

2001) ("ASCENT I"), by effectively ignoring the corporate distinctions between SWBT, on the one hand, and SBC's wholly owned advanced services subsidiary, SBC Advanced Solutions, Inc. ("ASI"), on the other. The combined telephone/advanced-services entity is fulfilling its obligation, under ASCENT I, to comply with the requirements of section 251(c). As John S. Habeeb described in his opening affidavit, ASI has entered into agreements in both Missouri and Arkansas to allow CLECs to resell the advanced services that it provides at retail by offering such services at the wholesale discount applicable to Southwestern Bell's own retail services in both states. See Habeeb Aff.; ASI-Logix Agreement – MO (App. G – MO, Tab 114); ASI-Logix Agreement – AR (App. E – AR, Tab 25). As a result of ASCENT I, therefore, the obligations of section 251(c) apply to the services provided by ASI in the same way that they would apply were those services provided by SWBT.

AT&T is wrong, therefore, when it suggests that Southwestern Bell has attempted to avoid its checklist obligations for advanced services by setting up a wholly owned affiliate to provide those services. See AT&T Comments at 61-62. On the contrary, as Southwestern Bell has explained in detail, ASI has assumed all the obligations that SWBT would have if it (SWBT) were the entity providing the advanced services. See Southwestern Bell Br. at 50-54; Habeeb Aff. ¶¶ 16-38. This is what ASCENT I requires, and Southwestern Bell has fully complied with that decision.

AT&T also suggests that SWBT has recently engaged in "efforts to evade its resale obligation" by eliminating products from the market that it had previously provided "solely and concededly in order to deny competitors access to DSL transport at a wholesale discount." AT&T Comments at 62-63. That is completely untrue. As Southwestern Bell explained in its opening brief, it has eliminated the "split-billing" option and cleaned up its web site in order to

eliminate any confusion that the DSL transport service that ASI was offering was a wholesale service to ISPs, not a retail service for end-user subscribers. See Southwestern Bell Br. at 57-58; Habeeb Aff. ¶¶ 28, 38 & Attach. D. At no point since the ASCENT I decision has ASI or SBC changed the nature of the DSL services being offered. AT&T is frustrated, of course, that the wholesale nature of ASI's DSL transport service is now unambiguous, but there is nothing remotely anticompetitive in taking steps to ensure that ASI's wholesale offering is not mistaken for a retail service.

ASI makes available for resale at a wholesale discount its retail DSL telecommunications services, and it does so through the same OSS (whether manual or electronic) that ASI uses to serve these retail customers. See Habeeb Reply Aff. ¶¶ 26-27. AT&T complains that this is discriminatory because "CLECs are given access only to ASI's OSS – a completely different OSS that SWBT itself describes as 'extremely limited.'" AT&T's Finney Decl. ¶ 36. But ASI's OSS is the only OSS through which anyone can order advanced services. Not all OSS can be used for all services. So, for example, while CLECs may use EASE for preordering, ordering, and provisioning resale services, they cannot use EASE for ordering UNE-Ps. Similarly, CLECs may use Complex Products Service Order System ("CPSOS") for preordering, ordering and provisioning of resale DSL services, but they cannot use other OSS that are neither designed nor capable of performing those functions. In its Connecticut Order,³⁰ this Commission rejected the argument that the telephone company's OSS had to be made available for ordering and provisioning of advanced services, noting not only that the separate OSS systems were the legacy of the Commission-ordered separate affiliate requirements but that both Verizon and its

³⁰ Memorandum Opinion and Order, Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut, CC Docket No. 01-100, FCC 01-208, (rel. July 20, 2001).

advanced services affiliate themselves “have to place separate orders to provision service to the end user.” Connecticut Order ¶ 41. This is equally true for SWBT and ASI.

Moreover, as John S. Habeeb explained in his opening affidavit, the number of ASI DSL customers available for resale is less than 1,300 in Missouri and Arkansas, and the “[l]arge customer CSAs [customer service arrangements] that are available for resale are not resold through the use of mechanized OSS even in SWBT, and likewise will not be resold using ASI’s [electronic] OSS.” Habeeb Aff. ¶ 51. In light of the small number of retail customers to whom CLECs will be able to resell SBC’s retail telecommunications services, it is unreasonable to require full-scale testing of the OSS. Indeed, under similar circumstances in Connecticut, this Commission reached precisely that conclusion: “The volume of orders for the expanded DSL resale offering in Connecticut is likely to be very small and Verizon will be able to process orders within a reasonable period of time using the interim manual process.” Connecticut Order ¶ 40. If Verizon’s interim manual ordering process was sufficient for a potential customer base of as much as 60,000 access lines, then SBC’s electronic ordering and provisioning process for less than 1,500 potential resale customers is more than sufficient.

On September 7, 2001, SBC filed a federal advanced services tariff through which it now offers, among other things, its wholesale DSL transport service designed for ISPs. The tariff became effective on September 10, 2001. See Habeeb Reply Aff. ¶ 6 & Attach. A. Under the terms of the tariff, the ISP – the “Customer” – “is responsible for providing all customer support to its End Users, and all marketing, billing, ordering and repair for its End Users.” SBC Tariff F.C.C. No. 1, § 6.3.1. Moreover,

Customer is responsible for: (1) the terms of any pricing plans offered by Customer to its End Users; (2) the ordering, billing and collection of its own End Users; and (3) customer service for all aspects of the Service. Customer is also responsible for managing end-user trouble reports and will advise its End Users to

contact Customer directly with any trouble reports. Customer will not direct its End Users to contact Company.

Id. § 6.3.2.

Through its tariff, SBC offers a DSL volume discount plan, id. § 6.4, according to which the monthly charge for the DSL transport service depends on the volume commitment that the ISP has made, see id. § 6.6. This is analogous to the tariff that this Commission reviewed in its Second Advanced Services Order: “In this process, the Internet Service Provider adds value to the bulk DSL telecommunications service by dividing that service for individual consumer use and adding the Internet service, thus enabling the Internet Service Provider to offer and sell the newly created information service to the ultimate consumer: the residential or business subscriber. For these reasons, the Internet Service Provider is not the ultimate end-user.” 14 FCC Rcd at 19244, ¶ 14. SBC’s wholesale DSL transport offering satisfies, therefore, the essential requirements of the Second Advanced Services Order.

Just like Verizon’s, SBC’s tariff “specifically contemplate[s] that the Internet Service Provider will be the entity providing to the ultimate end user many services typically associated with retail sales, thus reinforcing [the Commission’s] conclusion that the bulk DSL services are not retail services offered to the ultimate end users.” Id. ¶ 15. The fact that an end-user customer (such as a large business) could purchase the DSL transport service directly under the tariff does not change the fact that the service is designed to be a wholesale offering.³¹ As the D.C. Circuit noted in affirming the Commission’s Second Advanced Services Order, the “mere possibility” that “large, corporate end users with the requisite need and the ability to perform

³¹ Of course, SBC offers a DSL product (the Remote LAN) expressly designed for large business end users under its tariff and subject to a wholesale discount, see SBC Tariff F.C.C. No. 1, § 7.1.1, so it is unlikely that businesses would purchase the wholesale service designed for ISPs.

those [retail] functions for themselves might take the service . . . does not invalidate the Commission's interpretation of the statute" that the tariffed offering is a wholesale, not a retail, service. ASCENT II, 253 F.3d at 32. As the Court went on to recognize, "[i]f in the future an ILEC's offering designed for and sold to ISPs is shown actually to be taken by end users to a substantial degree, then the Commission might need to modify its regulation to bring its treatment of that offering into alignment with its interpretation of 'at retail,' but that is a case for another day." Id. (emphasis added). Based on the record in this proceeding, that day has still not arrived.³²

The following table reveals some of the similarities between SBC's wholesale tariff and Bell Atlantic's (now Verizon's) wholesale tariff that this Commission analyzed in the Second Advanced Services Order:

³² This Commission has recognized under the pre-1996 Act, Computer Inquiry regime that "carriers should not restrict the availability of [comparably efficient interconnection] to any particular class of customer or enhanced service competitor, noting that both enhanced service vendors and large users are competitors of the carriers in enhanced service markets." Memorandum Opinion and Order on Reconsideration, Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Service and Facilities Authorizations Thereof Communications Protocols Under Sections 64.702 of the Commission's Rules and Regulations, 2 FCC Rcd 3035, 3049, ¶ 94 (1987) (subsequent history omitted). And SBC has not restricted its offering of wholesale DSL transport services to ISPs, see SBC Tariff F.C.C. No. 1, § 6.1.1. But the question whether such an offering constitutes a retail offering with respect to those non-ISP "large users" was never at issue in the Computer Inquiry proceeding because nothing would have depended on the answer; in contrast, in the Second Advanced Services Order, where the only question was whether the tariffed offering constituted a retail or wholesale service, this Commission (and the D.C. Circuit on review) concluded that a system designed for the modern equivalent of "enhanced service vendors" does not become a retail service merely because "large users" may also occasionally purchase the tariffed service for their one use.

