

a customer's address without notifying Michigan Bell.⁵²³ and believe that this possibility justifies Michigan Bell's policy requiring competitive carriers to notify it of a line splitting customer's post-conversion change of address.

148. AT&T and MCI contend that even given the clarifications above, Michigan Bell is still in violation of checklist item 7. First, according to AT&T, "CLECs have always understood that any physical address change would require the CLEC to issue an LSR, in order to keep SBC's systems updated. Since this policy was clearly understood by all parties, there would have been no need to issue an Accessible Letter to establish such a policy."⁵²⁴ We find, however, that it is not a violation of the competitive checklist for Michigan Bell to "clarify" its E911 database policy in the line splitting context by issuing an Accessible Letter.⁵²⁵ Second, AT&T and MCI argue that because the July 15 Accessible Letter was sent only to competitive LECs in the five-state SBC Midwest region, its "retract[ion]" of the policy "establish[ed]" by the June 20 letter may apply only in those states.⁵²⁶ We note that our review here is limited to SBC's policies in Michigan.⁵²⁷

149. Third, MCI charges that the July 15 Accessible Letter is "oblique," and that the class of cases in which a competitive LEC must submit an LSR updating end-user E911

⁵²³ See Michigan Bell Valentine Supplemental Reply Aff. at para. 19 ("When a CLEC employs a line-splitting arrangement, it controls the physical connection of both the switch port and the unbundled loop to a splitter located within its collocation arrangement (or the collocation arrangement of a partnering CLEC). Unlike a typical resale or UNE-P scenario, wherein SBC Midwest maintains control of all physical connections in the network, and can thus ensure that the physical end-user service address associated with the loop is appropriately reflected in the E911 database, SBC Midwest loses that capability in the line-splitting scenario – even where the switch port and loop were previously elements of a UNE-P."); see also *id.* at para. 20.

⁵²⁴ AT&T Supplemental Reply Comments at 13. We note that AT&T does not contend that the policy enunciated by the two accessible letters is itself discriminatory. AT&T does, however, raise two complaints regarding its duties under the policy, both of which appear to be based on misunderstandings. First, AT&T alleges that Michigan Bell's policy unfairly requires competitive LECs to "incur the substantial cost of subscribing to the MSAG database." AT&T Willard Supplemental Decl. at para. 13. Michigan Bell states, however, that it provides access to this database to any competitive LEC requesting such access at no cost. Michigan Bell Valentine Supplemental Reply Aff. at para. 23. Second, AT&T asserts that Michigan Bell's "PREMIS" database might prevent a competitive LEC from making necessary edits to the MSAG. AT&T Willard Supplemental Decl. at para. 13. Michigan Bell, however, avers that the PREMIS database is not even used in Michigan, and that AT&T's argument is therefore moot. Michigan Bell Valentine Supplemental Reply Aff. at para. 26. AT&T has not disputed either of Michigan Bell's claims.

⁵²⁵ See, e.g., Michigan Bell Valentine Supplemental Reply Aff. at paras. 3, 9.

⁵²⁶ AT&T Supplemental Reply Comments at 13-14; MCI Lichtenberg Supplemental Reply Decl. at para. 37.

⁵²⁷ For this reason, AT&T's claims regarding SBC's policy in California are not relevant here. See AT&T Supplemental Reply Comments at 14. To the extent that competitors believe that SBC has in fact applied a discriminatory policy not consistent with the July 15 Accessible Letter, either in Michigan or in any other state where SBC has been granted section 271 approval, they are free to bring their claims before this Commission or the relevant state commission.

information "remains unclear."⁵²⁸ We disagree. As set forth above, the July 15 Accessible Letter stated plainly that the policy described applied "solely" to "situation[s] in which a CLEC initially engages in line-splitting by reusing facilities previously used as part of a UNE-P or line-shared arrangement," and only required competitive carriers "to provide updated end-user service address information based upon a change in the customer's physical service address."⁵²⁹

150. Finally, Michigan Bell acknowledges that on one occasion, when an AT&T line-splitting customer dialed 911, responders were sent to the Michigan Bell central office serving the customer rather than to the customer's home address.⁵³⁰ Michigan Bell investigated the problem, determined its root cause, remedied incorrect records in its files, and updated its procedures to ensure that the customer's address, rather than that of the serving wire center, is listed in the 911 database.⁵³¹ As such, nearly all of the faulty records were corrected before Michigan Bell filed the instant application.⁵³² No commenter has alleged any further problems. We do not believe that this isolated incident warrants a finding of noncompliance with checklist item 7.

2. Access to Operator Services/Directory Assistance

151. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.⁵³³ Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to ... operator services, directory assistance, and directory listing, with no unreasonable dialing delays."⁵³⁴ Based on our review of the record, we conclude, as did the Michigan Commission,⁵³⁵ that Michigan Bell offers nondiscriminatory access to its directory

⁵²⁸ MCI Supplemental Reply Lichtenberg Decl. at paras. 34, 35.

⁵²⁹ Michigan Bell July 15 *Ex Parte* Letter, Attach.

⁵³⁰ Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 64.

⁵³¹ *Id.* at para. 66.

⁵³² According to Michigan Bell, all but two of the approximately 50 erroneous records were remedied before this application was filed, and the rest were fixed before day 20 of this proceeding. See Michigan Bell July 30 *Ex Parte* Letter, Attach. at

⁵³³ 47 U.S.C. § 271(c)(2)(B)(vii)(II)-(III); see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4131, para. 351.

⁵³⁴ 47 U.S.C. § 251(b)(3). We have previously held that a BOC must be in compliance with section 251(b)(3) in order to satisfy sections 271(c)(2)(B)(vii)(II) and (III). See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740 n.763; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4132-33, para. 352.

⁵³⁵ Michigan Commission Comments at 111.

assistance services and operator services (OS/DA).⁵³⁶

152. We reject NALA's arguments that SBC's practices with respect to the branding of OS/DA services require rejection of its application. NALA contends that SBC requires competitive LECs to either brand the OS/DA services they use on an unbundled basis or adopt "silent" branding (also known as "unbranding") – as opposed to using SBC's branding – and charges competitive LECs one-time branding fees equaling approximately \$4,000 per switch.⁵³⁷ NALA claims that this practice violates the Commission's requirements. Michigan Bell, however, offers evidence that it does, in fact, permit competitive LECs that use its OS/DA services to default to SBC branding, and that carriers choosing SBC branding are not subject to the non-recurring loading changes applied to carriers electing their own branding or silent branding.⁵³⁸ In fact, according to Michigan Bell, approximately fourteen competitive LECs in Michigan currently subscribe use Michigan Bell's unbundled OS/DA services with SBC branding.⁵³⁹ NALA has not presented any evidence to rebut this claim.⁵⁴⁰

V. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

153. Checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."⁵⁴¹ Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁵⁴² Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.⁵⁴³ Based on the evidence in the record, we conclude, as did the Michigan Commission,⁵⁴⁴ that Michigan Bell complies with the requirements of this checklist item.⁵⁴⁵ In

⁵³⁶ See Michigan Bell Ehr Aff. at paras. 169-73; Michigan Bell Ehr Supplemental Aff. at paras. 147-51.

⁵³⁷ NALA Supplemental Comments at 9.

⁵³⁸ See Michigan Bell July 30 *Ex Parte* Letter, Attach. at 4. All carriers are subject to recurring "per-call" branding charges, which equal \$0.025 for resellers and \$0.005461 for UNE-platform carriers. See *id.*

⁵³⁹ See *id.*

⁵⁴⁰ Indeed, NALA's only evidence that Michigan Bell is engaging in the behavior it alleges is a letter that it sent to Michigan Bell seeking confirmation that Michigan Bell's policies do not require rebranding or unbranding. NALA provides no information regarding whether Michigan Bell ever responded. See generally NALA Comments, Ex. B.

⁵⁴¹ 47 U.S.C. § 271(c)(2)(B)(i).

⁵⁴² 47 U.S.C. § 251(c)(2).

⁵⁴³ 47 U.S.C. § 252(d)(1).

⁵⁴⁴ See Michigan Commission Comments at 40.

reaching this conclusion, we have examined Michigan Bell's performance in providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings.⁵⁴⁶ We find that Michigan Bell has satisfied the vast majority of its performance benchmarks or retail comparison standards for this checklist item.⁵⁴⁷ Below, we address specific complaints raised by commenters regarding Michigan Bell's call blocking practices and its interconnection pricing.

154. *Call Blocking.* We disagree with NALA's claim that Michigan Bell's call blocking policies violate the competitive checklist. NALA contends that Michigan Bell disclaims responsibility for the effectiveness of its call blocking services, and charges competitive LECs for usage-based services that their end users consume, even when Michigan Bell is supposed to prevent the use of such services.⁵⁴⁸ NALA, however, has provided no specific evidence upon which we could conclude that Michigan Bell is, in fact, allowing calls that should be blocked to proceed. Michigan Bell's testimony indicates that there are several different call blocking options available to competitive LECs in Michigan, each of which blocks different services.⁵⁴⁹ NALA does not describe the specific type of call blocking its members have attempted to establish. Indeed, the one specific complaint discussed in NALA's filing appears to involve a competitive LEC that failed to order the blocking services relevant to the call types for

(Continued from previous page)

⁵⁴⁵ See Michigan Bell Ehr Supplemental Aff. at paras. 7-16. Michigan Bell met all relevant standards in the PM 70 and PM 71 families, which measure trunk blockages; the PM 77 family, which measures trunk restoration intervals; and the PM 73, PM 74, PM 75, and PM 78 families, which measure interconnection trunk installation timeliness, in each of the five relevant months. Michigan Bell also satisfied all measures in the PM 109 family, which measures collocation timeliness, in each of the relevant months. Moreover, Michigan Bell provides legally binding terms and conditions for collocation in its interconnection agreements. See Michigan Bell Alexander Aff. at para. 29.

⁵⁴⁶ See *Qwest 9-State Order*, 17 FCC Rcd at 26473-74, para. 312 (citing *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9133-37, paras. 201-06; *Verizon Massachusetts Order*, 16 FCC Rcd at 9092-95, 9098, paras. 183-87, 195).

⁵⁴⁷ See PM 70-2 (Percent Trunk Blockage – AIT Tandem to CLEC End Office); PM 70.1-01 (Trunk Blockage Exclusions); PM 70.2-01 (Percent Trunk (Trunk Groups) – AIT Tandem CLEC End Office); PM 71-01 (Common Transport Trunk Group Blockage); PM 73-04 (Percentage Missed Due Dates – Interconnection Trunks – Non Projects); PM 73-05 (Percentage Missed Due Dates – Interconnection Trunks – Projects); PM 74-04 (Average Delay Days for Missed Due Dates – Interconnection Trunks); PM 75-04 (Percent of Ameritech Caused Missed Due Dates > 30 Days – Interconnection Trunks); PM 76-04 (Average Trunk Restoration Interval – Interconnection Trunks); PM 78-04 (Average Interconnection Trunks Installation Interval); PM 107-04 (Percent Missed Collocation Due Dates - Cageless); PM 107-08 (Percent Missed Collocation Due Dates – Augments to Physical Collocation); PM 107-09 (Percent Missed Collocation Due Dates – Augments to Virtual Collocation); PM 109-03 (Percent of Collocation Requests Processed Within Established Timelines – Additions); PM 109-04 (Percent of Collocation Requests Processed Within Established Timelines – Cageless Collocation); see also Michigan Bell Ehr Aff. at paras. 25-36.

⁵⁴⁸ See NALA Supplemental Comments at 3-5. Some NALA members offer low-priced, fixed fee services that rely on effective blocking by Michigan Bell. *Id.* NALA contends that Michigan Bell's blocking practices therefore harm its members, but it does not indicate which checklist item those practices purportedly violate.

⁵⁴⁹ See Michigan Bell Alexander Supplemental Reply Aff. at para. 13.

which it was billed.⁵⁵⁰ It is clear, moreover, that Michigan Bell has made competitive LECs aware that some calls simply will not be blocked, and that Michigan Bell's Multi-State interconnection agreement – available to all carriers in Michigan⁵⁵¹ – expressly places on competitive LECs the financial responsibility for any such calls placed by their end-user customers.⁵⁵² NALA has not denied that its members' interconnection agreements with SBC contain similar, or identical, provisions.⁵⁵³ If NALA or its members wish to revise their agreements with SBC, the appropriate context for doing so would be a section 252 negotiation or arbitration proceeding, not this section 271 proceeding.⁵⁵⁴

155. *Interconnection Pricing.* Based on the evidence in the record, we find that Michigan Bell offers interconnection in Michigan to other telecommunications carriers at just, reasonable, and nondiscriminatory rates in compliance with checklist item 1. The Michigan Commission concluded that Michigan Bell's interconnection prices "comply with the Act and satisfy the checklist," noting that no commenter disputed this conclusion.⁵⁵⁵ Collocation prices are also set at rates established by the Michigan Commission.⁵⁵⁶

156. TDS Metrocom contends that Michigan Bell's collocation practices result in improper charges, because Michigan Bell bills TDS Metrocom for more power than TDS

⁵⁵⁰ See *id.* at paras. 14-19.

⁵⁵¹ See Michigan Bell Alexander Aff. at para. 21 n.6.

⁵⁵² According to the agreement:

CLEC acknowledges that blocking is not available for certain types of calls, including 800, 888, 411 and Directory Assistance Express Call Completion. Depending on the origination point, for example, calls originating from correctional facilities, some calls may bypass blocking systems. CLEC acknowledges all such limitations and accepts responsibility for charges associated with calls for which blocking is not available and any charges associated with calls that bypass blocking systems.

See Michigan Bell Alexander Supplemental Reply Aff. at para. 20.

⁵⁵³ Given NALA's failure to rebut SBC's argument that SBC's interconnection agreements assign to the competitive LEC financial responsibility for certain call types, its argument that its members should be free of such obligations "in the absence of a contractual arrangement" is simply not relevant here. See Letter from Glenn S. Richards and Susan M. Hafeli, Counsel for NALA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 (filed Aug. 19, 2003).

⁵⁵⁴ See, e.g., *Verizon 3-State Order*, 18 FCC Red at 5300-01, para. 151 ("As we have found in previous proceedings, given the applicable time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligations to its competitors."). Furthermore, we note that NALA or one of its members believes that it has a valid claim, it can bring the issue to this Commission or the Michigan Commission, as appropriate.

⁵⁵⁵ See Michigan Commission Comments at 36.

⁵⁵⁶ Michigan Bell Application at 25; Michigan Bell Fennel Aff. at para. 54.

Metrocom actually uses.⁵⁵⁷ Michigan Bell responds that TDS Metrocom did not raise this issue before the state commission, although the collocation arrangements have been in place, and Michigan Bell has been billing for redundant power in this manner, for over two years.⁵⁵⁸ Michigan Bell also alleges that, if competitive LECs believe they are being billed for power they do not use, they may reconfigure their DC power arrangements to better align their recurring monthly power charges with their current, actual collocation equipment needs.⁵⁵⁹

157. We find that this collocation pricing argument raised by TDS Metrocom does not cause Michigan Bell to fail this checklist item. The Commission previously has found that this issue is an intercarrier dispute that should be addressed in the first instance by the state commissions, not by the Commission in a section 271 application.⁵⁶⁰ Here we find that TDS Metrocom should raise this issue before the Michigan Commission. We also find Michigan Bell's explanation, that TDS Metrocom can remedy this problem by reconfiguring its power intake, reasonable under the circumstances. Accordingly, TDS Metrocom has failed to demonstrate a checklist violation.

B. Checklist Item 2 – UNE Combinations

158. In order to satisfy section 271(c)(2)(B)(ii), a BOC must show it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements, and that it does not separate already combined elements, except at the specific request of a competing carrier.⁵⁶¹ We conclude, as did the Michigan Commission,⁵⁶² that Michigan Bell provides nondiscriminatory access to combinations of unbundled network elements (UNE combinations) in compliance with the Commission's rules. Michigan Bell demonstrates that competitive LECs may order already-combined UNE combinations, and Michigan Bell will not separate these UNE combinations unless requested to do so by the competitive LEC.⁵⁶³ Michigan Bell also shows that, in accordance with its interconnection agreement, the "Mi2A," Michigan Bell combines UNEs, including new UNE-P combinations and enhanced extended links, for competitive carriers when requested.⁵⁶⁴ For competitive LECs that choose to combine their own UNE combinations, Michigan Bell shows it provides UNEs in

⁵⁵⁷ TDS Metrocom objects to Michigan Bell's practice of billing for redundant collocation power. TDS Metrocom Supplemental Comments at 9; TDS Metrocom Cox Aff. at para. 23.

⁵⁵⁸ Michigan Bell Alexander Supplemental Reply Aff. at para. 3.

⁵⁵⁹ Michigan Bell Reply at 50; Michigan Bell Alexander Reply Aff. at para. 13.

⁵⁶⁰ *Verizon Massachusetts Order*, 16 FCC Rcd at 9102-03, para. 203; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17478, para. 108.

⁵⁶¹ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.313(b).

⁵⁶² Michigan Commission Comments at 47.

⁵⁶³ Michigan Bell Application at 27.

⁵⁶⁴ *Id.* at 28.

a manner that permits competitive LECs to combine them.⁵⁶⁵ No commenting parties raise any issues with Michigan Bell's provision of UNE combinations.

C. Checklist Item 10 – Databases and Signaling

159. Section 271(c)(2)(B)(x) of the Act requires a BOC to provide to other telecommunications carriers “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”⁵⁶⁶ Based on the evidence in the record, we find, as did the Michigan Commission,⁵⁶⁷ that Michigan Bell provides nondiscriminatory access to databases and signaling networks in the state of Michigan.⁵⁶⁸

160. TSI argues that Michigan Bell is violating checklist item 10.⁵⁶⁹ Specifically, TSI claims that it should be able to purchase signaling from Michigan Bell as an unbundled network element at TELRIC rates, rather than from tariffs at higher rates.⁵⁷⁰ Pursuant to section 271(c)(2)(B) of the Act, Michigan Bell only is required to make checklist items available to other telecommunications carriers.⁵⁷¹ TSI, however, is not a telecommunications carrier.⁵⁷² Therefore, we find that Michigan Bell has no obligation under the Act to provide signaling services to TSI at UNE rates.⁵⁷³ Thus, TSI's allegations do not warrant a finding of checklist noncompliance.

D. Checklist Item 13 – Reciprocal Compensation

161. Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”⁵⁷⁴ In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable.⁵⁷⁵ The Michigan Commission found Michigan Bell's rates for reciprocal compensation consistent with TSLRIC

⁵⁶⁵ *Id.* at 27-29.

⁵⁶⁶ 47 U.S.C. § 271(c)(2)(B)(x).

⁵⁶⁷ Michigan Commission Comments at 126.

⁵⁶⁸ Michigan Bell Application at 82-84; Michigan Bell Deere Aff. at paras. 179-213.

⁵⁶⁹ TSI July 18 *Ex Parte* Letter at 1-2.

⁵⁷⁰ *Id.*

⁵⁷¹ 47 U.S.C. § 271(c)(2)(B); *see also* Michigan Bell July 30 *Ex Parte* Letter, Attach. at 3-4.

⁵⁷² TSI is a third-party provider offering signaling services to telecommunications carriers. TSI July 18 *Ex Parte* Letter at 2.

⁵⁷³ *See Verizon 3-State Order*, 18 FCC Rcd at 5294, para. 1399.

⁵⁷⁴ 47 U.S.C. § 271(c)(2)(B)(xiii).

⁵⁷⁵ 47 U.S.C. § 252(d)(2)(A).

costing principles, and that Michigan Bell has demonstrated compliance with this checklist item.⁵⁷⁶ In its supplemental application filed on June 19, 2003, Michigan Bell explained that it had elected to invoke the rate structure set out in the *ISP Remand Order*, and the rate structure change would be effective in Michigan on July 6, 2003.⁵⁷⁷ This rate change occurred after comments were filed on Michigan Bell's supplemental application.⁵⁷⁸

162. *Complete-As-Filed Waiver.* We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider Michigan Bell's revised reciprocal compensation rates.⁵⁷⁹ The Commission maintains certain procedural requirements governing section 271 applications.⁵⁸⁰ In particular, the "complete-as-filed" requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance.⁵⁸¹ We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record.⁵⁸² The Commission can waive its procedural rules, however, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁵⁸³

163. We find that a waiver is appropriate in these circumstances. Michigan Bell has changed its rates subsequent to filing its application.⁵⁸⁴ In prior cases in which the Commission

⁵⁷⁶ Michigan Commission Comments at 135-136. In January 2001, the Michigan Commission approved TELRIC-based rates for a new, bifurcated rate structure for reciprocal compensation. Michigan Bell Fennell Aff. at para. 15; see also Michigan Bell Application, App. L, Tab 28, *Application of Ameritech Michigan to Revise its Reciprocal Compensation Rates and Rate Structure and to Exempt Foreign Exchange Service from Payment of Reciprocal Compensation*, Case No. U-12696, Opinion and Order (Jan. 23, 2001); Michigan Bell Application, App. A, Vol. 1, Tab 1, Affidavit of Scott J. Alexander, at paras. 101-102, 106 (Michigan Bell Alexander Aff.)

⁵⁷⁷ Michigan Bell Alexander Supplemental Aff. at para. 4.

⁵⁷⁸ Comments were due on Michigan Bell's supplemental application on July 2, 2003.

⁵⁷⁹ 47 C.F.R. § 1.3.

⁵⁸⁰ *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 16 FCC Rcd 6923 (Com. Car. Bur. 2001).

⁵⁸¹ *Verizon Rhode Island Order*, 17 FCC Rcd at 3306-06, para. 7 (2002); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

⁵⁸² *Verizon Rhode Island Order*, 17 FCC Rcd at 3306, para. 7; *Ameritech Michigan Order*, 12 FCC Rcd at 20572-73, paras. 52-54.

⁵⁸³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); see also 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

⁵⁸⁴ See Michigan Bell Alexander Supplemental Aff. at paras. 3-6 (explaining reciprocal compensation rate changes to become effective after the June 19th filing date of Michigan Bell's section 271 application).

has considered post-filing rate changes, our primary concern has been to ensure that “this is not a situation where a BOC has attempted to maintain high rates only to lower them voluntarily at the eleventh hour in order to gain section 271 approval.”⁵⁸⁵ We find no evidence that Michigan Bell has engaged in this type of gamesmanship in this case. Michigan Bell changed its rate structure for reciprocal compensation for ISP-bound traffic to the rate caps set forth in the Commission’s *ISP Remand Order*, not as part of a strategy to win approval of this application.⁵⁸⁶

164. Another major concern that we have identified in prior cases where rates have changed during a proceeding is that interested parties be afforded a sufficient opportunity to review the new rates, and that the analytical burden of doing so is not too great in light of the time constraints inherent in the section 271 application process.⁵⁸⁷ Again, we find no cause for concern with respect to Michigan Bell’s post-filing rate structure change. When Michigan Bell filed its section 271 application on January 16, 2003, it explained that it had elected not to invoke the *ISP Remand Order*’s rate caps for section 251(b)(5) traffic, but reserved its right to do so in the future.⁵⁸⁸ In a June 16, 2003, Accessible Letter, Michigan Bell notified competitive LECs that it had elected to invoke the rate structure set out in the *ISP Remand Order*, and that the rate structure change would be effective in Michigan on July 6, 2003.⁵⁸⁹ Given that carriers received notice of the rate structure change before Michigan Bell filed its supplemental section 271 application, we find that they had sufficient opportunity to review the new rates and so waiver of the complete-as-filed rule is appropriate in this instance.

165. *Reciprocal Compensation Discussion.* We find that commenters’ allegations regarding Michigan Bell’s reciprocal compensation policies and rate structure in Michigan do not cause Michigan Bell to fail this checklist item or the public interest standard. AT&T argues that Ameritech’s region-wide policy precluding competitive LECs from adopting state-approved reciprocal compensation provisions for the exchange of local traffic found in interconnection agreements entered into by Ameritech violates the *ISP Remand Order* and section 252(i) of the Act.⁵⁹⁰ According to AT&T, the Commission in the *ISP Remand Order* prohibited competitive LECs only from opting in to terms of agreements then in existence.⁵⁹¹ AT&T asserts that Michigan Bell must make available to all competitive LECs the reciprocal compensation provisions in interconnection agreements adopted pursuant to section 252 that became effective

⁵⁸⁵ *Verizon Rhode Island Order*, 17 FCC Rcd at 3307, para. 9.

⁵⁸⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9187-93, paras. 78-88 (2001) (*ISP Remand Order*).

⁵⁸⁷ *Verizon Rhode Island Order*, 17 FCC Rcd at 3308, paras. 10-11.

⁵⁸⁸ Michigan Bell Alexander Aff. at para. 107.

⁵⁸⁹ Michigan Bell Alexander Supplemental Aff. at paras. 4-5.

⁵⁹⁰ AT&T Supplemental Comments at 37-38; see also *ISP Remand Order*, 16 FCC Rcd 9151.

⁵⁹¹ AT&T Supplemental Comments at 37-38, citing *ISP Remand Order*, 16 FCC Rcd at 9189, para. 82.

after the *ISP Remand Order* was published in the Federal Register.⁵⁹² Michigan Bell contends that such reciprocal compensation provisions are not available for adoption under section 252(i) in light of the *ISP Remand Order*.⁵⁹³

166. AT&T does not allege that it has been unable to opt in to reciprocal compensation provisions of Michigan Bell interconnection agreements entered into after publication of the *ISP Remand Order* in the Federal Register. It also does not claim to have raised this issue before the Michigan Commission, nor does it assert that the Michigan Commission would incorrectly apply the sections of the *ISP Remand Order* regarding opting in to reciprocal compensation interconnection agreement provisions. We find that this issue should be resolved by the Michigan Commission or through a complaint brought to this Commission in the context of a section 208 proceeding, rather than in a section 271 application proceeding.⁵⁹⁴ We anticipate that any violations of the statute or our rules will be addressed expeditiously through federal and state complaint and investigation proceedings.

167. In an *ex parte* filing, TSI alleges that Michigan Bell's intrastate SS7 rate structure violates applicable reciprocal compensation rules and policies.⁵⁹⁵ As discussed above, we find that disputes regarding Michigan Bell's reciprocal compensation rate structure are best resolved before the Michigan Commission or through a complaint brought to this Commission in the context of a section 208 proceeding.

168. CLECA alleges that LDMI and certain other competitive LECs received a letter from Michigan Bell describing its failure to bill reciprocal compensation charges for certain calls originating with competitive LEC end users served by UNE-P and terminating with Michigan Bell, and claims that the problem has not been fixed.⁵⁹⁶ Michigan Bell responds that the problem has, in fact, been corrected and Michigan Bell has provided affected carriers with information about the charges to be billed.⁵⁹⁷ Michigan Bell states that because LDMI was not one of the competitive LECs affected by the reciprocal compensation billing problem, there were no revisions to its subsequent bills and it was not informed of the correction of the error.⁵⁹⁸ We find that Michigan Bell has adequately explained why LDMI did not receive notice of the correction

⁵⁹² *Id.*

⁵⁹³ Michigan Bell Reply at 51.

⁵⁹⁴ See *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20776, para. 115 (addressing an opt-in dispute regarding an interconnection agreement, and noting that while the Commission has an independent obligation to ensure compliance with the checklist, section 271 does not compel the Commission to preempt the orderly disposition of intercarrier disputes by state commissions).

⁵⁹⁵ TSI July 18 *Ex Parte* Letter at 2.

⁵⁹⁶ CLECA Supplemental Comments at 12-13.

⁵⁹⁷ Michigan Bell Reply Aff. at para. 21.

⁵⁹⁸ *Id.* LDMI received the notice of the reciprocal compensation billing problem in error. *Id.* Michigan Bell notes that LDMI has never been paid reciprocal compensation by Michigan Bell because, as of January 2003, LDMI has never billed Michigan Bell for reciprocal compensation. *Id.*

of the reciprocal compensation billing error once it was fixed. Further, CLECA provides no evidence that Michigan Bell failed to correct the problem with respect to other competitive LECs. We thus conclude that CLECA's complaint does not warrant a finding of checklist noncompliance.

E. Remaining Checklist Items (3, 5, 6, 8, 9, 11, 12, and 14)

169. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),⁵⁹⁹ item 5 (unbundled transport),⁶⁰⁰ item 6 (unbundled switching),⁶⁰¹ item 8 (white pages),⁶⁰² item 9 (numbering administration),⁶⁰³ item 11 (number portability),⁶⁰⁴ item 12 (dialing parity),⁶⁰⁵ and item 14 (resale).⁶⁰⁶ Based on the evidence in the record, we conclude, as did the Michigan Commission, that Michigan Bell demonstrates that it is in compliance with these checklist items.⁶⁰⁷ No parties object to Michigan Bell's compliance with these checklist items.

VI. SECTION 272 COMPLIANCE

170. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."⁶⁰⁸ Based on the record, we conclude that Michigan Bell has demonstrated that it will comply with the requirements of section 272.⁶⁰⁹ Significantly, Michigan Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Michigan as it does in Texas.

⁵⁹⁹ 47 U.S.C. § 271(c)(2)(B)(iii).

⁶⁰⁰ 47 U.S.C. § 271(c)(2)(B)(v).

⁶⁰¹ 47 U.S.C. § 271(c)(2)(B)(vi).

⁶⁰² 47 U.S.C. § 271(c)(2)(B)(viii).

⁶⁰³ 47 U.S.C. § 271(c)(2)(B)(ix).

⁶⁰⁴ 47 U.S.C. § 271(c)(2)(B)(xi).

⁶⁰⁵ 47 U.S.C. § 271(c)(2)(B)(xii).

⁶⁰⁶ 47 U.S.C. § 271(c)(2)(B)(xiv). See Part IV.B.2 for discussion of performance measures.

⁶⁰⁷ See Michigan Commission Comments at 80 (checklist item 3), 97 (checklist item 5), 115 (checklist item 8), 117 (checklist item 9), 129 (checklist item 11), 131 (checklist item 12), and 141 (checklist item 14).

⁶⁰⁸ 47 U.S.C. § 271(d)(3)(B); App. C at para. 68.

⁶⁰⁹ See Michigan Bell Application at 100-06; Michigan Bell Application, App. A, Vol. 1, Tab 4, Affidavit of Joe Carrisalez (Michigan Bell Carrisalez Aff.); Michigan Bell Application, App. A, Vol. 5a-c, Tab 15, Affidavit of Robert L. Henrichs (Michigan Bell Henrichs Aff.); Michigan Bell Application, App. A, Vol. 6, Tab 20, Affidavit of Linda G. Yohe (Michigan Bell Yohe Aff.).

Kansas, Oklahoma, Missouri, Arkansas, and California – states for which SBC has already received section 271 authority.⁶¹⁰ No party challenges Michigan Bell's section 272 showing.⁶¹¹

VII. PUBLIC INTEREST ANALYSIS

A. Public Interest Test

171. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.⁶¹² At the same time, section 271(d)(4) of the Act states that “[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).”⁶¹³ Accordingly, although the Commission must make a separate determination that approval of a section 271 application is “consistent with the public interest, convenience, and necessity,” it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B). Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

172. We conclude that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in Michigan's local exchange market have been removed, and that the local exchange market is open to competition. As set forth below, Michigan Bell's performance plan provides assurance of future compliance. We also address specific arguments raised by commenters.

B. Assurance of Future Performance

173. We find that the performance remedy plan (PRP) currently in place for Michigan provides assurance that the local markets will remain open after Michigan Bell receives section 271 authorization. Although it is not a requirement for section 271 approval that a BOC be subject to such post-entry performance assurance mechanisms, the Commission has previously

⁶¹⁰ See Michigan Bell Carrisalez Aff. at para. 5; Michigan Bell Yohe Aff. at para. 6; see also *SBC California Order*, 17 FCC Rcd at 25731-33, paras. 145-46; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20780-81, paras. 122-23; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6370-74, paras. 256-65; *SWBT Texas Order*, 15 FCC Rcd at 18548-57, paras. 394-415.

⁶¹¹ E&Y has completed the first independent audit of SBC's section 272 compliance pursuant to section 53.209 of the Commission's rules, 47 C.F.R. § 53.209. See Letter from Brian Horst, Partner, E&Y, to Marlene H. Dortch, Secretary, Federal Communication Commission (Sept. 16, 2002) (transmitting audit report). Only Texas, Kansas, and Oklahoma were included in the first SBC biennial audit.

⁶¹² 47 U.S.C. § 271(d)(3)(C).

⁶¹³ 47 U.S.C. § 271(d)(4).

found that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations.⁶¹⁴

174. We conclude that the Michigan Bell PRP plan provides sufficient incentives to foster post-entry checklist compliance. We note that the PRP was developed and approved by the Michigan Commission in an open proceeding, and Michigan Bell's performance measurements are the result of extensive collaborative negotiations among the competitive LECs, the Michigan Commission, and Michigan Bell.⁶¹⁵ As in prior section 271 orders, our conclusions are based on a review of several key elements in any performance assurance plan: total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements.⁶¹⁶

175. Michigan Bell notes that the Michigan Commission approved the PRP because it is modeled on a plan that has been approved by this Commission and by other states, that it computes the remedies according to the number of violations, and that it can be modified to the unique circumstances of Michigan Bell's service area.⁶¹⁷ Because this is essentially the same PRP that has been adopted successfully in other states to foster post-entry compliance and prevent backsliding, we are not persuaded by AT&T's assertion that the penalties at stake under this plan are not sufficient to ensure future compliance.⁶¹⁸ Specifically, AT&T argues that the monetary penalties will not give Michigan Bell adequate incentive to modify its behavior.⁶¹⁹ We disagree. The penalties under the plan are comparable to what we have accepted in other 271 proceedings. The plan places at risk more than \$303 million which represents 36% of annual net return from local exchange service⁶²⁰ – a percent consistent with PRPs in other states that have been approved by this Commission.⁶²¹ Further, if the remedies exceed this procedural cap,

⁶¹⁴ See *Verizon New Jersey Order*, 17 FCC Rcd at 12362, para 176; *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98. We note that in all of the previous applications that the Commission has granted to date, the applicant was subject to a performance assurance plan designed to protect against backsliding after BOC entry into the long distance market.

⁶¹⁵ Michigan Bell Ehr Aff., Attach. B; Michigan Commission Comments at 142.

⁶¹⁶ See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9121-24, paras. 240-247; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6378-81, paras. 273-80.

⁶¹⁷ Michigan Bell Application at 98 (footnote omitted).

⁶¹⁸ AT&T Comments at 55, 58-59 (stating that Michigan Bell's assertion that use of this plan will foster checklist compliance is "demonstrably incorrect" and that Michigan Bell will pay any penalties for violating the plan simply as a cost of doing business).

⁶¹⁹ *Id.*

⁶²⁰ Michigan Bell Ehr Aff. at 279; Michigan Bell Application at 98.

⁶²¹ Michigan Commission Comments at 142. See, e.g., *Qwest Minnesota Order* at para. 71 & n.263; *Qwest 3-State Order*, 18 FCC Rcd at 7365, para. 71 & n.263; *Verizon Massachusetts Order*, 16 FCC Rcd at 9121, para. 241 (continued....)

Michigan Bell may still be required to pay amounts above this limit.⁶²² We also note that the PRP is not the only means of ensuring that Michigan Bell continues to provide nondiscriminatory service to competing carriers. In addition to the monetary payments at stake under this plan, any Michigan Bell failure to sustain an acceptable level of service to competing carriers may trigger enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and other legal actions.⁶²³

176. We also disagree with AT&T's argument that Michigan Bell's self-reported performance data is too unreliable to serve its intended monitoring purpose.⁶²⁴ As discussed above, we find Michigan Bell's data to be accurate and reliable for purposes of evaluating checklist compliance.⁶²⁵ For the same reasons, we believe the data to be accurate and reliable for purposes of post-entry enforcement.

C. Other Issues

177. *Penalty Waiver Agreement.* We find that TDS Metrocom's allegation regarding Michigan Bell's failure to file an agreement with another telecommunications carrier does not demonstrate that Michigan Bell's application is inconsistent with the public interest. TDS Metrocom claims that Michigan Bell violated sections 251 and 252 of the Act by entering into an "exclusive and secret" interconnection agreement with Climax Telephone.⁶²⁶ Under the agreement, Michigan Bell and Climax Telephone each agreed to waive the early termination penalties set forth in its customers' service contracts when those customers switch their services to the other company.⁶²⁷ TDS Metrocom claims that the unfiled agreement discriminated against other competitive LECs by giving Climax Telephone a market advantage.⁶²⁸

(Continued from previous page)

& n. 769; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6378 para. 274 & n.837; *SWBT Texas Order*, 15 FCC Rcd at 18561-62, para. 424 & n.1235; *Bell Atlantic New York Order*, 15 FCC Rcd at 4168, para. 436 & n.1332.

⁶²² Michigan Commission Comments at 142.

⁶²³ See *Qwest Minnesota Order* at para. 72; *Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430 (stating that the BOC "risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner"); see also *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421.

⁶²⁴ See AT&T Reply at 35-36.

⁶²⁵ See *supra* Part VI.A (discussing evidentiary case).

⁶²⁶ See TDS Supplemental Comments at 18-19.

⁶²⁷ 47 U.S.C. §§ 251, 252. See TDS Supplemental Comments at 18-19; Letter from Michael W. Fleming, Counsel for TDS Metrocom, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 03-138, Attach. at 14-15 (TDS Metrocom, LLC's Motion and Brief in Support of Its Request for Emergency Relief) (filed July 8, 2003) (TDS Metrocom July 8 *Ex Parte* Letter).

⁶²⁸ TDS Metrocom contends that Michigan Bell customers desiring to switch to a competitive LEC would be inclined to choose Climax Telephone rather than other competitive LECs, because no termination penalties would be charged. TDS Supplemental Comments at 18.

178. Michigan Bell acknowledges that it entered into the mutual waiver agreement with Climax Telephone.⁶²⁹ However, Michigan Bell argues that these waiver agreements are not interconnection agreements and, thus, are not required to be filed with the Michigan Commission pursuant to sections 251 and 252 of the Act.⁶³⁰ Further, Michigan Bell notes that, on January 15, 2003, it issued an accessible letter indicating its willingness to enter into similar agreements with other competitive LECs.⁶³¹ TDS Metrocom – along with several other competitive LECs – entered into such agreements with Michigan Bell.⁶³² TDS Metrocom has filed a complaint with the Michigan Commission regarding issues arising under this agreement.⁶³³

179. Under the framework established by the Act, competitive carriers are entitled to avail themselves of interconnection agreements through the operation of section 252(i).⁶³⁴ TDS Metrocom's complaint raises an issue of first impression: Whether an agreement regarding termination penalties constitutes an "interconnection agreement" subject to section 252(i).⁶³⁵ We do not reach the question of whether Michigan Bell had an obligation to file this agreement pursuant to section 252(i). As we have stated, whether an agreement qualifies as an interconnection agreement for purposes of section 252(i) is a question best addressed by the state in the first instance.⁶³⁶ Moreover, even if this were an interconnection agreement that should have been filed under 252(i), this appears to be an isolated instance of noncompliance and would not warrant a finding that this application is not in the public interest.

180. In concluding that TDS Metrocom's allegations do not warrant a finding that this application is inconsistent with the public interest, we find significant that the terms of the Michigan Bell-Climax Telephone agreement were made available to all competitive carriers on

⁶²⁹ Michigan Bell Supplemental Reply, App., Tab 7, Supplemental Reply Affidavit of Robin M. Gleason at para. 26 (Michigan Bell Gleason Supplemental Reply Aff.).

⁶³⁰ Michigan Bell Gleason Supplemental Reply Aff at para. 26.

⁶³¹ Michigan Bell Supplemental Application, App. H, Tab 1, Accessible Letter CLECAM03-008.

⁶³² Michigan Bell Gleason Supplemental Reply Aff. at para. 26 & n.10.

⁶³³ TDS Metrocom Supplemental Comments at 17-18. TDS Metrocom also claims that Michigan Bell is breaching the terms of their agreement by refusing to waive the termination penalties for Michigan Bell customers switching to TDS Metrocom. TDS Supplemental Comments at 18; TDS Metrocom July 8 *Ex Parte* Letter at 8-9 in TDS Metrocom, LLC's Motion and Support of Its Request for Emergency Relief.

⁶³⁴ 47 U.S.C. § 252(i).

⁶³⁵ The Commission has previously held that if an agreement creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements or collocation, it is an interconnection agreement pursuant to section 252(a)(1). *Qwest Communications International Inc. Petition for Declaratory Ruling On the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337 (2002) (*Qwest Declaratory Order*).

⁶³⁶ *Qwest Declaratory Order*, 17 FCC Rcd at 19340, para. 7; *Qwest 9-State Order*, 17 FCC Rcd at 26558-59, para. 459.

January 15, 2003. Thus, any discrimination that may have existed was cured prior to the filing of the instant application. To the extent any past discrimination existed, we anticipate that any violations of the statute or our rules will be addressed expeditiously through federal and state complaint and investigation proceedings.⁶³⁷ We further note that, if such proceedings find that this or other agreements should have been filed with the Michigan Commission under section 252(a)(1), we would consider any filing delays to be extremely serious. As we have noted previously, the Commission clarified the obligation of incumbent LECs to file interconnection agreements under section 252(a)(1) in the *Qwest Declaratory Order* released October 4, 2002.⁶³⁸ Given that incumbent LECs have had adequate notice of their legal obligations under section 252(a), we will consider appropriate enforcement action when carriers fail to meet those obligations.⁶³⁹

181. *Security Deposits.* NALA alleges that the terms and conditions regarding security deposits in SBC's generic 13-state interconnection agreement are onerous and overly broad.⁶⁴⁰ Specifically, NALA argues that SBC's generic interconnection agreement requires a three-month security deposit, grants considerable discretion to SBC in determining when the security deposit assurance of payment provisions will be triggered, has no *de minimis* time or amount exceptions, and provides no leniency for any delinquent payments made during a 12-month period.⁶⁴¹ According to NALA, these provisions conflict with this Commission's policy statement regarding security deposit provisions in the access tariff context.⁶⁴² Michigan Bell responds that the terms in the generic 13-state interconnection agreement are merely an offer that a competitive LEC may accept or use as the basis for further negotiations.⁶⁴³ Michigan Bell also argues that the Commission's policy statement did not apply to section 251 interconnection agreements, which can be negotiated and individually tailored between the parties.⁶⁴⁴

182. We find that the security deposit provisions in SBC's generic 13-state interconnection agreement do not require us to deny Michigan Bell's Michigan section 271 application on public interest grounds for two reasons: carriers are not forced to use these terms and may negotiate or opt in to other terms, and the Commission's policy statement has no

⁶³⁷ See *Qwest Minnesota Order* at para. 87.

⁶³⁸ *Qwest Declaratory Order*, 17 FCC Rcd at 19340, para. 7; *Qwest Minnesota Order* at para. 93.

⁶³⁹ See, e.g. *Qwest Minnesota Order* at para. 93 (referring to the Enforcement Bureau allegations that Qwest failed to file 34 interconnection agreements with the Michigan Commission until shortly before filing its 271 application with the Commission).

⁶⁴⁰ NALA Supplemental Comments at 5-7.

⁶⁴¹ *Id.* at 6.

⁶⁴² NALA Supplemental Comments at 5-6, citing *Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202, Policy Statement, 17 FCC Rcd 26884 (2002) (*Security Deposit Policy Statement*).

⁶⁴³ Michigan Bell Supplemental Reply at 25; Michigan Bell Alexander Supplemental Reply Aff. at paras. 21-22.

⁶⁴⁴ Michigan Bell Supplemental Reply at 25; Michigan Bell Alexander Supplemental Reply Aff. at para. 23.

application to interconnection agreements. NALA does not point to security deposit terms in negotiated or arbitrated interconnection agreements in Michigan as the basis for its complaint, but rather complains about proposed language in a generic agreement. If a carrier does not agree to the security deposit terms in SBC's generic 13-state interconnection agreement, its statutory remedy is to negotiate different terms pursuant to section 252(a), or to arbitrate the issue before the state commission pursuant to section 252(b).⁶⁴⁵ In addition, a carrier may opt in to existing interconnection agreements with less onerous security deposit requirements pursuant to section 252(i).⁶⁴⁶ Our policy statement cited by NALA addressed security deposit requirements in access tariffs pursuant to sections 201 and 202 of the Act, not interconnection agreements pursuant to sections 251 and 252.⁶⁴⁷ The access tariffs at issue in the policy statement proceeding were applicable and binding on all access customers. The security deposit provisions in SBC's generic 13-state agreement, however, are not binding on any carrier, absent a voluntary agreement by the carrier to adopt the provisions pursuant to negotiation, or a finding by the state commission that the terms are just, reasonable, and non-discriminatory pursuant to an arbitration. Therefore, we find that the claim raised by NALA regarding language in a generic interconnection agreement does not demonstrate that grant of Michigan Bell's section 271 authorization is inconsistent with the public interest, convenience, and necessity.⁶⁴⁸

183. *Other Economic Factors.* We disagree with commenters' assertions that, under our public interest standard, we must consider a variety of other factors such as the economy, levels of competitive LEC market share, or the financing difficulties of competitive LECs.⁶⁴⁹ Given the affirmative showing that the competitive checklist has been satisfied, low customer volumes in certain market segments or the financial hardships of the competitive LEC community do not undermine that showing.⁶⁵⁰ Indeed, we have consistently declined to use factors beyond the control of the applicant BOC to deny an application.⁶⁵¹ We also note that the

⁶⁴⁵ 47 U.S.C. § 252(a), (b).

⁶⁴⁶ 47 U.S.C. § 252(i). See, e.g., Michigan Bell Application, App. B, Vol. 2, Interconnection Agreement Between Ameritech Information Industry Services and AT&T Communications of Michigan, Inc. at Art. XIX, section 19.20 (requiring only two months' security deposit, and triggering after two delinquency notices in a 12-month period).

⁶⁴⁷ *Security Deposit Policy Statement*, 17 FCC Rcd at 26884, para. 1.

⁶⁴⁸ 47 U.S.C. § 271(d)(3)(C).

⁶⁴⁹ See AT&T Comments at 55 (contending that the Commission should reject Michigan Bell's application because of conditions in other states); Sprint Comments at 7 (suggesting that lack of out-of-region BOC competition is contrary to public interest); Sprint Comments at 9 (contending that low-levels of facilities-based competition, particularly in the residential market, signals that competitors are unwilling or unable to make a sizeable investment in a given market); CLECA Comments at 16-17 (contending that Michigan Bell has failed to show affirmatively that grant of its application would increase competition and benefit consumers).

⁶⁵⁰ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9177-78, para. 282; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

⁶⁵¹ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9177-78, para. 282; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6376, para. 268.

D.C. Circuit confirmed in *Sprint v. FCC* that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.⁶⁵² Furthermore, we reject AT&T's claim that approval of Michigan Bell's application at this time will serve as a barrier to competition.⁶⁵³ We agree with the Michigan Attorney General that our approval of Michigan Bell's section 271 application will mean that consumers have an additional choice for long distance and bundled telecommunications services.⁶⁵⁴

184. *Regulatory Uncertainty.* Several commenters contend that because of regulatory uncertainty or changes involving UNE-P rates and availability, the Commission cannot find that grant of Michigan Bell's section 271 application will be in the public interest.⁶⁵⁵ These commenters suggest that such uncertainty would inevitably lead competitive LECs to exit the market, which would result in decreased competition. We disagree. As an initial matter, we reiterate that we have declined to use factors beyond the BOC's control to deny an application, and the status of federal rules certainly is not within a BOC's control.⁶⁵⁶ Moreover, we note that the *Triennial Review Order*, which adopted rules on incumbent LEC obligations to make elements of their networks available on an unbundled basis to new entrants, did not end all availability of UNE-P,⁶⁵⁷ as these commenters appear to assume. Accordingly, the potential public interest harm feared by some commenters, premised on unrealized expectations about the regulatory status of UNE-P or other elements, simply has not materialized.

185. *Competitive Issues.* Competitive LECs allege that Michigan Bell's alleged anti-competitive practices make it difficult for carriers to enter or continue competing in the Michigan market. For example, TDS Metrocom contends that Michigan Bell has engaged in bad faith negotiations regarding off-site collocation terms.⁶⁵⁸ Contrary to TDS Metrocom's suggestion that this is an ongoing issue, we note that the Michigan Commission in December 2001 approved the

⁶⁵² *Sprint Communications Co. v. FCC*, 274 F.3d at 553-54 (D.C. Cir. 2001); see also *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77.

⁶⁵³ AT&T Comments at 54-55.

⁶⁵⁴ Michigan Attorney General Comments at 8; see also Michigan Bell Reply, Tab 10, Reply Affidavit of Robin M. Gleason at 8-9 (Michigan Bell Gleason Reply Aff.).

⁶⁵⁵ CLECA Comments at 8 (stating that such competition as there is in Michigan is linked to UNE-P availability, and that if UNE-P is eliminated, then the percentage of competitive LEC local lines would drop to 6%); Sprint Comments at 5-7 (asserting that uncertainty over UNE pricing and availability will lead to less competition); TDS Metrocom Comments at 37 (predicting an "OSS disaster" if UNE-P is no longer available to Michigan Bell's competitors); CLECA Supplemental Comments at 23 ("the continued availability of UNE-P at all is uncertain until after the MPSC proceedings following issuance of the FCC's Triennial Review Order").

⁶⁵⁶ See, e.g., *SWBT Texas Order*, 15 FCC Rcd at 18558, para. 419; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6376, para. 268; *Verizon Massachusetts Order*, 16 FCC Rcd at 9119, para. 235.

⁶⁵⁷ See *Triennial Review Order*; see also *Triennial Review News Release*; Michigan Attorney General Supplemental Comments at 2 (noting his concerns addressed by the Triennial Review).

⁶⁵⁸ See TDS Metrocom Comments at 36.

VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

187. Section 271(d)(6) of the Act requires Michigan Bell to continue to satisfy the “conditions required for . . . approval” of its section 271 application after the Commission approves its application.⁶⁶⁸ Thus, the Commission has a responsibility not only to ensure that Michigan Bell is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.⁶⁶⁹

188. Working in concert with the Michigan Commission, we intend to closely monitor Michigan Bell’s post-approval compliance to ensure that Michigan Bell does not “cease[] to meet any of the conditions required for [section 271] approval.”⁶⁷⁰ We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

189. Consistent with prior section 271 orders, we require Michigan Bell to report to this Commission all Michigan carrier-to-carrier performance metrics results and PRP monthly reports, beginning with the first full month after the effective date of this Order, and for each month thereafter for one year, unless extended by the Commission. These results and reports will allow us to review Michigan Bell’s performance on an ongoing basis to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Michigan Bell’s entry into the long distance market for Michigan.

IX. CONCLUSION

190. For the reasons discussed above, we grant Michigan Bell’s application for authorization under section 271 of the Act to provide in-region, interLATA services in Michigan.

X. ORDERING CLAUSES

191. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, Michigan Bell’s application to provide in-region, interLATA service in Michigan, filed on June 19, 2003, IS GRANTED.

⁶⁶⁸ 47 U.S.C. § 271(d)(6).

⁶⁶⁹ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53; see also App. C.

⁶⁷⁰ 47 U.S.C. § 271(d)(6)(A).

TDS Metrocom-Michigan Bell interconnection agreement that specifically includes the off-site arrangement.⁶⁵⁹ Since then, to Michigan Bell's knowledge, neither TDS Metrocom nor any other competitive LEC has requested such an off-site arrangement.⁶⁶⁰ TDS Metrocom also makes a general allegation that Michigan Bell communicates with competitors only through the telephone, but does not supply any supporting evidence of this contention.⁶⁶¹ We do not find that such unsupported allegations are sufficient to demonstrate that this application is not in the public interest. In addition, CLECA asserts that Michigan Bell's toll prices for intraLATA calling are significantly higher than its competitors, and that, through court delays and anti-competitive long-term contracts, Michigan Bell has accrued huge profits.⁶⁶² As a result, CLECA argues that we should find that a grant of this application is not in the public interest. Michigan Bell notes, however, that it is in compliance with both Michigan Commission and Michigan Supreme Court rulings.⁶⁶³ Also, these allegations appear to be irrelevant to this section 271 proceeding – CLECA's allegations pertain only to Michigan Bell's retail toll prices and profits from retail operations, not to the wholesale rates, terms, and practices at issue here.

186. We likewise find that Michigan Bell's premature marketing does not warrant a denial of this application. On August 25, 2003, Michigan Bell voluntarily disclosed to the Commission that its Internet website had contained a promotional offer for an International SuperPlus plan for the state of Michigan, which Michigan Bell removed upon its discovery of the offer.⁶⁶⁴ Customers who looked at this website page were unable to accept the offer because no order button was associated with the product.⁶⁶⁵ As such, no orders were placed or provisioned.⁶⁶⁶ Based on the evidence in this proceeding, this appears to be an isolated instance of premature marketing that has, in any event, already been referred to the Commission's Enforcement Bureau. Given the facts of this case and Michigan Bell's remedial actions, we conclude that, consistent with our precedent, we should not deny this application under the public interest standard.⁶⁶⁷

⁶⁵⁹ Michigan Bell Alexander Reply Aff. at para. 18.

⁶⁶⁰ *Id.* at para. 18; Michigan Bell Gleason Reply Aff. at paras. 31-33.

⁶⁶¹ TDS Metrocom Comments at 36-38.

⁶⁶² CLECA Comments at 17-21.

⁶⁶³ Michigan Bell Gleason Reply Aff. at 6.

⁶⁶⁴ See Letter from Colin S. Stretch, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 1 (filed Aug. 25, 2003) (Michigan Bell August 25 *Ex Parte* Letter).

⁶⁶⁵ *Id.*

⁶⁶⁶ *Id.*

⁶⁶⁷ See *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18751-55, paras. 163-168; *Verizon New Jersey Order*, 17 FCC Rcd at 12367-68, paras. 188-90.

192. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE September 26, 2003.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is written in a cursive style with a large initial "M".

Marlene H. Dortch
Secretary