXX were not recorded under PM59 (trouble reports) after they were pushed out of the PPIG, and is currently taking that up with SWBT.

repeatedly criticized PM 114.1 on this ground, and despite the fact that SWBT's proposed revisions to PM 114.1 would cure this problem, the TPUC simply sets forth the results for PM 114.1 without acknowledgement of the issue. The TPUC thus continues to overlook the fact that PM 114.1 does not measure all of the steps that SWBT needs to take to finish the provisioning of a CHC hot cut. The reconciliation shows that this error affected at least 31 of AT&T's orders during the December – February period at issue, and required in each case that SWBT change the performance interval that it had previously reported for the lines in that order, and that on those orders with gaps, the duration of the gap lasted in excess of 20 minutes in both December and February. See Notification Gap Calculations (Attachment 14 hereto).[36]

93. Second, and equally important, PM 114.1 is only one measure of on-time performance. Bell Atlantic's on-time performance included both prolonged and early cuts. BA-NY Order ¶ 296 n.946. As the FCC observed in the BA-NY Order (¶ 301 n. 959) premature or "early" cuts also are cutovers that do not occur on time. Thus, the New York performance measures (PR 4-06) on which the FCC relied to evaluate Bell Atlantic's on-time performance expressly included *both* early cuts *and* prolonged cutovers. See id., ¶293 & n..932, 933; see also BA-NY Measure PR-4-06 (Attachment 15 hereto). Not surprisingly, even SWBT's witnesses concede the relevance of early cuts to on-time performance; see Conway/Dysart Supp. Aff. ¶¶ 8, 9, 12 (discussing results under both PM 114.1 and PM 114 as relevant to on-time performance). By looking only at prolonged cutovers, and ignoring early cutovers, the TPUC has (just as it did with outages) ignored one important part of the overall picture of on-time performance that was

[36] SWBT tries to minimize this problem by averaging the gap over the entire number of orders, rather than over the number of orders in which there was a gap. Such a procedure makes no more sense here than it would in the case of outage durations—if durations were averaged over all orders instead of over all the orders that had outages, the average outage duration would look rather small, despite the fact that *of the orders which had outages*, the average duration was quite long.

considered in the BA-NY Order. Once again, the TPUC purports to apply a BA-NY standard (the 90 percent on-time standard) only to one subset of performance that the BA-NY Order considered relevant.

94. The TPUC does not offer any facts or analysis for its decision not to include SWBT's early cuts (i.e., PM 114) in its analysis of SWBT's on-time performance. Perhaps its concern was to avoid double-counting. But because the TPUC also appears to advocate that early cuts not be counted as outages (hence its insistence that AT&T's early cuts be backed out of the reconciled data), the TPUC's approach does not result even in "single-counting" of early cuts. Instead, the TPUC apparently favors leaving early cuts unaccounted for in either outages or on-time performance. The TPUC thus fails not only to explain its exclusion of early cuts from on-time performance, but to provide any coherent analysis for how early cuts should be counted.

95. Nevertheless, one point is clear: to compare SWBT's on-time performance with Bell Atlantic's performance, either early cuts must be included, or the performance standard must be raised. In the BA-NY Order, the 90% on-time performance level that Bell Atlantic was found to have achieved took into account both Bell Atlantic's early cuts (the equivalent of PM 114) and its prolonged cutovers (the equivalent of PM 114.1, if disaggregated). Thus, if the TPUC were to insist that SWBT's on-time performance be measured exclusively on the basis of prolonged cutovers, then a fair comparison to Bell Atlantic would require that a higher standard of performance than 90% be set as well, to reflect the fact that only one aspect of SWBT's on-time performance is being measured.

96. Given these overarching errors, the PM 114.1 data that the TPUC exclusively relies upon does not demonstrate on-time performance. First, assuming the data are valid,[37] they

[37] AT&T cannot confirm the validity of the TPUC's summaries, because neither SWBT nor the TPUC has provided interested parties with the background data needed to confirm the accuracy of the

show – on their face – that SWBT has not demonstrated on-time performance equivalent to Bell Atlantic's on-time performance for orders involving 10 or fewer loops.[38] For the three months combined, the TPUC's data show that SWBT was late on 10.1% of the loops it cut over, and was early on 4.45% of the loops it cut over, for a total on-time percentage of 85.47%. See TPUC Comments 16, 18. This preliminary figure already is significantly less than the 90% on time percentage that Bell Atlantic achieved.