SBC Tariff F.C.C. No. 1, Transmittal No. 1	Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 1138 ³³
"Wholesale DSL Transport Service is intended primarily for Internet Service Providers (ISPs), but may be purchased by any information Service provider or carrier to connect to their End User for the purposes of providing a retail Service." § 6.1.1.	"The telecommunications services offered under the VTDP [volume and term discount plan] are provided at wholesale to carriers and non-carriers. The telecommunications services offered under the VTDP are not services that the Company provides at retail" § 16.8(F)(4)(a).
"Customer is responsible for: (1) the terms of any pricing plans offered by Customer to its End Users; (2) the ordering, billing and collection of its own End Users; and (3) customer service for all aspects of the Service. Customer is also responsible for managing End-User trouble reports and will advise its End Users to contact Customer directly with any trouble reports. Customer will not direct its End Users to contact Company." § 6.3.2.	"The customer will submit orders to the Company electronically in a format and manner designated by the Company; the customer will provision all customer premises equipment and wiring to its end users; the customer will deal directly with its end users and will be solely liable with respect to all matters relating to the service, including marketing, ordering, installation, maintenance, repair, billing and collections; and the customer will not direct its end users to contact the Company regarding any aspect of the service." § 16.8(F)(4)(a).
The Volume Commitment Plan is a rate discount plan available with all wholesale DSL Service Arrangements offered under the tariff, with a minimum term commitment of one year and a total volume commitment of 250 DSL Transport Service Arrangements. § 6.4.2.	The VTDP is available for terms of 3 and 5 years; the 3-year VTDP has two optional volume Commitment Levels, and the 5-year VTDP has six optional volume Commitment Levels. § 16.8(F)(4)(a).
"If Customer selects a volume commitment and does not meet the minimum number of required in service DSL Transport lines within twelve (12) months, the Customer shall pay a shortfall liability calculated as follows: Qty of in service DSL Transport lines multiplied by \$6." § 6.4.2.	"Shortfall Liability applies to any VTDP customer with Commitment Levels B through F that fails to meet the minimum line volumes for its designated Commitment Level. Shortfall Liability is based on the difference between the monthly rate for the Commitment Level and the monthly rate for the Commitment Level that should have been charged based upon the actual quantity of in-service Infospeed DSL lines at the end of the Contract Year." § 16.8(F)(4)(c).

As this Commission recognized in the Second Advanced Services Order, in addition to the volume and term discount services that Verizon offers at wholesale, Verizon also makes available "single line DSL offerings [that] are designed for and offered to the ultimate end user because the incumbent LEC will be performing functions such as marketing, billing, and customer care for the end user." 14 FCC Rcd at 19240, ¶ 6 & n.16. Indeed, Verizon's current

³³ On January 19, 2001, Verizon filed a revised tariff, changing the name of its wholesale service to "Verizon Infospeed DSL Solutions," and filing it as Part III of Verizon Advanced Data Inc. ("VADI") Tariff F.C.C. No. 1, at 588-602.

tariff makes clear that, with respect to the simple DSL offering (as opposed to the VTDP), “Company [i.e., Verizon] will provide sales, customer service, billing services and trouble and repair service directly to end users who purchase ADSL Service on a retail basis.” VADI Tariff F.C.C. No. 1, at 519, § 5.7.6. It is essential to recognize, however, that, in contrast to Verizon, SBC has no retail DSL transport offering for Internet applications, either as part of its tariff or as part of its generally available terms and conditions.

ASCENT and WorldCom argue that SBC has an obligation to offer at a wholesale discount to CLECs its wholesale telecommunications services and its retail information services. See ASCENT Comments at 2-10; WorldCom Comments at 6-10. WorldCom states that “SBC’s arguments rest on the language of section 251(c)(4).” WorldCom Comments at 6. Exactly so. The two questions that must be answered under section 251(c)(4) are whether the service is a telecommunications service and whether the service is offered at retail to subscribers who are not telecommunications carriers. If the answer to either question is “no,” there is, under the plain terms of the statute, no obligation to offer such services for resale at the wholesale discount.³⁴

WorldCom completely misunderstands the distinction between a retail telecommunications service and a retail information service. There is no other way to explain

³⁴ The resale obligation under Checklist Item 14 (section 271(c)(2)(B)(xiv)) is expressly defined to cover telecommunications services “available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).” 47 U.S.C. § 271(c)(2)(B)(xiv). Compliance with the general resale obligation – an obligation of all local exchange carriers – under section 251(b)(1) is not a checklist requirement; nor can it become a requirement under the public interest test of section 271(d)(3)(C), for that would clearly constitute an extension of “the terms used in the competitive checklist” in violation of section 271(d)(4). The Commission is free, of course, to initiate a rulemaking to define further the LECs’ resale obligations with respect to advanced services, but “the section 271 process simply could not function as Congress intended if the Commission were required to resolve,” as a precondition to granting a section 271 application, all “disputes over an incumbent LEC’s precise obligations to its competitors that FCC rules have not addressed and that do not involve per se violations of self-executing requirements of the Act.” Pennsylvania Order App. C ¶ 4.

how WorldCom could assert, for example, that SBC asks this Commission to ignore the Second Advanced Services Order “[w]hen it comes to distinguishing the relationship between SBC’s own affiliated ISP and ASI” from the relationship between ASI and unaffiliated ISPs. See WorldCom Comments at 9. It is not that the Commission should ignore its Second Advanced Services Order; rather, as Southwestern Bell explained in its opening brief, the Commission should recognize that the Second Advanced Services Order had nothing to say about an incumbent LEC’s provision of wholesale telecommunications services to its own affiliate. See Southwestern Bell Br. at 60.

ASCENT contends, however, that the Commission’s decision in the Second Advanced Services Order to define telecommunications services designed as inputs to ISPs as wholesale services not subject to the resale requirements of section 251(c)(4) was somehow predicated on a condition that “the incumbent LEC would still have to make available for section 251(c)(4) resale xDSL-based advanced services provided to residential and business end users.” ASCENT Comments at 10. While it is certainly true that Verizon was offering DSL telecommunications services through a retail tariff at the same time that it was offering a wholesale telecommunications service designed as an input for ISPs, at no point did the Commission suggest that an incumbent LEC was required to offer a retail DSL telecommunications product. Such a requirement would have been wholly inconsistent with the Local Competition Order, where the Commission concluded that nothing under federal law that prohibits an incumbent LEC from choosing not to offer a retail service. See 11 FCC Rcd at 15976-78, ¶¶ 965-968; see also MCI Telecomms. Corp. v. SNET, 27 F. Supp. 2d 326, 335 (D. Conn. 1998) (“nowhere does

§ 251 or any other provision of the 1996 Act require an ILEC to remain in the retail business or to resell its services at wholesale rates if does not provide at retail telecommunications service to subscribers who are not telecommunications carriers”).

In any case, to the extent that SBC does offer retail DSL telecommunications services, it makes those services available for resale at the wholesale discount, thereby “ensuring that resellers are able to acquire advanced services sold by incumbent LECs to residential and business end users at wholesale rates.” Second Advanced Services Order, 14 FCC Rcd at 19246, ¶ 20. Moreover, as the Commission recognized, clarifying that DSL telecommunications services provided at wholesale are not themselves subject to resale at the wholesale discount “will encourage incumbents to offer advanced services to Internet Service Providers at the lowest possible price. In turn, the Internet Service Providers, as unregulated information service providers, will be able to package the DSL service with their Internet service to offer affordable, high-speed access to the Internet to residential and business consumers.” Id. at 19247, ¶ 20. This is happening in Missouri and in Arkansas, and throughout SBC’s region, just as the Commission predicted.

ASCENT also fundamentally misconstrues this Commission’s prior orders regarding the distinction between telecommunications and information services. While it is true that SBC is the provider of the underlying transmission facilities through which the high-speed Internet access services is provided (ASCENT Comments at 12), that only means that SBC is a telecommunications carrier – it does not mean that what the end user receives is a telecommunications service. As the Commission explained in its Report to Congress,³⁵

³⁵ Report to Congress, Federal-State Joint Board on Universal Service, 13 FCC Rcd 11501 (1998).

A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. . . . If we decided that any offering that "included telecommunications" was a telecommunications service, we would need some test to determine whether the transmission component was "included" as part of the service. Based on our analysis of the statutory definitions, we conclude that an approach in which "telecommunications" and "information service" are mutually exclusive categories is most faithful to both the 1996 Act and the policy goals of competition, deregulation, and universal service.

13 FCC Rcd at 11530, ¶ 59. When SBC provides the high-speed DSL Internet access service to end users, it is offering an information service that "include[s] telecommunications" but that is entirely distinct from telecommunications. The key, as this Commission has recognized, is to view the service from the perspective of the end-user customer. "An offering that constitutes a single service from the end user's standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components." *Id.* at 11529, ¶ 58. A customer that receives high-speed DSL Internet access service from America Online is receiving a "single service" allowing for "enhanced functionality, such as manipulation of information and interaction with stored data," *id.* at 11530, ¶ 59 – in other words, an information service. In precisely the same way, a customer that receives high-speed DSL Internet access service from SBIS is, from her standpoint, also receiving a "single service."

To be sure, as Southwestern Bell explained in its opening brief (at 61-62), SBC provides nondiscriminatory access to the telecommunications services utilized by its information services affiliate.³⁶ This does not mean, as WorldCom contends in its comments (at 7-8), that SBC must

³⁶ See Memorandum Opinion and Order, and Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 13 FCC Rcd 24011, 24031, ¶ 37 (1998) ("First Advanced Services Order") (noting that "BOCs offering

agree to joint market its services with unaffiliated ISPs. The BOCs' obligations under Computer Inquiry extend to providing unaffiliated ISPs nondiscriminatory access to the underlying telecommunications services, and joint marketing arrangements are not telecommunications services.

