

fails to properly inform the Commission that the merger conditions explicitly state that they do not preempt state action. Specifically, the second paragraph of the merger conditions states as follows:

It is not the intent of these Conditions to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these Conditions, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these Conditions. Nor do the Conditions reflect or constitute any determination or standard regarding SBC/Ameritech's compliance or non-compliance with 47 U.S.C. §§ 251, 252, 271, or 272. [with the enclosed footnote from those conditions (Conditions impose fewer or less stringent obligations on SBC/Ameritech than the requirements of any past or future Commission decision or any provisions of the 1996 Act or the Commission or state decisions implementing the 1996 Act or any other pro-competitive statutes or policies, nothing in these Conditions shall relieve SBC/Ameritech from the requirements of that Act or those decisions. The approval of the proposed merger subject to these Conditions does not constitute any judgment by the Commission on any issues of either federal or state competition law. In addition, these conditions shall have no precedential effect in any forum, and shall not be used as a defense by the Merging Parties in any forum considering additional procompetitive rules or regulations.))] ¹³

SWBT's reply comments amount to a violation of the merger conditions in that SWBT used the conditions "as a defense" in this forum. ¹⁴

Not only does SWBT impermissibly fail to refer to this obvious precedent, it fails to note that IP is proposing corrective action to conduct engaged in by SBC/SWBT after the merger conditions were adopted. This Commission certainly has the authority to condition its voluntary 271 approval on a remedy to SWBT's conduct particularly when the remedy is necessary to give CLECs a reasonable opportunity to compete, let alone an irreversible opportunity to compete.

¹³ *SBC/Ameritech Merger Order*, page 1 of conditions attachment. The SBC Voluntary Commitments, dated August 2, 2000, are attached hereto as Exhibit B.

¹⁴ See Second Reply Comments in Support of Southwestern Bell's Application for Section 271 Relief in Kansas at 39 (attempting to rebut IP's proposal, in part, by noting that the proposal "conflicts" with the merger conditions).

Finally, SWBT's additional reliance on the Texas 271 Order is misplaced. Again the SWBT conduct complained of was not included in the Texas 271 record. Similarly, SBC's Project Pronto announcements were made after Texas PUC's agreement in December of 1999 to support the Texas 271 application.

7) Restrictions on Unbundled Dedicated Transport (UDT)¹⁵

Finally, SWBT restricts the availability of unbundled dedicated transport (UDT) in violation of checklist item V. This issue was not addressed in the Texas proceeding, in part, because SWBT previously provisioned certain UDT orders that it now rejects. This restriction stems from SWBT's implementation of particular language in the Texas T2A that SWBT proposes as Section 2.2 of Attachment 6 – UNE, of the K2A.

Like many providers, IP generally connects its equipment from one SWBT central office to another through the use of UDT from SWBT where available. Transport is generally comprised of two components, UDT and entrance facilities. These are two completely separate pieces of equipment that are required to be connected to each other to complete the circuit. Recently, IP has ordered UDT from SWBT seeking connection to entrance facilities controlled by another provider, which that provider obtained from SWBT by ordering from SWBT's access tariff. SWBT has rejected IP's orders.

SWBT bases these rejections on Section 2.2 of Attachment 6 – UNE in the T2A. SWBT argues that this language gives it the authority to deny IP's UDT requests. Specifically, Section 2.2 of Attachment 6 - UNE states, in relevant part: "Unbundled Network Elements may not be

(..continued)

¹⁵ This issue was not in IP's initial comments. However, IP previously provided a proposed modification to the K2A to address the problem. As explained to staff, IP did not include the issue initially because SWBT was provisioning IP's orders in Texas when the initial comments were filed. Since that time, SWBT changed its policy and has improperly used language contained in the T2A and K2A to create a restriction on unbundled dedicated transport in violation of FTA section 251(c).

connected to or combined with SWBT access services or other SWBT tariffed service offerings with the exception of tariffed collocation services.” Based on this language, SWBT argues that it can reject IP’s orders because they would be “connected to” SWBT access service.

