



STATE OF MICHIGAN  
PUBLIC SERVICE COMMISSION  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

Jennifer M. Granholm  
GOVERNOR

January 29, 2003

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Application by SBC Communications Inc., et al. for Provision of  
In-Region, InterLATA Services in Michigan, WC Docket No. 03-16

Dear Ms. Dortch:

Enclosed is the Report of the Michigan Public Service Commission adopted on January 13, 2003 relating to the application of SBC Communications Inc. for authorization to provide in-region, interLATA service in Michigan. The Michigan Commission recommends that the application be granted. In addition, our letter of January 13, 2003 to the Federal Communications Commission regarding SBC's application is included.

Sincerely,

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Laura Chappelle  
Chairman

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David A. Svanda  
Commissioner

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Robert B. Nelson  
Commissioner

Laura Chappelle, Chairman • David A. Svanda, Commissioner • Robert B. Nelson, Commissioner

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter, on the Commission's own motion, )  
to consider **SBC's, f/k/a AMERITECH MICHIGAN,** )  
compliance with the competitive checklist in )  
Section 271 of the federal Telecommunications Act )  
of 1996. )  
\_\_\_\_\_ )

Case No. U-12320

REPORT OF THE MICHIGAN PUBLIC SERVICE COMMISSION

January 13, 2003

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## **OVERVIEW**

On January 2, 1997, Ameritech Michigan filed with the Federal Communications Commission (FCC) its initial application to provide in-region interLATA services in Michigan pursuant to Section 271(d) of the federal Telecommunications Act (FTA or the Act), 47 USC 271(d).<sup>1</sup> In response to a February 11, 1997 letter from Ameritech, the FCC dismissed this initial application without prejudice. On May 21, 1997, Ameritech filed with the FCC its second application to provide in-region interLATA services in Michigan.<sup>2</sup> In its August 19, 1997 order the FCC rejected Ameritech's application.

On February 9, 2000, after receiving notice from Michigan Bell Telephone Company, d/b/a SBC Ameritech Michigan, (SBC) that it was preparing for a third Section 271 application, the Michigan Public Service Commission (Commission) issued an order opening the docket in Case No. U-12320 so that SBC "and other interested parties may file any documents that bear on Ameritech Michigan's compliance or noncompliance with the Section 271 competitive checklist and on the status of competition in Ameritech Michigan's service territory."<sup>3</sup> Attachment A includes a list of the parties who noticed an intent to participate in that docket. This report is based upon the evidence assembled in Case No. U-12320 and related proceedings in other dockets.

In its February 9, 2000 order, the Commission specifically required that the following issues be addressed in the context of this proceeding: 1) third-party testing of SBC's operations support systems (OSS); 2) "tariffs that demonstrate its full compliance with state and federal statutes, rules and previous Commission orders on unbundled network element (UNE) offerings"; 3) information regarding general market conditions; 4) performance measures and standards to ensure "continuing parity for all OSS between competitive local exchange carriers (CLECs) and Ameritech Michigan and nondiscriminatory access to all interconnections services delineated in the checklist provisions;" 5) performance assurance measures, "including a self-effectuating system to prevent backsliding;" 6) three consecutive months of data reporting its compliance with all performance measures approved by the Commission; and 7) information regarding compliance with each of the competitive checklist items prescribed in the FTA.

During the last three years, information has been presented, discussed, and addressed for each of these items. After collaborative discussions in the spring of 2000, BearingPoint, Incorporated, f/k/a KPMG Consulting, (BearingPoint) was retained as the third-party tester of SBC's OSS with support from Hewlett-Packard. Again, following collaborative discussions, agreement was reached on a Master Test Plan that would govern the OSS tests to be conducted by BearingPoint and Hewlett-Packard. It was submitted for the record in August 2000. Agreements were also reached between the parties regarding a number of OSS enhancements and process issues that would be implemented by SBC, and testing of many of these enhancements and processes was incorporated into the Master Test Plan and conducted

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<sup>1</sup>This application was docketed by the FCC as CC Docket No. 97-1.

<sup>2</sup>This application was docketed by the FCC as CC Docket No. 97-137.

<sup>3</sup>February 9, 2000 Order in Case No. U-12320, p. 2.



by BearingPoint. The results of those agreements, the so-called Wisconsin A-AA issues, were also incorporated into this docket.<sup>4</sup>

UNE combinations tariffs, UNE Remand offerings, line sharing and line splitting issues, cost-based pricing issues, and long term shared transport tariffs were discussed collaboratively, and disputes regarding these matters were resolved in this and other proceedings.<sup>5</sup>

Performance measures initially established in May 1999 were revised following collaborative discussion, and joint petitions for approval of the Commission were filed and approved on four occasions in Case No. U-11830. A remedy plan was also adopted in that proceeding on April 17, 2001.

A survey instrument to assess levels of market competition was discussed collaboratively during the spring of 2000, and subsequently the Commission Staff (Staff) gathered information and filed the results of four market surveys in August 2000, May 2001, April 2002, and October 2002.

The Commission adopted SBC's proposal to address the non-OSS portions of each of the 14-point checklist items while the third party test was ongoing. Thus, over a year ago, on May 15, 2001, SBC presented its Checklist Informational Filing, which was addressed in comments filed on June 29, 2001 by MCI Metro Access Transmission Services, Inc., Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc., (collectively, WorldCom), BRE Communications, LLC d/b/a McLeodUSA (McLeod), MichTel, Inc., Sprint Communications Company LP (Sprint), the Michigan Cable Telecommunications Association (MCTA), XO Michigan, Inc., (XO), Attorney General Jennifer M. Granholm (Attorney General), AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T), Michigan Consumer Federation (MCF), the Michigan Pay Telephone Association (MPTA), Z-Tel Communications, Inc. (Z-Tel), and the Competitive Local Exchange Carriers Association of Michigan (CLECA). Reply comments were filed on July 30, 2001 by SBC, AT&T, WorldCom, McLeod, MCF, the Attorney General, and CLECA. Those comments and replies are further described in the following report on each of the separate checklist items. Further, in a December 20, 2001 order issued in this proceeding, the Commission identified six non-OSS issues that, after a review of the

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<sup>4</sup>Joint Filings on the Wisconsin A-AA issues were filed on March 27, 2001, June 26, 2001, and May 16, 2002 and a separate filing by SBC was made on July 5, 2002 attesting to the implementation of a number of the Wisconsin A-AA issues that were not specifically tested by BearingPoint.

<sup>5</sup>UNE Remand issues and line sharing and line splitting were addressed in contested case proceedings in Case No. U-12540. Long term shared transport issues were addressed in contested case proceedings in Case No. U-12622. UNE-Platform and other UNE combination issues were addressed in orders in this proceeding. Total service long incremental cost issues had been addressed in Case No. U-11831 in 1999 and 2000.

comments and replies, it indicated were noncompliant with checklist items.<sup>6</sup> Further action has been taken by SBC on each of these items during 2002 to bring these items into compliance with checklist requirements. The Commission's conclusions on these actions are also discussed in the following summaries of each checklist item.

Information filings regarding the OSS testing and nondiscrimination portions of the 14-point checklist were presented and began to be addressed in September 2002. BearingPoint's third-party testing to date was discussed in a week-long collaborative, October 14 through 18, 2002, and formal comments on the BearingPoint report and SBC's proposals to address some outstanding issues from the BearingPoint test in ongoing improvement and compliance plans were filed by SBC, AT&T, WorldCom, Long Distance of Michigan, Inc., (LDMI), XO, TDS, and CLECA on November 15, 2002. As required by the Commission's February 9, 2000 order in this proceeding, SBC also submitted performance measure results for the months of June, July, and August 2002. Because BearingPoint's testing of SBC's performance measure reporting is not yet complete, SBC also presented audit reports from Ernst & Young in support of the filed performance measure results. Written comments and replies were filed regarding the performance measure results and Ernst & Young's third-party audit by SBC, AT&T, WorldCom, LDMI, XO, TDS, CLECA, and Z-Tel. The Ernst & Young audit was also a subject for the October collaborative discussions.

Finally, on November 25, 2002 the Commission held a hearing at which oral statements were received from a number of parties regarding all aspects of the Section 271 issues. Presentations were received from BearingPoint, Ernst & Young, SBC, the Communications Workers of America, Colin Communications, Inc., CLECA, JAS Networks, LDMI, Talk America, TDS, TelNet, Z-Tel, WorldCom, and AT&T. Several other CLECs and interested parties were in attendance at this hearing. A subsequent follow-up Ernst & Young audit was filed with the Commission on December 19, 2002.

## Conclusion

After consideration of all the information incorporated into this and other related proceedings, the Commission now concludes that SBC has complied with Section 271(c) of the FTA and the rules and regulations promulgated by the FCC.

The Commission firmly believes that the overwhelming evidence shows that the competitive market is thriving in Michigan. These conclusions, however, are based on our recognition of the fact that the Michigan competitive market is significantly dependent on the availability of the Unbundled Network Element Platform. Elimination or severe curtailment of UNE-P will, we believe, adversely impact our competitive market. Our recommendations assume the continuation of policies and rules that will allow competitors access to UNE-P for the foreseeable future and throughout an orderly transition to facilities-based competition.

The specifics on each of the 14-point checklist items are delineated in the following sections of this report. The Commission also is issuing a companion order today specifying certain further actions and monitoring that the Commission has determined to be necessary.

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<sup>6</sup>Items found in non-compliance with checklist requirements included interconnection to remote switches, issuance of line loss notifications, line sharing and line splitting procedures, operator services/directory assistance branding charges, pricing of directory assistance listing services and access to the calling name (CNAM) database.

Finally, other backsliding requirements are discussed in the final portions of this report and in the accompanying order, specifically in regard to the performance remedy plan that this Commission has required of SBC. Oversight by this Commission will thus be an ongoing activity and the Commission will remain vigorous in its ongoing enforcement efforts.

## **Performance Data**

### **A. Description of the Issue**

As a result of a 1998 complaint proceeding,<sup>7</sup> this Commission initiated an inquiry to address issues related to the nondiscrimination provisions of the FTA. The Commission indicated that “[t]here can be little doubt about the importance of the availability of nondiscriminatory access to service and facilities that enable CLECs to compete. Unless competitors are provided services and facilities equal in quality to that which the incumbent provides itself, the competitor probably will not be able to compete effectively.”<sup>8</sup> The Commission further noted that “[u]ntil Ameritech Michigan has approved performance measurements in place and can demonstrate that its performance for the CLECs is in parity with that which it provides itself, the Commission will not be in a position to support any application Ameritech Michigan may make to the FCC pursuant to 47 USC 271 for release from the restrictions against its provision of interLATA toll service. Moreover, the Commission finds it appropriate to set ground rules now for determining compliance with the statutory obligations that will remain after interLATA relief has been granted.”<sup>9</sup>

In establishing initial performance measures at that time the Commission utilized the performance measure guidelines which had been released by the FCC in its April 17, 1998 Notice of Proposed Rulemaking in CC Docket No. 98-56. The Commission specified that the purpose of the proceeding was to “provide a basis for determining appropriate performance measurements, the form and method for reporting performance, appropriate standards or benchmarks that should be met, and appropriate enforcement mechanisms.”<sup>10</sup>

Following the review of numerous proposals in that proceeding, the Commission adopted initial performance measures on May 27, 1999. The scope of the original measures was comprehensive and addressed the areas of pre-ordering, ordering, provisioning, maintenance and repair, 911, billing, collocation, interconnection trunks, operator services, directory assistance, and miscellaneous administrative issues. Following collaborative discussions of the industry and Commission Staff, Joint Petitions to amend these measures were filed with the Commission and revised measures were adopted on four separate occasions.<sup>11</sup> These later Commission orders amended existing measures and added

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<sup>7</sup>October 2, 1998 Order in Case No. U-11654, “In the matter of the complaint of BRE Communications, L.L.C., d/b/a Phone Michigan, against Ameritech Information Industry Services, a division of Ameritech Michigan, on behalf of Ameritech Michigan, and request for declaratory ruling.”

<sup>8</sup>May 27, 1999 Order in Case No. U-11830, p. 2.

<sup>9</sup> May 27, 1999 Order in Case No. U-11830, p. 6.

<sup>10</sup>May 27, 1999 Order in Case No. U-11830, “In the matter of Ameritech Michigan’s submission on performance measures, reporting, and benchmarks, pursuant to the October 2, 1998 order in Case No. U-11654.”

<sup>11</sup>July 17, 2000, February 22, 2001, July 11, 2001 and December 20, 2001 Orders of the Commission in Case No. U-11830.

additional measures including measures in the areas of local number portability, NXX provisioning, poles, conduits and rights-of-way, coordinated conversions, bona fide requests and facilities modification processes. A total of 150 performance measures are now in effect in Michigan. For some measures, wholesale performance is compared to retail performance; for others a benchmark standard has been established; still others are considered to be diagnostic measures where a specific standard of performance has not been adopted.

## B. Standard of Review

The FCC has found that performance measurements provide valuable evidence regarding a Bell operating company's (BOC) compliance or noncompliance with individual checklist items. According to the FCC, performance measures should cover a range of interconnection services and should include pre-defined performance standards and clearly articulated business rules. The FCC has also indicated that a change management plan should exist so that performance measures can evolve over time to reflect changes in the industry and the market. Further, in its New York 271 order, the FCC discussed the importance of data validity and indicated the importance of accurate, consistent and meaningful performance metric data.<sup>12</sup> The FCC found that third-party audits and the availability of dispute resolution procedures serve as additional checks on the reliability and accuracy of performance measurement data. However, in its Georgia 271 order, the FCC also indicated that "we cannot as a general matter insist that all audits must be completed at the time a section 271 application is filed at the Commission."<sup>13</sup> In the same 271 order, the FCC indicated that "Consistent with the recommendation of the Department of Justice, however, where specific credible challenges have been made to the BellSouth data, particularly with respect to checklist items 1, 2 and 4, we will exercise our discretion to give that data lesser weight, and [as] discussed more fully below, look to other evidence to conclude that Bell South has met its obligations under section 271."<sup>14</sup>

## C. Summary of the Evidence

### 1. The BearingPoint Test

As directed by the Commission in its February 2000 order in the subject proceeding a third-party test of SBC's OSS was initiated. After collaborative discussion in the Spring of 2000, BearingPoint (f/k/a KPMG Consulting, Inc.) was retained by SBC to conduct the test. The terms of the BearingPoint test plan were developed in collaborative sessions with BearingPoint, CLECs, Commission Staff, other interested parties and SBC, resulting in a Master Test Plan submitted in the subject proceeding in August 2000. One of the three major parts of BearingPoint's test, Performance Metrics Reporting, was designed to permit evaluation of "the systems, processes, and other operational elements associated with Ameritech's

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<sup>12</sup>New York 271 Order, ¶11.

<sup>13</sup>Georgia and Louisiana 271 Order, ¶19.

<sup>14</sup>Georgia and Louisiana 271 Order, ¶20.

support for Performance Metrics.”<sup>15</sup> BearingPoint’s third-party review of SBC’s performance metrics reporting includes five separate tests: data collection and storage (PMR 1), definitions and standards development and documentation (PMR 2), metrics change management (including processes related to remedy recalculations following performance measure restatements) (PMR 3), data integrity (PMR 4) and metrics calculations and reporting (PMR 5).

At the request of the Commission Staff, an interim report on BearingPoint’s testing activities was generated on September 23, 2002. Following a week long session of collaborative discussions, an update to the report was issued on October 30, 2002. Although considerable progress toward completion of testing was indicated for the other two portions of the BearingPoint test (transaction and procedures), the performance metrics part of testing was, and remains, largely incomplete. Nearly half of the applicable BearingPoint testing criteria for this part of the test remained in a “Not Satisfied” status and determinations on another 40% of the criteria were as yet undetermined.<sup>16</sup> One-third of the evaluation criteria which were not satisfied at the time of BearingPoint’s report relate to the metrics calculation and reporting evaluation of January, February and March 2002 reported results (PMR 5). Since the time of the report, BearingPoint has moved the focus of this part of the test to the July, August and September 2002 data months. A large number of observations and exceptions are outstanding for this PMR 5 portion of the test, the data integrity test (PMR 4) and the data collection and storage evaluations (PMR 1). The test criteria for the definitions and standards development and documentation have been satisfied (PMR 2) as have all the criteria for the remedy recalculation portions of the change management tests and many of the criteria for the remaining portions of the change management test as well (PMR 3).<sup>17</sup> Current project plans indicate that portions of the BearingPoint metrics tests are not due to complete until May 23, 2003.