IV. SOUTHWESTERN BELL PROVIDES NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS

In its Joint Application, Southwestern Bell demonstrated that it offers competing carriers nondiscriminatory access to the same OSS that this Commission has twice found to satisfy the requirements of section 271.³⁷ The few allegations levied against isolated aspects of Southwestern Bell's OSS do not detract from this Commission's previous findings that SWBT provides nondiscriminatory access to OSS that are operationally ready to handle both current demand and reasonably foreseeable future volumes. Kansas/Oklahoma Order ¶ 106; Texas Order, 15 FCC Rcd at 18400, ¶ 99.

In fact, the comments filed in this proceeding reveal that CLECs have essentially conceded that SWBT's OSS meet the requirements of the 1996 Act in nearly every aspect.³⁸ The

information services to end users of their advanced service offerings, such as xDSL, are under a continuing obligation to offer competing ISPs nondiscriminatory access to the telecommunications services utilized by the BOC information services").

³⁷ See Southwestern Bell Br. at 63-73, 90-103; Dysart AR Aff. ¶¶ 30-50; Dysart MO Aff. ¶¶ 31-48; see generally Lawson AR Aff.; Lawson MO Aff.; Noland AR Aff.; Noland MO Aff.; D. Smith AR Aff.; D. Smith MO Aff.; VanDeBerghe AR Aff.; VanDeBerghe MO Aff.; Flynn AR Aff.; Flynn MO Aff.; LMOS Aff.

³⁸ Although El Paso (at 21-22) contends that SWBT's overall OSS performance in Missouri is too low, from June through August 2001, SWBT met or exceeded the standard on 95.4 percent of the OSS measures in Arkansas in at least two of three months and 92.7 percent in Missouri. See Dysart Reply Aff. ¶ 8; see also Dysart AR Aff. ¶ 31; Dysart MO Aff. ¶ 32. This performance, excellent in its own right, is comparable to SWBT's performance in Oklahoma – and far superior to that in Kansas – at the time SWBT filed its successful applications in those states. See Affidavit of William R. Dysart, CC Docket No. 00-217 (FCC filed Oct. 26, 2000).

vast majority of the OSS-related comments – including the DOJ's only OSS-related comment – pertain to a single aspect of SWBT's maintenance and repair performance: the impact of “problems with” UNE-P line records in the LMOS database on both CLECs' ability to open electronic trouble tickets in the first few days after installation and SWBT's performance measurements. Yet these comments do not call into question SWBT's showing that it implemented system enhancements and procedures that have corrected the UNE-P information in LMOS and that ensure, to the extent possible, that this information will remain correct in the future. Nor do these comments demonstrate that any problems with LMOS have resulted in end-user troubles or failure by SWBT to work trouble tickets on a timely basis.³⁹ Indeed, during SWBT's application for Kansas and Oklahoma – which was filed before SWBT took the specific actions described in the opening brief (at 64-69) to correct the information in the LMOS database – this Commission noted that no commenter had taken issue with the functionality or performance of SWBT's maintenance and repair OSS. See Kansas/Oklahoma Order ¶¶ 161-162. Thus, the belated “discovery” of this “problem” with LMOS – which, at worst, affects less than 0.2 percent of CLECs' UNE-P service orders and barely more than one percent of CLECs' trouble tickets submitted shortly after provisioning⁴⁰ – demonstrates that it is not a competitive problem at all.

³⁹ To the contrary, “customer service employees report that the LMOS line record problems were not service affecting.” Communications Workers of America Comments at 8.

⁴⁰ See Dysart/Noland/Rentler/D. Smith Joint Reply Aff. Attach. G (“LMOS Reply”). For example, from June through August 2001, SWBT received 572,018 UNE-P service orders throughout its five-state region. Only approximately 6,516 trouble tickets would have been submitted within the first five days after provisioning these orders, of which only approximately 940 – representing less than two-tenths of one percent of all CLEC UNE-P service orders submitted during that time – would have been required to be submitted manually due to any delay in posting the service orders to LMOS. See id.

Preordering, Ordering, and Provisioning. As Southwestern Bell explained in its opening brief (at 93-100), SWBT is providing CLECs with nondiscriminatory access to its preordering, ordering, and provisioning OSS. Performance data from July and August 2001 demonstrate that SWBT has continued to provide CLECs with nondiscriminatory access to these aspects of its OSS. See Dysart Reply Aff. Attachs. A, B. Although CLECs raise a handful of complaints, none undermines SWBT's showing.

Navigator contends that it is often unable to reserve telephone numbers correctly through the Verigate interface, leading to rejected orders and the need to submit supplemental orders. See Navigator Comments at 8-10. As with all of Navigator's complaints, its failure to provide specific information in support of its claims prevents SWBT from formulating a complete response. See Flynn/Lawson/Noland Joint Reply Aff. ¶¶ 5-7, 10-13.⁴¹ The same is true of Navigator's assertions that SWBT frequently rejects its orders in error, fails to return jeopardy notifications, and improperly disconnects service for lines that it has recently converted from SWBT or another CLEC. See Navigator Comments at 11; Flynn/Lawson/Noland Joint Reply Aff. ¶¶ 14-19.

AT&T and El Paso argue that SWBT's flow-through performance is out of parity. See AT&T's Willard/Van de Water Decl. ¶¶ 47-49, 51-52; El Paso Comments at 22-25. As Southwestern Bell explained in its opening brief, the flow-through measure, as interpreted by the Texas Commission in May 2001, no longer makes an "apples-to-apples" comparison, because it now includes certain CLEC orders that cannot flow through by design while continuing to

⁴¹ Likewise, Navigator provides no specific information in support of its complaint about the information that it receives through the Verigate interface on whether there is working service on premises. See Navigator Comments at 9; Flynn/Lawson/Noland Joint Reply Aff. ¶¶ 8-9.

include only those retail orders that are designed to flow through. See Lawson AR Aff. ¶ 178; Lawson MO Aff. ¶ 178; cf. Massachusetts Order ¶ 79 (“We disagree with commenters that we should reject Verizon’s application . . . because some kinds of orders are not designed to flow through.”).⁴² By contrast, when this Commission approved SWBT’s Texas, Kansas, and Oklahoma applications, SWBT’s reported retail and wholesale flow-through performance was based only on orders that could flow through; under that standard, SWBT has continued to provide CLECs with parity flow-through performance in Arkansas and Missouri. See Flynn/Lawson/Noland Joint Reply Aff. ¶¶ 37-44 & n.12; Lawson AR Aff. ¶¶ 178, 181-183, 186; Lawson MO Aff. ¶¶ 178, 181-183, 186.⁴³

McLeodUSA repeats earlier complaints that it is unable to order UNE-P service from SWBT with the Metropolitan Calling Area (“MCA”) option. See McLeodUSA Comments at 16-17. McLeodUSA notably has not asserted that it has experienced any problems ordering UNE-P service with MCA after May 24, 2001 – which is both more than four months ago and only six business days after McLeodUSA finally agreed to provide SWBT with details concerning its attempts to place these UNE-P orders. See Flynn/Lawson/Noland Joint Reply

⁴² Even under the Texas Commission’s current interpretation of the flow-through measure, SWBT’s performance far exceeds the level that this Commission has found, in the past, to satisfy the requirements of section 271. See Pennsylvania Order ¶ 49; Massachusetts Order ¶ 78. Indeed, despite the change, SWBT met the parity standard for EDI flow-through in each of the past three months in Arkansas and in August in Missouri, falling short of parity in June and July by only 2.4 percentage points, on average. See Dysart Reply Aff. Attachs. A, B, D. Moreover, CLECs in Arkansas and Missouri achieve widely varied levels of flow through, see Lawson AR Aff. ¶¶ 184-185, 187; Lawson MO Aff. ¶¶ 184-185, 187, demonstrating that the capabilities of SWBT’s OSS are significantly better than the aggregate reported results might suggest, see, e.g., Massachusetts Order ¶ 78; New York Order, 15 FCC Rcd at 4038-39, ¶ 166.

⁴³ For the only time in the past 12 months in Missouri, SWBT’s EDI flow-through rate, under the old standard, was out of parity in July; SWBT returned to parity in August, under both the old and the new standards. See Flynn/Lawson/Noland Reply Aff. ¶ 39; Dysart Reply Aff. Attach. D (PM 13-03).

Aff. ¶ 32. In addition, as SWBT explained previously, detailed instructions for ordering UNE-P with MCA are provided in the CLEC Handbook. See id. ¶ 31.

Maintenance and Repair. Southwestern Bell explained in its opening brief (at 100-01) that CLECs are able to use SWBT's maintenance and repair OSS to diagnose and process end-user troubles with the same speed and accuracy as SWBT's retail operations. SWBT's maintenance and repair performance has continued to be excellent. For example, from June through August 2001, SWBT met or exceeded the performance standard in at least two of three months on 21 of the 23 disaggregated POTS/UNE-P maintenance and repair measures in Arkansas and on all 29 of the measures in Missouri. See Dysart Reply Aff. Attachs. A, B (PMs 37, 37.1, 38, 39, 40, 41).⁴⁴

No commenter takes issue with the capabilities or performance of SWBT's maintenance and repair OSS for any product other than UNE-P. AT&T, WorldCom, and the DOJ, however, assert that there are still errors in the UNE-P records in SWBT's LMOS database that affect the access that SWBT provides to its maintenance and repair OSS. Yet Ernst & Young has reviewed SWBT's correction of the UNE-P data in LMOS and the steps that SWBT has taken to minimize and correct future errors in those data, finding that they are effective and work as designed. See Kelly Aff. Attach. A; Southwestern Bell Br. at 63-72.⁴⁵ First, Ernst & Young confirmed that

⁴⁴ On PM 38-03 in Arkansas, SWBT has missed only five appointments from April through August 2001 (2.1 percent), but due to the low level of CLEC activity met the benchmark only in the two months in which it missed no appointments at all (May and August). See Dysart Reply Aff. Attach. D. On PM 39-07 in Arkansas, SWBT has met the benchmark in six of the past eight months, including August 2001. See id.

