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

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Pacific Bell Telephone Company, and	)	WC Docket No. 02 - 306
Southwestern Bell Communications Services	)	
Inc., for Authorization To Provide In-Region,	)	
InterLATA Services in California	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2002 **Released: December 19, 2002**

By the Commission: Chairman Powell and Commissioner Copps issuing separate statements; Commissioner Martin dissenting and issuing a statement; and Commissioner Adelstein not participating.

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I. INTRODUCTION

1. On September 20, 2002, SBC Communications Inc., and its subsidiaries, Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively, Pacific Bell) filed this application pursuant to section 271 of the Communications Act of 1934, as amended,[1] for authority to provide in-region, interLATA service originating in the State of California.[2] We grant Pacific Bell's application in this Order based on our conclusion that Pacific Bell has taken the statutorily required steps to open its local exchange markets in California to competition.

2. We wish to acknowledge the effort and dedication of the California Public Utilities Commission (California Commission), for the significant time and effort expended in overseeing Pacific Bell's implementation of the requirements of section 271. The California Commission reviewed Pacific Bell's section 271 compliance in open proceedings with ample

[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act or the Act. *See* 47 U.S.C. §§ 151 *et seq*. We refer to the Telecommunications Act of 1996 as the 1996 Act. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Provision of In-Region, InterLATA Services in California*, WC Docket No. 02-306 (filed Sept. 20, 2002) (Pacific Bell Application).

opportunities for participation by interested third parties. The California Commission adopted comprehensive performance measures and standards, as well as a Performance Incentives/Remedy Plan designed to create a financial incentive for post-entry compliance with section 271.[3] In addition, the California Commission provided for extensive third-party testing of Pacific Bell's operations support systems (OSS) offerings.[4] As the Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purpose of the Act serve a vitally important role in the section 271 process.[5] We commend the state for its enormous time and effort in developing this application.

3. We also commend Pacific Bell for the significant progress it has made in opening its local exchange market to competition in California. Pacific Bell states that in its local service territory in California, competitive local exchange carriers (competitive LECs) provide local service to 786,000 residential lines, or 6 percent of total residential lines, and 1,816,000 business lines, or 20% of total business lines.[6] Additionally, of the estimated 2,602,000 competitive LEC lines in Pacific Bell's area in California, there were 151,000 resold lines, 222,000 UNE-Platform (UNE-P) lines, 494,000 lines using unbundled local loops, and an estimated 1,735,000 lines over CLECs' own self-provided facilities.[7] We believe that these results reflect the extensive efforts that Pacific Bell has made to open its local exchange markets to competition.

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long

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[3] Pacific Bell Application, App. A, Vol 1, Tab 1, Affidavit of Enrico R. Batongbacal (Pacific Bell Batongbacal Aff.) at para. 102.

[4] Pacific Bell Application at 2.

[5] *See, e.g.*, *Application of Verizon New York Inc.*, *Verizon Enterprise Solutions*, *Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, FCC 01-208, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*).

[6] Pacific Bell Application, App. A, Vol 5, Tab B, Affidavit of J. Gary Smith (Pacific Bell J. G. Smith Aff.) Table 2, at 7.

[7] Pacific Bell J. G. Smith Aff., Table 3, at 8. These figures represent the more conservative of two methods used by Pacific Bell to estimate competing carriers' self-provided lines (i.e., using E911 listings).

distance service.[8] Congress provided for Commission review of BOC applications to provide such service in consultation with the affected state and the U.S. Attorney General.[9]

5. On March 31, 1998, Pacific Bell filed its draft section 271 application, to provide in-region, interLATA service in California, with the California Commission.[10] Following a series of collaborative meetings, comment cycles, and workshops, the California Commission released a report in October 1998 that provided Pacific Bell with a series of corrective actions that would bring them into further compliance with the requirements under section 271. On July 15, 1999, Pacific Bell made a compliance filing for section 271 approval with the California Commission.[11]

6. Pacific underwent third party OSS testing from June 1999, until the first quarter of 2001.[12] In April 2001, the California Commission held an open hearing for all interested parties to discuss outstanding issues relating to Pacific Bell's application.[13] A decision was released on September 19, 2002, affirming a July 23, 2002 Draft Order,[14] in which the California Commission granted Pacific Bell's motion for a finding that it had "substantially satisfied" the requirements set forth in section 271 of the 1996 Act.[15]

7. The California Commission determined that Pacific Bell had successfully complied with 12 of the 14 checklist items.[16] The California Commission also emphasized that Pacific Bell had successfully passed the independent third party test of its OSS and noted the strong performance results Pacific Bell has achieved across many service categories.[17] The

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[8] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[9] The Commission has summarized the relevant statutory framework in prior orders. *See, e.g.*, *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*).

[10] Pacific Bell Application at 5.

[11] Pacific Bell Batongbacal Aff. at para. 68.

[12] Pacific Bell Application at 5.

[13] Pacific Bell Application at 7.

[14] Pacific Bell Application at 7.

[15] *Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order That It Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 27,1 and Denying That It Has Satisfied 5 709.2 of The Public Utilities Code* (Sept. 19, 2002), (*California Commission Order*) at 4-5. Pacific Bell Application at 5.

[16] *California Commission Order* at 2.

[17] *California Commission Order* at 2.

California Commission, however, withheld approval of checklist item 11 (number portability) and checklist item 14 (resale).[18] According to the California Commission, Pacific Bell could not demonstrate its compliance with the number portability requirements of checklist item 11 until Pacific Bell implemented a mechanized Number Portability Administration Center (NPAC) check process.[19] With regard to the resale requirements of checklist item 14, the California Commission concluded that Pacific Bell "has erected unreasonable barriers to entry in California's digital subscriber line market by both not complying with its resale obligation with respect to its advanced services…and by offering restrictive conditions in the SBC Advanced Solutions Inc. (ASI) CLEC Agreements."[20] Furthermore, based on its analysis of section 709.2 of the California Public Utilities Code, the California Commission determined that, although Pacific Bell met most of the technical requirements under section 271, it could not support Pacific's entry into the long distance market as beneficial to the public interest.[21]

8. We note that subsequently, the California Commission issued a proposed draft decision on December 12, 2002, in order to address the section 709.2 inquiry.[22] The draft decision proposed several measures in order to alleviate concerns regarding the possibility of anti-competitive harm from Pacific Bell. With these proposed measures, the draft decision recommends that Pacific Bell be granted authority to operate and provide intrastate interexchange telecommunications services, provided that this Commission approve Pacific Bell's 271 application.

9. On October 25, 2002, the Department of Justice filed its evaluation recommending approval of this application with certain qualifications. Specifically, the Department of Justice noted that the California Commission's decision regarding checklist items 11 and 14 do not appear to preclude approval of Pacific Bell's application.[23] The Department also expressed concern regarding total-element long-run incremental cost (TELRIC) pricing and the true-up mechanism that Pacific Bell has proposed for use in California. Specifically, the Department of Justice states:

> Conceivably, SBC's proposal could have the effect of altering the Commission's approach to cross-state comparisons of rates. At the

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[18] *California Commission Order* at 2-3.

[19] *California Commission Order* at 3.

[20] *California Commission Order* at 3.

[21] *California Commission Order* at 4. California law establishes a separate state public interest requirement with regard to Pacific Bell's entry into the intrastate interLATA market in California.

[22] *See* Pacific Bell Dec. 13 *Ex* Parte Letter at Attach 2 (Draft Final Decision on the Public Utilities Code Section 709.2(c) Inquiry, R.93-04-003, *et seq.* (Dec. 12, 2002) (*Draft Final Decision on the Public Utilities Code Section 709.2(c) Inquiry*)).

[23] Department of Justice Evaluation at 4.

> very least, the ambiguity of the proposal invites unnecessary future debate over such issues. The Department therefore urges the Commission to resolve this ambiguity before relying in any way on SBC's commitment.[24]

10. In addition, in view of the California Commission's findings with respect to the public interest, the Department deferred to this Commission's decisions regarding the impact of continuing state proceedings on Pacific Bell's compliance with the section 271 public interest standard.[25] While the Department of Justice supports approval of Pacific Bell's application, based on the current record, it noted its conclusions were subject to the Commission's review of certain concerns expressed in its Evaluation.

III. COMPLIANCE WITH SECTION 271(c)(1)(A)

11. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[26] To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[27] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[28] The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"[29] which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.[30]

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[24] Department of Justice Evaluation at 9.

[25] Department of Justice Evaluation at 5.

[26] 47 U.S.C. § 271(d)(3)(A).

[27] *Id.*

[28] *Id.*

[29] *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695 at para. 14 (1997) (SWBT Oklahoma Order).

[30] SWBT Kansas/Oklahoma Order, 16 FCC Rcd at 6357, para. 42; *see also Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan,* Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, at para. 78 (1997) (Ameritech Michigan Order).

12. We conclude, as did the California Commission,[31] that Pacific Bell satisfies the requirements of Track A in California. We base this decision on the interconnection agreements Pacific Bell has implemented with competing carriers in California and the number of carriers that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers.[32] No party challenges Pacific Bell's finding of compliance with section 271(c)(1)(A). In support of its Track A showing, Pacific Bell relies on interconnection agreements with AT&T, WorldCom and Allegiance Telcom.[33] We find that each of these carriers serves more than a *de minimis* number of residential and business customers predominantly over its own facilities and represents an "actual commercial alternative" to Pacific Bell in California.[34] Specifically, the record demonstrates that AT&T and WorldCom each provide service to residential and business customers over their own facilities, UNE-P and UNE Loops, and Allegiance Telcom provides service to residential and business customers over its own facilities and UNE Loops.[35]

IV. PRIMARY ISSUES IN DISPUTE

13. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish checklist compliance with every checklist item. Rather, we rely on the legal and analytical precedent established in prior 271 orders, and we attach comprehensive appendices containing performance data and the statutory framework for evaluating section 271 applications.[36] Our conclusions in this Order are based on

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[31] *California Commission Order* at 10.

[32] *California Commission Order* at 9. For a list of competitive LECs' approved interconnection agreements, see Pacific Bell Batongbacal Aff., Attach. A-1 to A-9.

[33] Pacific Bell J.G. Smith Aff. at para. 5.

[34] *See SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

[35] Pacific Bell J.G. Smith Aff. at Tab. 8, Attach. E-1 and E-2 (*citing confidential information*).

[36] Appendices B (California Performance Data), and C (Statutory Requirements). *See also, Application by Verizon New England Inc., Bell Atlantic Communications, Inc.* (*d/b/a Verizon Long* Distance), *NYNEX Long Distance Company* (*d/b/a Verizon Enterprise Solutions*), *Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, Memorandum Opinion and Order, 17 FCC Rcd 3300, Apps. B, C, and D (2002) (*Verizon Rhode Island Order*); *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, 16 FCC Rcd 20719, Apps. B, C, and D (*SWBT Arkansas/Missouri Order*); *Application of Verizon Pennsylvania Inc.*, *Verizon Long Distance*, *Verizon Enterprise Solutions*, *Verizon Global Networks Inc.*, and *Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17508-545, Apps. B and C (2001) (*Verizon Pennsylvania Order*).

performance data as reported in monthly performance reports reflecting service in the most recent months before filing, specifically, May through September 2002.[37]

14. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing Pacific Bell's compliance with checklist item 2 (UNEs), checklist item 11 (number portability), and checklist item 14 (resale). Next, we address the following checklist items: checklist item 1 (interconnection), checklist item 4 (unbundled local loops), checklist item 5 (transport), and checklist item 13 (reciprocal compensation). The remaining checklist items, 3, 6-10, and 12, are discussed briefly. We then consider whether the requested authorization would be consistent with the public interest, and address the California Commission's analysis under section 709.2 of the California Public Utilities Code. We find, based on our review of the evidence in the record, that Pacific Bell satisfies all of the section 271 requirements.

A. Checklist Item 2 – Unbundled Network Elements

15. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[38] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[39]

1. Pricing of Unbundled Network Elements

16. Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing

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[37] We examine data through September of 2002 because they describe performance that occurred before comments were due in this proceeding on October 9, 2002. *See Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Ind. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18372 at para. 39 (2000) (*SWBT Texas Order*).

[38] 47 U.S.C. § 271(B)(ii). Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of UNEs "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1665 (2002) (*Verizon v. FCC*). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999).

[39] 47 U.S.C. § 251(c)(3).

the network elements, and may include a reasonable profit.[40] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on TELRIC principles of providing those elements.[41]

17. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.[42] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[43] We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

18. Commenters in these proceedings assert numerous challenges to Pacific Bell's pricing that were never raised before the state commission. Just as it is impractical for us to conduct a *de novo* review of the state commission's pricing determinations, it is likewise generally impractical for us to make determinations about issues that were not specifically raised before the state commission in the first instance. During the course of its UNE pricing proceeding, the state commission is able to cross examine witnesses, compel discovery, and direct the submission of additional record evidence on particular issues. This Commission lacks the time to employ such tools during the course of the 90-day statutory review period for section 271 applications. Without the means to test and evaluate evidence during this short statutory review period, and without a state record to analyze with respect to issues not raised before the state commissions, we are often left to resolve factually complex issues based simply on the untested written assertions of various experts. We have confidence that the California Commission will continue to exercise its authority over setting rates to ensure that UNE prices comply with TELRIC as required by our rules and the Act.

19. We take this opportunity to set forth the analytical framework we employ to review section 271 applications in these situations. As the Commission's previous decisions make clear, a BOC may submit as part of its *prima facie* case a valid pricing determination from

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[40] 47 U.S.C. § 252(d)(1).

[41] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition Order*); 47 C.F.R. §§ 51.501-51.515. The Supreme Court has recently upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs. *Verizon v. FCC*, 122 S. Ct. at 1679 (2002).

[42] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55 (citations omitted); *see also Sprint Communications Company L.P. v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001) ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

[43] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55.

a state commission. In such cases, we will conclude that the BOC meets the TELRIC pricing requirements of section 271[44] unless we find that the determination violates basic TELRIC principles or contains clear errors of fact on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.[45] Once the BOC makes a *prima facie* case of compliance, the objecting party must proffer evidence that persuasively rebuts the BOC's *prima facie* showing. The burden then shifts to the BOC to demonstrate the validity of its evidence or the state commission's approval of the disputed rate or charge.[46] When a party raises a challenge related to a pricing issue for the first time in the Commission's section 271 proceedings without showing why it was not possible to raise it before the state commission, we may exercise our discretion to give this challenge little weight. In such cases, we will not find that the objecting party persuasively rebuts the *prima facie* showing of TELRIC compliance if the BOC provides a reasonable explanation concerning the issue raised by the objecting party.

20. With these principles in mind and after thoroughly reviewing the record in this application, we find that Pacific Bell's UNE rates in California are just, reasonable, and nondiscriminatory, and satisfy checklist item two. Before we discuss commenters' arguments and our conclusions, we summarize the pricing proceedings in California.

a. Background

21. The California Commission set UNE rates for Pacific Bell after an extensive multi-phase review process. On April 7, 1993, the California Commission initiated the Open Access and Network Architecture Development (OANAD) proceeding to facilitate the introduction of competition into the local telecommunications market in California.[47] The

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[44] When a state commission makes a determination that rates are TELRIC-compliant, it may not have explicitly analyzed every component of such rates, particularly when no party has taken issue with the component. Indeed, we do not provide extensive analysis on checklist items that receive little or no attention from commenters when our own review of the record leads us to conclude that the BOC has satisfied these requirements.

[45] *See, e.g., Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12305, para. 68 (2002) (*Verizon New Jersey Order*).

[46] *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20635-39, paras. 51-59 (1998) (*Second BellSouth Louisiana Order).*

[47] Pacific Bell Application App. D, Vol. 1, Tab 1, *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks; Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks (OANAD Proceeding),* R. 93-04-003, I. 93-04-002, Order Instituting Rulemaking and Order Instituting Investigation, California Commission (1993) (*OANAD Rulemaking and* (continued….)

culmination of the OANAD cost proceeding was the issuance of two decisions in 1998 in which the California Commission approved with modifications TELRIC studies prepared by Pacific Bell, as well as the methodology and principles for future cost studies.[48] The California Commission specifically found that "[w]ith the corrections and adjustments ordered by this decision, the [recurring] cost studies submitted by Pacific [Bell]. . . adequately comply with the TELRIC principles adopted herein, and can be used to set prices for the unbundled network elements to be offered by Pacific [Bell]."[49] The California Commission also found that "[i]t is just and reasonable to use Pacific [Bell's] nonrecurring UNE cost model changeover model as modified, to develop final nonrecurring UNE and changeover costs for Pacific [Bell.]"[50]

22. Based on the TELRIC studies approved in these rate cases and after an exhaustive review process which included voluminous discovery, evidentiary hearings, and comments filed by interested parties, the California Commission adopted prices for the UNEs on November 18, 1999.[51] In its decision, the California Commission acknowledged that the TELRIC costs that it had used to set rates were "based largely on data that [had] . . . not been updated since 1994" and that there was "evidence that some of these costs may be changing rapidly."[52] The California Commission therefore established a process for an annual reexamination of the costs of up to two UNEs.[53]

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Investigation Order); *see also* Pacific Bell Application App. A, Tab 23, Affidavit of Linda S. Vandeloop (Pacific Bell Vandeloop Aff.) at para. 9.

[48] Pacific Bell Application App. C, Vol. 3, Tab 30*, OANAD Proceeding,* Interim Decision Adopting Cost Methodology, Evaluating the Hatfield Computer Model, and Deciding Other Issues Related to Cost Studies of Pacific Bell's System, D. 98-02-106*,* California Commission (1998) *(First OANAD Cost Decision*); Pacific Bell Application App. C, Vol. 5, Tab 45, *OANAD Proceeding*, Opinion, D. 98-12-079, California Commission (1998) (*Second OANAD Cost Decision*); *see also* Pacific Bell Vandeloop Aff. at para. 10.

[49] *First OANAD Cost Decision*, Conclusion of Law No. 57; *see also* Pacific Bell Vandeloop Aff. at para. 10. The California Commission also found that Version 2.2.2 of the Hatfield Model, sponsored jointly by AT&T and MCI, had too many structural infirmities to allow it, and the hypothetical costs for the local exchange network it modeled, to be used in place of the TELRIC studies submitted by Pacific Bell.

[50] *Second OANAD Cost Decision*, Conclusion of Law No. 5*; see als*o Pacific Bell Vandeloop Aff. at para. 10; Pacific Bell Application App. C, Vol. 6, Tab 50, *OANAD Proceeding*, Order Granting Limited Rehearing to Modify Decision (D.) 98-12-079 and Denying Rehearing of Modified Decision*,* D. 99-06-060, California Commission, ordering para. no. 2(i) (1999) (*Second OANAD Cost Decision Modification*).

[51] Pacific Bell Application App. C, Vol. 7, Tab 60, *OANAD Proceeding,* Interim Decision Setting Final Prices for Network Elements Offered by Pacific Bell*,* D. 99-11-050, California Commission (1999) (*OANAD Pricing Decision*). Numerous parties participated in the proceeding, including Pacific Bell, AT&T, MCI Communications Corporation (now WorldCom Inc.), Sprint, and NEXTLINK (now XO California, Inc.). *See also* Pacific Bell Vandeloop Aff. at paras. 10-11.

[52] *OANAD Pricing Decision* at 168.

[53] *Id*. at 168-69, Conclusion of Law Nos. 68, 69, and ordering para. 11. A party nominating a UNE for review must include a summary of evidence demonstrating a cost change of at least 20 percent up or down from the costs (continued….)

23. On June 14, 2001, as part of its first annual reexamination of the costs of Pacific Bell's UNEs, the California Commission determined that there was a reasonable presumption to believe that costs may have declined for unbundled switching and unbundled loops and began a proceeding to review the costs of these two UNEs.[54] On May 16, 2002, after finding that the inadequacies in Pacific Bell's cost filings had resulted in delays and the need to examine competing cost models, the California Commission adopted interim discounts to Pacific Bell's unbundled loops and unbundled local and tandem switching.[55] Specifically, the California Commission adopted on an interim basis a 15.1 percent, a 69.4 percent and a 79.3 percent reduction to Pacific's unbundled loop, unbundled local switching, and unbundled tandem switching rates, respectively.[56] On September 19, 2002, the California Commission extended the interim 69.4 percent discount beyond the basic (two-wire) port type to include all port types.[57] The *2002 Relook Proceeding* has commenced and been consolidated with the *2001 Relook*

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approved in the prior applicable rate case for the UNE to be eligible for nomination. *Id*. at 168-69; *see also* Pacific Bell Vandeloop Aff. at paras. 2-3.

[54] *See California Commission Order* at 109. The Assigned Commissioner and Administrative Law Judge in the 2001 reexamination proceeding reiterated an earlier decision denying a request for leave to file a competing cost model to that which Pacific Bell would file. They maintained that it was appropriate to limit the scope of the proceeding to review of Pacific Bell's cost model as long as the cost models and studies allowed parties to: (1) reasonably understand how costs are derived for unbundled loops and switching, (2) generally replicate Pacific Bell's calculations, and (3) propose changes in inputs and assumptions in order to modify the costs produced by these models. *See California Commission Order* at 109-10.

[55] Pacific Bell Application App. C, Vol. 10, Tab 77, *Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D. 99-11-050, et al. (2001 Relook Proceeding),* Interim Opinion Establishing Interim Rates for Pacific Bell Telephone Company's Unbundled Loop and Unbundled Switching Network Elements*,* D. 02-05-042*,* California Commission, at 2 and 17 (2002) (*Interim Rates Interim Decision*); *see also California Commission Order* at 119.

[56] *Interim Rates Interim Decision* at 2-3; *see also California Commission Order* at 119.

[57] Letter from Geoffrey M. Klineberg, Esq., Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sept. 30, 2002) (Pacific Bell Sept. 30 *Ex Parte* Letter) Attach. 3, *Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D. 99-11-050, et al. (Consolidated 2001/2002 Relook Proceeding* or *Relook Proceeding),* Interim Opinion Applying Pacific Bell Telephone Company Interim Switching Discounts to All Port Types*,* D. 02-09-052, California Commission, at 2 (2002) (*All Port Types Interim Switching Discount Decision*). Specifically, the California Commission adopted an interim discount of 69.4 percent to Pacific Bell's Coin Port, Centrex Port, Direct Inward Dial (DID) Port, DID number block, Integrated Services Digital Network (ISDN) Port, Trunk Port Terminations (i.e., end office termination and tandem termination), and DS1 Port. The interim price reductions adopted in these rate cases became effective immediately and the interim rates were made subject to adjustment once the California Commission adopts final rates for Pacific Bell's unbundled loops and unbundled switching in the *Relook Proceeding. Id.* at 11.

Proceeding to consider the costs and prices of DS3 loops and entrance facilities, DS1 and DS3 unbundled dedicated transport, and signaling system 7 (SS7) links, as well as the loop and switch prices.[58]

24. On August 6, 2002, the United States District Court for the Northern District of California determined that the California Commission had miscalculated the total direct costs of Pacific Bell's UNEs by double-counting Pacific Bell's nonrecurring costs when it calculated the shared and common cost markup percentage.[59] Finding that the error unlawfully deflated Pacific Bell's markup from 21 percent to 19 percent, the court vacated and remanded to the California Commission its calculation of Pacific Bell's total direct costs of UNEs used in the markup, as well as those decisions that depended upon the incorrect calculation.[60] On September 19, 2002, the California Commission, in response to the remand order, increased Pacific Bell's shared and common cost markup percentage from 19 percent to 21 percent.[61] In addition, concluding that the total direct UNE cost figure that the court remanded for review was also used to set Pacific Bell's monthly recurring charges, the California Commission directed Pacific Bell to remove 13 percent from the expense portion of its UNE recurring costs to correct the overstatement.[62]

25. On September 19, 2002, the California Commission found that Pacific Bell had demonstrated that it provides nondiscriminatory access to unbundled network elements at just and reasonable rates, terms and conditions.[63] The California Commission therefore concluded that Pacific Bell satisfied the requirements of checklist item two.[64] The California Commission

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[58] Pacific Bell Application App. K, Vol. 10, Tab 52, *Consolidated 2001/2002 Relook Proceeding, Scoping Memo for Consolidated 2001/2002 Unbundled Network Element (UNE) Reexamination for Pacific Bell Telephone Company,* California Commission (2002) (*Scoping Memo*); *see also* Pacific Bell Vandeloop Aff. at para. 29.

[59] Pacific Bell Application App. K, Vol. 10, Tab 55, *AT&T Communications of California, Inc. v. Pacific Bell Tel. Co*., No. C01-02517 CW, slip op. at 36-38 (N.D. Cal. Aug. 6, 2002) (*AT&T v. Pacific Bell Remand Order*); *see also* Pacific Bell Sept. 30 *Ex Parte* Letter Attach. 2, *Consolidated 2001/2002 Relook Proceeding,* Opinion on Remand Addressing Shared and Common Cost Markup Established in Decision 99-11-050 and Unbundled Network Element Recurring Prices*,* D. 02-09-049, California Commission, at 7 (2002) (*Shared and Common Cost Markup Remand*).

[60] *AT&T v. Pacific Bell Remand Order*, slip op. at 25-33.

[61] *Shared and Common Cost Markup Remand* at 18 and ordering para. no. 1. The percentage markup was made effective immediately. *Id*. at 18.

[62] *Id*. at 3, Conclusion of Law No. 10, and ordering para. no. 2. The changes the California Commission adopted to Pacific Bell's shared and common cost markup and to the expense portion of its UNE recurring costs were made effective immediately (i.e., September 19, 2002), but implementation of the rate changes was stayed pending a final determination by the California Commission of the actual rate changes*.* *Id*. at 2-3, and Conclusion of Law Nos. 16 and 17.

[63] *California Commission Order* at 120, Finding of Fact No. 180, and Conclusion of Law No. 43; *see also id.,* Finding of Fact No. 178.

[64] *Id.* at 120, and Conclusion of Law No. 44.

also stated that it would move steadfastly in its consolidated *Relook Proceeding* to adopt permanent rates to replace the interim adjustments made to Pacific Bell's switching and loop rates.[65]

b. Discussion

(i) Complete-As-Filed Requirement

26. Before evaluating Pacific Bell's compliance with the requirements of section 271, we discuss why we accord evidentiary weight to a rate reduction that it filed on day 45. The Commission maintains certain procedural requirements governing section 271 applications. In particular, the "complete-as-filed" requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record. The Commission can waive its procedural rules, however, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[66]

27. We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules to the extent necessary to consider the rate reduction filed by Pacific Bell on day 45.[67] We conclude that the special circumstances before us here warrant a deviation from the general rules for consideration of late-filed information or developments that take place during the application review period. In particular, as we discuss below, we find that the interests our normal procedural requirements are designed to protect are not affected by our consideration of the late-filed rate reduction. In addition, we also conclude that consideration of the rate reductions will serve the public interest. We will continue to enforce our procedural requirements in future section 271 applications, however, in the absence of such special circumstances, in order to ensure a fair and orderly process for the consideration of section 271 applications within the 90-day statutory deadline.

28. There are special circumstances here that satisfy the first element of the test for grant of a waiver. At the time Pacific Bell filed its application with us on September 20, 2002, the California Commission had approved the rate for DS3 loops but had decided to include the rate as part of its *Relook Proceeding* because it believed the rates were based on outdated cost information. Pacific Bell proposed a DS3 rate of $573.20 to the California Commission for its

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[65] *Id.* at 120.

[66] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). *See also* 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

[67] Pacific Bell Application Reply App., Tab 17, Affidavit of Linda S. Vandeloop (Pacific Bell Vandeloop Reply Aff.) at para. 16.

rate submission in the *Relook Proceeding*, but did so after it filed its section 271 application and after comments were due in this proceeding. Thus, it was not possible for Pacific Bell to lower its DS3 loop rate to its proposed rate in the *Relook Proceeding* until after it would run afoul of our complete-when-filed requirement. Pacific Bell asserts in its brief that it believes it is likely that new rates will be adopted for those elements at the conclusion of the *Relook Proceeding*. Pacific Bell admits that this lower rate "is likely the rate ceiling for the [California Commission]'s ultimate determination."[68]

29. Second, interested parties have had an opportunity to evaluate the new rates and to comment. Pacific Bell filed its rate change with its reply comments on day 45, and XO, the party that raised the issue, has commented on it.[69] This fact, taken with the fact that the rate adjustment was limited to the reduction of a single UNE, demonstrates that it was not unduly difficult for commenters to respond to Pacific Bell's actual reduction or Commission staff to evaluate the change within the 90-day review period. The Department of Justice did not comment on the modified rate, but in its initial comments states that it "defers to the Commission's ultimate determination of whether the prices supporting this application are appropriately cost-based."[70] Because the Commission and commenters have had sufficient time and information to evaluate Pacific Bell's application, we see no need to restart the 90-day clock.

30. Finally, in this instance, Pacific Bell has responded to criticism in the record by taking positive action that will foster the development of competition. This is very different from the situation in which late-filed material consists of additional arguments or information concerning whether current performance or pricing satisfies the requirements of section 271. In addition, this application is otherwise persuasive and demonstrates a commitment to opening local markets to competition as required by the 1996 Act.

31. We conclude that grant of this waiver will serve the public interest and thus satisfy the second element of the waiver standard. In particular, grant of this waiver permits the Commission to act on this section 271 application quickly and efficiently without the delays inherent in restarting the 90-day clock. Grant of this waiver also serves to credit Pacific Bell's decision to respond positively to criticism in the record concerning its rate levels by making a pro-competitive rate reduction. Given that interested parties have had an opportunity to comment on the rate reduction, we do not believe that the public interest would be served in this instance by strict adherence to our procedural rules. Nor do we need to delay the effectiveness of this Order, as we did in the *SWBT Kansas/Oklahoma Order*.[71] In contrast to that situation,

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[68] Pacific Bell Application Reply App., Tab 17, Affidavit of Linda S. Vandeloop (Pacific Bell Vandeloop Reply Aff.) at para. 16.

[69] *See* Letter from Cathleen Massey, Vice President, XO Communications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, WC Docket No. 02-306 (filed Nov. 12, 2002) (XO Nov. 12 *Ex Parte* Letter).

[70] Department of Justice Evaluation at 6-8.

[71] *SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6249-50, paras. 26-27.

here the California Commission dictated the timing by its reevaluation of the DS3 loop rate in its ongoing rate proceeding. As we have made clear above, however, we do not intend to allow a pattern of late-filed changes to threaten the Commission's ability to maintain a fair and orderly process for consideration of section 271 applications.

(ii) Application of TELRIC Standard

32. Based on the evidence in the record, we find that Pacific Bell's charges for UNEs made available to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item two. As discussed above, we waive our "complete-when-filed" rule in the unique circumstances presented by this application to consider Pacific Bell's reduced DS3 loop rates as evidence of compliance with checklist item two.

33. As an initial matter, we find that the California Commission followed basic TELRIC principles. We disagree with AT&T's assertion that the California Commission never made an affirmative finding that California rates are TELRIC-compliant.[72] The California Commission stated that "[w]e have and shall continue to adopt cost-based, TELRIC compliant UNE rates in California. We have made interim adjustments where we have found the most significant disparities, and will move to adopt permanent rates."[73] As discussed above, the orders of the California Commission provide numerous indicia that it followed a forward-looking approach that is consistent with TELRIC. We find that the California Commission has demonstrated an admirable and consistent commitment to TELRIC principles and has worked diligently to set UNE rates at TELRIC levels.

34. We also find that the California Commission properly applied the TELRIC methodology and applicable Commission precedent regarding several issues disputed by the commenters. Specifically, we disagree with AT&T's assertion that Pacific Bell should fail this checklist item because some of its UNE rates are based on outdated cost information.[74] AT&T asserts that the California Commission last approved permanent rates in 1998, based on 1997 cost studies that relied on 1994 data.[75] To begin with, the issue of outdated data is not particularly relevant to those rates to which we apply our benchmark analysis. That is, because our benchmark analysis allows us to find that a rate in dispute in a section 271 application under consideration is TELRIC-compliant if it is less than the benchmark rate, taking into account different underlying costs, the issue of "old age" relates, not to the disputed rate, but to the benchmark rate. And, as explained more fully below, we find that no challenger has presented

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[72] AT&T Comments at 15-17, 26-27.

[73] *California Commission Order* at 120.

[74] AT&T alleges that signaling, transport, collocation, and nonrecurring rates violate TELRIC because they are based on outdated cost data. *See* AT&T Comments at 15-18.

[75] *Id*.

evidence so strong that the benchmark rates are so unreasonably outdated that we should conclude that they do not continue to serve as a reasonable benchmark.[76]

35. We also conclude that challengers do not present evidence so strong that the non-benchmarked rates are so unreasonably outdated that we should conclude that they are not TELRIC-compliant. Although we recognize that the court's analysis in *WorldCom* focused on rates subject to a benchmark analysis, we believe that the same analysis applies to rates not subject to a benchmark analysis, because the same rate-setting process, which takes substantial amounts of time, is required. In *WorldCom*, the D.C. Circuit upheld the Commission finding that Verizon's rates in Massachusetts were TELRIC-compliant. It recognized that a "lag" between the time period in which costs declined and the time a state commission modifies its rates to reflect changing costs is "both unavoidable and perhaps even desirable."[77] The court continued: "[i]n *AT&T* we recognized that a state's TELRIC rates could not always reflect the most recently available information, since rate determinations consume substantial periods of time and cannot be constantly undertaken."[78] As the court stated, "the mere age of a rate doesn't render the FCC's reliance on it unreasonable."[79] The court, however, noted that "[a]t some point, [an argument that rates are outdated] plainly must become a winner."[80] That point, according to the court, occurs when rates become "ancient" in "a market with falling costs," or "have been based on fraudulent ILEC submissions," or a "challenger . . . tender[s] evidence of . . . unreasonableness [with regard to the rates] so strong as to preclude FCC approval without a hearing."[81] In regard to the issue of "old rates," the court specifically stated that, even where the Commission made no explicit findings with regard to the rates at issue, "it adopted what is likely a far more workable approach to the problem of timeliness – namely, reliance on the state's own processes of rate revision and correction."[82]

36. We find that the California Commission has demonstrated its commitment to setting UNE rates at TELRIC levels, and we are confident that it will modify rates appropriately if presented with adequate evidence that costs have declined. The annual *Relook Proceeding* is the appropriate forum for AT&T to raise its claim that certain UNE rates are based on outdated cost information. We find that AT&T has presented insufficient evidence for us to conclude that

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[76] *See WorldCom v. FCC,* 308 F.3d 1, 8 (D.C. Cir. 2002) (*WorldCom*).

[77] *Id*.

[78] *Id*. (citing *AT&T v. FCC*, 220 F.3d 607, 617-18 (D.C. Cir. 2000)).

[79] *Id*.

[80] *Id*. at 7.

[81] *Id.*

[82] *Id*. at 8.

certain of Pacific Bell's UNE rates violate TELRIC because they are based on old data and we rely on the California Commission's "own processes of rate revision and correction."[83]

37. Moreover, we find that the California Commission's use of interim rates does not violate our rules or basic TELRIC principles. In the *SWBT Texas Order*, the Commission found that "the mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set."[84] The California Commission is currently re-examining loop and switching rates according to its scheduled *Relook Proceeding*, and expects to set new permanent rates in the near future. Given that the California Commission follows TELRIC principles, we have confidence that the permanent rates will comply with our rules.[85] The interim rates, which are lower than the permanent rates they replace, encourage competitive entry while the California Commission examines updated cost information. Additionally, the interim rates are subject to true-up. We thus find that the interim rates in California conform to our guidelines and are "reasonable under the circumstances."

38. We disagree with AT&T's assertion that Pacific Bell's switching and loop rates, which were set by the California Commission on an interim level, are not TELRIC-compliant but were obtained by applying a few "rough cut" discounts to the old loop and switching rates.[86] AT&T also contends that the Commission has approved interim rates in prior section 271 cases only when a few UNE rates were interim and the vast majority of rates, particularly those comprising the UNE-P, were set on a permanent basis, which is not the case in California.[87] As

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[83] *Id*.

[84] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 87.

[85] Additionally, the California Commission's actions in response to its problems with Pacific Bell's actions in the state rate case are similar to the Kansas Commission's actions in a prior 271 order. In the *SWBT Kansas/Oklahoma Order*, the Commission approved a voluntary, across-the board discount to nonrecurring rates in light of the fact that the state commission's rate-setting efforts "were hampered by carriers' failure to follow its directions in running their respective cost studies." *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6267, para. 60. The Commission's actions were upheld by the D.C. Circuit Court of Appeals. *Sprint v. FCC*. Here, the California Commission found that it was hampered in its efforts to set switching and loop rates by Pacific Bell's refusal to follow the state commission's instructions to file updated versions of its cost model and to supply its cost model in a form that other carriers could understand and replicate. *Interim Rates Interim Decision* at 10-12. The California Commission found that Pacific Bell's deficient cost filing "left a muddle" due to the "inadequacies of [its] cost filing," *Interim Rates Interim Decision* at 16, and it granted the request for interim rates filed by AT&T and WorldCom.

[86] Specifically, the interim loop rates were generated by varying a small subset of inputs used in the HAI Model 5.2a – the model proposed by AT&T and WorldCom – to estimate the magnitude of loop cost declines. *See* AT&T Comments at 16-17; *see also* Letter from Christopher T. Shenk, Esq., Counsel for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 at 2 (filed Nov. 26, 2002) (AT&T Nov. 26 Shenk *Ex Parte* Letter).

[87] AT&T Comments at 30.

discussed, we find the California Commission's actions to be reasonable under the circumstances, to conform to other circumstances in which we have approved interim rates, and to be a pro-competitive step while the state commission examines new cost data. We take additional comfort in the fact that Pacific Bell has voluntarily agreed to a cap on its rate recovery that will not allow the rates to go any higher than rates that will benchmark to its rates in Texas, even if the California Commission adopts modified rates that would allow Pacific Bell to charge these higher rates.[88]

39. We disagree with AT&T's claim that Pacific Bell's interim rate reductions are not sufficient to bring its recurring loop and switching rates into a reasonable TELRIC range.[89] As discussed below, the interim rates pass a benchmark to SWBT's Texas rates, which provides us with assurance that the switching and loop rates fall within a reasonable TELRIC range.

40. We also disagree with AT&T's assertion that Pacific Bell's interim rates are "sham" and are part of a "bait-and-switch" strategy.[90] AT&T asserts that Pacific Bell has submitted cost studies to the California Commission as part of its ongoing rate case to support rates higher than the existing interim rates.[91] AT&T contends that such submissions are proof that Pacific Bell intends to obtain section 271 approval based on lower rates but will implement much higher rates after it obtains such approval.[92]

41. We have previously held that a BOC's submission of new cost data in an ongoing rate case does not prove that existing rates are outside a TELRIC range.[93] Additionally, we do not find that the existence of a pending UNE rate investigation alters our analysis of Pacific Bell's section 271 application. As we have noted previously, we perform our section 271 analysis based on the rates before us.[94] If, as is the case here, we find that Pacific Bell's rates in California pass the checklist requirements, then Pacific Bell has met its section 271 obligations. If Pacific Bell were to raise its UNE rates in the future above the range that a reasonable

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[88] *See* Pacific Bell Vandeloop Reply Aff. at paras. 14-15.

[89] AT&T Comments at 16-17, 29-30.

[90] AT&T Nov. 26 Shenk *Ex Parte* Letter at 3. *See also* Letter from Stephen Gunn, Vice President, Working Assets Funding Service, Inc., to Michael K. Powell, Chairman, Federal Communications Commission, WC Docket No. 02-306 (filed Dec. 4, 2002).

[91] *Id*.

[92] *Id*.

[93] *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9066 at para. 96 (2002) (*BellSouth Georgia/Louisiana Order*).

[94] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066-67, para. 97 (*citing Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31).

application of TELRIC principles would produce, such rates might contravene the requirements of section 271. We cannot assume, however, that the rates Pacific Bell proposed to the California Commission in the *Relook Proceeding* are not cost justified or that the California Commission would approve rates that violate TELRIC. Additionally, section 271 provides a mechanism for parties to challenge any UNE rates as being outside a reasonable TELRIC range.[95] Under section 271(d)(6)(A), we have the authority to review any future rate increases implemented by Pacific Bell.[96] If we determine that future rate increases are not TELRIC compliant, we may suspend the rates, revoke Pacific Bell's section 271 authority, or impose other penalties.[97]

42. In response to concerns raised by some commenters and the Department of Justice that Pacific Bell has not provided sufficient detail of its true-up commitment, Pacific Bell clarifies that it has committed to a cap on the amount of the true-up. Pacific Bell's commitment is to true up to rates no greater than rates that would pass a benchmark analysis to current Texas rates.[98] As a result, Pacific Bell commits that competitive LEC entering the California market will not pay more than $18.52 for the UNE-P during the period interim rates are in effect, no matter what rate revisions are adopted by either the Texas or California Commission.[99] The true-up will occur after the California Commission sets permanent rates and will be calculated in the same manner that benchmarked rates are calculated, that is, by comparing weighted average California rates based on California state-specific usage figures to weighted average Texas rates based on Texas state-specific usage figures.[100] Should a competitive LEC believe that Pacific Bell's application of its true-up commitment results in Pacific Bell's California loop or non-loop rates not meeting a benchmark to the comparable rates in Texas, the competitive LEC should file a complaint with the Commission under section 271(d)(6) of the Act.[101]

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[95] 47 U.S.C. § 271(d)(6)(B).

[96] 47 U.S.C. § 271(d)(6)(A).

[97] 47 U.S.C. § 271(d)(6)(A).

[98] Pacific Bell Vandeloop Aff. at n.67 and Reply Aff. at paras. 14-15. That is, because California costs are eleven percent below Texas costs, Pacific Bell will base its true-up on rates no higher than eleven percent lower than current Texas rates. Pacific Bell Vandeloop Reply Aff. at paras. 14-15.

[99] *Id.* Pacific Bell's commitment is premised on the use of three vertical features: call waiting, caller ID and 3-way calling. *See* Pacific Bell Vandeloop Reply Aff. at para. 14 and n.37. It is unclear what a competitive LEC would pay while the interim rates are in effect if it purchases more than three vertical features.

[100] *See* Pacific Bell Vandeloop Aff. at paras. 49-50; *see also* Pacific Bell Application App. A, Tab 14, Affidavit of Thomas J. Makarewicz (Pacific Bell Makarewicz Aff.) at paras. 13-17.

[101] *See* 47 U.S.C. 271(d)(6).

43. We note that commenters allege specific TELRIC violations not addressed above.[102] Even assuming, *arguendo*, that these claims are correct and that the specific inputs do not comply with TELRIC, we conclude that the alleged errors do not yield an end result outside a TELRIC-based range when the interim rates are considered.[103] After comparing relevant rates and costs in California with those in Texas, we conclude that the California Commission's calculations result in rates that a reasonable application of TELRIC would produce.[104]

(iii) Dedicated Transport

44. We find that RCN fails to allege a TELRIC violation that would cause Pacific Bell to fail this checklist item. RCN asserts that it wants Pacific Bell to clarify that its dedicated transport rates are TELRIC-compliant because RCN has had problems with Verizon in other states.[105] RCN also asserts that Pacific Bell's CNAM rate, for its Calling Name database, is higher than Verizon's corresponding rates in New York. Pacific Bell responds that Verizon's practices are irrelevant for purposes of a Pacific Bell application, but that it does allow competitive LECs to order cost-based transport and that the California Commission approved its CNAM rate as TELRIC-compliant.[106] We agree with Pacific Bell that concerns about transport rates offered by another BOC do not prove that Pacific Bell does not offer TELRIC-based rates in California. Moreover, RCN has failed to proffer evidence that persuasively rebuts Pacific Bell's showing of TELRIC compliance, instead making general assertions that another BOC in another state has different rates. We find that Pacific Bell offers dedicated transport at rates that fall within a reasonable range of what the application of TELRIC principles would produce.

(iv) DS1/DS3 Loop Rates

45. *DS1/DS3 Loop Rates.* We are not persuaded by the allegations of several commenters that Pacific Bell's DS1 and DS3 loop rates violate TELRIC. In 1999, the California Commission approved rates for DS1 loops, DS1 entrance facilities, and DS3 entrance facilities.[107] The DS3 entrance facilities price was subsequently used to establish a DS3 loop

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[102] AT&T alleges that Pacific Bell should not be allowed to benchmark its rates because the California Commission violated TELRIC principles when it refused to calculate DS1 and DS3 lines as voice-grade equivalents and instead counted copper pair and DS3 as a single line and each DS1 as two lines. AT&T Comments at 18-19. AT&T asserts that this method of counting lines does not address the substantial rate inflation caused by the fact that Pacific Bell's rates are based on outdated data, including line count data. *Id.* AT&T also asserts that the manner in which vertical feature costs are recovered violates TELRIC. *Id*. at 27-28.

[103] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17456, para. 61.

[104] *See* section IV(A)(1)(b)(v), *infra* (benchmark section).

[105] PacWest, RCN, and TelePacific Comments at 34-36.

[106] Pacific Bell Reply Vandeloop Aff. at para. 9.

[107] *OANAD Pricing Decision* at 104-09, 259-60.

price.[108] The California Commission is currently reexamining rates for DS1 and DS3 loops in the *Relook Proceeding*. Pacific Bell asserts that the current loop rates are TELRIC-compliant.[109] In order to "eliminate any concerns" about the current rates for these elements, however, Pacific Bell committed to treat the current DS1 and DS3 loop rates as interim from the date of the filing of its section 271 application, subject to true-up to the final rates set by California Commission.[110]

46. XO contends that the DS3 price is the highest-price comparable loop in the nation, is more that three times higher than the comparable price in Texas, and is not geographically deaveraged.[111] XO also asserts that Pacific Bell's retroactive true-up to a future date when the California Commission conducts a cost hearing is inadequate, as the high rates currently foreclose market entry.[112] AT&T asserts that the rates for Pacific Bell's DS1 and DS3 lines violate TELRIC because they are based on severely outdated cost information from 1994 and are not computed on forward-looking principles.[113] XO and AT&T also dispute Pacific Bell's contention that the DS3 rates were scrutinized and set by the California Commission.[114] AT&T asserts that the California Commission stated in its *Scoping Memo*, which outlines issues to be considered in the *Relook Proceeding*, that Pacific Bell's DS3 loop rates were set using DS3 entrance facilities as a proxy, and that the underlying costs were not reliable.[115]

47. In its reply comments, Pacific Bell notes that it submitted cost justification in the *Relook Proceeding* for a DS3 loop rate that is lower than its current DS3 loop rate, and admits that its lower proposal "is likely the rate ceiling for the [California Commission]'s ultimate determination."[116] Consequently, Pacific Bell filed an "accessible letter" with applicable competitive LECs on November 1, 2002, offering the lower DS3 loop rate.[117] Thus, Pacific Bell now offers this lower DS3 loop rate on an interim basis, subject to true-up, until the California Commission establishes permanent rates in its reexamination proceeding, or until it is no longer

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108 *See* Pacific Bell Application App. A, Tab 19, Affidavit of Richard L. Scholl (Pacific Bell Scholl Aff.) at para. 113.

109 Pacific Bell Vandeloop Reply Aff. at para. 16.

110 Pacific Bell Application at 33; App. G, Tab 57, SBC Accessible Letter CLECC02-267 (Sept. 13, 2002).

111 XO Comments at 6-13.

112 *Id*. at 7, 11-15.

113 AT&T Reply Comments at 9-10.

114 XO Comments at 6; AT&T Reply Comments at n.17.

115 AT&T Reply Comments at n.17.

116 Pacific Bell Vandeloop Reply Aff. at para. 16.

117 *Id*.

required to make the DS3 loop available as a UNE.[118] Pacific Bell asserts that in the *Relook Proceeding*, it has submitted cost justification for a DS1 loop rate that is higher than its current rate, and thus it does not believe that any further adjustments to its current DS1 loop rate are appropriate.[119]

48. We find Pacific Bell's voluntary discounting of its DS3 rate to be a reasonable step designed to address our concerns and encourage competitive entry. Prior to Pacific Bell's voluntary discounting of its DS3 loop rates, the DS3 loop rate was among the highest in the nation.[120] Even assuming, *arguendo*, that this high rate was caused by the TELRIC violations alleged by XO and AT&T, we find that Pacific Bell's voluntary reduction assures us that its DS3 loop rate is within a range of what the reasonable application of TELRIC would produce.[121] We note that the interim reduced rate of $573.20 is less than the current comparable Texas DS3 loop rates of between $665 and $966.[122] The California Commission is reviewing this rate as part of its *Relook Proceeding*, and is thus subject to the state's process of "rate revision and correction."[123] Moreover, we find further assurance in the fact that these rates are interim and subject to true-up.[124]

49. We also reject XO's contention that a slight delay in the implementation of Pacific Bell's voluntary rate reduction of its DS3 rate should cause it to fail this checklist item. XO asserts that, due to California Commission procedures, the accessible letter offering the discounted DS3 loop rate was filed with the state commission on November 14, 2002 but the rate

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[118] *Id.* Pursuant to Pacific Bell's Accessible Letter CLECC02-302, the reduced DS3 rate of $573.20 will become effective on the date the Accessible Letter is approved by the California Commission, which, under normal circumstances, occurs thirty days after its filing with the California Commission, unless the California Commission rejects the rate. *Id*. at Attach. A.

[119] *Id.* at n.44.

[120] *See* XO Comments at 6.

[121] We reject AT&T's assertion that the DS3 rate violates TELRIC because the California Commission used DS3 entrance facility rates as a proxy for DS3 loop rates. AT&T Reply Comments at n.17. Pacific Bell responds that the California Commission set this price after Pacific Bell provided evidence that the DS3 entrance facility and the design of the DS3 loop were identical. Pacific Bell Reply at 25. As discussed above, we do not conduct a *de novo* review of a state's ratemaking decisions, but will reject an application only if basic TELRIC principles are violated or the state commission makes clear errors on substantial factual findings. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55. Here, AT&T fails to meet its burden in proving either of these circumstances.

