

unbundled from local switching or other services.”⁵¹¹ The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.⁵¹²

178. In order to establish that it is “providing” unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.⁵¹³ Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

2. Discussion

179. We conclude that SWBT demonstrates that it provides unbundled local loops in both Kansas and Oklahoma in accordance with the requirements of section 271. Specifically, we find that SWBT demonstrates that it provides new stand-alone loops, including xDSL-capable loops, in substantially the same time and manner as it does for SWBT’s own retail service.⁵¹⁴ We also conclude that SWBT demonstrates that it provides voice grade unbundled loops through “hot cut” conversions in a manner that affords competing carriers a meaningful opportunity to compete. In evaluating SWBT’s overall performance in providing unbundled local loops, we examine SWBT’s performance in the aggregate (i.e., by all loop types) as well as its performance

⁵¹¹ 47 U.S.C. § 271(c)(2)(B)(iv).

⁵¹² *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

⁵¹³ *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

⁵¹⁴ Where no retail analogue exists to compare SWBT’s performance towards competing carriers to SWBT’s performance to its retail operations, we evaluate SWBT’s showing to ascertain whether SWBT affords competing carriers a meaningful opportunity to compete. As a result, we sometimes rely on performance measurements that use a benchmark instead of a parity standard.

for specific loop types (i.e., by voice grade, xDSL-capable, BRI, and DS-1 types). In doing so, we are looking for patterns of systematic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete.

180. As we have noted in previous section 271 Orders, we examine the data for all the various loop performance measurements, as well as the factors surrounding the development of these measures. Isolated instances of performance disparity, especially when the margin of disparity or the number of measurements impacted is small, will generally not result in findings of checklist noncompliance. We also look to SWBT's performance in Texas (where SWBT has been handling commercial volumes to a greater degree and for a longer period of time) as evidence relevant to this checklist item because volumes in Kansas and Oklahoma are low and SWBT's OSS is the same as in Texas. Finally, we evaluate the information SWBT provided describing its processes for installing and maintaining loops, the capabilities of its workforce, and employee training to show that it provisions and maintains unbundled loops using the same methods and procedures throughout its five-state region.⁵¹⁵

181. As explained below, we evaluate SWBT's compliance with this checklist item by evaluating several performance measurements as they apply to five different types of unbundled local loops.⁵¹⁶ For most measurements, SWBT shows that it performs at an acceptable level, generally meeting or exceeding the established benchmark or parity standards in the months leading up to its application. We find that SWBT's overall performance meets the checklist requirements, even though some performance measurements indicate isolated problems for some types of unbundled loops. As explained below, we believe that the marginal disparities in some measurements are not competitively significant and do not show signs of systemic discrimination. Instead of faulting a BOC's showing for checklist item 4, we believe such performance issues are better addressed through a Performance Assurance Plan, targeted enforcement action, or carrier-initiated complaints under the Act or an interconnection agreement.

a. xDSL-Capable Loops

182. We find that SWBT demonstrates that it is providing xDSL-capable loops in accordance with the requirements of checklist item 4. In analyzing SWBT's showing, we rely

⁵¹⁵ Letter from Jared Craighead, Associate Director-Federal Regulatory, SBC Telecommunications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket no 00-217 (Nov. 29, 2000) (SWBT November 29 EX Parte Letter); Letter from Eduardo Rodriguez, Executive Director-Federal Regulatory, SBC Telecommunications Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-217 (Nov. 7, 2000); SWBT Chapman Aff. at paras. 17-51, 71-101; SWBT Noland/Smith Aff. at paras. 14-26, 29, 96-148; SWBT Mah Reply Aff. at paras. 23-37; SWBT Noland Reply Aff. at paras. 3-19.

⁵¹⁶ Specifically, we examine percent FOCs returned within "x" hours, average installation interval, missed installation due dates, percentage of trouble reports within 30 days of installation, mean time to restore, trouble report rate, and repeat trouble report rate. We examine SWBT's performance for 8.0 dB loops, 5.0 dB loops, DS-1 loops, BRI loops, and DSL loops. Both BRI loops and DSL loops are "xDSL-capable loops."

primarily on the performance data noted above and described in prior section 271 Orders. We note, however, that we do not rely on SWBT's separate affiliate to reach our conclusions because SWBT carried its burden of demonstrating checklist compliance with an evidentiary showing of performance to its wholesale xDSL customers.⁵¹⁷

183. SWBT demonstrates that it has a legal obligation to provide unbundled xDSL-capable loops to competing carriers.⁵¹⁸ SWBT makes available unbundled xDSL-capable loops (including all technically feasible features, functions, and capabilities) in Kansas through the K2A and in Oklahoma through the O2A.⁵¹⁹ Since June 2000, the volume of xDSL-capable loop orders in Kansas and Oklahoma has tripled.⁵²⁰ In recent months, SWBT has been providing a greater proportion of unbundled xDSL-capable loops to competing carriers. For the period July through October 2000, 50 percent of the unbundled loops provided in Kansas were either DSL or BRI loops; likewise, 72 percent of the unbundled loops provided in Oklahoma were either DSL or BRI loops.⁵²¹

(i) **Order Processing Timeliness**

184. *Firm Order Confirmation (FOC) Timeliness.* We conclude that SWBT demonstrates that it provides order processing for xDSL-capable loops in a timely manner that provides an efficient competitor a meaningful opportunity to compete. In previous section 271 applications, we have relied primarily on performance measurements that track a BOC's ability

⁵¹⁷ In addition, we note that SWBT's separate affiliate has not been purchasing the same inputs used to provide advanced services as unaffiliated competing carriers. SWBT's separate affiliate purchases either line sharing to provide ADSL service or intrastate special access, while competing carriers in Kansas and Oklahoma are purchasing stand-alone DSL loops, BRI loops, and DS-1 loops to provide advanced services. As a result, SWBT's advanced services separate affiliate is not useful in making a presumption of nondiscriminatory performance. Pursuant to the *Bell Atlantic New York Order* and the *SWBT Texas Order*, a BOC may submit evidence of a fully operational separate affiliate to demonstrate compliance with this checklist item, but only if its affiliate is purchasing the same inputs and using the same processes as unaffiliated carriers. See *Bell Atlantic New York Order*, 15 FCC Rcd at 4122-4123, paras. 331-32.

⁵¹⁸ SWBT provides two types of xDSL-capable loops: (1) DSL loops, which are further disaggregated in SWBT's performance measurements to show line shared loops and stand-alone DSL loops; and (2) BRI loops, which are often used to provide IDSL service. See, e.g., *SWBT Deere Aff.* at para. 110.

⁵¹⁹ *Id.* at paras. 90-127; *SWBT Jones Aff.*, Attach. A at 180. *Kansas 271 Agreement*, Attach. 25; *Oklahoma 271 Agreement*, Attach. 25.

⁵²⁰ Since June 2000, SWBT has been provisioning at least 70 DSL loop orders per month in Kansas and at least 115 such orders per month in Oklahoma. In October 2000, the volume of orders exceeded 220 in Kansas and 300 in Oklahoma. See *SWBT Aggregated Performance Data (Kansas and Oklahoma)*, Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – DSL – No Line Sharing"), at 271-No. 58c.

⁵²¹ See *SWBT Aggregated Performance Data (Kansas and Oklahoma)*, Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – DSL – No Line Sharing"), at 271-No. 58c.

to provide firm order confirmations (FOCs) in a timely manner.⁵²² In Kansas and Oklahoma, as in Texas, SWBT's FOC timeliness is measured against a benchmark of 24 hours. Since June 2000, SWBT has performed better than the established standard by providing at least 96 percent of the FOCs to competing carriers in Kansas and Oklahoma within the required time frame.⁵²³ This performance is mirrored in Texas, where SWBT uses the same OSS for processing orders at significantly higher volumes.⁵²⁴ Although several commenters have alleged that SWBT is not providing FOCs for unbundled loops in a timely manner, these parties generally point to problems that occurred before July 1, 2000.⁵²⁵ Current and more recent performance indicate that these problems have been addressed and no longer appear to be an issue.

(ii) Provisioning Timeliness

185. We find that SWBT demonstrates that it provisions xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations. In analyzing SWBT's provisioning performance for checklist compliance, we continue to rely primarily upon the performance measurements identified in the Bell Atlantic New York and SWBT Texas Orders, i.e., missed installation due dates and average installation intervals. We also evaluate SWBT's provisioning processes. Because it uses the same processes throughout its region and we previously evaluated those processes in our review of SWBT's section 271 application for Texas, we also rely on SWBT's performance in Texas.

186. *Provisioning Processes.* We agree with the Kansas Commission and Oklahoma Commission that SWBT uses the same provisioning processes in those states as it does in Texas.⁵²⁶ To order unbundled loops in any state in the SWBT region, competing carriers submit

⁵²² We also evaluate a BOC's provisioning of loop qualification capability to competing carriers. For the instant application, we evaluate SWBT's performance for loop pre-qualification and loop qualification under checklist item 2, access to unbundled network elements.

⁵²³ See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 5.1-01 ("Percent Firm Order Confirmations (FOCs) Relating to xDSL-capable Loops Returned within x Hours"), at 271-No. 5.1a.

⁵²⁴ Since June 2000, SWBT has returned at least 98 percent of FOCs within 24 hours. Except for July 2000, SWBT has processed at least 3,900 FOCs per month in Texas; in July 2000, SWBT processed 2,990 FOCs in Texas. By contrast, SWBT processed an average of 125 FOCs per month in Kansas and 184 FOCs per month in Oklahoma between July and October 2000. See SWBT Aggregated Performance Data (Texas, Kansas, Oklahoma), Measure No. 5.1-01 ("Percent Firm Order Confirmations (FOCs) Relating to xDSL-capable Loops Returned within x Hours"), at 271-No. 5.1a.

⁵²⁵ Adelpia Lippold Decl. at para. 4 (alleging an average 5.27 day delay in FOCs provided to Adelpia between March 3, 1999 and July 1, 2000); McLeodUSA Comments at 10.

⁵²⁶ SWBT Cleek Aff., Attach. A at 75-78 (presenting Kansas Commission staff recommendations); SWBT Jones Aff., Attach. A at 180 (presenting Oklahoma Commission conclusion that SWBT meets checklist item 4), 181 (presenting Oklahoma Commission conclusion regarding SWBT's provisioning processes for xDSL loops); Kansas Commission Comments at 17, 25, 26; Oklahoma Commission Comments at 1, Attach. A; *but see* IP Comments, Attach. 4 at 16 (noting local and regional differences in provisioning performance); IP Reply at 7-9.

Local Service Requests (LSRs) to SWBT's Local Service Center in Dallas, Texas.⁵²⁷ SWBT accepts LSRs for unbundled loops through an application-to-application interface, a graphical user interface (GUI), and through manual processes.⁵²⁸ Orders for unbundled loops are forwarded from SWBT's Local Service Center to its Local Operations Center for supervision and management of the installation process.⁵²⁹ With its staff in the Local Service Center and Local Operations Center, SWBT maintains centralized supervision and oversight of the provisioning process for unbundled loops purchased by competing carriers. After receiving an order for an unbundled loop, SWBT's Local Operations Center forwards the order to one of four Mechanized Loop Assignment Centers (MLACs), which are responsible for assigning facilities to the order and maintaining an overall inventory of SWBT's facilities.⁵³⁰ After completing its work, the MLAC forwards the order to one of two Circuit Provisioning Centers (CPCs), which are responsible for additional design and assignment work related to special services.⁵³¹ The CPCs forward the order to SWBT's provisioning forces. For unbundled loop installations that do not require a dispatch, SWBT's Central Office Operations employees perform the necessary work. SWBT's Installation and Maintenance forces perform all installation work that requires a dispatch outside the central office. Provisioning a stand-alone unbundled loop (including xDSL loops) usually requires SWBT to dispatch a technician.

187. *Average Installation Intervals.* As evidenced by SWBT's performance data, SWBT installs xDSL loops in a nondiscriminatory manner.⁵³² In Kansas, from August through

⁵²⁷ SWBT Application at 50; SWBT Chapman Aff. at 3; SWBT Noland/Smith Aff. at para. 29. See SWBT November 29, 2000 *ex parte* at 2-5.

⁵²⁸ SWBT Chapman Aff. at para. 37.

⁵²⁹ SWBT Noland/Smith Aff. at paras. 18-22, 96-98; SWBT Chapman Aff. at paras. 35-45.

⁵³⁰ See SWBT November 29, 2000 *Ex Parte*; SWBT Mah Reply Aff. at para. 24. SWBT has a total of four MLACs located in Kansas City, Kansas; St. Louis, Missouri; Dallas, Texas, and Houston, Texas. More precisely, the provisioning process starts when SOAC, the system used to route orders, receives an order from the service order system, SORD. See SWBT Ham Aff. at paras. 163-66; SWBT Mah Reply Aff. at para. 24. SWBT employees in the MLAC assign the facilities required to provision the service with LFACs. The MLAC employees use LFACs to manage outside plant facilities and SWITCH to manage and assign central office facilities. SWBT Mah Reply Aff. at para. 24. SWITCH is an operations system designed to inventory and assign central office equipment and related facilities. See *id.* at para. 20.

⁵³¹ SWBT Mah Reply Aff. at para. 25. SWBT's has a total of four CPCs located in Topeka, Kansas; St. Louis, Missouri; Dallas, Texas; and Houston, Texas. Employees in the CPC use TIRKS to perform their work functions. SWBT's downstream work units, i.e., Central Office Operations and Installation & Maintenance forces, use the work document created in TIRKS by the CPC employees to install the service. See *id.*

⁵³² SWBT's advanced services retail operations are currently organized into a separate affiliate, ASI. Because SWBT's affiliate does not purchase stand-alone unbundled xDSL loops, there is no direct retail analogue for comparing xDSL performance. We therefore evaluate SWBT's performance to ensure SWBT affords competing carriers a meaningful opportunity to compete.