97. Second, this figure of 85.47% likely overstates SWBT's performance as compared to Bell Atlantic's. The majority of the loops reported in the new "all-CLEC" data have not been reconciled with the affected CLEC. As a result, those data have not been corrected for the under-reporting that AT&T found in its reconciliation with SWBT. Specifically, the data on PM 114.1 have not been corrected for the "gap" problem that, as noted above, changed the reported interval on at least XXX of AT&T's orders. Similarly, the data on PM 114 have not been corrected for the significant under-reporting of premature disconnects that AT&T also found in its reconciliation. See DeYoung/Van De Water Supp. Aff. ¶ 86 (discussing how SWBT's own WFA logs or outage desk records contained evidence of a number of premature disconnects on AT&T orders between December and February that SWBT had overlooked when it prepared its manual summary of premature disconnects for its performance measure personnel).

TPUC's newly reported "All-CLEC" Data that purports to combined the reconciled data from certain CLECs with SWBT's self-reported data with regard to the rest.

[38] Although the TPUC also presents the PM 114.1 data on a two-hour interval for orders of up to 24 loops, even the TPUC seems implicitly to realize the irrelevance of that particular measure, and notes that SWBT has come close to meeting the TPUC's benchmark only in one of the three months. TPUC Comments at 14-15. In any case, because the vast majority of CLEC orders are for fewer than 10 loops, the use of a two-hour interval designed for orders of up to 24 loops is obviously irrational and arbitrary, and the TPUC does not seriously contend otherwise. See DeYoung/Van de Water Supp. Aff. ¶¶ 60; AT&T Supp. Comments at 35-36.

98. These errors thus raise significant doubt about the accuracy of SWBT's reported data on *each* on the two performance measurements relevant to on-time performance. (SWBT's frequent restatements of data during its first application only underscore this doubt). Neither SWBT nor the TPUC has proven that these errors are not systemic problems that would affect all CLECs; to the contrary, the nature of the problems is such that there is no reason to conclude that they would be unique to AT&T. See, e.g. Krabill Aff., ¶¶5-8 (discussing Dec-Jan data); Koch/Smith Aff., ¶16 (discussing April data); DeYoung/Van de Water Supp. Decl., ¶¶53-54, 64 (discussing SWBT under-reporting). Because SWBT's on-time data for all CLECs does not account for either of these errors, the already too-low figure of 85.4 percent on-time that SWBT largely self-reports must be deemed to significantly overstate SWBT's actual level of on-time performance. It is therefore clear that SWBT's on-time performance does not meet the minimally acceptable level approved in the BA-NY Order.

C. The TPUC Ignores Its Own Requirement That SWBT Demonstrate Parity Performance On Trouble Reports, And Repeats Without Inquiry Or Justification SWBT's Confusing And Idiosyncratic I-10 Data

99. The TPUC notes (p.32) almost off-handedly SWBT's "non-compliant" performance on PM 59, the TPUC's measure of trouble reports after installation. Rather than take SWBT to task, the TPUC first applauds SWBT because "the trend shows that performance is improving" (id.). But the reality is plain: from December through March, SWBT was never in compliance with the parity standard of PM 59. The TPUC then offers excuses for SWBT's failures, suggesting—without looking at any supporting evidence—that SWBT might have done better if the business rules for PM 59 allowed the exclusion of trouble reports where, after investigation, no trouble was found, or where trouble may have resulted from a CLEC's non-standard use of xDSL capable loops. Id.

