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February 29, 2000

FILED[2]
MAR 0 1 2000
Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Brief.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Paul G. Lane

Enclosure

cc: Attorneys of Record

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED[2]
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Missouri Public Service Commission

In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company.	))))))	Case No. TO-2000-322

SOUTHWESTERN BELL TELEPHONE COMPANY'S BRIEF

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March 1, 2000

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SOUTHWESTERN BELL TELEPHONE COMPANY'S BRIEF

COMES NOW Southwestern Bell Telephone Company ("SWBT") and, for its Brief in this arbitration proceeding with DIECA Communications, d/b/a Covad Communications Company ("Covad"), states as follows:

I. SUMMARY OF SWBT'S POSITION

This is an arbitration under the federal Telecommunications Act of 1996 ("FTA"). Five issues are presented, four of which involve pricing matters that have been previously decided by this Commission in one or more arbitrations (AT&T/MCI Arbitration, TO-97-40, et al.; BroadSpan Arbitration, TO-99-370; and Sprint Arbitration, TO-99-461). SWBT has proposed the rates previously approved by the Commission in those arbitrations and believes that the Commission should continue to follow prior decisions as no new substantive issues have been presented which would justify a different result. If the Commission is inclined to consider further downward adjustments to the prices it previously established, however, fairness and public policy considerations would mandate that the Commission reconsider each of the adjustments it made in establishing the prices in the AT&T, BroadSpan and Sprint arbitrations. It would not be appropriate to take the prior decisions as a ceiling on the prices to be charged, as SWBT would have no incentive to accept prior decisions of the Commission and competitive local exchange companies ("CLECs") would have an incentive to always seek additional reductions if the prior arbitrations prices served merely as a ceiling.

Covad's contention that Project Pronto substantially changes the basis of prior Commission decisions is simply erroneous for several reasons. First, the Pronto network will only begin to be deployed when this contract is in effect. Pronto will be built over the next three years (T. 390, Lube), while the Covad/SWBT contract will be in effect only until April 12, 2001. Second, as Covad admits, the interconnection agreement between Covad and SWBT is not based on the Project Pronto network, and additional negotiations would be required to take Project Pronto into account. (T. 138-139, Murray). Third, the costs of the network which Covad will use under this contract do not change as a result. (T. 275, Smallwood; T. 396-398, Lube; Ex. 22, Lube, p. 19-20,). Fourth, while Project Pronto may relieve the need for conditioning (to the extent Covad and SWBT negotiate an agreement under which Covad acquires sub-loops under Project Pronto), the costs presented by SWBT will in fact be incurred when conditioning is required on copper loops in the current network.

A. Issue 1: Loop Qualification

With regard to loop qualification, SWBT proposes the $15.00 rate previously approved by the Commission in the BroadSpan arbitration. Covad's contention that loop qualification costs should be ignored is unlawful under the FTA and inconsistent with prior Federal Communications Commission ("FCC") decisions. Covad's alternate contention that the cost of loop qualification should be determined as if a drafting clerk would perform the work is similarly flawed. It is SWBT's practice to find a loop that will require either little or no conditioning, and, consistent with Staff's view, it is necessary that an engineer perform this function.

Staff's proposal that the previously established rate of $15.00 should be reduced to eliminate joint and common costs is not appropriate.[1] A review of the Commission's decision in

[1] Staff proposed to eliminate the use of the joint and common cost allocator on non-recurring charges in the Sprint arbitration, but that proposal was not adopted.

the AT&T arbitration establishes that the joint and common cost percentage was based on SWBT's total costs. If the common cost allocator is applied only to recurring charges, SWBT would be denied full recovery of its costs as mandated under the FTA unless the common costs allocator percentage was increased when applied only to recurring costs.

Staff's additional proposal to eliminate the recovery of a loop qualification charge on July 1, 2000, is apparently based on a factual misunderstanding. Staff appears to believe that SWBT will be providing electronic access to a fully mechanized database by that date. While SWBT expects to be providing electronic access to a database by July, the database itself will not be populated with all of the information required under the Covad contract or FCC requirements. In fact, SWBT's assumption in its cost study that a manual look-up of the information will be required only 20% of the time substantially understates the total manual work which will be required in the foreseeable future. If the Commission is inclined to adjust the price, it should also reflect the substantially higher manual cost which will actually be incurred rather than the amount contemplated by the cost study. Staff's proposal that SWBT undertake the substantial manual effort to fully populate the database runs contrary to the FCC's determination in that regard, and also fails to provide any cost recovery for the massive work that would be required. Moreover, the equipment which Staff proposes to be used for this project does not even work on the spare lines which are those which must be inventoried into the database. For all of these reasons, the proposal to eliminate loop qualification charges as of July 1, 2000, is wholly inappropriate.

B. Issue 2: Loop Conditioning

With regard to loop conditioning, SWBT proposes to utilize the rates established in the BroadSpan arbitration, with the overall cap established in the Sprint arbitration. SWBT believes these rates are non-compensatory, but has accepted the Commission's prior determinations

without appeal. Any further adjustments to those rates, however, should not be made unless the Commission revisits the 19.2% discount established in the BroadSpan arbitration. That discount is not consistent with the FTA as any discounts is to be based upon marketing, billing, and other retail costs, which are avoided when a CLEC resells the service. Section 252(d)(3). No witness contends that the conditioning costs incurred by SWBT vary based on whether they are performed for a CLEC or SWBT's retail affiliate, and there are no retail costs that would be avoided to justify a discount. If the Commission is inclined to make further adjustments to conditioning prices, it should review and eliminate the discount established in the BroadSpan and Sprint arbitrations as inconsistent with the FTA.

Covad's assertion that the FCC rules mandate that no additional charges be assessed for conditioning work is disingenuous. While the matter was already very clear based upon the FCC's determination in the August 8, 1996 Order in Docket 96-98 (as this Commission noted in its Arbitration Order in BroadSpan, Case No. TO-99-370, 6/15/99, p. 8), the FCC's repeated determinations over the last six months that conditioning charges may be recovered from CLECs absolutely erased any doubt. Despite Covad's active participation in those FCC dockets, in which Covad raised exactly the same arguments it raises here, and despite the fact that the FCC has repeatedly acknowledged that its rules require CLECs to pay for DSL conditioning, Covad continues to claim recovery of these conditioning costs is not permitted under FCC rules. But the FCC has clearly stated that recovery is required in at least four dockets in the last six months: (1) In re Ameritech Corporation-SBC Communications Merger, CC Docket No. 98-141, Memorandum Opinion and Order, released 10/8/99, ¶375 and Appendix C, ¶21; (2) Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, released 11/5/99 ("UNE Remand Order"), ¶¶192 and 193; (3) Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, released 12/9/99

("Line Sharing Order"), ¶87; and (4) Memorandum Opinion and Order in CC Docket No. 99-295, released 12/22/99 ("Bell Atlantic New York 271 Application"), ¶254. SWBT believes Covad's refusal to acknowledge valid FCC orders should be instructive in the Commission's evaluation of Covad's other contentions in this case.

Covad contends that SWBT should condition all pairs in a binder group and charge Covad only 1/50th of the cost. The proposal is unlawful, as it deprives SWBT of recovery of costs as mandated by the FTA. It is also extraordinarily unfair, as it burdens SWBT with 98% of the cost to perform work at Covad's request, with no reasonable likelihood of recovering these costs. In addition, such a proposal could adversely affect existing customers' service. (T. 155, Donovan).

With regard to Staff's proposal, SWBT believes that the common cost allocator adjustment should not be accepted for the reasons noted above with regard to loop qualification. With regard to the adjustment of the work times for load coil removal, SWBT notes that Mr. Couch agreed that his time estimates were not adequate for work done in manholes. Given that both Covad and SWBT agree that manhole work will predominate, the adjustment to work time proposed by Staff is not appropriate. Covad's work times are similarly flawed, as they are based only on the claims of its purported expert and are purposely understated. Staff's additional contention that recovery of loop conditioning charges should be limited to 4% of the loops between 12,000 and 17,500 feet is based on a factual misunderstanding (conditioning will be required more frequently) and is unlawful because it fails to compensate SWBT for costs it in fact incurs, and forces SWBT to subsidize Covad's business plans.

C. Issue 3: ISDN Loop Charges

With regard to ISDN loop charges, SWBT proposes to utilize the loop charges established by the Commission in the AT&T/MCI arbitration. As the Commission is aware, that

is the only arbitration case which SWBT has appealed, but it nevertheless has proposed to utilize those rates pending the outcome of that appeal. Covad's contention that the 1997 cost study should be adjusted to reflect decreased prices in one input to the study (i.e. electronic equipment), without analyzing the changes in costs to the hundreds of other inputs into the study, is simply inappropriate. Staff also supports utilizing the rates established in the AT&T arbitration.

D. Issue 4: Cross-Connect Charges

With regard to cross-connect charges, SWBT proposes to utilize the recurring and non-recurring charges for unshielded cross-connects determined in the AT&T arbitration and the recurring and non-recurring rates for shielded cross-connects determined in the BroadSpan arbitration. Staff concurs in this proposal.

Covad offers no substantial rationale to support any different rates. The "average" of the California and Texas rates proposed by Covad must be rejected since: (1) Covad has admitted that the California rates do not measure the same functionality and are not comparable; and (2) in any event, the FTA requires that rates be set on Missouri costs, not prices established in other states. Covad's proposal is both unlawful and unsupported by any facts.

E. Issue 5: Technical Publications

With regard to technical publications, SWBT believes that it should be permitted to make changes in technical publications as changes are necessitated by technology changes and regulatory requirements. This provision is routinely included in all interconnection agreements with facilities-based carriers in Missouri, and no carrier has ever claimed that SWBT acted inappropriately in making any technical publication change. If there were such a claim, the dispute resolution process contained in the interconnection agreement between SWBT and Covad could be utilized to resolve the dispute. Covad's proposal to give it a veto power over

"substantive" changes in technical publications is inappropriate, as it would permit Covad to seek concessions from SWBT in other unrelated areas before "agreeing" to a substantive change in a technical publication.

II. ARGUMENT

Basic Definition of DSL Technology

DSL is a technology that allows high-speed data transmission over one or two twisted-pair copper loops. (Ex. 20, Lube, p. 2). DSL-based services provide dedicated, point-to-point access for data, and, therefore, are not carried over the public switched telephone network. Id. The different types of DSL technology are collectively referred to as "xDSL", where the "x" is replaced with a specific letter to designate a particular type of DSL technology. Id. at 3.

A. Issue 1: Loop Qualification

1. This Commission Should Approve SWBT's Proposed Non-Recurring Loop Qualification Rate Of $15.00 Because It Complies With The Requirements of the FTA and the FCC's Orders. Further, It Has Been Previously Approved By This Commission In The BroadSpan Arbitration.

(a) Background: The Loop Qualification Process That Is Being Offered By SWBT To Covad.

SWBT offers a two-step loop qualification process to CLECs, desiring xDSL loops.[2] (Ex. 20, Lube, p. 3). The first step is called pre-qualification. Id. This step is based on theoretical loop length for a particular group of customer addresses (*i.e.* a particular distribution area), and can give a CLEC a useful look at what parts of SWBT's loop network can most likely support xDSL services. Id. Covad can electronically access SWBT's pre-qualification data on-line at no charge. Id. CLECs are not required to use the pre-qualification process; rather CLECs may use

[2] This pre-qualification process complies with the FCC's Memorandum Opinion and Order, CC Docket No. 98-141, 10/8/99, ¶374, approving the merger between SBC Communications Inc. and Ameritech, as is discussed in subsection 1(b) below.

this step to determine likely areas to market their xDSL based-services and/or to obtain a preliminary evaluation of the ability to serve a particular customer.[3] Id. at 4; T. at 94.

The second step of the qualification process is called loop qualification. Id. This step provides a CLEC with the actual make-up and spectrum inventory data for a specific loop. Id. SWBT's engineers do not determine whether a CLEC's xDSL-based services will work; rather, those analyses are for the CLEC to make based upon the information that SWBT is required to provide through the loop qualification process. (Lube, p. 8; Ex. 13, Smallwood, p. 10).