October 2000, SWBT installed DSL loops in 6.7 days on average.⁵³³ In Oklahoma during the same period, SWBT installed DSL loops in 6.1 days on average.⁵³⁴ Although we recognize that these averages exceed the 5-day benchmark established by the state commissions, we note that SWBT's performance has improved during the same period in both Kansas and Oklahoma as volumes have increased.⁵³⁵ This improving trend persuades us that SWBT's technicians are gaining sufficient expertise and are quickly adjusting to the growth of competition in these states. Moreover, SWBT's performance in Texas, where SWBT has installed unbundled DSL loops in 6.15 days on average for the period July through October 2000 while taking substantially greater volumes of orders, indicates that SWBT is capable of accommodating substantially greater volumes of orders for unbundled DSL loops without negatively impacting performance.⁵³⁶ We therefore find that these performance disparities do not warrant a finding of checklist noncompliance.

188. *Percent Missed Installation Due Dates.* Although SWBT's performance data indicate that it has continuing difficulties satisfying the state-approved benchmarks for missed installation due dates, this performance alone does not undermine our determination that SWBT installs xDSL-capable loops in a manner that satisfies the checklist. Although past performance indicates that there has been statistically significant facial disparity between SWBT's actual performance and the five percent benchmark established by the Kansas and Oklahoma Commissions in their Performance Assurance Plans, the trend in Kansas and Oklahoma has been improving significantly, however, and, in the last two months, SWBT's performance has closed to within a few percentage points of the benchmark level.⁵³⁷ Moreover, this improved

⁵³³ In Kansas, SWBT installed DSL loops (no line sharing and no conditioning required) in 7.44 days in August, 6.87 days in September, and 6.02 days in October. See SWBT Aggregated Performance Data (Kansas), Measure No. 55.1-01 ("Average Installation Interval – DSL – No Line Sharing – Requires No Conditioning"), at 271-No. 55.1.

⁵³⁴ In Oklahoma, SWBT installed DSL loops (no line sharing and no conditioning required) in 6.46 days in August, 7.24 days in September, and 6.09 days in October. See SWBT Aggregated Performance Data (Oklahoma), Measure No. 55.1-01 ("Average Installation Interval – DSL – No Line Sharing – Requires No Conditioning"), at 271-No. 55.1.

⁵³⁵ Volumes of orders for DSL loops nearly tripled in both states between August and October 2000. In Kansas, SWBT received 72 orders for DSL loops in August and 224 orders in October 2000. In Oklahoma, SWBT received 134 orders for DSL loops in August and 305 such orders in October 2000.

⁵³⁶ See SWBT Aggregated Performance Data (Texas), Measure No. 55.1-01 ("Average Installation Interval – DSL – No Line Sharing – Requires No Conditioning"), at 271-No. 55.1. In the *SWBT Texas Order*, we accepted installation intervals for stand-alone xDSL loops ranging from 4.98 days to 6.65 days. See *SWBT Texas Order* at 15 FCC Rcd at 18502, n.817, para. 292.

⁵³⁷ See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – DSL – No Line Sharing"), at 271-No. 58c. In Kansas, SWBT missed 20.8 percent of the installation due dates for DSL loops in August and 9.4 percent in October. Volumes increased from 72 orders in August to 224 orders in October. In Oklahoma, SWBT missed 17.2 percent of the installation due dates for DSL loops in August and 9.8 percent in October. Volumes likewise increased in Oklahoma, from 134 orders in August to 305 orders in October. *Id.*

performance brings SWBT's performance in line with Texas, in which SWBT has missed an average of 7.9 percent of installation due dates for xDSL-capable loops in the last four months.⁵³⁸ Although we find this inability to satisfy the state-approved benchmarks to be troubling, we do not find that this constitutes per se discrimination requiring a finding of checklist noncompliance. Indeed, these performance disparities have been narrowed to a small margin, and SWBT's performance on other measurements related to xDSL-capable loops shows acceptable performance. Finally, as explained below, we find that the record in this proceeding does not reflect that performance at this level denies efficient competitors a meaningful opportunity to compete.

189. We are not persuaded that the issues raised by some parties defeat SWBT's showing that it provides nondiscriminatory access to unbundled xDSL-capable loops.⁵³⁹ These parties generally point to disparities in SWBT's performance data without providing additional evidence of competitive harm. Allegiance and McLeodUSA argue, for example, that SWBT's data for missed installation due dates demonstrates a failure to meet the requirements of checklist item 4.⁵⁴⁰ These parties have not indicated or otherwise submitted evidence that SWBT's performance has resulted in lost business, such as dissatisfied customers switching back to SWBT because of mistakes in the provisioning process or increased operating costs.⁵⁴¹ Nor have these parties shown evidence of disputes arising under interconnection agreements, documentation of complaints provided to SWBT and subsequent efforts to resolve the performance problems, or formal or informal complaints filed with regulatory agencies. As we have stated in the past, isolated instances of performance disparity, along with evidence of generally acceptable performance in other areas, are generally not sufficient on their own to show that a BOC has failed to demonstrate compliance with the checklist.⁵⁴²

190. As a final matter, we recognize that SWBT's data indicate that it continues to have some troubles with on-time provisioning of BRI loops, which are often used to provide xDSL services.⁵⁴³ These performance problems have affected both SWBT and competing carriers alike. In particular, we note that, in Kansas, SWBT missed an average of 23.7 percent of

⁵³⁸ See SWBT Aggregated Performance Data (Texas), Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – DSL – No Line Sharing"), at 271-No. 58c.

⁵³⁹ See Adelpia Comments at 2, 4; Allegiance Comments at 11-31; KMC Comments at 4-9; McLeodUSA Comments at 7-22; Sprint Comments at 57-64.

⁵⁴⁰ Allegiance Comments at 20-23; McLeodUSA Comments at 9-12; Sprint Comments at 58, 60-61.

⁵⁴¹ See Adelpia Comments at 4. Adelpia explains that missed installation due dates irritate customers and often affect Adelpia's internal operations. We have not reviewed any evidence indicating specific instances in which customers cancelled installation service or otherwise changed service providers because of missed installation due dates.

⁵⁴² See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20718, para. 200.

⁵⁴³ See Allegiance Comments at 25.

the installation due dates for BRI loops during the period July through October 2000 in Kansas⁵⁴⁴ and missed an average of 15.85 percent during the same period in Oklahoma.⁵⁴⁵ In Texas, SWBT's performance has been similar in this area.⁵⁴⁶ We are persuaded that SWBT's performance has not put competing carriers at a disadvantage because SWBT's data show that it has consistently performed worse when installing BRI loops for its own uses, so that competing carriers have generally enjoyed better installation service for BRI loops than SWBT's retail operations. As noted earlier in this Order, we evaluate SWBT's checklist showing based on the totality of the circumstances, and do not necessarily rely on its performance in a single measurement.⁵⁴⁷ We will continue to monitor SWBT's performance in this area so that, if SWBT's performance deteriorates further, or if we find evidence that suggests discriminatory or unequal treatment, we will take appropriate enforcement action.

(iii) Provisioning Quality

191. We find that SWBT demonstrates that it provides competing carriers an installation quality sufficient to afford them a meaningful opportunity to compete. As noted in previous section 271 Orders, trouble reports within 30 days after an installation indicate the quality of installation services provided to competing carriers.⁵⁴⁸ In Kansas, SWBT has generally met the benchmark of 6 percent for trouble reports within 30 days of an installation for the period May through September 2000, and only missed the established standard by 0.7 percent in October 2000.⁵⁴⁹ SWBT appeared to experience performance difficulties in only one month during the period pertinent to its application. Specifically, in July 2000, SWBT reported a rate of 18.3 percent trouble reports within 30 days of an installation. In light of the generally steady performance in Kansas, and because the sample size is so small, we conclude that SWBT's poor performance in July appears to constitute an aberration from the installation quality provided to competing carriers. We likewise find that SWBT's installation quality in Oklahoma affords competing carriers a meaningful opportunity to compete. For the period July through October 2000, troubles were reported on average on 6.6 percent of xDSL-capable loops within 30 days of

⁵⁴⁴ See SWBT Aggregated Performance Data (Kansas), Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – BRI Loop"), at 271-No. 58a.

⁵⁴⁵ See SWBT Aggregated Performance Data (Oklahoma), Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – BRI Loop"), at 271-No. 58a.

⁵⁴⁶ In Texas, SWBT missed 15.5 percent, 17.8 percent, and 17.3 percent of the due dates for BRI loops in August, September, and October respectively. By contrast, SWBT missed 30 percent, 24.8 percent, and 27 percent of the due dates for BRI loops installed for its own retail operations. See SWBT Aggregated Performance Data (Texas), Measure No. 58-09 ("Percent SWBT Caused Missed Due Dates – BRI Loop"), at 271-No. 58a.

⁵⁴⁷ See *supra* paras. 30-33.

⁵⁴⁸ *SWBT Texas Order*, 15 FCC Rcd at 18504-05, para. 299; *Bell Atlantic New York Order*, 15 FCC Rcd at 4073-74, para. 222, n.711.

⁵⁴⁹ See SWBT Aggregated Performance Data, Measure No. 59-08 ("Percent Trouble Reports on N, T, C Orders within 30 days – DSL – No Line Sharing"), at 271-No. 59c.

installation, which was only 0.6 percent higher than the established benchmark.⁵⁵⁰ Finally, we note that SWBT's performance in Texas has generally met the established benchmark.⁵⁵¹ Because volumes of DSL loop orders are substantially higher in Texas than in either Kansas or Oklahoma,⁵⁵² and because the provisioning processes are identical, we conclude that SWBT's Texas performance demonstrates that SWBT's provisioning systems and processes are capable of consistently providing quality installation service to competing carriers.

192. Although SWBT's data reveal some performance issues with BRI loops, we conclude that these issues are not fatal to SWBT's showing.⁵⁵³ As noted earlier, we evaluate SWBT's showing based on the totality of the circumstances, so that SWBT's performance in a single measurement or for a single category of loops is not necessarily dispositive for SWBT's showing of checklist compliance.⁵⁵⁴ In Kansas, competing carriers experienced an average of 12.3 percent trouble reports within 30 days after installation of a BRI loop compared to an average of 3.3 percent for SWBT's retail operations from August through October.⁵⁵⁵ In Oklahoma, competing carriers experienced an average of 11.03 percent during the same period compared to a 3.5 percent average for SWBT's retail operations during the same period.⁵⁵⁶ We have not found evidence that these types of troubles on BRI loops have denied competing carriers a meaningful opportunity to compete. Moreover, SWBT's performance in Texas shows an improving trend in this area.⁵⁵⁷ Finally, SWBT's ability to provide trouble-free loops in

⁵⁵⁰ See SWBT Aggregated Performance Data (Oklahoma), Measure No. 59-08 ("Percent Trouble Reports on N, T, C Orders within 30 days – DSL – No Line Sharing"), at 271-No. 59c.

⁵⁵¹ See SWBT Aggregated Performance Data (Texas), Measure No. 59-08 ("Percent Trouble Reports on N, T, C Orders within 30 days – DSL – No Line Sharing"), at 271-No. 59c.

⁵⁵² In Texas, SWBT processed 2,646 circuits in July, 3,343 circuits in August, 3,720 circuits in September, and 3,592 circuits in October 2000. See SWBT Aggregated Performance Data (Texas), Measure No. 59-08 ("Percent Trouble Reports on N, T, C Orders within 30 days – DSL – No Line Sharing"), at 271-No. 59c. By contrast, SWBT processed orders for between 70 and 305 circuits in Kansas and Oklahoma during the same period. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 59-08 ("Percent Trouble Reports on N, T, C Orders within 30 days – DSL – No Line Sharing"), at 271-No. 59c.

⁵⁵³ See Allegiance Comments at 25 (asserting that performance issues exist with BRI loops).

⁵⁵⁴ See *supra* paras. 30-33.

⁵⁵⁵ See SWBT Aggregated Performance Data (Kansas), Measure No. 59-03 ("Percent Trouble Reports on N, T, C Orders within 30 days – BRI Loop"), at 271-No. 59a.

⁵⁵⁶ See SWBT Aggregated Performance Data (Oklahoma), Measure No. 59-03 ("Percent Trouble Reports on N, T, C Orders within 30 days – BRI Loop"), at 271-No. 59a.

⁵⁵⁷ In Texas, competing carriers experienced a 25 percent trouble report rate within 30 days after installing BRI loops in January 2000; by September 2000, SWBT's performance improved so that competing carriers experienced 10.4 percent trouble report rate within 30 days of installing a BRI loop. See SWBT Aggregated Performance Data (Texas), Measure No. 59-03 ("Percent Trouble Reports on N, T, C Orders within 30 days – BRI Loop"), at 271-No. 59a.

Kansas and Oklahoma is generally good. Based on the totality of SWBT's performance in provisioning xDSL-loops, we conclude that SWBT's performance has not denied efficient competitors a meaningful opportunity to compete.

(iv) **Maintenance & Repair**

193. We conclude that SWBT demonstrates that it provides maintenance and repair of unbundled xDSL-capable loops in a manner that affords efficient competitors a meaningful opportunity to compete. In analyzing SWBT's showing for its maintenance and repair service, we continue to rely primarily upon the performance measurements identified in the Bell Atlantic New York and SWBT Texas Orders, i.e., the mean time to repair, the repeat trouble report rate, and the overall trouble report rate. We also evaluate SWBT's maintenance and repair processes and, because it uses the same processes throughout its region, SWBT's performance in Texas.

