

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

In the Matter of)	
)	
Application by SBC Communications,)	
Inc., Southwestern Bell Telephone)	
Company, and Southwestern Bell)	
Communications Services, Inc. d/b/a)	CC Docket No. 00-4
Southwestern Bell Long Distance)	
for Provision of In-Region, InterLATA)	
Services in Texas)	
_____)	

**COMMENTS OF MCI WORLDCOM, INC., ON THE
APPLICATION BY SBC FOR AUTHORIZATION TO PROVIDE
IN-REGION, INTERLATA SERVICES IN TEXAS**

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<u>SWBT Reverse Search Services Order</u>	<u>Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Reverse Search Services</u> , CC Docket No. 98-193, Memorandum Opinion and Order, 14 F.C.C.R. 5329 (1999).
<u>U S West National Directory Assistance Order</u>	<u>In re Petition of U S West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance</u> , CC Docket Nos. 97-172 & 92-105, Memorandum Opinion and Order, FCC No. 99-133 (rel. Sept. 27, 1999).
Declarations and Affidavits	
Auinbauh Aff.	Affidavit of Michael C. Auinbauh, SWBT Appl., app. A-3, Tab 1.
Beard & Mayo Decl.	Joint Declaration of T. Randolph Beard and John W. Mayo on Behalf of MCI WorldCom (attached hereto as Tab E).
Beard & Mayo NY Decl.	Joint Declaration of T. Randolph Beard and John W. Mayo on Behalf of MCI WorldCom, MCI WorldCom Comments, <u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York</u> , CC Docket No. 99-295 (filed Oct. 19, 1999).
Brown Aff.	Affidavit of Lincoln Brown, SWBT Appl., app. A-3, tab 2.
Chapman Aff.	Affidavit of Carol Chapman, SWBT Appl., app. A-2, tab 2.
Dysart Aff.	Affidavit of William R. Dysart, SWBT Appl., app. A-5, tab 1

Ford & Jackson Decl.	Joint Declaration of George S. Ford and John D. Jackson on Behalf of MCI WorldCom (attached hereto as Tab B).
Habeeb Aff.	Affidavit of John S. Habeeb, SWBT Appl., app. A-1, tab 1.
Ham Aff.	Affidavit of Elizabeth A. Ham, SWBT Appl., app. A-4, tab 1.
McMurtrie, Macko, & Lichtenberg Decl.	Joint Declaration of Terence D. Macko, Sherry Lichtenberg, and Ronald J. McMurtrie on Behalf of MCI WorldCom (attached hereto as Tab C).
McMillon & Sivori Decl.	Joint Declaration of Terri McMillon and John Sivori on Behalf of MCI WorldCom (attached hereto as Tab A).
Price Decl.	Declaration of Donald G. Price on Behalf of MCI WorldCom (attached hereto as Tab D).
Rogers Aff.	Affidavit of Jan D. Rogers, SWBT Appl., app. A-2, tab 6
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<u>DOJ NY Eval.</u>	Evaluation of the United States Dept. of Justice, <u>In re Application of New York Telephone Company (d/b/a Bell Atlantic - New York), for Authorization to Provide In-Region, InterLATA Services in New York</u> , CC Docket No. 99-295 (filed Nov. 1, 1999).
<u>DOJ Okla. Eval.</u>	Evaluation of the United States Dept. of Justice, <u>In re Application of SBC Communications, Inc., et al. to Provide In-Region, InterLATA Services in the State of Oklahoma</u> , CC Docket No. 97-121 (filed May 21, 1997)
<u>DOJ SC Eval.</u>	Evaluation of the United States Dept. of Justice, <u>In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina</u> , CC Docket No. 97-208 (filed Nov. 4, 1997)
Other Record Materials	

<u>12/19/97</u> <u>Arbitration</u> <u>Award</u>	Arbitration Award, Docket Nos. 16189 <u>et al.</u> (Pub. Util. Comm=n Tex. Dec. 19, 1997) (SWBT Appl., app. F, tab 17).
T2A	Interconnection Agreement between Southwestern Bell Telephone Company and CLEC (SWBT Appl., app. B, tab 68).

INTRODUCTION AND SUMMARY

The Commission=s seminal decision approving Bell Atlantic=s application to provide long distance service in New York (ANY Order@) confirmed the core principle that to gain section 271 entry, a Bell Operating Company (ABOC@) must prove that it is providing service to competitors at parity with the BOC=s retail offerings, and that it can accommodate commercial-scale competition for traditional and advanced local telecommunications services. For all the progress Southwestern Bell (ASWBT@) has recently made with the guidance and insistence of the Texas Public Utilities Commission (APUC@), SWBT still cannot make this essential showing.

In a few areas, SWBT=s Operations Support Systems (AOSS@) are not even designed to provide parity and support commercial-scale volumes (unlike Bell Atlantic=s systems in New York), although SWBT is fully capable of making the needed system improvements in the near term. In other areas the system design is adequate but SWBT has not yet been able to consistently meet critical performance standards, even though it is handling a far smaller volume of orders from competitors than will be required in a competitive market, particularly on the residential side. These problems must be cured before there can be any meaningful level of competition for residential consumers and small and medium-sized businesses in Texas, both for ordinary voice and DSL-based services.

MCI WorldCom hopes to be able to enter the Texas residential market using the unbundled element Aplatform@ (AUNE-P@), the only viable means today for wide-scale residential entry. Whether MCI WorldCom will be able to do so will depend on whether SWBT eliminates the remaining barriers to entry discussed in these Comments. SWBT=s unresolved

OSS problems would limit any entry to a very small scale because SWBT cannot handle commercial volumes of orders. MCI WorldCom will not harm its customers and its reputation by entering and ramping up until SWBT cures the defects in its OSS that prevent it from handling significant order volumes in a nondiscriminatory fashion. The most significant OSS problems are summarized below, along with several other remaining barriers to entry in Texas, including SWBT's excessive and unlawful pricing of UNE-P.

OSS System Defects

The first problem SWBT must resolve is that it divides UNE-P orders into three component parts and often disassociates the orders, causing lost dial tone for consumers. The CLEC community has expressed great concern over this impediment to competition for residential services, and to date SWBT has only acknowledged the problem and promised to address it in an unstated manner and at an undefined time.

Equally important, SWBT fails to provide CLECs a pre-order interface that can be successfully integrated with an EDI ordering interface. The Commission has repeatedly found that without an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. The Commission correctly recognized that this lack of integration places competitors at a competitive disadvantage and significantly impacts a carrier's ability to serve its customers in a timely and efficient manner. Indeed, in the NY Order the Commission concluded that the integration requirement is fundamental to a BOC's showing of nondiscriminatory access to OSS.⁶ The Commission also properly found that parsed Customer

Service Records (ACSRs@) are essential to such integration, yet SWBT does not provide parsed CSRs. There is simply no way to square approval of SWBT=s application with the fundamental OSS standards set forth in the Commission=s prior decisions, and thus with the threshold requirements for robust local competition.

A further problem that stands in the way of commercial-scale residential entry is that SWBT cannot handle electronic trouble tickets in the critical one to two days after initial installation, the time when most troubles are reported. SWBT=s system design also requires competitors to use inefficient processes for vital updates to data showing a customer=s preferences, including the data needed to route calls to the customer=s chosen interexchange carrier. This severely impacts the ability of CLECs to compete because of the frequency with which customers change long distance providers.

More generally, SWBT=s excessive reliance on manual processing of orders that it rejects, as well as those it accepts, leads to delays and increased errors. This was particularly apparent in the limited testing of MCI WorldCom=s UNE-loop interface, where SWBT made repeated errors handling loop orders because of manual intervention.

Apart from some issues concerning manual intervention, none of the systemic OSS defects identified above was at issue in Bell Atlantic=s New York application. These deficiencies, which MCI WorldCom and other CLECs did not face in New York, stand in the way of an open local market in Texas.

Inadequate and Unproven Performance

SWBT has also failed to show that it can consistently meet critical performance standards, which is particularly problematic given the relatively small volume of orders it has handled to date.

In the recent months preceding its application, SWBT demonstrated discriminatory and inadequate performance in a number of vitally important areas, including DSL provisioning, timeliness of order rejections, and frequency of repeat troubles on a customer=s line. SWBT=s performance data reveal that SWBT=s OSS does not yet perform as promised, and the inadequate Telcordia third-party test raises, rather than alleviates, concerns about that performance.

In addition, SWBT must also prove that it can consistently and reliably perform in a crucial area not even covered by the performance measures B change management. At the urging of the PUC, SWBT recently made a number of important promises in the area of change management, but that does not translate into compliance. SWBT must show that it will follow the new rules for significant upcoming software releases, as a failure to abide by change management requirements (including advance notice of changes, accurate documentation, and proper testing of releases CLECs depend upon) can stop nascent B or even well established B local competition in its tracks. SWBT must show that it can comply with its paper promises concerning change management when it undertakes significant software releases in the coming months.

In addition to the needed improvements to SWBT=s systems and performance, there are a few other remaining barriers to local entry in Texas, as the PUC has worked vigorously to create favorable conditions for market entry. The remaining barriers summarized below are significant, but also could be resolved in the near term.

Glue Charges

SWBT must remove the substantial Aglue charges@ it still imposes for UNE-platform, in violation of the Supreme Court=s Iowa Utilities Board decision and required costing principles. This change could be made promptly and would encourage more widespread competition.

Ineffective Backsliding Plan

SWBT=s performance remedy plan is far too weak B even in conjunction with other incentives SWBT claims to have B to ensure that SWBT will provide nondiscriminatory service following section 271 entry. The needed changes could easily be implemented immediately:

(i) trivial Aper occurrence@ remedy amounts must be changed to an effective scheme that triggers adequate remedies for poor performance; (ii) clearly erroneous statistical loopholes that excuse poor performance should simply be removed; and (iii) a few measures of critical functions, such as change management (which are part of Bell Atlantic=s performance plan), must be added to the Texas plan.

Intellectual Property Protection.

SWBT continues to refuse to provide, or confirm that CLECs already have, clearance to use SWBT=s unbundled elements free of intellectual property claims by SWBT=s vendors. SWBT has thus erected a significant barrier to competition in Texas, as well as violated its duty under the competitive checklist to provide nondiscriminatory access to network elements.

Pricing of Directory Listings.

SWBT insists on charging Texas CLECs excessive Amarket-based@ prices, rather than forward-looking prices, for access to directory assistance listings and databases relating to

customers outside of Texas. Because there is no evidence that SWBT imputes to itself the price it seeks to charge others for these in-region, out-of-state listings, SWBT is not in compliance with the requirements of the 1996 Act.

Until these remaining barriers are lifted, Texas will not see meaningful competition for market segments for which access to SWBT=s unbundled elements is required -- residential consumers, small and medium-sized businesses, all locations of larger business customers, and DSL-based services. As the leading provider of competitive local residential service in New York using unbundled elements, MCI WorldCom is uniquely able to identify the impact of these remaining obstacles to commercial-scale residential entry in Texas. Several of the entry barriers in Texas are similar to the problems that plagued MCI WorldCom=s initial entry in New York many months ago (problems that Bell Atlantic largely corrected prior to section 271 entry); other SWBT system and performance problems are notably more serious than those in New York, and must be resolved before the Texas market will be irreversibly open to local competition.

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**COMMENTS OF MCI WORLDCOM, INC., ON THE
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Southwestern Bell=s application for section 271 authority is premature, as it plainly has not satisfied the competitive checklist nor irreversibly opened the Texas local market to competition. The Commission=s order granting Bell Atlantic=s application to provide long distance service in New York confirmed the essential standards set forth in each of the Commission=s prior section 271 orders, leaving no ambiguity that SWBT must fully implement the competitive checklist and demonstrate that sufficient safeguards are in place to prevent post-entry backsliding. SWBT has not made either showing. SWBT must eliminate several substantial barriers to entry in order to allow Texas consumers to benefit from competition for traditional voice and advanced services in the Texas market.

**I. SWBT HAS NOT SATISFIED THE COMPETITIVE CHECKLIST NOR
IRREVERSIBLY OPENED THE TEXAS MARKET TO COMPETITION**

A. Legal Framework

To gain entry into the interLATA market in Texas, SWBT must prove that it has Afully implemented@ all fourteen items of the competitive checklist set forth in section 271(c)(2)(B) of the 1996 Telecommunications Act.¹ 47 U.S.C. ' 271(c)(2)(B); NY Order & 44; MI Order & 105; see also LA II Order & 50 (noncompliance with a single checklist item is sufficient to deny an application).² Section 271 of the Act is designed to ensure that ABOCs have taken real, significant, and irreversible steps to open their markets@ to local competition before they are permitted to enter the long distance market in their own regions. MI Order & 18; see also DOJ LA I Eval. at iii, 1-2; DOJ LA II Eval. at 1.

Both the Commission and the Department of Justice have recognized that the statutory requirement that a BOC Aprovide@ access and interconnection, 47 U.S.C. ' 271(c)(2)(A), means not only that a BOC must make each item legally available, on paper, but also that it must make each item practically available B that the BOC must demonstrate that it is furnishing or ready to furnish the item in quantities that competitors may reasonably demand, and at an acceptable level of quality. NY Order & 52; LA I Order & 54; SC Order && 78, 81; MI Order && 107, 110.³

¹The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (A1996 Act@ or AAct@).

²A table of citation abbreviations and corresponding full citations is provided above, following the Table of Contents.

³See also DOJ SC Eval. at 13 (each checklist item must Abe genuinely available@); id. at 16 (BOC must demonstrate practical ability to provide UNEs with Asatisfactory performance in commercial quantities@); DOJ Okla. Eval. at 75-76 (interconnection and access must be practically available in adequate quantities, and through automated systems that permit efficient ordering, installation, and billing).

To judge whether these standards are met, and to ensure that the conditions SWBT has put into place to win section 271 approval do not deteriorate once it is allowed to compete in the long distance market, it is essential that there be adequate standards of performance creating a strong financial incentive for post-entry compliance with the section 271 checklist. NY Order §§ 8, 12, 436, 438; MI Order § 22 (BOC must not only prove compliance with Act=s requirements at time of application, but also that it can be relied on to remain in compliance); see also id. §§ 204-206, 209; DOJ LA I Eval. at 31.

SWBT has the burden of proving by a preponderance of the evidence that all of these criteria are satisfied as to each checklist item. NY Order §§ 47-48; LA II Order §§ 51-59; SC Order §§ 37, 57; MI Order § 45. Critically, paper promises of future compliance are not enough. NY Order § 37. SWBT has the burden of submitting evidence demonstrating its present compliance with the requirements of section 271. Id. (emphasis in original); DOJ SC Eval. at 16 & n.28; LA II Order §§ 51-59.

B. SWBT=s OSS Does Not Provide CLECs Parity Or A Meaningful Opportunity to Compete.

The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. NY Order § 83. While SWBT has made significant progress in implementing OSS capable of supporting competitive entry by CLECs, vital steps remain. SWBT=s OSS does not meet either prong of the test the Commission has established to evaluate OSS: it has not deployed the necessary systems and personnel; and its OSS is not operationally ready. NY Order § 87. SWBT=s OSS contains

critical functional deficiencies that will cause substantial problems for customers and will also significantly raise CLEC costs if and when CLECs are able to transmit commercial volumes of orders. In addition, SWBT=s performance data reveal that SWBT=s OSS does not yet perform as promised, and the inadequate Telcordia third-party test raises, rather than alleviates, concerns about that performance.

As a result of the facial deficiencies in SWBT=s OSS, as well as SWBT=s unproven ability to process commercial volumes of orders, any launch of UNE-P service by MCI WorldCom would have to be at low order volumes. See Joint Declaration of Terri McMillon and John Sivori on Behalf of MCI WorldCom (AMcMillon & Sivori Decl.@), & 5 (Tab A hereto). The delay in bringing meaningful levels of residential competition to Texas is due to barriers erected by SWBT, including OSS and pricing. See Joint Declaration of Ronald J. McMurtrie, Terence D. Macko, and Sherry Lichtenberg on Behalf of MCI WorldCom (AMcMurtrie, Macko and Lichtenberg Decl.@), passim (Tab B hereto).

The principal problem is that SWBT has failed to create a seamless electronic process. CLECs using SWBT=s systems must manually re-type information obtained at the pre-order stage when they submit orders; must manually call in trouble tickets for the first 24-48 hours after a customer has obtained service, and must use a separate, partially manual process to update a customer=s information in the Line Information Database (ALIDB@). Each of these processes raises CLEC costs and leads to increased errors on the CLEC=s side of the interface. Moreover, SWBT=s relatively high level of reliance on manual processing of orders and of rejects on its side of the interfaces also lead to delays and increased errors. Finally, and perhaps most

fundamentally, SWBT=s procedure of creating three separate service orders from each Local Service Request (ALSR@) submitted by CLECs and its inability to ensure that these three orders are completed simultaneously creates a substantial risk of lost dial tone or double billing for customers. Other than issues concerning manual processes, none of these functional deficiencies was at issue in Bell Atlantic=s section 271 application for New York.

