reports are processed through the same system (the Single System Image which interfaces with LMOS).[493] After a MLT is performed, the results and a commitment time for restoration or repair of the service arc returned to the CLEC.[494] That all POTS maintenance reports (both retail and wholesale) arc processed through the same system ensures that CLECs receive parity service. Commitment times for special (as opposed to POTS) services are based upon standard intervals, which intervals arc the same for retail and wholesale customers. CLECs, in addition, may call the LOC for status reports any time after maintenance or repair services have been requested.[495] Between January 1999 and May 2000, the Regional LOC handled some 817,000 CLEC calls and 157,000 trouble reports.[496]

258. These facts make clear that Nevada Bell has deployed the necessary interfaces, systems. and personnel to enable requesting carriers to access the same maintenance and repair functions that the Company provides to itself. Competing carriers may electronically access Nevada Bell's niaintcnance and repair functions Tor UNE-Loop, UNE-P, and resale through the GUI TBTA interface or the application-to-application EBTA interface in compliance with the Act. Both interfaces flow directly into h'evada Bell's back-end OSS systems and enable competing carriers to perform the same functions as Nevada Bell's retail operations. Accordingly, the Commission believes the FCC should find that Nevada Bell satisfies this component of Checklist Item 2

(B) Nevada Bell's interfaces provide prompt times and are consistentlv available

259 PM 42 measures the percentage of scheduled hours that the Regional OSS electronic interfaces are available PM 42 performancc results demonstrate that TBTA is stable

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regional LOC employed 242 persons in Nevada arid California, including 34 managers. Id. ¶ 29. LOC personnel undergo rigorous training and qualification testing before they become permanent employees. See id. ¶ 30. Training and operating providers arc uniform throughout Nevada and California. Id. ¶¶ 25-31

493 Id. ¶ 25

494 Id. Commitment times are assigned by LMOS and are based upon rhe type ofmaintenance report (e.g., out of service or serv ice affecting). the class of service (e.g., business or residential), uorkload. and work force availability

495 Id. ¶ 26.

496 Id. Of those, Nevada Bell received some 4,900 calls and 540 trouble reports

and reliable. During the April to August. 2001 time frame, TBTA, the availabilityofwhich is captured by the Toolbar submeasure, was available 100 percent of the schedule hours. exceeding the 99.25 percent benchmark.[497] Therefore, the Commission believes that Nevada Bell's electronic maintenance and repair interfaces are consistently available and thus afford an efficient competitor a meaningful opportunity to compete.

260. Nevada Bell's performance results also demonstrate that the LOC answers CLEC inquiries in a timely fashion, thus demonstrating that this "manual" interface also is consistently available to competitive providers. PM 44 (Center Responsiveness) reports the average time it takes Nevada Bell's work centers to answer telephone calls from requesting carriers."" Between April and August 2001, the LOC responded to some 3,190 telephone calls from CLECs.[499] The average response time ranged from 2 to 3 seconds, well under the corresponding parity yardstick, which ranged from 8 to 11 seconds."'" These data demonstrate that Nevada Bell's "manual" maintenance and repair interface – the LOC - is consistently available to requesting carriers.

(C) Nevada Bell provides CLECs access maintenance and repair functions in substantially the same time and manner as Nevada Bell's retail operations

1. Overview

261. The FCC assesses the speed with which an applicant resolves troubles for its wholesale customers. Relevant performance measurements are ones that reflect the time to restore service, the trouble report rate, and missed appointment rates. With respect to resale products, Nevada Bell consistently provides adequate and timely service.[501] While Nevada Bell had provisioned less than a dozen UNE-P products as of August 2001, the Company's processes for provisioning, maintaining and repairing UNE-P products are the same as those used by Pacific Bell.[502] Pacific Bell's performance results, consequently, are probative of the adequacy

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497 Id. PM 42, Submeasure 4200900.

498 See Exhibit 140. Gleason/Johnson Direct. at TCG CSJ Attachment A-181

499 See Exhibit 144. Johnson Supplemental Rebuttal. GSJ Attachment K. PM 44. submeasure 440200

500 Id

501, 502 See Section V(M) infra.

See Exhibit 122. Huston/Lawson Supplemental Rebuttal at 4 n. 3 ("PwC confirmed that Nevada Bell utilized the same OSS and processes as those used by Pacific Bell to support CLEC activity."); see also Exhibit 134

of Nevada Bell's compliance with the competitive checklist. Those performance results demonstrate that CLECs have equivalent access to maintenance and repair functions. Indeed, the California OSS Test and the California Order confirm this fact.[503]

262. Under this aspect of Checklist Item 2, the FCC evaluates performance results for two products: the UNE platform and resale services. The FCC assesses maintenance and repair functions for other UNEs (such as loops) under the relevant checklist items. This section briefly addresses the quality and timeliness of Nevada Bell's maintenance and repair services as they relate to resale products. In Section V(M) infra, those services are analyzed in niorc detail. After summarizing the Company's resale service results, turn to the UNE platform.

ii. Analysis

263. Nevada Bell provides maintenance and repair services in a timely manner for resold products, including residential POTS, business POTS, and specials. CLEC customers typically report trouble less frequently than Nevada Bell's customers.[504] When a CLEC customer reports trouble on resold lines and services. Nevada Bell consistently resolves those trouble reports in a timely manner.[505] CLECs, in sum, have access to Nevada Bell's maintenance and repair functions for resale services in substantially the same time and manner as Nevada Bell's retail operations.

264. As of August 2001, Nevada Bell had provisioned only *3* UNE-P products. The Company had maintained and repaired those lines in a sufficient manner. CLEC customers, as of August 2001, had not reported trouble on a single UNE-P product.[506] Pacific Bell's performance measurements provide probative evidence of the timeliness of the Regional OSS' niaintenance and repair functions.

Supplemental Testimony of Rick Resnick at 6-7 (explaining that PwC confirmed that Nevada Bell and Pacific Bell use the same processes, procedures and systems to provision, maintain arid repair all wholesale products) ("Resnick Supplemental Rebuttal").

[503] California Order at 55 ("We further lind that the OSS test has shown that the M&R systems have basic functionality") & 55-56 ("Still, month-to-month OSS M&R performance pariry appears to be being achieved in the large majority of instances. and seems to he growing."). Finally. the Commission, similar to the CPUC, has significant incentives in place to ensure that Nevada Bell provides adequate maintenance and repair services.

[504] See Exhibit 144, Johnson Supplemental Rebuttal, CSJ Attachment K, PM 19.

[505] See Exhibit 144, Johnson Supplemental Rebuttal, CSJ Atrachment K, PMs **20, 21** and 22.

[506] See Exhibit 144, Johnson Supplemental Rchutial, GSJ Attachment K, PM 19, Submcasure 1993600

265. Pacific Bell has satisfied the established maintenance and repair standards for UNE-P products (PMs 19, 20, 21, 22 and 23). in two of the examined three months of June through August, 2001; in June, 2001, Pacific Bell missed 3 maintenance sub-measures. The overall trouble report rate shows that less than one percent of UNE-P in service has reported trouble during this time.[507] Even though Pacific Bell missed PM 19 in June, 2001, the aggregated CLEC trouble report rate was only slightly greater, at 0.71 percent than the retail analog of 0.57 percent. Pacific Bell met PM 20 (Percentage of Customer Trouble Nor Resolved within Estiniatcd Time) for this service in two of the same three months. The parity standard was not met in June, 2001, but was achieved in both July and August of 2001. Though Pacific Bell failed to achieve the parity standard for PM 21 (Average Time to Restore) in June and August, on average. it took no more than two hours longer to restore UNE-P service when compared to the retail analog. The sub-measure was niet in July. Overall, these results show that the UNE-P maintenance and repair processes used by Pacific Bell and Nevada Bell. which are the same. are nondiscriminatory,

> (D) Nevada Bell performs maintenance and repair work for customers of competing carriers at substantially the same level of quality that it provides to its own customers

266. PM 33 (Frequency of Repeat Troubles in 30 Days) provides information about the quality of Nevada Bell's maintenance and repair services. In only one month between April and August, 2001 (namely. June) did Nevada Bell miss any submeasure. "Pacific Bell's performance for PM 23 (Repeat troubles) for the three months ended August 2001 was very good, with one sub-measure, resale private branch exchange ("PBX"), missed in one month."[508] In June, 2001 three of ten Resale PBX troubles were repeats, sending the repeat pcrccntagc to 30 percent, and taking rhe result out ofparity. More important, between June and August, 2001, Pacific Bell consistently satisfied the statistical benchmark standard for repeat troubles on UNE-P lines.[509]

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507 & Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 19.

