bulk of the UNEs ordered by competitors (such as UNE loops and switch ports) have associated rates that were arbitrated in Case No. TO-97-40 which were then incorporated into various SWBT interconnection agreements with competitors. These rates are also incorporated into SWBT's proposed M2A. The Staff believes the rates arbitrated by the Commission in Case No. TO-97-40 conform to the FCC's TELRIC standard. Although SWBT has appealed the Commission's decision in Case No. TO-97-40 to the 8th Circuit Court of Appeals, the Staff continues to believe SWBT will fail in its efforts to have the Commission's decision overturned.

Case No TO-98-115.

The Commission's December 23, 1997 Report and Order in Case No. TO-98-115 established interim recurring and nonrecurring (NRC) rates for UNEs and services associated with the UNEs. In order to establish permanent rates, the Commission instructed the Staff to conduct an investigation beginning on January 5, 1998, "with a special focus on identifying the critical inputs and analyzing the [SWBT and AT&T's NRCM] costing models" used to establish the rates. Further, the Commission specified that the Staff "should use the same permanent rate costing approach adopted in Case No. TO-97-40."

The Staff filed its report on July 24, 1998, ("Pricing Report"). There the Staff recommended approximately 187 UNE associated rates for nonrecurring charges, recurring charges and services related to the functionality of the UNEs. In a memorandum filed with the Commission on August 7, 1998, the Staff updated, clarified and summarized the Pricing Report. The Staff also proposed modifications and related its understanding of party positions taken in response to the Staff's Pricing Report. AT&T and SWBT filed testimony, affidavits

and comments to the Pricing Report on August 24, 1998.

The Commission conducted a question and answer session on September 4, 1998. The parties filed initial and reply briefs on February 1 and February 16, 1999, respectively. On December 12, 2000, the Commission issued an order directing the Staff, AT&T and SWBT to file a joint list of issues by December 29, 2000, and individually submit proposed findings of fact and conclusions of law by January 22, 2001.

The Staff's recommendation for Case No. TO-98-115 is for the Commission to adopt the rates contained within Staff's July 24, 1998 Pricing Report. In the Staff's view the rates in that report are both TELRIC-based and conform to FCC pricing guidelines. Therefore, the Staff recommends that the Commission require SWBT to offer the UNEs that are the subject of Case No. TO-98-115 with the associated rates set forth in the Staff's July 24, 1998, Pricing Report and condition SWBT's section 271 approval accordingly.

xDSL loop qualification and conditioning rates.

The Commission has arbitrated permanent rates for loop qualification and conditioning in Case Nos. TO-99-370, TO-99-461 and TO-2000-322. SWBT has incorporated these rates into M2A. In Case No. TO-2000-322, the Commission ordered that further loop conditioning cost analysis be conducted. SWBT has committed to incorporating into M2A adjustments made by the Commission due to this further loop conditioning cost analysis.

Although a detailed cost analysis of loop conditioning is underway in Case No. TO-2000-322, the parties in that case (SWBT and Covad) filed with the Commission on December 12, 2000, a Notice of Settlement of all issues and requested the Commission to close that case. Because the Commission ordered a further loop conditioning cost analysis and the

current rates for loop conditioning set in Case No. TO-2000-322 are not interim, are not subject to true-up and, further, are significantly different than the xDSL conditioning rates established by the TPUC, the Staff is concerned that the FCC may not consider the present Missouri rates to be TELRIC-based.

Use of rates not approved by the Commission

In Attachment B to the Staff's August 28, 2000, Response to SWBT's Updated Record, the Staff identified approximately 110 UNE prices proposed in the original version of the M2A which had not been presented to the Commission before. Based on subsequent conversations with SWBT, the Staff now believes that of those 110 rates, approximately 20 were arbitrated in Case No. TO-97-40. SWBT has revised the rates it originally proposed in M2A to incorporate these 20 rates arbitrated in Case NO. TO-97-40 into the most recent redlined version of the M2A. This leaves approximately 95 UNE rates that the Staff still questions.

Although SWBT maintains that these approximately 95 UNE rates are based on SWBT cost studies, because there has been no independent determination that the SWBT cost studies conform to TELRIC principles, the Staff recommends that the Commission not assume that these approximately 95 UNE rates are TELRIC-based and conform to FCC pricing guidelines. Instead, the Staff recommends that the Commission adopt the corresponding FCC-approved Texas UNE prices on an interim basis subject to true-up until such time as the Commission has determined Missouri specific rates for these UNEs that conform to TELRIC principles and comply with FCC pricing guidelines.