## 2. The Ernst & Young Audit

On July 30, 2002 SBC provided notice that it intended “to supplement the record of this proceeding with an independent audit of its Michigan Performance Measurements performed by the certified public accounting firm of Ernst & Young, LLP (E&Y).” It further indicated that it intended “to rely on this independent audit as a supplement to certain of the performance measurement evaluations being conducted by KPMG.”<sup>18</sup>

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<sup>15</sup>Master Test Plan, p. 21.

<sup>16</sup>The October 30, 2002 Report of BearingPoint indicates that 30 of the 274 applicable test criteria for the Performance Metrics portion of the test were satisfied, 136 were not satisfied and 108 were indeterminate. Page 13 of BearingPoint’s Report.

<sup>17</sup>Seven of the 16 evaluation criteria for this portion of the test were not satisfied in the October 30, 2002 report. However, three of the seven unsatisfied criteria, PMR 3-3, 3-4 and 3-5 have been satisfied since that time.

<sup>18</sup>SBC’s July 30, 2002 Notice of Intent to Supplement the Record, p. 1.

A draft of E&Y's audit results for the months of March, April and May of 2002 was filed on September 23, 2002 and discussed in collaborative meetings shortly thereafter. The slightly revised reports and two updates were dated October 18, November 18 and December 19, 2002 and filed with the Commission on October 21, November 20 and December 19, 2002. E&Y presented two reports in its analysis. First, the so-called E&Y Report included an assessment of SBC's "compliance of reported performance measures with the Business rules for the Evaluation Period." The second report, the E&Y Internal Control Report, presented the results of its examination of "the effectiveness of controls over the accuracy and completeness of reported data in accordance with the Business Rules." According to E&Y the two reports "cover the following Master Test Plan Sections: certain aspects of PMR 1 (data collection only), and all of PMR 4 and PMR 5."<sup>19</sup>

The E&Y Report concluded that "considering the Company's interpretations of the Business rules discussed in Attachment B and except for the material noncompliance described in Attachment A, the company complied, in all material respects, with the Business Rules during the Evaluation Period."<sup>20</sup>

E&Y's Internal Control Report disclosed that "certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer program coding and modifications, did not include certain controls to ensure the accuracy of the reported performance measurements." According to E&Y "these deficiencies contributed to the need to restate certain data and modify certain performance measurements on a prospective basis." These restatements and prospective changes were also included in Attachment A. E&Y stated that except for the effect of these control deficiencies, "the Company maintained, in all material respects, effective controls over the process to calculate and report accurate and complete performance measurements in accordance with the Business Rules for the Evaluation Period."<sup>21</sup>

There were 49 interpretations disclosed in the referenced Attachment B which E&Y indicated SBC utilized in applying the Business Rules and which E&Y did not consider as exceptions to compliance with the Business Rules. Attachment A specified 68 instances of noncompliance with the Business Rules, many of which contained more than one issue. At the time of the October 18<sup>th</sup> report, E&Y had verified that only a small number of these issues had been corrected and reflected in restated results for the evaluation period. The November and December E&Y reports indicated that corrections had occurred on a much greater number of issues. In the December report, E&Y has reviewed SBC's management assertions regarding a total of 130 instances of noncompliance. This number includes the subparts of the original 68 total issues identified by E&Y and three additional issues identified by E&Y during the course of its ongoing audit. The assertions reviewed by E&Y indicate that as of December 19, 2002 corrective action had been completed and restatements

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<sup>19</sup>October 18, 2002 Report of Independent Accountants presented with SBC's October 21, 2002 Performance Measure Results, Affidavit of James Ehr, Attachment O.

<sup>20</sup>October 18, 2002 Report of Independent Accountants presented with SBC's October 21, 2002 Performance Measure Results, Affidavit of James Ehr, Attachment N.

<sup>21</sup>October 18, 2002 Report of Independent Accountants presented with SBC's October 21, 2002 Performance Measure Results, Affidavit of James Ehr, Attachment P.

made, where planned, for 99 issues, corrective action had been taken but restatements not yet made for another 14 issues and 17 issues remained to be corrected.<sup>22</sup> In regard to many of the as yet uncorrected or not yet restated issues, E&Y also reviewed materiality assertions regarding the likely effect of corrections yet to be made.

### 3. SBC's Position

On October 21, 2002 SBC submitted its performance metrics results for the months of June, July and August 2002 which it proposes to utilize in support of its compliance with individual checklist items. It indicates that its reported performance results are reliable. SBC represents that it has instituted internal controls to ensure the accuracy and reliability of its performance measure reports. Additionally, SBC commits to continuing the portions of the BearingPoint OSS Test that address performance metrics and to resolve any issues that have not been satisfied.<sup>23</sup> However, SBC believes that these issues need not be resolved prior to a Section 271 application. SBC introduced E&Y's audit in support of the reported performance measure results. In referencing the E&Y reports, SBC noted that the E&Y transaction tests resulted in an error rate of only 1.26%. Of the errors which E&Y identified SBC indicated that many errors had already been addressed and that "the remaining identified errors have been or will be corrected in the next few months."<sup>24</sup> In regard to the issues identified in E&Y's Internal Control Report, SBC indicates that the required changes needed to address the computer programming issue had been implemented and that they had been effectively managed for the past 4 months. In regard to the manual collection and processing of data, SBC indicates that, where economically feasible, certain processes have been automated. In cases where the processes had not been automated, SBC indicates additional manual controls have been designed and implemented. SBC also indicates that the measurement categories involved are not significant in the context of all the data reported.

In regard to outstanding change management issues in the BearingPoint PMR 3 test, SBC indicates it has supplemented its change management processes in order to satisfy the issues identified for the outstanding portions of this test. These relate to the monitoring of source systems for changes that impact metrics reporting (test criteria PMR 3-6), compliance with intervals for implementing changes to metrics business rules (criteria PMR 3-7), and the availability and utilization of procedures to identify and test changes (criteria PMR 3-12 and 3-16).

SBC's policies and practices for the collection and storage of data are addressed in BearingPoint's PMR 1 test. Tests regarding documentation for data collection and storage processes (test criteria PMR 1-1), documentation for data processing and technical require-

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<sup>22</sup>SBC's December 19, 2002 Submission of Supplemental Ernst & Young Reports, Exhibit A, Appendix A, Attachment 1, Table 2.

<sup>23</sup>SBC's October 21, 2002 Submission of Three Months of Performance Measure Results, p. 7.

<sup>24</sup>SBC's October 21, 2002 Submission of Three Months of Performance Results, p. 10.



ments (criteria PMR 1-2), edits and controls on calculations (criteria PMR 1-4) and data retention procedures (criteria PMR 1-6) have not been satisfied according to BearingPoint's October report. The three tests regarding storage capacity, back-up procedures and data access limitations (test criteria PMR 1-3, 1-5 and 1-7 respectively) have not as yet been completed and are thus indeterminate. It indicates it is working with BearingPoint on these issues to enable it to complete its review. It indicates that it has provided BearingPoint with a set of documentation which BearingPoint has considered complete as of August 21, 2002 and that BearingPoint is currently reviewing this extensive documentation to determine its adequacy and accuracy. In regard to restatements of performance results which are included in BearingPoint's analysis of test criteria PMR 1-5, SBC indicates it has implemented numerous control improvements, including several improvements in measurement processes, to reduce the need for performance measure restatements in the future which BearingPoint identified as particularly problematic in 2001. However, SBC also indicates that it is important not to limit reviews in this area to the number of restatements which occur because it believes this is inevitable with 150 performance measures, 3,000 sub-measures and over 100 unique CLECs in Michigan. SBC believes it is important to recognize the materiality of these restatements as well. Given the improvements it has implemented and in consideration of the materiality of changes which have been made, SBC indicates that the restatement rate for January through September 2002 data where results changed from "pass" to "fail" or vice versa was less than one percent of reported results. In regard to data retention SBC indicates that on October 30, 2002 it represented "that 100 percent of the reported performance metrics, source system unique elements, and system of records are retained in the manner specified by BearingPoint."<sup>25</sup> SBC indicates that the remaining issues in the PMR 1 test do not relate to the accuracy of current performance reports and can as such be addressed in an ongoing manner.

The PMR 4 test relates to data integrity. BearingPoint's test evaluates the accuracy and completeness of data transferred from the point of collection to the point of reporting and as it is converted from raw to processed form. At the time of BearingPoint's October 30, 2002 report, tests for 32 of the 43 applicable test criteria were incomplete and 11 were not satisfied. The PMR 5 test relates to the calculation of performance results and assesses the consistency of SBC's metric calculations to the Commission's approved business rules for each performance measure reported by SBC. SBC indicates that the test is ongoing and thus 22 of the 72 test criteria are "Indeterminate" while 46 are currently not satisfied based on a January 2002 data review. SBC acknowledges that BearingPoint's PMR 5 testing analysis has now moved to July data. However, in reviewing the PMR 5 test results of January data presented in BearingPoint's October 30, 2002 report, SBC proposes that a number of issues in regard to BearingPoint's test methodology must be recognized. First, in instances where testing of a measurement group met the 95% threshold, BearingPoint classified the test as "Indeterminate" because it had not yet completed testing on February and March data. Second, tests of measurement groups considered not satisfied in January do not consider whether identified issues have been corrected on a going forward basis nor whether January results were subsequently corrected and restated. Recognition of these factors would in SBC's opinion indicate good progress in addressing issues identified by BearingPoint.

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<sup>25</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 78.

Finally, SBC indicates that BearingPoint's PMR 5 test methodology for several evaluation criteria do not incorporate a materiality consideration and thus "any deviation from BearingPoint's strict reading of the business rules, however slight, would lead BearingPoint to score 'Not Satisfied.'"<sup>26</sup>

SBC concludes by indicating that the ongoing nature of BearingPoint's performance measurement testing does not preclude the Commission from assessing checklist compliance. In referring to the FCC's BellSouth Five-State 271 Order it indicates that the FCC considers and gives substantial weight to the BOC's data, notwithstanding the fact that it is still the subject of a general audit, so long as there are sufficient other assurances of reliability such as extensive third party auditing, the internal and external data controls, the BOC's making available the raw performance data to competing carriers and regulators, the BOC's readiness to engage in data reconciliations, and the oversight and review of the data, and of proposed changes to the metrics, provided by state commissions.<sup>27</sup> SBC believes that particularly given the E&Y audit all of these assurances are present in this situation.

#### 4. Other Parties' Positions

In November 5, 2002 comments on SBC's three months of performance results, CLECA proposes that the E&Y audit be rejected as support for Section 271 approval and that BearingPoint's third-party test on performance measures proceed to its conclusions prior to accepting a Section 271 application. CLECA indicates that even if E&Y's audit were to be considered, the report delineates material noncompliance with business rules supporting the conclusion that SBC's performance measure results should be rejected.

Like CLECA, LDMI proposes that the E&Y audit be rejected and that review of the E&Y results only supports the fact that SBC has not met its obligations to establish nondiscriminatory performance. LDMI also proposes that the Commission assess a one year delay in consideration of Section 271 matters as a penalty to SBC for proposing that the E&Y report be substituted for the BearingPoint test. LDMI believes that E&Y's methodology was limited in scope and that E&Y lacked the knowledge of required OSS systems and the Section 271 testing process. LDMI particularly objected to the fact that E&Y's transaction testing was five state in scope and that Michigan testing could not be separated from the results of the other four states. LDMI also believes that E&Y's audit is consulting support for the Section 271 application and thus in conflict with new federal laws requiring the separation of auditing and consulting services.

XO indicates that E&Y's report raises substantial questions with respect to SBC's control over the accuracy and completeness of its reported data and its compliance with business rules. Similarly, the results of the BearingPoint test show substantial shortcomings in SBC's ability to collect its data, ensure the integrity of its data and calculate its performance metrics. As a result, XO believes that SBC's performance data is unreliable and that it has not met its burden to provide nondiscriminatory access to its OSS.

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<sup>26</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 85, footnote 69.

<sup>27</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 90.

TDS believes that E&Y's "sampling/audit" testing methodology was less rigorous than BearingPoint's. TDS also indicates that review of E&Y's workpapers indicates that some exceptions noted in the workpapers were not included in its report, and others were excluded because the exceptions were outside the 3-month time period of E&Y's examination. Nevertheless, TDS's November 5, 2002 comments indicate that the results of E&Y's audit show that SBC's OSS are not successfully operated and that its performance measurements are not being made in compliance with the business rules. In particular TDS refers to E&Y's Attachment A where 32 separate errors impacting over 70 different performance measures are identified under the heading of "Other Identified Issues." These are issues that have not been restated and have not been corrected. According to TDS, "[u]ntil these issues are properly addressed, any performance measurement data filed by Ameritech will be unreliable and meaningless."<sup>28</sup> TDS also points out in regard to the list of interpretations contained in E&Y's Attachment B that the vast majority of them have not been agreed to by CLECs. TDS' own experience with Loop Make up Information (Performance Measure or PM 1.2) shows inaccurate reporting. TDS concludes that BearingPoint's test results show that SBC is unable to demonstrate that it can measure its performance correctly and vigorous testing on SBC's performance measures must continue.

Like LDMI, WorldCom believes that E&Y's testing methodology was less vigorous than BearingPoint's and is particularly deficient in not incorporating issues identified by BearingPoint in the E&Y conclusions. As another example of the less vigorous methodology, WorldCom points to that fact that E&Y never looked at end-to-end reporting because under its methodology it does not issue its own transactions and therefore could not completely track any specific order. WorldCom indicates that since E&Y's reports were qualified, the Commission cannot rely on them to support the accuracy and reliability of SBC's performance measure. Many identified issues have not been corrected nor has verification occurred of corrections which have been made. WorldCom also objects to E&Y's adoption of the list of SBC interpretations to which E&Y did not object. WorldCom indicates that "[b]etween the issues in the E&Y Report at pages 8-15, [on Prospective Changes and Other Identified Issues] plus the issues in Attachment 'B' to the E&Y PM Report [on Interpretations], 114 distinct PMs out of the 150 Michigan PMs are at issue as either not being valid (and having not been restated) or being found valid only because E&Y deferred to the SBC management assertion as to how the Business Rules associated with the PM should be interpreted."<sup>29</sup> Finally, WorldCom believes that E&Y has a conflict of interest since as SBC's corporate auditor it is financially incented to bend to SBC's favor to keep SBC's business for its other corporate work.

AT&T indicates that the number of restatements SBC makes to its performance results demonstrates that its performance measurement and reporting systems are unstable and rest on data of questionable and undemonstrated integrity. AT&T believes that E&Y seriously underestimates the number of restatements which occurred for March, April or May 2002 results by applying a materiality standard and by specifying only the number of instances of noncompliance with the business rules rather than the number of performance measures impacted by the failure to comply with the business rules. According to AT&T,

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<sup>28</sup>TDS' November 5, 2002 Comments on SBC's Performance Measure Data, p. 4.