508 See Exhibit 144, Johnson Supplemental Rebuttal at 60 n. 155.

509 See Exhibit 144. Johnson Supplemental Reburial. Attachment GSJ L. PM 23. Submearure 2393600

(E) Issues Raised by the Staff, BCP and Competitive Providers

267. Initially, Staff identified only one issue with the maintenance of resale services. The Staff suggested that Nevada Bell missed PM *23* (Frequency of Repeat Troubles within 30 Days), three or four times during the six-month period from October 2000 through March 2001. Nevada Bell missed the parity standard three times during that period, for all resale sub-measures. Since then, however, Nevada Bell's performance has met all resale sub-measures for the three-month period ending August 2001 except for resale residential POTS in June.

268. Moreover, the trouble report rate was less than one percent for each resale product in service[510] and all troubles were resolved in the estimated time.[511] The parity standard for the average time to restore service was satisfied for all resale products except resale Centrex, which experienced a miss in July when one trouble ticket took 11.73 hours to be cleared.[512] If not but for that one trouble ticket, the performance measure would have been met. **As** nicntioned previously, Nevada Bell's repeat report rate also showed strong performance during the three-month period.[513] Overall, these PM results demonstrate good performance.[514]

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[510] Exhibit 144, Johnson Supplemental Rebuttal. GSJ Attachment K. PM 19. **As** of August 2001. Nevada Bell had 1,400 resold residential POTS lines in service: PM 19. Sub-measure 1991600, and 362 resold residential business POTS lines in service. PM 19, Sub-measure 1991700. **As** of August 2001. Nevada Bell had approximately 7,300 resold Centrex producrs in service. PM 19. Sub-measure 1991900. These volumes certainly are large enough to provide probative evidence of the quality of Nevada Bell's maintenance and repair processes.

[511] Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K. PM 20. Since January 2001. Nevada Bell has only had 1 trouble ticket nor resolved by the estimated time of the 54 resold residential trouble tickets reported. Since January 2001. Nevada Bell provided better than parity service with respect to the 141 resold Centrex products upon which it received a trouble ticket that required dispatch.

[512] Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 21

[513] Nevada Bell missed only a single sub-measure, when it had four of 11 resale residential POTS trouhle tickets were repeats. PM 23. Dr. Otsuka notes thar Nevada Bell has insufficient data for sub-measures 2193100 and 2 193200. This should not prevent a finding of Checklist Compliance because Nevada Bell's overall performance on the items CLECs currently order is superior

[514] Pacific Bell's PM results confirm this conclusion. Maintenance results for resale products were also strong for the three months ending August 2001. with trouble report rates well below one percent for all of the Resale products except resale DS1, which had trouble report rates of 3.39 percenr. 5.26 percent and 0 percent in June, July and August, respectively. Two misses occurred in July for PM 20 (Percent of Customer Trouble not Resolved within Estimated Time). Four percent of resale residential POTS dispatched troubles in July and again in August were not resolved within the estimated time. Resale business POTS dispatched out troubles also missed the parity standard in July In June, Pacific Bell missed resale Centrex dispatched and not dispatched for PM 21 (Average Time to Restore). The average time to restore resale Centrex in June was about three hours longer than the average for the retail equivalent. In June and August, Pacific Bell missed PM 2 I for resale business POTS not dispatched, with the average time to restore trailing the retail average by less than one hour. In July, Pacific Bell missed resale business POTS dispatched. again, by less than one hour. Finally, Pacific Bell's performance for PM 23 (Rcpcat troubles) for the three months ended August 2001 was very good, with one sub-measure, resale PBX. missed in one

e. Billing

(1) Overview

260. **A** review of Nevada Bell's billing processes and systems, as well as the Company's performance data, demonstrates that Nevada Bell affords CLECs nondiscriminatory access to billing functions.

(2) Standard

270. To provide timely and accurate bills to their customers, competitive providers obviously need access to billing information that resides in Nevada Bell's systems. For this reason, the FCC has concluded that incumbent LECs must provide competing carriers "with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that [the incumbent LEC] provides such information to itself."[515] **A** 271 applicant also must demonstrate that it provides wholesale bills to competitive providers in a manner that gives the competing carriers a meaningful opportunity to compere.""

(3) Analysis

(A) System Overview

271. The billing process has several components. The process involves the exchange of information so that CLECs can hill their customers, process end users' claims and adjustments, and view Nevada Bell's bills for services provided to the competitive provider.''' To meet its obligations under the Act, Nevada Bell and Pacific Bell made significant investments in the regional billing systems.[518] Nevada Bell uses two main billing systems, Customer

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month. In June, three of ten Resale PBX troubles were repeats, sending the repeat percentage to 30 percent. and taking the result out of parity. Overall. Pacific Bell's results arc excellent.

515 SBC Texas Order at ¶ 210.

516 See id.; see also SBC Kansas/Oklahoma Order ¶ 163 ("**As** we have required in prior section 271 orders. SBC must demonstrate thai it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that SBC provides such information io itself, and wholesale bills in a manner that gives competing carriers a meaningful opportunity io compete.").

517 Ser Exhibit 120, Huston/Lawson Supplemental Direct ¶ 169.

518 See Exhibit 37. Direct Testimony and Draft Affidavit of Ann S. Lee ¶ 3 ("Lee Direct").

Record Infomiation System ("CRIS"),[519] and Carrier Access Billing System ("CABS"),"" and one other system, the Flexible Automated Billing System ("FABS"),[521] to support its wholesale and retail operations.

272. These systems perform four major functions, namely, service order processing, usage processing, bill preparation and data exchange. Stated simply, these systems process service orders and messages by editing and rating those items.[522] Then, the systems update each custotncrs' billing account and store the data in a master file.[523] The information contained in the master files is then aggregated and a bill is created for delivery to retail and wholesale customers.[524] Bills are then delivered to CLECs in any one of the following formats: (i) paper. (ii) magnetic tape, or (iii) via Network Data Mover ("NDM"). The data exchange or usage extract function provides CLECs with information on the usage generated by the competitive providers' accounts in industry standard Exchange Message Interface ("EMI") format via magnetic tape or electronically.[525]

(B) Billing Performance Measures

273. The PMP/PIP contains eight measures designed to gauge the quality, timeliness and overall effectiveness of the billing systems and processes that Nevada Bell uses for its wholesale opcrations. Those measures include the following ones: (i) Performance Measure 28

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519 Nevada Bell has used the Customer Record Information System ("CRIS") to bill retail residential and business customers for retail products for some 24 years. Lee Affidavit, ¶ 4. This same system is tlie one that the Company uses to hill CLECs for resale products. Id. Each month, the system proccsscs more rhan 4 billion usage records and creates some 12.7 million hills for customers throughout Nevada Bell's and Pacific Bell's service territories. Id. Ofihese. approximately 40 million usage records and 245 thousand hills are sent to retail and wholesale customers of Nevada Bell

520 The Carrier Access Billing System ("CABS")was developed to bill interexchange carriers ("IXCs") for access products. and has been in use since 1984. Id. ¶ 5. Nevada Bell and Pacific Bell also use **CABS** to bill CLECs for UNE and interconnection producrs aiid services Id. The system processes more than 3.6 **billion** usage records and creates more than 6.700 hills each month. Id. Some 58 million usage records and 490 hills are for Nevada Bell's customers.

521 The **Flexible Automated** Billing **System** ("FABS") has been used by Nevada Bell and Pacific Bell to hill retail customers, carriers, and affiliates for miscellaneous charges since 1985. Id. ¶ 6. In addition. Nevada Bell uses FABS. which is a stand-alone system. to hill wholesale customers for miscellaneous charges that arc nor driven hy telephone or circuit numhers

522 See Id ¶¶ 8 & 9.

523 See id.

524 See id. ¶ 10.

525 See Exhibit 120,Huston/Lawson Supplemental Direct Testimony ¶ 170

(Usage Timeliness); (ii) Perforniance Measure 29 (Accuracy of Usage Feed); (iii) Performance Measure 30 (Wholesale Bill Timeliness); (iv) Performance Measure 31 (Usage Completeness); (v) Performance Measure 32 (Recurring Charge Completeness); (vi) Performance Measure 33 (Non-recurring Charge Completeness); (vii) Perforniance Measure 34 (Bill Accuracy); (viii) Performance Measure 35 (Timeliness of Billing Completion Notices); and (ix) Perfoniiancc Measure 36 (Accuracy of Mechanized Bill Feed).“‘ Generally, these measures arc disaggregated by major service category (i.e., Resale, UNE, UNE Specials, and Facilities/Interconnection).[527] The billing accuracy and completeness measures are reported by performance on usage. recurring. and noli-recuring charges.[528] These performance measures, which were developed in collaboration with CLECs operating in Nevada (and California), provide a panoply of information that the Commission can use *to* evaluate whether Nevada Bell provides CLECs with nondiscriminatory access to billing functions, enabling competitive providers to accurately and timely bill their customers.

