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September 3, 2004

Mrs. Blanca S. Bayó
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Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040601-TP (Covad)

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Brief in Support of Proposed Interconnection Agreement Amendment, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Meredith E. Mays

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

549356

CERTIFICATE OF SERVICE
Docket No. 040601-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and FedEx this 3rd day of September, 2004 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996	)))))))	Docket No.: 040601-TP Filed: September 3, 2004

BELLSOUTH'S BRIEF IN SUPPORT OF PROPOSED INTERCONNECTION AGREEMENT AMENDMENT

INTRODUCTION

This proceeding requires the resolution of a straightforward legal question – what is BellSouth's legal obligation concerning Covad's access to the high frequency portion of the local loop ("HFPL" or "line sharing")? The Federal Communications Commission ("FCC") and applicable federal rules upheld by the United States Court of Appeals for the D.C. Circuit have indisputably answered this question -- Covad is only entitled to line sharing on a grandfathered basis pursuant to a transitional mechanism. Despite the binding and unambiguous federal rules, Covad stubbornly insists that it is entitled to line sharing forever, by cobbling together a nonsensical reliance upon Section 271 of the 1996 Act.[1] BellSouth requests that this Commission answer the question by holding that Covad is entitled to line sharing consistent with the transition mechanism established by the FCC – nothing more, nothing less.

BACKGROUND

The Interconnection Agreement

BellSouth and Covad are parties to a regionwide interconnection agreement ("Agreement") that requires BellSouth to provide Covad access to the HFPL as an unbundled

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[1] References to "the Act" or "the 1996 Act" mean the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which can be found at 47 U.S.C. § 151 *et seq.*

network element ("UNE"). Following the issuance of the FCC's *Triennial Review Order,*[2] BellSouth sought to amend the parties' Agreement. In relevant part, BellSouth sought to modify the provisions of the Agreement that relate to the HFPL.

The High Frequency Portion of the Local Loop

The FCC created the HFPL UNE in its December 9, 1999 *Line Sharing Order.*[3] There, the FCC amended its unbundling rules, "to require incumbent LECs to provide unbundled access to a new network element, the high frequency *portion* of the local loop. This will enable competitive LECs to compete with incumbent LECs to provide to consumers xDSL-based services through telephone lines that the competitive LECs can share with incumbent LECs. The provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is frequently called 'line sharing.'" *Line Sharing Order,* ¶ 4 (emphasis added). The FCC's language in the *Line Sharing Order* made clear that the newly created HFPL UNE consisted of one "portion" of a local loop.

In May 2002, the United States Court of Appeals for the D.C. Circuit addressed the FCC's new HFPL UNE. In *USTA I,* the D.C. Circuit vacated and remanded the *Line Sharing Order*, finding that the FCC failed to consider intermodal competition, specifically the relevance of competition in broadband services via cable and satellite services. *USTA I,* 290 F.3d at 428. The D.C. Circuit's vacatur of line sharing was stayed until the issuance of the FCC's *Triennial Review Order.*

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[2] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[3] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 14 FCC Rcd 20912 ("*Line Sharing Order*"), *vacated and remanded, USTA v. FCC,* 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"), *cert. denied,* 538 U.S. 940 (2003).

In the *Triennial Review Order*, the FCC decided that the HFPL was no longer a UNE. The FCC explained, "allowing competitive LECs unbundled access to the whole loop and to line splitting but not requiring the HFPL to be separately unbundled creates better competitive incentives than the alternatives." *Triennial Review Order,* ¶ 260. In doing so, the FCC reversed its earlier finding that line sharing would level the competitive playing field; instead, the FCC explained "rules requiring line sharing may skew competitive CLECs' incentives toward providing a broadband-only service to mass market consumers, rather than a voice-only service or, perhaps more importantly, a bundled voice and xDSL service offering." *Id.,* ¶ 261.

The FCC's Line Sharing Plan

In eliminating line sharing as a UNE, the FCC acknowledged that a number of CLECs had relied upon access to the HFPL to provide service. *Id.,* ¶ 264. Consequently, to provide carriers adequate time to implement alternatives, the FCC adopted a three-year transition plan for new line sharing arrangements. *Id.* The FCC also grandfathered existing line sharing arrangements. *Id.* The FCC's decision impacts BellSouth and Covad in three ways. First, Covad's line sharing arrangements that were in service as of October 1, 2003 will be "grandfathered" until the FCC's next biennial review. Covad will pay the same amount to serve those customers as it did on October 1, 2003. Second, any new line sharing customers Covad adds from October 2, 2003 through October 1, 2004 are subject to a three-year transitional period and transitional rates.[4] Third, pursuant to the transitional plan, after October 1, 2004, Covad cannot request new line sharing arrangements. *Id.*, ¶ 265; *also* 47 CFR § 57.319(a)(i)(B). The

[4] Under the FCC's transition plan, Covad should have been paying higher rates for any customers added during this timeframe. Because the Agreement has not yet been modified, however, Covad has enjoyed the benefit of line sharing at the current monthly recurring rate at $0.61.

third aspect of the FCC's line sharing transition plan is what has created the need for Commission action on an expedited basis.

<u>The Parties' Dispute</u>

After the FCC issued its *Triennial Review Order,* communications between BellSouth and Covad occurred.[5] BellSouth has requested an amendment to the parties' Agreement that incorporates the FCC's transitional and grandfathering line sharing mechanism. BellSouth's proposed amendment states, consistent with federal rules, that after October 1, 2004, Covad will no longer be able to request new line sharing arrangements. Covad has refused to accept BellSouth's proposed language. Instead, Covad's petition proposes contract language that would require BellSouth to "agree to offer" access to the HFPL "on an unbundled basis in accordance with its obligations under Section 271 . . . beginning October 1, 2004."[6] BellSouth has not negotiated, pursuant to Sections 251 and 252 of the Act, any access to the HFPL other than as specified by the FCC in the federal rules.

Although the *Triennial Review Order* and the subsequent rules clearly outline the means by which Covad may access the HFPL, Covad has refused to amend the parties' Agreement and effectuate the FCC's plan. Without such an amendment, Covad apparently believes that it can continue ordering new line sharing arrangements at UNE prices after October 1, 2004, an

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[5] The details concerning the parties' communications have been addressed in previous filings; to avoid repetition BellSouth incorporates by reference its prior pleadings.