(b) The FCC Requires ILECs To Provide Loop Qualification Information To CLECs And Further Requires That The Price Of This Loop Qualification Information Be Based On Costs and Be Non-Discriminatory

The FCC has addressed loop qualification on numerous occasions. In its decision approving the merger between SBC Communications Inc. ("SBC") and Ameritech, the FCC specifically determined that SWBT is required to provide cost-based and non-discriminatory loop qualification information to CLECs. The FCC stated, in pertinent part:

> . . .no later than 90 days after the merger closing, SBC/Ameritech will provide requesting telecommunications carriers, including its separate advanced services affiliate, with additional loop make-up information in response to address-specific requests. Depending on the request, SBC/Ameritech will provide, by manual means until it is available electronically, information contained on an individual loop record, which may include: the actual loop length; length by gauge; the presence of bridged taps, load coils, and repeaters, and their approximate location and number; the presence of pair-gain devices, digital loop carrier or digital added main lines; and the presence of disturbers in the same or adjacent binder groups. SBC/Ameritech will price the provision of this loop makeup information in compliance with any applicable Commission pricing rules for UNEs. (Emphasis added. Footnotes omitted.)

[3] In SWBT's prequalification process, SWBT classifies loops as "red" (loops longer than 17,500 feet), "yellow" (loops between 12,000 feet and 17,500 feet), or "green" (loops less than 12,000 feet), evidencing the likelihood that a loop will support its xDSL-based services. (Ex. 21, Lube, p. 9). While SWBT provides these initial classifications, it is up to the CLEC to make the actual determination regarding whether a loop will support its xDSL-based services. (Ex. 21, Lube, p. 8; Ex. 13, Smallwood, p. 10).

(Ex. 26, Memorandum Opinion and Order, CC Docket No. 98-141, 10/8/99, ¶374; Ex. 20, Lube, pp. 4-5).

Although Covad argued before the FCC that ILECs should be required to inventory and make loop qualification information available through automated databases, the FCC rejected this position in its UNE Remand Order, Ex. 28. The FCC determined that if an ILEC has not compiled loop qualification information for itself in an electronic database, it is not required to conduct a plant inventory and construct a database on behalf of requesting carriers. Id. at ¶429. The FCC also determined that to the extent that ILECs have loop qualification information in an electronic database it must provide access to a requesting carrier via an electronic interface. Id. The FCC stated:

> We disagree, however, with Covad's unqualified request that the Commission require incumbent LECs to catalogue, inventory, and make available to competitors loop qualification information through automated OSS [Operational Support Systems] even when it has no such information available to itself. If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. We find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-discriminatory basis. In addition, we expect that incumbent LECs will be updating their electronic database for their own xDSL deployment and, to the extent their employees have access to the information in electronic format, that same format should be made available to new entrants via an electronic interface. (Emphasis added. Footnote omitted).

Ex. 28, UNE Remand Order, ¶429.

Thus, the FCC requires SWBT to give electronic access to loop qualification information which exists in SWBT's databases. (Ex. 21, Lube, pp. 4-5). SWBT intends to meet this obligation. However, as indicated by its Orders referenced above, the FCC does not require SWBT to populate its databases, using information that would have to be looked up manually, so

that 100% of the loop qualification information can be accessed electronically (i.e. without any manual intervention). (Ex. 21, Lube, p. 5; Ex. 22, Lube, p. 2).[4]

(c) The Status Of SWBT's Obligation To Provide Mechanized Access To Loop Qualification Information To CLECs

SWBT is in the process of developing mechanized on-line access[5] for CLECs to that portion of its loop information that already exists in SWBT's mechanized database. (Ex. 20, Lube, p. 6). The mechanized access being developed by SWBT will allow all CLECs' service representatives to perform pre-order loop qualification while negotiating service with their customers. (Ex. 20, Lube, p. 6; Lube, p. 7). Mechanized loop qualification based upon designed loop information will be available by July, 2000. (Ex. 20, Lube, p. 6; Ex. 21, Lube, p. 8). By the end of 2000, mechanized access will be provided to actual loop information, where the mechanized data[6] is available in SWBT's databases. Id.

However, even when mechanized access to loop make-up information is available, mechanized access will not be available for all loop qualification information. (Ex. 20, Lube, p. 6; Ex. 22, Lube, p. 2). Actual loop length and the presence of load coils and bridged tap is available in the database only 20% of the time, while the presence of repeaters and location of all interferors is not included at all. (Ex. 21, Lube, p. 3-4). SWBT will be required to provide these types of loop makeup information on a manual basis to all CLECs, including ASI. (Ex. 20, Lube, p. 6; Ex. 21, Lube, p. 7; Ex. 22, Lube, p. 2).

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[4] In approving an interconnection agreement between SWBT and Covad, the Texas Public Utility Commission similarly determined that ILECs do not need to inventory and make available to competitors actual loop make-up information through automated systems when it has no such information available to itself. Public Utility Commission of Texas, Order Approving Interconnection Agreements, Docket Nos. 20226 and 20272, 2/7/2000, p. 2.

[5] Mechanized access (also referred to as electronic access) is the ability to electronically access and obtain information that resides in a mechanized database. (Ex. 22, Lube, p. 3).

[6] Mechanized data is loop make-up information used for loop qualification that has been inventoried in a database. (Ex. 22, Lube, p. 2). SWBT can access this mechanized data today to provide part of the loop qualification information for both CLECs and SWBT's advanced services affiliate, SBC Advanced Solutions, Inc. Id.

SWBT will add information to its mechanized database in the normal course of operation. (Ex. 22, Lube, p. 2). However, SWBT will not achieve the level of mechanization that is assumed in its cost study in the foreseeable future. (Ex. 22, Lube, p. 2; Ex. 13, Smallwood, p. 9). Thus, manual look-up of loop qualification information will take place up to four times more frequently than is assumed in SWBT's cost study.[7] (Ex. 21, Lube, p. 2; Ex. 22, Lube, p. 5). This will result in a higher cost than is reflected in SWBT's cost study. (Ex. 21, Lube, p. 2).

The parties agree that SWBT is not required to conduct a plant inventory to populate its database. (Ex. 22, Lube, p. 2). In its pre-filed testimony, Covad states:

> Covad is not, however, asking the Commission to order SWBT to "mechanize" access to any data that are not already contained in SWBT's existing electronic databases.

(Ex. 2, Murray, p. 3; T. 93, Murray). Further, Attachment DSL to the parties' proposed interconnection agreement states:

> In accordance with the UNE Remand Order, where SWBT has not compiled loop qualification information for itself, SWBT is not required to conduct a plant inventory and construct a database on behalf of requesting carriers.

(Ex. 22, Lube, p. 3; Schedule 1-9, ¶5.4.1). Thus, the issue in this arbitration is neither whether Covad will have mechanized or electronic access to SWBT's loop qualification information nor what information to which Covad will have access. The issue with regard to loop qualification is solely a pricing issue.

[7] SWBT's cost study assumes that loop qualification information will be available on a mechanized basis an estimated 80% of the time. (Ex. 21, Lube, p. 3). However, in reality, some loop qualification is available from a mechanized inventory only 20% of the time or not at all. (Ex. 21, Lube, p. 3).

(d) SWBT Proposed A Nonrecurring Loop Qualification Rate of $15.00. It Complies With The Requirements of the FTA and the FCC's Orders. Further, It Has Been Previously Approved By This Commission In The BroadSpan Arbitration.

Section 252(d)(1) of the FTA provides that the price to be established for the provision of unbundled network elements ("UNEs") be "based on the cost" of providing the element. 47 C.F.R. 51.505(b)(1) indicates that the TELRIC cost of an element should be measured "based on the use of the most efficient telecommunications technology currently available."

SWBT has proposed a nonrecurring rate of $15.00 for each loop qualification requested. (Ex. 17, Latham, p. 5). This charge is based on the non-recurring TELRIC cost for a partially mechanized loop qualification per subscriber line, plus a uniform allocation of joint and common costs (16.47%), then rounded to $15.00 to be consistent with the Commission-ordered rate in the BroadSpan Arbitration Order. (T. 265, Smallwood; Ex. 17, Latham, p. 5; Ex. 12, Smallwood, pp. 3 and 6 and Schedule 3 attached thereto).

2. Covad's Contention That Loop Qualification Costs Should Be Ignored Is Inconsistent With Prior FCC Decisions And Is Unlawful Under the FTA. Further, Covad's Contention That The Cost Of Loop Qualification Information Should Be Based On A Drafting Clerk Performing the Work Is Flawed.

(a) Covad's Contention That Loop Qualification Costs Should Be Ignored Is Inconsistent With Prior FCC Decisions And Is Unlawful Under the FTA.

Covad contends that loop qualification should be provided at no charge. (Ex. 1, Murray, p. 22). The basis for this contention is that loop qualification information should be available through electronic access, which is "more consistent with a forward looking environment wherein efficient technologies are deployed." (Covad's Petition, ¶27).

Covad's contention that loop qualification costs should be ignored is inconsistent with prior FCC decisions. The FCC specifically rejected Covad's request that incumbent local exchange companies ("ILECs") be required to mechanize their loop qualification information. (Ex. 28, ¶429; Ex. 17, Latham, p. 6). The FCC has been consistent in its determination that

ILECs are only obligated to unbundle their existing network, including Operational Support Systems. Id. Accordingly, the FCC has only required that access to loop qualification information be provided on a non-discriminatory basis. Id.

Covad's allegation that loop qualification costs should be ignored is also unlawful under the FTA. The FTA does not require SWBT to provide UNEs or services to Covad at no charge; rather, Section 252(d)(1) requires the charges to be "based on costs" and "non-discriminatory". 252(d)(1). (Ex. 17, Latham, p. 6). As discussed above, SWBT's proposed rate for loop qualification is based on costs and conforms to the Commissions decision in BroadSpan. (T. 265, Smallwood; Ex. 35; Ex. 12, Smallwood, pp. 3 and 6, and Schedule 3; Ex. 17, Latham, p. 6).[8]

Moreover, SWBT's proposed rate for loop qualification is non-discriminatory. This rate was previously established by the Commission in the BroadSpan arbitration, and it was incorporated into both the BroadSpan and Sprint interconnection agreements, which were also

[8] Covad asserts that the time charged for the "partially mechanized" loop qualification has spectrum management time included in it which should be eliminated and that Covad should not have to pay for the costs incurred to perform spectrum management. (Ex. 7, Chao, pp. 4-5; Ex. 1, Murray, pp. 23-26). SWBT will continue to perform spectrum management functions, as mandated by FCC requirements (Ex. 28 Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket 96-98, 11/5/99, ¶429) and the Covad xDSL Appendix (T. 97, Murray; Ex. 22, Lube, p. 3 and Schedule 1: Attachment DSL, Section 9.2). SWBT will not, however, implement its Selective Feeder Separation process (Ex. 15, Smallwood, p. 10). While it is true that when the cost study was done, SWBT planned to analyze the effect of disturbers in the same and adjacent binder groups and, therefore, included some time for this activity in its "partially mechanized" loop qualification cost study, SWBT subsequently decided to eliminate this function. (Ex. 15, Borders, p. 18). Although this function was eliminated, real-world experience proved that the overall time that it takes an engineer to retrieve the partially mechanized loop qualification information (60 minutes) remains unchanged. (T. 310, Smallwood; Ex. 15, Borders, p. 18). The 60 minutes proved to be a conservative estimate for the engineering time required to perform this function. Id.

approved by this Commission. (Ex. 20, Lube, p. 7). Further, it is the same loop qualification rate that appears in the SWBT/ASI Interconnection Agreement, approved by this Commission on December 1, 1999. (Ex. 17, Latham, p. 6).[9]

(b) Covad's Contention That The Cost Of Loop Qualification Information Should Be Based On A Drafting Clerk Performing the Work Is Flawed.