IP disagrees with SWBT’s application of Section 2.2 of the UNE attachment. It is IP’s understanding that this section was intended to protect SWBT from switched access arbitrage. In other words, this language was in place to prevent interexchange carriers from carrying interLATA and intraLATA voice traffic over a combination of UNEs and access circuits when traditionally such traffic would have been carried over access circuits. SWBT, however, is applying the section more broadly than was intended. In IP’s circumstance, SWBT is refusing to fulfill IP’s UDT orders even though all of the traffic is ATM traffic that never would have been subject to SWBT’s switched access tariff. By applying this language more broadly than was intended, SWBT is restraining the availability of UDT and is not meeting Checklist Item V.

Although it shouldn’t be necessary, IP proposed to Staff a modification of Section 2.2 to more closely codify the intent to limit any future over-application. IP would modify the second sentence of Section 2.2 as follows:

“When used to carry predominantly intraLATA or interLATA voice traffic, SWBT will not be required to provision Unbundled Network Elements ~~may not be~~ connected to or combined with SWBT access services or other SWBT tariffed service offerings with the exception of tariffed collocation services.”

Without a change in language or a permanent change in SWBT’s policy, SWBT will be guilty of unreasonable restrictions on the provision of UDT. In reaffirming the requirement to provide UDT in the UNE Remand, the FCC did not authorize such a restriction. In fact, the FCC implies the opposite. At paragraphs 492 through 496, the FCC acknowledged one, and only one, circumstance where a restriction might be appropriate. The open issue was whether ILECs

should be obligated to provide entrance facilities at UNE rates when used to bypass access charges. The circumstance faced by IP is drastically different. In IP's situation, SWBT is receiving the higher access charges for its entrance facilities. Consequently, the UNE remand does not support SWBT's restriction and by enforcing such a restriction SWBT's application is in violation of checklist item V of section 271. SWBT's application must therefore be rejected unless the proposed remedial action is taken.

III. Response to Staff's Recommendation

1) Procedural Note:

Briefly stated, IP has concerns regarding the process employed in this proceeding. It is a concern on one level that there will not be a hearing on the application because there were hearings, on a much different application, almost two years ago. The concern is at a much higher level when IP reads at paragraph 18 of Staff's recommendation that Staff has had "multiple meetings with SWBT" to address issues. IP is only aware of one conference call on which its participation was requested. IP was an active and eager participant on that call. IP can only guess whether the issues of concern to IP were discussed between SWBT and Staff, whether SWBT persuaded Staff to discount IP's concerns, and whether Staff received complete and accurate information from SWBT regarding IP's issues. This "one-way" process differs greatly from the process in Texas. Not only were there hearings and numerous collaborative sessions, but there were numerous one-on-one sessions. If a CLEC made a representation to Staff when SWBT was not present, the Texas Staff was obligated to get a confirmation, denial, and/or explanation from SWBT. Similarly, when SWBT made a representation, Staff consulted with the CLECs. IP is somewhat in the dark because a similar process was not followed in Kansas to

date. Finally, on this point, IP notes that at page 8 of the Staff consultants' report, the consultant mentioned the lack of a collaborative process as one of the factors that qualify its report.¹⁶

2) Faulty Assumptions / Lack of Analysis:

IP will not point out every concern it has with Staff's recommendation, but instead focuses on those concerns that relate most directly to the issues raised by IP. Many of the specific concerns follow from some specific, repeated assumptions that are not accurate. Specific examples of these problems will be included in the next section.

i) Erroneous Application of Burden of Proof

In this application SWBT seeks 271 relief. SWBT has the burden of proof. In spite of that legal fact, Staff's recommendation appears to either ignore the burden of proof or place that burden of proof on the CLECs. Given the number of concerns and positions raised by IP that were never controverted, it is not conceivable that a positive recommendation could be made on the existing record.