100. The TPUC's purported interest in having such a gloss on the Trouble Report data is extraordinary given that AT&T submitted precisely the information that the TPUC speculates might be useful. Specifically, both in its initial UNE-Loop Declaration (at ¶124) and its supplemental DeYoung/Van de Water Declaration (at ¶67), AT&T set forth the data that SWBT itself reported for troubles on AT&T's lines, which do not include xDSL loops, and which did not include lines where no trouble was found. Just as significantly, AT&T provided that data on the basis of reports filed within seven days of installation, in a genuine effort to, in the words of the TPUC (p.18), "assist the FCC in making a better comparison to Bell Atlantic's performance," which had been assessed on the basis of a seven-day period. Those data showed that SWBT's provisioning resulted in troubles on 2 or more percent of lines each month from December to February, with February the worst month at 4 percent. See DeYoung/Van de Water Supp. Aff., ¶¶67-73. Notably, neither the TPUC nor SWBT has ever challenged the data (which is SWBT's) or the methodology (which is plainly correct—see UNE-Loop Decl., ¶124 and nn. 78 and 79). The TPUC's disregard of its own Performance Measure, together with its peculiar reliance on SWBT's idiosyncratic invention of an I-10 measure rather than data developed consistent with the Commission's BA-NY Order, reflects the remarkable degree to which the TPUC has simply ignored the relevant, probative evidence before it that is inconsistent with its result. Because the information the TPUC ignores is part of the record, the Commission need not rely on the TPUC's incomplete evaluation, and can determine for itself that SWBT has not met either the Texas Performance Measure parity requirement or the BA-NY Order standard for minimally acceptable performance.

101. Indeed, the latest statewide experience further confirms the inadequacy of SWBT's performance. The March I-30 data on trouble reports for all CLECs shows a 5.3

percent rate, while that for SWBT's own retail operations is 3.3 percent, a statewide parity violation.[39]

II. THE RESPONSES BY TPUC AND SWBT FAIL TO ADDRESS COMPREHENSIVELY THE PROBLEMS WITH THE LACK OF ACCURATE, MECHANIZED DATA GATHERING AND REPORTING PROCESSES AND IMPROPERLY DEFINED PERFORMANCE MEASURES.

102. Despite substantial evidence of fundamental problems with SWBT's data gathering and reporting, the TPUC omits any mention of the serious the need for revisions and reforms to existing processes and procedures. Even the TPUC has acknowledged the need to implement some of the action items that AT&T has recommended to fix SWBT's data-reporting problems—but the necessary changes have yet to be made, and likely will not be if the TPUC does not insist upon them. The TPUC and SWBT also misrepresent the purpose and significance of the Performance Measure revisions currently being discussed. Because the prospects for future nondiscriminatory behavior by SWBT hinge on full and complete correction of these identified problems, the Commission must require such corrective action before 271 compliance can be found.

A. There Has Been No Adequate Responses To The Action Items Generated Out Of the Learnings From the Reconciliation Experience

103. The reconciliation experience demonstrated many areas where SWBT's processes require significant improvement. See DeYoung/Van de Water Supp. Decl., ¶¶79-95. In an effort to respond to the TPUC's request for a summary of the data reconciliation that they had ordered, AT&T prepared and presented an action item list at the TPUC's April 4, 2000 CLEC Workshop. See DeYoung/Van de Water Supp. Decl., ¶97 and Attachment H thereto. The TPUC's April 26, 2000 ignores that list. However, SWBT has now provided a written response. See SWBT's

[39] AT&T's I-7 rate for March was 2.5%.

Response to AT&T's Letter to ALJ Regarding the UNE-Loop Coordinating Cutover Process, (Attachment 2 hereto). Its responses contain many inadequacies, including many responses that are essentially little more than promises to do better in the future. SWBT's responses to some of the key issues are as follows:

- Despite the frequency with which premature disconnects appear in the workforce administration database or outage desk records but not in the PM 114 reports, SWBT's response is not to mechanize the data collection process, but to remind its personnel to do their jobs properly, and to have Quality and Training Managers occasionally double check their work. See id., p.6.

- SWBT's "responds" to the fact that it never informed CLECs about the scope and impact of the critical RCMAC/SOAC problem affecting CHC as well as FDT orders by observing that it "will be happy to discuss with CLECs the best vehicle to communicate these rare occurrences." Id. at p.7. Of course, even if the RCMAC/SOAC problem itself was a one-time event (we hope), problems of one sort or another have been endemic. As the 911 database problem illustrates, SWBT cannot rely on CLECs to tell SWBT about problems—by the time CLECs are aware, it is too late. SWBT's failure to communicate is indicative of a corporate culture insensitive to its Section 271 obligations toward CLECs. SWBT still lacks even a concrete proposal to fix this basic problem.