Covad asserts that the manual loop qualification process should be performed by a drafting clerk, not an engineer. (Ex. 4, Donovan, pp. 41-42; Ex. 6, Donovan, p. 2; Ex. 1, Murray, p. 27). This assertion must be dismissed. A drafting clerk would only be able to determine the loop makeup and list any load coils, bridged tap(s) or repeaters that were found. (Ex. 15, Borders, p. 17). However, the clerk has neither been trained nor is it in the drafting clerk's job description to analyze the loop or cable makeup. (Ex. 15, Borders, p. 17). This analysis is necessary in order to determine if a better pair can be found in the cable for the service requested. (Ex. 15, Borders, p. 17). The engineer uses training and experience to study the available cable binder groups in an attempt to produce a pair that will require no conditioning, including through a service rearrangement.[10] (Ex. 15, Borders, p. 17). A drafting clerk, quite simply, cannot perform this analysis. (Ex. 15, Borders, p. 17).

SWBT's position, that manual loop qualification information should be performed by an engineer, is fully supported by Staff. Staff states:

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[9] Covad alternatively proposes a $0.10 charge as a forward-looking loop qualification charge. (Ex. 2, Murray, p. 5). This rate, is an interim rate set by an arbitrator in Texas and is clearly not compensatory. (Ex. 19, Latham, p. 2). In its Order Approving Interconnection Agreements, approving interconnection agreements between: (a) SWBT and Rhythms, Links, Inc.; and (b) SWBT and Covad, the Texas PUC specifically stated: "the rate set in the Award are interim and [will] be finalized when appropriate cost studies are approved." (Order Approving Interconnection Agreements, Docket Nos. 20226 and 20272, 2/7/2000, p. 8). Therefore, SWBT expects the arbitrator's erroneous decision will be corrected in the permanent pricing proceeding. (Ex. 19, Latham, p. 3). More importantly, this Commission is the only one in SWBT territory that has established a permanent loop qualification charge. Id. Consistent with the Commission's decision in BroadSpan, SWBT has proposed a $15.00 loop qualification charge in this case, even though this charge is actually less than SWBT's cost to provide the service. Id.

[10] Covad's assertions that it does not need an analysis of the location of bridged tap, repeaters, and load coils is unpersuasive. (Ex. 6, Donovan, p. 12). SWBT does not analyze whether the loop is suitable for Covad's services; rather, SWBT attempts to produce a pair that will not require conditioning.

> This work should be done by an outside plant engineer. It is my opinion that loop qualification is significant to the company that requests it. First, loop qualification requires an individual to look at the loop to determine the length, whether the loop is loaded, has a bridged tap or a repeater. Second, it would be a disservice to the company ordering the loop to use an unqualified person to perform a significant task. If a non-technical person makes that evaluation and mistakenly evaluates the loop as qualified when it is not, the requesting company will waste a technician's time and a customer's time turning up a loop that will not work.

(Ex. 25, Couch, p. 3).

3. Staff's Proposal To Reduce The Previously-Established $15.00 Loop Qualification Rate Is Inappropriate Because SWBT Would Be Denied Full Cost Recovery As Mandated Under The FTA. Further, Staff's Proposal To Eliminate The Recovery Of A Loop Qualification Charge On July 1, 2000 Is Inappropriate Because SWBT Will Be Required To Provide Loop Qualification Information On A Manual Basis For The Foreseeable Future.

(a) Staff's Proposal To Reduce The Previously-Established $15.00 Loop Qualification Rate Is Inappropriate.

Staff proposes to reduce the previously-established $15.00 loop qualification rate to eliminate the joint and common cost allocator ("CCA"). (Ex. 23, Clark, p. 3; Ex. 24, Claiborn-Pinto, pp. 3-4). Staff proposes to remove the CCA on the erroneous bases that: (1) it is improper to apply the CCA to non-recurring charges because nonrecurring charges are the result of one-time events and are calculated using loaded labor rates which encompass all the costs incurred in the one-time event; and (2) the joint and common costs are fully recovered in the recurring rate for the elements. (Ex. 23, Clark, pp. 3-4). Staff opines that applying the CCA to the nonrecurring rates would result in over recovery on the part of SWBT. (Ex. 23, Clark, p. 4).

The removal of the CCA is inappropriate. SWBT's Commission-approved allocator is a ratio of Forward Looking Costs to Total Element Expenses, which by definition includes both recurring and nonrecurring costs. (Arbitration Order, Case No. TO-99-461, p. 6; T. 371, Latham; Ex. 19 Latham, p. 4). If the application of the allocator to nonrecurring rates is disallowed, then nonrecurring expenses must be removed from the denominator of the ratio,

which would result in a larger allocator to be applied to recurring charges only. (T. 293-294, Smallwood, Ex. 19, Latham, pp. 4-5; Ex. 14, Smallwood, p. 4). In that case, SWBT's recurring charges would need to be adjusted using the higher allocator. Id. Instead, SWBT has proposed prices that include the allocator in both recurring and nonrecurring rates, consistent with the Commission's Orders in both BroadSpan and Sprint. Id. Furthermore, Staff made this same proposal, which was not accepted, in the Sprint Arbitration and it should not be accepted here. (T. 438).

(b) Staff's Proposal To Eliminate The Recovery Of A Loop Qualification Charge On July 1, 2000 Is Inappropriate.

Staff proposes to eliminate the recovery of a loop qualification charge on July 1, 2000. (Ex. 23, Clark, p. 5-6). Staff's proposal is apparently based on the misunderstanding that SWBT will be providing electronic access to a fully mechanized database by that date. As has been explained above, SWBT is striving to provide electronic access to loop qualification information by July, 2000. (Ex. 22, Lube, pp. 8-9). However, this electronic access will not be to all actual loop information for all loops; instead, it will be electronic access to the amount of actual loop information that exists in SWBT's database. (Ex. 22, Lube, p. 9). Consequently, SWBT will in fact provide loop qualification information on a manual basis to all CLECs. (Ex. 20, Lube, p. 6; Ex. 21, Lube, p. 7; Ex. 22, Lube, p. 2). SWBT's assumption that a manual look-up of loop qualification information will be required only 20% of the time substantially understates the total manual work that will be required over the course of the Covad contract (which runs through April 12, 2001) and in the foreseeable future. (Ex. 22, Lube, p. 2; Ex. 13, Smallwood, p. 9). If the Commission is inclined to adjust the price, it should also reflect the substantially higher manual costs which will be incurred in fact as compared to the amount contemplated by the cost study. (Ex. 21, Lube, p. 2; Ex. 22, Lube, p. 5).

Further, Staff's proposal that SWBT undertake the substantial manual effort to fully populate the database runs contrary to the FCC's determination in CC Docket No. 96-98, 11/5/99, discussed above, and also fails to provide any cost recovery for the massive work that would be required. Staff suggests that there is equipment available which SWBT could use that would allow a completely mechanized loop qualification process. (Ex. 23, Clark, p. 3). But Staff is simply wrong.

The Harris 105A RTU discussed by Staff is central office equipment that can test copper loops connected to the central office switch. (Ex. 22, Lube, p. 5). However, as Staff concedes, the 105A RTU can only access working POTS loops; it cannot be used to test spare loops as required in the loop qualification process. (T. 490, Couch; Ex. 25, Couch, p. 3; Ex. 22, Lube, p. 5). Moreover, it cannot detect other loop makeup information associated with xDSL loop qualification such as the presence, location, and length of bridge tap. (Ex. 22, Lube, p. 6). Furthermore, the 105A RTU cannot be used to qualify loops for xDSL because it does not perform tests in the frequency ranges required for xDSL operation. Id. at 6. Finally, the 105A RTU cannot be upgraded or enhanced to identify additional loop qualification information for xDSL or qualify loops for xDSL. Id. at 6-7. Therefore, even though SWBT has some of this equipment at some locations in Missouri, this equipment is not and cannot be used to qualify loops for xDSL service. Id. at 7.

B. Issue 2: Loop Conditioning

1. This Commission Should Approve SWBT's Proposed Loop Conditioning Rates Because These Rates Are In Compliance With The Requirements Of The FTA and The FCC's Orders. Further, These Rates Were Previously Established By This Commission.

(a) Background: What Is Loop Conditioning, When Is It Necessary And How Is It Performed?

On certain copper loops there may be devices on that loop that will either prevent the operation of an xDSL service, or, at best, impair its performance. (Ex. 20, Lube, p. 9). These devices are called load coils, digital repeaters, and excessive bridged tap (collectively referred to as "interferors" or "disturbers"). Id. Loop conditioning is the process of disconnecting these devices from the copper loop. Id. In order to better understand why conditioning is necessary on some loops so that xDSL service can be delivered, one must understand why load coils, digital repeaters and bridged tap are found on copper loops and why they are inconsistent with xDSL service.

Signals at all frequencies are attenuated (i.e. their strength is reduced) in copper loops because of capacitance[11] that exists between the two copper wires that make up each loop cable pair. Id. at 10. Load coils are devices that are spliced to loop cable pairs to counteract capacitance-caused signal attenuation at voice frequencies. Id. The current design of copper loops for voice-frequency transmission requires the placement of load coils on loops longer than 18,000 feet. Id. SWBT uses a loading scheme called "H88", where the "H" designates 6,000-foot spacing between the coils, and the "88" designates an inductance of 88 millihenries. Id. Although load coils improve the transmission of voice-grade signals at any loop length, they significantly attenuate all frequencies above the voice band. Id. at 11-12. Because xDSL technologies operate at signal frequencies much higher than the voice band, load coils will usually prevent the operation of xDSL service. Id. at 11.

There are two primary reasons for load coils to be present on some copper loops where the customers are less than 18,000 feet from the serving central office. Id. First, earlier design

[11] Capacitance is an electrical property of the two copper wires that make up a cable pair. Because the two wires are in proximity to each other, electrical signals present in one wire "bleed over" into the other wire. The amount of bleed-over is directly related to the frequency of the signals and the length of the cable pair. As the frequency becomes higher or the length becomes longer, the capacitance effectively begins to act like a short-circuit between the two wires, preventing their use for carrying those signals. (Ex. 20, Lube, p. 10, footnote 7).

criteria may have called for loading of those pairs. Id. Second, when that loop plant was initially designed and placed by SWBT, it may have provided voice-grade service to customers who were 18,000 feet or more from the central offices, and therefore, would have been loaded. (Ex. 20, Lube, p. 11; Ex. 25, Couch, p. 6). However, because of the evolution of the loop network, some of those pairs may not be needed for those longer distances, due to changes in customer density or the deployment of fiber optics for longer loops. (Ex. 20, Lube, p. 11). As a result, load coils placed for longer loops do exist on loops now shorter than 18,000 feet. Id.

Digital repeaters are used on non-loaded copper loops to extend the reach of digital services such as DS1 data services or Integrated Services Digital Network ("ISDN") services. Id. at 12. The type of digital repeaters found most often on loops less than 18,000 feet are T1 repeaters. Id. These repeaters are necessary on T1 loops generally longer than 3,000 feet.[12] Id. Multiple repeaters may exist on longer T1 lines, generally spaced at 3,000 foot intervals. Id. at 12-13. If a T1 repeater is no longer in service on a loop, that non-loaded loop could be assigned to a new xDSL-based service once the digital repeater is disconnected from the loop. Id. at 13.

Bridged tap is a branched or bridged connection of a distribution pair such that the same pair appears at two or more locations within the distribution area. Id. Without the use of bridged tap, sufficient cable capacity would have to be placed for every possible present and future customer location to have dedicated loops that extend all the way back to the serving central office. Id. Because of the uncertainty of where customers will be located, such dedicated loops would result in larger cable sizes, and more cost to SWBT and customers. Id. Although the amount of bridged tap in SWBT's existing network is proper for voice-grade services, in those

[12] The distance at which a repeater is required varies, depending on the characteristics of the copper loop, such as the gauge(s). (Ex. 20, Lube, p. 12, footnote 8).

instances where SWBT's existing network will be used for xDSL-based services, the removal of bridged tap from loops may be required. Id.

