III. THE COMMENTS CONFIRM THAT SWBT HAS NOT FULLY IMPLEMENTED ITS CHECKLIST OBLIGATIONS WITH RESPECT TO ADVANCED SERVICES.

The comments demonstrate that SWBT has failed to fully implement its checklist obligations with respect to advanced services. *See, e.g.,* ASCENT at 3-16; El Paso/PacWest at 26-29; WorldCom at 1-10. For example, SWBT refuses to make DSL transport available for resale at the appropriate avoided-cost discount required by Section 251(c)(4) of the Act, even though it provides such services at retail to business and residential end-users – as evidenced, for example, by its continued direct billing of end-users for DSL as a stand-alone service and SBC's public announcements. *See* AT&T at 61; WorldCom at 2-3. As WorldCom describes, SWBT's direct offering of DSL transport to such end-users as a stand-alone service is further evidenced by SBC's "1-888" contact number, which welcomes persons interested in DSL to "Southwestern Bell" – not its affiliated ISP subsidiary, Southwestern Bell Internet Services ("SBIS") -- and advises the caller on how to "order DSL service." WorldCom at 4-5.[15]

Thus, SWBT is plainly wrong in asserting that it is obligated to resell DSL transport at a wholesale discount under Section 251(c)(4) only to the extent that it sells DSL at retail to certain "grandfathered" residential customers and to business customers under customer

[15] CWA does not even acknowledge, much less discuss, this evidence in its comments defending SWBT's refusal to resell DSL at a wholesale discount. Communications Workers of America ("CWA") at 8-12. Instead, CWA bases its position on "interviews" that it conducted with an unspecified number of service representatives before the parties filed their comments in response to SWBT's Section 271 application. *See id.* at 11 & n.26 (stating that interviews were conducted on August 30 and September 6, 2001). CWA's interviews are also entitled to no weight because – at most -- they show only that: (1) the representatives "have been instructed not to offer nor to sell DSL transport to retail customers"; and (2) "SBC has modified its electronic systems so that retail customer service representatives cannot sell DSL transport services to retail end-user customers." *Id.* at 11. Those findings, even if correct, do not alter the fact that, through its willingness to engage in "split billing" and its other activities, SWBT continues to hold itself out as a provider of DSL transport at retail to business and residential end-users.

service arrangements. *See* SWBT AR/MO Br. at 50-51. That error is not rectified by the tariff that SWBT, through ASI, filed subsequent to the filing of its application.[16]

The ASI Tariff provides for the purchase of "wholesale DSL transport service" by "any information Service provider or carrier to connect to their End User for the purposes of providing a retail Service." ASI Tariff § 6.1.1. The provisions of the tariff, however, make clear that SWBT is not providing DSL transport at a wholesale discount under Section 252(c)(4), or on reasonable and nondiscriminatory terms and conditions, as required by both Section 251(b)(1) and Section 251(c)(4). The tariff – which purports to encompass ASI's entire offering of wholesale DSL transport – not only fails to provide for any wholesale discount for CLECs, but also indicates that SWBT will provide DSL transport service *only* when SWBT also provides the underlying voice service.[17]

SWBT's offering is thus far more limited than that which Verizon was required to make before the Commission found Verizon in compliance with its resale obligations under the checklist. *Connecticut 271 Order* ¶¶ 33-38; *Pennsylvania 271 Order* ¶¶ 94-95. Unlike SWBT, Verizon makes DSL available for resale at a wholesale discount to CLECs providing voice service through resale, as well as in situations where Verizon is providing the voice service. *Connecticut 271 Order* ¶ 29; *Pennsylvania 271 Order* ¶ 95. Indeed, in its orders approving Verizon's Section 271 applications for Connecticut and Pennsylvania, the Commission found that Verizon's preexisting policy, which (like SWBT) had limited resale of DSL to situations

[16] *See* SBC Advanced Solutions, Inc., Advanced Services Tariff, Tariff F.C.C. No. 1, issued September 7, 2001 ("ASI Tariff").