These deficiencies have already created significant problems for CLECs in Texas, including lost dial tone for a high number of customers. The impact is likely to grow far worse at commercial volumes. SWBT claims to have processed almost no orders via EDI until July, then processed only 3,458 orders in July, 6,523 in August, 32,497 in September and 19,104 in October. Ham Aff. & 100 & att. S-2.⁴ In New York, in contrast, Bell Atlantic processed almost 70,000 UNE orders in September (not including disconnect orders). NY Order & 169. The New York number is itself low; MCI WorldCom=s monthly order volumes in New York have increased substantially since September. McMillon & Sivori Decl. & 238. As a result, SWBT must be capable of successfully processing a far higher volume of orders than it is processing

⁴SWBT nowhere presents data on the number of LSRs it has received via differing interfaces per month for different order types. The numbers presented in attachment S-2 to the Ham Affidavit appear to be three times the number of LSRs SWBT has received via EDI. SWBT states that the numbers on the chart represent the total number of posted CLEC orders originating via SWBT=s EDI Gateway. Ham Aff. & 100. As discussed below, however, SWBT divides each LSR into three service orders. Thus, the posted orders seem to represent three times the number of LSRs submitted. Ham Aff. & 200 n.18. The numbers MCI WorldCom provides in the text are therefore 1/3 of the numbers in attachment S-2. However, the accuracy of these numbers is uncertain because the data SWBT provided in attachment S-2 appears to be inconsistent with the data SWBT provided in Ham Aff. att. X-2-1 (which provides somewhat higher numbers for the total ASMFIDs@ submitted B with no explanation of what a SMFID is).

today. Although SWBT has managed to mask the impact of some of its systems problems by hand-holding orders at today=s relatively low volumes, it will not be able to do so at higher volumes. McMillon & Sivori Decl. && 238, 252. Nor will CLECs be able to hand-hold orders on their side of the interfaces. Id. && 238, 253.

1. SWBT=s OSS Contains Fundamental Systemic Flaws That Will Prevent Commercial Scale Entry Using Unbundled Elements.

a. SWBT Does Not Offer A Pre-order Interface That Can Be Integrated With an Order Interface.

The Commission has repeatedly made clear the importance of a pre-order interface that CLECs can integrate with an EDI ordering interface. As the Commission explained in the NY Order, A[w]ithout an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. This lack of integration would place competitors at a competitive disadvantage and significantly impact a carrier=s ability to serve its customers in a timely and efficient manner.@ NY Order & 137; see also LA II Order && 94-100; SC Order && 112, 156-59. SWBT has not shown that it has such an interface. Indeed, defects in SWBT=s OSS clearly preclude CLECs from successfully using address information obtained from a Customer Service Record (CSR) at the pre-order stage to populate an order.

SWBT Fails to Show Its Interfaces Can Be Integrated. First, SWBT provides no evidence that the pre-order interfaces it offers enable integration of any pre-ordering function with ordering. While SWBT claims that one CLEC has successfully integrated pre-order and order functions using SWBT=s Datagate pre-order interface, see Ham Aff. & 60, it offers no detail to

support this claim. It does not assert, much less provide evidence, that the CLEC integrated all pre-order functions for all important order types, or that the CLEC avoided the need for re-typing for those functions it ostensibly integrated. SWBT also cannot rely on the Telcordia test for proof that its pre-order interfaces are integratable. Telcordia did not build an integrated interface nor even examine SWBT=s documentation to evaluate whether SWBT=s interfaces are capable of integration. McMillon & Sivori Decl. & 50. In sharp contrast, in its New York application, Bell Atlantic presented evidence that Hewlett Packard had developed an EDI pre-order interface, that KPMG had evaluated whether that interface could be integrated with an EDI ordering interface, and that CLECs had actually built integrated interfaces for some pre-order functions. NY Order && 133-34, 138. SWBT=s application is more akin to BellSouth=s second Louisiana application which this Commission rejected as inadequate in part because there was no evidence that any Acarrier has sought to integrate all five pre-ordering functions with ordering@ and because there was no evidence as to Awhether a competing carrier is able to build an integrated interface.@ LA II Order & 101.

SWBT Fails to Provide Parsed CSRs. This critical defect in SWBT=s application is not simply one of lack of proof. The fact is that SWBT=s pre-order interfaces cannot yet be integrated with an EDI ordering interface with respect to at least one essential pre-order function: retrieval of Customer Service Records (ACSRs@). Unlike Bell Atlantic, see NY Order && 133-34, 138, 151-52, SWBT does not offer fully parsed CSRs. McMillon & Sivori Decl. & 52. SWBT provides address information from the CSR in one unparsed address field. Id. This information cannot be directly populated into an LSR; CLECs must take this information from the

CSR and re-type it into the correct fields on the LSR (service address descriptive location, service address house number, service address house prefix, service address street directional, service address house number suffix, service address street name, service address street suffix, and service address thoroughfare) while precisely following SWBT=s business rules. Id. && 42, 53. The need to re-type address information takes substantial time and risks an extremely high error rate. McMillon & Sivori Decl. && 53-54, 71-74. As the Commission has explained, Aparsed CSR functionality is necessary for carriers to integrate CSR data into their own back office systems . . . [A BOC] must provide access to parsed CSR functionality that affords an efficient competitor a meaningful opportunity to compete.@ NY Order & 151; see also id. && 137, 152; LA II Order & 100 (rejecting BellSouth=s reliance on a CGI-LENS offering in part because carriers were unable to use CSR information Ato populate individual fields of an order@).

SWBT=s Address Databases Contain Too Many Mismatches. Errors are also the inevitable result of another defect in SWBT=s systems related to service addresses: a significant number of mismatches between the CRIS database (from which CLECs obtain CSRs) and the PREMIS database (against which addresses are validated). McMillon & Sivori Decl. && 65-66. AT&T and Birch Telecommunications have both reported experiencing a significant number of rejects for invalid addresses on orders on which they had placed the exact address obtained from the CSR. Id. & 66. SWBT=s explanation has been that addresses in CRIS and PREMIS do not always match. Id. & 100. Such address mismatches cause a high number of rejects and force the CLECs to rely on manual processes to obtain an address that can be accepted by SWBT=s systems. Id. & 67. Moreover, even if the address is successfully validated, it does not always

match the database from which SWBT draws addresses for provisioning, and this has led to mistakes such as provisioning of service at the incorrect address. Id. & 68.

SWBT Requires Population of an Address on Every Order. The impact of address mismatches and the need to re-type addresses is magnified by yet another defect of SWBT=s systems. SWBT requires that CLECs place an address on every order, even migration orders. As a result, every order has the potential to be rejected for an invalid address, and every order requires the expenditure of time and expense in populating address information. Id. & 69. If, like Bell Atlantic, SWBT permitted CLECs to transmit migration orders without re-transmitting the customer=s address (an address which, after all, already resides in SWBT=s systems), the issues associated with addresses could be avoided on all such orders. Id. & 70.

The service address issues are a major gating item to MCI WorldCom=s ability to launch service in commercial volumes. McMillon & Sivori Decl. & 64. MCI WorldCom significantly increased the number of orders it was transmitting in New York only after it was able to obtain parsed CSRs. Id. && 43, 64.

SWBT=s Responses to CLEC Concerns With Respect to Addresses Are Unavailing. SWBT offers little excuse for its systemic flaws with respect to service addresses. SWBT acknowledges that it does not offer parsed CSRs but asserts that no CLECs have asked for them. Ham Aff. && 182-83. However, MCI WorldCom requested parsed CSRs from SWBT more than a year ago and has consistently made clear its need for an EDI pre-order interface that would allow it to integrate pre-order and order. McMillon & Sivori Decl. && 61-62 & att. 3. In any event, even if, as a result of the low volume of orders placed to date and other barriers in

SWBT=s systems, no CLECs were yet in a position to avail themselves of parsed CSRs, this would not excuse SWBT=s failure to provide such important functionality so that it is available when CLECs need to use it. See NY Order & 136 (explaining that where CLECs have not yet chosen to access a particular function which the BOC has an obligation to provide, the BOC must show that it is A presently ready to furnish the item@ (quotation omitted)).

SWBT also argues that parsed CSRs are not necessary because CLECs can take the unparsed address obtained from the CSR and verify it by using the address validation function. Ham Aff. & 184. But this still would require retyping the address. McMillon & Sivori Decl. && 55-56. Moreover, use of the address validation function itself adds significantly to the time CLECs must expend at the pre-order stage while the customer is on the line. Id. & 57. On migration orders, when CLECs can obtain an address from the CSR, they should not have to use the address validation function. Id. Based on MCI WorldCom=s volumes in New York, SWBT=s proposal would require re-typing of thousands of addresses a day and an equal number of additional pre-order transactions. Id. In addition, the address validation function is likely to be unavailable on almost 20% of orders. Id. & 58.

As explained previously, SWBT=s systemic flaws with respect to service addresses also add significantly to the number of rejected orders. SWBT experiences reject rates of over 30%. Id. & 71. Unlike Bell Atlantic, see NY Order & 167, SWBT cannot blame these rejects on CLECs. SWBT simply has not offered CLECs a means of obtaining address information from the CSR and using it to successfully populate an order; CLEC mistakes in populating orders could be significantly reduced if SWBT provided such a capability. Mismatches in SWBT=s databases are

also responsible for a number of rejects. The additional rejects, delays, and costs experienced by CLECs as a result of SWBT=s systemic deficiencies related to addresses, as well as SWBT=s failure to prove that it offers CLECs the capability of integrating any other pre-order and order functionality in and of itself warrants rejection of SWBT=s application under the standards set forth in the Commission=s prior orders.

b. SWBT=s Back-end Processes Create an Unnecessary Risk of Lost Dial Tone and Double Billing for Customers.

SWBT divides each Local Service Request (LSR) submitted by a CLEC for UNE-Platform or a UNE-Loop into three separate service orders, a disconnect order (D order), a new order (N order) and a change order (C order). McMillon & Sivori Decl. & 95. These orders must remain coordinated or significant customer-impacting problems can result. If the disconnect orders is processed before the new order, the customer can lose dial tone. Id. If the new order is process before the disconnect order, the customer may be double billed. Id.

The possibility of the orders becoming disassociated is high. LSC representatives are responsible for generating the N, C and D orders on many LSRs and are also responsible for updating all N, C and D orders when a CLEC submits a supplementary LSR to ask for a new due date (something customers request rather frequently). Id. && 97, 103-04. If an LSC representative successfully changes the due date on one or two of the service orders but not on all three, or fails to input the proper codes to coordinate the orders, the service orders will be completed at different times. Id. & 103.

The service orders can also become disassociated if one of the orders is rejected and the other two are accepted. Id. & 98. The possibility of this problem is also high because, rather than simply transferring the address from the LSR to each of the three service orders, SWBT transfers the address from the LSR to the C order but populates the N and D orders with addresses obtained from a database lookup. Id. If the address on the LSR does not exactly match the address obtained from the database lookup, either because of mismatches in SWBT's databases (as described above) or simply because the CLEC made a mistake in populating the LSR, then one or two of the service orders may be rejected while others are completed -- leading to lost dial tone or double billing of the customer. Id. & 99-102. SWBT has previously acknowledged some instances of lost dial tone as resulting from address mismatches in its databases. Id. & 100.

SWBT has acknowledged the existence of other problems related to the three- service-order process as well. During a User Forum meeting in December, many CLECs criticized the three-service-order process, and SWBT responded that it had set up a team to examine that process. Id. & 112 & att. 11 (Final Minutes for December 7, 1999 CLEC User Forum). At a second User Forum meeting, SWBT identified seven areas that represent potential processing problems associated with the three-service-order process. Id. & 112 & att. 10 (Minutes from December 21, 1999 CLEC User Forum Follow-Up Conference Call). It then listed problems including ADiscrepancy of End User Address on CSR,@ ADue Date Changes/Supps,@ and ACompletion/Posting Service Orders.@ Id. It stated that the team will be Aproviding a more timely ordering process and incorporating a process that will ensure that all orders remain

synchronized through posting.@ Id. But SWBT did not even explain many of the problems it had identified, much less its proposed solutions. Indeed, it reported that for many of these problems, the solution was Aunder investigation.@ Id. Paper promises of future performance cannot demonstrate compliance with the requirements of ' 271. NY Order & 37.

It may be that the only realistic solution is to eliminate the three-service-order process. Indeed, for resale orders, SWBT moved away from a multiple service order process after determining that it caused loss of dial tone. Thus, SWBT has stated that:

In the early days of local service, two orders were required to convert residence and small business customers, which did result in a customer losing dial tone if the order for new service was not referenced to the disconnect order. To prevent such problems, SWBT created a special type of change order to handle new conversions, so that only one order was issued to accomplish the conversion. This change had a great impact on seamless conversions in the residence and simple business orders.

Sur-rebuttal Testimony of Linda Kramer, Case No. TO-99-227, at 19 (Mo. PSC Feb. 1999) (McMillon & Sivori Decl. att. 12).

SWBT=s failure to make a similar change for UNE orders (or implement some equally effective fix) has repeatedly caused customers to lose dial tone (although this is impossible to tell from SWBT=s performance measures, which do not specifically track lost dial tone). AT&T has previously reported that up to 6% of its UNE-P customers were losing dial tone. Comments of AT&T Communications of the Southwest, Inc. Regarding United States Department of Justice Evaluation of the Application of Bell Atlantic, Project No. 16251, at 12 (Texas PUC Nov. 3, 1999) (SWBT App. C, Tab 1960). Birch has also reported that a substantial number of its

customers were losing dial tone. McMillon & Sivori Decl. & 107. In contrast, in New York, customers are not losing dial tone when they switch to MCI WorldCom. Id. & 110.

SWBT is likely to respond that lost dial tone and other problems associated with the three-service-order process have decreased in recent weeks. However, even if this is so, SWBT has not identified any systems fix it has put into place to preclude future problems. Id. & 111. Indeed, SWBT acknowledged at the December User Forum that it is still seeking long term solutions. The fact that SWBT may have been able to reduce lost dial tone for a short period of time by hand-holding relatively low volumes of orders (many of which are resale conversions), should not be enough to enable SWBT to obtain section 271 authority using a process that is fraught with the possibility of causing substantial numbers of customers to lose dial tone, that has done so in the past, and that will have to operate successfully at much higher volumes of orders to support local competition.

c. SWBT=s Process for Enabling CLECs to Update LIDB is Severely Deficient.

Unlike every other Bell Operating Company, SWBT does not allow CLECs to update its Line Information Database (LIDB) by submitting an LSR. As a result, it is significantly more difficult for CLECs to change a customer=s Primary Interexchange Carrier (PIC). In addition, SWBT=s new process for updating LIDB on initial CLEC orders has not yet been proven to work.

LIDB is the database that includes the information enabling a customer to receive collect calls and make credit card calls. McMillon & Sivori Decl. & 80. It also contains the customer=s

PIC designation and the information that triggers the branding on a customer=s directory assistance and operator calls. Id. When a customer migrates service to a CLEC, LIDB must be updated. LIDB must also be updated whenever a customer changes his or her PIC, a frequent occurrence in today=s highly competitive market for long distance services. Id.

Until January 15 (subsequent to the date of SWBT=s application), when a CLEC submitted an LSR to migrate a customer, that LSR did not trigger an update of LIDB. Id. && 82-83. Instead, SWBT required the CLEC to fill out a separate order for a LIDB update and to submit that order via fax, via a GUI, or via a batch process the CLEC was required to develop for just this purpose. Id. && 82-83. This was extremely inefficient. Id. & 83. In addition, using these processes, a CLEC could not update LIDB until SWBT had issued a service order completion on the LSR, a process which takes time. Id. Until then, customers would be unable to receive collect calls, would receive SWBT branding on operator or directory assistance calls (which would in turn likely prompt confused calls from customers to the CLEC), and would retain their prior PICs even if they had asked for PIC changes as part of their orders. Id. Moreover, when the CLEC did submit a separate LIDB order, it would not receive any notification back from SWBT informing it of the status of that order. Id. If customers called to complain that they could not receive collect calls or that they were receiving SWBT branding, the CLEC would have no visibility into the status of the LIDB updates. Id.

The January 15 systems change with respect to LIDB was designed to eliminate these problems only with respect to initial CLEC orders. As of that time, SWBT began allowing SWBT to update LIDB on initial orders by submitting an LSR. However, the effectiveness of

that systems change has not been proven. MCI WorldCom tested a few orders with SWBT prior to implementation of the LIDB change but SWBT processed these orders somewhat differently than it will process live orders. Id. & 85. There has not yet been any significant commercial experience with the new process. The likelihood that the process will work as intended is very much in doubt. In response to a series of MCI WorldCom questions about the new process, SWBT explained that Aunder normal no error conditions and no down time at the LRAF, the order may be completed within 24 to 48 hours@ and that Aa migrated TN will have the potential for reflecting the new owner=s brand when LIDB is updated by the migration order.@ Id. & 86, att. 7 (emphasis added). SWBT=s noncommittal and vague answers to MCI WorldCom questions about the change do not leave MCI WorldCom with any confidence that the process will work as it should.

