

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Michigan Bell Telephone Company, and)	WC Docket No. 03-138
Southwestern Bell Communications Services, Inc.)	
for Provision of In-Region, InterLATA Services)	
in Michigan)	

COMMENTS OF TDS METROCOM, LLC

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SBC'S APPLICATION IS <i>STILL</i> PREMATURE AND MUST BE DENIED.....	3
III.	SBC FAILS TO SATISFY CHECKLIST ITEM 2 BECAUSE IT DOES NOT PROVIDE READABLE, AUDITABLE AND ACCURATE WHOLESale BILLS.....	7
IV.	SBC ALSO FAILS TO SATISFY CHECKLIST ITEM 2 BECAUSE IT DOES NOT PROVIDE ADEQUATE CHANGE MANAGEMENT BETWEEN ITS ORDERING SYSTEMS	16
V.	THE APPLICATION SHOULD BE DENIED BECAUSE IT IS NOT IN THE PUBLIC INTEREST.....	18
VI.	IF THE COMMISSION GRANTS SBC LONG-DISTANCE AUTHORITY, IT MUST PREVENT BACKSLIDING BY CREATING A COLLABORATIVE PROCESS UNDER STATE COMMISSION OVERSIGHT TO DISCUSS AND RESOLVE ISSUES AND PROBLEMS RELATED TO WHOLESale BILLING	19
VII.	CONCLUSION.....	20

SUMMARY

Once again, SBC has failed to cure the defects that plagued Ameritech's filing nearly six years ago and that continued through its January application. Six months later, SBC still has not passed the Metrics Data Integrity Test (PMR4) of the Master Test Plan administered by BearingPoint regarding the integrity of its performance measurements data. Thus, there is no new basis for the Commission to grant the latest SBC application. Further, until SBC passes PMR4 regarding the integrity of the data that SBC uses for its performance measurements, the Commission cannot be sure that any of the performance measurements results that SBC uses to support its application are reliable.

It is clear now in hindsight that the BearingPoint tests for SBC's billing systems were terribly inadequate. The tests did not reveal the extent of SBC's billing problems and did not catch the majority of the problems that CLECs have identified over the last year. The Commission should be compelled to order SBC to undergo additional testing of its billing systems to ensure that they actually work. Right now they don't, and the BearingPoint tests are not going to reveal the systemic problems within the SBC billing systems.

TDS Metrocom has already chronicled the extensive problems it has experienced with SBC's wholesale billing operations. Since TDS Metrocom began operations in 1998, it has *never* received an accurate bill from SBC. The inaccuracy of the bills received from SBC have had a clear impact on TDS Metrocom's operations and financial bottom line. SBC's wholesale bills are simply exceptionally bad, and they are costing TDS Metrocom time and money to reconcile and rectify.

TDS Metrocom also urges the Commission to reject the application because SBC's change management processes are woefully deficient. The test environment for SBC's LSOG

systems differs substantially from the production environment so that problems that do not appear in the test environment come up in the production environment when exactly the same ordering information is entered into the system. As a result, when TDS Metrocom implemented LSOG 5, a number of orders that would have been accepted in the test environment were rejected by SBC. SBC has yet to find a work-around for some of the orders that are being rejected, and the root causes of the problems have yet to be identified.

Granting SBC's Application would also not be in the public interest. In December 2002, TDS Metrocom discovered an exclusive and secret deal between SBC and a CLEC in which SBC agreed to waive early termination penalties set forth in their customers' contracts when customers sought to switch their services to the other company. SBC's secret deal with this CLEC provides further evidence of SBC's disdain for its obligations under the Telecommunications Act.

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COMMENTS OF TDS METROCOM, LLC

TDS Metrocom, LLC (“TDS Metrocom”) submits these comments concerning the Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively referred to as “SBC”), for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan (“Application”).¹ For the reasons stated in these comments, as well as in all of TDS Metrocom’s previous filings,² the Commission should deny the Application once again.

I. INTRODUCTION

This proceeding represents SBC’s third bite at the apple, and SBC still comes up short. In 1997, prior to being acquired by SBC Communications, Inc., Ameritech Michigan sought authority to provide long-distance under Section 271 of the Telecommunications Act of 1996

¹ *Comments Requested on the Application by SBC Communications, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan*, Public Notice, WC Docket No. 03-138, DA 03-2039, released Jun. 19, 2003.

