

AT&T Comments  
Michigan 271 Application  
WC Docket No. 03-138

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

In the Matter of

Application of 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	)	
	)	
	)	

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**COMMENTS OF AT&T CORP.**

Pursuant to the Commission’s Public Notice, DA 03-2039 (released June 19, 2003), AT&T Corp. (“AT&T”) respectfully submits these comments in opposition to the renewed application of SBC Communications, Inc., (“SBC”), Michigan Bell Telephone Company (“Michigan Bell”), and Southwestern Bell Communications Services, Inc. (“SBCS”), for authorization to provide in-region, interLATA services in Michigan.

**INTRODUCTION AND SUMMARY**

This Commission properly refused to grant SBC’s application filed earlier this year for interLATA authorization in Michigan. Because SBC withdrew that application before the Commission issued an order rejecting it, the precise grounds for the Commission’s refusal are unknown. But it is plain from Chairman Powell’s statement accompanying SBC’s withdrawal, and from SBC’s discussion of numerous issues in its renewed application, that the Commission

had concluded that SBC had not fully implemented its duties under Section 271 in several important respects.

SBC's performance remains seriously deficient today. SBC still does not provide CLECs with nondiscriminatory access to the unbundled network elements needed to compete with SBC's voice/DSL packages through the use of line-splitting arrangements. SBC continues to provide CLECs with wholesale bills and usage records that are inaccurate and incomplete. And SBC also has yet to demonstrate that it is providing CLECs with complete, accurate, and timely performance reporting.

In one critical respect, moreover, SBC's deficiencies are even worse than AT&T had previously realized. SBC refuses to update its E911 data base for customers that CLECs serve through line-splitting. That policy effectively makes further testing, let alone commercial provisioning, of line-splitting based services a practical impossibility. Worse still, SBC has now stated its intention to terminate its E911 support not simply for customers served through line-splitting, but for all customers served through UNE-P. SBC thus seeks to establish a new, significant, and needless barrier to UNE-based competition that simultaneously harms the public interest by increasing the risk of error in providing E911 service. Each of these defects is a reason to reject this application.

AT&T's comments and supporting declarations therefore address both the continuing deficiencies in SBC's performance and the new ways in which SBC is failing to meet its obligations. As permitted by the Commission's Public Notice (at p.2), AT&T also incorporates by reference all of its prior opening and reply comments, opening and reply declarations, and ex parte submissions, with particular emphasis upon those portions that address SBC's failure to

comply with its line-splitting, billing, and performance measure obligations, as well as its failure to demonstrate that approval of its application is in the public interest.

Part I explains that SBC is not providing nondiscriminatory access to unbundled network elements as required by checklist item two, because SBC still does not provide reliable and effective support for ordering and provisioning line-splitting. As the Department of Justice has recognized and as AT&T previously demonstrated, CLECs must be able to offer packages of voice and DSL services in order to compete effectively with SBC. Such competition, however, depends on SBC's ability to provide nondiscriminatory access to the network elements that CLECs need to provide broadband service through line-splitting arrangements.

AT&T previously demonstrated that SBC cannot yet effectively support the ordering and provisioning of commercially significant volumes of line-splitting orders. Since April 2003, when SBC withdrew its prior application, SBC has not fixed any of the key problems that AT&T identified. These include SBC's inability to support the conversion of customers from line sharing to line-splitting or from line splitting to UNE-P, SBC's refusal to permit re-use of an existing loop when converting a customer from line-splitting to UNE-P, and SBC's inability to process orders from two CLECs in a line-splitting arrangement because of its discriminatory versioning policy. These failures alone have caused AT&T and its partner in providing voice/DSL service to suspend their efforts to market a voice/broadband package in Michigan.

Worse still, as explained in Part II below, SBC has now reinforced the entry barriers to DSL competition by announcing a new policy that shifts to CLECs the obligation to perform all necessary updates to the E911 database whenever, *inter alia*, the CLEC seeks to switch a customer from a UNE-P or line sharing arrangement to a line-splitting arrangement. Because a

CLEC in such arrangements is, by definition, not using its own voice switch to provide service to the customer, SBC's policy is extraordinarily burdensome and unworkable, and would independently require AT&T to stop converting any customers to line-splitting in Michigan. SBC's refusal to provide reasonable E911 support for non-switch-based competitors independently violates checklist items seven and ten, exacerbates SBC's failure to provide access to the unbundled network elements needed to offer broadband services through line-splitting in violation of checklist item two, and ensures that SBC will not face broadband competition in Michigan from UNE-P-based voice competitors. And SBC's stated plan to expand the policy to carriers who provide service through UNE-P is intended to and will create a new and powerful barrier to UNE-P based competition that will seriously impair, if not undo entirely, the competitive gains that UNE-P competitors have made in Michigan to date.

Part III addresses SBC's continuing failure to fix its billing problems. SBC's data reconciliation last January revealed enormous problems in the accuracy of SBC's wholesale bills and usage reporting, affecting dozens of CLECs, over 138,000 UNE-P circuits, and \$16.9 million in wholesale bills. Neither SBC nor Ernst & Young have even confronted, let alone resolved, SBC's continuing problems in generating accurate wholesale bills. To be sure, review of the accuracy of an ILEC's wholesale bill is highly resource-intensive, which may explain why SBC has never asked E&Y to perform such a review. But the resource-intensive nature of such a review is no excuse for SBC's failure to provide it; indeed, the need to avoid imposing such a burden on competitors is a significant reason why this Commission has required 271 applicants to demonstrate that their electronic provision of such bills is complete and accurate. Although AT&T cannot identify the root cause of SBC's billing problems, SBC's refusal to agree in

Michigan to performance measures adopted in other SBC jurisdictions (where ACIS is not used) suggests that ACIS may be the source of the problem.

AT&T has begun the process of examining the accuracy of SBC's March 2003 and subsequent wholesale bills. The initial review indicated discrepancies between AT&T's systems for over 28,800 telephone numbers. Without undertaking further detailed review, however, AT&T could not rule out the possibility that some of these numbers on SBC's bill may resulted from events (e.g., a customer disconnection late in the billing cycle) unrelated to an SBC billing error. Because it would have been impractical to conduct a manual review of all or even most of these numbers to determine the reason for each discrepancy, AT&T conservatively chose to review in detail only that subset of the seemingly erroneously billed numbers for which such conceivably benign explanations could be categorically ruled out. AT&T's detailed review of that subset of remaining numbers is telling. Of the 2,114 telephone numbers that AT&T then examined in detail, AT&T found that SBC had erred in billing 1,941 – or 92 percent – of them.

AT&T's review of the March bill alone took over two months to complete, and AT&T's review of subsequent wholesale bills is ongoing. Nevertheless, AT&T's review to date confirms that SBC remains unable to generate accurate wholesale bills. Notably, nearly all (88%) of the telephone numbers that SBC billed AT&T in error on the March bill were still being erroneously billed to AT&T on the May bill. Ernst & Young's review, on which SBC so heavily relies, is non-responsive to this problem, because Ernst & Young did not attempt to evaluate the accuracy of the data in SBC's billing databases. The inescapable fact is that SBC has not done the work needed to assess fully and respond to the root causes in its systems that continue to generate significant wholesale billing errors. SBC's transmission of an additional 258 telephone numbers

this past week that were erroneously included the data reconciliation is yet further evidence of the reconciliations's shortcomings.

Part IV explains that SBC has not fully implemented its obligations with respect to reciprocal compensation (checklist item thirteen) because it is refusing to allow CLECs to opt into any terms of an interconnection agreement relating to reciprocal compensation. Although SBC purports to base its position on this Commission's decision in the *ISP-Bound Traffic Order*, that Order prohibited CLECs only from opting into terms of agreements then in existence. SBC's failure to permit CLECs to opt in to agreements adopted after the *ISP-Bound Traffic Order* conflicts with SBC's opt-in obligations under Section 252(i) and independently precludes approval of its application.

Finally, Part V demonstrates that SBC has not met its burden to show that its performance measures are reliable. SBC still has yet to satisfy most of the BearingPoint test criteria. Because other BOC applicants had satisfied nearly 100 percent of the equivalent test criteria before their 271 applications were approved, SBC's failure to make a comparable showing requires rejection of its application. Indeed, SBC's poor performance on BearingPoint's independent test is a stark red flag that, in this case, both warns and confirms other evidence that SBC's systems are not yet stable and reliable enough to provide verifiable performance reports to CLECs and to the Michigan PSC.

This Commission should accord great weight to BearingPoint's results, because they are the product of testing performed at the request of the Michigan PSC, according to a design similar to that BearingPoint has repeatedly used with other BOCs and into which CLECs had input. Conversely, the Commission should accord no weight to the testing done by Ernst &

Young, on which SBC so heavily relies. Unlike BearingPoint, E&Y is not an objective examiner of SBC. E&Y is SBC's financial auditor. Unlike BearingPoint, E&Y established its test plan working with SBC alone, without input from CLECs or any public scrutiny. E&Y's narrow and flawed test plan failed to uncover many deficiencies that BearingPoint has identified, and the results E&Y did reach are suspect.

Reliance on E&Y's rather than on BearingPoint's testing is all the more improper given the recently reported decision of the Securities and Exchange Commission to seek "to have Ernst & Young suspended from accepting new corporate clients for six months" because E&Y's "internal controls are inadequate to prevent its auditors from becoming too cozy with client companies."<sup>1</sup> The SEC's decision to seek to suspend a major accounting firm from accepting new clients has been described as a "rare move," and is reportedly the first such action taken by the SEC "since 1975."<sup>2</sup> Given the SEC's exceptional concern about E&Y's too-cozy relationships with E&Y's auditing clients, it would be inappropriate indeed for this Commission to give weight to E&Y's testing here. The Commission should not reward SBC and E&Y for their end-run around the state-commission sponsored BearingPoint test, both because E&Y's objectivity and the design and results of its test are suspect, and because any endorsement by this Commission of the E&Y test would only encourage SBC and other RBOCs to pursue similar strategies whenever they are dissatisfied with the results of publicly sponsored audit or test proceedings.

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<sup>1</sup> "SEC Wants Ernst & Young Suspended From New Cos. for 6 Mos" (Dow Jones Newswires, May 30, 2003).

<sup>2</sup> *Id.*

**I. SBC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO LINE-SPLITTING, IN VIOLATION OF CHECKLIST ITEM TWO.**

SBC does not provide “nondiscriminatory access to unbundled network elements in accordance with the requirements of section 251(c)(3),” because it does not have workable and reliable processes for ordering and provisioning line-splitting. *See* 47 U.S.C. § 271(c)(2)(B)(ii); *Line Sharing Reconsideration Order*, 16 FCC Rcd. 2101, ¶ 19 (2001). In response to SBC’s previous application, AT&T demonstrated that SBC’s systems were inherently incapable of processing any commercially significant quantity of line-splitting orders. Since SBC’s withdrawal of its application, it has not fixed any of these problems. Indeed, AT&T has since discovered that some of these problems are even more serious than they originally seemed.

As AT&T previously explained, AT&T and Covad have entered into a partnership in which AT&T will provide voice service and Covad will provide DSL service to AT&T’s UNE-P customers in Michigan. The ability of CLECs to offer packages of voice and DSL services is vitally important if there is to be vibrant competition for broadband services in Michigan. As the Department of Justice emphasized in its Evaluation of SBC’s previous application, partnerships like the one between AT&T and Covad could provide significant competition for broadband services. DOJ Eval. at 13 (filed Feb. 26, 2003). Such competition, however, depends on SBC’s ability to provide effective support for line-splitting arrangements, as required by the *Line Sharing Reconsideration Order*, in commercially reasonable timeframes and volumes.

Despite the concerns raised in response to its previous application, and despite the fact that it has now had eight additional weeks to address these concerns since it withdrew its previous application, SBC still does not have reliable processes in place to provision line-splitting orders. SBC’s processes fail to satisfy the checklist in at least four respects: (1) SBC

cannot yet effectively convert customers from an SBC voice/data combination to a CLEC line-splitting arrangement or from a line splitting to an UNE-P arrangement; (2) SBC's policies and practices have resulted in inaccurate 911 database information and do not comply with SBC's checklist obligation; (3) SBC degrades the quality of CLEC service by refusing to permit a CLEC to reuse the existing loop in service whenever a customer is converted from a line-splitting arrangement to a UNE-P arrangement; and (4) SBC does not currently have a workable means of processing simultaneous orders from two CLECs in a line-splitting arrangement, because of its discriminatory "versioning" policy. These problems are so severe that AT&T and Covad have stopped testing any new line-splitting customers in Michigan, and they have put on hold plans to enter the Michigan market while SBC continues to fail to address these problems.