⁴⁵ AT&T criticizes Ernst & Young for failing to provide the work papers underlying its attestation review of SWBT's enhancements to LMOS. See AT&T's Willard/Van de Water Decl. ¶ 33. Yet Ernst & Young has provided this Commission with the same type of information that was found to justify "reliance on the reviewer's conclusions" in SWBT's Kansas and Oklahoma applications. Kansas/Oklahoma Order ¶ 107 n.303.

SWBT has ensured that the records in LMOS for existing UNE-P lines are correctly designated as working and contain the same data as in the CABS billing system – including the designation of the owner of the line. See Kelly Aff. Attach. C at 7-9.⁴⁶ Second, Ernst & Young verified that SWBT has designed its systems to eliminate the out-of-sequence posting problem that had previously resulted, on occasion, from the flow of “D” orders through SWBT’s systems. See Kelly Aff. Attach. C at 7. The efficacy of these changes was demonstrated by AT&T’s admission – which goes completely unmentioned in its comments – that it had attempted to open trouble tickets electronically on 292 new UNE-P conversions and found that none of the lines had been designated as “disconnected” in LMOS, meaning that trouble reports could be opened electronically on all 292 lines. See Southwestern Bell Br. at 69 & n.58; LMOS Aff. ¶ 40.

Nonetheless, AT&T, WorldCom, and the DOJ raise numerous complaints about LMOS and the opening of trouble tickets on UNE-P lines.⁴⁷ However, because it is uncontested that, as a result of the twice-monthly comparison and update process, fewer than 0.5 percent of the UNE-P line records in LMOS are incorrectly in disconnected status, the Commenters have focused only on the few days following provisioning of a UNE-P service order.⁴⁸ AT&T, for

⁴⁶ Thus, AT&T’s contention that Ernst & Young did not test whether LMOS correctly identified the CLEC owner of the UNE-P line is wrong. See AT&T’s Willard/Van de Water Decl. ¶ 35.

⁴⁷ El Paso also discusses LMOS, but merely repeats AT&T’s claims. Like AT&T, El Paso never claims that it has been prevented from submitting any trouble tickets electronically as a result of the status of line records in LMOS. See El Paso Comments at 24-26.

⁴⁸ Although the DOJ contends that the results of the comparison and update process presented in the Joint Application suggest that LMOS errors are increasing, it admits that the calculation it used to arrive at that conclusion is materially flawed because it is based only on the net increase in UNE-P lines. See DOJ Evaluation at 9-10 & nn.36-37; see also LMOS Reply Aff. ¶¶ 26-27. The net increase not only understates the gross number of new UNE-P customers obtained by CLECs, but also does not include transactions that could result in an LMOS line record incorrectly in disconnected status but that have no effect on the net number of UNE-P lines, such as a CLEC-to-CLEC UNE-P conversion. See LMOS Reply Aff. ¶¶ 27-29. When the

example, asserts that “[m]ost of the troubles” that its end users experience “occur within the first 72 hours after provisioning.” AT&T’s Willard/Van de Water Decl. ¶ 32; see also DOJ Evaluation at 9 n.36, 11. There is no basis whatsoever for AT&T’s claim. Even considering only the trouble tickets submitted within ten days after provisioning, AT&T submits only about one-third of its “I-10” tickets within the first 72 hours after provisioning. See LMOS Reply Aff. ¶ 38. Looking more broadly at all of the trouble tickets that AT&T submits in a month, less than 2.5 percent of its trouble tickets are submitted during that time period. See id. And CLECs can expect to be able to open more than 85 percent of this extremely small number of trouble tickets electronically. See id. ¶ 45 & Attach. G.

Moreover, an even smaller percentage of CLEC orders result in trouble reports within the first few days after installation. From June through August 2001, CLECs in SWBT’s five-state region submitted trouble tickets on only 0.77 percent of lines with service order activity during the first three days after installation. See id. ¶ 38 n.26. In other words, 99.23 percent of those CLEC orders had no reported trouble during that period.⁴⁹ Even were the Commission to assume that none of the trouble tickets in the first three days could be opened electronically (an assumption that SWBT’s evidence demonstrates is invalid), it would be entirely implausible to

number of records updated in the comparisons is divided by the total CLEC UNE-P line activity – which the DOJ recognizes is the “most accurate denominator” – the concern that the DOJ raises (but that is raised by no other commenter) is mitigated. See id. ¶¶ 33-35 & Attach. E. In any event, the entire premise of the DOJ’s analysis is flawed because the comparison and update process does not correct only errors requiring manual intervention. Instead, it corrects any LMOS UNE-P record that is in disconnected status when the corresponding CABS record shows a working line at the specific time of the comparison, even if the LMOS line record would be updated electronically that night through the normal operation of SWBT’s systems. See id. ¶¶ 32, 36; Horst Reply Aff. Attach. A.

⁴⁹ Thus, contrary to the DOJ’s speculation, there is no evidence that “new orders are particularly vulnerable to any problem” in posting service orders to LMOS. See DOJ Evaluation at 9 n.36.

believe that this would have a detrimental effect on CLECs' ability to compete. This is so particularly when CLECs continue, for their own business reasons, to open about half of all trouble tickets manually. See LMOS Reply Aff. ¶ 57 & Attach. I.

Indeed, for all of AT&T's complaints about LMOS, it never once in its comments points to an instance in which it was unable to open an electronic trouble ticket to report an actual end-user trouble. By its own admission, AT&T instead is using SWBT's TBTA interface to search for errors in LMOS and is then stating what would have happened had there been a trouble (even though the lines were working perfectly). See AT&T's Willard/Van de Water Decl. ¶¶ 20, 22. The record in this proceeding is thus bereft of any evidence that the extremely small number of UNE-P lines that – for a period of no more than two weeks – are incorrectly in disconnected status in LMOS have had any impact on CLECs' ability to attract and retain end users. The Commission should give no weight to the commenters' hypothetical and speculative concerns. See, e.g., Kansas/Oklahoma Order ¶¶ 117, 151; New York Order, 15 FCC Rcd at 4044, ¶ 174 n.550, 4106-07, ¶ 295.⁵⁰

Trouble Tickets on or Before the Date of Installation. AT&T and WorldCom contend that a CLEC cannot open a trouble ticket on a line when LMOS identifies the line as belonging to SWBT. See AT&T Comments at 77-78; AT&T's Willard/Van de Water Decl. ¶¶ 11, 17; WorldCom Comments at 14. This claim is false, and both AT&T and WorldCom know it. Indeed, it was as a result of complaints from AT&T and WorldCom during SWBT's Texas application that SWBT modified its TBTA and EBTA interfaces expressly to permit CLECs to

⁵⁰ WorldCom asserts, without any detail or supporting evidence, that, “[o]ver a recent two-week period, there were still some tickets that WorldCom could not submit electronically.” WorldCom Comments at 16. Even assuming that this assertion is accurate, without more information, it is simply impossible for SWBT to respond.

open a trouble ticket electronically when LMOS incorrectly identified another carrier as the owner of the line. See Texas Order, 15 FCC Rcd at 18458, ¶ 204 & n.568; see also Lawson MO Aff. ¶ 207; LMOS Aff. ¶ 40.⁵¹

Trouble Tickets Within Three Business Days After the Date of Installation. AT&T claims further that it was unable to open its pseudo-trouble tickets electronically in the first three days after having received a service order completion (“SOC”) notice for a UNE-P line in Missouri. See AT&T Comments at 78-79; AT&T’s Willard/Van de Water Decl. ¶¶ 20-23. AT&T alleges that this evidence contradicts SWBT’s claim that a high percentage of “C” and “D” orders for UNE-P conversions post correctly in LMOS on the night of installation. See AT&T Comments at 79; AT&T’s Willard/Van de Water Decl. ¶ 19.⁵² Notably, AT&T did not present these results to SWBT prior to filing its comments in this proceeding, even though AT&T and SWBT were involved in contemporaneous discussions regarding other attempts by AT&T to open pseudo-trouble tickets. See LMOS Aff. ¶¶ 40-41; LMOS Reply Aff. ¶¶ 9-11. This action by AT&T confirms that the problems it complains of here were not service-affecting; if AT&T’s end users had actually been impacted by AT&T’s difficulties in opening trouble

⁵¹ Also false is AT&T’s claim that, prior to the system enhancements described in the LMOS Affidavit, SWBT’s systems failed to post “D” and “C” orders to LMOS in the proper sequence “for all UNE-P lines.” AT&T’s Willard/Van de Water Decl. ¶ 16 (emphasis added). In fact, the sequencing error only arose in specific circumstances and affected a limited number of UNE-P line records. See LMOS Aff. ¶¶ 12, 14, 18, 27 & Attach. B.