[6] The parties plan to address jurisdictional arguments during the second phase of this proceeding, if necessary, and BellSouth reserves its right to do so. By way of explanation, BellSouth has contractually agreed that either party may petition this Commission for resolution for certain disputes, which Covad has done. Thus, this dispute is properly before the Commission. By submitting briefs to this Commission on the issue of access to line sharing, however, BellSouth is not waiving any arguments it has about whether this Commission can actually order the parties to include Covad's proposed language in an interconnection agreement (which it should not in any event, as will be explained more fully herein).

outcome clearly in conflict with binding federal law. BellSouth respectfully requests that this Commission resolve this matter by ordering Covad to abide by the applicable federal rules.[7]

DISCUSSION

I. BellSouth is Only Obligated to Provide Covad with Access to Line Sharing Under the FCC's Transitional Mechanism

In the *Triennial Review Order,* the FCC rejected its prior finding that lack of separate access to the HFPL would cause impairment. TRO, ¶ 258. The FCC issued detailed findings to support its decision. Notably, the FCC recognized that all potential revenues from the full functionality of a loop would offset the costs associated with purchasing the entire loop. *Id.* The FCC also recognized that CLECs interested in broadband alone could obtain such access from other carriers through line splitting. *Id.,* ¶ 259. Moreover, the FCC observed that because most states had priced the HFPL at zero, competitive incentives were distorted in favor of CLECs purchasing only the HFPL as compared to carriers purchasing the entire loop. *Id.,* ¶ 260. This distortion skewed carriers' incentives toward providing only broadband service instead of bundled voice and DSL. *Id.*, ¶ 261. In addition, line sharing discouraged innovative arrangements between voice CLECs and data CLECs and also discouraged product differentiation between ILEC and CLEC offerings. *Id.* Finally, the FCC acknowledged substantial intermodal competition exists in broadband service, particularly with cable modem service, and, to some degree, with third generation wireless service, satellite service, and broadband over power lines. *Id.*, ¶ 262.

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[7] In resolving this dispute, BellSouth is not seeking any order that addresses the parties' ability to participate in independent negotiations concerning access to line sharing on a commercial basis, a matter that is not before the Commission. BellSouth supports *voluntary* commercial negotiations. The question before the Commission focuses on *the legal obligation* concerning access to line sharing, which is explicitly and unambiguously addressed by binding federal rules. By doing so, BellSouth is not agreeing that a state commission has jurisdiction to decide any questions concerning BellSouth's obligations under Section 271 or to arbitrate disputes about the rates at which elements available under Section 271 will be provided.

After detailing the numerous reasons for eliminating unbundled access to line sharing, the FCC created a transition and grandfathering mechanism to ensure carriers like Covad would have adequate time to implement new processes and procedures, design new product offerings, and negotiate new arrangements *to replace* line sharing. *Id.*, ¶ 264 (emphasis added). The FCC found it appropriate to fashion a lengthy transition period to allow CLECs to move their customers to alternative arrangements and modify their business practices and operations on a going forward basis. *Id.*, ¶ 266.

II. BellSouth Is Not Required to Provide Access to Line Sharing for New Customers After October 1, 2004.

Despite the fact that the FCC found that line sharing did not satisfy the impairment standard under Section 251 and outlined a transition plan for line sharing, Covad contends that it is entitled to continued access to line sharing in perpetuity under Section 271, checklist item 4. This Commission can and should resolve this matter by simply relying on binding federal rules alone, without wading into the section 271 regulatory morass into which Covad would lead it.

However, even if it were proper for a state commission to look to Section 271, and it is clearly not, Covad's reliance upon checklist item 4 to support its position that line sharing is required by Section 271, is without reasonable basis. Indeed, Covad's argument is contradicted by the plain language of checklist item 4. That language requires access or interconnection that includes:

> (4) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.[8]

The key point is that checklist item 4 explicitly requires the provision of a loop. Checklist item 4 does not require subloops, portions of the loop (high frequency or otherwise), or

[8] 47 U.S.C. § 271(c)(2)(B)(iv).

isolated functionalities of the loop. Clearly, the requirement is for the provision of a whole loop, nothing more and nothing less.

Covad's claim that line sharing involves the loop and, therefore, falls within the rubric of Section 271, also is inconsistent with the FCC's analytical framework in its *Line Sharing Order,* in the *Triennial Review Order* and, as indicated below, completely misstates the FCC's various Section 271 decisions. The FCC decided almost four years ago in the *Line Sharing Order* to designate the high frequency portion of the loop as an unbundled network element, *separate and apart from the loop itself.* The FCC continued analyzing the HFPL and the loop as separate unbundled network elements in its *Triennial Review Order.*

Specifically, the FCC found that competing carriers that request stand-alone copper loops are generally impaired on a national basis (*Triennial Review Order,* ¶ 248), while also finding that carriers that request HFPL are not impaired under any circumstances. (*Id.*, ¶ 258) Covad's contention that the FCC would conduct separate analyses of line sharing and whole loops for purposes of applying Section 251, but combine the two provisions together without distinction for purposes of applying Section 271, defies logic. Covad's conclusion is all the more illogical when considering the FCC specifically found line sharing to be competitive (i.e., it did not meet the impairment test), but reached a different conclusion as to whole loops. Furthermore, as discussed below, neither the *Triennial Review Order* nor other FCC decisions support Covad's faulty conclusion.

A. Covad's Reliance on the FCC's Section 271 Decisions Is Misplaced

Covad primarily relies upon the FCC's Section 271 decisions to try to justify its conclusion that line sharing is a checklist item 4 requirement. These decisions, however, do not support Covad's position.

First, Covad's argument conveniently ignores the first two FCC decisions granting long distance authority to a BOC. The FCC's *Line Sharing Order* was released on December 9, 1999, shortly before the FCC's *Bell Atlantic New York Order,*[9] which was released on December 22, 1999. In the *Bell Atlantic New York Order,* the FCC explained that Verizon (formerly Bell Atlantic) was not required to comply with the new unbundling rules established in the *UNE Remand* proceedings *and was not required to demonstrate that it complied with line sharing. Bell Atlantic New York Order* at n. 70. The FCC reached a similar conclusion in the *SWBT Texas Order,*[10] finding that "[f]or the purpose of evaluating whether this application satisfies Section 271, *we do not require SWBT to prove that it has implemented the . . . modifications necessary to accommodate requests for access to the line sharing unbundled network element . . .*" (*SWBT Texas Order,* ¶ 321). If line sharing actually had been required in order to receive long distance authority under checklist item 4, then the FCC could not have granted Verizon and SBC Section 271 authority.

Second, Covad's assertion likewise ignores other Section 271 decisions by the FCC. In the *SBC Illinois/Indiana/Ohio Order*[11] and the *Qwest Arizona Order,*[12] both of which were issued after the *Triennial Review Order* became effective, the FCC explained that as part of the required showing, an applicant must satisfy the FCC's old rules concerning UNEs. *(SBC*

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[9] *In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, 15 FCC Rcd 3953 (Dec. 22, 1999) *("Bell Atlantic New York Order").*

[10] *In the Matter of 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, 15 FCC Rcd 18354 (June 30, 2000) ("SWBT Texas Order").

[11] *Joint Application by SBC Communications, Inc., et al., for Authorization to provide In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin,* WC Docket No. 03-167, *Memorandum Opinion and Order,* FCC 03-243 (Oct. 15, 2003) ("SBC Illinois/Indiana/Ohio Order").

[12] *Application by Qwest Comm. International, Inc., for Authorization to Provide In-Region, InterLATA Services in Arizona,* WC Docket No. 03-194, *Memorandum Opinion and Order (Dec. 3, 2003) ("Qwest Arizona Order").*

Illinois/Indiana/Ohio Order, ¶ 10; *Qwest Arizona Order* ¶ 7.) The FCC then listed seven UNEs that incumbent LECs are obliged to provide. The first UNE on the list is "local loops and subloops." The seventh UNE on this list is the "high frequency portion of the loop." (*Id.*)

The *SBC Illinois/Indiana/Ohio Order* and the *Qwest Arizona Order* demonstrate that, even under the FCC's old unbundling rules, the loop and the HFPL were treated as separate elements. The FCC's delineation of the loop and HFPL as separate elements began in the *Line Sharing Order* and has continued to this day in the *Triennial Review Order*. Thus, while checklist item 4 of Section 271 may obligate BellSouth to provide access to loops, this obligation does not extend to providing line sharing.