- Though plagued by instances in which CLEC's FDT orders are mistakenly treated as CHC by the SWBT LSC, SWBT first responds by saying that LSC service representatives "were covered on the proper handling" of orders, and that "[f]lashes were sent out as training on this order process." It then suggests that the burden somehow ought to be on the CLECs to police SWBT's internal communications by checking the FOC against the LSC and notifying the LSC of any discrepancy. Id. at p.8. CLECs cannot possibly take on the task of managing SWBT's personnel.

- SWBT appears to have no response at all to the high number of outages attributable to wiring problems and the associated failure of its personnel to discover these problems as they are supposed to during the Due Date –1 Pre-testing Process. Instead of proposing a response, SWBT merely restates the problem, explaining what the pre-testing procedures are and why they are important, but not addressing the root causes of the wiring problems, nor addressing why its pre-testing routines are not functioning to detect the problems. Id. at p.10.

- SWBT's pre-testing process is also failing to provide advance notice of hot cut orders for customers serviced by IDLCs, an especially critical problem given SWBT's plans to greatly expand its IDLC facilities through Project

Pronto. SWBT again fails to really respond to the problem, saying only that it has trained its personnel and issued more "flashes," and putting off the proposed resolution by suggesting it be raised in the CLEC user forum. Id. at p.11. Furthermore, AT&T is not aware of any "defined and documented" process for handling IDLC orders. AT&T does intend to propose to the CLEC users' forum the changes it is suggesting; the goal for all involved is to be sure that the process is driving the definition of the Performance Measures, and not the other way around.

- Despite the importance SWBT has put on IDLC facilities, SWBT treats IDLC orders as neither CHC nor FDT, and its provisioning performance on these orders is not reflected on any Performance Measure. SWBT's claim that it was agreed at the 6 month review to exclude these from PMs 114, 114.1, and the new 115 and treat them as "new" loops misstates the nature of the agreement. AT&T and other CLECs agreed to document the fact that IDLC orders *are currently being excluded* from the Performance Measures and from the monthly denominators. There was no agreement that this increasingly important facet of the market *should be excluded*; as noted above, the AT&T proposal to capture IDLC provisioning, though not a topic that could be covered in the performance measures workshop, is going to be taken to the CLEC users' forum.

B. The New Performance Measure 115, While An Improvement, Still Must Be Defined And Interpreted Carefully To Understand The True Quality Of SWBT's Provisioning Performance

104. A new Performance Measure 115, designed to measure trouble reports before noon of the next business day after a cutover, is currently under consideration in Texas. This new measure should have real value, given the fact that the Texas process currently lacks any measure for defective provisioning of hot cut loops. However, the Commission should not be misled by the TPUC's confusing misrepresentation of the new Performance Measure 115 as an outage measure corresponding to the standards set in the BA-NY Order. The TPUC's evaluation says:

> The current performance measurements do not capture all outage data. This problem is being resolved in the six-month review process and will result in *a measure to accurately capture all outage data.* The proposed new PM 115 will measure the percent of CHC/FDT circuits for which the CLEC submits a trouble report on or before noon on the next business day after conversion. All

> the parties agree that this new measure captures the outages that result from defective loops.

TPUC Evaluation, p.16 (emphasis added).

105. SWBT makes the same misrepresentation, describing the new PM 115 as "provid[ing] the 'outages on conversion' measurement that AT&T and other CLECs have indicated is important to them." Benchmarks Brief, p.4. SWBT concedes elsewhere in the same brief (p.10) that the new PTR (percent trouble reports) performance measure "is not precisely the same as the *Bell Atlantic New York Order's* analysis of provisioning-related outages." Nevertheless, SWBT then goes on to argue that it should be allowed 5 percent outages on this PM 115. Id. The problem, of course, is that PM 115 is not defined to capture all outages, but only those outages resulting from defective cutovers. If SWBT were allowed to cause up to 5 percent of these types of outages alone, the that amount, when combined with outages allowed under PMs 114 and 114.1 for premature and prolonged cutovers, would lead to a total outage rate far in excess of that the Commission found minimally acceptable in the BA-NY Order.