More fundamentally, the new LIDB process cannot be used for LIDB updates requested by CLECs subsequent to an initial order. Id. & 88. When, for example, customers who have already migrated to a CLEC request a change in their PICs, the CLEC cannot place an order for the PIC changes through the LSR process. Id. & 89. The CLEC will instead have to use one of the means discussed above B a fax process, a GUI, or a separately developed batch process. Id. Using any of these processes, a CLEC will be unable to transmit a PIC change request from a customer until it has received a completion notice on the initial order, creating potentially significant delays for the customer. Id. & 90. When the CLEC does submit the PIC change request, it will have to enter the information both into its own systems and into the GUI, fax, or batch process, adding to CLEC costs and increasing the chance of errors. Id. & 92. Moreover,

after transmitting a request, the CLEC will not receive any response from SWBT informing it that the request has been received or that it has been completed. Id. & 91. The only way CLECs will know that a PIC change request was not processed is when a customer calls to complain. Id.

These problems will significantly affect the competitive entry of MCI WorldCom. In New York, MCI WorldCom receives approximately 1,500 PIC change requests a month from its local customers. Id. & 89. MCI WorldCom fully expects that it would have the same number of PIC change requests in Texas when it has the same number of local customers. Until SWBT implements an LSR process for PIC changes, it would be a poor business practice for CLECs to ramp up to true commercial volumes. SWBT=s inadequate process with respect to LIDB will therefore significantly reduce the number of orders that MCI WorldCom would be willing to transmit if and when it is able to launch UNE-P service. Id. & 94.

d. SWBT Is Unable to Receive Electronic Trouble Tickets Until Orders Have Posted.

SWBT=s maintenance and repair interfaces have a major systemic flaw that will impede competition: CLECs cannot submit a trouble ticket electronically until an order has posted to SWBT=s downstream billing systems. Id. & 192. Such posting generally does not occur until 24-48 hours or more after an order has been completed. Id.⁵ Until then, CLECs will have to submit troubles manually via phone calls. Id. & 193.

⁵Indeed, the delay could be even longer. Telcordia identified several possible reasons why an order might get hung up before posting to billing. Ham Aff. att. A at 25. If this occurred, not only would there be significant problems with billing the customer, but the CLEC would be unable to submit trouble tickets electronically.

SWBT=s failure to implement a fix for this maintenance and repair problem is a severe obstacle for MCI WorldCom. A high percentage of trouble reports occur in the first 24-48 hours after an order is placed. Id. This is also a period when customers are most carefully judging their new provider. Id. Submitting troubles manually increases the risk of error and delays response to the troubles, a problem that new customers will blame on the CLEC. Submitting troubles manually also raises CLECs= costs. Id. && 194-99.

Delay is inherent in a process that requires CLECs to call SWBT to submit troubles. CLECs will not know when an order has posted to billing (no notice is sent by SWBT at this stage). McMillon & Sivori Decl. & 195. Thus, a CLEC will first have to submit a trouble electronically, receive an error message, and then determine that the trouble ticket was submitted prior to posting of the initial order. Id. As KPMG found when discussing a similar problem in New York, the result of this manual process is that A[t]he CLEC=s customer suffers an extended time delay in getting service problems resolved.@ McMillon & Sivori Decl. & 195 (att. 24). This delay is exacerbated in SWBT=s case by the lengthy time period that CLECs have to wait to reach a SWBT representative in the LOC. Id. & 195. Moreover, until the original order has posted to billing, the representative may believe the CLEC's customer remains SWBT's customer and be unwilling to resolve the trouble. Id. & 196.

The use of manual processes also precludes CLECs from conducting MLT tests on customers= lines, a function the Commission has described as Athe most common maintenance and repair function.@ NY Order & 219. As a result, CLECs will be unable to determine when troubles originate on the customer=s side of the line and resolve those troubles without SWBT=s

involvement; they will also be unable to determine the source of troubles on SWBT=s side of the line and advise SWBT of the source of the trouble, thus helping to ensure quicker and more accurate resolution of the customers= troubles. McMillon & Sivori Decl. & 194. This significantly impedes the CLECs= ability to compete. As the Commission has explained, A[a] new entrant that is unable to provide such instantaneous trouble resolution services to its customers cannot compete effectively with [the incumbent] which has the capability of resolving many trouble complaints while their customers are still on the line.@ LA II Order & 157.

In addition, when CLECs submit trouble tickets manually, they generally will be unable to advise customers of what progress has been made in resolving their troubles. When customers call to ask about such progress, CLECs will be unable able to check the status of the troubles electronically. McMillon & Sivori Decl. & 197. Unless SWBT has called to advise the CLEC of that status, the CLECs will have to inform their customers that they do not know what, if anything, has been done to resolve the troubles. Id. This will result in extremely dissatisfied customers.

The manual process of trouble resolution will also increase CLEC costs. Because of the time consuming nature of reporting troubles manually, CLECs will have to hire additional personnel. Id. & 195. In addition, when SWBT calls CLECs to report on the status of troubles (including the closure of trouble tickets), the CLECs will then have to type this information into

their own systems -- a process that is avoided with an electronic bonding interface in which status information is returned electronically. Id. & 197.⁶

SWBT=s inability to accept trouble tickets electronically until service orders have posted to billing thus significantly impedes CLECs= ability to compete. Although Telcordia documented the systemic problem, Readiness Report at 25 (Ham Aff., att. A), SWBT has not yet fixed it or even agreed to do so in the future. In contrast, in New York, this Commission specifically found that ABell Atlantic permits competing carriers to open trouble tickets immediately on recently-completed service orders. In light of an early exception noted by KPMG, Bell Atlantic implemented a function in RETAS in April that permits competing carriers to enter a trouble ticket immediately after completion of a service order.@ NY Order & 216 (emphasis added). SWBT=s failure to implement any similar functionality should result in rejection of its application.

e. SWBT Relies on Far Too Much Manual Processing During Ordering and Provisioning.

It is well established that manual processes lead to delay and increased likelihood of errors. See LA II Order && 107-116; MI Order && 172-73, 186-88 196; SC Order && 104-08. This is driven home by the Telcordia Report which repeatedly lists mistakes by SWBT employees

⁶Moreover, SWBT=s systemic failure is made worse by a failure of its personnel. CLECs are likely to have to manually enter SWBT=s status reports on trouble tickets even after a customer=s order has posted to billing. During the Telcordia test, SWBT employees repeatedly responded to trouble tickets submitted via the electronic bonding interface with phone calls back to MCI WorldCom. McMillon & Sivori Decl. & 201. This defeats the purpose of the electronic interface, requiring MCI WorldCom to manually enter the information received back into its own systems. Id. SWBT has not shown that it has now adequately trained its employees to avoid this problem.

as the source of SWBT errors. SWBT continues to rely on far too much manual processing in its ordering and provisioning processes.

SWBT Manually Processes Too Many Rejects. SWBT manually processes 37% of orders that it ultimately rejects. McMillon & Sivioli Decl. & 157. This substantially delays the return of these rejects. While the performance standard for the return of electronically processed rejects is one hour, the standard for the return of manually processed (or manually transmitted) rejects is five hours. Id. & 158. SWBT has consistently failed even this standard. In December, SWBT failed this standard by over thirty hours. On average, SWBT returned manually processed rejects in 35.65 hours in December, continuing a trend of deteriorating performance B SWBT had return times of 6.20 hours in August, 8.13 hours in September, 10.10 hours in October, 14.94 hours in November, culminating in the 30-hour miss in December. Id. & 159. In contrast, in New York, the Commission found that Bell Atlantic=s reject time was steadily improving prior to filing, with the average time for rejects (manual and mechanized combined) reaching a low of 6.2 hours in the month before filing. NY Order && 164 & n. 506, 169. Bell Atlantic=s on-time performance increased with increasing volumes of orders .⁷

Manual processing of rejects also increases the number of erroneous rejects and erroneous explanations of the reason for rejects. During the Telcordia test, Telcordia repeatedly pointed to

⁷In its brief, SWBT claims only that it is able to process mechanized rejects on time. SWBT Br. at 89; Dysart Aff. & 133. Under the relevant business rules, however, mechanized rejects do not include manually processed rejects. SWBT also disingenuously compares its return time for rejects that are processed and returned in a mechanized fashion with what the Commission found to be Bell Atlantic=s average time for return of all rejects, including manually processed rejects. See Ham Aff. & 149; NY Order & 164 n. 506.

errors made by LSC representatives in processing orders and processing rejects. In concluding that a high percentage of rejects during the test were the fault of CLECs, Telcordia ignored its own findings. It did so based on an erroneous assumption that rejects transmitted in an automated fashion cannot have been SWBT=s fault. McMillon & Sivori Decl. & 74. Moreover, the fact that CLEC reject rates have varied significantly says little about whether rejects are the fault of CLECs or SWBT without further analysis of the type of orders the CLECs submitted; for example, one would expect AT&T=s orders for resale conversion to experience almost no rejects since all appropriate pre-ordering information is already in AT&T=s own systems. Id. & 73. This Commission has no basis on which to conclude that SWBT=s manual processing of rejects will not significantly impact timeliness and accuracy of reject returns; indeed, the evidence is that it will have such an effect.

Timely and accurate return of rejects Adirectly affects a competing carrier=s ability to serve its customers, because such carriers are unable to correct errors and resubmit orders until they are notified of their rejection@ by SWBT. LA II Order & 118. The delays and errors caused by manual processing of rejects are particularly important at the early stages of competition, when the number of rejects is very high. Given that SWBT rejected 37.2% of the orders it receives through its LEX interface and 30.7% of the orders it receives via EDI, manually processing of 37% of these rejects is a substantial problem and should lead to rejection of SWBT=s application. McMillon & Sivori Decl. & 156; LA II Order & 119 (relying on manual processing of rejects as one reason to reject BellSouth=s application); MI Order && 186, 188 (same). Here, in contrast to what the Commission found to be the case in New York, NY Order & 169 (Bell Atlantic has

shown its ability to manually process orders in a timely and accurate fashion), manual processing of rejects is directly correlated with poor performance even at the relatively low volumes of orders currently transmitted to SWBT.

SWBT Manually Processes Too Many Orders. Moreover, manual processing of rejects is coupled with a related problem: manual processing of most of the supplemental orders CLECs transmit to correct rejects. If SWBT has created service orders in its back-end systems from the original LSR transmitted by a CLEC, then a supplemental order to correct a reject of that LSR (or for any other reason) will not flow through SWBT's systems. McMillon & Sivori Decl. & 121. This includes all supplemental orders to correct rejects that were manually processed. In addition, SWBT has informed MCI WorldCom that rejects for invalid service address occur after service orders have been created, and thus supplements for these rejects, one of the main categories of rejects, will not flow through. Id. & 121. Lack of flow through of most supplemental orders will in and of itself reduce flow through to unacceptably low levels.

SWBT also engages in manual processing of other important order types:

- § No orders for coordinated cutovers flow through. Id. & 123. Indeed, only 29.63% of UNE orders (other than UNE-P) flowed through in October. Ham Aff. & 134. Given the high number of manual errors MCI WorldCom experienced on such orders during the Telcordia test, the manual processing of these orders is likely to make it extremely difficult for CLECs to compete using a loop strategy. McMillon & Sivori Decl. & 123. In New York, in contrast, coordinated cutover orders are designed to flow through and this Commission relied on KPMG's finding that 85% of loop orders designed to flow through could indeed flow through. Id.; NY Order & 168.
- § Orders for partial migrations also do not flow through. McMillon & Sivori Decl. & 120. Such orders are particularly important during early stages of competition when customers are likely to migrate a second line to a CLEC to determine

whether the CLEC=s service is satisfactory. Id. & 120; MI Order & 179 (relying in part on Ameritech=s failure to provide for flow through of resale orders for partial migrations as one reason for rejecting Ameritech=s section 271 application).

§ Orders to suspend a customer=s service for non-payment and then to restore the customer=s service once payment is received are another important category of orders that do not flow through. McMillon & Sivori Decl. & 124. If a suspension order is improperly processed as a result of manual handling, the customer may lose dial tone altogether rather than retaining the ability to make 911 calls. Id. & 124. If a restoration order is delayed as a result of manual handling, the CLEC may fail its obligations under state law to restore service within a certain period of time. Id.

Even within categories of orders that ostensibly flow through, there are almost certainly important exceptions. In New York, the PSC staff conducted a careful order by order analysis to determine the primary causes of manual intervention. Id. & 126. Some of the causes it found were entirely unanticipated, and Bell Atlantic agreed to eliminate almost all of these sources of manual intervention. Id. No similar analysis has even been conducted in Texas. Id. The known and unknown flow through problems are yet another barrier to MCI WorldCom offering residential service in commercial volumes.

SWBT=s Folders Process Exacerbates the Impact of Manual Processing. SWBT=s overall dependence on manual processing is exacerbated by a unique component of SWBT=s back-end systems called folders. In response to repeated MCI WorldCom inquiries, SWBT has provided ambiguous and inconsistent explanations of the folders process and resisted any detailed analysis by Telcordia of that process. Id. && 128-29. Nonetheless, it is clear that the folders process has the potential to be a significant bottleneck in SWBT=s systems. Based on SWBT=s prior representations and its explanation in this application, either every order must be reviewed

by a SWBT representative in folders before it passes downstream in SWBT=s systems, or, at a minimum, orders that are manually processed or rejected must be reviewed in folders. Id. & 129. Even if the latter is the case, folders can pose a significant bottleneck if representatives do not quickly and accurately identify those orders in folders that need to be reviewed and then complete this task. Id. & 129. Otherwise, the orders will simply sit in folders. During MCI WorldCom=s small-scale UNE-P trial, SWBT informed MCI WorldCom that some of its orders were Ahung up in folders@; Birch Telecom recently reported that this same problem had arisen in commercial operation with a high percentage of its orders. Id. & 130, Birch Informal Complaint in Docket 21,000, Sept. 7, 1999, at 4-12 (SWBT App. C, Tab 1789).⁸ AFolders@ therefore remains an insufficiently explained aspect of SWBT=s systems and one with a significant potential to cause problems.

SWBT=s Claimed AFlow Through@ Rates Do Not Show That Manual Processing is Low.

SWBT responds to criticisms of the high level of manual processing it employs by asserting that its overall flow through rate is high B even higher than the flow through rate for its retail orders. SWBT Br. at 88. But SWBT=s flow-through rate for UNEs other than UNE-P is less than 30%. McMillon & Sivori Decl. & 116. Moreover, a measure of orders that flow through without manual processing does not capture problems caused by manual review of orders in folders or by manual processing of rejects. In any event, SWBT=s data do not support its claim. In its performance reports, SWBT only reports the flow through of orders designed to flow through,

⁸This problem is likely not captured by any performance metrics, since no FOCs, rejects, or completion notices are actually returned on these orders.

not numbers for all order types. McMillon & Sivori Decl. & 115. For the first time in its application, SWBT claims to provide true flow through numbers. Id. & 116. But these last-minute numbers have not been audited by Telcordia, by the PUC, or by CLECs and are extremely dubious in light of the high level of manual processing that MCI WorldCom experienced during the Telcordia test and that other CLECs have experienced.⁹ Id. & 117. In any event, even SWBT=s last minute numbers do not report true flow through. SWBT appears to be calculating flow through only for initial orders, not supplemental orders placed in response to rejects (likely the primary source of manual processing);¹⁰ SWBT considers orders to flow through even if they drop out for manual processing after reaching SWBT=s back-end system SORD;¹¹ finally, SWBT inflates the number by counting service orders (each N, C, or D) that flow through, rather than each LSR. Id. && 117-118.

SWBT may also contend that under the NY Order, manual processing is unimportant. However, while this Commission found Bell Atlantic=s use of manual processing was not causing poor performance, NY Order & 169, that is not the case with SWBT. SWBT=s high manual

⁹During the retest, Telcordia found that 37.68% of orders had a missing customer due date as a result of manual errors, 2% had an incorrect purchase order number, and others orders had a variety of different errors. Readiness Report at 90-91. Thus, during testing at least 37.68% of orders were manually processed.

¹⁰Given the high percentage of LSRs that SWBT rejects and on which CLECs must then submit a supplemental order, it is hard to understand how SWBT=s flow through numbers could be as high as it claims they are if it is including such orders.

¹¹Although SWBT claims that CLEC orders and retail orders are treated identically at this stage, Ham Aff. & 125, no one has audited this claim, and SWBT does not establish that retail orders and CLEC orders fall out at equivalent rates at this stage.

processing of rejects has caused delays and errors in return of rejects. Its high manual processing of orders resulted in a significant number of errors during the Telcordia test.¹² And its use of the folders process has caused the loss of a significant number of Birch=s orders (and the impact of the folders process may not be captured by performance standards in any event). Moreover, the potential harm from manual processing is higher in Texas than in New York. As discussed above, because SWBT=s process of creating three service orders is manual in some instances, manual errors by SWBT employees can cause loss of dial tone. Finally, SWBT has not shown that it is capable of handling vastly increased volumes of orders with its current levels of manual processing. Telcordia=s capacity test and scalability analysis are not to the contrary. The capacity test only included orders which flowed through the systems, and the scalability analysis made no effort to ascertain the number of likely additional errors caused by increased volumes. McMillon & Sivori Decl. && 252-53. In contrast, in New York, the Commission had reason to believe that Bell Atlantic could accurately process manual orders even at higher volumes. NY Order & 163.