(C) Timeliness and accuracy of usage information –

273. Between June and August 2001, Nevada Bell consistently delivered usage information to CLECs in substantially the same time and manner that the Company provided such information to itself. Under PM 28. which measures the timeliness of when the data exchange is ready for transmission to CLECs, Nevada Bell reports results for resale, UNE and meet point (interconnection) categories. Parity is the applicable standard, and the result is measured in rhc average number of days. For June, July and August, 2001, Nevada Bell consistently provided resale usage information to CLECs faster than such information was made available to Nevada Bell’s retail operations.””

275. While Nevada Bell did not satisfy the parity srandard in all these instances, the performance differentials were minor. Nevada Bell missed the UNEs sub-measure in June, 2001

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526 See Exhibit 140, Johnson Direct Testimony ¶ 30

527 Id. ¶ 31.

528 Id.

529 Id., Attachment K (PM 2800200).

by only 0.04 days, and in July by 0.19 days, and in August by just 0.01 days."[530] That is, in June, Nevada Bell provided usage records to CLECs in 66.00 hours and to its retail side in 65.04 hours. In July. Nevada Bell provided usage records to CLECs in 70.08 hours and to its retail side in 05.52 hours. In August, the difference was just 14.4 minutes, when Nevada Bell provided usage records to CLECs in 63.12 hours and to its retail operations in 62.88 hours."[531]

276. Two other performance measurements, PMs 31 and 34, also record the accuracy and timeliness of usage information. PM 31 measures the percentage of "on-time" usage charges appearing on the next available hill. With the exception of August, 2001 (for Resale), Nevada Bell satisfied the applicable benchmark standard for the resale, UNE and facilities/interconnection service categories.[532] In August, Nevada Bell missed the parity standard for the resale submeasure when the percent of on-time usage charges reported on the next available bill to CLECs was 99.22 percent, and the parity standard was 99.62 percent.

277. PM **34,** Bill Accuracy, reports the percentage of the total hill amount that has not been adjusted for the month. Nevada Bell has also consistently performed well on PM 34, which reports by service category and type of charge (recurring, noli-recurring, and usage). For the months of June, July and August, 2001, Nevada Bell satislied the applicable parity or benchmark standard for each usage submeasure (Resale, UNE POTs, UNE Other, and Facilities/Interconnection), with the exception of one submeasure (Resale) in August, 2001.[533] In August, Nevada Bell did not meet the parity standard for the resale submeasure when 99.21

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530 PM 28, Sub-measure 2800300.

531 For meet point billing Nevada Bell satisfied the parity standard in June 2001, but missed the parity standard for this sub-measure in July by *just* .01 days. In August. Nevada Bell missed the parity standard by 0.16 days. Again, these differences also are minor ones. Specifically, in July, Nevada Bell **provided** meet point billing *to CLECs in 65.76 hours* and to its retail side in 65.52 hours. In August. the difference was less than four hours. The difference relates to a programming problem that causes usage records to backlog in processing to data exchange. resulting in a delay in transmission of usage records to the CLEC Nevada Bell and Pacific Bell are working on upgrades to the process for transmitting usage records to CLECs. These improvements should have a significant effect on ensuring compliant performance for Phl 28. Where Nevada Bell's **retail** side and CLECs **receive** billing information on the same day and within four hours of one another, it is unlikely that the differential adversely affects CLECs.

532 Id. (PM 3100200. PM 3100300 **8.** PM 3100400).

533 Id. (PM 3400401, 3400701, 3401001 & 3101301).

percent of the total bill amount to CLECs was nor adjusted (.79 percent was adjusted) and 99.87 percent of the total bill amount to retail customers was nor adjusted (.13 percent was adjusted).'"

278. To summarize, Nevada Bell's performarice misses have been isolated and minor. Nevada Bell's performance data, in summary, shows that the Company provides timely and accurate usage information to competitive providers.

(D) Wholesale Bill timeliness

279. PM 30 captures the timeliness with which Nevada Bell provides a mechanized bill to a CLEC. Nevada Bell has clearly met its responsibilities for rendering bills to CLECs in a timely manner. Performance on this measure, for all sub-nieasures with data, has been 100 percent each month between June and August, 2001.[535] Pacific Bell's performance during that same period was perfect as well.[536]

(E) Usage completeness

280. With respect to processing usage and recurring charges for UNEs and interconnection services, which are measured in PM 31 and PM 32, Nevada Bell's PM results historically have been significantly affected by the construction of these measures. The issue with PM 31 stems from the way usage charges are processed through CABS. Billing for UNEs and Interconnection occurs through CABS whereas billing for Nevada Bell's retail customers is processed through CRIS. CABS processes billing charges for UNEs and interconnection one cycle later than CRIS does for retail products. Usually this is not a problem for billing timeliness evaluation. unless the charges are being processed at the end of the month. For those charges processed at the end of the month, billing will appear in tlic subsequent month's bill and niay appear to be late, even when the charges are processed in a timely manner.

281. This anomaly, which affects performance on PM 31 in the CABS billing process, was identified during the 2000 and 2001 reviews of the Nevada Bell's perfomlance measures. The Parties agreed to a new business rule for PM 31 that allows CABS billings processed at the

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534 Id. (PM 3400401).

535 Exhibit 144, Johnson Supplemental Rebuttal at 30

536 Id.

end of the month to be counted as "on time" if the billing elements were processed within three calendar days of the end of the month. This change in the way this measure is tracked has resolved the billing performance issues for UNE and Interconnection services. as reported in PM 31.

282. Reporting of billing performance that incorporated the business rules in the revised Nevada Bell's performance measurements plan began with the May, 2001 report month. Nevada Bell met the parity standard for UNEs in June, July and August, 2001. Parity has been achieved Tor facilities/interconnection for this measure since January, 2001. PM 32 performance had been affected by the fact that mandated changes to billing elements could not always be immediately implemented. Though an ordered billing change may be effective at the time of the order or soon thereafter, programming for these changes could take Nevada Bell several months to complete. During this time recurring and non-recurring charges could be assessed as being processed late. In the most recent stipulation in the PM proceedings, an exclusion was incorporated in PMs 32, 33, and 34 to accommodate this time lag between when a billing element change may be ordered and when it is programmed into Nevada Bell's billing systems. This change was implemented in June, 2001.

f. Change management process

(1) Overview

283. Nevada Bell provides CLECs the documentation and support necessary to obtain nondiscriminatory access to the Regional OSS. The Company constantly must evaluate and, when necessary, make changes lo the support systems that CLECs rely upon for accessing network elements. A change management process ("CMP") refers to the process of planning, coordinating. monitoring, communicating. and implementing changes within an organization. With the input and cooperation of competitive providers in many states, the Company has developed a process for planning, coordinating, monitoring, communicating, and implementing changes to the Regional OSS. The Company adheres to that process, ensuring that the implementation of changes do not adversely affect CLECs' operations.

(2) Standard

284. To satisfy Checklist Item 2, Nevada Bell must provide "the documentation and support ncccssary to provide competing carriers nondiscriminatory access to its OSS."[537] To prove this requirement, the Company must show that it "has an adequate change nianagement process in place in [Nevada]."[538] In conducting its review, the FCC "will give substantial consideration to the existence of an adequate change nianagement process and evidence that [Nevada Bell] has adhered to this process over time."[539])

(3) Analysis

285. When Nevada Bell filed the application, the Company followed the Nevada Bell/Pacific Bell CMP, which formed the core of the SBC 8-state change management process."[540] The FCC has reviewed and approved the SBC 8-state CMP when it approved SBC's 271 applications for Texas, Kansas and Oklahoma.[541] The 8-state CMP unquestionably satisfied the requirements of the Act."[542]

286. Even before Nevada Bell initiated this proceeding, the Company and its SBC affiliates were negotiating the iniplementation of a 13-state, SBC-wide CMP.[543] This process was completed on March 6, 2001.[544] **All** of the elements of the 8-state CMP approved by the FCC in the SBC Texas Order and the SBC Kansas/Oklahoma Order – such as the "go/no go" voting process and implementation of versioning – are found in the 13-state CMP.[545] "A comparison of the 13-state CMP contained . . . with the 8-stale version in place during the

537 SBC Texas Order ¶ 106.
538 Id. ¶ 105
539 Id ¶ 106
540 See Exhibit 120. Huston/Lawson Supplemental Direct at 21
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542 SBC Texas Order ¶ 110; SBC Kansas/Oklahoma Order ¶ 166; California Order ¶ 79-80.
543 See Exhibit 120, Huston/Lawson Supplemental Direct ¶ 186 (Ham Affidavit).
544 See Exhibit 120, Huston/Lawson Supplemental Direci at 21.
545 See Exhibit 120, Huston/Lawson Supplemental Direct at', 209 ("The FCC found that SWBT's dispute voting process (or 'go/no-go' vote) was one element of SWBT's CMP which provided assurance that change to existing interfaces will not disrupt CLECs' use of SWBT's OSS Texas Order ¶ 112. The 'yoino-go' process implemented by SWBT was based on the dispute voting process established in the Nevada Bell/Pacific Bell Change Management Process "); see also California Order ai 79-XU ("[The 13-state CMP's] differences from the JSA version and the later 8-stare version appear to be designed to clarify. and more fully memorialire through documentation. a CMP that is increasingly responsive Φ CLEC needs.").