ii) Provisioning Data Can Not be Ported from Another State

Rightly or wrongly, Staff has agreed with SWBT's position that SWBT's OSS's are regional and therefore results from the Texas OSS system testing are applicable in Kansas. What is clearly incorrect is Staff's expansion of that principle to apply the "Regional Analysis" to provisioning issues. Provisioning is based on state-specific (and often central office specific) factors including the level of staffing in a particular office, the level of staffing in the regional area, the quality of training, local practice, level of employee retention, workload, average experience, success of local management teams, average number of customers per central office, etc. Consequently, it is erroneous to assume that provisioning performance in one location will be repeated in another location. A cursory review of performance data will prove that. There

¹⁶ Although that statement specifically referred to the development of performance measures, the concern is equally applicable to all substantive areas.

are substantial variations from one state to another. In fact, in Texas, there are substantial variations from the four market areas within that state. For example, at page 9 of the consultants' report attached to Staff's recommendation, the consultants make it clear that it is the "systems" that it believes have regional attributes. The consultants were very clear to limit their discussion to "systems," which excludes provisioning.

iii) Reliance on Performance SWBT Provides to Itself (or Its Affiliate)

Clearly, when evaluating an ILEC's performance, the issue is whether the ILEC provides sufficient performance to its competitors such that markets can be deemed to be irreversibly open to competition. The performance an ILEC provides to itself or its affiliate cannot be a substitute for performance to competitors. Yet, Staff relies on line sharing performance SWBT provided to itself/its affiliate as data to support this application. Not only is such information incapable of supporting a 271 application on principal, there are substantive differences between how SWBT ordered and provisioned those orders to itself and the way they are provisioned today.

iv) Lack of Explanation

Throughout Staff's recommendation, a pattern of presenting information is apparent. The position of the CLEC is presented, the position of SWBT is presented, and a Staff conclusion that the checklist item is met follows. At least in the case of IP's issues, there is no analysis of the concerns raised. For the Commission to give any weight to Staff's recommendation, on each and every point, it is necessary for Staff to state why it concluded what it did.

v) Use of a "Minimum Standards" Approach

Probably the greatest overarching concern when reviewing Staff's recommendation is that it appears to have taken a minimum standards approach. Rather than focusing the review on the competitive telecommunications market in Kansas and evaluating what is needed to assure an irreversibly open market is created, Staff has reviewed backward from existing FCC decisions to see if the minimal terms of those decisions have been put into contract language. Of course, an

FCC rulemaking proceeding is not capable of reviewing the factual detail of the Kansas marketplace. FCC rulemakings are tools to foster market opening initiatives but also are an opportunity to codify state learnings. For example, the FCC’s existing collocation rules largely codified decisions that were made during the Texas 271 process. Had the Texas commission taken the “look at the current FCC rules approach” followed in the Staff recommendation, there wouldn’t be a cageless collocation requirement in the T2A, and K2A, today.

As will be discussed later in this reply, important steps are necessary to achieve an irreversibly open market. Moreover, many of these steps relate to issues that were not addressed in Texas. Project Pronto, for example, was not announced until after the conclusion of the Texas PUC’s 271 review concluded. The requirement to address the issue is, however, required in this proceeding. The Illinois commission noted that the FCC itself stated in its line sharing order: **“We note that states are free to impose additional, procompetitive requirements consistent with the national framework established in this order.”**¹⁷

3) Response to Specific Recommendations:

i) Standard for Overall Performance

The premise behind SWBT’s application is generally that this Commission should accept the policies and tests performed in Texas because the Texas PUC did things right. Regarding overall performance, the Texas PUC did an extensive quantitative and qualitative analysis of SWBT’s performance. The quantitative standard was to meet 90% of the measures for two out of three consecutive months. Moreover, the Texas PUC wanted to review the most recent three months of data when possible and had staff file a detailed report so SWBT and CLECs could respond to it. In this proceeding Staff finds at page 37 that “SWBT is in compliance on the majority of the performance measures.” A majority criteria is a far cry from 90% for two of

¹⁷ Illinois Decision at 4 (quoting the *Line Sharing Order*).