Checklist Item 3 – Poles, Ducts, conduits, and Rights of Way

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 3?

Yes.

Section 271 (c)(2)(B)(iii) requires that BOCs provide nondiscriminatory access to poles, ducts, conduits and rights-of-way at just and reasonable rates. Having the burden to show that it provides nondiscriminatory access, SWBT implemented procedures to ensure that it provides poles, ducts, conduits and rights-of-way at parity. First, SWBT implemented a 45-day requirement to respond to requests in its Master Agreement that outlines the specific terms and conditions for access.[36] Second, SWBT's Master Agreement itself provides for access to SWBT's records regarding this checklist item within two days of a request for those records.[37] Third, SWBT allows carriers that have access to SWBT's poles, ducts, conduits and rights-of-way to make short-term use of maintenance ducts for repair and maintenance activities. These ducts are available to all users for emergency use at any time, and 30-day permits may be obtained for non-emergency uses such as cut-arounds.[38] The carrier can use its own, or contract out for, qualified personnel for these purposes.[39] Fourth, SWBT assesses just and reasonable rates, uniform to all carriers and compliant to the rate methodology in 47 U.S.C. § 224(d)(1). SWBT follows this formula and methodology adopted by the FCC.[40]

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[36] Hearst Direct, Ex. 26, pp. 9, 20.

[37] Hearst Direct, Ex. 26, p. 6.

[38] Hearst Direct, Ex. 26, p. 13.

[39] Hearst Direct, Ex. 26, p. 12.

[40] Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, FCC 86-212, pp.16-20 (1987).

The intervenors in the present case failed to introduce any evidence demonstrating that SWBT does not meet this checklist item. The Staff took this position in its March 24, 1999,[41] The Staff's position has not changed. SWBT meets this checklist item.

Checklist Item 4 – Unbundled Local Loops

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 4?

Yes.

Section 271(c)(2)(B)(iv) of the Act (Checklist Item 4) requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[42] The FCC has defined the loop as a transmission facility between a distribution same, or equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises.[43] This includes both voice grade and DSL capable loops.[44]

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[41] Staff's Post-Hearing Brief filed March 24, 1999, pp. 26-28.

[42] 47 U.S.C. § 271(c)(2)(B)(iv).

[43] *Local Competition First Report and Order,* 11F.C.C.R. at 15691, ¶ 380; *UNE Remand Order,* 15 F.C.C.R at 3772-73, 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 condition in are among the features, functions and capabilities of the loop).

[44] *SBC Texas Order* at ¶ 246.

Specifically, a BOC must demonstrate: (1) 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; and (2) it provides nondiscriminatory access to unbundled loops, i.e., provides 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.

The Staff's focused its energies concerning Checklist Item No. 4 - Unbundled Loops on the Issues of Line Sharing and Line Splitting. The FCC's Line Sharing Order states that an incumbent LEC has an "obligation . . . to make the high frequency portion of the loop separately available" and is "limited to those instances in which the incumbent LEC is providing and continues to provide voice service on the particular loop to which the requesting carrier seeks access."[45] The FCC did not "not per se address SWBT's compliance with the *Line Sharing Order*.[46] The FCC at paragraph 321 of its SBC Texas Order stated:

> For the purpose of evaluating whether this application satisfies section 271, we do not require SWBT to prove that it has implemented the loop facility and OSS modifications necessary to accommodate requests for access to the line sharing unbundled network element as required by our December 9, 1999 *Line Sharing Order*. Although that order became technically effective on February 9, 2000, we acknowledged that it could take as long as 180 days from release of our order for incumbent LECs to develop and deploy the modifications necessary to implement the new obligations. This 180 day period concluded on June 6, 2000, well after SWBT filed its application. As with the aspects of the *UNE Remand Order's revised* rule 319 that were not in effect at the time SWBT filed its application, we

[45] *SBC Texas Order* at ¶ 323.

[46] Staff's Reply and Additional Comments to October Question & Answer dated November 2, 2000, p. 23.

conclude it would be unfair to require SWBT to demonstrate full compliance with the implementation of the *Line Sharing Order* in its initial application at a time well in advance of the implementation deadline established in the Order. Finally, requiring SWBT to supplement the record with new evidence demonstrating its compliance with its line sharing obligations on or after June 6, 2000, would necessitate an 11th hour review of fresh evidence and dispose of our well-established procedural framework.