Most loops do not require conditioning to remove load coils because most of SWBT's copper loops in Missouri are not loaded. (Ex. 20, Lube, p. 9; Ex. 21, Lube, p. 17). SWBT estimates that only 17.28% of its copper loops in its Missouri network are loaded. (Ex. 21, Lube, p. 18). Of just the copper loops less than 18,000 feet in Missouri, SWBT estimates that only about 4.2% are loaded. Id. The presence of bridged tap and repeaters would increase the percentage of times where conditioning is necessary. (Ex. 22, Lube, p. 16).

Loop conditioning is technically not required by SWBT and will be conducted only at Covad's request. (Ex. 17, Latham, p. 9; Ex. 18, Latham, p. 4). Covad may order a given loop with some, all, or none of the conditioning options, and SWBT will provide the loop as ordered. (Ex. 17, Latham, p. 9; Ex. 20, Lube, p. 9).

When load coils, digital repeaters and bridged tap are to be disconnected from a loop, an engineer must first manually locate on cable drawings all of the devices that must be removed. (Ex. 20, Lube, pp. at 13-14). An engineering work order must be prepared and a cable splicing crew must be dispatched to each location where work is to be done. Id. at 14. Multiple work locations will usually be involved because of load coil spacing and the location(s) of bridged tap. Id. At each location, a safe working environment must be established, the cable located, cable splice opened, the device disconnected from the loop, the cable water-proofed and closed, and the work site vacated. Id.

(b) The FCC Has Repeatedly Determined That CLECs Must Compensate ILECs For Loop Conditioning.

As early as August, 1996, the FCC determined that CLECs must compensate ILECs for conditioning. The FCC reaffirmed this determination in 1998. Despite the clarity of the FCC's

Orders, Covad filed numerous pleadings with the FCC in which Covad alleged, as it does here, that assessing per-loop, actual conditioning charges on CLECs is plainly inconsistent with the Commission's TELRIC pricing rules and forward-looking costing methodologies. Covad has repeatedly claimed that under the Commission's TELRIC pricing rules, there should be no charge for conditioning an xDSL loop. These claims have been repeatedly rejected by the FCC. SWBT will discuss six of the FCC's Orders as well as four pleadings Covad has filed with the FCC.

The FCC first determined that ILECs are entitled to recover costs associated with loop conditioning it its Local Competition First Report and Order. The FCC stated in pertinent part:

> Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. . . .As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3). The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning. (Emphasis added).

(First Report and Order, CC Docket No. 96-98, 8/8/96, ¶382; Ex. 13, Smallwood, pp. 2 and 5). In a subsequent Order, the FCC reaffirmed its earlier position that ILECs must perform conditioning for DSL services, and that the requesting CLEC is required to bear the costs. (Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket 98-188, 8/7/98, ¶53, footnote 98).

Despite the clarity of the FCC's Orders that require CLECs to compensate ILECs for conditioning, Covad continued its attempt to persuade the FCC that it did not mean what it said. On July 19, 1999, Covad filed comments in the SBC/Ameritech merger docket. (Ex. 27). In that pleading, Covad alleged that SBC/Ameritech's proposed conditioning charges were

discriminatory and unlawful for several reasons, including a claim that "assessing per-loop, actual conditioning charges on CLECs is plainly inconsistent with the Commission's TELRIC pricing rules." (Ex. 27, pp. 44-45). Covad argued that: "[u]nder the Commission's TELRIC pricing rules, there should be *no* charge for conditioning an xDSL loop." (Ex. 27, pp. 45-46). Covad stated in pertinent part:

> . . .any assessment of a charge for removing a load coil on a particular loop would constitute double-recovery of the forward-looking economic cost of implementing a load-coil-free forward-looking network design. This Commission *cannot*, by definition, permit SBC-Ameritech to levy non-recurring, actual cost per-loop charges for "conditioning" on CLECs that purchase UNEs at TELRIC-based prices.

(Ex. 27, p. 47).

These are the same arguments Covad advances here. The FCC, however, rejected Covad's arguments:

> Numerous parties allege that the rates charged by incumbents for conditioning loops are unreasonably high and preclude competitors from offering advanced services to many potential customers, particularly residential and small business customers where the conditioning costs may exceed prospective net income. This condition is designed to ensure that SBC/Ameritech will not erect a barrier to the competitive deployment of advanced services by charging excessive rates for loop conditioning. Within 180 days of the merger's closing, SBC/Ameritech will file with state commissions cost studies and proposed rates for conditioning loops used in the provision of advanced services, prepared in accordance with the methodology contained in the Commission's pricing rules for UNEs. Pending approval of state-specific rates, SBC/Ameritech will immediately make available to carriers loop conditioning rates (provided that they are greater than zero) contained in any effective interconnection agreement to which an SBC/Ameritech incumbent LEC is a party, subject to true up. (Emphasis added. Footnotes omitted.)

Ex. 26, Memorandum Opinion and Order, CC Docket No. 98-141, 10/8/99, ¶375. The SBC/Ameritech merger order endorsed an arrangement in which conditioning rates established in one state could be "ported", on an interim basis, to another state until the regulatory authority in that state established a cost-based rate. The FCC specifically referenced this Commission's decision in the BroadSpan arbitration as one that could be ported to another state. Id. at

Appendix C, ¶21. Clearly, the FCC would not have cited the conditioning rates established in BroadSpan if it believes these rates violated the TELRIC pricing rules.

The FCC again affirmed its position that CLECs must compensate ILECs for loop conditioning in its UNE Remand Order. The FCC stated in pertinent part:

> 192. In the *Local Competition First Report and Order*, the Commission also states that requesting carriers would compensate the incumbent LECs for the cost of conditioning the loop. Covad and Rhythms argue that, because loops under 18,000 feet generally should not require devices to enhance voice-transmission, the requesting party should not be required to compensate the incumbent for removing such devices on lines of that length or shorter.
>
> 193. We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops and, the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent LEC should be able to charge for conditioning such loops. (Emphasis added. Footnotes omitted).

(Ex. 28, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 99-98, 11/5/99, ¶¶192 and 193[13]; Ex. 13, Smallwood, pp. 5-6).

Despite this, Covad continued to argue that CLECs should not have to compensate ILECs for loop conditioning charges because it permits: "double recovery, is discriminatory, and violates the Commission's unbundled element pricing rules". (Ex. 32, p. 16-17). In particular, Covad stated:

> [i]n short, the forward-looking cost for the loop already includes the process of conditioning loops for analog or digital services. The Commission should definitively declare that charging data CLECs the historic (or actual) costs of conditioning for digital services permits double-recovery, is discriminatory, and violates the Commission's unbundled element pricing rules.

Id.

Covad's disingenuous claim that FCC rules prohibit charging CLECs for DSL conditioning is laid bare by Covad's own admission in its Joint Petition for Reconsideration of

[13] This Order is commonly referred to as the: "UNE Remand Order."

the Rhythms NetConnections Inc. and Covad Communications Company, in CC Docket No. 96-98, that: "the *UNE Remand Order* authorizes ILECs to charge CLECs for conditioning." (Emphasis added). (Ex. 30, p. 2).

Despite Covad's persistence in arguing against compensation for loop conditioning, the FCC once again rejected Covad's arguments. Specifically, the FCC stated:

> In the *Local Competition Third Report and Order* we clarified that incumbent LECs are required to condition loops to enable requesting carriers to offer advanced services, wherever a competitor requests, even if the incumbent LEC itself is not offering xDSL services to the customer on that loop. We explained that a conditioned loop describes a copper loop from which bridge taps, low-pass filters, range extenders, and similar devices that carriers use to improve voice transmission capability have been removed. We found that because competitors cannot access all of the loop's native "features, functions, and capabilities" unless it has been stripped of all accreted devices, loop conditioning falls within the definition of the loop network element. Moreover, we concluded that although loops of 18,000 feet or shorter normally should not require voice-transmission enhancing devices, these devices are sometimes present on such loops and the incumbent LEC should be able to charge for conditioning such loops. (Emphasis added. Footnotes omitted.)

(Ex. 31, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 12/9/99, ¶82; Ex. 13, Smallwood, p. 6).

Still undeterred, Covad again alleged that CLECs should not be required to compensate ILECs for loop conditioning in a pleading filed with the FCC in CC Docket No. 99-295. (Ex. 34). Covad argued that Bell Atlantic was engaged in anticompetitive pricing practices for loop conditioning in violation of TELRIC pricing rules. Specifically, Covad alleged:

> For example, Covad must pay, for a "conditioned" loop (i.e. a loop without loading coils or bridged taps – a "clean" copper loop) over *four thousand dollars*. And, Bell Atlantic's loop prices have caused a chilling effect on DSL competition in New York: no CLEC is offering DSL service to customers that are unfortunate enough to be served by a long loop. This loop pricing is neither forward looking nor cost based, as required by the FCC's pricing methodology rules. It is not forward looking because the most efficient telecommunications network is designed to handle telecommunications services without electronic impedances (sic), like load coils, on the loop. It is not cost based because Bell Atlantic has already recovered the full cost of all of its loop conditioning from residential voice customers for whom the loop was constructed. (Emphasis added).

(Ex. 34, p. 12).

Once again the FCC rejected all of Covad's arguments. The FCC again reaffirmed its position that CLECs are required to compensate ILECs for loop conditioning. The FCC stated in pertinent part:

> In the *Local Competition First Report and Order*, the Commission found that, in some instances, incumbent LECs would be required to "take affirmative steps to condition existing loop facilities" to enable competitors to provide services not currently provided over the facilities, such as xDSL. The Commission stated that "such loop conditioning may involve removing load coils or bridge taps that interfere with the transmission of digital signals," and that the carrier requesting the loop conditioning would be required to "bear the cost of compensating the incumbent LECs for such conditioning.". . .(Emphasis added. Footnotes omitted.)

Ex. 33, Memorandum Opinion and Order, CC Docket No. 99-295, 12/22/99, ¶254. The FCC summarized its position in the following statement:

> . . .The Commission has clearly stated the incumbent LECs, if required to condition loops, may recover their costs of such conditioning. . . .(Emphasis added. Footnote omitted.)

Id. at ¶259. Thus, it is undeniably clear that the FCC requires CLECs to compensate ILECs for loop conditioning.

(c) SWBT's Proposed Nonrecurring Rates for Loop Conditioning Are Consistent With Prior Commission Decisions.

In the BroadSpan arbitration, SWBT presented its Unbundled Network Digital Subscriber Line Loop Conditioning (loop lengths up to and over 17,500 feet) cost study, which SWBT also presents here. (Case No. TO-99-370; Ex. 12, Smallwood, pp. 6 and 7 and Schedule 4 attached thereto). SWBT applied the CCA of 16.47% previously set in the AT&T arbitration, resulting in the rates proposed in the BroadSpan arbitration. (Case No. TO-99-370). In BroadSpan, this Commission noted that:

> the FCC's interpretation of federal law requires SWBT to perform conditioning work requested by BroadSpan. However, it also requires that BroadSpan

compensate SWBT for the cost of conditioning. The fact that BroadSpan must compensate SWBT for the cost of conditioning the loops it requests is not disputed.

(Arbitration Order, Case No. TO-99-370, June 15, 1999, p. 8; Ex. 17, Latham, p. 10; Smallwood, p. 5; Ex. 20, Lube, p. 18). In the BroadSpan arbitration, this Commission determined that it would reduce SWBT's proposed conditioning charge by applying a retail discount rate of 19.2%, which was established in the AT&T/MCI arbitration (Case Nos. TO-97-40 and TO-97-67). (Arbitration Order, Case No. TO-99-370, 6/15/99, p. 12; Ex. 17, Latham, p. 10; Ex. 12, Smallwood, pp. 6-7 and Schedule 4 attached thereto). Subsequently, in the Sprint arbitration, this Commission determined that it "cannot adopt Sprint's suggestion that no charge be made for conditioning." (Arbitration Order, Case No. TO-99-461, 8/3/99, p. 5; Ex. 20, Lube, p. 18). Thereafter, the Commission adopted the rates that were established in the BroadSpan arbitration with the caveat that the charge for conditioning in no case shall exceed SWBT's established retail price for conditioning ($900.00), less the 19.2% discount, that is, $727.20. (Arbitration Order, Case No. TO-99-461, August 3, 1999, p. 8; Ex. 17, Latham, p. 11).