<sup>29</sup>WorldCom's November 5, 2002 Comments on Three Months of Performance Data, p. 12-13.

restatements “changed the pass / fail result for a staggering 99 performance measures during the Evaluation period - roughly 65% of the total number of performance measures.”<sup>30</sup> AT&T believes that E&Y’s reports only highlight the shortcomings with SBC’s performance data, systems and processes. First, AT&T points out that E&Y’s audit was of March, April and May 2002 data whereas SBC has submitted performance results for June, July and August 2002 in support of its Section 271 application. Second, AT&T believes that E&Y’s audit slants the results by, for example, accepting without critique SBC’s interpretations of its business rules. At a minimum these interpretations are prospective changes to the business rules which have neither been agreed to by the CLEC community nor approved by the Commission. AT&T also believes that SBC has misstated the data in E&Y’s report to its own advantage. For example, AT&T objects to SBC’s claim that only 1.26% of E&Y’s transactions were found to be problematic. Instead AT&T indicates that E&Y tested 8,300 transactions and found 819 errors in 38 different types of exceptions. AT&T believes that restatements, exceptions and interpretations all signal instances of noncompliance and that taken together these problems identified in the E&Y report “indicate that the systems and processes used by Ameritech Michigan to collect, store, calculate and publish performance data are unstable, unreliable, have inadequate controls, and simply are not sufficient to produce accurate and complete reports on Ameritech Michigan’s wholesale and retail operations.”<sup>31</sup> AT&T believes that BearingPoint has also made findings consistent with but more expansive than those found by E&Y. This is as a result of the far more robust testing methodology employed by E&Y. In its review of BearingPoint’s testing AT&T indicates that, among other things, SBC’s performance measure data retention has been found deficient, the number of restatements indicates the instability of its reporting systems, its business rules are not updated accurately or on a timely basis and that dozens of other observation reports indicate an inability to duplicate SBC’s metric results. To prevent further backsliding once SBC obtains Section 271 authorization, AT&T recommends that “the Commission in this proceeding should require that such audits be annual for a five-year period, beginning one year after Section 271 authority is received. On the fourth anniversary of receiving Section 271 authorization, it recommends that the commission conduct a proceeding to determine, based upon Ameritech’s performance metric reporting, if the auditing requirement should continue.”<sup>32</sup>

## 5. SBC’s Response

On November 21, 2002, SBC replied to the comments submitted by CLECs in response to its submission of performance results. SBC first reiterates that the FCC does not require the completion of all audits prior to the filing of a Section 271 application as long as there are sufficient other assurances of reliability, such as third-party audits and the

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<sup>30</sup>AT&T’s November 5, 2002 Comments on Three Months of Performance Data, p. 15.

<sup>31</sup>AT&T’s November 5, 2002 Comments on Three Months of Performance Data, Affidavit of Timothy M. Connolly, ¶19.

<sup>32</sup>AT&T’s November 15, 2002 Comments on the BearingPoint Report, Affidavit of Karen W. Moore, p. 16.

availability of reconciliations between the BOC's data and the CLECs' data. Thus the ongoing nature of BearingPoint's audit is not a procedural bar to the Commission's assessment of Section 271 compliance. Next, SBC indicates the reliability of its performance results is supported by the lack of contrary performance data submitted in this proceeding, by newly implemented internal improvements to SBC's controls and performance measurement procedures, by BearingPoint's own transaction tests which match up favorably with SBC reported results for similar performance measures and by the fact that restatements rarely have changed performance results from pass to fail. SBC believes great weight should be given to the E&Y report and that E&Y's position as its financial auditor only serves to give it experience which makes it more qualified to perform this audit. SBC indicates that neither the Commission nor the FCC has required that the auditor examine the exact data months as are submitted in support of its Section 271 application and that such a requirement, from a timing point of view, would be almost impossible to carry out. SBC also clarifies that it continues to correct and that E&Y continues to confirm the corrections made to the issues which have been raised. SBC indicates that the TDS issue raised in regard to PM 1.2 is an operational issue and not a performance measure calculation or reporting issue. In regard to the list of interpretations which E&Y has disclosed, SBC indicates that contrary to the suggestions of some CLECs SBC is not suggesting that changes under consideration in the six-month review are to be applied retroactively but that the absence of objections either by E&Y or in the six-month review process demonstrates that its interpretations are reasonable. SBC concludes that its performance measures results are one factor which the Commission may rely upon in the totality of the evidence which is considered to support SBC's Section 271 application. Ongoing resolution of BearingPoint and E&Y issues identified in their performance measure reviews will continue.

#### D. Discussion

The Commission finds that SBC has implemented a comprehensive set of performance measures on which to garner information regarding whether nondiscriminatory access to its wholesale services and facilities is being provided. These measures have been implemented primarily through a collaborative process in which SBC, CLECs and other interested parties have negotiated agreements on measures to be adopted. SBC has indicated its intention to rely on the June, July and August 2002 reported results of its performance to support its position that it provides nondiscriminatory access to certain network elements and processes required for Section 271 approval.

In the discussion of each checklist item which follows in this report, determinations will be made about whether the reported performance metric results as stated support SBC's compliance with the checklist item at issue. Here, however, the Commission will discuss the degree to which SBC's performance metric reporting process may be considered to be a stable and dependable process and more specifically to what degree the reported results may be taken at face value to be a reliable and accurate representation of the activity which actually occurred for the item, process or service being measured. As will be discussed more fully below, the Commission is of the opinion that work remains to be done to assure that all aspects of SBC's performance measure reporting system will operate smoothly, adequately, with stability and as expected to assure reliability and timeliness of reported results. The Commission believes that completion of that work is not a prerequisite to consideration of

SBC's Section 271 application. The BearingPoint tests will continue and needed modifications to SBC's processes, procedures and systems will be implemented. The gating factor for purposes of proceeding with a checklist analysis is determining whether the reported performance results may be utilized as support for checklist compliance determinations.

First, we discuss the status of the BearingPoint tests and the conclusions which can be reached regarding SBC's performance metrics reporting based on that testing. We then address the E&Y audit including the propriety of having an additional third-party testing the same subject matter as BearingPoint is testing, whether E&Y's test methodology has been rigorous and sufficient, and finally whether its conclusions may be relied upon given the inclusion of numerous outstanding exceptions and interpretations included in its October report.

### 1. The BearingPoint Test

In its May 1999 Order adopting SBC's original performance measures for this state, the Commission required that an annual audit occur to review the data underlying SBC's metrics reports and "should cover not only the measurements of service provided to the CLECs, but should include all those items for which the incumbent local exchange carrier (ILEC) must measure its performance for itself or any affiliated CLEC. Additionally, the Commission required that the audit include a review of whether Ameritech Michigan has implemented the measures as ordered by the Commission."<sup>33</sup> BearingPoint's analysis of SBC's performance measure results was, among other things, to "permit Ameritech to comply with the Commission's order in Docket Case No. U-11830 which requires an annual audit of the process and data underlying the reporting of Ameritech performance standards. This will constitute the first annual audit..."<sup>34</sup>

The BearingPoint test criteria regarding SBC's practices for developing, documenting and publishing metric definitions, standards and reports (PMR 2) have been satisfied. Commission approved business rules are being utilized by SBC and these rules are published in a timely manner and are available to relevant parties. Similarly, BearingPoint's tests of SBC's change management processes (PMR 3) support a conclusion that the processes are adequate and function appropriately. Twelve of the 16 BearingPoint test criteria for the change management process have already been satisfied. Outstanding issues have been addressed by SBC and now await retest opportunities to verify that the documented changes have been made and work as envisioned.<sup>35</sup> Based on the fact that numerous change manage-

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<sup>33</sup>May 27, 1999 Commission Order in Case No. U-11830, p. 11.

<sup>34</sup>August 14, 2000 Master Test Plan, p. 21.

<sup>35</sup>Three of the four issues relate to open Exceptions 41 and 157 regarding monitoring for changes in source data systems that impact metrics reporting and the timely updates to approved changes in metrics business rules. The fourth issue relates to Exception 133 and the testing of proposed changes to calculation programs, processes and systems involved in the production and reporting of certain performance measures. Additional information and interviews have just been analyzed and completed on this issue, and additional data may still be requested.

ment test criteria have already been satisfied and that changes have been implemented to address the few identified outstanding issues, the Commission believes that SBC's change management process is adequate and reliable. It now appears to be the case that these issues have been addressed. However, should BearingPoint's retests of the few outstanding issues indicate they have not been adequately addressed, continued efforts will be expected to assure these few remaining problem areas are eliminated.

The PMR 1 tests relate to data collection and storage. BearingPoint scores each of the 18 groups of performance measures (e.g., pre-order related measures, provisioning related measures, maintenance and repair related measures, etc.) according to seven test criteria. In the October 30, 2002 BearingPoint report, three of these test criteria were in an indeterminate status for all the groups of performance measures.<sup>36</sup> No outstanding findings relate to these criteria but tests are incomplete. In addition, although testing of these matters must continue to assure satisfaction, the Commission is in agreement with SBC that these items do not directly affect the reliability of the metrics results which are reported today and upon which SBC intends to rely in this proceeding. The remaining four test criteria were unsatisfied for each of the 18 metrics groups as of October 30, 2002. These four criteria relate to the documentation for data collection and storage, the documentation for technical requirements and data processing, the adequacy of internal controls as demonstrated in part by the frequency of restatements of reporting results, and whether data is retained in compliance with regulatory data retention requirements. Exceptions related to these criteria were issued over a year ago<sup>37</sup> and early in the testing process the Commission observed obstinance on the part of SBC in addressing the inadequacies which BearingPoint identified. However, in July 2002 SBC presented what it believes to be a complete set of technical documentation representing the flow of documents from source system to reporting system for each of the reported metrics. In addition business and technical requirements were presented. In August 2002 BearingPoint agreed that the set of documentation which it had received was complete but has not yet determined whether it is adequate. Similarly, in an October 30, 2002 response to BearingPoint, SBC indicated that its data retention policies for all measures now conformed to BearingPoint's specifications as well. Again these issues remain in retest.<sup>38</sup> Delay in BearingPoint's ability to retest the adequacy of this information also relates in part to delays in the data integrity (PMR 4) and the metrics calculation

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<sup>36</sup>These three relate to storage capacities, back-up of critical data and the existence of internal controls to assure that only authorized personnel have access to metrics data.

<sup>37</sup>Exception 19 regarding data retention was issued on November 29, 2001. Exception 20 regarding procedure documentation and internal controls was issued on November 30, 2001.

<sup>38</sup>BearingPoint has indicated to Staff that the status of the PMR 1 tests in Michigan in December 2002 now indicate adequate documentation for data collection and storage for 5 of the 18 measure groups, adequate documentation for technical requirements and data processing for 1 of the 18 measure groups and adequate data retention for 6 of the 18 measure groups. These results were also reported in the BearingPoint reports for the states of Ohio and Illinois which were released on December 20, 2002. BearingPoint analysis of SBC submitted information is continuing.

(PMR 5) parts of the test as well. In the meantime, the number of restatements of performance results has been raised by BearingPoint and a number of commenting parties as indication of lack of reliability of reported results. SBC represents that it has made restatements even when reported results would not be materially affected in an effort to satisfy BearingPoint's PMR 5 testing of metrics calculations where only an extremely small degree of deviation from reported results is considered acceptable. Even considering this policy, SBC indicates that in reviewing its restatement rate for January through September 2002 data, less than one percent of reported results were affected by restatements.<sup>39</sup> AT&T indicates instead that restatements are far more excessive.<sup>40</sup> A large part of the difference in these statements is a result of the fact that AT&T has included October restatements in its information where corrections for a great number of issues identified by both BearingPoint and E&Y were made as discussed further below. Nevertheless, the Commission agrees these frequent restatements are indicative of the fact that stability has not yet been achieved in SBC's metrics reporting, particularly during this time of responding and correcting issues identified by both BearingPoint and E&Y. Again the Commission believes reporting stability is at this time an unachieved goal. Detailed project plans developed by BearingPoint and SBC do not project that all the PMR 1 testing activities will complete until April at the earliest. However, in the Commission's opinion frequency of restatements and completion of retesting activities for adequate documentation and data retention does not mean that the restated results may not at this time be relied upon as accurate for the data months on which SBC wishes to rely for checklist compliance support.

Finally, BearingPoint's PMR 4, data integrity and PMR 5, metrics calculations tests remain largely indeterminate or not satisfied.<sup>41</sup> The PMR 4 test includes four test criteria for each of the 18 performance measure groups and will determine whether source records are included in data used to calculate measures, whether any inappropriate data is present in the data used to calculate measures, whether records in the processed data are consistent with the unprocessed data from the source systems and whether data fields in the processed data are consistent with fields in the unprocessed data. Both test CLEC transaction data and wholesale CLEC and retail sample data will be utilized in this analysis. Detailed work plans for the PMR 4 test developed by SBC and BearingPoint now project test completion no sooner than May 23, 2002. PMR 5 activities will similarly test four criteria for each of the 18 metrics

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<sup>39</sup>SBC's November 15, 2002 Comments in Response to BearingPoint's Report, p. 77.

<sup>40</sup>In its November 5, 2002 comments on SBC's Performance Measure Results at p. 14, AT&T indicates that restatements from May through October 2002 affected many measures several times and number in the hundreds for the March, April and May data months.

<sup>41</sup>BearingPoint's October 30, 2002 report indicated that for the PMR 4 test, no test criteria were as yet satisfied, 32 were indeterminate, 11 were unsatisfied and 29 were not applicable. In regard to the PMR 5 test, 4 criteria were satisfied for the January, February, March data analysis, 22 were indeterminate and 46 were not satisfied. Updated Michigan information was prepared by BearingPoint as of December 2002. For the PMR 4 test 2 test criteria are now satisfied, 26 are indeterminate, 12 are unsatisfied and 32 were not applicable. PMR 5 results indicate that 17 test criteria were satisfied for the July, August and September data analysis, 12 were indeterminate and 43 were not satisfied.



groups: whether required metrics are specified in the reported data, whether the calculated metrics values agree with reported metrics values, whether reported data is consistent with the business rules and whether excluded data is consistent with the business rules. As discussed earlier, the PMR 5 analysis only recently moved to July as the beginning data month of analysis due to the number of identified issues with the January analysis, and detailed test plans for completion of this test are presently in development. PMR 5 observations are now being released by BearingPoint regarding July calculation issues. These observations fall into four categories. Some of the observations were issued regarding January data and have recently been reissued for July data and involve what E&Y has considered “interpretations” of the business rules.<sup>42</sup> These will be discussed in more detail below. A second category of observations are also reissues of January observations, have been corrected since they were reissued but have not yet been restated for earlier months, cannot be restated for earlier months or are still being retested by BearingPoint. A third category involves issues originally identified with January data which have not yet been corrected, and a final category involves new issues never identified in regard to January data either because the issue did not exist in January or existed in January but was not identified since BearingPoint did not complete its review of January data before it was determined that analysis of a new month should proceed.

In summary, BearingPoint’s PMR 2 tests on definitions, standards and reports and almost all of its PMR 3 tests on change management have been satisfied. The unsatisfied portions of the data collection and storage portions of BearingPoint’s test (PMR 1) have largely been responded to by SBC but retests in regard to these responses have not yet concluded. The data integrity portion of the test (PMR 4) is again largely indeterminate at this time and is not projected to conclude until the end of May. The metrics calculation tests (PMR 5) have just moved to new data months and new conclusions according to BearingPoint’s methodology have just begun to be released in the last month or so. These tests must continue but at present provide little evidence on which reliance of June, July and August 2002 metrics results may be based.

## 2. The E&Y Audit

The Commission has determined that it is reasonable to review the results of the E&Y performance measure audit to determine whether the performance measure data reported by SBC for June, July and August 2002 may be utilized to support checklist determinations made elsewhere in this report. First of all, the Commission does not agree that either new statutes regarding the provisioning of consulting and auditing services by a single firm or the fact that E&Y is SBC’s financial auditor preclude its participation in the performance measure audit. E&Y is functioning as an auditor on this matter and the Commission has seen no indication that E&Y’s determinations have been compromised in any way due to the fact that it is also SBC’s financial auditor.

Second, although E&Y’s test methodology differs from BearingPoint’s, E&Y’s methodology has nevertheless been rigorous in the matters that it has addressed. E&Y has

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<sup>42</sup>For example, Exception 113 and Observations 628, 659, 684, 689, 711, 716, 718, 719, 722, 723, 726, 727, 731 and others.

disclosed in detail the matters it was retained to address and the methodology it has utilized to address these issues. The Commission may therefore reach conclusions with that information in hand. E&Y uses a different materiality standard than BearingPoint, it has performed a five state transaction test rather than Michigan specific and it has not utilized pseudo CLEC activity to test conclusions. It did review issues identified by BearingPoint and many issues identified by BearingPoint are included in E&Y's findings as well (and vice versa). The exclusion of certain issues identified in workpapers from final exception lists incorporates its professional judgment that, given its disclosed methodology and its ongoing investigation and inquiry, inclusion as an exception was not called for. Finally, the Commission is aware of the fact that E&Y's conclusions were based on its analysis of March, April and May 2002 performance measure results. Although SBC presented June, July and August 2002 data as support for its checklist compliance the Commission believes that an audit of the immediately preceding earlier months' activity will provide much information regarding the reliability of posted metrics results for months directly following. From a timing point of view alone it is not practical to suggest that an audit of the most recently available data months could be issued simultaneously with the performance measure results themselves.