Although the FCC did not specifically address whether SWBT had met its line sharing obligations, it did state in paragraph 322 of its SBC Texas Order:

> We find that SWBT demonstrates significant development and operational resources devoted to planning for competing carrier access to the high frequency portion of the loop. We find the depth and scope of this evidence sufficient to overcome the speculative concerns of some competing carriers regarding SWBT's line sharing readiness...
>
> However, in the present case before the Commission, SWBT must show that it complies with the *Line Sharing Order* to show that its complies with the requirement to provide nondiscriminatory access to UNEs.

It is the Staff's opinion that SWBT's line-sharing terms and conditions, as currently stated, would in all probability meet the FCC's requirements relating to line-sharing as part of Checklist Item 4—Unbundled Local Loops. However, the Staff strongly encourages the Commission to take into consideration the comments of the parties to this proceeding—comments such as those of IP Communications of the Southwest. With this input the Commission will be in a position to build upon the TPUC's line-sharing experience and expertise. In order to negate the problems that CLECs rightfully perceive as "barriers and [a] cause [of] increased costs and delay and provisioning problems" the Staff again recommends adoption of the terms and conditions contained in the Texas interim-line sharing contract. Though Attachment F of the M2A contains many of the features of the Texas interim line-sharing contract, a number of the Texas provisions have been modified or eliminated.

Line splitting differs from line sharing in that both the voice and data service is provided by competing carrier(s) other than SWBT over a single loop. SWBT does not provide the voice service under line splitting.

The FCC has not, as of yet, made line splitting a § 271 requirement and, accordingly, it is not included in Checklist Item 4—Unbundled Local Loops, or under any other of the 14-Point Checklist Items. SWBT is currently providing line splitting in accordance with the FCC's *Line Sharing Order*, i.e., SWBT is the voice provider and shares the loop with one other party, a data CLEC.

Line splitting issues are also fairly new. The FCC recognized this point in SBC's Texas Order. There the FCC stated the following:

> In response to petitions for reconsideration of the *UNE Remand Order*, we have been asked to consider whether to impose on incumbent LECs a new obligation to provide access to the splitter, just as we are often asked to adjust our unbundling rules in light of industry developments. In this regard, we believe AT&T's arguments merit prompt and thorough consideration bye the Commission, and we commit to resolving them expeditiously in our reconsideration of the UNE *Remand Order*.[47]

The M2A does not offer any terms and conditions for line splitting. Line splitting is not an option in the state of Missouri.

The Texas Commission recently completed an arbitration regarding a number of issues including line splitting (TPUC Docket No. 22315). The Texas Arbitrators stated that:

> . . . based upon the evidence in this record there is no technical distinction between line sharing and line splitting, as the splitter provides access to the same functionality of the loop in both contexts. The Arbitrators agree with AT&T that its discriminatory for SWBT to provide the splitter in a line sharing context while not providing the splitter in a line splitting context. The Arbitrators believe that SWBT's policy will have the effect of severely limiting the number of data

[47] *SBC Texas Order* at ¶ 328.

CLECs with which a UNE-P provider can partner in order to offer advance services. Many data CLECs are relying upon SWBT to provide the splitter.[48]

The Texas Arbitrators further stated that:

> . . . SWBT is required to provide the splitter in order to allow AT&T to access the full functionality of the loop. Although not dispositive in this case, the Arbitrators also believe that this decision will promote more rapid deployment of advanced services to broader cross section of customers, as required by Section 706 of the FTA.[49]

SWBT has filed a motion for clarification and reconsideration in this docket. It is the Staff's understanding that the Texas Arbitrators' decision is now final and the Texas T2A will be thus modified to include an "Optional Line Splitting Amendment."

The Staff recommends that the Commission adopt the Texas line splitting arbitration decision as stated in TPUC Docket No. 22315. Once the Texas terms, conditions and pricing are finalized these would be incorporated into the M2A. In the interim, the Staff recommends that the Commission adopt the language as stated in the O2A. The Texas terms, conditions and rates would be interim subject to true up and/or refund until such time as the Commission establishes its own line splitting terms and conditions and TELRIC based rates.

The Staff believes that adoption of the Texas line splitting arbitration decision would be pro-competitive and allow CLECs full access to "all capabilities of the loop including the low and high frequency spectrum portion of the loop when it purchases the unbundled loop combination with the switch port or the unbundled network element platform (UNE-P)."[50]

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[48] *TPUC Docket No. 22315, SWBT/AT&T Arbitration Award* at 21.

[49] *Id.* at 22.

[50] *Id.* at 18.

The Staff further recommends that when the FCC issues its "reconsideration of the UNE *Remand Order*" that the Commission review the FCC's line splitting decision to determine if any changes are required to the M2A.