[122] *See* Letter from Geoffrey M. Klineberg, Esq., Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission at 6 (filed Nov. 13, 2002) (Pacific Bell Nov. 13 *Ex Parte* Letter).

[123] *WorldCom*, 308 F.3d at 8.

[124] *See* our discussion of interim rates, section IV(A)(1)(b)(ii), *supra*.

was not available until December 14, 2002.[125] As discussed above, we find that Pacific Bell's offering of the lower DS3 loop rate on an interim basis is a pro-competitive step designed to encourage entry and respond positively to the assertions raised by several parties about this rate.[126] Pursuant to California Commission policy, the rate went into effect on December 14, 2002, thirty days after the first agreement implementing the rate was filed.[127] We do not find the brief implementation delay cited by XO to be unreasonable, nor does it cause Pacific Bell to fail this checklist item.[128]

50. XO also asserts that in Pacific Bell's accessible letter offering its voluntarily-discounted DS3 loop rate, Pacific Bell inserts language stating that if the Commission or another relevant regulatory body determines that incumbent LECs are no longer required to offer high-capacity loops on an unbundled basis, the discounted rate will be invalidated.[129] To the extent that such language causes concern, we nevertheless conclude that its presence is not so unreasonable to warrant denial of Pacific Bell's application. We note that one carrier, DSLnet, agreed to the terms contained in this agreement.[130] Had the terms been so unreasonable and onerous, we doubt that any party would have agreed to them. We take additional comfort in the fact that Pacific Bell has subsequently offered a new agreement, not yet in effect, that XO, the only party to raise this issue, has agreed to take.[131] XO states that it finds the modified change of law language acceptable.[132] Should the California Commission approve this agreement, it will be available to all competitive LECs.

51. We do not agree with XO's assertion that Pacific Bell should fail this checklist item because the DS3 rate is not geographically deaveraged.[133] The California Commission recently began the process of deaveraging some of Pacific Bell's UNE rates. In March, 2002, the California Commission approved a settlement agreement that deaveraged several UNE loop

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125 XO Nov. 12 *Ex Parte* Letter at 2; Letter from Colin S. Stretch, Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 at Attach. 3, n.5 (filed Nov. 14, 2002) (Pacific Bell Nov. 14 *Ex Parte* Letter).

126 *See* section IV(A)(1)(b)(i), *supra*.

127 *See* Letter from Colin S. Stretch, Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No.02-306 (filed Dec. 16, 2002) (Pacific Bell Dec. 16 *Ex Parte* Letter).

128 Because we find that a brief delay to implement Pacific Bell's "accessible letter" is reasonable, we do not consider XO's alternate implementation proposals. *See* XO Nov. 12 *Ex Parte* Letter at 2-3.

129 *Id*. at 3-4.

130 *See* Pacific Bell Dec. 16 *Ex Parte* Letter.

131 *See* Pacific Bell Dec. 13 *Ex Parte* Letter at 2-3 and Attach. 3.

132 *See* XO December 10 *Ex Parte* Letter.

133 XO Comments at 8.

rates into three zones on an interim basis, pending final review in its *Relook Proceeding*.[134] DS1 loop rates were deaveraged as part of this settlement.[135] It does not appear that parties requested deaveraging of DS3 loop rates in that proceeding.[136] The California Commission has granted XO's request that it review DS3 loop rates in its ongoing *Relook Proceeding*.[137] We have previously stated that we are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors before the state commission, which has primary jurisdiction over the matter.[138] Here, we believe that XO's request for rate deaveraging is a local arbitration decision for the California Commission in the first instance. We have confidence in the California Commission's ability to review XO's request for review and set the DS3 rates on a geographically-deaveraged basis consistent with our rules.

52. We are not persuaded by those commenters who allege that Pacific Bell's DS1 rates violate TELRIC.[139] The California Commission set the DS1 rate according to TELRIC principles.[140] It is currently reviewing these loop rates as part of its *Relook Proceeding*, and we have confidence in its ability to modify the rate according to TELRIC principles if necessary. We take additional comfort in the fact that this rate is subject to true-up. Additionally, we do not believe that the California loop rate is based on such outdated cost data that it violates TELRIC. No commenter presents a specific assertion as to how the alleged staleness of the underlying cost data affects the rate, such as evidence of significant cost declines. As discussed in greater detail above, the D.C. Circuit recently held that "it is reasonable for the FCC to rely on the states' periodic rate revision process as a means of correcting flaws in adopted rates."[141] The court further found that it will reverse the Commission's judgment only if it sufficiently disregarded the rate's age "so as to adopt rates that were unreasonably outdated."[142] Here, no commenter meets its burden in proving sufficient evidence that this rate is so unreasonably outdated that it

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[134] Pacific Bell Application App. C, Vol. 9, Tab 75, *Order Instituting Investigation on the Commission's Own Motion into the Deaveraging of Unbundled Network Element Rates within at Least Three Geographic Regions of the State of California pursuant to Federal Communications Commission Rule 47 C.F.R. Section 51.507(f)*, I.00-03-002, Order Adopting Geographically Deaveraged Unbundled Network Element Rates for Pacific Bell Telephone Company, 02-02-047, California Commission at 13 (2002) (*Order Adopting Geographically Deaveraged Rates*).

[135] *Id*. at Attach. B.

[136] *Id*.

[137] *Scoping Memo* at 5-6.

[138] *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20754, para. 73.

[139] AT&T Reply Comments at 9-10, XO Comments at 5-14, XO Nov. 12 *Ex Parte* Letter at 4.

[140] *OANAD Pricing Decision* at 104-106, 259-60.

[141] *WorldCom*, 308 F.3d at 8.

[142] *Id.*

violates TELRIC, and we rely on the California Commission's ability to modify this rate if necessary.

53. We are not persuaded by XO's contention that SWBT's DS1 rate in Texas, which is not significantly higher than Pacific Bell's DS1 rate in California, proves that the California rate is outside a reasonable TELRIC range.[143] The Commission has repeatedly held that a simple comparison of rates in various states is not evidence that a rate violates TELRIC.[144] We find that no commenter meets its burden in proving that this rate is outside a TELRIC range.

(v) Benchmark Comparison

54. States have considerable flexibility in setting UNE rates and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that correct application of TELRIC principles would produce.[145] The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly (e.g., the state commission made a major methodological mistake or used an incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), then we will look to rates in other section 271-approved states to see if the rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.[146] In comparing the rates, the Commission has used its USF cost model to take into account the differences in the underlying costs between the applicant state and the comparison state.[147] To determine whether a comparison with a particular state is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states

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[143] XO Comments at 15-16.

[144] *See Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont,* CC Docket No. 01-7, 17 FCC Rcd 7625, 7639-40, paras. 26, 27 (2002) (*Verizon Vermont Order*); *Verizon New Jersey Orde*r, 17 FCC Rcd at 12,301, para. 59.

[145] *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a) Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware,* WC Docket No. 02-157, FCC 02-262, Memorandum Opinion and Order at para. 39 (2002) (*Verizon New Hampshire/Delaware Order*); *Verizon Rhode Island Order*, 17 FCC Rcd at 3319-20, para. 37.

[146] *Verizon New Hampshire/Delaware Order* at para. 39; *see also Verizon Rhode Island Order*, 17 FCC Rcd at 3319-20. para. 38; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17456-57, para. 63; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82. In the *Pennsylvania Order*, we found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64.

[147] *See Verizon Massachusetts Order,* 16 FCC Rcd at 9000, para. 22; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 57; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 65; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.[148]

55. In conducting a benchmark analysis, we consider the reasonableness of loop and non-loop rates separately.[149] Where the Commission finds that the state commission correctly applied TELRIC principles for one category of rates, it will use a benchmark analysis to evaluate the rates of the other category. If, however, there are problems with the application of TELRIC for both loop and non-loop rates, then the same benchmark state must be used for all rate comparisons to prevent an incumbent LEC from choosing for its comparisons the highest approved rates for both loop and non-loop UNEs.[150]

56. We are not persuaded by AT&T's arguments that Pacific Bell should not be allowed to benchmark to Texas rates.[151] AT&T fails to present sufficient evidence that Texas does not meet the criteria set forth for determining whether a comparison to a particular state is reasonable. First, we disagree with AT&T's argument that Texas rates are an inappropriate benchmark because the Texas Commission recently opened a new rate proceeding.[152] The Commission has held that the existence of an ongoing state rate case does not prove that current rates are not TELRIC-compliant.[153] In the *Verizon Massachusetts Order*, the Commission found that it was reasonable for Verizon to rely on New York's current switching rates despite the fact that the New York rates were being reviewed at the time that Verizon relied on them for a benchmark.[154] The Commission found that the New York rates were found to be TELRIC-compliant by the New York Commission in an extensive rate-making proceeding,[155] and by this Commission in the *Bell Atlantic New York Order*,[156] and were in effect at the time of the Verizon

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148 *See Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63; *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

149 *See, e.g., Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 40; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 67; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27. Loop rates consist of charges for the local loop, and non-loop rates consist of charges for switching, signaling, and transport.

150 *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20748, para. 58.

151 AT&T Comments at 19-26.

152 *Id*. at 20-21.

153 *Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 31.

154 *Id*.

155 *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 at 4081-83, 4084, paras. 238-40, 242 (1999) (*Bell Atlantic New York Order*).

application in Massachusetts. The Commission stated that it would be unreasonable to preclude incumbent LECs from relying on appropriate rates that have been found to be TELRIC-compliant merely because these rates are under some form of challenge or review where there has not been a determination that those rates are not TELRIC-compliant.[157] As the D.C. Circuit stated:

> [W]e suspect that rates may often need adjustment to reflect newly discovered information, like that about Bell Atlantic's future discounts. If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change.[158]

57. Our reasoning in the *Verizon Massachusetts Order* was recently upheld by the D.C. Circuit, which held that "it is reasonable for the FCC to rely on the states' periodic rate revision process as a means of correcting flaws in adopted rates."[159] The court also noted that the time it takes for state commissions to modify rates based on changed cost data "does not render a rate invalid. Indeed, when element costs are falling, such temporary deviations, or regulatory lags, are both unavoidable and perhaps even desirable. . . . [R]ate determinations consume substantial periods of time and cannot be constantly undertaken."[160] The court further held that it will reverse the Commission's judgment only if it sufficiently disregarded the rate's age "so as to adopt rates that were unreasonably outdated."[161]

58. We note that the Texas Commission is actively investigating UNE rates and may modify those rates to reflect changed market conditions, technologies, and information. If the Texas Commission adopts modified UNE rates, future section 271 applicants could no longer demonstrate TELRIC compliance by showing that their rates in the applicant states are equivalent to or based on the current Texas rates, which will have been superceded.[162] Moreover, because Pacific Bell would have us rely on rates from Texas, a decision by the Texas Commission to modify these UNE rates may undermine Pacific Bell's reliance on those rates in

(Continued from previous page)

[156] *Id.* at 4083, para. 242.

[157] *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 29.

[158] *AT&T Corp. v. FCC*, 202 F.3d at 617-18.

[159] *WorldCom*, 308 F.3d at 9.

[160] *Id.* at 8.

[161] *Id.*

[162] *Verizon Massachusetts Order,* 16 FCC Rcd at 9002, para. 29. *See also WorldCom Inc. v. Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a/ Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprises Solutions), and Verizon Global Networks, Inc*., EB 02-MD-017, Memorandum Opinion and Order, 17 FCC Rcd 15115 (2002).

California and its compliance with the requirements of section 271, depending on the Texas Commission's conclusions.[163]

59. Second, we disagree with AT&T's assertion that the Texas rates are based on outdated cost data and are therefore inappropriate for benchmarking purposes.[164] When the Commission approved SWBT's section 271 application in 2000, it found that the Texas rates comply with TELRIC principles and fall within a reasonable range of what TELRIC principles would produce.[165] The fact that the Texas Commission is currently reexamining certain UNEs does not mean the rates are no longer TELRIC-compliant, nor does it mean that Texas rates cannot be used as an appropriate benchmark.[166] No commenter provides sufficient evidence for us to conclude that these rates are unreasonably outdated. We disagree with AT&T's assertion that in *WorldCom,* the D.C. Circuit held that a "safe harbor" exists for use of benchmarked rates that are three to four years old, but that Texas rates fall outside this "safe harbor," are "ancient," and thus violate TELRIC.[167] The court in *WorldCom* did not define a standard for a "safe harbor" of rate ages, nor did it state that Commission reliance on older rates is unreasonable. The court did find that rates may become "ancient" in "a market with falling costs," or "have been based on fraudulent ILEC submissions," or a "challenger . . . tender[s] evidence of . . . unreasonableness [with regard to the rates] so strong as to preclude FCC approval without a hearing."[168] We find that AT&T has not met its burden in providing sufficient evidence that the Texas rates are "ancient." We are not convinced that Texas rates are "ancient" merely because they are based on data that is more than three or four years old.[169] In opening its docket to examine UNE rates, the Texas Commission did not change its conclusion that current rates are

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[163] *See Verizon Massachusetts Order*, 16 FCC Rcd at 9002-03, para. 30.

[164] AT&T Comments at 20-21; AT&T Reply Comments at 13.

[165] *SWBT Texas Order*, 15 FCC Rcd at 18392, para. 82.

[166] We disagree with AT&T's assertion that an analysis of cost data reported through ARMIS, as well as data used in our USF cost model, proves that Texas rates are based on outdated cost data and thus violate TELRIC. AT&T Comments at 24 and Tab A, Declaration of Michael R. Lieberman and Brian F. Pitkin (AT&T Lieberman-Pitkin Decl.) at paras. 10-13; AT&T November 26 Shenk *Ex Parte* Letter at Exh. 1, Supplemental Joint Declaration of Michael R. Lieberman and Brian F. Pitkin (AT&T November 26 Lieberman/Pitkin Decl.) at paras. 14-26. The Commission has stated that our USF cost model is used to compare relative cost differences between states, not to set rates. *See Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 32; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84. The fact that cost data used in our USF cost model may have declined does not mean that current rates violate TELRIC. Additionally, ARMIS data is based on embedded costs, not the forward-looking costs required to set TELRIC-compliant rates. As discussed above, we "rely on the states' periodic rate revision process as a means of correcting flaws in adopted rates." *WorldCom*, 308 F.3d at 9.

[167] AT&T November 26 Lieberman/Pitkin Decl. at paras. 9-12.

[168] *WorldCom*, 308 F.3d at 7.

[169] AT&T also fails to present evidence that Texas rates are based on fraudulent submissions, or are otherwise unreasonable.

TELRIC-compliant. Rather, it noted that some loop costs may have changed over time, and held that loop cost data should be examined in an upcoming rate case.[170] The state commission noted that it was unclear whether loop rates would move up or down after an evaluation of new cost data.[171] Additionally, the Texas rates are neither interim nor subject to true-up, both of which provide us with further assurance that the Texas Commission finds the rates to be TELRIC-compliant. In regard to the issue of "old rates," the court specifically stated that, even where the Commission made no explicit findings with regard to the rates at issue, "it adopted what is likely a far more workable approach to the problem of timeliness – namely, reliance on the state's own processes of rate revision and correction."[172] The fact that the Texas commission is reexamining the rates does not make them less TELRIC-compliant, and our reliance on the Texas commission's reexamination process is exactly the type of approach that the D.C. Circuit approved in *WorldCom*, that is, reliance on the state commission's "processes of rate revision and correction."[173]

60. Third, we disagree with AT&T's assertion that Texas is an inappropriate benchmark because substantial differences exist in rate structure, BOCs, geography and company structure between California and Texas.[174] In the *SWBT Kansas/Oklahoma Order*, the Commission determined that an applicant state may benchmark to an anchor state if the states have a common BOC and geographic similarities, similar rate structures, and the rates in the anchor state had been found by the Commission to be TELRIC-compliant.[175] The Commission has since refined this analysis. The Commission determined in the *Verizon Pennsylvania Order* that the most important part of an appropriate benchmark analysis is whether the Commission had found TELRIC-compliant rates in the anchor state.[176] The Commission clarified that, "while a comparison state's rates must have been found reasonable, the remaining criteria previously set forth should be treated as indicia of the reasonableness of the comparison" because "it is clear

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[170] *See* Letter from Colin S. Stretch, Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 (filed Dec. 17, 2002) (Pacific Bell Dec. 17 *Ex Parte* Letter), Attach. A, Petition of MCIMetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE Platform Coalition, McLeod USA Telecommunications Services, Inc., and AT&T Communications of Texas, LP for Arbitration with Southwestern Bell Telephone Company under the Telecommunications Act of 1996, Arbitration Award, Texas Commission Docket No. 24542 at 95-97 (2002).

[171] *Id*.

[172] *WorldCom,* 308 F.3d at 8.

[173] *Id*. at 8.

[174] AT&T Comments at 23-28.

[175] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

[176] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17457, para. 64.

that the most relevant factor of the four-part test is TELRIC compliance. . . . The other criteria do not rise to such a level."[177]

61. Here, we find that AT&T fails to prove that differences between California and Texas in geography, BOCs, and rate structures, such as the difference in call-set up and duration measurements, invalidate our benchmark analysis. The USF cost model is designed to account for relative cost differences between states based on, among other things, geographic differences.[178] For example, AT&T states that whereas Pacific Bell recovers the cost of vertical features through 31 different rate elements, Pacific Bell recovers the cost of vertical features through the recurring switching rate element.[179] This difference in rate structure, AT&T argues, renders comparison of the non-loop rate in California and Texas quite complex, because it necessitates conversion of the 31 California vertical features charges into an average rate, which requires estimation of penetration rates for the vertical features in California.[180] Our benchmark analysis takes the California vertical feature charges into account by including three features, which is the average number of features per access line for both retail and wholesale usage. We take additional comfort in the fact that even if the benchmark analysis was conducted with an assumption of ten features, the maximum offered by AT&T in California, Pacific Bell's rates would pass a benchmark analysis.[181] Our benchmark analysis takes other rate structure differences into account by converting element-specific rates into weighted averages based on state-specific actual usage figures.[182] The use of these weighted averages ensures a more accurate rate comparison between states with differing rate structures.

62. Additionally, the Commission has previously utilized a benchmark analysis between two states that were not originally part of the same BOC.[183] In the *Verizon Pennsylvania Order*, the Commission noted that New York and Pennsylvania, although both part of Verizon's service territory, were not part of the same original BOC. The Commission concluded, however, that a benchmark comparison was still appropriate because our cost model makes no distinction between data among BOCs, and no reason existed to suspect that such a comparison has been made less significant because different BOCs served the two states.[184] The

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177 *Id*.

178 *See* http://www.fcc.gov/wcb/tapd/hcpm/welcome.html.

179 AT&T Lieberman-Pitkin Decl. at para. 19.

180 *Id.*

181 *Id.* at n.21.

182 *See, e.g.*, *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, n.250; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20747-48, para. 59 and n.161.

183 See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64.

184 *Id*.

same reasoning applies here. Although Texas and California were not part of the same original BOC, we find that a benchmark comparison between the two states is appropriate because our cost model makes no distinction between data among BOCs, and we have no reason to suspect that such a comparison is less significant because different BOCs serve Texas and California.

63. Having determined that a benchmark to Texas is appropriate, we conduct our own benchmark analysis by comparing: (1) the percentage difference between its California and Texas rates for the UNE-platform on a per-line per-month basis for non-loop rate elements collectively, and (2) the percentage difference between California and Texas costs per line and per month for these non-loop elements collectively, based on the Synthesis Model.[185] For purposes of this comparison, UNE-platform non-loop rate elements are line port, end office switch usage, common transport (including the tandem switch), and signaling, including vertical features.[186]

64. Here, we find that Texas' rates have been found to be TELRIC-compliant,[187] and Pacific Bell may benchmark its California rates to Texas rates. We conclude that California's recurring UNE rates fall within the range that TELRIC-based ratemaking would produce. With respect to loops, in taking a weighted average in California and Texas, we determine that California's rates are lower than those in Texas. The weighted average rates for a 2-wire analog loop in California and Texas are $9.93 and $14.10, respectively. The California loop rate is thirty percent lower than the Texas loop rate. The USF cost model, however, shows that California loop costs are fourteen percent lower than the Texas loop costs.[188] Because the percentage difference between California loop rates and Texas loop rates exceeds the percentage difference between California loop costs and Texas loop costs, Pacific Bell's recurring loop rates satisfy our benchmark test.[189]

65. We also conclude that non-loop rates fall within a reasonable TELRIC range.[190] The non-loop rate includes three representative vertical features, as discussed above.[191] Taking

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[185] We adjust the costs derived from the Synthesis Model to make them comparable to UNE-platform costs. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249. We benchmark non-loop rates separately from loop rates. *See, e.g., id.* at 17458, para. 66; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27.

[186] *See Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina,* Memorandum Opinion and Order, WC Docket No. 02-150, FCC 02-260 (rel. Sept. 18, 2002) *(BellSouth Multistate Order)* at n.319.

[187] *SWBT Texas Order*, 15 FCC Rcd at 18392, para. 82.

[188] *See* http://www.fcc.gov/wcb/tapd/hcpm/welcome.html.

[189] *See, e.g. SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20748, para. 57 and n.160.

[190] This analysis is based on Pacific Bell's conclusions regarding feature utilization in California. Pacific Bell Makarewicz Aff. at n.17. The three features are call waiting, caller ID and 3-way calling. *Id.* Pacific Bell notes that it researched competitive offerings in California and found that very few feature packages offered more than (continued….)

the relevant rate elements into account, the California non-loop rates are 34 percent lower than the non-loop rates for Texas, while California's non-loop costs are two percent lower than Texas' non-loop costs, according to the USF cost model. Because the percentage difference between California non-loop rates and Texas non-loop rates exceeds the percentage difference between California non-loop costs and Texas non-loop costs, Pacific has met its burden regarding the benchmark test using our USF cost model for recurring non-loop rates.

(vi) Nonrecurring Charges

66. We disagree with AT&T's assertion that Pacific Bell's nonrecurring charges violate TELRIC principles and cause Pacific Bell to fail this checklist item. In adopting nonrecurring costs for Pacific Bell in 1998, the California Commission examined charges by AT&T that Pacific Bell violated TELRIC principles by recovering recurring costs in its nonrecurring charges. AT&T specifically alleged in that proceeding that Pacific Bell's field work and head count loading nonrecurring charges[192] improperly included recurring costs. The California Commission determined that AT&T overstated the magnitude of the double-counting problem and that Pacific Bell properly recovered field work nonrecurring costs.[193] The California Commission stated, however, that Pacific Bell appeared to be double-recovering some costs in its head count loadings. Noting that the Commission's rules prohibiting the incumbent LECs from recovering recurring costs through nonrecurring rates[194] were the subject of a pending stay order by the Eighth Circuit,[195] the California Commission stated that it would "direct Pacific . . . to remove head count loadings from . . . [its] nonrecurring cost studies" if the Court reversed the stay.[196] In June of 1999, the California Commission affirmed its decision that the costs of

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five features, and found that the average number of features offered was three. *Id*. at n.21. Pacific Bell notes that in filings before the California Commission, AT&T assumed utilization of three features when it conducted a price-squeeze analysis that was presented to the California Commission. *Id.* at n.21. Because no party raises an issue relating to the use of our benchmark analysis for non-loop elements in the aggregate, we do not address the issue. *See Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, FCC 02-297 (2002) at paras. 109-10 (*Verizon Virginia Order*).

[191] *See* our discussion *supra* at Section IV.A.1. (b)(ii).

[192] AT&T Comments at 28-29. *See Second OANAD Cost Decision* at 49 (stating that field work activities include provisioning a loop); *id.* at 50, n.34 (stating that "[o]ne example of a head-count loading would be support costs that would be necessary to have a service order representative process orders. Computers, software and electricity are examples.").

[193] *Second OANAD Cost Decision* at 51-53.

[194] *See Local Competition Order*, 11 FCC Rcd at 15875, para. 746.

[195] *See Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

[196] *Second OANAD Cost Decision* at 53.

Pacific Bell's field work activities were properly recovered in its nonrecurring charges.[197] In November of 1999, the California Commission found that Pacific Bell's nonrecurring charges conform to TELRIC principles and that Pacific Bell's nonrecurring charges were not being double-counted, i.e., counted as recurring costs as well as nonrecurring costs.[198]

67. Our rules require that recurring costs be recovered through recurring charges, unless an incumbent LEC proves to the relevant state commission that such recurring costs are *de minimis*.[199] Our rules also permit states to require LECs in an arbitrated agreement to recover nonrecurring costs through recurring charges over a reasonable period of time.[200]

68. AT&T contends that although the California Commission stated that it would direct Pacific Bell to remove the head count loadings from its nonrecurring charges in the event that the Supreme Court reversed the Eighth Circuit's stay, the California Commission has failed to do so despite the Supreme Court's reversal of the stay order in January, 1999.[201]

69. Pacific Bell responds that, contrary to AT&T's claim, the California Commission did not find that Pacific Bell recovered recurring costs in its nonrecurring charges in violation of the Commission's TELRIC principles. Rather, Pacific Bell asserts that the California Commission determined that the type of costs of apparent concern to AT&T in this proceeding should be included in Pacific Bell's nonrecurring costs.[202] Pacific Bell contends that by setting nonrecurring rates on the basis of Pacific's nonrecurring costs studies after the Supreme Court's decision, "the California Commission implicitly (and appropriately) rejected AT&T's argument that the costs associated with secondary investments must be removed from the nonrecurring

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[197] *Second OANAD Cost Decision Modification* at 25-27.

[198] *OANAD Pricing Decision* at 71, n.71.

[199] 47 C.F.R. § 51.507(d). Recurring costs are considered *de minimis* under the Commission's rules when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs. *Id.*

[200] *Local Competition Order*, 11 FCC Rcd at 15875, para. 749. In such circumstances, however, we require the state commission "to take steps to ensure that incumbent LECs do not recover nonrecurring costs twice and that nonrecurring charges are imposed equitably among entrants." *Id*. at 15876, para. 750. We further require that state commissions ensure that nonrecurring charges imposed by incumbent LECs "are equitably allocated among entrants where such charges are imposed on one entrant for the use of an asset and another entrant uses the asset after the first entrant abandons the asset." *Id*. at 15876, para. 751.

[201] AT&T Comments at 28-29; AT&T Reply at 12; *see also AT&T v. Iowa.*

[202] Pacific Bell Reply at 22-23; Pacific Bell Application Reply Tab. 13, Affidavit of Richard L. Scholl (Pacific Bell Scholl Reply Aff.) at paras. 3-6 (stating that AT&T's present claim appears to center on the alleged wrongful inclusion of the type of costs associated with secondary investments, such as installation trucks and administrative space occupied by installation technicians).

UNE costs."[203] Also, Pacific Bell contends that secondary investment items are "clearly" nonrecurring costs properly recovered through nonrecurring charges consistent with TELRIC pricing principles, given that these costs are associated with the installation of a UNE at the time of installation.[204] Pacific Bell further claims that "even a cursory examination" of the nonrecurring charges associated with the UNE-P in California reveals that the rates in place are well within the range that a reasonable application of TELRIC would produce.[205]

70. The record reflects that following the Supreme Court's decision, the California Commission did not specifically address whether Pacific Bell's head count loading costs should be recovered from its nonrecurring or recurring charges,[206] but did specifically find that Pacific Bell's nonrecurring charges conform to TELRIC principles and that Pacific Bell's nonrecurring costs were not being double-counted, i.e., recovered in both recurring and nonrecurring charges.[207]

71. Even assuming that AT&T is correct in its assertion that these costs are being recovered improperly in nonrecurring charges, we have reviewed Pacific Bell's nonrecurring charges and find that they are within the reasonable range that application of TELRIC principles would produce.[208] As discussed above, different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce. Therefore, an input rejected elsewhere might be reasonable under the specific circumstances here. We do not conduct a *de novo* review of a state's pricing determinations.[209] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the

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[203] Pacific Bell Application Reply at 23 (citing *OANAD Pricing Decision* at ordering para. 2 ("The non-recurring charges associated with the UNEs offered by Pacific . . . satisfy the requirements of Sections 251(c)(2), 251(c)(3), and 252(d)(1) . . . and are hereby adopted.")).

[204] *Id.* at 23-24; *see also* Pacific Bell Scholl Reply Aff. at para. 14 ("[t]he costs at issue are the costs of the one-time event of using a capitalized item (*e.g.*, a truck) while installing a UNE, not costs of ongoing events.").

[205] *Id.* at 24, n.21.

[206] *See OANAD Pricing Decision*. In June of 1999, the California Commission affirmed that the costs of Pacific Bell's field work activities were properly recovered in its nonrecurring charges. *Second OANAD Cost Decision Modification* at 25-27.

[207] *OANAD Pricing Decision* at 71, n.71.

[208] Based on the record before us, AT&T does not appear to have raised this issue again before the California Commission in the nearly three years since its decision. We are troubled by AT&T's decision to remain silent before the California Commission on this issue, only to raise it here now.

[209] *Verizon New Jersey Order*, 17 FCC Rcd at 12285, para. 17; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55; *see also Sprint v. FCC*, 274 F.3d at 556.

reasonable application of TELRIC principles would produce."[210] AT&T fails to cite any specific nonrecurring rate offered by Pacific Bell that falls outside a reasonable TELRIC range. We observe that the nonrecurring charge for Pacific Bell's "hot cut"[211] for a single line is $73.04 in California and $103.37 in Texas.[212] On a per-line basis, the nonrecurring hot cut charge for an eight-line order is $24.76 in California and $29.08 in Texas.[213] We also observe that other nonrecurring charges in California are similarly comparable to charges for similar activities in Texas.[214] We therefore find that AT&T has not shown that Pacific Bell's nonrecurring charges fall outside the range that a reasonable application of our TELRIC rules would produce and that AT&T's allegations do not cause Pacific Bell to fail this checklist item.

2. Access to Operations Support Systems

72. Under checklist item 2 of section 271, a BOC must provide nondiscriminatory access to its OSS – the systems, databases, and personnel that the BOC uses to provide service to customers.[215] We find, as did the California Commission,[216] that Pacific Bell provides competitors in California nondiscriminatory access to its OSS. Consistent with past practice, we consider the entire record, including commercial practice as well as third-party testing, and focus our review on specific issues in controversy or areas where Pacific Bell fails to satisfy performance standards. We do not address each OSS element in detail where our review satisfies us that Pacific Bell complies with the nondiscrimination requirements of the checklist item. Specifically, our discussion focuses on the sufficiency of independent third-party testing, Pacific Bell's pre-ordering, ordering, provisioning, maintenance and repair functionalities, wholesale billing practices, change management processes, and access to UNE combinations. Our review of the record, including areas of Pacific Bell's OSS performance contained in Appendix B that we do not specifically discuss, satisfies us that Pacific Bell is providing competitors nondiscriminatory access to OSS in compliance with checklist item 2.

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[210] *Verizon New Jersey Order*, 17 FCC Rcd at 12285, para. 17; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55.

[211] A hot cut is the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch. The "cut" is said to be "hot" because telephone service on the specific customer's loop is interrupted for a brief period of time. *See generally Verizon New Jersey Order,* 17 FCC Rcd at 12302, para. 61. The rate for this UNE has been the most contentious nonrecurring charge in recent 271 applications. *See, e.g., id.* at 12302-05, paras. 61-68; *see also Verizon New Hampshire/Delaware Order* at para. 88*; SWBT Texas Order*, 15 FCC Rcd at 18494, paras. 275-77.

[212] Pacific Bell Nov. 13 *Ex Parte* Letter at 6.

[213] *Id.*

[214] Pacific Bell Vandeloop Aff. at Attach. B.

[215] *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83.

[216] *California Commission Order* at 305-07.

a. Independent Third-Party Testing

73. As the Commission has held in prior section 271 proceedings, the persuasiveness of a third-party review depends upon the conditions and scope of the review.[217] To the extent a test is limited in scope and depth, we rely on other evidence, such as actual commercial usage, to assess whether the BOC provides nondiscriminatory access to its OSS.[218] Based on our review of the evidence in the record describing the test process, and the evaluation that the California Commission offered, we find that the third-party test was broad and objective and provides meaningful evidence that is relevant to our analysis of Pacific Bell's OSS. The third-party test results support our finding that Pacific Bell provides nondiscriminatory access to its OSS.

74. The California Commission directed Pacific Bell to develop a Master Test Plan (MTP) and submit it for review and comment.[219] Following comments from the California Commission's staff and interested parties, as well as a two-week industry-wide collaborative workshop, the California Commission issued a finalized MTP in August 1999, setting up the test requirements and the need to have outside consultants assist in the test of Pacific Bell's systems.[220] The California Commission issued Requests for Proposals for teams to perform the three significant roles of the OSS test: the Test Administrator (TAM), the Technical Advisor (TA) and the Test Generator (TG).[221] The California Commission selected Cap Gemini Ernst & Young (Cap Gemini) to be the TAM and TA, and selected Global eXchange Services (Global eXchange) to be the TG.[222] As the TAM, Cap Gemini administered the actual test effort by defining the test execution and monitoring the TG.[223] As the TG, Global eXchange set up four "pseudo competitive LECs," and interacted with Pacific Bell by submitting the orders on behalf of those pseudo companies on a day-to-day basis.[224] Global eXchange submitted and processed orders using manual procedures (by fax), graphical user interface (GUI) and application-to-

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217 *Ameritech Michigan Order*, 12 FCC Rcd at 20659, para. 216.

218 *See Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and Bellsouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, FCC 02-147, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9070-71, para. 105 (2002) (*BellSouth Georgia/Louisiana Order*).

219 *California Commission Order* at 37.

220 *California Commission Order* at 37.

221 *California Commission Order* at 37.

222 *California Commission Order* at 37; Pacific Bell Application App. A , Vol. 3, Affidavit of Stephen D. Huston and Beth Lawson (Pacific Bell Huston/Lawson Aff.) at para. 31.

223 Pacific Bell Huston/Lawson Aff. at para. 31; Cap Gemini Ernst & Young, Final Report of the Pacific Bell Operational Support Systems, Version 1.2 at 26 (Feb. 12, 2001) (TAM Final Report) App. D, Tab 212.

224 Pacific Bell Huston/Lawson Aff. at para. 31; TAM Final Report at 27.

application electronic data interchange (EDI).[225] Cap Gemini's Final Report assessed the results of functionality testing, capacity testing, and performance measurement analysis.[226] This testing and evaluation examined the five critical OSS functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing.[227]

75. The functionality test assessed Pacific Bell's readiness and capability to provide the competitive LECs with access to Pacific Bell's OSS in order to perform pre-ordering, ordering, provisioning, and maintenance and repair activities to customer accounts.[228] To reflect the variety of customer orders that competitive LECs could place, Local Service Requests (LSRs) were generated for both resale and UNE services, as well as for business and residential accounts.[229] The capacity test assessed whether Pacific Bell's systems had sufficient capacity to handle the workload volumes required to support competitive LEC pre-order and ordering activities.[230] The capacity test consisted of a pre-order test, an order test, and a combined pre-order/order volume stress test.[231] Cap Gemini, as the TAM, formed a statistical team to track and maintain performance measurement statistics based on the test effort, and concluded that the pseudo competitive LECs generally received parity service levels from Pacific Bell and even surpassed the benchmark standards for most services for most months.[232] In addition to the Cap Gemini analysis, Pacific Bell agreed to a third party audit of its performance measurement systems and processes, which was performed by PricewaterhouseCoopers (PWC).[233]

76. In performing the third-party tests, Cap Gemini, Global eXchange, and the California Commission took precautions to maintain blindness and independence of the testing process.[234] To preserve blindness of the test, four pseudo competitive LECs were created; each had a separate Access Customer Name Abbreviation (ACNA), Operating Company Number (OCN), Billing Account Number (BAN), and produced different test orders with a variety of

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225 TAM Final Report at 27.

226 Pacific Bell Huston/Lawson Aff. at para. 37; TAM Final Report at 22.

227 Pacific Bell Huston/Lawson Aff. at para. 37; TAM Final Report at 22.

228 TAM Final Report at 28.

229 TAM Final Report at 28.

230 Pacific Bell Huston/Lawson Aff. at para. 37; TAM Final Report at 31.

231 TAM Final Report at 31.

232 TAM Final Report at 34-35.

233 *See* Pacific Bell Application App. A, Volume 4a, Affidavit of Gwen S. Johnson (Pacific Bell Johnson Aff.) at para. 201.

234 Pacific Bell Huston/Lawson Aff. at para. 44.

products and services.[235] Moreover, Pacific Bell was unaware of the mix or the timing of test scenarios submitted over its interfaces.[236] To ensure independence of the test, the California Commission staff monitored the contact between Cap Gemini and Pacific Bell.[237] In addition, Cap Gemini and Global eXchange's activities were directed solely by the California Commission, and the results of the tests were provided solely to the California Commission.[238]

77. We note that only one party, AT&T, challenges the accuracy of Pacific Bell's performance data and the effectiveness of the third-party test. With regard to the accuracy of the performance data, AT&T argues that, in addition to Cap Gemini's restricted ability to perform a full assessment of the performance data, the audit PWC conducted was inadequate and the data reconciliations with competitive LECs were too limited to demonstrate the accuracy of the performance data.[239] We reject AT&T's claims. While we recognize the limitations expressed by Cap Gemini with regard to the performance data available during the third party test,[240] we conclude that Pacific Bell has sufficiently demonstrated that its performance data is accurate. As the California Commission mentioned in its order, the competitive LECs were involved in both the design of the performance data audit and choosing PWC as the auditor.[241] PWC determined that Pacific Bell's systems and processes in compiling the data for the performance measurements were substantially in compliance with the business rules agreed upon by Pacific Bell and the competitive LECs.[242] For the systems and processes that were not fully in compliance, Pacific Bell implemented improved processes and PWC issued two subsequent

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[235] Pacific Bell Huston/Lawson Aff. at para. 44; TAM Final Report at 27.

[236] Pacific Bell Huston/Lawson Aff. at para. 45.

[237] Pacific Bell Huston/Lawson Aff. at para. 46; TAM Final Report at 25.

[238] Pacific Bell Huston/Lawson Aff. at para. 46.

[239] AT&T Comments, Tab E, Declaration of Diane P. Toomey, Susan M. Walker, and Michael Kalb (AT&T Toomey/Walker/Kalb Decl.) at paras. 27-46; Letter from Richard E. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-306 (filed Nov. 27, 2002) (AT&T Nov. 27 Young *Ex Parte* Letter), Attach. 1, Joint Supplemental Declaration of Diane P. Toomey and Sarah DeYoung (AT&T Toomey/DeYoung Supp. Decl.) at paras. 22-35.

[240] In reviewing the statistical analysis of Pacific Bell's performance data, Cap Gemini noted that the analysis was "somewhat limited" because it was unable to assess a large amount of competitive LEC and pseudo competitive LEC performance data due to incomplete Pacific Bell data necessary for comparative analysis. TAM Final Report at 34-35.

[241] *California Commission Order* at 94; *see also* Pacific Bell Johnson Aff. at para. 201 (noting how competitive LECs were involved in a collaborative effort to establish and select an auditor).

[242] Pacific Bell Johnson Aff. at para. 205; Pacific Bell Johnson Aff., Attach. D, Independent Accountant's Report on Management's Assertions Related to Pacific Bell's Compliance with Certain Requirements of the Joint Partial Settlement Agreement (PWC Report) at 8.

reports detailing the modified processes.[243] The data reconciliations between Pacific Bell and competitive LECs also provide probative evidence that Pacific Bell's data collection procedures are reasonably accurate.[244] We also note that AT&T has provided no evidence of specific inaccuracies with the performance data, or any evidence that suggests that the data Pacific Bell presents cannot be relied upon. We do recognize, however, that other competitive LECs did provide evidence of inaccuracies with regard to certain billing performance measurements, which we address below in the billing section.

78. AT&T also argues that the third-party test was deficient in establishing the operational readiness of the EDI ordering interface because it failed adequately to test the ability of the OSS to handle UNE-P orders through any version of EDI.[245] While we recognize that the functionality portion of the third-party test did not include testing of UNE-P solely over the EDI interface, we agree with the California Commission that the GUI portion of the functionality phase, combined with the EDI UNE-P portion in the capacity phase, offer a reasonable indication of how Pacific Bell's systems will be able to handle UNE-P orders submitted via the EDI OSS interface.[246] Although the vast majority of the UNE-P orders were submitted over Pacific Bell's GUI LEX interface during the functionality testing phase, both LEX and EDI flow into the same ordering and provisioning process, regardless of which interface is used to initiate the test.[247] Accordingly, testing UNE-P over LEX does provide useful evidence regarding the ability of Pacific Bell's systems to process UNE-P orders generally. Moreover, in the EDI capacity test, Global eXchange processed UNE-P orders (as well as other types of UNE orders) through the EDI interface to test whether Pacific Bell's OSS would be able to process a large number of orders using EDI.[248] Therefore, the capacity test also indicated that Pacific Bell's OSS was operationally ready to process UNE-P orders via EDI.

79. We also dismiss AT&T's assertions that the third-party test failed to show operational readiness of the OSS because it did not include testing of the LSOG 5 version of the EDI interface.[249] As AT&T itself notes, Pacific Bell did not implement LSOG 5 until April

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[243] Pacific Bell Johnson Aff., Attach. E, Report of Independent Accountants (PWC Supp. Report) at 1-53; Pacific Bell Johnson Aff., Attach. F, Report of Independent Accountants (PWC 2nd Supp. Report) at 1-5.

[244] *See* Pacific Bell Johnson Aff. at paras. 210-18.

[245] AT&T Comments at 43-44.

[246] *See California Commission Order* at 80-81; Pacific Bell Huston/Lawson Aff. at para. 65.

[247] *California Commission Order* at 80-81; Pacific Bell Huston/Lawson Aff. at para. 65.

[248] TAM Final Report at 142-43. In the volume test, Global eXchange submitted 445 UNE-P conversion orders and 23 UNE-P new orders using EDI, and in the stress test, submitted 1,320 UNE-P conversion orders and 30 new orders using the EDI interface.

[249] AT&T Comments at 44; AT&T Reply at 23.

2002, more than a year after the completion of the third-party test.[250] As we have stated previously, "OSS functionalities are constantly evolving, and BOCs should not be penalized because substantially improved functionalities come on-line near the conclusion of the testing period or after testing has already concluded."[251]

80. In any event, we find that the commercial data demonstrates that Pacific Bell's EDI interface is able to effectively process competing carriers' UNE-P service orders.[252] Pacific Bell processed 73,150 UNE-P service orders over its EDI interface in July 2002, 92,120 UNE-P service orders in August 2002, and 119,940 UNE-P service orders in September 2002.[253] In relying on this commercial data, we reject AT&T's arguments that the commercial data is not probative because the service orders were submitted over the LSOR 3.06 version of the EDI software, rather than LSOG 5 version to which competitive LECs are in the process of converting.[254] Because, as we noted above, OSS functionalities are constantly evolving, as long as the BOC has demonstrated operational readiness based on a current software version, we do not require the BOC to demonstrate that a software version that most competitive LECs have not yet converted to is operationally ready. Moreover, Pacific Bell has recently begun processing competitive LEC UNE-P orders submitted via the LSOG 5 version of the EDI software and there is no evidence indicating that competitive LECs are experiencing any problems submitting orders with this new software version.[255] Finally, Pacific Bell provides evidence that competitive LECs are successfully submitting UNE-P service orders under the LSOG 5 version of the LEX interface, and as noted above, both LEX and EDI flow into the same ordering and provisioning process.[256]

b. Pre-Ordering

81. We find that Pacific Bell provides carriers in California nondiscriminatory access to all pre-ordering functions. Competing carriers have access to four principal electronic

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250 AT&T Comments App. Tab D, Declaration of Walter W. Willard (AT&T Willard Decl.) at para. 47.

251 *Verizon New Jersey Order*, 17 FCC Rcd at 12312, para. 86.

252 *See* Letter from Colin S. Stretch, Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306, Attach. 2 at 2 (filed Oct. 17, 2002) (Pacific Bell Oct. 17 *Ex Parte* Letter).

253 Pacific Bell Oct. 17 *Ex Parte* Letter, Attach. 2 at 2.

254 AT&T Nov. 27 Young *Ex Parte* Letter, Attach. 2, Supplemental Declaration of Walter W. Willard (AT&T Williard Supp. Decl.) at paras. 60-61.

255 Pacific Bell has provided evidence that, since October 2002, three competitive LECs have submitted over 500 orders using either LSOR version 5.01 or 5.02. *See* Letter from Geoffrey M. Klineberg, Counsel for Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306, Attach. at 1 (filed Dec. 6, 2002) (Pacific Bell Dec. 6 *Ex Parte* Letter).

256 *See* Pacific Bell Oct. 17 *Ex Parte* Letter, Attach. 2 at 2.

interfaces, including Enhanced Verigate, which is a GUI, as well as EDI, CORBA and Uniform Datagate, which are application-to-application interfaces.[257] Competing carriers are able to use any of the four interfaces to perform all of the key functions identified in prior section 271 orders.[258] No commenter raised any problems with Pacific Bell's pre-order systems, and performance data show that Pacific Bell typically meets every benchmark or retail analog, confirming that competitors have equivalent access to Pacific Bell's pre-order databases.[259]

82. We also conclude that Pacific Bell provides competitive LECs with the information necessary to integrate its pre-ordering and ordering systems. Specifically, Pacific Bell's four pre-ordering interfaces provide "parsed" customer service information pursuant to the guidelines of the ordering and billing forum (OBF)—that is, information divided into identifiable fields.[260] As the Commission has held previously, providing pre-ordering information in a parsed format is a strong indicator that it is possible for competitive LECs to integrate.[261] In addition, Pacific Bell explains that the four pre-ordering interfaces offer complete synchronization of every OBF-defined pre-ordering field, and certain additional nondefined pre-ordering fields, with the associated ordering fields.[262] We also rely on the third-party test performed by Nightfire Software, Inc., which determined that all pre-order responses were parsed as per the Local Service Preordering Requirements (LSPOR).[263] Nightfire concluded that Pacific Bell's EDI system accurately and effectively allows competitive LECs the capability to integrate preorder responses with order requests to Pacific Bell.[264] Moreover, no competitive

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[257] Pacific Bell Huston/Lawson Aff. at para. 111.

[258] *See SWBT Texas Order*, 15 FCC Rcd at 18427, para. 209. Pacific Bell's pre-ordering systems allow carriers to perform functions required by our section 271 orders and some additional functions. The functions Pacific Bell's pre-ordering systems provide include the ability to: (1) retrieve customer service information (CSIs) and customer service records (CSRs); (2) validate addresses; (3) select, reserve, and cancel telephone numbers; (4) obtain information on pooled telephone numbers; (5) determine services and features available to a customer; (6) obtain due date availability; (7) access loop qualification information; (8) view a customer's directory listing; (9) determine dispatch availability; (10) retrieve local primary intraLATA carrier (LPIC) and primary interexchange carrier (PIC) lists; (11) access the Common Language Location Identifier (CLLI) code; (12) verify connecting facility assignments; (13) validate network channels and network channel interfaces; (14) determine order status and provisioning order status; and (15) perform a remote access to call forwarding inquiry. Pacific Bell Huston/Lawson Aff. at para. 112.

[259] *See* Pacific Bell Johnson Aff. at paras. 59-66*; see also* Appendix B.

[260] Pacific Bell Huston/Lawson Aff. at para. 131.

[261] *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9078, para. 120.

[262] This means that OBF-defined pre-ordering fields and certain additional fields can be stored and automatically populated on associated ordering fields on the LSR without requiring a CLEC to adjust and/or reconfigure characters. Pacific Bell Huston/Lawson Aff. at para. 133.

[263] Nightfire Software, Report of Pacific Bell/Nevada Bell Preorder-to-Order Integration Testing Report (June 25, 2002) (Nightfire Report), App. A, Tab 18.

[264] Nightfire Report at 3.

LEC challenged these findings nor submitted any comments expressing any concerns with regard to pre-order to order integration.

83. We reject AT&T's claim that Pacific Bell has failed to provide competitive LECs with equivalent access to correct directory listing information at the pre-ordering stage.[265] Specifically, AT&T claims that Pacific Bell does not provide competitive LECs with proper directory listing information when a customer has chosen an alternative community name for their listing.[266] In its initial comments, AT&T stated that its inability to discern a customer's correct listing (whether by postal community or alternative community) has led to address mismatches which caused nearly six percent of UNE-P orders that AT&T submitted in August to be rejected.[267] Pacific Bell notes, however, that AT&T need not submit directory listing information if the end user simply wants to maintain its current listing—and, thus, AT&T could have avoided the majority of these rejects simply by keeping the directory listing (DL) field blank.[268] Pacific Bell also states that not all of the rejects cited by AT&T are attributable to the alternative community name issue, and suggests that some rejects were attributable to a different software problem, or to AT&T's own errors.[269] As we have stated in other section 271 orders, the Commission has not engaged in a parity or direct benchmark analysis of a carrier's reject rate, in part because a high reject rate for one carrier does not necessarily indicate flaws in the BOC's OSS systems or processes, but instead could be attributable to the competitive LEC's own actions.[270] Moreover, in this instance, we find the reject rate of approximately six percent experienced by AT&T is relatively low and does not suggest that AT&T has been deprived of a meaningful opportunity to compete. We also note that Pacific Bell provides competing carriers with timely reject notices, which allows carriers to resolve ordering problems in a relatively efficient manner.[271] In any event, Pacific Bell has responded to AT&T's concerns by implementing system modifications designed to eliminate two types of rejects experienced by

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[265] AT&T Comments at 38-39.

[266] Alternative community names are community names that customers can request for inclusion in their directory listing in lieu of the community listing in their postal or service address. For example, a customer in Daly City (which is located outside of San Francisco) might request that the directory list San Francisco as his or her community. AT&T Comments at 38.

[267] AT&T Comments at 38.

[268] Pacific Bell Reply Affidavit of Stephen D. Huston and Beth Lawson, Tab 9 (Pacific Bell Huston/Lawson Reply Aff.) at para. 27.

[269] Pacific Bell Huston/Lawson Reply Aff. at paras. 26, 28.