⁵² AT&T alleges that SWBT “provide[d] no documentation or underlying detail” to support its statement that more than 70 percent of the telephone numbers that AT&T provided for investigation had updated correctly to LMOS on the night the order was provisioned. See AT&T’s Willard/Van de Water Decl. ¶ 23 n.6. Not so. Attachment H to the LMOS Affidavit contains specific, telephone-number-level detail to support SWBT’s statement; indeed, that attachment stands in marked contrast to the summary tables in the attachments to the Willard/Van de Water Declaration. Moreover, AT&T has apparently forgotten that, on July 27, 2001, it met with SWBT via conference call to discuss SWBT’s analyses of the numbers that AT&T provided. See LMOS Aff. ¶ 40; see also LMOS Reply Aff. ¶¶ 9-10.

tickets electronically, one would have expected AT&T to have sought prompt resolution of the matter.

SWBT believes that the results that AT&T obtained are a consequence of the specific dates on which it chose to open pseudo-trouble tickets and that the dates that AT&T selected are not typical. AT&T's CABS billing date for its UNE-P lines in Missouri is the 25th of the month. See LMOS Reply Aff. ¶ 15; see also Flynn MO Aff. ¶¶ 18, 20. This means that all service orders that complete before the 25th calendar day of each month will appear on AT&T's monthly bill from SWBT. In order to ensure that it bills CLECs correctly, SWBT processes CABS bills three to four business days after the bill date, which allows orders completed before the bill date to post to CABS and to be included on the bill. See LMOS Reply Aff. ¶ 15; see also Flynn MO Aff. ¶ 21. Orders that complete on or after the bill date are held in interim status in CABS and will not post until the bill period processing ends. See LMOS Reply Aff. ¶ 15. Therefore, if an AT&T UNE-P order in Missouri completes on the 25th or 26th of the month, the "C" order will be held in CABS – and, therefore, will not post in LMOS – until after the bill period processing ends. See id. Once able to post to CABS, the "C" orders should then be sent to LMOS for posting in the next nightly update. See id. ¶¶ 15, 43.

AT&T's two attempts to assess the updating of the LMOS database in Missouri occurred within a few business days of the 25th of the month – on July 28 and August 29. See AT&T's Willard/Van de Water Decl. ¶¶ 20, 22. The bill period processing in those months ended on July 30 and August 29. In both cases, therefore, the "C" orders for some of AT&T's UNE-P orders would have been held in CABS in interim status when AT&T opened its pseudo-trouble tickets.

See LMOS Reply Aff. ¶ 16.⁵³ By contrast, in Texas, AT&T attempted to open pseudo-trouble tickets electronically on August 31, which is after the bill period processing had completed. See AT&T's Willard/Van de Water Decl. ¶ 24. As AT&T admits, its Texas results were far different from the results in Missouri and revealed that, if there had been trouble on those lines, AT&T could have opened tickets on 62 percent of the orders that completed the day before and on 95 percent of the orders that completed two and three days earlier. See AT&T's Willard/Van de Water Decl. ¶ 24; see also LMOS Reply Aff. ¶¶ 17-19.⁵⁴

To confirm that the difficulties AT&T experienced in opening pseudo-trouble tickets were related to its decision to open those tickets near its bill date, SWBT replicated AT&T's methodology for assessing updates to the LMOS database on two consecutive weeks in September. SWBT attempted to open electronic trouble tickets on all AT&T and Navigator UNE-P orders in Missouri and Arkansas, respectively, with a SOC sent during that week. See LMOS Reply Aff. ¶¶ 20, 23-24.⁵⁵ Of the 698 pseudo-trouble tickets that SWBT attempted to open using TBTA, it was unable to open a ticket electronically on only one – or less than 0.15

⁵³ SWBT believes that it is for this reason that AT&T was able to open pseudo-trouble tickets on 100 percent of its Missouri orders with a SOC date of August 24, which is three business days before August 29 (when AT&T attempted to open the trouble tickets), but which is also prior to the close of the billing period. See LMOS Reply Aff. ¶ 16. By contrast, the Missouri orders with a SOC date of July 25 would have been held in CABS in interim status at the time AT&T attempted to open its pseudo-trouble tickets. See id.

⁵⁴ Because AT&T does not provide detailed information on its attempts to open pseudo-trouble tickets in Texas – there is not even a summary table, let alone telephone-number-level detail – SWBT is unable to respond to AT&T's claim that certain errors had not been corrected as of September 7. See AT&T's Willard/Van de Water Decl. ¶ 24, LMOS Reply Aff. ¶ 17 n.9.

⁵⁵ SWBT did not actually open trouble tickets on these lines. Instead, it established terminals that replicated the access to SWBT's OSS that AT&T and Navigator have. SWBT then entered the telephone number for each UNE-P line and observed whether it received either the "disconnected or ported out" or the "not part of your company profile" messages. SWBT did not complete the process of opening a trouble ticket. See LMOS Reply Aff. ¶¶ 11 n.6, 20.

percent – of the orders. See id. ¶¶ 21-24 & Attachs. C, D.⁵⁶ This demonstrates that, contrary to AT&T's claims, CLECs can generally open trouble tickets on an extremely high percentage of their new UNE-P lines during the first few days after installation. See also id. ¶¶ 19-25 & Attach. B; LMOS Aff. ¶ 37 & Attach. G.

Opening Trouble Tickets Manually. AT&T contends that, when the LMOS record for a UNE-P line is in disconnected status, a CLEC must submit a trouble ticket twice – first electronically, then manually – delaying the submission of the trouble ticket. See AT&T Comments at 79-80; AT&T's Willard/Van de Water Decl. ¶ 27; see also DOJ Evaluation at 10 n.42.⁵⁷ Yet a CLEC need enter only the ten-digit telephone number of a line with a trouble to determine whether it can open an electronic trouble ticket on that line. See LMOS Reply Aff. ¶ 51. Thus, there is no meaningful delay in the submission of a manual trouble ticket after encountering an error message from TBTA, as it takes no more than five or ten seconds to type in ten digits. Indeed, if the CLEC submits the manual trouble ticket immediately after learning

⁵⁶ SWBT investigated that one number and determined that it typed the wrong telephone number into TBTA, accidentally attempting to open a pseudo-trouble ticket on a number that had been correctly in disconnected status in LMOS since January 2001. See LMOS Reply Aff. ¶ 23. SWBT then investigated the number that it intended to test and determined that it was correctly updated in LMOS on the day of installation. See id. ¶ 23 n.13. In addition, SWBT determined that it correctly entered the other 697 telephone numbers into TBTA. See id. On four of the 698 orders tested – less than 0.6 percent of the total – SWBT received the “not part of your company profile” message. See id. ¶¶ 22-24.

⁵⁷ AT&T also argues that, if it decides to open a trouble ticket electronically on a line that LMOS lists as belonging to another carrier (in which case AT&T would receive the “not part of your company profile” message), “SWBT will investigate and verify whether the CLEC is the actual ‘owner’ of the circuit before it takes action on the trouble report.” AT&T's Willard/Van de Water Decl. ¶ 18; see also DOJ Evaluation at 11 n.43 (implying, incorrectly, that SWBT's LMOS Affidavit ¶ 33 n.20 supports AT&T's claim). Once again, this is false. As SWBT has previously explained to AT&T, under those circumstances, it would begin working the trouble ticket immediately; it does not wait to verify ownership of the line. See LMOS Reply Aff. ¶ 10 n.4; Ex Parte Letter from Geoffrey M. Klineberg to Magalie Roman Salas, Attach. A ¶ 14, CC Docket No. 01-88 (FCC filed June 1, 2001).

that it cannot submit the ticket electronically, it should receive the exact same commitment time that it would have received if the ticket had been submitted electronically. See id. ¶ 52. Finally, it takes, on average, four to five minutes for a CLEC to submit, and SWBT to open, a trouble ticket manually. See id. ¶ 55. Any need to enter a telephone number into TBTA before submitting a manual trouble ticket, therefore, does not delay submission of the trouble or impact CLECs' ability to compete in any remotely meaningful way.

AT&T claims further that SWBT does not resolve manually submitted trouble tickets faster than electronically submitted tickets. See AT&T Comments at 80; AT&T's Willard/Van de Water Decl. ¶ 26. WorldCom similarly claims that opening tickets manually results in delays in resolving end-user troubles. See WorldCom Comments at 15. SWBT demonstrated in its Joint Application that, from June 2000 through June 2001, it resolved manual trouble tickets in an average of 24.67 hours – which is slightly faster than the average of 25.36 hours for resolution of electronic trouble tickets. See LMOS Aff. Attach. I. Results were similar in July and August 2001. See LMOS Reply Aff. ¶ 56 & Attach. I.⁵⁸ Even for AT&T, SWBT completed manual trouble tickets, on average, only about 15 minutes slower than electronic trouble tickets. See id.; LMOS Aff. Attach. I. AT&T's and WorldCom's unsupported assertions to the contrary should be given no weight. See, e.g., Kansas/Oklahoma Order ¶¶ 117, 151; New York Order, 15 FCC Rcd at 4044, ¶ 174 n.550, 4106-07, ¶ 295.⁵⁹

⁵⁸ AT&T and WorldCom claim that it is more difficult to track the status of a manually reported trouble ticket, as it can check the status only by calling SWBT. See AT&T's Willard/Van de Water Decl. ¶ 30; WorldCom Comments at 15. Because manual trouble tickets are resolved, on average, in a day, this could be no more than a minimal inconvenience. See LMOS Reply Aff. ¶ 53 n.35.