SWBT must reduce the number of rejects and order types that are manually processed and eliminate the folders process before gaining approval to offer long distance service.

f. SWBT Is Unable to Successfully Coordinate Cutovers.

SWBT has not yet shown that it can successfully provision loops to CLECs. MCI WorldCom=s experience with loop provisioning during the Telcordia test was one of complete frustration. Even though a small number of UNE-L orders were tested, multiple MCI WorldCom

¹²In addition, during the UNE-L test, Telcordia found 17 manual errors on the 152 LSRs submitted. Readiness Report, att. A.

customers lost dial tone as a result of mislabeled circuits, a technician erroneously pulling down a circuit, incorrect provisioning of a tie pair, and other reasons. McMillon & Sivori Decl. & 170-79.

Other customers were never transferred to MCI WorldCom, were erroneously disconnected after obtaining service, or erroneously switched to a different CLEC. Id. && 180-82. Even Telcordia acknowledged in its final report that, Acoordination problems do occur during cutovers.@

Readiness Report at 23 (Ham Aff. att. A).

Telcordia concluded that the issues surrounding coordination Aare manual in nature and speak to SWBT policies regarding SWBT missed commitments and their impact on subsequent CLEC cutovers scheduled for a particular due date. This issue does not impede the functionality of the orders, but it can impact the timeliness of how orders are processed and provisioned.@

Readiness Report at 53 (Ham Aff. att. A (emphasis added)). It is hard to fathom how Telcordia could view a loss of dial tone as not impeding the functionality of the orders or how it could regard issues of timeliness as something to mention but then ignore.

To MCI WorldCom=s knowledge, SWBT has not implemented any systemic fixes to avoid continued problems with coordinated cutovers. McMillon & Sivori Decl. && 187-89. AT&T has reported that data it has reconciled with SWBT show that outages occurred on at least 13-15% of AT&T=s September orders for UNE loops with and without number portability, some of which lasted up to three days. Id. & 174; SWBT App. C, Tab 1960, Comments of AT&T Communications Regarding United States Department of Justice Evaluation of the Application of Bell Atlantic, at 7 (Texas PUC Nov. 3, 1999). Even SWBT=s contrary data (SWBT Br. at 99-100) shows a relatively high percentage of outage of between one and two hours. In addition,

SWBT=s performance data reveal consistently poor performance on return of FOCs on loop and loop/LNP orders. McMillon & Sivori Decl. && 147-55.

MCI WorldCom currently orders loops via the Access Service Request process but would prefer eventually to switch to the LSR process for ordering loops. However, SWBT=s problems in provisioning loops, which MCI WorldCom itself experienced during the Telcordia test, make MCI WorldCom reluctant to do so. McMillon & Sivori Decl. & 190. Certainly, the problems make it difficult for any CLEC to compete using a loop strategy.

g. SWBT Cannot Successfully Relate Orders for CLECs.

SWBT fails to provide any means for CLECs to relate orders downstream. Customers frequently request both migration of a line from SWBT and installation of an additional line. CLECs should be able to ensure that these requests are filled simultaneously. McMillon & Sivori Decl. & 137. This ensures that the customer does not have to be home for two separate visits to the premises. Id. It also enables CLECs to properly coordinate their billing. If a customer issues two related orders, MCI WorldCom will not bill the customer until both orders are completed. Id. If SWBT completes the orders at different times, however, it will begin billing MCI WorldCom as soon as it completes the first order. Id. & 137. Thus, any SWBT gap between completion of the first and second orders causes MCI WorldCom to lose revenue. Id. The industry standards have long provided a means for CLECs to relate orders. Id. & 138. CLECs simply fill out two LSRs and indicate in a standard field that they wish the orders to be related.

Id. Nonetheless, SWBT refuses to relate CLEC orders.¹³ In contrast, SWBT does relate orders on its retail side. Id.

Even though SWBT does not relate CLEC orders, MCI WorldCom will fill in the field requesting related orders on those orders that should be related. This is because MCI WorldCom must relate the orders in its systems. But this leads to another problem. If CLECs request that two LSRs be related and one of the two LSRs is rejected, SWBT will then reject the second LSR for Arelated order not found.@ Id. && 140-41. If the CLEC has corrected the first LSR in the interim and re-transmitted it, that order will then be rejected for the same reason. Id. & 141. During the Telcordia test, MCI WorldCom had orders repeatedly rejected for related order not found B even though SWBT would not have related the orders through to provisioning in any event. Id. && 140-41.

The danger of a vicious cycle of rejects could be avoided if SWBT relied on the process used by other BOCs, such as Bell Atlantic and Ameritech, of holding an order for a fixed period of time when a related order is not found. Id. & 142. CLECs would then have time to re-transmit the related order. Id. & 142. In conjunction with adopting such a change, SWBT should also begin relating all orders downstream when the CLEC requests them to do so.

h. SWBT=s OSS Suffers From Other Systemic Deficiencies.

¹³SWBT claims to relate CLEC orders that do not flow through SWBT's systems, but SWBT does not seem to relate these orders all the way through to provisioning B the point at which relationship is important for CLECs. McMillon & Sivori Decl. & 139.

In addition to the fundamental deficiencies discussed above, SWBT=s systems suffer from a series of more minor deficiencies which in combination significantly hinder a CLECs= ability to compete.

First, SWBT=s systems are unavailable for too many hours each day. SWBT takes its OSS out of service for several hours each day, precluding CLECs from using those systems. Id. & 225. MCI WorldCom would like to be able to work rejects throughout the day and night, as it does in commercial operation in New York, to ensure that all orders are completed in a timely fashion. Id. & 226.¹⁴ It will not be able to do this in Texas. It will also be unable to submit troubles electronically for several hours per day. If a customer reports a trouble during the time when SWBT=s systems are down, MCI WorldCom will have to report that trouble by phone -- with all of the incumbent disadvantages discussed above. Id. & 229. SWBT thus precludes MCI WorldCom from doing business in an efficient manner.

SWBT=s decision is entirely unnecessary. There is no reason for its systems to be down each day for as many hours as they are. In New York, for example, Bell Atlantic=s systems are scheduled to be available almost all of the time.¹⁵ See NY Order & 155 (ABell Atlantic measures

¹⁴In a phone call last week, SWBT informed MCI WorldCom that even when its front-end systems are accepting orders, its back-end systems are sometimes down for maintenance. At these times, CLEC orders are placed in a queue. McMillon & Sivori Decl. & 228. This has the potential to create significant problems, however. If the capacity of the queue is too small, CLEC orders can be lost during peak periods.

¹⁵SWBT contends its systems are available a higher percentage of the time than Bell Atlantic=s, Ham Aff. & 50, but this comparison is of hours actually available as a percentage of hours the systems are supposed to be available. It ignores the fact that the systems are intended to be available for far fewer hours in Texas than in New York.

EDI interface availability 24 hours a day@); McMillon & Sivori Decl. & 225. Although this Commission found that Bell Atlantic's OSS was non-discriminatory with an availability of 97.01 percent of non-prime time hours in September, NY Order & 156, SWBT deliberately makes its interfaces unavailable for far longer.

Second, SWBT relies on a deficient process of loss notification. When a CLEC customer migrates to another carrier, CLECs must be informed quickly so that they know to stop billing the customer. McMillon & Sivori Decl. & 170. Rather than relying on the industry standard method of transmitting loss notifications via EDI, however, SWBT relies on a data stream which it transmits once a day, the day after the loss occurs. Id. & 171. This leads to the possibility of double billing the customer for that day of service. Id. Moreover, because CLECs such as MCI WorldCom receive all other provisioning notices via EDI, it is more difficult to track notices received via the data stream. Id.¹⁶ It is also more difficult to decipher the loss notification messages, because the data stream contains a mixture of order status information, not just loss notifications. Id.

Finally, SWBT's pre-order interfaces lack some useful functionality they should include. They lack any functionality related to DID numbers, functionality that is part of the industry standard. Id. & 76. They lack the ability to select a due date and schedule any outside work for

¹⁶SWBT provides FOCs, rejects, and completion notices via EDI. It also has begun providing jeopardy notifications via EDI. However, SWBT provides no evidence that the jeopardy process is operational. McMillon & Sivori Decl. & 165-68. Unlike Bell Atlantic, NY Order & 186, SWBT does not even show that it is providing active jeopardy notices on hot cut orders. The only jeopardy MCI WorldCom received during the Telcordia test was sent after MCI WorldCom specifically requested it. McMillon & Sivori Decl. & 169.

anything other than POTS-like services, something that SWBT does not define and which may mean the functionality is not available for ISDN or DSL orders. Id. & 77. The interfaces also do not give CLECs the ability to obtain vanity numbers in an automated fashion. Id. & 78.

2. SWBT=s OSS Is Not Operationally Ready

In addition to vital systemic deficiencies, SWBT=s OSS is not operationally ready. Rather than demonstrating SWBT=s readiness, as SWBT claims, SWBT Br. at 27, both the Telcordia test and SWBT=s performance data show that SWBT must make further progress before it can claim to have met the requirements of the Act. Certainly neither is sufficient to demonstrate that SWBT is ready.

a) SWBT=s Performance Data Does Not Show That Its Systems Are Ready.

SWBT=s performance data cannot show the readiness of its systems, because (i) the volume of orders SWBT is processing is far too small to be a reliable basis for assessing readiness; (ii) the data has not been sufficiently audited; and (iii) the data does not capture key functional deficiencies. As explained above, SWBT is not processing a high volume of UNE-P or UNE-L orders in any given month. McMillon & Sivori Decl. && 237-38. Moreover, it is MCI WorldCom=s understanding that AT&T placed most of the UNE-Platform orders received by SWBT and that almost all of those were orders to convert AT&T=s resale base to UNE-P. Id. & 239. Migrating a CLEC resale customer to UNE-P is far easier than migrating a SWBT customer. Id. The CLEC already has all of the customer data such as the customer=s address and features in its own systems. Thus, there is no need for the CLEC to use SWBT=s pre-order

systems to obtain this information and no need to re-type the information. Id. Because the customer is already the CLECs, the CLEC presumably has continual access to electronic systems to submit trouble reports. Id. SWBT also does not have to switch billing from itself to the CLEC and thus may not use the three service order process on these orders. Id. In addition, it is MCI WorldCom=s understanding that SWBT treated AT&T=s resale conversion as a Aproject,@ deliberately hand holding each order. Id. Such hand holding will not be possible at higher volumes. Id.

SWBT=s data also has not been sufficiently audited. The Texas PUC, Department of Justice, this Commission and the CLEC industry all rely heavily on SWBT=s performance reporting, yet SWBT has every incentive to distort those numbers. The solution is careful auditing of SWBT=s performance reporting. Unfortunately, Telcordia only audited the raw data underlying SWBT=s reports for only a portion of the metrics, and for some key measures B those implemented after the Telcordia test B Telcordia did not even audit whether SWBT had correctly applied its business rules to the underlying measures. The measures not audited at all included, among others:

PM 10.1 - Percent Manual Rejects Received Electronically and Returned within 5 hours;

PM 11.1 - Mean Time to Return Manual Rejects that are Received Electronically via LEX and EDI;

PM 55.1 - Average Installation Interval - DSL;

PM 55.2 - Average Installation Interval for Loop with LNP;

PM 96 - Percentage Premature Disconnects for LNP Orders.

SWBT=s performance data also does not capture key functional deficiencies. SWBT=s data does not measure SWBT=s change management performance or time on hold at the LOC. It measures flow through only of orders designed to flow through and, even for these orders, does not measure flow through after the orders have reached SWBT=s SORD system.

b) SWBT=s Performance Is Poor Even Using Its Inadequate Data.

Moreover, SWBT=s data in fact reveals poor performance. SWBT has consistently missed a high percentage of the performance measures implemented by the Texas PUC. It missed 16% of the measures in October and the same in November. McMillon & Sivori Decl. & 234, att. 28.¹⁷ At current low volumes of orders, SWBT should be meeting every measure. Even if it could be argued that particular misses were not in and of themselves significant impediments to competition, the aggregate number of misses is a significant impediment.

In addition, many of the measures SWBT has missed are key measures for CLECs. As explained above, SWBT is consistently missing the measure for timely return of manually processed rejects. It is also failing to return FOCs in a timely manner. The performance metrics require SWBT to provide 95 percent of FOCs for loop orders received via EDI within 5 hours and 95 percent of FOCs for loop orders received manually within 24 hours. See SWBT

¹⁷This includes parity measures in which the z score was 1.645 or greater; measures in which SWBT missed a benchmark; and parity measures that had a marginal score of 0.8225 to 1.645 combined with a score of at least 0.8225 for one of the prior two months. This is the method used in New York. Even under the defective Texas scheme with inappropriate leniency, however, see Part II.B.1 below, SWBT missed 12% of the measures in October and 14% in November. McMillon & Sivori Decl. & 234, att. 28.

Performance Measure 5, Percent Firm Order Confirmations Returned, Benchmark (McMillon & Sivori Decl., att. 19). SWBT has failed both of these measures for the past three months. For EDI loop orders, SWBT has managed to return only 88.1, 92.7, and 85.8 percent on time in October, November, and December respectively. Performance Measure 5, Percent FOCs received within 5 hours - Mechanized - EDI - UNE Loops 1-50. McMillon & Sivori Decl., att. 19.

SWBT has also failed to provide timely FOCs for manual loop orders, and the problem is getting worse. SWBT reports providing only 88.7 percent and 80.7 percent of FOCs for manual loop orders on time in October and November respectively.¹⁸ Performance Measure 5, Percent FOCs received within 24 hours - Manual - UNE Loops 1-50 (McMillon & Sivori Decl., att. 19).¹⁹

These numbers are actually far worse than they appear. In calculating return time, SWBT

¹⁸SWBT claims that it returned some 94.9 percent of FOCs for manual loop orders on time in December, but this figure is highly suspect in light of the fact that SWBT's average FOC return time in December was almost 43 hours per FOC. Performance Measure 6, Average Time to Return FOC - Manual - UNE Loop (1-50) (McMillon & Sivori Decl., att. 19).

¹⁹SWBT has struggled to return FOCs for other manual orders as well. While SWBT claims to be returning timely FOCs on manually processed orders, see SWBT Br. at 88 n.48; Dysart Aff. & 133, it has failed three of the seven measures for manual FOCs. In addition to failing to provide timely FOCs for manual UNE-loop orders (1-50 lines), SWBT has not provided FOCs on time for either manual complex business orders or manual switch port orders. SWBT is supposed to provide timely FOCs for complex business orders 94 percent of the time. However, SWBT has failed to meet this standard for two of the past three months, recording return rates of only 83.9 and 87.9 percent in October and November. Performance Measure 5, Percent FOCs received within 24 hours - Manual - Complex Business (1-200 lines) (McMillon & Sivori Decl., att. 19). Similarly, SWBT has consistently missed the mark for switch port orders, which require a 95 percent on-time return rate for FOCs, and its performance continues to deteriorate. In October, SWBT returned 87 percent of FOCs on time. In November, that figure dropped to 74.2. And in December, even with ordering volumes down significantly, SWBT reports a dismal

excludes hours between 5:00 p.m. and 8:00 a.m. on weekdays and excludes weekends and holidays altogether. SWBT Performance Measures and Business Rules, Version 1.6, Performance Measure 5, Business Rules (McMillon & Sivori Decl., att. 19). Thus, if a CLEC places an order at 5:30 p.m. on Monday night and receives a FOC at 9:00 a.m. on Tuesday, SWBT considers the FOC to have been returned in one hour.²⁰ McMillon & Sivori Decl. & 151. CLECs such as MCI WorldCom that primarily market their service between 6:00 p.m. and 9:00 p.m. therefore receive FOCs that are far more dilatory than is apparent from SWBT=s data. SWBT also considers a FOC to be returned even before it has been transmitted to CLECs. Id. & 152.

SWBT also has consistently provided repair and maintenance service of higher quality and in a more timely manner for its retail customers than it has for CLEC customers. The percentage of repeat reports of trouble on customers= lines is consistently lower for SWBT retail customers than for CLECs. Performance Measure 41, Percent Repeat Reports. In South Texas, for instance, the percentage of repeat trouble reports for CLEC UNE-Platform customers was 15.7, 11.5, and 11.73 percent for September, October, and November as compared with 8.52, 8.12, and 7.61 percent for SWBT=s customers. Performance Measure 41, South Texas, Percent Repeat

36.4 percent on-time rate. Id., Switch Ports (McMillon & Sivori Decl., att. 19).

²⁰In contrast, Bell Atlantic counts peak CLEC ordering hours in its measurement of FOC return time. See BA-NY Performance Measure OR-1 Order Confirmation Timeliness Exclusions (excluding only weekend hours from 5:00 p.m. Friday to 8:00 a.m. Monday). As a result, SWBT=s comparison of the time it takes to return FOCs with the time it takes Bell Atlantic to return FOCs, Ham Aff. & 156, is totally inapposite.