194. *Maintenance and Repair Processes.* We agree with the Kansas Commission and the Oklahoma Commission that SWBT's maintenance and repair processes are the same in these states as in Texas. The maintenance process starts when a competing carrier contacts SWBT's Local Operations Center via telephone or uses a graphical user interface (GUI) or application-to-application interface to initiate a trouble report.⁵⁵⁸ Employees in the Local Operations Center perform testing and then route the trouble report to SWBT's work units downstream in the process. SWBT's Central Office Operations perform any repair work needed in a central office; SWBT's Installation and Maintenance employees repair problems with SWBT's outside plant. SWBT's employees use standardized methods and procedures to perform their maintenance and repair work.⁵⁵⁹ The Local Operations Center monitors the status of the repair work throughout the maintenance and repair process.⁵⁶⁰ SWBT has shown that this process is the same as the one used in Texas.⁵⁶¹

195. *Mean Time to Repair.* SWBT's performance data show a proven track record of providing quality repair service to competing carriers operating in Kansas and Oklahoma. In both states, SWBT has generally restored service for DSL loops in less than 5 hours, which is significantly better than the established 9-hour standard.⁵⁶² Although SWBT's October performance in Kansas missed the benchmark, we note that SWBT's performance generally has

⁵⁵⁸ Competitive carriers submit trouble reports through Toolbar Trouble Administration (TBTA) or the application-to-application Electronic Bonding Trouble Administration interface. SWBT Noland/Smith Aff. at para. 99-105; SWBT Mah Reply Aff. at para. 28.

⁵⁵⁹ *Id.* at para. 28 and Attach. A (providing training course examples).

⁵⁶⁰ *Id.* at para. 29.

⁵⁶¹ See SWBT November 6, 2000 *Ex Parte*; SWBT November 29, 2000 *Ex Parte*; SWBT May Reply Aff. at paras. 28-30; SWBT Noland/Smith Aff. at paras. 99-105.

⁵⁶² See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 67-08 ("Mean Time to Restore (Hours) – Dispatch – DSL – No Line Sharing"), at 271-No. 67c.

been acceptable. We believe that the disparity in SWBT's data for a single month may be attributable to the wide swings possible with low sample sizes. SWBT's performance in Texas appears to support this observation. In that state, SWBT has consistently restored service in an average of less than 4 hours since June 2000.⁵⁶³ We find that, particularly in light of the substantially greater volume of work required of SWBT's workforce in Texas, SWBT's performance in Kansas and Oklahoma, indicates that its repair service affords competitors a meaningful opportunity to compete.

196. *Repeat Trouble Report Rate.* SWBT's repeat trouble report data show that competing carriers were rarely afflicted with continuing problems after a repair visit for a trouble on DSL loops. In Kansas, competing carriers have not experienced any repeat trouble reports since March 2000.⁵⁶⁴ Although SWBT has not performed as well in Oklahoma, SWBT's data are affected by the small number of repeat troubles. For example, only seven competing carriers reported trouble reports on DSL loops in September 2000, and only one of those carriers experienced a repeat trouble.⁵⁶⁵ Finally, SWBT's performance in Texas, where it uses the same maintenance and repair processes as are made available in Kansas and Oklahoma, shows that competing carriers enjoy a repeat trouble report rate that is well below the established benchmark.⁵⁶⁶

197. *Trouble Report Rate.* SWBT's trouble report rates for DSL loops in Kansas and Oklahoma further supports our conclusion that SWBT provides competing carriers with maintenance and repair service in substantially the same time and manner as SWBT's own retail operations. Competing carriers in Kansas experienced a trouble report rate of only 2.75 percent

⁵⁶³ See SWBT Aggregated Performance Data (Texas), Measure No. 67-08 ("Mean Time to Restore (Hours) – Dispatch – DSL – No Line Sharing"), at 271-No. 67c.

⁵⁶⁴ See SWBT Aggregated Performance Data (Kansas), Measure No. 69-08 ("Repeat Reports – DSL – No Line Sharing"), at 271-No. 69c. SWBT's performance for repeat trouble reports on BRI loops shows comparable performance provided to competing carriers and to SWBT's retail operations. Since May 2000, SWBT has generally met the statistical parity standard for repeat troubles in Kansas. Although SWBT missed the parity standard in August 2000, we note that this month involved a low volume of only four repeat trouble reports. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 69-03 ("Repeat Reports – BRI Loop"), at 271-No. 69a.

⁵⁶⁵ SWBT's Oklahoma performance is reported as 14.3 percent, which is just above the 12 percent benchmark. See SWBT Aggregated Performance Data (Kansas), Measure No. 69-08 ("Repeat Reports – DSL – No Line Sharing"), at 271-No. 69c.

⁵⁶⁶ See SWBT Aggregated Performance Data (Texas), Measure No. 69-08 ("Repeat Reports – DSL – No Line Sharing"), at 271-No. 69c. In the area of BRI loop repair performance, SWBT provides competing carriers comparable repair service for BRI loops in Texas. For example, competing carriers experienced 17.5 percent, 11.5 percent, and 13.5 percent repeat trouble report rates in Texas for the months of August, September, and October respectively. By comparison, SWBT's retail operations experienced repeat trouble report rates of 15.3 percent, 15.9 percent, and 17 percent for the same period. SWBT's Oklahoma performance is reported as 14.3 percent, which is just above the 12 percent benchmark. See SWBT Aggregated Performance Data (Kansas), Measure No. 69-03 ("Repeat Reports – BRI Loop"), at 271-No. 69a.

on average for the months of July through October 2000, which is on average below the 3 percent benchmark.⁵⁶⁷ Similarly, competing carriers in Oklahoma experienced an average of only 2.32 percent during the same period.⁵⁶⁸ Furthermore, SWBT's performance in Texas demonstrates that it is capable of continuing to provide quality maintenance and repair service to competing carriers as volumes increase.⁵⁶⁹

b. Voice-Grade Stand-Alone Loops

198. We conclude that SWBT demonstrates that it provides voice grade unbundled loops in a nondiscriminatory manner. At the outset, we note that SWBT does not provide as many voice-grade loops in Kansas and Oklahoma as it does xDSL-capable loops in those states, making the difficulty of analyzing data based on low volumes even more acute. We therefore look towards SWBT's performance in Texas to assist our analysis of SWBT's showing that it provides unbundled voice grade loops in accordance with the checklist requirements. Finally, we note that SWBT's provisioning processes are the same for voice grade unbundled loops as for xDSL-capable loops.⁵⁷⁰

(i) Hot Cut Loop Provisioning

199. We find that SWBT demonstrates that it provides unbundled loops through the use of coordinated conversions of active customers from SWBT to competing carriers, a process known as "hot cuts," in accordance with the requirements of checklist item 4. Because there is no retail equivalent to a hot cut, SWBT must demonstrate that it provides unbundled loops through hot cuts "in a manner that offers an efficient competitor a meaningful opportunity to compete."⁵⁷¹

200. *Hot Cut Process.* SWBT makes available the same two hot cut processes that it makes available in Texas: the fully coordinated hot cut (CHC) process and the frame due time (FDT) hot cut process. CHC orders are manually handled in SWBT's order processing center and require intensive coordination and communication between SWBT and the competing carrier

⁵⁶⁷ SWBT's trouble report rates for DSL loops provided to competing carriers were 4.2 percent, 1.7 percent, 2.0 percent, and 3.1 percent for the months of July, August, September, and October 2000 respectively. See SWBT Aggregated Performance Data (Kansas), Measure No. 65-08 ("Trouble Report Rate – DSL – No Line Sharing"), at 271-No. 65c; see also SWBT Reply at 64.

⁵⁶⁸ See SWBT Aggregated Performance Data (Oklahoma), Measure No. 65-08 ("Trouble Report Rate – DSL – No Line Sharing"), at 271-No. 65c.

⁵⁶⁹ In Texas, SWBT has consistently maintained a trouble report rate for DSL loops below the 3 percent benchmark since April 2000. Since July, SWBT's Texas average has been 2.4 percent for DSL loops without line sharing. See SWBT Aggregated Performance Data (Texas), Measure No. 65-08 ("Trouble Report Rate – DSL – No Line Sharing"), at 271-No. 65c.

⁵⁷⁰ SWBT Chapman Aff. at 3; SWBT Mah Reply Aff. at 23-27; SWBT November 29, 2000 *Ex Parte* at 2-3.

⁵⁷¹ See *Bell Atlantic New York Order*, 15 FCC Rcd 4104, para. 291.

during the actual cutover from SWBT to the competing carrier.⁵⁷² FDT hot cuts require both SWBT and the competing carrier to perform necessary work at pre-arranged times, with no communication required at the time of the hot cut.⁵⁷³ Unlike CHC orders, FDT orders are capable of flowing through SWBT's order processing center without manual work by SWBT's representatives.⁵⁷⁴ Competing carriers may freely choose between CHCs and FDT conversions, selecting the cutover methods that best fits their resources and priorities.⁵⁷⁵ We note, however, that very few competitive LECs have used the FDT provisioning process during the months leading up to the filing of this application.⁵⁷⁶

201. We find that SWBT demonstrates that it provides hot cuts in Oklahoma and Kansas in accordance with checklist item 4 because competing carriers can choose freely between the CHC and FDT hot cut processes, and because it provides CHCs in a timely manner, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation. In our *SWBT Texas Order*, we concluded that SWBT provisioned hot cut loops through the CHC process in compliance with the criteria established in our earlier 271 orders,⁵⁷⁷ but that SWBT could not establish checklist compliance based on FDT conversions because of problems with service disruptions.⁵⁷⁸ Nevertheless, we concluded that SWBT provided hot cuts in Texas in accordance with checklist item 4 because competing carriers could choose freely between the CHC and FDT hot cut processes, and because the CHC process was in compliance with our hot cut processing criteria. Similarly, in this Order, we do not rely on the FDT hot cut process because carriers have not yet relied on this process sufficiently for us to conclude that SWBT demonstrates compliance with checklist item 4 based on FDT conversions. We thus conclude that SWBT demonstrates that it provides hot cuts in Oklahoma and Kansas in accordance with checklist item 4 because competing carriers can choose freely between the CHC and FDT hot cut processes, and because it provides CHCs in compliance with the criteria established in our earlier 271 proceedings.

202. *Hot Cut Timeliness.* We find that SWBT demonstrates that it can complete a substantial percentage of CHCs it provisions within a reasonable time interval.⁵⁷⁹ Under the

⁵⁷² SWBT Noland/Smith Aff. at para. 114.

⁵⁷³ *Id.*; see also *SWBT Texas Order*, 15 FCC Rcd 18492-93, paras. 271-72.

⁵⁷⁴ SWBT Noland/Smith Aff. at para. 114 n.14.

⁵⁷⁵ SWBT Application at 96; SWBT Noland/Smith Aff. at para. 114

⁵⁷⁶ SWBT Noland/Smith Aff. at para. 119 (stating that during July through September, "SWBT has received orders to provision only 2 loops via the FDT process in Oklahoma, and 8 loops in Kansas").

⁵⁷⁷ See *SWBT Texas Order*, 15 FCC Rcd at 18487, paras. 260-61.

⁵⁷⁸ See *id.*

⁵⁷⁹ See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4114-15, para. 309 (finding that Bell Atlantic was able to complete at least 90 percent of competing carrier hot cut orders of fewer than 10 lines within a one-hour interval).

performance measurements developed by the Texas Commission, and adopted by the Kansas and Oklahoma Commissions, SWBT's hot cut performance is measured according to the percentage of hot cut loops in orders of less than 10 lines that SWBT completes within one hour.⁵⁸⁰ In Kansas, the aggregated data from July 2000 through October 2000 indicate that SWBT completed an average 96.5 percent of all CHC loops from orders with less than 10 lines within 1 hour.⁵⁸¹ In Oklahoma, the aggregated data from July 2000 through October 2000 indicate that SWBT completed an average 94.2 percent of all CHC loops from orders with less than 10 lines within 1 hour.⁵⁸² We are further encouraged that SWBT's performance in Kansas and Oklahoma on hot cut timeliness appears consistent with its current performance in Texas, where SWBT, using the same CHC process, has completed an average of 97 percent of all CHC loops from orders with less than 10 lines within 1 hour from August 2000 through October 2000.⁵⁸³ Thus, we find that the aggregated data demonstrate that SWBT can provision a substantial percentage of competing carrier CHC loops within a 1 hour interval, and that this evidence is sufficient to overcome the claims of a few carriers discussed below that argue SWBT's hot cut provisioning is not performed in a timely manner.

203. *Hot Cut Quality.* We further conclude that SWBT demonstrates that it provisions CHCs at a level of quality that offers efficient competitors a meaningful opportunity to compete. Upon review of the evidence in the record regarding hot cut installation quality, and specifically the outage rate associated with failed SWBT CHCs, and the trouble rate following CHC installation, we find that SWBT demonstrates that it provisions CHCs to competitors in a manner that meets the requirements of the checklist.

⁵⁸⁰ SWBT Noland/Smith Aff. at para. 118. We relied on similar data in our Texas 271 proceeding. We recognize, however, that PM 114.1 has been revised to track conversions with loop on a one-hour completion basis for orders of less than 10 lines, rather than orders of less than 11 lines. This change does not affect our analysis. See SWBT Aggregated Performance Data, Kansas and Oklahoma, Measurement No. 114.1 ("CHC/FDT LNP with Loop Provisioning Interval") ("Coordinated Hot Cut, Frame Due Time") at 271-No. 114.1-01- 114.01-05.

⁵⁸¹ See SWBT Noland/Smith Aff., Attachment C (providing July data for CHC loops for orders with less than 11 lines); SWBT Aggregated Performance Data, Kansas, Measurement No. 114.1-01 at 271-No. 114.1-01 (providing August through October data for CHC loops from orders with less than 10 lines). We also note that from July through October, SWBT completed 100 percent of FDT hot cut loops from orders with less than 10 lines within 1 hour. See SWBT Noland/Smith Aff., Attachment C (providing July data for FDT loops completed within 1 hour); SWBT Aggregated Performance Data, Kansas, Measurement No. 114.1-03 at 271-No. 114.1-03 (providing August through October data for FDT loops from orders with less than 10 lines).