⁵⁹ AT&T also speculates that SWBT's handling of manual trouble tickets will "deteriorate" as more CLECs enter the market. See AT&T's Willard/Van de Water Decl. ¶ 31. The evidence shows otherwise: SWBT handled more than 2.3 times as many manual trouble tickets in June 2001 as in December 2000 and resolved the June troubles an average of 27

Maintenance and Repair Performance Measurements. AT&T argues that errors in the LMOS database decrease the accuracy of SWBT's trouble report data and claims that SWBT's restatement of performance data through April 2001 "almost certainly understates the true extent of the inaccuracy." AT&T Comments at 80-81; AT&T's Willard/Van de Water Decl. ¶¶ 37-42, 44.⁶⁰ As SWBT explained – and AT&T does not contest – the restatement of that data changed only a handful of measures in Missouri and no measures in Arkansas from parity to out-of-parity; this is hardly a meaningful impact. See LMOS Aff. ¶ 60 & Attach. L. In any event, trouble report performance data from June through August 2001 – which is almost entirely unaffected by inaccurate information in LMOS, as evidenced by SWBT's data reconciliations with Birch and Logix – demonstrate that SWBT has provided CLECs with parity service on their UNE-P troubles. See Dysart Reply Aff. Attachs. C, D (PMs 38-05, 38-06, 39-09 to 39-12, 40-

minutes faster than the December troubles. See LMOS Aff. Attach. I. The DOJ states that SWBT's calculation appears to omit any time between its receipt of a manually submitted trouble ticket and entry of that ticket into LMOS. See DOJ Evaluation at 10 n.42. In fact, entry of a trouble ticket occurs either simultaneously with, or within about 30 seconds of, receipt of the trouble ticket in the LOC. See LMOS Reply Aff. ¶ 54.

⁶⁰ AT&T also challenges SWBT's decision not to restate certain trouble ticket performance measurements. See AT&T Comments at 81 & n.114; AT&T's Willard/Van de Water Decl. ¶¶ 42-43. As SWBT explained, the fact that the LMOS record for a UNE-P line does not reflect the correct owner of the account has no bearing on the speed with which the trouble report is processed; thus, there is no reason to believe that reallocating trouble tickets from retail to CLEC, or among CLECs, would materially affect the reported data. See LMOS Aff. ¶ 59 & Attach. L at 2. This assumption is borne out by the fact that the average time to resolve CLEC troubles has remained relatively constant – and in parity – after the corrections to the LMOS database resulted in increased accuracy in associating trouble tickets with the correct carrier. See LMOS Reply Aff. ¶ 59 & n.39. Further, contrary to AT&T's claims, PM 35.1 is a subset of information in PM 35 and, in any event, is a purely diagnostic measure. See LMOS Aff. ¶ 59. Finally, AT&T argues that SWBT's line sharing trouble report performance measurements were likely affected as well. See AT&T's Willard/Van de Water Decl. ¶ 43 n.17. AT&T's speculation is wrong: the high-frequency portion of the loop information on a POTS LMOS line record is updated using a different process than for information on UNE-P lines. See LMOS Reply Aff. ¶ 60. In addition, as SWBT explained previously, it no longer uses LMOS for its line-shared loop maintenance and repair performance measurement data. See id.; LMOS Aff. ¶ 13 n.3.

03); LMOS Aff. ¶¶ 55-57. Moreover, SWBT's performance on non-UNE-P POTS troubles has long been excellent. See Dysart Reply Aff. Attachs. C, D (PMs 37-01, 37-02, 37.1-01, 37.1-02, 38-01 to 38-04, 39-01 to 39-08, 40-01, 40-02, 41-01, 41-02).

Billing. As demonstrated in its Joint Application, from April through June 2001, SWBT met or exceeded the benchmark for every billing measure in both Arkansas and Missouri in at least two of three months. See Dysart AR Aff. Attach. A (PMs 14-19); Dysart MO Aff. Attach. A (PMs 14-19). SWBT's performance on these measures in July and August has similarly been excellent. See Dysart Reply Aff. Attachs. C, D (PMs 14-19). Navigator is the only CLEC to complain about SWBT's billing performance. Yet, for Navigator specifically, SWBT has met or exceeded the benchmarks for the billing measures in each of the past five months. See id. Attach. F.

Navigator, however, contends that its bills often contain charges that are misapplied and alleges that these charges total one-quarter of its bills. See Navigator Comments at 6-7. Again, because Navigator does not provide specific details in support of its allegations, it is difficult for SWBT to formulate a complete response. See Flynn/Lawson/Noland Joint Reply Aff. ¶¶ 20-30. In addition, Navigator has recently filed a complaint before the Arkansas PSC relating to its billing disputes with SWBT. As this Commission has recognized, pending state proceedings are the proper place in which to address these types of claims. See, e.g., Pennsylvania Order ¶¶ 101, 113, 118. SWBT and Navigator have also instituted weekly conference calls to resolve expeditiously any specific complaints. See Flynn/Lawson/Noland Joint Reply Aff. ¶ 28. At Navigator's request, these calls are now scheduled to occur every other week. See id.

Change Management. No commenter takes issue with SWBT's change management plan, SWBT's compliance with that plan, or the various training offerings and other forms of assistance that SWBT provides to CLECs.

V. THE PERFORMANCE REMEDY PLANS IN BOTH ARKANSAS AND MISSOURI ARE SELF-EXECUTING AND EFFECTIVE

Commenters agree that the performance incentive plans that SWBT has put in place in Missouri and Arkansas are virtually identical, in all material respects, to the plans in place in Texas, Kansas, and Oklahoma. See, e.g., AT&T Comments at 51; DOJ Evaluation at 11-12. As Southwestern Bell has explained, it necessarily follows that here, as in those states, the performance incentive plans "constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest." Kansas/Oklahoma Order ¶ 269; see Southwestern Bell Br. at 156-61.

Both the DOJ and Sprint note that the Arkansas PSC has suggested that it has limited authority to enforce the performance incentive plan in Arkansas. See DOJ Evaluation at 12; see also Sprint Comments at 15-16. According to the DOJ, two concerns flow from that: first, it calls into question whether the performance plan can be modified in response to changes in the local market; and, second, it creates uncertainty over whether SWBT will in fact automatically make payments in the event of sub-standard performance. See DOJ Evaluation at 12.

As an initial matter, however, these concerns are purely hypothetical. As Southwestern Bell explained in its opening brief, and as no commenter disputes, the Arkansas PSC has held on two separate occasions that it does, in fact, have authority to interpret and to enforce interconnection agreements. See Southwestern Bell Br. at 160-61 & n.147 (citing Order No. 6 at 9, Connect Communications Corp. v. Southwestern Bell Tel. Co., Docket No. 98-167-C (Ark. Pub. Serv. Comm'n Dec. 31, 1998) (App. E – AR, Tab 16); Order No. 2 at 5-6, American

Communications Servs. of Little Rock, Inc. v. Southwestern Bell Tel. Co., Docket No. 00-071-C (Ark. Pub. Serv. Comm'n June 12, 2000) (App. E – AR, Tab 21)). Those holdings are thoroughly supported by state law. See, e.g., Ark. Code Ann. § 23-3-119; Ark. PSC R. Prac. & Proc. § 10. Because SWBT's performance plans are incorporated into interconnection agreements, the terms of those plans are clearly subject to interpretation and enforcement by the Arkansas PSC. In addition, if the Arkansas PSC were to abdicate its authority to interpret and enforce those portions of SWBT's interconnection agreements, this Commission has held that it may act in its place. See Memorandum Opinion and Order, Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission, 15 FCC Rcd 11277, 11279-80, ¶ 6 (2000). As a matter of both state and federal commission authority, therefore, there is simply no reason to doubt that SWBT's performance incentive plan will be as effective in Arkansas as it has been elsewhere.⁶¹

Even were that not the case, moreover, the DOJ concerns would still be insufficient to call into question the adequacy of SWBT's performance plans. As explained in the Reply Affidavit of William R. Dysart, the experience of CLECs operating in Texas, Kansas, and Oklahoma overwhelmingly demonstrates the self-executing nature of SWBT's performance plans. In Texas, for example, at least 165 CLECs have entered into the T2A (which incorporates, as Attachment 17, the performance remedy plan), and SWBT has provided those CLECs at least 1,024 bill credits, totaling more than \$5.4 million, under that plan. See Dysart Reply Aff. ¶ 59. Yet, with the exception of the one specific dispute discussed below, SWBT is

⁶¹ The DOJ suggests (at 12) that, if the Arkansas PSC decides not to interpret or enforce the performance incentive plan, that plan may not evolve with the needs of the local market. However, the Arkansas PSC staff has participated in the Texas Commission's six-month reviews (including the most recent one, see Dysart Reply Aff. ¶ 83), and there is every reason to believe that it will continue to do so.

not aware of a single written complaint from any CLEC that SWBT has failed to remit the payments that have come due under the plan. See id.

AT&T itself recognizes – indeed, emphasizes – that SWBT has paid substantial penalties under its performance incentive plans. See AT&T Comments at 102 & n.143. Yet, AT&T nevertheless disputes the self-executing nature of SWBT's performance plans, on the theory that one dispute – out of the more than 1,000 performance payments that have come due under the plan – renders these plans toothless. See id. at 50-55. But the exception proves the rule. However much rhetoric AT&T employs in the six pages of comments that it devotes to this issue, it cannot escape the fact that it can find only one single instance – and a moot one at that, because SWBT has paid the amount in dispute, see Dysart Reply Aff. ¶ 63 – to suggest that SWBT's plans are not self-executing.