Reports - UNE Loop & Port Combos (McMillon & Sivori Decl. & 203, att. 19). In December, SWBT improved somewhat but still provided only marginally passable service with 9.94 percent repeat troubles for CLEC customers and 7.73 percent for its own. Id. The disparity in other regions is similar. Id. && 204-05.²¹ CLEC customers who experience repeat troubles are obviously likely to return to SWBT to obtain service. McMillon & Sivori Decl. & 202.

In addition, when SWBT makes a commitment to resolve a customer=s troubles, it is far more likely to meet that commitment for its retail customers than for CLECs= customers (both for repairs that require dispatch of a technician to the customer premises and for repairs that do not). Performance Measure 38, Percent Missed Repair Commitments (McMillon & Sivori Decl. & 206, att. 19). In Central West Texas, for example, SWBT has missed between two to five times the percentage of scheduled repair dates for CLEC UNE-P customers than it has for its own customers over the past several months. SWBT=s performance in November is representative. SWBT missed fully 11.16 percent of repair times with dispatch and 5.0 percent without dispatch for CLEC customers, while missing only 6.88 percent with dispatch and 1.29 percent without dispatch at retail. Performance Measure 38, Central West Texas, Percent Missed Repair

²¹In Houston, the CLEC percentages of repeat problems were consistently poor from September through December. There were 15.33, 8.26, 10.86, and 10.08 percent repeat troubles for CLECs as compared with 8.39, 8.77, 8.44, and 9.10 percent for SWBT. Measure 41, Houston, Percent Repeat Reports - UNE Loop & Port Combos (McMillon & Sivori Decl., att. 19). Finally, in Dallas/Fort Worth, SWBT=s repair and maintenance service has gone from bad to worse. From September through October, SWBT reported 10.66, 10.74, and 8.74 percent repeat troubles for CLEC customers and 8.13, 7.83, and 8.16 percent on SWBT lines. Id., Dallas/Fort Worth, Percent Repeat Reports - UNE Loop & Port Combos (McMillon & Sivori Decl., att. 19). In December, the percentage of repeat troubles for CLECs actually rose to 10.24 percent, as compared with only 8.56 percent for SWBT. Id.

Commitments - Dispatch - UNE Loop & Port Combos (McMillon & Sivori Decl. & 206). The situation was the same in South Texas, where SWBT missed 21.10 percent of CLEC customer repair dates with dispatch and 6.06 percent without dispatch, but only missed 8.77 percent with dispatch and 1.4 percent without dispatch for itself. Performance Measure 38, South Texas, Percent Missed Repair Commitments - No Dispatch - UNE Loop & Port Combos (McMillon & Sivori Decl. & 207, att. 19). Failure to meet commitments to resolve troubles will anger customers B especially when those customers have stayed home to meet a technician. McMillon & Sivori Decl. & 207.

SWBT has also failed to show that it can consistently provide timely wholesale bills electronically. Under its performance measures, SWBT is supposed to provide 95 percent of wholesale bills within six business days from the billing date. Performance Measure 18, Billing Timeliness. SWBT has failed this measure by significant amounts in recent months. In November and December, SWBT provided timely wholesale bills to CLECs only 76.4 percent and 76.3 percent of the time, respectively. Performance Measure 18, Billing Timeliness (Wholesale Mechanized Bill) (McMillon & Sivori Decl. & 215, att. 19). It is difficult for a CLEC to operate efficiently if it does not know when it will receive its bills.

c) The Telcordia Test Also Demonstrates SWBT=s Poor Performance and Certainly Does Not Prove SWBT=s Performance Is Acceptable.

Given the absence of adequate performance data to demonstrate the readiness of SWBT=s systems, SWBT must rely heavily on the Telcordia test to show its readiness. But that reliance is misplaced. The Telcordia test was not conducted by a neutral party, used an inadequate

methodology, failed to accurately assess the import of deficiencies it did find, failed to demand full (or in some cases any) corrections of those deficiencies, and was incomplete in scope.

Nonetheless, the first thing to note about the Telcordia test is that even this inadequate test revealed significant deficiencies in SWBT=s OSS. A careful review of Telcordia=s specific findings undermines its results-oriented conclusion that SWBT=s OSS is operationally ready. As explained above, Telcordia described numerous errors caused by manual processes employed by SWBT. It described severe, customer-affecting problems during coordinated cutovers (including lost dial tone by several customers), and it discussed the problem with SWBT=s inability to receive electronically submitted trouble tickets until orders had posted to billing. The Telcordia test therefore shows that SWBT=s OSS is not operationally ready.

Equally important, no conclusion can be drawn concerning aspects of SWBT=s OSS Telcordia did not criticize, because the Atest@ was so clearly stacked in favor of SWBT. First, Telcordia (formerly Bellcore) was not a neutral third party. Telcordia oversaw the testing of various SWBT systems that Telcordia itself had developed, presenting an obvious conflict of interest. In addition, SWBT remains a major Telcordia customer that Telcordia would not want to alienate. A large percentage of Telcordia=s revenues comes from BOCs (who are all in the process of applying for section 271 approval), a fact Telcordia has never rebutted.

Second, Telcordia did not build the interfaces it used but instead relied on AT&T=s UNE-P interface and MCI WorldCom=s UNE-L interface. Compare McMillon & Sivori Decl. & 243 with NY Order & 96 (KPMG built the interfaces and acted as a pseudo-CLEC). This hindered Telcordia=s ability to assess whether SWBT was to blame for various problems

encountered during the test because, rather than having first-hand knowledge of whether a problem was SWBT's fault, Telcordia had to judge between competing accounts. McMillon & Sivori Decl. & 243. It also left CLECs other than those whose interface was being used relatively blind to problems encountered during the test and to any fixes implemented, and it precluded Telcordia from accurately evaluating the comprehensiveness of SWBT's documentation. Id. As the UNE-P test was proceeding, for example, MCI WorldCom was largely unaware of the problems encountered by AT&T and thus unable to make informed suggestions with respect to possible solutions or new testing. When the test was over, it was not in AT&T's interest to share with its competitors the details of any solutions that had been implemented. In New York, in contrast, MCI WorldCom's development was expedited by its ability to track problems and have Bell Atlantic correct them, based on the open test in which KPMG built to Bell Atlantic's documentation. Id.

Third, Telcordia did not clearly define the test plan or obtain significant CLEC participation in designing that plan. Telcordia did not provide the master test plan to interested parties until three weeks after UNE-L testing began and the plan continued to be revised thereafter. Id. & 242. CLECs were excluded from some parts of the process and allowed to bring only two or three representatives to key technical meetings, preventing them from bringing subject matter experts when multiple subjects were discussed. SWBT, by contrast, was permitted to bring many representatives to each meeting. Id. After the conclusion of the interim test, Telcordia produced the retest plan late with almost no time left for CLEC comment prior to the beginning of the retest so that it was not possible for CLECs to alter any significant aspect of the

test design. Id. Then, at the conclusion of the test, CLECs were denied in their request for an open meeting at which they could discuss test conclusions with Telcordia and raise questions about Telcordia=s research in an effort to arrive at a more accurate report. Id.

Fourth, despite SWBT=s claims to the contrary (Br. at 30), Telcordia did not conduct a military-style test. Unlike KPMG in New York, see NY Order & 98, Telcordia did not identify problems as it went along and demand that SWBT implement a fix for those problems and then conduct a retest. Instead, after identifying problems during the first phase of the test, Telcordia simply conducted a retest and, if the problems did not reappear, assumed that the problems had been corrected even if SWBT had not implemented any changes in the interim. McMillon & Sivori Decl. && 184-88, 244-46. Telcordia made little effort to assess the root cause of the original problems. But there is no reason to presume that a problem that does not reappear on a small volume of orders during a retest has been corrected. Id. & 244. This is especially so given that SWBT knew what would be retested and was also able to ascertain when the test orders were being transmitted. Id.

In addition, with respect to problems identified during the retest, SWBT again conducted little in the way of a root cause analysis, and, when SWBT claimed to have implemented a fix, Telcordia assumed that the fix would work without conducting any further testing. Id. & 245. For example, during the retest, Telcordia failed to return correct information on FOCs on almost 43% of MCI WorldCom=s orders. Id. & 185. SWBT claimed to have implemented a fix for this problem but only one part of the fix was tested. Readiness Report at 53. To this day, MCI WorldCom is unsure as to whether the problem has been eliminated. McMillon & Sivori Decl.

& 185. Similarly, Telcordia noted a problem with SWBT=s processing of related orders but asserted the problem had been fixed by a change in documentation. Ham Aff. att. A at A 49-50. Telcordia did not address the question as to whether, after the documentation change, SWBT would correctly process such orders. McMillon & Sivori Decl. & 143.

Telcordia=s failure to require fixes and then to test those fixes is particularly apparent in the case of problems caused by manual processing. Again and again, Telcordia identified mistakes made in manual processing of the orders and then closed out the issue without any change by SWBT, or at most, with the retraining of the individual representative who made the error. Thus, in response to a problem with late provisioning, Telcordia explained that A[t]here are a myriad of reasons why circuits are provisioned late or incorrectly ranging from inexperienced staff to heavy work volumes in the Central Office. Telcordia has verified all of these orders, which have been provisioned late or incorrectly during the Retest Phase.@ Readiness Report at A 59-60. Similar examples abound in which Telcordia closed out issues raised by manual errors without implementation of any systemic fix. See, e.g., id. at A 51-52, A 55, A57-59.

Finally, the scope of the Telcordia test was too narrow. Telcordia did not conduct analysis of the retail side of SWBT=s processes, simply accepting SWBT=s word as to how those processes worked. McMillon & Sivori Decl. & 249. Telcordia did not provide any detailed analysis of any of the functional deficiencies discussed above. It did no testing of SWBT=s EDI or CORBA pre-ordering interfaces and did not test the ability of a CLEC to construct an integrated pre-order and order interface using SWBT=s other application-to-application pre-ordering interface, Datagate. Id. Telcordia=s evaluation lacked any detailed evaluation of the

folders process or of SWBT=s procedure of splitting LSR into three service orders, or of mismatches in SWBT=s address databases. Id.

Telcordia=s scope was too narrow in other ways as well. Telcordia failed to conduct an end-to-end evaluation of the ordering and provisioning process, generally excluding any evaluation of SWBT processes beyond its SORD system. Id. Telcordia did not stress test SWBT=s manual processes, evaluated very few DSL orders, and failed to audit SWBT=s collection of raw data with respect to most performance measures. Id. && 249, 252. Telcordia=s review of maintenance and repair functionality was limited to a small number of trouble tickets almost all of which involved the same problem (a pulled coil). Id. && 210-13. Telcordia=s review of performance of the LOC and LSC was limited and, although Telcordia observed significant difficulties that MCI WorldCom experienced in contacting the LOC, Telcordia buried the issue in an appendix noting that A[i]n several instances the SWBT Rep did not respond in the time frame they had specified and the CLEC then initiated another call to SWBT to find out the status of the request.@ Readiness Report at 55. Telcordia lists the action taken as follows: A[T]his is a closed issue, it does not impede the functionality of the orders, but it can impact the timeliness of how orders are processed and provisioned.@ Id.

Telcordia=s review of change management, the importance of which this Commission has emphasized, NY Order && 102-03, was also insufficient to conclude SWBT is operationally ready. Telcordia reviewed SWBT=s implementation of two minor EDI releases. During the first release, conducted in August prior to SWBT=s implementation of new change management procedures, Telcordia found that SWBT frequently deviated from documented procedures

(although Telcordia whitewashed this finding by concluding that SWBT=s overall conduct was acceptable). During the second release in October, conducted only partially under the improved change management rules, Telcordia found that SWBT did follow its documented procedures. However, the fact that SWBT followed change management procedures for one minor release, while under the microscope, after repeated deviations from written procedures prior to that release, hardly shows that SWBT will follow such procedures during a major release when observing the procedures is much more difficult. Id. && 217-24. This is especially so given that even in October, SWBT again and again invoked the exceptions process in the change management rules to make changes to documentation that was ostensibly final. Id. & 221. Although exceptions are sometimes necessary, they should not become the rule. Id. SWBT should therefore be required to prove its compliance with change management procedures in a major release observed by a neutral third party. Moreover, it is only with the July release that SWBT will first implement versioning, an essential component of a successful change management program. Id. & 224.

The deficiencies in the Telcordia test and MCI WorldCom=s own negative experience during that test are yet another factor against entering the residential market at this time. When combined with SWBT=s inadequate B and relatively poor B performance data and with the vital functional deficiencies in SWBT=s systems, the Commission cannot properly conclude that SWBT=s OSS satisfies the standards set forth in the Commission=s prior orders.

C. SWBT Imposes Glue Charges and Lost Profits Charges That Are Not Cost-based and Seriously Impede Residential and Small Business Services Competition

The ability of MCI WorldCom and other CLECs to compete for local customers on a level playing field is, of course, critically dependent on the prices SWBT charges for unbundled elements. In a few areas, SWBT's prices are grossly excessive and unlawful.

1. The Non-Recurring Rates SWBT Charges for Existing UNE Combinations Violate FCC Rule 315(b) and the Supreme Court's Decision Upholding The Rule Against SWBT's Challenge in Iowa Utilities Board

It is now firmly established that SWBT cannot impose charges for separating existing combinations of network elements and recombining them. See FCC Rule 315(b), 47 C.F.R. § 1.315(b).²² Nonetheless, SWBT insists on charging new entrants non-recurring rates established prior to the Supreme Court decision in Iowa Utilities Board B rates that were intended to compensate SWBT for separating and recombining network elements that were combined in its network, even though SWBT admits it never actually does so.²³ See Declaration of Donald G. Price & 7, 8 (Tab C hereto). As a result, when an existing SWBT customer migrates to MCI WorldCom and MCI WorldCom leases an existing loop-port combination to serve the customer, SWBT charges a non-recurring rate in excess of \$20, devised to cover the costs of separating and

²²Rule 315(b) was affirmed by the Supreme Court in AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721, 737-38 (1999).

²³SWBT witness Michael C. Auinbaur admits in his affidavit that ASWBT does not separate the specific unbundled network elements requested that SWBT has currently combined in its network unless requested to do so by the CLEC. @ Auinbaur Aff. & 87.

recombining the loop and port UNEs that are already connected in SWBT=s network and are fully functional. See Price Decl. && 9, 10.

These charges violate the Act and the FCC=s Rule 315(b), and impose a serious obstacle to competitive entry for MCI WorldCom and other CLECs who wish to serve residential consumers and small businesses. See McMurtrie, Macko and Lichtenberg Decl. & 36.²⁴ The only non-recurring cost caused by the migration is the cost of updating the switch translation. Another state commission found that the costs caused by an existing ILEC customer migrating to a CLEC justified a total non-recurring charge for a loop-port combination of only \$1.46. See Final Order Resolving Interconnection Agreement Disputes, Addressing Retail Service Composition, and Setting Non-Recurring Charges, Florida PSC, Docket No. 971140-TP (June 16, 1998), at 68 (attached to Price Decl. as Exh. 1); Price Decl. & 12. SWBT provides no basis for charging over 14 times more in Texas for the same minor task. Moreover, SWBT=s insistence on continuing to impose charges for separating and recombining pre-existing combinations of elements is inconsistent with the Act and with the FCC=s regulations. Almost all of the more than \$20 charge constitutes an improper glue charge.

2. SWBT Charges Competitors An Additional Glue Charge For New Combinations That Provides SWBT With A Double Recovery.

SWBT levies yet an additional charge on CLECs who lease Anew@ combinations of UNEs B combinations that do not already exist in SWBT=s network and require some amount of work

²⁴SWBT=s contention that its non-recurring rates for pre-existing combinations are Acost-based,@ see SWBT Br. at 38 n.15, is refuted by the Texas PUC=s arbitration award and, moreover, by its own cost studies. See Price Decl. & 11.

to assemble. (ANew@ combinations include both typical combinations for new customers as well as new types of combinations.) In addition to the UNE non-recurring rates discussed above, which supposedly cover the costs of combining the network elements, for new combinations SWBT imposes an additional glue charge of \$16.35, which it calls a Central Office Access Charge (ACOAC@). The COAC supposedly covers the costs of combining the elements, see SWBT Br. at 37-38; Price Decl. §§ 13, 14, and thus is wholly duplicative. The same activities are paid for through both the individual UNE non-recurring charges and the COAC charge. See Price Decl. §§ 16-17. MCI WorldCom is prepared to pay for necessary work that is actually performed, at cost-based rates, but as the Commission has long recognized, such a double recovery is certainly not cost-based pricing and violates section 252(d)(1) of the Act. See First Report and Order § 698 (stating that A[a]ny multiple recovery would be unreasonable and thus in violation of the statutory standard.@).

In addition, the \$16.35 COAC is not cost-based because it was not based on specific, relevant costs. Instead, it is a retail rate, established in a rate-of-return proceeding, and includes SWBT=s embedded and historical costs. See Price Decl. §§ 15, 18. This is expressly prohibited by section 252(d)(1) of the Act and this Commission=s orders. See First Report and Order §§ 704-07.