**A. SBC Does Not Have Reasonable And Reliable Systems For Provisioning Line-Splitting.**

AT&T demonstrated in detail in response to SBC's previous 271 application that SBC has yet to implement a reasonable and workable system for transitioning customers from an SBC voice/data service<sup>3</sup> to a CLEC line-splitting arrangement, or for transitioning customers from line splitting to UNE-P. In the period since SBC withdrew its previous application, these facts have not changed, and SBC makes no serious attempt to argue otherwise. *See* SBC Suppl. Br. at 28. The breakdown in SBC's processes is even more serious than first realized, however, because AT&T has since discovered that customers converted from SBC to line-splitting do not have accurate street address information in the E911 database.

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<sup>3</sup> This scenario has previously been referred to in these proceedings as a "line sharing" arrangement, but in the vast majority of circumstances the "line sharing" is an arrangement in which SBC is providing both the voice and the data service (the latter through a wholly owned data affiliate).

As AT&T previously demonstrated, SBC's line splitting process are ill-defined and require cumbersome submission of multiple interrelated orders and manual handling. Experience has shown that these processes are entirely unworkable and unsuitable for mass market competition. The evidence demonstrates that SBC fails to relate separate orders, has issued erroneous order rejections, and has resulted in lengthy delays, and in customers losing their voice service altogether.<sup>4</sup> SBC has no response on the merits, and therefore it tries to shift attention from its defective processes by accusing AT&T of being unwilling to work with SBC to resolve these issues. *See* SBC Suppl. Br. at 29-30. But as SBC well knows, AT&T has in fact been continuously working with SBC to try to resolve these issues, both in the collaborative process and elsewhere. The issue in this proceeding, however, is whether SBC is *currently* providing nondiscriminatory access to line-splitting, and the evidence establishes that the answer is an unequivocal "no."<sup>5</sup>

Recently, however, AT&T has been forced to suspend all further attempts at placing orders to convert customers from SBC voice/data service to CLEC line-splitting because it has discovered that SBC does not have accurate street address information for such customers in the E911 database, and because SBC has announced a policy to require CLECs engaging in line splitting to bear responsibility for all 911 updates.

SBC has recently announced via Accessible Letter that it is the CLEC's responsibility to maintain correct information in the 911 database for switch ports used in a line-splitting arrangement. As described more fully in Section II, *infra*, this policy is completely unworkable

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<sup>4</sup> *See* DeYoung/Connolly Supplemental Declaration, ¶¶ 17, 20-26 (submitted as an Attachment to Ex Parte Letter of Alan C. Geolot to Marlene H. Dortch, FCC, dated March 19, 2003); Ex Parte Letter of Alan C. Geolot to Marlene H. Dortch, FCC, dated March 8, 2003.

because it would effectively require the CLEC to replicate SBC's internal systems, in much the same way that switch-based carriers do. Moreover, SBC's process is ill-defined and carries with it the additional risk of error – a risk that carries with it serious public safety ramifications.

Separately, AT&T discovered a problem with the accuracy of SBC's 911 database purely by chance when one of its customers with a line-splitting arrangement made a 911 call and the PSAP did not retrieve accurate street address information for the customer. It was later determined that the PSAP in fact had the address of the SBC *central office* serving that customer. Fortunately, the incident that precipitated the 911 call was not a life-threatening situation. *See* DeYoung Decl. ¶ 9.

After investigation, SBC determined that this error is in fact a by-product of SBC's treatment of line-splitting as two separate services – an unbundled loop and a switch port with transport – rather than as an integrated UNE-P product. Under SBC's methods and procedures, SBC assumes that a stand-alone switch port product is being used to provide a foreign exchange (FX) service. SBC assumes that no one would seek emergency service from an FX number, since FX numbers do not correspond to a telephone set. SBC's systems, however, require its E911 database to contain a street address for every working telephone number, and therefore SBC simply assigns the central office address for these FX numbers as a default rule. *See* DeYoung Decl. ¶ 10.

These methods and procedures are obviously unworkable for line-splitting arrangements and effectively deny nondiscriminatory access to E911 services. In subsequent discussions with SBC, SBC has indicated that it will correct its methods and procedures so that representatives are

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<sup>5</sup> *See also* DOJ Eval. at 13 n.58 (underscoring the seriousness of the issues raised and the need to examine carefully

aware that address fields for unbundled switch port orders associated with line-splitting should not be populated with the SBC central office address. This solution, however, does not comply with the checklist, because it continues to subject critical 911 information to human error. Because this solution is not mechanized, representatives who do not thoroughly review M&Ps or who are unable to differentiate the two types of unbundled switch port orders may mistakenly continue to populate the address field with the SBC central office address. Indeed, because AT&T believes that 911 routing information is too critical to rely on this type of judgment call, AT&T has suggested that SBC differentiate the NC/NCI codes for unbundled switch ports used for foreign exchange and line splitting. Thus far, SBC has not agreed to this proposal. Thus, the parties are currently at an impasse, and while the parties continue to discuss these issues, AT&T has suspended all further attempts to convert customers to a line-splitting arrangement in Michigan. In short, SBC's recently-announced policy and AT&T's operational experience with 911 in the line-splitting context dramatically prove that SBC does not have workable and reliable systems in place to ensure that line splitting customers continue to have accurate address information in the 911 database. See DeYoung Decl. ¶¶ 11-12.

**B. SBC's Policy Prohibiting Reuse Of The Same Loop When A Customer Is Converted From Line-Splitting To UNE-P Is Discriminatory And Unlawful.**

SBC also clings to its discriminatory policy of requiring a CLEC to order an entirely new loop whenever it is converting a customer from a line-splitting arrangement to UNE-P. SBC Suppl. Br. at 30-31. Rather than simply changing out cross-connects using the existing loop that is already in service, SBC insists on the far more complicated and expensive process of disconnecting the existing loop altogether, which creates unnecessary service outages and risks

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SBC's efforts to remedy the problems).

other service quality problems. SBC also charges a \$20 non-recurring charge for the establishment of the new unbundled loop.

This policy is blatantly discriminatory, because SBC's customers do not face these burdens in analogous circumstances. When an SBC customer has a voice/data combination and wishes to drop the data portion and return to a simple voice arrangement – which is exactly analogous to an AT&T customer changing from a line-splitting arrangement to UNE-P – it is undisputed that SBC reuses the existing loop. *See* SBC Appl. at 30; Chapman/Cottrell Reply Aff. ¶ 10 n.18 (*Michigan I*); SBC Ex Parte Letter from Geoffrey M. Klineberg to Marlene Dortch, FCC, dated March 17, 2003, App. A, pp. 18-19.

Although these two situations are obviously analogous, SBC tries to claim that the SBC service is “line sharing” while the AT&T service is “line-splitting,” as if these labels established an important and dispositive distinction. SBC Suppl. Br. at 30. Even if the SBC combination is “line sharing,” however, these labels are irrelevant.<sup>6</sup> SBC cannot lawfully provide access to voice and data capabilities to itself and its data affiliate on terms that are more advantageous than those offered to competitors. That is the very definition of discrimination under Sections 251 and 271. *See, e.g., ASCENT v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

SBC's only justification for this policy – that it cannot reuse the CLEC's loop because the CLEC “may have requested conditioning of that loop that could cause degradation in the quality of voice service provisioned over that loop” (SBC Suppl. Br. at 30-31) – borders on absurd, for three fundamental reasons.

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<sup>6</sup> As AT&T has previously explained, the SBC voice/data combination is not “line sharing” as the Commission has used that term. *See Line Sharing Order* ¶ 4 (line sharing involves ILEC voice services combined with CLEC data services provided over the same loop).

First, AT&T has no ability to make changes in the conditioning of the loop that would affect the quality of the services provided. AT&T does not have physical access to the loop anywhere outside the collocation cage. The simple fact is that SBC is the *only* carrier that could even theoretically make relevant changes to the conditioning of the loop. But if SBC had in fact received and acted on such a request, SBC can reasonably be expected to know at the time of conversion that it had performed such conditioning. The truth is that reusing the loop when converting a CLEC customer from line-splitting to UNE-P would rarely ever present service quality issues, which is confirmed by the fact that SBC routinely reuses the loop when converting its own voice customers from a voice/data combination to voice only. SBC's asserted justification is just a pretext, and one that lacks even superficial plausibility. DeYoung Decl. ¶¶ 16-17.

Second, SBC's policy improperly inserts SBC into the CLEC's relationship with its customer. In most cases, the CLEC's line-splitting customer is satisfied with the quality of voice service being provided over that loop. Thus, when the customer indicates that she wants to drop the DSL portion of the service, both the CLEC and the customer would be content to keep the existing loop in place, in order to avoid undue disruption. SBC's policy, however, overrides these wishes, all in the name of SBC's asserted concern that there is a *possibility* that the loop might not meet *SBC's* quality standards. In other words, even though both the CLEC and the customer are happy with the existing loop, SBC forces every CLEC customer switching from line-splitting to UNE-P to change loops – which inevitably results in outages, increased costs, and the possibility of other service quality problems stemming from the transition – all because of the off-chance that *SBC* might not be happy with the loop. DeYoung Decl. ¶¶ 18-19. SBC has no reasonable grounds for imposing the substantial burdens of changing loops on a CLEC

and its customer, where both the CLEC and the customer are satisfied with the original loop, solely to vindicate some abstract standard of SBC's.

Third, and perhaps most importantly, the testimony of SBC witnesses in a recent Texas complaint proceeding suggests that the real reason SBC prohibits reuse of the same loop is the fact that its operations support systems are designed in a way that *precludes* reassignment of the loop to the CLEC. This is yet another manifestation of SBC's irrational insistence that line-splitting is something other than UNE-P. SBC views line-splitting as two separate services, an unbundled loop and unbundled switch, and SBC's systems are designed not to treat the two as an integrated product.

Consistent with this position, SBC inventories the UNEs used in a line-splitting arrangement in its TIRKS database, which is used for special circuits. When a CLEC seeks to convert a customer from line-splitting to UNE-P, however, the order is processed through SBC's *LFACS* system, not the TIRKS system. The existing loop that the CLEC is already using is not inventoried in LFACS, and the LFACS and TIRKS systems are not capable of sharing the information. As a result, SBC's systems are designed in such a way that the loop cannot be reassigned to the new UNE-P arrangement; instead the LFACS system generates an order for a new loop.<sup>7</sup> This testimony dramatically confirms that SBC simply does not have processes in place that permit reasonable and reliable provisioning of line-splitting and UNE-P arrangements.

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<sup>7</sup> See *Complaint of AT&T Communications of Texas, L.P., against Southwestern Bell Telephone Co.*, PUC Docket No. 27634, Testimony of Chapman and Oyer, pp. 127-32 (June 3, 2003) ("It's the way the systems are designed. They do not share that information."); see also DeYoung Decl. ¶¶ 20-21.

**C. SBC Still Maintains Its Discriminatory “Versioning” Policy.**

AT&T demonstrated previously that SBC maintains a discriminatory “versioning” policy. Under this policy, whenever AT&T partners with a DLEC (such as Covad), the DLEC must use the same version of the EDI interface (including the same dot release) when it submits data orders using AT&T’s OSS codes. AT&T has previously shown in detail that SBC’s policy renders joint line-splitting orders a practical impossibility, and effectively precludes any attempt by CLECs to partner with a third party to provide voice/data combinations through line-splitting on any significant scale. The policy is also blatantly discriminatory, because SBC and its data affiliates do not face these limitations.<sup>8</sup>

SBC has recently indicated that it might be willing to consider changes to its systems that would allow DLECs to avoid the restrictions of SBC’s current versioning policy. SBC has proposed enabling a field in its ordering systems (called “LSP Authorization” or LSPAuth). This would permit a DLEC such as Covad to populate the new LSPAuth field on the LSR with the AT&T company code to let SBC know that it was ordering on behalf of AT&T. With this new field, SBC could then work all of the orders even if the two CLECs were not on the exact same version of EDI. SBC has not provided the details of such a system in writing, however, and it has also indicated that this capability will not be operational until at least the first quarter of 2004. Accordingly, SBC still does not have workable processes in place that would facilitate line-splitting orders from two partnering CLECs. *See* DeYoung Decl. ¶¶ 23-24.