[17] *See* ASI Tariff, § 6.2.2 ("Company's DSL Transport is offered via a line sharing arrangement (High Frequency Portion of the Line – HFPL) over an SBC ILEC-provided (non-resold, non-UNE-platform) retail POTS line"); *id.* § 6.6 (setting forth rates applicable to all purchasers of wholesale DSL transport, whether ISPs or CLECs). The tariff also provides for no wholesale discount for resale of Remote Local Area Network ("RLAN") DSL transport service. *Id.* § 7.6.

where the BOC was the voice provider, was unlawful. The Commission held that such a limitation is "unreasonable under sections 251(c)(4) and 252(d)(3)," "severely hinders the ability of other carriers to compete," and would be "clearly contrary to the pro-competitive Congressional intent underlying section 251(c)(4)." *Pennsylvania 271 Order* ¶ 93; *Connecticut 271 Order* ¶ 32.[18]

The ASI Tariff imposes other conditions and limitations on the resale of DSL that are unreasonable and discriminatory, in violation of Section 251(c)(4). For example, like the "DSL Addendum" that SWBT is currently attempting to compel unaffiliated ISPs to sign, the tariff gives ASI the right to place other applications over the same line that is carrying DSL transport to the CLEC's customer – thus forcing the CLEC to allow SWBT to provide competitive services over the same line that is carrying the DSL service to the end-user (and possibly limiting the bandwidth available for the service provided by the CLEC purchaser of the DSL transport).[19]

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[18]Although AT&T agrees with the holding of the *Connecticut 271 Order* and the *Pennsylvania 271 Order* that a BOC is required under Section 251(c)(4) to resell DSL to a CLEC providing voice service through resale, AT&T continues to believe that the Commission did not go far enough. The Commission should have held that a BOC is required to resell DSL to *any* CLEC providing voice service, including CLECs providing voice service through the UNE platform or through UNE loops. The Commission stated in its orders that it was limiting its holding to situations involving provision of voice service through resale because the resale of DSL to UNE-P or UNE-L carriers "raises significant additional issues concerning the precise extent of an incumbent ILEC's resale obligations." *See, e.g., Connecticut 271 Order* ¶ 33; *Pennsylvania 271 Order* ¶ 97. AT&T, however, showed in both the Connecticut and Pennsylvania proceedings that from a legal and technical perspective, there is no basis for limiting a BOC's obligation to resell DSL to situations where the CLEC is providing voice service through resale. *See, e.g.,* Reply Comments of AT&T Corp. In Opposition To Verizon Pennsylvania Inc.'s Section 271 Application For Pennsylvania, filed August 6, 2001, in CC Docket No. 01-138, at 16-20.

[19] *See* ASI Tariff, § 6.2.4; AT&T at 66 & n.89 (describing similar provision in "DSL Addendum"); WorldCom at 6 (same). Furthermore, Section 6.1.2 of the ASI Tariff makes clear that SWBT's DSL transport service is provisioned between the network interface device ("NID") and the digital subscriber line access multiplexer ("DSLAM"). Section 6.2.7 further requires that a customer purchase an *additional* SWBT service, SWBT/ASI's asynchronous transfer mode ("ATM") service, in order to obtain DSL transport. Moreover, these provisions impose a discriminatory restriction on the availability of the DSL transport service, because they would preclude a customer in a Project Pronto configuration (where DSLAMs are located at the remote terminal) from purchasing DSL transport from SWBT if it intended to utilize non-SWBT ATM facilities on the network side of the remote terminal.

The ASI Tariff is thus simply the latest in SWBT's series of efforts to leverage its local monopoly by denying competitors to resell DSL, while at the same time exploiting its own ability, through creation of its affiliated ISP subsidiary (SBIS), to jointly market local voice and DSL service. AT&T at 63. As part of its efforts, SWBT now tries to cast itself as a mere "wholesaler" of DSL transport to unaffiliated ISPs, and describes the services offered by SBIS as "information services," in order to use the Commission's precedents as a means of shielding itself from the requirements of Section 251(c)(4). *See* SWBT AR/MO Br. at 54-62. SWBT's efforts, however, are wholly misplaced. Moreover, if successful, SWBT's efforts would frustrate the pro-competitive intent of the very decisions of which SWBT seeks to take advantage.