⁵⁸² See SWBT Noland/Smith Aff., Attachment C (providing July data for CHC loops for orders with less than 11 lines); SWBT Aggregated Performance Data, Oklahoma, Measurement No. 114.1-01 at 271-No. 114.1-01 (providing August through October data for CHC loops from orders with less than 10 lines). We also note that from July through October, SWBT completed 100 percent of FDT hot cut loops from orders with less than 10 lines within 1 hour. See SWBT Noland/Smith Aff., Attachment C (providing July data for FDT loops completed within 1 hour); SWBT Aggregated Performance Data, Oklahoma, Measurement No. 114.1-03 at 271-No. 114.1-03 (providing August through October data for FDT loops from orders with less than 10 lines).

⁵⁸³ SWBT Aggregated Performance Data, Texas, Measurement No. 114.1-01 at 271-No. 114.1-01 (providing August through October data for CHC loops from orders with less than 10 lines).

204. Because outages that occur on the day of a CHC were not reported by a SWBT performance measurement at the time of its application,⁵⁸⁴ we rely, when possible, on outage data that has been reconciled by the state commission. Under the auspices of the Texas Commission, SWBT and AT&T established the Performance Process Improvement Group (PPIG) to reconcile SWBT and competing carrier data relating to unexpected hot cut outage data, including such data in Kansas.⁵⁸⁵ In Kansas, the PPIG has focused its efforts on reconciling data for the Kansas City, Kansas and Kansas City, Missouri serving area.⁵⁸⁶ During the period from June through August, reconciled data for the Kansas City market area demonstrate that SWBT completed at least 97.24 percent of CHCs without a service outage.⁵⁸⁷ Because the PPIG data reveal that during the period from June through August 2000, an average of less than 3% of all CHC loops that SWBT provisioned resulted in end-user service outages caused by SWBT provisioning failures, we conclude that SWBT makes available a hot cut process that provides efficient competitors a meaningful opportunity to compete.⁵⁸⁸

205. In Oklahoma, neither AT&T nor any other competitive LEC has requested data reconciliation.⁵⁸⁹ As such, to assess the outage rate in Oklahoma, SWBT shows, based on its own internal records, that it completed 100% of CHCs without a service outage from April 2000 to August 2000.⁵⁹⁰ SWBT further states that the only competitive LEC to complain about hot cut performance before the Oklahoma Commission was AT&T and that AT&T chose not to pursue data reconciliation in Oklahoma.⁵⁹¹ We also note that no competitive LEC has complained of loop conversion-related outages in Oklahoma in this proceeding.⁵⁹² We thus conclude that the

⁵⁸⁴ As part of the Texas six-month performance measurement review, the Texas Commission adopted new PM 115.1 to measure the percent of CHC/FDT circuits for which the CLECs submits a trouble report on the day of the conversion, or before noon the next business day. See SWBT Noland/Smith Aff. at para. 131. SWBT's October data for PM 115.1 show no trouble reports in either Kansas or Oklahoma. See SWBT Aggregated Performance Data, Kansas and Oklahoma, Measurement No. 115.1 at 271-No.-115.1 (providing August through October data).

⁵⁸⁵ See SWBT Noland/Smith Aff. at paras. 120-28 (discussing the PPIG reconciliation process); see also SWBT Texas Order, 15 FCC Rcd at 18488-92, paras. 263, 269-71 (describing the PPIG process in Texas). No Oklahoma CLEC requested reconciliation of outage data. See SWBT Noland Smith/Aff. at para. 120.

⁵⁸⁶ Because Kansas City, Kansas and Kansas City, Missouri are in the same LATA, and are served off a single AT&T switch, the results for both cities have been combined pursuant to AT&T's request. *Id.* at para. 122.

⁵⁸⁷ SWBT Application at 97.

⁵⁸⁸ See SWBT Noland/Smith Aff. at paras. 124-25.

⁵⁸⁹ *Id.* at para. 129.

⁵⁹⁰ See SWBT Application at 99.

⁵⁹¹ See *id.* at para. 129.

⁵⁹² Several commenters assert that SWBT has failed to meet the Commission's minimum standards for hot cut performance based on a one-month anomaly in June 2000 in the Oklahoma data for PM 114-01 concerning premature disconnects involving the provisioning of local number portability *without* the loop. See Allegiance (continued....)

record demonstrates that the CHC process SWBT makes available to competing carriers in Oklahoma minimizes service disruptions that may deny an efficient competitor with a meaningful opportunity to compete.

206. We conclude that SWBT demonstrates that competing carrier end users experience only very low rates of installation troubles on lines provisioned by CHCs. From June through August 2000, competing carriers experienced troubles within 7 days after installation on an average of 1.45 percent of CHCs in Kansas and 2.34 percent of CHCs in Oklahoma.⁵⁹³ Although the Oklahoma trouble report data are slightly higher than that which we found to comply with checklist item 4 in Texas,⁵⁹⁴ there were only three reported instances of trouble in Oklahoma, and no commenter has complained about SWBT's Oklahoma CHC performance from July 2000 through October 2000.⁵⁹⁵ Thus, we find that SWBT installs hot cuts in Oklahoma of sufficient quality to provide an efficient competitor with a meaningful opportunity to compete.⁵⁹⁶

207. We reject commenters' argument that, in Kansas, SWBT's true performance provisioning hot cuts is not captured in the performance data.⁵⁹⁷ For example, commenters argue that the CHC process is fundamentally flawed leading to customer outages,⁵⁹⁸ and that the hot cut performance data does not capture all of the SWBT-caused outages.⁵⁹⁹ In addition, KMC argues that, based on the performance data, it seems obvious that SWBT uses a different CHC process in Kansas and Oklahoma than the CHC process that it uses in Texas.⁶⁰⁰ Based on the record in this proceeding, we find commenters' anecdotal evidence insufficient to overcome SWBT's demonstrated compliance in Kansas with the timeliness and quality performance metrics discussed above.⁶⁰¹ We also reject Sprint's argument that its troubles with the FDT process in

(Continued from previous page) _____
Comments at 30-32; McLeodUSA Comments at 22-23. We reject this assertion because these commenters rely on a measurement that does not capture premature disconnects involving loop conversions. PM 114-01 measures premature disconnects for LNP conversions without loops. See SWBT Smith Reply Aff. at para. 10.

⁵⁹³ See SWBT Noland/Smith Aff., Attachment G. SWBT includes trouble reports received on the day of conversion in this data. *Id.* at para. 133.

⁵⁹⁴ *SWBT Texas Order*, 15 FCC Rcd. at 18493, para. 274 (finding that a 1.5 percent trouble rate for CHC in Texas complied with checklist item 4).

⁵⁹⁵ See SWBT Noland/Smith Aff. at para. 134.

⁵⁹⁶ See generally *SWBT Texas Order*, 15 FCC Rcd. at 18493, para. 274.

⁵⁹⁷ See Adelpia Lippold Decl. para. 7; KMC Comments at 4; Sprint Comments at 62-63.

⁵⁹⁸ KMC Comments at 5-6.

⁵⁹⁹ See Adelpia Lippold Decl. para. 7; Sprint Comments at 62-63.

⁶⁰⁰ See Letter from Andrew Klein, Counsel to KMC, to Magalie Salas, Secretary of the Federal Communications Commission, CC Docket No. 00-217 (Dec. 7, 2000).

⁶⁰¹ See SWBT Noland/Smith Aff. at para. 116 (stating that the CHC and FDT processes and procedures in Kansas and Oklahoma are the same that SWBT uses in Texas).

Kansas warrant a finding of checklist non-compliance.⁶⁰² As discussed above, because we do not rely on the FDT process to find that SWBT demonstrates compliance with checklist item 4, Sprint's alleged problems using the FDT process are not fatal to this application. We expect, however, that SWBT will address these issues with Sprint, and will continue to improve the FDT process as more competing carriers choose to avail themselves of this option.

(ii) **New Stand-Alone Loop Provisioning**

208. We find that SWBT demonstrates that it provisions new unbundled stand-alone voice grade loops in accordance with the requirements of checklist item 4. When SWBT does not presently service the customer on the line in question, a hot cut loop is not required. In such instances, a competing carrier obtains a new stand-alone loop from SWBT, which dispatches a technician to the customer's premises to complete the installation. We find that SWBT demonstrates that it provisions xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations. In analyzing SWBT's provisioning for new stand-alone loops, we continue to rely primarily upon the performance measurements identified in the Bell Atlantic New York and SWBT Texas Orders, i.e., missed installation due dates and average installation intervals. We note that SWBT's provisioning processes for new stand-alone loops mirrors its processes for provisioning xDSL-capable loops, which we find is identical in Kansas, Oklahoma, and Texas.

209. *Average Installation Interval.* Based on the record, we find that SWBT provisions new unbundled stand-alone loops to competing carriers in substantially the same time and manner as it does for its own retail service. Since July 2000, SWBT has generally met its 3-day target average installation interval for both 8.0 dB and 5.0 dB loops provided to competing carriers in both Kansas and Oklahoma.⁶⁰³ SWBT's performance in Texas, where it has been handling greater volumes for a longer period of time, shows that SWBT has consistently met the established benchmarks for unbundled voice grade loops provided on a stand-alone basis.⁶⁰⁴

⁶⁰² Sprint Comments 62-64; Sprint Supp. Comments 5-7.

⁶⁰³ See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 55-01 ("Average Installation Interval – 8.0 dB Loop"), at 271-No. 55a (indicating that SWBT met the 3-day benchmark between July and October 2000); SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 55-01 ("Average Installation Interval – 5.0 dB Loop"), at 271-No. 55a; SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 56-01 ("Percent Installed Within X Days – 8.0 dB Loop"), at 271-No. 56a (showing that SWBT generally installed 100 percent of the loops in the requested 3-day interval). We recognize that, in Oklahoma, SWBT installed only 83.3 percent of 8.0 dB loops in the 3-day interval for the month of October 2000. We conclude, however, that SWBT's performance is masked in large part due to the low volume of orders for that month. See *id.* (indicating that SWBT received only 6 orders for 8.0 dB loops during October 2000).

⁶⁰⁴ See SWBT Aggregated Performance Data (Texas), Measure No. 55-01 ("Average Installation Interval – 8.0 dB Loop"), at 271-No. 55a (indicating that SWBT met the benchmarks for loop orders of all quantities between July and October 2000); SWBT Aggregated Performance Data (Texas), Measure No. 55-01 ("Average Installation Interval – 5.0 dB Loop"), at 271-No. 55a.

210. *Missed Installation Due Dates.* During the same period, SWBT missed either a lower percentage of installation due dates for competing carriers than for itself or a comparable percentage, depending on whether field work was required.⁶⁰⁵ For installations of 8.0 dB loops that did not require field work, SWBT did not meet the parity standard in Oklahoma for several months leading up to its application. SWBT persuades us, however, that the disparity in its data most likely stems from differences in the mix of work performed.⁶⁰⁶ Furthermore, SWBT's Texas performance data show that, for substantially greater volumes, SWBT usually misses less than 1 percent of the installation due dates for 8.0 dB loops that do not require field work.⁶⁰⁷

211. Because these disparities in performance appear to be isolated and minimal, and because SWBT has demonstrated an ability to meet most of its other relevant benchmark and parity standards for other loop-related measurements, we are not persuaded by the arguments of KMC and others that certain isolated failures to meet due dates on SWBT's part shows that SWBT fails to provide voice grade loops in a nondiscriminatory manner.⁶⁰⁸ Again, no party has submitted evidence to show that SWBT's performance has resulted in actual competitive harm.

(iii) Maintenance and Repair of Voice Grade Loops

212. We conclude that SWBT demonstrates that it provides maintenance and repair functions for unbundled voice grade local loops to competing carriers in substantially the same

⁶⁰⁵ See SWBT Aggregated Performance Data (Kansas), Measure No. 65-08 ("Percent SWBT Caused Missed Due Dates – 8.0 dB Loop – Field Work"), at 271-No. 58a. Although SWBT missed 33.3 percent of its installation due dates for competing carriers in September, there were only three orders in that month and SWBT missed only one of them. In light of the extremely low volume in Kansas for September, we conclude that SWBT's performance measurement does not reflect its true capabilities and provisioning quality. Furthermore, we note that most 8.0 dB loops do not require field work, and that SWBT's performance towards competing carriers has surpassed SWBT's performance for its retail operations in such instances in Kansas. See SWBT Aggregated Performance Data (Kansas), Measure No. 58-02 ("Percent SWBT Caused Missed Due Dates – 8.0 dB Loop – No Field Work"), at 271-No. 58a.

⁶⁰⁶ SWBT Reply at 59; SWBT Dysart Aff. at paras. 79-81; SWBT Dysart Reply Aff. at para. 48. SWBT explains that it often assigns changes to a customer's service features (e.g., adding voice mail, call waiting, or caller identification) to the performance measurement "8.0 dB loop without field work." Because changing a customer's service features is not labor-intensive work, SWBT rarely fails to meet an assigned due date. By contrast, installing an 8.0 dB loop for a competing carrier requires more labor-intensive work and frequently takes longer than SWBT Application at 95; SWBT Reply at 59-60. After accounting for the discrepancies, SWBT met the parity standard for six months in the period January through August 2000. SWBT Reply at 59-60.