² TDS Metrocom incorporates by reference the following: Comments of TDS Metrocom, LLC, February 6, 2003; Reply Comments of TDS Metrocom, LLC, March 4, 2003; *Ex Parte* Letters of TDS Metrocom, LLC, March 14, 2003 and March 24, 2003; Supplemental Comments of TDS Metrocom, LLC, April 9, 2003. See Public Notice at 2 (regarding reliance on prior submissions in this proceeding).

(the “Act”). That application was soundly rejected by the Commission.³ In January 2003, SBC filed a second application, and even with supplemental information filed late in the proceeding to bolster its case, the application was inadequate and was subsequently withdrawn.⁴ SBC now returns to the Commission with a supplement to its original application, but the supplement shows that SBC has done nothing to fix the problems TDS Metrocom discussed at length in the prior proceeding. Once again, SBC has failed to cure the defects that plagued Ameritech’s filing nearly six years ago and that continued through its January application. In rejecting the first application in 1997, the Commission found particular fault with the readiness of Ameritech’s operations support systems (“OSS”) to enable competitive local exchange carriers (“CLECs”) to use network elements and resale services in competition with Ameritech, emphasizing that “new entrants must have access to the functions performed by the systems, databases and personnel, commonly referred to as operations support systems, that are used by the incumbent LEC to support telecommunications services and unbundled elements.”⁵ It stated that nondiscriminatory access to such systems is “critically important to the development of effective, sustained competition in the local exchange market.”⁶ It found that before any future Section 271 request could be granted:

We would expect Ameritech to demonstrate, at a minimum, that both individual and combinations of unbundled network elements can be ordered, provisioned, and billed in an efficient, accurate and timely manner, and that its operations

³ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC 97-298 (Aug. 19, 1997) (“*Michigan Order*”).

⁴ See Ex Parte Letter dated April 16, 2003 from James C. Smith, SBC Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission.

⁵ *Michigan Order* at ¶ 129.

⁶ *Michigan Order* at ¶¶ 3, 130.

support systems supporting such functions are designed to accommodate both current demand and projected demand of competing carriers.⁷

TDS Metrocom submits that due to the absence of record support for SBC's Application and in light of the established legal precedent holding that "It is axiomatic that an agency choosing to alter its regulatory course 'must supply a reasoned analysis indicating that its prior policies and standards are being deliberately changed, not casually ignored,'"⁸ the Application must again be rejected.

II. SBC'S APPLICATION IS *STILL* PREMATURE AND MUST BE DENIED

As addressed above, this case presents unusual circumstances due to the Commission's previous rejection of SBC's Section 271 request for Michigan. In addition to the fact that the fatal deficiencies associated with the unsuccessful 1997 filing persist today and preclude Commission approval of the Application, the Commission must deny SBC's request for the independent reason that testing of SBC's performance metrics and OSS is far from complete. Testing was incomplete in January when SBC filed its previous application, and testing is still incomplete six months later. SBC admits that the Master Test Plan being conducted by BearingPoint has not been finished, but SBC now maintains that the test's pendency "should not make any difference." Application at 5. Yet it does make a difference, because SBC has not yet passed the performance evaluation it agreed to prior to filing its application.

⁷ Michigan Order at ¶ 161.

⁸ *Action for Children's Television, et. al. v. Federal Communications Commission*, 821 F.2d 741, 745 (DC Cir. 1987), citing *Greater Boston Television Corp. v. Federal Communications Commission*, 444 F.2d 841, 852 (DC Cir. 1970), cert. den'd, 403 U.S. 923, 91 S.Ct. 2233, 29 L.Ed.2d 701 (1971) ("An agency's view of what is in the public interest may change, with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.")

Given the ongoing state of such testing in Michigan, it is readily apparent that SBC has still not met the burden of demonstrating that it provides nondiscriminatory access to all of its OSS functions, a requirement cited by the Commission as one of the primary reasons for denying the 1997 Application.⁹ SBC therefore cannot be deemed to be in compliance with the competitive checklist, and the award of Section 271 authority would be inappropriately premature.