[California] OSS test reveals that this latest version is a more thoroughly articulated document than the [8-state CMP]."[546] Differences were designed to clarify, and more fully document, a comprehensive CMP that is ever more responsive to the needs of CLECs.[547] The 13-state CMP was reviewed and approved by the FCC in the SBC Arkansas/Missouri Order."[548] Accordingly. there should be no doubt that Nevada Bell's CMP satisfies the requirements of the Act.

287. Nevada Bell likewise provides CLECs access to a stable testing environment that allows carriers to certify that their OSS will interact effectively with Nevada Bell's OSS.[549] Nevada Bell's testing environment mirrors the production environment, affords competing carriers an opportunity to test representative pre-ordering and ordering transactions, and offers the extended testing periods that competing carriers need for EDI implementation and new release testing.[550] The Staff. BCP, and competitive providers did not provide any evidence challenging the adequacy of Nevada Bell's CMP or its testing environment. All of the evidence – Nevada Bell's testimony, prior FCC orders, the California OSS test, and the California Order – confirm that Nevada Bell's CMP and testing environment provide efficient carriers a meaningful opportunity to compete.

6. UNE combinations

288. Nevada Bell's contractual commitments include an obligation to provide CLECs access to UNE combinations to the extent required by applicable law. Appendix UNE to the Company's generic interconnection agreement obligates Nevada Bell to provision UNE combinations, including the UNE-P and EELs. when the UNEs already are combined in Nevada

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546 California Order at 79

547 Id. at 79-80.

548 See SBB Arkansas/Missouri Order ¶ 15 & n 32 The FCC found that where a BOC provides evidence that a particular system or process previously reviewed and approved in a prior order is also used in the state for which a current application has been filed, the Commission's review of the same system in this proceeding will be informed by its prior findings. See SBC Kansas/Oklahoma Order ¶ 35; Massachusetts Order ¶ 48. Nevada Bell's CMP was also reviewed during the California OSS test, with the third-party tester concluding that the "Change Management Process was highly organized and thought out." TAM Report, § 3.5; see also Huston/Lawson Supplemental Direct at 21 ("Nevada Bell and Pacific Bell have always shared their CMP.").

549 See Exhibit 120. Huston/Lawson Supplemental Direct at 21 (noting that Nevada Bell's followed the 8-state CMP approved by the FCC in the Kansas. Oklahoma and Texas 271 application); see also Kansas/Oklahoma Order ¶ 168; Texas Order ¶ 133: Exhibit 120. Huston/Lawson Supplemental Direct at ¶¶ 215-20; California Order at 7Y ("[W]e find Pacific's CMP intertace rest environment to be adequate.").

550 See Exhibit 120. Huston/Lawson Supplemental Direct at ¶ 217; see also Kansas/Oklahoma Order ¶ 168.

Bell's network."" Because the United States Court of Appeals for the D.C. Circuit had stricken the FCC's combination rules, and therefore those rules were not effective when the Company filed testimony in October, 2000,[552] the GIA did not obligate Nevada Bell to combine UNEs that were not already combined.

289. Even so, the Company was willing to "work with the Nevada Commission in negotiating an amendment to offer new combinations . . .."[553] Nevada Bell, in fact. offered the Nevada 271 amendment (the "N2A") in May. 2001, well before the Supreme Court issued its decision in Verizon Communications, Inc. v. F.C.C.,-- U.S.-, 122 S.Ct. 1646, 1687, 152 L. Ed.2d 701 (2002). The N2A's offer to provide "certain new combinations of UNE ('Combinations'),and special products, services or arrangements" further evidences the Company's commitment."' And although the **N2A** has expired, interconnection agreements approved by the Commission since then impose an obligation on the Company to provide UNE combinations to the extent required by applicable law.[555]

290. The record, in short, shows the Company's willingness to provide CLECs with existing and new UNE combinations as required by applicable **law.** This evidence is sufficient to overcome any speculative concerns that Nevada Bell **will** not provision UNE combinations to the extent required by the Act and, therefore, provides a basis for rejecting any argument that the

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551 See Exhibit 4. Hopfinger Direct at ¶ 87: id. at CLH Attachment A-535; see Exhibit 69, Hopfinger Rebuttal ai 16-17 (explaining thai Nevada Bell is obligated to convert special access arrangements to EELs when the special access circuit meets the "significant amount of local exchange service" criteria established by the FCC) ("Hopfinger Kchutial"). The CAT Communications International, Inc., interconnection agreement approved by the Commission contained the UNE Appendix. See id. at 6.

552 See Exhibit 69, Hopfinger Rebuttal at 18-19 (explaining Nevada Bell's obligation to combine UNEs under rules and precedent as of October 31, 2000).

553 See Exhibit 4. Hopfinger Direcr at ¶ 87.

554 See Exhibit 107. Direct Testimony of Daniel O. Jacobsen at DOJ Attachment A-1, § I 1 and DOJ Attachment A-2 § 3.

555 See Order. Joint Petition of Nevada Bell Telephone Company and Advanced Telcom, Inc., d/b/a/ Advanced Telcom Group and ATG for Approval of Interconnection and Data Exchange Agreement Pursuant to Section 252 of the Telecommunications Act. P.U.C.N. Docket No 02-3021 (i s May 15, 2002); Interconnection and Data Exchange Agreement Pursuant to Section 252 of the Telecommunications Act between Nevada Bell Telephone Company and Advanced Telcom, Inc., d/b/a. Advanced Telcom Group and ATG, Appendix UNE § I I. Such an agreement complies with the requirements of the Act See Meniorandum Opinion and Order, In the Matter of Petition of WorldCom, Inc. Puisuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Sraie Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docker No. 00-218, DA 02-1731, ¶¶ 317-329 & 323 n. 1082 (rel. July 17, 2002) (adopting Verizon's defining its obligation to provide UNE combinations "simply, with direct reference io 'Applicable Law"').

Commission should refuse to support Nevada Bell's application to the FCC for relief under Section 271.[556]

291. Nevada Bell does not separate UNEs that it currently combines in its network unless a CLEC requests that it do so.[557] Nevada Bell allows CLECs to combine elements themselves, making available collocation arrangements to CLECs, including caged, sliarcd-caged, cageless, and virtual collocation, for such purposes."[558] CLECs can collocate their equipment in adjacent controlled environmental vaults or similar structures where space for physical collocation is not available, and Nevada Bell does so under the same nondiscriminatory terms as traditional physical collocation."[559] Finally, the Company extends UNEs that a CLEC intends to combine to a sliarcd UNE frame located in a mechanically secured common space within the Nevada Bell central office or outside plant cabinet."[560]

292. CLECs are not required to own or operate any equipment of their own to combine UNEs.[561] The various collocation options and other methods of access *to* unbundled network elements. as well as Nevada Bell's UNE combination offerings, provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities. Facilities-based CLECs can use these same methods to combine UNEs with their own facilities. CLECs are not restricted to these methods of combining UNEs, but may request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions.[562]

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556 See SBC Texas Order ¶ 322 ("We find that SWBT demonstrates significant development and operational resources devoted to planning for competing carriers access to the high frequency portion of the loop. We find the depth and scopr of this evidence sufficient to overcome the speculative concerns of some competing carriers regarding SWBT's line sharing readiness. and reject competing carriers arguments that the Commission should deny *SWBT's section 271 application* on the basis of its alleged failure to comply with the requirements of the Line Sharing Order ").

557 See Exhibit 4, Hopfinger Direct ¶ *87.*

558 See Exhibit *3,* Hopfinger Direct ¶¶ 26-29 (describing collocation) & 88 (noting that CLECs can use *collocation* to combine elements themselves); see generally Exhibit 5. Deere Direct ¶¶ *128-44.*

559 See Exhibit 4, Hopfinger Direct at ¶ 47.

560 See Exhibit 5, Deere Direct ¶¶ 128-34; see Exhibit 4. Hopfinger Direct ¶ 26

561 See id.. Hopfinger Direct ¶¶ *87 & 88.*

iii2 Exhibit 5, Deere Direct ¶¶ 76-79

293. To summarize, Nevada Bell complied with the UNE combination requircnients that existed when it initiated this proceeding. The record demonstrates that the Company, in fact. took significant steps to provide new UNE combinations even before the Supreme Court's decision in June 2002.