Checklist Item 5 – Unbundled Local Transport.

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 5?

No. This is a change from the Staff's position as last stated. It has come to the attention of the Staff that certain rates have not undergone scrutiny by the Commission as to whether they are TELRIC-based and FCC guideline compliant.

Section 271 (c)(2)(B)(v) of the Act requires that a BOC provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching and other services."[51] The FCC has found that this includes both dedicated and common transport.[52] The FCC has primarily looked at performance data concerning provisioning of interoffice facilities.[53]

The Staff's November 2, 2000 reply comments indicated that SWBT had met this checklist item. Upon further analysis, the Staff now believes SWBT is not in full compliance due to proposed M2A rates for local transport which have not been examined by the Commission. For example, although numerous dedicated and common transport UNEs were established by the Commission in Case No. TO-97-40, numerous other transport rates are the focus of further arbitration in Case No. TO-98-115. Further, certain unbundled transport rates

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[51] 47 U.S.C. Section 271(c)(2)(B)(v).

[52] *SBC Texas Order* at ¶ 331.

[53] See Generally the Texas Order at ¶ 333.

proposed by SWBT in its M2A are among the approximately 95 rates previously identified by the Staff as not having been previously examined by the Commission.

Although not all local transport rates have been examined by the Commission, the Staff believes the provisioning aspects of SWBT local transport offerings do conform to the Act and the FCC's relevant rules. SWBT's local transport offerings are detailed in the testimony of SWBT witnesses William C. Deere,[54] the affidavit of SWBT witness Rebecca Sparks,[55] and in Appendix UNE Pricing of the M2A.

SWBT's proposed rates for local transport are contained within the proposed M2A. As shown in the UNE pricing appendix of SWBT's most recent version of M2A labeled by SWBT as "Appendix Pricing UNE," where the Commission has established permanent rates for unbundled common and dedicated local transport, SWBT proposes to offer those final arbitrated rates pursuant to the Commission's order in Case No. TO-97-40. For example, in its Appendix Pricing UNE SWBT proposes a rate of $48.70 for dedicated DS1 transport; this is the rate in Attachment B of the Final Arbitration Order in Case No. TO-97-40.[56]

The Staff maintains that although SWBT technically provides unbundled local transport pursuant to the FCC's guidelines, the Commission should conclude its examination of SWBT's proposed rates for local transport before finally evaluating SWBT's compliance with this checklist item.

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[54] Deere Direct; p. 25. November 20, 1998.

[55] Sparks affidavit; ¶ 98; June 28, 2000.

[56] Final Arbitration Order; Case No. TO-97-40 dated July 31, 1997. Rate of $48.70 is for the first mile of DS1 transport in zone 4.

Checklist Item 6 – Unbundled Local Switching

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 6?

Yes.

Section 271 (c)(2)(B)(vi) of the act requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[57] The FCC has found that a BOC is required to provide:

> unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers. Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions. (Footnotes omitted)[58]

The FCC also requires BOCs to:

> . . . permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic. The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information. Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching. Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function. (Footnotes omitted)[59]

Prices for unbundled local switching were arbitrated by the Commission in Case No. TO-97-40 and are incorporated into SWBT's M2A and numerous Commission-approved

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[57] 47 U.S.C. 271 (c)(2)(B)(vi).

[58] *SBC Texas Order* at ¶ 336.

[59] Id. at ¶ 337.

interconnection agreements. SWBT's forward looking end office switching cost methodology is outlined in Attachment A-24 of the affidavit of SWBT witness Thomas G. Ries.[60] As shown in the testimony of SWBT witness William C. Deere,[61] the affidavit of Rebecca Sparks,[62] and as contained in Attachment 6 of SWBT's M2A and numerous Commission-approved interconnection agreements, SWBT provides unbundled local switching in accordance with the Act, FCC rules, and the Commission's arbitration award in Case No. TO-97-40. The Staff believes SWBT complies with this checklist item.

Checklist Item 7 – 911-E911 Access & Directory Assistance/Operator Services

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 7?

Yes.

Section 271 (c)(2)(B)(vii) of the Act requires that a BOC provide nondiscriminatory access to: (1) 911 and E911 services; (2) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (3) operator call completion services. Directory assistance services and operator services are only required to be provided under Section 271 of the Act. It is not required that they be provided as an unbundled network element.

SWBT satisfies the requirements of checklist item (vii)(a). All information obtained and reviewed by Staff as of March 24, 1999, showed that all interconnection agreements in Missouri

[60] Ries affidavit filed June 28, 2000.