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<sup>8</sup> *See, e.g.*, DeYoung/Connolly Decl. ¶¶ 15-19; Ex Parte Letter from Alan C. Geolot to Marlene Dortch, FCC, dated March 28, 2003.

**II. SBC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO E911 SERVICES AND DATABASES, IN VIOLATION OF CHECKLIST ITEMS SEVEN AND TEN.**

SBC does not provide nondiscriminatory access to E911 services and databases, in violation of checklist items seven and ten. 47 U.S.C. § 271(c)(2)(B)(vii) & (x). SBC recently issued an Accessible Letter, dated June 20, 2003, establishing a broad policy that, whenever a customer is converted from a UNE-P or line-sharing arrangement to a line-splitting arrangement, the CLEC serving that customer becomes responsible for performing all necessary updates to the E911 database after the initial provisioning of the service. SBC's Accessible Letter also requires the CLEC to bear responsibility for 911 database information when the CLEC engages in "physical rearrangements" or "disconnect[s]" of the original line splitting arrangement – a veiled reference to line splitting to line splitting (i.e., between CLECs) and line splitting to UNE-P conversions. Given that the CLEC in a line-splitting arrangement is not a switch-based carrier, this policy is extraordinarily burdensome and unworkable, threatens public safety, and denies nondiscriminatory access to E911 databases.

SBC is required to provide access to E911 databases under two different checklist items. First, checklist item seven (47 U.S.C. § 271(c)(2)(B)(vii)(I)) requires SBC to provide "nondiscriminatory access to ... 911 and E911 services." The Commission has made clear that the term "nondiscriminatory" includes a comparison between the level of service the incumbent LEC provides competitors and the level of service it provides to itself. *See Michigan 271 Order* ¶ 256. Thus, "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity." *Michigan 271 Order* ¶ 256. The Commission has held that a BOC must "maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for

its own customers,” which includes both “populating the 911 database with competitors' end user data” and “performing error correction for competitors on a nondiscriminatory basis.” *Id.*

Switch-based competitors, by contrast, generally establish their own direct links to the E911 database and directly control and maintain the records in the E911 database for their customers.<sup>9</sup>

Checklist item ten independently requires “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.” 47 U.S.C. § 271(c)(2)(B)(x). The Commission has made clear that the E911 database is a such a database. *See UNE Remand Order* ¶¶ 403, 406.

SBC’s previous policy was consistent with the checklist and the Commission’s orders.<sup>10</sup> SBC’s prior policy was based on whether the CLEC was a *switch-based* or *non-switch-based* carrier.<sup>11</sup> As SBC’s witness has explained, for these purposes, “[n]on-switch-based carriers are those who utilize Michigan Bell’s switching functionality to provide dial tone to their end users,” which “includes resellers and CLECs who subscribe to the Unbundled Network Element Platform (‘UNE-P’).”<sup>12</sup> Under SBC’s prior policy, “UNE-P services [were] handled in the same manner as Resale – i.e., Michigan Bell performs the E9-1-1 database updates as part of the service order process.”<sup>13</sup>

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<sup>9</sup> *See Michigan 271 Order* ¶ 256 (“[f]or facilities-based carriers, nondiscriminatory access to 911 and E911 services also includes the provision of unbundled access to Ameritech's 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what Ameritech provides to itself”).

<sup>10</sup> *See* Affidavit of Bernard E. Valentine (SBC) (*Michigan I*) (“Valentine Aff.”).

<sup>11</sup> *See* Valentine Aff. ¶ 5 (“Michigan Bell makes available non-discriminatory access to its 9-1-1 databases to both switch-based and non-switch-based carriers”).

<sup>12</sup> Valentine Aff. ¶ 5 n.6.

<sup>13</sup> Valentine Aff. ¶ 27.

Under SBC's prior policies, SBC used its own internal systems to perform all updates to the E911 database on behalf of non-switch-based CLECs. These updates can take many forms. For example, relevant street address information changes from time to time, such as the street name, the community name, directional rules governing the street, and the like. Community 911 coordinators input these changes into the Master Street Address Guide ("MSAG"), which is a database maintained by Michigan Bell.<sup>14</sup> SBC's internal systems routinely check to make sure that the information in its own E911 routing database is current and consistent with the MSAG, and SBC historically has performed this function for CLEC addresses as well, without any involvement of the CLEC. Similarly, in the course of responding to a 911 call, emergency personnel will occasionally discover that an address is either incomplete or incorrect, which is known as a "911 misroute." The PSAP will inform SBC of the error, and SBC will then correct the error in its databases. SBC would also perform these corrections for itself and for non-switch-based CLECs entirely within its own internal systems.<sup>15</sup>

Under SBC's recent Accessible Letter, however, SBC has indicated that it will abdicate these functions and foist them onto the CLEC, even though the CLEC has no switch. For customers that have been converted from a UNE-P or line-sharing arrangement to a line-splitting arrangement, the Accessible Letter states that "[o]nce the initial provisioning of the UNEs in the conversion scenario for a line-splitting arrangement has been completed, . . . the CLEC is responsible for ensuring the ongoing accuracy of the end user service address information in order to maintain the integrity of the of the 911/E911 database." *Id.* SBC explains that CLECs

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<sup>14</sup> See Valentine Aff. ¶ 12.

<sup>15</sup> See Valentine Aff. ¶ 39. In the extremely rare instance in which it was necessary to contact the end-user in order to correct the E911 record, SBC would ask the CLEC to contact the customer, and the CLEC would obtain the

in Michigan are to initiate 911/E911 database updates “via the Local Service Request (‘LSR’) process.” Accessible Letter at 1-2. Moreover, the Accessible Letter foists responsibility for the accuracy of the 911 database on CLECs that engage in line splitting to line splitting and line splitting to UNE-P conversions, and is silent on which carrier bears the burden of ensuring the accuracy of the 911 database in other critical conversion scenarios such as: (1) SBC retail to line splitting; (2) CLEC switch-based arrangements to line splitting; (3) line splitting to line sharing; and (4) line splitting to retail.

AT&T believes that SBC ordering-system edits, which are based on the PREMIS database, will not allow an LSR to be processed to make an MSAG correction if PREMIS and the MSAG are not in synch. But even if this were not an issue, this new policy introduces an unnecessarily high degree of ambiguity and risk for CLECs who wish to engage in line-splitting, places an enormous burden on non-switch-based CLECs, and is wholly unreasonable. This new policy effectively requires non-switch-based CLECs, to the extent that they participate in line-splitting arrangements, to replicate the functions currently performed by SBC’s internal systems, and communicate the results to SBC via the Local Service Request process. *See Willard Decl.* ¶¶ 13.

For example, the CLEC would have to incur the substantial cost of subscribing to the MSAG database, and would be forced to devote personnel and resources to monitor the full panoply of continuous changes that occur to street address information maintained in that database. As these changes occur in MSAG, AT&T would be required to generate an LSR for each change, so that SBC’s internal systems can perform the updates that they routinely perform

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correct information. The CLEC would communicate the correct information to SBC through informal means, however, such as a phone call or email, and not through SBC’s OSS ordering systems. *See Willard Decl.* ¶¶ 8-11.

today without a CLEC LSR. Similarly, CLECs would also be required to devote personnel and resources to monitor all 911 misroutes and to generate LSRs for each such change – again, for the sole purpose of allowing SBC’s internal systems to perform the same updates that they perform today without an LSR. These procedures are not only unnecessary and burdensome, they require substantial duplication of effort across companies and introduce several additional steps in the process, including reliance on LSRs. Each of these additional steps increases the overall chance that there will be a mistake or failure at some point in the process, which – in the context of E911 – could be fatal. *See Willard Decl.* ¶¶ 13-14.

SBC has offered only one justification for its new policy, and that justification makes no sense. SBC asserts in the Accessible Letter that a “CLEC may physically rearrange or disconnect the UNEs used in the original line-splitting arrangement . . . within its collocation arrangement . . . without [SBC] having any knowledge or information as to the change in service,” and such changes could have “the potential to affect negatively the accuracy of the end user address information contained in the applicable 911/E911 database.” *Id.* This is preposterous. While it is theoretically possible that a CLEC, within its collocation cage, could disconnect a loop and possibly re-connect it to a different switch port, SBC cannot reasonably expect that a CLEC would actually undertake such a disconnection or rearrangement. From a practical standpoint, any attempt to do so would inevitably cause service outages and, absent coordination with SBC, could potentially result in disruption of billing and other customer care functions. The possibility that any CLEC would actually attempt such a change is exceedingly

low, and certainly not high enough to justify the blanket policy SBC has adopted. Willard Decl.

¶ 18.<sup>16</sup>

SBC's unreasonable and anticompetitive policy is also a by-product of SBC's irrational insistence that line-splitting is not a UNE-P offering. SBC has designed all of its OSS systems to treat line-splitting as two separate and independent offerings: the loop and the switch port. SBC does not treat line-splitting as an integrated UNE-P product in any way. SBC's decision to design its systems in this fashion is the sole reason why a CLEC could even theoretically rearrange its line-splitting arrangements in its collocation cage without SBC's knowledge; SBC's systems cannot track UNE-P offerings in a line-splitting arrangement as a single integrated offering. Thus, the "problem" SBC seeks to address with its new E911 policy is solely the result of its own irrational decision to design its systems as if line-splitting were something other than UNE-P.

SBC's decision to design its systems in this way is wholly unreasonable. Line-splitting unquestionably involves UNE-P by definition, as the Commission made clear in the *Line Sharing Reconsideration Order*. See, e.g., *Line Sharing Reconsideration Order* ¶¶ 15, 19 ("incumbent LECs have an obligation to permit competing carriers to engage in line-splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter"). SBC should not be permitted purposely to design its systems inefficiently and in a manner that does not reflect the reality of the services being provided, and then to use that purposeful

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<sup>16</sup> Moreover, SBC's "solution" sweeps far more broadly than the asserted "problem." If SBC's concern is that a CLEC could change the loop/switch port connections in its collocation cage, SBC could simply institute a policy requiring a CLEC to inform SBC whenever it attempted any such conversion. SBC's new procedures, however, require CLECs to be responsible for *all* updates to the E911 database after the service has been established, regardless of whether the CLEC is attempting to change its line-splitting arrangement. Willard Decl. ¶ 19.

inefficiency as an excuse to foist additional anticompetitive burdens on CLECs, such as the E911 update policy at issue here.

It is vitally important that the Commission issue a clear holding that these practices violate the checklist. SBC has recently taken the position in California that the CLEC is responsible for all post-provisioning updates to the E911 database not just for line-splitting, but for *all* UNE-P services. Indeed, SBC recently informed AT&T that, under this new policy, there were more than *three hundred* customer records in the E911 database that had become inaccurate, and that it was AT&T's responsibility to update and correct these records using the LSR process described above. In the course of discussions and negotiations with SBC, SBC eventually offered to perform the updates on behalf of AT&T on an interim basis, but it refused to accept responsibility for the accuracy of the updated records. SBC has indicated in recent meetings that it is in the process of formulating a uniform policy for its 13-State region, which includes both California and Michigan, and SBC's recent change of position in California strongly suggests that SBC is planning to impose the same discriminatory policy on all UNE-P customers throughout this 13-State region, including in Michigan. *See Willard Decl.* ¶¶ 23-24. The Commission should make crystal clear that SBC cannot use a function as important as E911 as a means of foisting anticompetitive burdens on CLECs.

In short, SBC has abdicated its responsibilities under checklist items seven and ten. Those checklist items require SBC not only to populate the E911 database for non-switch-based CLECs in the first instance, but also to perform the necessary updates and "error correction" to the database. *Michigan 271 Order* ¶ 256. SBC's new policy in the Accessible Letter fails to adhere to these requirements.