[270] *See SWBT Texas Order*, 15 FCC Rcd at 18442, para. 176. In that instance, the Commission noted that the order rejections varied widely by individual carrier, from 10.8 percent to higher than 60 percent, but concluded that these overall reject rates did not appear to indicate a systemic flaw in the BOC's OSS.

[271] Pacific Bell Johnson Aff. at paras. 74-75; *see also* Appendix B, PM 3 (Average Reject Notice Interval).

AT&T.[272] We are, therefore, satisfied that Pacific Bell has corrected the problem AT&T was experiencing. Pursuant to section 271(d)(6), we will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order.[273] AT&T and others should bring to the attention of the Commission's Enforcement Bureau any areas of deteriorating performance.

c. Ordering and Provisioning

84. We find, as did the California Commission,[274] that Pacific Bell satisfies checklist item 2 with regard to ordering and provisioning in California. The record demonstrates that Pacific Bell provides nondiscriminatory access to its ordering and provisioning systems and processes and consistently satisfies the performance standards on the relevant performance measurements, with few exceptions.[275] We reject AT&T's argument that these few discrepancies warrant a finding of checklist noncompliance.[276] First, AT&T argues that Pacific Bell failed to provide competitors with timely notices that it would miss a scheduled installation date, and the performance data shows that Pacific Bell has fallen short of the benchmark standard for this measure for each of the past five months for UNE-P.[277] We note, however, that late missed commitment notices occur infrequently.[278] In fact, Pacific Bell misses committed due dates on a

[272] Pacific Bell explains that prior to October 9, 2002, Pacific Bell's Listings Gateway did not recognize valid abbreviations for either postal or alternative community addresses. This was corrected with a programming change on October 9, 2002. Pacific Bell Huston/Lawson Reply Aff. at para. 28. Pacific Bell also explains that, on an Address Validation Inquiry, Pacific Bell's pre-order interfaces would return the alternative community name for the end user, when available, rather than the postal community name. This would cause AT&T's order to be rejected because Pacific Bell's systems require the end- user's actual location (i.e. the postal community name) to be included on the ordering form. Pacific Bell modified its systems on October 15, 2002, so that an Address Validation Inquiry would return the postal community name to the competitive LEC, thereby addressing this second problem leading to address mismatches. Upon further review of AT&T problems, Pacific Bell realized that it had not applied the modification to the 3.06 version of EDI and CORBA, which AT&T uses. Pacific Bell states that it implemented this fix on November 2, 2002. Pacific Bell Huston/Lawson Reply Aff. at paras. 29-30.

[273] *See FCC's Enforcement Bureau Establishes Section 271 Compliance Review Program*, Public Notice, DA 02-1322 (rel. June 6, 2002).

[274] *See* California Commission Order at 2, 270, 277, 305, 307, 308.

[275] *See* Appendix B; Pacific Bell Johnson Aff. at paras. 67-84.

[276] *See* AT&T Reply at 23.

[277] AT&T Reply at 23; AT&T Toomey/Walker/Kalb Decl. at paras. 58-59. *See* Appendix B, PM 6-652000 (Average Jeopardy Notice Interval – Missed Commitment – UNE-P Basic Port and (8 db and 5.5 db) Loop field work/no field work). Jeopardy notices alert customers when Pacific Bell misses a committed due date, and Pacific Bell should provide 95 percent of missed commitment notices to competitors within 24 hours. *See* Pacific Bell Application, App. C, Tab 71 (Joint Partial Settlement Agreement) at 96-98.

[278] Pacific Bell sent 7 missed commitment notices in May 2002, 10 in June, 10 in July, 61 in August, and 127 in September. *See* Appendix B, PM 6-652000 (Average Jeopardy Notice Interval – Missed Commitment – UNE-P Basic Port and (8 db and 5.5 db) Loop field work/no field work); Pacific Bell Johnson Aff. at para. 152 n.89.

very small percentage of competitors' total UNE-P orders completed, demonstrating generally timely performance.[279] We view Pacific Bell's performance issuing timely missed commitment notices within the broader context of Pacific Bell's high rate of on-time performance provisioning UNE-P orders and, therefore, do not find the identified disparity to be competitively significant.

85. AT&T also points to Pacific Bell's failure in two recent months to meet the standard for returning timely Firm Order Confirmations (FOCs) for electronically received, manually-handled UNE dark fiber and Resale PBX orders.[280] We note, however, that the volumes for these orders were very low and, therefore, may produce a distorted picture of Pacific Bell's performance.[281] Indeed, Pacific Bell satisfied the standard for three of the past five months, and we note that Pacific Bell's performance data reflect success in returning on-time FOC notices for all other service categories. Finally, AT&T argues that Pacific Bell failed to provide competitors with certain types of completion notices on time. The performance data show that, for three months, Pacific Bell failed the benchmark – 95 percent within 24 hours –for timely returning completion notices for electronic orders that should not "fall out" for manual processing, but did.[282] We note that Pacific Bell has shown general steady improvement on this measure, meeting the benchmark in July and August and barely missing it in September.[283] We also note that very few electronic orders that should be electronically processed fell out for

[279] Total UNE-P orders completed for this period were 53,161 in May 2002, 56,143 in June, 79,476 in July, 93,033 in August, and 124,691 in September. Appendix B, PM 11 (Percent of Due Dates Missed, UNE-P - Basic Port and (8 db and 5.5 db) Loop field work/no field work). Based on this data, therefore, Pacific Bell missed less than 1 percent of committed due dates during the period May through September 2002.

[280] AT&T Toomey/Walker/Kalb Decl. at paras. 61-62. A FOC provides a committed due date for a requested service, and PM 2 measures the average time it takes Pacific Bell to issue a FOC after receiving a valid service request. *See* Joint Partial Settlement Agreement at 86-89. Pacific Bell failed the 6-hour benchmark for providing timely FOCs for Resale PBX orders in May and June 2002, providing FOCs to competitors in 13.25 hours in May and 23.65 hours in June. Pacific Bell failed the 6-hour benchmark for UNE dark fiber orders in June and July 2002, providing FOCs to competitors in 37.29 hours in June and 8.91 hours in July. Appendix B, PMs 2-203100 (Average Notice Interval – Electronic/Manual – Resale PBX) and 2-204003 (Average Notice Interval – Electronic/Manual – UNE dark fiber).

[281] For Resale PBX, Pacific Bell received 7 competitive LEC orders in May and 14 orders in June. For UNE dark fiber, Pacific Bell received 5 orders in June and 5 orders in July. Appendix B, PMs 2-203100 (Average Notice Interval – Electronic/Manual – Resale PBX) and 2-204003 (Average Notice Interval – Electronic/Manual – UNE dark fiber).

[282] AT&T Toomey/Walker/Kalb Decl. at para. 63; Appendix B, PM 18-1800401 (Average Completion Notice Interval – Fully Electronic Fallout – LEX/EDI LASR). *See* Joint Partial Settlement Agreement at 134-35.

[283] Pacific Bell provided 87.64 percent of completion notices to competitors within 24 hours in May, 92.76 percent in June, and 94.93 percent in September. Appendix B, PM 18-1800401 (Average Completion Notice Interval – Fully Electronic Fallout – LEX/EDI LASR).

manual processing.[284] Considering Pacific Bell's improving performance, we do not find that these isolated ordering and provisioning discrepancies warrant a finding of checklist noncompliance. We will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order.[285]

d. Maintenance & Repair

86. We conclude that Pacific Bell provides nondiscriminatory access to maintenance and repair OSS functions. We find that Pacific Bell has deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions that Pacific Bell provides to itself.[286] The third-party test conclusions support our finding on functionality and no commenter challenged those results.[287]

87. We also find that Pacific Bell allows competing carriers to access its maintenance and repair functions in substantially the same time and manner as Pacific Bell's retail operations, and restores service to competing carriers' customers in substantially the same time and manner and with a similar level of quality as it restores service to its own customers.[288] We make these findings upon close examination of the performance data and after considering the concerns expressed by the Department of Justice and AT&T's comments that Pacific Bell failed to meet parity at times for certain performance measurements.[289] We find that Pacific Bell satisfied the applicable parity or benchmark standard for each major performance measurement with few exceptions.[290] While Pacific Bell did occasionally miss the standards in individual months for certain types of services, we find these misses to be narrow and do not reflect discriminatory

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284 *See* Appendix B, PM 18-1800502 (Average Completion Notice Interval – Fallout Level – LEX/EDI LASR). Based on this data, an average of less than .5 percent of electronic orders that should not fall out for manual processing, did fall out for the period May through September 2002. *Id.*

285 *See FCC's Enforcement Bureau Establishes Section 271 Compliance Review Program*, Public Notice, DA 02-1322 (rel. June 6, 2002).

286 *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9111 para. 169; *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 211. Pacific Bell provides competing carriers with several options for requesting maintenance and reporting troubles. Competing carriers may use the GUI Electronic Bonding Trouble Administration (GUI-EBTA) available from the SBC Web Toolbar, the Electronic Bonding Trouble Administration application to application interface (EBTA), and the Toolbar Trouble Administration application (TTA). Pacific Bell Huston/Lawson Aff. at paras. 210-15.

287 TAM Final Report at 99-104.

288 *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9111 para. 169; *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 211.

289 Department of Justice Evaluation at 3 n.10; AT&T Comments at 48-49; AT&T Reply at 30, 33-34.

290 *See* Pacific Bell Johnson Aff. at paras 154-55, 191-96; *see also* Appendix B, PM 19 (Customer Trouble Report Rate, PM 20 (Percentage of Customer Trouble Not Resolved Within Estimated Time), PM 21 (Average Time to Restore), PM 23 (Frequency of Repeat Troubles in 30-Day Period).

performance overall.[291] We therefore reject AT&T's claims that Pacific Bell's scattered failures demonstrate discriminatory performance.[292] We will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order.

e. Billing

88. The Commission has established in past section 271 orders that, as part of its OSS showing, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.[293] In particular, BOCs must provide two essential billing functions: (1) complete, accurate, and timely reports on the service usage of competing carriers' customers; and (2) complete, accurate, and timely wholesale bills.[294] Service-usage reports and wholesale bills are issued by BOCs to competitive LECs for two different purposes. Service-usage reports generally are issued to competitive LECs that purchase unbundled switching and measure the types and amounts of incumbent LEC services that a competitive LEC's end users use for a limited period of time (usually one day).[295] In contrast, wholesale bills are issued by incumbent LECs to competitive LECs to collect compensation for the wholesale inputs, such as unbundled network elements, used by competitive LECs to provide service to their end users.[296] These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.[297]

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[291] The Department of Justice and AT&T point to Pacific Bell's failure to meet parity for UNE-P services for several of the measurements. Nevertheless, we determine that these misses are not competitively significant. For example, for PM 19 (Customer Trouble Report Rate), Pacific Bell failed the parity measure for UNE-P services in June, July, August and September 2002. *See* PM 19-1993600. For the five-month data period, however, the average trouble report rate for competitive LEC UNE-P customers was 0.61, while for Pacific Bell retail customers, the average was 0.47. This very slight difference does not appear to be competitively significant. Similarly for PM 20 (Average Time to Restore), Pacific Bell reports average time to repair for competitive LEC UNE-P services that are only slightly longer than for retail. *See* PM 21-2197401. Although Pacific missed parity for average time to repair UNE-P for July, August and September 2002, on average for the five-month period, Pacific Bell restored competitive LEC UNE-P in 8.52 hours, while it restored its retail customers in 7.64 hours. This is a difference of less than one hour. Finally for PM 23 (Frequency of Repeat Troubles in 30-Day Period), Pacific Bell failed to meet the parity standard for UNE-P Services in August and September 2002. *See* PM 23-2393600. However, the discrepancy between the rate of repeat troubles for competitive LECs and Pacific Bell retail was not significant. Competitive LEC UNE-P customers had an average repeat trouble report rate of 8.81 percent for the five-month data period, while Pacific Bell retail customers had an average repeat trouble report rate of 7.77 percent. This is only a difference of slightly more than one percent.

[292] *See* AT&T Reply at 24-25.

[293] *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

[294] *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

[295] *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

[296] *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

[297] *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

89. We find that Pacific Bell complies with its obligation to provide complete, accurate and timely reports on service usage. Pacific Bell provides competitive carriers with daily usage files (DUFs), which allow competitive carriers access to usage records, including end-user, access and interconnection records.[298] No commenting parties raise any issues with Pacific Bell's provision of service usage data to competitive LECs. Based on the information provided by Pacific Bell, we find that its provision of service usage data through the DUF meets its obligations in this regard.

90. We also find that Pacific Bell demonstrates that it is providing carrier bills in a timely manner.[299] For competitive LECs that are reselling services, Pacific Bell uses the Customer Record Information System (CRIS), which is the same system Pacific Bell uses for its retail customers.[300] Pacific Bell uses its Carrier Access Billing System (CABS) to bill competitive carriers for UNE and interconnection products, including loops, switch ports, loop and port combinations, local transport and interconnection.[301] We note that no party challenges the timeliness of Pacific Bell's wholesale bills in California. Several parties, however, dispute Pacific Bell's ability to provide complete, accurate, and auditable wholesale bills and contest the effectiveness and timeliness of Pacific Bell's dispute resolution process. To demonstrate the accuracy of its bills, Pacific Bell provides evidence of the third-party test, which determined that Pacific Bell provides competitive LECs with accurate electronic and hard copy bills.[302] In addition, Pacific Bell notes that its performance data reveal that its wholesale bills are sufficiently accurate.[303] While we acknowledge that competitive carriers have identified

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[298] Pacific Bell Application App. A, Vol. 1, Affidavit of Michael E. Flynn (Pacific Bell Flynn Aff.) at para. 10. Competitive LECs can use the DUFs to: (1) bill their end-user customers; (2) bill interconnecting carriers; and (3) reconcile their wholesale bills. Competitive LECs may elect to have their DUF delivered electronically, or via Magnetic Tape, and have the option of receiving their DUF file on a daily, weekly or monthly basis. Pacific Bell Flynn Aff. at para. 10.

[299] *See* Pacific Bell Johnson Aff. at para. 88-95; *See also* Appendix B, PM 28 (Usage Timeliness), PM 30 (Wholesale Bill Timeliness).

[300] Pacific Bell Flynn Aff. at para. 4.

[301] Pacific Bell Flynn Aff. at para. 5.

[302] TAM Final Report at 31. The third-party test evaluated Pacific Bell's CABS system and determined that Pacific Bell supplied competitive LECs with accurate and timely electronic and hard copy bills.

[303] Pacific Bell met the parity standard for all services for every month from May to September 2002 for almost all of the billing performance measurements that impact billing accuracy. Pacific Bell Johnson Aff. at paras. 94-95; *see also* Appendix B, PM 31 (Usage Completeness), PM 33 (Non Recurring Charge Completeness), and PM 34 (Bill Accuracy). The only performance measurement for which Pacific Bell did not meet parity each month was the measure regarding the completeness of recurring charges, and even in that instance, Pacific Bell only missed parity for one month for one service and two months for another service. *See* PM 32 (Recurring Charge Completeness). Pacific Bell did not meet parity in May 2002 and September 2002 for recurring charge completeness for its UNE POTS services. *See* PM 32-3200300. However, the disparity was less than eight percent in May and less than one percent in September. Moreover, on average for the five-month period, Pacific Bell's recurring charge completeness for UNE POTS services was 94.89 percent, while it was only 92.82 percent for its retail customers. (continued….)

problems with Pacific Bell's bills, we conclude, as did the California Commission, that Pacific Bell's wholesale bills provide competitive LECs in California with a meaningful opportunity to compete.[304] As the Commission has previously stated, "we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate."[305] Many of the problems identified by commenters appear to be resolved historical problems, and even in the aggregate, these claims do not overcome Pacific Bell's demonstration of checklist compliance. We address the claims more fully below.

91. *Accuracy of Data*. Several commenters question the accuracy of the data underlying Pacific Bell's performance measurements relating to billing accuracy. Both Vycera and Telscape claim that, in their experience, Pacific Bell's bills contain many more errors than is reflected by the performance measurements, which demonstrate billing accuracy rates of close to one hundred percent.[306] The commenters suggest that the reason for the discrepancy between their first-hand experience with Pacific Bell's bills and the performance results could be that Pacific Bell has failed to include various credits in its performance data.[307] For instance, Vycera explains that once Pacific Bell agrees to credit an account, the credit simply shows up as a general credit to the bill as a whole, and does not specify to which charges or accounts the credit relates.[308] Vycera notes that this manner of issuing credits might exclude those credits from the performance measurements.[309] Vycera also suggests that Pacific Bell's billing accuracy measurements may understate the credits that should be issued because Pacific Bell will only issue a credit if it is demanded by the competitive LEC, even if it knows a credit is due to other similarly-situated competitive LECs.[310] Similarly, Telscape claims that bill credits offered by

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Pacific Bell also failed to meet the parity standard in July 2002 for recurring charge completeness for competitive LEC resale customers. *See* PM 32-3200200. However, in this instance, even for the month that Pacific Bell missed, the difference was very small—93.11 percent for competitive LEC customers and 94.09 for Pacific Bell retail customers. Moreover, on average during the five-month period evaluated, Pacific Bell performed slightly better for competitive LEC customers, than its own retail customers.

[304] The California Commission found that Pacific Bell's billing systems achieved a substantial state of parity. In addition, the California Commission noted that it had incentives in place to help assure that Pacific Bell does not backslide in its performance. *California Commission Order* at 64.

[305] *Verizon New Jersey Order*, 17 FCC Rcd at 12336-37, para. 126.

[306] Letter from Patrick J. Donovan, Rogena Harris and Katherine A Rolph, counsel for Vycera, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306 at 1 (filed Oct. 25, 2002) (Vycera Oct. 25 *Ex Parte* Letter); Letter from Rogena Harris and Katherine A. Rolph, counsel for Vycera, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306 at 1-2 (filed Nov. 4, 2002) (Vycera Nov. 4 *Ex Parte* Letter); Letter from Ross A. Buntrock, counsel for Telscape, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306 at 2 (filed Nov. 1, 2002) (Telscape Nov. 1 *Ex Parte* Letter).

[307] *See* Vycera Nov. 4 *Ex Parte* Letter at 2; Telscape Nov. 1 *Ex Parte* Letter at 2-3.

[308] Vycera Oct. 25 *Ex Parte* Letter at 1.

[309] Vycera Oct. 25 *Ex Parte* Letter at 1.

Pacific Bell through certain settlement agreements are excluded from the performance measurements, which could understate the number of credits given to competitive LECs.[311]

92. In response, Pacific Bell explains that all bill adjustments are reflected in its performance measurements.[312] Pacific Bell also states that when it learns of systems-related billing errors that could impact more than one competitive LEC, Pacific Bell's practice is to make those adjustments for all impacted competitive LECs—not just the competitive LEC that called the error to Pacific Bell's attention.[313] Pacific Bell concedes that its data have understated billing adjustments in recent months in one regard, but argues that the impact was minimal. Specifically, Pacific Bell admits that manual billing adjustments made to the Enhanced Summary Billing Account (ESBA) statement (which is the bill as a whole, instead of the sections relating to an individual telephone number), must be added manually to the billing accuracy performance measurement (PM 34) results. For the five-month data period at issue those ESBA credits were apparently not provided to the performance measurement group, and were therefore not included in the reported data.[314] While this oversight slightly impacted the performance results, Pacific Bell states that the total adjustments made during the five-month data period including the ESBA adjustments amounted to less than 0.3 percent of resale billing and less than 0.04 percent of total CRIS and CABS wholesale billing.[315] Even including those additional billing credits, Pacific Bell still demonstrated billing accuracy of over 99 percent for June, July, and August 2002, over 98 percent for May 2002 and approximately 93.5 percent for September 2002.[316] Moreover, Pacific Bell has taken steps to ensure that these billing adjustments are included in the performance measurements in the future.[317] Pacific Bell also admits that it has entered settlement

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[310] Vycera Nov. 4 *Ex Parte* Letter at 2.

[311] Telscape Nov. 1 *Ex Parte* Letter at 2-3; Telscape Reply at 4-5.

[312] Pacific Bell states that the bill adjustments are reflected in either performance measurement 33 (Non-recurring Charge Completeness) or in performance measurement 34 (Billing Accuracy). Pacific Bell explains that if the credit is a mechanized adjustment to correct a billing system error, the credit would appear as a one-time credit to nonrecurring charges and would be reported in performance measurement 33. Pacific Bell further explains that if the credit is a manual adjustment, for instance, an agreement reached with an individual competitive LEC that is not a billing system error, those credits would appear in the adjustment section of the bill and be reported in performance measurement 34. Pacific Bell Reply Affidavit of Michael E. Flynn, Ginger L Henry and Gwen S. Johnson, Tab 5 (Pacific Bell Flynn/Henry/Johnson Reply Aff.) at paras. 41-42.

[313] Letter from Colin S. Stretch, counsel for Pacific Bell, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306, Attach., at 1 (filed Nov. 26, 2002) (Pacific Bell Nov. 26 *Ex Parte* Letter).

[314] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 42.

[315] Pacific Bell Nov. 13 *Ex Parte* Letter, Attach. at 3.

[316] Pacific Bell Nov. 13 *Ex Parte* Letter, Attach. at 3.

[317] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 42; *see also* Letter from Colin S. Stretch, counsel for Pacific Bell, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306, Attach. 1 (filed Nov. 21, 2002) (Pacific Bell Nov. 21 *Ex Parte* Letter).

agreements with competitive LECs that, among other things, exclude certain billing credits from reported performance measurements.[318] Pacific Bell explains, however, that a decision to exclude certain credits from performance measurements would only be made by mutual agreement of the parties.[319] Based on the record, we do not find that Pacific Bell's billing adjustments in any settlement agreement merit a finding of checklist noncompliance. Moreover, because we encourage the settlement of disputes, we do not consider it necessarily improper for parties to agree to compromise or settle billing disputes such that payments are not reflected in performance data. Accordingly, even taking into account these accuracy issues, we do not find that Pacific Bell's performance warrants a finding of checklist noncompliance. We will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order.

93. *Auditable Bills*. Pacific Bell provides competing carriers in California the opportunity to receive their bills in paper format, electronic media, or both.[320] Electronic CABS bills follow the industry standard Billing Output Specification (BOS) guidelines, while CRIS bills also follow industry standards.[321] Several competitive LECs generally claim that Pacific Bell's wholesale bills are difficult to decipher and, therefore, are unauditable.[322] Specifically, Mpower provides two examples for which it claims that Pacific Bell fails to provide sufficient information to audit its bills. First, Mpower argues that Pacific Bell's wholesale bills do not identify loops by "CLLI code," which makes it very difficult to verify the zones in which the loops are located and thus, the appropriate rate.[323] Second, Mpower claims that Pacific Bell fails to provide sufficient information to audit end-user return charges.[324] In responding to Mpower's first claim, Pacific Bell counters that it does provide CLLI codes in both its paper and electronic bills for Mpower's loops and provides an excerpt of Mpower's bills to illustrate the information it provides.[325] With regard to the second issue, Pacific Bell explains that before any loop is disconnected as part of an end-user return, the competitive LEC must send a FOC to Pacific Bell

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[318] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 40 n.10.

[319] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 40 n.10.

[320] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 7.

[321] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 7.

[322] Mpower Comments at 5; Telscape Reply at 3; Vycera Comments at 10-11.

[323] Mpower Comments at 5-6; Letter from Marilyn H. Ash, Counsel—Legal &Regulatory Affairs, to Michael Powell, Chairman, Federal Communications Commission, WC Docket No. 02-306, Attach., Affidavit of Mark S. Kazmierski at paras. 4-5 (filed Oct. 21, 2002) (Mpower Kazmierski Aff.). The CLLI Code (Common Language Location Identifier) identifies the central offices where the loops terminate.

[324] An end-user return is when the end user must be disconnected from the competitive LEC, because it has selected Pacific Bell as its local carrier. Pacific Bell Flynn/Henry/Johnson Reply Aff. at para. 22.

[325] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para 10, Attach. A; *see also* Pacific Bell Nov. 26 *Ex Parte* Letter, Attach., at 3-5.

to submit the disconnect order on the competitive LEC's behalf.[326] Pacific Bell contends that Mpower can reconcile its billing by comparing the information provided on its FOC to the purchase order number (PON) and/or the circuit identification information provided on the bill.[327] Because the competitive LECs' general contentions of difficulty auditing Pacific Bell's bills lack any specific evidence substantiating their claims, we reject these claims. With regard to Mpower's specific bill auditing issues, we determine that Pacific Bell does provide sufficient information for Mpower to audit the charges it identifies and, accordingly, we reject Mpower's claims as well.[328]

94. *Allegations of Specific Billing Errors.* Mpower, Vycera and Telscape claim a host of specific Pacific Bell billing mistakes and other disputes between the parties.[329] We recognize that billing errors such as these can be time-consuming and costly for competing LECs to identify and resolve, particularly if they occur frequently. We do not find in this instance, however, that these specific billing claims warrant a finding of checklist noncompliance. Indeed, the vast majority of the billing disputes these commenters raise are historical problems, for which Pacific Bell already has issued the appropriate credits.[330] We determine that, the majority

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[326] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para. 23.

[327] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para. 23.

[328] With regard to the CLLI Code claim, although Mpower claims that such information is not included in Pacific Bell's electronic bills, we note that Pacific Bell has provided an excerpt from Mpower's bills illustrating that such information is included in both the electronic and paper version of its bills. Pacific Bell Nov. 26 *Ex Parte* Letter, Attach., at 3-5. With regard to the end-user return claim, Mpower concedes that it could verify the charges with its FOC records, but instead claims that such a procedure would be cumbersome. Letter from Marilyn H. Ash, Counsel—Legal &Regulatory Affairs, to Michael Powell, Chairman, Federal Communications Commission, WC Docket No. 02-306, Attach., Supplemental Affidavit of Scott Sarem at para. 12 (filed Nov. 19, 2002) (Mpower Sarem Supplemental Aff.)

[329] *See, e.g.*, Mpower Comments at 5-7; Vycera Comments at 10-11; Letter from Ross A. Buntrock, counsel for Telscape, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306 at 2-3 (filed Oct. 18, 2002) (Telscape Oct. 18 *Ex Parte* Letter); *see also* Telscape Reply at 2-5.

[330] For example, Mpower and Telscape both claim that Pacific Bell inappropriately charged competitive LECs the manual rate for disconnection of the end user from the competitive LEC when the end user selects Pacific Bell as its local carrier. Mpower Comments at 6; Telscape Oct. 18 *Ex Parte* at 3. Telscape also claims that Pacific Bell: (1) mistakenly charged deaveraged loop rates when it should have been charged average loop rates; and (2) erroneously charged the semi-mechanized rate for Universal Lifeline Telephone Service Migrations. Telscape Oct. 18 *Ex Parte* Letter at 3; *see also* Letter from Ross A. Buntrock, counsel for Telscape, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-306, Attach. at 9 (filed Oct. 24, 2002) (Telscape Oct. 24 *Ex Parte* Letter). Vycera claims that Pacific Bell: (1) charged incorrect tariff rates for certain services; (2) erroneously billed for anonymous call rejection, which is a free service; (3) double billed for custom calling services for single- line accounts; and (4) failed to apply the resale discount for certain services. Vycera Comments at 11. For most of these issues, Pacific Bell has already fully resolved the disputes by issuing appropriate credits. Pacific Bell Flynn/Henry/Johnson Reply Aff. at paras. 17-18, 22, 24, 28-35. For certain of Vycera's billing disputes, Vycera claimed that the credits were not sufficient, and Pacific Bell has agreed to determine whether additional credits are required. Letter from Colin S. Stretch, counsel for Pacific Bell, to Marlene H. Dortch, Federal (continued….)

of these issues have been resolved, and Pacific Bell's errors appear to represent isolated instances, and are not indicative of a systemic problem with Pacific Bell's billing systems.[331] The commenters identify additional billing disputes, for which Pacific Bell investigated the dispute and determined that either no billing credit was due, or the credit already provided was correct.[332] Again, these disputes appear to be isolated instances that do not reflect systemic problems with Pacific Bell's billing. Moreover, commenters did not provide sufficient information to rebut Pacific Bell's response that it took appropriate action with regard to these disputes. Finally, we note that commenters raise other disputes with Pacific Bell that have little relevance to the effectiveness of Pacific Bell's billing systems.[333] Because we determine that these issues fail to demonstrate any competitively significant issue with regard to Pacific Bell's billing systems, we reject these claims as well.

95. *Dispute Resolution Process*. Mpower, Vycera and Telscape all generally complain that Pacific Bell's dispute resolution process is cumbersome and fails to provide timely corrections of billing errors.[334] Mpower further alleges that Pacific Bell has been using anticompetitive collection tactics—withholding payment owed to Mpower—because of disputes Mpower raised regarding Pacific Bell's bills.[335] In response, Pacific Bell states that its billing dispute resolution process is well documented and is set out in detail in the Pacific Bell/Nevada Bell CLEC Handbook.[336] Pacific Bell claims that the CLEC Handbook provides detail on how to submit a billing dispute, instructions for completing the standard dispute form, a general timeline

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Communications Commission, WC Docket No. 02-306, Attach. 1, at 3 (filed Dec. 13, 2002) (Pacific Bell Dec. 13 *Ex Parte* Letter).

[331] *See* Appendix B; Pacific Bell Johnson Aff. at paras. 88-95.

[332] For instance Mpower claims that Pacific Bell: (1) charged the incorrect zone rate for thousands of loops; (2) failed to accurately apply the credit for deaveraged loop rates; (3) incorrectly charged for disconnected lines; and (4) incorrectly charged manual service charges for faxing orders. Mpower comments at 5-6. Telscape also argues that Pacific Bell: (1) incorrectly charged a semi-mechanized rate for internal migrations from UNE-P to UNE-L; and (2) bills frivolous late charges. Telscape Oct. 18 *Ex Parte* Letter at 2-3. For these billing disputes, Pacific Bell either investigated the dispute and determined that they had accurately billed the charge or applied the credit, or Pacific Bell determined (as was the case with Telscape's claim of incorrect late charges) that it had insufficient information to appropriately investigate the claim. Pacific Bell Flynn/Henry/Johnson Reply Aff. at paras. 9-11, 14-15, 19-21, 27.

[333] For instance, Mpower raises a current dispute it is having with Pacific Bell over maintenance and repair charges in its interconnection agreement. Mpower Comments at 6. Similarly, Vycera claims that on some occasions, Pacific Bell would not properly switch a customer to Vycera's network for intraLATA toll calls, which caused Vycera to incur Pacific Bell wholesale charges. Vycera Comments at 11. We determine that neither of these claims relate specifically to Pacific Bell's billing systems and therefore, this is not the proper forum to address these issues.

[334] Mpower Comments at 6-7; Telscape Reply at 3-4;Vycera Comments at 11.

[335] Mpower Comments at 7-8.

[336] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para. 13.

for dispute resolution, and escalation procedures in the event the competitive LEC is not satisfied with the result of Pacific Bell's investigation.[337] Pacific Bell also explains that this process was developed with competitive LEC input through workshops and billing forums conducted by the California Commission as part of the section 271 collaborative process.[338] With regard to Mpower's claims of anticompetitive collection tactics, Pacific Bell counters that Mpower undisputedly owes Pacific Bell many times the amount Pacific Bell undisputedly owes Mpower. Pacific Bell, nonetheless, claims that it and Mpower are taking steps to resolve their billing issues and Pacific Bell has paid Mpower undisputed reciprocal compensation payments with the understanding that Mpower will likewise release all undisputed funds owed to Pacific Bell and will escrow all disputed funds.[339] Mpower has not countered Pacific Bell's explanation. Based on the evidence in the record with regard to Pacific Bell's dispute resolution process and conduct, including the acknowledgement of the commenters that Pacific Bell has indeed issued credits to resolve errors, we determine that Pacific Bell's dispute resolution process enables competing carriers to correct billing mistakes in a manner that allows them a meaningful opportunity to compete. We further reject Mpower's claims regarding Pacific Bell's tactics, as it appears from the record that the amounts in question have been paid.

f. Change Management and Technical Assistance

96. *Change Management.* We conclude that Pacific Bell demonstrates that it satisfies checklist item 2 regarding change management.[340] In addition, Pacific Bell has shown that it uses the same change management process in California as in SBC's wider thirteen-state region, including the previously-approved change management process found in the five-state SWBT region.[341] We are thus able to conclude that Pacific Bell's change management process provides the documentation and support necessary to provide competitive LECs nondiscriminatory access to Pacific Bell's OSS.[342] We also conclude, as did the California Commission,[343] that Pacific Bell

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[337] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para. 13. Pacific Bell also explains that in certain instances, due to the complexity of certain billing disputes, and the requisite research and system changes that need to occur to resolve the dispute, some disputes take a substantial amount of time to resolve. *See* Pacific Bell Nov. 13 *Ex Parte* Letter, Attach. at 4.

[338] Pacific Bell Flynn/Henry/Johnson Reply Aff. at para. 13.

[339] Pacific Bell Reply Affidavit of Colleen L. Shannon, Tab 14 (Pacific Bell Shannon Reply Aff.) at paras 20-21.

[340] *See* Pacific Bell Application at 49; Pacific Bell Huston/Lawson Aff. at paras. 222-30.

[341] Pacific Bell Application at 49; Pacific Bell Huston/Lawson Aff. at paras. 222-30. *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. at 6318, para. 166 (2001); *SWBT Texas Order*, 15 FCC Rcd. at 18403, para.105 (2000).

[342] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. at 6318-19, para. 167; *SWBT Texas Order*, 15 FCC Rcd. at 18409-20, paras. 116-134. In Texas, we concluded SWBT's change management process was adequate, based on, *inter alia*, the "go/no go" vote process, adequate documentation, compliance with documented procedures, and the testing environment. *Id*.

[343] California Commission Order at 77.

demonstrates that it provides competitors access to a stable test environment that mirrors its production environment.[344]

97. Based on the record, we reject AT&T's arguments that Pacific Bell's test environment does not mirror its production environment.[345] We note that AT&T alleges various shortcomings in the test environment, but we conclude that no widespread problems exist that would undermine a carrier's ability to test new and existing OSS. First, AT&T alleges that Pacific Bell's test environment does not allow AT&T to determine whether a particular end user is in Pacific Bell's "Northern" or "Southern" region – a distinction that is important because AT&T must use a different BAN for each region.[346] AT&T explains that this deficiency makes it difficult to submit successful orders in production for end users in two California LATAs that overlap both regions.[347] While AT&T recognizes that it will receive a rejection in the test environment when it submits an order that carries the wrong BAN, it is still dissatisfied and suggests that a proper test environment should enable it to "submit the order through Pacific [Bell]'s systems *without* rejection, on the first try."[348] However, Pacific Bell points out that with only two possible BANs, a reject in the test environment should permit AT&T to determine the correct BAN for a specific address.[349] We find this explanation to be reasonable, and find that the test environment does, in this manner, provide AT&T information relating to BANs. Moreover, we note that AT&T need not rely exclusively on testing to determine the appropriate BAN for each customer, because this information is available from Pacific Bell through its "Enhanced Verigate User Guide," which, according to Pacific Bell, would indicate – in "Street Address Guide Abbreviation" (SAGA) information – whether AT&T should use the Northern system or the Southern system for a particular city of residence.[350] For these reasons, we do not

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[344] *See* Pacific Bell Application at 50; Pacific Bell Huston/Lawson Aff. at paras. 224, 242-45, 251-53; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. at 6318-19, paras. 167-68. *See also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd. at 9124-25, para. 187 (2002); *SWBT Texas Order*, 15 FCC Rcd. at 18419, para. 132. As we have indicated in prior orders, a stable testing environment – one that mirrors the production environment and is physically separate from it – is a fundamental part of the change management process, ensuring that competitors can interact smoothly with the BOC's OSS, particularly in adapting to interface upgrades. *Id.* When the test environment mirrors the production environment, the BOC avoids the situation where a competitor's transactions succeed in the testing environment but fail in production. *Id.*

[345] *See* AT&T Comments at 40-41.

[346] *See* AT&T Comments at 40; AT&T Reply Comments at 20.

[347] AT&T November 27 Young *Ex Parte* Letter, Willard Supplemental Decl. at paras 44-49. AT&T argues that this limitation impairs the production environment because AT&T must conduct extensive systems testing during production. AT&T Comments at 41.

[348] AT&T Reply Comments at 20 (emphasis in original).

[349] Pacific Bell Huston/Lawson Reply Aff. at para. 47. *See* Pacific Bell Huston/Lawson Aff. at para. 245.

[350] Pacific Bell Huston/Lawson Reply Aff. at para. 49; Pacific Bell Dec. 6 *Ex Parte* Letter, Attach. at 2. Pacific Bell indicates that this is the same information made available to its retail representatives for use in making this determination. Pacific Bell Dec. 6 *Ex Parte* Letter, Attach. at 2. AT&T makes various general assertions that this (continued….)

find that this alleged deficiency in Pacific Bell's test environment has an impact on AT&T that is competitively significant,[351] and thus we find that Pacific Bell's test environment satisfies the requirements of this checklist item.

98. We also reject AT&T's argument that, because AT&T was unable to identify two types of problems during testing that later arose when it began submitting real orders to migrate existing UNE-P customers to UNE Loop service, Pacific Bell's test environment is flawed.[352] AT&T argues that when it submitted orders containing customer directory listing information, the orders were accepted in the test environment, but similar migration orders were rejected when AT&T began submitting them in production in early November 2002.[353] AT&T also argues that when it submitted orders to migrate UNE-P POTS customers to xDSL UNE Loop service with LNP, on one LSR, these orders were accepted in the test environment but similar orders were rejected in production.[354] We do not find that these concerns demonstrate any widespread problem with Pacific Bell's test environment. With regard to the first problem, we find that the parties failed to account for directory listing information when they jointly established the test plan for UNE-P to UNE-Loop migrations.[355] With regard to the second problem as well, we find that there was confusion as to what specific type of UNE-P to UNE-Loop conversion orders AT&T planned to submit in the test environment, and whether those orders could successfully be submitted using one LSR.[356] We recognize that establishing a test

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BAN information is "poorly documented and not easily obtained" and suggests that the Verigate User Guide is an "unrealistic and unreasonable" solution. *See* AT&T Comments at 41; AT&T November 27 Young *Ex Parte* Letter, Willard Supplemental Decl. at paras. 45, 48-49. AT&T does not explain why this is so and does not demonstrate that Pacific Bell fails to provide nondiscriminatory access to information relating to BANs.

[351] Indeed, AT&T does not disclose how many of its rejects, if any, are attributable to a BAN mismatch problem that could have been detected through testing.

[352] *See* AT&T Reply Comments at 21; Letter from Richard E. Young, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 (filed December 10, 2002) (AT&T Dec. 10 *Ex Parte* Letter).

[353] AT&T Reply Comments at 21.

[354] *See* AT&T Dec. 10 *Ex Parte* Letter at 2-3.

[355] Pacific Bell failed to appreciate that AT&T planned to migrate customers with existing main directory listings, and AT&T realized only after production problems arose that Pacific Bell's business rules reject migration orders when they contain directory listing information. *See* Pacific Bell Nov. 13 *Ex Parte* Letter at 5; AT&T November 27 Young *Ex Parte* Letter, Willard Supplemental Decl. at paras. 54-57; AT&T Reply Comments at 21. While not pertinent to our conclusions, we note that Pacific Bell has implemented an "enhancement" to the EDI, effective November 13, 2002, that will ensure AT&T would no longer receive a reject notice for migrations either in the test environment or in production. Pacific Bell Nov. 13 *Ex Parte* Letter at 5.

[356] *See* Letter from Colin S. Stretch, Counsel to Pacific Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 (filed December 13, 2002) (Pacific Bell Dec. 13 *Ex Parte* Letter), Attach. 1 at 2-3; AT&T Dec, 10 *Ex Parte* Letter at 2-3; Letter from Richard E. Young, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 (filed December 17, 2002) at 1-2, Attach. 1. Pacific Bell's analysts failed to recognize that AT&T's test orders sought xDSL UNE (continued….)

environment that mirrors production requires careful coordination and communication between the BOC and the competitive LEC community, and we expect BOCs to provide clear written direction and competent staff to ensure that the tests are set up correctly and produce reliable results. Notwithstanding the problems that have arisen with the test scenario identified by AT&T, however, Pacific Bell notes that its test environment processed more than 2,600 test case LSRs this year, and that AT&T was the only commenter to raise a complaint here.[357] The record reflects that Pacific Bell works closely with competitive LECs to establish and process accurate and clear test scenarios, pursuant to a process defined by extensive written documentation. Viewing the totality of the circumstances, we find that Pacific Bell's test environment affords competitors an adequate opportunity to compete.

99. Finally, we reject AT&T's argument that it cannot adequately test Pacific Bell's "versioning" policy, under which Pacific Bell supports multiple versions of its EDI software in order to ease competitors' transition from older versions of the software to newer versions.[358] Specifically, AT&T argues that Pacific Bell's test environment does not permit AT&T to determine whether, once AT&T converts to a newer version of the software, it would continue to receive responses to orders that were already submitted using the older version.[359] Pacific Bell confirms that it enables competing carriers to continue to receive responses to orders already submitted under the superceded version of the software.[360] AT&T has not presented evidence that contradicts Pacific Bell, or that shows AT&T has had any actual difficulty transitioning to newer software versions. The inability to independently verify that an old version of software

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Loop service and that this type of order should be submitted through two LSRs. *See* Pacific Bell Dec. 13 *Ex Parte* Letter), Attach. 1 at 2-3.

[357] Pacific Bell Dec. 13 *Ex Parte* Letter, Attach. 1 at 2.

[358] *See* AT&T Comments at 41; Pacific Bell Huston/Lawson Aff. at paras. 224, 242-45, 251-53. Pacific Bell first implemented a versioning policy in California in August 2000, supporting two versions of software for EDI ordering and EDI and CORBA pre-ordering interfaces. This policy was subsequently expanded, and in April 2002, when version 5.0 was implemented, Pacific Bell began to support three versions of EDI software. The three current versions are 3.06, 5.00, and 5.01, the most recent of which became available on August 3, 2002. Pacific Bell Huston/Lawson Aff. at paras. 235 n.97, 251 n.102. Pacific Bell shows that as software upgrades are initiated, a competitor may transition its systems to these more recent software versions on its own timeframe; a competitor may continue to operate under an older version until it is retired. Pacific Bell Huston/Lawson Aff. at para. 252. Version 3.06 will remain available until it is replaced by version 6, which is scheduled to be released in June 2003. Pacific Bell Nov. 14 *Ex Parte* Letter, Attach. 3 at 1; Pacific Bell Huston/Lawson Aff. at para. 252 n.102.

[359] AT&T Comments at 41.

[360] Pacific Bell Huston/Lawson Aff. at paras. 50-51; Pacific Bell Nov. 14 *Ex Parte* Letter, Attach. 3 at 1. If a competing carrier transitions to a new software version at the scheduled time for release of that new version, responses to orders that had already been placed would be received under the new software. By contrast, if a competing carrier transitions to new software on its own timeframe – rather than at the time the new software is released – responses to orders that had already been placed would be received under the superceded version. Pacific Bell Nov. 14 *Ex Parte* Letter, Attach. 3 at 1.

would still be supported thus does not appear to inconvenience a competing carrier. Therefore, we conclude that Pacific Bell shows it provides an adequate "versioning" process.[361]

100. *Training, Technical Assistance, and Help Desk Support.* We conclude that Pacific Bell demonstrates that it provides technical assistance and help desk support necessary to permit competing carriers nondiscriminatory access to Pacific Bell's OSS. Pacific Bell shows that several organizations that perform support functions in California also perform them across SBC's thirteen-state region, including states that the Commission has found satisfy the requirements of Section 271.[362] In addition, Pacific Bell's operations include support organizations specific to the Pacific Bell/Nevada Bell regions. These include a Local Service Center (LSC) and a Local Operating Center (LOC), which provide competitors with a single point of contact for various OSS functions.[363] We find that Pacific Bell provides efficient competitors a meaningful opportunity to compete by enabling them to understand how to implement and use all of the OSS functions available to them.

101. We reject AT&T's argument that Pacific Bell is not providing competitive LECs with the assistance they need to use available OSS functions. AT&T offers several arguments, all directed against the allegedly poor performance of one of Pacific Bell's support centers, the Mechanized Customer Production Support Center (MCPSC).[364] While the distinction between the MCPSC and the LSC appears to have created confusion on AT&T's part – leading both AT&T and Pacific Bell to complain about wasting time and resources to respond to the confusion[365] – we do not find this confusion to be caused solely by Pacific Bell, or to undermine

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[361] Pacific Bell Application at 49-50; Pacific Bell Huston/Lawson Aff. at paras. 224, 242-45, 251-53. *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. at 6318-19, paras. 167-68.

[362] Pacific Bell Application at 47-48; Pacific Bell Huston/Lawson Aff. at paras. 83-99. These organizations include an Account Team SBC has established for each competitive LEC, SBC's competitive LEC OSS Training Organization, SBC's Information Services (IS) Call Center, SBC's Mechanized Customer Production Support Center (MCPSC), and SBC's OSS competitive LEC Support Team. *Id.*

[363] Pacific Bell Huston/Lawson Aff. at para. 83. In particular, the LSC provides a central point of contact for pre-ordering, ordering, and billing of interconnection facilities, resale services, and UNEs. Pacific Bell Henry Aff. at para. 6. The LOC serves a similar function for provisioning and maintenance and repair of interconnection facilities, resale services, UNEs, and LNP. Pacific Bell Cusolito Aff. at para. 3.

[364] *See* AT&T November 27 Young *Ex Parte* Letter, Willard Supplemental Decl. at paras. 22-42. *See also* AT&T Comments at 42-43; AT&T Willard Decl. at paras. 25-31.

[365] AT&T Comments at 42-43; AT&T Willard Decl. at paras. 27-29 (arguing that the delineation of functions between the two centers is unclear and the MCPSC is slow and poorly staffed – with "hold times" exceeding one hour through June 2002 and personnel inadequately trained to answer questions); Pacific Bell Reply at 19-20; Pacific Bell Huston/Lawson Reply Aff. at paras. 6, 14-16 (arguing that any confusion has arisen from poor training by AT&T of its own personnel). Pacific Bell indicates that it has described the roles of the LSC and the MCPSC in writing – including letters disseminated to competitive LECs and the "CLEC Online Website" (specifically, the competitive LEC handbook). Pacific Bell Huston/Lawson Aff. at para. 94; Pacific Bell Huston/Lawson Reply Aff. at paras. 6-8. *See* AT&T Willard Decl. at para. 25.

the overall adequacy of Pacific Bell's OSS. We urge the parties to continue working towards resolving what appears to be needless confusion about the roles of these two centers. We also note that the unreasonably long telephone "hold times" for calls to the MCPSC cited by AT&T have been eliminated in recent months.[366] Finally, while AT&T complains that there are currently "no performance measurements in place" to monitor the MCPSC, it does not indicate what performance measurements are needed or even describe what specific areas of performance – other than "hold times" – have been problematic.[367] We note, however, that there is an established process in California for adding new performance metrics, and AT&T apparently has recently proposed a new measure for the MCPSC through this process.[368] We thus do not find that the absence of a special performance measurement relating to the MCPSC, or the apparent confusion surrounding the relationship between the LSC and the MCPSC, warrants a finding of checklist noncompliance.

3. UNE Combinations

102. In order to satisfy section 271(c)(2)(B)(ii), a BOC must show it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements, and that it does not separate already combined elements, except at the specific request of a competing carrier.[369] We conclude, as did the California Commission,[370] that Pacific Bell provides nondiscriminatory access to combinations of unbundled network elements (UNE combinations) in compliance with the Commission's rules. Pacific Bell demonstrates that competitive LECs may order already-combined UNE combinations, and Pacific Bell will not separate these UNE combinations unless requested to do so by the competitive LEC.[371] Pacific Bell also shows that, in accordance with its interconnection agreement with AT&T, Pacific Bell combines UNEs, including new UNE-P combinations and enhanced extended links, for AT&T when requested.[372] For competitive LECs that choose to combine their own UNE combinations, Pacific Bell shows it provides UNEs in a manner that permits competitive LECs to combine them.[373]

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366 Pacific Bell Huston/Lawson Reply Aff. at para. 11. *See* AT&T Comments at 42.

367 AT&T November 27 Young *Ex Parte* Letter, Willard Supplemental Decl. at para. 39.

368 AT&T November 27 Young *Ex Parte* Letter, Willard Supplemental Decl. at para. 41. *See* Pacific Bell Huston/Lawson Reply Aff. at para. 10.

369 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.313(b).

370 California Commission Order at 34.

371 Pacific Bell Application App. A, Vol. 5, Affidavit of Colleen L. Shannon (Pacific Bell Shannon Affidavit) at para. 84.

372 Pacific Bell Shannon Affidavit at para. 85.

373 Pacific Bell Shannon Affidavit at paras. 86-87.

103. We reject AT&T's claims that Pacific Bell does not comply with the Commission's requirements regarding "new" UNE combinations.[374] AT&T notes that Pacific Bell has invoked the "change of law" provision of its interconnection agreement with AT&T – in response to the Supreme Court's opinion in *Verizon v. FCC*[375] – and thus is seeking to change its contract language regarding UNE combinations.[376] Specifically, AT&T takes issue with Pacific Bell's proposed change, arguing that it reflects a narrower interpretation of "new" UNE combinations than the Commission's rules allow.[377] Significantly, however, AT&T does not suggest that Pacific Bell currently fails, under its existing agreement, to comply with the Commission's requirements regarding UNE combinations. We note that incumbent LECs bear an obligation to negotiate interconnection arrangements in good faith,[378] and we would take seriously any allegations brought before us that a party had violated this duty or sought arbitration of issues that it knows the courts or the Commission have resolved. At the same time, we believe it would be inappropriate and premature for us to address this dispute over a proposed change in contract language, which is more appropriately reached by the state commission. Accordingly, we find that AT&T's allegations do not support a finding that Pacific Bell fails to satisfy the requirements of this checklist item.