294. Nevada Bell does not separate UNEs that it currently combines in its network unless a CLEC requests that it do so.[563] Nevada Bell allows CLECs to combine elements themselves, making available collocation arrangements to CLECs, including caged, shared-caged, cageless, and virtual collocation, for such purposes.[564] CLECs can collocate their equipment in adjacent controlled environmental vaults or similar structures where space for physical collocation is not available, and Nevada Bell allows such collocation under the same nondiscriminatory terms as traditional physical collocation.[565] Finally, the Company extends UNEs that a CLEC intends to combine to a shared UNE frame located in a mechanically secured common space within the Nevada Bell central office or outside plant cabinet.[566]

295. The various collocation options and other methods of access to unbundled network elements, as well as Nevada Bell's UNE combination offerings, provide multiple methods Tor CLECs to obtain UNEs. Facilities-based CLECs can use these same methods to combine UNEs with their own facilities.[567] CLECs are not restricted to these methods of combining UNEs, but niay request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions.[568]

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563 See Exhibit 4, Hopfinger Direct ¶ 87.

564 See Exhibit 4, Hopfinger Direct ¶¶ 26-29 (describing collocation) & 88 (noting that CLECs can use collocation to combine elements themselves); see generally Exhibit 5, Deere Direct ¶¶ 128-44.

565 See Exhibit 4, Hopfinger Dtrect at ¶ 47

566 Exhibit 5. Deere Direct ¶¶ 128-44; see also, Hopfinger Direct ¶ 26.

567 Exhibit 5, Deere Direct ¶ 65 ("Nevada Bell provides CLECs with access to UNEs so as to permit CLECs to combine such unbundled network elements with other unbundled network elements obtained from Nevada Bell or with network components provided by the CLEC itself in order to provide telecommunications services to its customers, provided that such a coinbination is rechnically feasible and would not impair the ability of other carriers to obtain access to other UNEs or to interconnect with Nevada Bell's network.").

568 Exhibit 5, Deere Direct ¶¶ 76-79 ("Upon requcsr. Nevada Bell provides UNEs, or modifications to previously identified UNEs, to the extent technically feasible and consistent with the Act's requirements. Nevada Bell also provides. upon request, any technically feasible method of interconnection or combining of unbundled network elements not already provided. as required by law.").

296. To summarize, Nevada Bell complied with the UNE combination requirements that existed when it initiated this proceeding. The record deinonstrates that the Company, in fact. took significant steps to provide new UNE combinations even before Rule 315 became effective following the Supreme Court's decision in June 2002. Nevada Bell's interconnection agreement with AT&T, which is available to all CLECs under section 251(i), obligates the Company to provide new UNE combinations iii compliance with Rule 315.

C. Checklist Item 3 – Poles, ducts, conduit and rights-of-way

1. Overview

297. Nevada Bell has satisfied the requirements of Checklist Item 3. The Company provides nondiscriminatory access to poles, ducts, conduits and rights-of-ways owned or controlled by it. CLECs obtain access to poles, ducts, conduits, and rights-of-way at rates and on terms and conditions that are just and reasonable.

2. Standard

298. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts. conduits, and rights-of-way owned or controlled by the [BOC] at Just and reasonable rates in accordance with the requircrncnts of section 224."[569] Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscrimitiatory access to any pole. duct, conduit, or right-of-way owned or controlled by it."[570] Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety. reliability and generally

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[569] 47 U.S.C.A. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles. ducts. conduits. or rights-of-way owned or controlled by utilities. The 1096 Act amended section 224 in several important respects lo ensure that telecommunications carriers as well as cable operators have access to poles, ducts. conduits. or rights-ot-way owned or coiitrolled by utility companies. including LECs. SBC Texas Order ¶ 243. n.684.

[570] 47 U.S.C.A § 224(f)(1) Section 224(a)(1) defines "utility" to include any entity. including a LFC, that controls "poles, ducts. conduits, or rights-of-way used. in whole or in part, tor any wire communications." Id. § 224(a)(1).

applicable engineering purposes."[571] Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[572] Section 224(b)(1) states that the FCC shall regulate the rates. terms. and conditions governing pole attachments to ensure that they are "just and reasonable."[573] Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the FCC jurisdiction with respect to the rates, terms, and conditions. or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State."[574]

3. Analysis

299. Through June 30, 2000, Nevada Bell was providing other telecommunications carriers with access to 562 poles and 19,813 feet of conduit.[575] Moreover, for over 35 years, Nevada Bell has had in place practices and procedures to grant such access to other third parties, such as cable system operators.[576] Indeed. through June 30, 2000, Nevada Bell was providing cable television (CATV) operators access to an additional 25.190 poles and 4,031 feet of conduit."[577] As the Staff concluded,[578] and as discussed below, Nevada Bell satisfies the requirements of Checklist Item 3.

300. Checklist Item 3 incorporates the standards set forth in Section 224. Section 224(f)(1) states that a "utility shall provide a cable television system or any telecommunications

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571 47 U.S.C.A. § 224(f)(2). In the Local Competition Order, the FCC concluded that. although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles. ducts. conduits. and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner Id. ¶¶ 1175-77.

572 Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct. conduit, or right-of-way owned or controlled by a utility." 41 U.S.C.A. § 224(a)(4).

573 47 U.S.C.A. § 224(b)(1).

574 Id. § 224(c)(1) The 1996 Act extended the FCC's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles. ducts. conduits, 3nd rights-of-way. Local Competition Order ¶ 1232; 47 U.S.C.A. § 224(f) Absent state regulation of terms and conditions of nondiscriminatory attachment access. the FCC retains jurisdiction. Local Competition Order ¶ 1232; 47 U.S.C.A. § 224(c)(1); see also Bell Atlantic New York Order ¶ 264

575 See Exhibit 33. Rabideau Direct ¶ 5.

576 Id.

577 Id.

578 See Exhibit 152, Orsuka Testimony Phase II-B at 4-5.

carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or conirolled by it."[579] Notwithstanding this requirement, a utility may deny access to its poles. ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[580] The Commission has noi elected to regulate the rates, tcnns. and conditions for pole attachments.[581] Accordingly, pursuant to Section 224(b)(1), the FCC regulates the rates, terms, and conditions governing Nevada Bell's pole attachments to ensure that they are "just and reasonable."[582]

301. Nevada Bell makes unassigned pole, duct, conduit, or right-of-way space available to telecommunications carriers and cable operators, including Nevada Bell itself, on a first-come, first-served basis.[583] Nevada Bell evaluates CLECs' requests for access to poles, ducts, conduits, and rights-of-way under the same capacity, safety, reliability, and engineering standards that it applies to its own use of the facilities.[584] Nevada Bell responds to all

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579 47 U.S.C. 4. § 224(f)(**1).** Section 224(a)(1) defines "utility" to include any entity, including a LEC, that controls "poles. ducts. coiiduits, or rights-of-way used. in whole or in part. Tor any wire communications." Id. § 224(a)(1). Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduir. or right-of-uay owned or controlled by a utility." Id. § 224(a)(4).

580 47 U.S.C.A. § 224(f)(2) In the Local Competition Order. the FCC concluded that, although the statutory exception enunciated in scciion 224(f)(2) appears to be limited lo utilities providing electrical service. LECs should also be permitted to drny access to their poles. ducrs. conduits. and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes. provided the assessment of such factors is done in a nondiscriminatory manner Local Competition Order ¶¶ 1175-77.

Section 224(c)(1) slates that "[n]othing in [section 224] shall be construed to apply to, or to give the FCC jurisdiction with respect io the rates, terms, and conditions, or access to poles, ducrs. conduits and rights-of-way as prov ided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." The Nevada Commission has not certified to the FCC that it regulates the rates. term. and conditions for pole attachments. See States That Have Certified That They Regulate Pole Atlacliments, Public Notice, 7 FCC Rcd 1498 (1992) (identifying nineteen states that had certified to the FCC that they regulated rhe rates. terms. and conditions for pole attachments as of 1992): 47 U.S.C § 224(f). The 1996 Act extended the FCC's authority tu include not just rates, terms, and conditions. but also the authority to regulate nondiscriminatory access to poles, ducts. conduits. and rights-of-way. Local Competition Order ¶ 1232; 47 U.S.C.A. § 224(f) Absent state regulation of terms and conditions of nondiscriminatory attachment access. the FCC retains jurisdiction. Local Competition Order ¶ 1232; 47 U S.C.A. § 224(c)(1); see also SBC Texas Order ¶ 244, n.691

582 47 U.S.C.A § 224(b)(1) Section 224 contains a second provision governing the maximum rates that a utility may charge ior "pole attachments."