**III. SBC DOES NOT PROVIDE CLECS WITH COMPLETE, TIMELY AND ACCURATE WHOLESALE BILLS AND USAGE RECORDS.**

To comply with its obligations under item 2 of the competitive checklist, SBC must demonstrate that it “provide[s] competitive LECs with two essential billing functions: (i) complete, accurate and timely reports on the service usage of competing carriers’ customers and (ii) complete, accurate and timely wholesale bills.” *Pennsylvania 271 Order* ¶ 13. As the Commission has recognized, “[s]ervice-usage reports are essential because they allow competitors to track and bill the types and amounts of services their customers use.” *Id.* Similarly, “[w]holesale bills are essential because competitive LECs must monitor the costs they incur in providing services to their customers.” *Id.*<sup>17</sup>

SBC still fails to comply with these important requirements. The evidence is overwhelming – from the magnitude of the wholesale billing problems uncovered by the January reconciliation, to SBC’s ongoing errors in its March through May wholesale bills, to the instability in its billing systems reflected in other recent and conceded SBC errors, that SBC has not yet shown that it can consistently generate complete, accurate and timely wholesale bills. SBC also has yet to fix the important problem of providing CLECs with inaccurate UNE-P usage records, *i.e.*, records of use by customers who have disconnected their CLEC service. These

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<sup>17</sup> As the Commission further explained, *Pennsylvania 271 Order* ¶ 23:

Inaccurate or untimely wholesale bills can impede a competitive LEC’s ability to compete in many ways. 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.

problems fall outside the scope of what SBC E&Y's testing was designed to address, and SBC's other rationalizations for its poor billing performance also lack merit.

**A. SBC Still Has Not Fixed Its Wholesale Billing Problems**

SBC's problems generating complete and accurate wholesale bills are longstanding and continue to this day. The Commission rejected the application that Ameritech Michigan filed in 1997 in part because Ameritech Michigan could not provide accurate and timely bills. *Michigan 271 Order ¶¶ 200-03*. SBC then withdrew its Michigan application earlier this year in significant measure because of "important" and "troubling" concerns about "whether SBC is currently providing wholesale billing functions for competitive LECs in a manner that meets the requirements" of Section 271.<sup>18</sup>

SBC has yet to fix its billing problems. SBC's most recent application seeks to trivialize, but ultimately cannot gainsay, the extraordinary magnitude of the errors in its billing systems that its January data reconciliation revealed. The reconciliation alone showed that SBC's wholesale billing systems are profoundly flawed. By SBC's admission, adjustments were required on approximately 138,000 UNE-P circuits (in a state with fewer than 1 million UNE-P lines), confirming that a staggering number of UNE-P customers were incorrectly represented in SBC's systems. The problems, again by SBC's admission, affected 37 CLECs and required the adjustment (by SBC's estimate) of \$16.9 million in previously issued bills.

Despite the unprecedented magnitude of SBC's billing errors, SBC's renewed application fails to ask or answer three fundamental questions: Has SBC identified all of the root cause(s) of this extraordinary volume of billing errors? What are the system changes that SBC has made to

ensure that its wholesale bills, in the future, will be accurate? And what is the proof that those changes have been successfully made?

SBC's failure to answer these questions directly and persuasively in its renewed application is reason, in itself, to deny it. Yet there is additional evidence that now confirms, beyond any reasonable doubt, that SBC continues to generate inaccurate wholesale bills.

**1. March – May Wholesale Bills:** AT&T has reviewed SBC's March wholesale bill and identified over 28,800 telephone numbers that did not correspond to the customer records in AT&T's end user billing systems.<sup>19</sup> AT&T could not rule out the possibility that the discrepancy between SBC's bill and AT&T's records could have resulted, at least for some of these telephone numbers, from events unrelated to an error in SBC's billing systems. But the detailed review needed to rule out such potentially benign explanations for each of these orders was far too resource-intensive to be practical to do. Thus, AT&T chose categorically to eliminate from review all of those telephone numbers that might be susceptible to such an explanation, whether or not it was in fact responsible for the inconsistency between SBC's bill and AT&T's records. On this basis, AT&T put aside nearly 26,700 numbers.

AT&T then conducted a detailed, manual, and resource-intensive analysis of the remaining 2114 telephone numbers. Of these, AT&T confirmed billing errors with 1941 – or 92 percent – of them. Specifically, AT&T confirmed 1619 instances of overbilling, resulting from SBC including on its March wholesale bill numbers that do not belong to current AT&T

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<sup>18</sup> *Statement of FCC Chairman Michael Powell On Withdrawal of SBC's 271 Application For Michigan*, Press Release (April 16, 2003).

<sup>19</sup> Joint Declaration of Sarah DeYoung and Shannie Tavares ¶ 7 (July 2, 2003) ("DeYoung/Tavares Decl."), attached hereto.

customers.<sup>20</sup> These telephone numbers either have never been in AT&T's ordering system or no longer belonged to an AT&T customer during the period for which SBC had billed AT&T.<sup>21</sup> In many instances, SBC is billing AT&T for telephone numbers for which AT&T does not receive Daily Usage File ("DUF") records.<sup>22</sup> AT&T also identified 322 instances of underbilling on its March bills.<sup>23</sup>

AT&T's labor-intensive review of SBC's March wholesale bill alone took more than two months to complete.<sup>24</sup> AT&T's review of subsequent bills is ongoing. Although time did not permit AT&T to review all of the phone numbers on the May bill, AT&T has reviewed the same telephone numbers that it identified as instances of overbilling and underbilling on the March bills. This review revealed that 1527 (of the 1619) instances of overbilling and [177 (of the 322)] instances of underbilling continue to be present on the May bills.<sup>25</sup> This follow-up review of the May bill demonstrates that SBC has not yet caught or managed to fix nearly all of the errors in its March bills.<sup>26</sup>

**2. Erroneous Calculation of Debits/Credits:** There is yet further evidence that SBC has not yet corrected the inaccurate billing uncovered in the data reconciliation. To begin with, SBC has not correctly calculated the debits and credits associated with its incorrect wholesale bills.<sup>27</sup> For example, in a recent and much-delayed meeting with AT&T in which

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<sup>20</sup> *Id.* ¶ 8.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* ¶ 9.

<sup>24</sup> *Id.* ¶ 11.

<sup>25</sup> *Id.* ¶ 12.

<sup>26</sup> Because of the limited nature of the review of the May bill that AT&T was able to complete, AT&T has not determined how many other errors may exist on the May bill that were not present on the March bill.

<sup>27</sup> *Id.* ¶¶ 23-29.

SBC explained its debit and credit calculations, SBC admitted to AT&T that the connect and disconnect dates for individual circuits on multi-line accounts are not contained in the ACIS database, and for that reason did not use the ACIS database to validate any connect or disconnect dates, including those with respect to single line accounts (which are contained in ACIS).

Moreover, SBC admitted that it cannot in many cases substantiate connect or disconnect dates from any data source. This deficiency in SBC's approach to the reconciliation is fundamental.<sup>28</sup>

**3. Incomplete Reconciliation:** SBC also has only begun to address problems with particular telephone numbers that AT&T believes illustrate why the reconciliation was done incorrectly. AT&T's and SBC's first telephone meeting to discuss 285 of these telephone numbers was on July 1, 2003. This call made clear that it will be a lengthy process to determine whether the telephone numbers were reconciled correctly or not. Even though the call went for over two hours, AT&T and SBC were only able to get through a discussion of about 15 telephone numbers. SBC is continuing to do research on some numbers and provided possible explanations to AT&T with respect to other numbers that AT&T will have to research.<sup>29</sup>

**4. Failure To Identify All Affected Numbers:** As recently as this week, SBC disclosed that it had failed to advise AT&T of yet another 238 telephone numbers that SBC had erroneously excluded in the reconciliation, and provided that list to AT&T.<sup>30</sup> That SBC is still generating errors of this magnitude associated with the reconciliation at this late date further

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<sup>28</sup> *Id.* ¶ 24. SBC's methodology for calculating the reconciliation debits and credits was flawed in several respects. For example, SBC's primary method for determining how far back to allow the credits due AT&T is flawed, *id.* ¶¶ 25-26, and SBC is not justified in limiting or capping AT&T's credits based on contractual limitations (since none of AT&T's interconnection agreements contain provisions that would operate to limit the duration of the credits), *id.* ¶ 27. With respect to debits, SBC's reliance on usage records to determine how far back to impose debits is inappropriate, *id.* ¶ 28, and SBC is not justified in commencing billing for phone numbers where SBC found the telephone number in ACIS but had no corresponding CABS entry or usage records, *id.* ¶¶ 29.

<sup>29</sup> *Id.* ¶ 37.

belies SBC's repeated assertions that the reconciliation was done accurately and has corrected all of SBC's billing problems.<sup>31</sup> Indeed, given the latest disclosure, there can be no assurance that SBC has, even today, identified all of the telephone numbers erroneously excluded in the reconciliation.

**5. Refusal To Restate Performance Results:** SBC has also failed to resolve the problems uncovered in the reconciliation in yet another respect. Despite acknowledging that PM 17 (Billing Completeness) was affected by the inaccuracies in the CABS database, SBC has yet to restate its performance results in light of the reconciliation. Although SBC now claims that no such restatement is needed, its explanations are inconsistent and unpersuasive.<sup>32</sup> By refusing to restate these performance results, SBC is acting both to disguise one measure of the extent of its billing problems, and to escape potential penalties for its poor performance. This misconduct alone precludes SBC from fairly claiming to have resolved its reconciliation-related billing errors.

**6. Other Evidence Of Systemic Errors:** Finally, in addition to the errors related to the reconciliation, SBC systems continue to cause other errors that affect billing. Thus, SBC recently admitted that it had previously billed incorrect UNE loop rate zones for several Michigan wire centers, and that software and human errors had led to other billing errors in rates and DUF file records.<sup>33</sup> Although such errors, standing alone, might not be sufficient to show that SBC was not providing accurate wholesale and usage bills, they are yet more evidence that

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<sup>30</sup> *Id.* ¶ 30.

<sup>31</sup> *See, e.g.*, Brown/Cottrell/Flynn Decl. ¶ 5 (“Ernst & Young has performed an independent third party verification of the CABS/ACIS reconciliation and found that it was nearly perfect”); *id.* ¶ 41 (“E&Y’s findings conclusively establish that SBC Midwest implemented the reconciliation properly and achieved a high success rate”); *id.* ¶ 47 (“[I]t is clear from E&Y’s findings that the updating of the CABS database worked as designed”).

<sup>32</sup> DeYoung/Tavares Decl. ¶ 38.

SBC's billing systems have not yet achieved the level of reliability and stability required to satisfy SBC's checklist obligations.

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In summary, the record to date with respect to SBC's provision of wholesale bills shows unequivocally that the achievement of an accurate and complete wholesale bill remains a work in progress for SBC. AT&T's recent review of the March and May bills confirms that SBC continues to make serious and pervasive errors in both accuracy (by overbilling AT&T for telephone numbers not associated with AT&T customers) and completeness (by not billing AT&T for customers that AT&T has obtained). And SBC's glacial progress in addressing, let alone resolving, the errors and inconsistencies in January's data reconciliation further underscores SBC's failure to move swiftly to address the root causes of its erroneous bills and thereby justifiably make its billing problems a problem only of the past. Because SBC still fails to produce complete and accurate wholesale bills, it has not fully implemented its checklist obligations.

**B. SBC Also Has Not Fixed Its Provision Of Inaccurate Usage Records**

The core of SBC's problems with respect to UNE-P usage is simple. SBC provides AT&T with usage records for customers that have disconnected their AT&T service. While SBC's last application was pending, AT&T submitted examples of telephone numbers where AT&T received usage records for customers that even SBC's own records showed are no longer AT&T customers.<sup>34</sup> In its application, SBC has attempted for the first time to respond to the

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<sup>33</sup> *Id.* ¶ 17.

<sup>34</sup> *Id.* ¶ 31; Letter from Alan C. Geolot to Marlene H. Dortch, April 14, 2003, at 2-3 ("AT&T April 14 Billing Ex Parte") (citing 187 such examples for a six-month period in Michigan and providing eight illustrative examples).

issues AT&T raised. SBC's responses serve only to confirm, however, that SBC has not taken the steps needed to eliminate its faulty provision of records for UNE-P usage.