In addition to the fact that the FCC's section 271 decisions clearly distinguish the loop and the HFPL, these orders also demonstrate that the line sharing analysis in these orders relates to the FCC's unbundling obligations as contained in *federal rules* and is not an implicit recognition of a *statutory obligation*. That the FCC analyzed line sharing under its *rules* and not under the Act is clear from language in the *SBC Illinois/Indiana/Ohio Order*:

> Based on the evidence in the record, we conclude . . . that SBC provides unbundled local loops in accordance with the requirements of Section 271 *and our rules*. Our conclusion is based on our review of SBC's performance for all loop types which include voice grade loops, xDSL capable loops, digital loops and high capacity loops, *as well as* our review of FCC's processes for hot cut provisioning, and line sharing and line splitting.

SBC Illinois/Indiana/Ohio Order ¶ 142; *see also Qwest Arizona Order* ¶ 26 (emphasis added).

It is readily apparent the FCC's analysis relating to hot cuts, line sharing and line splitting is *not based upon the requirements of checklist item 4 as expressly articulated in the Act, but rather upon the FCC's rules.*[13] Neither a hot cut, line sharing, nor line splitting is a loop; rather,

[13] Attached as Exhibit 1 is a copy of a spreadsheet Covad filed in Alabama and North Carolina to support its argument that line sharing is a checklist 4 requirement. The highlighted language demonstrates the FCC evaluated line sharing under its former (pre-*Triennial Review Order*) unbundling rules and not as a statutory obligation.

these are loop processes. With respect to line sharing specifically, the rule in question is the FCC's former rule (pre-*Triennial Review Order*) that required line sharing on an unbundled basis pursuant to Section 251.

Covad's argument that line sharing is part of checklist item 4 (despite the actual language of checklist item 4), is contradicted by the language in the *SBC Illinois/Indiana/Ohio Order* and the *Qwest Arizona Order* referring to the requirements *of the FCC's rules*. Stated simply, if a requirement to provide line sharing (and line splitting and hot cut provisioning) resides in checklist item 4, rather than the FCC's unbundling rules, then there is nothing left to be considered as part of the checklist item 4 analysis that *does* arise from the FCC's rules, which would render the citation to the rules meaningless.

The FCC's orders make two points clear. First, the FCC distinguished the loop UNE from the HFPL UNE in its *SBC Illinois/Indiana/Ohio Order* in discussing unbundling required under checklist item two. Second, by referring to its rules in its checklist item 4 discussion, the FCC has demonstrated it would analyze both the actual checklist item 4 loop provisioning requirement *and related requirements (such as line sharing) that arise from the unbundling rules* (i.e., the same unbundling that is the topic of checklist item 2). Consequently, Covad cannot reasonably rely on the FCC's Section 271 decisions to demonstrate that line sharing is a checklist item 4 requirement.

The FCC's Section 271 decisions concerning BellSouth are consistent with its *SBC Illinois/Indiana/Ohio Order* and its *Qwest Arizona Order*. In evaluating BellSouth's Section 271 applications, the FCC discussed line sharing in connection with applicable *rules* rather than a statutory requirement. For example, at paragraph 218 of the *BellSouth Georgia/Louisiana Order*[14] the FCC said:

> . . . . BellSouth demonstrates that it provides unbundled local loops in accordance with the requirements of Section 271 *and our rules*. Our conclusion is based on our review of BellSouth's performance for all loop types, which include, as in past Section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, high capacity loops, and digital loops, and our review of BellSouth's processes for line sharing and line splitting.

Similar language appears in paragraph 232 of the *BellSouth Multistate Order*[15] and in paragraph 132 of the *BellSouth Tennessee/Florida Order*:[16]

> . . . . BellSouth demonstrates that it provides unbundled local loops in accordance with the requirements of Section 271 *and our rules*. As in past Section 271 orders, our conclusion is based on our review of BellSouth's performance for all loop types, including voice grade loops, xDSL-capable loops, high capacity loops, and digital loops, hot cut, line sharing, and line splitting processes.

Third, Covad may erroneously claim that line sharing must inherently fall within checklist item 4, simply because the FCC's checklist item 4 analysis in the *SBC Illinois/Indiana/Ohio Order* and in the *Qwest Arizona Order* included a consideration of line sharing after the issuance of the *Triennial Review Order*. Any such argument is misplaced. In the FCC's recent Section 271 decisions, it acknowledged that it had adopted new unbundling rules as part of the *Triennial Review Order* on October 2, 2003, but explained that it was basing its decisions on the *former unbundling rules*. *SBC Illinois/Indiana/Ohio Order*, ¶¶ 10-11; *Qwest Arizona Order*, ¶ 8. Thus, when the FCC considered both the actual checklist item 4

[14] *In the Matter of Joint Application by BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, 17 FCC Rcd 9018 (May 15, 2002) ("BellSouth Georgia/Louisiana Order").

[15] *In the Matter of Joint Application by BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 02-150, 17 FCC Rcd 17595 (Sept. 18, 2002) ("BellSouth Multistate Order").

[16] *Joint Application by BellSouth Corp. et al. for Authorization to provide In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-37, *Memorandum Opinion and Order* (Dec. 19, 2003) ("BellSouth Florida/Tennessee Order").

requirements *and* the loop-related requirements of the FCC's rules, it applied the old unbundling rules (under which, unlike the current rules, line sharing was required to be provided as a UNE).

B. The *Triennial Review Order* Does Not Require Access to Line Sharing As A Section 271 Obligation

Although Covad has no reasonable basis for relying upon the FCC's Section 271 decisions to justify its quest for access to line sharing, BellSouth anticipates Covad will argue the *Triennial Review Order* did not change or modify the existence of line sharing as a checklist item 4 requirement. Any such argument suffers from the fatal flaw that because line sharing is not a checklist item 4 requirement, the FCC would not need to modify a non-existent obligation. Further, even if Covad makes such a claim, it is clear that the FCC consistently treats line sharing in a way that distinguishes it from the loop in the *Triennial Review Order* by separately referring to the loop-UNE, *and not* line sharing.

In the *Triennial Review Order*, the FCC observed that Section 251 and Section 271 operate independently. In relevant part, at Paragraph 654 of the *Triennial Review Order* the FCC made clear that checklist items 4, 5, 6, and 10 only "impose access requirements regarding *loop, transport, switching, and signaling ....*" (*Triennial Review Order,* ¶ 654.) *Line sharing is never mentioned by the FCC as a requirement of any checklist item.*

Because line sharing is never listed as a requirement, any reliance Covad places upon paragraph 659 of the *Triennial Review Order* as bolstering its position is unjustified. Paragraph 659 suggests that Section 271 obligations may exist independently of section 251 obligations, however, paragraph 659 does nothing to suggest that a *line sharing* Section 271 obligation exists to begin with. The reality is that there is no mention of line sharing at any point in the fifteen-paragraph discussion of Section 271 obligations contained within the *Triennial Review Order.* (*See Triennial Review Order*, ¶¶ 653-667.) Thus, to the extent that Covad's argument is that the

FCC intended the term "loop" to include line sharing, even though the FCC never states such an intention, is a strained interpretation that falls apart upon examination of the distinction between the UNE-loop and the UNE-line sharing.

