

advantages and functionality available to SWBT's retail operation and because they do not provide a meaningful opportunity to compete. Whether measuring how reject notifications are returned, or whether orders flow through SWBT's back end systems without manual handling, or how quickly a firm installation due date is confirmed, or how quickly a CLEC is made aware that a committed due date for one of its customers has been or will be missed, or how quickly a service completion record is updated and returned to show the CLEC that provisioning is complete, or how quickly service is restored once trouble on the line has been detected, the pattern is the same: either the available information affirmatively shows a disparity compared to SWBT's retail operation and/or SWBT has not provided the underlying data that would permit CLECs to make a parity determination. And, in critical areas, SWBT has been unwilling even to acknowledge that nondiscriminatory access to OSS functions is the governing standard.

The FCC's listed examples of how an incumbent meets the obligation to assist competing carriers in understanding how to implement and use available OSS functions include "providing specifications needed for systems design or modification, formatting and processing information needed for quick and efficient flow-through, and internal "business rules," including USOCs, FIDs, and other ordering codes)."⁴⁰ The specifics of how a CLEC must populate a service request in order to have it process electronically at SWBT's end are expected to be communicated within the context of a change management control process. Timely and accurate communication of ordering requirements is essential in order to permit CLECs to develop the capability at their end to generate orders that will be accepted and that will flow through SWBT's back end systems without manual handling.

SWBT's communications to CLECs to date, including its latest series of announcements concerning the most recently implemented special EDI release, raise serious concerns about

³⁹ BellSouth--South Carolina Order. ¶ 97.

SWBT's ability to deliver timely information upon which CLECs can rely in the development of their own systems. SWBT's published expectations of the content and format of data that a CLEC is required to provide have not matched the requirements to which SWBT's systems have been developed.

In addition, as is discussed in greater detail in the Affidavit of Sean Minter, in critical OSS performance measures categories, the data that has been reported raises serious issues regarding compliance with parity standards and established benchmarks. More fundamentally, SWBT continues to resist measuring the CLECs' experience against SWBT's experience in its retail operations for such critical functions as accessing the pre-ordering and ordering functionality necessary to provide consumers with comparable service. SWBT's resistance to providing the data necessary to conduct a true parity analysis (and its unwillingness to acknowledge parity as the standard) should raise serious concerns about any regulatory body's ability to determine in the first instance (and thereafter continue to monitor) whether limitations in available OSS functioning impact CLECs differently or disproportionately compared with SWBT's retail experience.

Birch Telecom: SWBT has failed to offer Operational Support Systems which afford nondiscriminatory access for competitive carriers. As yet the access to pre-ordering, ordering and provisioning, maintenance and repair, and billing information is not nondiscriminatory. OSS continues to be a bottleneck. Although the OSS has improved since Birch began providing service in Kansas in 1997, the Systems still have far to go.

MCI: SWBT's OSS currently is deficient, failing to provide just, reasonable and non-discriminatory access necessary for CLEC's to obtain unbundled network elements and resale in a manner consistent with the requirements of the Telecommunications Act of 1996. SWBT's OSS

⁴⁰ Ameritech Michigan Order, ¶¶ 136-37.

still contains significant deficiencies and limitations, such that it does not provide consistently reliable, parity-level service to CLECs. Among the current deficiencies of SWBT's OSS are:

- (a) SWBT's OSS lacks automated interfaces for many important OSS functions and for many CLEC service orders; See, Champlin prefiled rebuttal testimony at pp. 16-67;
- (b) SWBT has failed to demonstrate operational readiness to handle commercial volumes of orders for critical OSS interfaces (e.g., MCI's testing shows SWBT's EDI is not operationally ready). (See, Champlin Rebuttal, pp. 44-53);
- (c) SWBT's documentation for its EDI system has proven to be incomplete and inaccurate, and has been provided on a piecemeal basis. (See, Champlin Rebuttal, pp. 50-53);
- (d) SWBT's process of order rejection notification is inadequate (even for notices sent without manual intervention) because SWBT's process does not identify all errors before rejecting an order. (See, Champlin Rebuttal, pp. 34-37);
- (e) SWBT's manual intervention in the ordering process delays the return to CLECs of Firm Order Confirmations (FOCs). (See, Champlin Rebuttal, p. 37);
- (f) SWBT's lack of an EDI interface for providing jeopardy notifications (i.e., SWBT notifications to CLECs that particular orders will not be completed on the date promised) prevents CLECs from tracking the status of orders as efficiently as SWBT can accomplish for its own retail operations. (See, Champlin Rebuttal, pp. 37-40);
- (g) SWBT lacks a sufficient order completion notification process. (See, Champlin Rebuttal, pp. 40-42);
- (h) SWBT fails to provide CLECs an on-line process for determining the status of pending service orders. (See, Champlin Rebuttal, p. 42);
- (i) SWBT's EASE system is a non-standardized interface offering even less functionality than SWBT's EDI interface (EASE is unavailable for unbundled elements, unavailable for large business orders, and unavailable for "complex services". (See, Champlin Rebuttal, pp. 42-43);
- (j) SWBT's LEX system requires manual intervention, is not a standardized interface, is not available for "design services" and does not return FOCs electronically. (See, Champlin Rebuttal, pp. 43-44);
- (k) SWBT's manual processes for handling CLEC service orders are inadequate. (See, Champlin Rebuttal, pp. 53-55);
- (l) SWBT's Electronic Bonding ("EB") process for the OSS maintenance and repair functions is not fully tested, and SWBT's "Trouble Administration" feature of "Toolbar" is deficient. (See, Champlin Rebuttal, pp. 57-62);

(m)SWBT's approach of processing orders in two steps – disconnect and connect – results in interruption of CLECs' customers' dial-tone; (See, Champlin Rebuttal, pp. 64-65); and,

(n) SWBT lacks an adequate process of "loss notification". (See, Champlin Rebuttal, pp. 65-67).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: SWBT falls short on providing OSS systems to competitors sufficient to pass 271 muster. SWBT does not provide non-discriminatory access to its pre-ordering systems via LEX or EDI. (Wescott Rebuttal, pp. 25-26). CLECs are required to enter customer information twice while SWBT's systems allow it to enter the information once. The same applies for SWBT's ordering systems. (Id. at 27). SWBT has not demonstrated that its OSS interfaces can provide full system flow through of commercial volumes of CLEC orders at parity with its retail operations. (Id. at 28). SWBT has not tested its usage billing OSS systems for CLECs to determine if they are at parity with its own systems. Sprint has found it necessary to test the systems independently due to many billing errors. (Id.) SWBT's interim proprietary OSS interfaces do not meet the parity requirement. It is necessary to adopt industry standard OSS systems to implement true competition in Missouri. (Id. at 29-35).

19. Has SWBT developed adequate performance measures and penalties?

SWBT: Although the 1996 Act nowhere contains any requirement that a Bell company establish performance measurements to satisfy its obligation of providing nondiscriminatory interconnection and network access, SWBT has taken very seriously the FCC's request for "[c]lear and precise" measurements backed by self-executing contractual enforcement mechanisms. (Michigan Order, 12 FCC Rcd at 20656, ¶ 209; see Second Louisiana Order ¶¶ 363-364). Working with DOJ, the Texas Public Utility Commission, and CLECs such as AT&T and MCI WorldCom, SWBT has developed a comprehensive set of 103 measurements covering preordering, ordering, provisioning,

maintenance and repair, and billing of interconnection, UNEs, and resold services, as well as DA services, operator services, and INP. (Dysart Direct, pp. 16-48 & Sch. 1 (describing measurements)). DOJ has determined that these performance measurements, described in the testimony of William R. Dysart, “would be sufficient, if properly implemented, to satisfy the Department’s need for performance measurements for evaluating a Section 271 application filed in the not-too-distant future.” (Letter from Donald J. Russell, Chief, Telecommunications Task Force, to Liam S. Coonan, Esq., Senior Vice President and Assistant General Counsel, SBC Communications at 1 (Mar. 6, 1998); Dysart Direct Sch. 2).