[61] Deere Direct, p. 28, filed November 20, 1998.

[62] Sparks affidavit ¶ 103 filed June 28, 2000.

contain provisions allowing competitors access to SWBT maintained E911 services. This includes the associated databases used to update subscriber information.[63]

SWBT has also demonstrated compliance with checklist item (vii)(b) and is providing nondiscriminatory access to directory assistance ("DA") services.[64] Testimony provided by Mr. Tom Weckel, on behalf of SWBT, clarified that although there was a period of time in the past where SWBT had refused to provide the bulk transfer of DA listings, that refusal was required by contractual agreements not to release those listings.[65] Since that time, the FCC has made it clear that it expects all subscriber listings in a BOCs direct database to be released.[66] That would include the listings of ILEC subscribers whose records reside within SWBT's directory database.[67]

Operator Call Completion Services ("OCCS"), the subject of checklist item (vii)(c), refer to a variety of call services that are obtained by dialing "0-" (dialing only the digit 0),)+ a local number, or 0+ a toll number.[68] These services include fully automated call processing, semi-automated call processing, station-to-station operator handled calls, line status verification, busy line interrupt, operator transfer, call branding, and call rating and reference information.[69] In that all calls for these operator call completion services, whether from SWBT's retail operations or from a CLEC, are processed by the same operator services system according to the order of

[63] Voight Rebuttal, Ex. 53, p. 25.

[64] Id. at 26.

[65] Tr. 1823-1824.

[66] Second Bell South Louisiana Order at ¶ 249.

[67] Voight Rebuttal, Ex. 53, p. 26.

[68] Weckel Direct, Ex. 49, p. 17.

[69] Id. at 17-18.

receipt, it is hard to envision how SWBT could not be in compliance with this item.[70]

The Staff's position taken In March of 1999, that SWBT complies with this checklist item has not changed.[71]

Checklist Item 8 – White Pages Directory Listings

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 8?

Yes.

Section 271 (c)(2)(B)(viii) of the Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."[72] A BOC satisfies this checklist item by "demonstrating that it: (1) provided nondiscriminatory appearance and integration of white pages directory listings to competitive LEC's customers; and (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers."[73]

SWBT witness Tom Weckel, testified that "SWBT provides white pages listings to all CLECs in a nondiscriminatory manner in Missouri and its 5-state area."[74] SWBT provides for the availability of WP listings for the end-users of both resellers and facilities-based carriers.[75] The listings of all CLEC retail customers are stored in SWBT's white pages database in the

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[70] *See,* generally, Id., pp. 17-22.

[71] Staff's Post-Hearing Brief filed March 24, 1999 at pp. 39-43.

[72] 47 U.S.C. 271 (c)(2)(B)(viii).

[73] *SBC Texas Order* at ¶ 234.

[74] Weckel Direct, Ex. 49, p. 34.

[75] Weckel Direct, Ex. 49, p. 27.

same manner as the listings SWBT maintains for its own retail customers.[76] The facilities-based CLECs may have their customers' names listed separately in the white pages directory in a section devoted to customers of that CLEC, or included alphabetically with SWBT's own retail customers in the directories.[77] If the CLECs so request, SWBT will also transmit these listings to a third-party directory publisher.[78]

Weckel also testified that SWBT will provide listings in bulk to any requesting CLEC.[79] This would enable the CLEC to check the accuracy of the entire listing prior to publication in a more convenient manner. ("SWBT provides access to its WP directory listings in readily accessible magnetic tape or electronic format.)"[80] Weckel went on to testify that:

> SWBT provides a requesting facility-based CLEC a paper verification report sixty (60) days prior to the date in which service orders can affect the listings in a WP directory that is about to be published . . . to verify their end-users' listings for a specific WP directory so that service order requests correcting any errors may be issued.[81]

A CD-ROM, which creates a "galley-style" printout for a CLEC to verify its customers' listings prior to publication, is also made available by SWBT.[82] Weckel testified during cross-examination that the CD-ROM verification procedure has "moved beyond" an interim measure

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[76] Weckel Direct, Ex. 49, p. 29.

[77] Weckel Direct, Ex. 49, p. 28.

[78] Weckel Direct, Ex. 49, p. 32.

[79] Tr. 1823.

[80] Weckel Direct, Ex. 49, pp. 27-28.

[81] Weckel Direct, Ex. 49, p. 33.