For example, in its *Second Advanced Services Order*, the Commission exempted bulk sales of advanced services by pure wholesalers to unaffiliated ISPs from the wholesale discount obligations of Section 251(c)(4) because it believed that this exemption would benefit consumers by stimulating the development and deployment of advanced services to residential market, *and* because the Commission assumed that ILECs would *continue* to make such services available for resale to CLECs pursuant to Section 251(c)(4). *See* ASCENT at 10-11. Thus, the Commission expressed its "confiden[ce] that our findings reinforce the resale requirement of the Act by ensuring that resellers are able to acquire advanced services sold by incumbent LECs to residential and business end-users at wholesale rates, thus ensuring that competitive carriers are able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs." *Second Advanced Services Order* ¶ 20. SWBT, however, is attempting to achieve precisely the opposite of what the Commission intended, by denying CLECs the ability to offer consumers the same quality DSL and voice service that

SWBT, through its affiliate, provides in its retail operations. AT&T at 62-66; ASCENT at 10-11; WorldCom at 10.

Similarly, although SWBT relies on prior Commission rulings in contending that the "DSL Internet Service" offered by SBIS is an "information service" not subject to the requirements of Section 251(c)(4), those precedents – like the *Second Advanced Services Order* – are based on the Commission's expectation that the underlying market for transmission facilities such as DSL would remain competitive or subject to sufficient pro-competitive safeguards. *See* ASCENT at 12-13. Through its corporate shell games, however, SWBT seeks to deny such competition.

SWBT *itself* characterizes DSL transport as a distinct telecommunications service that is sold to SBIS. In its application, SWBT states: "SBIS *bundles the telecommunications service that it obtains from ASI* with its own Internet services and then sells a single-high speed DSL Internet access product directly to the ultimate consumer." SWBT AR/MO Br. at 59 (emphasis added; citation omitted). As such, DSL transport is indisputably subject to resale under Section 251(b). However, DSL transport should also be subject to the requirements of Section 251(c)(4). SWBT's sales of DSL transport to SBIS do not qualify as a "wholesale" arrangement under the *Second Advanced Services Order,* because such sales are not sales to an unaffiliated ISP (and because, as previously stated, the *Order* presumed that ILECs would continue selling DSL transport at retail, rather than attempt to immunize themselves from competition through corporate shell games).

Thus, by offering DSL only as part of SBIS's "DSL Internet" package, or as a bulk product to unaffiliated ISPs, SWBT is making a blatant attempt to avoid obligations imposed on it as an incumbent LEC under the 1996 Act. The Commission should not tolerate

such tactics. SWBT, both by itself and through its affiliates, has held itself out to the public as a provider of stand-alone DSL service. SWBT does not remotely resemble the type of entity that the Commission assumed when it found that certain sales of advanced services were exempt from Section 251(c)(4). Specifically, SWBT has not been a pure wholesaler that (1) has never held itself out to the public as a direct vendor of DSL, (2) has never marketed DSL to the public together with voice service, and (3) has never had a substantial base of customers who believed that they were able to obtain both voice and DSL service. *See* AT&T at 61-66 (describing, *inter alia*, SWBT's retail offering of DSL transport and SWBT's performance of certain services, including marketing, for SBIS but not for unaffiliated ISPs).

The recent tender offer by SBC for the outstanding shares of Prodigy Communications Corporation ("Prodigy"), in which SBC already owns an effective 42 percent interest, is all the more reason why the Commission should put an end to SWBT's tactics and find SWBT in violation of its resale obligations.[20] According to Prodigy's own corporate profile, Prodigy already is "the exclusive ISP and portal for SBC's DSL Internet service and dial customers served by its regional brands," including SWBT, pursuant to a strategic and marketing agreement between Prodigy and SBC.[21] Prodigy claims that its nationwide dial network "covers more than 90 percent of the United States" and that Prodigy "intends to be the leader in providing broadband Internet applications and services to customers – from communications and information to entertainment."[22] Under the existing "strategic partnership" that SBC has with Prodigy, SBC performs for Prodigy many of the same functions that it performs for SBIS,

[20] *See* "SBC Makes Tender Offer for Prodigy – Offers 54 percent Premium at $5.45 per Share," SBC press release dated September 21, 2001 (found at http://www.sbc.com/News_Center /1,3950,31,00.html? query=20010921-1).

