

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
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Joint Application by SBC Communications)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell)
Long Distance Pursuant to Section 271)
of the Telecommunications Act of 1996)
To Provide In-Region, InterLATA Services)
in Arkansas and Missouri -)

CC Docket No. 01-194

MEMORANDUM OPINION AND ORDER

Adopted: November 16, 2001

Released: November 16, 2001

By the Commission: Commissioners Abernathy and Martin issuing separate statements;
Commissioner Copps concurring and issuing a statement.

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I. INTRODUCTION

1. On August 20, 2001, SBC Communications Inc. (SBC) and its subsidiaries Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (SBCS) -- collectively, Southwestern Bell or SWBT -- filed jointly applications pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, interLATA service originating in the states of Arkansas and Missouri.² We grant these applications in this Order based on our conclusion that Southwestern Bell has taken the statutorily-required steps, as required by section 271, to open its local exchange markets in Arkansas and Missouri to competition.

2. Indeed, according to Southwestern Bell, competing carriers in Arkansas serve approximately 98,500 lines, almost 40 percent of which are residential, using all three entry paths

¹ We refer to the Communications Act of 1934, as amended, as the Communications Act or the Act. 47 U.S.C. § 151 *et seq.*

² Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, filed August 20, 2001 (SWBT Application).

available under the Act.³ Across the state, competitors serve more than 24,000 lines through unbundled network elements, and more than 34,000 lines through resale. Similarly, SWBT states that, in Missouri, competing carriers serve approximately 295,000 lines, just over 20 percent of which are residential, using all three entry paths available under the Act.⁴ Across Missouri, competitors serve more than 76,000 lines through unbundled network elements, and more than 107,000 lines through resale.⁵

3. We recognize the hard work of the Arkansas Public Service Commission (Arkansas Commission) and the Missouri Public Service Commission (Missouri Commission) to facilitate the development of successful 271 applications. Using the model adopted in the *SWBT Kansas/Oklahoma Order*, both states have built upon the successful work of the Texas Public Utilities Commission (Texas Commission), which served as a starting point for the development of their own section 271 reviews. In many ways, Southwestern Bell's process of opening its local market and satisfying the requirements of section 271 in Texas serves as a precursor, and as a model, for the process it has followed in Arkansas and Missouri. This approach has allowed states within a single Bell Operating Company (BOC) region to conduct section 271 reviews without overwhelming their regulatory resources, primarily by building on the work of other successful states in the region.⁶

4. Both the Arkansas and Missouri Commissions have taken significant steps to facilitate the opening of markets in their states to competition. The Arkansas and Missouri Commissions conducted extensive proceedings concerning Southwestern Bell's section 271 compliance, which were open to participation by all interested parties.⁷ In addition, the Commissions each adopted a broad range of performance measures and standards as well as Performance Remedy Plans designed to create a financial incentive for post-entry compliance with section 271. Moreover, once section 271 approval is granted to Southwestern Bell, we believe that the Arkansas and Missouri Commissions will continue their oversight of Southwestern Bell's performance through ongoing state proceedings. As the Commission has

³ SWBT Application at iv.

⁴ *Id.*

⁵ *Id.* at 2, 9-15.

⁶ We note that Southwestern Bell, as well as the Arkansas and Missouri Commissions, relies heavily on Southwestern Bell's statements that the non-pricing provisions of its model interconnection agreements -- including performance remedy plans -- are substantially similar to those adopted in Texas, Kansas, and Oklahoma, that it uses the same systems and processes for pre-ordering, ordering, billing, maintenance and repair, and change management, and that essentially the same measures are used to evaluate Southwestern Bell's performance. While our findings in the Texas, Kansas, and Oklahoma proceedings are a relevant factor in our analysis here, we make independent determinations of Southwestern Bell's compliance with section 271 for both Arkansas and Missouri.

⁷ A list of parties filing comments in this proceeding is included as Appendix A (List of Commenters).

recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purpose of the Act serve a vitally important role in the section 271 process.⁸

II. BACKGROUND

5. In the 1996 amendments to the Communications Act, Congress required that the BOCs demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.⁹ Congress provided for Commission review of BOC applications to provide such service in consultation with the affected state and the Attorney General.¹⁰

6. In November 1998, SWBT notified the Missouri Commission of its intent to file with the Federal Communications Commission (the Commission) an application to provide interLATA telecommunications service in Missouri.¹¹ In response, the Missouri Commission initiated a proceeding, which was open to participation by all interested parties, to examine SWBT's compliance with requirements of section 271.¹² On June 28, 2000, SWBT filed for approval of the Missouri 271 Interconnection Agreement (M2A).¹³ On March 15, 2001, the Missouri Commission issued an order approving the M2A and recommending that the "FCC

⁸ See, e.g., *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket 01-100, FCC 01-208, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149 at para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket 01-9, FCC 01-130, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*).

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

¹⁰ The Commission has summarized the relevant statutory framework in prior orders. See, e.g., *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*); *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, 15 FCC Rcd 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp. v. FCC*, 220 F. 3d 607 (D. C. Cir. 2000).

¹¹ SWBT Application at 6.

¹² *Id.* at 7.

¹³ The M2A is based on a model interconnection agreement developed by the Texas Commission.

grant SWBT's application for authorization to provide in-region, interLATA services in the state of Missouri."¹⁴

7. This is SWBT's second application to the Commission for authorization to provide in-region, interLATA services in Missouri.¹⁵ SWBT filed its first application on April 4, 2001 and subsequently withdrew it on June 7, 2001.¹⁶ As with the first application, the Missouri Commission has endorsed Southwestern Bell's application to provide in-region, interLATA services in Missouri.¹⁷

8. On July 24, 2000, SWBT filed with the Arkansas Commission an application for authorization to provide in-region, interLATA services and for approval of the Arkansas 271 Interconnection Agreement (A2A), requesting that the Arkansas Commission issue an order or report indicating its support.¹⁸ In response to SWBT's request, the Arkansas Commission issued two consultation reports which find that "the A2A will satisfy the fourteen point checklist" set out in section 271.¹⁹ Although the Arkansas Commission finds that the A2A satisfies the 14 point checklist, it declines to make a specific determination about whether SWBT meets the requirements of Track A.²⁰ The Arkansas Commission also strongly suggests that the

¹⁴ Missouri Commission Missouri I Comments at 91.

¹⁵ Commenters in this proceeding were permitted to incorporate by reference their comments from the initial Missouri Section 271 proceeding, CC Docket No. 01-88. A list of parties that incorporated their prior comments by reference is included in Appendix A (List of Commenters).

¹⁶ Letter from Priscilla Hill-Ardoin, Senior Vice President, SBC Telecommunications Inc., to Magalie Salas, Secretary, Federal Communications Commission, CC Docket No. 01-88 (filed June 7, 2001); *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc d/b/a Southwestern Bell Long Distance pursuant to section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Missouri*, CC Docket No. 01-88, Order, DA 01-1402, 16 FCC Rcd 12,036, 12,037, para. 2 (2001) (*First SWBT Missouri Order*).

¹⁷ Missouri Commission Comments at 1.

¹⁸ Arkansas Commission Comments, *attaching Application of the Southwestern Bell Telephone Company For Authorization to Provide In-Region, InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996 and For Approval of the Arkansas Interconnection Agreement*, Docket No. 00-211-U, Consultation Report of the Arkansas Public Service Commission to the Federal Communications Commission Pursuant to 47 USC Section 271(D)(2)(B), at 1-2 (Dec. 21, 2000) (Consultation Report).