In rejecting Ameritech's 1997 Application, the Commission made several findings that are particularly relevant to the instant case. The Commission ruled that "There is... a fundamental difference between making improvements to the OSS access that, at the time of the application, meets the nondiscriminatory requirement, and taking post-filing remedial measures to try to bring the OSS access into compliance during the pendency of the application."¹⁰ In other Section 271 cases, the Commission has similarly stated that the competitive checklist must be "fully implemented" before Section 271 authority is given, rather than at some indeterminate date after the BOC has received such an award.¹¹

Furthermore, in the *Michigan Order* the Commission stated that "it is not enough that the BOC prove it is in compliance at the time of filing a section 271 application; it is essential that

⁹ See *Michigan Order* at ¶¶ 5, 128, 158, 403. The Commission has repeatedly emphasized that nondiscriminatory access to OSS is a component of checklist compliance in other Section 271 cases. See *In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Authorization to Provide In-Region, InterLATA Services in Florida and Tennessee*, Memorandum Opinion and Order, WC Docket No. 02-307, FCC 02-331 (Dec. 19, 2002) at ¶ 68; *In the Matter of Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions, Inc., Verizon Global Networks, Inc. and Verizon Select Services of Virginia, Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia*, Memorandum Opinion and Order, WC Docket No. 02-214, FCC 02-297 (Oct. 30, 2002) at ¶ 22.

¹⁰ *Michigan Order* at ¶ 153.

¹¹ See *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130 (April 16, 2001) at ¶ 11.

the BOC must also demonstrate that it can be relied upon to remain in compliance.”¹² It added that “we will look to see if there are appropriate mechanisms, such as reporting requirements or performance standards, to measure compliance, or to detect noncompliance, by the BOC with their obligations.”¹³ Because testing of SBC’s OSS and performance standards for the State of Michigan is not yet complete, the Application must be rejected.

TDS Metrocom previously urged the Commission to reject the SBC Application because SBC had not passed the Master Test Plan administered by BearingPoint regarding the integrity of its performance measurements data. Comments at 10-19; Reply Comments at 6-7. Six months later, SBC still has not passed the Metrics Data Integrity Test (PMR4). Application at 7. Thus, there is no new basis for the Commission to grant the latest SBC Application. Further, until SBC passes PMR4 regarding the integrity of the data that SBC uses for its performance measurements, the Commission cannot be sure that any of the performance measurements results that SBC uses to support its Application are reliable.

Further, in hindsight, it appears that the BearingPoint tests for SBC’s billing systems were terribly inadequate. Even though CLECs participated in developing the tests and SBC passed the tests, real world results show that the tests did not reveal the extent of SBC’s billing problems and did not catch the majority of the problems that CLECs have identified over the last year. The tests did not test the processes and systems that provided the inputs to the billing systems, and they did not include CLEC interviews as other OSS tests did. The subsequent Ernst & Young test was conducted without CLEC input and Ernst & Young heard only one side of the story and only investigated what SBC asked them to investigate. If the Commission truly

¹² *Michigan Order* at ¶ 22.

¹³ *Michigan Order* at ¶ 22.

adheres to its previously stated requirement that the competitive checklist must be “fully implemented” before Section 271 authority is given, then the Commission should be compelled to order SBC to undergo additional testing of its billing systems to ensure that they actually work. Right now they don’t, and the BearingPoint tests are not going to reveal the systemic problems within the SBC billing systems.

Concerns about premature Section 271 Applications have previously been expressed by several commissioners. In his recent dissenting statement in the proceeding involving Commission approval of SBC’s Section 271 California filing, Commissioner Kevin J. Martin stated, “I believe approval of this application at this point is premature.”¹⁴ Commissioner Martin explained that SBC had not complied with the entire competitive checklist, and added, “I am not convinced that granting this application at this time is in the public interest.”¹⁵ In dissenting from the majority’s approval of Verizon Pennsylvania’s Section 271 Application, Commissioner Michael J. Copps similarly found both that “the record does not demonstrate that Verizon has satisfied the requirements of Section 271 in Pennsylvania,” and that “I deem approval of the Application at this point to be premature.”¹⁶ The Commission should heed the commissioners’ prior statements and prevent the premature award of Section 271 authority in the instant case. Because SBC clearly has not met its burden of demonstrating compliance with all applicable legal requirements, its Application must be rejected.

¹⁴ *Application by SBC Communications, Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in California*, Docket No. 02-306, Memorandum Opinion and Order, FCC 02-330 (December 19, 2002) (“*California Order*”), Dissenting Statement of Commissioner Kevin J. Martin at 1.

¹⁵ *California Order*, Dissenting Statement of Commissioner Kevin J. Martin at 1.

¹⁶ *Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, (“*Pennsylvania Order*”), Dissenting Opinion of Commissioner Michael J. Copps at 8 (September 19, 2001).