In some cases, SBC has admitted to errors.<sup>35</sup> In other cases, SBC points chiefly to AT&T's incorrect assumption that SBC always used actual disconnect dates to calculate debits and credits.<sup>36</sup> Although AT&T would not have made this assumption if SBC had explained its dating methodology at an earlier date, SBC's argument here is beside the point. The important fact is that SBC fails to rebut AT&T's examples by providing the appropriate disconnect dates, and thus has failed to rebut AT&T's showing that SBC is sending AT&T usage records on disconnected customers.

SBC's erroneous assignment of usage messages presents a significant problem to AT&T and to CLECs generally, because CLECs cannot recover the revenues associated with their customers' usage of the UNE-P based local service if SBC does not provide accurate customer usage information.<sup>37</sup> In addition, SBC's erroneous assignment of usage messages further undercuts the reliability of the data reconciliation, because SBC used its own usage records to determine how far back to calculate debits.<sup>38</sup> Notably, these SBC-created errors create problems for CLECs that SBC does not face, thus underscoring the inherently discriminatory impact of SBC's inadequate billing systems.

**C. Third Party Testing Has Not Identified Or Enabled SBC To Fix The Root Causes Of SBC's Inaccurate and Incomplete Wholesale Bills**

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<sup>35</sup> Brown/Cottrell/Flynn Aff. ¶ 137.

<sup>36</sup> *Id.*

<sup>37</sup> DeYoung/Tavares Decl. ¶ 34 .

<sup>38</sup> *Id.* ¶ 35.

In the eight weeks that elapsed between SBC's withdrawal and renewal of its Michigan application, SBC took no significant steps to address the root causes of its inaccurate and incomplete wholesale bills or its incorrect usage bills. It did not convene a workshop or technical conference, for example, to work through its billing problems with CLECs. Nor did it engage an independent consultant to test the accuracy of the information in its database records or to reconcile discrepancies between CLEC and SBC records.

Instead, SBC asked E&Y to conduct additional testing of the extent to which data in various components of SBC's billing system are consistent with one another. SBC now relies heavily upon this recent E&Y testing, as well as upon prior testing by BearingPoint, to claim that its billing systems satisfy the competitive checklist.<sup>39</sup> Neither E&Y's nor BearingPoint's testing supports its claims, however, because neither E&Y nor BearingPoint has ever tested the recent *accuracy* of SBC's bills.

**1. BearingPoint testing:** BearingPoint's testing provides no support for SBC's claim to have fixed its billing problems because BearingPoint completed its testing of SBC's UNE-P order processing in July 2002. During that period, SBC held hundreds of thousands of orders for processing in connection with the CABS conversion. Thus, BearingPoint completed its testing long before the January 2003 data reconciliation and subsequent revelation of tens of millions of dollars in SBC billing errors.

Furthermore, BearingPoint's testing was not designed to uncover, and hence would not have uncovered, any of the problems at issue in the data reconciliation. BearingPoint did not examine data connected with real customer orders but relied on orders generated by its pseudo-

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<sup>39</sup> Application at 15-21.

CLEC. Thus, it did not examine *any* of the 750,000 actual CLEC orders that were subject to SBC's "hold." Finally, BearingPoint has done no testing in any state after the data reconciliation to determine whether the problems identified in the data reconciliation have been resolved. It has not examined, for example, the stark conflicts between AT&T's records of which telephone numbers its customers have, and the telephone numbers for which it is receiving bills from SBC. For all of these reasons, the BearingPoint testing does not support SBC's claim to have overcome its problems generating inaccurate and incomplete wholesale bills.

**2. E&Y testing:** E&Y's testing also does not support SBC's claim to have resolved the billing issues that required SBC to withdraw its prior application. The prior application could not be approved, in part, because of concerns about the accuracy of SBC's wholesale bills that emerged in the aftermath of SBC's attempt to reconcile two sets of internal SBC records, the Ameritech Customer Information Systems ("ACIS") database and the Carrier Access Billing System ("CABS") database. The reconciliation itself was not the issue; rather, it was the revelation that SBC's billing errors had over 100,000 UNE-P circuits involving dozens of CLECs and generating \$16.9 million in billing adjustments. That revelation then led to further review of the accuracy of SBC's wholesale bills, which has uncovered yet more evidence that SBC's bills are inaccurate.

Nothing in E&Y's recent work was designed to, or had the effect of, reviewing or analyzing the substantive accuracy of SBC's wholesale bills. Rather, E&Y's sole and limited purpose was "to test the Company's assertion regarding the methodology and results of the

[January data] Reconciliation, and the CLEC UNE-P billing adjustments that were issued as a result thereof.”<sup>40</sup>

Thus, E&Y’s testing, by design, did not address whether SBC is now generating complete and accurate wholesale bills. On this critical issue, E&Y is conspicuously silent. E&Y did not review the underlying accuracy of the database information.<sup>41</sup> It therefore did not address the root causes for the inconsistencies in the two SBC databases, or the root causes for inconsistencies between SBC’s billing records and those that CLECs have maintained. Because E&Y has never addressed the core issue of whether SBC is generating accurate wholesale bills or usage reports, E&Y’s testing provides no assurance that SBC has solved the problems that led to the inconsistencies in its databases or to the inconsistencies between its records and those of CLECs.

Of course, AT&T cannot identify the root cause(s) of SBC’s continued inability to date to generate complete and accurate wholesale bills. The problems with the March bills at least call into question, however, the underlying accuracy of the information contained in ACIS. And AT&T cannot help but notice that in states where SBC does not use ACIS, SBC has agreed to performance measurement standards that demand better performance from SBC than SBC is willing to agree to in the SBC Midwest region.<sup>42</sup> SBC’s decision not to ask E&Y to examine the accuracy of SBC’s ACIS database is consistent with AT&T’s concern about the quality of ACIS,

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<sup>40</sup> See E&Y Report of Independent Accountants on the Company’s Assertion Dated June 17, 2003, at 1 (“E&Y Report”) (Attachment A to the Affidavit of Brian Horst).

<sup>41</sup> E&Y Report at 4 n. 5 (“For purposes of the Reconciliation, when there were discrepancies between ACIS and CABS, the ACIS data was assumed to be accurate and was utilized to update CABS. . . . [T]he underlying accuracy of the UNE-P circuit information within the ACIS database . . . was not within the scope of E&Y’s engagement”); *id.* at 4 n. 7 (“the accuracy of the underlying information in each of those existing production data sources . . . was not within the scope of E&Y’s engagement”).

<sup>42</sup> DeYoung/Tavares Decl. ¶ 16.

and at the very least is further evidence that E&Y's recent testing does not provide a sufficient basis on which to conclude that SBC has addressed and resolved its problems generating complete and accurate wholesale bills.

In summary, E&Y's testing does not address, either directly or even by implication, the inaccuracies in SBC's March bill that AT&T's detailed review has confirmed. It also does not address the inconsistencies in the resolution of credit disputes that CLECs continue to have with SBC, or the inconsistencies between the January reconciliation and CLEC records that AT&T is now working with SBC to resolve. And E&Y concededly made no attempt to address discrepancies and inaccuracies in SBC's UNE-P usage reports. For all these reasons, the latest E&Y testing is not responsive to the problems that SBC must resolve before it can demonstrate that its billing performance meets the minimum that this Commission and the Telecommunications Act require.

**D. None Of SBC's Other Arguments Concerning Billing Has Merit**

Unable to dispute its inability, to date, to eliminate all or even most of the billing disputes that its inaccurate wholesale and usage bills have precipitated, SBC is forced to try to belittle their significance. It is now SBC's position that it need not attempt to take any further steps to correct the root causes of its billing problems. In SBC's world-weary view, the billing disputes with competitors in Michigan are no different than those in other states where the Commission

has granted SBC's 271 application.<sup>43</sup> Such disputes, SBC now maintains, "inevitably arise" and must simply be accepted as "a commercial fact of life."<sup>44</sup>

Certainly no competitor can reasonably expect perfection from SBC, and this Commission has made clear that a BOC applicant need not compile a record of perfect performance in order to obtain the Commission's approval of a section 271 application. Human errors, software glitches, and interpretive disagreements can arise in any business setting.

But SBC's degree of non-compliance in the area of wholesale billing is neither a minor matter nor business as usual. Rather, the record in Michigan shows pervasive inaccuracies that are indicative of fundamental flaws in SBC's systems and processes. SBC wants, but should not be permitted, to ignore the fundamental deficiencies in its Midwest Region billing systems that are responsible for the need for (and errors in) the January reconciliation, and for the continuing generation on a significant scale of wholesale and usage billing errors. The errors in Michigan are of a magnitude and gravity not present in any prior application, and reflect chronic deficiencies rooted in the inadequate systems that SBC inherited from Ameritech, and that SBC has not fully rehabilitated.

It is therefore SBC's decision to devote resources to explaining away its billing problems rather than to resolving them that distinguishes Michigan from the states in which the Commission has granted SBC 271 approval. SBC will not solve these problems unless the Commission, through the authority and responsibility Congress has given it in enforcing the requirements of Section 271, insists that SBC do so before the Commission grants SBC's 271

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<sup>43</sup> *Id.* at 22; Brown/Cottrell/Flynn Affid. ¶ 113.

application. Because SBC has not demonstrated that it is providing CLECs with complete, accurate, and timely wholesale bills and usage reports, the Commission should again deny SBC's 271 application for Michigan.

**IV. SBC'S REFUSAL TO PERMIT CLECS TO OPT INTO RECIPROCAL COMPENSATION TERMS OF INTERCONNECTION AGREEMENTS THAT BECAME EFFECTIVE AFTER THE ISP-BOUND TRAFFIC ORDER IS UNLAWFUL (CHECKLIST ITEM 13).**

In its supplemental application, SBC reiterates its position that CLECs may not exercise its rights under 47 U.S.C. § 252(i) to opt into *any* terms of an interconnection agreement relating to reciprocal compensation. *See* Alexander Decl. ¶ 6 n.4; *see also* Alexander Decl. (*Michigan I*) ¶ 22 n.7 (“a CLEC may not opt into provisions relating to reciprocal compensation (and legitimately related terms) in an existing Agreement”). In SBC's view, the Commission has forbidden any carrier from opting into interconnection agreement terms that relate to ISP-bound traffic, and SBC asserts that since all reciprocal compensation terms relate to ISP-bound traffic, CLECs are barred from opting into any reciprocal compensation terms. *See* Alexander Decl. (*Michigan I*) ¶ 22 n.7; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151, ¶ 82 (2001) (“*ISP-Bound Traffic Order*”), *rev'd*, *WorldCom Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (remanding but not vacating).

SBC misreads the *ISP-Bound Traffic Order*. The Commission prohibited only opting into terms of agreements *then in existence*. *ISP-Bound Traffic Order* ¶ 82 (“as of the date this order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt

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<sup>44</sup> SBC Supplemental Brief at 21-22. SBC's assertion that the total current amount in dispute between it and CLECs is \$25 million, *id.* at 22, also conveniently ignores the disputes of AT&T (and perhaps other CLECs) concerning the amounts relating to the data reconciliation, which for AT&T alone represents a debit of \$3.3 million.

into an *existing* interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic” (emphasis added)). The Commission nowhere prohibited opting into reciprocal compensation terms of an agreement adopted pursuant to Section 252 that became effective *after* the *ISP-Bound Traffic Order* was published in the Federal Register. Accordingly, SBC’s position denies CLECs nondiscriminatory access to reciprocal compensation arrangements in violation of checklist item thirteen (47 U.S.C. § 271(c)(2)(B)(xiii)).

**V. SBC STILL HAS NOT SHOWN THAT ITS PERFORMANCE DATA ARE ACCURATE AND RELIABLE.**

SBC still has not met its burden to demonstrate that its performance reporting is reliable. The Commission has repeatedly recognized that performance data provide “valuable evidence” for determining whether an ILEC can provide access to OSS functions and network elements on a nondiscriminatory basis. *Connecticut 271 Order*, Appendix D, ¶ 7; *Michigan 271 Order* ¶ 22. To satisfy its obligations under Section 271, an ILEC must demonstrate that its performance reports accurately track its performance and allow an appropriate determination of the adequacy of its OSS functions. To meet that standard, the “reliability of reported data is critical; the performance measures must generate results that are meaningful, accurate, and reproducible.” *Kansas/Oklahoma 271 Order* ¶ 278.