¹⁹ See Arkansas Commission Comments, *attaching Application of the Southwestern Bell Telephone Company For Authorization to Provide In-Region, InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996 and For Approval of the Arkansas Interconnection Agreement*, Docket No. 00-211-U, Order No. 17 (Jun. 18, 2001) (Arkansas Commission Order No. 17); *Application of the Southwestern Bell Telephone Company For Authorization to Provide In-Region, InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996 and For Approval of the Arkansas Interconnection Agreement*, Docket No. 00-211-U, Second Consultation Report of the Arkansas Public Service Commission to the Federal Communications Commission Pursuant to 47 USC Section 271(d)(2)(B), at 12 (May 21, 2001) (Second Consultation Report); Consultation Report at 24.

²⁰ Arkansas Commission Comments, Second Consultation Report at 12.

Commission consider including potential anti-backsliding provisions, citing its “limited legal authority to ensure future performance.”²¹

9. The Department of Justice does not oppose SWBT’s section 271 application for Arkansas and Missouri, but states that it is unable fully to endorse it due to concerns about three issues.²² First, the Department of Justice raises concerns about pricing of interconnection and unbundled network elements in Missouri. Specifically, the Department of Justice states that the permanent rates may not comply with total element long run incremental cost methodology (TELRIC) principles and that there are an impermissibly high number of interim rates.²³ Second, the Department of Justice raises concerns about SWBT’s ability to provide nondiscriminatory access to its maintenance and repair functions.²⁴ Finally, the Department of Justice suggests that performance problems may occur after section 271 approval in Arkansas because of the limited enforcement authority of the Arkansas Commission.²⁵ However, the Department of Justice recognizes that the Commission may gather additional information on those issues during the pendency of the application, and “may therefore be able to assure itself the remaining questions have been answered and may be in a position to approve SBC’s [SWBT] joint application by the close of these proceedings.”²⁶

III. CHECKLIST COMPLIANCE

A. Primary Issues In Dispute

10. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.²⁷ In this Order, we rely upon the legal and analytical precedent established in those prior orders. Additionally, as in the *Verizon Pennsylvania Order*,²⁸ we include comprehensive appendices

²¹ *Id.* at 12.

²² Department of Justice Evaluation at 3.

²³ *Id.* at 6-7.

²⁴ *Id.* at 8.

²⁵ *Id.* at 12.

²⁶ *Id.* at 13-14.

²⁷ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, and 43-60; *SWBT Texas Order*, 15 FCC Rcd at 18359-61, 18365-72, 18373-78, paras. 8-11, 21-40, and 43-58.

²⁸ See *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269, App. C (rel. Sept. 19, 2001) (*Verizon Pennsylvania Order*).

containing performance data and the statutory framework for approving section 271 applications.²⁹

11. In this application, we examine performance data as reported in carrier-to-carrier reports reflecting service in the most recent four months before filing (i.e., April through July 2001).³⁰ We also examine SWBT's August 2001 performance data in a few instances for the limited purpose of confirming the acceptable performance or a trend of improvement showing in earlier months' data.

12. As in our most recent orders on section 271 applications, we focus in this Order on the issues in controversy in the record.³¹ Accordingly, we begin by addressing checklist items 2 and 14, which encompass access to unbundled network elements and resale of Southwestern Bell's service offerings, respectively. We find, as described below, that Southwestern Bell satisfies the requirements of both checklist item 2 and 14.

13. Next, we address checklist items 1, 4, 6, and 13, which cover interconnection and collocation issues, access to unbundled local loops, access to unbundled switching, and reciprocal compensation, respectively. We find that Southwestern Bell satisfies each of these checklist requirements.

14. The remaining checklist requirements are then discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Southwestern Bell has satisfied these requirements. We then consider whether Southwestern Bell has satisfied the requirements for Track A in Arkansas and Missouri. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

1. Checklist Item 2 – Unbundled Network Elements

a. Access to Operations Support Systems

15. Under checklist item 2, a BOC must demonstrate that it provides non-discriminatory access to the five operational support systems (OSS) functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.³² We find that SWBT

²⁹ See Appendices B (Arkansas Metrics), C (Missouri Metrics) and D (Statutory Requirements).

³⁰ See SWBT Application Arkansas App. A, Vol. 7, Affidavit of William R. Dysart (SWBT Dysart Arkansas Aff.), Tab B (SWBT Arkansas DOJ Performance Measurements Tracking Report); SWBT Application Missouri II App. A, Vol. 6, Affidavit of William R. Dysart (SWBT Dysart Missouri II Aff.), Tab B (SWBT Missouri DOJ Performance Measurements Tracking Report).

³¹ See *Verizon Connecticut Order*, 16 FCC Rcd at 14151-52, para. 9; *Verizon Massachusetts Order*, 16 FCC Rcd at 8996, para. 15; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6255-56, para. 39.

³² *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers. See *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; (continued. ...)

provides non-discriminatory access to its OSS in Arkansas and Missouri. Consistent with prior Commission orders, we do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that SWBT meets the nondiscrimination requirements.³³ Rather, we focus our discussion on those issues in controversy. We begin our analysis with a discussion of the threshold issue of whether SWBT's performance measurement data are reliable. We then turn to issues related to SWBT's maintenance and repair OSS arising out of the operation of SWBT's Loop Maintenance Operations System (LMOS). Finally, we specifically address other issues related to each of the other four OSS functions.

(i) **Data Reliability**

16. As a threshold matter, we are unpersuaded by the arguments of AT&T, WorldCom and El Paso-PACWEST that the detailed performance data submitted by SWBT are inherently unreliable and cannot form the basis for any meaningful assessment of SWBT's performance in Arkansas and Missouri. In particular, we conclude that SWBT need not undergo a comprehensive verification of its representations as requested by some parties.³⁴

17. As part of SWBT's application, Ernst & Young evaluated and validated SWBT's data collection processes for performance measures.³⁵ AT&T, nevertheless, contends that SWBT's performance data, as a whole, are suspect because the Ernst & Young evaluation failed to uncover performance data anomalies arising from two performance data-related problems.³⁶ AT&T supports this argument with specific complaints aimed at Ernst & Young's procedures

(Continued from previous page) _____

BellSouth South Carolina Order, 13 FCC Rcd 539, 585, para. 82. In addition, a BOC must show that it has an adequate change management process in place to accommodate changes made to its systems. *See Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102 and n.277.

³³ *See Verizon Connecticut Order*, 16 FCC Rcd at 14151, para. 8. We find that SWBT provides competitive LECs in Arkansas and Missouri with access to loop qualification information in a manner consistent with the Commission's requirements set forth in the *UNE Remand Order*. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, 15 FCC Rcd 3696, 3885-3886, paras. 427-431 (*UNE Remand Order*). In both Arkansas and Missouri, the average response time for competitive LECs' receipt of DSL loop qualification information has surpassed the benchmark performance standard and has been comparable to the average response times experienced by ASI's retail operations. SWBT Application Missouri II App. A, Vol. 2a, Affidavit of William R. Dysart (SWBT Dysart Missouri II Aff.), paras. 42-43; SWBT Application Arkansas App. A, Vol. 2, Affidavit of William R. Dysart (SWBT Dysart Arkansas Aff.), paras. 69-71.

³⁴ *See* Letter of Richard E. Young, Sidley, Austin, Brown & Wood, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-88, at 17 (filed May 24, 2001) (AT&T May 24, 2001 OSS *Ex Parte* Letter); WorldCom Missouri I Comments at 4.

³⁵ *See* SWBT Application Missouri II App. A., Affidavits of Thomas F. Hughes (SWBT Hughes Missouri II Aff.), paras. 17-18.

