

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE  
1615 M STREET, N.W.  
SUITE 400  
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:  
(202) 326-7999

April 14, 2003

**Ex Parte Presentation**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 03-16*

Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am attaching a letter that William M. Daley of SBC sent on Friday, April 11, 2003, to Chairman Powell and the Commissioners. See Attachment A. I am also attaching a copy of a document that James C. Smith of SBC faxed on Friday to Daniel Gonzalez of Commissioner Martin's office. See Attachment B.

Finally, I wish to inform you that, on April 11, 2003, James C. Smith, Rebecca L. Sparks, Jared Craighead, and Geoffrey M. Klineberg, on behalf of SBC, met with Christopher Libertelli of the Chairman's office, to discuss the data integrity and billing issues.

In accordance with this Commission's Public Notice, DA 03-156 (Jan. 16, 2003), SBC is filing this letter and attachments electronically through the Commission's Electronic Comment Filing System. Thank you for your kind assistance in this matter.

Sincerely,

  
Geoffrey M. Klineberg

**Attachments**

cc: Christopher Libertelli  
Mathew Brill  
Jessica Rosenworcel  
Daniel Gonzalez  
Lisa Zaina  
John P. Stanley  
Gina Spade  
Susan Pié  
Layla Seirafi-Najar  
Dorothy Wideman  
Ann R. Schneidewind  
Qualex International

# **Attachment A**



William M. Daley  
President

SBC Communications, Inc.  
175 East Houston Street  
Suite 1308  
San Antonio, TX 78205

210-351-3700 Phone  
210-351-3711 Fax

April 11, 2003

Hon. Michael K. Powell, Chairman  
Hon. Kathleen Q. Abernathy, Commissioner  
Hon. Michael J. Copps, Commissioner  
Hon. Kevin J. Martin, Commissioner  
Hon. Jonathan S. Adelstein, Commissioner  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RE: SBC's Michigan Section 271 Application, WC Docket No. 03-16

Dear Chairman Powell and Commissioners:

I am writing this letter to urge you to support SBC's application for long-distance authority in Michigan. The record in this proceeding demonstrates that SBC has done everything that Congress and this Commission have asked of it in implementing the local competition provisions of the 1996 Act and opening the local market in Michigan. The results are clearly evident: there is more local competition in Michigan than in almost any state for which section 271 has been granted – in fact, nearly one-third of the access lines in Michigan are now being served by CLECs. Michigan Bell has provided consistently excellent wholesale services and facilities to these local competitors. SBC has also successfully completed comprehensive OSS testing by BearingPoint/Hewlett Packard throughout its Midwest region, at a cost of more than \$250 million over the past two years. The Michigan PSC, one of the strongest and most respected public service commissions in the country, has meticulously reviewed and evaluated every step that SBC has taken over the past seven years (and, in particular, over the past three years) to open the Michigan local market to meaningful, substantial and ongoing competition. The Michigan PSC's support for this Application has been earned through tremendous effort; the degree of enthusiasm with which the Michigan Commissioners have endorsed this Application is unprecedented.

Yet, despite all of this, I understand that the fate of this Application has apparently come down to two issues: (1) that the BearingPoint replication test of the performance measurements is not yet complete, even though these same measurements have been thoroughly audited by Ernst & Young and found to be reliable by the Michigan PSC, and (2) that there is insufficient evidence to conclude that SBC produces accurate wholesale bills for UNE-P services after the records were converted to the Carrier Access Billing System ("CABS") in October 2001. This, in spite of the fact that BearingPoint subsequently tested the same billing systems in SBC's other Midwest states and confirmed that these systems are currently providing bills that are accurate, reliable,

and auditable. To deny this Application on these grounds would require you to apply a higher standard than you have ever applied before and to disregard completely the detailed findings and conclusions of the Michigan PSC on these same issues. Not only would that be unfair to SBC, but it would be extraordinarily unfair to the consumers of Michigan. They have waited years for the benefits of meaningful competition from SBC in the markets for long-distance and bundled services, and the consequences of denying this Application – particularly in light of the remarkable degree of competitive penetration in the market for local services – would be extremely serious.

With respect to the first issue, SBC filed this Application only after it had effectively completed Ernst & Young's third-party audit of its performance measurements – an audit that was entirely consistent with third-party verifications that this Commission has repeatedly accepted in the past. See, e.g., California Order ¶ 77; Arkansas/Missouri Order ¶ 17; Owest Nine State Order ¶ 13. SBC has never suggested that the incomplete BearingPoint test alone would have been sufficient to satisfy this Commission's requirement for a third-party verification of the performance measurements. That is precisely why, at considerable expense, SBC, with the concurrence of the Michigan PSC, engaged the services of Ernst & Young to perform its audit. Both SBC and the Michigan PSC relied on this Commission's prior orders when they determined that a successfully completed Ernst & Young audit would be sufficient to satisfy any concerns about the reliability of SBC's performance data. Indeed, the staff of the Wireline Competition Bureau assured us prior to our filing this Application that an Ernst & Young audit would suffice, so long as nothing in BearingPoint's continued review undermined the reliability of Ernst & Young's conclusions. Of course, BearingPoint is in the midst of its exacting work to replicate and test every performance measurement, but SBC has demonstrated in this record that BearingPoint has not found any material problems (using the materiality standard endorsed by this Commission and employed by Ernst and Young) with any performance measurement that would call into question the trustworthiness of the Ernst & Young audit. If the question is whether BearingPoint's incomplete replication has undermined in any way the legitimacy of Ernst & Young's audit, the answer is "no." And the Michigan PSC has already concluded that "[t]he benefits to Michigan consumers of true competition in local, long distance and bundled services far outweigh any benefit of several more months of waiting for incremental test results." Michigan PSC Reply Comments at 6. If this Commission were now to deny this Application on the grounds that SBC has presented "only" an Ernst & Young audit and not a completed BearingPoint replication test, that would constitute an astonishing and unwarranted departure from this Commission's precedent.