Likewise, Covad may argue that, because the *Triennial Review Order* contains a more granular analysis of network elements in the context of Section 251 than within the fifteen paragraph discussion of Section 271, this *must* mean that the term "loop" is intended to include line sharing by implication wherever it appears. This argument also fails. In the final analysis, without any actual language within the *Triennial Review Order* that supports Covad's position, such a "granularity" argument is nothing more than reliance upon the structure of the *Triennial* Review rather than upon its express holdings. Such reliance cannot stand given the language of the Act, the *Triennial Review Order* in its entirety, and other orders of the FCC.

III. Decisions Addressing BellSouth's Self Effectuating Enforcement Mechanism ("SEEM") Plan Do Not Provide Covad with the Right to Add New Line Sharing Customers After October 1, 2004

Despite the fact that the federal rules unambiguously govern Covad's access rights to the HFPL, Covad may argue that prior decisions in BellSouth's region support its proposed amendment to the parties' interconnection agreement. Any such argument is without foundation.

Following the issuance of the *Triennial Review Order*, BellSouth sought to modify its Self-Effectuating Enforcement Mechanism ("SEEM") plan to remove penalties associated with line sharing. In connection with such proceedings, the state commissions in Georgia and North Carolina initially issued orders that included language recognizing a Section 271, checklist item 4 line sharing obligation. Both decisions were subsequently modified, however, which means that Covad cannot rely on these orders to circumvent the federal rules.

On reconsideration, the Georgia Commission, on its own motion, modified its order "to remove . . . an independent and ongoing access obligation under Section 271." *Order on Reconsideration,* GPSC Docket No. 7892-U, *In re: Performance Measurements for Telecommunications, Unbundling, and Resale* (Mar. 25, 2004). The Georgia Commission recognized "it makes more sense to address this question, if and when necessary, at a point when more information on the FCC's intent is available." *Id.* p. 3 of 4. Similarly, the North Carolina Commission struck an entire paragraph from its initial order in Docket No. P-100, Sub 133k, meaning it relied solely upon the federal rules in its decision. *See* p. 28, *Order on Reconsideration,* NCUC Docket No. P-100, Sub 133k, *In re: Generic Docket to Address Performance Measurements and Enforcement Mechanisms,* (July 13, 2004).

In addition, if Covad contends the initial decisions from Georgia or North Carolina relating to BellSouth's SEEM plan support its position here, it will have to distinguish decisions from this Commission and Alabama. This Commission recognized that BellSouth is no longer required to accept new line sharing services after October 2004, while the Alabama Commission recognized BellSouth was no longer required to provide access to the HFPL as a UNE. *See Order Denying the CLEC Coalition's Motion to Strike and BellSouth's Amended Motion to Modify SEEM Plan,* FPSC Docket No. 000121A-TP, Order No. PSC-04-0511-PAA-TP, p. 12 (May 19, 2004) ("BellSouth is not obligated to offer new line sharing services as UNEs after October 2004"); *and Order Denying Motion to Modify SEEM Plan*, APSC Docket 25835 (Feb. 13, 2004) ("BellSouth is correct in noting that the FCC concluded in its *TRO* that CLECs are no longer impaired without unbundled access to line sharing").[17]

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[17] The Kentucky Public Service Commission also recognized the *Triennial Review Order* included a three-year transition period for line sharing. *See* Order p. 2, KPSC Case No. 2001-00105, *In re: Investigation Concerning the Proprietary Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996* (Dec. 15, 2003). The Kentucky Commission noted that "BellSouth is still required

Because none of the state commissions in BellSouth's region, including the Georgia and North Carolina Commissions, recognized any Section 271 obligation to provide access to the HFPL after October 1, 2004, Covad cannot justifiably cite to these decisions as support for its position. In any event, this Commission can and should address the current dispute between BellSouth and Covad by simply relying on the federal rules.

IV. Decisions Addressing Verizon's Wholesale Tariffs Do Not Provide Covad with the Right to Add New Line Sharing Customers After October 1, 2004

During the course of an informal conference between the parties in Kentucky, Covad referred to decisions outside of BellSouth's region and suggested such orders recognize a section 271 line sharing obligation. Based on Covad's reference to these decisions, BellSouth expects it will cite to these decisions to support its request for continued access to line sharing in perpetuity. Any such reliance is misplaced.[18]

Specifically, Covad referenced decisions from Pennsylvania and Maine. The *Pennsylvania Decision,* Case No. R-00038871C0001, Order (July 8, 2004) (*Pennsylvania Decision*) is factually distinguishable from this proceeding and fails to justify the relief Covad seeks. In Pennsylvania, Verizon had previously filed a tariff through which it offered unbundled network elements. Following the *Triennial Review Order,* Verizon filed revisions to remove line sharing and other UNEs from its tariff, which revisions were not permitted to take effect. On appeal, the Pennsylvania Commission declined to extend the initial suspension of Verizon's tariff. While that commission stated, in passing, that "it is a reasonable interpretation of Checklist item #4 to also include the HFPL of the local loop," it also recognized a state

to provide new line sharing arrangements and maintain existing ones", an accurate statement on December 15, 2003. Of course, as set forth herein, such a statement would not be accurate after October 1, 2004.

[18] The parties jointly requested this Commission resolve the issue of access to line sharing after the submission of one round of briefs. Because the parties do not plan to file reply briefs, BellSouth has addressed arguments it anticipates Covad will make here.

commission's role under Section 271 is "consultative and that the ultimate adjudicative authority lies with the FCC." *Pennsylvania Decision,* p. 17. In addition, the Pennsylvania Commission noted "this Commission does not have the authority to ultimately construe the statutory requirements for Checklist item # 4." *Id.*

Unlike Verizon, BellSouth is not seeking to modify a wholesale tariff. To the extent that Covad tries to assert the *Pennsylvania Decision* is somehow tangentially analogous to this case, its assertion cannot stand. Because the *Pennsylvania Decision* has been remanded to an administrative law judge for further proceedings, it may be subsequently clarified. At most, the *Pennsylvania Decision* ultimately stands for the unremarkable proposition that a state commission outside of BellSouth's territory elected to temporarily suspend a proposed Verizon tariff seeking to delete access to line sharing, while recognizing that ultimate authority lies with the FCC.

During the same informal conference, Covad also referenced a decision in Maine. There is no final commission order in Maine that supports Covad's position in this docket. In Maine, a Hearing Examiner recommended a finding that "Verizon must continue to provide CLECs with access to line sharing in order [t]o comply with Checklist Item No. 4 of Section 271 . . . however, we will not exercise any authority . . . to set rates for 271-based UNEs such as line sharing and will leave those issues to the FCC . . . ." July 23, 2004 Examiner's Report, Docket No. 2002-682.

The Maine commission considered the Hearing Examiner's recommendation during its August 12, 2004 open meeting. Although the Maine commission has yet to issue a written order, the Commission voted *not* to require line sharing as a Section 271 obligation, recognizing that defining the scope of Section 271 obligations is a matter properly left to the FCC. Consequently, Covad has no justifiable basis to rely upon a decision from Maine to bolster its argument in this proceeding.