B. Checklist Item 11 – Local Number Portability

104. Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[379] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[380] Pacific Bell indicates that it makes local number portability (LNP) available to competitive LECs through interconnection agreements and in conformance with the Commission's rules.[381] We note that Pacific Bell has consistently met all performance benchmarks for number portability with few exceptions.[382]

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374 AT&T Comments at 30-31. *See* 47 C.F.R. § 51.315(c).

375 122 S.Ct. 1646 (2002).

376 AT&T Comments at 31-33, 34-35. *But see* Pacific Bell Shannon Affidavit at para. 85 n.54.

377 AT&T Comments at 31-33, 34-35.

378 *See* 47 U.S.C. § 251(c)(1).

379 47 U.S.C. § 271(c)(2)(B)(xi).

380 47 U.S.C. § 251(b)(2).

381 *See* Pacific Bell Application, Appendix A, Vol. 5, Tab 21, Affidavit of E.D. Smith (E.D. Smith Aff.) at para. 13.

382 In this regard, we look to Pacific Bell's performance relating to ordering and provisioning work that involves LNP – in particular, performance measurements reflecting the frequency of installation-related troubles. Pacific Bell's performance data for the months of May through September 2002, demonstrate compliance with checklist item 11. *See* Pacific Bell Johnson Aff. at paras. 175-180. We note that Pacific Bell's performance data for the (continued….)

Based on the evidence in the record, we conclude that Pacific Bell complies with the requirements of checklist item 11.[383]

105. We recognize that the California Commission determined that it could not find that Pacific Bell has satisfied the compliance requirements for checklist item 11 until Pacific Bell implemented a new mechanized process, referred to as a "mechanized NPAC check," designed to ensure that Pacific Bell would not disconnect an end user until the new service provider has completed its installation work.[384] We note, however, that the California Commission did not identify any particular problems with Pacific Bell's existing systems and processes which, absent the enhancement, warrant a finding of checklist noncompliance. While the California Commission expressed general concern about Pacific Bell's ability to capture service outages for LNP orders cancelled or rescheduled at the last minute in performance measure 15,[385] Pacific Bell has explained that it relies on two performance measures to track trouble reports which are

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average time to restore provisioning troubles metric indicates a failure to meet the standard for four months. However, given the low order volumes for this metric (approx. 20 per month), we do not find that these disparities warrant a finding of noncompliance. *See* PM 15a-4691400 (Time to Restore Provisioning Troubles – Port Out OOS), PM 15a-4691500 (Time to Restore Provisioning Troubles – Port Out Service Affecting). Additionally, Pacific Bell has indicated that many of the troubles reflected in this measure are not associated with actual installation work, and thus have nothing to do with the number porting process, but are network troubles that incidentally occur. *See* Pacific Bell Johnson Aff. at paras. 178-179; Pacific Bell E.D. Smith Aff. at paras. 16-17. *See also* Pacific Bell Reply Affidavit of Gwen S. Johnson, Tab 10 (Pacific Bell Johnson Reply Aff.) at paras. 37-38; Pacific Bell Reply Affidavit of E.D. Smith, Tab 15 (Pacific Bell E.D. Smith Reply Aff.) at paras. 6-7.

[383] *See* Pacific Bell Johnson Aff. at paras. 177-180; Pacific Bell E.D. Smith Aff. at paras. 10-20. Pacific Bell also explains that it has worked with the industry to develop functionality to minimize the potential for service disruption to end users resulting from porting of the telephone number, noting that it implemented an unconditional ten-digit trigger feature which eliminates the need to coordinate the disconnect from Pacific Bell's switch with activation on the competitive LEC's switch. *See* Pacific Bell E.D. Smith Aff. at para. 14.

[384] *See California Commission Order* at 199-200. The California Commission required Pacific Bell to equip its Number Portability Administration Center with a mechanized check function to ensure that a number would not be disconnected by Pacific Bell until the competitive LEC had activated the number. If the activate message is not received by 9:00 p.m. on the due date for porting the number, Pacific Bell automatically delays its disconnect of the number for up to six days, giving the competitive LEC time to reschedule the activation of the customer's number. *See* Pacific Bell E.D. Smith Reply Aff. at paras. 8-9. The California Commission also required Pacific Bell to submit confirmation that the mechanized check was functioning properly, along with 30 days operational data. *Id.* at 200. On Nov. 1, 2002, Pacific Bell provided 31 days of operational data on this enhancement to the California Commission, indicating that the mechanized NPAC check had automatically delayed 273 telephone number disconnections, and had received 14,207 activation verification messages. *See* Pacific Bell E.D. Smith Reply Aff., at Attach. A.

[385] Specifically, the California Commission acknowledged that Pacific Bell's data indicated low error rates for LNP orders and an average trouble report rate (PM 15) that was well within the benchmark for AT&T LNP orders from May through July 2001. The California Commission, however, stated that PM 15 may not capture service outages for those competitive LECs that either reschedule or cancel their LNP orders at the last minute, and noted its concern that such carriers may not "have certain knowledge" of a disconnect. C*alifornia Commission Order* at 199-200.

designed to capture competitive LEC troubles that are reported both during provisioning (PM 15) or within ten days thereafter (PM 17).[386] Accordingly, both measurements are relevant to our analysis and the fact that a particular outage or trouble is reflected in PM 17 rather than PM 15 does not suggest a reporting flaw. We also note, as did the California Commission, that Pacific Bell's performance data reflect a very low level of outages and other troubles associated with the LNP process in the most recent months, prior to implementing the enhancement.[387] Indeed, as noted above, Pacific Bell has consistently met all performance benchmarks in this area, with few exceptions.

106. Section 271 requires us to assess whether Pacific Bell is in compliance with the Commission's number portability regulations, and the Department of Justice is correct in pointing out that this Commission has not previously required a mechanized NPAC check to be in place under its regulations or for compliance with checklist item 11.[388] Nothing we say here prohibits or preempts the California Commission, or any other state commission, from applying this requirement assuming it is otherwise consistent with the Act: we simply hold here that a mechanized NPAC check is not currently required under the Commission's regulations, and thus not required to show compliance with checklist item 11. Because we find that Pacific Bell's systems and processes in place on the date of filing satisfy this checklist item, we need not consider the impact of Pacific Bell's recently-implemented NPAC check enhancement, or AT&T's corresponding argument that the complete-as-filed rule precludes consideration of this OSS change.[389]

107. We disagree with AT&T that Pacific Bell's provision of number portability is discriminatory. According to AT&T, Pacific Bell's LNP procedures have resulted in a loss of dial tone for an unacceptably high number of AT&T's customers for its Digital Link and

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[386] *See* Letter from Colin S. Stretch, Counsel for SBC Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (filed December 12, 2002) (Pacific Bell Dec. 12 *Ex Parte* Letter) at 1-2. Pacific Bell explains that when it ports a number to a competitive LEC, it disconnects the number in its switch after 10pm. Accordingly, where a competitive LEC attempts to reschedule or cancel an LNP order at the last minute that results in a service outage, the resulting trouble is typically opened the following day and captured in PM 17, rather than PM 15. *Id.* at 1 n.2

[387] *See* PM 15 (Provisioning Trouble Report – prior to service order completion); PM 17 (Percentage Trouble in 10 days for Non-Special Orders - Pacific Bell only); *See also California Commission Order* at 198-199 (finding that Pacific Bell's data show very low error rates and an average trouble report rate on AT&T LNP orders "well below the measure's benchmark of 1.00%").

[388] *See* Department of Justice Evaluation at 4 n.13 (noting that the Commission has not previously required a mechanized NPAC check to be in place for compliance with this checklist item) (citing *BellSouth Multistate Order*, 17 FCC Rcd at 17743-44 at para. 263.)

[389] *See* AT&T November 27 Young *Ex Parte* Letter, Supplemental Declaration of Walter Willard at 30.

Broadband services.[390] AT&T explains that Pacific Bell does not process last-minute customer cancellations or reschedulings quickly and efficiently, with the result that the customer's number may be disconnected before porting, with a loss of service to the customer.[391] However, Pacific Bell indicates that from July through September, 99 percent of the requests submitted by AT&T to cancel or reschedule conversions were processed by Pacific Bell without complaint by AT&T.[392] Furthermore, as noted above, Pacific Bell's performance data reflect that competing LECs' customers experience troubles during the number porting process only rarely. We recognize that last-minute cancellations by end users can complicate the provisioning process and require special coordination and adjustments by the provisioning carriers. While the record reveals that this coordination was not without flaws, it also indicates that Pacific Bell was able to make the necessary adjustments for the vast majority of these cases.

108. In addition, AT&T raises doubt regarding the reliability of Pacific Bell's performance measures 15 and 17 and whether these measures appropriately capture LNP-related service outages.[393] However, as discussed above, Pacific Bell has explained that both performance measures track trouble reports and are designed to capture competitive LEC troubles that are reported during provisioning (PM 15) or within ten days thereafter (PM 17).[394] In addition, AT&T claims that Pacific Bell's reported data for October is inconsistent with AT&T's own data, because Pacific Bell's October data show 16 outages while AT&T's data show 26 outages.[395] Pacific Bell responds that AT&T's claims could not be verified or investigated without further documentation from AT&T, and notes that AT&T did not request data reconciliation for performance measures 15 or 17 for the time period relevant to this

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[390] AT&T Comments at 51. Specifically, AT&T states that, in some months, three to five percent of its new Digital Link and Broadband customers have suffered dial tone losses during the number porting process; however, AT&T does not specify the relevant time period. *See* AT&T Comments at 53.

[391] AT&T Comments at 52-53.

[392] Pacific Bell E.D. Smith Reply Aff. at para. 7 (*citing confidential information*). Pacific Bell submits that, although it assists AT&T and other competitive LECs in canceling and rescheduling "last minute" conversions, it is ultimately the responsibility of the competitive LEC to ensure that conversions are cancelled or rescheduled in a timely manner. *Id.* at para. 6.

[393] *See* Letter from Richard E. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed December 9, 2002) (AT&T Dec. 9 *Ex Parte* Letter) at 2-5.

[394] *See* Pacific Bell Dec. 12 *Ex Parte* Letter at 1-2. Pacific Bell notes that although the California Commission stated that "PM 15 does not capture service outages for LNP orders either rescheduled or canceled at the last minute," as noted above, last minute rescheduled orders that do result in a service outage are typically reported by the competitive LEC in the following day's trouble reports and thus are captured in PM 17. If however, the competitive LEC does report the trouble on the originally scheduled date, the trouble is captured in PM 15. *See* Pacific Bell Dec. 12 *Ex Parte* at 1 n.2.

[395] *See* AT&T Dec. 9 *Ex Parte* Letter at 2-3 and Attach. 1. Specifically, AT&T claims that Pacific Bell's reported October data show 16 outages while AT&T's data show 26 outages out of 1,133 LNP orders, changing the outage rate from 1.4% to 2.3%. *Id.* at 2 & n.4.

application.[396] We note that Pacific Bell reports PM 15 and PM 17 in accordance with the California Commission approved performance measure process. Additionally, no party challenged the accuracy of these measurements for the relevant months for this application (May to September 2002). Moreover, because the outage rate claimed by AT&T for October is small, 2.3 percent, and, given that Pacific Bell has taken steps to contact AT&T to solicit more information to conduct data reconciliation, we do not find that these allegations warrant a finding of noncompliance.

109. Finally, we reject XO's claim that Pacific Bell takes approximately two to three weeks to disconnect DSL customers switching to XO voice service.[397] Pacific Bell replies that it has procedures in place to process an order to disconnect DSL service within one business day, and effectuate the "LNP within loop" conversion request within five business days.[398] Pacific Bell asserts that any time beyond this six-day total processing time is attributable to the amount of time for the data LEC to send the DSL disconnect order to Pacific.[399] In the absence of further evidence suggesting a different reason for disconnect processing delays, we do not find that XO's claim warrants a finding of noncompliance with this checklist item. Pursuant to section 271(d)(6) , we will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order. XO and others should bring to the attention of the Commission's Enforcement Bureau any areas of deteriorating performance.

C. Checklist Item 14 – Resale

110. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services…available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)."[400] Based on the record in this proceeding, we find that Pacific Bell satisfies the requirements of this checklist item in California.[401] Pacific Bell has

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[396] *See* Pacific Bell Dec. 12 *Ex Parte* at 2; *See also* AT&T Dec. 9 *Ex Parte* Letter at 2 & n.4 and Attach. 1 (attaching Pacific Bell reported data); Letter from Richard E. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed December 13, 2002) (AT&T Dec. 13 *Ex Parte* Letter) at 1-2 and Attach (providing the relevant purchase order numbers, disconnect order numbers, telephone numbers and other identifying information on which it bases its claims).

[397] *See* XO Comments at 23-24. XO asserts that Pacific Bell "refused to port numbers in a timely and efficient manner where migrating customers purchase both voice and DSL services from … Pacific." XO Comments at 22.

[398] *See* Pacific Bell Application, Appendix A, Vol. 1, Tab 3, Affidavit of Carol Chapman (Pacific Bell Chapman Aff.) at para. 90; Pacific Bell Reply Affidavit of Carol Chapman, Tab 3 (Pacific Bell Chapman Reply Aff.) at paras. 9-12.

[399] *See* Pacific Bell Chapman Aff. at para. 90. *See also* Pacific Bell Reply at 65-66.

[400] 47 U.S.C. § 271(c)(2)(B)(xiv).

[401] Pacific Bell has generally met the applicable resale performance measures for most months from May through September. *See* PM 5-521900-522000 (Percentage of Orders Jeopardized, Resale); PM 6-640000-640100, PM 6-644300-644400, PM 6-648500-648600 (Average Jeopardy Notice Interval, Resale); PM 7 (Average Completed Interval, Resale); PM 16 (Percent Troubles in 30 Days, Resale); PM 19-1991600-1992400 (Customer Trouble (continued….)

demonstrated that it has satisfied its legal obligation to make retail telecommunications services available for resale to competitive LECs at wholesale rates.[402] Neither the California Commission nor the other commenting parties question Pacific Bell's showing of compliance with the requirements of this checklist item except in the area of resale of advanced services, which we discuss below.

111. The California Commission concluded that Pacific Bell has erected "unreasonable barriers to entry" in California's DSL market in two regards. First, the California Commission found that Pacific Bell does not comply with its resale obligations, based on a finding Pacific Bell does, in fact, offer a retail DSL telecommunications service that is subject to resale under 251(c)(4)(A).[403] Second, the California Commission found that certain "restrictive conditions" present in Pacific Bell's interconnection agreements with competitive LECs violate the resale obligations under section 251(c)(4)(B).[404] We address these issues in turn.

112. First, we find that Pacific Bell satisfies its resale obligations under section 251(c)(4)(A) with respect to advanced services. According to Pacific Bell, it provides three categories of DSL-related service: (1) "[w]holesale DSL [t]ransport to ISPs, including its ISP affiliate"; (2) "a DSL Internet service at retail to the ISPs' subscribers"; and (3) "retail telecommunications services … available for resale at a wholesale discount."[405] With respect to the last category, Pacific Bell indicates that these services are available for resale at wholesale discount of 17 percent in California.[406] With regard to the first two categories, Pacific Bell argues that it is not providing DSL telecommunications service at retail and, thus, has no obligation to make these services available for resale pursuant to the section 251(c)(4) discount.[407]

113. Pacific Bell's position is the same in all material respects as that taken by SBC on this issue in the Arkansas/Missouri section 271 proceeding, and that taken by BellSouth in the

(Continued from previous page)
Report Rate, Resale); PM 20-2093100-2094800 (Percentage of Customer Trouble Not Resolved Within Estimated Time, Resale); PM 21-219200-2194800 (Average Time to Restore, Resale); PM 23-2391600-2392400 (Frequency of Repeat Troubles in 30 Day Period, Resale).

402 *See* Pacific Bell Application App. A, Vol. 1, Tab. 8, Affidavit of John S. Habeeb (Pacific Bell Habeeb Aff.).

403 *See California Commission Order* at 219-20 (noting that "it is the affiliation between . . . [Pacific, its advanced service affiliate and its Internet affiliate] that effectively creates Pacific's provision of DSL Transport services at retail."

404 *See California Commission Order* at 220.

405 Pacific Bell Habeeb Aff. at paras. 16-29.

406 These advanced telecommunications services include "Frame Relay" and "ATM Cell Relay" services to business customers, as well as intrastate and interstate DSL transport to business with a Remote Local Area Network (R-LAN). *See* Pacific Bell Application at 81-82.

407 *See* Pacific Bell Application at 81.

Georgia/Louisiana section 271 proceeding.[408] In both proceedings, the Commission found that the Bell company applicant "d[id] not have a present obligation to offer DSL transport service for resale" under section 251(c)(4), and noted that the Bell company's Internet service is an information service, not a telecommunications service.[409] We thus do not agree with the California Commission's conclusion that the relationship between the three Pacific Bell entities "effectively creates Pacific's provision of DSL Transport Services at retail."[410] Moreover, as we stated in previous orders, we expect that how we decide questions about the regulatory treatment of the underlying transmission facilities provided by incumbent LECs with their own Internet access services could have far-reaching implications for a wide range of issues that would be more appropriately handled separately.[411] Indeed, many of these issues are being addressed in a pending proceeding before the Commission.[412] We thus could not endorse the California Commission's conclusion without conflicting with our own precedent in this area and prejudging the outcome of this pending proceeding.

114. We also disagree with the California Commission's interpretation of the D.C. Circuit's opinion in *ASCENT v. FCC,*[413] and its conclusion that *ASCENT* requires a different result. In that opinion, the D.C. Circuit specifies that an incumbent LEC cannot "avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services."[414] Pacific Bell does not suggest that any of its services are exempt from 251(c)(4) simply because they are provided by an affiliate. As explained above, Pacific Bell contends that neither the DSL transport, nor the DSL Internet service provided by its affiliates are telecommunications services sold at retail. Thus, as we have found twice before, because Commission precedent does not address the specific facts or legal issues raised here, we decline

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408 *See* Pacific Bell Application at 81; Pacific Bell Reply at 68.

409 *SWBT Arkansas/Missouri Order,*14 FCC Rcd at 20761, para. 84; *see also BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9175, para. 275.

410 California Commission Order at 220.

411 *See SWBT Arkansas/Missouri Order,* 14 FCC Rcd at 20759, para. 82; *BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9175, para. 277.

412 *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket Nos. 01-338, 96-98, 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) (*Triennial Review NPRM*); *see also Appropriate Framework for Broadband Access to Internet over Wireline Facilities,* Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002)(*Wireline Broadband NPRM*).

413 *Association of Communications Enterprises v. FCC,* 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT*).

414 *ASCENT,* 235 F.3d at 668.

to reach a conclusion in the context of this section 271 proceeding.[415] Therefore, we find that this issue does not warrant a finding of checklist noncompliance.

115. Finally, we disagree with the California Commission's finding that there exist "restrictive conditions" in Pacific Bell's interconnection agreements that warrant a finding of checklist noncompliance.[416] We note that the California Commission does not provide details or explain exactly how these "restrictive conditions" violate section 251(c)(4)(B).[417] Nor, for that matter, do any of the other commenters identify any particular "restrictive conditions" or explain why they violate the Act.[418] Accordingly, in the absence of factual support in our record, we do not agree with the California Commission's conclusion on this issue, and do not find that it warrants a finding of noncompliance with checklist item 14. Pursuant to section 271(d)(6), we will monitor Pacific Bell's compliance with the conditions of approval in this order with respect to this issue.

V. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

116. Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252.[419] Based on our review of the record, we conclude, as did the California Commission, that Pacific Bell is in compliance with the requirements of this checklist item.[420] In reaching this conclusion, we examine, as in prior

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[415] *SWBT Arkansas/Missouri Order,* 14 FCC Rcd at 20759-60, para. 82; *see also BellSouth Georgia/Louisiana Order,* 17 FCC Rcd. at 9176, para. 277.

[416] *See* California Commission Order at 220.

[417] *See* California Commission Order at 220.

[418] On December 17, 2002, AT&T submitted three pages of a brief filed before the California Commission in August, 2001 which, it explained, had been erroneously omitted from an earlier filing in this proceeding. *See* Letter from Peter M. Andros, Legal Assistant for Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed December 17, 2002). In these pages, AT&T argued that several provisions in an interconnection agreement between ASI and DSL.net were "discriminatory and unreasonable." *Id.*, at Attach., pages 2-4. We note that these provisions had not been identified by AT&T or any other party earlier in this proceeding. In any case, we need not address the substantive arguments raised in this late filing because Pacific Bell does not rely on the interconnection agreement between ASI and DSL.net to demonstrate compliance with checklist item 14, but relies instead on the interconnection agreement between ASI and Navigator Telecommunications, LLC. *See* Pacific Bell Brief at 82, and App. B, Tab 11; *see also SBC Texas 271 Order* at para. 78 (basing a finding of checklist compliance on language in one interconnection agreement, the terms and conditions of which were available to any requesting carrier pursuant to section 252(i)).

[419] 47 U.S.C. § 271(c)(2)(B)(i).

[420] *See California Commission Order* at 29.

section 271 orders, Pacific Bell's performance with respect to interconnection trunks and collocation.[421] We find that Pacific Bell has satisfied the vast majority of its performance benchmarks or retail comparison standards for this checklist item.[422] In addition, we find that Pacific Bell satisfies its statutory requirements for the provisioning of collocation and offers interconnection at all technically feasible points in California.

117. *Interconnection Pricing.* Checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[423] Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[424] Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.[425] The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation at rates that are based on TELRIC.[426]

118. Based on the evidence in the record, we find that Pacific Bell offers interconnection in California to other telecommunications carriers at just, reasonable, and nondiscriminatory rates in compliance with checklist item 1. The California Commission concludes that Pacific Bell's interim interconnection prices are "in compliance with the law, subject to . . . [the commission's] imminent determination of permanent rates, terms and conditions"[427] and that Pacific Bell makes trunking available pursuant to . . . [California

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421 *See, e.g., BellSouth Multistate Order*, 17 FCC Rcd at 17715, para. 213.

422 *See* PM 8-03600, PM 8-07200, PM 8-10800, PM 8-14400 (Percent Completed Within Standard Interval – Interconnection Trunks); PM 11-05900, PM 11-11800, PM 11-17700, PM 11-23600 (Percent of Due Dates Missed – Interconnection Trunks); PM 7-05900, PM 7-11800, PM 7-17700, PM 7-23600 (Average Completed Interval - Interconnection Trunks); PM 19-93700 (Customer Trouble Report Rate – Interconnection Trunks); PM 21-97500 (Average Time to Restore – Interconnection Trunks), PM 23-93700 (Frequency of Repeat Troubles in 30 Day Period – Interconnection Trunks); PM 24-00100 (Percent Blocking on Common Trunks); PM 25-00700 (Percent Blocking on Interconnection Trunks (Total Trunk Groups)), PM 25-00700 (Percent Blocking on Interconnection Trunks (ILEC Tandem Office to CLEC End Office)); PM 40-00100 (Time to Respond to a Collocation Request – Space Availability), PM 40-00200 (Time to Respond to a Collocation Request – Price & Schedule Quote); PM 41-00100 (Time to Provide a Collocation Arrangement – New), PM 41-00200 (Time to Provide a Collocation Arrangement – Augmentation). *See also* Pacific Bell Johnson Aff. at paras. 48-57.

423 47 U.S.C. § 271(c)(2)(B)(i).

424 *Id.* § 251(c)(2).

425 *Id.* § 252(d)(1).

426 *See* 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

427 *California Commission Order* at Conclusion of Law No. 6.

Commission]-approved interconnection agreements and FCC rules[.]"[428] The California Commission also concludes that Pacific Bell has satisfied the requirements of checklist item 1.[429]

119. We reject Vycera's argument that Pacific Bell fails to provide interconnection on rates and terms that are just, reasonable, and nondiscriminatory. Vycera alleges that Pacific Bell refuses to permit Vycera to opt into an August 14, 2001 interconnection agreement arbitrated between AT&T and Pacific Bell unless Vycera agrees to a lengthy amendment that, according to Pacific Bell, addresses issues related to compensation for ISP-bound traffic.[430] Vycera states that Pacific Bell filed an application for arbitration on September 18, 2002 to prevent Vycera's adoption of the interconnection agreement.[431] Pacific Bell responds that the commission "need not and should not" address this interconnection dispute because the California Commission placed the arbitration proceeding on an expedited schedule and that the commission expects to reach a decision by January 9, 2003.[432]

120. We have previously stated that we are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors before the state commission, which has primary jurisdiction over the matter.[433] As we have also stated in prior section 271 orders, although we have an independent obligation to ensure compliance with the checklist, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions."[434] Here, we believe this dispute is a local arbitration decision for the California Commission in the first instance. The record indicates that Pacific Bell's application for arbitration regarding Vycera's adoption of the interconnection agreement is pending before the California Commission.[435] We have confidence that the California

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428 *Id.* at Conclusion of Law No. 7.

429 *Id.* at Conclusion of Law No. 9.

430 Vycera Comments at 2-3 (citing August 4, 2000 Interconnection Agreement between SBC Pacific Bell and AT&T Communications of California, Inc.); *see also id.* at 6, n.16 (citing Pacific Bell Telephone Company's Application for Arbitration of Advice Letter No. 57 Filed by Vycera Communications, Inc. f/k/a Genesis Communications International, Inc., U-5477-C, Ex. 2 at 6 (Pacific Bell Application for Arbitration)); *see also* Letter from Patrick J. Donovan, Esq., Rogena G. Harris, Esq., Katherine A. Rolph, Esq., Counsel for Vycera, to David P. Discher, Pacific Bell Telephone Company (filed Nov. 8, 2002) (Vycera Nov. 8 *Ex Parte* Letter) (requesting that Pacific Bell immediately allow Vycera to adopt all provisions of the Pacific Bell-AT&T interconnection agreement, effective September 18, 2002, with the exception of the reciprocal compensation provisions pending before the California Commission).

431 Vycera Comments at 4 (citing Pacific Bell Application for Arbitration).

432 Pacific Bell Shannon Reply Aff. at para. 5.

433 *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20754, para. 73.

434 *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159 (quoting *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20776, para. 115.

435 Pacific Bell Shannon Reply Aff. at paras. 2, 5, and 6.

Commission will resolve this interconnection dispute between Pacific Bell and Vycera consistent with our rules.

121. We also reject the allegation of PSI and Touch Tel that Pacific Bell should fail this checklist item because it has inappropriately charged these paging companies for the delivery of interconnection services.[436] PSI and Touch Tel claim that Pacific Bell never should have imposed interconnection charges, because the Commission prohibits LECs from charging paging companies for the delivery of LEC-originated traffic and for the associated facilities.[437] Pacific Bell responds that this fact-intensive issue was not raised in the California 271 proceeding and therefore should not be addressed here.[438] Pacific Bell states that it is currently involved in negotiations with PSI and Touch Tel to resolve the amount of any refund which may be due them for past bills relating to the disputed charges, and to address Pacific Bell's charges on a going-forward basis.[439] Pacific Bell states that although it has billed PSI and Touch Tel for the interconnection charges, it has not taken adverse action against them for failure to pay the disputed charges.[440]

122. As we have stated previously, when a party raises a challenge related to a pricing issue for the first time in the Commission's section 271 proceedings without showing why it was not possible to raise it before the state commission, we may exercise our discretion to give this challenge little weight.[441] Although we do not require parties to raise all pricing issues at the state level before raising them in a section 271 proceeding, it is generally impractical for us to make the fact-specific findings that objecting parties require us to make regarding factual disputes.[442] We have held in such instances that if a BOC applicant provides a reasonable explanation concerning the issue raised by the objecting party, we will not find that the objecting party persuasively rebuts the *prima facie* showing of 271 compliance.[443] Here, we find that the objecting parties did not raise this issue before the state commission. We also find that Pacific Bell's explanation, that the interconnection charge dispute is the subject of an ongoing negotiation, reasonable under the circumstances. PSI and Touch Tel have failed adequately to

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436 PSI and Touch Tel Comments at 3-4.

437 *Id.* at 2-6 (citing *TSR Wireless, LLC v. U.S. West Communications, Inc.,* Memorandum Opinion and Order, 15 FCC Rcd 11166, (2000), *aff'd, Qwest Corp. v. FCC*, 252 F.3rd 462 (D.C. Cir. 2001)).

438 Pacific Bell Shannon Reply Aff. at paras. 27 and 32.

439 *Id.* at para. 30.

440 *Id.* at para. 31.

441 *New Hampshire/Delaware Order* at para. 88 (quoting *BellSouth Multistate Order* at para. 32); *see also BellSouth Multistate Order* at paras. 97 and 112.

442 *See Georgia/Louisiana Order*, 17 FCC Rcd at 9045, para. 49.

443 *BellSouth Multistate Order* at para. 32.

demonstrate a checklist violation. For these reasons, we conclude that Pacific Bell has complied with the pricing requirements under this checklist item.

B. Checklist Item 4 – Unbundled Local Loops

123. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[444] Based on the evidence in the record, we conclude, as did the California Commission, that Pacific Bell provides unbundled local loops in accordance with the requirements of section 271 and our rules.[445] Our conclusion is based on our review of Pacific 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 Pacific Bell's processes for hot cut provisioning, and line sharing and line splitting. As of the end of September 2002, competitors in California have acquired from Pacific Bell and placed into use approximately 494,000 stand-alone loops (including DSL loops) and about 222,000 UNE-P loop and switch port combinations.[446]

124. Consistent with prior section 271 orders, we do not address every aspect of Pacific Bell's loop performance where our review of the record satisfies us that Pacific Bell's performance is in compliance with the relevant parity and benchmark performance standards established in California.[447] Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Pacific Bell and its competitors in California. In making our assessment, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete.[448] Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.[449] Nevertheless, under certain circumstances, disparity with respect to one performance measurement may support a finding of noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory

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[444] 47 U.S.C. § 271(c)(2)(B)(iv); *see also* Appendix C (setting further the requirements under checklist item 4).

[445] *California Commission Order* at 153.

[446] Pacific Bell J.G. Smith Aff. at Attach. A.

[447] *See, e.g., Verizon Connecticut Order,* 16 FCC Rcd at 14151-52, para. 9; *BellSouth Georgia/Louisiana* Order, 17 FCC Rcd at 9144, para. 219.

[448] *See Verizon Massachusetts* Order, 16 FCC Rcd at 9055-56, para. 122.

[449] *See Verizon Massachusetts* Order, 16 FCC Rcd at 9055-56, para. 122.

conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.[450]

125. Based on the evidence in the record, we find that Pacific Bell demonstrates that it provides hot cuts, high-capacity loops, voice-grade loops, digital loops, xDSL-capable loops, as well as line sharing and line splitting in California in accordance with the statutory requirements pertaining to checklist item 4. Only one party, XO, raised concerns regarding Pacific Bell's loop performance.[451] We address isolated performance disparities associated with these loop types below, as well as XO's allegations with regard to voice-grade loops and high-capacity loops. We find that these issues do not demonstrate discriminatory performance, but we will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order.

126. *Voice-Grade Loops.* We conclude, as did the California Commission, that Pacific Bell demonstrates it provides voice-grade loops in a nondiscriminatory manner.[452] Pacific Bell has consistently met the benchmark and parity standards for installation timeliness, installation quality, and the quality of the maintenance and repair functions with few exceptions.[453]

127. Pacific Bell acknowledges that it has encountered difficulties, in some instances, in achieving the parity standard for repeat troubles on voice-grade loops.[454] As a consequence, Pacific Bell has developed and implemented a number of operational changes with respect to maintenance of voice-grade loops. First, Pacific Bell states that its new Fault Isolation Test (FIT) process provides for the complete description of troubles reported, and better defines

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450 *Application of Verizon Virginia, Inc., et.al., for Authorization to Provide In-Region, InterLATA Services in Virginia,* WC Docket No. 02-214, FCC 02-297, Memorandum Opinion and Order (rel. October 30, 2002), at C-6, para. 9.

451 XO comments at 16-21.

452 *California Commission Order* at 143, 153.

453 *See* PM 17-1791100 (% Troubles in 10 days for Non-Special Orders); PM 11-Statewide (% of Due Dates Missed – for UNE loop 2 wire analog 8db and 5.5db loop); PM 12-Statewide (% of Due Dates Missed Due to Lack of Facilities – for UNE Loop 2 wire analog 8db and 5.5db loop); PM 19-1992603 (Customer Trouble Report Rate – for UNE loop 2 wire analog 8db and 5.5db loop); PM 21-2195401 (Average Time to Restore – for UNE loop 2 wire analog 8db and 5.5db loop). We note that Pacific Bell's performance with respect to the frequency of the repeat troubles within 30 days metric fails to meet parity for three out of the relevant five month period, which we discuss below.

454 *See* PM 23-2392601 (Frequency of Repeat Troubles within 30 days). Pacific Bell missed parity in May, June, and August by 2.22%, 1.68%, and 1.95%, respectively. Given the slight disparities in performance (with competing LECs experiencing between 0.94 and 2.22 % more repeat troubles than Pacific Bell retail in May through September) these misses do not appear to indicate a competitively significant or systemic problem. The comparable numbers were 10.09%, 9.71%, 9.43%, 9.96% and 8.39% for competitive LECs and 7.87%, 8.03%, 8.49%, 8.01% and 7.15% for Pacific Bell retail in May, June, July, August and September, respectively. Pacific Bell Application App. A, Vol. 4b, Tab 15, Affidavit of Richard J. Motta (Pacific Bell Motta Aff.) at paras. 26-32.

whether troubles are inside Pacific Bell's central office, outside plant facilities, or in the competitive LECs' network.[455] Pacific Bell provides that this testing process is completed as quickly as possible and in many cases is concluded with results reported to the competitive LEC before the trouble reporting call has ended.[456] Along with the FIT process, Pacific Bell states that it has implemented a number of other operational changes that have resulted in a more timely resolution of troubles on voice-grade loops, and a reduction in the number of repeat troubles.[457] We note that Pacific Bell achieved parity in July 2002, after a three-month improvement trend.[458] Furthermore, the performance data indicates only minor discrepancies in August performance, while Pacific Bell achieved parity again in September.[459] Moreover, Pacific Bell's performance reflected by another maintenance and repair metric – average time to restore interval – has achieved parity for all five of the relevant months.[460] Accordingly, since Pacific Bell has demonstrated efforts to improve its performance and because performance disparities are small, we find that these misses do not warrant a finding of noncompliance.

128. We thus reject XO's contention that Pacific Bell's performance for repeat troubles for voice-grade loops illustrates discriminatory performance for competitive LECs.[461] XO notes that, even with efforts in place that are specifically designed to improve performance, Pacific

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[455] Pacific Bell Motta Aff. at paras. 26-32. Pacific Bell states that it established the Fault Isolation Test (FIT) in order to help reduce the number of trouble reports received on a line (i.e., repeat reports) and length of time required to resolve troubles. Pacific Bell also states that the FIT process allows Pacific Bell technicians to interact directly with the competitive LECs when the competitive LEC reports a trouble condition.

[456] Pacific Bell Motta Aff. at para. 28.

[457] Pacific Bell Motta Aff. at para 28. Along with the FIT process, Pacific has instituted a number of other operational changes with respect to maintenance of basic loops. New job aids were distributed in April 2002 to Pacific Bell's Work Coordination Center personnel who manage the tracking and dispatch of maintenance troubles reported by competitive LECs and to the field technicians who repair these troubles. Pacific Bell states that training on these job aids was ongoing throughout May to September 2002. Also Pacific Bell states that in May and June, programming of maintenance trouble dispatch systems was upgraded so that competitive LEC trouble tickets receive priority dispatch to field technicians for resolution. Additionally, field technician qualification lists were reviewed and updated to ensure that competitive LEC troubles were always dispatched to a technician with sufficient technical expertise to efficiently resolve the service problem. Finally, Pacific Bell points out that the WCC reinforced its process with its technicians whereby all competitive LEC trouble tickets are reviewed daily to ensure no trouble tickets are held due to administrative error. *Id.* at para. 29.

[458] Pacific Bell indicates that the average repeat trouble report rate for competitive LECs from May through July was 9.74%. In the nine months prior to April 2002, before the improvement processes were implemented, the repeat report rate averaged 12.80%. Pacific Bell states that this comparative performance reflects a reduction in competitive LECs' repeat reports of about 25%. Pacific Bell Motta Aff. at para 32.

[459] Pacific Bell's performance disparity for August was 1.95 %.

[460] *See* PM 21-2195401 (Average Time to Restore).

[461] XO comments at 19.

Bell nevertheless missed the standard for this metric.[462] As stated above, however, the record reflects improved performance, and parity in two of the last three months. Given this evidence, and recognizing that Pacific Bell is providing voice-grade loops of a quality sufficient to afford competitors a meaningful opportunity to compete, we do not find that XO's claims warrant a finding of checklist noncompliance.

129. *High-Capacity Loops.* Based on the evidence in the record, we find, as did the California Commission, that Pacific Bell provides high-capacity loops to competing carriers in a nondiscriminatory manner.[463] Pacific Bell's performance on the relevant measurements, satisfy the parity or benchmark standards, with few exceptions.[464] While Pacific Bell fails to satisfy the relevant benchmark and parity standard for several metrics, we find that these misses generally are isolated and slight, and thus do not warrant a finding of checklist noncompliance. Two metrics relating to Pacific Bell's maintenance and repair functions, however, warrant further discussion, which we provide below.[465]

130. We note that Pacific Bell failed to reach and maintain parity with respect to two maintenance and repair measures – the Percentage of Customer Troubles not Resolved Within the Estimated Time and the Average Time to Restore – for several of the most recent months.[466] These measures address the speed with which Pacific Bell repairs troubles on high-capacity loops. These results suggest that Pacific Bell is not repairing troubles for competitive LECs as quickly as it is for Pacific Bell's own retail operation. As an initial matter, we note that the disparity in the average time to restore measurement, reflects a minimal percentage difference between competitive LECs and Pacific Bell's retail customers.[467] We also recognize that Pacific

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[462] XO comments at 19; *See* PM 23-2392601 (Frequency of Repeat Troubles within 30 days).

[463] *California Commission Order* at 153.

[464] *See* Appendix B.

[465] *See* PM 20-2095801 (% of Customer Troubles Not Resolved Within Estimated Time); and PM 21-2196001 (Average Time to Restore).

[466] *See* PM 20-2095801 (% of Customer Trouble Not Resolved Within Estimated Time). Pacific Bell missed parity in May, June, August and September by 4.56% to 11.95%. The comparable numbers were 39.16%, 34.55%, 34.84%, 35.96%, and 38.8% for competitive LECs and 32.4%, 29.99%, 30.86%, 30.18% and 26.85% for Pacific Bell retail in May, June, July, August and September, respectively. We note that Pacific Bell did achieve parity for the month of July. *See Also* PM 21-2196001 (Average Time to Restore). Pacific Bell missed parity in May, June, July, August and September. The comparable numbers were 4.29, 4.13, 3.72, 3.96 and 4.28 for competitive LECs and 3.77, 3.44, 3.58, 3.49 and 3.14 for Pacific Bell retail in May, June, July, August and September, respectively.

[467] Pacific Bell points out that the disparity in average time to restore between Pacific Bell's performance for its retail operation and for competitive LECs is less than 2 hours for any of the relevant months. Moreover, Pacific Bell argues that in the months of July, August and September 2002, the difference in the restoral intervals for competitive LEC DS1 loops was no more than 75 minutes in any one month, and for the average three-month period of July through September, the difference was only slightly more than 30 minutes. *See* Pacific Bell Johnson Reply Aff. at 47.

Bell's performance on other maintenance and repair measurements relating to high-capacity loops, and Pacific Bell's repair timeliness with respect to loops in general, indicates nondiscriminatory performance. Specifically, we note that competitive LECs routinely encounter a low rate of high-capacity loop troubles (under 3 percent) that is consistently lower than those encountered by Pacific Bell's retail operation.[468] Furthermore, we note that Pacific Bell's repair timeliness has achieved parity for all other loop types, and that the number of DS1 loops in service for competitive LECs is only approximately 2 percent of all competitive LECs' loops placed in service by Pacific Bell.[469] Finally, Pacific Bell acknowledges that it has had problems with regard to these maintenance timeliness metrics, and indicates that it has implemented operational improvements in the prioritization of competitive LEC maintenance tickets for special services, including DS1 loops.[470]

131. We thus reject XO's claims that Pacific Bell's performance relating to high-capacity loops demonstrates noncompliance with checklist item 4. Specifically, XO calls attention to each incident of non-parity performance in the last five months on the metrics related to high-capacity loops.[471] As noted above, however, most of these performance disparities were

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[468] *See* PM 19-1992910 (Customer Trouble Report Rate). Pacific Bell points out that competitive LEC high-capacity loop trouble report rates are routinely under 3%. The comparable numbers for PM 19-1992910 were 2.8%, 2.8%, 2.49%, 2.84% and 2.57% for competitive LECs and 3.35%, 2.84%, 2.90%, 3.25% and 3.17% for Pacific Bell retail in May, June, July, August and September, respectively.

[469] Pacific Bell Johnson Reply Aff. at paras. 44-45. We note that in prior section 271 orders the Commission has supported a finding of checklist compliance given the relatively low volume of high-capacity loops compared to all loop types. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17468-69, para. 90; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9151-52, para. 232.

[470] Pacific Bell Johnson Aff. at para. 138. *See also* Pacific Bell Application Reply App., Tab 10, Affidavit of Gwen S. Johnson (Pacific Bell Johnson Aff.) at para. 46-47. Pacific Bell further argues that operational variances contribute to the minor differences in performance for competitive LECs. Specifically, Pacific Bell refers to the fact that more than 50% of troubles reported by retail customers are closed to "test okay" (TOK) or "no trouble found" (NTF), as compared to 25%-30% for competitive LECs. Pacific Bell argues that the higher percentage of these tickets in the retail data cause the appearance of superior retail performance, and that the removal would bring Pacific Bell into parity. As a result Pacific Bell concludes, that while competitive LECs focus soley on the statistical difference in performance, they demonstrate no practical harm.

[471] With the exception of PM 11(Statewide) % of Due Dates Missed, the various performance measures raised by XO are addressed below. We note, that XO raises Pacific Bell's failure to achieve parity with respect to the % of Due Dates Missed for California's Northern Region in two of the five relevant months. *See* PM 11-1110901 (% of Due Dates Missed). However, as noted in prior section 271 applications, we limit our review to statewide performance data. Our review of Pacific Bell's statewide performance for this metric demonstrates that Pacific Bell met the parity standard for all five of the relevant months. The comparable numbers were 1.98%, 1.56%, 1.34%, 1.98% and 1.96% for competitive LECs and 5.58%, 2.65%, 1.67%, 4.02% and 3.13% for Pacific Bell retail in May, June, July, August and September, respectively.

intermittent and slight.[472] As such, we do not find that lack of parity on these performance measurements warrant a finding that Pacific Bell fails to meet checklist item 4.

132. *Line Sharing and Line Splitting.* Based on the evidence in the record, we find, as did the California Commission, that Pacific Bell provides nondiscriminatory access to the high frequency portion of the loop.[473] For the relevant five-month period, Pacific Bell provisioned over 16,000 line sharing orders in California for unaffiliated competitive LECs.[474] 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.[475] Pacific Bell also complies with its line-splitting obligations and provides access to network elements necessary for competing carriers to provide line splitting.[476]

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472 We note only slight disparities in several other metrics, including the % of Orders Jeopardized (PM 5-524100), % of Due Dates Missed Due to Lack of Facilities (PM 12-Statewide), and the % Troubles in 30 Days for Special Service Orders (PM 16-Statewide). With regard to the % of Orders Jeopardized, the disparity between Pacific Bell's performance for its retail operation and for competitive LECs is less than 2% for any of the relevant months. The comparable numbers for PM 5 -524100 were 0.37%, 0.93%, 0.84%, 1.06% and 1.16% for competitive LECs and 0.48%, 0.24%, 0.22%, 0.18% and 0.11% for Pacific Bell retail in May, June, July, August and September, respectively. As for the % of Due Dates Missed Due to Lack of Facilities, the % difference between Pacific Bell's retail operation and the competitive LECs is also less than 2% over the past five months. The comparable numbers for PM 12 – Statewide were 0.76%, 0.94%, 1.07%, 1.58% and 0.98% for competitive LECs and 0.23%, 0.60%, 0.28%, 0.60% and 0.72% for Pacific Bell retail in May, June, July, August and September, respectively. Both of these measures indicate small levels of disparity that are not competitively significant. Finally, with regard to the % Troubles in 30 Days for Special Service Orders metric, we note the recent improvement trend in the August and September data. Specifically, while the disparity in July for this metric was 3.33%, Pacific Bell achieved parity for August and September. The comparable numbers were 9.12%, 8.15%, 9.48%, 10.54% and 11.76% for competitive LECs and 5.09%, 9.28%, 6.15%, 11.35% and 12.21% for Pacific Bell retail in May, June, July, August and September, respectively. We note, that the Commission has stated in the past, isolated cases of performance disparity, especially when the margin of disparities are small, generally will not result in a finding of checklist noncompliance.

473 *California Commission Order* at 150-51.

474 PM 11(Statewide) (for both conditioned and non-conditioned linesharing).

475 Pacific Bell's performance for installation timeliness and installation quality generally show nondiscriminatory treatment between competitors and Pacific Bell's retail customers for line-shared loops. *See* PM 11 – Statewide (% of due dates missed); PM 12 – Statewide (% of due dates missed due to lack of facilities); PM 15-1591600 (provisioning trouble reports statewide UNE loop 2 wire digital line sharing out of service); PM 15-1591700 (provisioning trouble reports statewide UNE loop 2 wire digital line sharing service affecting); PM 16 – Statewide (% of troubles in 30 days for special orders – line sharing). In addition, Pacific Bell's performance demonstrates that maintenance and repair measures were generally comparable for competitive LECs and Pacific Bell's retail operation.

476 *See* Appendix B; *see also* Pacific Bell Application at 58.

133. We note that XO contends that Pacific Bell's refusal to offer its DSL service and XO's voice service on the same line is grounds for failing this checklist item.[477] We reject this claim because, under our rules, the incumbent LEC has no obligation to provide DSL over the competitive LEC's leased facilities.[478] Furthermore, a UNE-P carrier can compete with an incumbent LECs' combined voice and data offering on the same loop by "splitting" the line itself and offering voice and data service over the UNE-P loop in the same manner.[479] Accordingly, we do not agree with XO that Pacific Bell's policy is discriminatory.

134. *xDSL-Capable Loops, Digital Loops, ISDN Loops, Dark Fiber, and Hot Cuts.* Based on the evidence in the record, we find, as did the California Commission, that Pacific Bell demonstrates that it provides xDSL-capable loops, digital loops, ISDN loops, dark fiber, and hot cuts in accordance with the requirements of checklist item 4.[480] We note that Pacific Bell consistently satisfies the applicable benchmark or parity standard for the relevant performance metrics with few exceptions.[481] Furthermore, commenters in this proceeding do not criticize Pacific Bell's performance with regard to these specific loops.

C. Checklist Item 5 – Unbundled Local Transport

135. Section 271(c)(2)(B)(v) requires that a BOC provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[482] Based on our review of the record, we conclude, as does the California Commission, that Pacific Bell complies with the requirements of this checklist item.[483]

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[477] XO Comments at 23.

[478] In the *Deployment of Wireline Services Offering Advanced Telecommunications Capability* proceeding, the Commission required unbundling of the high frequency portion of the loop when the incumbent LEC provides voice service, but did not require unbundling of the low frequency portion of the loop and did not obligate incumbent LECs to provide DSL service under the circumstance XO describes here. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999); Third Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 15 FCC Rcd 2101, 2109-14, paras. 14-26 (2000); *see also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9100-01, para. 157.

[479] *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9101, para. 157 (citing *SWBT Texas Order*, 15 FCC Rcd at 18517-18, para. 330.

[480] *California Commission Order* at 153.

[481] *See* Appendix C.

[482] 47 U.S.C. § 271(c)(2)(B)(v).

[483] In previous orders, the Commission has relied on the missed appointment rate to determine whether a BOC is provisioning transport to its competitors in a nondiscriminatory fashion. *See, e.g., BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9158, para. 246. Despite a low transport order volume for competitive LECs, Pacific Bell (continued….)

136. We note that Telscape contends that Pacific Bell fails to comply with checklist item 5 because it "has consistently refused to facilitate Telscape's requests to carry UNE-P IntraLATA toll calls using shared transport."[484] According to Telscape, Pacific Bell's actions are in violation of the Commission's requirement that SBC provide competitive LECs the option of using shared transport to route intraLATA toll calls, without restrictions, between their end user customers and customers served by SBC, as specified in the *SBC/Ameritech Merger Order* and the recent *SBC Forfeiture Order*.[485]

137. We disagree with Telscape's contention that Pacific Bell fails to offer shared transport in a manner that satisfies checklist item 5. As the Commission has explained, an incumbent LEC must provide competitive LECs nondiscriminatory access to the incumbent LEC's transmission facilities to enable the competitive LECs to provide intraLATA toll service as well as any other type of telecommunications service they may wish to offer.[486] Pacific Bell states that it provides shared transport for competitive LEC intraLATA toll traffic under its interconnection agreement with AT&T, which was arbitrated by the California Commission, and has been available to other requesting carriers since August 14, 2000.[487] Pacific Bell explains that, under this agreement with AT&T, a competitive LEC may request "Option C" customized routing and, after certain translation work is performed by Pacific Bell, the competitive LEC is charged the unbundled network rate(s) for shared transport for the carriage of its intraLATA toll calls over Pacific Bell's facilities.[488] While Telscape suggests that Pacific Bell does not

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demonstrates compliance with this metric form May through September for each of the relevant submeasures. *See* Pacific Bell Application at 67; Pacific Bell Application App. A, Vol. 1, Tab. 6, Affidavit of William C. Deere (Pacific Bell Deere Aff.), Tab. 12, Pacific Bell Johnson Aff., and Tab 20, Pacific Bell Shannon Aff.. *See also California Commission Order* at 158.

[484] *See* Telscape Oct. 18 *Ex Parte* Letter at 4; Telscape Reply at 5.