583 See Exhibit 33. Rabideau Direct at 8-9, ¶ *20*

584 Id. at 7-8, ¶ 19.

applications within 45 calendar days."[585] If access is granted, Nevada Bell provides in writing what modifications, if any, are necessary, and what the estimated costs for those modifications will be.[586] If no modifications are necessary, access will be granted immediately upon verification of space availability."[587] If access is denied – for reasons of lack of capacity. safety, reliability, or gcncrally applicable engineering purposes – Nevada Bell provides in writing all relevant evidence and explanations, and will promptly contact the applicant to discuss possible alternatives.[588]

302. In order to facilitate access to its poles, ducts, conduits, or right-of-way space, Nevada Bell has developed a Master Agreement for Access to Poles, Ducts, Conduits, and Rights of Way,[589] which is available as a stand-alone agreement or as an appendix to the GIA.[590] Thz rates contained in the Master Agreement for pole attachments and conduit space have been determined in accordance with Section 224(d).[591] CLECs in Nevada have executed the Master Agreement, both as a stand-alone agreement,[592] as well as an appendix to their interconnection agreements."[593] The Staff completed its review of Nevada Bell's compliance with Checklist Item 3 - verifying Nevada Bell's assertions in this regard, and recommending that the Commission find that Nevada Bell complies with the requirements of Checklist Item 3.[594] Based on the foregoing, the Commission concludes that Nevada Bell satisfies the requirements of this checklist item.

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585 Id. at 9, ¶ 21; Hopfinger Direct. Attachment A, p. 678; Transcript Vol. 4 Phase I, at 857, lines 8-21 (Mr. Rabideau clarifying that Nevada Bell actually had responded to all requests during 1999 and 2000 in less than 30 calendar days. *and would* respond *to future requests within* at least 45 calendar days).

586 See Exhibit 33, Rabideau Direct ¶ 21; see also Exhibit 4, Hopfinger Direct, Attachment A678-9

is- See Exhibit 33. Rabideau Direct ¶ 22

588 Id.; also Exhibit 4, Hopfinger Direct. Attachment CLH A678-9

589 Exhibit 4. Hopfinger Direct, Attachment CLH A610 – 766.

590 See Rabideau Direct ¶ 10.

591 *See* Rahideau Direct ¶ 33

592 Transcript of Proceeding, Vol. 4. Phase I. at 859 (Mr. Rahideau identifying two CLECs that had signed the Master Agreement).

593 See Transcript of Proceeding. Vol 4. Phase I. at 860. lines 11-19 (requesting the Commission **take** administrative notice of P U.C.N. Docket Nos. 00-10051 and 00-10060) see P.U.C.N. Docket No. 00-10051 (.Approving Interconnection Agreement Between Nevada Bell and Cat Communications); P.U.C.N Docket 00-10060 (Approving Interconnection Agreement Between Nevada Bell and @Link).

594 See Exhibit 152, **Otsuka** Testimony Phase II-B **at** 5.

D. Checklist Item 4 – Unbundled local loops

1. Overview

303. The local loop is the fundamental building block of Nevada Bell's local exchange network, providing a transmission facility between a distribution frame (or its equivalent) located within Nevada Bell's central office and the demarcation point at the customer's premises."" Under Checklist Item 4, Nevada Bell must prove that it affords CLECs *nondiscriminatory* access to unbundled local loops.

304. Nevada Bell fully complies with Checklist Item 4, providing CLECs with nondiscriminatory access to all of the functions, features and capabilities of unbundled loops CLECs have a broad range of options for obtaining local loops (and their sub-elements) on a pre-assembled basis or in combination with the CLEC's own facilities. Consequently, CLECs can provide local service without matching Nevada Bell's investment in the infrastructure that connects each customer to the public switched network. CLECs have taken advantage of Nevada Bell'sunbundled local loop offerings to provide facilities based alternatives to Nevada Bell's retail service. By August. 2001, Nevada Bell had provisioned more than 6,000 basic, voice grade unbuiidlcd local loops on a nondiscriminatory basis: [596]

2. Standard

305. Section 271(c)(2)(B)(iv), or Checklist Item **4.** obligates the Company to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[597] To demonstrate that it provides unbundled local loops to CLECs in compliance with Checklist Item 4, Nevada Bell must make three showings. First, the Company "must demonstrate that it has a concrete and specific legal obligation to furnish

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[595] See Exhibit 5, Deere Direct ¶ Y0: see also SBC Texas Order ¶ 246 (citing Local Competition Order ¶ 380; UNE Remand Order ¶¶ 166-167 & fn. 301 (retaining definition of the local loop from the Local Competition Order but replacing the phrase "network interconnection device" with "demarcation point," and making cxplicii that dark fiber and loop condition are among the fearures. functions, and capabilities of the loop)).

[596] See Exhibit 144, Supplemental Rebuttal Testimony of Gwen S. Johnson at 37, lines 7-8 ("As of August 2001. CLECs had more than 6.000 basic. voice grade UNE loops (8.0dB and 5 5dB loops) in service within Nevada Bell's service territory.").

[597] 47 U.S.C.A. § 271(c)(2)(B)(iv)

unbundled loops."[598] Second, Nevada Bell must demonstrate that it is "currently [furnishing loops] in the quantities that competitors demand and at an acceptable level of quality."[599] Third. Nevada Bell must "demonstrate that it provides nondiscriminatory access to unbundled loops."[600]

306. Although the FCC examines loops in a disaggregated way, it does not ground its conclusions about Checklist Item 4 on any one type of loop. Rather the FCC anchors its determination of compliance with Checklist Item 4 on Nevada Bell's overall stand-alone loop provisioning performance."[601] In reaching a conclusion about Nevada Bell's overall stand-alone loop provisioning processes, the FCC will evaluate performance measurements results relating to provisioning, and maintenance and repair of stand-alone loops.[602] In particular, the FCC will consider voice grade loops provisioned both as hot cut loops and as new stand-alone loops, as well as xDSL-capable loops and high capacity loops (e.g., DSI loops)."[603] The sections that follow apply the standards developed by the FCC to the facts estahlished in this proceeding to demonstrate that Nevada Bell provides CLECs nondiscriminatory access to all of the functions, features and capabilities of unbundled loops

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598 See SBC Texas Order ¶ 247

599 See id., SBC Kansas/Oklahoma Order ¶ 178

600 See id.; SBC Texas Order ¶ 248.

601 Id.; see also AT&T Corp. v. FCC. *220* F.3d 607, 621 (D.C. Cir. 2000) ("Section 271 docs nor say that an applicant must show that it provides nondiscriminatory access to *each* category of loop or *to* every single loop."). The FCC bases its conclusion upon the roraliry ofthc circumstances. Id. at 623-24. A failure in one arca, therefore, does not necessarily justify a finding that Nevada Bell does not satisfy Checklist Item 4. See also SBC Texas Order ¶ 252 ("Although we examine unhundled loops in this disaggregated way. we base our conclusion on SBC's unhundled *stand-alone* loop *provisioning overall. Thus. even if* SBC's *performance* appears locking *in* a *particular* area, we examine the circumstances surrounding any shortfall. as well as SBC's performance in aggregate, to reach our conclusion that checklist iteni 4 is met.")

602 SBC Texas Order ¶ 250

603 See SBC Texas Order ¶¶ 278-281, 282-301 & 319-330.

3. Analysis

a. Nevada Bell has a concrete, legal obligation to furnish local loops to competitive providers

307. Nevada Bell has concrete legal obligations to furnish local loops to CLECs. The GIA, Appendix UNE obligates the Company to provide all types of local loops, unbundled from local switching and other services.[604] The Company also provides access to the required sub-loop elements,"" as well as the high frequency portion of loops,[606] thus satisfying its obligations under the Local Competition Order. the UNE Remand Order, the Line Sharing Order. and the Line Sharing Reconsideration Order."".

b. Nevada Bell *is* furnishing local loops to competitive providers in the quantities that they demand and at an acceptable level of quality.

(1) Voice grade, stand-alone loops

(A) Introduction

308. Nevada Bell provides unbundled voice grade local loops to CLECs in three distinct forms. First. Nevada Bell provisions stand-alone loops to CLECs through conversions of active loops to the CLECs' collocation space. These loop cutovers, or hot cuts, make it possible io transfer an active Nevada Bell customer's service to a CLEC. Second. if Nevada Bell does not prcscntly service the customer on the loop ordered by the CLEC, the competing carrier may obtain a "new" loop from Nevada Bell. In this case, the customer receives service on a second loop from a competitive carrier and the provisioning process does not involve a hot cut. For both

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[604] See Exhibit 5, Deere Diirect ¶¶ 81-84; see id. ¶¶ 92-93. The Company's loop offerings include (1) 2-wire analog loops with 8dB or 5dB loss, 4-wire analog loops. 2-wire ISDN digital-grade lines. 4-wire DS-I digital glade lines, and various types of 2- and 4-wire loops capable of offering xDSL. services. See id. ¶ 81 (citing GIA Appendix UNE § 7.2). For the 11 percent of Nevada Bell's end-users that are sencd by integrated digital loop carrier ("IDLC") equipment, the Company satisfies its obligation by provisioning alternative facilities. See id. Nevada Bell. in addition, offers cross-connects that are marched to the loop type for CLECs thar choose to have Nevada Bell provide loops on a physically separate basts Id. ¶ 88. The GIA's terms constitute legally binding obligations because the Commission has approved interconnection agreements containing "most of the provisions contained in the GIA " Exhibit 69, Hopfinger Rebuttal at 3-7.