Also in the Sprint Arbitration Order, this Commission established the prices that SWBT proposes here for removal of an additional interferors at the same time and location. (Arbitration Order, Case No. TO-99-461, August 3, 1999, pp. 7-8 and 10; Ex. 17, Latham, p. 11). Sprint and SWBT subsequently agreed to rates for the removal of additional interferors in loops over 17,500 feet at the same time and location, but in a different cable. (Ex. 17, Latham, p. 11). These rates, which are reflected below, have been included in the DSL amendment to the Sprint/SWBT interconnection agreement, which has been approved by this Commission. Id.

SWBT proposes to utilize the rates that were established in the BroadSpan arbitration with the overall cap established in the Sprint arbitration. SWBT believes these rates are non-compensatory, but has accepted the Commission's prior determinations. If the Commission

further adjusts the price for conditioning, however, it should reexamine its decision to impose the 19.2% discount established in the BroadSpan arbitration. The discount is not consistent with the FTA as discounts are not to be provided except to the extent that an ILEC avoids specific retail costs when a CLEC resells an ILEC's service. Here, Covad is not reselling a SWBT retail service, it is ordering conditioning to provide its own retail DSL service. Moreover, Section 252(d)(3) provides, in relevant part, that wholesale rates shall be established:

> 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.

No witness contends that the conditioning costs incurred by SWBT vary based on whether they are performed for a CLEC or ASI and there are no marketing, billing, collection, or other retail costs that would be avoided to justify a discount. Although SWBT believes it is inappropriate to apply an avoided cost discount (because the costs are actually incurred and not avoided), SWBT has offered these same rates to Covad, but Covad has rejected them. (Ex. 17, Latham, p. 10). If the Commission is inclined to make further adjustments to conditioning prices, it should review and eliminate the discount established in the BroadSpan arbitration and the overall cap established in the Sprint arbitration as inconsistent with the FTA.

Thus, based on this Commission's prior arbitration orders, the prices that SWBT proposes for loop conditioning are as follows:

		Additional at Same Location	
Loops up to 17,500 feet	**Initial**	**Same Cable**	**Different Cable**
Removal of Load Coils	$727.20[14]	$18.18	$417.84
Removal of Bridged Tap	$484.19	$24.24	$197.71
Removal of Repeaters	$289.51	$13.74	$141.23

[14] No conditioning charges for loops less than 17,500 feet shall exceed $727.20, pursuant to the Commission decision in the Sprint arbitration (TO-99-461).

Loops Over 17,500 feet[15]	Initial	Additional at Same Location	
		Same Cable	Different Cable
Removal of One Load Coil	$329.12	$7.30	$139.28
Removal of One Bridged Tap	$299.64	$15.47	$98.85
Removal of One Repeater	$358.31	$17.15	$141.23

(Ex. 17, Latham, p. 12).[16]

2. Covad's Allegation That Loop Conditioning Costs Should Be Ignored Is Inconsistent With Prior FCC Decisions And Is Unlawful Under the FTA. Further, Covad's Allegation That SWBT's Loop Conditioning Costs, Which This Commission Has Previously Approved, Should Be Reduced Is Similarly Flawed Because SWBT Would Be Denied Full Recovery As Mandated By The FTA.

(a) Covad's Allegation That Loop Conditioning Costs Should Be Ignored Is Inconsistent With Prior FCC Decisions And Is Unlawful Under the FTA.

Despite the FCC's clear determination that ILECs can charge CLECs for conditioning, Covad continues to argue otherwise by raising the same arguments it made to the FCC. (Section B(1)(c) supra). Specifically, Covad claims that a "forward looking" network does not require conditioning and, therefore, SWBT's proposed conditioning charges double recover SWBT's costs for making a loop DSL-capable. (Ex. 1, Murray, pp. 12-15 and 29-32). As detailed in Section B(1)(c), the FCC has repeatedly rejected this claim.

The problem with Covad's argument is that it is factually incorrect. First, as is required by TELRIC principles, SWBT's 8dB unbundled loop study is based upon the least-cost loop design at any given loop length. (T. 265 and 274, Smallwood; Ex. 18, Latham, p. 5; Ex. 21, Lube, p. 12). In other words, the 8dB unbundled loop study uses an all-copper loop design for all loop lengths where copper is less costly than fiber/DLC (i.e. the shorter loops), and it uses the fiber/DLC loop design for all loop lengths where fiber/DLC is less costly than copper (i.e. the

[15] These rates apply in addition to the appropriate conditioning charges for loops up to 17,500.

[16] If a loop of less than 12,000 feet contains load coils or repeaters, SWBT will detach the load coils or repeaters at no charge to Covad. (Ex. 17, Latham, p. 9). However should Covad request detachment of bridged tap on a loop less than 12,000 feet, Covad will be responsible for bearing the costs of that request. Id.

longer loops). (Ex. 21, Lube, p. 12). Covad's assumption that SWBT has used fiber/DLC (T. 143, Murray) where copper would have been less costly is simply incorrect. Id.

Second, SWBT's costs for the underlying loop do not include costs for any of the optional loop conditioning work available to Covad. (Latham, p. 5; Ex. 13, Smallwood, page 11). Specifically:

> [t]he recurring costs for DSL-capable loops are reflected in the prices that the Commission has set for unbundled loops in Case Nos. TO-97-40/TO-97-67. Contrary to Ms. Murray's assertion, the cost studies that support those unbundled loops include no activities for loop conditioning. More specifically, there are no costs for detaching load coils, bridged taps, or repeaters in any of those studies.

(Ex. 13, Smallwood, p. 11). Therefore, Covad has not paid extra in the recurring charge for the 8dB unbundled loop to avoid conditioning work to remove disturbers on a copper loop. (Ex. 18, Latham, p. 5; Lube, p. 12).

Loop conditioning involves disconnecting certain devices from a loop, not the addition of anything. (Ex. 20, Lube, p. 15). The cost of a "forward-looking" network reflects the most-efficient plant available today. Id. Such theoretical construction of new plant in this "forward-looking" network would certainly not intentionally contain devices that would then have to be removed as part of the forward-looking costs. Id. Thus, it is simply incorrect for Covad to assert that loop conditioning is already included in "forward-looking" network costs. Id. Second, loop conditioning is an activity necessary in SWBT's existing network, not some theoretical "forward-looking" network. Id. In summary, Covad is confusing the Commission's costing and pricing assumptions used to set the price for unbundled loops with the technology that currently

exists in SWBT's network and is used to provide access on an unbundled basis to loop facilities.[17] (Ex. 18, Latham, p. 6).

Covad also asserts SWBT's proposed loop conditioning rates are discriminatory. Both of Covad's arguments are unfounded. First, Covad alleges that SWBT neither charges its retail ISDN customers for removal of load coils when conditioning a line for ISDN service nor for removal of repeaters to restore basic exchange service when ISDN is disconnected. Covad, therefore, concludes that SWBT should not be allowed to charge for conditioning with regard to wholesale DSL services.[18] (Ex. 19, Latham, p. 9). But Covad fails to note that SWBT does not charge CLECs to condition ISDN loops either, so that CLECs are treated in a non-discriminatory fashion. Id. at 9-10.

Second, Covad contends that SWBT's proposed conditioning charges are discriminatory by comparing them with SWBT's "planned actions relative to its own network." (Ex. 2, Murray, p. 9). SWBT's "planned actions" have been publicly announced as Project Pronto. (Ex. 22, Lube, p. 19). This network plan consists of the deployment of additional fiber optic cables and

[17] Covad additionally contends that the effort to obtain loop makeup information is incorrectly double-counted because it is included in SWBT's loop qualification cost study and SWBT's loop conditioning cost study. This contention is meritless. SWBT's effort is not incorrectly double-counted in SWBT's cost studies because the manual look-up of this information is separately required for both loop qualification and loop conditioning. (Ex. 22, Lube, p. 8). Mr. Lube clearly explains why separate look-ups are required for loop conditioning.

> Manual loop records are pulled and reviewed by the engineer for each request for loop qualification. If loop qualification determines that billable loop conditioning is needed, it is Covad's decision whether to request that conditioning to be performed by SWBT. Because Covad may chose not to proceed with the billable conditioning, the manual loop records are re-filed after completion of loop qualification. There is no practicable way for the engineer to hold this information in abeyance just in case Covad decides to request the conditioning. As a consequence, these records must be re-pulled and re-analyzed, if and when the request for loop conditioning is received from Covad, so that SWBT's engineer can then begin to prepare the work order for conditioning.

(Ex. 22, Lube, p. 8).

[18] Staff similarly questions the validity of SWBT's loop conditioning study on the basis that there are no conditioning costs included in the nonrecurring costs for an ISDN loop.

next generation digital loop carrier ("NGDLC") terminals, capable of provisioning xDSL-based services, in SWBT's network. Id.

Project Pronto will have little or no impact on the Covad/SWBT interconnection agreement. Project Pronto is a three year build out, while the interconnection agreement will be in effect only until April 12, 2001. (T. 390, Lube). To the extent the build out does occur during the contract period, even Covad concedes that the current interconnection agreement must be modified based on future negotiations to permit the Pronto network to be taken into account. (T.138-139, Murray).

Project Pronto may relieve the need for conditioning as Project Pronto facilities will be the first-choice facilities in lieu of all-copper loops for xDSL where they have been deployed, for all carriers whose interconnection agreements include the associated unbundled sub-loop elements. (Ex. 22, Lube, p. 19-20). However, at least where these new facilities are not deployed, all-copper loops still will be required and conditioning may still be required. (T. 394, 396-397, Lube; Ex. 22, Lube, p. 19). Where this occurs, the costs presented by SWBT remain appropriate. (T. 275, Smallwood).

(b) Covad's Allegation That SWBT's Loop Conditioning Costs, Which This Commission Has Previously Approved, Should Be Reduced Is Similarly Flawed Because SWBT Would Be Denied Full Recovery As Mandated By The FTA.

i. Covad's Proposed Reduction Of Task Times Is Unlawful Because SWBT Would Be Denied Full Recovery As Mandated By The FTA.

Covad relies on the "expert opinion" of John C. Donovan, who has less than two years of "outside plant" work experience. (Ex. 4, Donovan, pp. 23-27, 33-35, and 37-40; Attachment 1 to Ex. 4 which reveals that Mr. Donovan worked in "hands-on" craft through second level management only from 1972-1974). One major flaw of Covad's analysis is that it ignores the "front end" work required to identify the loops to be used, determine location of the interferors,

and prepare the engineering work order to send to the field. (T.163-164, 187-190, Donovan). This is obviously a significant undertaking and these costs cannot be ignored.

In addition, Covad substantially understated the time required for the removal of interferors. (Ex. 15, Borders, pp. 12-17). For example, Covad allows only 5 minutes to set up work area protection. (Ex. 4, Donovan, pp. 25-26). This amount of time is inadequate for a cable splicing technician to set up anywhere from 7 to 10 pieces of work area protection. (Ex. 15, Borders, p. 12). Further, Covad allows only 15 minutes to ventilate and pump a manhole. (Ex. 4, Donovan, p. 25). This is an inadequate amount of time to ventilate a manhole (which can take in excess of two hours) and/or to pump a manhole which is determined by the amount of water and the capacity of the pump. (Ex. 15, Borders, p. 13). Moreover, Covad's estimates do not reflect the undeniable fact that several manholes are sometimes involved in the process in order to: (1) stop the flow of water from adjacent manholes into the manhole in which the cable splicing technician is working; and (2) maintain air pressure on the cable, which prevents water from entering the cable and causing a service outage. (T. at 166, Donovan; Ex. 15, Borders, p. 13).