[21] *See* Prodigy Corporate Profile, at 1 (found at http://www.corporate-ir.net/ireye/ir_site.zhtml? ticker=prgy&script=2100&layout=9).

[22] *Id.*

including the marketing of Prodigy's Internet services, customer care support, billing, and collection.[23]

SBC's purpose in acquiring total ownership of Prodigy (the source of the Internet access portion of the "DSL Internet package" provided by SBIS) is clearly to increase its marketing of combined DSL and Internet access service to the public by using Prodigy's broad network. Indeed, according to published reports, SBC's spokesman stated that SBC is making its $384 million for the remaining Prodigy shares because "We [SBC] operate primarily in 13 states and Prodigy has a much more national footprint, so it would allow us to operate wherever they operate."[24]

Exclusive ownership of Prodigy will simply facilitate SBC's efforts to leverage its local monopoly into the advanced services market. The tender offer, if successful, will eliminate Prodigy altogether as a potential competitor to SBIS, or as a potential partner with ISPs unaffiliated with SBC, in the advanced services market. In addition, SBC's expenditure of nearly $400 million for the Prodigy shares, and its resulting greater involvement in the advanced services market, will only serve to increase its incentive to discriminate in favor of SBIS and, correspondingly, to put unaffiliated ISPs at a competitive disadvantage. As AT&T demonstrated in its opening comments, SBC/SWBT already engages in such discrimination by providing significant services exclusively for SBIS (including marketing, ordering, and billing), while attempting to dictate highly discriminatory terms to unaffiliated ISPs who increasingly have fewer choices of partners to whom they can turn for DSL transport service. AT&T at 65-66.

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[23] *Id.*; Amendment No. 1 To Internet Service Resale Agreement between SBC and Prodigy, executed June 13, 2001.

[24] *See* "SBC seeking to buy Prodigy in expansion move" (Reuters), dated September 21, 2001 (found at http://biz.yahoo.com/rf/010921/n21317784_2.html).

SWBT's ongoing discrimination against unaffiliated ISPs in the provision of DSL squarely violates the requirement of the Communications Act that an ILEC comply with its "basic common carrier obligations with respect to these services," including "providing such DSL services upon reasonable request; on just, reasonable, and nondiscriminatory terms; and in accordance with all applicable tariffing requirements."[25] Furthermore, such discrimination violates the Commission's requirement that ILECs provide DSL to ISPs on an "unbundled" basis and on reasonable and nondiscriminatory terms which do not "favor one enhanced service provider over the other."[26] If SBC's tender offer for the Prodigy shares is accepted and the Commission approves the current SWBT application, SWBT's disregard of its statutory obligations – and its anticompetitive efforts – will only increase in the future.

* * *

SWBT's conduct with respect to the resale of DSL thus violates the Act in several ways. First, SWBT has held itself out as a provider of DSL to business and residential end-users but has refused to resell DSL to CLECs at the wholesale discount required by Section 251(c)(4). Although it has eliminated the "DSL Transport only" retail offering from its web site, SWBT continues to provide DSL at retail to business and residential end-users by engaging in split billing. Thus, even if SWBT could comply with the checklist simply by discontinuing its retail offering, it has not done so.

Second, once its retail offering was pointed out in the comments on its first Missouri Section 271 application, SWBT purported to discontinue certain functions that it had been performing for unaffiliated ISPs while performing those functions for its own ISP affiliate, SBIS. Thus, in attempting to "cure" the violation of the wholesale discount requirement of

[25] *Second Advanced Services Order* ¶ 21.

Section 251(c)(4), SWBT committed another checklist violation by violating Section 251(c)(4)'s prohibition against imposition of unreasonable or discriminatory conditions on resale.