[605] See Exhibit 5. Deere Direct ¶¶ 85-91

[606] See, e.g., Exhibit 115. Chapman Direct *at* 2-3. ¶ *2* &3.

[607] Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourrh Report and Order on Reconsideration in CC Docker No 96-98. Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98. Deployment of Wireline Service Offering Advanced Telecommunications. CC Docket Nos 98-147 & 96-98, FCC 01-26 (rel. Jan 19, 2001); see also Order Clarification. Deployment of Wireline Service Offering Advanced Telecommunications Capability. CC Docket Nos. 98-147 & 96-98. DA 01-480 (rel. Feb. 23, 2001).

new loops and conversions of existing customers, when loops are provisioned on a stand-alone basis, the competing carrier obtains only the transmission facility between Nevada Bell's central office and the customer's premises. The third distinct type of loop provisioned by Nevada Bell is the UNE Platform ("UNE-P"), where the Company provides a loop as pan of a platform or combination of network elements.

309. This section discusses provisioning and maintenance and repair of hot cut loops and new stand-alone loops. The provisioning and maintenance and repair of UNE-P was discussed in Section V(B)(5)(d), supra, because loops provisioned as part of a platform are more similar to processes used to provide resale service than those used to provide unbundled loops, and thus UNE-P was addressed under Checklist Item 14

(B) Hot cuts

310. Nevada Bell must demonstrate that it provisions hot cut loops "in a manner that offers an efficient competitor a meaningful opportunity to compete,"[608] and that it provides new voice grade stand-alone loops to competing carriers in "substantially the same time and manner as it does for its own retail service."[609] To determine whether Nevada Bell provides hot cut loops in a nondiscriminatory manner and of acceptable quality, the FCC will review the Company's hot cut processes, the timeliness of hot cut provisioning, and the quality of the hot cuts.[610]

1. CLECs niav choose freely between fully coordinated and frame due time cutovers

311. Nevada Bell offers Nevada CLECs a choice between two different types of "hot cuts" – the fully coordinated to be called cut ("TBCC") and the frame due time cutover ("FDT").[611] The TBCC process requires the LSC to manually direct such orders to the LOC.[612] The LOC must then work with the CLEC to "cut" a loop at the time requested by the CLEC and confirmed by Nevada Bell."" In contrast, the FDT process is designed for conversions not

[608] SBC Texas Order ¶ 251

[609] Id.

[610] See SBC Texas Order ¶ 257 ("[W]e evaluate SBC's hot cut process. and the timeliness and quality of rhe hot cuts it provides to competing carrieis.")

[611] See Exhibit 123, Henry/Wells Direct ¶¶ 46-47.

[612] These processes are the same in Nevada and California. Exhibit 128, Smith/Tenerelli Supplemental Direct at 7-8.

[613] See Exhibit 123, Henry/Wells Direct ¶ 46

requiring manual coordination."[614] The FDT process is a flow-through process for the disconnect, and the Frame Technician performs the cutover based on the time provided from the CLEC via the service order."[615] Nevada Bell has sufficient personnel and resources to satisfy CLEC demand for either TBCC or FDT conversions; CLECs consequently may "choose freely between TBCC and FDT conversions. selecting the cutover method that best fits their resources and priorities."[616]

ii. Nevada Bell completes both TBCC and FDT conversions in a tinielv manner

312. Turning first to TBCC conversions. PM 9 (Coordinated Customer Conversions) assesses the timeliness with which Nevada Bell completes TBCC conversions for competing carriers. Between January and August, 2001, Nevada Bell met the parity standard for all rcportahle sub-measures under PM 9.[617] Between June and August, 2001, the Company "completed 100 percent of 114. 87, and 86 coordinated conversions for CLEC business customers 'on-time.'"[618] During the same period, Pacific Bell provided better than parity service at much higher volumes.[619] These data demonstrate that the Company provisions TBCC conversions in a timely manner, giving CLECs a meaningful opportunity to compete. Standing alone, the Company's TBCC performance demonstrates compliance with the Act."[620]

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614 See id.. Henry Wells Direct ¶ 47.

615 See Exhibit 128, Smith/Tenerelli Supplemental Direct ¶ 23.

616 See Exhibit 128, Smith/Tenerelli Supplemental Direct at 8; see SBC Texas Order ¶¶ 259-61 (concluding that CLECs could choose freely between the coordinated and frame dur time processes where SBC had sufficient resources to process coordinated cuts); California Order ai 144-48 (rejecting AT&T's argument that Pacific Bell lacks a properly functioning FDT process and concluding. instead. that quantitative data showed that Pacific Bell provisions hot cuts for unbundled loops in a timely fashion).

617 See Exhibit 144, Johnson Supplemental Rebuttal GSJ Attachment K, PM 9. "Nevada Bell completed 99.5 nercent of the 983 coordinated conversions of business lines on time since January 2001. exceeding parity." Id. at 72 n. 60.

618 Id., Exhibit 144, Johnson Supplemental Rebuttal GSJ Attachment K at 32. According to the PM&IP, a coordinated cutover is considered "on-time" where it is completed within one hour of the committed rime. See PM 9.

619 The following table report, Pacific Bell's results from PM 9. Results arc reported as the percent of transactions completed on time.

Product:	Coordinated Return Conversion - Business (PM 9, Sub-measure 990400)			
Volume	**Result (in seconds)**	**Month**	**Parity Value**	**Pars**
4,600	90.74	June. 2001	86.78	Yes
4,300	99 67	July. 2001	86.89	Yes
4,400	99.63	August, 2001	S7.72	Yes

620 In the Texas and the Kansas/Oklahoma proceedings the FCC made clear that an applicant can demonstrate that CLECs have nondiscriminatory access to loops through either a coordinated or due time hot cut process. SBC Kansas Oklahoma Order ¶ 272: SBC Texas Order ¶ 272. While Nevada Bell can provide compliance through the TBCC process alone, the Company is commincd to providing quality FDT cuts, as well.

313. Nevada Bell also provides FDT conversions in a timely manner. PM **9A** (Frame Due Time Conversions) measures the timeliness of the FDT process.[621] Under this measure, Nevada Bell must complete 95 percent of all FDT conversions within one hour of the confirmed frame due time. Between June and August, 2001, Nevada Bell provisioned 100 percent of CLEC FDT orders "on time."[622] "Pacific Bell's performance for LNP has been perfect, but performance for basic loops missed the new benchmark between June and August. 2001, and basic loops with LNP missed the benchmark in June and August."[623] The PM results demonstrate that Nevada Bell offers CLECs a second means – the FDT conversion -- to obtain "hot cuts" in a timely manner, reinforcing the conclusion (hat Nevada Bell meets the requirements of the Act.[624]

iii. Nevada Bell's provides both TBCC and FDT conversions at an acceptable level of quality

314. PMs 15, **15A** and 17 track provisioning quality for basic UNE loops."[625] Between June and August, 2001, Nevada Bell completed more than 500 orders and did not receive a single provisioning trouble report either with respect to a UNE loop being out of service or affecting service.[626] Moreover, not one bot cut order reponed trouble in the first ten days after completion.[627] These results indicate that Nevada Bell provides high-quality loops to CLECs, giving them a meaningful opportunity to compete. The California Order confirmed this based on the comparable perfomiance of Pacific Bell.[628]

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621 See Exhibit 144, Johnson Supplemental Rebuttal at 33.

622 See Exhibit 144, Johnson Supplemental Rebuttal at 33 ("Tracking and formal reporting of performance for this *measure* began [in] *June* 2001 and Nevada Bell's performance has hecn at oiic hundred percent since [hen "). 'Io bc "on time" the conversion must be completed within oiic hour of the scheduled due time

623 Id

624 See California Order at 145 ("The quantitative data indicates that Pacific is provisioning hot cuts Tor unbundled voice grade loops to the CLECs in a timely fashion.").

625 See Exhibit 144. Johnson Supplemental Rebuttal at 36.

626 See Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment K, PM 15, Sub-measures 1511000 & 1511100.

627 See Exhibit 144, Johnson Supplemental Reburial. GSJ Attachment K. PM 17, Sub-measures 1711300 & 1711400.

628 California Order at 146-7 ("These performance results substantiate that Pacific's hot cui qualiry *of* service, practices, and performance standards adequately satisfy the compliance requirements o f this checklist item.")