[82] Weckel Surrebuttal, Ex. 50, p. 7.

of verification.[83] AT&T witness Nancy Dalton confirmed that they are receiving and using the CD-ROM.[84]

In addition, SWBT now maintains an "ALPSS/LIRA" system, which replaces the traditional legacy white pages database.[85] This system will enhance the ability for a CLEC to verify the accuracy of its white pages listings. CLECs will be able to use it to download information into their own software and manipulate the data as they choose.[86] It will give the CLECs "real-time capability" to proof white pages directory listings.[87] Additionally, the ALPSS/LIRA system will allow SWBT, on behalf of the CLECs, to extract listings by methods other than using the "NNX" capability that exists at present.[88] ("NNX" refers to a three-digit code system used to identify the local central offices of the telecommunications company, and, in this instance, the method by which listings are currently extracted.) ALPSS/LIRA will be available to CLECs in Missouri on May 1, 1999.[89] OPC witness, Barbara A. Meisenheimer testified on cross-examination that if SWBT can provide the ALPSS/LIRA management system to CLECs in Missouri by May 1, 1999, it "will go a long way toward" achieving compliance with this item, from her perspective.[90]

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[83] Tr. 1795.

[84] Tr. 1137-38.

[85] Tr. 1796.

[86] Tr. 1799-1800.

[87] Tr. 1156-57.

[88] Tr. 1801-02.

[89] Tr. 1801.

[90] Tr. 1833.

Birch witness, Richard L. Tidwell, testified that performance issues have been improving as to service from SWBT.[91] He stated that the problem Birch was having with numbers being listed incorrectly, or not being listed at all, is "an individual issue now and not a systemic issue."[92]

As the above-cited testimony demonstrates, SWBT is in compliance with the checklist item. Despite some problems discussed by the witnesses from some of the CLECs, the evidence is clear that SWBT has met the terms of 47 U.S.C. § 271(c)(2)(B)(viii) in Missouri. SWBT has worked with the CLECs to provide white pages listings to them in a nondiscriminatory manner, most recently by the provision of the CD-ROM listings, and the imminent provision of the ALPSS/LIRA system.

The Staff's position taken In March of 1999, that SWBT complies with this checklist item has not changed.[93]

Checklist Item 9 – Number Administration

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 9?

Yes.

In March of 1999, the Staff stated that SWBT met this checklist item.[94] At that time SWBT administered numbering assignments in the state of Missouri. Numbering assignment administration is no longer a responsibility of SWBT. Neither relieving SWBT of numbering

[91] Tidwell Rebuttal, Ex. 62, p. 6.

[92] Tr. 1075.

[93] Staff's Post-Hearing Brief filed March 24, 1999, pp. 43-48.

[94] Staff's Post-Hearing Brief filed March 24, 1999, pp. 48-50.

assignment administration nor anything else in the record since March of 1999 has caused the Staff to alter its position that SWBT complies with this checklist item.

Checklist Item 10 – Databases and associated Signaling

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 10?

Yes.

Section 271(c)(2)(B)(x) of the Act requires a BOC to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[95] The FCC has required BOCs to provide nondiscriminatory access to "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems."[96]

The systems that the BOC is required to allow access to include, but are not limited to: Line Information Database, Toll Free Calling database, the Local Number Portability data base, Advanced Intelligent Network databases, calling name database, and 911 and E911 database.[97] In March of 1999, the Staff stated that SWBT met this checklist item.[98] Nothing has taken place since that time that causes the Staff to change its position. SWBT meets this checklist item.

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[95] 47 U.S.C. 271(c)(2)(B)(x).

[96] SBC Texas Order at ¶ 362.

[97] Id. at ¶ 363.

[98] Staff's post-hearing brief filed March 24, 1999, pp. 50-53.

Checklist Item 11 – Number Portability

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 11?

Yes.

Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[99] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[100] The Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another."[101]

As shown in the affidavit of SWBT witness Gilbert T. Orozco, SWBT has completed the deployment of LNP in Missouri pursuant to the FCC's schedule. As of April 2000, SWBT has equipped 178 switches in Missouri with LNP capabilities and SWBT has ported over 124,000 telephone lines to competitors in Missouri.[102] Performance measurements (PMs) data related to LNP are expressed as benchmarks and are reported within PMs 91.01 to 101.01 of version 1.6 of the PMs.

As indicated by the Staff in its November 2, 2000 Reply comments, the Staff continues to have concerns regarding the number of failed performance measurements associated with

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[99] 47 U.S.C. § 271(c)(2)(B)(xii).

[100] 47 U.S.C. at § 251(b)(2).

[101] 47 U.S.C. at § 153(30).