It is worth noting, moreover, that the particular payment at issue was a windfall for AT&T. The performance measure in question (PM 27) tracks the average installation interval for UNEs that do not require field work (i.e., “non-dispatch UNEs”). As a general matter, AT&T receives outstanding service for this type of order. For example, with respect to SWBT-caused missed due dates for this type of order, AT&T has received better than parity service in Texas every single month this year. See id. ¶ 72 & Table 7.⁶² To be sure, according to PM 27, AT&T has not received parity service with respect to the average installation interval. It is important to understand, however, that this PM is subject to distortion. As a general matter, if an order for a non-dispatch UNE – whether retail or wholesale – is received before 3:00 p.m., SWBT seeks to complete it that same day. Id. ¶ 65. If the order is received after 3:00 p.m.,

⁶² This issue is isolated to Texas. The results for PM 27 for AT&T's affiliate in Missouri (TCG) have consistently been in parity, and neither AT&T nor TCG has generated any orders as measured by PM 27 in Arkansas. See Dysart Reply Aff. ¶ 57 n.59.

SWBT aims to complete it the next day. Id. Like most Texas CLECs, SWBT submits almost two-thirds of its orders before 3:00 p.m. Id. ¶ 69. By definition, a parity measure assumes that a CLEC's mix of orders will be similar. But AT&T submits more than 90 percent of its orders after 3:00 p.m. See id. Thus, although the average installation interval for AT&T is (slightly) longer than SWBT's average, SWBT in fact completes the vast majority of AT&T's orders on time. Id. ¶ 70. Putting aside the question whether AT&T has intentionally delayed sending orders until after 3:00 p.m. in order to trigger payments under SWBT's performance remedy plan, the simple fact is that the performance that AT&T has received has been excellent.⁶³

Equally overblown are AT&T's claims regarding the results of the Texas Commission's latest six-month review. See AT&T Comments at 57-58. SWBT is in fact proceeding to implement all of the specific performance-measurement changes incorporated in Version 2.0 resulting from that review, including the elimination of 20 measures, the addition of four new ones, and modifications to 42 existing measures. See Dysart Reply Aff. ¶ 84. Moreover, these changes come on the heels of SWBT's acceptance of each and every one of the far more extensive changes ordered by the Texas Commission in its previous review. See id. ¶¶ 81-82.⁶⁴

⁶³ It is also worth noting that AT&T's characterization of the dispute over these bill payments is misleading. For one thing, AT&T was not "forced" to file a complaint with the Texas Commission. See AT&T Comments at 55. To the contrary, it was SWBT that brought this issue to the attention of the state commission, and only after repeatedly raising it with AT&T. See Dysart Reply Aff. ¶¶ 73, 75. Nor is AT&T correct that the manner in which SWBT did so is inconsistent with the terms of the performance plan. See id. ¶ 74 (explaining that the general procedural provisions do not expressly apply to instances of CLEC bad faith). And, notwithstanding AT&T's suggestion to the contrary, SWBT resolved this matter expeditiously. See id. ¶ 76.

⁶⁴ At page 156 of Southwestern Bell's opening brief, we stated that, in both Missouri and Arkansas, "SWBT has . . . implement[ed] all changes that were ordered by the Texas Commission in its six-month review process." This sentence was intended to refer to the changes ordered by the Texas Commission that resulted in Version 1.7 of the performance measures, the data on which Southwestern Bell relies for the commercial volumes in its Joint Application. We did not intend to imply that SWBT had voluntarily agreed to forego its rights to

To be sure, SWBT has sought rehearing on three limited aspects of the Texas Commission's recent order. See id. ¶¶ 85-87. The bases for SWBT's motion for rehearing are discussed in the Reply Affidavit of William R. Dysart. See id. Contrary to AT&T's unsupported allegations, however, SWBT was well within its rights to avail itself of the procedural remedies available under the T2A and the 1996 Act to challenge these limited aspects of the Texas Commission's order. See id. ¶ 88. SWBT has been, and continues to be, reluctant to exercise these rights. But there is simply no merit to the suggestion that SWBT has somehow violated the terms of the performance remedy plan by seeking reconsideration of specific decisions in the latest six-month review that are, in SWBT's view, inconsistent with its rights under federal law and with the purposes of section 271.⁶⁵

For its part, Z-Tel challenges the statistical methodologies used in SWBT's performance plans. Z-Tel contends that SWBT's use of traditional statistical analysis, though admittedly permissible for parity measures, is somehow impermissible for measures that compare performance against benchmarks. See Z-Tel Comments at 8-9. But the fact is that SWBT's statistical methodology is fully consistent with established methods, and its use of that methodology for benchmark measures is fully consistent with the Texas Commission's desire to mitigate the effects of random variation. See Dysart Reply Aff. ¶¶ 90-94. Moreover, Z-Tel fails to note that the use of the critical z-test has been eliminated for those benchmark measures that

seek review of the Texas Commission's order coming out of the latest six-month review (or, for that matter, any future six-month review).

⁶⁵ AT&T suggests (at 57) that SWBT has not implemented DSL-related PMs as required by the Texas Order. But, as demonstrated in its opening brief, SWBT has implemented DSL-related PMs that exactly track this Commission's requirements. See Southwestern Bell Br. at 115-18. Moreover, contrary to AT&T's characterization, even its own declarant (DeYoung Decl. ¶ 34) says nothing at all about "proposed measures" to improve tracking of DSL-related performance.

have generated sufficient data to assess accurately the reasonableness of the particular benchmark. Id. ¶ 95.

Finally, AT&T renews its claims that SWBT's data as a whole are unreliable. See AT&T's Willard/Van de Water Decl. ¶¶ 45-53. This claim is based on the outlandish theory that, because SWBT interpreted the Business Rule for a particular flow-through PM differently than AT&T would have, this Commission may not rely on any of SWBT's reported data – not just for flow through, but apparently for all of its performance measures. See id. But the Commission has already recognized that, as a general matter, SWBT's data are reliable, and it has put the burden squarely on commenters to identify areas where they believe that not to be the case. See Texas Order, 15 FCC Rcd at 18378, ¶ 57 (“[w]here particular SWBT data are disputed by commenters,” that data should be examined in discussing the relevant checklist item). AT&T cannot bootstrap a good-faith dispute over how to measure flow through of wholesale orders into a full-scale assault on SWBT's entire performance data.⁶⁶

VI. MISCELLANEOUS ISSUES

A. Line Sharing and Packet Switching

SWBT provides unbundled access to the high-frequency portion of the loop (“HFPL”) in full compliance with all of its obligations under the Line Sharing Order, the Line Sharing Reconsideration Order, and the Clarification Order.⁶⁷ SWBT has developed nondiscriminatory

⁶⁶ As Southwestern Bell has previously explained, even adopting the new interpretation of the PM 13 Business Rules preferred by AT&T, SWBT's flow-through data clearly establish that SWBT provides CLECs a meaningful opportunity to compete. See Southwestern Bell Br. at 96-98.

⁶⁷ Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 20912 (1999) (“Line Sharing Order”); Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147,

processes and procedures that enable competing carriers to provision data service over the HFPL, defined by SWBT and this Commission as “the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions.” 47 C.F.R. § 51.319(h)(1). See Sparks MO Aff. Attach. C, Optional Line Sharing Amendment § 2.4; Sparks AR Aff. Attach. C, Optional Line Sharing Amendment § 2.6. CLECs can choose whether to access the HFPL at a SWBT central office or at a remote terminal, and CLECs can engage in line sharing whether the SWBT voice customer is served by an all copper loop or by a combination of copper and DLC equipment. See Chapman MO Aff. ¶¶ 102-105; Chapman AR Aff. ¶¶ 102-105; Line Sharing Reconsideration Order, 16 FCC Rcd at 2106-07, ¶ 10.

Notwithstanding this Commission's statements in the Line Sharing Reconsideration Order and the Clarification Order, AT&T and WorldCom attempt to use this section 271 proceeding as a means to expand SWBT's line sharing obligations well beyond the scope of those orders. Specifically, AT&T and WorldCom continue to argue that SWBT must offer CLECs the ability to engage in line sharing over fiber-fed loops – a technical and logical impossibility. See generally AT&T Comments at 69-76; WorldCom Comments at 10-12. As the Commission has explained, “the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a copper loop facility.” Line Sharing Reconsideration Order, 16 FCC Rcd at 2107, ¶ 10. Where an incumbent has deployed digital loop carrier (“DLC”) facilities, line sharing ceases to be possible when the voice and data signals traveling over a line-shared loop arrive at an interface between copper distribution plant and the fiber

Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 16 FCC Rcd 2101 (2001) (“Line Sharing Reconsideration Order”); Order Clarification, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 16 FCC Rcd 4628 (2001) (“Clarification Order”).

feeder segment. See Chapman Reply Aff. ¶ 14; Chapman MO Aff. ¶ 105; Chapman AR Aff. ¶ 105.

Although line sharing itself becomes impossible at this interface, CLECs can nevertheless provide data service to SWBT voice customers served by DLC because SWBT allows CLECs to access the HFPL by locating a DSLAM at the remote terminal. A CLEC can access the HFPL before the copper feeder enters the DLC equipment – typically at the serving area interface or fiber distribution interface. By locating a DSLAM at or near the remote terminal, the CLEC can utilize available dark fiber or fiber feeder subloops to transmit the data signal through the central office and onto the packet switched network. See Chapman MO Aff. ¶¶ 104-106; Chapman AR Aff. ¶¶ 104-106. This offering places SWBT in full compliance with its line sharing obligations. See Chapman Reply Aff. ¶ 10 (citing Letter from John A. Rogovin, Deputy General Counsel, FCC, to Congressman W.J. Tauzin (Aug. 3, 2001)).