(C) New, stand-alone basic UNE loops

1. Nevada Bell provisions new, stand-alone basic loops to CLECs in a timely manner

315. Nevada Bell also has shown that it provides new stand-alone loops to CLECs in a timely manner. First, the Company affords CLECs nondiscriminatory access to due date databases."[629] Second. as explained below, Nevada Bell's performance data reveal that the Company misses fewer installation appointments for competing carriers' customers than it does for its retail operations.

316. Nevada Bcll provisioned 544 basic UNE loops for CLECs between January and August of 2001.[630] The average installation interval for CLECs in the aggregate was approxiniately 4 days. The interval ranged from approximately two days to almost six days."[631] While Nevada Bell has missed this submeasure intermittently, the misses do not reflect slow service. Instead, the misses are a product of the mix of work (most basic loop orders include LNP orders) and the "parity" construction of PM 7, which compares Nevada Bell's performance for CLECs to Ncvada Bell's retail results for fielded business POTS. The standard interval for this service is two days. LNP orders also require the Number Portability Administration Center (an independent third-party) to complete tasks that. by industry agreement, require three days.'[632] Consequently, Ncvada Bell provides parity, but the negotiated measurement does not accurately reflect this performance. These "misses" therefore do not preclude the Commission from advising the FCC that Nevada Bell meets the requirements of Checklist Item 4 where, as is the case here. other PM results demonstrate that Nevada Bell provisions basic loops in a timely fashion.[633]

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629 See Exhibit 120, Huston/Lawson Supplemental Direct ¶¶ 69-73.

630 See Exhibit 144, Johnson Supplemental Rebuttal GSJ Attachment K. PM 11, Submeasures 1104600. 1104700 & 1104701

631 Id., PM 7. Submeasures 704600 & 703701

632 See Exhibit 123, Resnick Rebuttal at 8.

633 Nevada Bell has. similar to Bell Atlantic in its New York application, made a reasonable showing "that the evidence on average installation intervals is disrorted by oihcr factors . . .." See Bell Atlantic New York Order ¶ 288. It is reasonable. therefore. lor the Commission to "accord more weight" lo other evidence timely perlormance. such as "performance in meeting loop installation appointments." Id.

317. PM 11 (Percent of Due Dates Missed) provides another, more accurate tool for assessing Nevada Bell's ability to provision unbundled loops in a timely manner."[634] Between January and August, 2001, Nevada Bell missed less than one percent of the 544 fimi due dates for provisioning unbundled basic loops to CLECs, consistently missing fewer CLEC due dates than it did for its retail customers.[635] Pacific Bell's PM 11 performance data mirror Nevada Bell's, confirming the ability of the Regional OSS to provision unbundled basic loops at even greater volumes.[636] Together, these PM results demonstrate that CLECs can provide their customers with a firm due date and rely upon Nevada Bell to turn-up service by that date."[637] Nevada Bell's reliable performance thus allows CLECs a meaningful opportunity to compete and, therefore, demonstrates that Nevada Bell satisfies this aspect of the competitive checklist.[638]

ii. Nevada Bell provides CLECs basic. stand-alone loops that are equal in quality to those that it provides to itself

318. To evaluate whether Nevada Bell provides unbundled basic loops at an acceptable level of quality, the FCC will evaluate metrics reflecting the percent of new orders reporting trouble soon after installation.[639] Nevada Bell's retail customers generally report trouble within 10 days of the installation of a new order more frequently than CLEC customers."[640] These data, together with Pacific Bell's data,"[641] provide a sound basis for the Commission to advise the FCC that Nevada Bell provisions new, stand-alone loops in accordance with this aspect of Checklist Item 4.[642]

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634 See id. ¶ ("Here, we find the missed irate of installation appointments to be the most accurate indicator of Bell Atlantic's ability to provision unbundled loops.").

635 See Exhibit 144, Johnson Supplemental Rebuttal at 36. lines 1-2; see also Exhibit 144, Johnson Supplemental Rebuttal. GSJ Attachment K. PM 11, Submeasure 1104600. 1104700 & 1104701.

636 See Exhibit 144, Johnson Supplemental Rebuttal at 36. lines 6-11

637 In this instance, these results also suggest that minor provisioning interval differences for PM 7 have not adversely affected CLEC operations.

638 See Bell Atlantic New York Order ¶ 288.

639 SBC Texas Order ¶ 280.

640 See, e.g., Exhibit 144, Johnson Supplemental Rebuttal. GSJ Attachment K. PMs 16 & 17, Submeasure 1602500 & 1711100

641 See, e.g., Exhibit 144, Johnson Supplemental Rebuttal, GSJ Attachment L, PMs 16 & 17, Submeasures 1602500, 1602600 & 1791100.

642 See SBC Texas Order ¶ 280 n 793

(D) Maintenance and repair of stand alone loops

319. As of August, 2001, CLECs had more than 6,000 basic, voice grade UNE loops (8.0dB and 5.5dB loops) in service within Nevada Bell's service territory."[643] Nevada Bell's performance measurement plan records and reports a wide range of data relating to maintenance and repair of those loops. The performance data demonstrate that Nevada Bell provides maintenance and repair functions to CLECs Tor unbundled local loops in substantially tlic same time and manner in which it provides those same functions to its retail customers.

320. Between June and August, 2001, CLEC customers reported trouble less frequently on basic loops than did Nevada Bell's retail customers.[644] In fact. during that three-month period, CLEC customers reported trouble on less than one-half of one percent of the basic UNE loops in service.[645] This data demonstrates that Nevada Bell maintains basic UNE loops at an acceptable level ofquality.

321. In addition, Nevada Bell consistently clears CLEC trouble tickets before the cotnniitted due time. Between June and August. 2001, Nevada Bell cleared 27 of 28 CLEC rrouble tickets by the committed due time."[646] Nevada Bell also restores trouble on UNE loops more quickly than it does for its retail customers. Between June and August, 2001, Nevada Bell met the parity standard for PM 21 by restoring trouble on UNE loops more quickly than it did for its own retail customers.[647]

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643 In Nevada Bell's service territory, 5.5 dB UNE loops are virtually non-existent. In Pacific Bell's service territory, 5.5 dB UNE loops comprise just over one percent of the total 5.5dB and 8.0dB loops that Pacific Bell has provisioned to CLECs.

644 See Exhibit 144, Johnson Supplemental Rebuttal. GSJ Attachment K, PM 19, Sub-measures 1992601 & 1992602.

645 See Exhibit 144. Johnson Supplemental Rebuttal. GSJ Attachment K, PM 19. Submeasures 1092601 & I992602

646 See Exhibit 144. Johnson Supplemental Rebuttal, GSJ Attachment K. PM 20, Submeasure 2095201

647 See Exhibit. Johnson Supplemental Rebuttal. GSJ Attachment K, PM 21, Submeasure 2195401. While Dr. Otsuka notes that sample sizes are small, this fact is a product of the low trouble report rate – CLEC customers reported rrouble on less than one and one half percent of UNE basic loops during that same three-month period. In addition. Nevada Bell also provided parity service under PM 22 (POTS Out Of Service Cleared Less rhan 24 Houri). Id., PM 22. Sub-nicasure 2290501

322. Finally, the Company also provides quality repair services Between June and August of 2001, CLECs reported repeat trouble only two times out of 29 reported troubles.[648] These data show that Nevada Bell provides maintenance and repair functions for UNE voice grade loops provision to CLEC customers in substantially the same time and manner as it does for its own retail operations.

(2) xDSL capable loops

323. Although the FCC evaluates compliance with Checklist Item 4 by reviewing a BOC's loop offering in the aggregate, the FCC will assess whether Nevada Bell provisions xDSL capable loops to CLECs in substantially the same time and manner as it does to its own retail services.[649] Because Nevada Bell has different provisioning intervals for xDSL UNE loops and IDSL UNE loops, the PM&lP tracks provisioning performance separately for those two products.'"[650] The sections that follow explain Nevada Bell's performance data. which demonstrates that the Company provides xDSL and IDSL UNE loops in a timely manner and ai an acceptable level of quality.

(A) Loop qualification

324. Nevada Bell allows CLECs to access all of the detailed loop characteristic information. CLECs, as explained above, enjoy nondiscriminatory access to this information.[651]

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[648] PM 23 measures the frequency of repeat troubles in the 30 days following a prior trouble report. See Exhibit 144, Johnson Supplemental Rebuttal. GSJ Attachment K, PM 23, Submeasure 2392601

[649] See SBC Texas Order ¶ 282 ("We also note that in our Bell Atlantic New York Order, we stated that we would 'find it most persuasive if future applicants under Section 271 . make a separate and comprehensive showing with respect to *the* provision of xDSL-capable loops.'").

[650] See Exhibit 144, Johnson Supplemental Rebuttal at 38-39.

[651] See Checklist item 2 discussion.