III. SBC FAILS TO SATISFY CHECKLIST ITEM 2 BECAUSE IT DOES NOT PROVIDE READABLE, AUDITABLE AND ACCURATE WHOLESALE BILLS

In the *Pennsylvania Order*, the Commission stated that Verizon “must demonstrate that it can produce a readable, auditable, and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2.”¹⁷ CLECs need readable, auditable, and accurate wholesale bills for a number of reasons:

First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT formats thus represent a crucial component of OSS.¹⁸

TDS Metrocom has already chronicled the extensive problems it has experienced with SBC’s wholesale billing operations. Comments at 24-27; Cox Affid. ¶¶ 44-68; Reply Comments at 3-6; Supplemental Comments at 1-2; Ex Parte Letter dated March 14, 2003 at 1-3. As stated in its Comments in February, since TDS Metrocom began operations in 1998, it has *never* received an accurate bill from SBC. Comments at 25; Cox Affid. ¶ 44. The inaccuracy of the bills received from SBC have had a clear impact on TDS Metrocom’s operations and financial bottom line. TDS Metrocom has a dedicated billing team comprised of five (5) employees who spend an estimated thirty percent (30%) of their time reviewing SBC bills and disputing billing inaccuracies and improper charges, and the time devoted to these efforts is growing. Cox Supp. Affid. at ¶ 10. Mr. Cox previously provided specific examples of SBC billing practices that have

¹⁷ *Pennsylvania Order* at ¶ 22.

¹⁸ *Id.* at ¶ 23 (citations omitted).

cost TDS Metrocom considerable expense and delay, thereby impairing its ability to compete by having to redirect limited resources into resolving billing disputes. Cox Affid. ¶¶ 46-68. TDS Metrocom's affiliate, USLink, Inc., has not experienced the same level of problems with the wholesale bills received from Qwest, the other BOC with which a TDS affiliate is interconnected as a CLEC. Cox. Supp. Affid. at ¶ 30. SBC's wholesale bills are simply exceptionally bad, and they are costing TDS Metrocom time and money to reconcile and rectify.

TDS Metrocom acknowledges that SBC has made progress in solving specific billing related errors as they arise, but SBC has yet to prove that it has done a comprehensive review of their processes and systems to correct hidden errors and ensure future errors are minimized. SBC refuses to admit there is a widespread problem with its billing systems, claiming instead that incidents are isolated and/or not technically due to billing systems but to inputs and processes that feed into billing systems. SBC's excuse proves the problem: as long as errors continue to arise, the problem is systemic and lacks effective controls. TDS Metrocom's experience is akin to the arcade game "Whack-A-Mole," in which as soon as one problem is identified and resolved, another one pops up in a place TDS Metrocom had no ability to anticipate.

SBC's arguments this time around are that the disputed amounts related to wholesale billing problems are not out of line with other BOCs that have received section 271 authority. Brown/Cottrell/Flynn Supp. Affid. ¶ 111. For example, SBC asserts that 12.1% of its total billings in Michigan are in dispute, compared to 25.6% of its billings in Arkansas, for which it has already been granted long-distance authority. *Id.* ¶ 112-113. Despite SBC's obvious pride in having received 271 authority previously with dismal performance results, a billing dispute

rate of 12.1% demonstrates terrible performance and provides no proof that SBC's billing systems actually work to provide wholesale customers with accurate, auditable bills.

As usual, SBC uses exceptions and omissions to paint a picture that is rosier than reality. In particular, SBC completely side-steps the billing disputes related to collocation and miscellaneous billing by omitting them from its calculation of a 12.1% billing dispute rate. *See Brown/Cottrell/Flynn Supp. Affid. n.127.* Some of the largest disputes that TDS Metrocom has had with SBC have come in these areas, including a new dispute between TDS Metrocom and SBC related to SBC's billing for redundant collocation power. SBC is billing TDS Metrocom using a rate structure that is completely different from what is contained in the interconnection agreement between the parties and SBC seems to have taken the novel position that it should be able to charge TDS Metrocom for electrical power that TDS Metrocom *does not use.* *Cox Supp. Affid. ¶ 23.*

Moreover, it is not clear from SBC's Application how the 12.1% billing dispute rate incorporates the substantial sums that SBC has back-billed to CLECs. If a CLEC is billed for services at one rate in a particular month but then receives a back bill for that service six months later, is that captured anywhere in this calculation? TDS Metrocom asserts that if these amounts have not been included in SBC's calculation, they should be and would likely raise the billing dispute rate significantly.