106. Thus, while the new measure does capture "outages that result from defective loops," it is most definitely *not* a measure which will "accurately capture all outage data." As the Commission noted in it BA-NY Order, outages result from premature cuts and prolonged cuts just as much as from defective cuts. One of the principle reasons that AT&T reluctantly acceded on an interim basis to SWBT's desire to measure premature cuts and prolonged cuts on a line basis was specifically because those two data points need to be added to the defective cut data in order to accurately capture all outage data, and SWBT insisted that, for technical reasons, it could not mechanize its data collection and reporting on the new PM 115 unless it reported on a line basis. As noted in Section I.A.2.a. above, it has never been the case that outages should be measured by defective cuts alone.

107. Finally, SWBT has grossly distorted AT&T's positions in the debate over lines vs. orders as a basis of measurement. As noted above, AT&T has temporarily agreed to line-based measurement of defective cuts to enable SWBT to mechanize its data collection and therefore overcome its chronic under-reporting of outages. In a recent brief filed with the TPUC, however, SWBT tries to suggest that it was AT&T that wanted a loop-based measure for PM 115 and that SWBT was graciously complying. See Brief on Benchmarks, pp.4-5, 8 (Attachment 16 hereto) (claiming that AT&T has a "preference" for measuring by loops "which SWBT did not oppose"). No independent observer who attended the CLEC workshops or reviewed the record in this case could find this credible.

108. What SWBT feels there is to gain from such obvious rhetorical gimmickry is unclear, but the facts remain what they have always been—SWBT and the TPUC have urged replacing line-based measurements with order-based percentage standards even though jointly reconciled order-based data are readily available, while AT&T has advocated order-based measures consistent with those in the BA-NY Order. AT&T's recent concessions represent only a desire to get data on premature disconnects and prolonged cutovers that are consistent with data on defective cuts, given that SWBT has designed its trouble report processes in such a way that (it claims) order-based data cannot be mechanically generated. Ultimately, SWBT needs to develop the ability to provide mechanized reports of outages and on-time performance on an order basis as well.

DECLARATION OF RICHARD TIDWELL

I, Richard Tidwell, hereby declare as follows:

1. I am Vice President—Regulatory Relations of Birch Telecom Inc. ("Birch").

2. Birch is a competitive local exchange carrier ("CLEC") serving small- to medium-sized business and residential customers in the states of Missouri, Oklahoma, Kansas, and Texas. Birch is currently in the process of expanding into the BellSouth and Ameritech regions and expects to have customers in service in those markets by early 2001.

3. On February 17, 2000, Birch filed a Petition for Partial Reconsideration of the *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket 96-98, FCC 99-238, released November 5, 1999. Birch demonstrated that the Commission's current cap of three on the number of lines that can be provided through unbundled switching in zone 1 of the Top 50 MSAs is unworkable. Birch demonstrated that it is not economically efficient to serve customers with fewer than 20 analog lines through self-provisioned switching even where a CLEC already has a switch in place. Birch further demonstrated that the difficulties and delays inherent in the coordinated cutover process are an additional reason why self-provisioned switching is not practical for serving smaller customers. Birch therefore proposed that the Commission increase the cap on the number of lines that can be served through unbundled switching to the DS-1 level or, at an absolute minimum, 20 lines.

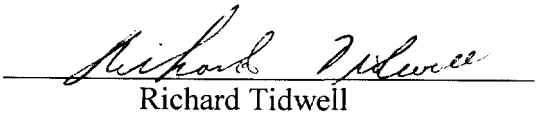
4. Birch has deployed its own switches in Saint Louis, Missouri; Kansas City, Missouri; and Wichita, Kansas. Even in those areas, however, Birch relies on the unbundled network element platform, or UNE-P, to provide service to customers served through individual analog lines. It is only for customers large enough to warrant a DS-1 or higher capacity loop that Birch has found

it practical to provide service using its own switch coupled with unbundled loops provided by SBC.

5. Birch's experience with the problems associated with the coordinated cutover process are a large part of the reason that it does not provide service to customers below the DS-1 level through self-provisioned switching. Prior to the installation of its switches, Birch had provided service to customers through resale. After turning up its Kansas City switch in early 1999, however, Birch began converting customers to service using self-provisioned switching and SBC-provided UNE loops. It soon became apparent that the process of converting individual customer loops was an unmititgated disaster. The so-called "coordinated" cutover process, which is supposed to ensure the conversion of the customer without loss of service, was anything but. In almost every case, the customer experienced some service disruption. The service disruptions ranged in length from a few minutes to, in a few instances, several days. Even in the minority of instances where the customer experienced no significant service disruption, the conversion was often delayed by days or weeks.