V. The FCC's August 20, 2004 Order and Notice of Proposed Rulemaking Does Not Provide Covad with the Right to Add New Line Sharing Customers After October 1, 2004.

On August 20, 2004, the FCC released its *Order and Notice of Proposed Rulemaking* in Docket Nos. WC 04-313 and CC 01-338 ("Interim Order"). The FCC's *Interim Order* seeks comments on whether Section 271 unbundling obligations need to be clarified or modified in light of *USTA II*. *See Interim Order,* at n. 38 (acknowledging BellSouth's Emergency Petition for Declaratory Ruling and Preemption of State Action, WC Docket No. 04-245). Significantly, however, while recent articles have suggested some individual FCC commissioners may have thought about modifying the FCC's rules regarding line sharing, the *Interim Order* contains no such modification. *See, e.g.,* Communications Daily, Aug. 4, 2004, "Powell Seeks Copps, Adelstein Agreement on Interim TRO Rules." Moreover, while the FCC acknowledged that BellSouth's petition raised Section 271 concerns, it did not reach any tentative or preliminary conclusions that impact the applicable line sharing rules.[19] Consequently, the only outcome in this proceeding that would be consistent with binding federal law is to find that BellSouth's obligation to provide Covad access to line sharing is strictly governed by the FCC's grandfathering and transitional mechanism as set forth in the FCC's rules.

VI. Covad Cannot Reasonably Rely Upon State Law to Circumvent the Federal Rules

In addressing the legal issue of access to line sharing, state statutes cannot negate the clear mandate of the federal rules. Covad's proposed line sharing contract amendment expressly refers to Section 271 and does not cite to state statutes. Thus, to the extent that Covad attempts

[19] *See also* Brief for Federal Respondents at 17, *NARUC, et al. v. USTA, et al.,* Nos. 04-12, 04-15, and 04-18 (S. Ct. filed Sep. 1, 2004) (FCC stated the D.C. Circuit "correctly upheld" its decision to phase out line sharing requirements).

to raise state law issues, any such arguments exceed the scope of this proceeding. Moreover, any reliance on state law would be without basis.

Under the *Triennial Review Order*, state commissions are "precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in [the *Triennial Review Order*]." *Triennial Review Order* ¶ 192. More specifically, any decision purporting to require BellSouth to provide line sharing when the FCC has unambiguously reversed its prior finding that the HFPL constituted a UNE would be preempted: "If a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment – and thus has found that unbundling that element would conflict with the limits in [section] 251(d)(2) – or otherwise declined to require unbundling on a national basis, we believe it unlikely that such [a] decision would fail to conflict with and 'substantially prevent' implementation of the federal regime, in violation of section 251(d)(3)(C)." *Id.* ¶ 195; *see id.* ¶ 196 ("[W]e find that the limitations embodied in section 251(d)(3)(B) and (C) will prevent states from taking actions under state law that conflict with our framework and create disincentives for investment."). In sum, as the FCC explained to the D.C. Circuit, its decisions in the *Triennial Review Order* "reflect[] a 'balance' struck by the agency between the costs and benefits of unbundling [an] element. Any state rule that struck a different balance would conflict with federal law, thereby warranting preemption."[20]

A recent decision in Wisconsin aptly demonstrates that any decision requiring access to line sharing under state law would be preempted. In *Wisconsin Bell v. AT&T Communications of Wis.*, No. 03 Civ. 0671 (W.D. Wis. July 1, 2004) ("*Wisconsin Decision"*), the ILEC challenged a

[20] Brief for Respondents at 93, *United States Telecom Ass'n v. FCC*, Nos. 00-1012 *et al.*, (D.C. Cir. filed Jan. 16, 2004) (citations omitted); *and* Brief for Federal Respondents at 21, *NARUC, et al. v. USTA, et al.*, Nos. 04-12, 04-15, and 04-18 (S. Ct. filed Sep. 1, 2004) ("state laws or rulings inconsistent with the FCC's unbundling regulations would be inconsistent with the Congressionally authorized implementation of the requirements of Section 251 . . . and hence preempted").

state commission arbitration decision requiring the ILEC to provide data services to a CLEC's UNE customers. The state commission decision did not "expressly require [the ILEC] to unbundle the [high-frequency portion of the loop] or the [low-frequency portion of the loop]," but did require the ILEC to "continue to provide all existing data services." Slip op. at 20 (quoting interconnection agreement).

The federal district court concluded that the state commission's decision was contrary to the FCC's regulations, specifically the *Triennial Review Order*, and thus was inconsistent with federal law. The court explained that the obligation imposed by the state commission was "functionally identical to compelled unbundling of the [high-frequency portion of the loop] and [the low-frequency portion of the loop]" and thus was a "thinly veiled unbundling of the local loop portions which was expressly rejected by the FCC." *Id.* Because the result imposed by the state commission was equivalent to the proposal that the FCC considered and rejected in the *Triennial Review Order*, it violated federal law. *See id.* at 20-22.

The court expressly rejected the argument that "this [is] a circumstance where [the state commission] might have exercised its residual state authority to impose the additional unbundling." *Slip op.* at 21. The agreement provision was "directly inconsistent with the FCC regulations implementing the [1996 Act] and the reasons underlying those requirements." *Id.* Given the conflict between the state commission arbitration decision and the FCC's conclusions in the *Triennial Review Order,* the court found the ILEC was "entitled to a determination that the agreement provision compelling it or its subsidiary to provide DSL service when defendant AT&T provides voice service does not comply with the [1996 Act]." *Id.*

CONCLUSION

Four years after the FCC created its high frequency portion of the loop UNE and after its creation was invalidated by the D.C. Circuit, the FCC determined that line sharing fails to satisfy the impairment standard and strictly limited continued access to line sharing. The FCC created a grandfathering and transitional mechanism and declined to require access to line sharing for new customers after October 1, 2004. Rather than accepting the FCC's decision and incorporating the terms of the federal rules into the parties' Agreement, Covad seeks to wish it away through a Section 271 checklist item 4 argument that is contradicted by the FCC's initial orders granting ILECs long distance authority. This Commission should resolve this dispute by entering an order requiring Covad to abide by the binding federal rules.

Respectfully submitted this 3rd day of September, 2004.