3. SWBT Imposes A Special Charge On Extended Area Calls, Not Based On Any Costs Incurred By SWBT, But To Recover Revenues Lost To CLECs.

SWBT imposes an Extended Area Service (AEAS@) additive charge that it admits is intended to compensate SWBT for lost revenues. See Price Decl. § 19. EAS is a popular

optional retail service that enables residential and business customers to extend the coverage of their flat-rate local calling area for a set monthly fee. Thus, calls that otherwise would be Anon-local@ and involve the caller paying usage-sensitive rates (i.e., per minute of use charges) are made toll free. See id. & 20.

If a customer subscribes to EAS, any call from the subscriber to a person or business located in its Aextended@ calling area is toll free. Moreover, any incoming call to the EAS subscriber that originates in its Aextended@ calling area is toll free and the person or business making the call is not subject to any per minute of use charges. See id. & 21.

Whenever a SWBT customer from an extended area calls a CLEC EAS subscriber, however, SWBT charges the CLEC an Aadditive@ charge of 2.4 cents per minute if the call is between contiguous exchanges in a metropolitan areas and 3.55 cents per minute if the call is between non-contiguous exchanges in a metropolitan area. See id. && 22-23. The Texas PUC has acknowledged that this additive charge is solely intended to compensate SWBT Afor artificial losses for EAS revenues it once received from customers that have moved to a new entrant.@ See 12/19/97 Arbitration Award, Appendix A, Issue 1180, at 11 (SWBT App. F, Tab 17); Price Decl. & 24.

As this Commission has expressly found, rates designed to recover lost revenues are inconsistent with a cost-based pricing methodology and, therefore, violate section 252(d)(1) of the Act. See First Report and Order, && 708-711 (rejecting application of the doctrine of efficient component pricing, which is designed to compensate for lost revenues); id. && 704-07 (recovery of historical or embedded costs are inconsistent with the pro-competitive goals of the

Act). Rates designed to recover historical and/or stranded costs are routinely rejected. See, e.g., Order Establishing Cost-Based Rates, In re Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services, Georgia Public Service Commission Docket No. 7061-U (Oct. 21, 1997) at 20-21 (attached to Price Decl. as Exh. 3) (Aallowing BellSouth=s proposed Residual Recovery Requirement would run counter to the goal of moving Georgia=s telecommunications marketplace toward competition, and would contravene the directive of the 1996 Act at Section 252(d)(1)(A) that UNE prices are to be based on the cost >determined without reference to a rate-of-return or other rate-based proceeding.=@). SWBT=s EAS additive charge flatly defies the Act and the FCC=s Order, and places CLECs at a competitive disadvantage with respect to a highly popular service, raising an obstacle to competition for residential and small business customers.

D. SWBT Has Not Satisfied Its Statutory Obligations with Respect to Provisioning DSL-Capable Loops.

SWBT has not yet met the requirements of the Act with respect to the provisioning of DSL-capable loops. While the DSL Arbitration Award recently approved by the Texas PUC²⁵ represents a major step toward leveling the playing field in this competitively significant area of DSL-based services, there are a few problems that remain. Because these problems currently

²⁵Petition of Rhythms Links, Inc. For Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company; Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Telephone Company, Arbitration Award, Public Utility Commission of Texas, Docket Nos. 20226 and 20272 (Nov. 30, 1999) (ADSL Arbitration Award@).

have the most direct and immediate impact on data CLECs, MCI WorldCom defers to their Comments concerning DSL-based services, and simply notes some of the more serious problems below.

SWBT=s Performance in Provisioning DSL-Capable Loops. In the NY Order, the Commission established the requirements for nondiscriminatory provisioning of DSL-qualified loops to which subsequent section 271 applications would be held.²⁶ The Commission permits BOCs to demonstrate adequate DSL provisioning either through validated performance reporting or by the establishment of a separate, advanced services affiliate. See NY Order && 330-36. SWBT has satisfied neither of these requirements. According to its own performance reports, SWBT is not consistently providing nondiscriminatory service to its competitors for DSL-capable loops.²⁷ Nor is SWBT=s advanced services affiliate sufficient to provide assurance of nondiscrimination, since SWBT has yet to take many of the steps that would create a firewall between its advanced services business and the rest of its operations.²⁸

²⁶In determining that Bell Atlantic provisioned DSL-capable loops in accordance with the Act, the Commission overlooked Bell Atlantic=s DSL performance deficiencies and relied instead on Bell Atlantic=s overall loop performance. The Commission stated, however, that Awe do not expect to rely solely on a BOC=s overall loop performance in reaching a decision on this checklist item in future applications.@ NY Order & 330 (footnote omitted).

²⁷See Southwestern Bell Provisioning & Maintenance Report (December 1999) (McMillon & Sivori Decl., att. 19).

²⁸SWBT=s affiliate, SBC Advanced Solutions Inc. (AASI@), will not begin operations in Texas until February 2, 2000 (see SWBT Br. at 44), and will not even begin converting SWBT advanced services customers (other than ADSL customers) to ASI until February 28, 2000, while SWBT provides no definite date for commencing the conversion of ADSL customers. See Brown Aff. att. A, p. 3; see also Brown Aff. & 22. Significantly, in the NY Order, the Commission noted

Access to Loop Makeup Information. The Commission determined in the NY Order that BOCs Amust provide requesting carriers nondiscriminatory access to the systems and processes for identifying loop characteristics that it provides to its retail representatives.@ NY Order & 141. Yet SWBT has made it more difficult for CLECs to gain access to loop makeup information than for its own retail representatives. See DSL Arbitration Award at 61, 70. In addition, the mechanized loop information that SWBT provides is inadequate for CLEC needs. SWBT=s automated Ared, yellow, green@ system is not useful for CLECs that do not choose to use ADSL to provide service. See Chapman Aff. && 7-17.²⁹

SWBT=s DSL Pricing Is Still Interim and Subject to Appeal. The prices charged by SWBT for DSL-capable loops are only interim, and SWBT has expressly reserved its right to appeal the DSL Arbitration Award. SWBT=s DSL rates are thus even more uncertain than in a situation where interim rates subject to true-up have been established, in that SWBT=s challenge to the arbitration award could invalidate even the interim rates set by the award. Thus, SWBT=s application does not meet the strict criteria set by the Commission for approval of an application despite interim pricing. See NY Order & 259.

but did not rely upon Bell Atlantic=s promise to form a separate subsidiary to handle advanced services in determining that Bell Atlantic was in compliance with the Act. See NY Order && 327, 331 n.1036.

²⁹SWBT has stated that it will not provide mechanized access to actual (as opposed to designed or theoretical) loop qualification information until December 2000. See AOSS Plan of Record for Pre-Ordering and Ordering DSL and Other Advanced Services@ p. 17 (Chapman Aff. att. E).

Other DSL Mandates. There are a number of other regulatory requirements pertaining to DSL competition with which SWBT has yet to comply. Although SWBT is not yet required to implement all of these mandates, it is important that SWBT demonstrate its progress toward compliance. The requirements include (1) fully dismantling SWBT=s discriminatory practices with respect to spectrum management, (2) implementing the Commission=s line sharing requirements, (3) and providing unbundled access to copper subloops pursuant to the DSL Arbitration Award.

E. SWBT=s Provision of Unbundled Elements to CLECs Must Include the Same Level of Protection from Third Party Intellectual Property Claims That SWBT Enjoys

SWBT continues to refuse to provide or secure the necessary intellectual property rights for CLECs to use SWBT=s network elements. By doing so, SWBT has erected a significant barrier to competition in Texas, as well as violated its duty under checklist item (ii) to provide nondiscriminatory access to network elements. Under the AT2A@ (SWBT=s generic ATexas 271 Agreement@), CLECs are expressly responsible for obtaining all licenses associated with their use of UNEs, and SWBT makes no warranties concerning CLECs= rights to use UNEs B including CLECs such as MCI WorldCom who intend to lease the AUNE-Platform@ from SWBT. See T2A ' ' 7.3.2, 7.3.4. Although SWBT=s intellectual property agreements with its vendors should provide the needed protection for CLECs who lease UNEs from SWBT, it is difficult for CLECs to rely exclusively on agreements to which they are not parties. SWBT=s interest lies in raising CLECs= costs, and third party vendors= interests are to maximize their own revenues.

Thus, the two parties to the contracts governing intellectual property usage have no incentive to interpret the contracts to protect CLECs who lease elements from SWBT.

For similar reasons, CLECs cannot plausibly negotiate licenses independently with SWBT's vendors. When SWBT purchases elements of its network such as switching equipment, it has a choice of vendors and can use its considerable purchasing power to negotiate favorable rates (if any) for intellectual property rights. CLECs who lease UNEs from SWBT, in contrast, have no leverage and are entirely captive. CLECs must use whatever UNEs SWBT already purchased, and cannot shop around for other vendors. Thus, any negotiation between a CLEC and a third party vendor would be one-sided: the vendor could name its price to the captive CLEC. Thus, SWBT has it within its power to deal with its equipment suppliers to ensure license and usage rights for CLECs, but CLECs have no leverage in negotiating such licenses and their efforts can be quietly and undetectably blocked by SWBT. See AT&T Communications v. Bell Atlantic-Virginia, Inc., 197 F.3d 663, 670-71 (4th Cir. 1999) (ILEC has a duty to negotiate intellectual property rights for CLECs that lease ILEC UNEs). SWBT's refusal to do so is a blatant example of a barrier to entry that facially discriminates against CLECs. See Beard & Mayo Decl. & 46-57.

The risk and uncertainty of intellectual property claims as well as the cost of defending such claims -- is just one more reason why entry in Texas presents an unacceptably high risk. See McMurtrie, Macko and Lichtenberg Decl. & 38. Even when the OSS problems are fixed, SWBT's prices for unbundled elements (including the glue charges) make residential entry a marginal business proposition. Factoring in the risk of liability for possible intellectual property

claims, and the costs of defending such claims, tilts the business case even further against commercial scale entry.³⁰

The Commission is currently considering a petition for a declaratory ruling on this issue that MCI filed nearly three years ago. See Pleading Cycle Established for Comments on Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements, CCBPol 97-4, Public Notice, 12 F.C.C.R. 3223 (1997). SWBT=s effort to avoid this issue by merely promising to follow any lawfully imposed regulations flowing from this proceeding, SWBT Br. at 36 n.14; T2A ' 7.3.5, should be unavailing. SWBT cannot be considered in present compliance with its checklist obligation to provide nondiscriminatory access to UNEs. See 47 U.S.C. ' 271(c)(2)(B)(ii). SWBT can no more hide behind the pendency of the intellectual property complaint proceeding than it could refuse to provide OSS to competitors, yet Aagree to be bound by@ any final court decision when CLECs pursue enforcement actions. Moreover, SWBT=s application cannot be considered consistent with the public interest, as SWBT has known of this barrier for years but has obdurately refused to correct its discriminatory treatment of CLECs.

³⁰It is no comfort to MCI WorldCom that third party vendors have not yet brought suit; owners of intellectual property rights wait for high revenue streams from alleged use of their intellectual property before they threaten suit. Although MCI WorldCom would have solid legal defenses to any such suit because SWBT=s rights should pass through to its customers (CLECs), absent pressure from regulators SWBT has no incentive to interpret its contracts to protect CLECs, and MCI WorldCom would face substantial costs even having to litigate intellectual property disputes with SWBT=s multiple vendors.

F. SWBT Discriminates Against CLECs By Overcharging for Certain Directory Listings

SWBT insists on charging Texas CLECs non-TELRIC, Amarket-based@ pricing for access to directory assistance listings and databases relating to customers outside of Texas. Because there is no evidence that SWBT imputes to itself the price it seeks to charge others for these in-region, out-of-state listings, SWBT is not in compliance with the requirements of the Act.

Pursuant to section 251(b)(3) of the Act, SWBT is required to provide competing carriers with Anondiscriminatory access@ to information contained in its directory assistance listing databases. See, e.g., NY Order & 353; Directory Listings Order && 128-29; Local Competition Second Report and Order & 101. Nondiscriminatory access includes Athe ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC.@ Second Report and Order & 101. The nondiscrimination requirement extends to pricing. See id. & 103; see also U S West National Directory Assistance Order & 35 (A[W]e conclude that U S West must make available to unaffiliated entities all of the in-region directory listing information it uses to provide regionwide directory assistance service at the same rates, terms, and conditions it imputes to itself. Thus, to the extent U S West charges unaffiliated entities for the in-region information it uses to provide nonlocal directory assistance on an integrated basis, it must impute to itself the same charges.@ (footnotes omitted)); SWBT Reverse Search Services Order, & 10 (requiring SWBT to Amak[e] available to unaffiliated entities all directory listing information that it uses to provide its interLATA reverse directory services . . . at the same rates, terms, and

conditions, if any, it charges or imposes on its own reverse directory operations.@ (footnote and quotations omitted)).

Despite this requirement, SWBT is demanding that Texas CLECs pay SWBT an excessive \$0.0583 per listing for in-region, out-of-state³¹ directory information (including updates), even though the cost-based rate established by the Texas PUC for in-state listings is only \$0.001 per listing. See Price Decl. & 26. SWBT has not shown that its own cost is \$0.0583 per listing, that it imputes these charges to itself, or that it has any accounting procedures to accomplish this imputation. In fact, SWBT=s application is silent on the issue of out-of-state DA listings. See Rogers Aff. & 29 (discussing provision of ATexas DA listings@ only).

In a section 271 proceeding SWBT is required to submit evidence that it complies with the relevant requirements of the Act, including the Anondiscriminatory access@ requirement of section 251(b)(3), as of the date of its application. Moreover, SWBT has the burden of showing that it is providing non-discriminatory access to directory listings. See Directory Listings Order && 131-35. SWBT has failed to address this requirement in its Application as it applies to in-region, out-of-state directory assistance listings and databases.

II. THE PUBLIC INTEREST WOULD NOT BE SERVED BY SWBT=S PREMATURE PROVISION OF INTEREXCHANGE SERVICES IN TEXAS

Although SWBT -- with steady prodding from the Texas PUC -- has made undeniable progress in opening its local market in Texas, several significant barriers to effective competition remain. The factual record that SWBT relies on to demonstrate that its local market is open

³¹That is, database information pertaining to Arkansas, Kansas, Missouri, and Oklahoma.

demonstrates only that at least some Internet service providers enjoy the benefits of competition. SWBT Br. at 6-7. Competition for local services generally is extremely limited and insufficient to provide assurance that SWBT has fully and irreversibly opened its market. Before SWBT can be considered to have met the public interest test, it must take at least the following four steps:

- X SWBT must correct -- and verify through independent testing and successful commercial operation -- the problems with its OSS that prevent it from handling commercial volumes of orders in a reasonable and nondiscriminatory manner. The improvements needed include OSS used for processing and provisioning CLEC orders for loops, UNE-P and DSL-based services.
- X SWBT must eliminate the inappropriate and redundant glue charges that it currently charges CLECs, the excessive prices for access to certain directory listings, and the EAS additive charge.
- X SWBT must ensure that CLECs using SWBT=s UNEs are covered by SWBT=s licenses from third-party vendors and are not subject to legal liability resulting from their use of SWBT=s UNEs.
- X SWBT must agree to a strengthened performance remedy plan.

Granting SWBT=s application now, with these barriers remaining and no competitive alternatives available for most customers, would not be consistent with the Apublic interest, convenience, and necessity.@ 47 U.S.C. ' 271(d)(3)(C).

A. Local Competition Is Limited and Narrowly Focused.

Contrary to the impression left by SWBT=s estimates, facilities-based local competition is still in its infancy. Although SWBT claims that CLECs account for significant quantities of local traffic in Texas, its own data show that more than 92 percent of all minutes of traffic from SWBT customers to CLEC customers consists of traffic to ISPs sent by CLECs. See Habeeb Aff. & 29 (15.6 billion minutes of the 16.9 billion minutes reported as SWBT to CLEC traffic between

January 1997 and September 1999 is traffic to ISPs served by CLECs). Only 1.3 billion minutes in the almost three-year period represent ordinary local telephone calls or fax calls from SWBT customers to CLEC customers. Similarly, SWBT claims only 1.1 billion minutes in this period represent traffic from CLEC customers to SWBT customers. Yet other estimates show that CLEC traffic constitutes less than two percent of the traffic on SWBT=s network in Texas. See Declaration of T. Randolph Beard & John W. Mayo on Behalf of MCI WorldCom (ABeard & Mayo Decl.@), & 42 (Tab E hereto).

SWBT=s claims concerning the extent of facilities-based competition in Texas are distorted by the fact that SWBT does not identify the number of trunks or lines in the CLEC Atotals@ that serve ISPs. Further, SWBT=s Aline count@ is based on faulty estimates derived from the number of interconnection trunks between SWBT and CLEC switches, see Habeeb Aff. & 27, a particularly misleading statistic where, as here, a high percentage of the trunks serve ISPs.