E&Y concludes that "considering the Company's interpretations of the Business Rules discussed in Attachment B and except for the material noncompliance described in Attachment A, the Company complied, in all material respects, with the Business rules during the Evaluation Period."<sup>43</sup> E&Y also concludes that "Our examination disclosed that certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer program coding and modifications, did not include certain controls to ensure the accuracy of the reported performance measurements. These control deficiencies contributed to the need to restate certain data and modify certain performance measurements on a prospective basis. The restatements and prospective changes are included in Attachment A to our separate Report of Independent Accountants on the Company's compliance with the Business Rules dated October 18, 2002."<sup>44</sup> Finally, in its December 19, 2002 follow-up report E&Y concludes "In our opinion, management's assertion, except with respect to Issues Pending Correction identified in Category G. in the Report of Management, referred to above is fairly stated, in all material respects."<sup>45</sup>

The referenced Attachment B includes 49 interpretations which E&Y has disclosed SBC incorporates into its application of the business rules and E&Y has not considered these as compliance exceptions. SBC has also specified its reasoning for each interpretation in Attachment R to its October 21, 2002 filing. As discussed above, BearingPoint has issued observations on many if not most of these issues. The Commission is in agreement with BearingPoint that the great majority of these "interpretations" do not agree with the literal reading of the business rule. Business rules, which were for the most part agreed to in

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<sup>43</sup>SBC's October 21, 2002 Submission of Performance Measure Results, Attachment N.

<sup>44</sup>SBC's October 21, 2002 Submission of Performance Measure Results, Attachment P.

<sup>45</sup>SBC's December 19, 2002 Submission of Supplemental Ernst & Young Reports, Attachment A.

collaborative session between SBC and CLECs, must be more tightly drawn to more clearly specify the ground rules on which metrics calculations are made. One of the results of the ongoing BearingPoint analysis will be to identify the business rules where more specificity must occur. However, the Commission believes that specificity may not need total resolution at this time. Instead the Commission concentrates here on whether reported results may be relied upon to support checklist compliance and to what degree interpretations compromise that goal. The Commission has found that the interpretations fall into several categories. In some instances there are conflicts within the business rule itself and the Commission agrees that SBC has, of necessity, chosen to implement one part of the business rule instead of another.<sup>46</sup> In the case of a second set of issues, correction of the item will have little or no effect on reported results, will improve results or will not affect the statewide aggregate data on which SBC intends to rely for checklist support.<sup>47</sup> Issue 13 was corrected prior to the June, July and August data months on which SBC intends to rely for checklist support. Issue 2 regarding PM 2 is addressed elsewhere in this report. The Commission has concluded in that regard that SBC was negligent in not specifically addressing the timing issues in this performance measure. Nevertheless, the Commission agrees that changes should have been incorporated to reflect placement and configurations of protocol translation functions under interfaces which are being utilized today. As such the Commission believes the interpretation SBC is utilizing is reasonable. The Commission has also determined that most of the remaining interpretations specified in E&Y's Attachment are reasonable given the support delineated by SBC in Exhibit R. The vast majority of these interpretations are likely to be incorporated in the business rules as a result of the considerable efforts of CLECs and SBC alike in the ongoing 6-month review process. However, the Commission rejects SBC's reasoning for part of Issue 1 (specifically CLEC WI 9), Issue 7 (regarding PMs 10.4 and MI 2) and Issue 45 (regarding PM MI 12). The Commission finds that the data reported for those measures may not be expected to represent what is reasonably understood to be the intent of those measures although the extent to which the results may deviate is unknown. As a result, reliance on those specific performance measures must include these considerations. However, the Commission is in agreement that pending correction of certain errors, conflicts or simply a clearer specification of governing language in the business rule, the interpretations included in Attachment B to E&Y's report are, for the most part, reasonable and performance results developed by inclusion of these interpretations may be considered reliable for purposes of checklist consideration.

Issues of material noncompliance are specified in Attachment A to the E&Y Report. In the December 19, 2002 filing, these issues are further broken down into 130 components. E&Y has examined SBC's assertions regarding all but three of these components and has delineated the methodology which it utilized to verify that issues have been corrected, restatements accurately made and, in certain cases where issues have not yet been corrected and/or restatements have not yet or cannot be made, E&Y has reviewed SBC's estimate of the materiality of actions yet to be taken. E&Y will continue its efforts to verify the

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<sup>46</sup>Issues 6, 8, 22, 39 and 41.

<sup>47</sup>Issues 9, 11, 12, 18, 28, 31, 32, 34 (part), 42, 48 and 49.

remaining 17 items where corrections have not yet been completed<sup>48</sup> and the 14 items where corrections have been made but restatements are not yet complete.<sup>49</sup> The Commission has again reviewed the assertions in regard to the 130 issues of material noncompliance. In reaching its determinations regarding the impact of these items on the June, July and August 2002 performance measure results on which SBC intends to rely for checklist compliance, the Commission has determined that reliance on 16 performance measures affected by 6 of the noncompliance issues continues to be problematic at this time.<sup>50</sup> In two of these cases affecting 7 PMs, the corrections made or to be made involve the implementation of new processes.<sup>51</sup> Therefore, restatements for the months of June, July and August will not be possible and there is no estimate of whether the effect on the reported results would have been significant. In other cases, either the issue was not corrected for June, July and August results or intended restatements have not been made for those months and there is no estimate of materiality which SBC has made and E&Y has agreed to which will permit the Commission to rely on the reported results for those months for those measures. For remaining performance measures, June, July and August results will be considered for purposes of checklist compliance but the restated results for those months will be utilized as appropriate as posted to SBC's website.

The Commission will require that E&Y conclude its audit to verify the corrections of the remaining outstanding issues.

### 3. Other Data Integrity and Metrics Calculations Considerations

As the Commission has discussed, the BearingPoint data integrity (PMR 4) and metrics calculations (PMR 5) tests are, for the most part, incomplete at the moment. Many observations and a few exceptions remain open or unsatisfied for these tests. E&Y's audit has rendered findings on the PMR 4 and PMR 5 tests, albeit through a different methodology and much of E&Y's audit is complete. The Commission has taken particular note of the six PMR 4 exceptions and the one PMR 5 exception which remain open at this time in the BearingPoint test and has reviewed these issues relative to the E&Y findings. In five of these instances, the issue discussed in the BearingPoint exceptions appears also to have been included in E&Y's findings and has thus been considered in our review of E&Y's December 19, 2002 report.<sup>52</sup> In one other case the exception has limited applicability to the

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<sup>48</sup>These 17 items are specified on lines E, F and G of Exhibit A, Appendix A, Table 2 in the December 19, 2002 SBC filing.

<sup>49</sup>These 14 items are specified on lines D.1 and D.2 of Exhibit A, Appendix A, Table 2 in the December 19, 2002 SBC filing.

<sup>50</sup>These performance measures include PMs 54, 54.1, 65, and 65.1 impacted by item 2f (ii) in Section IIa, and PMs 1.2, 14 (for June and July only), 28, 43, 44, 55, 55.1, 56, 56.1, 105, 106 and MI 5 in items 1, 9 (i), 11, 14 (ii) and 23 (i) in Section IV.

<sup>51</sup>These are issues 2f (ii) in Section IIa regarding PMs 54, 54.1, 65 and 65.1 and issue 23 (i) in Section IV regarding PMs 105, 106 and MI 5.

<sup>52</sup>These include issues addressed by Exceptions 111, 134, 174, 175 and 181.

data months on which SBC wishes to rely in this application.<sup>53</sup> However, the data integrity Exception 176, applicable to billing PM 19 does not appear to have been included in E&Y's results and may impact the integrity of the data reported for that measure for the June, July, and August data months. The Commission will therefore include this measure with those upon which reliance should be cautioned.

#### E. Conclusion

The Commission concludes that both BearingPoint's performance metrics tests and E&Y's performance metrics audit should be completed. At this time, the Commission cannot conclude that SBC's performance metric reporting process has fully achieved a level of stability and dependability which will be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior. Nevertheless, as the FCC concluded in its Georgia Section 271 approval, all audits need not have been completed prior to the filing of a Section 271 application. The Commission concludes that sufficient support exists in the completed portions of the BearingPoint test, in the completed portions of the E&Y audit, in the actual market experience and in the responses provided by SBC to BearingPoint's ongoing investigations to support a Section 271 approval at this time and for reliance on the June, July, and August 2002 performance metric results. As discussed herein, reliance will be made with caution for the 4 PMs which were questioned in the Commission's review of the interpretations delineated by E&Y in Attachment B, on the 16 PMs where outstanding questions remain regarding the E&Y exceptions included in its Attachment A and on PM 19 which is specifically included in BearingPoint's Exception 176. These 21 PMs<sup>54</sup> represent approximately 14% of SBC's 150 Michigan PMs and include approximately 14% of the total disaggregations on which SBC wishes to rely for support of checklist compliance.<sup>55</sup> Other supporting information regarding the related checklist items will be considered as well as discussed in regard to each specific checklist item. The Commission will vigorously pursue completion of the remaining portions of the BearingPoint and E&Y testing in regard to SBC's metrics reporting so that a stable and dependable system will be in place in the very near future. For purposes of checklist support, however, the Commission believes that Section 271 consideration may proceed and that the results of more than

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<sup>53</sup>Exceptions 179. In addition the exception relates to a performance measure without volumes in the June, July, and August 2002 data months, PM 120.

<sup>54</sup>The performance measures discussed in this sentence include CLEC WI 9, 10.4, MI 2, MI 12, 54, 54.1, 65, 65.1, 1.2, 14 (for June and July), 28, 43, 44, 55, 55.1, 56, 56.1, 105, 106, MI 5 and 19. Of these, pass/fail determinations are not made on PMs CLEC WI 9, 10.4, MI 2, 105, 106 and MI 5 for volume and other reasons discussed below.

<sup>55</sup>Only 104 of SBC's 150 performance measures and only a portion of the disaggregations in those measures include both standards by which performance is assessed and also include volumes sufficient on which to judge that parity or benchmark comparison. It is these approximately 425 disaggregations on which SBC wishes to rely for checklist support. The disaggregations which the Commission is addressing with caution at this time include approximately 14% of the approximately 425 disaggregations on which SBC wishes to rely.

85% of SBC's reported performance for June, July and August 2002 may be utilized for checklist support purposes.

## **SBC's Compliance with Section 271(c)(1)(A) - Presence of Facilities-based Competition**

### **A. Description of the Issue**

In order to obtain approval of a Bell Operating Company (BOC) application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or 271(c)(1)(B)(Track B). To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of “telephone exchange service . . . to residential and business subscribers.” 47 USC 271(c)(1)(A). The Act further states that “such telephone service may be offered . . . either exclusively over [the competitors’] own telephone exchange service facilities or predominantly over [the competitors’] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.” 47 USC 271(c)(1)(A).

### **B. Standard of Review**

In its Memorandum Opinion and Order, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket 97-137, FCC 97-298 (August 19, 1997), at ¶ 85 (Ameritech 271 Order), the FCC concluded that when a BOC relies upon more than one competing provider, Section 271(c)(1)(A) does not require each carrier to provide service to both residential and business subscribers.

### **C. Summary of the Evidence**

#### **1. SBC's Position**

In its May 15, 2001 filing, SBC states that it is eligible to seek interLATA relief under Section 271(c)(1)(A). SBC states that by almost any measure, competition is widely present and growing rapidly in Michigan. According to SBC's data, between February 2000 and March 2001, CLECs' facilities-based lines increased by 60 percent and UNE loops nearly doubled. CLECs' existing collocation arrangements allow them to serve more than 84 percent of the business customers in SBC's service area and 78 percent of the residential customers. The CLECs' installed switching capacity is capable of serving 88 percent of the customers in SBC's serving area. Moreover, although most CLECs in Michigan, like elsewhere, concentrate on major metropolitan areas, local competition is arriving in Michigan's SBC rural areas as well. CLECs are serving customers in Frankenmuth (population 4,838), Milan (population 4,775), and Chelsea (population 4,398).

As of March 2001, SBC stated that it had lost approximately 15 percent of its total lines to unaffiliated carriers. SBC states that competitors serve at least 755,023 of these lines over their own facilities. According to SBC, CLECs have captured at least 578,606 business lines and at least 176,417 residential lines in its service area. SBC states that, clearly, CLECs are providing Michigan consumers “an actual commercial alternative.” SBC has approximately 70 approved wireline interconnection and resale agreements with CLECs. While many facilities-based carriers in Michigan have substantial numbers of subscribers, there is

no statutory requirement that a qualifying CLEC under Section 271(c)(1)(A) serve any particular quantity of customers.<sup>56</sup>

SBC states that at least nine CLECs are providing services to residential and business subscribers in Michigan, either exclusively or predominantly over their own facilities thereby establishing that SBC satisfies Track A.<sup>57</sup> These “Track A” carriers include both well-established brand names and new entrants. For example, AT&T has several operational voice switches in Michigan, and provides facilities-based service to tens of thousands of residential and business subscribers.<sup>58</sup> Likewise, WorldCom offers service largely over its own facilities to tens of thousands of business and residential customers. Additional CLECs such as Global Crossing/Frontier, McLeod (Phone Michigan), CTS Telecom (Climax Telephone), Choice One Communications (US Xchange) and Z-Tel Communications, individually and/or collectively, also qualify as Track A providers under the standards developed in prior FCC decisions.<sup>59</sup>

## 2. Other Parties’ Positions

Several parties commented on SBC’s analysis of competition in Michigan. The comments were filed in June of 2001 in response to SBC’s May 2001 filing. However, these comments were based on data for 2000 and since that time, the Commission Staff has gathered new data for the year 2001 along with a mid-year partial update for 2002. What follows here is a brief synopsis of those earlier comments followed by updated information from the Staff surveys.

AT&T states that SBC’s application is based upon a flawed analysis of the status of local competition in SBC’s territories. AT&T’s asserts that even SBC’s poorly supported materials show facilities-based competition exists only in a very limited form in Michigan and at such a nascent level that it cannot provide a “check” on the anticompetitive tendencies of local exchange service monopolies such as SBC. The Commission should rely instead on the data collected by its own Staff, which shows facilities-based competition to be nearly nonexistent in the residential voice marketplace. Thus, SBC’s claim of growing competition

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<sup>56</sup>Michigan 271 Order, 15 F.C.C. Rcd. at 20584-85, ¶¶ 76-77. Congress rejected metric tests of actual competition in favor of a clear statutory “test of when markets are open.” 141 Cong. Rec. 8188, S8195 (daily ed. June 13, 1995) (statement of Sen. Pressler).

<sup>57</sup>SBC’s May 15, 2001 Checklists Informational Filing, Affidavit of Deborah Heritage, ¶ 10 and Table A, Attachment C.

<sup>58</sup>See *id.*, Attach. C ¶¶ 1-2; see also Michigan 271 Order, 12 F.C.C. Rcd. at 20598, ¶ 101 (service provided through UNEs is facilities-based for purposes of Track A).

<sup>59</sup>Michigan 271 Order, 12 F.C.C. Rcd. at 20587-88, ¶ 82 (“when a BOC relies upon more than one competing provider to satisfy Section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers”); Kansas & Oklahoma 271 Order ¶43 n.101 (holding that Track A can be satisfied where “competitors’ service to residential customers is wholly through resale”) (quoting Memorandum Opinion and Order, Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana, 13 F.C.C. Rcd. 20599, 20635, ¶ 48 (1998) (Second Louisiana 271 Order)).



is itself premature and the public interest requires that the Commission demand a showing of more than the minimal levels of competition than exist today in Michigan. AT&T's argues that the best measure of local competition is the quantity of local minutes being switched by the CLEC switches in Michigan. Based on SBC's own flawed data, CLECs switch only 1.6 percent of traditional (non-Internet service provider (ISP)) local traffic for the entirety of SBC's territory. Using the Commission Staff's more reliable data, the percentage drops below 1% (to 0.8%).