Overall, Covad's estimates represent a "best case scenario" and fail to reflect the real world network in which conditioning will occur and in which SWBT has extensive experience in actually performing the type of work at issue. Id. at 15. The use of Covad's proposed conditioning task times is unlawful because it would not allow SWBT to recover its full loop conditioning costs as required by the FTA.

ii. Covad's Proposal To Set Prices On The Basis That SWBT Is Or Should Be Conditioning Multiple Loops At The Same Time Is Not Practical, Does Not Follow Established Precedent, And Is Unlawful Because SWBT Would Be Denied Full Recovery As Mandated By The FTA.

Covad asserts that SWBT should set prices as if SWBT were conditioning multiple loops at the same time. (Ex. 4, Donovan, p. 21-22). Covad's proposal is based on a misrepresentation of SWBT's conditioning practices. Although Covad alleges that SWBT conditions 50 or more lines at one time for its retail ADSL service, this is simply not true. (Ex. 1, Murray, pp. 42-45; Ex. 21, Lube, p. 16). SWBT only conditions lines that are required to provide the service whether ordered by ASI or any other CLEC. (Ex. 21, Lube, p. 16; Ex. 22, Lube, p. 18; Ex. 14, Smallwood, p. 2).[19]

Further, Covad's proposal is not practical. SWBT has no way of knowing that the other pairs in a binder group will also be used for DSL-based services. (Ex. 18, Latham, p. 10; Lube, p. 13). Moreover, as Mr. Lube explains, there are other problems with requiring SWBT to condition entire binder groups at the same time, while only recovering the charge for a single conditioned loop.

> In some cases, it may not be physically possible to condition an entire binder group. For example, assume a pair needed for xDSL has been used in the past for a DS1 service that required a T1 repeater. The repeater housing will still be connected to that pair. If there are any other T1 repeaters working on other DS1 services in that binder group, all 25 pairs in the binder group can not be conditioned (i.e. the repeater housing can not be disconnected) because the other repeaters are still required and working.

(Ex. 21, Lube, p. 14). Load coils and bridged tap do not inhibit the transmission of voice grade service, and are necessary in some circumstances. (Ex. 18, Latham, p. 11; Ex. 21, Lube, p. 14). On the other hand, conditioning all pairs in a binder group could adversely affect service to other

[19] Covad bases this claim on a response that SWBT gave to a Data Request in Texas. At the hearing in this Texas matter, SWBT clearly explained that its preliminary plan regarding bulk conditioning was not implemented due to costs. Covad's reference to SWBT's response to this Data Request is particularly galling given that Covad was a party to this Texas proceeding wherein SWBT explained its Data Response. (T. 418, Lube; Ex. 21, Lube, p. 17).

customers. (T. 155, Donovan; Ex. 18, Latham, p. 11; Ex. 21, Lube, pp. 14-15). Even Covad concedes that its proposal to condition all pairs in a binder group is not appropriate on loops over 18,000 feet. (T. 155, Donovan). Specifically, Mr. Donovan testified as follows:

> Q. Let's talk about your use of the term "small cable" then. With regard to a small cable, 25 or 50 pair, would you agree with me that if you deload all of those loops when Covad or another CLEC requests one loop to be conditioned, that you could be adversely affecting the voice service of customers that are today served by those pairs in that binder group?
>
> A. Once again, does your question presume longer than 18,000-foot loop?
>
> Q. Sure.
>
> A. Then I would agree that I would not take load coils off of a pure copper loop longer than 18,000 feet that's working today for ATB (sic) POTs.

(T. 155, Donovan). Without a request from Covad, SWBT would not remove interferors because there is no reason to do so. (Ex. 18, Latham, p. 11). Moreover, Covad's proposal that SWBT should set prices on the basis that it is or should be conditioning multiple loops at the same time was previously suggested by Sprint and rejected by this Commission. (Ex. 36, Arbitration Order, Case No. TO-99-461, August 3, 1999, p. 6).

Finally, Covad's proposal that SWBT should set prices on the basis that it is or should be conditioning multiple loops at the same time is unlawful because this proposal does not allow SWBT to recover its full loop conditioning costs which SWBT is entitled to recover under the FTA. Specifically, Covad suggests that SWBT condition, on average, 50 pairs as a time. If Covad requests the first pair within a group of 50 pairs, it seeks to pay only $1/50^{th}$ of the total cost of bulk conditioning. (Ex. 18, Latham, p. 11; Ex. 21, Lube, p. 15). The flaw in Covad's logic is that SWBT is left with no reasonable means to recover the remaining 49/50ths of SWBT's costs which are actually incurred for such conditioning. (Ex. 21, Lube, p. 15). In this scenario, when another CLEC requests the second pair in that group of 50 pairs, SWBT would

not be able to charge that CLEC for conditioning because conditioning is no longer required. (Ex. 18, Latham, p. 11; Ex. 21, Lube, p. 15). The first requesting carrier has paid 1/50th of the cost, but unquestionably 100% of the cost has been incurred by SWBT. (Ex. 18, Latham, p. 11). Covad offers no reasonable explanation for how SWBT would recover the remaining 98% of the costs it would incur at Covad's request. Id. Moreover, Covad fails to explain who would reimburse SWBT for the remainder of the conditioning costs if the demand for xDSL services does not result in full xDSL utilization of all 50 pairs. (Ex. 21, Lube, p. 15). SWBT simply seeks to recover its full costs, in accordance with the FTA and FCC Orders from the requesting carrier, the cost causer. (Ex. 18, Latham, p. 11). To do otherwise, would force SWBT (i.e. its customers and shareholders) to subsidize the deployment of Covad's xDSL services. (Ex. 14, Smallwood, pp. 4-5).

iii. Covad's Proposal To Reduce The Cost Of Removing A Repeater To The Cost Of Removing A Shunt Plug Is Not Practical And Is Unlawful Because SWBT Would Be Denied Full Recovery As Mandated By The FTA.

Covad alleges that the cost of removing a repeater should consist of just the placement of a "shunt plug" inside the repeater housing that is currently spliced to the required loop. (Ex. 5, Donovan, p. 9). This solution is not practical, as explained by Mr. Lube.

> First, it must be remembered that, when providing a loop for xDSL, SWBT will not select a loop with any type of digital repeaters except as a last resort.
>
> Second, some repeaters are hardwired to the loop, such as an ISDN repeater. In this instance, a shunt plug ("otherwise known as a "though-connect adapter") is not an option; the repeater must be physically disconnected from the loop.
>
> Third, if the only available pair in a binder group with working T1 lines, SWBT will advise Covad of this as part of the loop qualification information. In this instance it is probable that Covad would not want to use that pair, because of the potential for interference between T1 and xDSL.
>
> Fourth, if Covad were to request the loop with the T1 repeater, SWBT's engineer would review the expected future need for a T1 repeater on that loop. If the engineer determines that the repeater is not needed in the future, a work order will

> be issued to disconnect the loop from the repeater housing. Conversely, if the engineer determines that a T1 repeater may be needed on this loop in the future, a "shunt plug" (otherwise known as a "through-connect adapter") could be placed in the repeater housing for that loop. However, in this instance, other T1 repeaters are most likely working in that binder group, and, as described above, Covad may not want to use that loop anyway.

(Ex. 22, Lube, p. 15; Ex. 14, Smallwood, pp.1-2). Thus, it is probable that the only way to properly provision a loop for xDSL capability would be to disconnect the loop from the repeater housing. Id. Even if a shunt plug could be utilized in some instances, there would still be substantial costs to go to the field and to do the necessary work to prepare the work site and access the manhole. (T. 331, Smallwood; Ex. 22, Lube, pp. 15-16).

3. Staff's Proposal To Reduce SWBT's Loop Conditioning Charges Is Inappropriate Because SWBT Would Be Denied Full Recovery As Mandated By The FTA.

Staff acknowledges that the FCC has stated that incumbent LECs may be compensated for conditioning. (Ex. 23, Clark, p. 7). Staff agrees that SWBT should be allowed to charge for conditioning loops, but disputes the prices that SWBT has proposed. Id. at 3.

(a) Staff's Proposal To Reduce The Previously-Established Loop Conditioning Charges By Eliminating The Common Cost Allocator Adjustment Is Inappropriate Because SWBT Would Be Denied Full Cost Recovery As Mandated Under The FTA.

As with SWBT's charges for loop qualification, Staff proposes to remove the CCA from SWBT's non-recurring loop conditioning rates, based on similar reasoning. (Ex. 23, Clark, p. 8). The removal of the CCA is inappropriate for the reasons noted in Section A(3)(a) above with regard to loop qualification.

(b) Staff's Proposal To Reduce The Previously-Established Loop Conditioning Charges By Decreasing Work Task Times Is Inappropriate Because SWBT Would Be Denied Full Cost Recovery As Mandated Under The FTA.

Staff also recommends that SWBT's prices be decreased based on certain adjustments Staff made related to the time estimates that Staff believes it takes to perform certain activities and by the elimination of bridge tap restoration being included in the cost of bridge tap removal.

(Ex. 23, Clark, p. 8; Ex. 24, Claiborn-Pinto, p. 4 and Schedule 2 attached thereto; Ex. 25, Couch, p. 8). This position should be rejected for two reasons. First, this Commission has previously accepted the work times that are being proposed by SWBT in this proceeding. (Ex. 14, Smallwood, p. 3). Second, the times assumed in SWBT's loop conditioning cost study are both valid and appropriate as is explained below. (Ex. 15, Borders, pp. 2-3; Ex. 14, Smallwood, p. 3).

SWBT's Engineering Group provided the time estimates for loop conditioning necessary to provision xDSL capable loops. (Ex. 15, Borders, p. 2). These estimates are based upon SWBT's outside plant experiences. (Ex. 15, Borders, pp. 3-4).

i. Staff's Estimate Regarding The Amount of Time It Takes To Remove A Load Coil Is Wholly Inadequate.

Staff's estimate that is takes 120 minutes to remove a load coil is wholly inadequate. (Ex. 25, Couch, p. 5; Ex. 15, Borders, p. 2). The estimated time for the cable splicing technician to remove one load coil is 4 hours and includes, per load coil[20]:

- Accessing the cable: two hours [this includes travel time, traffic and work area protection, air pressure, set up safety (pumping the manhole and ventilating the manhole), and accessing the cable].
- Splicing time: one hour [this includes opening the splice case, accessing and identifying the cable pairs, detaching the load coil, re-splicing the pair and closing the splice case].
- Close down time: one hour [includes reloading equipment on the truck, removing safety, traffic, work area protection, air pressure, and travel time].

(Ex. 15, Borders, p. 2)

Mr. Couch agrees that Staff's estimate of the amount of time that it takes to remove a load coil from an xDSL capable loop is understated with regard to manhole work. (T. 420-422 Borders; T. 493, Couch; Ex. 25, Couch, p. 5). Mr. Couch specifically states that in situations involving manholes it will take longer than 120 minutes to remove load coils from an xDSL

[20] As both Staff and Covad concede, there are typically three load coils to be removed on loops under 18,000 feet.

capable loop. Id. Moreover, the majority of the time the first two load coils on an xDSL capable loop will be located in manholes. (T. 420, Borders; Ex. 15, Borders, p. 3).[21] In a metropolitan area, the third load coil can also be located in a manhole. Id. In fact, in urban and suburban wire centers, SWBT estimates that the third load coil will be in a manhole approximately 75 per cent of the time.[22] Id.

Work in an underground environment (manhole) requires more time than work in a buried environment and/or aerial environment largely due to the time that is required to maintain air pressure on the cable, ventilate the manhole and, when necessary, pump water out of it. (T. 421-422, Borders; Ex. 15, Borders, p. 4). Maintaining air pressure requires accessing the cable on both the Central Office and field sides of the work site, often involving entering two additional manholes. (T. 426-428, Borders). The amount of time that is required to ventilate a single manhole (typically 5 minutes to 120 minutes; however, if the technician smells earth gases when removing the manhole cover, the ventilating time is tripled) is based on its size and the capacity of the air blower being used. (Ex. 15, Borders, p. 4).