Wherever possible, these measurements compare SWBT’s level of service on behalf of CLECs to SWBT’s level of service in its own retail operations. “Parity” of service exists where the difference in performance is no greater than one standard deviation in either direction – a criterion negotiated under the supervision of the Texas PUC. (Dysart Direct, pp. 9-16). Where no comparable retail function exists, the level of service provided to CLECs is tested against standard intervals that also were established through negotiations with AT&T and MCI and incorporated into their Commission-approved agreements. (*Id.* at 3; *see*, AT&T Agreement § 45 & Attach 17). If a performance breach occurs, SWBT automatically will incur a penalty that reflects the magnitude of the breach. Conversely, SWBT will accrue credits against future penalties by giving CLECs superior performance. (Dysart Direct, pp. 9-10). In this way, SWBT has committed to “appropriate, self-executing enforcement mechanisms” in accordance with the Commission’s expressed desire. (Michigan Order, 12 FCC Rcd at 20749, ¶ 394; Second Louisiana Order ¶ 364).

SWBT reports its performance monthly, on a geographically disaggregated basis (e.g., separately for the Kansas City and St. Louis market areas) where appropriate, using defined service and facility categories. (Dysart Direct, pp. 5-6). Performance data is accessible via an Internet Web site. (*Id.* at 8). CLECs wishing to receive performance measurement reports do not need to have

specific provisions in their interconnection agreements; they may view the reports on-line on an interim basis prior to amending their agreements. (Id. at 8). SWBT currently is providing performance measurement reports to seventeen CLECs throughout its region, including one CLEC in Missouri. (Dysart Direct, p. 8).

The performance measurements demonstrate that SWBT is providing CLECs with nondiscriminatory access to facilities and services. Of the 149 measurements for which there is sufficient data to provide statistically reliable results, more than 120 demonstrate parity between SWBT's retail operations and CLECs. (Id. at 46). For the relatively small number of measurements that do not demonstrate parity, SWBT has undertaken investigations to determine the cause. (Id.). These investigations showed that for some measurements, the data yield misleading results. For example, the Kansas City and St. Louis percentage of NFW ("no field work") missed due dates appear to be out of parity because the expected number of missed appointments is so low that even a handful of missed dates statistically suggests a lack of parity. (Id. at 46-47). However, a closer look at the data reveals that SWBT met 99.85 percent of these appointments for CLEC customers in Kansas City, and 99.83 percent in St. Louis -- percentages that hardly suggest discrimination. (Id. at 48). For other measurements, SWBT's investigation revealed a significant, nondiscriminatory difference between SWBT's retail operations and CLECs' service, which skews the performance results. (See, Id. at 46-48).

Although extensive, the performance monitoring commitments contained in the AT&T agreement are not necessarily exhaustive. Because the need for performance measurements may evolve along with networks and local competition, SWBT will negotiate additional or different measurements individual CLECs may deem necessary for their own purposes. (Dysart Direct, pp. 4, 7).

Staff: It is Staff's position that the Commission needs to determine a set of performance measures to be used. This could include the performance measures established in the AT&T/SWBT arbitration (see Schedule 1 to Voight surrebuttal), the performance measures put forth by Mark Smith in his rebuttal, and/or the Texas Commission's performance measures, using Missouri-specific data. Regardless of the measures used, SWBT will need to assemble the Missouri-specific data for each performance measure. The Commission also needs to evaluate the results of using any of the proposed performance measures and determine if additional performance measures are necessary to address Missouri-specific concerns. Staff also recommends that there be assurances that the performance measures will be adhered to subsequent to any Section 271 relief granted to SWBT.

OPC: In general, the performance standards suggested by SWBT are not fully defined, incomplete, and are still under development. Missouri should take advantage of the work conducted on performance standards in other SWBT states and review that work to develop Missouri specific performance standards. (Meisenheimer Rebuttal, pp. 60-63; 54; 53; 44-48; 41-42; 39-40; 38; 34; 23-25; 21-25).

AT&T: The Federal Act establishes the ILEC obligation to operate in a nondiscriminatory manner in both sections 251 and 271. *See* 47 U.S.C. §§ 271(c)(2)(C)(i, ii, and xiv); §§ 251(c)(2-4); First Report and Order, Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 at ¶¶ 315, 316, 523, 525 (released August 8, 1996) ("Local Competition Order"). An obligation to perform in a particular manner is virtually meaningless if no provisions exist to monitor performance and assure on-going compliance. "Clear and precise performance measurements are critical to ensuring that competing carriers are receiving the quality of access to which they are entitled." Ameritech Michigan Order ¶ 209. An RBOC must provide empirical evidence that it is providing such access, preferably commercial usage data. *Id.* at ¶ 160.