SBC’s performance data fall far short of satisfying these requirements. Indeed, the Michigan PSC has engaged an independent test of SBC’s performance data from BearingPoint, and BearingPoint has found that SBC still has passed only 56.3% of the BearingPoint test criteria. This is all the more shocking in light of the fact that other BOCs have met 96-100% of the same or similar criteria in winning 271 authority in other proceedings. SBC’s response has been to hire Ernst & Young (E&Y) to perform a competing audit, which has been far less

rigorous and comprehensive than BearingPoint's testing. Not surprisingly, SBC relies on E&Y, and urges the Commission to ignore BearingPoint.

Contrary to SBC's claims, however, the Commission cannot lawfully ignore the evidence before it. The state-commissioned independent audit reveals extensive and important deficiencies in SBC's data. E&Y's competing audit is limited in scope and flawed in design, and it does not answer or eliminate the myriad issues raised by the BearingPoint audit. And SBC's attempts to answer the BearingPoint findings on their own terms are meritless.

**A. The E&Y Audit Does Not Demonstrate That SBC's Data Are Reliable.**

In its Application, SBC urges the Commission to ignore the BearingPoint tests altogether and to find that SBC's performance data are accurate and reliable based solely upon the E&Y audit, "standing alone."<sup>45</sup> Alternatively, SBC contends that the completed portions of the PMR1, PMR2 and PMR3 tests conducted by BearingPoint, in combination with the PMR1, PMR4 and PMR5 tests conducted by E&Y, provide this Commission with adequate assurances regarding the reliability of its data. These contentions are meritless for four reasons: (1) E&Y lacks objectivity; (2) the E&Y Audit is unduly limited in scope and otherwise flawed; (3) as a result, BearingPoint has found many errors that E&Y did not; and (4) SBC's reliance on comparisons with audits in other 271 proceedings is unavailing. *See Moore/Connolly Decl.* ¶¶ 9-40.

*E&Y Lacks Objectivity.* Despite SBC's contrary claims, SBC's retention of its own handpicked financial advisor to conduct a separate audit as an end-run around the State-commissioned BearingPoint audit raises substantial questions regarding E&Y's objectivity.<sup>46</sup>

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<sup>45</sup> SBC Supplemental Brief at 5.

<sup>46</sup> Moore/Connolly Decl. (*Michigan I*) ¶¶ 11-14.

Notably, SBC retained E&Y unilaterally and without the approval of the MPSC.<sup>47</sup> The Texas Public Utility Commission has expressed concerns regarding E&Y's objectivity in conducting the Section 272(d)(2) biennial audit of SBC's operations in Kansas, Oklahoma and Texas.<sup>48</sup> Moreover, according to news reports, the SEC "in a rare move [is] seeking to have Ernst & Young suspended from accepting new corporate clients for six months because . . . Ernst & Young's internal controls are inadequate to prevent its auditors from becoming too cozy with corporate clients."<sup>49</sup> In such circumstances, this Commission cannot find that E&Y had the necessary objectivity in conducting its testing on SBC's behalf. *See Moore/Connolly Decl.* ¶¶ 11-14.

Casting further doubt on the E&Y audit is the fact that the scope and parameters of the E&Y audit were developed and agreed to by SBC and E&Y without CLEC input.<sup>50</sup> Unlike the BearingPoint Master Test Plan, which was the result of an open, collaborative process in which the CLEC industry participated, the precise contours of the E&Y work plan were cloaked in secrecy.<sup>51</sup> In addition, the BearingPoint test findings are open and available for public view on the website and are regularly updated; E&Y's work, by contrast, has been conducted privately, and E&Y's documentation remains confidential to SBC and E&Y.<sup>52</sup> For these reasons alone, E&Y's audit is a poor substitute for BearingPoint's audit and the Commission should accord E&Y's audit no weight. *See Moore/Connolly Decl.* ¶¶ 15-16.

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* ¶ 13.

<sup>49</sup> "SEC Wants Ernst & Young Suspended From New Cos. for 6 Mos" (Dow Jones Newswires, May 30, 2003).

<sup>50</sup> *Moore/Connolly Decl.* ¶ 15.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

*The E&Y Audit is Limited in Scope and Otherwise Flawed.* In sharp contrast to E&Y’s approach, BearingPoint is conducting a rigorous and comprehensive test, and, as a result, it continues to uncover significant defects in SBC’s performance monitoring and reporting processes that E&Y’s more narrow test has overlooked. SBC concedes that there are differences to the scope and methodologies in the E&Y and BearingPoint audits,<sup>53</sup> but wrongly contends that these differences are inconsequential. *See Moore/Connolly Decl.* ¶ 17.

SBC makes two principal arguments. First, SBC contends that “[b]ecause BearingPoint tests the PM data for a particular set of months, the more recent corrective actions that Michigan Bell has made in response to issues raised by E&Y in some instances are not reflected in the older data that BearingPoint reviewed.”<sup>54</sup> It is clear from the face of SBC’s application, however, that E&Y’s audit did not identify or address any number of defects that BearingPoint has uncovered during the course of its audit. SBC’s contention that E&Y has already identified and addressed the data defects that BearingPoint has found is thus absurd. Furthermore, E&Y’s testing procedures were limited and flawed, and therefore E&Y’s audits provide no assurance that SBC’s purported corrective actions have resolved the data defects that E&Y did, in fact, identify during the course of its audit. And because BearingPoint’s testing is incomplete and BearingPoint has not yet determined whether SBC’s purported corrective actions are effective, SBC’s claims regarding the efficacy of its corrective actions are premature, unsupported assertions which should be accorded no weight. *See Moore/Connolly Decl.* ¶¶ 18-19.

Second, SBC asserts that any other so-called “minor differences” between the E&Y and BearingPoint test findings are due to the different “materiality” standards that both auditors used.

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<sup>53</sup> Ehr/Fioretti Aff. ¶ 9.

In that connection, during its audit E&Y determined that an error would be considered material if it would change the original reported result by five percent or more, or if the error, when corrected, would cause the original attainment/failure result to reverse. E&Y applied this materiality standard at the sub-measure level. In contrast, during its audit, BearingPoint identifies all discrepancies in reported values. But SBC's implication that the BearingPoint Michigan test requires perfection is flatly wrong. Although BearingPoint identifies all discrepancies in reported values, in determining whether SBC has satisfied the test criteria for performance measurement groups in the PMR4 and PMR5 tests, BearingPoint uses a 95% benchmark standard. Indeed, the fact that other BOCs in Section 271 proceedings have satisfied between 96 and 100 percent of similar or more stringent BearingPoint test criteria belies SBC's assertions that the test criteria are too exacting. Furthermore, E&Y's audit examined only March-May 2002 results, and BearingPoint has uncovered defects in data generated outside the period covered in E&Y's review that would have constituted material errors even under E&Y's materiality standard. *See Moore/Connolly Decl.* ¶ 20.

*BearingPoint Has Found Errors That E&Y Has Not.* In all events, BearingPoint's testing was far more rigorous than E&Y's, which allowed it to unearth data deficiencies that E&Y did not uncover, and could not have uncovered, during its audit. For example, BearingPoint's audit involves an examination of data from January, May, July, August, September, December 2002 and February 2003 data, while E&Y's audit was limited to an examination of data generated in March, April and May 2002. As AT&T has explained previously, E&Y's opinions are based upon source systems that have since undergone major

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<sup>54</sup> Ehr/Fioretti Aff. ¶ 10.

changes.<sup>55</sup> Indeed, after E&Y conducted its testing, SBC implemented significant system changes, including using ICS/DSS as its system of record for EDI/LSOG 5-based transaction data.<sup>56</sup> As a consequence, the E&Y audit did not examine and could not have examined the effect that these major system changes have had on SBC's performance monitoring and reporting processes.<sup>57</sup>

In addition, BearingPoint's tests generated its own pseudo-CLEC test orders so that it could track SBC's raw data at the point of entry into and through SBC's systems to assure the reliability of reported results. In stark contrast, E&Y examined SBC's data only after it had been translated from EDI into SBC's internal systems and relied upon samples of data obtained from production data files. As a consequence, E&Y could not have detected the kinds of lost order problems that plagued Verizon's systems in New York where orders were lost in the EDI translator before hand-off to the Verizon legacy system.<sup>58</sup>

The BearingPoint audit also included regression testing to assess whether the corrective action that SBC purports to have taken to resolve data defects had other unintended consequences.<sup>59</sup> The Commission staff, in fact, requested such information from E&Y. *Id.* ¶ 30 (quoting Commission staff asked SBC "whether the correction[s], as implemented, had unintended consequences with respect to other data that was not mishandled by the original code"). In response, SBC conceded that E&Y "did not perform 'regression testing' in order to

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<sup>55</sup> Moore/Connolly Decl. ¶¶ 26-27.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* ¶¶ 21-29.

<sup>59</sup> *Id.* ¶ 30.

analyze whether the corrective action had unintended consequences with respect to other data that was not affected by the original problem.” *Id.*

And in contrast to the E&Y audit, the BearingPoint audit included an evaluation of SBC’s data collection, retention and storage practices.<sup>60</sup> That analysis confirmed that SBC has failed to retain important data in compliance with state regulatory requirements, a flaw overlooked by the E&Y audit.<sup>61</sup> The E&Y test also overlooked the fact that the underlying step-by-step calculation logic that is used to calculate reported results of the test are incomplete and inaccurate, a fact revealed by BearingPoint’s audit of SBC’s technical documentation.<sup>62</sup>

There are also other deficiencies in the E&Y audit that do not exist in the BearingPoint audit. For example, the E&Y audit did not attempt to replicate SBC’s reported results to assess the accuracy of SBC’s performance monitoring and reporting processes; the BearingPoint study did attempt to replicate SBC’s results.<sup>63</sup> And the E&Y audit failed to perform adequate testing of the corrective actions purportedly taken by SBC to remedy the identified data deficiencies.<sup>64</sup> The BearingPoint audit is in the process of conducting such a study.<sup>65</sup>

For all of these reasons, BearingPoint’s tests are far more rigorous, comprehensive and probative than E&Y’s limited and flawed tests. Because E&Y did not perform adequate testing of the corrective actions purportedly taken by SBC to remedy the data deficiencies identified, the

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<sup>60</sup> *Id.* ¶ 31.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* ¶ 32. The BearingPoint audit also revealed that SBC’s data flow diagrams were incomplete and inaccurate for numerous performance metrics. *Id.* ¶ 33.

<sup>63</sup> *Id.* ¶ 34.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

E&Y audit cannot possibly serve as the basis for a finding that these corrective actions are successful.<sup>66</sup>

*SBC's Attempt to Draw Comparisons to Other Audits Fails.* The substantial differences between the E&Y and BearingPoint audits highlight the fundamental infirmities in E&Y's testing approach and demonstrate that the E&Y audit is not an appropriate surrogate for the BearingPoint test. SBC tries to save the E&Y audit by claiming that it is similar to tests conducted in Missouri, Texas, and California, where 271 approval was granted.<sup>67</sup> But those cases are irrelevant here, because in none of those states was the Commission confronted with another audit – indeed, the one commissioned by the state commission – that flatly contradicted the BOC's claims regarding the accuracy of its performance monitoring and reporting processes.<sup>68</sup> SBC's failure to pass the State-commissioned BearingPoint test is the critical fact here, and an issue that was not present in the prior 271 applications on which SBC so heavily relies.<sup>69</sup>

**B. The BearingPoint Test Continues To Show That SBC's Data Are Unreliable.**

The BearingPoint test results continue to demonstrate that SBC's performance reports are unreliable and inadequate. According to BearingPoint's June 30, 2003 Metrics Update, SBC has passed 56.3% and failed 23.7% of the applicable test criteria. The remaining 20% of the

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<sup>66</sup> See *id.* ¶ 37.

<sup>67</sup> Ehr/Fiorelli Aff. at 5.

<sup>68</sup> See Moore/Connolly Decl. ¶¶ 39-40.