As explained in the attached declaration of Dr. T. Randolph Beard & Dr. John W. Mayo, ISPs have a disproportionate impact on the number of interconnection trunks, because ISPs need to have significant trunking capacity -- close to one trunk per line -- in order to handle calls during peak usage periods. See Beard & Mayo Decl. & 36. As SWBT=s own minutes-of-use figures confirm, the vast majority of CLEC-involved traffic in Texas is Internet traffic to ISPs. Accordingly, most CLEC trunking and line usage must be servicing ISPs. SWBT=s numbers attempt to hide the small number of lines serving other types of businesses and residential customers by lumping trunks to ISPs in with trunks serving other types of customers. SWBT=s

Aline count@ is further distorted by its method of Aestimating@ the number of CLEC lines by multiplying 2.75 times each interconnection trunk, regardless of whether the trunk serves an ISP. See SWBT Br. at 9; Habeeb Aff. at 4 (table 1). The result is puffery that exaggerates the number of actual lines or equivalents and completely obscures the number of CLEC lines serving non-ISP customers in Texas. In addition, SWBT=s figures are further inflated by the fact that its estimates are based on trunks ordered but not installed, even though on average only half of the trunks ordered from SWBT are likely to have been activated. See Beard & Mayo Decl. && 34-36. More accurate measures of CLEC lines indicate that SWBT retains more than 99% of the residential lines in its territory and more than 90% of the business lines. Id. & 41.

SWBT=s local competition data contains a further material inaccuracy that results in a gross overestimation of the percentage of residential market share held by CLECs. As SWBT admits, its methodology extrapolates from CLEC E911 database listings, which only include lines from which outgoing calls can be made, to determine the overall percentage of business and residential lines in the market. See Habeeb Aff. & 25. However, because outgoing calls cannot be made from certain types of business lines (e.g., call centers and ISP lines), these lines are not counted in the E911 database. Therefore, there is a lower percentage of business lines in the E911 database and, accordingly, a higher percentage of residential lines than is actually the case. Applying the E911 business and residential market share percentages to the overall number of lines thus overstates the share of the residential market captured by CLECs. Especially given the preponderance of ISPs among CLEC customers, SWBT=s estimate that 244,000 facilities-based

residential lines are served by CLECs is clearly too high. See Beard & Mayo Decl. && 37-38; SWBT Br. att. 2.

Because access minutes terminated to CLECs reflect actual usage by business and residential customers, data on terminating access minutes provides a more accurate picture of the state of local competition in Texas than SWBT=s inflated estimates.³² Recent data available to MCI WorldCom in its role as a long distance carrier indicates that in October 1999 all Texas CLECs as a group received less than three percent of the minutes terminated by MCI WorldCom in Texas. See Beard & Mayo Decl. & 39. This percentage is significantly lower than SWBT suggests with its misleading numbers and significantly lower -- by more than 25 percent -- than the equivalent terminating minutes data for New York State as of June 1999, nearly half a year earlier. See Beard & Mayo NY Decl. & 36.

The fundamental errors underlying SWBT=s CLEC business and residential line estimates, in combination with the terminating access minute data, show that local competition B outside the niche area of Internet service B is still quite limited. As the Commission has noted, extensive local competition can provide a strong indication that an incumbent LEC has opened its market.³³

³²In addition, terminating access traffic largely excludes Internet traffic, as most ISP customers dial a local number to reach their ISP.

³³See MI Order & 391 (AThe most probative evidence that all entry strategies are available [to competitors] would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent=s network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large)@); NY Order & 427.

Where -- as in Texas -- competition is largely limited to one narrow market segment, the key question for the Commission is whether the BOC has committed Any sin of omission or commission@ that would explain the dearth of competitive activity. See NY Order & 427.

SWBT has committed several such Asins,@ and its entry into long distance before the remaining barriers are eliminated would therefore be premature.

B. SWBT Has Not Yet Eliminated Several Significant Barriers to Entry or Irreversibly Opened the Local Market to Competition

That SWBT still has an overwhelming share of the local market four years after the passage of the Act is not due to hesitation by competitors. For years SWBT dragged its heels in implementing local competition at every opportunity, including challenging in court the constitutionality of section 271 and other provisions of the Act, as well as challenging the Commission=s efforts to implement the Act.³⁴

In addition to the significant OSS, pricing and intellectual property barriers discussed above, SWBT=s negotiating positions with respect to DSL UNEs, although ultimately rejected as unreasonable in arbitration, were successful in slowing competition for advanced services. The history of SWBT=s conduct with respect to DSL-based services is described in detail in the arbitration award recently affirmed by the PUC.

There is also no basis to conclude that SWBT=s hostility to competition has abated, as demonstrated by its refusal to cooperate in the State=s plan to open 911 and E911 services to

³⁴The Commission has recognized that instances of discriminatory or other anticompetitive conduct by a BOC are relevant to the public interest analysis. See, e.g., MI Order & 397.

competition. SWBT has actively hindered its potential competitor and the government agencies attempting to encourage such competition and continues to do so. SCC was formally awarded a contract to be the exclusive database management provider of 911 and E911 services in some areas, and to compete in others. According to the state 911 agency (the Advisory Commission on State Emergency Communications or AACSEC@), SWBT has steadfastly refused to permit SCC to interconnect with SWBT=s tandems in order to provide 911 and E911 service, which requires real-time data interjection for selective routing B denying the 911 agencies the economic and technical benefits of competition.³⁵ In light of SWBT=s consistent and continuing opposition to competition, it cannot be relied upon to eliminate the remaining barriers to competition after being granted 271 authority.

In addition to the OSS, pricing and other checklist issues discussed elsewhere in these comments, the most significant remaining barrier to an irreversibly open local market in Texas is SWBT=s grossly inadequate performance plan.

1. SWBT=s Performance Remedy Plan Is Inadequate to Prevent Backsliding.

A strong performance plan is important today and will become even more critical after SWBT takes the final steps necessary to complete the opening of its local markets to competition.

³⁵See ACSEC Emergency Petition, Texas PUC Docket No. 202334, at 4-6 (filed Jan. 15, 1999) (Tab F hereto). ACSEC has also intervened in both wireless and wireline state tariff proceedings to challenge SWBT=s 911 tariffs because its rate structure, imposing rates for the various components of 911 service much higher than its bundled rate for complete 911 services, effectively precludes competition for database management, selective routing, and transport. See, e.g., ACSEC List of Issues, Texas PUC Docket No. 20856 (filed Aug. 25, 1999) (Tab G hereto); SCC List of Issues, Texas PUC Docket No. 20856 (filed Aug. 10, 1999) (Tab H hereto).

Although there is some facilities-based competition in parts of Texas, that method of entry works primarily for large and medium-sized business customers in high-density geographic areas, and CLECs cannot rely exclusively on their own facilities to serve residential and small business customers in most geographic areas.³⁶ That is why it is still true in Texas that the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market. @ MI Order & 332; see NY Order & 81.

Until facilities-based competition has grown to the point where CLECs have other options for connecting to their customers if they encounter discrimination from SWBT, the Commission cannot rely solely on the market to protect against backsliding, and post-entry regulatory safeguards constitute a vital bulwark to protect the competitive gains that have been achieved in Texas. See Beard & Mayo Decl. && 23-26. The Commission has recognized the importance of performance remedy plans with consequences sufficiently severe to deter backsliding by BOCs after they enter the long-distance market, without the need for lengthy regulatory proceedings. See NY Order && 435-37, 441; MI Order & 394. The performance plan that SWBT has proposed is inadequate to provide a sufficient deterrent to discriminatory conduct.

There are at least three critical components to an effective performance remedy plan: First, the plan must set standards that, when met, will ensure effective local competition. Second, the plan must require reliable and effective measurement and reporting of all competition-affecting

³⁶See Beard & Mayo Decl. & 11 (discussing limitations of UNE-based competition).

functions to determine if the BOC has met the standards. Third, the plan must provide for remedies that are sufficiently severe and self-executing to give a BOC an incentive it does not otherwise have to cooperate with competitors who seek to take away its market share. See Declaration of George S. Ford and John D. Jackson on Behalf of MCI WorldCom (AFord and Jackson Decl.@), && 7-10 (Tab D hereto); see also NY Order & 433. SWBT=s performance plan includes reporting requirements and standards for many of the key local service functions that are measured. However, there are a few critical areas not measured at all and not subject to standards or remedies (most notably all aspects of change management), and the remedies are far too trivial and watered down to provide the appropriate incentives to SWBT.

a. Description of the T2A Performance Plan

The performance plan SWBT relies upon in support of its application is contained in the T2A. The T2A plan, Attachment H to the Dysart Affidavit, establishes performance metrics for specified functions and divides them into three tiers: Tier I, which are described as Aend user affecting@ measures; Tier II, described as Acompetition affecting,@ and Tier III, described as diagnostic.³⁷ Monetary payments are made to individual CLECs if SWBT fails to provide parity or meet a benchmark (a metric with no retail analog) for the set of metrics included in Tier I. The

³⁷MCI WorldCom does not agree with the claimed distinction between Aend user affecting@ and Acompetition affecting@ measures, and unsuccessfully resisted this artificial distinction in proceedings before the PUC. If poor performance by SWBT for a given function can adversely impact a local customer of a CLEC (i.e., Aend user affecting@ functions such as loop installation and restoration), that function necessarily is competition-affecting. Similarly, SWBT conduct that harms CLECs ultimately harms consumers, whether directly or indirectly. Local competition will not succeed when Aend users@ are adversely affected by SWBT=s poor performance.

determination whether parity or a benchmark was not satisfied is based on a statistical methodology described in the plan and discussed below. Payments for violations of Tier II metrics (as defined by the plan) are made to the Texas State Treasury, but only if SWBT misses the standards for three consecutive months. See Dysart Aff., att. H, at p. 15. Within each tier the measures are divided into categories of high, medium, or low, purportedly based on the importance of each measure. See id. p.10. Each class has different payout amounts. In Tier I, the remedy payments range from a low of \$25 per month for each occurrence to a high of \$800 per month B and even this supposedly Ahigh@ payment applies only if SWBT misses the most important type of standard for six months in a row. Id.

b. The level of remedies is trivial.

(i) Inadequacy of low per-occurrence payments. The primary defect with the T2A plan is that the base remedy amounts are simply too low to give SWBT the appropriate incentive to cooperate with its competitors in the local market. The core remedy provisions of the plan, in Tier I, call for remedy amounts of only \$25, \$75, and \$150 per occurrence. The notion that these amounts would have an impact on a company the size of SBC is nothing short of comical.

Assume, for example, that after weeks of competitive bids MCI WorldCom wins the business of five key business customers. All five experience extended, unplanned service outages because SWBT botches the cutovers. SWBT applies all the statistical tests it includes in the T2A plan and confirms that it violated the cutover standard for MCI WorldCom customers that month.

The impact on MCI WorldCom would likely be that some of the customers would discontinue their relationship with MCI WorldCom for local service, and others may discontinue using MCI

WorldCom for long distance and other services because of the outages. Indeed, MCI WorldCom=s prospects for new customers could be significantly impaired because word would get out that customers are losing dial tone when they switch to MCI WorldCom, or MCI WorldCom will have to advise prospective customers that it cannot guarantee the customer will not lose dial tone for significant and unplanned periods. Weighed against all this harm to MCI WorldCom, SWBT would pay Tier I remedies of a few hundred or a few thousand dollars as its market share became even more entrenched.

There is no need to speculate as to the theoretical results, however, as the PUC staff analyzed SWBT=s performance, and the applicable remedy amounts, from June 1999 to August 1999. See PUC Staff Three-Month Performance Evaluation for SWBT.³⁸ The results are telling. During that period SWBT performed poorly in many critical areas, but the remedies staff calculated based on the T2A plan were trivial. For example, the Tier II assessments included:

- X \$13,167 payment by SWBT for missing significantly more repair appointments for CLECs than for its own customers, three months in a row (PM 3805; DF);
- X \$1,667 payment by SWBT for missing the standard for loop installation within the required time period, three months in a row (PM 5601) (for standard of 95% on time, SWBT installed only 83% of loops on time for CLECs);
- X \$3,667 payment by SWBT for significantly and repeatedly discriminating against CLECs by missing due dates for loops (e.g., missing 9% of due dates for CLECs in July, 1999, and 1/2 of 1% of due dates for its own customers the same month) (PM 5804).

³⁸The staff memorandum can be found in SWBT Appendix C, Tab 1849. The appendices to the same memorandum are separately filed in SWBT Appendix C, Tab 1845.

See SWBT App. C, Tab 1845, att. 2 (PUC staff chart titled A Trouble Spots B Tier 2 Measures That Do Not Comply With Standards for Two Out of Three Months@). Similarly, PUC staff calculated potential damage amounts for Tier I misses. The paltry amounts that were triggered, in many cases for substantially poor performance, are reported in Attachment 9 to the staff=s analysis (SWBT App. C, Tab 1845).

Although staff has apparently not performed similar calculations for the past three months, SWBT recently released information on its website showing the amount of remedies it paid for both Tier I and Tier II payments in November. In that month SWBT paid a grand total of \$2,050 in Tier I remedies, and \$0 for Tier II.³⁹ SWBT paid this amount despite missing numerous performance standards, and many by a wide margin.

The Common Carrier Bureau has noted its concern with per-occurrence payments, focusing on the calculation of such payments for low-volume services.⁴⁰ As the examples above illustrate, per-occurrence remedies result in woefully insignificant remedies even for higher volume services and order types.

SWBT trumpets the Tier II remedy payments payable to the Texas State Treasury, but these payments are not triggered unless SWBT has discriminated against the entire CLEC community for three consecutive months. The problem is that even one month of poor performance, such as during a CLEC=s ramp-up before it has established a reputation in the local

³⁹See <https://clec.sbc.com/clehb/restr/pm/pm.cfm>.

⁴⁰See Letter from Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, to Priscilla Hill-Ardoin, Senior Vice President, SBC (Sept. 28, 1999).

market, can seriously erode prospects for local competition. And it is difficult to imagine that even SWBT believes two consecutive months of poor performance would not gravely impact any CLEC at any stage of market entry. Yet all SWBT need do is choose particular months to meet the standards in order to render the Tier II payments useless. SWBT can easily target CLECs during any given month without fear of invoking Tier II remedy payments. Indeed, the Tier II scheme allows SWBT to target a particular CLEC for poor performance (such as during a key ramp up or marketing campaign), but avoid any payments by aggregating that performance with adequate performance to other CLECs. In short, the Tier II system will rarely, if ever, be triggered, leaving SWBT with only a prospect of a slap on the wrist from the clearly inadequate remedy amounts in Tier I.

(ii) **Caps on remedy amounts further weaken plan.** The SWBT plan is further weakened by the imposition of caps on the per-occurrence payments (in addition to the overall plan cap). To the extent that per-occurrence payments could ever amount to an appreciable amount (possibly by an extended shut-down of all services for all CLECs), they would be reduced by the per-measurement caps to ensure that SWBT never pays a remedy with any teeth. Recent changes to a few of the per-occurrence caps are ineffective, as SWBT will reinstate the former caps as soon as it provides three months of compliant service on the affected measures. See Dysart Aff. att. K, p.4. But if the caps were so low that SWBT was compelled to increase them in order to provide a greater incentive for cooperation with CLECs, it makes no sense to reinstate the ineffective rules simply because SWBT refrains from discriminating for three months. CLECs need assurances that the local market will be open for the long term, not just the next quarter.

(iii) **Remedies do not increase for more severe violations, and increase insignificantly for repeated violations.** In addition, the T2A plan is ineffective because it does not adequately (or in most cases, does not at all) take into account the magnitude and the duration of poor performance by SWBT. SWBT will not be encouraged to provide quality service to CLECs, let alone to improve poor performance, when it is faced with the same trivial amount for missing a deadline by 500 hours as it is for a half-hour delay, and when it pays the same amount for providing timely order status notices 5% of the time as it does for compliance 85% of the time. Neither Tier I nor Tier II of the plan provides for increased remedies based on the severity of the violations.

Moreover, under Tier II SWBT pays the same amount of remedies each month even if it fails to correct a severe problem for months on end. Under Tier I, the remedy amounts payable to CLECs increase, but insignificantly, for repeated violations. For Tier I Amedium importance@ standards, the remedy amount is a paltry \$75 per occurrence for the first month, increasing to only \$400 for four consecutive months of poor performance, and only \$600 per occurrence for six months or more of repeatedly bad performance. For standards SWBT recognizes as the most significant (the Ahigh@ category), the per-occurrence payments begin at only \$150, increase to \$600 for four months of unimproved performance, and only \$800 for six months or more of repeatedly inadequate performance. Dysart Aff., att. H, p.10.

Basic common sense dictates that a plan that is supposed to discourage backsliding should require increasing amounts based on both the magnitude of the poor performance (how far off the required standard SWBT performs) and the duration of the miss (how many months SWBT=s

performance remains out of compliance). SWBT=s remedy plan does not provide for greater payments for more severe misses, and only the Tier I payments (which SWBT describes as not impacting competition) increase B albeit minimally B after repeated violations.

c. Misguided statistical loopholes lessen SWBT=s obligations.