[485] *See* Telscape Oct. 18 *Ex Parte* Letter at 4-5 n. 8 (citing *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules,* Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (*SBC/Ameritech Merger Order), reversed in part on other grounds, Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001)(*ASCENT Decision*) and *SBC Communications, Inc., Apparent Liability for Forfeiture*, FCC 02-282 (rel. Oct. 9, 2002) (*SBC Forfeiture Order*).

[486] *See SBC Forfeiture Order,* FCC 02-282 at paras. 14 and 18; *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

[487] *See* Pacific Bell Reply at 62 (citing Opinion, *Application of AT&T Communications of California, Inc. et al., for Arbitration,* D.00-08-011 (Cal. PUC Aug. 3, 2000) (App. C, Tab 64)).

[488] *See* Pacific Bell Nov. 13 *Ex Parte* Letter, Attach. at 2.

"facilitate" Telscape's requests to carry intraLATA toll traffic using shared transport,[489] it does not explain why Pacific Bell's offering or its conduct does not satisfy its legal obligation.[490]

138. We also disagree with Telscape's suggestion that the *SBC/Ameritech Merger Order* and the *SBC Forfeiture Order* indicate noncompliance with this checklist item.[491] We note that the *SBC Forfeiture Order* found fault with SBC's offering in Ameritech states, and did not directly address Pacific Bell's offering in California.[492] Moreover, while that order also commented generally on the shared transport UNE as established in the *UNE Remand Order*, Telscape does not demonstrate that Pacific Bell's arrangement for providing shared transport in its agreement with AT&T fails to satisfy this unbundling requirement. Finally, we take additional assurance from Pacific Bell's recent decision to make available a new, simpler process for allowing competing LECs to use shared transport to route intraLATA toll calls.[493] According to Pacific Bell, this offering is functionally equivalent to that provided by SWBT in Texas.[494]

139. AT&T also takes issue with the arrangement for providing shared transport in its agreement with Pacific Bell, suggesting that it actually requires the purchase of *dedicated transport*.[495] AT&T bases this claim on an observation that there are no Access Service Request (ASR) ordering procedures developed and implemented on Pacific Bell's website allowing the ordering of shared transport. Pacific Bell explains, however, that it provides sample ASRs in its handbook simply as examples of potential ordering scenarios.[496] It further explains that these

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489 *See* Telscape Oct. 18 *Ex Parte* Letter at 4; Telscape Reply at 5.

490 *See* Telscape Oct. 18 *Ex Parte* Letter at 4; Telscape Nov. 27 *Ex Parte* Letter at 8.

491 *See* Telscape Oct. 18 *Ex Parte* Letter at 5; *see also* Letter from Stephen Gunn, Working Assets Funding Service, Inc., to Chairman Michael K. Powell, Federal Communications Commission, WC Docket No. 02-306, at 1 (filed December 4, 2002).

492 *See SBC Forfeiture Order*, FCC 02-282 at para. 4.

493 AT&T contends that this offering is somehow deficient because it requires competitive LECs to pay termination access charges. *See* AT&T Nov. 26 Haddad/Fetting *Ex Parte* Letter at 13, and Declaration of Eva Fetting (AT&T Fetting Decl.) at para. 7. AT&T's concern is misplaced. Pacific Bell correctly points out that whether traffic is delivered over shared transport, dedicated transport, or another carrier's own facilities, the terminating carrier, which is providing local service to the called party, must complete the call through use of its switching capacity. That carrier is entitled to charge terminating access for intraLATA toll traffic it terminates. *See* Pacific Bell Dec. 6 *Ex Parte* Letter at 3. Accordingly, transport and terminating compensation are distinct functions.

494 *See* Pacific Bell Nov. 13 *Ex Parte* Letter at 2. We note that Pacific Bell introduced this new offering after it filed this application, and after parties filed their initial comments. We need not rely on this offering, however, based on our finding regarding Pacific Bell's shared transport offering contained in its agreement with AT&T, and thus need not address the question of whether we must waive our *"complete when filed"* rule. *See, e.g., Ameritech Michigan Order,* 12 FCC Rcd at 3320.

495 *See* AT&T Nov. 26 Haddad/Fetting *Ex Parte* Letter at 13, and AT&T Fetting Decl. at paras. 2,6.

496 *See* Pacific Bell Dec. 6 *Ex Parte* Letter Attach. at 3.

examples are not exclusive, and certainly should not be read as an indication that shared transport can not be ordered. We find this explanation to be reasonable, and thus find that AT&T's concerns about Pacific Bell's website and handbook do not warrant a finding of checklist noncompliance with respect to this issue.

140. We also note that DIRECTV requests that the Commission consider the reasonableness of the terms and conditions of tariffed interLATA transport services available to broadband service providers once Pacific Bell receives section 271 authority.[497] As DIRECTV itself acknowledges,[498] the Commission has previously determined that concerns such as this one, which relate to the reasonableness of Pacific Bell's wholesale tariffs, are beyond the scope of a section 271 proceeding.[499] We therefore deny DIRECTV's request.

D. Checklist Item 13 – Reciprocal Compensation

141. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[500] In turn, section 252(d)(2)(A) specifies when a state commission may consider the terms and conditions for reciprocal compensation to be just and reasonable.[501] Based on the record, we conclude that Pacific Bell demonstrates that it provides reciprocal compensation as required by checklist item 13.

142. We reject PacWest, RCN and TelePacific's allegation that Pacific Bell fails the requirements of this checklist item because it does not provide reciprocal compensation consistent with the Commission's rules.[502] PacWest and TelePacific assert that they have deployed switches capable of serving geographic areas comparable to the areas served by Pacific Bell's tandem switches, and therefore are entitled to receive reciprocal at the tandem switching rate. These commenters assert that Pacific Bell refuses to compensate them at the tandem switching rate in violation of section 251(b)(5) of the Act.[503] Pacific Bell replies that the PacWest and RCN interconnection agreements entitle PacWest and RCN to tandem switching compensation only where they perform a tandem switching function, which neither of them performs.[504] Pacific Bell asserts that because these commenters failed to raise the allegation

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497 *See* DIRECTV Comments at 7-8.

498 *See* DIRECTV Comments at 8.

499 *See BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9188-89, para. 305.

500 47 U.S.C. § 271(c)(2)(B)(xiii).

501 47 U.S.C. § 252(d)(2)(A).

502 PacWest, RCN and TelePacific Comments at 29-30.

503 47 U.S.C. § 251(b)(5); PacWest, RCN and TelePacific Comments at 29-30.

504 Pacific Bell Shannon Reply Aff. at para. 17.

before the California Commission, in the California 271 proceeding or otherwise, and because Pacific Bell filed an application for arbitration on March 29, 2002 with the California Commission to address proposed language for tandem switching compensation under a new interconnection agreement with these parties, the Commission need not address the contract dispute here.[505] In the *California Commission Order*, the California Commission found that Pacific Bell complies with its reciprocal compensation obligations.[506]

143. To the extent that these parties are unable to resolve this dispute in their ongoing negotiations, we find that this allegation is best resolved before the California Commission. While we do not require parties to raise all pricing issues at the state level before raising them in a section 271 proceeding, it is both impracticable and inappropriate for us to make the fact-specific finding regarding interconnection agreements requested of us in this section 271 review when the issue was not raised below.[507] As we have stated in prior section 271 orders, although we have an independent obligation to ensure compliance with the checklist, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions."[508] We have confidence in the California Commission's ability to resolve the allegations of PacWest, RCN and TelePacific consistent with our rules. We therefore find that Pacific Bell meets its obligations under checklist item 13.

VI. REMAINING CHECKLIST ITEMS (3, 6-10, 12)

144. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),[509] item 6 (unbundled local switching),[510] item 7 (911/E911 access and directory assistance/operator services),[511] item 8 (white pages),[512] item 9 (numbering administration),[513] item 10 (databases and signaling),[514] and item 12 (dialing parity).[515] Based on

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[505] *Id*. at para. 18 (citing Application of Pacific Bell Telephone Company (U-1001-C) for Arbitration with Pac-West Telecomm, Inc. (U5266-C) pursuant to Section 252(b) of the Telecommunications Act of 1996, A.02-02-059 (Apr. 18, 2002)).

[506] *California Commission Order* at 2 and 208, and Conclusions of Law Nos. 89 and 90.

[507] *Verizon Vermont Order*, 17 FCC Rcd at 7636, para. 20.

[508] *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159 (quoting *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20776, para. 115.

[509] 47 U.S.C. § 271(c)(2)(B)(iii).

[510] 47 U.S.C. § 271 (c)(2)(B)(vi).

[511] 47 U.S.C. § 271(c)(2)(B)(vii).

[512] 47 U.S.C. § 271(c)(2)(B)(viii).

[513] 47 U.S.C. § 271(c)(2)(B)(ix).

the evidence in the record, we conclude, as did the California Commission, that Pacific Bell demonstrates that it is in compliance with these checklist items.[516] No parties objected to Pacific Bell's compliance with these checklist items.

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[514] 47 U.S.C. § 271(c)(2)(B)(x).

[515] 47 U.S.C. § 271(c)(2)(B)(xii).

[516] *See California Commission Order* at 125 (checklist item 3), 169 (checklist item 6), 176 (checklist item 7), 182 (checklist item 8), 186-87 (checklist item 9), 192 (checklist item 10), and 204 (checklist item 12).

VII. SECTION 272 COMPLIANCE

145. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[517] Pacific Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in California as it does in Texas, Missouri, Arkansas, Kansas, and Oklahoma where SBC has already received section 271 authority.[518] Pacific Bell also states, among other things, that it will operate independently of its section 272 affiliate, which will have separate officers, directors and employees and will maintain separate books, records, and accounts.[519] Pacific Bell also states that it will conduct all transactions with its section 272 affiliate on an arm-length basis, with the transactions reduced to writing, open to public inspection, and accounted for in accordance with accounting principles and rules approved by the Commission.[520] Finally, Pacific Bell states that it will obtain and pay for a joint Federal/State biennial audit performed by an independent auditor to determine whether it has complied with the section 272 and the rules promulgated under it.[521] Based on the record before us, we conclude that Pacific Bell has demonstrated that it will comply with the requirements of section 272.[522]

146. AT&T raises concerns about Pacific Bell's compliance with section 272 making certain allegations based on an audit performed by Overland Consulting for the California Commission to monitor its New Regulatory Framework (NRF).[523] Based on certain findings in

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[517] 47 U.S.C. § 271(d)(3)(B).

[518] *See* Pacific Bell Application App. A., Vol. 1, Tab 2, Affidavit of Joe Carrisalez (Pacific Bell Carrisalez Aff.) at para. 5; Pacific Bell Application App. A., Vol. 2a, Tab 9, Affidavit of Robert Henrichs (Pacific Bell Henrichs Aff.) at para. 9; Pacific Bell Application App. A., Vol. 5, Tab 24, Affidavit of Linda G. Yohe (Pacific Bell Yohe Aff.) at para. 7. *See also SWBT Arkansas/Missouri Order,* 16 FCC Rcd at 20780-81, paras. 122-23; *SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6370-74, paras. 256-65; *SWBT Texas Order,* 15 FCC Rcd at 18548-57, paras. 394-415.

[519] Pacific Bell Application at 102-109.

[520] *Id*.

[521] Pacific Bell Application at 106-107. Ernst & Young has completed the first independent audit of SBC's section 272 compliance pursuant to section 53.209 of the Commission's rules. 47 C.F.R. § 53.209. *See* Letter from Brian Horst, Partner, Ernst & Young, to Marlene H. Dortch, Secretary, Federal Communication Commission (September 16, 2002)(transmitting audit report).

[522] *See* Pacific Bell Carrisalez Aff. at Tab 2; Pacific Bell Henrichs Aff. at Tab 9; Pacific Bell Yohe Aff. at Tab 24.

[523] *See* AT&T Comments at 55-68. Overland Consulting, *Regulatory Audit of Pacific Bell For The Years 1997, 1998, and 1999*, Feb. 21, 2002 (Overland Report). The NRF is an incentive-based regulatory framework adopted by the California Commission in 1989 for Pacific Bell and Verizon California (then GTE California, Inc.). *Re Alternative Regulatory Frameworks for Local Exchange Carriers (NRF Decision),* 33 CPUC 2nd 43, D.89-10-031, Oct 12, 1989.

the Overland Report, AT&T contends that Pacific Bell will not comply with section 272.[524] We disagree with AT&T's claim that these findings demonstrate that Pacific Bell will not, in fact, comply with section 272 on a going-forward basis. As an initial matter, we note that the audit did not address Pacific Bell's compliance with section 272, nor was its purpose to consider transactions with the section 272 affiliate established to offer long distance service in California, and which currently operates in other SBC states.[525] Rather the "report was prepared to document Pacific Bell's compliance with [California Commission] requirements and related internal controls, to identify issues of regulatory concern in specific areas, and to develop recommendations for the [California Commission]."[526] Also, the audit covered Pacific Bell's compliance with the NRF during the three year period 1997-1999, which pre-dates SBC's offering of long distance service in any of its in-region states.[527] Accordingly, none of the auditor's specific findings relate to Pacific Bell's compliance with section 272, or its relationship with its separate long distance affiliate.[528] Moreover, we recognize that the California Commission is still reviewing the report and has not yet adopted it,[529] and thus may even reach a different conclusion regarding Pacific Bell's compliance with the state requirements under review.[530] We thus conclude that none of the report's findings undermine Pacific Bell's showing

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[524] AT&T Comments at 55-56; AT&T November 26 Haddad *Ex Parte* Letter at 7-9.

[525] *See* Pacific Bell Reply at 54; Pacific Bell Borsodi Reply Aff. at para. 6; Overland Report at 1-1. The Overland Report does refer to "SBC Services" in several places. These references, however, are to Pacific Bell's administrative support shared services affiliate, not to its long distance affiliate, which is Southwestern Bell Communications Service, Inc. (SBCS). Pacific Bell Borsodi Reply Aff. at para. 6 n.3. Pacific Bell does note that the Overland Report mentions SBCS in a supplemental report, but not as an integral part of the report. Pacific Bell Reply at 54 n.43; Pacific Bell Borsodi Reply Aff. at para. 10.

[526] Letter from Howard E. Lubow, President, Overland Consulting, to Jack Leutza , Director - Telecommunications Division, California Public Utilities Commission (February 21, 2002) (transmitting audit report). The "general objective" of the audit was to "provide current, relevant information regarding Pacific Bell's operational and financial processes to assist the [California Commission] in regulation." Overland Report, Attach. 2-2, Development of Audit Scope and Objectives at 1 (quoting from the Request for Proposal to perform the audit issued by the California Office of Ratepayer Advocates).

[527] *See SWBT Texas Order*, 15 FCC Rcd at 18354 (authorizing long distance service provided by its separate section 272 affiliate in June, 2002).

[528] Among other things, the Overland Report found that Pacific underreported net regulated operating revenues to the California Commission, that it engaged in improper cross-subsidizations, that it violated the California Commission's affiliate transaction rules, and that it delayed the audit by withholding information. AT&T relies on these specific findings to support its claim the Pacific Bell will not comply with section 272. AT&T Comments at 56.

[529] Pacific Bell Application Reply App., Tab 2, Reply Affidavit of Emery G. Borsodi (Pacific Bell Borsodi Reply Aff.) at paras. 8, 15. The *California Commission Order* does not address its ongoing review of the Overland Report.

[530] Indeed, as described in our discussion of the public interest, infra, the California Commission recently issued a draft final decision concluding its review of Pacific Bell's state public interest compliance process in which it finds that its record supports the determinations that there is no improper cross subsidization by Pacific Bell, that there is (continued….)

that it will comply with section 272. Finally, we disagree with AT&T's allegation that Pacific Bell will obstruct and delay the section 272 biennial audit based on its alleged conduct in the California proceeding.[531] Pacific Bell will be required to comply with the requirements and timetable established by the Commission in sections 53.209, 53.211, and 53.213 of its rules to conduct the section 272 audits.[532]

VIII. PUBLIC INTEREST ANALYSIS

A. Public Interest Test

147. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[533] At the same time, section 271(d)(4) of the Act states that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."[534] Accordingly, although the Commission must make a separate determination that approval of a section 271 application is "consistent with the public interest, convenience, and necessity," it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B). Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

148. We conclude that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in California's local exchange market have been removed, and that the local exchange market is open to competition.

B. Price Squeeze

149. We find that the evidence submitted by XO, PacWest, RCN, TelePacific, DIRECTV, and Ernest that Pacific Bell is engaged in three distinct price squeezes in California does not support a finding that Pacific Bell fails its public interest requirements. We conclude

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no finding of anticompetitive behavior by Pacific Bell, and that there is no substantial possibility of harm to the competitive intrastate interexchange market by Pacific Bell's entry into that market. *See Draft Final Decision on the Public Utilities Code Section 709.2(c) Inquiry*.

[531] AT&T Comments at 62-64; AT&T Reply at 43; AT&T November 26 Haddad *Ex Parte* Letter at 9.

[532] 47 C.F.R. §§ 53.209, 53.211, 53.213.

[533] 47 U.S.C. § 271(d)(3)(C).

[534] 47 U.S.C. § 271(d)(4).

that none of these commenters has successfully established the existence of a price squeeze. With respect to PacWest, RCN, TelePacific, DIRECTV, Ernest, and AT&T's allegations, we also conclude that Pacific Bell's pricing of DSL and payphone services at issue here is not relevant under the competitive checklist requirements.

150. Before analyzing the commenters' price squeeze allegations, we begin with a discussion of a pending remand on the issue of how allegations of a price squeeze should be considered under the public interest standard of section 271(d)(3)(C). In *Sprint v. FCC*, the Court of Appeals for the D.C. Circuit remanded to the Commission for further consideration of how allegations of a price squeeze by a BOC should be examined as part of a section 271 application's public interest analysis.[535] In the Commission's *SWBT Kansas/Oklahoma Order*, the subject of *Sprint v. FCC*, the Commission declined to consider allegations that approving a section 271 application would not be in the public interest because competitors are unable to make a profit in the residential market using the UNE-platform.[536] The Commission concluded that the Act requires us to consider whether rates are cost-based, not whether market entry is profitable.[537] The Commission also stated that, if it were to focus on profitability, it would have to consider a state's retail rates,[538] which are generally outside its jurisdictional authority. Appellants asserted that their inability to make a profit in the residential market showed that granting the BOC's section 271 application was not in the public interest.[539] The court concluded that the Commission's rejection of the appellants' profitability argument was not responsive to the appellants' public interest argument.[540] The court did not, however, vacate the order. Instead, it remanded the Commission's rejection of the price squeeze issue for reconsideration.[541]

151. The Commission intends to issue an order addressing the questions posed in *Sprint v. FCC* about how we should consider allegations of a price squeeze that are raised in section 271 proceedings. Because we have not yet addressed the issues remanded by the court, however, we consider the specific allegations presented by the parties in this proceeding.

152. In a review of a section 271 application, the public interest requirement is an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as

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535 *Sprint v. FCC*, 274 F.3d 549.

536 *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6269, para. 65, 6280-81, para. 92.

537 *Id*. at 6280-81, para. 92.

538 *Id.*

539 *Sprint v. FCC*, 274 F.3d at 553.

540 *Id.* at 554.

541 *Id.* at 556.

Congress expected.[542] Congress did, however, explicitly prohibit the Commission from enlarging the scope of the competitive checklist.[543] Accordingly, consistent with our statutory obligation, we will consider the existence and scope of the alleged price squeezes along with all other relevant public interest factors.

153. XO claims that Pacific Bell's prices for DS1 and DS3 UNE loops effect a price squeeze on competitors, because in certain cases Pacific Bell's UNE rates for DS1 and DS3 loops are substantially higher than its retail rates for these loops.[544] XO contends that Pacific Bell's UNE rates effectively preclude competitors from achieving any profits at all for certain services and market segments.[545] XO claims that these UNE rates prevent competition against Pacific Bell in the market for these services.[546] Pacific Bell replies that XO not only failed to provide the necessary detailed analysis to establish a price squeeze, but that XO's DS1 and DS3 price squeeze allegation is "absurd" given the high level of competition in the provision of these high-speed services.[547]

154. The factual information necessary to conduct a price squeeze analysis is highly complex. Courts have recognized the particular difficulty of conducting a price squeeze inquiry in a regulated industry.[548] The key elements of a price squeeze inquiry -- input costs, revenues, and internal costs -- depend on numerous variables,[549] none of which are discussed or otherwise analyzed in XO's comments. XO fails to address any of the factors that we have identified in past orders as relevant to a price squeeze analysis. XO does not provide an analysis to demonstrate the internal costs of an efficient competitor, or alternative ways to provide service (i.e., resale).[550] Also, XO neither analyzes other revenues that may be available to competitors nor addresses the fact that competition exists in this market from other companies offering high-speed services.[551] Additionally, we note that Pacific Bell voluntarily reduced its DS3 loop rate to

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542 *Verizon New Hampshire/Delaware Order* at para. 144 (citing *Bell Atlantic New York Order*, 15 FCC Rcd at 4161-62, paras. 423-24).

543 47 U.S.C. § 271(d)(4); *see also Verizon New Hampshire/Delaware Order* at para. 144.

544 XO Comments at 32.

545 *Id.* at 32.

546 *Id.* at 32-33.

547 Pacific Bell Reply at 46-49; *see also id*. at Tab 4, Affidavit of Robert W. Crandall (Pacific Bell Crandall Reply Aff.) at para. 24.

548 *Concord Massachusetts v. Boston Edison Co*., 915 F.2d 17 (1st Cir. 1990).

549 *See BellSouth Multistate Order* at para. 281; *Verizon New Hampshire/Delaware Order* at para. 154.

550 *See BellSouth Multistate Order* at para. 285.

551 *See Verizon New Hampshire/Delaware Order* at paras. 155-56*; BellSouth Multistate Order* at para. 285 (citing *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20751, para. 66).

the rate it is proposing to the California Commission as part of its *Relook Proceeding*.[552] This further undermines XO's assertion that Pacific Bell's high rates preclude competition. Accordingly, as we have found in previous orders,[553] we find that XO provides insufficient evidence to determine that a price squeeze exists in the DS1 and DS3 markets in California.

155. PacWest, RCN, TelePacific, DIRECTV, and AT&T allege that Pacific Bell, through its affiliated companies, is engaging in a price squeeze by charging approximately $10.00 more per month for wholesale DSL service than it currently offers to retail customers for DSL-based Internet access service.[554] These carriers allege that Pacific Bell's wholesale DSL rates do not permit viable competition.[555] Commenters claim that in comparison to the $29.95 monthly promotional rate offered on a retail basis by Pacific Bell's affiliated ISPs, ASI (Pacific Bell's advanced services affiliate) provides wholesale ADSL access services and transport for more than $40.00 per end-user DSL customer.[556] Pacific Bell responds that pricing of DSL service is irrelevant to the Commission's public interest standard.[557] Also, Pacific Bell asserts that these commenters fail to provide the detailed analysis necessary to establish a price squeeze and that a price squeeze in the DSL market would be implausible given the high level of competition in the provision of this service.[558]

156. Pacific Bell does not have a present obligation to offer DSL transport service under section 251 or 252.[559] ASI's wholesale DSL transport services are offered at federally-tariffed rates.[560] In addition, no commenter addresses any of the factors necessary for us to conduct a price-squeeze analysis discussed above, such as input costs, revenues, or an efficient competitor's internal costs. Furthermore, commenters fail to consider how alternative modes of entry, e.g., the UNE-P, which enables a carrier to lease the entire line for less than $20 a month,

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552 Pacific Bell Reply at 26.

553 *See Verizon New Jersey Order*, 17 FCC Rcd at 12362, para. 175; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9181, para. 290; *Verizon Vermont Order*, 17 FCC Rcd at 7665, para. 73; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20751, para. 66.

554 PacWest, RCN and TelePacific Comments at ii and 27-28; DIRECTV Comments at I and 4-7; Letter from James P. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-306 at 1-2 (filed Nov. 26, 2002) (AT&T November 26 Young *Ex Parte* Letter).

555 *Id*. at 29.

556 *Id.* at 27-28 (citing ASI FCC Tariff No. 1 at §§ 4 *et seq*.).

557 Pacific Bell Reply at 45-46.

558 *Id*. at 46-48.

559 *See* 47 U.S.C. §§ 251(c)(2), (c)(4), and 252(d). *See also* section IV(c), *supra*.

560 *See* Pacific Bell Application App. A, Tab 8, Affidavit of John S. Habeeb (Pacific Bell Habeeb Aff.) at para. 16.

affect the price-squeeze analysis.[561] For these reasons, we find that commenters fail to demonstrate that Pacific Bell is engaged in a price squeeze through its provision of DSL transport in violation of the public interest when we have never found that it is required under any checklist item to offer DSL transport services at a wholesale discount.[562]

157. Ernest asserts that Pacific Bell "appears" to be engaged in a price squeeze that will preclude competitors from serving the pay telephone line market in California.[563] Ernest contends that Pacific Bell is offering payphone service providers (PSPs) retail rates that are below what Ernest, as an unbundled network element provider, must pay Pacific Bell for the network elements that Ernest requires to provide comparable service.[564] Pacific Bell replies that the Commission need not address Ernest's payphone pricing assertions in this proceeding because it did not raise the issue in the California 271 proceeding, because this pricing issue has nothing to do with checklist compliance, and because this issue is currently the subject of a pending complaint filed by MPower with the California Commission.[565] Pacific Bell also responds that it could not rationally engage in a price squeeze against payphone rivals because it would be unable to recoup the losses from such a pricing strategy, given that it alleges that the payphone industry is a dying business that is rapidly being replaced by personal wireless communications.[566]

158. We find that Ernest provides the Commission with none of the detailed analysis needed to establish a price squeeze. Indeed, Ernest acknowledges that it is not "in a position to provide . . . [the] detailed price squeeze analysis" required by the Commission in its previous orders.[567] In addition, in light of the pending complaint filed by MPower, we agree with Pacific Bell that this payphone pricing issue is best resolved by the California Commission. As we have stated in prior section 271 orders, although we have an independent obligation to ensure compliance with the checklist, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions."[568] We are confident that the California Commission will resolve this issue consistent with our rules.

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561 *See* section IV(A)(1)(b)(ii), *supra*.

562 We note that the appropriate venue for the price squeeze allegation raised by AT&T, PacWest, RCN, TelePacific, and DIRECTV is a complaint under section 208 of the Act. 47 U.S.C. § 208.

563 Ernest Comments at 1.

564 *Id*. at 2.

565 Pacific Bell Shannon Reply Aff. at paras. 22-26.

566 Pacific Bell Reply at 48; *see also id.* Crandall Aff. at paras. 20-24.

567 Ernest Comments at 2.

568 *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159 (quoting *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20776, para. 115.

159. We further note that Pacific Bell's intrastate payphone line rates are subject to the Commission's pricing guidelines. Specifically, in *Wisconsin Public Service Commission*, the Commission determined that section 276 of the 1996 Act requires that the BOCs' intrastate payphone line rates comply with the cost-based "new services test" and that these rates be calculated using a forward-looking, direct cost methodology such as TELRIC.[569] Because these pricing guidelines allow independent payphone providers to purchase lines from Pacific Bell based on a pricing standard similar, if not identical, to that used by Ernest to purchase UNEs, we would expect that competitive LECs that are not providing their own facilities might often have difficulty in competing with BOCs in providing services to independent payphone providers. Given that the interest in promoting competition between independent payphone providers and incumbent LEC payphone operations set forth in section 276 may at times run counter to the interest of competition in serving the niche market of independent payphone providers, we find that the interest explicitly identified by statute takes precedence. We therefore find that Ernest's allegations do not cause Pacific Bell to violate its public interest requirements.

C. Assurance of Future Compliance

160. We find that the performance incentives plan (PIP) currently in place for California provides assurance that the local markets will remain open after Pacific Bell receives section 271 authorization.[570] Although it is not a requirement for section 271 approval that a BOC be subject to such post-entry performance assurance mechanisms, the Commission has previously found that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations.[571]

161. We conclude that the Pacific Bell PIP plan provides sufficient incentives to foster post-entry checklist compliance. We note that the PIP was developed and approved by the California Commission in an open proceeding and Pacific Bell's performance measurements are the result of extensive collaborative negotiations among the competitive LECs, the California Commission, and Pacific Bell.[572] As in prior section 271 orders, our conclusions are based on a review of several key elements in any performance assurance plan: total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing

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[569] *Wisconsin Public Service Commission,* CCB/CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd 2051, 2072, para. 68 (2002).

[570] *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-398. We note that in all of the previous applications that the Commission has granted to date, the applicant was subject to a performance assurance plan designed to protect against backsliding after BOC entry into the long-distance market.

[571] *See Verizon New Jersey Order*, 17 FCC Rcd at 12362, para 176; *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 353-98.

[572] Pacific Bell Johnson Aff. at para. 13; *California Commission Order* at 221.

nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements.[573]

162. We disagree with XO's concern that the PIP is insufficient to deter backsliding.[574] The California PIP is overseen by the California Commission and includes reporting requirements that track Pacific Bell's performance on 5 measurements,[575] as well as incentive payments that subject Pacific Bell to up to $50 million of liability each month if it fails to provide nondiscriminatory service to competitive LECs.[576] The $50 million liability each month satisfies the California Commission's overall annual cap of 36% of Pacific Bell's annual net return from local exchange service in California.[577] Consequently, the PIP should play a key role in swiftly detected and sanctioning any post entry backsliding. We also note that the PIP is not the only means of ensuring that Pacific Bell continues to provide nondiscriminatory service to competing carriers. In addition to the monetary payments at stake under this plan, Pacific Bell faces other consequences if it fails to sustain an acceptable level of service to competing carriers, including: enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6) and remedies associated with antitrust and other legal actions.[578]

163. Further, we reject XO's contention that the PIP's "curvilinear" structure unduly limits the payments for which Pacific Bell is liable, and therefore limits the efficacy of the plan.[579] Rather, as the California Commission found, the incentive amounts are scaled to performance in a curvilinear structure in order to ensure that payments remain low when Pacific Bell's service quality is strong, but ratchet-up quickly when service quality deteriorates.[580] In the curvilinear plan, the per-failure payment amount increases as Pacific Bell "misses" more measure.[581] Thus, monetary liabilities mount as performance worsens. Moreover, the California

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[573] *See, e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9121-25, paras. 240-247; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6377-81, paras. 273-78.

[574] *XO* Comments at 29.

[575] C*alifornia Commission Order* at 224.

[576] Pacific Bell Reply at 49.

[577] *California Commission Order* at 227-28.

[578] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430 (stating that the BOC "risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner"); s*ee also SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421.

[579] XO Comments at 30.

[580] *See* Pacific Bell Johnson Aff. at paras. 234-35; *see also California Commission Order* at 228. S*ee also Before the California Utilities Commission of the State of California: Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company* D.02-03-023 at 38. (PIP Plan Opinion).

[581] Pacific Bell Reply Affidavit of Cynthia Wales, Tab 18 (Pacific Bell Wales Reply Aff.) at para. 79.

Commission will maintain vigilant oversight of the PIP. In its Plan Opinion, the California Commission ordered that after an initial period of six months, the performance of the PIP shall be reviewed by the California Commission and shall include any adjustments and modifications to the components, if necessary.[582]

164. *Other Issues*. Finally, we disagree with Sprint's comments that assert that under our public interest standard we must consider the level of competitive LEC market share, the weakening economy, or the financing difficulties of competitive LECs.[583] We have consistently declined to use factors beyond the control of the BOC or competitive LECs, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application.[584] We note that the D.C. Circuit confirmed in *Sprint v. FCC* that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.[585]

D. Section 709.2 of the California Public Utilities Code

165. Several commenters argue that the Commission should reject Pacific Bell's application because of the California Commission's findings that Pacific Bell failed to meet the requirements under California Public Utilities Code section 709.2 for the provision of intrastate interexchange telecommunications services.[586] The commenters allege that because the California Commission found that Pacific Bell failed to satisfy several prongs of section 709.2, those findings alone provide sufficient evidence that Pacific Bell's entrance into the long distance market in California is not in the public interest.[587] They also argue that facts or circumstances relied upon by the California Commission are relevant to our analysis and warrant a finding that Pacific Bell's request fails our public interest requirement.[588] In response, Pacific Bell states that section 709.2 is irrelevant to this Commission's section 271 determination, and even if it was relevant, the California Commission wrongly determined that Pacific Bell failed to meet section 709.2.[589]

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582 Pacific Bell Wales Reply Aff. at para 84.

583 Sprint Comments at 4-9 (asserting that we must consider the financial status of the competitive LEC industry.)

584 *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

585 *Sprint v. FCC,* 274 F.3d at 559; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

586 *See, e.g.,* AT&T Comments at 71-73; Vycera Comments at 19-21; XO Comments at 27-29; PacWest Comments at 4-12; Sprint Comments at 10-13; Paging Systems Comments at 7-10.

587 *See, e.g.*, AT&T Comments at 72-73; Vycera Comments at 21; XO Comments at 27.

588 *See, e.g.,* AT&T Comments at 72-73; XO Comments at 29; PacWest Comments at 34.

589 Pacific Bell Application at 95-101.

166. Section 709.2 was enacted by the California legislature in 1994 and requires the California Commission to make four essential determinations prior to "authorizing or directing competition" in the intrastate interLATA market.[590] Specifically, the California Commission is required to find that: (1) competitors have fair, nondiscriminatory access to exchanges; (2) there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or subscriber contacts generated by the provision of local exchange telephone service; (3) there is no improper cross-subsidization of interexchange telecommunications service; and (4) there is "no substantial possibility of harm" to the competitive intrastate interexchange telecommunications market.[591] The California Commission concluded that the record did not support the finding that Pacific Bell had satisfied the second, third and fourth parts of the statute.[592] Specifically, the California Commission identified evidence of Pacific Bell's behavior contrary to section 709.2, such as Pacific Bell's joint marketing plans,[593] under which it could potentially use its current relationships with customers to its advantage.[594] In addition, the California Commission stated that while it did not have actual evidence of improper cross-subsidization, the possibility existed for such conduct to occur in the future.[595] The California Commission also noted that, because Pacific Bell was going to be the Preferred Interexchange Carrier (PIC) administrator, it would have the ability to behave in a way that could harm competitors and potentially harm the competitive intrastate interexchange telecommunications market.[596] Accordingly, the California Commission concluded that Pacific Bell failed to meet the requirements of section 709.2.[597]

167. On December 12, 2002, an Administrative Law Judge (ALJ) appointed by the California Commission issued a draft decision proposing to conclude the section 709.2 inquiry. The ALJ determined that, with the implementation of certain additional safeguards, Pacific Bell had satisfied the remaining three parts of section 709.2.[598] Accordingly, the draft decision

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590 Calif. Pub. Util. Code § 709.2(c).

591 Calif. Pub. Util. Code § 709.2(c)(1)-(4).

592 *California Commission Order* at 245-67.

593 The California Commission concluded (contrary to the 1996 Act and the Commission's regulations) that permitting Pacific Bell to jointly market its long distance affiliate's services to incoming callers would be a harmful and discriminatory advantage. *California Commission Order* at 248-49.

594 *California Commission Order* at 248-49.

595 *California Commission Order* at 258.

596 *California Commission Order* at 261-63.

597 *California Commission Order* at 263.

598 *See* Pacific Bell Dec. 13 *Ex* Parte Letter, Attach 2, at 2. Specifically, the draft decision proposes to require ongoing review of Pacific Bell's joint marketing scripts, to complete development of an expedited dispute resolution process, and to monitor Pacific Bell's special access performance. *Id*. at 16-22.

proposes to allow Pacific Bell the authority to offer intrastate interexchange telecommunications services "provided that it has received full authorization from the FCC pursuant to Section 271 of the Telecommunications Act of 1996."[599] Nonetheless, at this point the draft decision does not represent a final action of the California Commission, and does not alter the earlier determinations contained in the California Commission's September 19, 2002 Order (the "California Commission Order"), discussed above.[600] Comments on the draft decision are due by December 24.

168. As an initial matter, we are not bound by the precise requirements of section 709.2. Congress granted the Commission exclusive authority to determine whether a BOC may provide interLATA services – including both interstate and intrastate services – and identified the findings the Commission must make before it grants a section 271 application.[601] In the *Non-Accounting Safeguards Order*, moreover, we determined that "sections 271 and 272, and the Commission's authority thereunder, apply to intrastate and interstate interLATA services provided by the BOCs or their affiliates," and that "the states may not impose, with respect to BOC provision of intrastate interLATA service, requirements inconsistent with sections 271 and 272."[602] We also note that a state retains authority to enforce obligations and safeguards relating to a BOC's provision of intrastate interLATA services, such as those governing consumer protection and service quality.[603] In addition, a state retains authority to enforce safeguards that promote a pro-competitive telecommunications market, to the extent that they are not inconsistent with federal requirements. However, this Commission retains the authority to determine whether a BOC remains in compliance with the requirements of section 271.

169. As we noted at the beginning of the public interest section of this Order, section 271(d)(3)(C) of the 1996 Act states that the Commission shall not approve a requested authorization to provide in-region, interLATA services unless "the requested authorization is consistent with the public interest, convenience, and necessity."[604] In discharging this obligation, we must be mindful that the standard applied is a federal one, as set forth in the 1996 Act. The

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599 *See* Pacific Bell Dec. 13 *Ex* Parte Letter, Attach 2, at 23.

600 The ALJ explained that the California Commission may adopt all or part of the draft decision as written, amend or modify it, or set it aside and prepare its own decision. *See* Pacific Bell Dec. 13 *Ex* Parte Letter, Attach 2, at 1.

601 *See* 47 U.S.C. § 271(a) (a BOC may not "provide interLATA services except as provided in this section"); *id.* § 271(b)(1) ("A Bell operating company…may provide interLATA services originating in any of its in-region States…if the Commission approves the application of such company for such State under subsection (d)(3)".

602 *In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended,* CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 21929, para. 47 (1996).

603 *See id.* at n.97.

604 47 U.S.C. § 271(d)(3)(C).

Commission has, accordingly, developed a significant body of precedent regarding the factors we have considered in making public interest findings for the purposes of section 271.[605] Although there is no requirement in the statute for the Commission to consult with a state or otherwise follow its determinations on the public interest,[606] we rely on the state commission as the initial fact finder. The state commission is able to cross examine witnesses, compel discovery, and direct the submission of additional record evidence on particular issues. The Commission lacks the time to employ such tools during the course of the 90-day statutory review period. We also recognize that the Commission, in conducting its public interest analysis, may not extend the terms of the competitive checklist.[607] Therefore, to the extent the California Commission's discussion of section 709.2 raises public interest considerations relevant to our section 271 analysis in this proceeding, we take seriously the findings of the California Commission and address them below.

170. As a general matter, then, we do not agree with certain commenters that we should simply reject this application based solely on the fact that the California Commission concluded Pacific Bell failed to meet state law requirements.[608] In particular, we do not consider the California Commission's conclusion under section 709.2 alone to be determinative of our own public interest analysis for several reasons. First, we note that section 709.2 is a state statute enacted several years before the 1996 Act, and section 709.2 provides a different framework for determining whether Pacific Bell can enter the intrastate interexchange market that is somewhat inconsistent with the approach in section 271.[609] For instance, section 271 explicitly permits joint marketing under certain circumstances, yet the California Commission did not consider this in its analysis of the state requirements (nor does section 709.2 require it to).[610] Second, while the California statute requires a determination of "no improper cross-subsidization of intrastate interexchange telecommunications service," the 1996 Act requires the BOC to comply with the structural safeguards of section 272 of the Act, which includes establishing a separate long distance subsidiary.[611] Because of the differences between section

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605 *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4161-72, paras. 422-43; *SWBT Texas Order*, 15 FCC Rcd at 18557-65, paras. 416-30.

606 *See* 47 U.S.C. § 271(d)(2)(B).

607 *See* 47 U.S.C. § 271(d)(4).

608 *See, e.g.*, AT&T Comments at 69; XO Comments at 27; PacWest Comments at 6.

609 *See, e.g.* letter from Jim Costa, California State Senator, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-306 (filed October 18, 2002) (Costa October 18 *Ex Parte* Letter). As the original author of Section 709.2 while a member of the California State Assembly, Mr. Costa submitted an *Ex Parte* letter stating that Section 709.2 was not intended to stand as a barrier to FCC approval of Pacific Bell's long distance application, and "if the FCC concludes that Pacific Bell meets the federal statutory requirements for relief, then the company meets the requirements of Section 709.2."

610 *See* 47 U.S.C.§ 271(e)(1).

611 47 U.S.C. § 272.

709.2 and the relevant sections of the 1996 Act, and as discussed in more detail below, we conclude that the California Commission's determinations with regard to section 709.2 do not compel any particular outcome of our public interest determination under the 1996 Act. We conclude that the 1996 Act is paramount to any state statute in determining whether Pacific Bell's section 271 application is in the public interest.

171. Nonetheless, while the California Commission's findings under state law do not compel any particular result, we do not agree with Pacific Bell that the specific issues raised by the California Commission and cited by commenters are irrelevant to our public interest inquiry.[612] Indeed, our precedent in this area clearly states that evidence of a BOC's failure to comply with state telecommunications regulations could undermine our confidence that a BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.[613] Therefore, we fully consider the specific facts and circumstances identified by the California Commission, to the extent these facts and circumstances are stated with clarity in our record, because they could independently establish a public interest concern separately cognizable by this Commission in its review. We thus address the specific facts and circumstances underlying the California Commission's analysis—and highlighted by the commenters in this proceeding.

172. We disagree with the several commenters that suggest that Pacific Bell failed to cooperate in opening its network to competitors by engaging in a pattern of anticompetitive conduct. The record in this proceeding does not support such a finding. Commenters raise two key issues with respect to their position that Pacific Bell engages in anticompetitive behavior. First, commenters note that Pacific Bell plans to jointly market its services to inbound callers.[614] While the California Commission finds this activity to be "unfair" usage of subscriber information or customer contacts, federal law specifically permits Pacific Bell to jointly market its long distance service to inbound callers once it obtains authority to provide in-region, interLATA services within a state.[615] Indeed, this Commission has found that where joint marketing is conducted pursuant to the statute and Commission rules, such activity is fully consistent with the public interest.[616] No party disputes that Pacific Bell's joint marketing plans comply with federal law and the California Commission does not contend otherwise. We therefore decline to find that Pacific Bell's entry into the interLATA market is not in the public

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[612] Pacific Bell Application at 99.

[613] *See Ameritech Michigan Order*, 12 FCC Rcd at 20749-50, para. 397.

[614] *See, e.g.,* Vycera Comments at 23-25; AT&T Comments at 78-79.

[615] *California Commission Order* at 249; 47 U.S.C. § 271(e)(1). Even if Pacific Bell's joint marketing plans were problematic, the California Commission is requiring Pacific Bell, among other things, to tell customers that they have the right to select the interLATA carrier of their choice, which should minimize any inherent advantage for Pacific Bell's long distance affiliate. *California Commission Order* at 251.

[616] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4160-61, paras. 419-20.

interest when Congress clearly established that this activity can benefit consumers and is otherwise consistent with the public interest. Second, commenters note the California Commission's concerns relating to two cases filed against Pacific Bell regarding its planned use of long distance carriers' billing information and alleged unlawful monopolization practices.[617] We find these cases have little, if any, relevance to our analysis, both having been settled more than 5 years ago without judgments having been entered against Pacific Bell.[618] Therefore, despite commenters' contentions, we cannot find that Pacific Bell behaves in an anticompetitive manner such that this application fails the public interest standard.

173. Commenters also support the California Commission's finding that Pacific Bell's joint marketing plan demonstrates the possible existence of improper cross-subsidization.[619] As we have previously stated, the principal guarantee against improper accounting practices and cross-subsidization is section 272 of the 1996 Act, which requires compliance with certain structural safeguards. As noted above, we find that Pacific Bell will conduct its in-region long distance operation in accordance with the requirements set forth in section 272. Therefore, we cannot find that the mere possibility of improper cross-subsidization is such that this application fails the public interest standard. We will monitor Pacific Bell's performance in this area for compliance with the conditions of approval in this order.[620]

174. Commenters also allege that Pacific Bell's role as PIC administrator would harm the long distance market. Specifically, commenters argue that the level of PIC dispute charges issued by Pacific Bell as PIC administrator (for intraLATA toll calls) were many times greater than that experienced under any other incumbent LEC.[621] In addition, these commenters point out that the number of intraLATA toll PIC disputes rose significantly once intraLATA equal access was implemented in California.[622] Some commenters also argue that Pacific Bell abused its role as PIC administrator through improper billing and winback practices, claiming that

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617 *See, e.g.,* Vycera Comments at 21-23; PacWest Comments at 6-8. *See also California Commission Order* at 247-48.

618 Pacific Bell Application at 96-97; *see also California Commission Order* at 247-48 (recognizing that both cases were settled and no judgments were entered against Pacific Bell).

619 Vycera Comments at 23-25; AT&T Comments at 78-79; PacWest Comments at 9-12.

620 *See* FCC's Enforcement Bureau Establishes Section 271 Compliance Review Program, Public Notice, DA 02-1322 (rel. June 6, 2002).

621 AT&T Comments at 79-80. Vycera argues that Pacific Bell's unique position as non-neutral primary carrier (PC) change administrator allows it to indiscriminately register alleged PC disputes against competitors as a result of winback calls and winback written materials, and to directly benefit from this by assessing PC change charges and fees against those competitors. Vycera further argues that while Pacific Bell does not allow carriers to provide evidence of customer authorization and verification to counter alleged PC disputes, Pacific Bell has nothing to lose and much to gain by registering PC disputes against carriers where none exists. *See* Vycera Comments at 36.

622 AT&T Comments at 80; Vycera Comments at 29-31.

Pacific Bell improperly coded certain winbacks as PIC disputes, even though the customer's original switch away from Pacific Bell to the competitive LEC was authorized.[623] In response, Pacific Bell argues that it has properly managed its role as PIC administrator and that its winback practices and procedures are in compliance with state and federal regulations.[624] Pacific Bell, however, does admit that for a period of time during 1999, certain winback reply cards were incorrectly processed so as to record the winback as a PIC dispute in addition to switching the customer back to Pacific Bell.[625] Pacific Bell explains that upon discovering this error, it notified all carriers affected by this mistake, and provided credits for any incorrect PIC dispute charges assessed.[626] Pacific Bell also claims that it apprised the California Commission of this problem and implemented appropriate steps to minimize the likelihood of its recurrence, including the retraining of personnel involved.[627]

175. Our slamming rules do not prohibit the BOC from retaining the role of PIC administrator.[628] Indeed, it appears to us that every BOC that has received authorizations under section 271 has continued to retain this role. We further note that the California Commission has decided to initiate an investigation into Pacific Bell's PIC administration practices, and assess whether to order the creation of an independent third-party PIC administrator.[629] Because the

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[623] Vycera Comments at 30-37; AT&T Reply Comments at 45-46. AT&T and Vycera both allege that Pacific Bell improperly coded winbacks as PIC disputes and then improperly required competitive LECs to pay the charges (equal to two times the PIC change fee) for customers that switched to those competitive LECs and then returned to Pacific Bell under its winback program. For instance, Vycera provides an example in which its President, Derek Gietzen, requested that his intraLATA toll service be switched from Pacific Bell to Vycera. According to Vycera, Pacific Bell sent Mr. Gietzen a winback letter and when Mr. Gietzen signed the form and agreed to switch back to Pacific Bell, Pacific Bell reported the original switch to Vycera as an "unauthorized carrier change." Vycera Comments at 33.

[624] Pacific Bell Reply Comments at 40-41. Pacific Bell argues that to the extent its winback practices have been investigated by the California Commission, that investigation has revealed no evidence of any pervasive or systematic mishandling of slamming claims.

[625] Pacific Bell Wales Reply Aff. at para. 13.

[626] Pacific Bell Wales Reply Aff. at para. 13.

[627] Pacific Bell Wales Reply Aff. at para. 14.

[628] *See Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes in Consumers Long Distance Carriers*, CC Docket No 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1569-70, para. 102-103 (1998) (*Slamming Order and Further Notice*) (permitting incumbent LECs to continue to act as executing carriers under the same rules as other carriers). We note that changes to subscriber carrier selections are governed by Part 64, Subpart K of our rules, which allow the BOC to act as an "executing carrier"—the carrier that effects a change in a subscriber's telecommunications carrier. 47 C.F.R. § 64.1100 *et. seq*.

[629] *California Commission Order* at 265. The California Commission noted that while the BOC was the presumed PIC administrator, a neutral third party may be necessary in the new environment. Furthermore, the California Commission initiated an investigation to examine the efficacy, feasibility, structural implementation, and selection criteria for selecting a competitively neutral third-party PIC administrator.

California Commission has not yet decided whether to require the creation of such a third-party PIC administrator, and because this Commission's slamming proceeding is still open with Petitions for Reconsideration and Further Notice issues pending, it would be premature for us to conclude that the *absence* of such a third-party PIC administrator will harm the public interest.[630] Nonetheless, the commenters have raised valid concerns with regard to Pacific Bell's conduct of its PIC administrator responsibilities for intraLATA toll service, and Pacific Bell admits that it has made mistakes improperly coding valid carrier changes away from Pacific Bell as PIC disputes. Along those lines, we note that Pacific Bell's conduct in the long distance market, including its actions as PIC adminstrator, will be governed by section 64.1100 *et. seq*. of the Commission's rules.[631] We find the existence of these rules, the Commission's enforcement authority, as well as the ongoing state and federal proceedings, provide assurance that Pacific Bell will be held accountable in this regard in the future. Accordingly, we cannot find that Pacific Bell's past behavior as intraLATA PIC administrator warrants a finding that grant of its section 271 application is not in the public interest.[632]

176. Finally, AT&T claims that the regulatory audit report issued by Overland Consulting, which we address above in the section 272 discussion, demonstrates that Pacific Bell's application is not in the public interest. Specifically, AT&T claims that the report contains repeated findings of violations, such as underreported net regulated operating revenues, and improper cross-subsidizations and suggests that Pacific Bell obstructed the work of the auditors.[633] We reject AT&T's contention, however, that the Overland Report requires a finding that Pacific Bell's application is not in the public interest. As we have routinely held, our principal guarantee under the Act against improper accounting practices and cross-subsidizations is compliance with the structural and accounting safeguards of section 272. So long as Pacific Bell demonstrates that it will comply with the requirements of section 272, we do not find a sufficient public interest concern to warrant rejection of this application.