Before the Commission gives any weight to this evidence, it should require SBC to make available its business rules used to produce this calculation. The devil is truly in the details on this measure, as with any complex measure of performance. The Commission should also ask SBC to provide a historical time series of similar calculations to see if dispute percentages are increasing over time. With BearingPoint, Ernst & Young, and individual CLECs all identifying

billing problems, more CLECs have begun to audit wholesale bills and more problems have come to light. It would not at all be surprising to TDS Metrocom to find that wholesale billing disputes, and therefore underlying billing problems, are getting worse over time, not better.

While TDS Metrocom hesitates to attempt a calculation that may suffer from similar problems because of the timing of back bills, TDS Metrocom's own experience with SBC is that since August 2002, TDS Metrocom has opened disputes equal to approximately 20% of the total amount billed by SBC during that period. At a minimum this shows that in reality SBC's wholesale billing systems are not performing as well as SBC claims. Furthermore, of the amount that was resolved during this period, over 87% of the disputed amounts were resolved in favor of TDS Metrocom. Cox. Supp. Affid. ¶ 27. Would a regulatory body ever accept this level of service for the billing of retail customers? Would any other industry tolerate such poor quality of service? Imagine having to wade through every entry on a credit card statement each month with the knowledge that one out of every five charges is potentially wrong. Worse yet, since there is no consistency in the errors, every entry would be suspect. One month a charge for groceries might be off by a few dollars. The next month there might be a double charge for dinner at a restaurant. The month after that it could be an unexplained assessment to true up incorrect charges for gas over the last 12 months. This level of service is inexcusable. Cox Supp. Affid. ¶28.

In addition, while SBC has worked out a number of specific issues with TDS Metrocom, some of SBC's representations in its Application are not entirely correct. First, with respect to TDS Metrocom's claim that SBC back-billed TDS Metrocom \$966,000 for serving as the Host for TDS Metrocom on the Centralized Message Distribution System, SBC asserts that such services are "outside the requirements of sections 251 and 252 of the Act," and therefore "have

nothing to do with OSS billing or section 251 of the Act.” Brown/Cottrell/Flynn Supp. Affid.

¶153. SBC is obviously wrong since it also admits that the service is provided pursuant to its interconnection agreement with TDS Metrocom, which was negotiated and approved pursuant to Sections 251 and 252. *Id.* Moreover, unless SBC asserts (which it doesn’t) that it maintains separate billing systems for services within the requirements of sections 251 and 252, and for services outside those requirements, systemic errors related to one type of service can be expected to occur with the other type of service. SBC’s wholesale billing problems make no distinction between types of wholesale service.

Second, SBC asserts that the dispute with TDS Metrocom regarding SBC’s improper billing of SONET facilities has been “closed.” Brown/Cottrell/Flynn Supp. Affid. ¶ 156. Even though SBC makes assurances that the problem has been resolved, TDS Metrocom continues to see the same charges for SONET facilities on its bills, and TDS Metrocom continues to dispute them. Cox. Supp. Affid. ¶ 20. Similar problems have arisen with respect to disputed costs over design and construction of central office collocation facilities. Cox. Supp. Affid. ¶ 22. TDS Metrocom does not consider an issue closed until the billing problem has been permanently fixed and all appropriate credit or debit adjustments have been received and validated.

The problems that are systemic to SBC’s wholesale billing operations are evident in SBC’s Application. The SBC affidavit that addresses billing issues spends eight pages describing how SBC’s rate tables are supposedly accurate, and how they have extensive controls in place to ensure that rate changes are implemented properly. Brown/Cottrell/Flynn Supp. Affid. ¶¶ 87-100. Amazingly, in the next section, SBC admits to errors on those same rate tables with respect to loop rate zone classifications, and attempts to downplay the scope of the errors. The error extended to 99 wire centers throughout SBC’s Ameritech region, even though only 11 were

in Michigan. Brown/Cottrell/Flynn Supp. Affid. ¶ 88; Cox. Supp. Affid. ¶ 17. As SBC admits, all unbundled loop types were affected, including stand-alone loops, UNE-P loops, and the high-frequency portion of the loop. Brown/Cottrell/Flynn Supp. Affid. ¶ 88. Apparently, the rates for these loops have been wrong since the initial implementation of zoned rates in 1997. As TDS Metrocom has stated repeatedly, SBC does not insure the accuracy of its billing on a proactive basis. As in virtually all other cases, a CLEC had to bring the errors to SBC's attention before SBC was aware of a problem. As a result of the investigation prompted by the CLEC complaint, SBC also discovered that it had a loop-rate problem related to different loop rates within the same wire center. Brown/Cottrell/Flynn Supp. Affid. ¶¶ 87-88. This issue should have been spotted by SBC when loop rates and geographic zones were being developed and implemented initially.