³⁶ AT&T Comments at 51; AT&T Comments Ex. E, Declaration of Walter W. Willard and Mark Van De Water (AT&T Willard/Van De Water Decl.), paras. 44-45. AT&T contends that SWBT's maintenance and repair performance measurements are faulty due to problems with LMOS. AT&T also asserts that SWBT has failed to properly calculate the flow-through performance metric. These issues are individually discussed *infra*.

and reports.³⁷ SWBT, however, notes that the audit, “conducted by Ernst & Young under the auspices of the Missouri PSC, concluded that SWBT’s reported data accurately reflect its performance, and that SWBT’s data gathering processes and controls were sufficient.”³⁸ After reviewing AT&T’s allegations, we find nothing sufficient to place in doubt either the correctness of the methodologies employed, or the conclusions reached in Ernst & Young’s reports.³⁹

18. We also conclude that AT&T’s specific criticisms regarding the accuracy of SWBT’s performance data do not warrant a finding of noncompliance with checklist item 2. AT&T’s data-related complaints concern the lack of reliability of the maintenance and repair and flow-through performance metrics.⁴⁰ These measurements comprise a handful of the hundreds of measurements and submeasurements for which SWBT reported data from April 2001 through July 2001.⁴¹ These two issues do not undermine the reliability of SWBT’s massive data compilation. The data submitted by SWBT in this proceeding have been subject to substantial scrutiny and review by interested parties throughout the section 271 process and, for the most part, the accuracy of the specific performance data relied upon by SWBT is not contested. Furthermore, “[w]here particular SWBT data are disputed by commenters, we discuss these challenges in our checklist analysis, below.”⁴² While the Commission believes that a systematic failure in a BOC’s data integrity may necessitate additional third party review, AT&T has not demonstrated a large-scale failure in the integrity of SWBT’s data here.

19. We conclude that WorldCom’s challenge to the accuracy of SWBT’s performance data is overbroad. WorldCom argues that SWBT’s inaccurate affidavits in prior section 271 proceedings and a lack of commercial experience in Arkansas and Missouri demonstrate that the Commission cannot rely on SWBT’s own assertions and should instead insist on a comprehensive third-party review of SWBT’s data.⁴³ While we agree that it is critical for SWBT (and other BOCs) to present accurate evidence to the Commission during section 271

³⁷ AT&T Comments at 51-52; AT&T Willard Decl., paras. 44-61.

³⁸ See SWBT Application at 158.

³⁹ In particular, AT&T has provided no evidence that SWBT or the Missouri Staff sought to limit the scope of testing deemed necessary by Ernst & Young in their professional judgment to be able to render an independent opinion on SWBT’s internal control environment and its compliance with applicable business rules/PM reporting requirements.

⁴⁰ See AT&T Comments at 51-52; AT&T Willard Decl. at paras. 43-46.

⁴¹ On a monthly basis, SWBT has provided information relative to over 700 total measurements (including principal measurements and disaggregated submeasurements) in both Arkansas and Missouri. See SWBT Dysart Arkansas Aff., Tabs A-N; Dysart Missouri II Aff., Tabs A-N.

⁴² See *SWBT Texas Order*, 15 FCC Rcd at 18377-78, para. 57.

⁴³ See WorldCom Missouri I Reply at 2. WorldCom contends that in the absence of third party testing, the Commission should not rely on “unilateral assertions that its OSS is adequate” or on SWBT’s “longstanding auditor,” Ernst & Young. *Id.* at 3; WorldCom Missouri I Comments at 12-14.

proceedings, WorldCom fails to raise a particularized complaint against the instant data submitted by SWBT. Like AT&T, WorldCom has not presented evidence of a systematic failure of SWBT's data. The Commission acknowledges the serious nature of WorldCom's data reliability issues that stem from SWBT's inaccurate statements in past applications.⁴⁴ Nevertheless, because there is no evidence to suggest that SWBT has made any false statements in its August 20, 2001 application, we do not believe it necessary to require a third-party review of SWBT's data.⁴⁵

20. We are similarly not persuaded by El Paso-PACWEST's claim that SWBT's performance measurement submissions are suspect because the Arkansas Commission declined to perform an independent review of SWBT's performance data.⁴⁶ We acknowledge that the Commission has relied on the ability of state commissions to rigorously review performance data, identify problems, and work with applicants and competitors to improve performance and resolve disputes even before a section 271 application is filed with this Commission.⁴⁷ Indeed, in light of the statutory 90-day review process, the Commission encourages, and expects, careful review of performance data by state commissions. In this case, much of the record evidence of checklist compliance or lack of competitive significance is uncontroverted, and therefore the Department of Justice and Commission staff have been able to identify performance problems as discussed herein. Therefore, given the particular facts of this case, we decline to conclude that SWBT's data are inherently suspect.

(ii) Maintenance and Repair

(a) Overview

21. We conclude that SWBT has demonstrated that it provides nondiscriminatory access to maintenance and repair OSS functions.⁴⁸ As set out below, we find that, while commenters raise questions about the functioning of SWBT's maintenance and repair databases,

⁴⁴ See, e.g., *SBC Communications, Inc Apparent Liability for Forfeiture*, FCC 01-308 (rel. Oct. 16, 2001) (finding SBC apparently liable for a \$2.52 million forfeiture for apparent violations of the SBC/SNET consent decree and 47 C.F.R. §§ 1.17 and 1.65).

⁴⁵ Notably, Ernst & Young submitted an attestation that confirms SWBT's assertion that it undertook corrections of the problem that results in orders posting out-of-sequence. See SWBT Application Arkansas and Missouri II Affs. A, Vol. 4, Affidavits of Michael Kelly (SWBT Kelly Arkansas Aff., SWBT Kelly Missouri II Aff.), paras. 2, 5. We note, however, that where we are presented with evidence that an applicant has established a pattern of providing inaccurate information, we are not precluded from requiring third-party review of such information.

⁴⁶ See El Paso-PACWEST Comments at 26.

⁴⁷ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3958-59, para. 10 (commending the New York Public Service Commission for overseeing third party testing which "identified numerous shortcomings in Bell Atlantic's OSS performance that were subsequently corrected and re-tested.").

⁴⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4066-67, para. 211.

these potential deficiencies have not had a significant effect on competitive entry in Arkansas and Missouri and, as such, do not warrant a finding of noncompliance with checklist item 2. We base this conclusion both on the additional measures implemented by SWBT to ensure nondiscriminatory access, including electronic and manual process changes and on our finding that only a relatively small number of trouble tickets are affected in Arkansas and Missouri.

(b) Background

22. SWBT explains that competing carriers may electronically access its maintenance and repair functions for UNE-Loop, UNE-platform, and resale through either of two electronic interfaces. The two interfaces are the Electronic Bonding Trouble Administration Interface (“EBTA”) and the Toolbar Trouble Administration (“TBTA”) application available from the SWBT Toolbar platform.⁴⁹ SWBT’s more widely used electronic maintenance and repair interface is TBTA. TBTA is a graphical user interface that SWBT makes available to competitive LECs so they may electronically submit and check on the status of trouble reports.⁵⁰

23. SWBT uses LMOS on a five-state basis to accommodate the processing of trouble reports for competitive LEC resale and UNE-platform accounts.⁵¹ SWBT explains that the processing of a UNE-platform order affects the LMOS line record for that telephone number in two ways. First, the “D,” or disconnect, order changes the status of the line record in LMOS to disconnected.⁵² Second, the “C,” or change, order updates the line record to reflect the competitive LEC that placed the UNE-platform order as the customer’s new service provider.⁵³

⁴⁹ See, e.g., SWBT Application Arkansas and Missouri II Apps. A., Affidavits of Beth Lawson (SWBT Lawson Arkansas Aff., SWBT Lawson Missouri II Aff.), para. 202. SWBT offers EBTA as an application-to-application interface. EBTA permits competitive LECs to submit trouble reports, and to receive trouble status updates and closure information. Competitive LECs that employ EBTA have the opportunity to integrate the interface with their own back office systems. However, due to the intricacies and costs associated with EBTA, small and medium-size competitive LECs generally do not utilize the EBTA application. See SWBT Lawson Missouri II Aff., para. 210.