6. Birch attempted for several months to address the service disruptions and delays, but the situation did not improve. Ultimately, both because of the underlying economics and because of the problems inherent in the coordinated cutover process, Birch was forced to abandon serving customers below the DS-1 level using self-provisioned switching. Now that UNE-P has become available, it is Birch's primary method of providing service to smaller customers.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Richard Tidwell

July 17, 2000
Date

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

Declaration
Of
Peter Karoczkai

I, Peter Karoczkai, hereby declare as follows:

1. My name is Peter Karoczkai. I am the Senior Vice President of Sales and Marketing of InfoHighway Communications Corporation. In this role, I am responsible for all sales and marketing activities of the company, including the planning and roll-out of new services, interfacing with vendors and carriers and managing our distribution channels across all markets.

2. Prior to my current role at InfoHighway Communications Corporation, I was Vice President, Marketing and Product Management for Bell Atlantic Telecom Industry Services, Bell Atlantic's wholesale business unit servicing CLECs, resellers, and wholesale customers requesting interconnection with Bell Atlantic's network. In that role, I managed Bell Atlantic's product development efforts for several dozen wholesale products, including resold services,

Unbundled Network Element ("UNE") Loop, collocation, UNE-Platform, UNE-Interoffice Facilities, and Local Number Portability. Prior to that, I was Managing Director, Resale Services for the NYNEX Corporation, responsible for the establishment of NYNEX' wholesale distribution to resellers, including operations, Operational Support Systems ("OSS") and product development. I began my telecommunications carrier with NYNEX Business Information Systems Company in marketing and sales. Later, I was also Director, Marketing for NYNEX Mobile Communications where I focused on distribution channels and wholesale. My educational background includes a BS in Business Administration from the University of North Carolina at Greensboro, and an MBA from New York University in Marketing and International Business.

3. InfoHighway Communications Corporation is a combination CLEC and ISP, known as an Integrated Communications Provider, offering DSL, data, voice and Internet services to businesses and tenants in high-rise office buildings. The Company provides service in eight major cities in New York, New Jersey, Texas, Florida and California and plans to expand into additional markets in Texas, New Jersey, Massachusetts, Pennsylvania, Maryland, Washington D.C., Connecticut and Rhode Island. InfoHighway is deploying a super-regional IP-based data network and will offer competitively priced advanced high-speed data and Internet solutions utilizing DSL technology; Web services that include hosting, collocation, design and e-commerce support; local and long distance telephone services; and network design and wiring services.

4. InfoHighway (previously ARC Networks, Inc.) began its local voice telecommunications operations by providing dedicated local service to large-sized business customers (usually those with more than 24 lines) from a CLEC switch in New York and has

been leasing switching capacity from various switch-based CLECs for over five (5) years. In order to serve small- to medium-sized business customers, the Company has begun offering local service based on the ILEC's UNE-P offering. For larger customers, InfoHighway continues to provision dedicated local service by providing at least one dedicated DS-1, connecting the customer's premise equipment (usually a PBX) to the CLEC's switch. Our service technicians are usually dispatched to integrate and connect the DS-1(s) with the customer's premise equipment. InfoHighway is billed at wholesale rates by the CLEC and by using call records from the CLEC switch, the Company bills its end-user customers directly. InfoHighway provides customer service and trouble administration functions to the customers as well.

5. InfoHighway currently purchases service at DS-1 level or above from two major CLEC providers but we have been unable to obtain basic local services (e.g. POTS service) from CLECs below the DS-1 level and consequently cannot service a critical segment of the market on a cost effective basis. For example, if InfoHighway wants to install only twelve (12) POTS lines to a business customer, we must purchase a DS-1 connection to the CLEC switch in order to provide the twelve POTS lines. However, as a practical matter, the DS-1 solution is cost-prohibitive to service this size customer. The resale of the ILEC's local service is also not a viable alternative because of its limited margins.

6. As a result, InfoHighway has only one practical option to service customers with less than approximately 24 lines - to provide local service from the ILECs (e.g. Bell Atlantic) on a wholesale basis by purchasing UNE-P service.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Peter Karoczkai

Peter Karoczkai

7/18/00

Date