When SBC supposedly fixed the problem, its fix was incomplete. It took the review by Ernst & Young to discover that SBC had left 1 of the 11 Michigan central offices off its update list. Horst Supp. Affid., Att. C at 17. Similar sloppiness with respect to SBC's correction of the embedded base of UNE-L loops was documented by Ernst & Young. *Id.* at 21-22. Ten percent (29 of 300) of the UNE-L loops tested by Ernst & Young were not updated correctly by SBC. *Id.* The errors cited by Ernst & Young were simple, yet they completely escaped detection by SBC. It appears that third-party review of SBC's changes to its billing systems is necessary to ensure satisfactory completion of even minor revisions. The Commission should deny SBC's Application until SBC can prove that it has the ability to make error-free corrections to its billing systems. It is far better to have SBC fix its systems *prior* to receiving Section 271 authority because once 271 authority is granted, SBC will have no incentive to retain Ernst & Young to review its revisions. At that point, CLECs will have no assurances that SBC will make changes

and adjustments properly. The burden will again be placed on CLECs to validate "corrections" to make sure they are done right.

Likewise, SBC has finally admitted that its misclassification of lines between business and residential categories has affected CLECs in addition to TDS Metrocom.

Brown/Cottrell/Flynn Supp. Affid. ¶¶ 100-108. Again, this was a problem first identified by a CLEC that involved several months of incorrect billing. Once notified by TDS Metrocom, SBC took more than eight months to notify other CLECs of the problem. Final resolution of the problem, through credits and adjustments to CLEC bills, will have taken more than a year since SBC was first notified of the problem by TDS Metrocom. Moreover, SBC considers this matter to be closed as between SBC and TDS Metrocom. Brown/Cottrell/Flynn Supp. Affid. ¶ 156.

However, TDS Metrocom has just recently uncovered problems with inconsistent and missing residential and business indicators on certain bills. Without such indicators it is unclear whether or not residential discounts are being applied accurately. This problem is affecting the billing for newly acquired customers, contrary to claims by SBC that it "fixed" this problem back in November 2002. This calls into question SBC's resolution of the problem and its belief that the issue should be considered closed. It is also important to note that TDS Metrocom has yet to confirm that all of the necessary adjustments to its bills have taken place and TDS Metrocom will not consider the matter closed until this occurs. Cox. Supp. Affid. ¶ 21.

Since TDS Metrocom filed its initial Comments opposing SBC's Application for long-distance authority in Michigan, new billing problems have arisen. As mentioned above, SBC is incorrectly charging TDS Metrocom for redundant collocation power. TDS Metrocom only identified this as a problem after it received yet another back bill. Again, SBC seems to want to charge TDS Metrocom for electrical power that TDS Metrocom does not use. At a minimum,

this latest dispute is further evidence that SBC is incapable of issuing an accurate bill: even if the charges were legitimate, they should have appeared on earlier bills as the charges were incurred rather than in a lump sum several months after the fact and they should be charged at rates consistent with the interconnection agreements. Cox Supp. Affid. ¶ 24.

A second new billing dispute relates to charges for transit traffic. Not only has SBC been billing TDS Metrocom the wrong rates, but identification of the problem and its resolution was made much more difficult because SBC does not provide adequate information on its bills for TDS Metrocom to conduct a simple reconciliation. In this case, TDS Metrocom had to impute the effective rates for traffic using revenue and minute-of-use data. However, because transit traffic may include a mileage sensitive component, this imputation could not possibly come up with the actual rates. Once contacted about this, SBC responded that the transit rates being charged were incorrect in one of TDS Metrocom's states. Cox Supp. Affid. ¶ 25.

This practice is yet another example how it seems that SBC's *modus operandi* is to make the process of verifying its bills as difficult as possible for CLECs, perhaps with the expectation that more likely than not the CLEC will abandon the project in utter frustration. Whether through the expense of paying CLEC employees to inspect every line of every bill from SBC, or through payment of improper charges that have not been double-checked, the multitude of errors in SBC's billing systems are costing CLECs real money. That is money that TDS Metrocom could apply either to expansion of facilities within its local network, or to reductions in end-user rates to compete more effectively against SBC. Additionally, TDS Metrocom does not receive interest on disputed payments that are held by SBC but later returned if a dispute is resolved in the company's favor, further harming TDS Metrocom's financial position. Until SBC's billing

systems are proven reliable by a clear record of accuracy, SBC has not satisfied its requirements under the competitive checklist and is not entitled to long-distance authority.