[102] Affidivit of Gilbert T. Orozco filed June 28, 2000 at ¶ 27.

this checklist item; however, the Staff believes SWBT is in compliance with this checklist item.[103]

Checklist Item 12 – Local Dialing Parity.

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 12?

Yes. This is a change in the Staff's last stated position and is based on events that have taken place since November 30, 2000, namely, the implementation of the Commission's order in Case No. TO-99-483 regarding metropolitan calling areas.

Section 271(c)(2)(B)(xii) of the Act requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[104] Section 251(b)(3) of the Act imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays."[105] Section 153(15) of the Act defines "dialing parity" as follows:

> . . . a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation . . .[106]

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[103] On December 15, 2000, AT&T Communications of the Southwest, Inc. ("AT&T") filed a Motion to Submit Comments on Supplemental Telcordia Texas Performance Measure Review Report. AT&T notes that Telcordia has rated as "critical" an issue associated with SWBT's reporting of PM 96.

[104] Based on the FCC's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (i.e., international, interstate, intrastate, or local), the FCC adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

[105] 47 U.S.C. § 251(b)(3).

[106] 47 U.S.C. at § 153(15).

In March of 1999, the Staff indicated that SWBT did not comply with this checklist item due to the lack of dialing parity within metropolitan calling areas ("MCA").[107] The Staff's position at that time is set forth in the paragraphs following:

> SWBT does not meet the requirements of this checklist item. As SWBT witness William C. Deere explained, "local dialing parity means that telephone exchange service customers within a local calling area may dial the same number of digits to make a local telephone call, regardless of the identity of the customer's or the called party's CLEC."[108]
>
> However, the evidence shows that SWBT does not provide parity for their own customers calling other SWBT customers and competitors' customers in MCAs. This problem takes several forms, described variously by witnesses for Staff and Brooks Fiber. "SWBT customers in MCA areas can call each other by dialing seven digits, while that same SWBT customer must place a toll call (1+10 digits) to reach a competitor's customer in the same area."[109] Brooks Fiber witness Steven J. Gaul testified "that in the St. Louis area some...of SWBT's extended calling areas cannot call into our switch as a local call. A SWBT customer in an extended area must place a toll call to our customer in St. Louis, while the same SWBT customer can call next door to our customer for free."[110]
>
> Witnesses for SWBT were unable to refute these allegations either in their testimony or at the hearing on this matter, nor did any of these witnesses specifically address the MCA problems discussed by witnesses Voight and Gaul. Staff believes that SWBT has not shown compliance with this checklist item, at least until the MCA problem has been resolved.[111]

In Appendix A to the Staff's response comments to the Commission's October 11-12, 2000, Question & Answer Session, the affidavit of William L. Voight, at pages 10-11, the Staff stated that with full implementation of the Commission's Report and Order in Case No. TO-99-483, SWBT would comply with the dialing parity requirements found in Checklist Item 12. In Case No. TO-99-483 the Commission ordered incumbent local exchange carriers including

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[107] Staff's post-hearing brief filed March 24, 1999, pp. 58-60.

[108] Deere Direct, Ex. 14, p. 83.

[109] Voight Surrebuttal, Ex. 54, pp. 13.

[110] Gaul Rebuttal, Ex. 70, pp. 7, 8.

SWBT to treat competitors as full MCA participants. The Staff's statements in the pleading accompanying that affidavit overstated this Staff position somewhat. There the Staff stated, "The Staff is satisfied that SWBT complies with checklist item eleven (sic), dialing parity" and "With SWBT's Tariff File No. 200100334, implementing the Commission's decision in TO-99-483, Staff's concerns regarding dialing parity are resolved."[112]

The Staff accurately stated its position on page 30 of its reply and additional response comments to the October 11-12, 2000, Question & Answer Session held by the Commission filed on November 2, 2000. There the Staff stated the following: "SWBT does not, as yet, meet this checkpoint item. However, as indicated in the affidavit of William Voight filed in this case on October 26, 2000, the Staff expects SWBT to be in compliance with this checklist item when SWBT fully implements the Commission's order in Case No. TO-99-483 regarding metropolitan calling areas ("MCA"). Staff anticipates this will occur on or about November 15, 2000."

As anticipated by the Staff, it is the Staff's understanding that implementation by SWBT of the Commission's order in Case No. TO-99-483 has occurred and SWBT now treats competitors as full MCA participants. As a result SWBT now complies with the local dialing parity requirement of Checklist Item 12.

Checklist Item 13 – Reciprocal Compensation

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 13?

Yes.

Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into

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[111] Staff's post-hearing brief filed March 24, 1999, pp. 59-60.