Additionally, the cable splicing technician must pump any water from the manhole. Id. The time required to perform this task is determined by the amount of water and the capacity of the pump. Id. It may also be necessary to do work site preparation and to pump water from adjacent manholes to clear the water in the manhole where the conditioning is to be performed. Id.

[21] Covad concedes that manhole work will typically be necessary at the first two load coils, that is the basis of Covad's time estimates. (Ex. 4, Donovan p. 24).

[22] Covad does not dispute the fact that most load coils are located in manholes. (Ex. 4, Donovan, p. 24; Ex. 15, Borders, p. 3). Covad states that it assumes that the first two load coils locations will involve underground cable at manhole locations. (Ex. 4, Donovan, p. 24; Ex. 15, Borders, pp. 3-4).

ii. Staff's Estimate Regarding The Amount of Time It Takes To Remove Bridged Tap Is Appropriate.

Staff's estimate that it takes approximately 120 to remove bridged tap. (Ex. 25, Couch, p. 6). SWBT agrees with this estimation. (Ex. 15, Borders, p. 5).

iii. Staff's Estimate Regarding The Amount of Time It Takes To Remove A Repeater Is Wholly Inadequate.

Staff estimates that a cable splicing technician will be able to accomplish this assignment in about 120 minutes is wholly inadequate. (Schedule 2 attached to Ex. 24; Ex. 15, Borders, pp. 5-6). The estimated time for the cable splicing technician to remove a repeater is four hours and includes:

- Accessing the cable: two hours [this includes travel time, traffic and work area protection, air pressure, set up safety (pumping the manhole and ventilating the manhole), and accessing the cable].
- Splicing time: one hour [this includes opening the splice case, accessing and identifying the cable pairs, detaching the load coil, re-splicing the pair and closing the splice case].
- Close down time: one hour [this includes reloading equipment on the truck, removing safety, traffic, work area protection, air pressure and travel time].

(Ex. 15, Borders, p. 6).

iv. Staff's Proposal To Eliminate The Cost To Restore Bridged Tap Is Inappropriate Because SWBT Will Be Required To Restore Bridged Tap.

Staff's proposal to eliminate the cost to restore bridged tap is inappropriate. SWBT's loop conditioning cost study reflects the restoral of bridged tap 34% of the time. (Ex. 21 Lube, p. 23). This is because when bridge tap is disconnected from a loop, that loop can no longer be used to provide service at other locations in the future. Id. at 23-24. If service demands require the reassignment of that loop to another location, the bridged tap would have to be reconnected. Id. at 24. The restoral of bridged tap is the most economical and responsive way for SWBT to meet customers' service requests. Id. Disconnection of the bridged taps will be undertaken only

at the specific request of Covad, and it is appropriate that Covad bear the cost of bridged tap restoral necessary to allow service to be provided to others.

(c) Staff's Proposal To Limit The Number Of Loops SWBT May Charge Covad For Conditioning Is Based On An Inaccurate Set of Facts And Is Inappropriate Because SWBT Would Be Denied Full Cost Recovery As Mandated Under The FTA.

Staff proposes to limit the payment of loop conditioning charges to only 4 out of every 100 loops between 12,000 and 17,500 feet provided by SWBT to Covad. (Ex. 23, Clark, pp. 9-10). This position must be rejected. First, Staff's proposal to limit recovery of conditioning costs is based on an inaccurate set of facts. While SWBT has estimated that approximately 4.2% of the loops in the 12,000 to 17,500 foot range would require load coil removal, SWBT has made no such estimate regarding other conditioning activities such as removal of repeaters or bridged tap. (Ex. 19, Latham, p. 5; Ex. 22, Lube, p. 16). Inclusion of incidences of those interferors would increase the percentage of loops that require conditioning. (Ex. 19, Latham, p. 5).

Second, this proposal is at odds with the FCC's explicit determination that ILECs must be permitted to recover their costs for performing loop conditioning at the requests of CLECs. (Ex. 19, Latham, p. 5). The FCC did not artificially limit the number of instances where the ILECs may recover its costs, and neither should the Commission. Id. Third, this proposal ignores SWBT's commitment to find suitable loops, where no conditioning is required, as often as possible.[23] Id. Fourth, the CLEC, not SWBT, controls when it will request conditioning, of any variety, and the CLEC must bear the cost of that request. Id. Fifth, arbitrarily capping SWBT's right to recover the costs it incurs on Covad's behalf encourages uneconomic behavior by insulating Covad from the real costs of its decisions. Id. Such a cap could motivate Covad to

[23] As Staff concedes, if the conditioning price is less than SWBT's actual costs (as SWBT believes is the case because of the 19.2% discount), SWBT has the incentive to try to avoid performing such conditioning work for CLECs. (T. 471, Clark).

request the removal of bridged tap from every single loop it orders, even though bridged tap of less than 2,500 feet does not generally impede most DSL technologies. Id. Further, Covad could choose to market in areas where conditioning is required, knowing that SWBT would bear all costs above the arbitrary cap. (Ex. 19, Latham, p. 6; Ex. 22, Lube, p. 16). Covad could use the pre-qualification loop process to identify loops between 12,000 and 17,500 feet and focus its marketing efforts there knowing that SWBT will bear the costs for Covad's business plan. (Ex. 19, Latham, p. 6). Nothing in the Act or the FCC pricing rules suggests that SWBT should be relegated to recovering the costs it incurs on Covad's behalf only 4% of the time, or that SWBT should be forced to bear the real costs that result from Covad's business plans and decisions.

C. Issue 3: ISDN Loop Charges

1. This Commission Should Approve SWBT's Proposed ISDN Loop Charges Because The Rates SWBT Has Proposed Comply With The Requirements Of The FTA And Have Been Previously Approved By This Commission.

SWBT proposes the ISDN loop charges, both recurring and non-recurring, that the Commission established in the AT&T/MCI arbitration, Case No. TO-97-40. (Ex. 12, Smallwood, pp. 7-8 and Schedule 5 attached thereto). In that arbitration, the Commission determined that SWBT's rates for ISDN loops are, in fact, TELRIC based. (Case No. TO-97-40; Ex. 18, Latham, p. 12; T. at 265). As the Commission is aware, SWBT appealed; however, it has proposed to utilize the rates, referenced below, pending the outcome of the appeal. The rates are as follows:

		Nonrecurring	
ISDN-BRI Loop	**Recurring**	**Initial**	**Additional**
Zone 1	$25.79	$57.77	$30.22
Zone 2	$42.10	$57.77	$30.22
Zone 3	$58.44	$57.77	$30.22
Zone 4	$41.44	$57.77	$30.22

(Ex. 17, Latham, p. 12). Covad, however, has refused to accept these Commission-approved rates. (Ex. 12, Smallwood, p. 9).

2. Covad's Allegation That ISDN Loop Charges Should Be Reduced Is Inappropriate Because It Is Unlawful Under the FTA.

Covad alleges that SWBT's proposed recurring charge for an ISDN loop is unreasonably high as compared to analog loop prices and ISDN loop rates that have been established in other jurisdictions. (Ex. 1, Murray, pp. 51-54). Covad proposes a proxy cost based on Pacific Bell's ISDN versus analog loop cost ratio. Id. at 56. At the outset, SWBT notes that although Covad has decried the discrepancy between the unbundled 8dB loop rate and the ISDN loop rate, it has failed to explain why the Commission should elect to arbitrarily lower the ISDN loop rate as opposed to raising the 8dB loop rate in order to narrow the gap. (Ex. 18, Latham, p. 12).

In any event, Covad's allegation that ISDN loop charges should be reduced is inappropriate because it is unlawful under the FTA. Specifically, the Act requires that charges for UNEs be "based on costs", not on the basis of rates established in other jurisdictions (e.g. California) based on a different set of costs. 252(d)(1). This Commission already determined that SWBT's ISDN loop rates were based on costs in establishing ISDN wholesale loop rates in TO-97-40.[24]

Despite the Commission's findings that SWBT's ISDN loop prices are cost-based, Covad argues otherwise. First, Covad argues that SWBT's ISDN loop prices are not cost-based because electronic prices have decreased since SWBT performed its cost study. (Ex. 1, Murray, p. 54; Ex. 6, Donovan, p. 28). It would be fundamentally unfair and inappropriate to make changes to UNE

[24] Moreover, Covad's comparison of ISDN costs to ISDN retail rates is an apples to oranges comparison. (Ex. 17, Latham, p. 13). Retail rates are often set on the basis of public policy interests rather than the TELRIC cost standard ordered by the FCC. Id. The resale avoided costs discount is the mechanism through which consideration is given to the retail price. Id. If Covad wishes to be a reseller, SWBT will certainly make the appropriate discount available to Covad under a Resale Agreement. Id. However, if Covad wishes to acquire UNEs from SWBT in order to provide its chosen service, then it must accept UNE rates that are based upon the costs of providing the UNEs. Id.

rates based on a single input (electronics prices), without reviewing all of the inputs that were utilized in establishing the rate. (Ex. 13, Smallwood, p. 15; Ex. 18, Latham, p. 12). Should the Commission determine that it is appropriate to readdress ISDN UNE loop costs and rates, then all of the inputs used in setting those rates should be reexamined. Id. This is true because although certain electronics prices may have decreased since SWBT performed its cost study, labor and other cost inputs have increased since the study was performed. (Ex. 13, Smallwood, pp. 15-16).

Second, Covad asserts that SWBT's ISDN loop rates are not cost-based because SWBT's ISDN loop cost study is based on the use of obsolete technology. (Ex. 4, Donovan, p. 43-44). Specifically, Covad argues that SWBT should be deploying next generation digital loop carrier ("NGDLC") technology for all its customers' services need. Id. Covad's position must be rejected. SWBT chooses today, and will continue to choose in the future, the technology that most economically serves the mix of services it provides to customers. (Ex. 21, Lube, p. 24). Plain old telephone service ("POTS") is used by the overwhelmingly majority of SWBT's customers; far fewer of these customers use ISDN. Id. at 24-25. SWBT's choice of digital loop carrier ("DLC") technology not only reflects the economic demand for the overwhelming majority of SWBT's customer demand (POTS use) in its real network but also reflects the technology SWBT reflected in its forward-looking TELRIC cost study. Id. at 25.

Finally, Covad contends that SWBT's ISDN loop prices are discriminatory because SWBT's proposed ISDN loop rates will result in a "price squeeze" in that a Zone 3 retail customer of SWBT would pay less than a proposed CLEC's customer would pay solely using SWBT's proposed ISDN wholesale rate. (Exhibit 1, Murray, p. 55). Specifically, Covad contends that SWBT would charge a Zone 3 retail customer $48.67 ($53.64 – a $4.07 unbundled BRI line port) for ISDN service. Id. However, a CLEC's customer would be required to pay

$58.44 for ISDN service solely based on SWBT's proposed wholesale ISDN rates. Id. Covad's claim of a potential "price squeeze" is based on a misunderstanding of SWBT's tariff. As is fully explained in footnote 25 below, a Zone 3 retail customer would be charged $132.94 for ISDN service, not $49.67 as claimed by Covad.[25] (Ex. 13, Latham, p. 18). Thus, Covad's suggestion that there will be a "price-squeeze" is simply unfounded.

3. Staff's Proposal To Adopt The ISDN Loop Rates That Were Established In TO-97-40 Should Be Accepted.

Staff recommends the rates that were established in Case No. TO-97-40 be adopted in this arbitration proceeding. (Ex. 23, Clark, pp. 14-15). SWBT concurs with this recommendation.

D. Issue 4: Cross-Connect Charges

1. This Commission Should Approve SWBT's Proposed Cross-Connect Charges Because The Rates SWBT Has Proposed Comply With The Requirements Of The FTA And Have Been Previously Approved By This Commission.