three months. Later in the report, it becomes apparent that the three months reviewed were January, February and March of 2000. Performance from the first quarter of the year, even if it met the 90% standard, would not be adequate to support an application seeking approval in the October time frame.

ii) Merger Condition Discounts

To IP, the discussion relating to Merger Condition Discounts raises an analytical red flag. That discussion, at pages 41 to 43, discusses these discounts as “encouraging local competition”. That conclusion begs the question of why they were required in a merger docket. The discounts were not required to “encourage local competition.” Instead, they were required to offset the anticompetitive effects of increased market power due to the combination of two very large BOCs. IP does not raise a concern with the discounts themselves; however, to the extent Staff offset concerns with the application by considering these discounts as an offset, that analysis would be incorrect because it misconstrues the purpose of a merger condition as well as failing to include the negative affects of market concentration to the analysis. A proper analysis would give no weight to the merger conditions promotional discounts pursuant to the theory that the pluses and minuses from the merger would offset.

iii) xDSL Capable Loops

At page 51, Staff finds that “SWBT is providing non-discriminatory access to xDSL capable loops.” The recommendation does not support that statement. Instead, there is a one sentence reference to the pre-order and provisioning processes being identical through out the 5-state region. No data is cited to support the conclusion. No reference to the ordering or maintenance processes are discussed. Most importantly, no justification is made to support the extrapolation that the existence of identical “provisioning processes”, if that is accurate, automatically means CLECs are receiving parity treatment and that SWBT has taken the steps in Kansas to assure parity treatment. Only performance data can support a conclusion that xDSL

loops are provisioned at parity in Kansas. And if adequate commercial performance does not exist, then test performance is necessary. Staff's erroneous conclusion appears to result from two high level errors. First, the premise that provisioning results are portable from state-to-state is erroneous as discussed above. Second, Staff does not appear to be applying a burden of proof on SWBT. It is SWBT's obligation to support its application with evidence necessary to support each and every element of its application. Staff does not appear to have required such information to support its recommendation.

iv) Using ASI Data as Evidence Relating to Line Sharing Compliance

Although Staff correctly notes at page 18 that there is appropriate concern because line sharing was not part of the OSS test relied upon by SWBT¹⁸, at page 52, it states the following as what appears to be the only argument to support the application on this point:

ASI, in accordance with the Merger Conditions, processes line sharing Local Service Requests (LSRs) within the SWBT territory. ASI receives no special advantage from SWBT and operates as any other CLEC. ASI submits LSR in commercial volumes that flow through SWBT's systems for DSL services. SWBT's performance for handling these line sharing orders was capture[d] in PMs, Version 1.6: 5.1, 55.1, 57-63, 65, 67, and 69.

First, performance SWBT provides to its affiliate cannot support SWBT's 271 application. An appropriate application of a burden of proof where SWBT is required to show that it provides adequate performance to competitors, cannot be met based on performance to its affiliate.

¹⁸ The Commission must consider that the line sharing requirement was not applied in the Texas 271 proceeding because the FCC determined that as a practical matter the FCC's line sharing order was not effective when the FCC application was filed. Such is not the case in this proceeding. This explains why an OSS test that did not include line sharing could support the Texas application but not the Kansas application.

Second, Staff provides no analysis of the data. What months is Staff using? This is a critical question because any data prior to June of this year would not relate to the process CLECs have to follow. Instead, SWBT would have been providing interim “exclusive” line sharing to ASI. Performance from that process would be completely invalid. What are the flow through results? Staff states orders flow through but does not reference PM13, which ostensibly measures flow through.

Third, Staff makes a bold statement regarding “no special advantage” to ASI. What investigation was done? Is Staff aware that some of SWBT’s most seasoned retail representatives obtain all of the information for ASI? Did Staff question whether the using of this most seasoned retail staff begs the question of whether SWBT’s training material for line sharing are adequate for a typical service representative that has not worked for SWBT for ten plus years. Did Staff question using benchmarks in Version 1.6 of the PMs when Version 1.7 generally looks at parity for line sharing? Finally, did Staff consider that line sharing orders follow a completely separate and distinct order flow than xDSL loop orders and are much easier to provision, thereby invalidating the use of xDSL benchmarks to measure the adequacy of line sharing performance. For example, attached as Exhibit A is the Arbitration Decision from the Illinois Commerce Commission relating to line sharing. As a result of that decision, as of December 8, 2000, the provisioning interval for line sharing will be one day. This compares to the 5 day interval for xDSL loops in Kansas.

