

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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

**JOINT REPLY DECLARATION OF SARAH DEYOUNG  
AND SHANNIE TAVARES**

**I. BACKGROUND**

1. My name is Sarah DeYoung. I previously submitted a declaration with Shannie Tavares dated July 2, 2003 in this docket on billing issues, as well as a declaration with Shannie Tavares (formerly Shannie Marin) dated March 4, 2003 in WC Docket No. 03-16 on billing issues. My qualifications are set forth in a declaration dated February 6, 2003 with Walter Willard on OSS issues.

2. My name is Shannie Tavares (formerly Shannie Marin). I previously submitted a declaration with Sarah DeYoung dated July 2, 2003 in this docket on billing issues. I submitted a declaration dated March 4, 2003 in WC Docket No. 03-16 with Sarah DeYoung on billing issues, as well as a supplemental declaration on April 9, 2003 in that same docket. My background and credentials are set forth in the March 4 declaration.

**II. PURPOSE AND SUMMARY OF TESTIMONY**

3. This declaration provides additional evidence of ongoing problems with SBC's wholesale billing performance, as reflected in two new developments since AT&T filed its Comments. First, SBC provided a written response to AT&T concerning some of the deficiencies with the reconciliation that AT&T discussed in its Comments. SBC's response, however, is incomplete, fails to address the substance of AT&T's concerns, and reveals that SBC's purported contractual basis for limiting credits is baseless. Second, SBC has just advised AT&T of numerous debit and credit adjustments on its June and July bills resulting from a variety of errors. These additional errors and adjustments demonstrate the continued inaccuracy and inauditability of SBC's wholesale bills.

**III. SBC HAS FAILED TO REBUT DEFICIENCIES IN THE RECONCILIATION IDENTIFIED BY AT&T.**

4. On July 2, 2003, AT&T sent a letter to SBC concerning the deficiencies with the reconciliation. These deficiencies were described in detail in AT&T's Comments. *See* Letter from Sarah DeYoung to Thomas Harvey (July 2, 2003) ("AT&T Letter") (attached hereto as Exhibit 1). SBC responded on July 15, 2003. *See* Letter from Thomas Harvey to Sarah DeYoung (July 15, 2003) (attached hereto as Exhibit 2). As discussed below, however, SBC's response is for the most part no response at all.

5. First, in its letter, AT&T identified the flaws in SBC's methodology for calculating the debits and credits, and requested that SBC take corrective actions, such as providing more information as to the percentage of time that it used default dates in lieu of actual connect and disconnect dates, or confirming that it will revise its debit or credit calculations. AT&T Letter at 1-3. SBC's response, however, failed to address the substantive issues raised by AT&T. Instead, SBC merely repeated its description of the

methodology that had first been provided to AT&T at the June 20<sup>th</sup> meeting between the companies. SBC did not respond to AT&T's claims that this methodology was deficient, nor did it respond to any of AT&T's requests to take corrective action, much less commit to take any such action. Incredibly, in response to AT&T's objections about SBC's use of default dates and its request for information about the percentage of time that the defaults were used, SBC responded that it "did not maintain records that would allow it to easily determine the percentage of records for which it used default dates," SBC Letter at 1. This response is remarkable: How can SBC claim to have used default dates to calculate adjustments, but have no record of the number of circuits for which default dates were used?

6. AT&T's letter also pointed out that SBC had improperly limited AT&T's credits based on contractual time frames because there is no provision in the interconnection agreement that would operate to limit the duration of credits. AT&T Letter at 1-2; DeYoung/Tavares Decl. ¶ 27. SBC asserts in its letter, without explanation, that it is relying on General Terms and Conditions §§ 27.2 and 28.2 of the Michigan interconnection agreement. SBC Letter at 1. Neither provision provides a basis for limiting AT&T's credits. Section 27.2 (Billing Information and Charges) provides general guidelines for billing and limitations on backbilling (*i.e.*, debits), and thus cannot provide any support for SBC's position. Nor does Section 28.2 provide support for SBC's position. That Section provides as follows:

28.2.1 Billing Disputes Related to Paid Amounts.

28.2.1.1. In order for a Billed Party to dispute all or a portion of amounts it has previously paid, it must:

28.2.1.1.1. within eleven (11) months of AT&T's receipt of the bill in question, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the total amount disputed and the specific details and reasons for disputing each item . . .

As the language demonstrates, reliance on Section 28.2. is nonsensical because it only applies to billing disputes initiated by the "Billed Party," *i.e.*, AT&T. That is, its purpose is to limit AT&T's ability to initiate disputes about amounts paid more than eleven months in the past. It does not address the situation where, as here, credits were applied by the Billing Party – *i.e.*, SBC – and were the result of admitted systems failures that caused billing inaccuracies.

7. Moreover, in response to AT&T's request that SBC restate PM 17 (the billing completeness timeliness measure), SBC repeated its prior inadequate excuses for its unwillingness to restate the measure. AT&T Letter at 3; DeYoung/Tavares Declaration ¶ 38. Remarkably, however, SBC also advanced a new "it's so bad that it doesn't matter" defense for its failure to restate inaccurate performance measure data. SBC admits that its performance under this measure has long been deficient, but states that "there seems little to be gained" by restatement given that "CLECs have long been aware of SBC's deficient performance." SBC Letter at 2. Such knowledge in no way relieves SBC of its obligation to accurately calculate the performance measures, even those for which its performance is clearly deficient. SBC's cavalier attitude toward its obligation to report accurate performance results no doubt helps explain why BearingPoint has not been able to complete its audit of SBC's metrics.

8. Finally, in response to AT&T's assertion that SBC breached the Proprietary Information provisions of its interconnection agreement with AT&T by disclosing AT&T's wholesale bills to Ernst & Young ("E&Y") in connection with E&Y's review of the data reconciliation, SBC does not deny that it disclosed such data; it merely claims (without explanation) that AT&T's interests were "suitably protected." AT&T Letter at 4; SBC Letter at 2. This response illustrates SBC's blatant disregard for its obligations under its ICA with AT&T. In essence, SBC's response amounts to a claim that it may unilaterally disregard the terms of the ICA in order to advance its 271 objectives and then deem such terms satisfied after the fact.<sup>1</sup>

**IV. SBC HAS DISCLOSED NEW ERRORS THAT WILL BE REFLECTED IN ADJUSTMENTS TO THE JUNE AND JULY BILLS.**

9. On July 16, 2003, Shannie Tavares received a telephone call from Cathy Wyban of SBC to advise AT&T that SBC had performed an investigation of monthly rate charges ("MRCs") to verify that they are consistent with the interconnection agreements and state tariffs. Ms. Wyban advised that, as a result of this investigation, SBC identified a number of additional errors causing both overbilling and underbilling, and that credit and debit adjustments were in process and either were included on the June wholesale bill (which AT&T has already received) or would appear on the upcoming July bill.

10. The first issue concerns a loop zone misclassification billing error. SBC had previously informed CLECs that a table error had caused this misclassification in all five of the SBC Midwest Region states, but Ms. Wyban's phone call was AT&T's first notice

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<sup>1</sup> See Letter from William Davis to Kathy Palter (July 18, 2003) (attached hereto as Exhibit 3).

of the specifics of the adjustments (although it is still unclear whether the debits and credits will appear on the June or July bill, or both). Ms. Wyban informed AT&T that the error resulted in both overbilling and underbilling and disclosed that there would be adjustments for Illinois, Indiana, Ohio and Wisconsin. Ms. Wyban indicated that “she did not have any information” about Michigan adjustments, even though an SBC Accessible Letter had indicated that SBC’s error had impacted 13 wire centers in Michigan.

11. On July 17, Ms. Wyban provided specific information about the amounts of the debits and credits in the four states for which she had data. The impact to AT&T resulting from this latest error is substantial. While the credits total \$6382.92, the debits total \$611,590,66, with a net debit to AT&T totaling \$605,207.74. Notably, as was the case with the reconciliation, SBC provided no information to AT&T that would enable it to determine whether SBC’s “corrections” were performed accurately. Rather, SBC simply stated that these debits would appear on AT&T’s bills. SBC has not, for example, provided AT&T with any information about the specific wire centers that were impacted, the number of loops changed in each wire center, or the different classifications applied to the affected wire centers before and after the adjustments. Nor did SBC disclose the methodology that it employed to determine the adjustments (except to reveal that the credits were limited in the same improper manner that credits were limited in connection with the reconciliation). Thus, as with the reconciliation, SBC simply expects AT&T (and presumably other affected CLECs) to trust that SBC performed the corrections accurately, even though the same SBC systems that produced the adjustments were also responsible for the errors.

12. The impact of this further adjustment is substantial, both for what it demonstrates about the continued unreliability of SBC's wholesale billing systems and its effect of substantially impeding entry efforts by CLECs such as AT&T. As discussed in our opening declaration, continual errors and restatements require the commitment of massive resources to identify and review SBC's adjustments, as well as to work through questions and disputes with SBC. DeYoung/Tavares Decl. ¶ 18. As AT&T's experience with the data reconciliation illustrates, resolving such issues with SBC is often a long and frustrating process. *Id.* at ¶¶ 21-23. As a result of such difficulties, the AT&T employees who address SBC billing issues spend approximately 70% of their time on the SBC Midwest Region, and the remaining 30% of their time on the former SWBT and Pacific Bell regions combined.

13. Moreover, continual adjustments of this magnitude make it impossible for AT&T to compete effectively in Michigan. With such substantial and after-the-fact adjustments, AT&T simply does not know, month to month, what its costs are, or whether it is operating profitably or not. Getting a timely bill from the principal supplier of inputs for one's business is not helpful if, one, two, or three, or even several months later, that supplier is likely to submit a supplemental bill. To be an effective competitor in a service business with margins as narrow as those for local telephone service, a business needs to know, with precision, what its costs are. This information determines, among other things, the pricing that a competitor can offer its customers, the promotions and packages it can offer new customers, and ultimately, where to concentrate its marketing efforts and whether it should reexamine its market entry altogether. For this reason, SBC's

continuing inability to provide accurate wholesale bills is seriously compromising the growth and vitality of local competition in Michigan.

14. The second issue that was identified on the telephone call involved adjustments to MRCs resulting from an error on the identifier for the application of charges for Directory Assistance Call Completion (“DACC”) and Operator Assistance (“OA”). According to Ms. Wyban, the operator assisted calls were double-billed and the DACC calls were improperly billed in accordance with a retail tariff. This error affected all five states in the SBC Midwest Region. Prior to this disclosure by Ms. Wyban, AT&T had noticed a large credit on its June consumer services bill (over \$500,000) and a credit on its business services bill (almost \$20,000), but the reason for the credits was not clearly identified on the bills. When AT&T received the June bill, it called SBC in an effort to gain an understanding of the credit. At that time, no explanation was provided to AT&T. Indeed, it was not until AT&T’s discussion with Ms. Wyban (a week later) that SBC’s after-the-fact explanation made clear that these credits related to the DACC and OA error that Ms. Wyban identified.

15. As the DACC/OA example reveals, SBC often does not notify CLECs of errors prior to issuing billing adjustments and does not clearly notate and explain the adjustments on the bills. As a result, AT&T cannot effectively audit SBC’s bills. No matter how carefully AT&T reviews a bill, that review is meaningless unless AT&T can determine the basis for particular debits and credits. Where it cannot, as in the case of the DACC/OA error, AT&T must rely on SBC’s disclosures to reveal it. Notably, SBC Midwest’s practice of failing to give advance notice of billing adjustments stands in stark

contrast to AT&T's experience with SWBT and Pacific Bell, which typically do provide advance notice of billing adjustments.

16. Ms. Wyban also identified several other adjustments applied to AT&T's bills. One – relating to the incorrect application of Daily Usage File (“DUF”) rates in Indiana – is significant because it further demonstrates that the lack of an orderly process for identifying and correcting errors impedes the auditability of SBC's bills. In this case, while AT&T had advance notice of this DUF adjustment, SBC had previously advised AT&T that it would need to negotiate a contract amendment in order to receive the adjustment. On the call, however, Ms. Wyban informed AT&T (for the first time) that the contract amendment solution was apparently being overridden and that SBC was going to issue AT&T a credit for the DUF charges. She did not reveal when this credit will appear on the bill.

17. SBC's recent disclosures provide additional evidence that SBC's billing systems are error-prone and fundamentally flawed. Notwithstanding the data reconciliation and SBC's recent efforts to verify the accuracy of the reconciliation through outside experts, the bottom line is that SBC's billing systems continue to generate new, substantial errors. Moreover, SBC's failure to clearly communicate and substantiate adjustments before they appear on the wholesale bills renders those bills completely inauditable. The continued failure of SBC to provide accurate wholesale bills significantly hinders AT&T's ability to effectively compete in the Ameritech states.

## **V. CONCLUSION**

18. SBC's continued billing errors demonstrate that SBC has not complied with its obligation to provide timely, accurate and auditable wholesale bills. SBC cannot be found to comply with this obligation until it can demonstrate that it can provide such bills to AT&T and other CLECs.

**VERIFICATION PAGE**

I declare under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge and belief.

/s/ Sarah DeYoung  
Sarah DeYoung

Executed on: July 21, 2003

**VERIFICATION PAGE**

I declare under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge and belief.

/s/ Shannie Tavares  
Shannie Tavares

Executed on: July 21, 2003

# Exhibit 1



Sarah De Young  
Division Manager  
Local Services and Access Management

Room 2107  
795 Folsom Street  
San Francisco, CA 94107  
Phone: 415 442 5506

July 2, 2003

By Email and First Class Mail

Mr. Thomas Harvey  
Vice President – Industry Markets  
SBC Corp.  
350 N. Orleans, Floor 3  
Chicago, IL 60654

Dear Thomas,

This letter is sent to update and reiterate AT&T's position on disputed backbilling and other related matters associated with the January, 2003 UNE-P ACIS-to-CABS Billing Reconciliation in the SBC/Midwest states.

### **Disputed Backbilling**

As outlined in my February 24, 2003 correspondence, AT&T notified SBC that it accepted no liability for the backbilling as calculated by SBC and accordingly withheld payment of all debit transactions associated with the reconciliation. Information disclosed for the first time by SBC in the course of the Michigan 271 proceeding reinforced AT&T's conclusion that SBC had significantly failed in its obligations to deliver accurate and timely wholesale bills over a period of more than a year and that it was therefore not entitled to associated backbilling. You recently advised that SBC would schedule a conference call to review the methodology supporting the reconciliation, as well as the questions raised by AT&T in the Michigan 271 proceeding, and that the information provided would most likely resolve this dispute.

However, the information finally provided by Cathy Wyban of your team and the SBC subject matter expert, Phil Dumm, on Friday, June 20 served only to increase AT&T's concerns re: the accuracy of the Billing Reconciliation and the associated backbilling calculations. Here is a summary of our concerns along with the requested action; however, please also note that these issues do not include hundreds of accounts for which we have identified additional reconciliation discrepancies and which we are scheduled to discuss separately.

- 1) In the case of records that were in CABS but not in ACIS (i.e. credit transactions), SBC reportedly assumed that there are provisions in the

Page 2  
July 2, 2003 Letter to Thomas Harvey

Interconnection Agreements that limit the retroactivity of credits. Cathy and Phil were unable or unwilling to provide contract cites or additional details on the call, and I have subsequently been unable to identify any relevant language that would support SBC's position.

Action Requested:

- Please provide the appropriate cites
- OR**
- confirm that SBC will adjust credit transactions based on this correction.

- 2) In the case of records that were found in CABS but not in ACIS (i.e. credit transactions), SBC reportedly used some sort of "archived information" to determine the appropriate disconnect date. Where this archived information was not available, SBC defaulted to issuing credits back to the original start date in CABS. Cathy and Phil were unable or unwilling to provide data regarding the percentage of records in which this "archived information" vs. the CABS start date (the default) was used. Unless SBC is willing to provide more detailed information about the archived information (e.g. the source, degree and manner in which it was tested for accuracy, etc.), AT&T disputes its use.

Action Requested:

- Please provide information described above regarding the "archived information" file and
- the percentage of records to which it was applied
- OR**
- confirm that SBC will adjust all credit transactions for AT&T and TCG back to the CABS start date.

- 3) In the case of records that were found in ACIS but not in CABS (i.e. debit transactions), SBC reportedly was unable to utilize the actual connect date in ACIS for each circuit, and instead relied on "guide information". Where this "guide information" was not available, SBC defaulted to issuing no backbilling but starting MRC billing with the next billing cycle.

Cathy and Phil later disclosed that this "guide information" was in fact usage data or based on usage data. Given past issues with misdirected usage, AT&T disputes the use of this data to accurately determine the start date of any specific circuit.

The use of the "default" is also problematic. Cathy and Phil were also unable or unwilling to provide data regarding the percentage of records in which usage information was not available. And although the default resulted in no backbilling, AT&T disputes SBC's decision to begin charging MRCs on accounts

Page 3  
July 2, 2003 Letter to Thomas Harvey

that apparently were in ACIS but reflected no past usage without additional review or investigation.

**Action Requested:**

- Please provide more detailed information regarding the "guide information" used in lieu of ACIS records (e.g. the source, the degree and manner in which it was tested for accuracy, etc.)
- SBC's rationale for using this information rather than actual ACIS data
- the percentage of records this data was applied to and
- SBC's rationale for beginning monthly recurring charges with the next billing cycle with respect to those TNs for which SBC could not find usage records **OR**
- confirm that SBC will issue credits for all debit transactions associated with the Billing Reconciliation and
- confirm that SBC will issue credits for all MRCs on accounts found in ACIS with no associated usage records (i.e. MRCs generated via use of the default).

**Failure to Restate Performance Measurement 17**

As stated in my June 7, 2003 email message to Becky Krost of your team, AT&T continues to question why PM 17 performance remedies were not restated as a result of the UNE-P Billing Reconciliation. Becky subsequently advised that SBC's response was contained in SBC's updated Section 271 application for Michigan.

The only reference that AT&T was able to locate was in the joint affidavit of Justin W. Brown, Mark J. Cottrell and Michael E. Flynn in a footnote (footnote 50 on page 25). This footnote explains that the accounts that were not updated in CABS until the Billing Reconciliation was completed in January, 2003 (and which were significantly delayed, some as long as 15 months, or retroactive to October, 2001) bypassed PM 17. This apparently occurred because the mechanized service orders generated to accomplish the posting were cancelled before they reached the point when they would be captured by the performance measurement. This outcome results in an unacceptable distortion of SBC performance for this period, and avoids remedy payments to CLECs that would otherwise be due. It is also inconsistent with SBC's previous submissions to regulators on this subject, in which SBC stated "No restatement of PM 17 is planned as a result of the reconciliation effort because the impact of the conversion effort has already been captured by this measurement".<sup>1</sup> In any event, AT&T disputes SBC's decision to bypass performance measurement reporting and remedy payments for these significantly delayed transactions, and requests that SBC provide an estimate of performance remedies due to AT&T and TCG in the response to this correspondence.

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<sup>1</sup> SBC Ex Parte Letter to FCC, March 14, 2003.

Page 4  
July 2, 2003 Letter to Thomas Harvey

**Inappropriate Disclosure of AT&T Proprietary Information to Ernst & Young**

Finally, in addition to these concerns, AT&T learned while reviewing SBC's updated Section 271 application for Michigan that SBC had engaged Ernst & Young to review and audit wholesale bills. As it is clear from these documents that AT&T's wholesale bills were among those audited by E&Y, SBC has breached the Proprietary Information provisions of its Interconnection Agreements with AT&T by not seeking prior written authorization. For example, Article XX of the AT&T/SBC Interconnection Agreement for Michigan provides as follows:

*Section 20.0.1 Notwithstanding the requirements of this Article XX, all information relating to the Customers of a Party, including information that would constitute Customer Proprietary Network Information of a Party pursuant to the Act and FCC rules and regulations, and Customer Usage Data, whether disclosed by one Party to the other Party or otherwise acquired by a Party in the course of the performance of this Agreement, shall be deemed "Proprietary Information".*

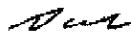
*Section 20.2 Each Receiving Party agrees that from and after the Effective Date:*

- ...(b) it will not permit any of its employees, Affiliates or Representatives to disclose such Proprietary Information to any third person;*
- ...(d) it will cause each of its agents, employees, Affiliates and Representatives to use such Proprietary Information only to perform its obligations under this Agreement or to use services provided by the Disclosing Party hereunder and for no other purpose...*

AT&T seeks SBC's acknowledgment that the Agreement was breached, that it will retroactively execute Non-Disclosure Agreements with E&Y specifying the proprietary information already disclosed, and that it will not disclose additional information to E&Y or any other third party (excluding Government agencies as described in the ICAs) without seeking AT&T's prior written authorization.

Please contact me with questions or for additional information. Please provide SBC's written response by COB Wednesday, July 9.

Sincerely,



Sarah DeYoung  
Division Manager –  
Local Services and Access Management

cc: Steve Huels, AT&T

## Exhibit 2

Industry Markets  
350 North Orleans Street  
Floor 3  
Chicago, IL 60654  
Phone: 312.335.6553  
Fax: 312.467.8626  
thomas.a.h.harvey@ameritech.com

Thomas R. Harvey  
Vice President  
Major Accounts



July 15, 2003

Sarah DeYoung  
Division Manager  
AT&T  
795 Folsom Street  
Room 2107  
San Francisco, CA 94107

Dear Sarah,

This letter provides the additional information you requested in your letter of July 2, 2003, concerning the ACIS/CABS reconciliation.

**ICA Provisions**

The contract provisions relied upon by SBC Midwest in determining the period of time credits or debits resulting from the ACIS/CABS reconciliation would apply to AT&T/TCG billing are as follows:

1. For Michigan, Indiana, Ohio and Wisconsin, see General Terms and Conditions, §§ 27.2 and 28.2;
2. For Illinois, see General Terms and Conditions, §§ 27.5 and 28.2.

**Circuit Disconnect/Establishment Dates**

For the ACIS/CABS reconciliation, the disconnect date of the UNE-P circuit (for credits) and establishment date (for debits) was determined based on data maintained in SBC Midwest's usage processing system, known as CAMPS ("Common Ameritech Message Processing System"). Among other things, CAMPS receives a daily update from ACIS for posted provisioning service order activity, including the effective dates of service orders for the establishment, change and disconnection of service. SBC Midwest used CAMPS for this purpose because the circuit establishment and disconnect dates, although updated from ACIS, could be more easily extracted from CAMPS.

Default dates were used in those instances where the circuit disconnect/establishment date was not available through CAMPS. SBC Midwest did not maintain records that would allow it to easily determine the percentage of records for which it used default dates. However, as explained in the June 20 meeting, the methodology utilized by SBC Midwest was designed to eliminate any adverse impact to AT&T resulting from use of the proxy dates. Specifically, if the UNE-P circuit disconnect date could not be determined, credits were applied from the date the UNE-P circuit was established in CABS. If the establishment date could not be determined, no debit was applied. Thus, to the extent the results were not exact, the dates were resolved in AT&T's favor.

Page 2  
July 15, 2003  
Sarah DeYoung

**PM 17**

As you know, PM 17 captures service orders posted to CABS. Cancelled service orders do not post to CABS and therefore are not included in PM 17 results. As such, PM 17 results cannot be "restated" as AT&T requests. Notably, SBC's PM 17 results during the course of 2002 (missing parity 11 months in Michigan; 5 months in Wisconsin; 12 months in Illinois; 7 months in Indiana and 9 months in Ohio) demonstrate that the impact of the CABS conversion effort was reflected in the measure. Given that CLECs have long been aware of SBC's deficient performance on this measure, there seems little to be gained even if the results could be restated or estimated to include cancelled service orders.

If AT&T wishes to estimate the potential performance remedies it would be due if the cancelled service orders had, instead, posted late to CABS, it may simply refer to the PM 17 remedy reports for Michigan Illinois and Ohio for 2002 – which show that, more often than not, SBC Midwest reached the cap provided for under the performance remedy plan for both AT&T and TCG.

**Proprietary Information**

Although SBC shares AT&T's general concern regarding the improper disclosure of proprietary information, AT&T's concerns in this instance are unfounded. Any dealings between SBC and its auditors were conducted on a confidential basis, and AT&T's interests were suitably protected. Therefore, while SBC does not agree with AT&T's assertion that the ICA was breached, SBC takes this opportunity once again to assure AT&T that no proprietary information of AT&T is or has ever been at danger of improper disclosure.

Please contact me if you have any questions.

Sincerely,



Thomas Harvey  
VP-Account Management/Midwest

## Exhibit 3



William A. Davis II  
Chief Regulatory Counsel  
Central Region

Sure 1500  
222 West Adams St.  
Chicago, IL 60606  
312 230-2636  
FAX 312 230-5210

**VIA FACSIMILE & U.S. MAIL**

July 18, 2003

Kathy Palter  
SBC/Legal Department  
SBC Plaza  
208 S. Akard, Suite 2900  
Dallas, TX 75202

Dear Ms. Palter:

This letter is in response to the letter dated July 15, 2003 from Thomas Harvey, Vice President – Account Management/Midwest to Sarah DeYoung of AT&T. Mr. Harvey's letter was in reply to Ms. DeYoung's letter of July 2nd. Copies of both are attached for convenient reference.

Specifically, I am referring to Mr. Harvey's response on the issue of proprietary information. In her letter, Ms. DeYoung indicated that AT&T had learned upon review of SBC's latest Section 271 application for Michigan that SBC had engaged Ernst & Young to review and audit wholesale bills, including those of AT&T. As Ms. DeYoung pointed out, such information is proprietary and subject to the non-disclosure provisions of the interconnection agreements between SBC and AT&T, specifically including Section 20.0.1 and 20.2 of the Michigan agreement.

Notably, Mr. Harvey in his response does not deny that AT&T's proprietary information was shared with Ernst and Young. Instead, he merely states that SBC "shares AT&T's general concern regarding the improper disclosure of proprietary information," but that "AT&T's concerns in this instance are unfounded." Mr. Harvey goes on to assert that the dealings between SBC and Ernst & Young were conducted on a "confidential basis," and that AT&T's interests were "suitably" protected. He states that while SBC "does not agree" that the ICA provisions were breached, it takes the opportunity "once again to assure AT&T that no proprietary information of AT&T is or has ever been at danger of improper disclosure."

This response is entirely unacceptable. First of all, AT&T was unaware of the "dealings" between SBC and Ernst & Young involving AT&T's proprietary information (AT&T customer usage data gained by SBC pursuant to its performance under the ICA).

Kathy Palter  
Page 2  
July 18, 2003

Mr. Harvey's letter makes no attempt to describe the "confidential basis" on which that information was supposedly provided to Ernst & Young, or to explain how AT&T's interests in the nondisclosure of that information were "suitably" protected. Beyond that, however, the larger point is that there has been a clear violation of the ICA, and SBC's response amounts to a claim that it may unilaterally disregard the terms of the agreement and deem them satisfied after-the-fact.

Under Section 20.1.3 of the Michigan ICA, "all information relating to the Customers of a Party, . . . and Customer Usage Data, whether disclosed by one Party to the other Party or otherwise acquired by a Party in the course of the performance of this Agreement, shall be deemed "**Proprietary Information.**" (Bold in original.) Certainly customer usage data is among the most proprietary information of any competitive carrier. In this instance, usage data for AT&T customers was provided by SBC to a third party, Ernst & Young, in violation of the express provisions of Section 20.2.1(b), and that was done without prior notice to or consent by AT&T. In this context SBC's "assurances" ring hollow, and indeed they reflect a decidedly cavalier attitude on the part of SBC toward the handling of confidential information of a competitor/wholesale customer. Indeed, it is evident that this disclosure was not inadvertent but rather was a conscious part of SBC's effort to bolster its Section 271 prospects before the FCC. In all events, in the face of such a clearly-identified breach of the ICA, AT&T would have expected a forthright apology, not merely dissemblance and evasion.

Hence, I reiterate AT&T's demand: (1) that SBC acknowledge that the above-referenced nondisclosure provisions of the ICA have been breached by SBC; (2) given that the disclosure has already taken place, that SBC advise Ernst & Young of the specific nondisclosure provisions in the AT&T ICA and obtain Ernst & Young's written acknowledgement of the proprietary information already disclosed and its agreement not to further disclose any of that information; and (3) that SBC acknowledge its obligation pursuant to the ICA not to disclose any Proprietary Information of AT&T to Ernst & Young or to any third party, except in accordance with the express terms of the agreement.

Sincerely,

  
William A. Davis, II

Attachments  
WAD/cyw



Sarah De Young  
Division Manager  
Local Services and Access Management

Room 2107  
795 Folsom Street  
San Francisco, CA 94107  
Phone: 415 442 5505

July 2, 2003

By Email and First Class Mail

Mr. Thomas Harvey  
Vice President – Industry Markets  
SBC Corp.  
350 N. Orleans, Floor 3  
Chicago, IL 60654

Dear Thomas,

This letter is sent to update and reiterate AT&T's position on disputed backbilling and other related matters associated with the January, 2003 UNE-P ACIS-to-CABS Billing Reconciliation in the SBC/Midwest states.

### Disputed Backbilling

As outlined in my February 24, 2003 correspondence, AT&T notified SBC that it accepted no liability for the backbilling as calculated by SBC and accordingly withheld payment of all debit transactions associated with the reconciliation. Information disclosed for the first time by SBC in the course of the Michigan 271 proceeding reinforced AT&T's conclusion that SBC had significantly failed in its obligations to deliver accurate and timely wholesale bills over a period of more than a year and that it was therefore not entitled to associated backbilling. You recently advised that SBC would schedule a conference call to review the methodology supporting the reconciliation, as well as the questions raised by AT&T in the Michigan 271 proceeding, and that the information provided would most likely resolve this dispute.