⁶⁰⁷ In Texas, SWBT has provisioned at least 2,200 unbundled 8.0 dB loops per month since February 2000 and generally misses less than two dozen due dates per month. SWBT has generally missed a comparable percentage of due dates for its own retail operations during the same time period. See SWBT Aggregated Performance Data (Texas), Measure No. 58-02 ("Percent SWBT Caused Missed Due Dates – 8.0 dB Loop – No Field Work"), at 271-No. 58a.

⁶⁰⁸ Allegiance Comments at 20-23; KMC Comments at 7-8; McLeodUSA Comments at 9-15.

time and manner as it does for its own retail customers.⁶⁰⁹ SWBT misses its own repair commitments for voice grade loops more frequently than it misses repair commitments for competing carriers.⁶¹⁰ Competing carriers enjoy a lower rate of repeat trouble reports than SWBT's retail operations.⁶¹¹ In both Kansas and Oklahoma, competing carriers experience a comparable percentage of trouble reports as SWBT's retail operations.⁶¹² Likewise, SWBT demonstrates that it restores service for voice grade loops faster for competing carriers than for its own retail operations.⁶¹³ When measured against the applicable parity standards, SWBT's performance measurements show that it often provides substantially better repair service to competing carriers than to itself.⁶¹⁴

⁶⁰⁹ SWBT's maintenance and repair process for voice grade loops is identical to the process described for xDSL-capable loops.

⁶¹⁰ See SWBT Aggregated Performance Data, Measure No. 66-01 ("Missed Repair Commitments – 2 Wire Analog 8.0 dB Loop"), at 271-No. 65d-66a.

⁶¹¹ Since June 2000, competing carriers have experienced a far lower repeat trouble report rate than SWBT's retail operations for 8.0 dB loops. In Kansas, competing carriers experienced repeat trouble report rates of 5.9 percent, 0 percent, and 5.9 percent for the months of August, September, and October respectively; by comparison, SWBT's retail operations experienced 12.5 percent, 11.8 percent, and 10.2 percent repeat troubles for the same months. In Oklahoma, competing carriers experienced 0 percent, 2.9 percent, and 5.6 percent for the months of August, September, and October respectively; by comparison, SWBT's retail operations experienced repeat trouble report rates of 13.4 percent, 11.8 percent, and 11.2 percent for the same months. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 69-01 ("Repeat Reports – 8.0 dB Loop with Test Access"), at 271-No. 69a. SWBT's performance for 5.0 dB loops has been comparable. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 69-02 ("Repeat Reports – 5.0 dB Loop with Test Access"), at 271-No. 69a. Finally, SWBT's performance in Texas, where SWBT has generally met its established parity standards while handling larger volumes, shows that competing carriers generally receive fewer repeat troubles than SWBT's retail operations. See SWBT Aggregated Performance Data (Texas), Measure No. 69-01 ("Repeat Reports – 8.0 dB Loop with Test Access"), at 271-No. 69a.

⁶¹² SWBT Reply at 60, 63.

⁶¹³ See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 67-01 ("Mean Time to Restore (Hours) – Dispatch – 8.0 dB Loop with Test Access"), at 271-No. 67c.

⁶¹⁴ See *id.* In Kansas, SWBT restored 8.0 dB loops for competing carriers in 4.34 hours in July, 13.77 hours in August, 1.97 hours in September, and 3.62 hours in October. By comparison, SWBT restored its own 8.0 dB loops in 20.67 hours in July, 17.88 hours in August, 17.43 hours in September, and 9.42 hours in October. SWBT's Kansas data for July and September show statistically significant results in favor of competing carriers. In Oklahoma, SWBT restored 8.0 dB loops for competing carriers in 3.37 hours in July, 3.14 hours in August, 3.59 hours in September, and 1.66 hours in October. By comparison, SWBT restored its own 8.0 dB loops in 29.95 hours in July, 18.24 hours in August, 17.24 hours in September, and 13.08 hours in October. SWBT's Oklahoma data for July through October show statistically significant results in favor of competing carriers.

c. High Capacity Loop Performance

213. We recognize that SWBT's performance with respect to provisioning high capacity loops on time has been poor in Kansas and Oklahoma.⁶¹⁵ Given the low volumes of orders for high capacity loops in these states,⁶¹⁶ we cannot find that SWBT's performance for high capacity loops results in a finding of noncompliance for all loop types. As noted above, SWBT performs at an acceptable level for most types of unbundled local loops. We note that SWBT uses the same processes for provisioning, maintaining, and repairing unbundled high capacity loops as it uses for other types of unbundled local loops.⁶¹⁷ In addition, we note that SWBT installed high capacity loops for carriers in Kansas in 2.7 days on average, and in 5.8 days on average in Oklahoma, for the period August through October 2000.⁶¹⁸ In both states, SWBT has improved its performance in October 2000. SWBT's average installation intervals indicate that it provisions DS-1 loops to competing carriers in a timely manner, and that SWBT quickly overcomes the challenges presented by a lack of facilities. We disagree with IP, KMC, Allegiance, and McLeodUSA that SWBT's failure to meet its installation dates for DS-1 loops in some cases requires a finding of checklist noncompliance.⁶¹⁹ Again, we look to the totality of the circumstances in evaluating SWBT's performance in providing loops in accordance with the checklist requirements. Although we recognize specific performance problems for high capacity loops, we do not find that this disparity in and of itself is enough to render a finding of checklist noncompliance. We stress, however, that we will be actively monitoring SWBT's performance in this area and we will take swift and appropriate enforcement action in the event SWBT's provisioning performance for high capacity loops fails to improve.

⁶¹⁵ See SWBT Reply at 62. SWBT missed on average 47.8 percent of its installation commitments in Oklahoma between July and October 2000, and 33.1 percent on average in Kansas during the same period. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 58-06 ("Percent SWBT Caused Missed Due Dates – DS1 Loop"), at 271-No. 58b; see Adelpia Comments at 4 (asserting that SWBT failed to meet due dates for installing DS-1 loops); but see SWBT D. Smith Reply Aff. at paras. 40-48. SWBT's performance in Texas has been equally poor. See SWBT Aggregated Performance Data (Texas), Measure No. 58-06 ("Percent SWBT Caused Missed Due Dates – DS1 Loop"), at 271-No. 58b.

⁶¹⁶ High-capacity loops comprise only 9.6 percent of the recent loop volume in Oklahoma and 15.7 percent of the recent loop volume in Kansas. From July through October, SWBT received 123 orders for DS-1 loops in Kansas (out of 1270 total for all loop types) and 210 orders (out of 1334 total) in Oklahoma. By contrast, SWBT received 1003 orders for DS-1 loops in Texas during the same period. See SWBT Aggregated Performance Data, Measure No. 58-06 ("Percent SWBT Caused Missed Due Dates – DS1 Loop"), at 271-No. 58b.

⁶¹⁷ See SWBT November 29, 2000 *Ex Parte* at 2,4.

⁶¹⁸ See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 58-06 ("Percent SWBT Caused Missed Due Dates – DS1 Loop"), at 271-No. 58b.

⁶¹⁹ Adelpia Comments at 4; Allegiance Comments at 15, 17, 18; IP Comments at 4-5; KMC Comments at 8; McLeodUSA Comments at 11, 13.

d. Line Sharing

(i) Background

214. On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops.⁶²⁰ In the *Line Sharing Order*, we acknowledged that it could take as long as 180 days from the release of our order for BOCs and other incumbent LECs to develop and deploy the technical and operational modifications necessary to implement the new rules. This 180-day period concluded on June 6, 2000, approximately four months before SWBT filed the instant application. Accordingly, SWBT must demonstrate that it has a legal obligation to provide nondiscriminatory access to line sharing, i.e., the unbundled high-frequency portion of the local loop.

(ii) Discussion

215. We find that SWBT demonstrates that, as of June 1, 2000, it has been making line sharing available in both Kansas and Oklahoma. SWBT makes line sharing available to competing carriers in an optional amendment to the K2A and the O2A.⁶²¹ Until recently, however, no competing carriers submitted orders for the high-frequency portion of the loop.⁶²² We conclude that we should not fault SWBT for the failure of competing carriers to deploy DSL service through line shared loops. We therefore focus our analysis of SWBT's line sharing performance for checklist compliance on SWBT's processes for provisioning line shared loops. To the extent there is any activity, we would expect to rely primarily upon the categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas Orders. Specifically, a successful BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases. Finally, to the extent that a BOC applicant relies upon commercial data from another state to

⁶²⁰ See Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*), recon. pending.

⁶²¹ SWBT Sparks Aff. at para. 104, Attach. C-KS and C-OK.

⁶²² SWBT Deere Aff. at paras. 121-25; SWBT Chapman Aff. at paras. 57-101; SWBT Sparks Aff. at paras. 104-07. In October 2000, SWBT provisioned a single line shared loop to competing carriers in Oklahoma and none to carriers in Kansas. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 58-10 ("Percent SWBT Caused Missed Due Dates – DSL –Line Sharing"), at 271-No. 58c.

establish that it is providing nondiscriminatory access to line shared loops in a state where it requests section 271 authority, it should provide evidence that the OSS and provisioning processes are identical. To the extent its OSS provisioning processes are not identical, a BOC applicant bears the burden of showing that whatever differences are present are not material. In the instant application, because SWBT is not processing orders for line sharing from competing carriers in commercial volumes in either Kansas or Oklahoma, we look to SWBT's performance in Texas to assist our evaluation. In addition, we rely on SWBT's performance towards its separate affiliate, Advanced Solutions, Inc. (ASI), to assist our evaluation because SWBT has provided substantial volumes of line shared loops to its separate affiliate.⁶²³

216. *Ordering, Provisioning, and Maintenance Processes.* We conclude that SWBT demonstrates that it has implemented the necessary processes for provisioning and maintaining the high-frequency portion of the loop in both Kansas and Oklahoma. The ordering, provisioning, and maintenance processes are nearly identical to those used to provision stand-alone xDSL-capable loops.⁶²⁴ To order the unbundled high-frequency portion of the loop in any state in the SWBT region, competing carriers submit LSRs (through an application-to-application interface, a graphical user interface (GUI), or manually) to SWBT's Local Service Center in Dallas, Texas.⁶²⁵ The LSR used by competing carriers is generally the same as the LSR used for stand-alone xDSL-capable loops, but some additional information (e.g., power spectral density information) is required to order the high-frequency portion of the loop.⁶²⁶

217. *Line Sharing Performance Data.* Only recently have competing carriers started purchasing the unbundled high-frequency portion of the loop from SWBT, and even then, only one competing carrier ordered a single line shared loop.⁶²⁷ SWBT has been providing line sharing to competing carriers in Texas, however, and has been using the same provisioning and maintenance processes in Texas as it uses in Kansas and Oklahoma. In addition, because SWBT has been providing line sharing to its separate affiliate in Kansas, Oklahoma, and Texas, we can rely on SWBT's performance towards its separate affiliate to evaluate its operations in these states. We therefore look to SWBT's performance towards its affiliate and towards competing carriers in Texas to evaluate SWBT's ability to accommodate requests for line sharing in Kansas and Oklahoma once competing carriers start to order the product.

⁶²³ See n. 327, *supra* (discussing recent court decision relating to this affiliate).

⁶²⁴ SWBT Chapman Aff. at paras. 3, 57-58, 71-97; SWBT Cullen Aff. at para. 8; SWBT November 29, 2000 *Ex Parte* at 3, 5.

⁶²⁵ SWBT Chapman Aff. at para. 80; SWBT Noland/Smith Aff. at paras. 15 and 29.

⁶²⁶ SWBT Chapman Aff. at paras. 81-84.

⁶²⁷ One competing carrier ordered one line shared loop in October 2000. See SWBT Aggregated Performance Data (Kansas and Oklahoma), Measure No. 58-10 ("Percent SWBT Caused Missed Due Dates - DSL -Line Sharing"), at 271-No. 58c.

218. SWBT demonstrates that, in Texas, it provisions the unbundled high-frequency portion of the local loop to competing carriers in substantially the same time and manner as SWBT does for its own advanced services separate affiliate. In particular, SWBT provisioned line shared loops to competing carriers 3.44 and 3.55 days in September and October 2000 respectively.⁶²⁸ By contrast, SWBT took about one day longer to provision the same type of line shared loops to its separate affiliate. Moreover, SWBT missed only 2.1 and 1.8 percent of the installation due dates for line shared loops provided to competing carriers during the same months. We also find that SWBT installs the high frequency portion of the loop at an acceptable level of quality.⁶²⁹ Although SWBT has not performed as well in the maintenance and repair of line shared loops as it has for stand-alone DSL loops, SWBT demonstrates that competing carriers experience a comparable percentage of trouble reports on line shared loops as SWBT's separate affiliate.⁶³⁰ Similarly, competing carriers have experienced comparable repair times for line shared loops as SWBT's separate affiliate, even though SWBT's repair times were slow in September and October 2000.⁶³¹ SWBT's performance in Texas provides reasonable assurances that competing carriers will experience comparable service in Kansas and Oklahoma once they start ordering line shared loops.

219. We find that SWBT's performance towards its separate affiliate in Kansas and Oklahoma supports our analysis. In both states, SWBT has provisioned line shared loops to its separate affiliate in less than 5 days, since June 2000, while coping with substantial volumes.⁶³² Similarly, SWBT missed less than 1.5 percent of the installation due dates for line shared loops provided its affiliate in September and October 2000.⁶³³ In light of SWBT's showing that orders

⁶²⁸ See SWBT Aggregated Performance Data (Texas), Measure No. 55.1-03 ("Average Installation Interval – DSL – Line Sharing – Requires No Conditioning"), at 271-No. 55.1. Although SWBT made available line sharing within its region as of June 1, 2000, SWBT did not having line sharing performance data available until September 2000. As a result, we only have two months of performance data to examine for this application.

⁶²⁹ SWBT Aggregated Performance Data, Measure No. 59-09 ("Percent Trouble on N, T, C Orders within 30 Day – DSL – Line Sharing"), at 271-No. 59c.