Contrary to Staff’s Recommendation, SWBT provides no credible evidence that it provides line sharing to competitors at parity with what it provides to ASI.

v) Inaccurate Loop Information

Staff concludes that the uncontroverted high level of inaccurate loop information provided to DSL providers is irrelevant because, in effect, ASI receives the same lousy treatment. Unfortunately, at page 54, Staff takes at face value the statement that if ASI receives the same data, parity is achieved. Staff misses the point.

As was discussed in response to SWBT, there is a discriminatory effect that results from the database accuracy. The T2A, and by duplication the K2A, includes numerous examples of situations where it was decided that “parity” in name only was not parity in the real world. The assumption is that the incumbent can weather the storm while competitors will blow away. IP put forth reasonable solutions to address this problem. It is understood that SWBT will not fix its substantial loop information problems overnight. And, IP did not seek to keep the 271 application in perpetual limbo. Instead, IP’s initial comments propose interim solutions so the application can move forward while SWBT meets commitments for improvement. It is unfortunate that Staff chose not to refer to those proposals in its recommendation nor state whether the citizens of Kansas would be better off and the fundamentals supporting a competitive marketplace improved if IP’s proposals are enacted. That leaves the Commissioners themselves in the position of having to review IP’s initial comments without the benefit of a Staff review of the public policy benefits.

vi) Interim xDSL and Line Sharing Rates

Unfortunately Staff, like SWBT, fail to address the substance of IP’s concerns regarding xDSL/line sharing rates. In fact, no Staff comment is provided on this issue, only a statement of IP’s position on page 54. Rather than restating the position here, IP will refer to its initial comments where it refers to the *Bell Atlantic 271 Order* and describes how SWBT’s past conduct in Kansas dispels the use of interim rates for such key offerings.

vii) xDSL-Capable Loop Performance

It should go without saying that to meet its burden of proof, SWBT must demonstrate parity loop performance in Kansas. Similarly, that burden must be supported by proof of actual performance not promises or hopes for the future. Yet, Staff's Recommendation, after noting deteriorating performance on page 60 states the following at page 61, "To the extent that SWBT uses common processes to install xDSL service, **Staff believes as Kansas order volumes increase, SWBT's parity performance will more closely align with that of its other states.**" The recommendation goes on to find compliance with the checklist item based on a *belief* that things will be better in the future. A 271 application cannot be supported by such "nonevidence".

viii) Line Sharing and Other Loop Related Issues

As with xDSL loop performance, Staff has a lot of confidence in SWBT since it avoids the lack of any commercial data to support the application regarding line sharing by simply noting at page 62 that "**Staff believes that SWBT will be in compliance with the Line sharing provisions once data is available.**" Notwithstanding Staff's believe, such is not the test. SWBT must provide sufficient commercial data to demonstrate compliance or pass an independent third party test.

ix) Project Pronto

IP finds no reference to its concerns, analysis, and recommendations regarding Project Pronto implementation in Staff's recommendation. Consequently, IP understands that Staff has not taken a position in favor of or against IP's proposals. Thus, the Commission is left with deciding the Project Pronto issues without the benefit of a Staff recommendation. IP refers the Commission to the discussions relating to Project Pronto in the SWBT section above and the discussion in IP's initial comments. IP has explained the immediacy of Pronto, how CLECs will

