BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF STEVEN E. TURNER

ON BEHALF OF

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

AND TCG SOUTH FLORIDA, INC.

DOCKET NO. 000731-TP

JANUARY 3, 2001

I. BACKGROUND AND EDUCATION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Steven E. Turner. My business address is Kaleo Consulting, 400 Preston Glen Circle, Suite 101, Canton, Georgia 30114.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I head my own telecommunications and financial consulting firm, Kaleo Consulting.

Q. PLEASE DESCRIBE YOUR EDUCATION BACKGROUND.

A. I hold a Bachelor of Science degree in Electrical Engineering from Auburn University in Auburn, Alabama. I also hold a Masters of Business Administration in Finance from Georgia State University in Atlanta, Georgia.

Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.

A. From 1986 through 1987, I was a Research Engineer for General Electric in its Advanced Technologies Department developing high-speed graphics simulators. In 1987, I joined AT&T and, during my career there, held a variety of engineering, operations, and management positions. These positions covered the switching, transport, and signaling disciplines within AT&T. From 1995 until 1997, I worked in the Local Infrastructure and Access Management organization within AT&T. In this organization, I gained familiarity with many of the regulatory issues surrounding AT&T's local market entry, including issues concerning the unbundling of incumbent local exchange company (incumbent) networks. I was on the AT&T team that negotiated with Southwestern Bell Telephone Company ("SWBT") concerning unbundled network element definitions and methods of interconnection. A copy of my resume is attached as Exhibit SET-1.

Q. HAVE YOU PREVIOUSLY TESTIFIED OR FILED TESTIMONY BEFORE A PUBLIC UTILITY OR PUBLIC SERVICE COMMISSION?

A. I have testified or filed testimony before commissions in the states of Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin. Additionally, I have filed testimony before the Federal Communications

Commission ("FCC"). A list of testimony that I have previously filed is attached as Exhibit SET-2.

II. PURPOSE AND SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. *First*, my testimony confirms that I am adopting the Direct Testimony of Gregory R. Follensbee on behalf of AT&T of the Southern States, Inc. and TCG South Florida, Inc. (collectively hereafter as "AT&T") as it pertains to issue number 33. *Second*, my testimony responds to the Direct Testimony of John A. Ruscilli on behalf of BellSouth Telecommunications, Inc. ("BellSouth"). Mr. Ruscilli incorrectly characterizes the present state of regulation to conclude that BellSouth has no obligation to provide line splitting, or said alternatively, that BellSouth "is under no obligation to offer line sharing on the UNE Platform."[1] My testimony will review the relevant FCC decisions that indicate that BellSouth does have an obligation to provide for line splitting. Moreover, my testimony will focus on the need for contract provisions that requires BellSouth to provide access to the high frequency spectrum (HFS) portion of an unbundled loop to a UNE-P voice provider. This "line splitting" option is not currently offered by BellSouth in any interconnection agreement, despite the FCC's requirement that all ILECS have an obligation to permit ALECs to engage in "line splitting" over the

[1] Direct Testimony of John A. Ruscilli on behalf of BellSouth Telecommunications, Inc., November 15, 2000, p. 53.

UNE-P. See FCC's Texas 271 Order dated June 30, 2000, ¶325. My testimony describes ways in which BellSouth is unlawfully hindering AT&T and other new entrants from providing advanced services even as BellSouth is aggressively and successfully deploying its own advanced services throughout Florida. Specifically, BellSouth refuses to permit AT&T to provide xDSL service on the loop that it has purchased as part of the UNE-P. It is important to bear in mind that AT&T is not requesting access to the high-frequency spectrum of the loop as a separate unbundled network element, in accordance with the Line Sharing Order. See FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, rel. December 9, 1999. Rather, AT&T's objective is to exercise its pre-existing right to utilize all the capabilities of the loop that it has already purchased, including the capability to provide xDSL service.[2] BellSouth's failure to give ALECs the right to do so in definitive contract language is a plain violation of the Telecommunications Act of 1996 ("1996 Act").

Moreover, BellSouth provides itself, and in connection with the implementation of the Line Sharing Order has agreed to provide to carriers seeking to offer only ADSL service over BellSouth's voice service, the ability efficiently to combine voice and ADSL service over the existing, functioning loop. BellSouth's refusal to permit AT&T to obtain the same

[2] See 47 C.F.R. 51.307(c) ("An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all the unbundled network element's features, functions and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element").

capability for a UNE-P loop – particularly when the technical procedures to enable AT&T to do so are exactly the same as BellSouth will use for itself or the data ALECs – is a blatant violation of Sections 201 and 251 of the 1996 Act.

BellSouth's refusal to cooperate with ALECs who seek to add xDSL capabilities to the combination of network elements known as UNE-P is competitively significant because, even though xDSL is certainly important as a standalone service, particularly for some business customers, the greater public policy concern is that BellSouth is exploiting the growing consumer demand for high-speed data services over existing voice lines to undermine competition for such services throughout the residential market. In particular, it is increasingly apparent that an ALEC's ability to offer xDSL service has a powerful effect on its ability competitively to provide residential customers voice services and "bundles" of voice and data services. Even if BellSouth fixes any recurrent problems in provisioning stand-alone xDSL-capable loops *and* properly implements the requirements for line-sharing with data-only ALECs, that would do *nothing* to address the key issue: BellSouth is aggressively pursuing a strategy calculated to ensure that BellSouth – and no one else – can efficiently offer combined voice and data service that consumers want.

III. BELLSOUTH CAN AND SHOULD PROVIDE AT&T WITH NONDISCRIMINATORY ACCESS TO THE LOOPS AND SUPPORT NEEDED TO PERMIT AT&T TO EFFICIENTLY PROVIDE VOICE AND ADVANCED SERVICES OVER THE LOOP FACILITIES IT PURCHASES AS PART OF UNE-P.

Q. WHAT TYPE OF ARRANGEMENT IS AT&T SEEKING?

A. As a preliminary matter, it is important to distinguish among three distinct competitive xDSL-related strategies, all of which are covered by Section 251 of the federal Telecommunications Act of 1996. *First*, there is the use of stand-alone, or "second," loops by carriers that want to provide data service only. For the most part, this is economically viable only in portions of the business market. *Second*, there is the use of the customer's existing loop by data ALECs who seek to provide data but not voice service. This is called "line sharing." *Third*, there is the use of the customer's existing loop by an ALEC to provide (either by itself or in conjunction with a cooperating carrier), both voice and data service, which the FCC refers to as "line splitting".[3] In its Order dated June 30, 2000 in the Texas 271 Proceeding, CC

[3] AT&T seeks "line-splitting," not line-sharing. AT&T has generally used the term "line sharing" as the FCC does, to refer to an arrangement where a ALEC that does not otherwise have rights to the use of a loop purchases from the ILEC the right to use only the HFS portion of the loop, while the incumbent provides voice services over the low-frequency spectrum of the loop. Under the arrangement sought by AT&T, the ALEC would purchase (or already has purchased) the entire loop from BellSouth, which would then be used to provide both voice and data services, consistent with the legal requirement that the purchaser of an unbundled network element must be permitted to exploit the full features, functions, and capabilities of that element. Moreover, the FCC in paragraph 324 of the Texas 271 Order makes clear that "line splitting" is an approach the FCC developed and is to be provided by the incumbents.

Docket No. 00-65, the FCC expressly concluded that ILECs have an obligation to permit ALECs to engage in line splitting over the UNE-P.

Q. WHAT POSITION IS BELLSOUTH TAKING?

A. Effectively, BellSouth appears intent on requiring AT&T to either disconnect the existing UNE-P arrangement, or alternatively, to use a second line to provide voice and data services, rather than enable AT&T to use the line it has already purchased as part of the UNE-Platform.[4] This is no "solution" to anything but rather a collateral attack on the usefulness of UNE-P as a competitive market entry mechanism. For most customers, especially in the residential market, this proposal is inconvenient, inefficient, and uneconomic. The FCC has expressly acknowledged this in its Line Sharing Order. BellSouth, however, has refused (i) to permit AT&T access to the architecture it makes available to its separate affiliate and data-only ALECs, (ii) to agree to other arrangements that permit AT&T to provide voice and data services over the same loop in a nondiscriminatory manner relative to itself, and (iii) to cooperate in negotiating ancillary administrative processes.

[4] Mr. Ruscilli does not address the question of how to provide for line splitting directly in his testimony, instead ignoring the issue under the guise that line splitting is not required by the FCC. However, BellSouth in an Ex Parte Submission from Kathleen B. Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, (August 15, 2000) (attached hereto as Exhibit SET-3) makes perfectly clear that it is BellSouth's intent to require the complete reconfiguration of UNE-P service via a collocation arrangement if an ALEC desires to utilize the high frequency portion of the loop. Moreover, as will be discussed in more detail infra, BellSouth has been less than forthcoming in discussing this issue with AT&T. During arbitration negotiations, BellSouth essentially refused to discuss the issue, taking the position that it was not required to support such arrangements. The few details that BellSouth provided were provided in connection with an ex parte presentation before the FCC on August 15, 2000.

Q. MUST BELLSOUTH PROVIDE NONDISCRIMINATORY ACCESS TO THE LOOPS AND OPERATIONS SUPPORT SYSTEMS ("OSS") NEEDED TO PERMIT AT&T TO EFFICIENTLY PROVIDE VOICE AND ADVANCED SERVICES OVER THE LOOPS IT PURCHASES AS PART OF THE UNE PLATFORM?

A. Yes. The 1996 Act and the Commission's implementing rules require BellSouth to provide nondiscriminatory access to the local loop, including all of its features, functions and capabilities.[5] Since August 1996, BellSouth, like all other incumbent LECs, has been under an obligation to provide unbundled access to loops capable of transmitting digital signals, such as xDSL. Local Competition Order ¶ 380. Additionally, BellSouth is required to "take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities . . . such as ADSL." Id. ¶ 382 (emphasis added). The FCC has consistently reaffirmed these fundamental requirements, most recently in the BA-NY Order and the UNE Remand Order.[6]

All AT&T seeks is access to the same network capabilities – and to the same efficiencies and reliability – that result when BellSouth provides combined voice and data service or shares its loop with a data ALEC. Whether AT&T deploys all of its own assets (digital subscriber line access multiplexers ("DSLAMs") and other packet switches) to provide advanced

[5] See, e.g., 47 U.S.C. §§ 251(c)(3); 271(c)(2)(B)(ii), (iv); 153(29) (defining "network element" to include "features, functions, and capabilities that are provided by means of such [network element]").

[6] BA-NY Order ¶ 271; UNE Remand Order ¶¶ 166-67.

services or obtains those capabilities through voluntary commercial arrangements with a third party, what AT&T needs is simple: access to the same configuration, functionalities, and support BellSouth provides to itself or to data ALECs when they decide not to compete for BellSouth's voice services on that loop.

Q. ARE LINE SPLITTING ARRANGEMENTS TECHNICALLY FEASIBLE?

A. Yes. To my knowledge, no incumbent, including BellSouth, has tied its opposition to line splitting to issues of technical feasibility – nor could they. For example, examination of SBC's recent filings with the FCC in connection with SBC's Texas 271 application demonstrates that SBC can and will provide precisely the equipment configuration that AT&T is seeking when the requesting carrier does not seek to compete for the voice services that SBC provides over the loop.[7] Moreover, BellSouth's own witnesses in North Carolina and Tennessee have indicated that there is not a technical feasibility issue associated with providing access to line splitting.[8] AT&T has been wholly unsuccessful in obtaining the necessary cooperation from BellSouth that would enable AT&T to provide advanced services in the high-

[7] See Cruz Section 271 Supplemental Affidavit on behalf of SBC, Attachment B, Figs. 2, 4 attached hereto as Exhibit SET-4.

[8] See Testimony of W. Keith Milner before the Tennessee Regulatory Authority, In re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123; Docket No. 00-00544, November 28, 2000, Transcript Volume II D, p. 246 attached hereto as Exhibit SET-5. See Testimony of W. Keith Milner before the North Carolina Utilities Commission, In the matter of: Generic Proceeding to Determine Permanent Pricing for Unbundled Network Elements; NCUC Docket

frequency spectrum ("HFS") of the local loops that AT&T leases from BellSouth. Accordingly, AT&T remains unable to provide an integrated bundle of voice and data services to retail customers though the UNE-P architecture.

Q. WHAT RATIONALE DOES BELLSOUTH USE IN DENYING AT&T SUCH ARRANGEMENTS?

A. BellSouth bases its opposition on two incorrect interpretations of the Act and FCC actions implementing the Act. *First*, BellSouth asserts that when AT&T buys a UNE-P loop in combination with the switch and other UNEs, AT&T has purchased only the voice band of that loop. In particular, BellSouth asserts that the UNE Platform may only be used to deploy voice grade service. *See* Ex Parte Submission from Kathleen B. Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, p. 3 (August 15, 2000). *Second*, BellSouth asserts that insertion of an ILEC-owned splitter into a local loop carrying voice service is a voluntary act on the part of BellSouth (which also permits blatant discrimination among carriers) rather than a legal obligation.

Q. IS BELLSOUTH'S RATIONALE CONSISTENT WITH THE 1996 ACT?

A. No. BellSouth's assertions are foreclosed by the 1996 Act and the FCC's rules. The 1996 Act itself defines the term "network element" to include the

No. P-100, Sub 133d, September 27, 2000, Transcript Volume 4, p. 38 attached hereto as Exhibit

"features, functions, and capabilities that are provided by means of such [network element.]" 47 U.S.C. § 153(29). The Act also requires ILECs to provide "nondiscriminatory access" to their network elements so that ALECs can provide the "telecommunications service" they seek to offer. 47 U.S.C. § 251(c)(3). Synthesizing these statutory requirements, the FCC's unbundling rule 307(c) states that:

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with *all of the unbundled network element's features, functions, and capabilities*, in a manner that allow the requesting telecommunications carrier to provide *any* telecommunications service that can be offered by means of that network element. 47 C.F.R. § 51.307 (emphasis added).

The FCC has repeatedly held that this duty applies directly to ALECs' use of unbundled loops to provide advanced services. Since August 1996, BellSouth, like all other ILECs, has been under an obligation to provide unbundled access to loops capable of transmitting digital signals, such as digital subscriber line (DSL). Local Competition Order, 11 FCC Rcd 15499, 15691 ¶ 380.

SET-6.

What AT&T is seeking is entirely consistent with the FCC's prior decisions and with the FCC's (and the 1996 Act's) overarching goals. As the FCC has previously recognized, "For effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services that they seek to offer . . . ." UNE Remand Order ¶ 13. The FCC has expressly recognized the importance of the UNE Platform in enabling competitors to address the residential mass market. UNE Remand Order ¶ 12. The FCC has an explicit statutory duty to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." Section 706(a) of the Telecommunications Act. All of these goals and findings will be jeopardized if AT&T is precluded from providing both voice and data services over UNE-P, as is the practical outcome of BellSouth's current policy.

Q. WHAT PROVISIONING ARRANGEMENTS SHOULD BELLSOUTH BE REQUIRED TO SUPPORT TO PROVIDE LINE SPLITTING?

A. In order to enable AT&T to provide voice and advanced services over a UNE-P loop in a prompt, efficient and nondisruptive manner, just as BellSouth now does when it combines voice and data over a single loop, AT&T needs BellSouth to insert a splitter into the UNE-P loop/port combination. Splitter insertion simply involves terminating the loop on the splitter and wiring the high-frequency (DSL) output of the splitter to a cross-

connect running to the DSLAM, and wiring the low-frequency (analog voice) output of the splitter to the UNE-P local switching element.[9] Naturally, BellSouth must also provide nondiscriminatory operational support that facilitates the provision of voice and data services over a UNE-P loop – just as it does when BellSouth provides both voice and data service and when any other data ALEC provides data services and BellSouth provides the voice service.[10]

As I stated earlier, BellSouth's own statements before state commissions demonstrate there are no technical impediments to satisfying the request by AT&T. There are no physical differences between ILEC-provided "line-sharing" that enables a data ALEC to provide data service over a loop on which BellSouth provides voice service and the "line-splitting" required to enable a UNE-P carrier to provide both voice and data service on the same loop. In both cases, BellSouth's deployment of the splitter is essential to permit the efficient delivery of services on a single loop.[11]

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[9] Please note that the splitter is not a new UNE, but is instead a part of the unbundled loop. As such, it is not necessary to justify its existence under a "necessary and impair" analysis. This will be discussed in more detail later in the testimony. Also note that the insertion of the splitter does not "disrupt" the pre-existing combination any more than adding or removing other loop electronics to the local loop creates a new "combination" of sub-loop elements.

[10] The Commission should be aware that simply ordering BellSouth to support line splitting would likely not be sufficient. The Commission should take the further step of clarifying that: (1) there must be no diminishment of the quality of the voice services when the voice ALEC provides service via UNE-P or UNE-P+DSL, due to action or lack of action by BellSouth; (2) that BellSouth must provide this support immediately due to the close parallel between the support required for line splitting and line sharing; and (3) BellSouth must be required to demonstrate that it has not required that UNE-P ALECs engage in unnecessary modifications of their existing UNE-P interfaces in order to take advantage of BellSouth ultimately supporting UNE-P+DSL.

[11] Please note, AT&T does not claim that the splitter is itself an unbundled network element. Rather, as demonstrated below, such splitters are part of the loop element.

Q. WHAT IS THE IMPACT OF BELLSOUTH DENYING AT&T ACCESS TO LINE SPLITTING?

A. Because BellSouth enables the efficient addition of DSL capabilities to the loops it uses to provide its own voice services to itself and data ALECs, its refusal to permit AT&T to enjoy comparable efficiencies on loops over which AT&T provides voice services as part of UNE Platform is plainly and unreasonably discriminatory. The Line Sharing Order does not authorize this discrimination. Indeed, the FCC explicitly recognized in the Line Sharing Order that competitive carriers are entitled to "obtain combination of network elements and use those elements to provide circuit switched voice service *as well as data services.*" Line Sharing Order ¶ 47 (emphasis added). Moreover, the practical impact of BellSouth denying AT&T and other ALECs access to line splitting is that customer service and choice will be negatively impacted. BellSouth has made it perfectly clear that if a customer who is currently line sharing between BellSouth and a data ALEC chooses to change voice providers, BellSouth will give the data ALEC an opportunity to purchase the entire loop (and have the customer use a different loop for his/her voice service); however, BellSouth will not permit the customer to maintain his/her voice service on the existing loop using the splitter in conjunction with a UNE-P arrangement.[12] The bottom line is that BellSouth's policy is to have the end user customer's service disrupted for no

[12] Testimony of W. Keith Milner before the North Carolina Utilities Commission, In the matter of: Generic Proceeding to Determine Permanent Pricing for Unbundled Network Elements; NCUC

justifiable reason than BellSouth's desire to thwart the effectiveness of UNE-P.

Q. SHOULD BELLSOUTH BE REQUIRED TO PROVIDE SPLITTER FUNCTIONALITY ON A LINE-BY-LINE BASIS?

A. Yes. AT&T strongly believes that line at a time splitter functionality should be provided for ILEC deployed line splitters. Such line at a time splitter capabilities have already been ordered by other state commissions such as in Illinois and Michigan.[13] AT&T also believes that ILEC provided line splitters should be available in both a line sharing arrangement (as proposed by BellSouth) as well as in a line splitting arrangement where AT&T has purchased the entire loop (which includes the high frequency spectrum). To the extent that BellSouth has made this capability available to data ALECs for line sharing, no delay should be tolerated in extending this capability to AT&T, or any other UNE-P ALEC, seeking to fully utilize the capabilities of the UNE-loop that it has purchased as part of the UNE-P combination.

Q. WHAT IS THE IMPACT OF BELLSOUTH'S REFUSAL TO PROVIDE THE SPLITTER TO AT&T?

A. Without BellSouth's insertion of the splitter, the ALEC is practically precluded from competing for BellSouth customers who wish to obtain voice

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Docket No. P-100, Sub 133d, September 27, 2000, Transcript Volume 4, pp. 28-30 attached hereto as Exhibit SET-7.

[13] Please *see* Arbitration Order dated August 17, 2000 in ICC Docket Nos. 00-0312/0313 in the arbitration between Ameritech Illinois and Covad Communications Company and Rhythms Links, Inc. at page 18 for support that Ameritech must provide both line at a time and shelf at a time line splitting capability when Ameritech chooses to deploy line splitters. To be provided as Late Filed Exhibit SET-8.

and advanced services over a single local loop. As noted below, in the former case, the FCC has found that the costs of collocation and the prospects of hot cuts represent a clear impairment to voice service competition. In the latter case, the FCC found in the Line Sharing Order that competing via a second line resulted in impairment to data service competition. Thus, all options that BellSouth has offered have previously been found to have significant impairments for the prospects of competition.

Q. WHY SHOULD BELLSOUTH BE REQUIRED TO PROVIDE THE SPLITTER?

A. As the FCC's UNE Remand Order determined, "attached electronics," with the exception of DSLAMs, are regarded as part of the loop and therefore must be provided by BellSouth as part of the loop. UNE Remand Order at ¶ 175. While BellSouth simply asserts in its ex parte to the FCC that the splitter is not part of the loop, what BellSouth fails to note is that the splitter is a passive electronic filter that is attached to the loop in order to split or separate signals on the basis of their transmission frequencies. In short, the splitter falls precisely under the definition of "attached electronics" and as such requires the splitter to be a part of the loop and not a separate unbundled element. In fact, the functions of frequency splitting and packet switching are entirely different. The splitter enables the low-frequency voice signals on the loop to be directed to a circuit switch and the high-frequency data signals on that loop to be delivered to a packet switching network (including

DSLAMs). In contrast, packet switching refers to protocols in which messages are broken up into small packets before they are sent. Each packet contains header information about the source, destination, sequencing, etc., that governs the process in which packets of information are independently transmitted from point to point between source and destination and reassembled into proper sequence at the destination. A splitter is incapable of reading a header, or even of distinguishing between analog and digital transmissions, and does not implement routing instructions based upon transmitted information from the customer. The fact that a splitter *can,* as a matter of design convenience, be combined with a DSLAM does not mean that stand-alone splitters are involved in packet switching or that BellSouth should be excused from providing them as "attached electronics" to the loop.[14]

Q. WHAT RATIONALE DOES BELLSOUTH PROVIDE FOR NOT PROVIDING THE SPLITTER FUNCTIONALITY TO UNE-P ALECS?

A. BellSouth indicates in Mr. Ruscilli's testimony that AT&T should not be entitled to the splitter functionality because BellSouth deployed splitters can only be used for line sharing and not for line splitting. BellSouth seems to base this position on its interpretation of paragraphs 325 and 327 of the

[14] SBC's position taken in a pending proceeding relating to implementation of the SBC/Ameritech merger conditions underscores this point. In conjunction with its request for interpretation of the SBC/Ameritech merger conditions, SBC argued that it should be entitled to retain control and ownership of line cards placed in remote terminals that have an integrated splitter functionality because the equipment "is not used solely in the provision of Advanced Services." See Letter from Paul K. Mancini, Vice President and Assistant General Counsel for SBC, to Lawrence E.

FCC's Texas 271 Order dated June 30, 2000.[15] This rationale is flawed. The FCC in evaluating SBC's application for 271 relief only evaluated the current set of requirements associated with line sharing and line splitting and determined that SBC did not have a present obligation to provide the splitter for line splitting. Moreover, from reading further in paragraph 328 of the same order, the FCC makes clear that the present state of regulation on splitters did not even require SBC to make the splitters available for line sharing. However, the FCC also noted that this issue had yet to be fully evaluated by the FCC and that it should be in short order (*see* paragraph 328). The issue in Florida is one of discrimination. BellSouth has decided to provide access to the splitter when BellSouth is the voice provider. But, BellSouth, in its continued effort to undermine the utility of the UNE-Platform has determined that it will not make access to the splitter available when another carrier is the voice provider. It is in this regard that the Florida Public Service Commission should act to prevent BellSouth from unilaterally determining who its competition will be and how its competition will provide service.

Strickling, Chief, Common Carrier Bureau, Federal Communications Commission at 4 (Feb. 15, 2000) to be provided as Late Filed Exhibit SET-9.

[15] Mr. Ruscilli's Direct Testimony on behalf of BellSouth in Florida is silent as to BellSouth's reasoning to denying ALECs access to splitters for use in UNE-P configurations. However, the Direct Testimony of Thomas G. Williams on behalf of BellSouth Telecommunications, Inc., November 13, 2000, pp. 15-16 in Georgia makes clear the basis for BellSouth's objections to the splitter access for UNE-P. It is this basis that I will respond to here.

Q. ARE BELLSOUTH'S ARGUMENTS AGAINST PROVIDING THE SPLITTER CONSISTENT WITH BASIC ENGINEERING PRINCIPLES?

A. No. BellSouth's argument that the splitter is not part of the loop is inconsistent with principles of telephone engineering.[16] It is indisputable that bridge taps are routinely installed in the ILEC's loop plant, and the FCC has expressly recognized the right of a purchaser of a loop element to insist that bridge taps be removed, even where the ILEC does not ordinarily perform such removals for itself, because it is not providing advanced services to those customers. It is likewise indisputable that load coils – which in fact are nothing but low-pass filters – may be part of a loop, and the FCC has expressly recognized the right of a purchaser of a loop element to insist that load coils be removed.[17] Yet BellSouth denies its obligation to provide a splitter, claiming it cannot be part of a loop, even though the insertion of a splitter is effectively nothing more than a bridge tap that derives two transmission paths from a single copper facility and provides filtering and electrical protection for the transmissions on each derived path.

Q. IS AT&T'S REQUEST THAT BELLSOUTH PROVIDE THE SPLITTERS SUPPORTED BY FCC ORDERS?

A. Yes. Just as the FCC has recognized that competitors must be able to access the loop and all of its "features, functions, and capabilities" by requesting the removal of accreted filtering devices from the loop, UNE Remand Order ¶

[16] Ex Parte Submission from Kathleen B. Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, p. 3 (August 15, 2000).

173, so too must competitors be entitled to request that filtering devices (*i.e*, the splitter) be added to the loop to enable a requesting carrier to use the full functionality of the loop. In either case, the removal or attachment of filtering devices that are necessary to enable voice and data transmission over a single loop simply gives effect to the FCC's determination that Section 251(c)(3) requires ILECs to provide modifications to their facilities to the extent necessary to accommodate access to network elements. Local Competition Order ¶ 198. Thus, the question of whether the ILEC performs such modifications for itself is irrelevant to this determination.

Q. DOES THE FACT THAT AT&T PLANS TO UTILIZE THE UNE PLATFORM AFFECT THAT ANALYSIS?

A. No. BellSouth seems to think that when it provides the UNE Platform its obligation is solely to deliver the existing combination of elements as is, and that if any modification or adjustment is required, the UNE-P must be disassembled and individual network elements must be reordered and connected by the ALEC. *See* Ex Parte Submission from Kathleen B. Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, p. 3 (August 15, 2000). But, even as BellSouth resists allowing AT&T to access additional features, functions, and capabilities of the *loop* obtained as part of UNE-P, BellSouth does not deny the right of a ALEC to order additional features, functions, and capabilities of the *switch* that is provided as part of that same combination of network elements. UNE-

[17] UNE Remand Order ¶¶ 172-173.

P carriers routinely order vertical features (*e.g.,* call waiting, Caller ID, call blocking) for their customers and, where necessary, BellSouth quite properly accommodates such requests by doing the "physical work" (see id. at ¶ 19) of modifying software instructions of the switch to ensure that the additional features, functions, and capabilities are activated. Moreover, BellSouth also does not deny the right of an ALEC to order loops combined *by BellSouth* with dedicated transport to create extended loops or other similar combinations such as loops for multiplexing, dedicated transport to DCS, or dedicated transport to multiplexing. In short, BellSouth has selected the connection of the loop to the splitter as a particular technical modification that it will not make available for ALECs using UNE-P because BellSouth has a strategic competitive advantage that would be undermined by this connection.

Q. IS AT&T'S REQUEST THAT BELLSOUTH ENABLE THE USE OF UNE-P LOOPS FOR ADVANCED SERVICES SUPPORTED BY THE DOJ?

A. Yes. In the DOJ's recent Evaluation filed in connection with SBC's revised application for interLATA authority in Texas, the DOJ noted that:

> AT&T asserts a related concern that its ability to compete with SBC using UNE-P will be impaired if SBC is not required to permit DSL providers to access UNE-P loops for providing DSL service in conjunction

with AT&T's voice service in the same manner that SBC's voice loops may be accessed for line sharing. A prompt resolution of the issues surrounding AT&T's complaint is needed to prevent UNE-platform carriers from being at a competitive disadvantage to SBC.[18]

Clearly the DOJ recognizes this as a legitimate concern that if left uncorrected places the UNE-P ALECs at a significant competitive disadvantage. Until resolved, residential customers in Florida will lack a legitimate alternative to BellSouth for the provision of bundled voice and data services. This situation was clearly not the intent of the 1996 Act and is not justified by any technical limitation.

Q. WHAT ARE THE LIKELY CONSEQUENCES OF BELLSOUTH'S PROPOSED APPROACH?

A. Right now, customers in the BellSouth service area who seek voice and advanced services provided over a single line have no practical option other than to take voice services from BellSouth. More specifically, the Commission should be vigilant to assure that BellSouth does not set forth a process – which will result from its current proposal – that will require a voice ALEC to obtain collocation it would not otherwise require and to subject the customer to a total reconfiguration of its service. Moreover,

[18] Ex Parte Submission from Donald J. Russell of the U.S. Department of Justice to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65, at fn 17 (June 13, 2000) attached hereto as Exhibit SET-10.

unnecessary extended interruption of the customer's service is a likely consequence of BellSouth's approach of requiring the disconnection of working service and re-termination of that service through a collocation arrangement. Because of its steadfast refusal to negotiate with AT&T, BellSouth has not specified what procedures would apply or what intervals would be applicable, but it has said that the UNE-P arrangement would need to be dismantled (and a new UNE loop and switch port provided) before the new combination could be constructed. Nevertheless, it is reasonable to conclude that in order to minimize service outages for the customer, coordination of the following procedures is required: (1) disconnection of the UNE-P, (2) connection of the loop to collocation, (3) connection of the switch port to collocation, and (4) associating the switch port with shared transport.[19] If any of these steps becomes disassociated from the others, or is worked at a different time than the others, the customer will suffer.[20] If such events occur with any regularity, the customer's carrier will be destined for failure in the marketplace.

BellSouth has not shown that it stands ready to provide all of the necessary coordination, with a sufficient degree of reliability, to avoid such

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[19] Although BellSouth provides few details regarding this procedure, it appears that ALECs would be required to submit *separate* LSRs for the xDSL loop and for the unbundled switch port with shared transport – and, quite possibly, a third, separate LSR to disconnect the existing UNE-P arrangement. Although an ALEC could itself physically disconnect the UNE-P network arrangement, BellSouth might well insist on performing the disconnection itself (pursuant to the ALEC's request).

[20] While it is theoretically possible to utilize a second loop to the customer's premises, from a practical standpoint the option is not viable. For example, SBC testified that the lack of a second loop to customers' premises that is DSL capable is a major barrier to the data CLECs' ability to compete. See Pfau/Chambers Section 271 Supp. Decl. at ¶¶ 33-34, (citing 4/13 TPUC Workshop Transcript at 347), Chapman/Dysart Section 271 Supp. Aff. ¶¶ 35-36, 38.

problems. Nor has it shown that the process BellSouth proposes would be remotely as reliable as those that are followed when a BellSouth voice customer adds BellSouth data service, or even when a BellSouth voice customer adds a data ALEC's data service. BellSouth has certainly never provided evidence that it had developed procedures to ensure that these steps are properly coordinated. In the final analysis, BellSouth has not made any showing, nor could it, that the UNE-P ALEC would be afforded a reasonable opportunity to compete if BellSouth's proposed alternative to UNE-P line splitting is implemented.

Q. ARE THERE OTHER POTENTIAL PROBLEMS ASSOCIATED WITH BELLSOUTH'S PROPOSED APPROACH?

A. Yes. Other related problems are suggested by experience with the initial offerings of UNE-P by BellSouth and other ILECs. Although the conversion of an ILEC's POTS customer to a UNE-P carrier's POTS service is largely a matter of record keeping rather than physical rearrangement, experience has taught that these conversions were plagued by problems like customers losing their telephone numbers, directory listings being dropped, and E-911 databases being populated with incorrect information. Customer-impacting problems resulted from multiple but related orders failing to be executed in their proper sequence. The same sorts of problems (or even new ones) could arise if UNE-P arrangements need to be torn down and then reassembled with

new orders of individual network elements, using new procedures that have yet to be disclosed, much less tested.

BellSouth's sole proposal of disconnecting existing voice arrangements and rerouting them through ALEC collocation cages and back to the switch presents the same problems here for UNE-P as it did during the time that the FCC's Rule 315(b) was vacated. During that time, BellSouth flatly refused to provide UNE-P, and insisted that ALECs obtain access to combinations of UNEs exclusively through a collocation-based method that was patently discriminatory and in essence no different than what BellSouth is now trying to impose on ALECs seeking to add DSL to UNE-P. Now, as then, BellSouth seeks to destroy the viability of UNE-P by forcing the UNE-P ALECs to recombine unbundled elements using collocation. Just as was the case when BellSouth initially sought to disable UNE-P, the imposition of a mandatory collocation requirement not only imposes a requirement that the ALEC obtain collocation space but after that (1) increases the necessary degree of coordination and manual work and, accordingly, increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays required for space applications, collocation construction, and equipment installation (in this case, the splitter); (3) requires additional central office and frame space, both of which are scarce and valuable resources; (4) increases the overall number of points of connection (or "points of failure") where the loop connection is most likely to fail due to human error; and (5) imposes additional costs on ALECs.

Additionally, a customer receiving BellSouth's voice service and a data ALEC's data service via an ILEC/data ALEC line sharing arrangement (in which the ILEC owns the splitter) would not be able to migrate to such services provided over the loop purchased by AT&T in a prompt, efficient, and non-disruptive manner, even though it is technically feasible to do so. The BellSouth/data ALEC service arrangement would utilize the network configuration set forth in an exhibit ("CO-Based Line Sharing Functional Block Diagram") to Mr. Williams's Direct Testimony on behalf of BellSouth in the Georgia line splitting docket, Docket No. 11900-U, which I have attached as Exhibit SET-11.[21] An AT&T service arrangement would utilize exactly the same logical configuration. Yet, in order for the customer to migrate to AT&T as a voice carrier, while retaining data service provided through the use of the same data ALECs' facilities, BellSouth's approach would: (1) require AT&T to place an order to disconnect the working combination; (2) permit BellSouth to remove its splitter; (3) force AT&T to provide its own splitter (or obtain the functionality from a D-ALEC); and (4) require AT&T to reconfigure the service by ordering an unbundled DSL-capable loop, an unbundled switch port, shared transport, and the necessary cross-connects between the collocation space and both the switch and the distribution frame.

[21] Please note that I would have used a diagram from Mr. Ruscilli's testimony. However, he did not attach a diagram illustrating how BellSouth intends to provide for line sharing. As such, I used a comparable diagram provided by BellSouth from Mr. William's testimony in the Georgia line splitting docket. This diagram is attached as Exhibit SET-11.

Q. DOES BELLSOUTH'S PROPOSED APPROACH PRESENT POTENTIAL IMPACTS TO AN END-USER CUSTOMER'S VOICE SERVICE?

A. Yes. AT&T is concerned that BellSouth's approach would affect its ability to ensure the reliability of the customer's voice service. Today, when AT&T obtains UNE-P from BellSouth, BellSouth assures the integrity of the voice path – loop, switch, and transport. When problems arise, AT&T can secure Mechanized Loop Testing ("MLT") from BellSouth, which enables sectionalization – and more rapid remediation – of faults. If BellSouth, for example, refuses to provide MLT access for loops that traverse collocation space and equipment supplied by a competitor, a position initially taken with the data ALECs when they requested such access in a line-sharing configuration, clearly there will be an opportunity for finger pointing because the collocation requirement creates the potential for unnecessary and expensive technician dispatches to definitely isolate trouble sources. Again, because BellSouth has chosen not to disclose the details regarding how its alternative for UNE-P ALECs will operate, there is no evidence or assurances that UNE-P carriers' customers will be afforded the same treatment as customers who obtain both voice and data from BellSouth, or voice service from BellSouth and data service from a data ALEC.

Q. COULD THESE PROBLEMS BE AVOIDED?

A. Yes. In contrast to all these problems that can be expected if BellSouth's rip-it-apart-and-rebuild-it approach were to be permitted, these problems would all be minimized if BellSouth merely cooperated to permit UNE-P ALECs to fully utilize their loops in an efficient manner. Another virtue of the approach AT&T advocates is that ILEC provision of the splitters facilitates additional customer choice in the future. When BellSouth provides the splitter used in a line-sharing situation, moving a single jumper can change the DSL supplier and the voice service need not be disrupted at all. On the other hand, if the splitter is integrated in the DSLAM or the splitter is separate but owned by the data ALEC, change of the DSL provider (or change of the voice provider) requires both services to be disrupted. Clearly this is a disincentive for change by customers who have existing voice and data service.

In short, competition will be seriously hindered if competitive voice providers (using UNE-P) are required to own splitters and purchase collocation, thereby needlessly engaging in the destruction of the UNE-P combination.

Q. SHOULD BELLSOUTH BE OBLIGATED TO CONTINUE THE PROVISION OF DATA SERVICES ON THE HFS PORTION OF A LOOP UPON WHICH AT&T HAS BEEN SELECTED TO BE THE VOICE PROVIDER?

A. Yes. AT&T should have the right to provide voice service to any customer who elects AT&T as their voice service provider using the same loop that BellSouth is using to provide voice services to the customer. At least until BellSouth supports line splitting in a nondiscriminatory manner, BellSouth should not be permitted to discontinue advanced data services that it provides to that customer when the voice service provider is changed. Data services provided by BellSouth should continue to be provided, on a prospective basis, to any customer that chooses AT&T (or any other UNE-P ALEC) as their local service carrier for voice services if the retail customer desires continuation of such service. Because BellSouth must meet its legal obligation of enabling ALECs to provide both voice and data over a single UNE-P loop, as long as BellSouth fails to meet this duty, by denying its own DSL service to customers who choose AT&T's voice service, BellSouth engages in unreasonable discrimination.

Q. WHAT MAINTENANCE REQUIREMENTS SHOULD BELLSOUTH BE REQUIRED TO SUPPORT FOR LINE SPLITTING?

A. Establishing non-discriminatory terms and conditions for maintenance and repair are of paramount importance. From a technical perspective, there are

no physical differences between ILEC line sharing and a UNE-P ALEC taking advantage of line splitting, when the ILEC owns and deploys the splitter. Thus, the maintenance procedures should be virtually indistinguishable from those that BellSouth is already providing to its affiliate and data ALECs, and should be provided to a UNE-P carrier in a nondiscriminatory manner. There is no justification for BellSouth to either withhold or delay support for UNE-P ALECs.

Q. WHAT TERMS AND CONDITIONS SHOULD GOVERN PRE-ORDERING AND ORDERING FOR LINE SPLITTING?

A. Provisions to support pre-ordering and ordering for line splitting must of course be nondiscriminatory and provide for a meaningful opportunity to compete. BellSouth must provide AT&T with all necessary information to identify the locations where BellSouth deployed splitters are available and any associated equipment information necessary to determine if the splitters are compatible with the advanced services deployment planned by AT&T or its authorized Advanced Services Providers (which are discussed later in my testimony). The implementation of nondiscriminatory ordering procedures includes the necessity of BellSouth providing complete documentation and technical assistance necessary for AT&T to understand order format, information content, business rules and all system/network interface requirements necessary for AT&T to access the HFS of the loop.

IV. IN THE EVENT THIS COMMISSION DOES NOT PROVIDE ACCESS TO LINE SPLITTING WITH BELLSOUTH OWNED SPLITTERS, THIS COMMISSION SHOULD PROVIDE ACCESS TO UNE-P+DSL COMBINATIONS IN COLLOCATION.

Q. IF THIS COMMISSION WERE TO NOT PROVIDE ACCESS TO UNE-P+DSL IN THE MANNER DESCRIBED ABOVE, WHAT ALTERNATIVE WOULD YOU WANT THIS COMMISSION TO PROVIDE?

A. BellSouth must support the ALEC combining the loop and port UNEs within its collocation arrangement in conjunction with the splitter and associated DSL electronics so that the ALEC can provide a UNE-P+DSL combination for voice and data services.

Q. WHY SHOULD BELLSOUTH BE REQUIRED TO SUPPORT LINE SPLITTING WHEN THE LOOP AND PORT ELEMENTS TERMINATE IN ALEC COLLOCATION?

A. *First*, BellSouth supports this configuration for line sharing so there is no reason to reject the requirement due to technical feasibility considerations. *Second*, requiring such support encourages competitive carriers to begin the process of facilities based competition in a rational manner. *Third*, it permits competition for voice and advanced services bundles by allowing competitors to deploy innovative advanced services without a concomitant requirement

that they engage in extensive investments including for the OSSs necessary to support the voice service.[22]

Q. DO YOU HAVE ANY CONCERNS ABOUT HOW BELLSOUTH MIGHT IMPLEMENT A COLLOCATION-BASED COMBINING OF AN UNBUNDLED LOOP AND SWITCH PORT IN CONJUNCTION WITH A DSL APPLICATION?

A. Yes. If the ALEC utilizes collocation to combine the loop and the port, BellSouth should not be permitted to then assert that the UNE-P combination no longer exists and that BellSouth is absolved of its obligation to provide nondiscriminatory support. Such an outcome would be contrary to the Act's objectives of simultaneously encouraging local service competition and advanced service deployment. Please note that this is not a hollow concern. BellSouth, in its August 15 ex parte before the FCC, explicitly stated the following: "Consequently, if a splitter is on a loop or is to be attached to a loop, a loop and port will lose its status as a UNE-P."[23] The concern here is quite obvious. This Commission cannot permit BellSouth to walk away from its nondiscriminatory support of unbundled loops and switch ports (meaning the performance BellSouth provides for its own use of these same elements) simply because they pass through a collocation arrangement. Said

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[22] Should the voice ALEC opt to obtain collocation and then combine the loop and port in the collocation, BellSouth should not be permitted to then assert the UNE-P combination no longer exists and that it is absolved of it obligation to provide nondiscriminatory support. Such an outcome would be contrary to the Act's objective of simultaneously encouraging local service competition and advanced service deployment.

[23] Ex Parte Submission from Kathleen B. Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, p. 3 (August 15, 2000), Exhibit SET-3.

alternatively, BellSouth should provide the same level of support to these unbundled elements in combination through the collocation arrangement as BellSouth would provide to its own voice customer that was being "line shared" with another ALEC's data service.

When and if an ALEC uses collocation to provide UNE-P, this approach requires more co-ordination between the ALEC and BellSouth. Therefore, in order for BellSouth to demonstrate compliance in supporting line splitting, it should be required to show that it stands ready to provide all of the necessary coordination, with a sufficient degree of reliability, to avoid service disruptions when the ALEC provides UNE-P through its collocation. At present, BellSouth has acknowledged that its does not have these operational procedures in place.[24] Moreover, as a general consideration, BellSouth must be required to show its operational processes are as reliable as those that are followed when a BellSouth voice customer adds BellSouth data service, or even when a BellSouth voice customer adds a data ALEC's data service. BellSouth has certainly never provided evidence that it has developed procedures to insure that these steps are properly coordinated. Furthermore, BellSouth has not demonstrated that its interface requirements (for exchange of information between the ILEC and ALEC) will avoid needless overhaul (or replacement) of ALEC OSS that have taken four years to construct. In the final analysis, BellSouth has not made any showing, nor could it, that the UNE-P ALEC would be afforded a reasonable opportunity

[24] Ex Parte Submission from Kathleen B. Levitz to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, p. 2 (August 15, 2000), Exhibit SET-3.

to compete if BellSouth's proposed alternative to UNE-P line splitting is implemented.[25]

V. THIS COMMISSION SHOULD ADOPT THE TERMS AND CONDITIONS PROPOSED BY AT&T TO ALLOW UNE-P PROVIDERS TO PROVIDE VOICE AND DATA SERVICE

Q. SHOULD AT&T BE ALLOWED TO DESIGNATE ONE OR MORE DATA ALECS WITH WHICH TO PARTNER TO PROVIDE A COMBINED VOICE AND DATA OFFERING TO AT&T'S END-USER CUSTOMERS?

A. Yes. AT&T should be allowed to identify one or more ALEC contractors as an AT&T authorized Advanced Service Provider, which has been authorized by AT&T to add, change or delete advanced services capabilities within the HFS of a UNE-loop employed or ordered by AT&T. In such instances, AT&T's contractors will follow agreed-to procedures to identify themselves as being authorized to access the HFS portion of an AT&T UNE loop.

[25] Again, it is important to note that BellSouth must support the reassembled combination passing through collocation in the same manner as it would a combination where it performed the "connecting." To permit otherwise, would relegate an otherwise technically feasible option of the ALEC a practically useless alternative.

Q. WHAT TERMS AND CONDITIONS SHOULD GOVERN AT&T'S ABILITY TO AUTHORIZE ADVANCED SERVICES PROVIDERS TO PERFORM PROVISIONING, MAINTENANCE AND REPAIR OR TESTING ACTIVITIES IN THE HIGH FREQUENCY SPECTRUM PORTION OF LOOPS THAT AT&T LEASES FROM BELLSOUTH?

A. AT&T is committed to work with advanced service providers who abide by the requirements of the Florida Public Service Commission, such as being certificated providers in Florida for the services they are authorized to provide. BellSouth should not be allowed to dictate the terms on which AT&T contracts with a data ALEC. Given that the indemnity and liability provisions of the General Terms and Conditions of the AT&T/BellSouth Interconnection Agreement will continue to apply, any concerns regarding the possible negligence and willful acts of AT&T's authorized service providers are groundless.

Q. SHOULD BELLSOUTH BE PROHIBITED FROM UNILATERALLY DISRUPTING AN END-USER'S SERVICE IF AT&T'S AUTHORIZED ADVANCED SERVICES PROVIDER FAILS TO PERFORM UNDER THE AGREEMENT?

A. Yes. BellSouth should not have the ability to unilaterally disconnect an end user's data service without AT&T having the ability to work with its advanced services provider to resolve any potential conflict which arises. AT&T is the voice and data provider in these circumstances and has

purchased the entire loop as part of the UNE-Platform, and BellSouth should not be taking any actions with respect to the loop without first contacting AT&T. In fact, unless there is a clear possibility of harm to the network of BellSouth, it should have no authority to intervene in the situation. Nevertheless, preserving the end user customer's service in these situations would be a priority for any carrier expecting to maintain the goodwill of its customers. Any disputes that BellSouth has with an advanced services provider performing services on AT&T's behalf can be resolved in accordance with applicable dispute resolution procedures.

VI. COSTING AND PRICING IMPLICATIONS FOR LINE SPLITTING

Q. WHAT ARE SOME POTENTIAL POLICY CONCERNS THIS COMMISSION SHOULD BE AWARE OF IN DETERMINING THE COSTING AND PRICING FOR LINE SPLITTING?

A. *First*, this Commission is in the process of establishing an approach to provide for lower UNE prices for loops and switch ports that are combined in a UNE-P configuration than those that are stand-alone. Without debating the relative merits of that decision, the important point going forward is whether line splitting, presuming this Commission awards this capability for UNE-P providers, should continue to utilize the combined UNE-P rates for the loop and switch port or the separate rates.

Q. WHAT IS YOUR POSITION IN THIS REGARD?

A. As an initial matter, the loop and switch port should continue to be priced as they are in a UNE-P combination. From a cost perspective, there will be additional assets that come into place in a line splitting scenario such as the line splitter itself and additional frame appearances. However, the price for the splitter will fully recover the incremental cost associated with these assets. There are no new investments (and therefore no new costs) associated with the loop and switch port that were part of the UNE-P arrangement and therefore the rates charges for these elements should remain unchanged.

Q. WHAT OTHER POTENTIAL POLICY CONCERN DO YOU HAVE REGARDING THE PRICING FOR LINE SPLITTING?

A. I have recently participated in a Line Sharing cost proceeding in Texas for Southwestern Bell where one of the issues in question was Southwestern Bell's recovery of OSS costs associated with Line Sharing. There are three points from the Southwestern Bell proceeding in Texas that this Commission should be aware of in determining BellSouth's cost recovery in Florida. *First*, both Southwestern Bell and BellSouth are using Telcordia for the systems development that is required to support the DSL initiative. Thus, the costs for Southwestern Bell and BellSouth should be similar. *Second*, Southwestern Bell has acquired this system development work at a significantly lower cost than has BellSouth. In particular, Southwestern Bell has obtained this software development work for $28 million while BellSouth

is presumably having similar development work done for a significantly higher cost of $41 million. *Third*, and this is most striking, Southwestern Bell has acknowledged that its cost recovery of the OSS development work should be spread across all users of DSL – including its own DSL subscribers through its data affiliate. However, BellSouth has sought to only have ALECs pay for this software development when, in fact, BellSouth and its retail customers will benefit as well. The end result is that Southwestern Bell is seeking a rate of $0.61 per DSL line per month whereas BellSouth is seeking a rate of $7.49 for presumably the same item. In short, BellSouth's request is clearly discriminatory against new entrants in Florida and will provide a significant deterrent to the development of DSL by any other provider than BellSouth.

VII. CONCLUSION

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. BellSouth's behavior constitutes a breach of its obligation to provide the functionalities and processes needed to enable UNE-P carriers to provide voice and advanced services using the full features, functions, and capabilities of the loop. BellSouth's refusal to accommodate the addition of DSL to UNE-P through two means that are have no demonstrated technical impediments hinders AT&T from competing in the markets for data services, voice services, and bundles of services. By limiting ALEC to only a vaguely

defined option involving collocation, BellSouth artificially limits the ALEC's choice of a viable means (UNEs) for addressing the market. By limiting ALEC choice in this manner, BellSouth is discriminating in favor of data service from its own retail DSL operations and that of ALECs electing not to compete for the voice portion of services. Companies like AT&T who wish to compete with the voice services BellSouth provides, as well as the bundles that only BellSouth can now efficiently offer and provide, are clearly disadvantaged. The value of UNE-P as an entry strategy will be seriously undermined if a UNE-P carrier such as AT&T cannot efficiently add advanced services to its voice offering, whether by having BellSouth deploy the splitter a line-at-a-time or by combining the loop and port in its collocation, without abrogating BellSouth's obligation to support the UNE-P combination as it had before.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

STEVEN E. TURNER

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KALEO CONSULTING EMPLOYMENT EXPERIENCE:

TELECOMMUNICATIONS AND FINANCIAL CONSULTANT (Jan 1997-Present)

- Provide expert testimony on technical issues surrounding the unbundling and interconnection to incumbent Local Exchange Company (ILEC) networks. The testimony includes analysis of ILEC unbundling and interconnection per the Telecommunications Act of 1996 (Section 271) as well as other technical issues of local market entry. Further, the testimony includes evaluating and conducting unbundled element and interconnection cost studies.
- Provide expert testimony on the level and extent of facilities-based competition in the local market place. This testimony which quantitatively and economically evaluates the extent of competition results in an assessment of ILEC compliance with Section 271 proceedings.
- Develop models to aid companies in developing market entry plans for the local telecommunications market. This assistance includes evaluating what market entry alternatives as well as which geographies provide the best profit opportunities for the new entrant.

AT&T EMPLOYMENT EXPERIENCE:

DISTRICT MANAGER - CONNECTIVITY NETWORK PLANNING - LI&AM (Feb 1996-Dec 1996)

- Managed the development of AT&T's Infrastructure Plans of Record for the Southwest region. These plans entailed defining the right mix of built and leased infrastructure to meet AT&T's local offer needs at the least cost.
- Managed AT&T's dedicated access inventory in the Southwest region. This effort involved identifying the optimum supplier(s) in each market for AT&T's access needs to meet both financial and strategic objectives.

MANAGER - STRATEGIC ACCESS PLANNING - Access Strategic Planning (Nov 1994-Feb 1996)

- Managed the development of strategic models to analyze alternatives for entering the local market. These models considered various technologies for entering local that would optimize the contribution to AT&T from a revenue, expense, and capital perspective.

RE-ENGINEERING MANAGER - Network Operations (Jul 1994-Oct 1994)

- Directed a CCS-NSD management-union team in re-engineering the engineering, provisioning, and maintaining of the Operator Services network. Delivered a re-engineered process that reduced operational expense significantly while mitigating the impacts on customers and employees.

PROJECT MANAGER/SYSTEM ENGINEER - CCS Centralized Test Center (Jan 1992-Jun 1994)

- Coordinated implementation plans and system development for new services and network elements in the Common Channel Signaling (CCS) Network. The planning scope included provisioning, monitoring, and maintaining the T1.5 facilities for the CCS signaling circuits.
- Acquired funding (development, capital, and head count) through writing and defending business cases in support of projects for new services or network elements in the CCS Network. Upon approval, coordinated the implementation of system development and capital projects affecting the CCS Centralized Test Center.

AT&T EMPLOYMENT EXPERIENCE (cont.):

DEPARTMENTAL QUALITY MANAGER - Network Operations (Jan 1990-Jan 1992)

- Developed the Network Operations Quality Management System and implemented it into an organization of 5000 people. Implementation required gaining organizational support for staffing and training 40 Quality Specialists and managing their efforts in transferring the quality technology into Network Operations.

OPERATIONS SUPERVISOR - Regional Network Service Center (Nov 1988-Dec 1989)

- Managed the Regional Network Service Center serving AT&T customers in the Southeastern United States through correcting their service troubles. Responsibilities included leading a team of 20 associates who responded to over 2000 customer troubles per month and escalating with Local Exchange Companies to remove barriers to trouble resolution.

4ESS SWITCH ENGINEER - Network Engineering Services (Dec 1987-Nov 1988)

- Identified current levels of asset utilization, analyzed future needs, and developed a capital budget to purchase and provision the necessary equipment to efficiently meet customer needs. Managed the implementation of over $10M in capital projects.

GENERAL ELECTRIC EMPLOYMENT EXPERIENCE:

RESEARCH AND DESIGN ENGINEER - Simulation and Control Systems (Jun 1986-Dec 1987)

- Designed and developed a major sub-system for a high-speed graphics simulator supporting both defense and commercial customers.
- Designed and developed a Very Large-Scale Integrated (VLSI) Chip with over 80,000 transistors used in the video display sub-system for the high-speed graphics simulator.

ACHIEVEMENTS:

- Developed the strategic planning system used throughout AT&T Connectivity Planning that identifies the mix of connectivity options (Wireless, CATV, LEC) that AT&T should implement within a market. This model is being used to determine AT&T's local market entry strategy for the entire country.
- Re-engineered the Operator Services operations processes through a collaborative effort of management and union employees yielding $19.9 million in operational expense savings annually while making the new organization more customer responsive.
- Planned and implemented a modification to the CCS Network data collection architecture resulting in operational expense savings of $7.3 million per year.
- Significantly advanced the implementation of Total Quality Management in Network Operations through the Quality Specialist strategy initiative begun in 1990.
- Completed development of a Win Back Program for non-AT&T customers who called the Regional Network Service Center in error. This program generated over $1.6 million in new revenue for AT&T in 1989.
- Designed and developed a Management Information System enabling the measurement of asset utilization in switching equipment at any point in time. The use of the information provided with this system and the resulting changes in engineering practices reduced Network Operations under-utilized switching assets by approximately $250 million.
- Re-engineered the installation process for switching equipment resulting in a 70% reduction in the installation interval.
- Designed and developed the largest VLSI chip with General Electric at that time in only five months.

EDUCATION:

August 1990: **Masters of Business Administration Degree - Finance**
Georgia State University
Atlanta, Georgia

December 1986: **Bachelor of Science Degree - Electrical Engineering**
Auburn University
Auburn, Alabama

Testimony for Steven E. Turner
January 1997 – March 2000

March 1997	Oklahoma Corporation Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996.
March 1997	Kansas Corporation Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996.
April 1997	Cost Proceeding before the Texas Public Utility Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for Southwestern Bell Telephone Company. (Comments specifically addressed Dedicated Transport, Common Transport, Dark Fiber, and Physical Collocation.)
May 1997	Federal Communications Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996 for the State of Oklahoma.
June 1997	Cost Proceeding before the Nevada Public Services Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for Nevada Bell and Sprint-Centel of Nevada. (Specifically addressed Physical Collocation.)
June 1997	Arkansas Public Service Commission Review of Southwestern Bell Telephone Company Statement of Generally Available Terms and Conditions.
August 1997	Arbitration Proceeding before the Texas Public Utility Commission to Establish an Interconnection Agreement between AT&T of the Southwest, Inc. and Southwestern Bell Telephone Company. (Specifically addressed issues related to unbundling and interconnecting to Southwestern Bell Telephone Company's network.)
August 1997	Interconnection Cost Adjustment Mechanism Proceeding before the Colorado Public Utilities Commission. (Specifically addressed issues related to network rearrangement cost and interconnection.)

August 1997	Cost Proceeding before the Hawaii Public Service Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for GTE - Hawaii. (Testimony specifically addressed Physical Collocation.)
September 1997	Cost Proceeding before the Texas Public Utility Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for Southwestern Bell Telephone Company. (Testimony specifically addressed Dedicated Transport, Common Transport, Compensation, Dark Fiber, Digital Cross-Connect System, Multiplexing, and Physical Collocation.)
November 1997	Arbitration Proceeding before the Missouri Public Utility Commission to Establish an Interconnection Agreement between AT&T of the Southwest, Inc. and Southwestern Bell Telephone Company. (Specifically addressed issues related to unbundling and interconnecting to Southwestern Bell Telephone Company's network.)
November 1997	Cost Proceeding before the Texas Public Utility Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for Southwestern Bell Telephone Company. (Testimony specifically addressed Physical Collocation and Virtual Collocation.)
December 1997	Cost Proceeding before the Minnesota Public Utilities Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for US West Communications Inc. (Testimony specifically addressed Physical Collocation and Virtual Collocation.)
December 1997	Cost Proceeding before the California Public Utilities Commission to Determine Cost-Based Rates for Non-Recurring Charges for Unbundled Elements and Interconnection for Pacific Bell and GTE of California. (Comments specifically addressed Physical Collocation.)
January 1998	Cost Proceeding before the Oklahoma Corporation Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for Southwestern Bell Telephone Company. (Testimony specifically addressed Dedicated Transport, Common Transport, Compensation, Digital Cross-Connect System, and Multiplexing.)

February 1998	Cost Proceeding before the California Public Utilities Commission to Determine Cost-Based Rates for Non-Recurring Charges for Unbundled Elements and Interconnection for Pacific Bell and GTE of California. (Reply comments specifically addressed Physical Collocation.)
March 1998	Cost Proceeding before the California Public Utilities Commission to Determine Cost-Based Rates for Non-Recurring Charges for Unbundled Elements and Interconnection for Pacific Bell and GTE of California. (Supplemental reply comments specifically addressed Physical Collocation.)
April 1998	Oklahoma Corporation Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996.
April 1998	Cost Proceeding before the California Public Utilities Commission to Determine Prices for Unbundled Elements and Interconnection for Pacific Bell. (Testimony specifically addressed Physical Collocation.)
April 1998	Cost Proceeding before the California Public Utilities Commission to Determine Prices for Unbundled Elements and Interconnection for Pacific Bell. (Rebuttal testimony specifically addressed Physical Collocation and Unbundled Element Combinations.)
May 1998	Kansas Corporation Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996.
July 1998	Cost Proceeding before the California Public Utilities Commission to Determine Costs for Physical and Virtual Collocation for Pacific Bell and GTE – California.
August 1998	Cost Proceeding before the Nebraska Public Utilities Commission to Determine Costs for Unbundled Network Elements and Interconnection with US West Communications, Inc. (Testimony specifically addressed the proper costs for Physical and Virtual Collocation.)

August 1998	Cost Proceeding before the Washington Utilities and Transportation Commission to Determine Costs for Unbundled Network Elements and Interconnection with US West Communications, Inc. and GTE of Washington. (Testimony specifically addressed the proper methods for developing forward-looking costs for collocation.)
September 1998	Cost Proceeding before the Nebraska Public Utilities Commission to Determine Costs for Unbundled Network Elements and Interconnection with US West Communications, Inc. (Rebuttal Testimony specifically addressed the proper costs and procedures for combining unbundled elements.)
September 1998	Cost Proceeding before the Texas Public Utilities Commission to Determine Costs for Virtual Collocation and Dedicated Transport Entrance Facilities.
December 1998	Cost Proceeding before the California Public Utilities Commission to Determine Prices for Unbundled Elements and Interconnection for Pacific Bell and GTE. (Testimony addressed multiple forms of collocation.)
December 1998	Dispute before the Texas Public Utilities Commission Regarding EAS Issues and Prices Over Unbundled Elements between ALT Communications, Inc. and Southwestern Bell Telephone Company
January 1999	Missouri Public Service Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996.
April 1999	Cost Proceeding before the Michigan Public Service Commission to Determine Prices for Unbundled Elements and Interconnection for Ameritech. (Testimony addressed multiple forms of collocation.)
July 1999	Illinois Commerce Commission Review of SBC – Ameritech Merger for the State of Illinois. (Testimony addressed Shared Transport and OSS issues.)
August 1999	Cost Proceeding before the Hawaii Public Service Commission to Determine Cost-Based Rates for Unbundled Elements and Interconnection for GTE - Hawaii. (Affidavit addressed multiple forms of collocation.)

August 1999	California Public Utilities Commission Review of Pacific Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996.
August 1999	Dispute before the Texas Public Utilities Commission to Determine Costs for Reciprocal Compensation between Golden Harbor and Southwestern Bell Telephone Company
January 2000	Proceeding before the Massachusetts Department of Transportation and Energy to Determine Terms, Conditions, and Costs for Interconnection Arrangements
January 2000	Proceeding before the Pennsylvania Public Utilities Commission to Determine Prices for All Forms of Collocation
January 2000	Proceeding before the Public Service Commission of Delaware to Determine Prices for All Forms of Collocation
January 2000	Federal Communications Commission Review of Southwestern Bell Telephone Company Compliance with Section 271 of the Telecommunications Act of 1996 for the State of Texas.
March 2000	Proceeding before the Illinois Commerce Commission to Develop Terms and Conditions for Collocation Consistent with the FCC Advanced Services Order.
March 2000	Cost Proceeding before the California Public Utilities Commission to Determine Prices for Unbundled Elements and Interconnection for Pacific Bell and GTE. (Testimony addressed multiple forms of collocation.)

BELLSOUTH

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August 16, 2000

EX PARTE

STAMP and RETURN

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Ms. Salas:

This is to inform you that on August 15, 2000 Steve Klimacek, Tommy Williams, Randy Sanders, Jonathan Banks, and I, representing BellSouth, met with Commission staff to discuss BellSouth's policies on line-splitting. The Commission staff participating in the discussion included Jake Jennings, Kathy Farroba, John Stanley, Jon Reel, and Jessica Rosenworcel of the Common Carrier Bureau's Policy and Program Planning Division and Andrea Kearney and Jim Carr of the Office of General Counsel. The attached document formed the basis for our discussion.

We are filing notice of this ex parte meeting in the docket identified above, as required by Section 1.1206(b)(2) of the Commission's rules. Please associate this notice with the record of that proceeding.

Sincerely,

Kathleen B. Levitz

Kathleen B. Levitz

Attachment
cc: Jake Jennings (w/o attachment)
Kathy Farroba (w/o attachment)
John Stanley (w/o attachment)
Jessica Rosenworcel (w/o attachment)
Jon Reel (w/o attachment)
Andrea Kearney (w/o attachment)
Jim Carr (w/o attachment)

BellSouth Ex Parte

Line Splitting and UNE-P

August 15, 2000

Line Splitting and UNE-P

1. Line Splitting

- Paragraph 324 of the FCC's Order authorizing SBC to provide in-region InterLATA service defines line splitting as a situation where the voice and data service are being provided by competing carrier(s) -- other than the incumbent LEC -- over a single loop.

- In paragraph 325 of that Order the FCC further stated that incumbent LECs have an obligation to permit line splitting where the competing carrier purchases the entire loop and provides its own splitter. In paragraph 327 the FCC further stated that the incumbent LEC is not required to furnish the splitter.

- BellSouth is prepared to permit CLECs to do line splitting as long as competitive carriers provide their own splitter.

- Line splitting operational procedures must be developed.

2. UNE-P

- UNE-P is a combination of a loop and a port.
- To access the high frequency spectrum on a loop, a data provider must use a splitter. A splitter, however, is not part of a loop. Consequently, if a splitter is on a loop or is to be attached to a loop, a loop and port will lose its status as a UNE-P.
- Line Splitting on UNE-P is thus a misnomer.
- BellSouth will accommodate line splitting with a loop and port that is delivered to a collocation space.

3. Steps Necessary to Implement Line Splitting

A. Interconnection Agreements

- The voice provider will need an interconnection agreement that authorizes it to buy loops and ports.

- The voice provider, the data provider, or both the voice and data providers will need a collocation agreement and will also need authorization to order cross-connects.

B. Splitter Ownership

- BellSouth's proposed architecture is for the CLEC to own the splitter.

C. OSS Ordering and Provisioning Systems

- BellSouth envisions that in the near future a minimum of two service requests will be required. Modifications of BellSouth's OSS's will be necessary.

D. Agency Issues

- BellSouth proposes a single customer of record for line splitting.

- BellSouth does not wish to be in the middle of disputes between a competing voice and data provider.

4. Collocation Issues

- BellSouth allows CLECs to sublease collocation space without any additional charges, unless the guest CLEC requires additional power or floor space.
- The guest CLEC's use of subleased collocation space must be consistent with the contractual obligations that exist between BellSouth and the host CLEC.
- BellSouth will permit CLECs to sublease a virtual collocation space. BellSouth proposes to have the host CLEC as its only point of contact.
- BellSouth currently provides in-office wiring between a shared collocation space and BellSouth-provided network elements.

5. Pricing

	Monthly	Non-recurring
❖ Georgia, Zone 1		
❖ UNE-P (Conversion as-is only)	$12.59	$ 2.01
❖ Loop (No IDLC)	$14.21	$42.54
❖ Port	$ 1.85	$17.16
❖ Total loop and port	$16.06	$59.70

❖ Collocation must be purchased in addition

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

ROD CRUZ SUPPLEMENTAL AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF DALLAS)

TABLE OF CONTENTS
COMPLIANCE WITH LINE SHARING ORDER

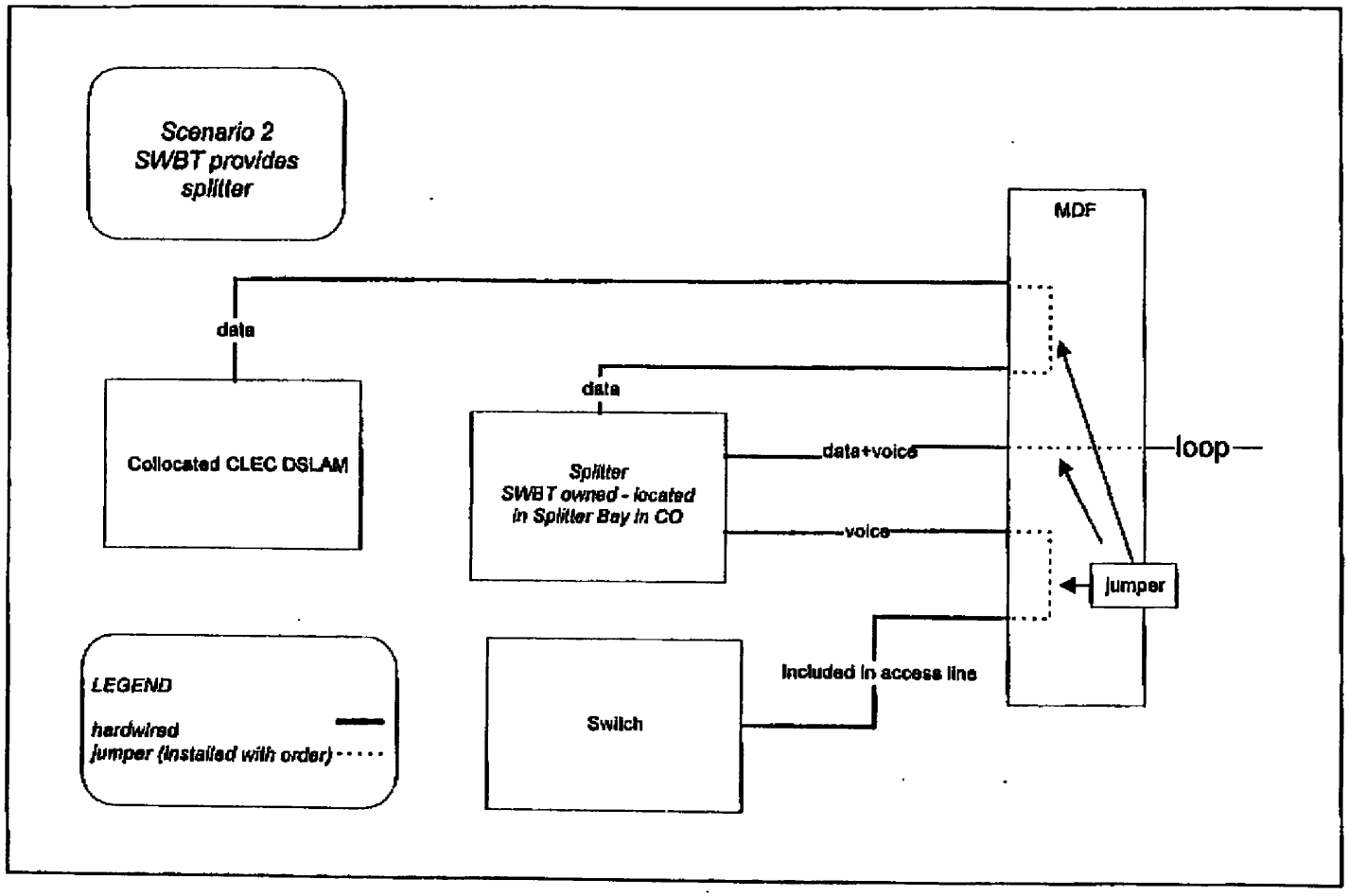

Figure 2

Cruz Testimony
Attachment B-2

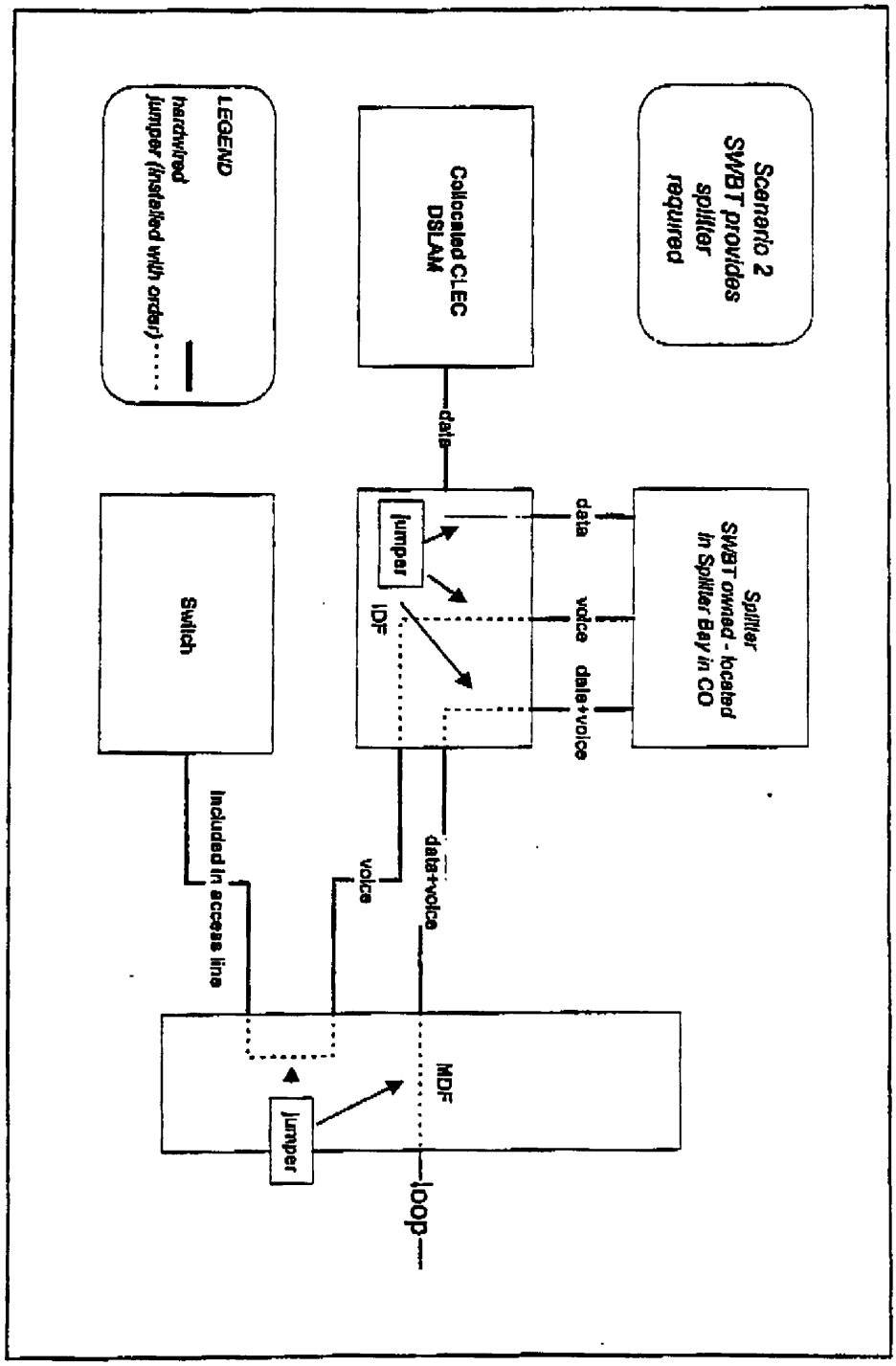

Figure 4

Cruz Testimony
Attachment B-4

provider over the line.
A. That's right. Yes.
Q. Is it your understanding that BellSouth is required to provide splitters in that situation to the CLECs?
A. I don't know the answer. I have never heard of an obligation that BellSouth be the one that owns the splitter in a line-sharing arrangement between BellSouth and a CLEC. I presume the CLEC could provide the splitter in its co-location arrangement, for example, if we could make use of that. This is new ground for me.
Q. And you might not be the right witness, but my question was: Is BellSouth required to offer the option of a BellSouth-owned splitter in a line-sharing situation?
A. Not from any basis of expertise, I believe the answer to your question would be yes, but I'm not certain.
Q. I guess what I want to explain is: One of the reasons BellSouth will make that splitter available for CLECs who want to line share is that the splitter is basically needed to make the high-frequency part of the loop available to the CLEC, right?
A. Yes, that's right.

Q. Do you know if -- let's say a CLEC buys a loop. Okay. I'll make this more specific. Let's say AT&T buys a loop from BellSouth. AT&T wants to partner with Covad. We want to provide voice over that loop with Covad providing the data. We would prefer to buy a splitter from BellSouth rather than buying one on our own. Will BellSouth sell us a splitter in that situation?
A. I have not directly been involved in those decisions. Maybe that's a better question for Mr. Ruscilli. But I understand the answer to be no, we will not.
Q. You will not, okay. Would you agree with me there is no technical reason for BellSouth not to offer a BellSouth-owned splitter in that situation?
A. I would agree with that, yes.
Q. The last permutation of this is let's say AT&T buys what we call the platform, where we buy a combination of a loop in BellSouth switching, and again, we want to partner up with Covad, where we provide voice and Covad provides data. It's my understanding that BellSouth will not provide a splitter in that situation, either; is that correct?
A. That's my understanding, as well, yes.
Q. And I think you also would agree with me

that, again, there is no technical reason in that situation that BellSouth cannot provide a splitter.
A. There's not a technical reason. There is, obviously, the issue of whether that's still an unbundled network element platform, or UNEP, or not, but that's a different question.
Q. Two last questions, last subject, customized routing.
Essentially, the issue on customized routing is if you can demonstrate that you've provided a sufficient customized routing solution, that you can get the commission to relieve you of your obligation to provide operator services and directory assistance as a UNE, correct?
A. Yes, that's right.
Q. So the question is whether you've provided an effective customized routing solution to CLECs.
A. Correct.
Q. You are aware that both AT&T and MCI, in their arbitrations here in Tennessee, have raised the issue of whether or not BellSouth has, indeed, provided an effective customized routing solution.
A. Yes, I'm aware of that.
MR. LAMOUREUX: That's all I have.
DIRECTOR GREER: Ms. Berlin.

MS. BERLIN: I have no questions. Thank you.
DIRECTOR GREER: Ms. Shaffer.
CROSS-EXAMINATION
BY MS. SHAFFER:
Q. Hi, Mr. Milner.
A. Good afternoon, Ms. Shaffer.
Q. My name is Dana Shaffer on behalf of XO. I know we know each other well. We've been in some of these telephone closets together.
A. Yes, we have. Well, we might want to clear the record. We were there to look at the wiring and terminals and --
Q. We were there to talk about this very subject.
A. Yes.
Q. Let me follow up and make sure I understand the discussion you had about SBC and how they allow access to this network terminating wire.
Correct me if I'm wrong, but I thought you said you weren't sure, but if SBC were providing direct access, they probably just weren't interested in how the CLECs access it because SBC doesn't own it. Is that --
A. Yes, in terms of the network terminating

A. Yes, sir.
Q All right. Would you agree with me there's no technical reason that BellSouth cannot install or leave in place a splitter to allow a UNE-P voice provider to share the spectrum with another CLP to provide advanced services?
A. There are probably no technical reasons. I mean, there are lots of practical reasons why that would not be a very desirable outcome, because now you've got two different parties providing two different services over equipment that BellSouth does not use for its own purposes any longer. But I can't think of any technical reasons why that couldn't happen.
Q Well, in Mr. Woods' situation, where BellSouth had already deployed a splitter, there's no technical reason BellSouth cannot leave that splitter in place so that a UNE-P provider will have access to a combination of a loop splitter and switching so that it can provide voice and it can share the spectrum with another CLP who wants to provide advanced services?
A. There's not a technical reason. But again, I don't agree that that's what a UNE-P is all about. The

So here again, the CLP will look at its own business needs and make its own business decisions as to which method it prefers.

Q I want to ask you a question or two about line sharing. I don't know that you were present in the hearing room when Ms. Cox was cross examined, but some of us asked her some questions about the following situation. And I want to have your take on this.

Say that the ILEC--in this instance let's use BellSouth--is providing voice service to an end user, and a Data-CLEC is providing advanced services, data services, to that same end user.

A. Okay.

Q Let's say, then, that the end user wants to choose a CLP--let's call it WorldCom--in order to provide its voice service. Are you with me?

A. Yes.

Q Okay. And WorldCom proposes to provide that service with the UNE-P, the UNE platform.

A. Okay.

Q Now, prior to that event, BellSouth has been providing a splitter in order to accommodate the

advanced services. That's the other part of the fact situation. Now, if the end user now wants to use WorldCom as its voice provider, what will BellSouth do with respect to the splitter? Will BellSouth disconnect it?

A. Yes, it would. What we're talking about here is no longer a UNE-P, because the UNE-P does not include a splitter for line sharing. So we've sort of got a contradiction of terms. You said earlier that MCI wanted to serve this customer on a UNE-P basis. That's not this. There is a splitter here that BellSouth would own but would not use for its own purposes. BellSouth does not provide unbundled splitters. So, yes, BellSouth would make changes at the distributing frames to remove that splitter from the connection.

Q I believe that Ms. Cox had said along these lines that BellSouth would first determine whether or not the Data-CLEC wanted to purchase, if you will, the entire loop from BellSouth.

A. Yes, that's my understanding.

Q Okay. If the Data-CLEC did not want to do that however, at that point, BellSouth would disconnect

the splitter?

A. That's correct, yes. We provide splitters where we're one of the service providers, that is where we're providing the voice service. In the two examples you've named, BellSouth would not be in that position and does not believe it has an obligation to provide splitters on an unbundled basis. So we would remove our splitter. One of the two parties, then, could provide its own splitter from its collocation arrangement, or wherever, and wire it into that loop.

Q Okay. Speaking of collocation, in that instance that we've used as our fact situation, WorldCom would then have to request and obtain collocation space from BellSouth, and someone would have to install the splitter.

A. In that scenario, yes.

Q All right.

A. But again, let me make clear. We're not talking about a UNE-P any longer; we're talking about a UNE-P with line sharing between two different companies using a splitter that's not part of the UNE-P.

EXHIBIT SET-8

This document will be filed with the Commission and all parties of record as a late-filed exhibit no later than January 12, 2001.

EXHIBIT SET-9

This document will be filed with the Commission and all parties of record as a late-filed exhibit no later than January 12, 2001.

U.S. Department of .

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

June 13, 2000

Ex Parte Submission

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65.

Dear Ms. Salas:

SBC has now provided additional performance data which indicate significant recent improvement in its provisioning of unbundled loops for voice services and for DSL services. In light of this evidence of improved performance, the Department of Justice recommends approval of SBC's application to provide long distance service in Texas, subject to the important qualifications noted below.[1]

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[1] The Commission docketed SBC's second Texas application on April 6, 2000. Order, *In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-4, 15 FCC Rcd 6604 (2000). SBC has augmented that application with additional performance data multiple times: Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65, at 1 (Apr. 21, 2000); Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (Apr. 25, 2000) ("SBC 4/25/00 Hot Cut Ex Parte"); Texas Aggregated and Disaggregated Performance Measurement Tracking/Chart Results for May 1999 Through April 2000 ("SBC April Performance Data"), attached to Reply Brief in Support of Supplemental Application of Southwestern Bell, *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-

I. SBC's Provisioning of DSL-Capable Loops

The Department advised the Commission to deny SBC's first Texas application in part because SBC had not shown that it was providing nondiscriminatory treatment to competitors offering services based on unbundled digital subscriber line (DSL)-capable loops. The Department also noted significant deficiencies in the process by which SBC measured and reported its performance in this area.[2] SBC has subsequently addressed both of these deficiencies.

Performance Measurements

SBC, working with the Texas PUC, has significantly improved the process by which it measures and reports its performance in providing unbundled loops for DSL services. SBC is now measuring and reporting its return of firm order commitments for DSL loops; it has corrected deficiencies in its measurement of the interval for returning preordering loop

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65 (May 19, 2000) ("SBC Reply Brief") as App. B, Vol. 1-2; Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (May 30, 2000) ("SBC 5/30/00 OSS/Hot Cut Ex Parte"); Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (June 6, 2000) ("SBC Hot Cut Ex Parte Presentation"). The Department again notes the Commission's previous indication "that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon." Memorandum Opinion and Order, *In re: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, 12 FCC Rcd 20543 ¶¶ 49-50 (1997).

[2] Evaluation of the United States Department of Justice, *In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4, at 2-3, 10-12, 27 (Feb. 14, 2000) ("DOJ Texas I Evaluation"), available at <http://www.usdoj.gov/atr/public/comments/sec271/ sbc/4160.htm>; Ex Parte Submission from Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, at 2, 8-9 (Mar. 20, 2000) ("DOJ Texas I Ex Parte"), available at <http://www.usdoj.gov/atr/public/comments/sec271/sbc/4370.pdf>.

qualification data; and it has corrected systems problems that had resulted in the exclusion of substantial numbers of DSL orders from the database from which average installation intervals were determined.[3] These improvements are sufficient to address concerns about the measurement of SBC's DSL performance in connection with this application.

In reaching that conclusion, however, we emphasize that additional performance measures and ongoing refinement of performance measurement processes are likely to be needed as new services and technologies are implemented. The Texas PUC is already considering these issues, and SBC has committed in this application to promptly institute performance measures regarding the provisioning of line sharing.[4]

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[3] Evaluation of the Texas Public Utilities Commission, *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, at 27-29 (Apr. 26, 2000) ("Texas PUC Evaluation"); Supplemental Reply Affidavit of William R. Dysart ¶¶ 25, 34-35 ("SBC Dysart Reply Aff."), attached to SBC Reply Brief as App. A-4, Vol. 1, Tab 2.

[4] SBC Dysart Reply Aff. ¶¶ 44-45. Line sharing as ordered by the Commission will permit CLECs to provide DSL service to SBC's voice customers by accessing the high frequency portion of their loop. *See* Third Report and Order, *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, and Fourth Report and Order, *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999), *recon. pending, United States Telecom Ass'n v. Federal Communications Comm'n*, No. 00-1012 (D.C. Cir. filed Jan. 18, 2000) ("*Line Sharing Order*"). SBC began providing line sharing on May 29, 2000. *See* SBC Reply Brief at 19.

Provisioning of Unbundled DSL-Capable Loops

The Department recommended denial of SBC's initial application in part because SBC had not shown nondiscriminatory performance in providing DSL-capable loops.[5] The March and April 2000 performance data submitted by SBC indicate that SBC is now providing parity under virtually all measures relating to the provisioning of DSL loops. Further improvements in the preordering and ordering processes should result from the recent implementation of improved access to databases with loop qualification data and from Texas PUC-directed changes in the ordering process.[6]

SBC's performance providing BRI loops has unfortunately lagged behind its much improved performance for DSL loops.[7] SBC has made impressive progress in complying with

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[5] *See* DOJ Texas I Evaluation at 17-23; DOJ Texas I Ex Parte at 2-3. Advanced services competitors in Texas currently use two types of unbundled loops: DSL loops (which are all copper) are preferred because they can be used to provide all forms of xDSL service; BRI loops (which may traverse repeaters or digital loop carrier ("DLC")) systems are sometimes used by CLECs to provide a slower speed IDSL service where DSL loops are not available. Declaration of David Rosenstein ¶ 30, attached to Supplemental Comments of Covad Communications Company, *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65 (Apr. 26, 2000) as Confidential Ex. 9. In April 2000, SBC installed 1445 DSL loops and 923 BRI loops. SBC April Performance Data, Measurement 58-09 ("Percent SWBT Caused Missed Due Dates") (DSL) at 271-No. 58c; *id.*, Measurement 58-04 ("Percent SWBT Caused Missed Due Dates") (BRI) at 271-No. 58b.

[6] Texas PUC Evaluation at 26. One of the principal areas of concern to the Department was the high frequency of missed appointments for DSL loops as measured by Performance Measure 58. The percent of missed due dates for DSL loops fell from 15.5% in January 2000 to 7.7% in March 2000, and to 2.5% for April 2000. SBC April Performance Data, Measurement 58-09 ("Percent SWBT Caused Missed Due Dates") (DSL) at 271-No. 58-c. Similarly, the number of trouble reports within 30 days fell from 9% for DSL in January 2000 to 6.8% in March 2000, and to 4.5 % in April 2000, and the overall trouble report rate decreased for DSL from 6.3% in January 2000 to 3.3% in March 2000, and to 2.4% in April 2000. SBC April Performance Data, Measurement 59-08 ("Percent Trouble Reports on N,T,C Orders within 30 Days") (DSL) at 271-No. 59c; *id.*, Measurement 65-08 ("Trouble Report Rate-%") (DSL) at 271-No. 65c.

[7] Texas PUC Evaluation at 34.

the three day installation interval prescribed for BRI loops.[8] Significant performance issues remain, however, regarding the number of troubles on BRI loops and the timeliness of repairing such troubles.[9] These measures indicate that SBC's performance in providing BRI loops is not at parity when compared to SBC's retail ISDN service.

SBC explains these results for BRI loops by saying that the CLECs are using the BRI loop (which SBC uses for ISDN service) in order to provide IDSL service which makes the provisioning work more difficult to perform.[10] SBC maintains that this and other technical difficulties associated with supporting IDSL, combined with the three day interval for installation, are responsible for the higher trouble report rate and the longer repair times than SBC experiences with its own ISDN service.[11] SBC, however, has committed to implementing solutions that should improve BRI performance. For example, as suggested by Rhythms

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[8] SBC's average installation interval for BRI loops in April 2000 was 2.8 days, and 90.2% of BRI loops were installed within 3 days. This shows a substantial improvement from January 2000 when the average was 6.7 days. SBC April Performance Data, Measurement 55-03 ("Average Installation Interval-Days") (BRI) at 271-No. 55a; *id.*, Measurement 56-03 ("Percent Installed Within 'X' Days") at 271-No. 56a.

[9] SBC Dysart Reply Aff. ¶ 59; SBC April Performance Data, Measurement 65-03 ("Trouble Report Rate-%") (BRI) at 271-No. 65b; *id.*, Measurement 67-03 ("Mean Time to Restore-Dispatch") (BRI) at 271-No. 67b; *id.*, Measurement 59-03 ("Percent Trouble Reports on N,T,C Orders within 30 Days") (BRI) at 271-No. 59b.

[10] IDSL modems combine the three ISDN circuits into a single 144 kbs data stream, and in order to support this use of BRI loops, SBC's central office technicians must avoid using some incompatible slots with certain digital loop carriers. *See* Amended Supplemental Reply Affidavit of Carol Chapman ¶ 31 ("SBC Amended Chapman Reply Aff."), attached to Ex Parte Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (May 25, 2000) ("SBC Amended Reply Brief").

[11] SBC Dysart Reply Aff. ¶ 59.

Netconnections Inc., SBC is testing a new card for its digital loop carriers that will support IDSL.[12]

Because of the differences between the way BRI loops are provisioned for IDSL and the way those loops are provisioned for ISDN, differences in reported performance do not necessarily indicate discrimination. Although the BRI "trouble report" and "time to repair" performance data indicate poorer performance for CLECs' IDSL loops than for SBC's retail ISDN loops, SBC is installing BRI loops for CLECs more quickly than it installs either its own ISDN or DSL service.[13] SBC maintains that it is inappropriate to compare loop quality measures when the prescribed installation intervals are substantially different.[14] Moreover, it is difficult to determine whether the CLECs are denied a meaningful opportunity to compete if, as the performance reports indicate, a higher trouble rate is coupled with a shorter installation interval.[15] Thus, as of today, the Department has concluded that SBC has achieved satisfactory overall performance providing loops for DSL competitors.

We emphasize, however, that future applications may require more than SBC has demonstrated in this application because of continuing developments in the market for advanced

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[12] SBC Amended Chapman Reply Aff. ¶¶ 31, 33.

[13] SBC Dysart Reply Aff. ¶ 51; Supplemental Joint Affidavit of Carol A. Chapman and William R. Dysart ¶¶ 43-49, attached to Ex Parte Submission from SBC Communications Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, at 2 (Apr. 5, 2000) ("SBC Texas II Application") as Supp. App. Vol. D, Tab 1.

[14] SBC Dysart Reply Aff. ¶ 59.

[15] The Texas PUC, in its ongoing review of SBC's DSL performance, will consider whether a somewhat longer interval is appropriate, and whether additional procedures such as joint testing would lead to improved performance for trouble reports and repair intervals. Texas PUC Evaluation at 34-35.

services. For example, the Texas PUC is currently conducting proceedings to implement line sharing.[16] The Commission should, of course, carefully monitor SBC's compliance with the line sharing order given its great importance to the future development of competition for advanced services.[17]

Some CLECs object to the application based on concerns that SBC, through Project Pronto,[18] is deploying digital loop carrier systems in remote terminals fed by fiber optic cables

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[16] *Id.* at 35-36.

[17] The Department does not agree with the suggestion that SBC's application here should be denied on the grounds that some issues relating to its implementation of the line sharing order have not been finally resolved. *See* Supplemental Comments of NorthPoint Communications, Inc., *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, at 7-9 (Apr. 26, 2000); Supplemental Reply Comments of Covad Communications Company, *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, at 3-6 (May 19, 2000); Supplemental Comments of Rhythms Netconnections Inc., *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, at 3-7, 9 (Apr. 26, 2000) ("Rhythms Comments"). AT&T asserts a related concern that its ability to compete with SBC using UNE-P will be impaired if SBC is not required to permit DSL providers to access UNE-P loops for providing DSL service in conjunction with AT&T's voice service in the same manner that SBC's voice loops may be accessed for line sharing. Supplemental Reply Comments of AT&T Corp., *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, at 8-9 (May 19, 2000) ("AT&T Reply Comments"). A prompt resolution of the issues surrounding AT&T's complaint is needed to prevent UNE-platform carriers from being at a competitive disadvantage to SBC.

[18] Project Pronto is an SBC network upgrade that will employ fiber optic cable and remote terminals to provide DSL services to customers that are out of reach to central office digital subscriber line access multiplexers ("DSLAMs"). In support of this application, SBC represents that it will offer competitors nondiscriminatory access to the DSL facilities being deployed in its remote terminals. SBC Reply Brief at 26-27; *see also* Supplemental Comments of the Competitive Telecommunications Association, *In re: Application by SBC Communications Inc et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, at 5-8 (Apr. 26, 2000).

and will not permit CLECs to line share the loops served by those remote terminals.[19] SBC asserts that, subject to the Commission's approval, it will offer CLECs the opportunity to provide DSL service to its subscribers served by Project Pronto.[20] SBC has stated further that it also intends to offer access to these facilities so that CLECs will be able to use them to provide both voice and DSL service over a single line.[21] The Department recognizes that important issues with regard to the architecture of Project Pronto are currently before the Commission in other proceedings. Given the large percentage of SBC's lines that will potentially be served by the facilities being deployed in Project Pronto, it is essential that competitors be provided nondiscriminatory access to these facilities if the market for advanced services is to remain open to competition.

II. SBC's Provisioning of "Hot Cuts"

The most recent performance data demonstrate significant improvement in SBC's hot cut provisioning, particularly in hot cuts provisioned via its coordinated hot cut ("CHC") process. There has also been steady improvement in SBC's alternative hot cut process, Frame Due Time ("FDT"), though performance under that process still shows significant defects. However, in our view those defects would not prevent meaningful competition, and thus should not preclude

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[19] Rhythms Comments at 9.

[20] Joint Supplemental Reply Affidavit of Michael C. Auinbauh and John P. Lube ¶¶ 28-35. attached to SBC Reply Brief as App. A-1. Vol. 1. Tab 2.

[21] *See* SBC Reply Brief at 21-22.

approval of this application, if the Commission is able to reach certain conclusions. as explained below.

The Competitive Significance of Hot Cut UNE Loops

The availability of unbundled network elements is a basic component of the Telecommunications Act of 1996.[22] The use of unbundled loops has been and continues to be an important means by which CLECs provide service to small and medium-sized business customers.[23] Well over 50 percent of the stand-alone loops CLECs purchase from SBC are hot cut loops.[24] Consequently, these loops must be provided with a minimum of end-user disruption if CLECs are to have a meaningful opportunity to enter the local market and compete with the incumbent provider.

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[22] 47 U.S.C. § 271(c)(2)(B)(ii); *id.* § 251(c)(3); *id.* § 252(d)(1); First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 ¶ 378 (1996) ("*Local Competition Order*"). *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. Federal Communications Comm'n,* 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. Federal Communications Comm'n*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded sub nom. AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

[23] *See* DOJ Texas I Evaluation at 27; Memorandum Opinion and Order, *In re· Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, 15 FCC Rcd 3953 ¶ 308 (1999) ("*FCC New York Order*").

[24] *Compare* SBC April Performance Data, Measurements 59-01 and 59-02 (Total UNE loops -- 8.0 dB and 5.0 dB combined) (April) *with* Measurements 114-02 and 114-06 (Hot Cut UNE loops -- CHC and FDT combined) (April); SBC Hot Cut Ex Parte Presentation, Ex. 17.

The Available Performance Data

There are several important dimensions of hot cut provisioning performance. Among other things, the cut should be accomplished at the time scheduled, should be completed within the time allotted, and should result in working telephone service for the customer. Although each of these dimensions of performance is different, their effects may overlap. For example, a cut that is performed prior to the scheduled time (i.e., a premature cut) reflects a lack of timeliness in provisioning and also results in service disruption or outage to the end user customer.[25]

SBC regularly reports, and has partially reconciled, performance data for the Texas PUC-approved performance measures. While these data cover all CLECs using hot cuts, they do not capture all provisioning outages.[26] In order to assess the overall outage rate, the Department has relied on the AT&T/SBC hot cut reconciliation data, which provide the only overall provisioning outage data available in this record but which unfortunately cover only a small subset of all hot

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[25] *FCC New York Order* ¶ 301 n.959.

[26] *See* Texas PUC Evaluation at 16. Hot cut performance is currently assessed by Performance Measure 114, which tracks premature cuts, Interim Performance Measure 114.1, which tracks cutover duration (measuring all loops against a two-hour interval, with the cutover marked as ended when the central office wiring work is done), and Performance Measure 115, which tracks those cuts that begin late. The Texas PUC is revising these measures. *See* Amended Joint Supplemental Reply Affidavit of Brian D. Noland and William R. Dysart ¶ 45 ("SBC Amended Noland/Dysart Reply Aff."), attached to SBC Amended Reply Brief. Performance Measure 114 will continue to track premature cuts. A new Performance Measure 115 will capture provisioning outages not currently captured in any other measure. Performance Measure 114.1 will be disaggregated so that loops associated with orders of 1-10 lines will be tracked against a one-hour interval, and loops associated with larger orders will be tracked against a longer time; also, the end-time for CHC cuts will include the period of time between when SBC completes the cut in its central office and when SBC notifies the CLEC that the cut is complete. To date, SBC has not been required to report this interval, and thus, has not been necessarily attuned to managing it; this revision to Performance Measure 114.1 will close an important gap in SBC's Performance Measure 114.1 calculations. *See* DOJ Texas I Evaluation at 31-32 n.84.

cuts.[27] The record includes recent reconciled outage data for January, February, and March 2000 as well as April 2000 outage data, which SBC presents as the results of its most recent reconciliation with AT&T, although no joint affidavit has yet been signed.[28] We presume, in the absence of any evidence to the contrary at this time, that these data are reliable, but we note that they have not been attested to by AT&T, nor has any other CLEC had the opportunity to review and respond to the data.

SBC's Hot Cut Performance

SBC's recent performance data on the CHC outage, timeliness and installation trouble report rates indicate sufficient improvement that CLECs using this process have a meaningful opportunity to compete, in accordance with the standard articulated in the Commission's *New York Order*. SBC has represented to the Department that critical process improvements were put in place in March 2000, at both its order center and central office operations, and that these process changes resulted in the reported performance improvements.[29]

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[27] In addition to the AT&T/SBC reconciliation of hot cut provisioning outages, the Texas PUC requested other CLECs to reconcile their own hot cut data with SBC for specific performance measures. These reconciliations were useful not only for providing the most reliable data describing SBC's performance, but also for illuminating certain gaps in SBC's data collection processes. As a result SBC has been able to plan and implement improvements to its performance data collection and reporting. SBC Amended Noland/Dysart Reply Aff. ¶¶ 31-40 & Joint Supplemental Reply Affidavit of Brian D. Noland and William R. Dysart, Attach. G, H ("SBC Noland/Dysart Reply Aff."), attached to SBC Reply Brief as App. A-2, Vol. 1, Tab 1. The availability of reliable performance data is critical not only for demonstrating whether the local exchange market is currently open but also as a tool for monitoring and ensuring that the local market remains open even after the BOC has entered the long distance business. Thus, it is necessary that SBC routinely make both the raw data and the necessary personnel available to both CLECs and regulators.

[28] SBC Hot Cut Ex Parte Presentation, Confidential Ex. 9 to Confidential Ex. 16.

[29] *See also* Supplemental Joint Affidavit of Candy R. Conway and William R. Dysart ¶¶ 4-5, attached to SBC Texas II Application as Supp. App. Vol. C, Tab 1 (referring to increased resources

The CHC outage data produced by SBC, reflecting outages due both to premature as well as to defective cuts, evidence significant improvement from February to April 2000. For March and April 2000, the aggregate outage rate is within the "less than 5 percent" level described in the Commission's *New York Order*.[30] The duration of these March-April outages appears to have improved significantly as well.[31] SBC performed its CHC hot cuts from February through April 2000 in a relatively timely manner, provisioning 93.86 percent of CHC loops on small-sized orders within one hour.[32] In addition, CLECs submit trouble reports on fewer than two percent of hot cut loops provisioned using the CHC process.[33]

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added to SBC's Local Service and Local Operations Centers since January 2000).

[30] *See* Joint Affidavit of Mark Van De Water and Robert Royer, Confidential Attach. ("Royer/Van De Water Aff."), attached to SBC 4/25/00 Hot Cut Ex Parte (presenting reconciled hot cut outage data for February 2000); SBC Noland/Dysart Reply Aff., Confidential Attach. C (presenting reconciled hot cut outage data for March 2000); SBC Hot Cut Ex Parte Presentation, Confidential Ex. 9 to Confidential Ex. 11 (presenting hot cut outage data for February through April 2000).

[31] SBC Hot Cut Ex Parte Presentation, Confidential Ex. 12. This average outage duration is in addition to the one hour "allowed" for provisioning small-size loop orders, and appears to be a significant improvement over the average duration for the December 1999 through February 2000 outages of about one business day (excluding outages resulting from SOAC). Supplemental Joint Declaration of Sarah DeYoung and Mark Van De Water, Confidential Attach. G ("AT&T DeYoung/Van De Water Decl."), attached to Supplemental Comments of AT&T Corp., *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65 (Apr. 26, 2000) ("AT&T Comments") as Exh. A.

[32] SBC Amended Noland/Dysart Reply Aff. ¶ 14 & Attach. B (showing reported-plus-reconciled data for February 2000 plus reported-unreconciled data for March and April 2000). SBC disaggregated the duration data for hot cut loops associated with orders of 1-10 lines and loops associated with larger orders and reported the smaller-size orders against a one-hour cutover standard.

[33] For February through April 2000, SBC received trouble reports within seven days of installation on an average of 1.52% of CHC-installed loops. *See* SBC Noland/Dysart Reply Aff., Attach. I (February through March 2000 data); SBC 5/30/00 OSS/Hot Cut Ex Parte, Tab 2 (April 2000 data).

SBC's provisioning performance using the FDT process is not as good as its most recent CHC performance. Of particular concern is the continuing high outage rate of 12.1 percent for orders from February through April 2000.[34] Although SBC's current performance reflects substantial improvement from the 20 percent FDT order outage rate presented in SBC's first Texas application,[35] SBC's FDT outage rate continues to be greater than that described in the Commission's *New York Order*, and these outages, however calculated, appear to last for a significant portion of the business day.[36] SBC performed its FDT hot cuts from February through April 2000 in a relatively timely manner, provisioning 95.1 percent of its FDT loops on small-sized orders within one hour.[37] CLECs submitted trouble reports on about two percent of the hot cut loops provisioned using the FDT process during this time period.[38]

Looking at the performance data as a whole, we have concluded that the Commission reasonably could find that SBC's provisioning of hot cuts is acceptable, if it makes two

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[34] The February-April FDT line outage rate was 10.23%. These rates exclude February outages caused by the SOAC software problem. *See* Royer/Van De Water Aff., Confidential Attach. (February 2000 data); SBC Noland/Dysart Reply Aff., Confidential Attach. C (March 2000 data); SBC Hot Cut Ex Parte Presentation, Confidential Ex. 9 (February through April 2000 data).

[35] DOJ Texas I Evaluation at 34 (stating the FDT November/December 1999 order outage rate).

[36] *Compare* AT&T DeYoung/Van De Water Decl., Confidential Attach. G (outage duration data) *with* SBC Hot Cut Ex Parte Presentation, Confidential Ex. 15, 16 (outage duration data). These outage durations are in addition to the half-hour the AT&T/SBC reconciliation "allowed" for FDT provisioning.

[37] SBC Amended Noland/Dysart Reply Aff., Attach. B (including reconciled-plus-reported data for February, and reported-unreconciled data for March and April, for loops associated with orders of 1-10 lines).

[38] For February through April, CLECs submitted trouble reports within seven days of installation on 2.07% of their FDT-installed loops. *See* SBC Noland/Dysart Reply Aff., Attach. I (February through March 2000 data); SBC 5/30/00 OSS/Hot Cut Ex Parte, Tab 2 (April 2000 data).

subsidiary findings. First, the Commission should be assured that SBC's reported CHC outage data for April accurately reflect its performance. The April outage data were produced very late in the application period and are not accompanied by the normal reconciliation process attestations. Should the Commission choose to rely on these data, it should take the steps necessary to confirm their accuracy.

Second, the Commission should confirm that CLECs may, in fact, freely choose between the CHC and FDT hot cut processes. This issue is important because of the continuing deficiencies in performance under the FDT process. If CLECs as a practical matter were compelled to rely on the FDT process, their ability to compete effectively would be jeopardized. However, if CLECs may readily use the CHC process, and if SBC's performance using that process provides a meaningful opportunity to compete, then the availability of an alternative process, which may offer certain advantages to CLECs notwithstanding continuing performance shortcomings, should not preclude approval of the application.

CLECs in Texas are currently relying on both of these processes to have their hot cut loop orders provisioned, with CLECs increasingly relying on the FDT process. Indeed, SBC provisioned as many as 60 percent of hot cut loops using the FDT process in April 2000.[39] SBC has indicated that it "has in the past encouraged the use of FDT for those orders of 19 or less UNE loops,"[40] but it has told the Department that this policy was changed before the April 5

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[39] SBC Hot Cut Ex Parte Presentation, Ex. 17; *but see* SBC April Performance Data, Measurement 114 ("Percent of Premature Disconnects"), Measurement 114.1 ("Loop Disconnect/Cross Connect Interval-% within 120 Minutes"), and Measurement 115 ("Percent SWBT Caused Delayed Coordinated Cutovers").

[40] SBC Amended Noland/Dysart Reply Aff. ¶ 54.

refiling of its Texas application and that CLECs know they are free to use either process.[41] This policy change is not, however, clearly reflected in the current record.[42]

The availability of the FDT process appears to be a positive development in hot cut provisioning because the FDT process does not require at-cut coordination between SBC and the CLEC and thus should require fewer resources of *both* parties. While SBC's current FDT performance is not yet at the level necessary to sustain the long-term development and maintenance of an open local exchange market on its own, continuing performance

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[41] There is some suggestion on the record that SBC previously saw no need for a policy change. *Id.* (SBC "has always been clear that CLECs may freely opt to have all of their orders for less than 19 loops provisioned via FDT, or via the coordinated process."); Supplemental Reply Affidavit of Candy Conway ¶ 43 ("SWBT will continue to provide CHC to any CLEC requesting this type of conversion."). Some statements in the record suggest otherwise. Affidavit of Candy R. Conway ¶ 79, attached to Brief in Support of Application by SBC Communications, Inc., *In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-4 (Jan. 10, 2000) as App. A, Vol. A-4, Tab 3. ("The CHC process is normally necessary only for larger size business customers ... FDT should be used for small business and residence end users."); AT&T DeYoung/Van De Water Decl., Attach. D, E (correspondence between SBC Telecommunications Inc. and AT&T Corp. in which SBC encourages the use of FDT); E-mail from Bob Bannecker, Southwestern Bell Telephone Company, to Sarah DeYoung, AT&T Corp., May 26, 2000, attached to Ex Parte Submission by AT&T Corp. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (June 8, 2000) as Confidential Attach. 8 (addressing SBC's ability to handle CHC orders).

[42] Of continuing concern in this regard is the basis and justification of the additional charges that SBC imposes for small size CHC cuts. The structure of these charges itself suggests that its purpose is to push the CLECs to use FDT. SBC asserts that these charges are Texas PUC-approved, and that it refrains from assessing them on FDT cuts because it is a special discounted process. SBC Amended Noland/Dysart Reply Aff. ¶¶ 48-53. AT&T asserts that these charges have never been approved by the Texas PUC. Supplemental Joint Reply Declaration of Sarah DeYoung and Mark Van De Water ¶ 27, attached to AT&T Reply Comments as App. I. The charges appear to be significant in amount, and the record does not contain any justification of them as appropriately cost-based.

improvements for FDT[43] may make it a process with great potential for the efficient provisioning of small-size loop orders.

Creating performance measures for the FDT process with appropriate standards is critical to achieving this laudable goal. SBC's managers, like many at incumbent telephone service providers, strive to meet the performance requirements set for them. Those requirements, therefore, must be set to preserve the long-term viability of FDT as a meaningful entry and competitive opportunity for CLECs. The Texas PUC is currently revising its hot cut performance measures.[44] These anticipated improvements, in conjunction with the continuing capable oversight of the Texas PUC, are key to the Department's conclusion that SBC's current hot cut performance overall appears to be adequate.

III. UNE-Platform Issues

In evaluating SBC's first Texas application, the Department was unable to determine whether certain complaints about performance problems relating to the UNE-platform would impose a serious constraint on competition. For that reason, the Department recommended that

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[43] As measured in rolling three-month averages, SBC's FDT provisioning has steadily improved: the December 1999 through February 2000 order outage rate was 16.05%; the January through March 2000 order outage rate was 14.95%; the February through April 2000 order outage rate was 12.1%. *See* Royer/Van De Water Aff., Confidential Attach.; SBC Noland/Dysart Reply Aff., Confidential Attach. C; SBC Hot Cut Ex Parte Presentation, Confidential Ex. 9.

[44] New Performance Measure 115 is intended to track provisioning outages for CHC and FDT that are not currently captured by the Texas performance measures. *See* SBC Amended Noland/Dysart Reply Aff. ¶ 45. Until the Texas PUC has finalized and implemented the new performance measure, including associated benchmarks, these outages will not result in any payments under the Performance Remedy Plan. Thus, there is no current incentive for SBC to maintain an adequate level of provisioning quality for hot cuts processed using either the CHC or FDT processes.

the Commission reserve judgment on those issues for a subsequent re-application, in the belief that additional commercial experience might provide evidence clarifying the competitive significance of these issues.[45]

The most recent signs are encouraging. Entry by CLECs using the UNE-platform has increased steadily since the time of our initial evaluation in February 2000. The number of platform lines SBC provisioned each month in Texas rose from approximately 23,000 platform lines in January 2000 to over 40,000 platform lines in March 2000.[46] Moreover, several of the CLECs providing service using the UNE platform are increasing the number of platform lines they order from SBC.[47] Importantly, two CLECs with plans to mass market UNE-platform based service are currently present in the Texas market. AT&T entered the local market using the platform in the second half of 1999 and has been steadily increasing the volume of UNE-platform based services it provides. In April 2000, WorldCom began selling local UNE-platform based service in Texas, although its current volumes are still low. In sum, Texas appears to be poised on the brink of significant UNE-platform based competition. We expect that CLEC UNE-platform orders will increase dramatically over the next few months as AT&T, WorldCom, and other competitors step up their marketing efforts.

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[45] DOJ Texas I Evaluation at 49-53.

[46] *See* Supplemental Affidavit of John S. Habeeb, Attach. A, attached to SBC Texas II Application as Supp. App. Vol. A, Tab 1A; Supplemental Reply Affidavit of John S. Habeeb, Attach. A, attached to SBC Reply Brief as App. A-4, Vol. 1, Tab 3A.

[47] *See* Supplemental Reply Affidavit of Elizabeth A. Ham, Confidential Attach. D ("SBC Ham Reply Aff."), attached to SBC Reply Brief.

Despite the current rate of growth in the market, there are some lingering doubts whether UNE-platform competition will be constrained in certain respects. First, the Department is concerned about the apparent difficulty CLECs have had integrating SBC's pre-order interfaces with SBC's ordering interface, difficulties that are exacerbated by the lack of a fully segmented, or parsed, customer service record. Integration of these interfaces is a necessary prerequisite for CLECs to process mass market volumes of UNE-platform orders.[48] SBC has recently taken some significant steps designed to alleviate the concerns related to pre-order and order integration.[49] Evidence of improvements from these changes should be closely evaluated by the Commission as such evidence is not available to the Department on the current record.

Second, the Department is concerned about the allegations regarding SBC's inability to provide nondiscriminatory access to updating the line information database ("LIDB")[50] in a timely and accurate manner.[51] Although SBC has acknowledged the serious nature of this

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[48] *FCC New York Order* ¶ 137.

[49] SBC's CLEC website now addresses pre-order and order integration issues. *See* SBC Ham Reply Aff., Attach. I-1. SBC has implemented Telcordia's recommended documentation changes relating to integration. Amended Supplemental Reply Affidavit of Elizabeth A. Ham ¶ 36 ("SBC Amended Ham Reply Aff."), attached to SBC Amended Reply Brief. SBC has said that it will provide CLECs with two weeks of consulting services from a third-party vendor. Supplemental Affidavit of Elizabeth A. Ham ¶ 15, attached to SBC Texas II Application as Supp. App. Vol. B, Tab 1. SBC is also planning to host an integration workshop on June 21, 2000. *Id.* ¶ 16. Most significantly, on May 27, 2000, SBC stopped requiring service addresses for orders to convert existing SBC local service to UNE-platform service. *Id.* ¶¶ 24-25 & Attach. I; SBC Amended Ham Reply Aff. ¶¶ 22-25.

[50] *FCC Local Competition Order* ¶ 484; Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696 ¶ 403 (1999), *recon. pending United Telecom Ass'n v. Federal Communications Comm'n*, No. 00-1015 (D.C. Cir. filed Jan. 19, 2000).

[51] Joint Supplemental Reply Declaration of Terri McMillon, John Sivori & Sherry Lichtenberg ¶¶ 26-40 ("WorldCom McMillon, Sivori & Lichtenberg Reply Decl."), attached to Reply Comments of WorldCom, Inc., *In re: Application by SBC Communications Inc. et al. Pursuant to Section*

problem and states that it has been resolved,[52] some evidence in the record suggests that this problem persists.[53] The Commission should assure itself that this problem has indeed been resolved.[54]

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271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65 (May 19, 2000) (incorrect intraLATA and/or interLATA PIC on 15-70% of records sampled).

[52] SBC Amended Noland/Dysart Reply Aff. ¶¶ 87-92.

[53] WorldCom McMillon, Sivori & Lichtenberg Reply Decl. ¶¶ 26-40. Ex Parte Submission from Keith L. Seat, Senior Counsel, WorldCom, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65, at 7 (June 9, 2000).

[54] The Department also notes two recent disturbing allegations regarding limitations on the availability of the UNE-platform to SBC's competitors, which cannot be resolved based on information currently in the record. First, "fiber-to-the-curb" lines originating from a central office in Richardson, Texas are allegedly not available as a UNE-platform, only as resale. Joint Supplemental Reply Declaration of Julie S. Chambers and Sarah DeYoung ¶¶ 55-62 & Attach. 9, attached to AT&T Reply Comments as Exh. J. Second, Global Crossings alleges that it cannot reach an agreement with SBC about converting resale customers in Texas to the UNE-platform. Reply Affidavit of Christopher E. Poynter ¶¶ 1-4, attached to Supplemental Reply Comments of Global Crossings, *In re: Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65 (May 19, 2000).

Conclusion

SBC has provided additional data indicating significantly improved performance in providing DSL loops and hot cuts. If the Commission concludes that the recent hot cut performance data accurately reflect SBC's performance and that CLECs may freely choose between the CHC hot cut process and the FDT hot cut process, it should approve this application. The Commission should also satisfy itself that adequate mechanisms exist to resolve emerging issues that will affect competition, such as DSL line sharing and Project Pronto. The Department requests that a copy of this correspondence be placed in the record of this proceeding.

Sincerely,

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Donald J. Russell
Chief
Telecommunications Task Force
Antitrust Division

CO-Based Line Sharing Functional Block Diagram

11/9/00