TDS Metrocom has also experienced problems with the dispute resolution process itself. These errors do not occur every time, but they occur frequently enough to demonstrate that SBC's practices are poorly managed. For example, sometimes when TDS Metrocom submits a dispute claim, TDS Metrocom may eventually see an adjustment on a bill, but no notice of resolution of the claim. Similarly, TDS Metrocom often sees notices from SBC that a particular claim has been resolved, but the related adjustment does not appear on TDS Metrocom's bills. And sometimes SBC sends acknowledgements of billing disputes to TDS Metrocom personnel other than those that submitted the claim. There is a hodge-podge of ways in which SBC handles billing disputes, indicating that its billing systems lack adequate controls to assure consistent, accurate treatment of billing problems. Cox Supp. Affid. ¶ 29. As the Commission can see, SBC's wholesale billing operations are woefully inadequate. SBC's poor provisioning of wholesale bills to TDS Metrocom has impaired TDS Metrocom's ability to provide local exchange service by diverting personnel and financial resources in order to resolve these unnecessary disputes. The Commission should reject SBC's Application for failing to satisfy checklist item 2.

Finally, TDS Metrocom remains greatly concerned that additional, significant issues exist that have yet to be identified. Because of limited resources, TDS Metrocom has only been able to analyze a portion of the invoices it receives from SBC. Progress in analyzing all of these invoices has been seriously hampered by the receipt of numerous back bills that require immediate attention. The transit rate issue described above is a prime example of a hidden issue coming to light. When a preliminary review of the transit charges was finally undertaken, it

revealed numerous questions and identified a valid problem. The identification of inaccurate rates presents another example of TDS Metrocom having to perform an audit of SBC's rate tables for them. A further examination of the information provided in transit reports is ongoing and there are serious concerns with the information being passed by SBC related to transit traffic. It seems that more and more often, the deeper TDS Metrocom digs into invoices, the more issues are discovered. To put it concisely, TDS Metrocom fears the unknown - those issues that are lurking as yet undetected because SBC does not proactively audit its bills and a truly comprehensive review of SBC's wholesale billing systems has not taken place. Cox Supp. Affid.

¶ 31.

IV. SBC ALSO FAILS TO SATISFY CHECKLIST ITEM 2 BECAUSE IT DOES NOT PROVIDE ADEQUATE CHANGE MANAGEMENT BETWEEN ITS ORDERING SYSTEMS

TDS Metrocom also urged the Commission to reject the SBC Application because SBC's change management processes were woeful. Comments at 21-22; Cox. Affid. ¶¶ 12-21; Reply Comments at 2-3; Supplemental Comments at 3; Ex Parte Letter dated March 14, 2003 at 3-4. Now that SBC has implemented LSOG 6, the inadequacies of the SBC change management processes are glaringly evident. SBC is able to support only two generations of its LSOG systems; when it introduces a new version, the oldest version is discontinued. Thus, when SBC introduced LSOG 6, TDS Metrocom was required to migrate off LSOG 4 onto either LSOG 5 or LSOG 6. Because there is a greater knowledge base for LSOG 5 than LSOG 6, TDS Metrocom chose to adopt LSOG 5 with the expectation that there were fewer bugs in the system. Cox Supp. Affid. ¶ 33.

Much to TDS Metrocom's disappointment, SBC had failed to manage the change between systems effectively. The test environment for SBC's LSOG systems differs substantially from the production environment so that problems that do not appear in the test environment come up in the production environment when exactly the same ordering information is entered into the system. As a result, when TDS Metrocom implemented LSOG 5, a number of orders that would have been accepted in the test environment were rejected by SBC. SBC has implemented work-arounds, some manual, but has yet to identify the root causes of many of the problems. For example, *all* orders from TDS Metrocom for services in South Beloit, Illinois, are being rejected by SBC. While a manual work-around for this particular area is in place, SBC does not expect to have a permanent fix in place until December. Granted, this problem is for service in Illinois rather than Michigan, but it demonstrates the clear inadequacies within SBC's change management processes for an ordering system that is used throughout the SBC-Ameritech states. Cox Supp. Affid. ¶ 34.

Further, TDS Metrocom expects SBC to tout its OSS in subsequent Section 271 proceedings, assuming its Application for Michigan is granted. To the extent SBC relies upon its OSS in Michigan in its applications for other states, the tremendous technical difficulties TDS Metrocom has experienced for services outside Michigan also should be considered in this proceeding. Any other approach would unfairly favor SBC at TDS Metrocom's expense.