be harmed if Pronto is not immediately addressed, and has proposed a streamlined process for timely resolving the issues. IP also refers the Commission to the attached arbitration decision from the Illinois commission. In that decision, the Illinois commission agreed with the many concerns raised by IP in this proceeding. The Illinois commission determined that SBC/Ameritech “is required to provide line sharing over fiber-fed “Project Pronto” DLC architecture to CLECs simultaneous with such provision to its retail or affiliate operation.”¹⁹ That commission added “that this requirement is not only technically feasible, but is necessary to promote the deployment of competitive advanced services in Illinois.”²⁰ IP has made the same observation regarding the deployment of competitive advanced services in Kansas. In that Section 252 proceeding, the Illinois commission added that, “Not only is there a need to rule on this for the reasons above, but the FCC has granted us that authority. The FCC, in its Line Sharing Order, granted state commissions the authority ‘to impose additional, procompetitive requirements consistent with the national framework established in the [line sharing] order.’ We find that the requirements above with respect to Project Pronto DLC fully comport with the competitive national framework for advanced services.”²¹ Given that Staff has not made a recommendation on this issue, IP submits that it would be reasonable to consider the findings of the Illinois commission as a persuasive recommendation to fill the gap.²²

¹⁹ Illinois Decision at 30.

²⁰ Id.

²¹ Id. at 32.

²² As the Commission is aware, IP proposed building off of the current Texas proceeding to efficiently address Pronto issues. IP would equally support building from the Illinois commission decision. The ultimate goal is immediate resolution so the building blocks are in place to allow nondiscriminatory access to this infrastructure when it is made available.

x) Restrictions on Unbundled Dedicated Transport (UDT) – Section 2.2 of Attachment UNE

Staff, by implication, chose not to recommend IP's proposed modification to Section 2.2 of Attachment UNE. IP assumes this result because, although Staff never refers to IP's proposal, Staff failed to include IP's proposal in its list of edits to the K2A. As stated earlier, IP actively participated in the one telephone conference to which it was invited. In that conference, IP explained that a recent change at the SWBT Local Service Center (LSC) was improperly restricting the availability of unbundled dedicated transport (UDT) in violation of checklist item V. This issue was not addressed in the Texas proceeding nor IP's initial comments because SWBT previously provisioned certain UDT orders that it now rejects. IP explained this to Staff. Staff accepted IP's edits and informed IP that its proposal would be considered. At no time was IP requested to take any additional action for its proposal to receive consideration.

Rather than restating them here, the Commission is referred to the above discussion in the SWBT reply section.

xi) Merger Condition Compliance

In IP's review of the Staff recommendation, IP did not notice any reference to IP's proposal regarding merger condition compliance. As IP stated in its initial comments, "Any 271 approval should be conditioned on SWBT's compliance with all merger conditions that affect competitors in this state. This commitment would affect virtually all checklist items as well as the public interest standard. For example, SWBT's failure to meet the requirements created by the FCC in the various plans of record and the multistate MFN conditions contained in those conditions would be grounds for an enforcement action pursuant to section 271."

It is IP's hope that this recommendation by IP is considered seriously. Merger conditions are in place to help alleviate the perceived anticompetitive effects of the further market

consolidation created by the SBC merger with Ameritech. Without compliance with those conditions an irreversibly competitive market cannot be achieved.

xii) Maintaining Separate Affiliate For Data Services Indefinitely

IP also does not find reference to its proposal regarding on-going separation of the SWBT data affiliate from SWBT. As IP stated in its initial comments, SBC/SWBT has made statements in meetings with CLECs regarding Project Pronto that suggest that it is making certain offerings to CLECs only because a separate affiliate exists, ASI, and that offerings will possibly be taken away once the merger requirement for a separate affiliate is taken away (*i.e.*, three years from merger approval date). This raises concerns for CLECs both today and in the future. To have a reasonable opportunity to compete today, CLECs need the level of certainty that is available to SWBT and its affiliate. In other words, for access to offerings, such as ILEC-owned splitters and Project Pronto, to have meaning, CLECs must have assurances of long-term access. Without such assurances, CLECs cannot effectively compete in the marketplace or in the world of financing. This concern would be alleviated if this Commission conditions 271 approval on SWBT committing to either maintain the separate DSL affiliate structure indefinitely or agree that all terms, conditions, and pricing availability would continue into the future as if ASI were a separate affiliate. This would mean that CLECs would have equal access to terms, conditions, and rates as are available to SBC's data provider in Kansas (whether that data provider is a separate affiliate or an operating unit).

The concerns raised are critical. IP had hoped for a Staff recommendation that would have analyzed the details of IP's proposal with a conclusion that the proposal is in the public interest. That said, IP does understand how overwhelming the size of the application is. In these reply comments, IP seeks the Commission's analysis on the proposal, as well as IP's other proposals. Meeting a minimum requirement of a merger condition will not achieve an

irreversibly open market. The merger proceedings, just like FCC rulemakings, were never intended to supplant a substantive 271 proceeding. As stated earlier, that condition was the minimum requirement to alleviate anticompetitive effects of consolidating market power. This proceeding, on the other hand, is tailored toward seeking those market opening initiatives necessary to achieve an irreversibly competitive market.

xiii) Updating Version 1.7 of the Performance Measures

SWBT has agreed to implement Version 1.7 of the Performance Measures as reflected in Staff's recommendation. IP assumes that language in Staff's recommendation will be updated to incorporate the additional requirements by the Texas PUC last week. IP does not expect disagreement on this point but refers to the additional requirements in an abundance of caution.

IV. Conclusion

The good news is that the Commission's immediate decision is made simple by SWBT. Because SWBT generally fails to controvert issues, the harmful affect on competition, and the appropriateness of IP's proposed solutions, the Commission can easily adopt IP's positions. The "bad news" is that we all lose when the application is rejected because of SWBT failures. IP loses because it will not benefit from the market opening measures it proposed; the Commission and the people of Kansas lose because they will have to wait a little longer to get the type of robust competition they deserve; and SWBT loses its bid for 271 relief (although it benefits from keeping many barriers to entry in its local markets). While the "bad news" is a bitter pill for us all to swallow, the hope is that SWBT's new 271 filing will address all issues completely and fairly. With adequate cooperation, the necessary steps to irreversibly open markets to competition may be implemented. Then, we all will win. The key is for the citizens of Kansas to not lose the one-time opportunity given to them by Congress in Section 271. It is up to this Commission to stop the timer before the opportunity ticks away.

As IP attempted to do in this proceeding, when that new docket is initiated, IP will again take the approach with which it began. IP will discuss its concerns but also propose solutions in a collaborative manner that move in the direction of “yes.”

Respectfully submitted,

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Attachment 5

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one Day of Work Completion 25

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APPENDIX
PERFORMANCE MEASUREMENTS BUSINESS RULES (VERSION 1.7)
RESALE POTS, RESALE SPECIALS AND UNES

Pre-Ordering/Ordering

1.2 Measurement (New Measure)	
Accuracy of Actual Loop Makeup Information Provided for DSL Orders	
Definition:	
The percent of accurate DSL actual Loop Makeup Information provided to the CLEC.	
Exclusions:	
None	
Business Rules:	
This measurement tracks accuracy of the loop makeup information provided to the CLEC. It compares reported loop makeup information to actual loop makeup information on the loop provided to the CLEC, and it captures both the clerical error and underlying data error.	
Levels of Disaggregation:	
<ul style="list-style-type: none"> • DSL actual Loop Makeup Information provided manually • DSL actual Loop Makeup Information provided electronically 	
Calculation:	Report Structure:
(# of orders for which Loop makeup information provided by SWBT is identical to engineering work confirmation/DLR ÷ total actual Loop Makeup Information responses) * 100	Reported on a CLEC, all CLECs, SWBT DSL affiliate, and SWBT DSL Retail basis by interface for EDI, DATAGATE, VERIGATE, or manually, depending on method of provision of actual loop makeup information.
Measurement Type:	
Tier 1 – Low Tier 2 – Medium	
Benchmark:	
95% accurate for each level of disaggregation, or parity with SWBT DSL Retail, SWBT DSL Affiliate, or other CLECs, whichever is higher.	