A cross-connect involves a technician using a piece of wire to connect one piece of telephone plant to another; inside a central office, this connection is made at a "distributing frame." (Ex. 20, Lube, p. 19). In the context of SWBT's cross-connect charges for xDSL loops,

[25] The rate ($53.64) cited by Covad as evidence of a "price squeeze" represents a measured service package that includes only 600 total minutes of use per month. (Ex. 18, Latham, p. 13). This would allow local data transmission at 128 Kb/s for only five hours (300 minutes per channel) a month, with any additional local usage rated at $.04 per minute per channel. Id. On a flat-rate basis, a retail customer in any zone will need to acquire an interface and control channel ($45.50), in addition to B channels, which carries either voice or data transmission at 64 kb/s, in order to obtain its desired ISDN service. Id. Each B channel results in an additional charge of $17.25 per channel per month. Id. There is also a $7.66/month EUCL and Port charge, plus a $0.48 Number Portability Service Charge on the service. Therefore, a retail customer will need to pay $70.89 ($45.50 + $17.25 + $7.66 +$0.48) to acquire a single voice channel or a 64 Kb/s data connection (in any zone). Id. The tariff rate climbs to $88.14 for full ISDN capability. Id. This arrangement provides for one of the following: (a) two voice channels; (b) one voice and one 64Kb/s data connection (simultaneously); or (c) a single 128Kb/s data connection. Id. In addition, SWBT's tariff also includes additives for Link Extension Equipment ($36.00) and Link Extension Facilities ($8.80) when "the customer's normal serving office is not located within a DigiLine Service Area. (SWBT's Integrated Services Tariff, P.S.C. Mo. No. 41, Section 3, 3rd Revised Sheet 10, Replacing 2nd Revised Sheet 10 at 3.5.6, ¶2; Ex. 18, Latham, p. 13). Thus, in Covad's Zone 3 example (Zone 3 customers' normal serving offices would not typically be located within a DigiLine Service Area), the retail customer would be charged $132.94 ($45.50 + $17.25 + $17.25 + $7.66 + $0.48 +$36.00 + $8.80) under SWBT's tariff.

the cross-connect is the connection between SWBT's unbundled loop and the central office cabling to the CLEC's collocation space or other point of access to that unbundled loop. Id.

SWBT proposes to utilize the recurring and non-recurring charges for unshielded cross-connects in the AT&T arbitration, subject to the pending appeal, and the recurring and non-recurring rates for shielded cross-connects in the BroadSpan arbitration (Case No. TO-99-370). SWBT offered these UNE cross-connect rates to Covad, subject to modification upon final resolution of that appeal. (Ex. 12, Smallwood, pp. 3 and 8 and Schedules 2 and 6 attached thereto). Thus, SWBT's proposed, cost-based rates for cross-connects are as follows:

		Nonrecurring	
Cross-Connect	**Recurring**	**Initial**	**Additional**
2-Wire Analog (w/o test)	$0.31	$19.96	$12.69
2-Wire Digital (w/test)	$1.89	$35.83	$29.44
2-Wire Digital (w/o test)	$0.31	$19.96	$12.69
4-Wire Analog (w/o test)	$0.63	$25.38	$17.73

(Ex. 17, Latham, p. 14). Additionally, SWBT makes available an ADSL Shielded Cross-Connect at a recurring rate of $0.80, and a nonrecurring rate of $19.96 initial connection and $12.69 additional connection. Although these rates were not a part of the AT&T arbitration, these rates have been approved in both the BroadSpan and Sprint Interconnection Agreements. (Ex. 35, Arbitration Order, TO-99-370, 6/15/99, p. 13).

2. Covad's Allegation That SWBT's Proposed Non-recurring Charge for Cross-Connects Should Be Reduced Is Unlawful Under the FTA.

Although Covad accepts SWBT's proposed recurring charges for cross-connects, it alleges that SWBT's proposed nonrecurring charges for cross-connects appear high. (Ex. 1, Murray, p. 59). Covad alleges that a "reasonable" non-recurring cross-connect rate can be derived by averaging the nonrecurring rates from Texas ($17.29) and California ($0.16). Id. at 59-60. Covad alleges that this would result in a reasonable proxy estimate for a forward-looking nonrecurring charge for the cross-connections of $8.73. Id. Covad's proposal is unlawful under

the FTA because it proposes to establish rates based prices in other jurisdictions, not SWBT's costs in Missouri as required by Section 252(d)(1).

Moreover, even if it were appropriate to consider prices from other jurisdictions, Covad's suggested rate ignores the fact that costing, component pricing, and network design differ between California, Texas and Missouri. (Ex. 17, Latham, p. 14). For example, in California, the cross-connect cost, which SWBT costs and prices separately, is included in the loop costs. Id. At the hearing, Covad witness Terry Murray admitted that the California rates do not measure the same functionality, are not comparable, and that Covad's proposal to average California and Texas rates was inappropriate. (T. 136, Murray). Specifically, in response to questions by Commissioner Drainer, Ms. Murray testified:

> Q. So that would be your recommendation as the expert witness for Covad, that we use the 8.73 for all nonrecurring, the initial and any additional?
>
> A. I think, as I've clarified, I would not now average in the Pacific Bell price, because the Pacific Bell price is for slightly different functionality. It doesn't include all the functionality that's included in Missouri. So your prices in the BroadSpan arbitration, I don't have a specific number to point you to that is different from that at this point in time. We did at the time of the direct until there was a clarification about the difference in functionality.
>
> Q. Okay. I'm sorry, Ms. Murray. So what you're saying is you wouldn't be recommending the 8.73 now?
>
> A. I cannot recommend averaging two numbers when I know that one of them isn't comparable.

(T. at 136, Murray).

SWBT's charges for the cross-connects are based upon SWBT's costs and are recovered only through the nonrecurring charge for the cross connects. (Ex. 17, Latham, p. 12). Thus, the Commission should accept SWBT's proposed rates.

3. Staff's Proposal To Adopt The Cross-Connect Rates That Were Established In TO-97-40 Should Be Accepted.

Staff recommends the recurring and nonrecurring rates that were established in Case No. TO-97-40 for non-shielded cross-connects and the recurring and nonrecurring rates that were established in Case No. TO-99-370 for shielded cross-connects. (Ex. 23, Clark, p. 15). Staff points out that Covad has provided no real basis by which the Commission could revise the rates. Id. at 16. SWBT concurs with Staff's assessment.

E. Issue 5: Technical Publications

1. This Commission Should Continue To Permit SWBT To Make Changes To Its Technical Publications As Changes Are Necessitated By Technology and Regulatory Changes.

Technical Publications ("Tech Pubs") are documents prepared within SBC that generally provide technical descriptions and specifications for technologies and equipment used in SWBT's network, as well as services and UNEs which use SWBT's network. (Ex. 20, Lube, p. 21). These Tech Pubs document the technical requirements necessary for SWBT to internally deploy technology and equipment and offer services and network elements in such a way as to ensure proper network functionality and network reliability for all of SWBT's customers, both wholesale and retail. Id.

Tech Pubs exist for a wide variety of subjects. Id. SWBT's interconnection agreements with CLECs typically reference Tech Pubs that cover subjects such as electrical/optical interfaces, signaling, collocation, and access to UNEs. Id.

This Commission should continue to permit SWBT to use its Tech Pubs because SWBT must have the ability to update its Tech Pubs in order to keep current with new technology and equipment used in its network, especially to the extent it is impacted by evolving national standards. (Ex. 20, Lube, p. 22; Ex. 21, Lube, p. 26). Further, SWBT must have the ability to

update its Tech Pubs in order to keep current with any changes in regulations related to the services and UNEs offered by SWBT. (Ex. 20, Lube, p. 22; Ex. 21, Lube, p. 26). Absent these updates, the deployment, use, and maintenance of SWBT's network may not be appropriate, from either a technical or regulatory perspective. (Ex. 20, Lube, p. 22). This is particularly true regarding the requirements for collocation. Id. SWBT's collocation offerings are subject to various statutory and regulatory requirements related to competition, national and local safety codes, and other matters. Id.

2. Covad's Proposal To Prohibit SWBT From Making Substantive Changes To Its Technical Publications Should Be Rejected As Inappropriate And Better Resolved Through The Dispute Resolution Process.

Covad does not object to the concept of Tech Pubs as they: "can be an effective vehicle for communicating information to CLECs like Covad." (Ex. 7, Chao, p. 2). Although Covad neither objects to SWBT making procedural modifications or "non-substantive" changes to its Tech Pubs, Covad does object to SWBT modifying its Tech Pubs when such modifications involve "substantive changes" to the Tech Pubs. (T. at 209, Chao; Ex. 7, Chao, p. 2). Id at 2-3. Specifically, Covad recommends that the Commission rule that SWBT cannot make substantive changes to its Tech Pubs that will bind Covad. Id. at 4. Covad, however, has refused to define substantive changes and, in fact, states that it cannot do so. (Ex. 8, Chao, p. 2). Covad's proposal must be dismissed.

First, a CLEC, quite simply, cannot be given the ability to prevent SWBT from complying with new regulatory requirements or industry standards. (Ex. 20, Lube, p. 23). SWBT has only one network, and cannot have different sets of Tech Pubs applicable to that network. Id. If FCC orders include major changes that affect all CLECs and ILECs, SWBT would have no choice but to implement the changes in its affected Tech Pubs and in its relationships with CLECs. (Ex. 21, Lube, p. 28). Mr. Chao admitted this at the hearing:

Q. Would you agree with me that it would be inappropriate to have one particular CLEC, Covad, have a veto right over changes in technical publications that are necessary to either comply with revised technology or to comply with FCC directives?

A. I'd agree that it would be inappropriate for a CLEC to object to a technical publication that was required by a change in the regulatory landscape. . . .

(T. 206, Chao).

Second, there is no issue related to xDSL Tech Pubs referenced in the DSL appendix to SWBT's proposed interconnection agreement. (Ex. 8, Chao, p. 2; Ex. 20, Lube, p. 23; Ex. 21, Lube, p. 22). Rather, SWBT and Covad have agreed to language in this appendix which provides:

> SWBT shall not impose its own standards for provisioning xDSL services, through Technical Publications or otherwise, until and unless approved by the Commission or the FCC prior to use.

(Ex. 20, Lube, p. 23).

References to SWBT's Tech Pubs are a standard feature in all interconnection agreements SWBT has with facilities-based carriers in Missouri. Id. No CLEC has a complaint regarding specific changes made in the past in SWBT's Tech Pubs. Id. Moreover, if such a dispute should arise in the future it would properly be subject to the dispute resolution process that is contained in the proposed interconnection agreement between SWBT and Covad. In summary, Covad's proposal to give it veto power over "substantive" changes in SWBT's Tech Pubs is inappropriate because it would allow Covad to seek concessions from SWBT in other unrelated areas before "agreeing" to a substantive change in a Tech Pub which may be required as a result of technology or regulatory changes.

3. This Commission Should Reject Staff's Proposal That Would Prevent SWBT From Modifying Its Technical Publications If The Modification Would Alter Existing Agreements With CLECs Because SWBT Must Be Permitted To Make Changes To Its Technical Publications To Comply With Regulatory Directives And Industry Standards.

Staff recommends that SWBT be allowed to modify its Tech Pubs but that modifications should not be allowed to change existing agreements with CLECs. (Ex. 23, Clark, p. 18; Ex. 25, Couch, p. 8). Staff states that if SWBT encounters a change that makes existing agreements obsolete, it can either renegotiate with Covad or, failing that, can bring the disagreement back to the Commission for arbitration. (Ex. 25, Couch, p. 8). This approach is not appropriate.

SWBT simply must be able to make changes to its Tech Pubs to comply with future regulatory directives and national standards, and to reflect the deployment of new technology in its network. (Ex. 22, Lube, pp. 22-23). These changes must apply to all carriers in order for SWBT to be able to manage one network that is used by all of these carriers. Id.

III. Conclusion

For all of these reasons, this Commission should approve SWBT's proposed: (1) non-recurring loop qualification rate; (2) loop conditioning rates; (3) ISDN loop charges; and (4) cross-connect charges. Moreover, this Commission should continue to permit SWBT to make changes to its Technical Publications.

Respectfully submitted,

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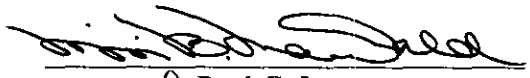
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by Airborne Express on March 1, 2000.



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