Another indicator of the limited nature of competition in Michigan is the scarce number of unbundled loops that have been purchased from SBC. In the five plus years since the FTA passed, only 199,166 unbundled loops, or 3.7 percent, have been purchased for all of Michigan. SBC has inappropriately converted all of the interconnection trunks in Michigan into equivalent access lines. This grossly inaccurate approach to assessing the scope of competition in Michigan fails to recognize that many of these interconnection trunks are being used to terminate Internet traffic, so that SBC's line to trunk ratio significantly exaggerates the number of actual lines in service. Further, of the facilities-based lines that SBC has *estimated*, only 9 percent (68,079) can actually be counted as working lines. SBC's estimate of the scope of local competition is further inflated by its improper consideration of resold lines. SBC states that its current access line loss due to resale competition in Michigan is 165,846 access lines, or 3.07 percent of SBC total access lines in Michigan. More telling, these resold lines actually represent 34.3 percent of all of the competition in Michigan. Yet, resale competition by definition does not meet the requirement of Section 271(c)(1)(A) that facilities-based competition be offered by competing providers either exclusively or predominantly over their own telephone exchange service facilities.

Several other parties (CLECA, MPTA, Sprint, WorldCom, and MCF) comment that competition for local service in Michigan is not thriving. They state that in the Commission's own January 2001 *Annual Report and Annual Report of the Status of Competition in Telecommunication Services in Michigan*, the Commission concluded: "The marketplace for local telecommunication services in Michigan continues to be dominated by SBC and GTE (now Verizon), and a truly competitive marketplace remains a goal, not a reality."<sup>60</sup> "The number of CLEC lines compared to total lines represents 3.99 percent; SBC's share is 80.77 percent (5,433,390 lines); GTE's share is 11.69 percent (786,541 lines); and the small independent telephone companies represent the remaining 3.55 percent (238,655 lines) of the total lines in Michigan." They state that the reports indicate a lack of real competition and that giving a blanket approval to SBC's policies at this time would not meet the FCC's public interest test.

Those parties who challenge SBC's compliance with Section 271(c)(1)(A), contend that the amount of residential competition in the state is inadequate to show an irreversibly open market and, therefore, does not warrant recommendation of the approval of SBC's application by the FCC. The parties state that despite various encouraging steps in the direction of competition, there are other recent trends that point in the opposite direction. For example, there is the alarming development in recent months of a dramatic decline in the number of viable competitors still in business. Some companies have filed bankruptcy. Others are on the ropes with apparent borrowed time. Since the recent economic downturn,

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<sup>60</sup>Report, p. 15.

many are unable to secure the necessary capital for the final steps necessary in the extraordinarily expensive task of providing local service.

In SBC's September 5, 2002 filing, SBC states that when the Commission initiated this case in February 2000, the competitive telecommunications landscape in Michigan was much different from what it is today. In February 2000, SBC provided 69,000 unbundled loops and 145,000 resold lines. According to SBC's estimates, competitors' access lines have increased 114% in the 18-month period between the end of 2000, when BearingPoint's OSS testing in Michigan began in earnest, and the end of the second quarter of 2002. As of June 2002, SBC provided over 750,000 UNE-P combinations to over 30 CLECs, of which almost 638,000 were for residential customers; SBC provided over 181,000 unbundled loops; and resold lines in service have decreased to about 75,000, reflecting the increasing reliance on UNE-P. For example, in the first half of 2002, the majority of CLEC competition in Michigan came through an increase in UNE-P lines, which grew at a rate of 78%. As of June 2002, competitors served an estimated 1,750,000 access lines, or 28% of the access lines in SBC's service area in Michigan. SBC states that, based on CLEC market share, there is more local competition in Michigan than in almost any other state at the time when the FCC granted Section 271 long distance relief for those states.

The recent reports of the Staff show the same competitive growth, even though SBC believes they are understated. In the two years since the Commission initiated this docket, using just the annual data collected, the Michigan local exchange marketplace has seen CLEC lines grow by 234%. The Commission Staff reports that as of the end of 2001, CLEC lines comprised 12.8% of all access lines in Michigan (i.e., all ILEC and all CLEC lines across the entire state). Given that most CLECs concentrate their efforts in SBC's territory, that market share jumps to 15%. The 2001 survey results further show that there were 14 CLECs with more than 10,000 lines and 12 CLECs with between 1,001 and 10,000 lines.

SBC goes on to state that, clearly, its data, the Staff's survey results, and the FCC's data demonstrate the significant, exponential growth of local telecommunications competition in Michigan. SBC states that, quite simply, local competition is flourishing in Michigan and Michigan businesses and consumers are the direct beneficiaries. This significant local entry was made possible in part by SBC's OSS, which CLECs have tested and are using in commercial volumes. For example, the number of orders that SBC has processed in the Ameritech region on a monthly basis has increased 412% from February 2000 through June 2002. The same or greater growth can also be seen in the number of pre-order transactions processed. The number of pre-order transactions that SBC has processed in the Ameritech region on a monthly basis has increased 124% from January 2002 through June 2002. Currently, in the five-state Ameritech region, wholesale systems are operating at commercial volumes and are being provided at high levels of quality. From January 2002 through July 2002, SBC's wholesale systems processed more than 12.2 million pre-order transactions and 4.4 million orders from competitors every month. On a daily basis, this amounts to 79,000 pre-orders and 28,000 orders on an average business day. During the same time period, SBC's systems processed more than 3.29 million pre-order and 1.7 million order transactions for the state of Michigan. (On a daily basis, this amounts to more than 21,000 pre-order and 11,000 orders per day.)

### 3. Michigan Staff Reports on Competitive Lines

To gather information on the competitive marketplace in Michigan for local service, the Staff of the Commission conducted surveys of SBC and all licensed CLECs in Michigan for 1999, 2000, and 2001 and a partial mid-year 2002 update of 15 CLECs. As of the time SBC made its checklist filing and the CLECs commented, only the 2000 data were available. Since that time, another full year survey was undertaken for 2001 and a partial mid-year update for 2002 was conducted.

The Commission continues to license new CLECs, and at the end of 2001, the CLECs were serving 12.8% of the lines provided to customers by all telecommunication carriers in Michigan. This would constitute about 15% of the SBC service territory. This is an increase over the previous year and indicates a positive trend in the competitive basic local service market in Michigan. These numbers are consistent with the trend that is represented in an analysis done by the FCC on information gathered through December 2001.

At year-end 2001, the data indicated that of the 102 CLECs reporting, 60 were serving no customers in 2001 and this represents almost 59% of the group, while the second group served between 1 line and 1,000 lines, a group of 16 CLECs or almost 15.5%. The third group, 12 CLECs, served between 1,001 and 10,000 lines each, for an 11.8% share. The last group of 14 CLECs served over 10,000 lines each, for a 13.7% share.

A portion of the data gathered by the Commission for the last three years is presented below in a table format to allow a more comprehensive presentation for analysis.

#### Michigan Public Service Commission CLEC Survey Results

	1999 Data	2000 Data	2001 Data
Licensed CLECs	120	167	173
CLECs responding to survey	59	69	102
CLECs actually providing service	25	37	52
CLECs with actual line counts	23	31	42
Lines Provided by CLECs	268,385	446,164	896,023
Total Lines in Michigan	6,726,971	6,901,813	7,014,263
CLEC %	4 %	6.5 %	12.8 %
SBC %	81 %	78 %	72.2 %
GTE %	11.5 %	12 %	11.5 %
ILECs %	3.5 %	3.5 %	3.5 %

As is shown, the actual number of CLEC providers and CLEC lines in Michigan has grown over the three years that this information has been gathered and has grown from a 4% share to a 12.8% share at the end of 2001.

The Commission Staff conducted a mid-year survey of SBC and 15 CLECs in Michigan to update the survey results from December 31, 2001. This survey was sent out to the 15 largest CLECs in the state as identified by the results of the survey from the

December 31, 2001 data. The data collected was for the mid-year ending June 30, 2002. The largest 15 CLECs represent 96% of the CLEC lines from December 31, 2001 so for ease of administration and timeliness of the response only the largest 15 CLECs were surveyed. This information was gathered to assist the Commission in its evaluation of the state of local competition in Michigan.

From the data compiled through this survey, the Staff has found that the number of lines provided by the 15 CLECs (including over their own facilities) is 1,118,437. This represents an increase of 261,206 lines over the December 31, 2001 figures for this same group of 15 CLECs and represents a 30% increase for the six-month period. SBC reports that its number of access lines for the period ending June 30, 2002 is 4,609,518. The number of CLEC lines compared to the total population of CLEC plus SBC lines is 20%. That same figure at the December 31, 2001 point was 15%. The most notable figure in this reporting period was the number of lines served over UNE-P. As of June 30, 2002, the largest 15 CLECs served 724,970 UNE-P lines, or 65% of all of the CLEC line activity. UNE-P represents almost 91.4% of the total SBC commercial volume in Michigan (based on August 2002 volumes).<sup>61</sup> Resale accounts for 47,609 lines, while lines served over unbundled network facilities were 197,148 and lines served via the CLECs' own facilities were 113,786 lines.

#### D. Conclusion

MPSC Staff surveys indicate that, as of June 2002, CLEC lines comprise 20% of SBC's total wireline access lines in Michigan. Of the CLEC lines, 65% are served via UNE-P, 4% via resale, 18% via UNE loop, and 10% solely over the CLEC's own facilities. There are 194 CLECs that currently hold a license from the Commission to provide basic local exchange service in the state, and the Staff survey indicates that, as of December 2001, 173 CLECs were doing so. According to the incomplete responses to the Staff's December 2001 survey, 31 CLECs served residential customers, 34 served business customers, and 23 served both residential and business customers. As of December 2002, there were approximately 154 Commission-approved interconnection agreements in effect between SBC and its competitors and 7 pending approval. Of those 154 approved agreements, 132 were between SBC and providers of basic local exchange service, with the balance between SBC and CMRS providers.

Based on the Commission's review of the evidence, the Commission finds that SBC has demonstrated compliance with the requirements of Section 271(c). The Commission specifically finds that SBC complies with the requirements of Section 271(c)(1)(A) regarding the presence of facilities-based competitors, because it has provided sufficient evidence that one or more carriers are providing local exchange service either exclusively over their own telephone exchange service facilities or in combination with the services of another carrier.

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<sup>61</sup>SBC's October 31, 2002 submission on performance results, Affidavit of James D. Ehr, pp. 31-32.

## **SBC's Compliance with Section 271(c)(2)(B) - Specific Interconnection Requirements, Competitive Checklist**

### **Checklist Item 1 – Interconnection**

#### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(i) of the competitive checklist requires BOCs to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) . . . .” Section 251(c)(2)(A) imposes upon ILECs the “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access . . . .” In the Local Competition First Report and Order, the FCC concluded that the term “interconnection” under Section 251(c)(2) refers “only to the physical linking of two networks for the mutual exchange of traffic.”

#### **B. Standard of Review**

First, the ILEC must provide interconnection at “any technically feasible point within its network.” Second, an ILEC must provide interconnection that is “at least equal in quality to that provided by the local exchange carrier to itself or . . . to any other party to which the carrier provides interconnection.” Finally, an ILEC must provide interconnection “on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the agreement and requirements of this section [Section 251] and section 252.”

ILECs must also allow competing carriers to choose any method of technically feasible interconnection at a particular point on the ILEC’s network. One common means of interconnection is the provisioning of interconnection trunking by the ILEC. In the Local Competition First Report and Order, the FCC concluded that to implement the “equal in quality” requirement under Section 251, an ILEC must provide interconnection between its network and that of a requesting carrier at “a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party.” This duty requires the incumbent to design and to operate its interconnection facilities to meet “the same technical criteria and service standards” that are used for the interoffice trunks within the ILEC’s network. In the Local Competition First Report and Order, the FCC identified trunk group blockage and transmission standards as indicators of an ILEC’s technical criteria and service standards. In prior Section 271 applications, the FCC reviewed trunk group blockage data and concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers “equal in quality” to the interconnection the BOC provided to its own retail operations. Moreover, the FCC examines the percent of the ILEC’s common final trunk groups exceeding their engineering design and the percent of total CLEC dedicated final trunk groups exceeding the same engineering design. The FCC does such an examination so as to determine whether the ILEC designs and provides interconnection trunks to CLECs using the same technical standard as it uses to design its own facilities.

Additionally, the FCC concluded that the requirement to provide interconnection on terms and conditions that are “just, reasonable, and nondiscriminatory” means that an ILEC must provide interconnection to a competitor in a manner no less efficient than the way in which the ILEC provides the comparable function to its own retail operations. The FCC has interpreted this obligation to include, among other things, the ILEC’s installation time for interconnection service and its provisioning of two-way trunking arrangements. Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under the “terms and conditions that are no less favorable than the terms and conditions” the BOC provides to its own retail operations.

Another common means of interconnection is collocation at the local exchange carrier’s (LEC) premises. Section 251(c)(6) of Act imposes upon ILECs “[t]he duty to provide . . . for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.” Consequently, additional technically feasible methods of interconnection include physical and virtual collocation and meet point arrangements.

In the Advanced Services First Report and Order,<sup>62</sup> the FCC revised its collocation rules to require ILECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings and set forth various other requirements ILECs must meet in provisioning collocation arrangements. In prior Section 271 applications, the FCC has considered the provision of collocation as an essential prerequisite to demonstrating compliance with Checklist Item 1. To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with Section 251(c)(6) and the FCC’s implementing rules. Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space and arrangements help to evaluate a BOC’s compliance with the collocation requirements.

In conclusion, to satisfy its obligations under this checklist item, a Section 271 applicant must demonstrate that it provides competing carriers with interconnection that is equal in quality to the interconnection that it provides to its own retail operations, on rates and terms that are just, reasonable, and nondiscriminatory.

## C. Summary of the Evidence

### 1. SBC’s Position

#### a. Interconnection

SBC stated in its May 15, 2001 checklist filing that it satisfies Checklist Item 1 by making available all required forms of interconnection. SBC states that it makes fiber-meet

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<sup>62</sup>First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 98-48 (March 31, 1999) (Advanced Services Order) at ¶¶ 41-42.

interconnection available at any mutually agreeable, economically and technically feasible point between a CLEC's premises and an SBC tandem or end office. The fiber-meet arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via SBC's tandem switch. SBC states that CLECs can connect to SBC at the trunk-side or line-side of the local switch, trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs, as well as other technically feasible points upon request. 47 CFR 51.305(a)(2). At their discretion, CLECs can obtain a single point or multiple points of interconnection per LATA. SBC discusses interconnection interoffice trunking arrangements for various types of traffic between a CLEC and SBC. Forecasting and servicing of interconnection trunk groups are based upon the same industry standard objectives that SBC uses for its own trunk groups. SBC also uses standard trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as trunking for SBC's own local services. SBC accommodates CLEC requests for one-way or two-way trunking when technically feasible. In order to ensure equality, SBC interconnects with CLECs using the same facilities, interfaces, technical criteria, and service standards as for its own retail operations.

SBC states that it has implemented multiple performance measurements and standards to govern interconnection trunking. As with the other measurements and standards, they were developed in collaborative proceedings with CLEC input, and they have been approved and made legally binding by order of the Commission. The principal measure tracks the rate of call blockage: blockage on call attempts from SBC customers that are to be routed to and terminated on CLEC networks, as compared to the blockage rate for traffic that both originates and terminates on SBC facilities. The call blockage rate reflects the actual volume and source of traffic that is affected, adjusting for calls that are re-routed and successfully completed over other facilities. SBC also reports on trunk blockage (PM 71), average installation intervals (PM 78), missed due dates (PM 73), the length of delays for missed due dates (PM 74), and trunk restoration intervals (PMs 76, 77). These are the same "clearly defined performance measurements and standards" developed in Texas.<sup>63</sup>

#### b. Collocation

In accordance with Section 251(c)(6), 47 CFR 51.321, and 47 CFR 51.323, SBC states that it makes available to CLECs collocation of telecommunications equipment for interconnection and access to unbundled network elements. SBC's terms and conditions for collocation are provided in interconnection agreements and also through SBC's collocation tariff, Tariff No. 20R, Part 23, Section 4 (the Collocation Tariff). In addition, a CLEC may negotiate or arbitrate terms and conditions for collocation as part of its own interconnection agreement with SBC. SBC states that its tariff and its interconnection agreements incorporate and are fully compliant with the FCC's collocation requirements as set forth in the Advanced Services Order and the Advanced Services Reconsideration Order.<sup>64</sup> A CLEC

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<sup>63</sup>Texas 271 Order, ¶ 3; Kansas & Oklahoma 271 Order, ¶ 3.

<sup>64</sup>Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No.

can apply for collocation space even while that CLEC's state certification is still pending, or before the CLEC and SBC have entered into a final interconnection agreement. Physical collocation of CLEC equipment is available where space permits. SBC states that it makes available caged, shared cage, cageless, and other physical collocation arrangements, all at the option of the CLEC.

On October 2, 2000, SBC filed its Collocation Tariff, which provides for the offering of physical collocation (including caged, shared cage, cageless, and adjacent structure collocation), as well as virtual collocation, in its eligible structures, in accordance with the Commission's directives in Case No. U-11831. The Collocation Tariff became effective October 3, 2000. SBC also offers physical collocation (including caged, shared caged, cageless, and adjacent structure collocation) through its interconnection agreements. SBC states that these offerings fully comply with the FCC's collocation rules, as well as the Commission's orders. Adjacent space collocation is available on SBC's premises when all space for physical collocation within an eligible structure is legitimately exhausted. If space in an eligible structure subsequently becomes available, the CLEC may, at its option, relocate its equipment into that interior space. SBC also will make available other technically feasible collocation arrangements consistent with Paragraph 45 of the Advanced Services Order.

If SBC must deny a CLEC's request for physical collocation because space is not available, SBC states it will furnish to the CLEC detailed documentation relating to the denial within ten days. SBC has also modified its internal procedures to ensure that, if it denies collocation on the grounds that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit will contain all the information required by the Advanced Services Reconsideration Order, ¶ 57 (revising 47 CFR 51.323(b)).

Furthermore, as provided in the Collocation Tariff, if space is not available to accommodate the CLEC's request, the CLEC may request a tour of the premises. Consistent with 47 CFR 51.321(f) and as provided in the Collocation Tariff, this tour will be scheduled within five business days from the date the written request for a tour is received from the CLEC.

SBC states that its space reservation policies are nondiscriminatory. As required by 47 CFR 51.323(f), SBC does not and will not allow any of its affiliates to reserve space on terms more favorable than those that apply to collocation. Moreover, SBC has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market.

SBC's Collocation Tariff and interconnection agreements establish processes and procedures to ensure that collocation arrangements are available on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with Section 251(c)(6). These include standards in SBC's approved interconnection agreements and its Collocation Tariff regarding the length of time required to process and implement requests for collocation. SBC provisions collocation space in full conformity with the criteria established by the FCC in its Advanced Services Reconsideration Order and by the Commission in Case No. U-11831, regarding collocation costs, rates, terms, and conditions, and by Commission in Case No. U-11830 regarding SBC's performance measurements and standards. SBC



notifies a requesting collocator whether its request for collocation space has been granted or denied due to a lack of space within ten days of submission of the completed application. SBC has established, and the Commission has approved, performance measurements and standards to demonstrate the timeliness of processing collocation applications. These include the percentage of requests processed within established timelines, the rate of missed due dates, and the average delay on missed due dates, all of which are identical to measures approved in the Texas 271 Order.

In addition to requests for initial collocation space, SBC accommodates requests to augment existing collocation arrangements. The Collocation Tariff provides shortened intervals for such requests. Virtual collocation is available to CLECs regardless of the availability of physical collocation. SBC uses the same engineering practices for virtually collocated equipment as it does for similar equipment of its own. SBC will maintain and repair virtually collocated equipment using the same standards that SBC uses for maintaining and repairing its own equipment. Intervals for virtual collocation are provided in accordance with the Commission's criteria established in Case No. U-11830.

SBC also states that it provides interconnection and physical and virtual collocation at rates that comply with all FCC and statutory requirements.

## 2. Other Parties' Positions

WorldCom's June 2000 comments focus on four issues: 1) the delay in SBC provisioning interconnection trunking; 2) the port problem (trunking issue) in the Pontiac tandem; 3) the "runaround" for ordering interconnection trunking in Grand Rapids; and 4) the Bell shelf problem in Detroit.

WorldCom states that SBC is providing unacceptably poor service in provisioning interconnection trunking to WorldCom. Almost all of the orders are past due when provisioned. There is also a large gap between the due date (as provided by SBC) and the actual installation date for the interconnection trunking, which has been installed.

WorldCom states that, for about a year, SBC generally refused to allow orders to be submitted for interconnection trunking in the Pontiac tandem. SBC claims that there is no capacity for competitors and that the only way for a competitor to obtain interconnection trunking is if a circuit is disconnected. This severely impaired the ability of competitors to provide unblocked service in the Pontiac area. The lack of trunking could cause a blocking situation with WorldCom's existing local/toll trunks.

WorldCom has run into a string of problems in ordering DS3 trunking in Grand Rapids. WorldCom is in need of additional DS3 interconnection trunks at the Grand Rapids locations. All of WorldCom's interconnection trunks in Grand Rapids are full to capacity, and WorldCom is not able to place any T1 orders for interconnection without these additional DS3s, which in turn limits the amount of capacity WorldCom can deliver to all of its customers. The delay in installing, or the failure to install, these interconnection trunks causes a strain on all future revenue coming into WorldCom.

The last issue is the Bell shelf problem in Detroit. On April 4, 2001, a purchase order was issued to SBC for several DS3s to the SBC Detroit Bell central office. The requested in-service date was April 18, 2001. The firm order confirmation (FOC) was received from SBC on April 26, 2001 with a FOC of May 16, 2001. A major problem within a digital access crosscontrol system unit at SBC caused a delay in the installation of the last DS3s.

These last DS3s were installed and accepted on June 25, 2001, nine full weeks after the requested due date and about five weeks after the FOC date.

AT&T states that SBC has not offered rates, terms and conditions for collocation that comply with the Act and the requirements of the FCC guidelines. Specifically, SBC has failed to provide total element long run incremental cost (TELRIC) based rates for the collocation terms and conditions in the AT&T/SBC interconnection agreement.

McLeod states that it was informed by SBC that it would not provision unbundled loops out of its remote switches. SBC indicated that it would require CLECs to collocate in all remote switches. SBC provided McLeod with no accessible letter or other form of notice regarding this new policy, but instead merely stopped processing orders for UNE loops. By requiring McLeod to collocate in a remote switch, SBC makes it cost-prohibitive for McLeod to serve many Michigan customers. SBC's applicable cost models do not include remote switches. Indeed, a remote switch cannot exist in a cost model based on forward-looking cost principles. Thus, SBC is attempting to impose extra charges on McLeod for an embedded cost, in violation of TELRIC principles.

XO states that it has both physical and virtual collocations with SBC. XO has immediate access to its physical collocation facilities. However, to access its virtual collocation facilities, XO must first contact SBC to create an "escort ticket." The process of receiving an escort ticket and gaining admission to the virtual collocation facilities takes two hours, and XO has never accessed its virtual collocation facilities in less than two hours. Even if the escort ticket passes through SBC's system prior to the conclusion of the two-hour window, and even if the virtual collocation is manned, SBC still makes XO wait until the two-hour window has expired. Therefore, when an XO customer is served by virtual collocation, and that XO customer experiences a service outage, XO cannot even begin repairs until two hours have passed. This unequal access is blatantly discriminatory and harms XO in the competitive marketplace.

### 3. SBC's Response

In its July 2001 response, SBC states that there is no dispute as to the central point in SBC's filing: that it makes available all required forms of interconnection. It contends that the CLEC comments as to SBC's performance in meeting its commitment (typically, complaints about a single order or small group of orders) are premature and would be better addressed when performance measure results are field in the subsequent part of this proceeding. SBC also contends that CLECs ignore the fact that interconnection requires the cooperation and coordination of *both* parties. SBC responds to these comments and shows that in each case SBC more than fulfilled its obligation.

As with trunking, SBC contends that, for the most part, the CLECs do not take great issue with SBC's physical and virtual collocation offerings. The few comments they do make fall far short of their mark. AT&T claims that the collocation rates in its interconnection agreement are not consistent with the FCC's TELRIC methodology. AT&T's claims are baseless. First, AT&T greatly overstates the alleged problem. Although AT&T tries to create the impression that there are many collocation rates in dispute between SBC and AT&T, this is simply not the case. Moreover, AT&T has steadfastly refused to adopt the tariff rates required by the Commission's order in Case No. U-11831 on an interim basis pending negotiation as to the revisions needed to reflect the results of the AT&T/SBC

arbitration. There is no merit to the allegations of XO either, according to SBC. SBC affords limited access to XO to its virtual collocation arrangements, consistent with the Act and FCC's regulations and the interconnection agreement between SBC and XO. What XO claims is a delay is really a commitment by SBC to locate and provide to a CLEC an escort (who must remain with the CLEC throughout the time the XO representative is in the virtual collocation area) two hours after a request is first made. This procedure reflects the inherent, fundamental differences between physical and virtual collocation. Lastly, McLeod complains about collocation of remote switches, based on its conclusory assertion that "a remote switch cannot exist in a cost model based on forward-looking cost principles" and that "SBC's applicable cost models do not include remote switches." These claims have no merit. SBC's policy regarding access to loops complies fully with the Act and FCC regulations. In any event, remote switches are reflected in the cost models approved by the Commission in various retail and UNE forward-looking cost studies. Similarly, AT&T's claim that SBC improperly treats certain rate elements as a nonstandard collocation request (NSCR) is also unsupported. In fact, AT&T's own witness conceded that certain items are "by their very nature 'nonstandard.'" All of the items for which SBC utilizes the NSCR process are appropriately priced on a case-by-case basis.

No commenter disputes SBC's demonstration that the Commission-ordered prices for interconnection comply with the Act and satisfy the checklist.

#### D. Performance Measures

##### 1. SBC's Position

SBC's performance measurement plan includes ten specific measurements that address the timeliness and quality of SBC's installation and repair activities involving interconnection trunks. These measurements cover various aspects of SBC's provision of interconnection trunks. In addition, four performance measurements address SBC's provision of nondiscriminatory access to collocation arrangements in SBC's central offices. Results for the interconnection trunk performance and collocation measurements were submitted to the Commission on October 30, 2002, and include the results of June, July, and August 2002 performance on all related measures. In SBC's opinion, the results provide ample information to conclude that SBC complies with Checklist Item 1 as to interconnection.

SBC's performance data demonstrate that the operating quality of existing interconnection trunks (measured in terms of the percentage of calls blocked) has been significantly better than the established performance standards. The overwhelming majority of calls from and to Michigan CLEC end-users travel on dedicated interconnection trunks connecting SBC tandem switches to CLEC end offices. The results for PM 70-02 (Percent Trunk Blockage – SBC Tandem to CLEC End Office) demonstrate that the percentage of such calls that were blocked was 0.01 percent – well below the 1% benchmark – in each of the three months presented. In addition, in each of those three months, SBC met the 1% benchmark for trunk blockage (PM 71- 01 (Percent of Trunk Blockage (Trunk Groups) – AIT Tandem to CLEC End Office)).

The data for installation of new interconnection trunks, once analyzed in the proper context, also show good performance. On the surface, the results for PM 73-04 (Percentage

Missed Due Dates - Interconnection Trunks-Non-Projects), PM 73-05 (Percentage Missed Due Dates - Interconnection Trunks- Projects), PM 75-04 (Percentage SBC Caused Missed Due Dates > 30 Days - Interconnection Trunks) and PM 78-04 (Average Interconnection Trunk Installation Interval – Interconnection Trunks) suggest that SBC did not meet the benchmark for missed due dates during the last three month period. In fact, however, according to SBC, the apparent “misses” do not indicate untimely installation.

Similarly, SBC also missed PM 74-04 (Average Delay Days For Missed Due Dates – Interconnection Trunks-Interconnection Trunks) during June and July 2002. This performance miss is duplicative of the same performance miss indicated in PM 75-04 (Percentage SBC Caused Missed Due Dates > 30 Days - Interconnection Trunks).

According to SBC, these apparent performance misses are largely the result of negotiations of revised due dates with the CLECs, after completion and delivery of the interconnection facility. Currently, a supplementary order is not required for a CLEC to change the due date on interconnection trunks. Thus, when a CLEC requests a later due date (which occurs with some frequency due to the need to coordinate translations changes in SBC’s and the CLEC’s switches), the electronic systems used for performance measurements still reflect the original due date. Installation after the original due date would still be counted as a “miss” even though SBC met the revised due date requested by the CLEC. As a result, most of the apparent “misses” (and the “delay days” for those misses) are really timely installation that met the CLEC’s request for a different, later completion of the work. SBC has established a procedure to identify and reflect revised due dates, so as to better capture current and future performance.

Finally, the data for PM 76-04 (Average Trunk Restoration Interval – Interconnection Trunks) clearly demonstrate that SBC provided trunk restoration for CLECs in a fashion that exceeds parity requirements for each of the last three months. Trouble tickets for CLECs’ interconnection trunks during June 2002 though August 2002 were repaired, on average, in just 1.29 hours, roughly 65% of the average restoration interval (1.98 hours) for SBC’s own trunks.

SBC’s speed in responding to CLECs’ collocation requests is demonstrated by the performance results for PM 109 (Percent of Requests Processed Within Established Timelines). SBC processed every one of the CLECs’ initial collocation requests during June, July, and August 2002 within the designated interval. In addition, SBC met established timelines for every one of the CLECs’ collocation additions during each of the last three months for PM 109-03 (Percent of Collocation Requests Processed Within Established Timelines – Additions).

Furthermore, the results for PM 107 (Percent Missed Collocation Due Dates) show that SBC completed 52 CLEC collocation projects during June, July, and August 2002 without missing a single due date. As a consequence of the excellent performance for PM 107, there were no “delay days” to report during those three months for PM 108 (Average Delay Days for SBC Missed Due Dates).

Given the CLECs’ use of the UNE-Platform (UNE-P) and the extent of collocation arrangements that are already in place, order volume for new collocation arrangements was low. There were fewer than ten collocation requests during each month within the study period (June through August 2002) reflected in the results for both PM 109-01 (Percent of Requests Processed Within Established Timelines – Physical), and PM 109-04 (Percent of Requests Processed Within Established Timelines – Cageless).

SBC states that overall performance for the trunking and collocation measurements conclusively demonstrates that the CLECs are consistently provided both nondiscriminatory interconnection services and a meaningful opportunity to compete.

## 2. Other Parties' Positions

AT&T responds that the data regarding interconnection reveal an overall compliance rate of 50% -- hardly "ample evidence" of meeting the standard. AT&T goes on to state that SBC attempts to shift the blame for SBC's failure to meet trunk installation due dates onto CLECs. It asserts that that "most" "misses" result from instances where a CLEC "negotiates" a later due date for installation, but the calculation is based on the original due date. Nowhere does SBC indicate how many "most" is, nor does it explain why SBC is not following the Business Rules, which do not provide for such an exclusion. Moreover, SBC's argument presumes that SBC has secured the CLECs' agreement to change the due date for such "negotiated" later due dates, but that premise is unsubstantiated and may well be another unilateral "interpretation" formulated by SBC. Thus, SBC's attempts to explain away its failure to comply are unconvincing.

WorldCom is dubious about SBC's explanation of its failures in meeting appointments and delay days for new interconnection trunks, both projects and non-projects. SBC argues that its reported performance understates its actual performance because SBC does not report these PMs in situations where the due date has been extended at the request of a CLEC or customer. It then speculates that a significant improvement in its performance would be shown if it kept track of its records to prove that this is the most prevalent reason for "missed appointments" and long delay day averages. If SBC intends to assert that its data would show better results if it kept accurate data for these types of changes to the due dates, then it is incumbent upon SBC to report its PMs in this manner and to have the accuracy of its data established as part of the BearingPoint third party test in this matter.

TDS asserts that SBC has also missed key performance measures relating to the provisioning of trunks (PMs 73, 74, 75 and 78). Thus, even under its flawed approach to collecting and reporting performance measures, SBC fails to provide key services necessary for facilities-based providers to successfully compete with SBC.

According to XO, even though Ernst & Young has indicated that SBC is not properly measuring its performance with respect to PM 74, (Average Delay Days For Missed Due Dates - Interconnection Trunks), PM 75 (Percentage of SBC Caused Missed Due Dates > 30 Days - Interconnection Trunks), and PM 78 (Average Interconnection Trunk Installation Interval), SBC missed the benchmark for these performance measures or submeasure(s) for each. In addition, SBC has also missed the benchmark for PM 73 (Percentage Missed Due Dates-Interconnection Trunks). SBC's inability to make available interconnection trunks is not only borne out by its own data, but is also borne out by XO's experience in attempting to obtain interconnection trunks from SBC. As a result, there is insufficient evidence for any claim that SBC is in compliance with the checklist item requiring nondiscriminatory access to interconnection trunks.