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FCC 271 Checklist Item 4 Line sharing Quotes

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	130	232	As in past Section 271 orders, our conclusion is based on a review of BellSouth's performance for all loop types, including voice grade loops, x-DSL capable loops, high capacity loops and digital loops, as well as our review of BellSouth's hot cut, line-sharing and line splitting processes.
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	143	248	*Line Sharing.* We find, as did the state commissions, that Bellsouth offers nondiscriminatory access to the high frequency portion of the loop in each applicable state. We note that competitive LECs in Mississippi and South Carolina have not yet ordered any line-sharing arrangements from Bellsouth. Because order volumes for line-shared loops are low in each of the states, we look to BellSouth's line-sharing performance in Georgia to inform our analysis. We further note that no party has alleged that BellSouth's line-sharing offerings in Mississippi and South Carolina fail to provide nondiscriminatory access to high frequency portion of the loop.
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	144	250	We also reject Covad's claim that BellSouth's line-sharing provisioning and maintenance and repair performance precludes a grant of long distance authority. Although BellSouth's performance with regard to certain measures-customer trouble reports within 30 days of installation and repeat trouble reports within 30 days of maintenance or repair-is out of parity in certain months, we find these disparities in reported performance do not warrant a finding of checklist noncompliance.
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	145	250	BellSouth generally performed at or above parity with regard to line-sharing maintenance, as measured by its trouble report rate for line-sharing arrangements, during the relevant period. In these circumstances, we conclude that BellSouth's customer trouble report and repeat trouble report rates for line sharing do not support a finding of checklist noncompliance.
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	143-144	249	Because BellSouth's performance data show that it installs line-sharing arrangements in accordance with the standards approved by the state commissions, we reject Covad's reliance on BellSouth's alleged failure to provision line-sharing arrangements within the time frame specified in its interconnection agreement with Covad. Given that BellSouth's line-sharing provisioning intervals for its retail customers and competitive LECs are comparable, and recognizing BellSouth's timeliness performance during the relevant period in Georgia, we find that BellSouth's installation performance does not warrant a finding of checklist noncompliance.
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	H-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
BellSouth	AL, KY, MS, NC and SC	WC Docket No. 02-150	FCC 02-260	H-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.
BellSouth	FL and TN	WC Docket No. 02-307	FCC 02-331	68	132	As in past Section 271 orders, our conclusion is based on a review of BellSouth's performance for all loop types, including voice grade loops, x-DSL capable loops, high capacity loops, and digital loops, as well as our review of BellSouth's hot cut, line-sharing and line splitting processes.
BellSouth	FL and TN	WC Docket No. 02-307	FCC 02-331	77-78	144	*Line Sharing*. We find, as did the state commissions, that Bellsouth offers nondiscriminatory access to the high frequency portion of the loop in Florida and Tennessee. BellSouth has provisioned 2,850 line sharing arrangements in Florida and 931 linesharing arrangements in Tennessee, as of July 2002. We recognize that BellSouth's performance in Florida and Tennessee, with respect to one installation timeliness measure...was out of parity for several months. We note, however, that the data under another installation timeliness metric-percent missed installation appointments-shows that BellSouth generally provisioned line shared loops in timely fashion during the relevant period. Accordingly, we find that BellSouth's provisioning of line-shared loops satisfies checklist item 4. Should Bellsouth's performance in this area deteriorate, we will pursue appropriate enforcement action.
BellSouth	FL and TN	WC Docket No. 02-307	FCC 02-331	D-30	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
BellSouth	FL and TN	WC Docket No. 02-307	FCC 02-331	D-30	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.
BellSouth	GA and LA	CC Docket No. 02-35	FCC 02-147	128-9	218	Our conclusion is based on our review of BellSouth's performance for all loops types which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, and our review of Bellsouth's processes for hot cuts, line sharing and line splitting.
BellSouth	GA and LA	CC Docket No. 02-35	FCC 02-147			Based on the evidence in the record, we find, as did the Georgia Commission, that Bellsouth demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. BellSouth offers line sharing in Georgia and Louisiana under its interconnection agreements and the terms of its tariff, in accordance with the requirements of the Line Sharing Order and the Line Sharing Reconsideration Order.

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
Qwest	AZ	WC Docket No. 03-309	FCC 03-309	14	26	Our conclusion is based on our review of Qwest's performance for all loop types-which include, as in past section 271 orders, voice grade loops, xDSL capable loops and high capacity loops-as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.
Qwest	AZ	WC Docket No. 03-309	FCC 03-309	C-27	51	To determine whether a BOC makes Line Sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas orders.
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	182	335	Our conclusion is based on our review of Qwest's performance for all loop types-which include, as in past section 271 orders, voice grade loops, xDSL capable loops and high capacity loops-as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	189	342	*Line Sharing and Line Splitting.* We find that Qwest demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, and access to network elements necessary for competing carriers to provide line splitting. Qwest provides line sharing pursuant to its SGAT and state-approved interconnection agreements. According to Qwest, as of September 30, 2002, it had in service approximately 5,885 unbundles shared loops in Colorado, 4 unbundled shared loops in Idaho, 312 unbundled shared loops in Iowa, 309 unbundled shared loops in Montana, 128 unbundled shared loops in Nebraska, no unbundled shared loops in North Dakota, 1,858 unbundled shared loops in Utah, 5,850 unbundled shared loops in Washington, and 95 unbundled shared loops in Wyoming.
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	189	343	Both Covad and Touch America argue that Qwest's performance under measures of maintenance and repair timeliness reveals multiple disparities. We recognize that Qwest's performance with regard to line sharing maintenance and repair measure-the All Troubles Cleared Within 24 Hours metric-is out of parity for some months in Colorado, Utah, and Washington, but we do not find that these disparities warrant a finding of checklist noncompliance given the relatively low volumes observed during these months and the difficulties associated with drawing strong conclusions based on low volumes of data.
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	190	344	We note that Qwest's performance with regard to two other line-sharing maintenance and repair measures-the All Troubles Cleared Within 48 Hours and the Mean Time to Restore metrics-is also out of parity for some recent months in Colorado, Utah and Washington. First, the All Troubles Cleared Within 48 Hours metric shows that Qwest missed the parity standard for two of the relevant months in Colorado, Utah and Washington. Next, Qwest's performance for the Mean Time to Restore metric indicates that Qwest missed parity for dispatch orders for two of the relevant months in Colorado and Utah, and for three of the relevant months in Washington.