The RBOC must monitor and report data comparing its actual performance for CLECs and for its own local retail operations as part of its 271 application. See Id. at ¶¶ 204, 212. The FCC emphasized that "it is essential for [the FCC], as both fact-finder and decision-maker, to have the empirical evidence necessary to make a reasoned and informed decision." Id. at ¶ 212.

Performance measurements are taking on an increasingly important role in the assessment of 271 compliance. In rejecting BellSouth's South Carolina application, the FCC relied in part on its finding that BellSouth's "performance measures do not provide sufficient evidence for us to determine whether it is providing nondiscriminatory access to the ordering and provisioning of resale services."⁴¹ Yet more recently, performance data or, to be more precise, the lack of satisfactory performance data, was key to several of the grounds on which the FCC rejected BellSouth's second application for the state of Louisiana. Proof of compliance with a checklist item requires a BOC to demonstrate that it has a "concrete and specific obligation to furnish the item upon request pursuant to a state-approved interconnection agreement" and "that it is currently furnishing, or ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality."⁴² The evidence necessary to demonstrate the latter standard will vary; for some items, it is clear, however, that the FCC will look to "actual commercial usage and relevant performance data."⁴³ Promises of future performance have no probative value.⁴⁴ to compete.⁴⁵ The FCC identified an RBOC's commitment (or lack of same) to performance monitoring (including performance standards and reporting requirements) and to

⁴¹ In the Matter of Application of Bell South Corporation, CC Docket No. 97-208, Memorandum Opinion and Order ¶ 140 (December 24, 1997) (hereafter "BellSouth South Carolina 271 Order").

⁴² BellSouth Second Louisiana Order at ¶ 54.

⁴³ Id. at ¶ 56.

⁴⁴ Id. at n. 143.

⁴⁵ Id. at ¶¶ 194-99.

appropriate, self executing enforcement mechanisms as appropriate factors to consider in determining whether entry by the RBOC into the long-distance market will serve the public interest, convenience and necessity.⁴⁶ In all, the BellSouth Second Louisiana Order makes clear that the FCC will require valid performance data, produced under properly defined measures, reported in sufficiently disaggregated units to identify relevant comparisons with reasonable precision, that demonstrate sustained, satisfactory performance, when compared against analogous performance that the RBOC provides itself in support of its retail operations or, where such analogies may be unavailable, against benchmarks that have been demonstrated to protect a CLEC's meaningful opportunity to compete. And the measures should be backed up by a commitment on the RBOC's part to incur meaningful, automatic consequences in the event of noncompliance.

As is discussed in the testimony of Sean Minter, SWBT has failed to demonstrate that it has established and implemented adequate performance measurements. The deficiency here is not in the number of measures SWBT has agreed to track and report, although there is at least one material omission from SWBT's list – the lack of any measurements related to the methods of access proposed by SWBT for CLECs who wish to combine UNEs. The deficiencies in SWBT's measurements instead lie in definitional uncertainties that continue to surround these measures, inadequate disaggregation to create “apples-to-apples” comparisons, SWBT's unwillingness to identify reasonable analogs for use in judging parity of performance in critical areas, and the absence of sound benchmarks against which to measure SWBT performance where no SWBT retail analogy is available to provide a parity comparison. More fundamentally, SWBT's processes for collecting, analyzing, and reporting this performance data have not been validated. Rigorous validation of SWBT's performance measurement, and careful evaluation of validated data, employing appropriate statistical comparison methods, are essential to determining whether SWBT

⁴⁶ Id. at ¶¶ 363-34.