Third, as previously stated, SWBT (through ASI) filed a tariff that limits the resale of "wholesale DSL transport" to situations where SWBT is providing voice service on the line – a limitation that, under the *Connecticut 271 Order* and the *Pennsylvania 271 Order*, is flatly contrary to Section 251(c)(4). Fourth, SWBT's preferential treatment favoring SBIS over unaffiliated ISPs violates the *Unbundling Order*'s prohibition against discrimination that favors one ISP over another.

Thus, even if SWBT's recent conduct does not violate the competitive checklist, and even if the "indicia" of a retail offer are no longer present with respect to SWBT's sales of DSL, it would be contrary to the public interest to allow SWBT to "cure" a checklist violation by committing another violation. SWBT has unlawfully sought to evade its resale obligations by attempting to recast its sales of DSL so that they fall within the limited exceptions that the Commission had created for wholesale bulk sales to unaffiliated ISPs and for information services because of its belief that such exceptions would *promote* competition in the sale of advanced services. Indeed, SWBT argues that these exceptions apply even to sales of DSL to SBIS, which reaps the benefit of SWBT's discriminatory conduct. The pro-competitive intent of those exceptions can be furthered only if the Commission rejects SWBT's tactics and makes clear that, in order for SBC's sales of DSL to its ISP affiliate to be lawful under the Act, SWBT must (1) reinstate the stand-alone DSL offer that it previously made on its website, and (2) provide DSL to CLECs as a stand-alone service at a wholesale discount consistent with the requirements of Section 251(c)(4).

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[26] *Unbundling Order* ¶¶ 39, 43, 46.

IV. THE COMMENTS DEMONSTRATE THAT SWBT STILL DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS MAINTENANCE AND REPAIR SYSTEMS.

DOJ agrees that "the record does not yet demonstrate that SBC has adequately resolved problems with its maintenance and repair systems so that CLECs operating in Arkansas and Missouri have sufficient electronic access to these systems." DOJ Eval. at 3. Because of the "questions that remain unanswered," DOJ urges that the Commission "continue to give this matter careful attention and assure itself that these problems do not impede the CLECs' ability to compete using resale and the UNE platform." *Id.* at 11 (footnote omitted).

DOJ is eminently correct in finding that SWBT has not borne its burden of showing that it has fully corrected the problems with its Loop Maintenance Operations System ("LMOS") that have often prevented CLECs from submitting trouble tickets electronically. Only when SWBT's systems update LMOS records fully, correctly, and promptly to show the correct LEC as the "owner" of the circuit will CLECs have the same degree of electronic access to maintenance and repair functions that SWBT has in its retail operations. *See* AT&T at 77-78.

The CLECs commenting on the issue agree that SWBT has not shown that its systems are updating LMOS records fully, correctly, and promptly. *Id.* at 78-79; El Paso at 24-26; WorldCom at 15-17.[27] AT&T, for example, showed that even after implementation of

[27] Like the interviews that it conducted to determine SWBT's compliance with its resale obligations regarding advanced services (*see* fn. __, *supra*), CWA's telephone interviews with SWBT personnel regarding LMOS have no probative value. *See* CWA at 6-8. CWA simply asserts that its employee interviews "confirm[ed] that Southwestern Bell has substantially cleaned up the LMOS line records," that "most LMOS records are now accurate," that SWBT "has implemented changes in its electronic systems to ensure that conversion orders now flow through properly, ensuring accurate line records in the LMOS system," and that CLECs that submit trouble tickets electronically "rarely experience rejections due to inaccurate LMOS line records." CWA at 6-7. CWA, however, provides no details to support its generalized statements, including the number of employees that it interviewed, the questions that were asked during the interviews, and the data or other bases that the interviewees offered to support their opinions. Furthermore, CWA clearly did not ask its interviewees about the timeliness of the LMOS updating process – a matter that is as critical to a CLEC's ability to open trouble tickets electronically as is order sequencing. AT&T at 78. In any event, CWA's interviews are no substitute for the actual commercial experience of CLECs such as AT&T and WorldCom.