⁶³⁰ In Texas, competing carriers experienced a trouble report rate for line shared loops of 18.4 percent and 11 percent in September and October respectively. During the same time period, SWBT's separate affiliate experienced a trouble report rate of 22.2 percent and 8 percent. See SWBT Aggregated Performance Data (Texas), Measure No. 58-10 ("Percent SWBT Caused Missed Due Dates – DSL – Line Sharing"), at 271-No. 58c.

⁶³¹ SWBT restored service for competing carriers in 0.12 hours in September and in 37.88 hours in October. By comparison, SWBT restored service for its separate affiliate in 31.19 hours in September and 42.98 hours in October. See SWBT Aggregated Performance Data (Texas), Measure No. 67-23 ("Mean Time to Restore – No Dispatch – DSL – Line Sharing"), at 271-No. 67g.

⁶³² See SWBT Aggregated Performance Data, Measure No. 55.1-03 ("Average Installation Interval – DSL – Line Sharing – Requires No Conditioning"), at 271-No. 55.1. In September 2000, SWBT provisioned over 1,700 line shared loops to its separate affiliate in Kansas and over 2,000 line shared loops to its separate affiliate in Oklahoma. See SWBT Chapman Reply Aff. at para. 18.

⁶³³ In Oklahoma, SWBT missed 0.5 percent and 0.3 percent of its installation due dates for line shared DSL loops provided to its affiliate in the months of September and October 2000 respectively. During the same period in (continued....)

for line sharing from competing carriers are treated by SWBT precisely as orders from its separate affiliate, we believe that competing carriers will experience comparable performance as they order line sharing. Although SWBT has an incentive to provide preferential provisioning and maintenance service to its separate affiliate, SWBT also has a duty to provide competing carriers with nondiscriminatory performance. We will therefore closely monitor SWBT's performance in this area to ensure that SWBT meets its nondiscrimination obligations in this area.⁶³⁴

e. Line Splitting

220. SWBT demonstrates that it makes it possible for competing carriers to provide voice and data service over a single loop – *i.e.*, to engage in “line splitting.”⁶³⁵ Specifically, SWBT demonstrates that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.⁶³⁶ A competing carrier, either alone or in conjunction with another carrier, thus is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer.

221. WorldCom asserts in its Comments that, notwithstanding SWBT's assertions on the record in this proceeding, its K2A interconnection agreement in Kansas contains language that is plainly inconsistent with the line splitting obligation discussed above.⁶³⁷ Specifically, this language states that competing LECs “shall not utilize any SWBT splitters, equipment, cross-

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Kansas, SWBT missed 0.2 percent and 1.2 percent of its installation due dates. *See* SWBT Aggregated Performance Data, Measure No. 58-09 (“Percent SWBT Caused Missed Due Dates – DSL – Line Sharing”), at 271-No. 58c.

⁶³⁴ We note that SWBT's performance towards its separate affiliate is subject to an annual independent audit pursuant to the *SBC/Ameritech Merger Order*. *See* Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14,712 at Appendix C, para. 66 (1999) (*SBC/Ameritech Merger Order*).

⁶³⁵ *See generally* *SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. §51.703(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers “to provide any telecommunications service that can be offered by means of that network element.”).

⁶³⁶ *See* SWBT Chapman Reply Aff. at paras. 29-40. In its reply, SWBT states that it will modify the language of its interconnection agreements to eliminate any ambiguity regarding the ability of a competing carrier to purchase line splitting. Specifically, SWBT offers an amendment that states that a competing carrier “may provide voice and data services over the same loop by engaging in ‘line splitting’” SWBT Chapman Reply Aff. at para. 40 (addressing Section 4.7.5 of the K2A Optional Line Sharing Appendix).

⁶³⁷ *See* WorldCom Comments at 19-20.

connects or OSS systems to facilitate [line splitting].⁶³⁸ We agree with WorldCom that, on its face, this language appears to create a restriction that would make it virtually impossible for a carrier to provide voice and data service over a single loop in the manner envisioned in the *SWBT Texas Order*. SWBT, however, contends that it never intended this language to undermine its policy of permitting line splitting and, moreover, has never taken the position that this language precludes line splitting, as defined in the *SWBT Texas Order*.⁶³⁹ We need not reach the question of interpreting this language, however, because SWBT has stricken this language and has replaced it with language that appears to be consistent with the *SWBT Texas Order*.⁶⁴⁰ We thus conclude that, based on evidence in the record, SWBT has demonstrated that it currently satisfies its line splitting obligation in Kansas.

f. Pricing

222. Sprint and the Department of Justice take issue with certain rates in Kansas and Oklahoma, including those for loop conditioning, line sharing, and line splitting, because they are interim.⁶⁴¹ We address these concerns with respect to collocation,⁶⁴² and believe our conclusions are equally applicable here. Sprint further argues that the rates for loop conditioning proposed by SWBT are much higher than the interim rates, raising the possibility of enormous true-ups once the cost proceedings are completed.⁶⁴³ The Kansas and Oklahoma Commissions have indicated that they intend to conclude the proceedings for loop conditioning in the immediate future,⁶⁴⁴ so we are not worried about the true-up extending indefinitely. We also are not moved by the size of the differential. Based on the permanent rates that the Kansas and Oklahoma Commissions have already adopted for unbundled network elements,⁶⁴⁵ and the expectation that in setting permanent rates, the Kansas and Oklahoma Commissions will take into account concerns we raise in our decision today, we have confidence that the Kansas and Oklahoma Commissions will set permanent rates that are in compliance with the Act and our rules. Thus, as we stated in the *SWBT Texas Order*, Sprint and other CLECs “face uncertainty about the imposition of a true-up only to the extent that they reasonably believe that they may in fact have a legal obligation to pay something greater than” the rates that the state commissions

⁶³⁸ See, *id.* (citing to SWBT Sparks Decl. Attach. C-KS, at 8 (K2A Optional Line Sharing Amendment § 4.7.5)).

⁶³⁹ See SWBT Chapman Reply Aff. at paras. 31-39.

⁶⁴⁰ See, *id.* We rely on SWBT’s commitment to eliminate the restrictive language quoted above. Moreover, we accept SWBT’s explanation that the commitments outlined in its Chapman Reply Affidavit, rather than the language in the K2A quoted above, represents its position on line splitting.

⁶⁴¹ Sprint Comments at 27-37; Department of Justice Evaluation at 24-25, 27-28.

⁶⁴² See Section IV.D.4, *infra*.

⁶⁴³ Sprint Comments at 32-33.

⁶⁴⁴ Kansas Commission Reply at 4; Oklahoma Commission Reply at 17.

⁶⁴⁵ See Section IV.B.1, *supra*.

now impose.⁶⁴⁶ We observed in the *SWBT Texas Order* that carriers should expect to be affected by future resolutions of disputed issues, and that such concern is insufficient to warrant denial of a section 271 application.⁶⁴⁷ For these reasons, we therefore conclude that each state's loop conditioning, line sharing, and line splitting rates are reasonable under the three-pronged interim rate test enunciated in the *Bell Atlantic New York Order*.⁶⁴⁸

D. Checklist Item 1 – Interconnection

223. We conclude, as described below, that SWBT demonstrates that it provides equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251(c)(2) and as specified in section 271 and applied in our prior orders.⁶⁴⁹ We further find that SWBT proves that it designs its interconnection facilities to meet “the same technical criteria and service standards” that are used for the interoffice trunks within its own network.⁶⁵⁰ We also find that SWBT makes interconnection available at any technically feasible point, including the option to interconnect at only one technically feasible point within a LATA,⁶⁵¹ and that it is providing collocation in Kansas and Oklahoma in accordance with the Commission's rules.⁶⁵² We note that both the Kansas and Oklahoma Commissions have found that SWBT has satisfied all aspects of this checklist item.⁶⁵³

1. Interconnection Trunking

224. Based on our review of the record, we are persuaded that SWBT provides competing carriers with interconnection trunking in both Kansas and Oklahoma that is equal-in-quality to the interconnection SWBT provides to its own retail operations, and on terms and conditions that are just, reasonable, and nondiscriminatory.⁶⁵⁴ SWBT makes interconnection

⁶⁴⁶ *SWBT Texas Order*, 15 FCC Rcd at 18475, para. 237.

⁶⁴⁷ *Id.* at 14875-76, para. 237.

⁶⁴⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258.

⁶⁴⁹ See *SWBT Texas Order*, 15 FCC Rcd at 18379-81, paras. 61-64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640.

⁶⁵⁰ See *SWBT Texas Order*, 15 FCC Rcd at 18380, paras. 62-63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-50, paras. 65, 74-77.

⁶⁵¹ See *SWBT Texas Order*, 15 FCC Rcd at 18390, para. 79.

⁶⁵² See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 00-297 (rel. August 10, 2000), *recon. pending (Advanced Services Reconsideration Order)*.

⁶⁵³ Kansas Commission Comments at 7-8; Oklahoma Commission Sec. 271 Order at 160.

⁶⁵⁴ In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC's technical criteria and service standards. *Local (continued....)*

available in Kansas and Oklahoma through interconnection agreements, including its state-approved K2A and O2A agreements.⁶⁵⁵ SWBT receives orders for interconnection trunks through the Access Service Request (ASR) process, and accepts ASRs through an electronic application-to-application interface, through a proprietary OSS system, and through manual orders.⁶⁵⁶ SWBT provides performance data to measure the quality of interconnection service provided to competing carriers.⁶⁵⁷ We note that no commenter in this proceeding raised concerns about trunk blockage or on-time provisioning of interconnection trunks.

225. *Interconnection Quality.* In prior section 271 applications, we relied on trunk blockage data to evaluate a BOC's interconnection quality.⁶⁵⁸ SWBT's performance data demonstrate that it provides interconnection that is equal-in-quality to the interconnection it provides in its own network. Specifically, SWBT's statewide performance data measuring the percentage of calls blocked on outgoing traffic (trunk blockage from SWBT end office and tandem to competitive LEC end office) demonstrate that in the three months immediately preceding its application, SWBT was in compliance with the relevant benchmarks established in Kansas and Oklahoma (*i.e.*, blockage not to exceed one percent on these trunks).⁶⁵⁹ Although the

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_____ *Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25. In prior section 271 applications, the Commission concluded that disparities in trunk group blockage may indicate a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations. *See SWBT Texas Order*, 15 FCC Rcd at 18380, para. 62. As discussed below, for certain interconnection performance metrics, the Oklahoma and Kansas Commissions relied on a benchmark standard for evaluating SWBT's performance (*e.g.*, percent of trunk blockage and average interconnection trunk installation intervals). For other interconnection measurements, such as percent missed due dates for installation, a parity standard is applied. *See SWBT Dysart Aff.* at paras. 10-11.

⁶⁵⁵ SWBT Application App. B (providing interconnection agreements between SWBT and competing carriers in both Kansas and Oklahoma).

⁶⁵⁶ SWBT Ham Aff. at para. 173.

⁶⁵⁷ *See* SWBT Dysart Aff. at para. 50 and Attachs. A and B, Measurements 70-78 (Performance Measurement Business Rules) (Version 1.6). SWBT has implemented ten performance measures relating to interconnection, including measures that compare trunk blockage between SWBT and competitive LECs (PM 70), measures that capture missed due dates for trunk installations (PM 73), and measures that provide data on average installation intervals (PM 78). *Id.*

⁶⁵⁸ Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer's perception of a competitive LEC's service quality. *SWBT Texas Order*, 15 FCC Rcd at 18382-83, paras. 66-68; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20649-50, para. 76; *Ameritech Michigan Order*, 12 FCC Rcd at 20669-74, paras. 236-245.

⁶⁵⁹ In Kansas, for SWBT end office and SWBT tandem to competitive LEC end office, SWBT's data indicate 0% blockage for both measures from July through October. *See* SWBT Aggregated Performance Data, Kansas, No. 70-01 and 70-02 at 271-No. 70-71. In Oklahoma, for SWBT tandem to competitive LEC end office, SWBT's data indicate performance well below the benchmark, 0% blockage from July through September, and 0.1% blockage for October. *See* SWBT Aggregated Performance Data, Oklahoma, No. 70-01 and 70-02 at 271-No. 70-71.

number of trunks provisioned in Kansas and Oklahoma is relatively low, this pattern is consistent with the trend in Texas, where SWBT follows the same processes and procedures.⁶⁶⁰

226. *Interconnection Timeliness.* Other aspects of SWBT's performance data further indicate it is providing nondiscriminatory interconnection trunking in Kansas and Oklahoma.⁶⁶¹ In previous section 271 applications, the Commission has evaluated missed due dates and average installation intervals to gauge trunk provisioning timeliness. SWBT's performance in both of these areas demonstrates satisfactory performance in Kansas and Oklahoma. Because of low volumes, we also look to Texas performance to confirm our findings. SWBT's performance data concerning the percentage of missed due dates for provisioning of interconnection trunks show that, in recent months, SWBT's provisioning performance for competitors in Kansas was as good as (at parity) or better than that provided on its own network.⁶⁶² In Oklahoma, from July to October 2000 in the aggregate, SWBT-caused missed trunk installations averaged 22.9% for competitive LECs, and 28.6% for SWBT.⁶⁶³ These figures indicate that, in general, SWBT

⁶⁶⁰ See SWBT Aggregated Performance Data, Texas, No. 70-01 and 70-02 at 271-No. 70-71; SWBT Deere Aff. at para. 14.

⁶⁶¹ The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service, 47 C.F.R. § 51.305(a)(5), and its provisioning of two-way trunking arrangements. Our rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); see also *SWBT Texas Order*, 15 FCC Rcd at 18380-81, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-220.