<sup>69</sup> Furthermore, in Missouri, Texas and California, SBC made its raw data available for all performance measures via download from a website or other sources. As a result, the CLECs in those states can have ready access to and can more easily reconcile SBC's raw data with their own, thus providing CLECs and regulators with other probative evidence in assessing the reliability of reported results.

applicable test criteria are “Indeterminate.” In stark contrast, in other 271 applications that have been approved, the BOC had passed 96 to 100% of comparable test criteria.<sup>70</sup>

SBC’s attempts to explain these findings away fall flat. For example, SBC argues that any BearingPoint finding of “Not Satisfied” is of no real consequence, because such scores “do not stem from BearingPoint finding a real problem or error in reported results, but from BearingPoint requesting more information before it is satisfied.”<sup>71</sup> That is preposterous. As BearingPoint has explained, a finding of “Not Satisfied” means that “the norm, benchmark, standard, and/or guideline was not met”<sup>72</sup> – *i.e.*, that SBC has not passed the applicable test criteria. *See* Moore/Connolly Decl. ¶¶ 42-44.

SBC also suggests that a “Not Satisfied” finding in the most current BearingPoint test is of no import because the BearingPoint audit is far from complete, and the most recent metrics update is simply a “snapshot” in the audit process. Although it is certainly true that the audit process is incomplete and that BearingPoint’s findings could change before the audit is concluded, it is equally clear that, based upon this “snapshot” in time, SBC has failed yet to pass over 43.7% of the test criteria in the BearingPoint audit. SBC simply cannot escape that dispositive fact.<sup>73</sup>

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<sup>70</sup> Moore/Connolly Decl. ¶ 41.

<sup>71</sup> Ehr/Fioretti Aff. ¶ 57.

<sup>72</sup> BearingPoint OSS Evaluation Project Report – Executive Summary, October 30, 2002 at 10.

<sup>73</sup> Moore/Connolly Decl. ¶¶ 45-46. Moreover, SBC controlled the timing of its application and elected to seek 271 approval notwithstanding the fact that the BearingPoint test was still in progress and had uncovered and could continue to uncover substantial deficiencies in its performance monitoring and reporting processes. Having unilaterally elected to file its application at this time, SBC cannot and should not be permitted to escape from BearingPoint’s findings that are set forth in its Michigan Metrics Update and observations and exceptions.

SBC also insists that BearingPoint’s “Not Satisfied” findings are of no real consequence because it “has already responded to nearly all of the current observations and exceptions.”<sup>74</sup> Implicit in its application, SBC attempts to show that the findings BearingPoint has reached to date during the PMR1, 4 and 5 tests are relatively insignificant. SBC’s analysis is wide of the mark. *See* Moore/Connolly Decl. ¶ 47.

**1. The BearingPoint PMR1 Test Demonstrates That SBC’s Data Are Untrustworthy.**

BearingPoint’s PMR1 list evaluates SBC’s procedures and practices associated with the storage and collection of data, including, *inter alia*, the accuracy and completeness of the documentation of technical requirements, data collection processes, and data retention practices. According to BearingPoint’s current Michigan Metrics Update, of the 126 test points, 30 test criteria are “Not Satisfied” and 11 test criteria are “Indeterminate.” SBC tries to excuse this dismal performance by arguing that these “Not Satisfied” findings are relatively insignificant because they “are driven by very narrow exceptions relating to technical documentation (Exceptions 188 and 187) or data-retention policy (Exception 186).”<sup>75</sup> Nothing could be further from the truth. *See* Moore/Connolly Decl. ¶¶ 48-50.

*Technical Documentation.* With respect to Exception 187, as of June 3, 2003, BearingPoint has identified nine measurement groups and 35 performance measures as to which SBC’s step-by-step logic documentation for its performance results is inaccurate. Version 4 of Exception 187, dated June 7, 2003, reveals that numerous performance metrics have been impacted by these deficiencies in SBC’s calculation logic – including metrics which SBC

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<sup>74</sup> Ehr/Fioretti Supp. Aff. ¶ 57.

<sup>75</sup> *Id.* ¶ 72.

concedes are “key measures.”<sup>76</sup> Importantly, in this exception, BearingPoint has found that the defects in documentation “may include data base queries that incorrectly document the extraction of data and calculation of performance results.”<sup>77</sup> Furthermore, BearingPoint is still evaluating the accuracy of the technical documentation relating to 33% of the performance measurements which are being evaluated in Exception 187. In view of the critical importance of correct data extraction when calculating performance, Exception 187 is a glaring example of the considerable risk of reliance on the performance data in this application. *See* Moore/Connolly Decl. ¶ 51.

In Exception 188, Version 4, dated June 3, 2003, BearingPoint has found that SBC’s Data Flow Diagrams and Data Element Maps are inaccurate with respect to 11 measurement groups and 85 individual measurements.<sup>78</sup> Although SBC contends that it is awaiting BearingPoint’s analysis of its responses to the issues raised as to 80 measures and that SBC is in the process of investigating and resolving issues concerning 5 other measures, the fact remains that BearingPoint has not confirmed the accuracy of SBC’s documentation for these 85 measures.<sup>79</sup>

SBC’s insinuation that the PMR1 test is insignificant because it addresses “ancillary processes” (*e.g.* documentation) which “do not relate to reported results at all” is frivolous.<sup>80</sup>

Correct mapping of data fields is critical in assessing the consistency and accuracy of performance results. Indeed, if SBC’s data flow diagrams are incorrect or error-ridden, the SBC

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<sup>76</sup> Exception 187 notes that that these data problems have affected “key measures” such as, for example, Performance Measurement 5 (“Percent Firm Order Confirmations (FOCs) returned Within ‘X’ Hours”); 7 (“Percent Mechanized Completions Returned Within One Hour of Completion in Ordering System”); 9 (“Percent Rejects”); 10 (“Percent Mechanized Rejects Within One Hour of Receipt of Reject in MOR”); 11 (“Mean Time to Return Rejects”); 13 (“Order Process Percent Flow Through”); 56 (“Percent Installations Completed Within Customer Requested Due Date”); and MI 13 (“Percent Loss Notifications Returned Within ‘X’ Hours of Completion of Maintenance Trouble Ticket”). BearingPoint Exception 187, Version 4, dated June 7, 2003.

<sup>77</sup> *See* BearingPoint’s Exception 187 at 1.

<sup>78</sup> BearingPoint Exception 188, Version 4, dated June 3, 2003.

<sup>79</sup> Ehr/Fioretti Aff. ¶ 82; *see* Moore/Connolly Decl. ¶ 52.

analysts and programmers who manage the data underlying SBC's reported data can implement system changes based upon incorrect specifications that can increase the risk that error will be introduced in the modified systems. And errors in the documentation containing the step-by-step logic used to calculate performance results can spawn inaccuracies in performance results. *See* Moore/Connolly Decl. ¶ 54.

Nor can the E&Y audit rescue SBC. Unlike the BearingPoint audit, the E&Y audit did not examine SBC's failure to maintain and store data in compliance with state regulations. And, unlike BearingPoint's audit, the E&Y audit did not examine the completeness and accuracy of the technical documentation that is used for generating performance results. Thus, the E&Y audit provides no assurance that SBC's "ability to collect and store data is reliable." *See* Moore/Connolly Decl. ¶ 55.

*Internal Data Collection Controls.* BearingPoint is still evaluating SBC's internal data collection controls to assess the accuracy of reported results for the Billing and Directory Assistance Database Measure Groups. SBC insists that it has implemented certain control improvements, and that those improvements are validated by its own lowered "material" standard. These arguments are meritless. *See* Moore/Connolly Decl. ¶ 56.

First, SBC cannot legitimately contend that the current record demonstrates that it has implemented sufficient controls to assure the accuracy of its reported results. As explained above, because of the inherent limitations and deficiencies in E&Y's testing procedures, the E&Y audit cannot serve as a basis for a finding that SBC has implemented corrective action and

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<sup>80</sup> Ehr/Fioretti Aff. ¶ 57.

implemented adequate controls to assure the stability and accuracy of its performance monitoring and reporting processes. *See* Moore/Connolly Decl. ¶¶ 57-58.

SBC’s attempts to change the standard of materiality is especially indefensible. In its initial application, SBC stated that an assessment of whether an error in reported data is material and, therefore, worthy of restatement, “is determined by the individual submeasure results moving from a) ‘pass’ to ‘fail’; b) ‘fail’ to ‘pass’; c) indeterminate/no data (no test possible) to ‘fail’; or d) ‘fail’ to indeterminate/no data.”<sup>81</sup> AT&T previously demonstrated that even this standard was flawed because, *inter alia*, SBC’s materiality test could effectively conceal the cumulative effect of multiple errors in a single measure.<sup>82</sup> SBC has now watered the standard down even further, by asserting that, in assessing whether an error is “material,” it examines “whether the recalculated data would result (a) in a shift in the performance in the aggregate from a ‘make’ to a ‘miss’ condition or (b) in a further degradation of reported performance of more than 5% for measures that are in a ‘miss’ condition, provided there are at least 100 CLEC transactions in the sub-metric.”<sup>83</sup> This new, ill-conceived definition of materiality, which was unilaterally developed without the input of the CLEC industry or MPSC approval, and upon which SBC relies for purposes of this application, effectively permits it to mask errors in its reported results – including, incredibly, errors that SBC deemed to be “material” in its initial application.<sup>84</sup>

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<sup>81</sup> Ehr Reply Aff. (*Michigan I*), ¶ 49.

<sup>82</sup> Moore/Connolly Decl. (*Michigan I*) ¶ 63.

<sup>83</sup> Ehr/Fioretta Decl. ¶ 85 (footnote omitted).

<sup>84</sup> *See* Moore/Connolly Decl. ¶¶ 59-62. Thus, for example, in its initial application, SBC admitted that, if an error in an individual submetric would change the result from a “fail” to a “pass,” such a data defect would constitute a material error warranting restatement. However, under SBC’s new definition of materiality in this application, this type of error would be deemed immaterial and unworthy of correction. Similarly, in its prior application, SBC conceded that, if an error in the data for a submetric caused the result to change from “indeterminate/no data (no test

Furthermore, SBC's new definition of "materiality" continues to mask the cumulative effect of multiple errors in a measure. Moreover, although SBC touts the effectiveness of its quality assurance process to detect and correct errors before results are published, SBC's most recent web update reveals that, *inter alia*, SBC is still correcting errors in its data that were reported approximately a year ago.<sup>85</sup> In all events, the nature and full extent of the errors in SBC's performance results remain a mystery because of SBC's ill-conceived and ever-shifting definitions of "materiality." *See* Moore/Connolly Decl. ¶ 68.

*Data Retention.* The BearingPoint PMR1 test also includes an assessment of SBC's data retention practices. E&Y never evaluated data retention during its audit, and BearingPoint's PMR1 test shows that seven test criteria are "Satisfied," one test criterion is "Indeterminate," and ten test criteria are "Not Satisfied." SBC insists that BearingPoint's "Not Satisfied" findings are based upon Exception 186 which identifies only a "few" systems that violated regulatory retention requirements.<sup>86</sup> However, Version 3 of Exception 186 issued on June 23, 2003 reveals that SBC has failed to retain data for 14 systems in accordance with state requirements.<sup>87</sup>

## **2. The BearingPoint PMR4 Test Demonstrates the Inaccuracy of SBC's Data.**

BearingPoint's PMR4 test assesses the integrity of SBC's data, and of the 40 PMR4 test criteria, BearingPoint has found that three are "Not Satisfied," 11 are "Satisfied," and the

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possible)" to "fail," then this type of error is material and should be corrected. However, under SBC's current formulation of its materiality standard, presumably this type of error would be considered "immaterial" because, technically, there was no shift in performance "from a 'make' to a 'miss' condition." Ehr/Fioretti Aff. ¶ 85. Additionally, in its previous application, SBC admitted that, if an error in a given measure caused the result to change from a "fail" to "indeterminate/no data," this type of error is, in fact, material and compels restatement. In stark contrast, according to SBC's current definition of materiality upon which it relies in this application, such an error would be considered immaterial and would not be corrected. Moore/Connolly Decl. ¶¶ 63-67.

<sup>85</sup> *See* Moore/Connolly Decl. ¶ 68 (giving examples).