⁵⁰ SWBT Lawson Missouri II Aff., para. 205. In addition, TBTA can be used to initiate a Mechanized Loop Test (MLT) and receive the test results for resold POTS lines without initiating a trouble report. The TBTA application is also designed to flow through electronically to LMOS, a SWBT back office system.

⁵¹ See SWBT Application Arkansas and Missouri II Apps. A, Affidavits of Daniel J. Coleman, William R. Dysart, and David R. Smith (SWBT Coleman/Dysart/Smith Arkansas Aff., SWBT Coleman/Dysart/Smith Missouri II Aff.), paras. 8-9.

⁵² SWBT claims that the designation of “disconnected” affects only the LMOS record, and has no impact on service to the end user. Coleman/Dysart/Smith Missouri II Aff., para 11 n.2.

⁵³ There are also additional functions of the D and C orders. In particular, the D and C orders serve critical billing functions. The D order removes the current service provider – SWBT or a reseller – in the Customer Records Information System (CRIS) billing system, while the C order inserts the new service provider and moves the account to the Carrier Access Billing System (CABS). See SWBT Coleman/Dysart/Smith Missouri II Aff., para 10.

24. During SWBT's initial section 271 application in Missouri, commenters alleged that TBTA was not functioning properly.⁵⁴ Subsequently, SWBT acknowledged that there were instances in which the C order posted to LMOS prior to the D order.⁵⁵ Because the C order encountered a working line, it would error out to the LMOS Data Resolution Center (LDRC) for manual handling.⁵⁶ When the D order subsequently posted to LMOS, it changed the status of the line record to disconnected. The disconnected status of the LMOS record would then prevent competitors from submitting electronic trouble reports, among other things.⁵⁷

25. While the original Missouri application was pending, the Texas Commission determined that "SWBT failed to update competitive LEC circuit data in LMOS database in a timely manner" and that "performance data reported by SWBT understates a competitive LEC's trouble report rate and potentially overstates SWBT retail rate used for parity comparison."⁵⁸ Therefore, the Texas Commission ordered an audit of LMOS that has not yet commenced.⁵⁹

⁵⁴ See AT&T Missouri I Comments at 43-44; El Paso-PACWEST Missouri I Comments at 18. SWBT withdrew its initial application for section 271 authority in Missouri, in part, because it determined that it was unable to address the many LMOS-related issues within the statutory 90-day review period. See Letter from Priscilla Hill-Ardoin to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-88 (filed June 7, 2001).

Parties to this proceeding point out that the initial Missouri application was withdrawn because the Commission discovered that SWBT had filed inaccurate affidavits related to LMOS in prior section 271 proceedings. See Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-88 (filed June 8, 2001) (SWBT June 8, 2001 Withdrawal Letter). The Commission takes these matters seriously and is investigating whether SWBT violated any Commission rules when it provided inaccurate affidavits related to LMOS in a separate proceeding.

⁵⁵ SWBT acknowledges the continuing existence of the sequencing problem when it indicates that every two weeks the company manually updates the UNE-platform information in LMOS with information from CABS. See SWBT Coleman/Dysart/Smith Missouri II Aff., para 15.

⁵⁶ There are two distinct LDRC teams. The LDRC team in the Oklahoma location handles LMOS errors for Arkansas, Kansas, Missouri and Oklahoma, while the LDRC teams in the Houston and San Antonio locations handle Texas errors. LDRC employees in both locations report to a single Area Manager-LMOS, who also is responsible for LMOS Staff system support and who, in turn, reports to Daniel Coleman, Interim General Manager – Repair Systems support. *Id.*, para. 49.

⁵⁷ SWBT explains that "[i]f a CLEC attempts to create an electronic trouble report via TBTA on a telephone number while the LMOS record is in disconnected status, TBTA will return the message '[t]his TN has been disconnected or ported out. No information available.'" See SWBT Coleman/Dysart/Smith Missouri II Aff., para. 13.

⁵⁸ See Texas Commission, TPUC Project No. 20400, Order No. 33 (June 1, 2000).

⁵⁹ Although the Texas Commission has issued a request for proposals for the LMOS –related audit, the auditor will not be selected until the Texas Commission's December 7, 2001 Open Meeting. See Public Utility Commission Request for Proposals for a Compliance Audit of Southwestern Bell Telephone Company Performance Measures, Project No. 20400.

(c) Discussion

26. We conclude, based on the record before us, that competitors are able to open trouble tickets in a manner that satisfies the nondiscriminatory access standard of checklist item 2. We affirm that the availability of systems that permit competitive LECs to process trouble tickets in a manner that is nondiscriminatory is important to ensuring that the incumbent LEC is complying with the Act and providing an adequate opportunity for competitive entry. In this case, we conclude, as described below, that there is currently no competitive impact caused by SWBT's handling of trouble tickets in Arkansas and Missouri, though we share commenters' concerns that there continue to be operational problems associated with the LMOS database. We find that SWBT has taken and continues to take steps to identify and correct problems, and we believe that the upcoming audit by the Texas Commission will further refine SWBT's maintenance and repair processes, if necessary. Although we do not find evidence of competitively significant problems in Arkansas and Missouri at this time, we will closely monitor SWBT's LMOS performance in the future and are prepared to take appropriate enforcement action should conditions associated with the process erode.

27. SWBT states that it has addressed concerns about the LMOS database – most notably concerns about the sequencing of C and D orders on retail and resale to UNE-platform conversions by taking several actions. First, on March 29, 2001, SWBT altered its procedures for updating the LMOS database. LMOS now receives a file containing the D order after it has completed in the Service Order Retrieval and Distribution (SORD) system rather than waiting for the D order to post to CRIS.⁶⁰ C orders, however, follow a less direct path first to SORD, then to the CABS billing system and finally to LMOS.⁶¹ On May 11, 2001, SWBT implemented a second change, utilizing a feature in Telcordia's latest release of the Work Force Administration/Dispatch Out (“WFA/DO”) software to send only D orders to SORD each

⁶⁰ Every night during the business week, SORD produces what it refers to as a BU340 file, which contains information on all service orders (including all completed C and D orders) distributed that business day. SORD then makes the BU340 file available for posting to downstream systems, including LMOS. *See* SWBT Coleman/Dysart/Smith Missouri II Aff., para. 16. Also on a nightly basis (during the business week), CRIS program BJ501 produces a file containing information on all service orders posted to CRIS and CABS for that business day (referred to as the “BJ501 file”). The BJ501 file is made available that night to other systems, including LMOS and SORD, for posting. SORD will reflect the next business day as the posted date. *See* Coleman/Dysart/Smith Missouri II Aff., para. 16.

⁶¹ AT&T argues that SWBT's March 29, 2001 change in its handling of D orders is, in fact, the same change that SWBT proffered in the Texas section 271 proceeding to resolve problems that AT&T experienced with testing and reporting trouble on lines for combined loop and port orders. AT&T May 24, 2001 OSS *Ex Parte* Letter at 7 quoting SWBT Ham Texas Aff., CC Docket No. 00-4, para. 223 (“In June 1999, SWBT changed programming so that LMOS no longer waits for Disconnect orders to post to completion before processing them. Disconnect orders are now processed from SORD distribution.”). The likely existence of discrepancies in SWBT's prior affidavits has been acknowledged by SWBT. *See* SWBT June 8, 2001 Withdrawal Letter. As indicated above, these statements are not part of the record in this proceeding.

morning, before any other order types, including C orders, are sent to SORD.⁶² SWBT asserts that taken together, these changes are designed to ensure that the D and C orders arrive at LMOS in the correct sequence, thus, enabling competitors access to their customers' records for maintenance and repair purposes. In addition, SWBT conducts bi-weekly comparisons of information on UNE-platform lines in both CABS and LMOS and updates the UNE-platform information in LMOS as necessary.⁶³ According to SWBT, these bi-weekly comparisons will identify and update any UNE-platform record improperly reflecting a disconnected status in the LMOS database.

28. At the time of the Department of Justice's filing, prior to the receipt of reply comments and several *ex parte* filings related to LMOS, it concluded that "the record does not yet demonstrate that SBC has adequately resolved problems with its maintenance and repair systems."⁶⁴ Accordingly, the Department of Justice urged the Commission to "assure itself that these problems do not impede the competitive LECs' ability to compete."

29. Commenters in this proceeding contend that there continue to be operational problems associated with the LMOS database. Specifically, AT&T and other competitive LECs argue that: (i) SWBT has failed to resolve sequencing problems related to LMOS; (ii) timing delays in the posting of orders to LMOS prohibit electronic access; (iii) new LMOS related problems continue to occur; and (iv) SWBT's LMOS related performance measurements have not been adequately disclosed. We discuss these allegations and SWBT's responses below.

30. First, commenters argue that SWBT has not shown that its systems are updating LMOS records fully, correctly, and promptly.⁶⁵ These commenters note SWBT's admission that sequencing problems continue to occur: "[w]hile the systems are designed such that 'D' and 'C' orders will post to LMOS in the correct sequence on retail and resale to UNE- platform conversions, service order or other system errors may still occur that result in the LMOS record improperly remaining in disconnected status."⁶⁶ The Department of Justice also contends that

⁶² See SWBT Coleman/Dysart/Smith Missouri II Aff., para. 19. SWBT indicates that it has instituted a new daily auto completion run – composed solely of D orders – beginning at 9:00 a.m. for Texas and 11:00 a.m. for Missouri, Oklahoma, Kansas and Arkansas. The early run is designed so that all D orders in the first run complete before any other order types are sent to SORD, including the C orders. According to SWBT, this change ensures that all of the day's D orders reach SORD before 6 p.m., when SORD sends completed D orders to LMOS and completed C orders to CABS. See *id.*, paras. 19-20, n.9. However, SWBT explains that orders received by SORD after 6 p.m. are held until the next day.

⁶³ See SWBT Coleman/Dysart/Smith Missouri II Aff., paras. 27-31.

⁶⁴ Department of Justice Evaluation at 3.

⁶⁵ AT&T Comments at 78-79; El Paso-PACWEST Comments at 24-26; WorldCom Comments at 15-17; Department of Justice Evaluation at 3.

⁶⁶ See SWBT Coleman/Dysart/Smith Missouri II Aff., para. 20 n.10, 27; AT&T Willard/Van De Water Decl., para. 18; see also Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. to Magalie (continued....)

“[t]he most recent evidence in the record suggests that on a regional basis, new LMOS errors have continued to arise at an increasing rate.”⁶⁷ In response to the specific concerns of the Department of Justice, SWBT provided updated LMOS data that it claims will properly state errors as a percentage of new orders because they do not include both the addition and disconnection of records in LMOS for a particular period.⁶⁸ Second, AT&T argues that despite SWBT’s efforts related to sequencing, it has failed to demonstrate that C orders post to LMOS in a timely manner.⁶⁹ AT&T reasons that if the C orders post in the proper sequence, but not in a timely manner, competitive LECs would still be unable to submit electronic trouble tickets.⁷⁰ SWBT, nevertheless, contends that “CLECs are able to open a very high percentage of UNE-P trouble tickets electronically within the first 3-5 days after installation.”⁷¹

31. Third, commenters highlight the fact that two additional LMOS-related problems have recently occurred. The first problem occurred between June 6 and July 19, 2001, when over 25,000 LMOS line records were disconnected.⁷² In its October 1, 2001 *Ex Parte* Letter, SWBT explains that the errors occurred because “[r]ather than issuing C service orders for disconnection of the lines in question, three different LSC representatives erroneously issued CABS D

(Continued from previous page)

Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-194 at 1 (filed Oct. 1, 2001) (SWBT Oct. 1, 2001 LMOS *Ex Parte* Letter) (“It is surely the case that LMOS is not perfect.”).

⁶⁷ Department of Justice Evaluation at 3. The Department of Justice arrived at this conclusion by setting the number of new errors in LMOS against the monthly change in the total number of UNE-platform records in LMOS and found error rates of approximately 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. See SWBT Coleman/Dysart/Smith Missouri II Aff., Attachs. C, D & E. The Department, however, noted that because the denominator of its calculation includes SBC’s churn -- *i.e.*, it reflects both the addition and disconnection of records in LMOS for a particular period -- it overstates errors as a percentage of new orders. Department of Justice Evaluation at 3. See SWBT Coleman/Dysart/Smith Missouri II Aff., para. 29.

⁶⁸ SWBT’s data, nevertheless, raise concerns because its error rate continues to vary considerably among the five states. SWBT’s LMOS error rate on September 10, 2001, for example, was 11.11% in Texas and .38% in Missouri. See Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-194 at 1 (filed Oct. 22, 2001) (SWBT Oct. 22, 2001 *Ex Parte* Letter), Att. B at 2. If such state-by-state disparities continued to occur, it would “rais[e] questions about the consistency of SBC’s manual error correction performance between states.” See Department of Justice Evaluation at 10. SWBT, however, explains that these disparities are based on “specific systems issues with region-wide effects which SWBT either has corrected or is in the process of investigating.” See Dysart/Noland/Rentler/Smith Reply Aff., para 35.

⁶⁹ AT&T Willard/Van De Water Decl., para. 17. AT&T explains that the timeliness of C orders is important because the update to an LMOS record on a migration to UNE-platform is only effective after both the D and C orders have been posted to LMOS.

⁷⁰ AT&T Willard/Van De Water Decl., para. 17.

⁷¹ See Dysart/Noland/Rentler/Smith Reply Aff., para. 39.

⁷² See SWBT Coleman/Dysart/Smith Missouri II Aff., para. 17.

orders.”⁷³ SWBT represents that it has re-trained its personnel in an attempt to avoid similar errors in the future.⁷⁴ Similarly, AT&T submits that its July 28, 2001 and August 29, 2001 LMOS-related tests demonstrate that “LMOS records for Missouri UNE-P customers are not updated until at least 3 business days after completion of the UNE-P conversion.”⁷⁵ In response, SWBT contends that AT&T’s tests overstate the updating problem because “AT&T chose to run the test during the processing period for its CABS UNE-P bills.”⁷⁶ SWBT notes, however, that during the processing period for its CABS UNE- platform bills, there is a three-to-four day period when service orders are held in “interim status” and not allowed to post to CABS until after the bill processing period ends.⁷⁷

32. Finally, commenters argue that SWBT may not have fully disclosed the impact of LMOS problems on its performance measurements. Before the Texas Commission, SWBT acknowledged that eight performance measures “utilize the LMOS database for reporting purposes.”⁷⁸ Nevertheless, SWBT has not recalculated four maintenance and repair performance metrics for this Commission.⁷⁹ This information, however, may not be available to SWBT. On reply, SWBT explained that it “is not able to provide a restatement of the performance measurements related to trouble reporting since there is no practical way from a historical basis to determine which tickets were mis-classified to the wrong CLEC.”⁸⁰ Based on SWBT’s sworn assertion that it cannot do the recalculation without significant CLEC input, we rely on the

⁷³ SWBT Oct. 1, 2001 LMOS *Ex Parte* Letter at 9. The CABS D order proceeded to disconnect an entire CABS Billing Account Number (BAN), instead of individual lines. SWBT Coleman/Dysart/Smith Missouri II Aff., para. 22.

⁷⁴ SWBT Oct. 1, 2001 LMOS *Ex Parte* Letter at 10.

⁷⁵ See AT&T’s Willard/Van de Water Decl., para. 23.

⁷⁶ See SWBT Dysart/Noland/Rentler/Smith Reply Aff., para. 15.

⁷⁷ AT&T argues that this process delay means that competitive LECs will be unable to electronically enter trouble tickets 20 percent of the time in Arkansas and Missouri and even more so in Texas where there are two billing cycles each month. Letter of Richard E. Young, Sidley, Austin, Brown and Wood, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 01-194 (filed Oct. 16, 2001) (AT&T Oct. 16, 2001 OSS *Ex Parte* Letter) at 2. SWBT, however, explains that UNE-P orders are not affected by multiple billing cycles because “[a]ny given UNE-P service order is associated with only one billing date.” SWBT Oct. 22, 2001 *Ex Parte* Letter at 3.

⁷⁸ SWBT Comments (Texas Commission - Apr. 19, 2001). The eight performance metrics are: PM 35 -- Percent POTS/UNE-P Trouble Report within 10 Days of Installation; PM 37 -- Trouble Report Rate; PM 37.1 -- Trouble Report Rate Net of Installation and Repeat Reports; PM 41 -- Percent Repeat Reports; PM 38 -- Missed Repair Commitments; PM 39 -- Receipt To Clear Duration; PM 40 -- Percent Out of Service Less Than 24 Hours; PM 35.1 -- Percent UNE-P Trouble Reports On the Completion Date.

⁷⁹ See SWBT Coleman/Dysart/Smith Missouri II Aff., para. 59.

⁸⁰ SWBT Dysart/Noland/Rentler/Smith Reply Aff., para. 58. We note, however, that the Texas Commission audit will attempt to recalculate all eight performance data measurements that SWBT indicated were affected by the LMOS updating problem. See Texas Commission, TPUC Project No. 20400, Order No. 33 (June 1, 2000).

performance data that it has provided to the Commission as evidence of its compliance with these key metrics. Should the Commission determine that there is a material difference in these four measures, we retain authority to review our determination that SWBT provides nondiscriminatory access to maintenance and repair OSS functions.

33. Although commenters raise legitimate concerns about whether competitors consistently are able to open electronic trouble tickets for newly converted UNE-platform customers within the first few days after an order is placed, we conclude that the actual competitive impact of the noted LMOS problems appears limited. According to SWBT's data, the overall number of trouble tickets that are likely to be affected by the LMOS problems is relatively small in Arkansas and Missouri.

34. Specifically, it appears that the potential programmatic problems impact a very small number of competitive LEC trouble reports in Arkansas and Missouri and there is no evidence before us that any end user's repairs were delayed as a result of the described LMOS problems.⁸¹ Data from Missouri demonstrate this point. In Missouri in July, SWBT processed 3,929 UNE-platform service orders that could have generated a trouble report within the first 5 days. During the June through August time period, only 1.14 percent of all UNE-platform service orders had a trouble ticket submitted within the first five days. Applying that percentage to Missouri's July UNE-platform service order activity results in approximately 45 trouble tickets issued on these service orders within the first five days after provisioning. SWBT further contends that over 85% of all trouble tickets submitted within the first five days can be processed electronically.⁸² Thus, according to SWBT, in the month of July only approximately 6 or 7 trouble tickets required manual handling for all competitive LECs, combined, in the state of Missouri.⁸³ These assertions are unchallenged on the record.⁸⁴ Accordingly, we do not believe that this degree of manual processing warrants a finding of non-compliance with checklist item 2.

35. We find that there is compliance with checklist item 2 based on our evaluation of the competitive impact of the posting errors in Arkansas and Missouri. Those errors are extremely small in number and can readily be resolved by manual processing. Under these specific circumstances, we find no adverse competitive impact from any processing errors that may now exist. No credible record evidence suggests that the need to manually process such a limited number of orders would result in discriminatory access to maintenance and repair functions. We nonetheless urge commenting parties to inform the Commission if SWBT's LMOS performance falls below section 271's nondiscrimination standard in Arkansas or

⁸¹ See SWBT Reply at v ("no commenter has identified in its comments a single instance in which it was unable to open an electronic trouble ticket to report an *actual* end-user trouble").

⁸² See SWBT Dysart/Noland/Rentler/Smith Reply Aff., para. 45.

⁸³ See SWBT Dysart/Noland/Rentler/Smith Reply Aff., paras. 47-48.

⁸⁴ See SWBT Oct. 22, 2001 *Ex Parte* Letter at 1.

Missouri.⁸⁵ Moreover, we are encouraged by the active involvement of the Texas Commission, which is currently supervising an audit of the LMOS database and associated performance measurements used by SWBT in Arkansas and Missouri.⁸⁶ As stated, we arrive at the conclusion that SWBT's LMOS problems present limited competitive significance, in large part, due to the limited demand for UNE-platform lines in Arkansas and Missouri.

36. We will closely monitor the state of SWBT's LMOS for the foreseeable future. We are prepared to take appropriate enforcement action should the number of lines disconnected in LMOS become more commercially significant or widespread in Arkansas or Missouri. For all these reasons, we conclude that SWBT complies with checklist item 2 as it relates to maintenance and repair of OSS systems.

(iii) Pre-ordering

37. We find that SWBT provides carriers in Arkansas and Missouri nondiscriminatory access to all pre-ordering functions and enables these carriers to integrate pre-ordering and ordering functions through DataGate and VeriGate. Navigator, nevertheless, suggests that it experiences a variety of problems when attempting to reserve a telephone number using Verigate.⁸⁷ Because these arguments are based on unsupported evidence alone, we find that they are insufficient to warrant a finding of checklist noncompliance. Such unsupported evidence does not overcome the detailed affidavit and performance data evidence submitted by SWBT that indicates that Verigate and other SWBT systems operate properly.⁸⁸

(iv) Ordering

38. For those functions of the ordering systems for which there is a retail analogue, we find that SWBT demonstrates, with performance data and other evidence, that it provides

⁸⁵ In theory, there are several competitive problems that may result if competitive LECs are unable to resolve maintenance problems on a nondiscriminatory basis. For example, if competitive LECs cannot resolve their customers' maintenance problems on the same mechanized, timely basis that SWBT is able to achieve for its own customers, LMOS problems may result in discriminatory delay. AT&T alleges that even after "the delay necessitated by the duplicative, manual submission, further delay inevitably results as SWBT and the CLEC resolve the confusion over who is the true 'owner of the circuit.'" See AT&T Willard/Van de Water Decl., para. 28. We agree that this practice, if true, would appear to violate the section 271 requirement that SWBT provide nondiscriminatory access to network elements. 47 U.S.C. § 271(B)(ii). AT&T, however, fails to support this allegation with specific evidence. These concerns about the process of submitting electronic trouble tickets are particularly important because the inability to submit trouble tickets may result in loss of customers and damage competitors' reputations. AT&T Willard/Van De Water Decl., paras. 11-12, 31-32. In addition, manual processing exposes competitors to the increased likelihood of error and imposes increased costs on competitive LECs for training of personnel.

⁸⁶ See Texas Commission TPUC Project No. 20400, Order No. 33 (June 1, 2000).

⁸⁷ See Navigator Comments at 8-9.

⁸⁸ See SWBT Dysart Missouri II Aff., Tab F, F-1 (PMs 1-16 through 1-27); SWBT Reply at 7.

competing carriers with access to its OSS systems in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, we find that SWBT's systems and performance allow an efficient carrier a meaningful opportunity to compete. Consistent with these findings, we specifically discuss below SWBT's performance related to order confirmation notices, order rejection notices, and order flow-through rates.

(a) Order Confirmation Notices

39. We find that SWBT provides order confirmation notices in a manner that affords competitors a meaningful opportunity to compete.⁸⁹ In making this determination, we rely on data that indicate that SWBT provides competing carriers access to confirmation notices for orders for resale, UNE-platform, unbundled loop, xDSL, and number portability. For example, SWBT demonstrates that it returns timely order confirmation notices to competing carriers in Missouri that either use mechanized interfaces (EDI and LEX) to submit orders or that submit orders for "manual" processing (i.e., via fax). In fact, SWBT met the relevant performance benchmark for each service type in the months most relevant for the instant application with only scattered exceptions.⁹⁰ Absent evidence of discrimination or competitive harm, we find that SWBT's performance in returning timely order confirmation notices provides efficient competitors with a meaningful opportunity to compete. We reject the arguments to the contrary by El Paso-PACWEST and McCleodUSA for lack of a systematic failure of SWBT's order confirmation notice process.⁹¹

(b) Order Rejection Notices

40. Based on the evidence in the record, we conclude that SWBT provides competing carriers with timely order rejection notices in a manner that allows them a meaningful opportunity to compete. Specifically, SWBT's performance data demonstrate that it returns order rejection notices in a timely manner over both EDI and LEX, and manually.⁹² We are

⁸⁹ See *SWBT Texas Order*, 15 FCC Rcd at 18438-40, paras. 171-73; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-37, para. 164, 4047-48, para. 180.

⁹⁰ See *SWBT Dysart Missouri II Aff.*, Tabs F, F-2 (PM5). El Paso-PACWEST argue that SWBT's failure to meet PM 5-18 in Missouri demonstrates that CLECs experienced difficulties in ascertaining the status of their orders. El Paso-PACWEST Missouri I Comments at 17-18. SWBT, however, has consistently met the parity measurement for PM 5-18 since March 2001. Based on the totality of the circumstances, the limited and historical failures raised by El Paso-PACWEST appear to be temporary, rather than systemic conditions. Similarly, in Missouri, SWBT narrowly missed PM 5-30 in July 2001 and in Arkansas, it missed 5-14 in May 2001 and 5-22 in April 2001. Despite these limited problems, SWBT's performance provides competitors with a meaningful opportunity to compete.

⁹¹ El Paso-PACWEST Missouri I Comments at 17-18; McLeod Missouri I Comments at 28.

⁹² From April 2001 to July 2001, SWBT's EDI rejection rate remained below 31.2% in Missouri and 33.9% in Arkansas. These reject rate are considerably lower than both the 40.5% reject rate for EDI in August 2000 for Kansas and the 38.6% reject rate for the same month in Oklahoma as set out in SWBT's Kansas/Oklahoma 271 (continued....)

unpersuaded by McLeod's bare allegation that SWBT is discriminating by manually rejecting some of its LEX orders.⁹³ McLeod has not provided any evidence that meaningfully challenges the data provided by SWBT. Thus, we conclude that SWBT provides competing carriers with timely order rejection notices in a manner that allows them a meaningful opportunity to compete.⁹⁴

(c) Order Flow-Through Rate

41. Based on the evidence in the record, we find that competing carrier orders flow through SWBT's systems in substantially the same time and manner as they flow through for SWBT's orders.⁹⁵ Despite some minor disparities in SWBT's performance, we find sufficient evidence to conclude that SWBT's systems are capable of achieving high overall levels of order flow-through.⁹⁶ We are unpersuaded by El Paso-PACWEST's assertion that SWBT discriminates against competing carriers because its LEX flow-through rate in Missouri is lower than its analogous retail flow-through rate.⁹⁷

42. Specifically, El Paso-PACWEST argues that the restated data for PM 13-02 (Order Process Percent Flow Through – LEX) demonstrate that SWBT has not met the standards for parity performance since September 2000.⁹⁸ However, LEX flow-through rates have increased significantly in Arkansas from 66.3% in January 2001 to over 80% in June 2001.⁹⁹ In Missouri, the same rates have increased from 68.0% in January 2001 to over 83% in each of the most

(Continued from previous page) _____
application. The Missouri reject rates for LEX during the same months were 43.7% and 47% between April and July 2001. In Arkansas, the LEX rejection rates were between 36.7 and 43.7%. See SWBT Dysart Arkansas and Missouri II Affs., Tab F, Measurement Nos. 10.1 and 11.1.

⁹³ McLeod Missouri I Comments at 26 (claiming that 15-20 percent of its LEX are rejected for "no valid reason" because a SWBT manager will eventually accept the order).

⁹⁴ See, e.g., SWBT Application Arkansas App. A, Vol. 5, Affidavit of Brian D. Noland (SWBT Noland Arkansas Aff.), para. 42; SWBT Application Missouri II App. A, Vol. 6, Affidavit of Brian D. Noland (SWBT Noland Missouri II Aff.), para. 44.

⁹⁵ Competing carriers' orders "flow-through" if they are submitted electronically and pass through SWBT's ordering OSS into its back office systems without manual intervention. The Commission traditionally uses order "flow-through" as a potential indicator of a wide range of problems that we consider in determining whether a BOC provides nondiscriminatory access to its OSS. *Bell Atlantic New York Order*, 15 FCC Rcd at 4033, n.488.

⁹⁶ See SWBT Dysart Arkansas Aff., Tab B at B-46, Measurement 13 (Order Process % Flow Through); SWBT Dysart Missouri II Aff., Tab B at B-46, Measurement 13 (Order Process % Flow Through).

⁹⁷ See El Paso-PACWEST Missouri I Comments at 16.

⁹⁸ See El Paso-PACWEST Missouri I Comments at 23. With the exception of March and April 2001, El Paso-PACWEST's assertions are correct. SWBT's rates are constantly near or above 90% flow-through. See SWBT Dysart Missouri II Aff., Tab B, Measurement No. 13.

⁹⁹ See SWBT Dysart Arkansas Aff., para. 46.

recent three months.¹⁰⁰ Thus, flow-through rates for competitors are experiencing a positive trend upward. Furthermore the flow-through rate for both Arkansas and Missouri competitive LECs using LEX was less than four percentage points below SWBT's retail order flow-through rate. Notably, flow-through rates are not the sole factor the Commission uses to determine whether a BOC has treated its competitors in a nondiscriminatory manner.¹⁰¹ In any event, the Arkansas and Missouri flow-through rates are better than those accepted by the Commission in the *SWBT Kansas/Oklahoma Order*.¹⁰² Thus, the record in this proceeding, taken as a whole, does not reflect that SWBT's LEX flow-through fails to provide competitors with nondiscriminatory access to its OSS. Moreover, as in the *SWBT Texas Order*, we place more weight on EDI flow-through results than on the LEX flow-through results because EDI is the industry standard application-to-application interface.¹⁰³

43. We also reject AT&T's contention that SWBT's flow-through rates are unreliable because the performance data were calculated in a manner inconsistent with the applicable business rules.¹⁰⁴ SWBT's Arkansas/Missouri II Application demonstrates that even when the data are recalculated consistent with AT&T's interpretation of the business rules, SWBT's overall flow-through numbers are acceptable.¹⁰⁵ Furthermore, under the Texas Commission's current interpretation of the flow-through measure, SWBT's performance is consistent with performance accepted in prior section 271 orders.

(v) Provisioning

44. Based on the evidence in the record, we conclude SWBT provisions unbundled network elements in a nondiscriminatory fashion. Accordingly, we disagree with El Paso-PACWEST, which argues that "[t]here are serious concerns about the functionality and capacity of SWBT Missouri systems."¹⁰⁶ Specifically, El Paso-PACWEST contends that SWBT's success

¹⁰⁰ See *SWBT Dysart Missouri II Aff.*, para. 46.

¹⁰¹ See *SWBT Texas Order*, 15 FCC Rcd at 18444, para. 179.

¹⁰² See *SWBT Kansas/Oklahoma Order*, paras. 145-46.

¹⁰³ See *SWBT Texas Order*, 15 FCC Rcd at 18444, para. 180, n.489.

¹⁰⁴ AT&T Missouri I Comments at 47; AT&T Willard Missouri I Decl. paras 34-43; AT&T May 24, 2001 OSS *Ex Parte* Letter at 12-15. According to AT&T, SWBT has calculated the data using a methodology that overstates EDI and LEX flow-through for CLECs and may underestimate SWBT's own flow-through rates for Easy Access Sales Environment (EASE). AT&T Willard Missouri I Decl. at paras. 37-40. Specifically, AT&T asserts that SWBT excluded from the denominator of the flow through PM (13) any UNE- platform order that is not designed to flow-through, but would flow through EASE if submitted by SWBT retail operations. Thus, AT&T suggests that SWBT's flow-through data does not accurately compare similar orders.

¹⁰⁵ SWBT Reply at 37 n.42; see also *Verizon Pennsylvania Order*, para. 49; *Verizon Massachusetts Order*, para. 78.

¹⁰⁶ El Paso-PACWEST Missouri I Comments at 15.

ratio¹⁰⁷ in Missouri impermissibly remains below ninety percent.¹⁰⁸ The Commission does not use a BOC's success ratio as an indicator of adequate performance. Rather, the Commission focuses on key performance metrics rather than the success ratio as a whole. El Paso-PACWEST also questions whether SWBT has the capability to scale its OSS to handle the increased volumes¹⁰⁹ but provides no evidence to substantiate this concern. El Paso-PACWEST fails to explain why the Commission should not continue to rely on the capacity and stress tests conducted in Texas.¹¹⁰ Absent such a showing, we find that SWBT's OSS remain scalable.

(vi) **Billing**

45. We find that SWBT provides competing carriers nondiscriminatory access to the functionality of its billing systems.¹¹¹ We reject El Paso-PACWEST's claim that SWBT must demonstrate a period of "sustained compliance" concerning billing completeness because it did not meet the metric for billing completeness in 12 out of the 16 months prior to January 2001.¹¹² We find that competitors were provided with parity performance related to billing completeness in the months most relevant for the purpose of the instant application.¹¹³ Moreover, SWBT's current trend of parity performance outweighs any concerns about historical deficiency.¹¹⁴

46. We also reject McLeod's argument that, because it has allegedly had unreasonably protracted billing disputes with SWBT, SWBT fails to provide nondiscriminatory access to

¹⁰⁷ A success ratio represents the ratio of "met" PMs to PMs with a z-score and sample size of 10 or more. A PM is "missed" if it has a z-score of 1.68 or higher. See El Paso-PACWEST Missouri I Comments at 15.

¹⁰⁸ *Id.*; El Paso-PACWEST Comments at 22.

¹⁰⁹ El Paso-PACWEST Missouri I Comments at 16; El Paso-PACWEST Comments at 21.

¹¹⁰ *SWBT Texas Order*, 15 FCC Rcd at 18401, para 101. The Texas Commission retained Telcordia as an independent third party to oversee a carrier-to-carrier test of the operational readiness of SWBT's OSS and to evaluate the efficacy of the documentation and other processes SWBT makes available to competing carriers in Texas. With the help of several interested parties, Telcordia developed a Master Test Plan that outlined the general structure of the testing, and framed the specific requirements necessary for testing certain SWBT systems. The test consisted of a "functionality" test designed to evaluate and validate the ability of SWBT's OSS systems to process different types of orders, and a "capacity" test designed to evaluate the ability of SWBT's systems to handle reasonably foreseeable volumes of orders.

¹¹¹ SWBT provides competing carriers with billing information through the Usage Extract process and carrier wholesale bills, using the same processes and systems as it uses in Texas, Kansas, and Oklahoma. See *SWBT Dysart Missouri II Aff.*, Tab B, Measurements 14, 16, 17, and 19.

¹¹² See *El Paso Network/PACWEST Missouri I Comments* at 20.

¹¹³ See *SWBT Dysart Arkansas Aff.*, Tab B, Measurement No. 17; *SWBT Dysart Missouri II Aff.*, Tab B, Measurement No. 17. SWBT provided competing carriers billing functions on parity with itself for April through July 2001.

¹¹⁴ See *Dysart Arkansas Aff.* at 49; *Dysart Missouri Aff.*, at 47.

billing functions. McLeod itself acknowledges that these problems were resolved well before SWBT's application was filed.¹¹⁵ Accordingly, we conclude that SWBT's systems provide competing carriers with wholesale bills in a manner that enables them a meaningful opportunity to compete.

(vii) OSS of the Advanced Services Affiliate

47. We conclude based on the record before us that ASI provides nondiscriminatory access to its OSS. SWBT explains that ASI makes available for resale a wholesale DSL telecommunications services, and it does so through the same OSS (whether manual or electronic) that ASI uses to serve these retail customers.¹¹⁶ AT&T argues that SWBT is engaged in discrimination because "CLECs are given access only to ASI's OSS – a completely different OSS that SWBT itself describes as 'extremely limited.'"¹¹⁷ SWBT, however, explains that ASI's OSS is the only OSS through which anyone can order advanced services. SWBT also explains that this is typical because "[n]ot all OSS can be used for all services."¹¹⁸ Given the limited number of ASI DSL customers available for resale in Arkansas and Missouri, we believe that SWBT's processes are sufficient under the circumstances. We note that neither the Arkansas nor the Missouri Commissions have adopted performance metrics to evaluate whether ASI's OSS provides nondiscriminatory access. Accordingly, we rely on SWBT's affidavit evidence that it complies with the statutory requirements.¹¹⁹ We encourage state commissions to develop performance measures that will capture whether SWBT continues to provide nondiscriminatory access to its OSS as demand for these services increases.

¹¹⁵ See McLeod Missouri I Comments at 28. We also reject the billing arguments presented by Navigator because they lack support. See Navigator Comments at 6-7.

¹¹⁶ See SWBT Habeeb Reply Aff., paras. 26-27.

¹¹⁷ AT&T Finney Decl., para. 36 (emphasis omitted); see also ASCENT Reply at 8.

¹¹⁸ SWBT Reply at 25. Competitive LECs may use EASE for preordering, ordering, and provisioning resale services, however, they cannot use EASE for ordering UNE-Ps. Similarly, competitive LECs 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. *Id.*; see also *Verizon Connecticut Order*, para. 41 (rejecting argument that the telephone company's OSS had to be made available for ordering and provisioning of advanced services). See *SWBT Texas Order*, 15 FCC Rcd at 18401, para. 101.

¹¹⁹ SWBT Reply at 25.

b. Pricing of Unbundled Network Elements**(i) Recurring Charges****(a) Background**

48. Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions for unbundled network elements to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.¹²⁰ The Commission's pricing rules require, among other things, that an incumbent LEC provide unbundled network elements based on the TELRIC pricing methodology.¹²¹ Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996,¹²² the Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.¹²³ On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific rules contained within the Commission's pricing rules were contrary to congressional intent.¹²⁴ The Eighth Circuit has stayed the issuance of its mandate¹²⁵ pending appeal before the Supreme Court, which has granted certiorari in the case.¹²⁶ Accordingly, the Commission's rules remain in effect for purposes of this application.

¹²⁰ 47 U.S.C. § 252(d)(1).

¹²¹ See 47 C.F.R. §§ 51.501-09.

¹²² *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997).

¹²³ *American Tel. & Tel. Co. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that "the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The Court also held that the pricing provisions implemented under the Commission's rulemaking authority do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "it is the States that will apply those standards and implement that methodology, determining the concrete result." *Id.*

¹²⁴ *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. granted sub nom. Verizon Communications v. FCC*, 121 S. Ct. 877, 148 L.Ed.2d 788, 69 USLW 3269, 69 USLW 3490, 69 USLW 3495 (U.S. Jan 22, 2001).

¹²⁵ *Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.* (8th Cir. Sept. 25, 2000).

¹²⁶ *Verizon Communications v. FCC*, 121 S. Ct. 877, 148 L.Ed.2d 788, 69 USLW 3269, 69 USLW 3490, 69 USLW 3495 (Jan 22, 2001).