⁶⁶² SWBT's percentage of missed due dates in Kansas:

PM 73: Missed Due Dates				
	July	Aug.	Sept.	Oct.
CLEC	0%	0%	0%	11.3%
SWBT	2.9%	18.5%	10.5%	99.6%

See SWBT Aggregated Performance Measurement Data, Kansas, PM 73 at 271-No.73-76 (showing performance measurement data for July 2000 through October 2000).

⁶⁶³ See Letter from Jared Craighead, Associate Director-Federal Regulatory, SBC Telecommunications, to Magalie Salas, Secretary, Federal Communications Commission, CC Docket No. 00-217 (filed Dec. 14, 2000). SWBT's percentage of missed due dates in Oklahoma:

PM 73: Missed Due Dates				
	July	Aug.	Sept.	Oct.
CLEC	20.7%	0%	15.8%	49.9%
SWBT	0%	78.4%	23.2%	16.2%

See SWBT Aggregated Performance Measurement Data, Oklahoma, PM 73 at 271-No.73-76 (showing performance measurement data for July 2000 through October 2000).

provided parity or better performance for competitors in Oklahoma for trunk installations.⁶⁶⁴ As we discussed above, we also look to SWBT's current performance in Texas, where, using the same processes and procedures, SWBT has been processing commercial volumes to a greater degree and for a longer period of time, to further determine whether SWBT's performance in Kansas and Oklahoma appears acceptable.⁶⁶⁵ The Texas data, which show that SWBT consistently misses fewer due dates for competing carriers than for itself, further suggests that SWBT's system of provisioning trunks is nondiscriminatory.⁶⁶⁶

227. *Average Installation Intervals.* SWBT's performance data measuring the average time for installation of interconnection trunks in Oklahoma and Kansas show marginal disparities in performance between actual performance and the 20-day benchmark established by the Oklahoma and Kansas Commissions. For example, SWBT's performance data for average time to install interconnection trunks meet the Kansas 20-day benchmark in six out of seven months for which there are data during the twelve-month period of time ending October 31, 2000. Similarly, in Oklahoma, SWBT's data show that it meets the 20-day benchmark in seven out of nine months for which there are data.⁶⁶⁷ Once again, because of the low volume of orders in Kansas and Oklahoma, we find it instructive to look to Texas where SWBT follows the same procedures and has been handling larger commercial volumes of orders for a longer period of time. In Texas, SWBT's performance data show that it meets the 20-day benchmark nine out of the past twelve months.⁶⁶⁸ Finally, we note that no commenter has raised interconnection trunk provisioning timeliness as an issue. For all of these reasons, we find that SWBT's performance

⁶⁶⁴ We also note that over the twelve-month period concluding October 31, 2000, SWBT has provided competitive LECs more timely interconnection trunk installations than SWBT has provided its own retail operations by a factor of almost three. See SWBT Dysart Reply Aff. at para. 111.

⁶⁶⁵ SWBT percentage of missed due dates in Texas:

PM 73: Missed Due Dates				
	July	Aug.	Sept.	Oct.
CLEC	0%	2.5%	7.2%	8.7%
SWBT	25.1%	26.1%	28.8%	41.3%

See SWBT Aggregated Performance Measurement Data, Texas, PM 73 at 271-No.73-76 (showing performance measurement data for July 2000 through October 2000). We attribute these month-to-month fluctuations, at least in part, to the very low sample sizes involved, and thus find the 4-month aggregate number to be more probative of SWBT's performance in this instance.

⁶⁶⁶ We also are encouraged by SWBT's commitment to continue to improve trunk provisioning performance in Oklahoma. See SWBT Mah Reply Aff. at para. 44.

⁶⁶⁷ See SWBT Aggregated Performance Measurement Data, Kansas and Oklahoma, No. 78 at 271-No-78 (showing performance measurement data for average interconnection trunk installation interval).

⁶⁶⁸ The average installation interval for the months in which SWBT missed the benchmark were 22.8 days for December 1999, 25.94 for January 2000, and 29.06 for October 2000. See SWBT Aggregated Performance Measurement Data, Texas, No. 78 at 271-No-78 (showing performance measurement data for average interconnection trunk installation interval).

for installation of interconnection trunks provides competing carriers with a meaningful opportunity to compete and complies with checklist item 1.

2. Collocation

228. SWBT demonstrates that its collocation offerings in Kansas and Oklahoma satisfy the requirements of sections 251 and 271 of the Act. SWBT provides physical and virtual collocation through state-approved tariffs.⁶⁶⁹ SWBT's Kansas and Oklahoma physical and virtual collocation tariffs are virtually identical to the Texas physical and virtual collocation tariffs, which we found to satisfy checklist item 1 in our *SWBT Texas Order*.⁶⁷⁰ In its application, SWBT indicates that shared, cageless, and adjacent collocation options are available in Kansas and Oklahoma, and that it has taken other steps necessary to implement the collocation requirements contained in the *Advanced Services First Report and Order* and *Advanced Services Reconsideration Order*.⁶⁷¹

229. SWBT's collocation performance data generally indicate that SWBT processed collocation requests and provisioned collocation arrangements within time frames established by the Kansas and Oklahoma Commissions.⁶⁷² SWBT states that it has provided 233 physical collocation arrangements in 38 different SWBT central offices in Kansas, and 366 physical collocation spaces in 66 different SWBT central offices in Oklahoma.⁶⁷³ Except where a competitive LEC places a large number of collocation orders in the same 5-business day period, SWBT responds to each request within 10 calendar days.⁶⁷⁴ SWBT provides three measurements (disaggregated into various submeasures) for collocation: Percentage of Missed Collocation Due Dates (PM 107), Average Delay Days for SWBT Missed Due Dates (PM 108), and Percent of Requests Processed within the Tariffed Timelines (PM 109). Where data points are available,

⁶⁶⁹ The Kansas Commission approved SWBT's physical collocation tariff on June 14, 2000. SWBT Sparks Aff. at para. 34. The Kansas Commission approved SWBT's virtual collocation tariff on April 12, 2000. *Id.* On May 9, 2000, the Oklahoma Commission adopted the terms and conditions of SWBT's Texas physical and virtual collocation tariffs on an interim basis, subject to true-up, while it reviews SWBT's Oklahoma physical and virtual collocation tariffs. *See id.*; Oklahoma Commission Sec. 271 Order at 20.

⁶⁷⁰ SWBT Application at 80; *see also* Kansas Commission Staff Report at 8-10; Oklahoma Commission Sec. 271 Order at 160-61.

⁶⁷¹ SWBT Application at 79-85; *see also* Kansas Commission Staff Report at 10-11; Oklahoma Commission Sec. 271 Order at 161. On October 10, 2000, SWBT amended its collocation procedures to implement the rules adopted in the *Advanced Services Reconsideration Order*. SWBT Application App. E, Vol. 8, Revision to Notification of Compliance with FCC 00-297.

⁶⁷² Because the Kansas and Oklahoma Commissions have set their own application processing and provisioning standards for physical collocation, SWBT's operations in those states are not subject to the national standards. *See Advanced Services Reconsideration Order*, paras. 21-23; *see also* SWBT Sparks Aff. at para. 38.

⁶⁷³ SWBT Application at 80; SWBT Smith/Johnson Aff., Attach. A.

⁶⁷⁴ SWBT Sparks Aff. at para. 40; Kansas Commission Comments at 9.

SWBT's data indicate it meets the measures for the months of July through October with few exceptions.⁶⁷⁵ Thus, based on the record in this proceeding, we are persuaded that SWBT is meeting its collocation obligations.⁶⁷⁶

230. We reject MFNS's argument that SWBT's application should be denied because SWBT refuses to permit collocation of a fiber distribution frame in Texas.⁶⁷⁷ First, MFNS admits that this dispute does not arise out of a collocation dispute in either Kansas or Oklahoma. Second, SWBT must allow collocation of only that equipment which is "necessary for interconnection or access to [UNEs]."⁶⁷⁸ In accordance with the D.C. Circuit's opinion in *GTE v. FCC*,⁶⁷⁹ we currently are considering what equipment is "necessary" for these purposes.⁶⁸⁰ Finally, we believe that MFNS's alleged difficulties negotiating collocation arrangements with SWBT are best resolved through the section 252 negotiation and arbitration process or through the section 208 complaint process. As we have found in past section 271 proceedings, the section 271 process simply could not function if we were required to resolve every interpretive dispute about the precise content of an incumbent LEC's obligations to its competitors, including fact-intensive interpretive disputes.⁶⁸¹

⁶⁷⁵ See SWBT Aggregated Performance Measurement Data, Kansas and Oklahoma, PMs 107-109 at 271-No. 107a-109b. Although a few data points fall marginally short of the benchmarks, we do not believe that these misses rise to the level of non-compliance with this checklist item, absent evidence of more systemic failure or evidence from competitors demonstrating how this performance denied them a meaningful opportunity to compete.

⁶⁷⁶ We are aware that the Enforcement Bureau recently has issued a *Notice of Apparent Liability for Forfeiture* for violations of the Commission's rule requiring incumbent local exchange carriers promptly to post notices of premises that have run out of collocation space. See *SBC Communications, Inc., Apparent Liability for Forfeiture*, File No. EB-00-IH-0326a, DA-01-128 (rel. Jan. 18, 2001). This issue first came to light on August 7, 2000 through an independent auditor's public report concerning SBC's compliance with the Commission's collocation rules. See August 7, 2000 Report of Independent Accountants, Ernst & Young LLP. SBC had agreed to such an audit as part of the Commission's approval of the merger application of Ameritech Corporation and SBC. Although we are concerned about SWBT's apparent violation of our collocation rules, we believe that this issue will be appropriately addressed in the Enforcement Bureau's review of the pending *Notice of Apparent Liability (NAL)*. Based on the information that we have to date, we are not persuaded that the evidence supporting the NAL warrants a finding of checklist non-compliance. Moreover, no commenter has raised SWBT's posting of collocation space exhaustion as an issue in this proceeding.

⁶⁷⁷ See, e.g., MFNS Comments at 3.

⁶⁷⁸ 47 U.S.C. § 251(c)(6).

⁶⁷⁹ *GTE Services Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) (*GTE v. FCC*).

⁶⁸⁰ *Advanced Services Reconsideration Order*, paras. 71-92; see also MFNS Comments in CC Docket 98-147 at 10-15 (filed Oct. 12, 2000) (arguing that incumbent LECs must permit requesting carriers to collocate fiber distribution frames).

⁶⁸¹ See *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27.

231. We also disagree with Sprint that its problems concerning collocation in remote terminals in Kansas and Oklahoma warrant denial of SWBT's application.⁶⁸² The state commissions determined that Sprint's issues concerning collocation in remote terminals were insufficient to overcome an overall finding of checklist compliance.⁶⁸³ In addition, the Kansas Commission has said that if Sprint, or any other CLEC continues to experience difficulties concerning collocation in remote terminals, it will address these issues as part of its six-month review of SWBT's collocation tariff in Kansas.⁶⁸⁴ Because this appears to be a fact-based interconnection dispute that is better resolved at the state-level, and because the state commissions have determined that Sprint's claims were insufficient to overcome an overall finding of checklist non-compliance, we are not persuaded that SWBT has failed to comply with its collocation obligations in Kansas and Oklahoma.⁶⁸⁵

3. Technically Feasible Points of Interconnection

232. We conclude that SWBT provides interconnection at all technically feasible points, including a single point of interconnection, and therefore demonstrates compliance with the checklist item. SWBT asserts that it makes each of its standard methods of interconnection available at the line side or trunk side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs.⁶⁸⁶ SWBT demonstrates that it has state-approved interconnection agreements that spell out readily available points of interconnection, and provide a process for requesting interconnection at additional, technically feasible points.⁶⁸⁷ SWBT further shows that, for purposes of interconnection to exchange local traffic, a competitive LEC may choose a single, technically feasible point of interconnection within a LATA.⁶⁸⁸

⁶⁸² Sprint Comments at 65-66 (referring to concerns expressed before the Oklahoma and Kansas Commissions regarding collocation for advanced services).

⁶⁸³ See Kansas Commission Comments at 8-9; Oklahoma Commission Sec. 271 Order at 165.

⁶⁸⁴ Kansas Staff Recommendation at 9.

⁶⁸⁵ We also note that SWBT indicates that it has reached agreement with Sprint on language to be added to a new Sprint interconnection agreement to resolve Sprint's issues concerning collocation in remote terminals. See SWBT Reply at 88 n. 57.

⁶⁸⁶ SWBT Application at 76; SWBT Deere Aff. at paras. 15; 21-22. SWBT will provide other technically feasible alternatives using the Special Request Procedure set forth in the K2A and O2A. *Id.* at 15; 84-88.

⁶⁸⁷ SWBT Application at 76. SWBT's state-approved K2A and O2A require SWBT to provide other collocation arrangements that have been demonstrated to be technically feasible and in compliance with the *Advanced Services Order*.

⁶⁸⁸ In compliance with our *SWBT Texas Order*, SWBT modified the language of its K2A and O2A to allow a carrier to choose a single point of interconnection in a LATA. See *SWBT Texas Order*, 15 FCC Rcd 18390, para. 78; see also SWBT Application at 76; SWBT Deere Aff. at para. 5, 14, 66.