<sup>86</sup> Ehr/Fioretti Aff. ¶ 90.

remaining 26 are “Indeterminate.” However, SBC asserts that BearingPoint’s PMR4 test should be ignored because E&Y has already identified the data defects that BearingPoint has found during the PMR4 test and has validated that SBC has taken the appropriate corrective action. SBC’s analysis cannot withstand scrutiny. *See Moore/Connolly Decl.* ¶¶ 73-74.

For example, BearingPoint found in Exception 134 that SBC failed to capture certain product types in its provisioning, maintenance and repair, and other measures. Because of this error, BearingPoint found that as many as 6% of the total records in SBC’s RRS may have been misclassified “and thus not included in the January 2002 performance metrics results.”<sup>88</sup> BearingPoint also identified 29 performance measures that may have been impacted by this error. Although E&Y did identify this data mapping problem in its initial audit, E&Y failed to discover that these errors impacted a number of performance metrics. Thus, contrary to SBC’s assertions, E&Y did not identify all of the defects that BearingPoint addressed in Exception 134. *See Moore/Connolly Decl.* ¶¶ 75-78.

SBC attempts to sidestep other deficiencies by improperly relying on E&Y’s work papers, which are confidential and have not been filed with its application. For example, BearingPoint found in Exception 176 that SBC’s performance results for Performance Measurement 19 (Daily Usage File Timeliness) failed to capture access data (“Category 11 files”). SBC contends that “E&Y addressed this issue in part of its audit, but determined that . . . these Category 11 records were appropriately excluded from the results.”<sup>89</sup> SBC’s conclusions, however, which are purportedly based upon E&Y’s workpapers, should be accorded no weight

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<sup>87</sup> BearingPoint Exception 186, dated June 23, 2003; *see Moore/Connolly Decl.* ¶¶ 69-72.

<sup>88</sup> *Moore/Connolly Decl.* ¶ 77.

<sup>89</sup> *Ehr/Fioretti Aff.* ¶ 114.

by this Commission because these workpapers were not made generally available to the CLECs, and SBC has not submitted these workpapers as part of its application.

### **3. The BearingPoint PMR5 Test Demonstrates The Inaccuracy Of SBC's Data.**

BearingPoint's PMR5 test assesses the processes that SBC uses to calculate its reported results. Of the 72 total PMR test criteria, 31 are "Not Satisfied," 24 are "Satisfied," and 17 are "Indeterminate." Once again, SBC asserts that the Commission should rely on E&Y's PMR5 test.<sup>90</sup> In analyzing BearingPoint's findings during the PMR5 test, SBC contends that: (1) BearingPoint has successfully replicated over "95 percent of the key measures that BearingPoint examined";<sup>91</sup> (2) that "[i]n each case" where BearingPoint has identified any data issue, SBC has already responded to BearingPoint";<sup>92</sup> and (3) that BearingPoint's findings are superfluous because they essentially mirror those that E&Y "identified and addressed during its audit."<sup>93</sup> SBC's allegations are devoid of merit. *See* Moore/Connolly Decl. ¶ 82.

In its PMR5-2 Blind Replication Status Summary Chart – Attachment D, SBC goes to great lengths to identify, with respect to certain "key" measures, each "non-material match," where "BearingPoint's calculated result falls within 5% of Michigan Bell's posted result and where the parity determination . . . does not change."<sup>94</sup> SBC also identifies each "non-match," "where BearingPoint's calculated result differs from the Michigan Bell posted result by more than 5% or changes the parity determination."<sup>95</sup>

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<sup>90</sup> Ehr/Fioretti Supp. Aff. ¶ 9.

<sup>91</sup> SBC June 27, 2003 *Ex Parte*, Revised ¶¶ 138-139 of the Ehr/Fioretti Joint Supplemental Affidavit.

<sup>92</sup> Ehr/Fioretti Supp. Aff. ¶ 131.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* ¶ 136.

<sup>95</sup> *Id.* (footnote omitted). *See* Moore/Connolly Decl. ¶ 83.

As a preliminary matter, SBC's list of so-called "key measures" is incomplete and omits measures that are important to competitive entry, such as Performance Measures 13.1 ("Total Order Process Percent Flow Through"), 30 ("Percent Ameritech Missed Due Dates Due to Lack of Facilities"), 33 ("Percent Ameritech Caused Missed Due Dates"), 2 ("Percent Responses Received Within "X" Seconds – OSS Interfaces") and 4 ("OSS Interface Availability"). See Moore/Connolly Decl. ¶ 84.

But even putting that aside, SBC's own analysis shows is flawed in other important respects. In a separate table, SBC purports to summarize the results of the Blind Replication Status Summary and contends that this table demonstrates that "BearingPoint has been able to replicate or 'match' over 95% of the key measures evaluated to date for July through September 2002 based on a 1% deviation standard."<sup>96</sup> SBC contends that this table "shows a positive trend as replication continues, with the match rate improving in August and improving again for September."<sup>97</sup> But in calculating the successful replication rate, SBC included in the denominator of its calculation the sum of replications completed and *omitted* the metrics that remain to be evaluated. This manipulation of the data resulted in an inflated successful replication rate. Correcting SBC's error shows that BearingPoint has replicated or matched only 47.3% of SBC's so-called "key measures" from July through September 2002 – well below the 95% successful rate erroneously asserted by SBC.<sup>98</sup>

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<sup>96</sup> SBC June 27, 2003 *Ex Parte*, Revised ¶¶ 138-139 of the Ehr/Fioretta Joint Supplement Affidavit.

<sup>97</sup> Ehr/Fioretta Supp. Aff. ¶ 139.

<sup>98</sup> Moore/Connolly Decl. ¶ 85. Similarly, although SBC's contention that there has been "a positive trend as replication continues" is wrong. In reality, BearingPoint replicated 66.2% of the CLEC values in July 2002. The successful replication rate for CLEC values not only declined to 53% in August, but it declined even further to an astonishingly low 37.4% in September 2002. In addition, in July 2002, BearingPoint replicated 59.3% of SBC's retail values; however, in August 2002, the successful replication rate for retail values declined to 27.2%, and that rate plummeted to an abysmally low 19% in September 2002. *Id.* ¶ 87.

In addition, BearingPoint's PMR5 blind replication testing is far from complete.<sup>99</sup> And because of the defects in SBC's performance data, BearingPoint has encountered considerable difficulty in replicating SBC's reported values, and numerous performance measurements have repeatedly failed the PMR5 metrics replication test.<sup>100</sup> Indeed, replication testing has not been completed for 50.6% of SBC's "key metrics" for July 2002 through September 2002.<sup>101</sup>

In dismissing a number of BearingPoint's findings, SBC asserts that these findings are of no real consequence because SBC has corrected the data errors that are the subject of BearingPoint's findings and plans to restate its performance results.<sup>102</sup> SBC also contends that other BearingPoint findings are essentially irrelevant because it has already provided BearingPoint with information that will enable BearingPoint to replicate SBC's results.<sup>103</sup> However, BearingPoint still must retest SBC's data after SBC's restatements and complete its analysis of any information that SBC has provided in response to its findings; SBC's unverified assertions that the data are accurate do not suffice.

Finally, SBC contends that the Commission should ignore the BearingPoint PMR5 findings because E&Y has already addressed the data problems that BearingPoint has identified. SBC is wrong. As explained in detail in the Moore/Connolly Declaration (¶¶ 90-113), there are numerous examples to the contrary.

#### **4. BearingPoint Has Issued Additional Observations.**

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<sup>99</sup> *Id.* ¶ 88.

<sup>100</sup> Moore/Connolly Decl. ¶ 90.

<sup>101</sup> *Id.*

<sup>102</sup> *See* Ehr/Fioretti Aff. ¶¶ 141.

<sup>103</sup> Ehr Aff. ¶¶ 140-41.

SBC concedes in its application that its analysis of BearingPoint's findings is limited to those issued through May 30, 2003.<sup>104</sup> BearingPoint, however, has issued several additional observations since that time, which detail a number of other failures in SBC's systems. See Moore/Connolly Decl. ¶¶ 114-16. In short, BearingPoint's audit has uncovered and continues to uncover significant defects in SBC's performance monitoring and reporting processes. On the basis of the current record, SBC has not demonstrated and cannot demonstrate that its data are accurate and demonstrate statutory compliance.

**C. SBC Has Also Failed To Make The Raw Underlying Data Available.**

Finally, SBC has frustrated AT&T's attempts to verify the reliability of its performance data by denying access to the underlying raw data. The Commission has previously found that "the availability of raw performance data" is probative in evaluating the reliability of performance data relied upon by a Section 271 applicant.<sup>105</sup> Even SBC has admitted that the MPSC has determined that "raw data should be retained in sufficient detail so that a CLEC can reasonably reconcile the data captured by ILEC (for the CLEC) with its own internal data."<sup>106</sup>

As AT&T has previously explained, however, SBC has not provided all of the raw data that AT&T has requested in the past (including the full disposition code which is a part of the raw data). In addition, AT&T has explained that the raw data files that SBC provided were not only incomplete, but they were also untimely. In this regard, AT&T explained that SBC initially refused to provide AT&T with the full trouble ticket disposition code that is a part of the raw data, which is critical to any assessment of how SBC disposed of the troubles reported by AT&T

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<sup>104</sup> See Ehr/Fioretti Aff. ¶ 164.

<sup>105</sup> *Georgia/Louisiana 271 Order*, ¶ 119.

<sup>106</sup> Ehr Aff. ¶ 269 (citation omitted) (*Michigan I*).

customers. SBC's claim that AT&T's concerns about its provisioning of disposition codes were strictly limited to troubles coded to 0525 and 0526 is incorrect. The trouble ticket disposition code issue arose because SBC stated broadly and unequivocally that AT&T simply did not need the full four-digit disposition code. In fact, SBC admitted in its prior application that, with respect to all disposition codes, it "reminded AT&T that only the two-digit disposition codes provided to AT&T were needed to conduct a data reconciliation (*i.e.*, the full disposition code is not relevant for this purpose)."<sup>107</sup> SBC stated further that "[t]hese two-digit codes are utilized in the PM 39 business rules (which indicate that disposition codes 11, 12 and 13 are excludable), and the instances in which they apply are defined in the CLEC handbook made available on the CLEC website."<sup>108</sup>

Thus, despite SBC's contrary assertions, the trouble ticket disposition code dispute did not center exclusively on codes 0525 and 0526, but rather arose because SBC took the strident and misguided position that AT&T only needed the first two digits of any disposition code to assess the accuracy of SBC's disposition of AT&T's trouble tickets. But, as AT&T explained in comments filed on SBC's prior application, all four digits are needed to determine whether SBC has applied the correct code. SBC cannot dispute this, and indeed does not in its current filing, at least with respect to disposition codes 11, 12, and 13. While in its prior application SBC also maintained that, for purposes of data reconciliation, AT&T only needed two-digit codes for troubles coded to 11, 12 and 13, SBC now admits that "there would be merit in reconciling the

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<sup>107</sup> Ehr Reply Aff. (*Michigan I*) ¶ 128.

<sup>108</sup> *Id.*; *see also* Moore/Connolly Decl. ¶ 118-19.

information contained in the full disposition code . . . for troubles coded to the 11, 12, and 13 . . . series.”<sup>109</sup>

Because SBC has yet to provide CLECs with access to the raw data for all of the performance measurements, it is impossible for AT&T to reconcile a meaningful amount of performance measurement data. The lack of CLEC access to the raw data underlying all of SBC’s performance measures further underscores the critical role that the BearingPoint audit has played and must continue to play in assessing the integrity of SBC’s raw data. *See* Moore/Connolly Decl. ¶ 125-26.

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<sup>109</sup> Ehr/Fioretti Aff. ¶ 197; Moore/Connolly Decl. ¶¶ 120-24.

**CONCLUSION**

For the reasons stated above and in AT&T previous comments, reply comments, and ex parte submissions that are incorporated by reference herein, SBC's application for interLATA authority in Michigan should be denied.

Respectfully submitted,

/s/ Dina Mack

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July 2, 2003

*AT&T Comments*  
*Michigan 271 Application*  
*WC Docket No. 03-138*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of July, 2003, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: July 2, 2003  
Washington, D.C.

/s/ Patricia A. Bunyasi

Patricia A. Bunyasi

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*Michigan 271 Application*  
*WC Docket No. 03-138*

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