As to the billing issue, SBC has demonstrated that BearingPoint's testing of the identical wholesale billing processes in Illinois, Indiana, and Wisconsin (which was completed in August and September 2002) confirms that SBC provides accurate, timely, and auditable bills. BearingPoint itself has concluded that the results it found in these three Midwest states apply equally to Ohio's systems, and the Michigan PSC has confirmed that the same conclusions apply in Michigan as well. See Michigan PSC's Comments at 5-6 (Mar. 24, 2003) ("BearingPoint's tests and the results of SBC's billing performance measures support a conclusion that SBC's billing systems and, in particular, the newly implemented portions of the CABS UNE-P billing system provide competitors a reasonable opportunity to compete."). This Commission, most notably in its

Georgia/Louisiana Order, has relied on successful testing in neighboring states to confirm the functioning of identical systems in the applicant state. See Georgia/Louisiana Order ¶ 161 n.590 & ¶ 255 n.985. The Commission should follow this precedent here and take account of the results of a third-party test of identical systems in other states, especially considering BearingPoint's own conclusion that such reliance is entirely justified. Again, to depart from this precedent would be holding SBC to a different and higher standard than this Commission has historically applied.

BearingPoint's successful testing of SBC Midwest's billing systems in the mid-2002 timeframe is strong evidence that the actions taken by SBC in January and February of 2003 to correct certain discrepancies in its carrier billing data base relate to the small percentage of UNE-P circuits impacted by the CABS conversion. This, in turn, substantiates what SBC has said all along – that the discrepancies in the CABS database were caused by problems encountered with the one-time conversion in the Fall of 2001 of all UNE-P billing records into CABS. At the Staff's request, SBC filed an ex parte letter, detailing how the problems SBC encountered during this one-time conversion to CABS resulted in the database discrepancies that were recently addressed. While the January 2003 reconciliation synchronized the provisioning and billing databases, the reconciliation does not call into question the reliability or accuracy of the underlying billing system that was tested by BearingPoint. The Commission invited parties to comment on SBC's billing ex parte. Not surprisingly, several CLECs responded, but only with unsubstantiated and vague claims that problems remain. Time and again, this Commission has refused to rely on such anecdotal allegations as a basis for rejecting section 271 applications, particularly in the face of strong evidence – such as that provided by BearingPoint's testing of the CABS billing system and the Michigan PSC's conclusions – that the Bell company's systems are currently functioning as required.

This Commission has consistently stated (and has recently reiterated in the Triennial Review proceeding) its intention to defer to the judgment of the expert state commission that lives with these issues every day and that focuses principally on the interests of consumers of telecommunications services in its state. Like the records of many section 271 applications, this one from Michigan is both enormous and confusing. Particularly with a statutory deadline of 90 days, this Commission's deference to the state commission is both appropriate and necessary. Any fair reading of the record before the Michigan PSC would confirm that the state commission has been relentless in its determination to ensure that SBC satisfied every requirement for section 271 relief. In light of this record and of the Michigan PSC's unwavering support in this proceeding, denying this Application would constitute a remarkable repudiation not only of the Michigan PSC's judgment, but also of its painstaking effort to apply faithfully this Commission's prior decisions.

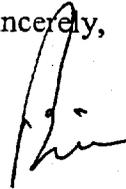
Every section 271 application presents difficult questions and choices, and this Application is certainly no exception. But when it comes to a final vote, the critical issue is whether the Bell company has taken the necessary steps to open its local markets to competition and whether carriers have a meaningful opportunity to compete. I simply ask you to follow your long-standing policy of evaluating section 271 applications by looking at the totality of the facts and circumstances presented. If you do, you will see that Michigan has among the lowest UNE rates in the country; that CLECs have taken a

higher percentage of SBC's access lines than anywhere in its region; that SBC's actual performance in providing wholesale services has been outstanding; that SBC has in place a performance remedy plan that will ensure that it has appropriate financial incentives to guard against backsliding; and that, in any case, the Michigan PSC and the State Attorney General will remain vigilant in ensuring that SBC continues to comply with its obligations in the post-271 environment.

The record before you is obviously not perfect; it could never be. But it is very strong. If you apply the same standard that you have consistently applied in every other section 271 proceeding, you should grant this Application. But you would be changing the rules on us to deny the Application on the grounds that BearingPoint continues to test the performance measurements that Ernst & Young has already found to be accurate, stable, and reliable or that SBC lacks a third-party test confirming the accuracy of its wholesale billing systems that have already been tested and found reliable in Illinois, Indiana, and Wisconsin.

I urge you to grant this Application and extend to the consumers of Michigan the benefits of the competition that section 271 makes possible.

Sincerely,



William M. Daley

# **Attachment B**

"Conservative" Estimate (E911 + VME-P + Resale)

<i>As of 7/02</i>	<u>SBC</u>	<u>CLEC</u>	<u>Total Market</u>	<u>% CLEC</u>
California				
Residential	10,581,000	786,000	11,367,000	6.9%
Business	6,929,000	1,816,000	8,745,000	20.8%
Total	17,510,000	2,602,000	20,112,000	12.9%

*J. Gary Smith  
Affidavit*

<i>As of 11/02</i>	<u>SBC</u>	<u>CLEC</u>	<u>Total Market</u>	<u>% CLEC</u>
Michigan				
Residential	2,465,000	891,000	3,356,000	26.5%
Business	1,885,000	633,000	2,518,000	25.1%
Total	4,350,000	1,524,000	5,874,000	25.9%

*Heritage Affidavit*