233. Some commenters argue that SWBT effectively denies a competing carrier the right to select a single point of interconnection by improperly shifting to competing carriers inflated transport and switching costs associated with such an arrangement.⁶⁸⁹ For example, AT&T avers that, in a technical conference in Oklahoma after the adoption of the O2A, SWBT advanced several compensation arrangements relating to a competing carrier's choice of interconnection and collocation which require AT&T to pay inflated transport costs upon exercising its right to a single point of interconnection.⁶⁹⁰ SWBT responds that AT&T largely misunderstands the positions it advanced at the technical conference, and that AT&T's claims are best addressed at the state level through the negotiation and arbitration process.⁶⁹¹ SWBT further argues that the Commission previously determined that carriers seeking a single point of interconnection should bear any additional cost associated with taking traffic to and from the point of interconnection in the other exchange.⁶⁹²

234. Because these commenters, including AT&T, take issue only with positions advanced by SWBT in a technical conference, we find that the issues raised are hypothetical ones, and therefore do not warrant a finding of non-compliance with checklist item 1. Although SWBT's interpretation of the state-approved interconnection agreement raises potential future compliance issues regarding the interplay between a single point of interconnection and reciprocal compensation, our review must be limited to present issues of compliance.⁶⁹³ Indeed, we understand that AT&T has filed for arbitration of these issues in Oklahoma.⁶⁹⁴ To the extent that the parties believe that this is a matter requiring more explicit rules, we invite them to file a petition for declaratory ruling or petition for rulemaking with the Commission.

235. Finally, we caution SWBT from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation

⁶⁸⁹ AT&T Comments at 24; *see also* Cox Comments at 10; WorldCom Reply at 38.

⁶⁹⁰ *See* AT&T Comments, Attachment 2 at 14-20.

⁶⁹¹ *See* SWBT Reply at 77-87.

⁶⁹² *Id.* at 86. SWBT relies on the following language from its Texas interconnection agreement with WorldCom: "MCI(WorldCom) and SWBT agree that MCI(WorldCom) may designate, at its option, a minimum of one point of interconnection within a single SWBT exchange where SWBT facilities are available, or multiple points of interconnection within the exchange, for the exchange of all traffic within that exchange. If WorldCom desires a single point for interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party's facilities." *See SWBT Texas Order*, 15 FCC Rcd 18390, para. 78 n. 174.

⁶⁹³ *SWBT Texas Order*, 15 FCC Rcd 18367, para. 27.

⁶⁹⁴ *See* Oklahoma Commission Reply at 16. We also note that in its Reply, SWBT makes certain concessions regarding future interpretation of certain language in the O2A and K2A that is at issue. For example, in response to AT&T's argument that SWBT requires a CLEC collocated in a SWBT end office to interconnect there by provisioning direct trunks, AT&T Comments at 28, SWBT concedes that the proper reading of the O2A and K2A is that direct trunking from the CLEC's collocation facility is an option, not a requirement. *See* SWBT Reply at 81.

to deliver traffic to a competitive LEC's point of interconnection.⁶⁹⁵ In our *SWBT Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection.⁶⁹⁶ We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules.⁶⁹⁷ For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.⁶⁹⁸ These rules also require that an incumbent LEC compensate the other carrier for transport⁶⁹⁹ and termination⁷⁰⁰ for local traffic that originates on the network facilities of such other carrier.⁷⁰¹

4. Pricing of Interconnection

a. Background

236. As discussed above, checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."⁷⁰² Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network ... on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁷⁰³ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.⁷⁰⁴ The Commission's pricing rules require, among other

⁶⁹⁵ See SWBT Reply at 86-87.

⁶⁹⁶ See *SWBT Texas Order*, 15 FCC Rcd 18390, para. 78 n. 174.

⁶⁹⁷ See 47 C.F.R. §§ 51.701 *et seq.*

⁶⁹⁸ 47 C.F.R. § 51.703(b); see also *TSR Wireless, LLC et al. v. U.S. West*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, FCC No. 00-194 (rel. June 21, 2000), *pet. for review docketed sub nom.*, *Qwest v. FCC*, No. 00-1376 (D.C. Cir. Aug. 17, 2000).

⁶⁹⁹ 47 C.F.R. § 51.701(c).

⁷⁰⁰ 47 C.F.R. § 51.701(d).

⁷⁰¹ 47 C.F.R. § 51.701(e).

⁷⁰² 47 U.S.C. § 271(c)(2)(B)(i).

⁷⁰³ 47 U.S.C. § 251(c)(2).

⁷⁰⁴ 47 U.S.C. § 252(d)(1).

things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.⁷⁰⁵

b. Discussion

237. Based on the evidence in the record, we find that SWBT offers interconnection in Kansas and Oklahoma to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1. The Kansas and Oklahoma Commissions conclude that SWBT currently provides collocation under approved interconnection agreements and tariffs, consistent with FCC, Kansas Commission, and Oklahoma Commission orders.⁷⁰⁶

238. Sprint challenges SWBT's collocation rates in both states because the rates are interim. Sprint further asserts that the fact that SWBT has not yet set permanent rates in Kansas and Oklahoma is directly relevant to whether the Commission can discount the uncertainty and risk of non-cost-based interim rates.⁷⁰⁷ The Department of Justice also expresses concern over the interim nature of both states' collocation rates.⁷⁰⁸ We have previously set forth a three-pronged test to determine whether interim rates are acceptable: (1) the interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to our pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.⁷⁰⁹ We conclude that each state's interim collocation rates meet this standard.

239. We find that the interim solutions adopted by the Kansas and Oklahoma Commissions are reasonable under the circumstances. ConnectSouth alleges that SWBT's physical collocation rates are barriers to entry in Kansas and Oklahoma because they are significantly higher than the cost-based rates charged in Texas.⁷¹⁰ We note that the Oklahoma rates cited by ConnectSouth⁷¹¹ have been superseded by the interim rates adopted by the

⁷⁰⁵ See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

⁷⁰⁶ Kansas Commission Comments at 9; SWBT Application App. C-Oklahoma, Vol. 25a-c, Tab 275 (Order Regarding Recommendation On 271 Application Pursuant to Telecommunications Act of 1996, Cause No. PUD 970000560 (Sept. 28, 2000)) at 161-62 (Oklahoma Commission Final 271 Order).

⁷⁰⁷ Sprint Comments at 34-36.

⁷⁰⁸ Department of Justice Evaluation at 24-25, 27-28.

⁷⁰⁹ *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258.

⁷¹⁰ ConnectSouth Comments at 2-6.

⁷¹¹ *Id.*

Oklahoma Commission, which in fact are the Texas collocation rates.⁷¹² As the Commission noted in the *SWBT Texas Order*, the Texas Commission based its interim physical collocation rates on a TELRIC model developed by AT&T and MCI, with modifications.⁷¹³ We believe that the rates contained within the Texas 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state. In Kansas, the interim rates were set at SWBT's proposed rates, except for those for Site Conditioning and Power, which the Kansas Commission set at one-half of the rates proposed by SWBT.⁷¹⁴ The Kansas Commission found that while the competitive LECs preferred Texas interim rates to those proposed by SWBT, they were more concerned with having a true-up in place, and acknowledged that SWBT's proposed rates were significant improvements over the Individual Case Basis (ICB) rates that were then in place.⁷¹⁵ We view the Kansas Commission's decision as a reasonable attempt by the state commission to set an interim TELRIC-based rate pending its final determination.

240. We take notice that each state has pending cost proceedings to set permanent rates for collocation,⁷¹⁶ and each has ordered that the interim rates be subject to true-up.⁷¹⁷ We also recognize that each state set its interim collocation rates so that competitive LECs could obtain collocation subject to true up rather than through ICB pricing that was much more expensive and not subject to true up.⁷¹⁸ Furthermore, each state has committed to complete its collocation cost docket in the near future.⁷¹⁹ We conclude that the uncertainty surrounding the interim rates has been minimized. Based on the permanent rates that the Kansas and Oklahoma Commissions have already adopted for unbundled network elements, and the expectation that in setting permanent collocation rates, the Kansas and Oklahoma Commissions will take into account concerns we raise in our decision today, we have confidence that the Kansas and Oklahoma Commissions will set permanent collocation rates that are in compliance with the Act and our

⁷¹² SWBT Application App. G, Vol. 3, Tab 36 (Order Denying Appeals From The April 20, 2000, Oral Recommendation of the Administrative Law Judge, Cause No. PUD 200000169 (May 2, 2000)) at 10 (Oklahoma Commission Collocation Order).

⁷¹³ *SWBT Texas Order*, 15 FCC Rcd at 18395, para. 89.

⁷¹⁴ SWBT Application App. D-Kansas, Vol. 2, Tab 52 (Order Granting in Part, Denying in Part Motion to Integrate Texas Collocation Rates into the SWBT-Kansas Collocation Tariff, Pending a Kansas-Specific Cost Proceeding and Subject to True Up, Docket No. 00-SWBT-733-TAR (Apr. 21, 2000)) at 4, 6-7, Att. 2 (Kansas Commission Collocation Order).

⁷¹⁵ *Id.* at 3.

⁷¹⁶ Kansas Commission Reply at 4; Oklahoma Commission Final 271 Order at 162.

⁷¹⁷ Kansas Commission Collocation Order at 7; Oklahoma Commission Collocation Order at 10.

⁷¹⁸ Kansas Commission Collocation Order at 3-4; Oklahoma Commission Collocation Order at 9-10.

⁷¹⁹ See Kansas Commission Reply at 4; Oklahoma Commission Comments at 2.

rules.⁷²⁰ We believe that these steps adequately address the Department of Justice's concerns about the existence of interim rates in both states.⁷²¹ Consequently, we find that SWBT has met its obligations under this checklist item for rates in both Kansas and Oklahoma.

V. OTHER CHECKLIST ITEMS

A. Checklist Item 6 – Switching

1. Background

241. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.”⁷²² To satisfy its obligations under this subsection, an applicant must demonstrate compliance with the Commission rules effective as of the date of the application relating to unbundled local switching, most of which are set forth in detail in our prior 271 orders.⁷²³ The Commission revised these rules in the *UNE Remand Order*, which was released on November 5, 1999. That order generally retained the unbundling obligations for local switching while narrowing the scope of the obligation for certain geographic areas.⁷²⁴ In the *UNE Remand Order*, the Commission required that incumbent LECs need not provide access on an unbundled basis to packet switching except in certain limited circumstances.⁷²⁵

2. Discussion

242. Based on the evidence in the record, we conclude that SWBT demonstrates that it complies with checklist item 6.⁷²⁶ Specifically, SWBT demonstrates that it provides: (1) line-side and trunk side facilities;⁷²⁷ (2) basic switching functions;⁷²⁸ (3) vertical features;⁷²⁹ (4) customized

⁷²⁰ See section IV.B.1, *supra*.

⁷²¹ See Department of Justice Comments at 24 (Oklahoma), 27-28 (Kansas).

⁷²² 47 U.S.C. § 271(c)(2)(B)(vi); see also *SWBT Texas Order*, 15 FCC Rcd at 18520, para. 336; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722.

⁷²³ See *SWBT Texas Order*, 15 FCC Rcd at 18520-22, paras. 336-38; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

⁷²⁴ *UNE Remand Order*, 15 FCC Rcd at 3822-32, paras. 276-299 (limiting an incumbent LEC's general duty to unbundle circuit switching when a requesting telecommunications carrier serves end users in the top 50 MSAs, in Density Zone 1, with four or more voice grade lines, provided that such LEC provides access to EELs).

⁷²⁵ *UNE Remand Order*, 15 FCC Rcd at 3838-3919.

⁷²⁶ SWBT Application at 103 (SWBT furnishes more than 17,000 unbundled switch ports in Kansas, and more than 6,000 in Oklahoma, mostly in combination with unbundled local loops); SWBT Smith/Johnson Aff., Attachment A.

⁷²⁷ Line-side facilities include, but are not limited to, the connection between a loop termination at a main distribution frame, and a switch line card. Trunk-side facilities include, but are not limited to, the connection (continued....)

routing;⁷³⁰ (5) shared trunk ports;⁷³¹ (6) unbundled tandem switching;⁷³² (7) usage information for billing exchange access;⁷³³ and (8) usage information for billing for reciprocal compensation.⁷³⁴ The Kansas and Oklahoma Commissions conclude that SWBT is in compliance with checklist item 6.⁷³⁵ Furthermore, the terms and conditions for local switching in both the K2A and the O2A are similar to those in the T2A, which we considered in the Texas 271 proceeding and determined to satisfy the requirements of checklist item 6.⁷³⁶ One significant

(Continued from previous page)

between trunk termination at a trunk-side cross-connect panel and a switch trunk card. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20724 nn.679-680. See SWBT Deere Aff. at paras. 152-153.

⁷²⁸ The basic switching function includes, but is not limited to: connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as the same basic capabilities that are available to the BOC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20726 n.690. See also SWBT Deere Aff. at para. 154.

⁷²⁹ *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20726. Vertical features provide end-users with various services such as custom calling, call waiting, call forwarding, caller ID and Centrex. *Id.*; see also SWBT Deere Aff. at paras. 154, 161.

⁷³⁰ An incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible. *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20728 n.705. Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from requesting carriers' customers. See *Id.* at 20728-29, para. 221; SWBT Deere Aff. at paras. 134-137. Customized routing is also referred to as selective routing. *Second BellSouth Louisiana Order* at 20728 n.704.

⁷³¹ *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12475-79; *Ameritech Michigan Order*, 12 FCC Rcd at 20716-17; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20732, para. 228; SWBT Deere at para. 157.

⁷³² The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and, (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733 n. 732. See SWBT Deere Aff. at paras. 165-169.

⁷³³ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733-35, paras. 230-31; SWBT Sparks Aff. at para. 133.

⁷³⁴ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20735-37, paras. 232-34; SWBT Sparks Aff. at para. 134.

⁷³⁵ Kansas Commission Comments at 28-29; Oklahoma Commission Sec. 271 Order at 184-85.

⁷³⁶ As an amendment to its K2A and O2A, SWBT offers CLECs an optional amendment which implements the rules adopted in the Commission's *UNE Remand Order* that became effective on February 17, 2000. See SWBT Sparks Aff. at para. 90. These amendments include language which eliminates unbundled switching as a UNE in certain high density areas when EELs are available. *Id.*, Attachment B.