is meeting its nondiscrimination obligations. Neither has been accomplished to date, in Texas or elsewhere. The Texas Commission has called for independent validation of SWBT's performance as part of the pending 271 proceedings in that state, and has scheduled that activity for the first quarter of 1999, but the scope and details of the audit that will be undertaken there remain uncertain. Finally, SWBT has not agreed to a satisfactory self-executing enforcement mechanism for breach of its performance obligations. The negotiated terms of the AT&T/SWBT Missouri interconnection agreement will not serve as a satisfactory enforcement mechanism for Missouri CLECs and the Missouri consumers they hope to serve. These terms incorporate a credit mechanism that was imposed by arbitration in Texas but has since been rejected by the Texas Commission itself as too broad and too lax for suitable self-enforcement. Establishment of an adequate self-enforcement mechanism remains an open issue in Texas, with SWBT balking at the most recent recommendations of the Texas Commission. Unless and until SWBT puts in place an enforcement mechanism sufficient to deter, and provide prompt correction of, discriminatory performance, without the need for CLECs to resort to regulatory complaints and litigation, SWBT cannot show that its entry into the long-distance market is consistent with the public interest.⁴⁷

Further, with regard to the data that SWBT has reported to date, that data does not demonstrate that SWBT is providing the nondiscriminatory support required to satisfy its section 271 obligations. In the first place, until the processes for collecting, analyzing, and reporting that data have been validated (which will not occur before the first quarter of 1999), the SWBT data simply does not have the reliability that should be required in order to support a decision with such

47 See In the Matter of Application of BellSouth Corporation et al. For Provision of In-Region, InterLATA Services in Louisiana, FCC CC Docket No. 98-121, Memorandum Opinion and Order at ¶¶ 363-64 (October 13, 1998) ("BellSouth Second Louisiana Order") ("as part of our public interest inquiry, we would inquire whether the BOC has agreed to private and self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention").

serious public consequences as a decision to authorize long-distance entry by an RBOC that continues to dominate the local service market. Indeed, SWBT has failed to grant access to much of the relevant data to date. But even taking the data "for what it's worth," it does not support a conclusion that SWBT is meeting its nondiscrimination obligations. The data show that CLECs in several cases are receiving service that is worse than what SWBT provides to itself for purposes of providing retail service, or that fails to meet applicable benchmarks.

SWBT performance data from elsewhere in the five-state region also belies the suggestion that SWBT is providing parity service to CLECs. The Texas Commission has called for independent review of SWBT's reported data and a demonstration of three months satisfactory performance on the great majority of SWBT's measures by means of validated performance data. That process is scheduled for the first quarter of 1999. A similar review would be required for validated Missouri-specific data before a positive conclusion could be reached about SWBT's performance in this state.

Birch Telecom: Birch Telecom takes no position on this issue at this time.

e.spire: e.spire believes that performance standards are critical to an evaluation of whether SWBT has provided service to CLECs equivalent to the service it provides to itself and to whether SWBT's Section 271 petition is in the public interest, convenience, and necessity. Also, performance criteria are critical to an evaluation of SWBT's OSS. A fairly uniform set of measurement methods should be in place to gauge SWBT's compliance with statutory and contract requirements. The measures agreed to by SWBT (SBC) and the Department of Justice are inadequate to provide CLECs or the PSC with sufficient information on whether SWBT has met its Section 271 obligations. Also, those measures do not meet the FCC's requirements for performance standards. (See Kaufman Rebuttal, pp. 21-26).

Show Me Competition: Show Me Competition has no position on this issue at this time.

Sprint: Sprint advocates the adoption of the performance standards in the Local Competition Users Group (LCUG) Service Quality Measurements document, Version 7.0. (Smith Rebuttal, p. 6). Sprint's local telephone company in Missouri, Sprint Missouri, and Sprint's CLEC division both support the adoption of these standards to measure how ILECs provide OSS to CLECs. (Id. at 3-7). Sprint supports reporting on a geographically disaggregated basis – smaller than a LATA but larger than a central office basis. (Id. at 8-9). Sprint further urges that 271 relief not be granted until SWBT can report on a rolling 6 month basis that its OSS systems meet the appropriate service quality measurements. (Id. at 10-11). Credits should not be given to SWBT to offset poor performance. This incents SWBT to not comply with all requirements. (Id. at 12-14).

III. HEARING SCHEDULE

ORDER OF WITNESSES:

Pursuant to the Commission's Order Regarding Hearing Procedure, issued February 17, 1999, the following Schedule of Issues and Witnesses is provided.