The Line Sharing Reconsideration Order provides no support for AT&T's and WorldCom's assertion that SWBT must provide "end-to-end line sharing" over loops served by DLC equipment. See AT&T Comments at 70; WorldCom Comments at 11-12. Indeed, no existing technology could even support such an offering. Traditional DLC equipment is wholly incompatible with DSL services. See Boyer Reply Aff. ¶ 10. Even where Next Generation Digital Loop Carrier ("NGDLC") systems have been deployed, no technology exists that would enable a CLEC to access the HFPL of a fiber-fed loop with a central office-based DSLAM. See Chapman Reply Aff. ¶ 8; Boyer Reply Aff. ¶¶ 9-14; Chapman MO Aff. ¶ 105; Chapman AR Aff. ¶ 105. What AT&T and WorldCom really seek, despite their purported focus on SWBT's loop and subloop unbundling obligations, is unbundled access to the packet switching

functionality.⁶⁸ Beyond the limited circumstances identified in the UNE Remand Order, however, SWBT has no obligation to unbundle packet switching. See Clarification Order, 16 FCC Rcd at 4628, ¶ 1 (“The Line Sharing Reconsideration Order in no way modified the criteria set forth in the Commission’s UNE Remand Order regarding the unbundling of packet switching functionality.”)

SWBT’s Project Pronto does not affect this calculus. Indeed, it merely provides yet another means through which CLECs can offer DSL services when DLC equipment has been deployed in SWBT’s network. See Chapman Reply Aff. ¶ 17. Notwithstanding the fact that the Project Pronto architecture offers packet switching functionality at both the remote terminal and the central office, see Boyer Reply Aff. ¶¶ 6-8, SWBT’s Broadband Service offering provides CLECs with the ability to offer DSL services to customers served by DLC without collocating a DSLAM and without regard to any technical limitations potentially associated with alternative all-copper facilities. See Chapman Reply Aff. ¶ 30. For CLECs that would rather collocate their

⁶⁸ WorldCom alleges that “remote terminal electronics are inherent features, functions and capabilities of the loop.” WorldCom Comments at 11-12. The UNE Remand Order is directly to the contrary; it explicitly excludes the electronics used for provisioning advanced services, including DSLAMs, from the definition of the local loop. See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696, 3772, ¶ 167 (1999); Chapman Reply Aff. ¶¶ 15-16. Likewise, AT&T’s Scott Finney emphasizes that local loop facilities are “the ‘most time-consuming and expensive network element[s] to duplicate on a pervasive scale,’” AT&T’s Finney Decl. ¶ 40 (quoting UNE Remand Order, 15 FCC Rcd at 3791, ¶ 211), as if the need to collocate a DSLAM at or near a remote terminal somehow carries a concomitant obligation to deploy local transmission facilities as well. The real issue is not whether AT&T has unbundled access to unbundled loops and subloops – it plainly does – but whether AT&T must locate its own DSLAM equipment at or near a remote terminal served by DLC equipment in order to access the HFPL. Because SWBT offers home-run copper and allows CLECs to collocate DSLAMs at or near remote terminals, SWBT need not unbundle the packet switching functionality. See UNE Remand Order, 15 FCC Rcd at 3839, ¶ 313 (incumbent LEC must unbundle packet switching only in the limited circumstances where “a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops”).

own DSLAMs, SWBT and its parent company have already committed to make sufficient collocation space available in their remote terminals (including those associated with Project Pronto). Neither AT&T nor WorldCom can point to any evidence that would call into question this Commission's conclusion, in its order modifying the SBC/Ameritech merger conditions, that:

[i]n light of SBC's commitment, competing providers of advanced services will receive quantifiable assurances that they will be able to access SBC's remote terminals and compete for consumers served through remote terminals. In this way, SBC's commitment should ensure that competing carriers will be able to offer consumers other types of DSL service through equipment deployed in the remote terminals of SBC's incumbent LECs.⁶⁹

SWBT offers access to unbundled packet switching in Missouri and Arkansas on the exact same terms that this Commission endorsed in its Kansas/Oklahoma Order. See Chapman Reply Aff. ¶ 25 n.30. As the Commission explained there, SWBT's standard offering "incorporate[s] verbatim the criteria adopted in our UNE Remand Order to establish when packet switching will be made available as an unbundled network element." Kansas/Oklahoma Order ¶ 243. And, while there remain several open and contested questions as to the proper application of these unbundling rules to NGDLC equipment like that used in Project Pronto, see Line Sharing Reconsideration Order, 16 FCC Rcd at 2127-30, ¶¶ 55-64, those questions are not ripe for review here. Because no Arkansas or Missouri CLEC has even requested (let alone been denied) either remote terminal collocation or unbundled packet switching, see Chapman Reply Aff. ¶¶ 25, 29, no question of present compliance stands before the Commission. See also Kansas/Oklahoma Order ¶ 245. Equally important, "new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have

⁶⁹ Second Memorandum Opinion and Order, Applications of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control, 15 FCC Rcd 17521, 17540, ¶ 34 (2000); see also Chapman Reply Aff. ¶¶ 19-20.

not yet addressed and that do not involve per se violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.” Pennsylvania Order ¶ 92.

B. Line Class Codes in Missouri

According to Sage Telecom, SWBT has refused to allow Sage access to line class codes and to other features of the SWBT switch that would allow Sage to offer expanded calling scopes in Missouri. See Sage Comments at 2. Sage complains that, while SWBT provides such access in Texas, Kansas, and Arkansas, it has refused to do so in Missouri. Id. at 3-4. But Sage is mistaken; SWBT has not refused to do anything that it is required to do.

One-way optional extended area service (“EAS”) is a retail service that SWBT offers in Texas but that it does not offer in Missouri. However, in Missouri, SWBT offers two expanded calling plans: the first is an MCA plan, see Hughes Reply Aff. ¶ 44, and the other is called Local Plus. Consistent with the orders of the Missouri PSC,⁷⁰ SWBT makes each of these plans available to CLECs purchasing the unbundled local switching element in Missouri. See Sparks Reply Aff. ¶¶ 11-12.

To date, Sage has not engaged in any in-depth substantive negotiations regarding how to implement the Missouri PSC’s orders concerning expanded calling scopes into an interconnection agreement. See id. ¶ 16. It is not even clear, therefore, that there is a dispute between Sage and SWBT on these issues; and even if a dispute did exist regarding the precise terms under which SWBT would agree to provide line class codes to Sage, “[t]he section 271

⁷⁰ Report and Order, Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Case No. TO-99-483 (Mo. Pub. Serv. Comm’n, Sept. 7, 2000) (App. G – MO, Tab 74); Report and Order, Investigation into the Effective Availability for Resale of Southwestern Bell Telephone Company’s Local Plus Service by Interexchange Companies and Facilities-Based Competitive Local Exchange Companies, Case No. TO-2000-667 (Mo. Pub. Serv. Comm’n May 1, 2001).

process simply could not function as Congress intended if [the Commission] were generally required to resolve all such disputes as a precondition to granting a section 271 application.” Kansas/Oklahoma Order ¶ 19. Moreover, this Commission has concluded under analogous circumstances that, where “the issues raised are hypothetical ones,” there is no justification to find the Bell company out of compliance with the checklist. See id. ¶ 234.

The arbitration window under section 252(b)(1) has now closed with respect to Sage’s original request to negotiate an agreement. See Sparks Reply Aff. ¶ 16 & n.12. Sage is free, of course, to request a new round of negotiations over these issues and, if necessary, to seek arbitration with the Missouri PSC.

C. Disconnection of IDSL Lines

There is no merit to the assertion by McLeodUSA that SWBT has some practice of systematically disconnecting IDSL service to McLeodUSA customers. See McLeodUSA Comments at 17-18; McLeodUSA’s Bowers Aff. ¶¶ 5-6. As explained in the Reply Affidavit of Thomas F. Hughes and in the Joint Reply Affidavit of Michael E. Flynn, Beth Lawson and Brian D. Noland, McLeodUSA placed a small number of IDSL orders in Missouri before obtaining authority from the Missouri PSC actually to offer such service. See Hughes Reply Aff. ¶¶ 51-53; Flynn/Lawson/Noland Joint Reply Aff. ¶¶ 33-34. Although these orders should have been rejected outright, SWBT’s LSC did not discover that McLeodUSA had offered such unauthorized service until after SWBT had already provisioned the requested loops. See Flynn/Lawson/Noland Joint Reply Aff. ¶ 33. Although SWBT properly disconnected this unauthorized service, it has been unable to verify whether it notified McLeodUSA before doing so. See id. at 34. McLeodUSA subsequently received authorization from the Missouri PSC on

July 23, 2001, to offer IDSL service, see Hughes Reply Aff. ¶ 52; since that date, SWBT has satisfied McLeodUSA's IDSL loop orders, see Flynn/Lawson/Noland Joint Reply Aff. ¶ 35.

McLeodUSA altogether fails to explain how SWBT's disconnecting a tiny number of unauthorized IDSL lines constitutes a competition-affecting "pattern of systematic performance disparities." Pennsylvania Order ¶ 77. SWBT has made multiple requests of McLeodUSA to reconcile the companies' apparently inconsistent internal records. See Flynn/Lawson/Noland Joint Reply Aff. ¶ 36. While McLeodUSA has yet to provide the documentation underlying its allegations, SWBT remains committed to working with McLeodUSA to resolve any data discrepancies and to allay any residual concerns that McLeodUSA may have. Id.

CONCLUSION

For the reasons presented above and in the opening brief, this Joint Application should be granted.

Respectfully submitted,



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