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	192	347	Covad also argues that maintenance and repair performance for line shared loops would improve if Qwest provided competitive LECs with the same "router test" for end-to-end data continuity that Qwest provides for its own customers as part of the provisioning process. Specifically, Covad states that many of the line shared loop orders for which it receives a service order completion notice suffer from missing or incomplete cross-connects in the central office that would be detected by the use of the router test, and could be corrected prior to delivery of the line shared loop.
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	193	347	As noted above, we find that Qwest's overall performance with respect to maintenance and repair of the line shared loops is nondiscriminatory.
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	K-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Qwest	CO, ID, IA, MT, NB, ND, UT, WA, and WY	WC Docket No. 02-314	FCC 02-332	K-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York and SWBT Texas Orders*.
Qwest	MN	WC Docket No. 03-90	FCC 03-142	29	53	Our conclusion is based on our review of Qwest's performance for all loop types-which include, as in past section 271 orders, voice grade loops, xDSL capable loops and high capacity loops-as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.
Qwest	MN	WC Docket No. 03-90	FCC 03-142	C-26	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Qwest	MN	WC Docket No. 03-90	FCC 03-142	C-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.
Qwest	NM, OR, and SD	WC Docket No. 03-11	FCC 03-81	53	93	Our conclusion is based on our review of Qwest's performance for all loop types-which include, as in past section 271 orders, voice grade loops, xDSL capable loops and high capacity loops-as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.
Qwest	NM, OR, and SD	WC Docket No. 03-11	FCC 03-81	F-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
Qwest	NM, OR, and SD	WC Docket No. 03-11	FCC 03-81	F-28	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.
SBC	AR and MO	CC Docket No. 01-194	FCC 01-338	26	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the Line Sharing Order, the Commission examines categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas orders.
SBC	AR and MO	CC Docket No. 01-194	FCC 01-338	50	104	We find that SWBT demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. SWBT offers linesharing in Missouri and Arkansas pursuant to its interconnections agreements in accordance with the Commission's Line Sharing Order and Line Sharing Reconsideration Order.
SBC	AR and MO	CC Docket No. 01-194	FCC 01-338	47-48	97	Our conclusion is based on our review of SWBT's performance for all loop types-which include, as in past section 271 orders, voice grade loops, hot cuts, xDSL-capable loops, digital loops, and high capacity loops, and on our review of SWBT's processes for hot cuts, line sharing and line splitting.
SBC	CA	WC Docket No. 02-306	FCC 02-330	71	123	Our conclusion is based on our review of Pacific Bell's performance for all loop types, which include voice-grade loops, x-DSL-capable loops, digital loops high-capacity loops, as well as our review of Pacific Bell's processes for hot cut provisioning, and line sharing and line splitting.
SBC	CA	WC Docket No. 02-306	FCC 02-330	76	132	*Line Sharing and Line Splitting*. Based on the evidence in the record, we find, as did the California Commission, that Pacific Bell provides non discriminatory access to the high frequency portion of the loop. For the relevant five-month period, Pacific Bell provisioned over 16,000 line sharing orders in California for unaffiliated competitive LECs. Pacific Bell's performance data for line-shared loops demonstrates that it is generally in compliance with the parity and benchmark measures established in California.
SBC	CA	WC Docket No. 02-306	FCC 02-330	C-30	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
SBC	CA	WC Docket No. 02-306	FCC 02-330	C-30	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
SBC	IL, IN, OH, and WI	WC Docket No. 03-167	FCC 03-243	88	142	Our conclusion is based on our review of Qwest's performance for all loop types-which include, as in past section 271 orders, voice grade loops, xDSL capable loops and high capacity loops-as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.
SBC	IL, IN, OH, and WI	WC Docket No. 03-167	FCC 03-243	91	145	Based on the evidence in the record, we find that SBC demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. SBC's performance data for line shared loops demonstrate that it is generally in compliance with the parity and benchmark measures established in the application states.
SBC	KS and OK	CC Docket No. 00-217	FCC 01-129	109	215	We find that SWBT demonstrates that, as of June 1, 2000, it has been making line sharing available in both Kansas and Oklahoma. SWBT makes line sharing available to competing carriers in an optional amendment to the K2A and the O2A.
SBC	KS and OK	CC Docket No. 00-217	FCC 01-129	110	217	Only recently have competing carriers started purchasing the unbundled high-frequency portion of the loop from SWBT, and even then, only one competing carrier ordered a single line shared loop. SWBT has been providing line sharing to competing carriers in Texas, however, and has been using the same provisioning and maintenance processes in Texas as it uses in Kansas and Oklahoma. In addition, because SWBT has been providing line sharing to its separate affiliate in Kansas, Oklahoma, and Texas, we can rely on SWBT's performance towards its separate affiliate to evaluate its operations in these states.
SBC	MI	WC Docket No. 03-138	FCC 03-228	73	127	Our conclusion is based on our review of Michigan Bell's performance for all loop types, which include voice grade loops, xDSL-capable loops, digital loops, high capacity loops, as well as our review of Michigan Bell's processes for hot cut provisioning, and line sharing and line splitting.
SBC	MI	WC Docket No. 03-138	FCC 03-228	78	133	*Line Sharing and Line Splitting*. Based on the evidence in the record, we find, as did the Michigan Commission, that Michigan Bell provides nondiscriminatory access to the high frequency portion of the loop (line sharing.) Michigan Bell had approximately 73,000 high frequency portion of the loop (HFPL) UNEs in service as of the end of 2002. Michigan Bell's performance data for the line shared loops demonstrate that it is generally in compliance with the parity and benchmark measures established in Michigan.
SBC	MI	WC Docket No. 03-138	FCC 03-228	81	140	...the Michigan Commission required Michigan Bell to establish procedures for migrations from line sharing to line splitting, line sharing to UNE-P, and UNE-P to line splitting.

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
SBC	NV	WC Docket No. 03-10	FCC 03-80	33	65	*Line Sharing and Line Splitting.* Based on the evidence in the record, we find, as did the Nevada Commission, that Nevada Bell demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. Given the low number of orders in Nevada...we examine Pacific Bell's performance in California. To the extent that there were discrepancies in Pacific Bell's California performance, with regard to line sharing and line splitting trouble reports after provisioning, such discrepancies in Pacific Bell's California performance with regard to lie sharing and line splitting trouble reports after provisioning, such discrepancies do not appear to be competitively significant. Moreover, as discussed in the high-capacity loop section above, Pacific Bell's new line testing procedures have lowered the percentage of trouble reports.
SBC	NV	WC Docket No. 03-10	FCC 03-80	D-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
SBC	NV	WC Docket No. 03-10	FCC 03-80	D-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas Orders.
SBC	TX	CC Docket No. 00-238	FCC 00-65	164	321	As with the aspects of the UNE Remand Order's revised rule 319 that were not yet in effect at the time SWBT filed its application, we conclude that it would be unfair to require SWBT to demonstrate full compliance with the requirements of the Line Sharing Order in its initial application, at a time well in advance of the implementation deadline established by the Order.
SBC	TX	CC Docket No. 00-238	FCC 00-65	164	322	We find the depth and scope of this evidence sufficient to overcome the speculative concerns of some competing carriers regarding SWBT's line sharing readiness, and reject competing carrier arguments that the Commission that the Commission should deny SWBT's section 271 application on the basis of its alleged failure to comply with the requirements of the Line Sharing Order.
Verizon	CT	CC Docket No. 01-100	FCC 01-208	6	10	We focus our analysis in this section on the four loop types which present issues in controversy under this checklist item, beginning with the ordering, provisioning, and maintenance repair of stand-alone x-DSL-capable loops and digital loops. We also address linesharing and high capacity loops.
Verizon	CT	CC Docket No. 01-100	FCC 01-208	7	12	Verizon relies mainly on New York performance data to support its application in Connecticut, and our analysis is based primarily on that data.

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
Verizon	CT	CC Docket No. 01-100	FCC 01-208	11-12	23	We find that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. Verizon offers line sharing in Connecticut under its interconnection agreements and the terms of its tariff, in accordance with the Commission's Line Sharing Order and Line Sharing Reconsideration Order. There is currently only one line-sharing arrangement in Verizon's Connecticut territory, and the Connecticut performance data shows no competitive LEC activity for line shared DSL services in March and April.
Verizon	MA	CC Docket No. 01-9	FCC 01-130	69	124	We find that Verizon has demonstrated that it has a line-sharing and line-splitting provisioning process that affords competitors nondiscriminatory access to these facilities. In so doing, we acknowledge that the Massachusetts Department also concludes that Verizon complies with this checklist item.
Verizon	MA	CC Docket No. 01-9	FCC 01-130	96	166	The Department of Justice recognizes that "Verizon is making efforts to resolve its line sharing implementation difficulties" and the Massachusetts Department urges us to find that Verizon provides nondiscriminatory access to the high frequency portion of the loop.
Verizon	MA	CC Docket No. 01-9	FCC 01-130	97	168	We recognize the Department of Justice's concerns that some of the line sharing completion interval data may be inaccurate. Like the Massachusetts Department, however, we conclude that the data adequately show that Verizon has met its line sharing obligation.
Verizon	MA	CC Docket No. 01-9	FCC 01-130	94-95	165	Because the linesharing volumes in Massachusetts have escalated only recently, however, we look to Verizon's line sharing performance in New York as well, where line sharing volumes are larger for additional evidence that Verizon is providing nondiscriminatory access to line sharing. We conclude that Verizon's line sharing OSS in New York and Massachusetts uses the same systems and offers the same functionality. Accordingly, we shall consider Verizon's limited commercial line sharing performance in Massachusetts.
Verizon	MD DC WV	WC Docket No. 02-384	FCC 03-57	71	119	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, x-DSL capable loops, digital loops, high capacity loops, as well as our review of Verizon's processes for line sharing and line splitting.
Verizon	MD DC WV	WC Docket No. 02-384	FCC 03-57	F-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Verizon	MD DC WV	WC Docket No. 02-384	FCC 03-57	F-28	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.