various "fixes," LMOS records are not being updated in a timely manner – thus requiring CLECs to submit trouble tickets manually (with the accompanying risks of delay and error) during the very time when customers are most likely to experience troubles. AT&T at 78-80.[28] WorldCom's experience in Texas similarly shows that the LMOS problem "has not been entirely fixed," because WorldCom was still unable to submit some trouble tickets electronically over a recent two-week period. WorldCom at 15-16. Indeed, as DOJ and the commenters note, SWBT itself has acknowledged that (1) it has not corrected all of the problems that have created LMOS errors, and (2) the uncorrected problems will preclude CLECs from submitting trouble tickets electronically despite implementation of its recent "fixes" addressing the order sequencing problem in LMOS. DOJ Eval. at 9; AT&T at 78; El Paso at 24-25; WorldCom at 16.

DOJ's Evaluation starkly demonstrates that SWBT has not adequately resolved the LMOS updating problem. Using SWBT's own data regarding the number of new sequencing errors in LMOS records since implementation of SWBT's "fixes" (including the correction of the embedded LMOS database), DOJ found that "The most recent evidence in the record suggests that on a regional basis, new LMOS errors have continued to arise *at an increasing*

[28] On October 1, 2001, SWBT filed an *ex parte* submission more than 65 pages in length with the Commission, purporting to respond to questions from Commission Staff regarding the functioning of LMOS and attaching transaction agreements between SWBT and ASI. *See ex parte* presentation from Geoffrey M. Klineberg to Magalie Roman Salas, filed October 1, 2001, in CC Docket No. 01-194 ("SWBT October 1 *ex parte*"). AT&T did not receive a copy of SWBT's submission until October 2 – two days before the filing of reply comments (a continuation of SWBT's persistent practice of filing *ex parte* submissions in Section 271 proceedings shortly before the filing of comments or reply comments regarding its application). The discussion in SWBT's October 1 *ex parte* regarding LMOS (which constitutes more than half of the *ex parte*) includes a lengthy response to AT&T's evidence, a description of SWBT's attempts in mid-September to open "pseudo-trouble tickets" for AT&T orders replicating AT&T's methodology for assessing updates to LMOS, and SWBT's explanation of its methodology for calculating LMOS error rates in a September 21 *ex parte* that it filed with the Commission (described below). *E.g., id.*, Responses to Staff's Question Nos. 1 & 2. The eleventh-hour nature of SWBT's October 1 *ex parte* has obviously precluded AT&T from conducting a full analysis of SWBT's submission before the filing of these reply comments. Furthermore, SWBT's newest *ex parte* indicates that SWBT will include *additional* data on LMOS in its reply comments. *Id.*, Response to Staff's Questions Regarding LMOS at 1. Accordingly, AT&T will file as soon as possible an *ex parte* letter responding both to the SWBT October 1 *ex parte* and to the additional LMOS data in SWBT's reply comments.

rate." DOJ Eval. at 9 (emphasis added; footnote omitted). Thus, the percentage of new sequencing errors to the monthly change in the total number of UNE platform records was "13 percent in May, 24 percent in June and the first two weeks of July, and 26 percent in the last two weeks of July." *Id.* at 9 n.36.[29] This increasing error rate cannot be explained by the inclusion of SBC's "churn" during this period. *Id.*[30]

The issue of whether SWBT has fully corrected its systems and ensured the accurate and timely updating of LMOS records is critical in the Commission's determination of whether SWBT has complied with its checklist obligations. As DOJ has stated:

> Ensuring that SBC's LMOS records are correct and available in a timely manner is important because CLECs need prompt and accurate access to SBC's maintenance and repair systems in order to resolve end-user customers' troubles and to determine the status of those troubles in order to respond to their customers' needs. Erroneous ownership records may deny CLECs this access and thus prevent them from providing their customers with the same level of service as SBC is able to provide its retail

[29] DOJ calculated these percentages using the data that SWBT had supplied in its application regarding its comparisons of the LMOS and CABS databases on May 10, June 6, July 19, and August 2, 2001. *See* DOJ Eval. at 9 n.36; LMOS Aff. ¶¶ 26, 28 & Atts. B, C, D, and E. However, in an *ex parte* submission that it filed with the Commission on September 21, 2001, SWBT presented data showing that the rate of LMOS sequencing errors to "Total CLEC UNE-P line activity" had *declined* on a regionwide basis from 5.72 percent on August 2 to 2.28 percent on August 21. *See* DOJ Eval. at 9 n.36; *ex parte* presentation from Geoffrey M. Klineberg (counsel for SWBT) to Magalie Roman Salas, dated September 21, 2001. As DOJ suggests, however, SWBT's data is entitled to no weight in view of SWBT's failure to define or otherwise explain in its September 21 *ex parte* the "Total CLEC UNE-P line activity" that it uses as the denominator for its calculation – an amount that exceeds by four to five times the "net growth from last [LMOS/CABS] comparison" that DOJ used as the denominator in its calculations. *Id.* AT&T notes that in its October 1 *ex parte* presentation, SWBT provided a response to the Staff's request to explain its calculation of "Total CLEC UNE-P Line Activity." SWBT October 1 *ex parte*, Response to Staff Question No. 2 on LMOS. As previously stated, AT&T will file an *ex parte* letter addressing this and other responses set forth in SWBT's October 1 *ex parte*.

[30] DOJ also found that, according to the data in SWBT's application, the rate of LMOS sequencing errors appears to have increased in Texas, while the collective rates for Arkansas, Missouri, Kansas, and Oklahoma declined, during the same periods. DOJ Eval. at 9 n.37. The data that AT&T submitted with its opening comments, by contrast, showed that SWBT's performance in updating LMOS records in Texas was superior to its performance in Missouri. *See* Willard/Van de Water Decl. ¶¶ 20-24. The difference in the results obtained by DOJ and AT&T may be due to the broader universe of the data used by DOJ, which encompasses all LMOS records from SWBT's region over a period of approximately three months. By contrast, each of AT&T's reviews examined only AT&T's UNE-P orders from Texas and Missouri with completion dates over a period of approximately one week. *Id.* Nonetheless, both DOJ's and AT&T's data present unexplained differences in SWBT's performance between Texas and the other States in its region. *Id.* ¶ 24; DOJ Eval. at 9-10.

> customers. In addition, continuing errors in SBC's LMOS database may affect the reliability of reported maintenance and repair performance data, making it difficult for CLECs and regulators to gauge the adequacy of SBC's performance.

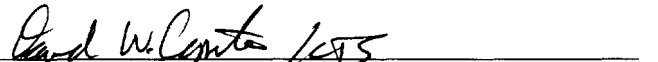
DOJ Eval. at 10-11 (footnotes omitted). *See also* AT&T at 79-81; El Paso at 24-26; WorldCom at 14-17.

The need to ensure that SWBT has fully fixed the LMOS updating problem is particularly great because questions regarding the ability of CLECs to open trouble tickets electronically on SWBT's systems have arisen at least since SWBT filed its initial application for Section 271 authority for Texas in January 2000. *See* DOJ Eval. at 11; WorldCom at 16-17. In the Texas 271 proceeding, despite evidence from WorldCom and other CLECs (including AT&T) that they could not open trouble tickets electronically on SWBT's interfaces, the Commission approved SWBT's Texas application on the basis of SWBT's claim that it had recently implemented changes that, SWBT promised, fixed the problem. *Texas 271 Order* ¶ 204. More than a year later, due to the LMOS problem, CLECs still are often unable to open trouble tickets electronically. This time, rather than accept SWBT's assurances that the problem has been fixed, the Commission should strictly require that SWBT meet its burden of proof – and the evidence overwhelmingly shows that SWBT has not done so. The continuing failure of SWBT's systems to update LMOS records accurately and promptly denies CLECs parity of access, in violation of SWBT's obligation to provide nondiscriminatory access to its operations support systems.

CONCLUSION

For the reasons stated above and in AT&T's opening comments, the Commission should deny SWBT's Joint Application for Arkansas and Missouri.

Respectfully submitted,



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October 4, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2001, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: October 4, 2001
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