[112] Staff's response comments to the Commission's October 11-12, 2000, Question & Answer Session filed October 26, 2000, p. 6, ¶ 7.

"[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[113] In turn, pursuant to section 252(d)(2)(A), "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[114]

The FCC has held that "ISP-bound traffic is non-local interstate traffic" and that "the reciprocal compensation requirements of section 251(b)(5) of the Act . . . do not govern inter-carrier compensation for this traffic."[115] The FCC specified that state commissions may impose reciprocal compensation obligations for ISP-bound traffic, or may decline to require the payment of reciprocal compensation and may adopt another compensation mechanism

[113] 47 U.S.C. § 271(c)(2)(B)(xiii).

[114] 47 U.S.C. § 252(d)(2)(A).

[115] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic; Declaratory Rulemaking and Notice of Proposed Rulemaking*, CC Docket No. 96-98, 14 F.C.C.R. 3689 at 3706, n.87 (1999) (*Inter-Carrier Compensation for ISP-Bound Traffic Order*).

while the FCC developed final rules in an ongoing proceeding.[116] On March 24, 2000, the D.C. Court of Appeals vacated this ruling and remanded it for a fuller explanation of why ISP-bound traffic is not subject to section 251(b)(5)'s reciprocal compensation requirements.[117] The FCC has not issued a further ruling on the applicability of reciprocal compensation for ISP bound traffic and has declined require reciprocal compensation for ISP bound traffic for grant of section 271 authority.

In March of 1999, the Staff stated that SWBT complied with this checklist item as follows:

> Staff, after a thorough examination of the evidence, believes that SWBT has met the requirements of this item. SWBT witness Michael C. Auinbauh testified that "[t]he rates SWBT charges for the transport and termination of local traffic are based upon the functions actually involved in transporting and terminating the call."[118] Auinbauh went on to testify that:
>
> > SWBT has implemented the process of reciprocal compensation and record exchange for local, EAS and intraLATA toll traffic . . . Reciprocal compensation and exchange of usage records is based upon originating recording of traffic by each party.[119]
>
> Auinbauh stated that through December 1998 his company had paid more than $500,000 in reciprocal compensation to CLECs in Missouri, despite having received nothing from them in return.[120] This is true on all traffic except local traffic to Internet service provider (ISP) access numbers.[121] SWBT witness William C. Bailey testified that his company does not pay for ISP traffic under the

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[116] *Id.*

[117] *Bell Atlantic v. FCC*, No. 99-1094 (D.C. Cir. Mar. 24, 2000).

[118] Auinbauh Direct, Ex. 4, p. 34.

[119] Auinbauh Direct, Ex. 4, p. 35.

[120] Auinbauh Surrebuttal, Ex. 5, p. 22.

[121] Tr. 1571.

agreements it has negotiated with CLECs, with the exception of Birch, which is the subject of an Arbitration Award by the MoPSC.[122]

This holds true even though Auinbauh and SWBT believe Birch to be a resale company,[123] because Birch does not provide switching.[124] Bailey further testified at the hearing that reciprocal compensation arrangements do not apply to resellers, but only to facilities-based CLECs.[125] Reciprocal compensation applies where facilities-based CLECs have their own switching or are using SWBT's unbundled switching to process their originating customers' calls to SWBT's customers. When SWBT terminates such traffic, it is owed terminating compensation by the CLEC. The same would hold in reverse when a SWBT customer originated a call that terminated to another CLEC.[126] In regards to this, AT&T witness Nancy Dalton testified at the hearing that, despite some problems her company was having in Texas, she knew of no information specific to Missouri to indicate that SWBT is not providing necessary records that are accurate and reliable for reciprocal compensation calls originating within Missouri from SWBT, terminating with CLECs in-state.[127]

Staff believes that the testimony and other evidence in this matter shows that SWBT has met the requirements of this checklist item, in that it has implemented just and reasonable, non-discriminatory reciprocal compensation arrangements with the CLECs in Missouri.[128]

It is still the Staff's position that SWBT complies with this checklist item.

Checklist Item 14 – Resale.

Does Southwestern Bell Telephone Company meet the requirements of Checklist Item 14?

No.

SWBT cannot meet the requirements of Checklist Item 14 if it imposes unreasonable or

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[122] Bailey Direct, Ex. 7, p. 27.

[123] Tr. 1576.

[124] Tr. 1578.

[125] Tr. 1562.

[126] Tr. 1577.

[127] Tr. 1139-41.

[128] Staff's Post-Hearing Brief filed March 24, 1999, pp. 61-63.