REGION	STATE	FCC DOCKET NO.	FCC PROCEEDING	PAGE	PARA	
Verizon	ME	CC Docket No. 02-61	FCC 02-187	31	44	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for hot cuts, line sharing and line splitting.
Verizon	ME	CC Docket No. 02-61	FCC 02-187	36	51	Based on the evidence in the record, we find, as did the Maine Commission, that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. Through March 2002, Verizon had provisioned 800 line sharing orders in Maine for unaffiliated competitive LECs. Verizon's performance data for lineshared DSL loops demonstrates that it is in compliance with the parity and benchmark measures established in Maine.
Verizon	ME	CC Docket No. 02-61	FCC 02-187	D-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Verizon	ME	CC Docket No. 02-61	FCC 02-187	D-27	51	To determine whether a BOC makes Line Sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas orders.
Verizon	NH and DE	WC Docket No. 02-157	FCC 02-262	62	105	Our conclusion that Verizon complies with checklist item 4 is based on our review of Verizon's performance for all loop types, which include, as in past 271 orders, voice grade loops, x-DSL capable loops, digital loops, and high capacity loops, as well as our review of Verizon's processes for hot cuts, line sharing, and line splitting.
Verizon	NH and DE	WC Docket No. 02-157	FCC 02-262	F-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Verizon	NH and DE	WC Docket No. 02-157	FCC 02-262	F-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas orders*.
Verizon	NJ	WC Docket No. 02-67	FCC 02-189	68	136	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for hot cuts, line sharing and line splitting.

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Verizon	NJ	WC Docket No. 02-67	FCC 02-189	76-77	152	*Line Sharing and Line Splitting.* We find that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, and access to network elements necessary for competing carriers to provide line splitting. Verizon provides line sharing pursuant to its interconnection agreements and in accordance with our rules. Verizon states that it provides line sharing to competitive LECS using substantially the same methods and procedures as in the other states where the Commission has found Verizon to be checklist compliant. According to Verizon, it had in service approximately 1,800 line sharing arrangements in New Jersey as of February 2002. We note that Verizon generally has met the relevant performance standards for provisioning, maintaining and repairing line-shared loops for competitors in New Jersey. We also note that the commenters in this proceeding do not criticize Verizon's performance with regard to the provisioning, maintenance and repair of line shared loops.
Verizon	NJ	WC Docket No. 02-67	FCC 02-189	C-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Verizon	NJ	WC Docket No. 02-67	FCC 02-189	C-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*. The commission did not consider linesharing Check List Item.
Verizon	NY	CC Docket No. 99-295	FCC 99-404			
Verizon	PA	CC Docket No. 01-138	FCC 01-269	40	76	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cuts, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for line sharing and line splitting.
Verizon	PA	CC Docket No. 01-138	FCC 01-269	40	77	Finally, we note that commenter have not raised any significant issues with voice grade loops, which comprise the overwhelming majority of loops ordered by competitive LECs.[272]
Verizon	PA	CC Docket No. 01-138	FCC 01-269	40	272 (footnote)	[272] The record reflects that in Pennsylvania, Verizon has provisioned approximately…1000 line sharing arrangements to competitive LECs as of June 21, 2001.
Verizon	PA	CC Docket No. 01-138	FCC 01-269	46	88	*Line Sharing*. We find that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, pursuant to its interconnection agreements and in accordance with our rules. Although ordering volumes have been low, Pennsylvania performance data demonstrate that Verizon's performance for provisioning and maintaining line-shared DSL loops to competitors is generally in parity.

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Verizon	PA	CC Docket No. 01-138	FCC 01-269	C-23	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)
Verizon	PA	CC Docket No. 01-138	FCC 01-269	C-24	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the Bell Atlantic New York and SWBT Texas orders.
Verizon	RI	CC Docket No. 01-324	FCC 02-63	37	76	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for hot cuts, line sharing and line splitting.
Verizon	RI	CC Docket No. 01-324	FCC 02-63	43-44	89	Based on the evidence in the record, we find, as did the Rhode Island Commission, that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop. Through September 2001, Verizon had completed approximately four line sharing orders in Rhode Island for unaffiliated competitive LECs and the Rhode Island performance data show almost no competitive LEC activity for lineshared DSL services in September or October. Although there has been very little ordering activity in Rhode Island for line sharing for the months reported, there has been much ordering activity in Massachusetts during the same period of time. Verizon's Massachusetts performance data demonstrate that it is provisioning lineshared DSL loops to competitors at parity with its own retail provisioning, and that its maintenance and repair performance is also acceptable.
Verizon	VA	WC Docket No. 02-214	FCC 02-297	80	138	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, x-DSL capable loops, digital loops, high capacity loops, as well as our review of Verizon's processes for line sharing and line splitting.
Verizon	VA	WC Docket No. 02-214	FCC 02-297	87	151	Line Sharing and Line Splitting. Covad argues that Verizon discriminates against competitors by refusing to provision UNE shared loops for customers served by resale voice providers. Covad complains that when it submits orders for UNE line shared loops for customers served by resellers of Verizon's voice service, Verizon refuses to provision the line sharing UNE, returning a rejection notice indicating "third party voice." We disagree with Covad that Verizon is obligated to provide access to the high frequency portion of the loop when the customer's voice service is being provided by a reseller, and not by Verizon.
Verizon	VA	WC Docket No. 02-214	FCC 02-297	C-27	50	On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL.)

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Verizon	VA	WC Docket No. 02-214	FCC 02-297	C-27	51	To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*.
Verizon	VA	WC Docket No. 02-214	FCC 02-297			Our rules do not require incumbent LECs to provide access to the high frequency portion of the loop when the incumbent LEC is not providing voice service over that loop. We disagree with Covad that Verizon is still considered the voice provider when a reseller is providing resold voice service to an end user customer. We agree, therefore, with Verizon that it is not required to provide access to the high frequency portion of the loop under these circumstances. We note that Verizon does permit the resale of its DSL service over resold voice lines so that customers purchasing resold voice are able to obtain DSL services from a provider other than Verizon.
Verizon	VT	CC Docket No. 02-7	FCC 02-118	28	48	Our conclusion is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, and our review of Verizon's processes for hot cuts, line sharing and line splitting.
Verizon	VT	CC Docket No. 02-7	FCC 02-118	32	55	Based on the evidence in record, we find, as did the Vermont Board, that Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop.