SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
WWW.SWIDLAW.COM

PATRICK J. DONOVAN
DIRECT DIAL (202) 424-7857
PJDONOVAN@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL. (212) 973-0111
FAX (212) 891-9598

September 15, 2003

VIA MESSENGER

Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte**
WC Docket No. 03-138

Dear Chairman Powell:

The CLEC Association of Michigan, the Small Business Association of Michigan, Michigan Consumer Federation, TelNet Worldwide, Inc., and BullsEye Telecom, Inc., are providing to you the attached materials concerning the application of SBC for long distance approval for Michigan which was provided to other offices in recent meetings. Among other issues, these materials show based on the experience of CLECs in Michigan that SBC remains unable to provide accurate bills to CLECs in Michigan, and that its OSS performance in a number of areas is far worse than in other SBC states. SBC's application should be denied.

Sincerely,

Patrick J. Donovan

cc: Mr. Christopher Libtertelli (via messenger)
ECFS

428261v1

SBC Wholesale Billing Problems in Michigan Have Not Been Solved.

SBC Michigan "271" Must Not Be Prematurely Approved

CLEC Association of Michigan
Michigan Consumer Federation
Small Business Association of Michigan
September 12, 2003

Summary

- Nothing has changed, since SBC Michigan's withdrawal of their "271" in April.
- The serious ongoing wholesale billing problems are demonstrated again in DOJ's recent "no recommendation" for SBC Michigan and SBC 4-state.
- SBC Ameritech OSS and billing problems have been, and ***continue*** to be, much worse than rest of SBC, and other ILECs.
- Contrary to what some believe, there is no Performance Metric or Remedy for billing ***accuracy*** (only one that deals with the ***timeliness*** of billing).
- Line splitting is still a problem; parts of BearingPoint test are still not completed; and the Ernst & Young SBC-flattering-pseudo-audit remains worthless.
- If FCC rewards SBC Michigan with a "271" now, how will the CLECs ***ever*** see these serious problems fixed?

Shocking Misconceptions About the SBC Michigan 271

- As competitors have picked up market share in Michigan, it's not unreasonable that SBC Michigan's wholesale billing errors have risen.
  - ***Wrong***. The real concern is that the ***percentage*** of billing elements in error has dramatically increased in Michigan, 2003 versus prior years. Coupled with the CLEC growth, this means that total errors have increased ***exponentially*** in Michigan.
- There may be problems with SBC Michigan OSS and billing systems, but they are no worse than rest of SBC or rest of the ILECs.
  - ***Wrong.*** CLEC evidence clearly shows that the percentage of billing errors is worse in SBC Michigan than in the rest of SBC (PacBell, SWBT, etc.) which use different billing systems, and ***dramatically*** worse than in other ILECs (such as Verizon).

CLEC Association Of Michigan

- We've met with FCC before on the Michigan 271 problem. You asked us for specifics, and we supplied them (comments, 7/2/03; ex-parte additional info to the staff, 7/14/03). Now we're here again, with CLEC members and friends.
- The wholesale billing and OSS problems with SBC Michigan are ***most*** serious.
- If we don't get the problems solved now, when and how does the FCC think these problems will ***ever*** be solved?

Rick Coy is general counsel of the CLEC Association of Michigan, whose membership includes well over twenty CLECs headquartered in, or operating in, the state of Michigan.

Suddenly, UNE-P Growth in Michigan May Have Ground to a Halt

- Various CLECs will privately concede that in recent months, their UNE-P growth in Michigan has slowed markedly, or even halted.
- For obvious reasons, CLECs don't wish to make such comments public.
- Reasons: poor service to customers, customer outages, delayed billing to customers, erroneous billing to customers – caused by SBC. Customer moves back to SBC; or having heard of stories from other customers, refuses to sign up with the CLEC.

TalkAmerica S.E.C. Data Shows Sudden Michigan Decline

- Alone among CLECs, TalkAmerica publishes its number of SBC Michigan UNE-P lines in its 10Qs and 10Ks.

- Talk America Michigan UNE-P growth rates, per this SEC data, have recently sharply declined (quarter-over-quarter growth):
  - 3rd Quarter 2002: 50.0%
  - 4th Quarter 2002: 35.3%
  - 1st Quarter 2003: 32.5%
  - **2nd Quarter 2003: 11.9%** <<<<<<

TalkAmerica, SEC filings, 10Qs for quarters ending 9/30/2002, 3/31/2003 and 6/30/2003; 10K for year ending 12/31/2002. TalkAmerica refers to this Michigan data as the number of "bundled lines" in Michigan. It shows a base of 100,000 such Michigan bundled lines on 6/30/2002, and then quarterly net growth of 50,000 Michigan bundled lines by 9/30/2002; net growth of 53,000 Michigan bundled lines by 12/31/2002; net growth of 66,000 Michigan bundled lines by 3/31/2003, and then a sharp drop down to a net growth of just 32,000 lines by 6/30/2003. TalkAmerica does not describe the reason for the decline, to our knowledge, and we are not attempting to attribute meaning here. It is simply coincidental to the drop off which some other CLECs in Michigan seem to have experienced.

CLEC Association Of Michigan

- Some believe the Michigan 271 should be approved, because the Michigan PSC supports it. Ironically, over the years, the Michigan 271 has come to the FCC ***five times***. In all those instances, the Michigan PSC has ***never*** opposed it.
- Some believe the CLECs can see their SBC Michigan wholesale billing accuracy problems solved by fines, through Performance Remedies. But ironically, there ***is*** no Performance Metric or Remedy in Michigan, for billing accuracy!

Rick Coy is general counsel of the CLEC Association of Michigan, whose membership includes well over twenty CLECs headquartered in, or operating in, the state of Michigan.

CLEC Association Of Michigan

- Years ago, it was recognized that Ameritech's OSS and billing systems were the worst in the country. We thought Ameritech would fix the problems. But instead, they sold the company to SBC.
- SBC's approach, following the acquisition, seems to have been: if we fix these problems, it only helps our competitors. 271 approval can instead be obtained through the political process.
- Our extensive evidence provided in this case to the Michigan PSC and FCC shows: we brought evidence of these serious billing problems forward repeatedly, beginning three years ago. Nothing was done. The 271 test plan was not modified. No investigation was held; no order was issued. BearingPoint did not get involved. Ernst and Young did not. ***The problems began three years ago, and still have not been addressed, much less solved***.
- FCC needs to make it clear to SBC: the 271 will not be granted ***until*** the serious problems have ***really*** been solved.

Rick Coy is general counsel of the CLEC Association of Michigan, whose membership includes well over twenty CLECs headquartered in, or operating in, the state of Michigan.

Sage TELECOM

Sage Telecom, Inc Background Information:
Over 500,000 customer lines in service company wide.
Over 72,000 in Michigan.
Over 94% residential company wide.
Nearly 98% residential in Michigan.
About 3/4ths rural and suburban markets company wide.
99% rural and suburban in Michigan, only 1% urban there.
Currently operates in 10 SBC states.
Sage has EDI interface with SBC throughout.

Robert McCausland is VP Regulatory Affairs for Sage Telecom.

Sage TELECOM

- SBC-Michigan "Back-End Processes are ***Inferior*** compared to SBC Texas
- Order Flow-Through Rate ***Lower*** in SBC-MI
- ***Higher*** Error Rate on Orders In Michigan
  - More internal SBC ***manual intervention*** required in Ameritech
  - Error rate virtually ***twice*** that of SWBT states (over 21 most recent months)
- Increasingly-Different SBC-MI Order Preparation Practices Are Imposed on CLECs
  - 3-way calling order example: SBC-MI "FID" field must be populated in order to block, whereas SBC-TX will reject any order having FID populated
  - CLEC system and process changes continue to result from ***evolving SBC-MI Back-End Processes***

Robert McCausland is VP Regulatory Affairs for Sage Telecom.

TelNet Worldwide™

- SBC Michigan may say just 12% of its wholesale bills have been in dispute. ***Wrong.*** Over 40% of our SBC Michigan wholesale bills have involved disputes.
- TelNet has seen ***no*** improvement in the accuracy of its wholesale bills from SBC Michigan since the DOJ evaluated their performance in Feb. 2003. The total number of errors has grown ***worse***.
- TelNet has several dozen SBC Michigan wholesale bills (current month) with items we have or will dispute: price does not agree with the tariff or our contract; incorrect geographic USOC; the list goes on and on.
- Because of the chronic SBC Michigan errors, TelNet must review each line of each bill received from SBC. Huge amount of time, and cost, repeated month after month. It often takes several attempts to get just one error resolved. Many times the response from SBC is not correct and must be disputed again. It must be disputed on each bill, not just the first time a service is billed.

TelNet Worldwide, Inc. is a privately-held, facilities-based telecommunications carrier, headquartered in Michigan.

TelNet Worldwide™

- We have seen ***no*** improvement in SBC Michigan performance. It actually seems to be getting worse.
- We're a small company, but were forced to hire a full-time staff to audit and correct SBC Michigan wholesale bills
- SBC Michigan billing: over 40% of new UNE-P orders have errors. Over 20% for UNE-L, and UNE, and CABS. Resolution takes over 3 months. 90% takes 2+ iterations to get fixed; 50% 3+ iterations; 25%, 4 or more iterations. Incredible.

TelNet Worldwide, Inc. is a privately-held, facilities-based telecommunications carrier, headquartered in Michigan.

TelNet Worldwide™

- SBC Michigan ordering, initial activation and migration: about 20% of our orders have problems ranging from lines not being tagged and having to send out a technician a 2nd or 3rd time, to "hot cuts" that flat-out don't work, resulting in an out of service condition for the client.
- Trouble tickets: approximately 10% of our active SBC Michigan services experience some type of problem per month. More often than not, the customer says I "never" had this problem when I was with "SBC", but now after the conversion to a CLEC, I'm having problems – problems for which SBC Michigan is the cause.
- There is ***no*** process where the Michigan PSC, BearingPoint or Ernst & Young is dealing with these problems. Certainly SBC is not. ***If you approve this 271 now, without the problems having been addressed, the Michigan CLECs will never get justice***.

TelNet Worldwide, Inc. is a privately-held, facilities-based telecommunications carrier, headquartered in Michigan.

BULLSEYE TELECOM
Worry-Free Connectivity

- Recently, BullsEye has had disputes on 100% of its SBC/Ameritech Michigan UNE-P invoices.
- It has typically taken numerous months for SBC to answer and resolve errors in billing, and sometimes they fail to resolve them at all.
- SBC has closed most of BullsEye's claims with little or no explanation, and then demanded payment without allowing time for BullsEye to look at the claims again.
- SBC has inadequate systems and insufficient follow-through on wholesale billing issues.

BullsEye Telecom, headquartered in Michigan, is a full-service communications solutions provider. Its services include local dial tone, toll and long distance, call management, fractional and full T-1, DSL, dial-up Internet bandwidth access, domain name services (DNS), web site hosting, and e-mail.

BULLSEYE TELECOM
Worry Free Connectivity

- **Billing Disputes/Inaccurate UNE-P CABS Billing**. BullsEye has disputes on all its SBC Michigan UNE-P CABS invoices due to issues such as duplicate billing, incorrect rates, and lines that do not belong to BullsEye.
- **Vague and Untimely Resolutions to Billing Disputes**. BullsEye audits SBC Michigan UNE-P CABS invoices and issues disputes in a timely manner upon receipt. SBC Michigan's responses to disputes are often received ***several months*** following receipt of BullsEye's dispute claims. Denial reasons are incomplete and unclear.
- **Chronic Provisioning Problems.**
  - LSOG4 to LSOG5 conversion problems. SBC Michigan new system would not accept Complex service orders (PBX, Centrex, etc). There also have been huge problems on Centrex Assume Dial 9, timeliness of Billing Completion records, and missing numeric addresses for rural customers.
  - SBC Michigan systems unable to process orders where accounts have Multiple Classes of Service (i.e., POTS, PBX, etc.)
  - The issues of PBX, Centrex and other Complex services were never part of the Michigan PSC OSS test plan, and never properly tested by BearingPoint or Ernst & Young.

BullsEye Telecom, headquartered in Michigan, is a full-service communications solutions provider. Its services include local dial tone, toll and long distance, call management, fractional and full T-1, DSL, dial-up Internet bandwidth access, domain name services (DNS), web site hosting, and e-mail.

BULLSEYE TELECOM
Worry Free Connectivity

- Our experience as a multi-region UNE-P provider shows that SBC Michigan has a ***dramatically*** higher wholesale billing error rate than other ILECs:
  - SBC Michigan, 21%.
  - Verizon, 2% to 3%.
- Even as compared to the rest of SBC, SBC Michigan is ***substantially*** worse:
  - SBC Michigan: 100% of invoices contain errors
  - SBC PacBell: 50% of invoices contain errors

BullsEye Telecom, headquartered in Michigan, is a full-service communications solutions provider. Its services include local dial tone, toll and long distance, call management, fractional and full T-1, DSL, dial-up Internet bandwidth access, domain name services (DNS), web site hosting, and e-mail.

BULLSEYE TELECOM
Worry Free Connectivity

- The time for SBC Michigan to fix wholesale billing errors, based on our own data, is also dramatically deficient:
  - SBC Michigan: well over 90 days
  - Verizon: consistently under 30 days

BullsEye Telecom, headquartered in Michigan, is a full-service communications solutions provider. Its services include local dial tone, toll and long distance, call management, fractional and full T-1, DSL, dial-up Internet bandwidth access, domain name services (DNS), web site hosting, and e-mail.

- Not only does SBC place material restrictions on CLECs seeking to avail themselves of the TELRIC rates for UNEs, SBC consistently and without notification misbills CLECs for these items...
- ...Worse, even though SBC may actually provide bill credits at some point, SBC refuses to update its underlying billing system to correct known errors. As a result, these same problems persist month in and month out, will no end in sight. This patent refusal to correct known billing errors demonstrates that SBC's conduct in this regard is both knowing and willful.

WC Docket No. 030167 (SBC 271 application for Illinois, Indiana, Ohio and Wisconsin), Opposition of Z-Tel Communications, Inc., August 6, 2003, at pp. 10-11. To be clear, Z-Tel is not a member of the CLEC Association of Michigan, and these comments were specifically with respect to Illinois and Indiana. The CLEC Association believes that since SBC Ameritech utilizes the same wholesale billing system for all five of the Ameritech states, it would be reasonable to conclude that the same or similar results would obtain in Michigan.

SBAM.ORG

Small Business Association of Michigan

- As an organization representing small business customers, who support customer choice, we are concerned about these continuing SBC Michigan billing errors, and the perception they are being caused by the competitors.
- We want to see telecom competition move forward; these billing problems impede competition. Customers think the CLECs are the cause of the billing delays or errors, when the problems in fact are caused by SBC/Ameritech.

Barry Cargill is Vice President, Government Relations for the Small Business Association of Michigan. SBAM is a state-based trade association, representing some 6,000 small business establishments in Michigan.

Michigan Consumer Federation

- The Michigan Consumer Federation is dismayed that the serious wholesale billing problems of SBC Michigan, ongoing for years, have still not been fixed.
- What consumers in Michigan pay for local telephone service is directly related to the true wholesale costs seen by the CLECs. If CLECs can't get accurate billing, they are forced to charge a higher retail rate than would otherwise apply.
- If Michigan is known as a state lacking reliable wholesale billing, carriers aren't going to come to Michigan.
- If CLECs can't get accurate and reliable wholesale billing from SBC, consumers will receive inaccurate bills. This will cause consumers to avoid CLECs, and not be able to achieve the savings and value they deserve.
- FCC may think CLECs already have a large market share in Michigan. But this is tenuous; recent evidence in Michigan suggests CLEC growth rates in Michigan may be dropping precipitously.

Rick Gamber is Executive Director of the Michigan Consumer Federation. The Michigan Consumer Federation now claims more than 10,000 members in the state, and is the only consumer group in Michigan with a full-time director able to stand up for consumer rights.

BULLSEYE TELECOM
Worry Free Connectivity

BullsEye Telecom's Issues with SBC Michigan

Issue with SBC Michigan: Billing Disputes/Inaccurate UNE-P CABS Billing
BullsEye Telecom has disputes on all of its SBC Michigan UNE-P CABS invoices due to a number of issues such as duplicate billing, incorrect rates, and lines that do not belong to BullsEye Telecom (see attached chart and definitions of disputes).

Impact to BullsEye Telecom: The numerous inaccuracies of the UNE-P CABS invoices from SBC have an extraordinary drain on human resources. Many man-hours are spent validating invoice charges and identifying repeated errors on the bills month after month.

Illustrative Example: All 83 UNE-P CABS Invoices from SBC Michigan to BullsEye Telecom for the period April 2002 through August 2003 contained at least one billing error. Dispute dollars as a percent of the invoice were as high as 81% (February 2003, mostly due to back billing). The average dispute as a percent of the invoice was 7% for 2002 and 21% for 2003 (see attached charts). ***This clearly indicates Wholesale Billing is getting worse, not better!***

****

Issue with SBC Michigan: Vague and Untimely Resolutions to Billing Disputes
BullsEye Telecom audits SBC Michigan UNE-P CABS Invoices and issues disputes in a timely manner upon receipt of the invoices. SBC Michigan's responses to disputes are often received several months following receipt of BullsEye's dispute claims. Denial reasons are incomplete and unclear.

Impact to BullsEye Telecom: This creates a backlog of disputes claims that puts an undue administrative burden for BullsEye Telecom to track. Countless hours are spent in follow up to ascertain the disposition of our dispute claims.

Illustrative Example: From March 24, 2003 to April 8, 2003 over 250 Billing Dispute Claim Resolutions were sent from SBC to BullsEye Telecom. ***This represents nearly all dispute claims sent to SBC by BullsEye Telecom for all of 2002 through February 2003, responded to by SBC in a two-week period of time!***

****

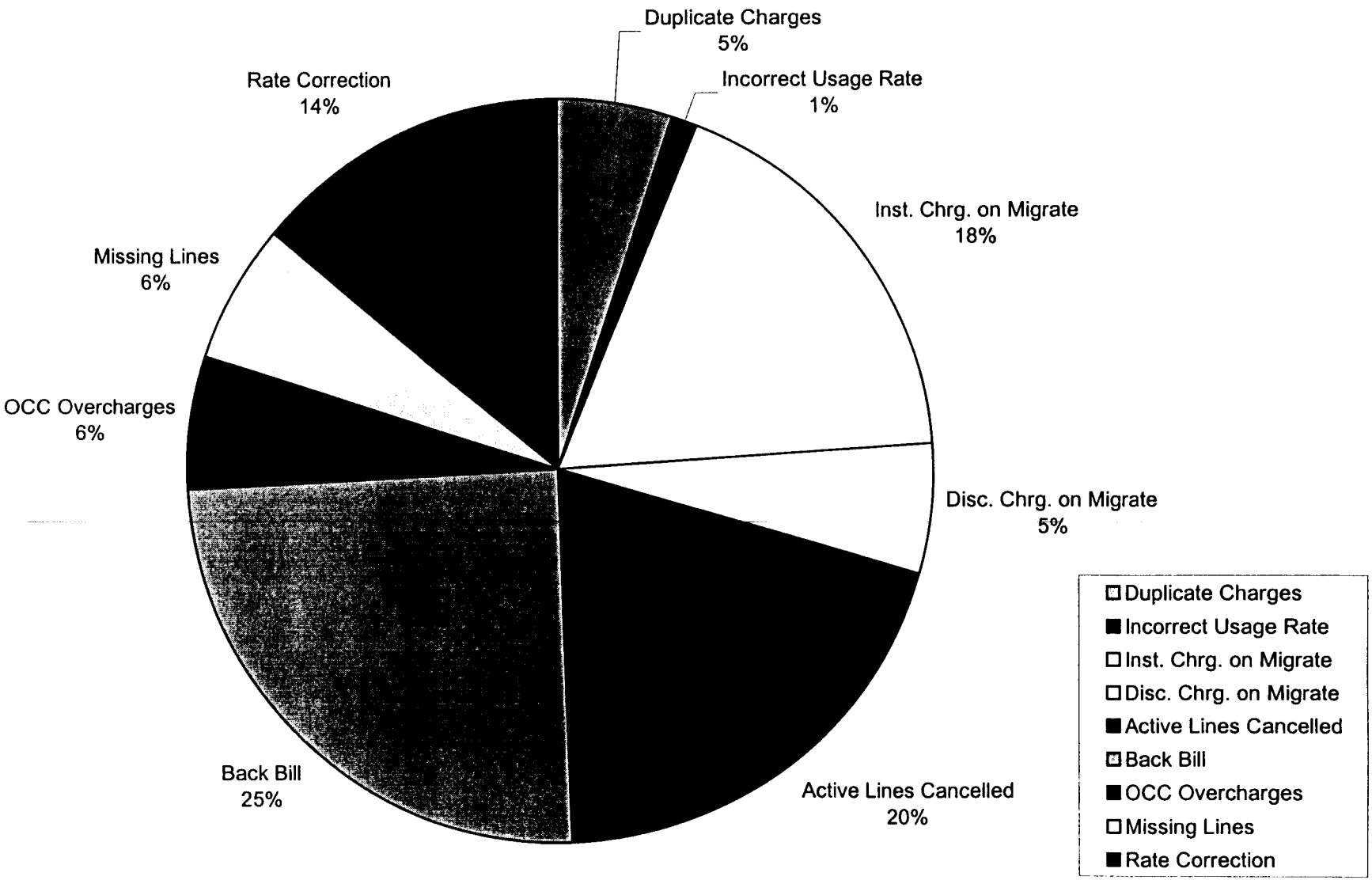
Issue with SBC Michigan: Chronic Ordering/Provisioning Problems

- LSOG4 to LSOG5 Conversion Problems – In June 2003, SBC imposed a sunset date that forced all CLECs to move into a new version of Operation Support System (LSORG5). This conversion has caused problems in the following areas:
    - SBC systems would not accept Complex Service Orders (i.e., Centrex, PBX, etc.)
    - Centrex Assume Dial 9
    - Timeliness of Billing Completion Records
    - Missing Numeric Addresses for rural customers
- SBC Systems unable to process orders where accounts have Multiple Classes of Service (i.e., POTS, PBX, etc.)
- Incorrect Intercept Announcements being provided by SBC

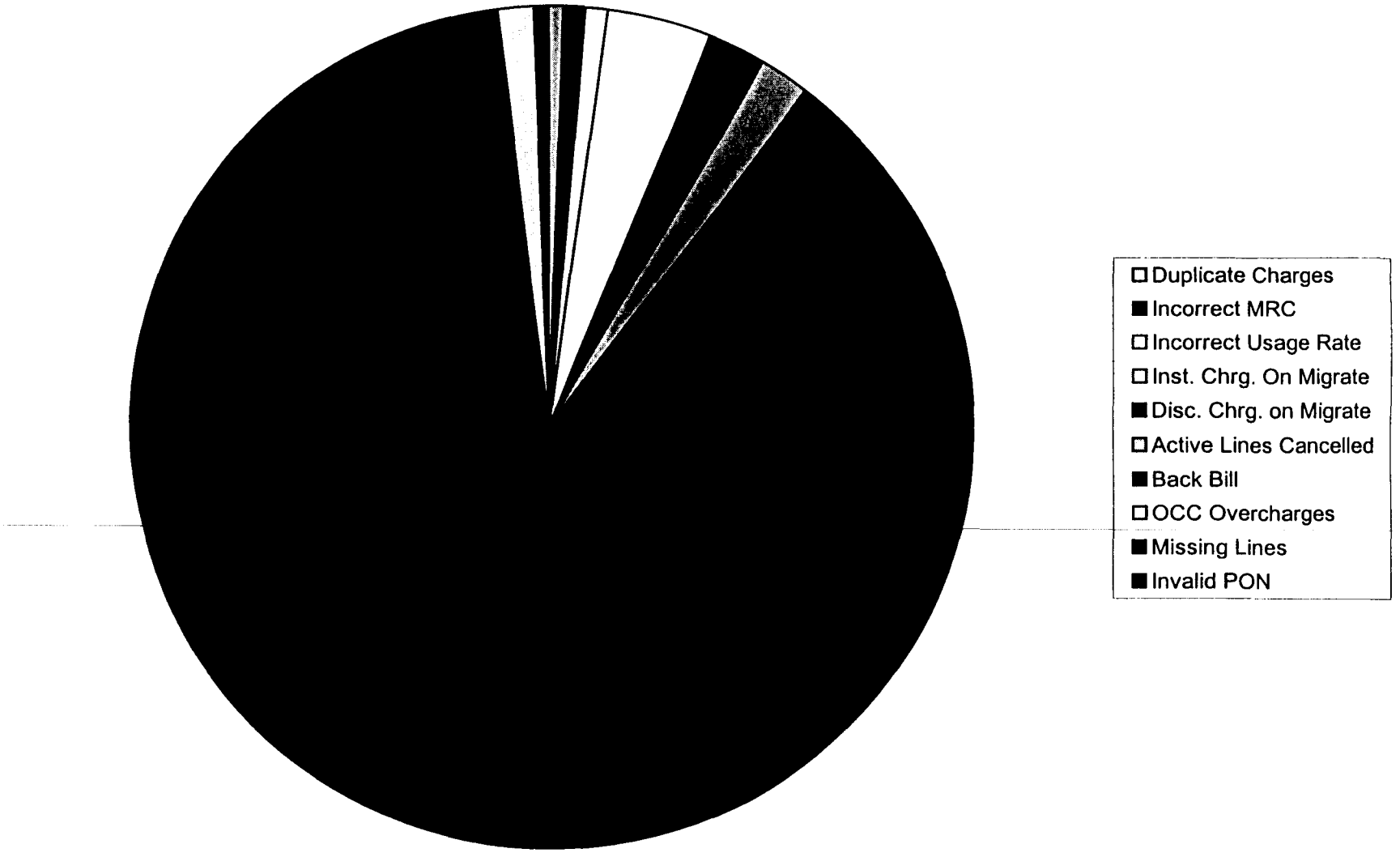
Impact to BullsEye Telecom: BullsEye Telecom has been forced to redesign, re-issue and even cancel customer service orders as a result of these problems. Clearly, this is a revenue impact to the Company when a migration to BullsEye Telecom is either delayed or cancelled.

Illustrative Example: ***Since the conversion from LSOG4 to LSOG5 in June 2003, nearly 750 lines have been impacted, ranging from delayed conversion to BullsEye Telecom or cancelled entirely.***

2002 BullsEye Telecom Disputes with SBC Michigan UNE-P CABS Invoices



2003 BullsEye telecom Disputes with SBC Michigan UNE-P CABS Invoices



BullsEye Telecom Disputes with SBC Michigan UNE-P CABS Invoices

Duplicate Charges – SBC Michigan charged BullsEye Telecom twice for a loop, port, cross connect, or Local Number Portability (LNP) charge

Incorrect Usage Rate - SBC Michigan charged BullsEye Telecom a higher rate for a Unbundled Switching element than what is contained in the negotiated and executed Interconnection Agreement

Install Charge on Migrate – SBC Michigan charged BullsEye Telecom full or partial installation charges for lines migrated from SBC or another CLEC to BullsEye Telecom via UNE-P

Disconnect Charge on Migrate – SBC Michigan charged BullsEye Telecom disconnect charges on lines migrated away from BullsEye Telecom to SBC or another CLEC

Active Lines Cancelled – SBC Michigan charged BullsEye Telecom for lines that are disconnected, appear on SBC's Loss Line Report, yet are still active in SBC's Billing System

Back Bill – SBC Michigan back billed BullsEye Telecom for Monthly Recurring and Usage that dates back several months or more, in some cases over a year.