Opening Statements

Section 272 – Issue 16

Rehmer (SWBT)
Larkin (SWBT)
Lube (SWBT)
Crombie (AT&T)
Morgan (AT&T)
Meisenheimer (OPC)
Winter (Staff)

Track A – Issue 1

Tebeau (SWBT)
Bailey (SWBT)
Turner (AT&T)
Meisenheimer (OPC)

Poles, Ducts & Conduits – Issue 4

Hearst (SWBT)
Meisenheimer (OPC)

Public Interest – Issue 17

Bailey (SWBT)
Schmalensee/Brandon (SWBT)
Kahn/Tardiff (SWBT)

	(Public Interest, continued)
	Raimondi (SWBT)
	Gordon (SWBT)
	Morgan (AT&T)
	Mayo (AT&T)
	Gillan (AT&T)
	Kohly (AT&T)
	Meisenheimer (OPC)
	Stahly (Sprint)
	Frigon (Sprint)
	Cooper (OPC)
	Ensrud (Show Me)
White Pages – Issue 9	Weckel (SWBT)
	Dysart (SWBT)
	Tidwell (Birch)
	Dalton (AT&T)
	Meisenheimer (OPC)
Resale – Issue 15	Bailey (SWBT)
	Auinbauh (SWBT)
	Moore (SWBT)
	Tidwell (Birch)
	Strow (Intermedia)
	Flappan (AT&T)
	Meisenheimer (OPC)
Reciprocal Compensation – Issue 14	Bailey (SWBT)
	Auinbauh (SWBT)
	Flappan (AT&T)
	Meisenheimer (OPC)
	Strow (Intermedia)
Licensing – Issue 3	Auinbauh (SWBT)
	Witcher (AT&T)
	Meisenheimer (OPC)
OSS – Issue 18	Ham (SWBT)
	Kramer (SWBT)
	Locus (SWBT)
	Dalton (AT&T)
	Tidwell (Birch)
	Wescott (Sprint)
	Champlin (MCI)
	Cooper (OPC)
	Meisenheimer (OPC)
	Thorsen (SWBT) ** only available 3/5/99

Number Assignment, – Issue 10
INP/LNP, – Issue 12
Local Dialing Parity – Issue 13

Adair (SWBT)
Fleming (SWBT)
Deere (SWBT)
Martinez (MCI)
Meisenheimer (OPC)

LOC/LSC – Issue 15

Kramer (SWBT)
Brainard (SWBT)
Antey (SWBT)
Dalton (AT&T)
Meisenheimer (OPC)

911/E911, DA & OS – Issue 8

Deere (SWBT)
Weckel (SWBT)
Schmersahl (AT&T)
Shirar (McLeodUSA)
Dunaye (e.spire)
Martinez (MCI)
Meisenheimer (OPC)

Interconnection/Collocation/
Specific UNEs – Issues 2, 3,
5, 6, & 7

Deere (SWBT)
Auinbauh (SWBT)
Moore (SWBT)
Scott (Birch)
Gaul (Brooks)
Falcone (AT&T)
Flappan (AT&T)
Barnes (AT&T)
Wescott (Sprint)
Strow (Intermedia)
Kaufman (e.spire)
Cooper (OPC)
Meisenheimer (OPC)

Database & Signaling – Issue 11

Deere (SWBT)
Meisenheimer (OPC)

Performance Criteria – Issue 19

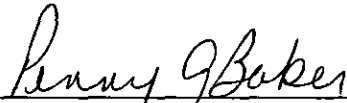
Dysart (SWBT)
Minter (AT&T)
Smith (Sprint)
Voight (Staff)
Cooper (OPC)
Meisenheimer (OPC)

ORDER OF CROSS-EXAMINATION:

The Order of Cross-examination given below has been simplified so that it can be followed for all witnesses. The party whose witness is testifying will simply drop out of the list for that witness.

- AT&T
- MCI
- Sprint
- Birch
- Intermedia
- e.spire, Digital Teleport, MCTA
- McLeodUSA
- Show Me Competition
- Associated Industries
- OPC
- State of Missouri
- Staff
- SWBT

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 18th day of February, 1999.

Penny G. Baker

Penny G. Baker

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Case No. TO-99-227
Revised: February 18, 1999

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