The problem of the woefully insufficient remedy amounts is exacerbated by the excessive statistical loopholes in the remedy plan. For example, SWBT misuses a statistical test to artificially and irrationally lower all the benchmark standards (a standard set at an absolute level because there purportedly is no retail analogue in SWBT=s service to its own customers). The effect of this mistake is that the benchmark standards, which already include Aforgiveness@ for SWBT by not requiring 100% adequate performance, are watered down for no reason at all. See Ford & Jackson Decl. && 53-63 & app. B. Regulatory agencies should not be misled by this obvious flaw in the SWBT plan B a flaw that SWBT inserted to further lessen its obligations. The accompanying declaration of George Ford and John Jackson explains that this loophole has absolutely no basis in accepted statistical principles.⁴¹

Second, what SWBT calls its Ak value@ methodology is another statistical technique misapplied to achieve the effect of removing standards from the required list. Using the Ak value exclusion,@ SWBT can excuse itself from violating a substantial number of standards in any given

⁴¹MCI WorldCom encourages the Department of Justice in its evaluation, and the Commission to assess this methodology (and the entire SWBT plan) through independent experts, including statisticians, so that the Commission does not unintentionally send a message to BOCs and state commissions that clearly erroneous statistical practices and ineffective remedy plans will be overlooked in future applications.

month. Dysart Aff., att. H. SWBT=s justification for this practice is that it supposedly is necessary to account for random results showing false reports of disparity. But, as explained in the Ford & Jackson declaration, the T2A plan already takes into account the possibility of randomness and, indeed, is already tilted in SWBT=s favor by requiring a 95% confidence level. The additional level of Ak value@ forgiveness is unwarranted and further dilutes an already ineffective plan.⁴²

Third, through a different use of the Az value@ than Bell Atlantic employs in its performance plan, SWBT lessens its obligations to provide nondiscriminatory service even further by giving itself a passing grade for repeatedly marginal performance. The z value is used to determine the level of confidence that disparate performance data in fact show discriminatory conduct. Greater z values mean a greater chance that reports of disparate treatment to CLECs equate to discrimination. Z values greater than 1.645 trigger remedies under both the Bell Atlantic and SWBT plans. Because it is not as likely that a z score between 0.8225 and 1.644 indicates discrimination, neither the New York nor the Texas plan requires remedy payments if the score in one particular month falls in that range. However, when there are recurring scores in that marginal range, statistically there is confidence that discrimination is occurring. Thus, for

⁴²That SWBT has agreed to exempt certain measurements from k value exclusion, see Dysart Aff., att. K, at 3, suggests that SWBT is well aware that the k value improperly excuses poor performance on key measures. Unfortunately, SWBT has agreed only to remove the k value exclusion for these measures until it meets the standards three months in a row, after which it will reinstate the k value loophole and regain its ability to violate excluded standards at will. The point of a performance remedy plan is to prevent backsliding on a long term basis, not to allow a BOC to discriminate as soon as it provides three months of adequate service.

repeated scores in that range, the New York plan appropriately requires remedy payments (for scores between 0.8225 and 1.645). The Texas plan does not, even if SWBT's performance continues at that unacceptable range for several months on end.

d. Important functions are not subject to standards.

In addition to the problem of trivial remedy amounts for the standards covered by the plan, some vital local service functions are not covered by any standards in Texas. For these, there are no self-executing remedies regardless how badly SWBT performs or discriminates. The most significant omission in the plan is change management, an area the Commission has recognized as vital to local competition. NY Order §§ 102-103, 439 & n.1341. When an ILEC fails to adhere to change management notice requirements, it prevents CLECs from developing to the systems changes, which can delay entry or stop the operation of existing OSS interfaces. For example, change management rules require sufficient notice of SWBT software upgrades and testing to ensure that the new software does not shut down CLEC systems. But without performance standards for these critical areas, SWBT can violate the change management requirements at will, leaving CLECs with only the time consuming and expensive process of filing complaints before regulatory bodies after the violation has shut down the CLECs' systems. An effective remedy plan would discourage SWBT from violating change management requirements in the first instance.

Notably, the Bell Atlantic performance plan includes several change management standards, including those relating to notification of system changes, software validation, resolution of problems discovered in Bell Atlantic's systems, and change management timeliness.

See generally NY Order & 439 n.1341 (complimenting New York PSC and Bell Atlantic for instituting performance standards for change management).⁴³ All of these should be added to the Texas plan.⁴⁴

e. The Performance Remedy Plan Will Not Serve Its Intended Purpose to Prevent Backsliding.

The insignificant remedy amounts in SWBT=s performance plan do not come close to counteracting the gain to SWBT from providing poor performance to its would-be competitors. As explained in the accompanying declaration of George Ford and John Jackson, SWBT benefits enormously from discriminating against CLECs, including (i) the benefit of retaining a customer=s business, potentially for many years, when the customer loses confidence in a CLEC; (ii) the gain to SWBT from deterring further competitive entry by CLECs, including deterring CLECs from Aramping up@ from low volumes used in initial entry; and (iii) SWBT=s gain in market share as a source for Aone stop shopping@ due to customers= dissatisfaction with a competitor=s service.

⁴³SWBT disingenuously argues that CLECs did not request change management metrics as part of the change management discussions. As SWBT well knows, however, MCI WorldCom and other CLECs raised the need for change management metrics in the 271 and performance dockets before the PUC. See, e.g., MCI WorldCom=s Comments on Telcordia=s Final Report, Texas PUC Docket No. 20000, at 37-39 (Oct. 13, 1999) (SWBT app. D, Tab 82). MCI WorldCom was instructed by the PUC staff to defer further advocacy of additional measures until the PUC conducts a six-month review of the measurement system later this year.

⁴⁴For example, far more robust DSL metrics are needed, as all parties apparently recognize. The PUC is developing these metrics as part of an ongoing DSL arbitration proceeding. In addition, a corrective action plan that was part of an earlier remedy plan proposal was removed; a corrective action plan is a critical element B along with sufficient remedy amounts B to prevent SWBT from choosing to pay remedy amounts without repairing the underlying problem.

The insignificant remedies in the performance plan, coupled with loopholes that will prevent the higher amounts from ever being triggered, do not come close to offsetting these long term gains to SWBT from providing poor service to CLEC competitors.

The solution to this problem is not to make cosmetic fixes to the remedy plan as SWBT has done recently (e.g., raising a few sub-caps and eliminating some Ak@ value exclusions, but only until SWBT provides three months of nondiscriminatory performance), but to do away entirely with the methodology of low per-occurrence remedies. Instead, remedy payments should be based on per-measurement amounts B or significantly greater per-occurrence amounts B that are high enough to affect SWBT=s conduct, such as per-measurement amounts of \$25,000 or more that increase based on the magnitude and duration of the poor performance. MCI WorldCom=s proposed remedy plan, which incorporates these key elements, is included as Tab I hereto.

The recent increase in the overall cap to \$289 million was a meaningless gesture, as the cap would never be approached unless SWBT shut down or disconnected every actual or potential CLEC customer. Thus, even assuming \$289 million represented an appropriate incentive despite the far greater gains to SBC from preserving its monopoly position and harming the reputation of competitors providing local, long-distance and bundled services, that cap has no relation to potential remedies, since even sustained, significant failures result in remedies of only a few thousand dollars. A cap that by definition will never be approached has no deterrent effect and is simply a distraction from the real issues. As the Commission has recognized, the question is not simply the amount of the overall cap, but whether liability Awould actually accrue at

meaningful and significant levels when performance standards are missed.@ NY Order & 437 (emphasis added). The Commission properly concluded that Aan overall liability amount would be meaningless if there is no likelihood that payments would approach this amount, even in instances of widespread performance failure.@ Id. That is precisely the case with the T2A plan.

There is no question that the PUC put a good deal of effort into improving the original plan that SWBT proposed, which was even more flawed than the T2A plan. But the Commission would be shirking its duty, and sending the wrong message to BOCs and state commissions that are currently working on remedy plans, if it were to confuse good faith efforts with results. The T2A plan must be recognized for what it is B a gentle slap on the wrist that will have no impact on a company the size of SBC with so much to gain from preserving its local monopoly and impeding competition for Aone stop shopping.@ The plan can be strengthened in a matter of weeks if the Commission acknowledges its obvious flaws.

f. Other Incentives Are Insufficient to Level the Playing Field.

SWBT claims that it does not matter whether its remedy plan is itself effective in deterring discrimination because SWBT has other reasons to cooperate with competitors, including the performance conditions in the Order governing SBC=s merger with Ameritech; the risk that the Commission will suspend SWBT=s long distance authority; the threat of antitrust actions; the threat of payments from interconnection agreement remedy provisions; and the incentive SBC has to provide good performance in order to gain section 271 authority in its remaining states. SWBT Brief at 45-47; NY Order & 430.

The problem with all of these suggestions is that they are slow, uncertain, require extensive expenditure of resources by CLECs, and ultimately are ineffective at curbing the cumulative effect of A death by a thousand cuts@ B the day-to-day discrimination that has the cumulative impact of impeding or destroying competition. MCI WorldCom addresses the insufficiency of each of these alternatives in turn:

First, after-the-fact regulatory enforcement efforts B particularly with technical issues, complex and disputed facts, and unspecified standards B are at best a poor substitute for self-enforcing remedies based on failure to meet objective standards regardless of cause and proof. SWBT will always have the advantage of superior access to relevant information, and discovery in regulatory proceedings is limited, difficult, and time-consuming. Affected CLECs and regulators would have to spend an enormous amount of time and money to prosecute enforcement claims based on poor performance, both in regulatory proceedings and in subsequent review by the courts. A CLEC deciding whether to expend the resources to litigate an enforcement claim will have to weigh the great uncertainty in whether the desired result will be achieved. In addition, CLECs do not know how deliberate, widespread and persistent performance failures must be before a regulator would be willing to withdraw SWBT=s section 271 authority or impose other severe sanctions (such as a refusal to grant additional section 271 applications even if SWBT or other SBC ILECs have otherwise satisfied the checklist in another state).

Moreover, SWBT=s current desire to obtain section 271 authority in additional states does not solve the problem because this incentive will at most last until SBC obtains section 271 authority in other key states in its region. SBC has the ability to obtain section 271 authority in

these states reasonably promptly (and routinely contends that it has already met all the requirements of section 271 in all of its states). Decisions by CLECs to make major investments and long-term commitments needed for a meaningful launch of local service depend on some level of confidence that BOC performance will be acceptable over the long term, not just for a limited time until it is no longer in the BOC=s interest to cooperate.

The Commission=s assessment of any performance remedy plan must be based on what is needed to prevent post-entry backsliding in the long term. It would be difficult, if not impossible, for the Commission to raise or lower the bar for an effective remedy plan based on a fluid notion of just how much incentive a BOC has at any given time. The Commission should not set one standard today for SBC based on the premise that SBC will A behave@ at least until it gains entry in key states such as California and Illinois, only to increase the standard needed for an effective remedy plan after SBC gains entry in California, and increase it yet again after SBC gains entry in Illinois. It would be difficult at best to calibrate such a variable remedy plan.

As a result of these factors, the theoretical prospect of additional regulatory consequences that might be imposed at some unknown (but likely distant) point in time will have little practical impact on SWBT=s conduct. See Ford & Jackson Decl. && 68-72. That is true even with this Commission=s commitment to improved enforcement. These inherent problems with after-the-fact regulatory proceedings mean that efforts by even well intentioned and well funded regulators have limited practical value.

Second, antitrust remedies are even more uncertain and resource intensive and therefore cannot significantly increase the incentive for nondiscriminatory, reasonable performance to

CLECs provided by self-executing performance plans with solid standards and meaningful remedies. At a minimum, antitrust action would force CLECs to engage in protracted litigation about the reasonableness of the BOC=s performance (apart from any remedy plan) and the causes of the poor performance. All of the factors that make regulatory litigation difficult, expensive and uncertain also apply to private antitrust actions. The delay and uncertainty in any final resolution of the case substantially decreases any deterrent effect.

Third, the performance conditions in the Merger Order do not make up for the deficiencies in the T2A plan. Those conditions are not even intended to serve the Aanti-backsliding@ purpose of a section 271 remedy plan. Indeed, the Commission emphasized in the Merger Order that it found only that the federal performance plan is sufficient to offset or prevent some of the potential harmful effects of the merger, but that the Merger Order performance plan is Anot designed or intended as anti-backsliding measures for purposes of section 271.@ Merger Order & 380. In contrast to the performance plan incorporated in the Merger Order, Aperformance programs that are being developed by state commissions in the context of section 271 proceedings serve a different purpose and may be designed to cover more facets of local competition and to prevent a BOC from backsliding on section 271 obligations.@ Id. & 481. Moreover, the Merger Order performance plan not only suffers from the defects identified above in the T2A plan, it actually contains a smaller subset of measures than are contained in the T2A, and no payments of any kind are triggered unless SWBT misses the standards for three consecutive months. In addition, any payments due under the Merger Order are offset by payments made under state performance plans. Thus, the Merger Order plan will have no appreciable Aanti-backsliding@ effect.

Finally, the prospect of SWBT facing additional liability under negotiated interconnection agreements with more strict remedy provisions ignores reality. The T2A plan represents the most the PUC was willing to impose on SWBT. It was precisely because of the inadequacies with remedy plans SWBT was willing to negotiate that CLECs complained; the Texas PUC rejected SWBT's approach and established a docket that led to the performance plan contained in the T2A. As the T2A is the most CLECs could attain for a performance remedy plan, it is no wonder that SWBT does not in its Application point to a single interconnection agreement that contains a more effective remedy plan, including remedies more severe than those in the T2A. For example, in the case of MCI WorldCom, while it was able to negotiate in its interconnection agreement a few provisions that are more effective than the T2A, the overall remedy scheme SWBT would agree to is far inferior to that in the T2A.

For example, the plan SWBT insisted on in negotiations allows SWBT to accumulate credits for good behavior. That is, SWBT can deliberately discriminate against MCI WorldCom for key local service functions, but avoid any remedy payments by providing above-par performance for different and less important functions. This was one of the primary criticisms MCI WorldCom and other CLECs raised before the PUC, and the result was the PUC forced SWBT to abandon that methodology in the T2A. In addition, SWBT refused in negotiation to include numerous important metrics in its interconnection agreements (many additional metrics were added to the T2A at the insistence of the PUC). Thus, the T2A remedy plan, as flawed as it is, represents the most CLECs were able to obtain after vigorous advocacy before the PUC. The

interconnection agreements are less effective and thus add little or no additional incentive for SWBT to provide reasonable, nondiscriminatory service to CLECs.

In sum, the T2A plan must by itself provide an adequate incentive for SWBT to provide reasonable, nondiscriminatory performance to CLECs on a day-to-day basis. Other possible remedies are too limited, too uncertain, and too costly to provide significant additional incentives. A plan that provides sufficiently severe self-executing remedies for failure to meet performance standards for all key local service functions is far and away the best means of encouraging a BOC to continue to provide interconnection and UNEs to CLECs on nondiscriminatory and reasonable terms. The gross inadequacies of the T2A plan described above are not offset by the theoretical possibility of other types of remedies.

C. Long Distance Competition Will Suffer from a Premature Grant of Section 271 Authority.

Because SWBT is not in compliance with several aspects of the competitive checklist, SWBT's entry into the already robustly competitive long distance market⁴⁵ would not be in the public interest. As the Commission stated in the NY Order, "Absent checklist compliance, grant of section 271 authority could potentially harm the long distance market because the BOC would have a unique ability to introduce vertical service packages" NY Order at 428.

Indeed, telecommunications providers increasingly strive to offer consumers bundled services. See Beard & Mayo Decl. at 14. These circumstances mean that it is more important

⁴⁵See Beard & Mayo Decl., att. 3, at 31 (discussing Airtel rivalry in the long distance market).

than ever that SWBT provide non-discriminatory access to its local network before being granted long distance authority. SWBT will otherwise have available to it significant economic and technological tools to leverage its present local service monopoly into long distance. See Beard & Mayo Decl. & 8. This unwarranted leverage deprives customers of the benefits of competition and is directly contrary to the public interest.

SWBT could also harm competition in the intrastate toll and interstate markets by using its ability to impose access charges on its competitors that are far higher than its own costs of providing access. The significant gap between SWBT=s cost of providing access and the charges it continues to impose on other interexchange carriers permits SWBT to engage in price squeezes.⁴⁶ Under SWBT=s current access charge plans, it could offer intrastate toll and interstate services to customers at prices that fully reimburse its very minimal access costs, and at the same time preclude unaffiliated interexchange carriers from doing so because their SWBT-imposed costs of access are so much higher. SWBT=s entry into in-region long distance and into bundled services will not be fully in the public interest until SWBT reduces its access charges to cost.

CONCLUSION

⁴⁶In addition to the inflated interstate access charges permitted by federal regulations, Texas regulation permits some of the highest intrastate toll access charges in the country.

SWBT has not yet met the market-opening standards clearly set forth in the Commission's prior orders, and its application should therefore be denied as premature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jerome L. Epstein, hereby certify that I have this 31st day of January, 2000, caused a true copy of Comments of MCI WORLDCOM, Inc. and appendices to be served on the parties listed below:

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