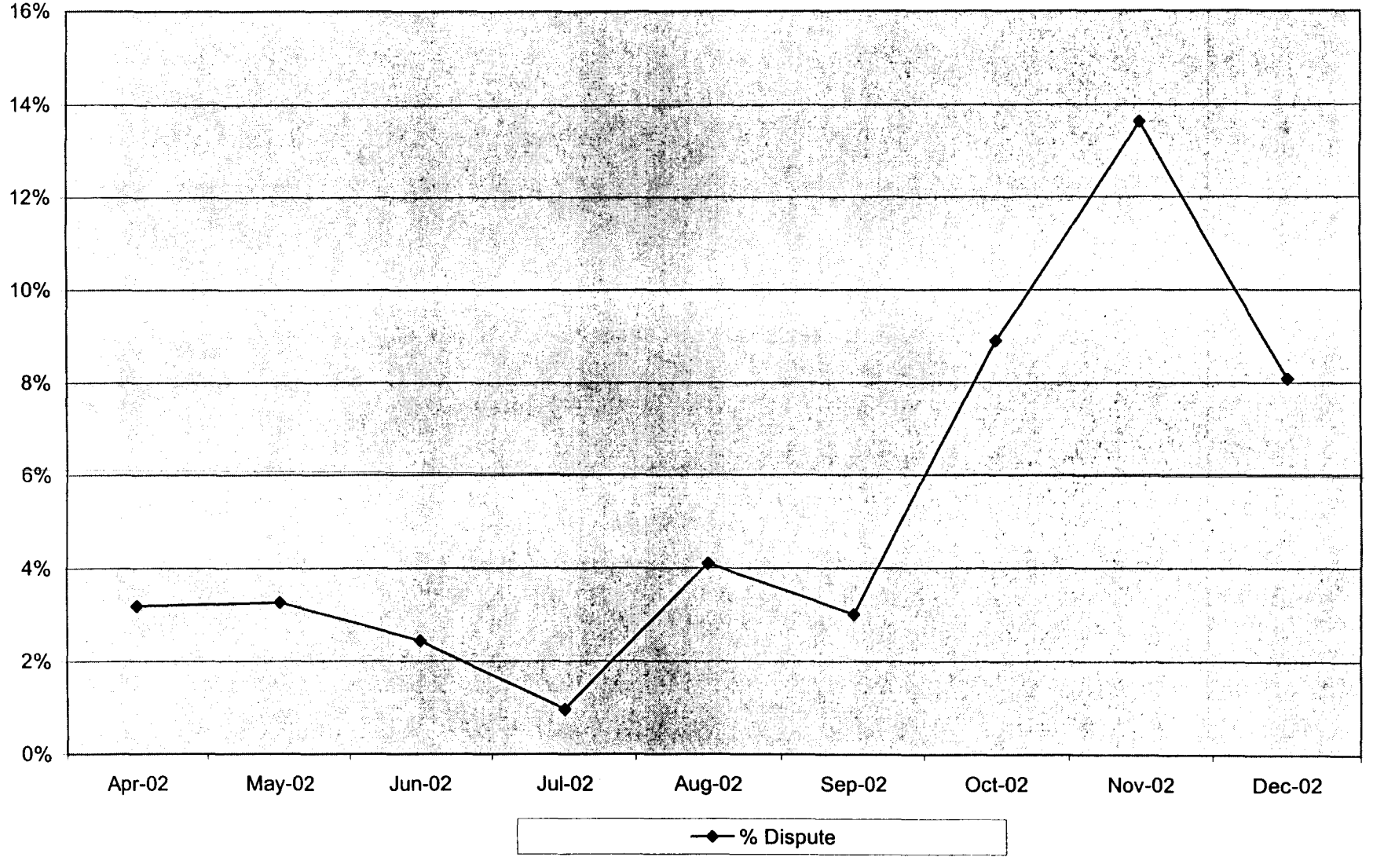
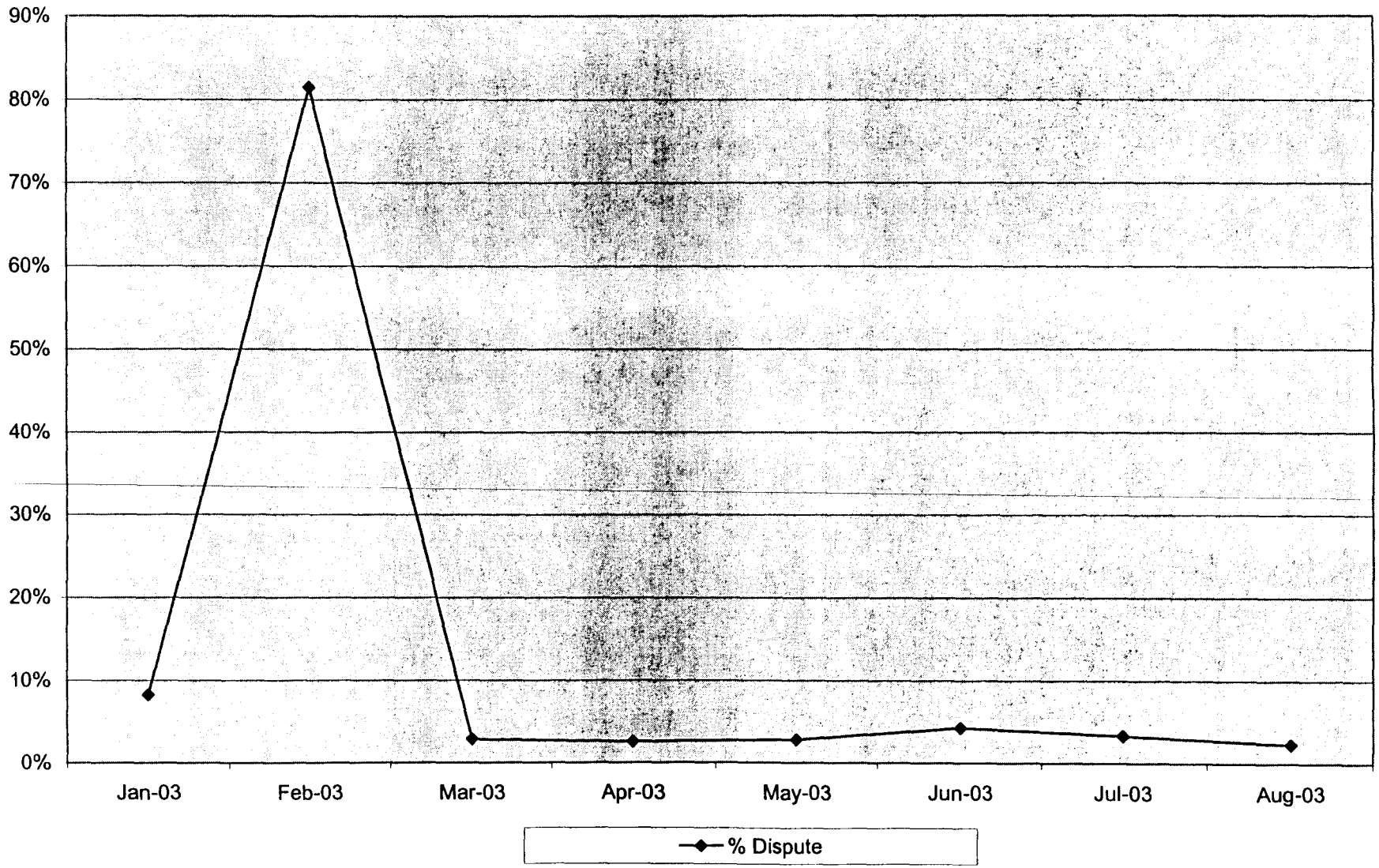
OCC Overcharges – SBC Michigan charged BullsEye Telecom for lines prior to activation date

Missing Lines – SBC Michigan charged BullsEye Telecom for lines that do not belong to BullsEye Telecom

Rate Correction – SBC Michigan charged BullsEye Telecom for Reciprocal Compensation, claiming this was a "true up" for an amount not billed previously

Invalid PON – SBC Michigan charged BullsEye Telecom for Purchase Order Numbers (PONs) that did not belong to BullsEye Telecom

2002 BullsEye Telecom Dispute Percentage of SBC Michigan UNE-P CABs Invoice



2003 BullsEye Telecom Dispute % of SBC Michigan UNE-P CABS Invoices