IX. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

177. Section 271(d)(6) of the Act requires Pacific Bell to continue to satisfy the "conditions required for . . . approval of its section 271 application subsequent to Commission approval of its application."[634] Thus, the Commission has a responsibility not only to ensure that Pacific Bell complies with section 271 today, but also that it remains in compliance in the future.

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630 *See, e.g., Slamming Order and Further Notice*, 14 FCC Rcd at 1609-10, paras. 183-84.

631 47 C.F.R. § 64.1100 *et seq.*

632 We note, that the California Commission itself provided that it is not presently prepared to require the use of a third-party PIC administrator. *California Commission Order* at 265.

633 AT&T Comments at 73-76. *See Supra* Section VII discussing Section 272 compliance.

634 47 U.S.C. § 271(d)(6).

As the Commission has already detailed the post-approval enforcement framework and its section 271(d)(6) enforcement powers in prior orders, it is not necessary to do so here.[635]

178. Working with the California Commission, we will closely monitor Pacific Bell's post-approval compliance to ensure that Pacific Bell does not "cease[] to meet the conditions required for [section 271] approval.[636] We stand ready to exercise our various statutory enforcement powers quickly and decisively if there is evidence that market opening conditions have not been sustained.

179. In the course of this proceeding, we have given close scrutiny to Pacific Bell's provision of UNEs, as have the California Commission, the Department of Justice, and other commenters.[637] We will closely monitor Pacific Bell's performance in California following section 271 approval. If evidence shows that performance is not maintained in these areas, we are prepared to use our authority under section 271(d)(6) to enforce compliance. As the Commission has warned, "any diminution in performance below levels deemed sufficient in this order may expose [Pacific Bell] to possible enforcement action under section 271(d)(6), including suspension of authorization to provide service."[638]

180. Consistent with prior section 271 orders, we require Pacific Bell to report to the Commission all California carrier-to-carrier performance metrics results and PIP reports, beginning with the first full month after the effective date of this Order, and for each month thereafter for one year, unless extended by the Commission. These results and reports will allow us to review Pacific Bell's performance on an ongoing basis to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Pacific Bell's entry into the California long distance market.

X. CONCLUSION

181. For the reasons discussed above, we grant Pacific Bell's application for authorization under section 271 of the Act to provide in-region, interLATA services in the State of California.

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[635] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53. *See* Appendix C.

[636] 47 U.S.C. § 271(d)(6)(A).

[637] *See generally*, *California Commission Order* at 29 *et seq*.; Department of Justice Evaluation at 5; AT&T Comments at 30 et s*eq*.; XO Comments at 5 *et seq*.

[638] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4176, para. 451.

XI. ORDERING CLAUSES

182. Accordingly, IT IS ORDERED, that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, Pacific Bell's application to provide in-region, interLATA service in the State of California, filed September 20, 2002, IS GRANTED.

183. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE December 30, 2002.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

Commenters in CC Docket No. 02-306

Commenter	Abbreviation
Alliance for Public Technology	APT
Association of Communications Enterprises	ASCENT
AT&T Corporation	AT&T
Communication Workers of America	CWA
DIRECTV Broadband Corporation	DIRECTV
Ernest Communications , Inc	Ernest
FONE4All Corporation	FONE4ALL
MPOWER Communications Corp	MPOWER
PACWEST Telecom, RCN Telecom & U.S TelePacific Corp	PacWest, RCN, TelePacific
Paging Systems Inc and Touch Tel Corporation	PSI and Touch Tel Corporation
Sprint Communications Company	SPRINT
Vycera Communications, Inc	Vycera
XO California, Inc	XO
Reply Commenter	**Abbreviation**
AT&T Corporation	AT&T
Pac Bell	Pac Bell
Telescape Communications, Inc.	Telescape
XO California, Inc.	XO

Appendix B

California Performance Metrics

Except where noted, the data included here is taken from the California performance reports provided by Pacific Bell, calculated according to the California OSS OII Performance Measurements (Joint Partial Settlement Agreement) business rules as of 5/24/01. This table is provided as a reference tool for the convenience of the reader. No conclusions are to be drawn from the raw data contained in this table. Our analysis is based on the totality of the circumstances, such that we may use non-metric evidence, and may rely more heavily on some metrics more than others, in making our determination. The inclusion of these particular metrics in this table does not necessarily mean that we relied on all of these metrics, or that other metrics may not also be important in our analysis. Some metrics that we have relied on in the past and may rely on for a future application were not included here because there was no data provided for them (usually either because there was no activity, or because the metrics are still under development).

Metrics with no retail analog provided are usually compared with a benchmark. Note that for some metrics during the period provided there may be changes in the metric definition, or changes in the retail analog applied, making it difficult to compare data over time.

Performance Metric Categories

Metric Number	Metric Name
Pre-Ordering	
1	Average Response Time (to Pre-Order Queries)
Ordering	
2	Average FOC/LSC Notice Interval
3	Average Reject Notice Interval
4	Percentage of Flow-Through Orders
Provisioning	
5	Percentage of Orders Jeopardized
6	Average Jeopardy Notice Interval
7	Average Completed Interval
8	Percent Completed Within Standard Interval
9	Coordinated Customer Conversion
9a	Frame Due Time (FDT) Conversions as a Percentage on Time
10	LNP Network Provisioning
11	Percent of Due Dates Missed
12	Percent of Due Dates Missed Due to Lack of Facilities
13	Delay Order Interval to Completion Date (For Lack of Facilities)
14	Held Order Interval
15	Provisioning Trouble Reports (Prior to Service Order Completion)
15a	Average Time to Restore Provisioning Troubles (Service Order Completion)
16	Percentage Troubles in 30 Days for Special Services Orders
17	Percentage Troubles in 10 Days for Non-Special Orders
18	Completion Notice Interval
Maintenance	
19	Customer Trouble Report Rate
20	Percentage of Customer Trouble Not Resolved Within Estimated Time
21	Average Time to Restore
22	POTS Out of Service Less Than 24 Hours

Metric Number	Metric Name
23	Frequency of Repeat Troubles in 30-Day Period
Network Performance	
24	Percent Blocking on Common Trunks
25	Percent Blocking on Interconnection Trunks
26	NXX Loaded by LERG Effective Date
Billing	
38	Usage Timeliness
30	Wholesale Bill Timeliness
31	Usage Completeness
32	Recurring Charge Completeness
33	Non-Recurring Charge Completeness
34	Bill Accuracy
35	Billing Completion Notice Interval
36	Accuracy of Mechanized Bill Feed
Database Updates	
37	Average Database Update Interval
38	Percent Database Accuracy
39	E911/911 MS Database Update
Collocation	
40	Time to Respond to a Collocation Request
41	Time to Provide a Collocation Arrangement
Interfaces	
42	Percent of Time Interface is Available
44	Center Responsiveness

California Performance Metric Data

Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
Pre-Ordering												
1 - Average FOC/LSC Notice Interval												
1 - 103300	Avg Resp Pre-Order Man Fax/Req for CSR	96.59	95.00	100.00	95.00	99.96	95.00	98.11	95.00	97.66	95.00	
1 - 103500	Avg Resp Pre-Order K1023: xDSL Loop Qual	2.86	15.09	2.84	19.99	1.87	33.32	2.16	13.16	4.22	19.98	
1 - 103501	Avg Resp Pre-Order K1023: Manual K1023	1.52	8.36	1.97	15.85	1.72	12.30	6.94	14.27	7.67	7.26	
1 - 104101	Avg Resp Pre-Order CSR Datagate: Rndtrp	2.06	10.00	1.85	10.00	2.07	10.00	1.70	10.00	1.23	10.00	
1 - 104400	Avg Resp Pre-Order Rej/Fail Inq Datagate: Rndtrp	3.72	tbd	5.04	tbd	1.62	tbd	0.98	tbd	0.80	tbd	
1 - 104501	Avg Resp Pre-Order Addr Verif Verigate: Rndtrp	2.00	4.50	1.78	4.50	1.81	4.50	1.64	4.50	1.74	4.50	
1 - 104502	Avg Resp Pre-Order Disp Rqrd/Fac Avail Verigate: Rndtrp	4.77	11.00	5.29	11.00	5.55	11.00	5.65	11.00	5.95	11.00	
1 - 104601	Avg Resp Pre-Order TN Verigate: Rndtrp	12.67	4.50	4.12	4.50	5.05	4.50	4.56	4.50	4.78	4.50	
1 - 104701	Avg Resp Pre-Order CSR Verigate: Rndtrp	3.66	10.00	3.55	10.00	3.74	10.00	3.40	10.00	3.53	10.00	
1 - 104801	Avg Resp Pre-Order Svc Avail Verigate: Rndtrp	0.95	8.00	0.75	8.00	1.20	8.00	0.97	8.00	0.92	8.00	
1 - 104901	Avg Resp Pre-Order Svc Appt Sch Verigate: Rndtrp	2.27	2.00	2.60	2.00	2.39	2.00	2.22	2.00	2.24	2.00	
1 - 105000	Avg Resp Pre-Order Rej/Fail Inq Verigate: Rndtrp	16.27	tbd	7.03	tbd	8.91	tbd	2.01	tbd	2.45	tbd	
1 - 105600	Avg Resp Pre-Order Mech Loop Qual Actual - Verigate: Rndtrp	14.68	11.23	13.18	9.28	13.51	10.33	13.38	10.30	13.63	10.66	
1 - 105700	Avg Resp Pre-Order Mech Loop Qual Design - Verigate: Rndtrp	2.89	4.51	2.56	3.60	2.24	4.07	2.24	4.41	3.25	4.37	
1 - 106000	Avg Resp Pre-Order Addr Verif EDI-CORBA: Rndtrp	3.14	4.50	2.98	4.50	2.89	4.50	4.42	4.50	1.62	4.50	
1 - 106002	Avg Resp Pre-Order TN EDI-CORBA: Rndtrp	2.85	4.50	2.37	4.50	2.32	4.50	4.32	4.50	4.02	4.50	
1 - 106003	Avg Resp Pre-Order CSR EDI-CORBA: Rndtrp	2.67	10.00	2.70	10.00	3.13	10.00	11.74	10.00	1.47	10.00	
1 - 106005	Avg Resp Pre-Order Svc Appt Sch EDI-CORBA: Rndtrp	1.47	2.00	1.31	2.00	1.18	2.00	2.00	2.00	2.11	2.00	
1 - 106006	Avg Resp Pre-Order Rej/Fail Inq EDI-CORBA: Rndtrp	3.30	tbd	4.90	tbd	3.89	tbd	8.75	tbd	3.64	tbd	
1 - 106007	Avg Resp Pre-Order Mech Loop Qual Actual - EDI-CORBA: Rndtrp	10.76	10.34	16.23	9.60	11.20	11.94	17.81	12.10	15.68	12.17	
1 - 106008	Avg Resp Pre-Order Mech Loop Qual Design - EDI-CORBA: Rndtrp	1.42	2.58	2.32	2.27	1.69	2.41		3.23	2.89	2.75	a d
Ordering												
2 - Average FOC/SLC Notice Interval												
2 - 200100	Resale Res	0.17	0.33	0.13	0.33	0.12	0.33	0.16	0.33	0.15	0.33	
2 - 200200	Elct Resale Bus	0.15	0.33	0.03	0.33	0.03	0.33	0.05	0.33	0.14	0.33	
2 - 201101	Elct 8.0 dB and 5.5 dB Loop	0.07	0.33	0.06	0.33	0.08	0.33	0.30	0.33	0.08	0.33	
2 - 201200	Elct 2 Digital ISDN	0.02	0.33	0.02	0.33	0.06	0.33	0.06	0.33	0.11	0.33	abcde

California Performance Metric Data

Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
2 - 201300	Elct 2 Digital xDSL	0.19	0.33	0.17	0.33	0.16	0.33	0.19	0.33	0.16	0.33	
2 - 201400	Elct 4 Digital 1.544 mbpd HDSL	0.12	0.33	0.09	0.33	0.11	0.33	0.11	0.33	0.10	0.33	
2 - 201404	Elct UNE EELs - Voice Grade	0.32	0.33	0.09	0.33	0.08	0.33	0.09	0.33	0.13	0.33	
2 - 201405	Elct UNE EELs - DS1	0.14	0.33	0.13	0.33	0.14	0.33	0.12	0.33	0.14	0.33	
2 - 202200	Elct UNE Platform Basic	0.21	0.33	0.20	0.33	0.19	0.33	0.27	0.33	0.42	0.33	
2 - 202500	Elct PNP	0.04	0.33	0.04	0.33	0.04	0.33	0.05	0.33	0.03	0.33	
2 - 202700	Elct Man-Resale Res POTS	5.01	6.00	2.18	6.00	3.08	6.00	2.18	6.00	1.15	6.00	
2 - 202800	Elct Man-Resale Bus POTS	6.87	6.00	2.57	6.00	6.75	6.00	4.07	6.00	2.51	6.00	
2 - 202900	Elct Man-Resale ISDN BRI	17.98	6.00	5.66	6.00	4.57	6.00	3.46	6.00	2.38	6.00	d
2 - 203000	Elct Man-Resale Centrex	5.34	6.00	4.75	6.00	4.20	6.00	2.06	6.00	2.28	6.00	
2 - 203100	Elct Man-Resale PBX	13.25	6.00	23.65	6.00	4.31	6.00	2.31	6.00	3.02	6.00	a
2 - 203300	Elct Man-Resale DS1/ISDN-PRI	16.03	6.00	5.55	6.00	5.15	6.00		6.00		6.00	abcde
2 - 203500	Elct Man-Resale VGPL/DS0		6.00	7.02	6.00		6.00		6.00		6.00	abcde
2 - 203601	Elct Man-8.0 dB and 5.5 dB Loop	2.24	6.00	1.89	6.00	1.96	6.00	2.33	6.00	2.15	6.00	
2 - 203800	Elct Man-2 Digital ISDN	1.50	6.00	2.24	6.00	1.49	6.00	1.77	6.00	2.03	6.00	
2 - 203900	Elct Man-2 Digital xDSL	1.85	6.00	2.00	6.00	1.85	6.00	2.07	6.00	2.50	6.00	
2 - 204000	Elct Man-4 Digital 1.544 mbpd HDSL	1.91	6.00	1.84	6.00	1.93	6.00	1.97	6.00	1.86	6.00	
2 - 204001	Elct Man-4 Digital DS3 Loop	1.74	6.00		6.00	2.53	6.00	2.80	6.00	5.02	6.00	abcde
2 - 204003	Elct Man- UNE Dark Fiber		6.00	37.29	6.00	8.91	6.00	1.07	6.00		6.00	abcde
2 - 204004	Elct Man- UNE EELs - Voice Grade	2.03	6.00	1.99	6.00	1.28	6.00	1.66	6.00	1.51	6.00	
2 - 204005	Elct Man- UNE EELs - DS1	1.74	6.00	1.54	6.00	1.65	6.00	1.67	6.00	1.85	6.00	
2 - 204006	Elct Man- UNE EELs - DS3	3.09	6.00	0.98	6.00		6.00	2.60	6.00	2.17	6.00	abcde
2 - 204701	Elct Man-UNE Dedicated Trnsprt DS1	3.00	6.00	3.90	6.00	5.19	6.00	3.61	6.00	8.92	6.00	
2 - 204702	Elct Man-UNE Dedicated Trnsprt DS3	3.39	6.00	2.73	6.00	3.72	6.00	2.92	6.00	2.96	6.00	
2 - 204800	Elct Man-UNE Platform Basic	3.76	6.00	2.90	6.00	3.74	6.00	3.02	6.00	3.00	6.00	
2 - 204802	Elct Man-UNE Platform - Specials		6.00		6.00	3.92	6.00	4.12	6.00	3.90	6.00	abcde
2 - 205100	Elct Man-PNP	1.74	6.00	1.69	6.00	1.63	6.00	1.64	6.00	1.64	6.00	
2 - 205300	Man-Man Resale Res POTS	4.95	12.00	3.20	12.00	3.40	12.00	2.53	12.00	2.38	12.00	
2 - 205400	Man-Man Resale Bus POTS	5.57	12.00	4.88	12.00	4.10	12.00	2.85	12.00	3.22	12.00	
2 - 205500	Man-Man Resale ISDN BRI	3.97	12.00	8.22	12.00	9.03	12.00	3.57	12.00	17.35	12.00	abcde
2 - 205600	Man-Man Resale Centrex	6.09	12.00	7.88	12.00	7.03	12.00	5.02	12.00	5.07	12.00	
2 - 205700	Man-Man Resale PBX	2.48	12.00		12.00		12.00	3.15	12.00	7.35	12.00	abcde
2 - 205900	Man-Man Resale DS1/ISDN-PRI	7.35	12.00		12.00		12.00		12.00	3.20	12.00	abcde
2 - 206100	Man-Man Rsale VGPL/DS0		12.00		12.00	3.77	12.00		12.00		12.00	abcde

California Performance Metric Data

Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
2 - 206201	Man-Man 8.0 dB and 5.5 dB Loop	100.59	12.00	3.76	12.00	4.23	12.00	4.00	12.00	3.89	12.00	b
2 - 206401	Man-Man 4 Digital DS3 Loop		12.00		12.00		12.00	29.02	12.00		12.00	abcde
2 - 206403	Man-Man UNE Dark Fiber	1.25	12.00	4.34	12.00		12.00	3.78	12.00	4.79	12.00	abcde
2 - 206404	Man-Man UNE EELs - Voice Grade	2.80	12.00		12.00	3.02	12.00	3.22	12.00		12.00	abcde
2 - 206405	Man-Man UNE EELs - DS1		12.00	3.44	12.00		12.00	6.65	12.00	3.78	12.00	abcd
2 - 206406	Man-Man UNE EELs - DS3		12.00		12.00		12.00	3.45	12.00		12.00	abcde
2 - 206500	Man-Man 2 Digital xDSL	3.10	12.00	3.22	12.00	3.78	12.00	5.05	12.00	3.55	12.00	abcd
2 - 206600	Man-Man 4 Digital	5.16	12.00	2.19	12.00	8.51	12.00	3.45	12.00	3.03	12.00	abcd
2 - 207302	Man-Man UNE Dedicated Trnsprt DS3	4.93	12.00		12.00	4.73	12.00	4.51	12.00		12.00	abcde
2 - 207400	Man-Man UNE Platform Basic	8.40	12.00	20.05	12.00	2.92	12.00	2.70	12.00	3.62	12.00	d
2 - 207700	Man-Man PNP	4.56	12.00	4.97	12.00	4.20	12.00	5.29	12.00	4.12	12.00	
2 - 207801	Projects - All Other Products	99.23	90.00	99.34	90.00	96.88	90.00	99.72	90.00	99.39	90.00	
2 - 207802	Projects - Interconnection Trks-days	4.19	tbd	3.58	tbd	2.77	tbd	2.52	tbd	2.48	tbd	
2 - 207902	Dys-Held & Denied Intercnnect Trks	5.67	n/a	44.50	n/a	23.00	n/a	4.00	n/a	52.00	n/a	abcde
2 - 208000	Elct 2 Digital Line Sharing	0.21	0.33	0.20	0.33	0.17	0.33	0.19	0.33	0.18	0.33	
2 - 208100	Elct Man-2 Digital Line Sharing	2.09	6.00	2.04	6.00	1.80	6.00	1.91	6.00	2.53	6.00	
2 - 208301	Interconn Trunks New	4.16	7.00	3.96	7.00	3.73	7.00	3.62	7.00	2.98	7.00	
2 - 208302	Interconn Trunks Augment	3.10	4.00	2.71	4.00	2.91	4.00	2.69	4.00	3.09	4.00	
3 - Average Reject Notice Interval												
3 - 300200	Elct:LEX-CLEO/LASR Facilities Syntax	0.03	0.33	0.03	0.33	0.02	0.33	0.04	0.33	0.04	0.33	
3 - 300201	Elct:LEX-CLEO/LASR Directory Listings Syntax	0.05	0.33	0.05	0.33	0.05	0.33	0.08	0.33	0.07	0.33	
3 - 300300	Elct:LEX-CLEO/LASR Resale Syntax	0.06	0.33	0.05	0.33	0.05	0.33	0.23	0.33	0.07	0.33	
3 - 300400	Elct:EDI-CLEO/LASR Facilities Syntax	0.20	0.33	0.19	0.33	0.18	0.33	0.24	0.33	0.36	0.33	
3 - 300500	Elct:EDI-CLEO/LASR Resale Syntax	0.25	0.33	0.17	0.33	0.21	0.33	0.26	0.33	0.21	0.33	
3 - 300501	Elct:EDI-CLEO/LASR Directory Listings Syntax	0.26	0.33	0.28	0.33	0.26	0.33	0.32	0.33	0.51	0.33	
3 - 300700	Elct Man:LEX-CLEO/LASR (Exc to LSC) Facilities Content Errs	2.29	5.00	1.88	5.00	2.40	5.00	2.24	5.00	2.94	5.00	
3 - 300800	Elct Man:LEX-CLEO/LASR (Exc to LSC) Resale Content Errs	5.67	5.00	2.43	5.00	3.27	5.00	1.63	5.00	1.67	5.00	
3 - 300900	Elct Man:EDI-CLEO/LASR (Exc to LSC) Facilities Content Errs	2.99	5.00	2.41	5.00	3.03	5.00	2.48	5.00	2.52	5.00	
3 - 301000	Elct Man:EDI-CLEO/LASR (Exc to LSC) Resale Content Errs	8.70	5.00	2.57	5.00	3.66	5.00	1.90	5.00	10.45	5.00	
3 - 301200	Man-Man:FAX Resale Content Errs	5.53	10.00	3.84	10.00	3.93	10.00	2.79	10.00	3.94	10.00	

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		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
3 - 301300	Man-Man:FAX Facilities Content Errs	4.71	10.00	4.94	10.00	3.92	10.00	3.54	10.00	3.68	10.00	c
3 - 301400	Elct:LEX-CLEO/LASR Line Sharing Syntax	0.02	0.33	0.02	0.33	0.01	0.33	0.07	0.33	0.02	0.33	
3 - 301500	Elct:EDI-CLEO/LASR Line Sharing Syntax	0.20	0.33	0.17	0.33	0.15	0.33	0.16	0.33	0.18	0.33	
3 - 301600	Elct Man:LEX-CLEO/LASR (Exc to LSC) Line Sharing Content Errs	2.42	5.00	2.03	5.00	1.79	5.00	2.44	5.00	2.25	5.00	c
3 - 301700	Elct Man:EDI-CLEO/LASR (Exc to LSC) Line Sharing Content Errs	1.66	5.00	1.82	5.00	1.67	5.00	1.46	5.00	1.95	5.00	
3 - 310100	Man:EXACT Facilities Content Errs	2.48	5.00	3.05	5.00	4.45	5.00	2.07	5.00	1.76	5.00	
3 - 310200	Man-Man:EXACT Facilities Content Errs	0.78	10.00	1.82	10.00	2.35	10.00		10.00		10.00	abcde
3 - 320000	Projects - All other Products	99.71	90.00	99.44	90.00	98.79	90.00	99.78	90.00	100.00	90.00	
4 - Percent of Flow Through Orders												
4 - 410400	LEX/EDI LASR FTE:Standalone LNP-Svc Migration w/chgs	51.89	tbd	53.92	tbd	55.27	tbd	56.82	tbd	55.00	tbd	
4 - 410500	LEX/EDI LASR FTE:UNE 8.0 dB-New Svc Install	65.53	tbd	70.88	tbd	72.48	tbd	71.65	tbd	70.93	tbd	
4 - 410600	LEX/EDI LASR FTE:5.5 dB-New Svc Install	89.74	tbd	91.67	tbd	84.62	tbd	100.00	tbd	0.00	tbd	e
4 - 410700	LEX/EDI LASR FTE:2 Digital xDSL-New Svc Install	60.78	tbd	63.91	tbd	68.01	tbd	70.07	tbd	65.15	tbd	
4 - 410800	LEX/EDI LASR FTE:UNE 4 Digital(1.544 mbps)-New Svc Install	51.68	tbd	53.30	tbd	60.62	tbd	62.86	tbd	62.04	tbd	
4 - 410900	LEX/EDI LASR FTE:UNE 8.0 dB-Svc Discnnect	53.07	tbd	49.83	tbd	50.63	tbd	46.86	tbd	44.20	tbd	
4 - 411000	LEX/EDI LASR FTE:UNE 5.5 dB-Svc Discnnect	12.50	tbd	18.75	tbd	12.00	tbd	0.00	tbd	17.65	tbd	
4 - 411100	LEX/EDI LASR FTE:2 Digital ISDN-Svc Discnnect	2.00	tbd	8.22	tbd	4.17	tbd	4.71	tbd	3.95	tbd	
4 - 411200	LEX/EDI LASR FTE:UNE 2 Digital xDSL-Svc Discnnect	64.78	tbd	56.78	tbd	58.38	tbd	61.83	tbd	38.80	tbd	
4 - 411300	LEX/EDI LASR FTE:UNE 4 Digital(1.544 mbps)-New Svc Install	71.51	tbd	78.11	tbd	75.43	tbd	78.93	tbd	74.77	tbd	
4 - 411500	LEX/EDI LASR FTE:LNP w/Loop-Svc Migration w/chgs	28.27	tbd	33.94	tbd	27.58	tbd	41.53	tbd	31.15	tbd	
4 - 411600	LEX/EDI LASR FTE:UNE Platform(Loop w/Prt)-New Svc Install	25.84	tbd	32.85	tbd	35.54	tbd	52.29	tbd	53.81	tbd	
4 - 411700	LEX/EDI LASR FTE:UNE Platform(Loop w/Prt)-Svc Discnnect	90.88	tbd	90.88	tbd	90.82	tbd	93.22	tbd	93.75	tbd	
4 - 411800	LEX/EDI LASR FTE:UNE Platform(Loop w/Prt)-Svc Migration w/chgs	86.21	tbd	86.27	tbd	86.02	tbd	76.97	tbd	83.06	tbd	
4 - 412000	LEX/EDI LASR FTE:UNE Platform(Loop w/Prt)-Chg Activities	72.68	tbd	76.64	tbd	76.64	tbd	75.39	tbd	78.37	tbd	

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		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
4 - 412100	LEX/EDI LASR FTE:UNE 2w Dig Line Sharing Loop-New Svc Install	82.65	tbd	91.23	tbd	90.88	tbd	93.21	tbd	87.25	tbd	
4 - 412200	LEX/EDI LASR FTE:UNE 2w Dig Line Sharing Loop-Svc Discnnect	51.63	tbd	54.85	tbd	61.47	tbd	63.91	tbd	65.21	tbd	
4 - 412300	LEX/EDI LASR FTE:UNE Lp 2w Dig IDSL cap	67.86	tbd	67.85	tbd	66.70	tbd	68.16	tbd	68.40	tbd	
4 - 412400	LEX/EDI LASR FTE:UNE EELs Voice - Svc Discnnect	38.46	tbd	50.00	tbd	37.50	tbd	22.22	tbd	35.00	tbd	
4 - 412500	LEX/EDI LASR FTE:UNE EELs DS1 - New Svc Install	29.43	tbd	46.89	tbd	47.58	tbd	49.80	tbd	57.51	tbd	
4 - 412600	LEX/EDI LASR FTE:UNE EELs DS1 - Svc Discnnect	54.41	tbd	65.53	tbd	54.01	tbd	71.01	tbd	56.78	tbd	
4 - 412700	LEX/EDI LASR FTE:UNE EELs Voice - New Svc Install	0.00	tbd	0.00	tbd	50.00	tbd	66.67	tbd	50.00	tbd	abcde
4 - 420501	LEX/EDI LASR FTE:Resale Res POTS-New Svc Install	73.61	tbd	77.80	tbd	76.58	tbd	75.89	tbd	69.67	tbd	
4 - 420601	LEX/EDI LASR FTE:Resale Res POTS-Chg Activities	92.56	tbd	92.04	tbd	91.53	tbd	89.98	tbd	94.21	tbd	
4 - 420701	LEX/EDI LASR FTE:Resale Res POTS-Svc Disconnect	97.14	tbd	99.21	tbd	95.22	tbd	99.26	tbd	99.02	tbd	
4 - 420801	LEX/EDI LASR FTE:Resale Res POTS-Svc Migration w/out chgs	84.89	tbd	90.01	tbd	83.29	tbd	66.75	tbd	75.10	tbd	
4 - 420901	LEX/EDI LASR FTE:Resale Res POTS-Svc Migration w/chgs	62.50	tbd	33.88	tbd	29.45	tbd	32.59	tbd	17.38	tbd	
4 - 421201	LEX/EDI LASR FTE:Resale Bus POTS-New Svc Install	38.55	tbd	35.78	tbd	47.22	tbd	28.09	tbd	31.88	tbd	
4 - 421301	LEX/EDI LASR FTE:Resale Bus POTS-Chg Activities	70.59	tbd	78.25	tbd	68.31	tbd	78.29	tbd	85.96	tbd	
4 - 421401	LEX/EDI LASR FTE:Resale Bus POTS-Svc Discnnect	70.89	tbd	59.49	tbd	62.47	tbd	40.76	tbd	44.54	tbd	
4 - 421501	LEX/EDI LASR FTE:Resale Bus POTS-Svc Migration w/out chgs	44.91	tbd	38.87	tbd	1.77	tbd	24.56	tbd	9.48	tbd	
4 - 421601	LEX/EDI LASR FTE:Resale Bus POTS-Svc Migration w/chgs	26.64	tbd	8.03	tbd	9.68	tbd	6.80	tbd	7.69	tbd	
4 - 430100	LEX/EDI LASR:8.0 dB-New Svc Install	65.53	tbd	70.88	tbd	72.48	tbd	71.65	tbd	70.93	tbd	
4 - 430300	LEX/EDI LASR:8.0 dB-Svc Discnnect	53.07	tbd	49.83	tbd	50.63	tbd	46.86	tbd	44.20	tbd	
4 - 430900	LEX/EDI LASR:5.5 dB-New Svc Install	89.74	tbd	91.67	tbd	84.62	tbd	100.00	tbd	0.00	tbd	e
4 - 431100	LEX/EDI LASR:5.5 dB-Svc Discnnects	12.50	tbd	18.75	tbd	12.00	tbd	0.00	tbd	17.65	tbd	
4 - 431500	LEX/EDI LASR:2 Digital ISDN-Svc Discnnect	2.00	tbd	8.22	tbd	4.17	tbd	4.71	tbd	3.95	tbd	
4 - 431700	LEX/EDI LASR:2 Digital xDSL-New Svc Install	60.78	tbd	63.91	tbd	68.01	tbd	70.07	tbd	65.15	tbd	
4 - 431900	LEX/EDI LASR:2 Digital xDSL-Svc Discnnect	64.78	tbd	56.78	tbd	58.38	tbd	61.83	tbd	38.80	tbd	
4 - 432300	LEX/EDI LASR:2 Digital IDSL-Svc Discnnect	67.86	tbd	67.85	tbd	66.70	tbd	68.16	tbd	68.40	tbd	
4 - 432500	LEX/EDI LASR:4 Digital (1.544 mbps)-New Svc Install	51.68	tbd	53.30	tbd	60.62	tbd	62.86	tbd	62.04	tbd	
4 - 432700	LEX/EDI LASR:4 Digital (1.544 mbps)-Svc Discnnect	71.51	tbd	78.11	tbd	75.43	tbd	78.93	tbd	74.77	tbd	
4 - 432813	LEX/EDI LASR: UNE EELs VG-New Svc Install	0.00	tbd	0.00	tbd	50.00	tbd	66.67	tbd	50.00	tbd	abcde

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		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
4 - 432815	LEX/EDI LASR: UNE EELs VG-Svc Discnnect	38.46	tbd	50.00	tbd	37.50	tbd	22.22	tbd	35.00	tbd	
4 - 432817	LEX/EDI LASR: UNE EELs DS1-New Svc Install	29.43	tbd	46.89	tbd	47.58	tbd	49.80	tbd	57.51	tbd	
4 - 432819	LEX/EDI LASR: UNE EELs DS1-Svc Discnnect	54.41	tbd	65.53	tbd	54.01	tbd	71.01	tbd	56.78	tbd	
4 - 432900	LEX/EDI LASR: Standalone PNP-Svc Migration w/chgs	51.89	tbd	53.92	tbd	55.27	tbd	56.82	tbd	55.00	tbd	
4 - 433000	LEX/EDI LASR: PNP w/Loop-Svc Migration w/chgs	28.27	tbd	33.94	tbd	27.58	tbd	41.53	tbd	31.15	tbd	
4 - 433100	LEX/EDI LASR: UNE Platform(8db Loop w/Prt)-New Svc Install	25.84	tbd	32.85	tbd	35.54	tbd	52.29	tbd	53.81	tbd	
4 - 433200	LEX/EDI LASR: UNE Platform(8db Loop w/Prt)-Chg Activities	72.68	tbd	76.64	tbd	76.64	tbd	75.39	tbd	78.37	tbd	
4 - 433300	LEX/EDI LASR: UNE Platform(8db Loop w/Prt)-Svc Discnnect	90.88	tbd	90.88	tbd	90.82	tbd	93.22	tbd	93.75	tbd	
4 - 433400	LEX/EDI LASR: UNE Platform(8db Loop w/Prt)-Svc Migration w/chgs	86.21	tbd	86.27	tbd	86.02	tbd	76.97	tbd	83.06	tbd	
4 - 433700	LEX/EDI LASR: Hi Bandwidth Line Sharing UNE-New Svc Install	82.65	tbd	91.23	tbd	90.88	tbd	93.21	tbd	87.25	tbd	
4 - 433800	LEX/EDI LASR: Hi Bandwidth Line Sharing UNE-Svc Discnnect	51.63	tbd	54.85	tbd	61.47	tbd	63.91	tbd	65.21	tbd	
4 - 450101	LEX/EDI LASR: Resale Res POTS-New Svc Install	73.61	tbd	77.80	tbd	76.58	tbd	75.89	tbd	69.67	tbd	
4 - 450201	LEX/EDI LASR: Resale Res POTS-Chg Activities	92.56	tbd	92.04	tbd	91.53	tbd	89.98	tbd	94.21	tbd	
4 - 450401	LEX/EDI LASR: Resale Res POTS-Svc Discnnect	97.14	tbd	99.21	tbd	95.22	tbd	99.26	tbd	99.02	tbd	
4 - 450501	LEX/EDI LASR: Resale Res POTS-Svc Migration w/chgs	62.50	tbd	33.88	tbd	29.45	tbd	32.59	tbd	17.38	tbd	
4 - 450601	LEX/EDI LASR: Resale Res POTS-Svc Migration w/out chgs	84.89	tbd	90.01	tbd	83.29	tbd	66.75	tbd	75.10	tbd	
4 - 450701	LEX/EDI LASR: Resale Bus POTS-New Svc Install	38.55	tbd	35.78	tbd	47.22	tbd	28.09	tbd	31.88	tbd	
4 - 450801	LEX/EDI LASR: Resale Bus POTS-Chg Activities	70.59	tbd	78.25	tbd	68.31	tbd	78.29	tbd	85.96	tbd	
4 - 451001	LEX/EDI LASR: Resale Bus POTS-Svc Discnnect	70.89	tbd	59.49	tbd	62.47	tbd	40.76	tbd	44.54	tbd	
4 - 451101	LEX/EDI LASR: Resale Bus POTS-Svc Migration w/chgs	26.64	tbd	8.03	tbd	9.68	tbd	6.80	tbd	7.69	tbd	
4 - 451201	LEX/EDI LASR: Resale Bus POTS-Svc Migration w/out chgs	44.91	tbd	38.87	tbd	1.77	tbd	24.56	tbd	9.48	tbd	
Provisioning												
5 - Percentage of Orders Jeopardized												
5 - 521900	Resale Residential POTS	0.44	0.54	0.12	0.73	0.30	0.67	0.20	0.71	0.03	0.70	
5 - 522000	Resale Business POTS	0.32	0.62	0.59	1.04	0.19	0.95	0.29	1.03	0.00	0.87	
5 - 522100	Resale ISDN BRI	0.00	5.76	2.78	10.79	6.67	5.80	0.00	5.27	0.00	4.38	de

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		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
5 - 522200	Resale Centrex	0.00	1.15	0.57	1.90	0.00	1.69	0.89	1.98	0.00	1.94	
5 - 522900	UNE (8db and 5.5db) field wk/no field wk	2.19	2.51	0.46	2.53	0.50	2.38	0.43	2.13	0.50	2.23	
5 - 523300	UNE Loop 2w Dig IDSL capable field wk/no field wk	4.96	5.76	7.71	10.79	6.79	5.80	9.08	5.27	6.33	4.38	
5 - 523500	UNE Loop 2w Dig xDSL capable field wk/no field wk	2.06	n/a	2.40	n/a	2.49	n/a	2.24	n/a	2.12		
5 - 523700	UNE Loop 2w Dig Ln Shrg cap-conditioned-field wk/no field wk	0.00	0.00	0.93	0.00	3.64	0.00	9.09	0.00	2.22	0.00	
5 - 523900	UNE Loop 2w Dig Ln Shrg cap-nonconditioned-field wk/no field wk	0.00	0.29	0.04	0.33	0.06	0.34	0.52	1.01	0.35	1.14	
5 - 524100	UNE Loop 4w Dig 1.544 mpbs cap/HDSL field wk/no field wk	0.37	0.48	0.93	0.24	0.84	0.22	1.06	0.18	1.16	0.11	
5 - 525300	EELs DS1-New	0.19	tbd	0.52	tbd	0.00	tbd	0.23	tbd	3.31	tbd	
5 - 525900	UNE Platform Basic Port and Loop field wk/no field wk	0.00	0.62	0.01	1.04	0.01	0.95	0.02	1.03	0.02	0.87	
5 - 526300	Interconnection Trunks	4.64	10.58	3.29	30.28	4.82	22.73	3.63	15.36	1.09	24.37	
6 - Average Jeoparady Notice Interval												
6 - 640000	Whlsle Assgnmnt-Resale Res POTS	100.00	90.00		90.00	100.00	90.00	100.00	90.00	100.00	90.00	abcde
6 - 640900	Whlsle Assgnmnt-Resale ISDN BRI		90.00	100.00	90.00		90.00		90.00		90.00	abcde
6 - 641300	Whlsle Assgnmnt-UNE 2w Dig LS Loop-Non Conditioned		90.00	100.00	90.00		90.00		90.00	100.00	90.00	abcde
6 - 641600	Whlsle Assgnmnt-UNE Loop 2w Dig xDSL cap field wk/no field wk	100.00	90.00	100.00	90.00	100.00	90.00	100.00	90.00	100.00	90.00	abcde
6 - 641601	Whlsle Assgnmnt-UNE Loop 2w Dig IDSL cap field wk/no field wk	100.00	90.00	100.00	90.00	100.00	90.00	100.00	90.00	100.00	90.00	abcde
6 - 641800	Whlsle Assgnmnt-UNE Lp 2/4w (8db and 5.5db) analog field wk/no field wk	100.00	90.00	100.00	90.00	100.00	90.00	100.00	90.00	100.00	90.00	a
6 - 643600	Whlsle Assgnmnt-UNE Plat Basic Port and Loop field wk/no field wk	100.00	90.00	100.00	90.00		90.00	100.00	90.00	100.00	90.00	abcde
6 - 644300	Whlsle Install-Resale Res POTS	100.00	95.00	92.59	95.00	100.00	95.00	100.00	95.00	100.00	95.00	
6 - 644400	Whlsle Install-Resale Bus POTS	100.00	95.00	83.33	95.00	100.00	95.00	100.00	95.00	100.00	95.00	abcde
6 - 644500	Whlsle Install-Resale Centrex		95.00	100.00	95.00		95.00	100.00	95.00	100.00	95.00	abcde
6 - 645100	Whlsle Install-Resale ISDN BRI		95.00		95.00	100.00	95.00		95.00		95.00	abcde
6 - 645400	Whlsle Install-UNE 2w Dig LS Loop-Conditioned		95.00	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	abcde
6 - 645500	Whlsle Install-UNE 2w Dig LS Loop-Non Conditioned		95.00	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	abcde
6 - 645800	Whlsle Install-UNE Loop 2w Dig xDSL cap field wk/no field wk	100.00	95.00	100.00	95.00	98.00	95.00	100.00	95.00	100.00	95.00	

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		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
6 - 645801	Whlsle Install-UNE Loop 2w Dig IDSL cap field wk/no field wk	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	
6 - 646000	Whlsle Install-UNE Lp 2/4w (8db and 5.5db) analog field wk/no field wk	100.00	95.00	100.00	95.00	100.00	95.00	97.67	95.00	100.00	95.00	
6 - 646800	Whlsle Install-UNE Ded Transport DS3 field wk/no field wk		95.00		95.00		95.00	100.00	95.00		95.00	abcde
6 - 647200	Whlsle Install-EELs DS1-New	100.00	95.00	100.00	95.00		95.00	100.00	95.00	85.71	95.00	abcd
6 - 647800	Whlsle Install-UNE Plat Basic Port and Loop field wk/no field wk	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	97.87	95.00	abc
6 - 648200	Whlsle Install-UNE Loop 4w Dig 1.544 cap/HDSL field wk/no field wk	100.00	95.00	88.89	95.00	100.00	95.00	93.33	95.00	92.31	95.00	ab
6 - 648300	Whlsle Install-UNE SubLoop 4w Dig 1.544 cap/HDSL field wk/no field wk		95.00		95.00		95.00		95.00		95.00	abcde
6 - 648500	Whlsle Missd Comm-Resale Res POTS	68.33	95.00	89.58	95.00	89.29	95.00	86.96	95.00	82.05	95.00	
6 - 648600	Whlsle Missd Comm-Resale Bus POTS	88.24	95.00	40.00	95.00	66.67	95.00	100.00	95.00	100.00	95.00	bcde
6 - 648700	Whlsle Missd Comm-Resale Centrex		95.00	100.00	95.00		95.00	100.00	95.00		95.00	abcde
6 - 649600	Whlsle Missd Comm-UNE 2w Dig LS Loop-Conditioned		95.00		95.00	100.00	95.00		95.00	100.00	95.00	abcde
6 - 649700	Whlsle Missd Comm-UNE 2w Dig LS Loop-Non Conditioned	100.00	95.00	100.00	95.00	90.00	95.00	83.33	95.00	100.00	95.00	ab de
6 - 650000	Whlsle Missd Comm-UNE Loop 2w Dig xDSL cap field wk/no field wk	100.00	95.00	71.43	95.00	90.00	95.00	87.50	95.00	100.00	95.00	b d
6 - 650001	Whlsle Missd Comm-UNE Loop 2w Dig IDSL cap field wk/no field wk	89.29	95.00	84.38	95.00	100.00	95.00	75.00	95.00	85.71	95.00	
6 - 650200	Whlsle Missd Comm-UNE Lp 2/4w (8db and 5.5db) analog field wk/no field wk	95.00	95.00	77.27	95.00	96.43	95.00	89.74	95.00	89.13	95.00	
6 - 651000	Whlsle Missd Comm-UNE Ded Transport DS3 field wk/no field wk		95.00		95.00		95.00	100.00	95.00		95.00	abcde
6 - 651400	Whlsle Missd Comm-EELs DS1-New	66.67	95.00		95.00		95.00	100.00	95.00		95.00	abcde
6 - 652000	Whlsle Missd Comm-UNE Plat Basic Port and Loop field wk/no field wk	57.14	95.00	60.00	95.00	80.00	95.00	60.66	95.00	63.78	95.00	a
6 - 652400	Whlsle Missd Comm-UNE Loop 4w Dig 1.544 cap/HDSL field wk/no field wk	75.00	95.00	100.00	95.00	80.00	95.00	100.00	95.00	100.00	95.00	abcde
7 - Average Completed Interval												
7	Interconnection Trunks	22.71	29.57	19.26	28.21	22.07	21.71	18.97	32.41	19.20	42.75	

California Performance Metric Data

Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
7	Resale Business POTS field work	1.47	2.29	1.25	2.38	1.08	2.39	1.48	2.19	2.19	2.15	
7	Resale Business POTS no field work	0.46	0.73	0.75	1.00	0.57	0.84	0.35	0.83	0.55	0.73	
7	Resale Centrex field work	4.43	5.01	5.13	4.52	4.56	4.30	4.38	4.31	3.00	4.19	a e
7	Resale Centrex no field work	1.00	2.87	3.20	3.09	2.69	1.45	1.42	1.58	1.08	1.68	
7	Resale ISDN BRI field work		9.56	14.33	9.88	7.00	9.45		8.76		9.24	a cde
7	Resale ISDN BRI no field work		2.99	15.00	3.19		4.81		2.46		1.88	abcde
7	Resale PBX field work		8.68		7.18		6.17		7.99	1.33	6.58	abcde
7	Resale PBX no field work		7.58		6.36		4.65		5.99	1.00	5.04	abcde
7	Resale Residential POTS field work	0.76	1.59	0.73	1.59	0.83	1.51	0.80	1.67	0.68	1.44	
7	Resale Residential POTS no field work	0.16	0.54	0.13	0.65	0.14	0.62	0.10	0.74	0.07	0.69	
7	Resale VGPL/DS0 field work		13.04	6.00	10.20	3.00	12.92		10.67		9.87	abcde
7	UNE Dark Fiber	30.00	tbd		tbd		tbd	29.00	tbd		tbd	abcde
7	UNE Dedicated Transport - DS1- Field Work/No field work	9.00	12.07	8.00	10.95		11.49	9.29	11.95	7.00	12.45	abcde
7	UNE EELs DS1 - New	6.71	tbd	6.28	tbd	6.62	tbd	6.68	tbd	6.62	tbd	
7	UNE EELs Voice Grade - Conversion		tbd		tbd	3.00	tbd	3.00	tbd		tbd	abcde
7	UNE Loop 2/4 wire analog 8db and 5.5db loop	2.72	2.29	2.78	2.38							
7	UNE Loop 2/4 wire analog 8db and 5.5db loop with LNP					99.85	95.00	99.91	95.00	100.00	95.00	
7	UNE Loop 2/4 wire analog 8db and 5.5db loop without LNP					1.71	2.04	1.70	2.00	1.57	1.84	
7	UNE Loop 2 wire Digital IDSL capable	7.74	9.99	7.83	10.21	7.46	10.30	7.69	9.94	7.15	9.51	
7	UNE Loop 2 wire Digital ISDN capable	5.00	9.99	1.00	10.21		10.30		9.94	5.00	9.51	abcde
7	UNE Loop 2 wire Digital Line Sharing - Conditioned	9.70	10.00	10.00	14.20	10.23	15.25	10.00	10.00	8.94	10.00	d
7	UNE Loop 2 wire Digital Line Sharing - Non Conditioned	3.02	3.18	3.15	3.02	3.05	3.01	3.02	3.02	3.00	3.03	
7	UNE Loop 2 wire Digital xDSL capable - Conditioned	9.71	n/a	10.00	n/a	10.06	n/a	7.78	n/a	100.00	95.00	d
7	UNE Loop 2 wire Digital xDSL capable - Non Conditioned	6.31	n/a	6.19	n/a	6.33	n/a	6.51	n/a	99.49	95.00	
7	UNE Loop 4 wire Digital 1.544 mbpd capable/HDSL	6.51	12.07	6.57	10.95	6.56	11.49	6.66	11.95	6.77	12.45	
7	UNE Platform - Basic Port and (8db and 5.5db) Basic Loop - Field Work/No Field Work	0.26	1.25	0.23	1.38	0.26	1.32	0.24	1.24	0.15	1.18	
7	UNE Platform Special Port/8db and 5.5db Loop - field work/no field work		8.28	5.00	6.55	12.00	5.86	3.00	8.42	5.50	5.35	abcde
8 - Percent Completed within Standard Interval												
8	Interconnection Trunks	98.10	75.68	95.91	76.92	96.99	55.00	99.48	96.51	98.69	89.29	

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Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
8	Resale Centrex	100.00	96.57	98.44	96.91	100.00	96.91	95.65	97.08	100.00	96.53	
8	Resale ISDN BRI		96.13	100.00	96.41	100.00	93.76		92.99		78.73	a cde
8	Resale PBX		96.63	100.00	88.90		91.59	100.00	90.74	100.00	87.42	abcde
8	Resale VGPL/DS0		88.57	100.00	96.08	100.00	77.78		84.62		90.48	abcde
8	UNE Dark Fiber	100.00	tbd		tbd		tbd	100.00	tbd		tbd	abcde
8	UNE Dedicated Transport DS1	100.00	90.81	100.00	95.88	100.00	94.14	100.00	94.40	100.00	95.89	abcde
8	UNE EELs DS1 - New	97.34	tbd	100.00	tbd	100.00	tbd	100.00	tbd	95.52	tbd	
8	UNE EELs Voice Grade - Conversion	100.00	tbd		tbd	100.00	tbd	100.00	tbd	100.00	tbd	abcde
8	UNE Loop 2 wire Digital IDSL capable	96.40	94.30	95.58	94.09	96.16	94.51	96.72	95.70	97.45	95.61	
8	UNE Loop 2 wire Digital ISDN capable	100.00	94.30	100.00	94.09		94.51		95.70	100.00	95.61	abcde
8	UNE Loop 2 wire Digital Line Sharing - Conditioned	100.00	100.00	100.00	80.00	95.45	75.00	100.00	100.00	100.00	100.00	d
8	UNE Loop 2 wire Digital Line Sharing - Non Conditioned	99.91	97.90	99.98	99.43	99.82	99.40	99.74	99.34	99.89	99.29	
8	UNE Loop 2 wire Digital xDSL capable - Conditioned	100.00	n/a	100.00	n/a	97.22	n/a	100.00	n/a	90.00	95.00	d
8	UNE Loop 2 wire Digital xDSL capable - Non Conditioned	99.23	n/a	99.55	n/a	99.22	n/a	99.66	n/a	99.49	95.00	
8	UNE Loop 4 wire Digital 1.544 mbpd capable/HDSL	97.08	90.81	98.12	95.88	98.92	94.14	97.33	94.40	97.52	95.89	
8	UNE Platform Special Port and Basic Loop		97.02	100.00	90.95	100.00	93.04	100.00	90.72	100.00	90.48	abcde
9 - Coordinated Customer Conversion												
9 - 990400	Bus	99.50	81.19	99.24	76.20	100.00	78.14	99.89	75.87	98.91	74.62	
9 - 990500	Port Out	100.00	78.79	100.00	78.95	100.00	18.60	100.00	88.46	100.00	75.00	
9a - Frame Due Time (FDT) Conversions) as a Percentage on Time)												
9a - 4590000	Basic Lps	95.72	95.00	98.17	95.00	98.70	95.00	95.99	95.00	98.32	95.00	
9a - 4590100	Basic Lps w/LNP	98.56	95.00	99.02	95.00	98.17	95.00	96.99	95.00	96.46	95.00	
9a - 4590200	LNP only	99.99	95.00	100.00	95.00	99.99	95.00	99.99	95.00	100.00	95.00	
10 - LNP Network Provisioning												
10 - 1090101	Whlsle PNP Ntwk Prov Fail	0.00	0.25	0.01	0.25	0.02	0.25	0.01	0.25	0.01	0.25	
11 - Percent of Due Dates Missed												
11	Interconnection Trunks	0.61	10.16	0.39	10.84	0.64	8.23	0.62	37.92	0.61	12.53	
11	Resale Business POTS field work	4.65	4.74	4.30	5.18	2.60	4.54	0.95	4.06	3.80	4.35	
11	Resale Business POTS no field work	0.10	0.22	0.34	0.80	0.17	0.36	0.12	0.46	0.00	0.44	
11	Resale Centrex field work	0.00	4.11	1.03	3.37	1.64	2.85	1.96	3.61	0.00	3.59	
11	Resale Centrex no field work	0.00	0.87	0.00	0.91	1.02	0.56	2.00	0.64	0.00	1.02	
11	Resale ISDN BRI field work	0.00	6.09	4.17	11.53	0.00	6.23	0.00	4.20	0.00	5.21	a cde
11	Resale Residential POTS field work	1.55	5.01	1.83	5.38	1.08	5.03	1.63	4.41	1.07	4.57	

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Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
11	Resale Residential POTS no field work	0.11	0.12	0.08	0.19	0.03	0.14	0.04	0.16	0.02	0.17	
11	UNE EELs DS1 - New	1.02	tbd	0.00	tbd	0.43	tbd	0.61	tbd	2.61	tbd	
11	UNE Loop 2 wire Digital Line Sharing - Conditioned	4.17	0.00	0.00	23.08	4.17	0.00	0.00	20.00	0.00	0.00	d
11	UNE Loop 2 wire Digital Line Sharing - Non Conditioned	0.15	1.31	0.02	1.08	0.15	0.89	0.20	0.83	0.12	0.83	
11	UNE Loop 2 wire Digital IDSL capable	3.74	5.29	4.73	9.66	4.37	6.05	3.96	4.29	2.91	5.53	
11	UNE Loop 2 wire Digital ISDN capable	0.00	5.29	0.00	9.66	0.00	6.05		4.29	0.00	5.53	abcde
11	UNE Loop 2 wire Digital xDSL capable	0.94	n/a	0.50	n/a	0.78	n/a	0.30	n/a	0.53	5.00	
11	UNE Loop 2/4 wire analog 8db and 5.5db loop	0.23	4.74	0.32	5.18	0.17	4.56	0.38	4.06	0.37	4.36	
11	UNE Loop 4 wire Digital 1.544 mbpd capable/HDSL	1.98	5.58	1.56	2.65	1.34	1.67	1.98	4.02	1.96	3.13	
11	UNE Platform - Basic Port and (8db and 5.5db) Basic Loop - Field Work/No Field Work	0.11	1.99	0.03	2.22	0.03	1.90	0.04	1.76	0.05	1.91	
12 - Percent Due Dates Missed Due to Lack of Facilities												
12	Interconnection Trunks	0.00	0.41	0.26	1.40	0.00	0.00	0.16	0.19	0.00	0.25	
12	Resale Business POTS field work	4.65	3.01	0.00	3.18	2.60	2.95	0.95	2.60	3.80	2.58	
12	Resale Business POTS no field work	0.00	0.06	0.08	0.35	0.00	0.12	0.00	0.17	0.00	0.13	
12	Resale Centrex field work	0.00	2.51	1.03	2.25	0.00	1.70	1.96	2.40	0.00	1.91	
12	Resale Residential POTS field work	0.80	3.28	1.56	3.48	0.83	3.25	1.18	2.88	0.68	2.82	
12	Resale Residential POTS no field work	0.01	0.02	0.02	0.07	0.01	0.02	0.00	0.04	0.00	0.03	
12	UNE EELs DS1 - New	1.28	tbd	0.00	tbd	0.43	tbd	0.00	tbd	1.74	tbd	
12	UNE Loop 2 wire Digital IDSL capable	3.59	3.73	4.35	5.46	4.05	3.35	2.94	2.93	2.26	3.66	
12	UNE Loop 2 wire Digital Line Sharing - Conditioned	4.17	0.00	0.00	7.69	4.17	0.00	0.00	0.00	0.00	0.00	d
12	UNE Loop 2 wire Digital Line Sharing - Non Conditioned	0.15	0.89	0.02	0.73	0.11	0.50	0.17	0.57	0.10	0.62	
12	UNE Loop 2 wire Digital xDSL capable	0.83	n/a	0.50	n/a	0.72	n/a	0.30	n/a	0.42	5.00	
12	UNE Loop 2/4 wire analog 8db and 5.5db loop	0.21	3.01	0.26	3.18	0.17	2.96	0.37	2.61	0.35	2.59	
12	UNE Loop 4 wire Digital 1.544 mbpd capable/HDSL	0.76	0.23	0.94	0.60	1.07	0.28	1.58	0.60	0.98	0.72	
12	UNE Platform - Basic Port and (8db and 5.5db) Basic Loop - Field Work/No Field Work	0.00	1.22	0.00	1.26	0.00	1.17	0.01	1.05	0.02	1.05	
13 - Delay Order Interval to Completion Date												
13 - 1394200	Resale Res POTS 1-30 Days	3.50	5.23	4.00	5.08	3.82	5.44	2.17	4.98	10.40	5.49	e
13 - 1394300	Resale Res POTS 31-90 Days	43.00	47.92		46.52		46.31		43.78		44.65	abcde
13 - 1394500	Resale Bus POTS 1-30 Days	4.67	7.04	2.00	6.42	2.50	7.71	6.00	7.00	7.33	6.56	abcde
13 - 1395100	Resale CTX 1-30 Days		9.03	2.00	10.22		6.78	4.00	8.52		6.63	abcde
13 - 1395901	UNE 2 w Dig Line Sharing Cond 1-30 Days	7.00	n/a		n/a	7.00	n/a		n/a		n/a	abcde
13 - 1395904	UNE 2 w Dig Line Sharing Non Cond 1-30 Days	5.25	8.38	11.00	7.93	7.00	4.82	4.86	4.78	3.20	6.23	abcde

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Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
13 - 1397701	UNE lp 8db and 5.5db 2/4 w 1-30 Days	7.59	7.00	9.60	6.15	4.17	7.50	6.75	7.01	5.08	6.56	
13 - 1397702	UNE lp 8db and 5.5db 2/4 w 31-90 Days	65.50	48.46		48.23		50.49		41.53		40.67	abcde
13 - 1398100	UNE lp 2 w Dig xDSL cap 1-30 Days	6.82	n/a	11.67	n/a	6.30	n/a	7.20	n/a			b d
13 - 1398200	UNE lp 2 w Dig xDSL cap 31-90 Days	44.00	n/a	68.00	n/a		n/a		n/a			abcd
13 - 1398301	UNE lp 2 w Dig IDSL cap 1-30 Days	7.57	7.53	8.27	11.33	7.19	9.23	10.41	9.73	10.79	9.75	
13 - 1398302	UNE lp 2 w Dig IDSL cap 31-90 Days	37.00	39.67		60.38		35.00		33.67	32.00	49.00	abcde
13 - 1398310	UNE Loop 2 wire Digital xDSL capable									9.17	14.00	e
13 - 1398400	UNE lp 4 w Dig 1.544 mbpd cap/HDSL 1-30 Days	4.20	18.00	4.50	10.80	9.25	8.33	4.82	17.80	8.75	9.50	abc e
13 - 1398500	UNE lp 4 w Dig 1.544 mbpd cap/HDSL 31-90 Days		n/a		n/a		n/a	31.00	51.33	49.50	59.00	abcde
13 - 1398910	UNE EELs DS1 New 1-30 Days	3.60	tbd		tbd	3.00	tbd		tbd	3.50	tbd	abcde
13 - 1399000	UNE Plat Basic Port and Lp 1-30 Days	2.00	7.04	5.00	6.42	6.00	7.71	4.67	7.00	3.40	6.56	abcd
13 - 1399100	UNE Plat Basic Port and Lp 31-90 Days		48.24	32.00	48.08		50.11		41.95		41.76	abcde
13 - 1399300	Int Connct Trnks 1-30 Days		1.00	1.00	9.75		n/a	1.00	7.88		7.00	abcde
14 - Held Order Interval												
14 - 1491400	Resale Res POTS	10.00	24.69	2.00	18.25		24.74	6.13	18.92	82.00	32.50	abcde
14 - 1491500	Resale Bus POTS		28.84		20.18		29.49	11.00	26.45	4.00	38.65	abcde
14 - 1491600	Resale ISDN BRI	1.00	48.89		60.94		13.75		28.13		19.56	abcde
14 - 1491700	Resale CTX		26.62	2.00	27.45		38.54		30.57		40.11	abcde
14 - 1492401	UNE lp 8db and 5.5db 2/4 w anlg	7.00	20.59	2.00	16.21	3.33	20.69	6.00	21.36	7.33	34.08	abcde
14 - 1492600	UNE lp 2 w Dig xDSL cap	65.00	n/a		n/a	40.00	n/a	8.00	n/a	9.80	14.00	abcde
14 - 1492602	UNE lp 2 w Dig IDSL cap	9.00	20.64	10.00	21.63	4.00	9.27	5.00	11.25	7.00	13.55	abcde
14 - 1492700	UNE lp 4 w Dig 1.544 mbps cap/HDSL	9.00	24.33	12.50	13.24	2.00	62.18	12.33	19.07	14.00	24.28	abcde
14 - 1493301	UNE Ded Trnspt DS1		24.33		13.24		62.18	8.00	19.07		24.28	abcde
14 - 1493307	UNE EELs DS1-New	64.00	tbd	5.00	tbd		tbd		tbd	4.50	tbd	abcde
14 - 1493400	UNE Basic Port and Lp	20.00	28.84	3.20	20.18	5.00	29.49	6.17	26.45	9.38	38.65	abcd
14 - 1493500	Int Connct Trnks	97.00	542.85	104.00	504.59	5.00	205.80		207.32		149.36	abcde
14 - 1493602	UNE lp 2 w Dig Line Sharing-Non Conditioned		10.82	9.00	5.76	1.00	7.71		8.46	6.00	10.59	abcde
15 - Provisioning Trouble Reports												
15 - 1590800	Resale Out of Svc	0.01	0.06	0.01	0.06	0.02	0.06	0.02	0.07	0.02	0.07	
15 - 1590900	Resale Svc Affctng	0.02	0.08	0.02	0.09	0.01	0.08	0.01	0.08	0.00	0.07	
15 - 1591110	UNE lp Out of Svc	0.06	0.06	0.06	0.06	0.06	0.06	0.24	0.07	0.14	0.07	
15 - 1591120	UNE lp Svc Affctng	0.17	0.08	0.15	0.09	0.13	0.08	0.16	0.08	0.06	0.07	
15 - 1591501	LNP Out of Svc	0.16	1.00	0.20	1.00	0.14	1.00	0.19	1.00	0.13	1.00	
15 - 1591502	LNP Svc Affctng	0.23	1.00	0.17	1.00	0.15	1.00	0.13	1.00	0.12	1.00	

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Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
15a - Average Time to Restore Provisioning Troubles												
15a - 4690800	Resale OOS	7.00	10.33	6.22	12.63	1.59	12.26	8.57	12.01	24.65	18.07	abcde
15a - 4690900	Resale Svc Aff	9.49	6.56	2.86	9.43	1.08	10.78		7.00		13.50	abcde
15a - 4691110	UNE Loop OOS	6.82	10.33	29.69	12.63	12.28	12.26	3.27	12.01	1.81	18.07	abc
15a - 4691120	UNE Loop Svc Aff	4.88	6.56	6.64	9.43	5.09	10.78	1.80	7.00	1.82	13.50	
15a - 4691400	LNP Port Out OOS	23.04	4.00	20.45	4.00	15.03	4.00	15.98	4.00	22.73	4.00	
15a - 4691500	LNP Port Out Svc Aff	6.55	4.00	16.84	4.00	17.25	4.00	13.81	4.00	7.84	4.00	
15a - 4691501	Loop 2w DLS OOS					0.23	3.32		8.40		n/a	cde
15a - 4691503	UNE Platform OOS						8.47		9.84	14.39	18.75	cde
15a - 4691504	UNE Platform Svc Aff						6.87		10.17	6.90	14.29	cde
16 - Percent Troubles in 30 days for New Orders (Specials)												
16	Interconnection Trunks	0.81	75.61	0.91	28.67	2.03	18.93	1.54	45.28	3.67	18.80	
16	Resale Centrex	21.37	5.00	7.51	4.64	5.91	4.92	6.80	4.60	10.26	5.19	
16	Resale ISDN BRI	0.00	3.03	2.70	3.79	7.69	2.28	22.22	3.88	0.00	4.18	de
16	Resale VGPL/DS0		32.79	0.00	9.09	50.00	17.91		9.64		12.50	abcde
16	UNE Dedicated Transport - DS1	8.33	8.71	11.11	14.46	0.00	9.40	17.86	10.27	7.41	10.46	bc
16	UNE Dedicated Transport - DS3	0.00	4.00	8.11	4.35	4.55	0.00	12.90	0.00	6.10	2.08	
16	UNE EELs - DS1	4.60	tbd	10.36	tbd	7.69	tbd	3.98	tbd	4.35	tbd	
16	UNE EELs - Voice Grade	0.00	tbd	0.00	tbd	10.00	tbd	0.00	tbd	0.00	tbd	ab e
16	UNE Loop 2 wire Digital Line Sharing	2.01	2.22	2.48	2.09	2.65	1.88	2.61	1.59	2.08	1.87	
16	UNE Loop 2 wire Digital xDSL capable	6.24	n/a	5.51	n/a	6.09	n/a	5.10	n/a	5.39	8.00	
16	UNE Loop 4 wire Digital 1.544 mbpd capable/HDSL	9.12	5.09	8.15	9.28	9.48	6.15	10.54	11.35	11.76	12.21	
16	UNE Platform Special Port/8db and 5.5db Loop	50.00	0.49	0.00	0.72	0.00	0.51	0.00	0.43	0.00	0.28	abcde
17 - Percent Troubles in 7 (10) days for New Orders (Non-Specials)												
17 - 1790700	Resale Res POTS	0.76	0.99	1.35	1.45	1.28	1.87	1.40	1.94	1.42	2.03	
17 - 1790800	Resale Bus POTS	0.80	1.01	0.86	1.50	0.52	1.96	2.04	1.93	0.86	2.22	
17 - 1791100	UNE Lp 2/4w 8db and 5.5db	1.54	1.19	2.29	2.92	2.71	2.51	2.40	2.40	2.95	4.63	
17 - 1791300	UNE Lp 2/4w 8db and 5.5db FDT	0.59	tbd	0.81	tbd	0.88	tbd	1.09	tbd	1.00	tbd	
17 - 1791400	UNE Lp 2/4w 8db and 5.5db TBCC	0.82	tbd	1.79	tbd	2.55	tbd	2.20	tbd	2.64	tbd	
17 - 1791600	UNE Plat Basic Port and Loop	0.17	1.01	0.40	1.50	0.41	1.96	0.45	1.93	0.67	2.22	
17 - 1791700	LNP	0.02	1.00	0.10	1.00	0.08	1.00	0.01	1.00	0.14	1.00	
18 - Completion Notice Interval												
18 - 1800101	Elec LEX/EDI LASR	99.90	95.00	99.94	95.00	99.98	95.00	99.34	95.00	99.97	95.00	

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Metric Number	Metric Name and Disaggregation	May 2002 CLEC Result	May 2002 P*B	June 2002 CLEC Result	June 2002 P*B	July 2002 CLEC Result	July 2002 P*B	August 2002 CLEC Result	August 2002 P*B	Sept. 2002 CLEC Result	Sept. 2002 P*B	Notes
18 - 1800401	Elec Fallout LEX/EDI LASR	87.64	95.00	92.76	95.00	96.95	95.00	97.80	95.00	94.93	95.00	
18 - 1800502	Fallout Level LEX/EDI LASR	0.88	5.00	0.31	5.00	0.46	5.00	0.35	5.00	0.16	5.00	
18 - 1800700	% w/in 24 hrs All Othr Int CESAR	97.52	90.00	96.30	90.00	91.67	90.00	96.30	90.00	93.06	90.00	
18 - 1800800	% w/in 24 hrs All Othr Int LTD	98.73	90.00	99.54	90.00	99.39	90.00	99.65	90.00	99.78	90.00	
18 - 1800900	% w/in 24 hrs All Othr Int EXACT	99.50	90.00	97.21	90.00	99.50	90.00	99.19	90.00	99.75	90.00	
Maintenance												
19 - Customer Trouble Report Rate												
19 - 1991600	Resale Res POTS	0.80	0.95	0.79	0.90	0.95	0.96	0.92	0.93	0.82	0.89	
19 - 1991700	Resale Bus POTS	0.26	0.48	0.25	0.44	0.29	0.48	0.28	0.47	0.27	0.47	
19 - 1991800	Resale ISDN BRI	0.34	1.07	0.65	1.19	0.97	1.14	0.82	1.07	0.17	0.96	
19 - 1991900	Resale CTX	0.65	0.30	0.45	0.28	0.47	0.28	0.34	0.29	0.44	0.26	
19 - 1992000	Resale PBX	0.10	0.13	0.05	0.12	0.05	0.14	0.08	0.12	0.11	0.10	
19 - 1992200	Resale DS1	0.00	3.77	2.22	3.28	2.27	3.44	0.00	3.79	0.00	3.29	
19 - 1992400	Resale VGPL/DS0	0.00	1.11	0.00	0.92	14.29	1.12	0.00	0.88	0.00	1.05	abcde
19 - 1992603	UNE lp 8db and 5.5db 2/4 w	0.36	0.44	0.33	0.40	0.34	0.47	0.35	0.44	0.35	0.44	
19 - 1992702	UNE lp 2 w Dig ISDN cap	0.25	0.34	0.19	0.42	0.47	0.42	0.23	0.91	0.35	0.86	
19 - 1992801	UNE lp 2 w Dig xDSL cap	0.81	0.00	0.76	0.00	0.87	0.00	0.76	0.00	0.73	2.00	
19 - 1992910	UNE lp 4 w Dig 1.544 mbps cap/HDSL	2.80	3.35	2.80	2.84	2.49	2.90	2.84	3.25	2.57	3.17	
19 - 1993501	UNE Ded Trnspt DS1	1.78	3.77	1.14	3.28	0.96	3.44	1.13	3.79	0.82	3.29	
19 - 1993502	UNE Ded Trnspt DS3	0.16	2.31	0.32	2.53	0.39	1.33	1.01	1.87	0.46	1.34	
19 - 1993505	UNE EELs Voice Grade	0.26	tbd	0.34	tbd	0.42	tbd	0.17	tbd	0.43	tbd	
19 - 1993506	UNE EELs DS1	1.81	tbd	2.18	tbd	2.35	tbd	2.19	tbd	2.14	tbd	
19 - 1993600	Plat Basic Port and Lp	0.51	0.48	0.53	0.44	0.59	0.48	0.62	0.47	0.71	0.47	
19 - 1993700	Int Connct Trnks	0.01	0.04	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	
19 - 1994100	UNE lp 2 w Dig Line Sharing	0.44	0.52	0.51	0.47	0.59	0.38	0.46	0.35	0.69	0.42	
20 - Percent of Customer Trouble not Resolved within Estimated Time												
20 - 2093100	Resale Res POTS disptchd	4.63	7.37	4.23	8.07	4.55	7.85	3.46	7.38	3.32	6.82	
20 - 2093200	Resale Res POTS not disptchd	1.64	1.12	1.61	1.55	0.00	1.21	8.70	0.84	2.44	1.29	
20 - 2093300	Resale Bus POTS disptchd	5.93	7.76	7.14	8.36	6.35	8.74	11.38	8.92	5.94	8.11	
20 - 2093400	Resale Bus POTS not disptchd	6.45	4.14	0.00	2.14	3.23	2.78	0.00	2.25	0.00	2.65	
20 - 2093500	Resale ISDN BRI disptchd		25.09	0.00	20.79	100.00	27.06	33.33	28.99		21.69	abcde
20 - 2093600	Resale ISDN BRI not disptchd	0.00	3.59	0.00	9.45	20.00	8.69	0.00	7.61	0.00	11.13	abcde
20 - 2093700	Resale CTX disptchd	5.00	7.03	4.35	8.64	18.52	9.80	13.33	9.54	3.57	9.07	
20 - 2093800	Resale CTX not disptchd	0.00	4.65	11.11	4.67	0.00	4.52	0.00	4.64	7.14	3.92	d

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Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
20 - 2093900	Resale PBX disptchd	0.00	17.79	0.00	16.19	0.00	17.43	33.33	13.13	0.00	19.70	abcde
20 - 2094700	Resale VGPL/DS0 disptchd		78.46		80.70	100.00	79.56		81.75		72.41	abcde
20 - 2095201	UNE lp 8db and 5.5db	5.93	7.69	7.51	8.27	8.89	8.49	9.19	8.62	8.62	7.98	
20 - 2095401	UNE lp 2 w Dig ISDN cap	0.00	25.45	33.33	20.36	16.67	26.22	50.00	11.62	33.33	26.19	abcde
20 - 2095601	UNE lp 2 w Dig xDSL cap	12.05	n/a	13.09	n/a	16.98	n/a	18.52	n/a	14.70	13.89	
20 - 2095801	UNE lp 4 w Dig 1.544 mbps cap/HDSL	39.16	32.40	34.55	29.99	34.84	30.86	35.96	30.18	38.80	26.85	
20 - 2097001	UNE Ded Transpt DS1	38.64	30.32	32.14	27.46	52.17	28.89	40.74	27.90	36.84	26.56	
20 - 2097002	UNE Ded Transpt DS3	25.00	11.11	0.00	30.00	0.00	6.25	11.54	8.70	41.67	5.88	ab
20 - 2097005	UNE EELs Voice Grade	66.67	tbd	75.00	tbd	60.00	tbd	0.00	tbd	0.00	tbd	abcde
20 - 2097006	UNE EELs DS1	36.05	tbd	32.77	tbd	25.76	tbd	29.73	tbd	40.66	tbd	
20 - 2097201	UNE Pltform Basic Port and Loop	6.63	7.37	8.10	7.69	9.63	8.17	10.21	8.25	6.87	7.56	
20 - 2097202	UNE Pltform Spcl Port and Loop	0.00	36.11		30.00		40.41		36.84		37.19	abcde
20 - 2097300	Int Connct Trnks	9.78	10.28	10.87	7.76	10.97	8.14	18.25	8.41	9.56	6.31	
20 - 2097401	PNP (port out)	0.08	1.00	0.00	1.00	0.00	1.00	0.14	1.00	0.11	1.00	cde
20 - 2097801	UNE Line Sharing lp 2w Dig xDSL	8.91	13.46	7.32	19.14	10.77	21.56	12.13	19.04	13.08	13.89	
21 - Average Time to Restore												
21 - 2192900	Resale Res POTS disptchd	11.36	16.40	12.72	17.90	14.55	17.88	14.31	17.14	12.40	17.80	
21 - 2193000	Resale Res POTS not disptchd	1.28	2.52	1.12	2.71	1.24	2.83	2.09	2.33	1.97	2.95	
21 - 2193100	Resale Bus POTS disptchd	7.11	8.31	7.21	8.52	7.21	8.52	7.36	8.31	6.42	8.22	
21 - 2193200	Resale Bus POTS not disptchd	2.22	2.18	0.53	1.74	1.55	1.83	1.12	1.74	1.03	1.98	
21 - 2193300	Resale ISDN BRI disptchd		20.63	3.28	17.98	28.17	22.27	23.44	20.35		18.74	abcde
21 - 2193400	Resale ISDN BRI not disptchd	2.43	2.58	0.54	3.09	5.58	3.79	2.89	2.86	2.00	3.83	abcde
21 - 2193500	Resale CTX disptchd	7.64	7.51	7.79	7.93	7.45	8.49	5.70	7.84	5.65	7.96	
21 - 2193600	Stwde Resale CTX not disptchd	1.69	2.28	4.49	2.70	0.91	2.54	1.59	2.46	4.14	2.93	d
21 - 2193700	Resale PBX disptchd	3.82	12.21	4.38	13.33	0.82	9.03	14.83	10.25	3.20	9.98	abcde
21 - 2193800	Resale PBX not disptchd		4.03		4.09	0.75	3.97		5.15		3.27	abcde
21 - 2194100	Resale DDS disptchd		8.86		8.98		7.04		7.41	0.83	6.94	abcde
21 - 2194400	Resale DS1 not disptchd		2.35	0.10	1.69	0.02	1.77		1.77		1.54	abcde
21 - 2194700	Resale VGPL/DS0 disptchd		13.11		11.07	10.88	11.50		13.06		10.58	abcde
21 - 2195401	UNE lp 8db and 5.5db 2/4 w	7.40	8.24	8.15	8.41	6.95	8.13	6.59	8.01	6.32	7.92	
21 - 2195601	UNE lp 2 w Dig ISDN cap	9.07	20.27	24.56	16.72	11.16	20.72		8.49	24.40	14.93	abcde
21 - 2195801	UNE lp 2 w Dig xDSL cap	11.18	n/a	13.27	n/a	11.78	n/a	11.25	n/a	12.32	12.50	
21 - 2196001	UNE lp 4 w Dig 1.544 mbps cap/HDSL	4.29	3.77	4.13	3.44	3.72	3.58	3.96	3.49	4.28	3.14	
21 - 2197201	UNE Ded Transpt DS1	5.21	3.66	3.37	3.24	5.96	3.39	3.27	3.39	5.13	3.12	

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Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
21 - 2197202	UNE Ded Transpt DS3	2.43	2.11	0.90	3.41	1.60	1.01	1.54	1.62	3.48	1.20	ab
21 - 2197205	Stwde UNE EELs Voice Grade	21.91	tbd	5.50	tbd	26.98	tbd	9.29	tbd	8.13	tbd	abcde
21 - 2197206	UNE EELs DS1	4.06	tbd	3.66	tbd	3.10	tbd	3.18	tbd	3.99	tbd	
21 - 2197401	UNE Pltform Basic Port and Loop	7.62	7.58	8.12	7.72	9.37	7.81	7.58	7.59	9.11	7.52	
21 - 2197402	UNE Pltform Spcl Port and Loop	1.53	7.48		5.18		5.32		7.03		5.66	abcde
21 - 2197500	Int Connct Trnks	5.62	8.27	5.49	10.52	7.14	11.41	10.22	7.10	5.85	7.50	
21 - 2197601	PNP (port out)	2.18	4.00	0.68	4.00	1.55	4.00	3.73	4.00	0.43	4.00	
21 - 2197800	NXX Code Open not disptchd		1.13	1.38	1.06	1.17	1.19		2.10		1.19	abcde
21 - 2198001	UNE Line Sharing lp 2w Dig xDSL	14.79	9.56	14.00	11.98	10.17	14.47	9.87	12.83	10.71	12.50	
22 - POTS Out-of-Service Less Than 24 Hours												
22 - 2290300	Resale Bus POTS	96.74	94.52	96.81	95.34	97.06	94.47	98.84	95.14	100.00	95.46	
22 - 2290400	Resale Res POTS	92.75	86.58	89.01	85.72	88.23	85.60	86.95	86.71	90.42	88.30	
22 - 2290501	UNE lp 2/4 w 8db and 5.5db analog	95.99	94.41	96.90	95.18	97.45	94.45	97.99	95.11	97.55	95.44	
22 - 2290700	UNE Platform	96.19	94.52	96.62	95.34	96.23	94.47	97.11	95.14	98.04	95.46	
23 - Frequency of Repeat Troubles in 30-day Period												
23 - 2391600	Resale Res POTS	6.63	8.99	6.75	8.70	7.81	9.46	5.48	8.63	7.07	8.19	
23 - 2391700	Resale Bus POTS	6.71	7.77	9.79	7.99	5.03	8.40	4.23	7.51	11.63	7.18	
23 - 2391800	Resale ISDN BRI	0.00	20.27	0.00	17.60	16.67	21.54	20.00	18.56	0.00	20.39	abcde
23 - 2391900	Resale CTX	6.90	8.16	7.32	8.28	13.33	10.07	11.11	7.67	11.36	7.44	
23 - 2392000	Resale PBX	25.00	11.67	0.00	9.85	0.00	10.50	33.33	9.81	0.00	10.68	abcde
23 - 2392601	UNE Loop 8db and 5.5db 2/4 w	10.09	7.87	9.71	8.03	9.43	8.49	9.96	8.01	8.39	7.15	
23 - 2392701	UNE Loop 2 wire Digital ISDN Capable	0.00	21.55	33.33	21.35	0.00	28.61	0.00	18.74	0.00	20.32	abcde
23 - 2392801	UNE Loop 2 wire Digital XDSL Capable	18.62	n/a	19.29	n/a	20.45	n/a	21.60	n/a	16.69	12.09	
23 - 2392901	UNE Loop 4 wire Digital 1.544 mbps capable/HDSL	23.57	21.45	24.00	22.43	20.21	23.70	23.68	24.59	28.71	23.55	
23 - 2393501	UNE Ded Trnsprt DS1	20.45	21.04	46.43	22.01	26.09	22.44	25.93	24.15	26.32	23.39	
23 - 2393502	UNE Ded Trnsprt DS3	0.00	14.81	12.50	13.33	10.00	31.25	7.69	13.04	25.00	23.53	ab
23 - 2393505	UNE EELs Voice Grade	0.00	tbd	0.00	tbd	0.00	tbd	0.00	tbd	40.00	tbd	abcde
23 - 2393506	UNE EELs DS1	20.41	tbd	22.03	tbd	19.19	tbd	21.62	tbd	20.33	tbd	
23 - 2393600	UNE Plat Basic port and loop	6.90	7.77	9.35	7.99	9.01	8.40	8.67	7.51	9.15	7.18	
23 - 2393700	Int Connct Trnks	10.87	6.53	15.22	10.34	11.61	13.90	9.16	11.68	14.71	8.48	
23 - 2393801	PNP (Port Out)	0.00	2.00	0.00	2.00	0.00	2.00	0.14	2.00	0.44	2.00	cde
23 - 2394000	UNE Loop 2 wire Digital Line Sharing	23.90	12.14	19.52	11.79	14.24	13.65	14.52	12.24	14.44	12.09	

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Metric Number	Metric Name and Disaggregation	May 2002 CLEC Result	May 2002 P*B	June 2002 CLEC Result	June 2002 P*B	July 2002 CLEC Result	July 2002 P*B	August 2002 CLEC Result	August 2002 P*B	Sept. 2002 CLEC Result	Sept. 2002 P*B	Notes
Network Performance												
24 - Percent Blocking on Common Trunks												
24 - 2400100	% Block Common Trnks: Common Trnks	0.98	2.00	0.33	2.00	0.33	2.00	0.81	2.00	0.93	2.00	
26 - NXX Loaded by LERG Effective Date												
26 - 2600200	NXX Load LERG Effect Dt: Whlsle	99.92	n/a	100.00	n/a	100.00	n/a	100.00	n/a	100.00	100.00	
Billing												
28 - Usage Timeliness												
28 - 2800200	Resale	1.26	3.35	1.23	3.31	1.41	2.63	1.28	2.43	1.46	2.53	
28 - 2800300	Unbundled	1.32	3.35	1.30	3.31	1.49	2.63	1.35	2.43	1.52	2.53	
28 - 2800500	Meet Pt	1.80	3.35	1.78	3.31	2.17	2.63	1.70	2.43	1.57	2.53	
30 - Wholesale Bill Timeliness												
30 - 3000100	Resalse	100.00	99.00	100.00	99.00	100.00	99.00	100.00	99.00	100.00	99.00	
30 - 3000200	Unbundled	100.00	99.00	100.00	99.00	100.00	99.00	100.00	99.00	100.00	99.00	
30 - 3000300	Fac/Int Cnnct	100.00	99.00	100.00	99.00	100.00	99.00	100.00	99.00	100.00	99.00	
31 - Usage Completeness												
31 - 3100200	Resale	99.26	99.04	99.64	99.55	99.80	99.42	99.74	99.52	99.81	99.51	
31 - 3100300	Unbundled	99.07	99.04	99.89	99.55	99.91	99.42	99.83	99.52	99.65	99.51	
31 - 3100400	Fac/Int Cnnct	99.23	95.00	99.94	95.00	99.98	95.00	98.98	95.00	99.95	95.00	
32 - Recurring Charge Completeness												
32 - 3200200	Resale	90.70	90.21	97.04	93.60	93.11	94.09	95.45	93.94	97.35	92.25	
32 - 3200300	UNE POTS	82.40	90.21	99.81	93.60	99.23	94.09	98.00	93.94	91.32	92.25	
32 - 3200400	UNE Other	99.10	90.00	99.28	90.00	99.57	90.00	91.62	90.00	99.39	90.00	
32 - 3200500	Fac/Int Cnnct	99.85	90.00	100.00	90.00	99.95	90.00	99.97	90.00	98.70	90.00	
33 - Non-Recurring Charge Completeness												
33 - 3300200	Resale	86.83	13.98	95.41	22.86	88.95	86.92	92.33	87.04	95.97	70.42	
33 - 3300300	UNE POTS	99.58	13.98	99.91	22.86	99.25	86.92	97.21	87.04	92.99	70.42	
33 - 3300400	UNE Other	99.27	90.00	99.34	90.00	99.64	90.00	98.83	90.00	99.50	90.00	
33 - 3300500	Fac/Int Cnnct	99.87	90.00	99.97	90.00	99.97	90.00	99.88	90.00	100.00	90.00	
34 - Bill Accuracy												
34 - 3400402	Resale Usage	99.98	tbd	99.99	tbd	99.95	tbd	99.95	tbd	99.94	tbd	
34 - 3400502	Resale Recur	99.99	tbd	99.99	tbd	99.97	tbd	99.93	tbd	99.85	tbd	
34 - 3400602	Resale Non-Recur	100.00	tbd	99.94	tbd	99.82	tbd	99.90	tbd	99.73	tbd	
34 - 3400610	Resale Combined	99.99	99.67	99.98	99.71	99.93	99.71	99.92	99.73	99.85	99.76	

California Performance Metric Data

Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
34 - 3400702	UNE POTS Usage	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	
34 - 3400802	UNE POTS Recur	98.89	tbd	100.00	tbd	100.00	tbd	99.12	tbd	100.00	tbd	
34 - 3400902	UNE POTS Non-Recur	100.00	tbd	100.00	tbd	97.87	tbd	100.00	tbd	100.00	tbd	
34 - 3400910	UNE POTS Combined	98.89	99.67	100.00	99.71	98.05	99.71	99.12	99.73	100.00	99.76	
34 - 3401002	UNE Other Usage	100.00	tbd	99.82	tbd	98.79	tbd	100.00	tbd	100.00	tbd	
34 - 3401102	UNE Other Recur	99.72	tbd	99.89	tbd	99.38	tbd	100.00	tbd	100.00	tbd	
34 - 3401202	UNE Other Non-Recur	99.17	tbd	100.00	tbd	97.01	tbd	100.00	tbd	100.00	tbd	
34 - 3401210	UNE Other Combined	99.38	95.00	99.72	95.00	97.03	95.00	100.00	95.00	100.00	95.00	
34 - 3401302	Fac/Int Cnnct Usage	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	
34 - 3401402	Fac/Int Cnnct Recur	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	
34 - 3401502	Fac/Int Cnnct Non-Recur	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	100.00	tbd	
34 - 3401510	Fac/Int Cnnct Combined	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	100.00	95.00	
35 - Billing Completion Notice Interval												
35 - 3500100	Resale	99.41	95.00	99.46	95.00	96.34	95.00	96.19	95.00	99.19	95.00	
Database Updates												
37 - Average Database Update Interval												
37 - 3700200	Loc Whlsle Prod Svc Ord Gen UpDts	2.26	4.78	1.95	4.89	1.95	5.08	2.71	5.00	1.95	4.98	
37 - 3700250	Loc Whlsle Prod Svc Ord Gen UpDts LIDB	0.03	0.25	0.01	0.23	0.01	0.16	0.01	0.18	0.01	0.12	
37 - 3700300	Loc Whlsle Prod Direct Gtwy UpDts	100.00	95.00	99.99	95.00	99.99	95.00	99.99	95.00	99.99	95.00	
38 - Percent Database Accuracy												
38 - 3800200	Loc Whlsle Prod DA/List Svc Ord Gen UpDts	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	
38 - 3800500	Loc Whlsle Prod E911 Svc Ord Gen UpDts	84.65	91.10	97.37	91.00	97.37	92.40	97.34	93.97	96.79	94.06	
38 - 3800700	Loc Whlsle Prod LIDB Svc Ord Gen UpDts	99.37	99.04	99.67	98.99	99.71	99.29	99.76	99.26	99.77	99.35	
39 - E911/911 MS Database Update												
39 - 3900200	Loc Whlsle Prod Svc Ord Gen UpDts	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	
39 - 3900300	Loc Whlsle Prod Direct Gtwy UpDts	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	
Collocation												
40 - Time to Respond to a Collocation Request												
40 - 4000100	Space Avail w/in 15 Days	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	bcd
40 - 4000200	Price & Sched w/in 15 Days	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	cd
41 - Time to Provide a Collocation Arrangement												
41 - 4100100	New % w/in Tariff Int		100.00		100.00	100.00	100.00	100.00	100.00	100.00	100.00	abcd
41 - 4100200	Augment % w/in 80 Days	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	

California Performance Metric Data

Metric Number	Metric Name and Disaggregation	May 2002		June 2002		July 2002		August 2002		Sept. 2002		Notes
		CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	CLEC Result	P*B	
Interfaces												
42 - Percent of Time Interface is Available												
42 - 4200700	Resale Datagate	99.13	99.25	99.70	99.25	99.38	99.25	99.99	99.25	99.99	99.25	
42 - 4200800	Resale WEBVERIGATE	98.15	99.25	99.19	99.25	99.00	99.25	99.99	99.25	99.98	99.25	
42 - 4200900	Resale WEBTOOLBAR	99.99	99.25	100.00	99.25	99.94	99.25	99.98	99.25	99.79	99.25	
42 - 4201000	Resale WEBLEX	100.00	99.25	100.00	99.25	100.00	99.25	99.83	99.25	99.98	99.25	
42 - 4201300	Resale EDI Ordering	99.89	99.25	99.99	99.25	100.00	99.25	99.97	99.25	100.00	99.25	
42 - 4201400	Resale PRAF	100.00	99.25	100.00	99.25	100.00	99.25	100.00	99.25	100.00	99.25	
42 - 4201500	Resale SORD	99.75	99.75	99.89	99.89	100.00	100.00	99.02	99.02	99.42	99.42	
42 - 4201700	Resale NDM to EXACT	100.00	99.25	99.85	99.25	100.00	99.25	100.00	99.25	100.00	99.25	
42 - 4201800	Resale EBTA GUI			99.83	99.25	100.00	99.25	99.83	99.25	99.44	99.25	
42 - 4201900	Resale EDI/CORBA Pre-Order					99.46	99.25	99.99	99.25	99.98	99.25	
42 - 4202000	Resale BDS/Telis to EXACT					100.00	99.25	100.00	99.25	100.00	99.25	
42 - 4202100	Resale TBTA (Trouble Admin)					100.00	99.25	100.00	99.25	100.00	99.25	
42 - 4202200	Resale EBTA (App to App)					99.82	99.25	99.67	99.25	98.66	99.25	
44 - Center Responsiveness												
44 - 4400200	Rpr Ctr Local Wlsle Prod	9.88	15.19	8.01	15.67	12.80	16.23	12.84	16.24	10.37	13.94	
44 - 4400300	Ord Ctr Local Wlsle Prod	11.96	15.00	10.66	15.00	9.21	15.00	9.14	15.00	9.90	15.00	
44 - 4400400	Rpr Ctr Provisioning Center	49.11	90.00	61.20	90.00	81.51	90.00	84.27	90.00	76.97	90.00	

Abbreviations: n/a - not available.
tbd - to be determined.

Blank space means data are not available.

Notes: a - for May, CLEC sample size was less than 10.
b - for June, CLEC sample size was less than 10.
c - for July, CLEC sample size was less than 10.
d - for August, CLEC sample size was less than 10.
e - for September, CLEC sample size was less than 10.

Appendix C
Statutory Requirements

I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the market for provision of in-region interLATA services on compliance with certain provisions of section 271.[1] BOCs must apply to the Federal Communications Commission (Commission or FCC) for authorization to provide interLATA services originating in any in-region state.[2] The Commission must issue a written determination on each application no later than 90 days after receiving such application.[3] Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate," and the Commission is required to "give substantial weight to the Attorney General's evaluation."[4]

2. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-

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[1] For purposes of section 271 proceedings, the Commission uses the definition of the term "Bell Operating Company" contained in 47 U.S.C. § 153(4).

[2] 47 U.S.C. § 271(d)(1). For purposes of section 271 proceedings, the Commission utilizes the definition of the term "in-region state" that is contained in 47 U.S.C. § 271(i)(1). Section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." *Id.* § 153(21). Under the 1996 Act, a "local access and transport area" (LATA) is "a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." *Id.* § 153(25). LATAs were created as part of the Modification of Final Judgment's (MFJ) "plan of reorganization." *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, "all [BOC] territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest." *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (D.D.C. 1983).

[3] 47 U.S.C. § 271(d)(3).

[4] *Id*. § 271(d)(2)(A).

based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the "competitive checklist."[5] Because the Act does not prescribe any standard for the consideration of a state commission's verification under section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to determine the amount of weight to accord the state commission's verification.[6] The Commission has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.[7]

3. Section 271 requires the Commission to make various findings before approving BOC entry. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[8] In order to obtain authorization under section 271, the BOC must also show that: (1) it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B);[9] (2) the requested authorization will be carried out in accordance with the requirements of section 272;[10] and (3) the BOC's entry into the in-region interLATA market is

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[5] *Id*. § 271(d)(2)(B).

[6] *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[a]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions' views any particular weight." *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998).

[7] *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

[8] 47 U.S.C. § 271(d)(3)(A). *See* Section III, *infra*, for a complete discussion of Track A and Track B requirements.

[9] *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

[10] *Id.* § 272; *see Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom.*, *Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review denied sub nom. Bell Atlantic Telephone Companies v. FCC*, 113 F.3d 1044 (D.C. Cir. 1997); *Implementation of*
(continued….)

"consistent with the public interest, convenience, and necessity."[11] The statute specifies that, unless the Commission finds that these criteria have been satisfied, the Commission "shall not approve" the requested authorization.[12]

II. PROCEDURAL AND ANALYTICAL FRAMEWORK

4. To determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist, as developed in the FCC's local competition rules and orders in effect at the time the application was filed. Despite the comprehensiveness of these rules, there will inevitably be, in any section 271 proceeding, disputes over an incumbent LEC's precise obligations to its competitors that FCC rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application.[13] In the context of section 271's adjudicatory framework, the Commission has established certain procedural rules governing BOC section 271 applications.[14] The Commission has explained in prior orders the procedural rules it has developed to facilitate the review process.[15] Here we describe how the Commission considers the evidence of compliance that the BOC presents in its application.

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the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 17539 (1996).

[11] 47 U.S.C. § 271(d)(3)(C).

[12] *Id*. § 271(d)(3); *see SBC Communications, Inc. v. FCC*, 138 F.3d at 416.

[13] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19; *see also American Tel. & Tel. Co. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000).

[14] *See Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (1996); *Revised Comment Schedule For Ameritech Michigan Application, as amended, for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Michigan*, Public Notice, DA 97-127 (rel. Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 99-1994 (rel. Sept. 28, 1999); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (collectively "271 Procedural Public Notices").

[15] *See, e.g.*, *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6247-50, paras. 21-27; *SWBT Texas Order*, 15 FCC Rcd at 18370-73, paras. 34-42; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-71, paras. 32-42.

5. As part of the determination that a BOC has satisfied the requirements of section 271, the Commission considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B). The BOC at all times bears the burden of proof of compliance with section 271, even if no party challenges its compliance with a particular requirement.[16] In demonstrating its compliance, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.[17] In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.[18] Previous Commission orders addressing section 271 applications have elaborated on this statutory standard.[19] First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself.[20] Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[21] For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete."[22]

6. The determination of whether the statutory standard is met is ultimately a judgment the Commission must make based on its expertise in promoting competition in local markets and in telecommunications regulation generally.[23] The Commission has not established,

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[16] *See SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

[17] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

[18] *See* 47 U.S.C. § 271(c)(2)(B)(i), (ii).

[19] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6250-51, paras. 28-29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

[20] *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

[21] *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

[22] *Id.*

[23] *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

nor does it believe it appropriate to establish, specific objective criteria for what constitutes "substantially the same time and manner" or a "meaningful opportunity to compete."[24] Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances. Therefore, the Commission looks at each application on a case-by-case basis and considers the totality of the circumstances, including the origin and quality of the information in the record, to determine whether the nondiscrimination requirements of the Act are met.

A. Performance Data

7. As established in prior section 271 orders, the Commission has found that performance measurements provide valuable evidence regarding a BOC's compliance or noncompliance with individual checklist items. The Commission expects that, in its *prima facie* case in the initial application, a BOC relying on performance data will:

a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;

b) identify the facial disparities between the applicant's performance for itself and its performance for competitors;

c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers; and

d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

8. The Commission has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.[25] Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the

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[24] *Id.*

[25] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15 FCC Rcd at 18377, para. 55 & n.102.

performance benchmark, the analysis is usually done. Otherwise, the Commission will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met.[26] Thus, the Commission will examine the explanations that a BOC and others provide about whether these data accurately depict the quality of the BOC's performance. The Commission also may examine how many months a variation in performance has existed and what the recent trend has been. The Commission may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.

9. Where there are multiple performance measures associated with a particular checklist item, the Commission would consider the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data are affected by factors beyond a BOC's control, a finding that would make it less likely to hold the BOC wholly accountable for the disparity. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

10. In sum, the Commission does not use performance measurements as a substitute for the 14-point competitive checklist. Rather, it uses performance measurements as valuable evidence with which to inform the judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist.

B. Relevance of Previous Section 271 Approvals

11. In some section 271 applications, the volumes of the BOC's commercial orders may be significantly lower than they were in prior proceedings. In certain instances, volumes may be so low as to render the performance data inconsistent and inconclusive.[27] Performance

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[26] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3970, para. 59.

[27] The Commission has never required, however, an applicant to demonstrate that it processes and provisions a substantial commercial volume of orders, or has achieved a specific market share in its service area, as a prerequisite for satisfying the competitive checklist. *See Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77 (explaining that Congress had considered and (continued….)

data based on low volumes of orders or other transactions are not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data are based on a low number of observations, small variations in performance may produce wide swings in the reported performance data. It is thus not possible to place the same evidentiary weight upon – and to draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity.

12. In such cases, findings in prior, related section 271 proceedings may be a relevant factor in the Commission's analysis. Where a BOC provides evidence that a particular system reviewed and approved in a prior section 271 proceeding is also used in the proceeding at hand, the Commission's review of the same system in the current proceeding will be informed by the findings in the prior one. Indeed, to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues. Appropriately employed, such a practice can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties involved in the section 271 process, the delay and expense associated with redundant and unnecessary proceedings and submissions.

13. However, the statute requires the Commission to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the Commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states, the Department of Justice. However, the Commission has always held that an applicant's performance towards competing carriers in an actual commercial environment is the best evidence of nondiscriminatory access to OSS and other network elements.[28] Thus, the BOC's actual performance in the applicant state may be relevant to the analysis and determinations with respect to the 14 checklist items. Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.

14. Moreover, because the Commission's review of a section 271 application must be based on a snapshot of a BOC's recent performance at the time an application is filed, the Commission cannot simply rely on findings relating to an applicant's performance in an anchor state at the time it issued the determination for that state. The performance in that state could change due to a multitude of factors, such as increased order volumes or shifts in the mix of the types of services or UNEs requested by competing carriers. Thus, even when the applicant

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rejected language that would have imposed a "market share" requirement in section 271(c)(1)(A)).

[28] *See SWBT Texas Order*, 15 FCC Rcd at 18376, para. 53; *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53.

makes a convincing showing of the relevance of anchor state data, the Commission must examine how recent performance in that state compares to performance at the time it approved that state's section 271 application, in order to determine if the systems and processes continue to perform at acceptable levels.

III. COMPLIANCE WITH ENTRY REQUIREMENTS – SECTIONS 271(c)(1)(A) & 271(c)(1)(B)

15. As noted above, in order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[29] To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[30] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[31] The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.[32]

16. As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under section 271(d)(3)(A)(ii), the Commission shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, "with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist."[33] Track B, however, is

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[29] *See* 47 U.S.C. § 271(d)(3)(A).

[30] *Id*.

[31] *Id*.

[32] *See Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20633-35, paras. 46-48.

[33] 47 U.S.C. § 271(d)(3)(A)(ii).

not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.[34]

IV. COMPLIANCE WITH THE COMPETITIVE CHECKLIST – SECTION 271(c)(2)(B)

A. Checklist Item 1 – Interconnection

17. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[35] Section 251(c)(2) imposes a duty on incumbent LECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."[36] In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred "only to the physical linking of two networks for the mutual exchange of traffic."[37] Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network."[38] Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."[39] Finally, the incumbent LEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252."[40]

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[34] *See Ameritech Michigan Order*, 12 FCC Rcd at 20561-62, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. *See* 47 U.S.C. § 271(c)(1)(B); *see also Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.

[35] 47 U.S.C. § 271(c)(2)(B)(i); *see Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662, para. 222.

[36] 47 U.S.C. § 251(c)(2)(A).

[37] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*). Transport and termination of traffic are therefore excluded from the Commission's definition of interconnection. *See id.*

[38] 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the Commission identified a minimum set of technically feasible points of interconnection. *See Local Competition First Report and Order*, 11 FCC Rcd at 15607-09, paras. 204-11.

[39] 47 U.S.C. § 251(c)(2)(C).

[40] *Id*. § 251(c)(2)(D).

18. To implement the equal-in-quality requirement in section 251, the Commission's rules require an incumbent LEC to design and operate its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within the incumbent LEC's network.[41] In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC's technical criteria and service standards.[42] In prior section 271 applications, the Commission concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.[43]

19. In the *Local Competition First Report and Order*, the Commission concluded that the requirement to provide interconnection on terms and conditions that are "just, reasonable, and nondiscriminatory" means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations.[44] The Commission's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service[45] and its provisioning of two-way trunking arrangements.[46] Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC

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[41] *Local Competition First Report and Order*, 11 FCC Rcd at 15613-15, paras. 221-225; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20641-42, paras. 63-64.

[42] *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25.

[43] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-50, paras. 74-77; *Ameritech Michigan Order*, 12 FCC Rcd at 20671-74, paras. 240-45. The Commission has relied on trunk blockage data to evaluate a BOC's interconnection performance. Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer's perception of a competitive LEC's service quality.

[44] *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; *see also Bell Atlantic New York* Order, 15 FCC Rcd at 3978, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

[45] 47 C.F.R. § 51.305(a)(5).

[46] The Commission's rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-20.

provides interconnection service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.[47]

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.[48] Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.[49] The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.[50] In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.[51] In response to a remand from the D.C. Circuit, the Commission adopted the *Collocation Remand Order*, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between collocated carriers, and establishing principles for physical collocation space and configuration.[52] To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section

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[47] 47 C.F.R. § 51.305(a)(5).

[48] *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

[49] 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

[50] 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

[51] *Deployment of Wireline Services offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4784-86, paras. 41-43 (1999), *aff'd in part and vacated and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), *on recon.*, *Collocation Reconsideration Order*, 15 FCC Rcd 17806 (2000); *on remand*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435 (2001) (*Collocation Remand Order*), *petition for recon. pending*.

[52] *See Collocation Remand Order*, 16 FCC Rcd at 15441-42, para. 12.

251(c)(6) and the FCC's implementing rules.[53] Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, help the Commission evaluate a BOC's compliance with its collocation obligations.[54]

21. As stated above, checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) *and* 252(d)(1)."[55] Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.[56] The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.[57]

22. To the extent pricing disputes arise, the Commission will not duplicate the work of the state commissions. As noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.[58] Although the Commission has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the Commission's pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.[59]

23. Consistent with the Commission's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as: (1) an interim solution to a

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[53] *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20643, para. 66; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

[54] *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

[55] 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

[56] *Id*. § 252(d)(1).

[57] *See* 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

[58] *See SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also* 47 U.S.C. §§ 252(c), (e)(6); *American Tel. & Tel Co. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*).

[59] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-86.

particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.[60] In addition, the Commission has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.[61]

24. Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.[62] At some point, states will have had sufficient time to complete these proceedings. The Commission will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

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[60] *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258 (explaining the Commission's case-by-case review of interim prices).

[61] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359-60, para. 239.

[62] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 260.

B. Checklist Item 2 – Unbundled Network Elements[63]

1. Access to Operations Support Systems

25. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.[64] The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[65] For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.[66] The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.[67]

26. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide

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[63] We note that the United States Court of Appeals for the District of Columbia Circuit recently opined in two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*Local Competition Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002), *petition for rehearing and suggestion for rehearing en banc denied Sept. 4, 2002*. The court's decision addressed both our UNE rules and our line sharing rules. The Commission is currently reviewing its UNE rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781 (2001) *(Triennial Review Notice*). Further, the court stated that "the *Line Sharing Order* must be vacated and remanded." *USTA v. FCC*, 290 F.3d at 429. The court also stated that it "grant[ed] the petitions for review[] and remand[ed] the *Line Sharing Orde*r and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id*. at 430. On September 4, 2002, the D.C. Circuit denied petitions for rehearing filed by the Commission and others. *See Order*, Nos. 00-1012 and 00-1015 (D.C. Circuit, filed Sept. 4, 2002).

[64] *Id*. at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

[65] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.

[66] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

[67] *Id.*

"nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[68] The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.[69] The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).[70] In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.[71] Consistent with prior orders, the Commission examines a BOC's OSS performance directly under checklist items 2 and 14, as well as other checklist terms.[72]

27. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, UNEs, and resale.[73] For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.[74] The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.[75] The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for

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[68] 47 U.S.C. § 271(c)(2)(B)(ii).

[69] *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

[70] *Id.*

[71] *Id.* As part of a BOC's demonstration that it is "providing" a checklist item (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service. An examination of a BOC's OSS performance is therefore integral to the determination of whether a BOC is offering all of the items contained in the competitive checklist. *Id*.

[72] *Id.* at 3990-91, para. 84.

[73] *Id.* at 3991, para. 85.

[74] *Id.*

[75] *Id.* For example, the Commission would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.[76]

28. For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."[77] In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the Commission will examine, in the first instance, whether specific performance standards exist for those functions.[78] In particular, the Commission will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.[79] If such performance standards exist, the Commission will evaluate whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.[80]

29. The Commission analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[81] The Commission next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[82]

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[76] *See id.*

[77] *Id.* at 3991, para. 86.

[78] *Id.*

[79] *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *Id*. at 20619-20.

[80] *See id.* at 3991-92, para. 86.

[81] *Id.* at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616; s*ee also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, the Commission "consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions," including the interface (or gateway) that connects the competing carrier's own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC's OSS (including all necessary back office systems and personnel); and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. *Ameritech Michigan*
(continued….)

30. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.[83] For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC's systems and any relevant interfaces.[84] In addition, a BOC must disclose to competing carriers any internal business rules[85] and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[86] Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.[87] Although not a prerequisite, the Commission continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.[88]

31. Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.[89] The most

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Order, 12 FCC Rcd at 20615; s*ee also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

[82] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

[83] *Id*. at 3992, para. 87; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (The Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."). For example, a BOC must provide competing carriers the specifications necessary to design their systems interfaces and business rules necessary to format orders, and demonstrate that systems are scalable to handle current and projected demand. *Id.*

[84] *Id.*

[85] Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders and include information concerning ordering codes such as universal service ordering codes (USOCs) and field identifiers (FIDs). *Id.*; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.335.

[86] *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

[87] *Id.*

[88] *See id.*

[89] *Id.* at 3993, para. 89.

probative evidence that OSS functions are operationally ready is actual commercial usage.[90] Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.[91] Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself.[92] If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight. As noted above, to the extent the Commission reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations.[93] Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

a. Relevance of a BOC's Prior Section 271 Orders

32. The *SWBT Kansas/Oklahoma Order* specifically outlined a non-exhaustive evidentiary showing that must be made in the initial application when a BOC seeks to rely on evidence presented in another application.[94] First, a BOC's application must explain the extent to which the OSS are "the same" – that is, whether it employs the shared use of a single OSS, or the use of systems that are identical, but separate.[95] To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces,

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[90] *Id.*

[91] *Id.*

[92] *See id.*; *Ameritech Michigan Order*, 12 FCC Rcd at 20659 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

[93] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6301-02, para. 138.

[94] *See id*. at 6286-91, paras. 107-18

[95] *See id*. at 6288, para. 111.

systems and, in many instances, even personnel.[96] The Commission will also carefully examine third party reports that demonstrate that the BOC's OSS are the same in each of the relevant states.[97] Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.[98] Second, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, an applicant must submit evidence relating to *all* aspects of its OSS, including those OSS functions performed by BOC personnel.

b. Pre-Ordering

33. A BOC must demonstrate that: (i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces;[99] and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.[100]

34. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.[101] Given that pre-

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[96] The Commission has consistently held that a BOC's OSS includes both mechanized systems and manual processes, and thus the OSS functions performed by BOC personnel have been part of the FCC's OSS functionality and commercial readiness reviews.

[97] *See SWBT Kansas/Oklahoma Order*, *id*. at 6287, para. 108.

[98] *See id*. at 6288, para. 111.

[99] In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC. *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148.

[100] The Commission has held previously that an interface that provides responses in a prompt timeframe and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as a BOC serves its own customers. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029, paras. 145 and 154.

[101] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94 (referring to "pre-ordering and ordering" collectively as "the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof"). In prior orders, the Commission has identified the following five pre-
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ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.[102] Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, a BOC must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.[103] For those pre-ordering functions that lack a retail analogue, a BOC must provide access that affords an efficient competitor a meaningful opportunity to compete.[104] In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.[105]

(i) Access to Loop Qualification Information

35. In accordance with the *UNE Remand Order*,[106] the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,[107] and in the same time frame, so that a

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order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4015, para. 132; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd at 619, para. 147.

[102] *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

[103] *Id.*; *see also BellSouth South Carolina Order*, 13 FCC Rcd at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

[104] *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

[105] *See id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

[106] *UNE Remand Order*, 15 FCC Rcd at 3885, para. 426 (determining "that the pre-ordering function includes access to loop qualification information").

[107] *See id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the

(continued….)

competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.[108] Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in a BOC's back office and can be accessed by any of a BOC's personnel.[109] Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.[110] A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.[111] As the Commission determined in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."[112]

c. Ordering

36. Consistent with section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC

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electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

[108] As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. *See id.*, 15 FCC Rcd at 4021, para. 140.

[109] *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

[110] *See SWBT Kansas Oklahoma Order*, 16 FCC Rcd at 6292-93, para. 121.

[111] *Id.*

[112] *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-31.

must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.[113]

d. Provisioning

37. A BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.[114] Consistent with the approach in prior section 271 orders, the Commission examines a BOC's provisioning processes, as well as its performance with respect to provisioning timeliness (i.e., missed due dates and average installation intervals) and provisioning quality (i.e., service problems experienced at the provisioning stage).[115]

e. Maintenance and Repair

38. A competing carrier that provides service through resale or UNEs remains dependent upon the incumbent LEC for maintenance and repair. Thus, as part of its obligation to provide nondiscriminatory access to OSS functions, a BOC must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.[116] To the extent a BOC performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions "in substantially the same time and manner" as a BOC provides its retail customers.[117] Equivalent access ensures that competing carriers can assist customers experiencing service disruptions

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[113] *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, paras. 163-66. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the "same time and manner" standard. The Commission examines order confirmation notices and order rejection notices using the "meaningful opportunity to compete" standard.

[114] *See Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, the Commission looks to missed due dates and average installation intervals; for provisioning quality, the Commission looks to service problems experienced at the provisioning stage.

[115] *Id.*

[116] *Id*. at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

[117] *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

using the same network information and diagnostic tools that are available to BOC personnel.[118] Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.[119]

f. Billing

39. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.[120] In making this determination, the Commission assesses a BOC's billing processes and systems, and its performance data. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[121]

g. Change Management Process

40. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.[122] Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[123] By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete.[124] As part of this demonstration, the

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[118] *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196.

[119] *Id*.

[120] *See SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

[121] *See id.*; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, at para. 163.

[122] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd at 19742.

[123] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

[124] *Id.* at 3999-4000, para. 102

Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.[125]

41. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS.[126] Such changes may include updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.[127] Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.[128] Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).[129]

42. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the Commission first assesses whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;[130] (2) that competing carriers had substantial input in the design and continued operation of the change management process;[131] (3) that the change management plan defines a procedure for the timely resolution of change management disputes;[132] (4) the availability of a stable testing environment that mirrors production;[133] and (5) the efficacy of the

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[125] *Id.* at 4000, para. 102.

[126] *Id.* at 4000, para. 103.

[127] *Id.*

[128] *Id.* at 4000, para. 103.

[129] *Id.*

[130] *Id.* at 4002, para. 107.

[131] *Id.* at 4000, para. 104.

[132] *Id.* at 4002, para. 108.

[133] *Id.* at 4002-03, paras. 109-10.

documentation the BOC makes available for the purpose of building an electronic gateway.[134] After determining whether the BOC's change management plan is adequate, the Commission evaluates whether the BOC has demonstrated a pattern of compliance with this plan.[135]

2. UNE Combinations

43. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3)."[136] Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory."[137] Section 251(c)(3) of the Act also requires incumbent LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.[138]

44. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.[139] Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.[140] Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.[141] Because the use of combinations of UNEs is an

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[134] *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, the Commission used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. The Commission left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

[135] *Id.* at 3999, para. 101, 4004-05, para. 112.

[136] 47 U.S.C. § 271(c)(2)(B)(ii).

[137] *Id*. § 251(c)(3).

[138] *Id.*

[139] *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

[140] *BellSouth South Carolina Order*, 13 FCC Rcd at 646; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

[141] *Bell Atlantic New York Order*, 15 FCC Rcd at 4077-78, para. 230.

important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the Commission examines section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.[142]

3. Pricing of Network Elements

45. Checklist item 2 of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[143] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[144] Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.[145] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.[146] The Commission also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined

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[142] *Id. In Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000), the Eighth Circuit had vacated the Commission's "additional combinations" rules (47 C.F.R. Sections 51-315(c)-(f)). However, on May 13, 2002, the Supreme Court reversed the Eighth Circuit with respect to those rules and remanded the case to the court of appeals "for further proceedings consistent with this opinion." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1687. *See also id*. at 1683-87. In response, the Eighth Circuit, on August 21, 2002, vacated its prior opinion insofar as it had vacated the pertinent combinations rules and denied the petitions for review with respect to those rules. *Iowa Utilities Board v. FCC*, 8th Circuit Nos. 96-3321, *et al*., Judgment, filed August 21, 2002.). *See also Competitive Telecommunications Association v. FCC*, 309 F. 3d 8 (2002) (affirming the Commission's interim decision to limit the ability of competitive local exchange carriers to gain access to a network element combination known as the enhanced extended link).

[143] 47 U.S.C. § 271(c)(2)(B)(ii).

[144] *Id*. § 251(c)(3).

[145] 47 U.S.C. § 252(d)(1).

[146] *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-79; 47 C.F.R. §§ 51.501 *et seq*.; *see also Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98*, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 (*Line Sharing Order*) (concluding that states should set the prices for line sharing as a new network element in the same manner as the state sets prices for other UNEs).

elements before providing them to competing carriers, except on request.[147] The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[148]

46. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996,[149] the Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.[150] On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission's pricing rules were contrary to Congressional intent.[151] The Eighth Circuit stayed the issuance of its mandate pending review by the Supreme Court.[152] The Supreme Court, on May 13, 2002, upheld the Commission's forward-looking pricing methodology in determining costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act."[153] Accordingly, the Commission's pricing rules remain in effect.

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[147] *See* 47 C.F.R. § 51.315(b).

[148] *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59.

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

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

[151] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. granted sub nom. Verizon Communications v. FCC*, 121 S. Ct. 877 (2001).

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

[153] *Verizon v. FCC,* 122 S.Ct. at 1679. On August 21, 2002, the Eighth Circuit implemented the Supreme Court's mandate with respect to the Commission's TELRIC pricing rule by vacating its prior opinion insofar as it had invalidated that rule and by denying the petitions for review of that (continued….)

C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

47. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[154] Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[155] Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[156] Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[157] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[158] Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole

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rule. *Iowa Utilities Board v. FCC*, 8th Circuit Nos. 96-3321, et al., Judgment, filed August 21, 2002.

[154] 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, n.574.

[155] 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines "utility" to include any entity, including a LEC, that controls "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

[156] 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

[157] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

[158] 47 U.S.C. § 224(b)(1).

attachments in any case where such matters are regulated by a State."[159] As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.[160]

D. Checklist Item 4 – Unbundled Local Loops

48. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[161] The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.[162]

49. In order to establish that it is "providing" unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.[163] Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible

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[159] *Id*. § 224(c)(1). The 1996 Act extended the Commission's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

[160] *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

[161] 47 U.S.C. § 271(c)(2)(B)(iv).

[162] *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase "network interconnection device" with "demarcation point," and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

[163] *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

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).[164] HFPL is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions." This definition applies whether a BOC's voice customers are served by cooper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal. However, the HFPL network element is *only* available on a copper loop facility.[165]

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*. Specifically, a successful BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases.

52. Section 271(c)(2)(B)(iv) also requires that a BOC demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.[166] In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P

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[164] *See Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27; *see also* n.63 at C-12 *supra*.

[165] *See Deployment of Wireline Services offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, 2106-07, para. 10 (2001).

[166] *See generally SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. § 51.703(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers "to provide any telecommunications service that can be offered by means of that network element").

configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer. To make such a showing, a BOC must show that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.[167]

E. Checklist Item 5 – Unbundled Local Transport

53. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[168] The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.[169] Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.[170] Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.[171]

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[167] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

[168] 47 U.S.C. § 271(c)(2)(B)(v).

[169] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

[170] *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

[171] *Id.* at 20719, n.650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit
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F. Checklist Item 6 – Unbundled Local Switching

54. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[172] In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.[173] The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.[174] Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.[175]

55. Moreover, in the *Second BellSouth Louisiana Order*, the Commission required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.[176] The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.[177] Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of

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requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

[172] 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

[173] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

[174] *Id*.

[175] *Id.* at 20722-23, para. 207.

[176] *Id.* at 20723, para. 208.

[177] *Id.* at 20723, para. 208 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

unbundled local switching.[178] Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.[179]

56. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.[180] In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.[181]

G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

57. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."[182] In the *Ameritech Michigan Order*, the Commission found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."[183] Specifically, the Commission found that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[184] For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."[185] Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other

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[178] *Id.*

[179] *Id.*

[180] *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

[181] *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

[182] 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

[183] *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

[184] *Id.*

[185] *Id.*

carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.[186] Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[187] The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).[188] In the *Local Competition Second Report and Order*, the Commission held that the phrase "nondiscriminatory access to directory assistance and directory listings"

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[186] 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

[187] *Id*. § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) *vacated in part sub nom. People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *overruled in part*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *see also Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

[188] While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to "directory assistance," section 251(b)(3) refers to nondiscriminatory access to "operator services," while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to "operator call completion services." 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term "operator call completion services" is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term "operator services" was defined as meaning "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, the Commission concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, "operator call completion services" is a subset of or equivalent to "operator service." *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. As a result, the Commission uses the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.

means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."[189] The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.[190] The Commission specifically held that the phrase "nondiscriminatory access to operator services" means that "a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."[191]

58. Competing carriers may provide operator services and directory assistance by reselling the BOC's services, outsourcing service provision to a third-party provider, or using their own personnel and facilities. The Commission's rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.[192] Competing carriers wishing to provide operator services or directory assistance using their own or a third party provider's facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating their own directory assistance

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[189] 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order's* interpretation of section 251(b)(3) is limited "to access to each LEC's directory assistance service." *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC's systems but requires "nondiscriminatory access to . . . directory assistance to allow the other carrier's customers to obtain telephone numbers." 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission's conclusion that "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible," *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)'s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. *See Directory Listings Information NPRM*.

[190] *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

[191] *Id*. at 19464, para. 151.

[192] 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as "thank you for using XYZ Telephone Company." Competing carriers may use the BOC's brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

database by obtaining the subscriber listing information in the BOC's database.[193] Although the Commission originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required UNEs in the *UNE Remand Order*.[194] Checklist item obligations that do not fall within a BOC's obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs.[195] Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.[196]

H. Checklist Item 8 – White Pages Directory Listings

59. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."[197] Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing.[198]

60. In the *Second BellSouth Louisiana Order*, the Commission concluded that, "consistent with the Commission's interpretation of 'directory listing' as used in section

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[193] 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, 15630-31, paras. 152-54 (1999); *Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, First Report and Order, 16 FCC Rcd 2736, 2743-51 (2001).

[194] *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

[195] *UNE Remand Order*, 15 FCC Rcd at 3905, para. 470; *see generally* 47 U.S.C. §§ 251-52; *see also* 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the … network element").

[196] *UNE Remand Order*, 15 FCC Rcd at 3905-06, paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

[197] 47 U.S.C. § 271(c)(2)(B)(viii).

[198] *Id*. § 251(b)(3).

251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider."[199] The Commission further concluded, "the term 'directory listing,' as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof."[200] The Commission's *Second BellSouth Louisiana Order* also held that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.[201]

I. Checklist Item 9 – Numbering Administration

61. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which telecommunications numbering administration, guidelines, plan, or rules are established."[202] The checklist mandates compliance with "such guidelines, plan, or rules" after they have been established.[203] A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules.[204]

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[199] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

[200] *Id*. In the *Second BellSouth Louisiana Order*, the Commission stated that the definition of "directory listing" was synonymous with the definition of "subscriber list information." *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the Commission's decision in a later proceeding obviates this comparison, and supports the definition of directory listing delineated above. *See Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

[201] *Id.*

[202] 47 U.S.C. § 271(c)(2)(B)(ix).

[203] *Id.*

[204] *See Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; *see also Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking (continued….)

J. Checklist Item 10 – Databases and Associated Signaling

62. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[205] In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)."[206] The Commission also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).[207] In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.[208] At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.[209] In the *UNE Remand Order*, the Commission clarified that the definition of call-related databases "includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases."[210]

K. Checklist Item 11 – Number Portability

63. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[211] Section 251(b)(2)

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in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 (rel. Dec. 28, 2001).

[205] 47 U.S.C. § 271(c)(2)(B)(x).

[206] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

[207] *Id.* at 20755-56, para. 272.

[208] *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

[209] *Id*. at 15741-42, para. 484.

[210] *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

[211] 47 U.S.C. § 271(c)(2)(B)(xii).

requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[212] The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[213] In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[214] Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability "to the extent technically feasible."[215] The Commission also requires LECs to gradually replace interim number portability with permanent number portability.[216] The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,[217] and created a competitively neural cost-recovery mechanism for long-term number portability.[218]

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[212] *Id.* at § 251(b)(2).

[213] *Id.* at § 153(30).

[214] *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16459, 16460, 16462-65, paras. 1, 6-9 (1999) (*Fourth Number Portability Order*).

[215] *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

[216] *See* 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

[217] *See* 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

[218] *See* 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

L. Checklist Item 12 – Local Dialing Parity

64. Section 271(c)(2)(B)(xii) requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[219] Section 251(b)(3) imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays."[220] Section 153(15) of the Act defines "dialing parity" as follows:

> [A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation.[221]

65. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.[222] Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.[223]

M. Checklist Item 13 – Reciprocal Compensation

66. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[224] In

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[219] Based on the Commission's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

[220] 47 U.S.C. § 251(b)(3).

[221] *Id.* § 153(15).

[222] 47 C.F.R §§ 51.205, 51.207.

[223] *See* 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

[224] 47 U.S.C. § 271(c)(2)(B)(xiii).

turn, pursuant to section 252(d)(2)(A), "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[225]

N. Checklist Item 14 – Resale

67. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[226] Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[227] Section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[228] Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A).[229] Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory.[230] If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.[231] If a state creates such a limitation, it must do so consistent with

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[225] *Id*. § 252(d)(2)(A).

[226] *Id*. § 271(c)(2)(B)(xiv).

[227] *Id*. § 251(c)(4)(A).

[228] *Id*. § 252(d)(3).

[229] *Id*. § 251(c)(4)(B).

[230] *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission's authority to promulgate such rules, and specifically upheld the sections of the Commission's rules concerning resale of promotions and discounts in *Iowa Utilities Board*. *Iowa Utils. Bd. v. FCC*, 120 F.3d at 818-19, *aff'd in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also* 47 C.F.R. §§ 51.613-51.617.

[231] 47 U.S.C. § 251(c)(4)(B).

requirements established by the Federal Communications Commission.[232] In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.[233] The obligations of section 251(c)(4) apply to the retail telecommunications services offered by a BOC's advanced services affiliate.[234]

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

68. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[235] The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.[236] Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and

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[232] *Id.*

[233] *See, e.g.*, *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

[234] *See Verizon Connecticut Order*, 16 FCC Rcd 14147, 14160-63, paras. 27-33 (2001); *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

[235] 47 U.S.C. § 271(d)(3)(B).

[236] *See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *petition for review pending sub nom. SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

its section 272 affiliate.[237] In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.[238]

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.[239] The Commission's findings regarding section 272 compliance constitute independent grounds for denying an application.[240] Past and present behavior of the BOC applicant provides "the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272."[241]

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[242] Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

71. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.[243] Thus, the Commission views the public interest requirement as an opportunity

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[237] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

[238] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

[239] *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[240] *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[241] *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

[242] 47 U.S.C. § 271(d)(3)(C).

[243] In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.[244] Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission's analysis of checklist compliance, that markets are open to competition.

[244] *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Joint Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization to Provide In-Region, Inter-LATA Services in California

In this Order, we grant Pacific Bell authority to provide in-region long distance service in California. California was one of the first states to actively investigate whether its local exchange markets were open to competition.[1] Today's decision represents the culmination of those efforts. I would like to congratulate the dedicated staff of the California Public Utilities Commission and Pacific Bell for their efforts in bringing this application to this Commission.

The item painstakingly evaluates a discrete set of questions left open by the California Commission and subsumed under our federal public interest standard. Consistent with our partnership with California regulators, we have gone to great lengths to give appropriate consideration to these issues. We do not conclude that these open questions are irrelevant to the federal public interest inquiry but rather, we have applied our existing approach to determine whether any of the allegations in the record could independently establish a public interest concern that would lead me to conclude that Pacific Bell should not be granted the requested authorization. In the end, the exhaustive record compiled in this docket convinces me that Pacific Bell has met all relevant requirements for long distance entry.

While this decision accords an appropriate amount of deference to the California Commission, the statute and our precedent also make clear that this Commission is not bound to reach the same outcomes as might be reached by the state commissions.[2] Congress required this Commission to exercise its independent judgment in reviewing applications for authority to provide interLATA service and we have done so here today. I am hard put to see how we could have afforded any more deference to the California Commission without compromising the integrity of this Commission's independent review.

It is also worth emphasizing that the California Commission is currently considering a decision that will resolve all of its remaining concerns under state law. While I am mindful that this decision has not yet been approved by the California Commission, it would seem to me that

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[1] Those who are familiar with California's "OANAD" proceeding, begun in 1993, know all too well the extensive time and effort spent evaluating Pacific Bell's efforts to open its local exchange markets to competition. *See* Rulemaking on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks (OANAD Proceeding), R. 93-04-003, I. 93-04-002, Order Instituting Rulemaking and Order Instituting Investigations, California Commission (1993).

[2] In this regard, state comments are accorded different treatment under the statute compared to the "substantial weight" that this Commission must attach to the recommendation of the Department of Justice. *See* 47 U.S.C. 271(d)(2)(A).

any suggestion that we have undermined a critical state interest or otherwise acted against the wishes of the state is exaggerated, and creates conflict with the states where none can be reasonably found.

Of course, today's action does not mean that our evaluation of these markets is complete. The Commission has a responsibility not only to ensure that Pacific Bell is in compliance with section 271 today but also that it remains in compliance in the future. This Commission will work closely with the California commissions to ensure that Pacific Bell does not cease to meet any of the conditions required for long distance entry.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region InterLATA Services in California

I commend Pacific Bell for the steps it has taken to open its local markets in California to competition. I also commend the California Public Utilities Commission for its ongoing and tireless efforts to make sure that the statutory market-opening requirements are met across the State.

Although I support granting this application, I write separately to address a number of concerns that have been raised in the course of this proceeding. The most troubling of these, for me, was the California Commission's determination that the application did not at present appear to meet the State's public interest standard. Such a concern, from any State Commission, is enough to give me pause. The public interest is a significant prong of our Section 271 approval process and one that does not always receive the attention it merits.

Although we are applying the federal statute, we consistently rely on State Commission findings in our Section 271 analysis. Moreover, our precedent holds that evidence that a Bell company has engaged in a pattern of discriminatory conduct or is disobeying federal and state telecommunications regulations would tend to undermine our confidence that the Bell company's local market is, or will remain, open to competition. I believe we must take the California Commission findings seriously and subject the public interest prong to heightened scrutiny in light of the State's findings. This is precisely what I have endeavored to do.

My conclusion, growing out of intensive analysis of both the application and the State's findings, is that the public interest is served by the majority's decision today. Significantly, the California Commission concluded in its public interest analysis that Pacific Bell has provided nondiscriminatory and open access to exchanges, including unbundling of exchange facilities, and that ongoing regulatory vigilance, oversight of Pacific Bell's activities, and enforcement could provide a check on Pacific Bell's ability to act anti-competitively. Given this finding, the FCC must be especially vigilant as it monitors Pacific Bell's continued compliance with its statutory obligations. And we anticipate that the California Commission will take steps to adopt the safeguards necessary to protect consumers and to prevent the possibility of harmful conduct in the market. I am pleased that the Order expressly recognizes that a State Commission retains the authority to enforce safeguards that promote a pro-competitive telecommunications market, protect consumers, and ensure service quality. To this end, I note that the California Commission in the near future may take steps to implement additional safeguards. If we take our shared responsibility under the Act seriously, I believe we can ensure that Pacific Bell does not act anti-competitively in the market. In the event that such conduct does come to pass, we and the State Commission must not hesitate to use our enforcement tools vigorously.

Another important issue in this proceeding is whether Pacific Bell has complied with a checklist requirement to ensure that telecommunications services are made available for resale. More precisely, the issue concerns whether Pacific Bell has met its obligation to make its DSL services available for resale. In the *SBC Arkansas/Missouri 271 Application*, the Commission concluded that our precedent on this issue is not adequately clear. Although I believed it would have been preferable to resolve the issue in that application, I agreed to a separate expeditious proceeding with a full record to clarify the situation. The Commission committed to a timely disposition with an NPRM by the end of 2001 and resolution of the issue as soon as possible in 2002. We are now a few short days away from the end of 2002 and we ***still*** have not provided the promised clarity. I am deeply troubled that we find ourselves in this position, but I cannot vote to deny an application when it is the Commission itself that has failed to provide clarity and direction.

Finally, I am concerned about the pricing decisions in this proceeding. The Order applies a benchmark analysis to compare the rates in California to those in Texas. In light of the age of the Texas rates and the decision of the Texas Commission to open a new rate proceeding, I question whether Texas is an appropriate benchmark. Nevertheless, the Order expressly recognizes that if Texas' rates were to be reduced so that the comparison is no longer valid, Pacific Bell may no longer be in compliance with Section 271. Our precedent holds that this would, in fact, be a subject for Commission scrutiny. Moreover, the California rates generally fall significantly below what the benchmark would allow. For example, our model predicts that loop costs are fourteen percent lower in California than in Texas, but the rate Pacific Bell charges for loops is 30 percent lower in California.

The problems raised in this proceeding highlight, once again, the pressing need for a systematic, comprehensive and ongoing post-Section 271 review process to assure the reality of continued competition in all states where approvals have been granted. Competition is not guaranteed by some mad 100-yard dash to temporary compliance with a 14 point check list. Rather, it is sustained by the follow-on activities of incumbent and competitor companies and disciplined oversight by the state and federal regulatory bodies that are tasked with developing a competitive telecommunications environment.

I believe that Pacific Bell has worked hard to comply with Section 271 in California. Given the concerns raised by the California Commission, I hope and trust that we and the State will work closely together to monitor and assess Pacific Bell's continuing performance in California, and that approval does indeed, over the long haul, serve the public interest.

DISSENTING STATEMENT OF COMMISSIONER KEVIN J. MARTIN

RE: Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in California, Memorandum Opinion and Order (WC Docket No. 02-306).

I believe approval of this application at this point is premature. It is possible that with just a few months more time this Application would have gained my support, and I believe that SBC has made great strides in opening the local market in California. The company should be commended for its hard work. Despite these efforts, however, the record does not demonstrate that SBC has satisfied all of the requirements of section 271 in California.

In Section 271, Congress did not provide us with a balancing test, where we look to the quality of a BOC's overall effort to meet its responsibilities. Congress required, as the Commission has noted in previous Orders, that a BOC must meet *each and every checklist item* before the Commission grants permission to offer interLATA service.[1] Additionally, the granting of an application must be in the public interest. As explained more fully below, I do not believe that the application as filed reflects compliance with the entire checklist. I am not convinced that granting this application at this time is in the public interest. Indeed, the state of California explicitly found that all of the checklist requirements had not been met and that the application was not in the public interest.

I believe that the states play a critical role in our evaluation of checklist compliance. While the state evaluation may not be dispositive, I believe it should be accorded great weight. As the Commission has stated, "the state commissions' knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive factual record regarding the opening of the BOC's local markets to competition."[2]

In this application, the CPUC, the regulatory entity most knowledgeable about the local conditions of competition in California, determined that SBC's application failed checklist items 11 and 14. The California Commission also found, under state law, that the grant of an application was not in the public interest. The CPUC's conclusions were based largely on failure to comply with state law and excessive fines Pacific Bell has had to pay. As explained more fully below, I am troubled by my sense that this Commission has not given appropriate weight or

[1] *See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, ¶ 9 (1997) (*Ameritech Michigan Order*).

[2] *Ameritech Michigan Order* at ¶ 30

respect to the findings of the California Commission on these issues. As a result, I am not fully convinced that SBC has met the statutory requirements.

Complete-As-Filed and Checklist Item 2

As this Commission has emphasized, under the Commission's rules, "an applicant is expected to demonstrate in its application that it complies with section 271 *as of the date of filing*."[3] Compliance with section 271 requires SBC to prove that it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B).[4] Checklist item 2 requires that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.[5] As the majority explains, pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on TELRIC principles of providing those elements.[6]

Based on these requirements, SBC's application as filed does not meet its burden of demonstrating compliance with checklist item 2. This Commission determined that it would not approve the application based on the interim $1837 DS3 rate offered by Pacific Bell when it filed its application on September 20. SBC fails to meet – and the majority does not conclude that it does meet – its burden of demonstrating that the $1837 rate is TELRIC-compliant. Indeed, this rate is more than triple the comparable rate in Texas,. In fact, the California Commission itself announced in June that it believed the rate was not cost-based. On day 45, however, Pacific Bell offered a lower rate of $573, but with significant conditions attached.

The majority's finding of compliance with checklist item 2 requires it to waive the complete-as-filed rule and accept this conditional, lower rate. The Commission can waive this rule only if "special circumstances warrant a deviation from the general rule and such deviation

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[3] *See In Application by England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, FCC 02-262, Memorandum Opinion and Order at ¶ 11 (2002) (*Verizon New Hampshire/Delaware Order*) (citing Updated Filing Requirements for Bell Operating Company Applications under Section 271 of the Communications Act, CCB, Public Notice, DA 01-734 (Mar. 23, 2001) (emphasis supplied).

[4] *See Application of Verizon New England Inc., Bell Atlantic Communications Inc. (D/B/A Verizon Long Distance), NYNEX Long Distance Company (D/B/A Verizon Enterprise Solutions), and Verizon Global networks Inc. for Authorization to Provide In-Region InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130, Memorandum Opinion and Order, 16 F.C.C. Rcd. 8988, ¶ 11 (2001) (*Verizon Massachusetts Order*).

[5] 47 U.S.C. § 252(d)(1). Checklist item 2 requires that "access or interconnection provided or generally offered by a Bell operating company to another telecommunications carrier [must] include[] . . . [n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B).

[6] Order at ¶ 16.

will serve the public interest."[7] Here, there are no such "special circumstances" warranting a deviation from the complete-as-filed rule. Moreover, I believe granting a waiver under the circumstances presented here is contrary to the public interest.

When Pacific Bell offered its lower rate on day 45, it attached conditions that I believe raise significant public policy concerns. The condition was tied to the outcome of this Commission's *Triennial Review* proceeding. A CLEC could only take the lower $573 rate if it agreed to give up certain rights under state law, if this Commission were to decide that DS3 no longer had to be offered on an unbundled basis.[8] The CLEC, then, is left with a "Hobson's choice": either (1) take an exorbitant DS3 rate at least three times higher than what it should be paying, or (2) take a lower rate that potentially forces it to give up rights under state and federal law. The majority has chosen to approve this application based on this agreement. I do not support this decision.

Approval of a 271 application based on such a conditional rate is unprecedented. Even more remarkable are the lengths to which the majority goes to excuse this late-filed conditional rate to justify their waiver of the complete-as-filed rule. The majority states that it was "not possible" for Pacific Bell to file the lower conditional rate prior to filing its application,[9] and that the California Commission "dictated the timing" of Pacific Bell's submission.[10] No matter that there is no support in the record for such conclusions. Indeed, the record reflects quite the opposite. The California Commission announced on June 12, three months prior to Pacific Bell's filing, that its $1837 DS3 rate was based on outdated cost information and would be reexamined in the *Relook Proceeding*. Still, Pacific Bell chose to submit its 271 application to this Commission on September 20 with the same, outdated rate. It alone made the choice of submitting only a conditional rate reduction 45 days after filing its application. Even Pacific Bell itself does not attempt to provide any excuses for waiting 45 days to make its filing. Indeed, Pacific Bell has consistently "relied" on the $1837 rate in support of its application.[11] In the

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[7] *Verizon New Hampshire/Delaware Order* at ¶ 11 (citing Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969); 47 U.S.C. § 154(j); and 47 C.F.R. § 1.3).

[8] Under the agreement, if the FCC were to decide that DS3 no longer had to be offered as a UNE, the CLEC would be forced to immediately give up any rights it may have under state law to purchase DS3 as a UNE. The agreement could also be interpreted to force a signatory to give up any rights under federal law to a grandfathering or phase-in of the new DS3 requirement, and to require certain "conversion charges" in the event the FCC decided DS3 were no longer a UNE, even if the change in legal status had no impact on the physical network. *See* ex parte letter from Cathleen Massey, Vice President, External Affairs, XO Communications, to Secretary, Federal Communications Commission (Nov. 12, 2002).

[9] Order at ¶ 28.

[10] Order at ¶ 31.

[11] *See* ex parte Letter from James Smith, Senior Vice President, SBC to Kevin Martin, Commissioner, FCC (Dec. 9, 2002).

absence of any evidence in the record, and even any supporting argument by Pacific Bell, I fail to see why it was "not possible" for Pacific Bell to (1) reduce its rate prior to filing its application, or (2) file it earlier without conditions that I believe raise significant public policy concerns.

The majority takes "comfort" in the fact that one company did agree to the conditional lower rate. The majority reasons that "had the terms been so unreasonable and onerous, we doubt that any party would have agreed to them."[12] I take no such comfort in this fact. Indeed, this appears to be the same company that also signed an agreement that contained an explicit condition requiring it to support SBC's federal 271 application.[13]

Finally the majority seems to emphasize that a late rate reduction, even with such conditions attached, is not of concern because the parties have had sufficient time to comment on it, the Commission has had sufficient time to evaluate it, and another party signed a new agreement on day 77 that did not contain such conditions. This agreement is not yet in effect, is itself conditional on CPUC approval, and as a result may never even go into effect. I disagree with this rationale. If you extend this logic, then virtually any late rate reduction, regardless of the circumstances or conditions attached, can pass the majority's low threshold. I believe the Commission must begin its analysis by determining, as it has in past applications, whether there really are special or unique circumstances that justify the waiver. If not, then adherence to the rule requires the analysis to end there.

Moreover, granting such a waiver where there are no special circumstances justifying the waiver, and particularly where there are extraordinary conditions, sends the wrong signal. The Commission has expressed in past 271 orders, including the *SWBT Kansas/Oklahoma Order* cited by the majority, a concern that "applicants might attempt to use grant of this waiver to 'game' the section 271 process with repeated last minute rate reductions."[14] This decision creates incentives for such a process. Why shouldn't a BOC first test the waters to see if non-TELRIC rates will pass muster with the majority if it knows it can come in anytime later with a rate reduction? Indeed, it seems that even a conditional rate reduction where the conditions are onerous could now be sufficient for approval by the majority. I am concerned about the public policy implications of this decision and creating unfortunate precedent.

In this order, I fear that the majority, while noting the importance of the complete-as-filed

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[12] Order at ¶ 50.

[13] *See Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order That It Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 271 and Denying That It Has Satisfied § 709.2 of The Public Utilities Code* at ¶ 221 (Sept. 19, 2002) (*California Commission Order)*.

[14] *See Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for the Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, at ¶ 27 (2001) (*SWBT Kansas/Oklahoma Order*).

requirement, has in all practical respects abandoned it. I believe that a more straightforward application of the rule would result in a rejection of this application. In two recent statements, I have expressed my fear that the Commission is moving in the wrong direction in its application of the complete-as-filed requirement.[15] The majority's decision confirms that my concern was justified. In this application, I believe the majority has moved too far.

Findings of the California PUC

Under section 271(d)(2)(B), the Commission "shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)." In requiring the Commission to consult with the states, Congress afforded the states an opportunity to present their views regarding the opening of the BOCs' local networks to competition. In order to fulfill this role as effectively as possible, state commissions are required to conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications. As the Commission has emphasized in previous orders, "the state commissions' knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition. The state commission's development of such a record in advance of a BOC's application is all the more important in light of the strict, 90-day deadline for Commission review of section 271 applications."[16]

Here, after an intensive proceeding spanning more than four years, the California Commission found that Pacific Bell failed checklist items 11 and 14, and also failed the state's own public interest test. I am troubled by what appears to me to be insufficient weight and consideration accorded by the majority to the opinion of the CPUC, and also by an analysis that could narrow the scope of the Commission's future consideration of a state's conclusions.

Checklist Item 14

The CPUC determined that Pacific Bell failed checklist item 14 for two reasons:

> (1) failure to comply with its resale obligation with respect to advanced services pursuant to § 251(c)(4)(A), and

[15] See separate statements of Commissioner Martin in *Application of Verizon Virginia, Inc., et.al., for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, FCC 02-297, Memorandum Opinion and Order (2002) (*Verizon Virginia Order*) and *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in Rhode Island*, Memorandum Opinion and Order, 17 FCC Rcd 3300 (2002) (*Verizon Rhode Island Order*).

[16] *Ameritech Michigan Order* at ¶ 30.

(2) including restrictive conditions in certain interconnection agreements in contravention of §251(c)(4)(B).[17]

With respect to the first reason for checklist failure, the majority considered the opinion of the CPUC and provided a detailed analysis explaining that under this Commission's own precedent, the CPUC's checklist failure on this ground does not warrant a finding of noncompliance by this Commission.[18] I am supportive of this type of careful consideration of the state commission's opinion.

By contrast, the majority affords no such careful consideration to the determination of the CPUC that Pacific Bell also failed checklist item 14 because there were restrictive conditions in Pacific Bell's interconnection agreements. In a three-sentence analysis, the majority dismisses the CPUC's conclusion by stating (1) that the CPUC "does not provide details or explain *exactly* how these 'restrictive conditions' violate section 251(c)(4)(B)," that (2) no commenter "identify any particular 'restrictive conditions' or explain why they violate the Act, and that therefore "in the absence of factual support in our record, we do not agree with the California Commission's conclusion on this issue."[19] However, the CPUC opinion does, in fact, offer insight into the nature of these restrictive conditions. The opinion reflects that the state had before it arguments by several parties, including AT&T, XO, ASCENT, and ORA, that various interconnection agreements contained numerous restrictive conditions.[20] One such condition referenced in the CPUC order was apparently contained in a particular agreement requiring the CLEC signatory to agree to support SBC's federal 271 application.[21]

The majority refuses to connect any of the information before the CPUC to the CPUC's final conclusion. Instead, the majority completely ignores the portion of the CPUC order listing these allegations, states that the CPUC has not explained the basis for its finding of noncompliance, and finally concludes that consequently, the default must be a "pass." I do not support such a cursory analysis or conclusion that default is a pass. Rather, I continue to believe it is the applicant who bears the burden.

I believe the CPUC's conclusion that certain interconnection agreements contained restrictive provisions was based upon careful consideration of the information before it and deserves a serious analysis by this Commission. At the very least, the majority could have assumed that the CPUC's conclusion was related to the interconnection agreement provisions

[17] *California Commission Order* at ¶ 227.

[18] Order at ¶ 111-114.

[19] Order at ¶ 115.

[20] *California Commission Order* at ¶ 218-221.

[21] *California Commission Order* at ¶ 221 (referencing DSLNet agreement).

referenced in the CPUC order.[22] This would not be unduly speculative given that these were the only "restrictive" provisions referenced in the checklist 14 section of the CPUC order. The majority could have independently evaluated whether any of these provisions would have amounted to a checklist violation under federal standards. Instead, the majority's opinion seems to suggest that the CPUC's determination was pulled out of thin air.

I personally find very troubling the allegation that one of the interconnection agreements in Pacific Bell's state compliance filing required the CLEC signatory to agree to support SBC's federal 271 application.[23] Even more troubling is the majority's refusal to consider any of this information. I believe that the CPUC's determination of checklist noncompliance is sufficient to warrant, at the very least, a more thorough consideration and analysis of this issue. As a result, I am not convinced that Pacific Bell has met its burden to demonstrate compliance with checklist item 14.

The approach taken by the majority with respect to checklist item 14 is particularly strange when compared to the majority's analysis of checklist item 11. Here, the CPUC also found checklist noncompliance. The majority characterizes the primary reason for this checklist failure as the lack of a mechanized NPAC check.[24] My belief is that the mechanized check was required by the CPUC to fix a problem of service outages, and that this was the primary reason for the failure. Indeed, in its Order and as recognized by the majority, the CPUC expressed concern about Pacific Bell's ability to capture service outages for LNP orders cancelled or rescheduled at the last minute.[25] In its Findings of Fact, the CPUC also found that "the CLECs do not have certain knowledge of when Pacific will disconnect certain customers, and cannot maintain the integrity of these end-users' dial tones."[26]

Regardless of the primary reason for the checklist failure, at least in this instance when the majority disagreed with the conclusions of the CPUC on this issue, they based this on an independent analysis of performance measures related to local number portability and service outages. While I do not agree with the majority's ultimate conclusions on this issue, at least with respect to this checklist item, the majority seemed to substantively consider the issue. I believe the majority should have taken the same approach with checklist item 14.

Public Interest

In addition to evaluating compliance with the competitive checklist, Congress directed

[22] *California Commission Order* at ¶ 218-221.

[23] *California Commission Order* at ¶ 221.

[24] Order at ¶ 105.

[25] *California Commission Order* at ¶ 199-200; Order at ¶ 105.

[26] *California Commission Order* at "Findings of Fact" ¶ 253.

this Commission to also evaluate whether the requested authorization would be consistent with the "public interest, convenience and necessity."[27] In the past the Commission has said that in making this determination, compliance with state law and good faith compliance with rules in general is important to this analysis. Specifically, the Commission has said "we would be interested in evidence that a BOC applicant has engaged in discriminatory conduct or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority."[28] We have also recognized that a state's opinion on these issues is not only relevant, but should have "substantial weight".[29]

In this case, the CPUC found that Pacific Bell's entry into the intrastate, interexchange telecommunications market would not be in the public interest. Specifically, the CPUC found that Pacific Bell failed to meet the following 3 out of the 4 the requirements under California Public Utilities Code 709.2 for entry into the markets: (1) there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber information or subscriber contacts generated by the provision of local exchange telephone service; (2) there is no improper cross-subsidization of interexchange telecommunications service; and (3) there is "no substantial possibility of harm" to the competitive intrastate interexchange telecommunications market."[30] The CPUC's conclusions were based largely on failure to comply with state law and excessive fines Pacific Bell has had to pay.

Since we have granted SBC's last 271 application, the FCC has fined SBC a record $6 million dollars for violating competition-related merger conditions,[31] and $84,000 for 24 violations of the Commissions collocation rules.[32] In addition, SBC paid $3.6 million under a

[27] 47 U.S.C. § 271(d)(3)(C).

[28] *Ameritech Michigan Order* at ¶ 397.

[29] *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New* York, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 at ¶ 20 (1999) (*Bell Atlantic New York Order*) ("We thus place substantial weight on the New York Commission's conclusions, as they reflect its role not only as a driving force behind these proceedings, but also as an active participant in bringing local competition to the state's markets).

[30] Order at ¶ 166.

[31] *See* FCC Fines SBC Communications, Inc. $6 Million for Violations of Commission Merger Condition, FCC News Release, Oct. 9, 2002.

[32] *See* FCC Imposes $84,000 Fine Against SBC Communications, Inc., FCC News Release, Feb. 25, 2002.

consent decree as a result of inaccurate information provided in support of its last 271 application.[33]

In light of the state commission's finding that Pacific Bell is not in compliance with state law, and this Commission's recent findings of noncompliance with our regulations, I feel uncomfortable finding this application in the public interest until the CPUC has made a final determination that they believe the company has made an adequate showing that such an authorization is in the public interest.[34]

Conclusion

I believe that SBC has taken great strides in moving toward compliance in California. I feel confident that the problems I've highlighted will be resolved very soon. I believe that if the Commission had denied this application, and SBC refiled it in the next few months, the result would be an approval that respects our complete-as-filed rule, and an analysis that gives more appropriate and greater consideration to the findings of the CPUC.

[33] *See* FCC, SBC Communications, Inc. Agree to Consent Decree – SBC to Make $3.6 Million Payment to United States Treasury, FCC News Release, May 28, 2002.

[34] I note that a very recent (December 12) ALJ opinion now proposes to find that Pacific Bell has satisfied the 709.2 inquiry. This is not a final determination of the CPUC and is not yet in effect.