SBC has not implemented change management practices that ensure seamless transition between local-services ordering systems. The fact that TDS Metrocom waited as long as possible to migrate to LSOG 5 should have made its transition as smooth as possible. TDS Metrocom's experience indicates instead that SBC's change management was extremely poorly

prepared. Accordingly, it is clear that SBC's OSS is deficient and SBC is not entitled to long-distance authority in Michigan.

V. THE APPLICATION SHOULD BE DENIED BECAUSE IT IS NOT IN THE PUBLIC INTEREST

In its earlier filings, TDS Metrocom explained how granting SBC long-distance authority in Michigan would not be in the public interest. TDS Metrocom also incorporates those arguments by reference.¹⁹ TDS Metrocom, however, believes that there are additional reasons why it would not be in the public interest to grant SBC Section 271 authority.

In December 2002, TDS Metrocom discovered an exclusive and secret deal between SBC and Climax Telephone Company ("Climax"), in which SBC and Climax mutually agreed to waive early termination penalties set forth in their customers' contracts when customers sought to switch their services to the other company. This arrangement provided Climax a significant market advantage over TDS Metrocom. For example, customers with long-term SBC contracts were more likely to choose Climax over TDS Metrocom because SBC's early termination fees and penalties would be waived if they switched to Climax, but they would be imposed if they switched to TDS Metrocom. Cox Supp. Affid. ¶ 37.

Upon learning of this secret deal, TDS Metrocom demanded nondiscriminatory treatment from SBC. Eventually, SBC entered into a signed agreement with TDS Metrocom that required the waiver of the early termination fees and penalties. Despite the signed agreement, SBC has repeatedly refused to implement the waiver of early termination fees and penalties for customers switching to TDS Metrocom. On May 9, 2003, TDS Metrocom filed a Complaint with the

¹⁹ See note 2, *supra*.

Michigan Public Service Commission regarding unlawful and discriminatory practices by SBC.

The case is still pending. Cox Supp. Affid. ¶ 38.

SBC's secret deal with Climax provides further evidence of SBC's disdain for its obligations under the Telecommunications Act. SBC's clear intent to avoid those obligations requires this Commission to find that granting SBC additional rights to provide telecommunications services is not in the public interest.

VI. IF THE COMMISSION GRANTS SBC LONG-DISTANCE AUTHORITY, IT MUST PREVENT BACKSLIDING BY CREATING A COLLABORATIVE PROCESS UNDER STATE COMMISSION OVERSIGHT TO DISCUSS AND RESOLVE ISSUES AND PROBLEMS RELATED TO WHOLESALE BILLING

TDS Metrocom urges the Commission not to grant SBC long-distance authority for the state of Michigan until SBC has passed the BearingPoint Master Test Plan and has implemented reliable controls over its OSS, including the ability to provide accurate, auditable wholesale bills. In the event that the Commission grants section 271 authority to SBC, the Commission must ensure that SBC does not engage in backsliding on the small improvements it has made since it has attempted to resolve the concerns of the CLEC industry in Michigan.

TDS Metrocom proposes the creation of a collaborative process under state commission oversight to discuss and resolve issues and problems related to wholesale billing. This would be similar to, but more expansive than the "Compliance and Improvement Plans" that SBC is already putting in place in Michigan pursuant to the Michigan Public Service Commission 271 Order. Such a collaborative process has been extremely effective in identifying and addressing issues related to SBC's OSS in the Ameritech region. The collaborative could take a comprehensive look at bill production, dispute resolution and performance metrics at one time. As long as such a process is in place, SBC would not need to fix every billing problem prior to

Section 271 approval. The process would act as a compliance program and would help guarantee that issues get addressed as they become known. The key to the success of this process is state commission oversight. Unlike the voluntary forums where billing issues are addressed today (CLEC User Forum and performance metric six-month review), a collaborative process would have teeth behind it that could compel SBC to devote the necessary resources to the effort. TDS Metrocom urges the Commission to help facilitate the creation of such a collaborative to resolve the litany of SBC wholesale billing problems that remain.

VII. CONCLUSION

For the foregoing reasons, SBC's Application fails to satisfy the standards for obtaining section 271 authority. The multiple deficiencies identified by the Michigan PSC and those described herein demonstrate that the award of Section 271 authority at this time would be premature. TDS Metrocom, LLC, urges the Commission to deny SBC's Application for Provision of In-Region InterLATA Services in the State of Michigan.

Respectfully submitted,



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