However, the information finally provided by Cathy Wyban of your team and the SBC subject matter expert, Phil Dumm, on Friday, June 20 served only to increase AT&T's concerns re: the accuracy of the Billing Reconciliation and the associated backbilling calculations. Here is a summary of our concerns along with the requested action; however, please also note that these issues do not include hundreds of accounts for which we have identified additional reconciliation discrepancies and which we are scheduled to discuss separately.

- 1) In the case of records that were in CABS but not in ACIS (i.e. credit transactions), SBC reportedly assumed that there are provisions in the

Page 2  
July 2, 2003 Letter to Thomas Harvey

Interconnection Agreements that limit the retroactivity of credits. Cathy and Phil were unable or unwilling to provide contract cites or additional details on the call, and I have subsequently been unable to identify any relevant language that would support SBC's position.

Action Requested:

- Please provide the appropriate cites
- OR
- confirm that SBC will adjust credit transactions based on this correction.

- 2) In the case of records that were found in CABS but not in ACIS (i.e. credit transactions), SBC reportedly used some sort of "archived information" to determine the appropriate disconnect date. Where this archived information was not available, SBC defaulted to issuing credits back to the original start date in CABS. Cathy and Phil were unable or unwilling to provide data regarding the percentage of records in which this "archived information" vs. the CABS start date (the default) was used. Unless SBC is willing to provide more detailed information about the archived information (e.g. the source, degree and manner in which it was tested for accuracy, etc.), AT&T disputes its use.

Action Requested:

- Please provide information described above regarding the "archived information" file and
- the percentage of records to which it was applied
- OR
- confirm that SBC will adjust all credit transactions for AT&T and TCG back to the CABS start date.

- 3) In the case of records that were found in ACIS but not in CABS (i.e. debit transactions), SBC reportedly was unable to utilize the actual connect date in ACIS for each circuit, and instead relied on "guide information". Where this "guide information" was not available, SBC defaulted to issuing no backbilling but starting MRC billing with the next billing cycle.

Cathy and Phil later disclosed that this "guide information" was in fact usage data or based on usage data. Given past issues with misdirected usage, AT&T disputes the use of this data to accurately determine the start date of any specific circuit.

The use of the "default" is also problematic. Cathy and Phil were also unable or unwilling to provide data regarding the percentage of records in which usage information was not available. And although the default resulted in no backbilling, AT&T disputes SBC's decision to begin charging MRCs on accounts

Page 3  
July 2, 2003 Letter to Thomas Harvey

that apparently were in ACIS but reflected no past usage without additional review or investigation.

Action Requested:

- Please provide more detailed information regarding the "guide information" used in lieu of ACIS records (e.g. the source, the degree and manner in which it was tested for accuracy, etc.)
- SBC's rationale for using this information rather than actual ACIS data
- the percentage of records this data was applied to and
- SBC's rationale for beginning monthly recurring charges with the next billing cycle with respect to those TNs for which SBC could not find usage records **OR**
- confirm that SBC will issue credits for all debit transactions associated with the Billing Reconciliation and
- confirm that SBC will issue credits for all MRCs on accounts found in ACIS with no associated usage records (i.e. MRCs generated via use of the default).

Failure to Restate Performance Measurement 17

As stated in my June 7, 2003 email message to Becky Krost of your team, AT&T continues to question why PM 17 performance remedies were not restated as a result of the UNE-P Billing Reconciliation. Becky subsequently advised that SBC's response was contained in SBC's updated Section 271 application for Michigan.

The only reference that AT&T was able to locate was in the joint affidavit of Justin W. Brown, Mark J. Cottrell and Michael E. Flynn in a footnote (footnote 50 on page 25). This footnote explains that the accounts that were not updated in CABS until the Billing Reconciliation was completed in January, 2003 (and which were significantly delayed, some as long as 15 months, or retroactive to October, 2001) bypassed PM 17. This apparently occurred because the mechanized service orders generated to accomplish the posting were cancelled before they reached the point when they would be captured by the performance measurement. This outcome results in an unacceptable distortion of SBC performance for this period, and avoids remedy payments to CLECs that would otherwise be due. It is also inconsistent with SBC's previous submissions to regulators on this subject, in which SBC stated "No restatement of PM 17 is planned as a result of the reconciliation effort because the impact of the conversion effort has already been captured by this measurement".<sup>1</sup> In any event, AT&T disputes SBC's decision to bypass performance measurement reporting and remedy payments for these significantly delayed transactions, and requests that SBC provide an estimate of performance remedies due to AT&T and TCG in the response to this correspondence.

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<sup>1</sup> SBC Ex Parte Letter to FCC, March 14, 2003.

Page 4  
July 2, 2003 Letter to Thomas Harvey

**Inappropriate Disclosure of AT&T Proprietary Information to Ernst & Young**

Finally, in addition to these concerns, AT&T learned while reviewing SBC's updated Section 271 application for Michigan that SBC had engaged Ernst & Young to review and audit wholesale bills. As it is clear from these documents that AT&T's wholesale bills were among those audited by E&Y, SBC has breached the Proprietary Information provisions of its Interconnection Agreements with AT&T by not seeking prior written authorization. For example, Article XX of the AT&T/SBC Interconnection Agreement for Michigan provides as follows:

*Section 20.0.1 Notwithstanding the requirements of this Article XX, all information relating to the Customers of a Party, including information that would constitute Customer Proprietary Network Information of a Party pursuant to the Act and FCC rules and regulations, and Customer Usage Data, whether disclosed by one Party to the other Party or otherwise acquired by a Party in the course of the performance of this Agreement, shall be deemed "Proprietary Information".*

*Section 20.2 Each Receiving Party agrees that from and after the Effective Date:*

- ...(b) *it will not permit any of its employees, Affiliates or Representatives to disclose such Proprietary Information to any third person;*
- ...(d) *it will cause each of its agents, employees, Affiliates and Representatives to use such Proprietary Information only to perform its obligations under this Agreement or to use services provided by the Disclosing Party hereunder and for no other purpose...*

AT&T seeks SBC's acknowledgment that the Agreement was breached, that it will retroactively execute Non-Disclosure Agreements with E&Y specifying the proprietary information already disclosed, and that it will not disclose additional information to E&Y or any other third party (excluding Government agencies as described in the ICAs) without seeking AT&T's prior written authorization.

Please contact me with questions or for additional information. Please provide SBC's written response by COB Wednesday, July 9.

Sincerely,



Sarah DeYoung  
Division Manager –  
Local Services and Access Management

cc: Steve Huels, AT&T

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Thomas R. Harvey  
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July 15, 2003

Sarah DeYoung  
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Dear Sarah,

This letter provides the additional information you requested in your letter of July 2, 2003, concerning the ACIS/CABS reconciliation.

**ICA Provisions**

The contract provisions relied upon by SBC Midwest in determining the period of time credits or debits resulting from the ACIS/CABS reconciliation would apply to AT&T/TCG billing are as follows:

1. For Michigan, Indiana, Ohio and Wisconsin, see General Terms and Conditions, §§ 27.2 and 28.2;
2. For Illinois, see General Terms and Conditions, §§ 27.5 and 28.2.

**Circuit Disconnect/Establishment Dates**

For the ACIS/CABS reconciliation, the disconnect date of the UNE-P circuit (for credits) and establishment date (for debits) was determined based on data maintained in SBC Midwest's usage processing system, known as CAMPS ("Common Ameritech Message Processing System"). Among other things, CAMPS receives a daily update from ACIS for posted provisioning service order activity, including the effective dates of service orders for the establishment, change and disconnection of service. SBC Midwest used CAMPS for this purpose because the circuit establishment and disconnect dates, although updated from ACIS, could be more easily extracted from CAMPS.

Default dates were used in those instances where the circuit disconnect/establishment date was not available through CAMPS. SBC Midwest did not maintain records that would allow it to easily determine the percentage of records for which it used default dates. However, as explained in the June 20 meeting, the methodology utilized by SBC Midwest was designed to eliminate any adverse impact to AT&T resulting from use of the proxy dates. Specifically, if the UNE-P circuit disconnect date could not be determined, credits were applied from the date the UNE-P circuit was established in CABS. If the establishment date could not be determined, no debit was applied. Thus, to the extent the results were not exact, the dates were resolved in AT&T's favor.

Page 2  
July 15, 2003  
Sarah DeYoung

**PM 17**

As you know, PM 17 captures service orders posted to CABS. Cancelled service orders do not post to CABS and therefore are not included in PM 17 results. As such, PM 17 results cannot be "restated" as AT&T requests. Notably, SBC's PM 17 results during the course of 2002 (missing parity 11 months in Michigan; 5 months in Wisconsin; 12 months in Illinois; 7 months in Indiana and 9 months in Ohio) demonstrate that the impact of the CABS conversion effort was reflected in the measure. Given that CLECs have long been aware of SBC's deficient performance on this measure, there seems little to be gained even if the results could be restated or estimated to include cancelled service orders.

If AT&T wishes to estimate the potential performance remedies it would be due if the cancelled service orders had, instead, posted late to CABS, it may simply refer to the PM 17 remedy reports for Michigan Illinois and Ohio for 2002 - which show that, more often than not, SBC Midwest reached the cap provided for under the performance remedy plan for both AT&T and TCG.

**Proprietary Information**

Although SBC shares AT&T's general concern regarding the improper disclosure of proprietary information, AT&T's concerns in this instance are unfounded. Any dealings between SBC and its auditors were conducted on a confidential basis, and AT&T's interests were suitably protected. Therefore, while SBC does not agree with AT&T's assertion that the ICA was breached, SBC takes this opportunity once again to assure AT&T that no proprietary information of AT&T is or has ever been at danger of improper disclosure.

Please contact me if you have any questions.

Sincerely,



Thomas Harvey  
VP-Account Management/Midwest