## E. Discussion

In its December 20, 2001 order in this case the Commission found that remote switch costs were properly included in the Commission approved cost studies in Case No. U-11831. However, it was not clear from SBC's response whether it currently insists that CLECs collocate at each remote switch. The Commission cautioned SBC that it may not require collocation at its remote switches. In the Commission's view, this problem is similar to providing access at the tandem to the end offices that home on that tandem as opposed to requiring a CLEC to collocate at each end office. SBC must provide access to unbundled loops at any technically feasible point on its network. As long as it is feasible to provide access to an unbundled loop from a remote switch through the host central office, SBC must do so. The cost effectiveness of that access must be determined by the requesting CLEC.

SBC responded to those findings on January 29, 2002 and February 28, 2002. WorldCom filed comments on February 13, 2002. The Commission concluded in its November 7, 2002 order in this case that the remaining dispute on this issue fundamentally reflects a misunderstanding between the parties, and concluded that the distinction between a remote switch functioning as a loop concentrator device or a central office is appropriate and has lawful consequences with respect to where a CLEC may access an unbundled loop. The Commission found that SBC's provision of access to unbundled loops at remote switches is now in compliance with Section 271.

AT&T's 2001 comments on the collocation rate issue were addressed in the Commission's order on February 6, 2002 in their arbitration case No. U- 12465 where TELRIC based rates for collocation as established in the Commission's cost proceeding were incorporated into AT&T's interconnection agreement and was subsequently approved by the Commission.

In its 2001 comments, WorldCom raised a number of issues regarding delays in the provisioning of interconnection services in Pontiac, Grand Rapids and elsewhere. AT&T, XO and TDS raised similar issues in specific response to SBC's performance measure results filed in October 2002. There are issues with the performance measures relating to the provisioning of trunks (PMs 73, 74, 75 and 78). According to SBC, these apparent performance misses are largely the result of negotiations of revised due dates with the Michigan CLECs, after completion and delivery of the interconnection facility. Currently, a supplementary order is not required for a CLEC to change the due date on interconnection trunks. Thus, when a CLEC requests a later due date (which occurs with some frequency due to the need to coordinate translations changes in SBC's and the CLEC's switches), the electronic systems used for performance measurement still reflect the original due date. Installation after the original due date would still be counted as a "miss" even though SBC met the revised due date requested by the CLEC. As a result, most of the apparent "misses" (and the "delay days" for those misses) are really timely installation that met the CLEC's request for a different, later completion of the work. SBC has established a procedure to identify and reflect revised due dates, so as to better capture current and future performance.

On the report of restated performance measures for August, September and October 2002, there were only two of the interconnection performance measures that were still indicated as misses, however, the October results were met so this indicates a positive trend. For the other earlier misses in this area, they have now been reported as meeting the performance measures in the latest report.

F. Conclusion

From the recently filed October 2002 performance results, SBC has only two measures that it is not currently meeting for the three month period in this area. However the October results were positive and SBC met the measures for October. The Commission sees this as a positive trend and the Commission concludes that SBC is making steady progress in this area. Given the present circumstances, the Commission finds that SBC has demonstrated compliance with Checklist Item 1.

## **Checklist Item 2 – UNE Combinations**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(ii) of the Act requires a Section 271 applicant to offer “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) . . .” Section 251(c)(3) requires the incumbent LEC to “provide, to any requesting telecommunications carrier . . ., nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . .” Section 251(c)(3) further provides that an incumbent LEC “shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.”

### **B. Standard of Review**

The FCC indicated in the prior Ameritech 271 Order, as well as others, that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress’ objective of promoting competition in local telecommunications markets.<sup>65</sup> The FCC has stated that because the use of combinations of unbundled network elements is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of Section 271, it examines Section 271 applications to determine whether competitive carriers are able to access and combine network elements as required by the Act and the Commission’s regulations. In the Pennsylvania 271 Order, the FCC stated that “[I]n order to comply with checklist item 2, a BOC also must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier.”<sup>66</sup> In Pennsylvania, the FCC specifically reviewed CLEC access to both combinations of the loop-switch-transport elements (UNE-P) and the loop-transport elements (enhanced extended loop or EEL).<sup>67</sup>

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC contends that it provides nondiscriminatory access to network elements, both separately and in combined forms. Through interconnection agreements and tariffs, SBC provides a comprehensive set of unbundled network elements and combinations under terms

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<sup>65</sup>Connecticut 271 Order, Appendix D, p. 22. Pennsylvania 271 Order, Appendix C, ¶ 646.

<sup>66</sup>Pennsylvania 271 Order at ¶ 73.

<sup>67</sup>Pennsylvania 271 Order at ¶ 73 - 75.



and conditions that comply with the Act and current FCC orders. SBC states that it provides CLECs with access to loops (including subloops, inside wire, the loop dark fiber, and the network interface device), circuit switching, interoffice transmission facilities, signaling and call-related databases [including 911 and enhanced 911 (E911) databases], loop qualification, and OSS. In addition, SBC offers access on an unbundled basis to operator services (OS) and directory assistance (DA) (i.e., OS/DA) in accordance with the Commission's orders and FCC rules. SBC indicates that it also commits to provide nondiscriminatory access to directory assistance listings as required by the Act.

SBC indicates that it does not separate UNEs that are currently physically combined in its network unless a CLEC requests it to do so. SBC further states that it offers UNEs in a manner that allows CLECs to access or to combine them by making certain collocation arrangements, including caged, shared caged, and cageless physical collocation, available for that purpose. SBC also offers a non-collocation option for combining UNEs through access to a secure frame option or external cross-connect cabinet until space becomes available (using a jumper wire cross-connect).

At the time of initial filings, in May of 2001, SBC was also making available new UNE combinations via an amendment to interconnection agreements, the Michigan 271 Amendment (Mi2A). Under the Mi2A, SBC indicated it would combine particular network elements that were not already combined, including new loop to switch port combinations (the UNE-P), and under certain conditions, loop to interoffice transport combinations (the EEL). In addition, CLECs could use SBC's shared transport element, the unbundled local switching-shared transport (ULS-ST) component of UNE-P to provide local and intraLATA toll service to end-users to which they were providing local service.

## 2. Other Parties' Positions

Most of the June 2001 comments regarding access to UNEs focus on the availability of unbundled network element combinations, including UNE-P and EELs, and the continued availability of those combinations. There is significant disagreement as to the interpretation of Commission, FCC, and court orders, particularly with respect to "currently" or "ordinarily" combined UNEs, i.e., what are the requirements for SBC to provide new combinations, as opposed to existing combinations, or already combined network elements, and is there or should there be any distinctions.

While SBC, as of the time of the comments in the summer of 2001, was making new and existing forms of combinations available, either as tariffed offerings or through the Mi2A, CLECs continued to urge a further specific finding by the Commission to ensure the permanent availability of combinations through both approved tariff offerings and interconnection agreements (the Mi2A had a limited term offering, tied to Section 271 approval for SBC). CLECA, and others argue that SBC must be required to offer through a tariff UNE combinations that SBC "ordinarily" combines for itself. This is in opposition to the SBC definition of "existing" or "currently combined, where, for example, no manual work is performed.

The Commission issued orders to address this controversy in Case No. U-12320 on January 4 and March 19, 2001. In the January order, the Commission required SBC to provide combinations under the definition of "ordinarily combines." In the March order, the Commission declined to more specifically address the distinction between existing and new

combinations, approving SBC's proposal at that time to offer existing combinations through tariffs and new combinations more specifically only in the Mi2A. Because these orders accepted SBC's proposals with respect to its combinations tariffs and the Mi2A, CLECs and others continued to urge a more definitive classification and requirements of SBC and a specific obligation to offer new combinations pursuant to tariff or to an unrestricted and unlimited interconnection agreement amendment. Finally, CLECA, in association with its arguments surrounding EELs, also takes issue with the overall pricing of special access services available to providers versus private line services available to end-user customers, the burdens CLECs are faced with competing in the "special access" arena, and the restrictions on the usage of EELs only for predominantly local services.

AT&T takes the position that its original interconnection agreement (Cases Nos. U-11151 and U-11152) provides for the availability of the UNE-P without restriction (specifically, without the restrictions being set forth by SBC via the Mi2A). Because SBC refuses to uphold the interconnection agreement in this manner, AT&T argues that this shows SBC continues to fail to meet checklist item 2.<sup>68</sup> WorldCom puts forth similar arguments with respect to its existing interconnection agreement (Case No. U-11168). MichTel also argues that its existing interconnection agreement obligates SBC to make UNE-P available without restrictions.

WorldCom, in citing specific problems with UNE-P, indicates that SBC refuses to restore as existing customers those WorldCom has disconnected for nonpayment. WorldCom states that it has been advised by SBC that when service to a WorldCom customer is disconnected (at the request of WorldCom), SBC pulls the jumpers off of the frame in the central office, for a total disconnect. If the customer subsequently pays, and WorldCom requests that SBC reconnect, SBC refuses because this would constitute a "new UNE combination," which it is not required to provide.<sup>69</sup> WorldCom loses the customer back to SBC. Similarly, McLeod has experienced difficulties in the classification of customers for existing UNE-P, if the customer has not first been classified as a resale customer for a 30-day billing cycle.

CLECA took issue with SBC's Mi2A restriction that allows SBC to choose not to provide CLECs with new combinations for business service when four or more CLECs collocate in a central office (Mi2A Agreements, at part 2.2.5.3). SBC can then limit access through only the secured frame option. CLECA argues that this places new obstacles and uncertainty for CLECs in the utilization of UNE-P. CLECA contends that the limitation also presumes the existence of a wholesale market for unbundled local switching that does not exist. Even if four CLECs have collocated, that does not mean additional competitors will not need the capacity to compete in the market.

The MPTA argues that SBC is not meeting its obligations for nondiscriminatory access to UNEs, urging that SBC should be required to offer a UNE combination that will

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<sup>68</sup>In its October 29, 2001 order in Case No. U-13082, the Commission modified Ameritech Michigan's Mi2A by removing the language requiring a CLEC to waive its right to challenge the Mi2A's terms and conditions as being inconsistent with Section 271. On November 2, 2001, AT&T and Ameritech Michigan filed the modified Mi2A for approval in Cases Nos. U-11151 and U-11152, which the Commission granted on November 20, 2001.

<sup>69</sup>WorldCom had not signed the Mi2A at that time.

allow CLECs to offer all payphone and independent payphone provider (IPP) line functionalities using the UNE-P. The MPTA also contends that payphone provider rates should be cost based, as are UNEs. The MPTA also argues that SBC fails Checklist Item 2 in that it is not complying with Section 276 of the Act regarding the new services test for providing service to payphones.

Turning to the topic of access to voice mail in connection with UNE-P, CLECA comments that this Commission has brushed aside competitive concerns about SBC voice mail, saying that it is an unregulated service and not a matter for CLEC concern on UNE-P. CLECA states that voice mail is an important feature for customers and that if it is not made available with UNE-P, the potential customer base for CLECs is drastically reduced.

LDMI, per Mr. Finefrock indicates that SBC initially agreed to proceed with a trial involving LDMI and then subsequently indicated that all plans to offer voice mail with UNE-P were on hold.<sup>70</sup> LDMI states that the issue is that a substantial fraction of the business and residential customer base of SBC has selected SBC voice mail as their method of voice mail, and those customers expect that if LDMI is to become their local telephone provider, LDMI must be able to provide the same or virtually identical voice mail service, including the “stutter dial tone” and /or lamp indicator that they receive on the local phone line, indicating they have a message waiting.

Under local resale, SBC offered its voice mail product to LDMI, including “stutter dial tone,” and SBC does provide voice mail with stutter dial tone to its retail customers in areas of Michigan where it does not offer it to LDMI. LDMI states that many CLECs have voice mail systems, but none of those can access the vitally required “stutter dial tone” of SBC in its central offices that serve the local UNE-P customer, unless SBC cooperates to make it available. SBC has not done so. LDMI indicates that SBC rejected its bona fide request for voice mail. SBC has offered a wholesale voice mail offering as an interim solution. However, LDMI states that this offering was not priced in a way that any CLEC could or would take advantage of the offering.

### 3. SBC’s Response

SBC argues that its UNE-P and EELs offerings under tariff and the Mi2A are compliant, and have been found to be reasonable by the Commission. SBC argues that the CLECs are essentially seeking rehearing of the Commission’s March 2001 order. As to the claims regarding the existing interconnection agreements, SBC contends that a Section 271 proceeding is not the place to resolve interconnection disputes, and that the law has changed significantly since AT&T’s and WorldCom’s original interconnection agreements were approved. SBC also notes that with regard to MichTel’s interconnection agreement, the agreement specifically provides that MichTel, not SBC, shall perform the work to combine the UNEs it requests.

With respect to special access to EELs conversions, SBC argues that its tariffs are in compliance with the FCC’s Supplemental Order Clarification. SBC also notes that CLECs are not required to sign the Mi2A to avail themselves of this offering. The scope of the new EEL combinations offered under the Mi2A is compliant as well. Specifically, the

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<sup>70</sup>CLECA’s June 29, 2001 Replies to SBC’s Checklist Filing, Affidavit of Jerry Finefrock, p. 45-54.

requirement that a CLEC must meet the significant amount of local exchange service criteria specified by the FCC, is compliant with the FCC's Supplemental Order Clarification. Finally, SBC contends that issues raised by CLECA regarding the prices of regulated special access and unregulated private line services are not relevant for a Section 271 review.

Turning to the service problems identified by WorldCom and McLeod, SBC responds these are simply not true. WorldCom's description of service disconnects and reconnects is incorrect. SBC argues that WorldCom is fully aware of a CLEC's ability to order either carrier disconnect service (where the customer's service is suspended, and the UNE-P arrangement is left intact) or a full disconnect. In the case of McLeod, SBC points out that the Commission-ordered tariff clearly allows for conversion of existing combinations of network elements to UNE-P, regardless of whether the current service is provided via retail, resale, or another provider's UNE-P. McLeod can obtain new UNE-P directly under the Mi2A.

In response to the MPTA's arguments that SBC should be required to make available to CLECs the features necessary to offer payphone provider lines, SBC points out that there is a process outlined in the tariff to request additional features. SBC also notes that during the collaborative discussions here in Michigan, no request was made for such a UNE switching feature

In response to LDMI's voice mail issue, SBC states that it does offer stutter dial tone and that any CLEC or third-party voice mail platform can interface with SBC's central office switches in the same manner as SBC's retail (or resale) voice mail platforms, and obtain identical functionality including "stutter dial tone." SBC goes on to state that there is nothing that a CLEC-provided voice mail system needs to activate stutter dial tone that cannot be readily obtained under SBC tariffs. SBC states that voice mail is not a telecommunications service, it is not a UNE, and it is not regulated. Thus, SBC has no legal obligation to provide voice mail service to any customer or CLEC.

#### D. Discussion

There has been much controversy and disagreement over SBC's offering of unbundled network element combinations, including the UNE-P and EEL. An extensive case record exists, and significant collaborative discussions have taken place over the last two years here in Michigan. Several Commission orders have been issued, resolving much of the dispute between SBC and the CLECs, with one Commission order being issued as recently as November 7, 2002 on this topic.

In orders issued in Case No. U-12320 on January 4 and March 19, 2001, given the then-pending United States Supreme Court decision regarding new combinations, the Commission determined that SBC must offer pursuant to tariff UNE combinations that it ordinarily combines in providing retail service to its own retail customers. The Commission found it unnecessary at that time to resolve the precise demarcation point between new and existing combinations because SBC's revised pricing schedule made both new and existing combinations available at TLSRIC pricing, either through tariffs or the Mi2A amendment. The Commission also acknowledged that it would revisit those determinations prior to an SBC application under Section 271, should anticipated court decisions or FCC orders be issued.

Following the May 13, 2002 decision in Verizon Communications Inc v Federal Communications Comm, 535 US \_\_\_, affirming the validity of the FCC's combinations rule in 47 CFR 51.315(c)-(f), and resolving SBC's claim that it is not subject to a legal obligation to offer new combinations of UNEs, the Commission issued an order in Case No. U-12320 on May 16, 2002 requiring SBC to specify the rates, terms, and conditions of all of its Mi2A product offerings in its filed tariffs. SBC was required to file a tariff making available new UNE combinations, including, at a minimum, the UNE-P and EEL combinations previously provided solely under the Mi2A. SBC complied.

In a July 25, 2002 informational filing, SBC indicates that it intends to demonstrate its compliance with Section 271 through the tariffs governing new and existing combinations and a Michigan-specific amendment, rather than the Mi2A (the Mi2A was set to expire September 28, 2002). SBC says it now offers three ways for a CLEC to obtain binding terms for UNE combinations: 1) the tariffs; 2) an amendment incorporating the tariffs into an existing interconnection agreement, which is available with an optional pricing schedule; and 3) an amendment to an existing agreement that does not refer to the tariffs, which is also available with an optional pricing schedule. Additionally, CLECs may obtain UNE combinations in a new 13-state generic interconnection agreement. SBC indicates that the offerings are the same for UNE-P and EEL combinations as were available under the Mi2A, and also include seven new UNE-P combinations previously not available under the Mi2A. CLECs and other interested parties filed comments, objecting to SBC's proposals concerning how it would effectuate price changes and change of law provisions.

The Commission issued an order on November 7, 2002 in Case No. U-12320 establishing a process that SBC must follow to obtain Commission approval for changes to the UNE combinations tariff, including when SBC seeks to limit or withdraw the availability of any combination, including the UNE-P, to any provider. Subject to the modifications specified in that order the Commission found that SBC's July 25, 2002 "proposed UNE combinations offerings are sufficient to comply with Section 271 of the Act."<sup>71</sup>

Parties also urged the Commission to remove usage restrictions on the use of new EEL combinations. The Commission indicated that it "declines to order SBC to make EELs available under conditions that are contrary to the restrictions that the FCC has placed on them. SBC's compliance with Section 271 does not require otherwise."

With the process set forth in the November order for effectuating changes in SBC's UNE combinations, the Commission is satisfied that SBC is in compliance with Section 271 with respect to access to unbundled network elements and combinations of network elements. The requirements and safeguards set in place by the Commission and FCC should provide the necessary assurances to CLECs for continued competitive opportunities through the purchase of these wholesale elements from SBC, along with their own facilities expansion. The Commission notes evidence contained in the Michigan Competitive Market Conditions Survey, updated for Mid-Year 2002, which indicates that CLECs are serving over 700,000 access lines utilizing UNE-P. The Commission also notes from that report that CLECs are currently serving approximately 197,000 access lines through access to unbundled network facilities.

This Commission agrees with SBC that voice mail is not a regulated service under the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., or the requirements of

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<sup>71</sup>November 7, 2002 Commission Order in Case No. U-12320, p. 7.

Section 271 of the federal Act, and therefore finds that it is beyond the scope of the Commission's authority to mandate that SBC offer voice mail with UNE-P. However, it appears that from SBC's comments that it does offer the type of features necessary for the CLEC voice mail system through its federal tariffs. On November 7, 2002, the Commission addressed the issue of voice mail in Case No. U-12320 and found that SBC's offering resolved the issue and that WorldCom's proposed change was beyond the scope of the proceeding.

There are several performance measurements associated with SBC's offering of unbundled network elements and combinations, including UNE-P and EELs. Those measurements are discussed later with the checklist item of the individual combinations components, primarily checklist item 4 on unbundled loops. The Commission notes, SBC reported performance measure results for combinations under both Checklist Item 2 and 4. The Commission will discuss those measures under Checklist Item 4.

#### E. Conclusion

The Commission is not persuaded by the comments in this procedure that suggest SBC has not complied with this checklist item, and finds that SBC has sufficiently addressed each complaint. Further, in the November 7, 2002 order, the Commission found SBC's UNE combinations offerings to be in compliance with Section 271.

## **Checklist Item 2 – Pricing of Unbundled Network Elements**

### **A. Description of the Checklist Item**

Section 252(d)(1) of the Act requires that state commission determinations adopting rates for network elements be based on the cost of providing the network elements and provides that rates may include a reasonable profit.

### **B. Standard of Review**

According to Section 252(d)(1), pricing of network elements shall be nondiscriminatory, shall be based on the cost of providing the network elements, and may include a reasonable profit. The FCC has determined that prices for UNEs must be based on the TELRIC of providing those elements.

### **C. Summary of the Evidence**

#### **1. SBC's Position**

SBC states that it provides UNEs and UNE combinations at rates that comply fully with all FCC and statutory requirements. Those rates have all been approved by the Commission in two extensive contested cost proceedings. SBC indicates the FCC's TELRIC methodology has been applied by the Commission, albeit in a strict, conservative manner, in SBC's opinion.

#### **2. Other Parties' Positions**

To the extent that prices were discussed, specific objections to the prices of unbundled network elements are discussed in sections relating to the specific checklist item. The only party taking issue with SBC's prices under Checklist Item 2 in the June 2001 comments was the MPTA. The MPTA argues that SBC has not met the new services test for payphones, associated with Section 276 of the Act. The MPTA argues that just as CLECs must be able to obtain cost based rates for UNEs and UNE combinations, payphone providers must also be able to obtain cost-based pricing (i.e., total service long run incremental cost) for payphone lines, IPP lines, and other payphone services.

In their November 20, 2002 comments, both AT&T and LDMI urge the Commission to establish some type of pricing stability for UNEs. The recently proposed price increase for UNEs, including the UNE-P, could cause significant harm to the competitive process.<sup>72</sup> AT&T proposes that the Commission impose a cap on current UNE rates for a three- to

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<sup>72</sup>SBC filed new TSLRIC studies on August 30, 2002, in which it proposed significant increases in prices for UNEs, including UNE combinations. On September 16, 2002, the Commission dismissed the application and established a docket on its own motion in Case No. U-13531, where SBC may refile with certain additional information required by the Commission. To date, SBC has not filed the new cost study.

five-year period as a precondition to any finding that SBC is in compliance with the requirements of Section 271 of the Act.

### 3. SBC's Response

In response to the MPTA, SBC argues that the FCC never required the services offered to payphone providers be offered at total service long run incremental cost (TSLRIC). The MPTA's concerns with respect to the new services test and Section 276 compliance are being reviewed before the Commission in a payphone specific complaint proceeding, remanded by the Michigan Supreme Court (Case No. U-11756) and is not relevant to this Section 271 proceeding.

In response to AT&T's and LDMI's request for a price cap on UNEs and the need for price stability, SBC, in its November 25, 2002 statements before the Commission, pointed out that it has been over three years since it filed an application to have its costs reviewed and that there is new information that the Commission should consider. SBC also notes that the FCC has previously indicated that a pending state cost proceeding is not a reason for denying a Section 271 application.

#### D. Discussion

The Commission has conducted two proceedings, Case No. U-11280 in 1997 and Case No. U-11831 in 1999, in which the TSLRIC of SBC's network costs were reviewed. As a part of both of those proceedings, the Commission approved prices for UNEs on a TSLRIC basis, adopting a methodology consistent with the FCC's TELRIC methodology. The proceedings were comprehensive, evaluating SBC's entire Michigan network and all services.

The FCC has previously found that the Commission's TSLRIC methodology is consistent with the FCC's TELRIC methodology, and SBC agrees the two are consistent.<sup>73</sup> The UNE and UNE combinations prices are Commission-approved prices.

The Commission is not persuaded that it is necessary at this time to impose a price cap on UNE rates. The current prices are Commission-approved, and the result of extensive evaluation by the industry. The UNE prices are currently compliant with state TSLRIC requirements and the FCC TELRIC methodology. Any new proposals by SBC must similarly comply with those requirements and will be reviewed with those obligations in mind.

Finally, the arguments raised by the MPTA are specific to Section 276, and are not relevant to a Section 271 determination. In any case, those issues are being addressed by the Commission in a pending contested proceeding.

#### E. Conclusion

The Commission finds that SBC has demonstrated compliance with the pricing requirements for Checklist Item 2.

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<sup>73</sup>Ameritech Michigan 271 Order.



## **Checklist Item 2 - Operations Support Systems (OSS)**

### **A. Description of the Checklist Item**

The FCC has defined OSS which a BOC must provide as “the various systems, databases, and personnel used by incumbent LECs to provide service to their customers.”<sup>74</sup> There are five primary OSS domains: pre-ordering, ordering, provisioning, maintenance and repair, and billing. In addition, a BOC must demonstrate that it is providing adequate assistance to competing carriers to understand how to implement and use all of the OSS functions and that it provides an adequate change management process.

### **B. Standard of Review**

Section 271(c)(2)(B)(ii) requires nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). The FCC has determined that “access to OSS functions falls squarely within an incumbent LEC’s duty under section 251(c)(3) to provide UNEs under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.”<sup>75</sup> “For OSS functions for which a retail analogue exists, nondiscriminatory access to OSS for wholesale customers may be compared to that offered for retail customers. For OSS functions that have no retail analogue, the BOC must offer access “sufficient to allow an efficient competitor a meaningful opportunity to compete.”<sup>76</sup>

The FCC utilizes a two-step approach to analyzing whether a BOC has met the nondiscriminatory requirements for each OSS function. First, it determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”<sup>77</sup> Under this requirement, a BOC must show that it has developed sufficient electronic and manual interfaces to allow competing carriers equivalent access to all of the needed OSS functions. It must provide necessary specifications, disclose any required business rules or information needed to assure that a provider’s orders may be processed efficiently, and it must demonstrate that its OSS is designed to accommodate both current and projected demand for these OSS functions.

Secondly, the FCC must then determine “whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”<sup>78</sup> Under this criteria, the

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<sup>74</sup>Georgia and Louisiana 271 Order, CC Docket No. 02-35, ¶102.

<sup>75</sup>Bell Atlantic New York 271 Order, CC Docket No. 99-295, ¶84.

<sup>76</sup>Bell Atlantic New York 271 Order, ¶86.

<sup>77</sup>Bell Atlantic New York 271 Order, ¶87.

<sup>78</sup>Bell Atlantic New York 271 Order, ¶88.

Commission may examine performance measurements and other evidence of commercial readiness to determine whether the BOC's OSS is able to handle current and projected demand. "The most probative evidence that OSS functions are operationally ready is actual commercial usage."<sup>79</sup> Third party testing may also provide evidence of commercial readiness and viability. "Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS."<sup>80</sup> To the extent that performance measurements are utilized in this second inquiry, the FCC has indicated that it "looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations."<sup>81</sup>

### 1. Pre-Ordering and Ordering

SBC must demonstrate that CLECs are able to utilize pre-ordering capabilities to gather and verify information required to place orders. SBC must show that CLECs are able to build and utilize application-to-application interfaces to perform pre-ordering functions, that its systems are available and able to provide reasonably prompt response times, that CLECs are able to integrate pre-ordering and ordering interfaces, and that it offers the capability to determine whether a loop is capable of supporting xDSL technologies. SBC must also demonstrate that CLECs have access to the OSS functions needed to place wholesale orders. In this regard, the FCC has indicated that it will look primarily "at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate."<sup>82</sup>

### 2. Provisioning

SBC must provision orders for its wholesale customers in substantially the same time and manner as it does for its retail customers. The FCC has indicated that it will review "provisioning processes, as well as its performance with respect to provisioning timeliness (i.e., missed due dates and average installation intervals) and provisioning quality (i.e., service problems experienced at the provisioning stage)."<sup>83</sup>

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<sup>79</sup>Bell Atlantic New York 271 Order, ¶89.

<sup>80</sup>Georgia and Louisiana 271 Order, Appendix D, ¶31.

<sup>81</sup>Georgia and Louisiana 271 Order, Appendix D, ¶31.

<sup>82</sup>Georgia and Louisiana 271 Order, Appendix D, ¶36.

<sup>83</sup>Georgia and Louisiana 271 Order, Appendix D, ¶37.

### 3. Maintenance and Repair

SBC must provide nondiscriminatory access to its maintenance and repair OSS as well. The ability for CLECs to access the same network information and diagnostic tools as are available for retail operations must be provided so that CLECs can assist customers with service disruptions and other repair issues. The quality of repair and the mean time to repair are two important indicators in regard to this domain.<sup>84</sup>

### 4. Billing

SBC must provide nondiscriminatory access to its billing functions so that CLECs may provide accurate and timely bills to their customers.

### 5. Account Management

SBC must provide the support required by CLECs to establish and utilize OSS. This includes not only support to initiate and establish the ILEC/CLEC relationship and to provide information about the BOC's systems and interfaces needed to access OSS functions, but also the existence of procedures to evaluate and implement changes to any of these operations. In considering a BOC's change management process, the FCC has indicated that it assesses whether information is readily accessible regarding the change management process, whether the CLECs have input into the design and operation of the change process, whether resolution of disputes is provided for, whether testing of changes is provided for, and whether documentation is available that permits the building of an electronic gateway.<sup>85</sup> Not only must its change management plan be adequate but information about compliance with this plan must also be available.

## C. Summary of the Evidence

### 1. SBC's Position

On May 15, 2001 SBC submitted an informational checklist filing in support of its compliance with, among other checklist items, requirements related to nondiscriminatory access to OSS. SBC indicates the availability of two pre-order interfaces: EDI/CORBA (an application-to-application interface) and Verigate (a graphical user interface). SBC opines that both of these interfaces "allow requesting carriers access to the same information and functions available to SBC's retail representatives, and to the same functions identified by the FCC in prior orders under section 271."<sup>86</sup> According to SBC, its EDI/CORBA pre-order interface is designed to be integrated with its EDI order gateway "to form a seamless pre-

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<sup>84</sup>Massachusetts 271 Order, CC Docket No. 01-9, ¶172.

<sup>85</sup>Georgia and Louisiana 271 Order, Appendix D, ¶42.

<sup>86</sup>SBC's May 15, 2001 Checklist Informational Filing, p. 31.

order/order system.”<sup>87</sup> SBC also offers CLECs two alternative ordering interfaces: its application-to-application EDI interface and its Enhanced LEX Graphical User Interface.<sup>88</sup> These ordering systems notify CLECs of incorrectly formatted orders and, once properly formatted, provide the CLEC a notice confirming the receipt of its order. When the order is provisioned, a completion notice is also returned to the CLEC. SBC also offers CLECs the ability to check on the status of orders. Some order types are designed to translate in an entirely electronic manner, the so-called flow-through orders. Manual processes are utilized for other order types. SBC’s informational filing also refers to a number of performance measures utilized to track the actual provisioning of orders including average installation intervals, percentage of installations timely completed, percentage completed by the due date, average delay for orders not completed by the due date and rate of installation for which “trouble” is reported within 30 days of installation.<sup>89</sup> SBC also offers two alternative methods by which a CLEC may report trouble and request maintenance: the so-called Electronic Bonding & Trouble Administration (EBTA) application-to-application interface and the EBTA GUI interface. According to SBC these interfaces permit a CLEC to issue trouble reports, conduct a mechanized loop test, determine the status of a previous trouble report, view a list of open trouble reports, and view a list of reports closed within the last 120 days.<sup>90</sup> In regard to billing, SBC offers daily usage files to CLECs for use in billing their end-user customers and other carriers. In addition, it issues monthly bills to carriers. All of these billing functions are subject to certain performance measures. In its informational filing, SBC also discusses its account management and training procedures, the availability of technical assistance, and its change management plan.<sup>91</sup> In further comments, SBC indicates that commercial usage, actual performance results from June, July, and August 2002 and BearingPoint’s third-party test of its OSS demonstrate that it is “providing nondiscriminatory interconnection, unbundled access, and wholesale services to Michigan CLECs in compliance with the requirements of Section 271.”<sup>92</sup>

## 2. Commercial Usage

According to SBC, as of June 2002, CLECs served approximately 1,750,000 access lines in Michigan, comprising 28% market coverage. SBC indicates that this is an increase

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<sup>87</sup>SBC’s May 15, 2001 Checklist Informational Filing, p. 31.

<sup>88</sup>SBC’s May 15, 2001 Checklist Informational Filing, p. 15.

<sup>89</sup>SBC’s May 15, 2001 Checklist Informational Filing, p. 40.

<sup>90</sup>SBC’s May 15, 2001 Checklist Informational Filing, p. 41.

<sup>91</sup>SBC’s May 15, 2001 Checklist Informational Filing, p. 42-51.

<sup>92</sup>SBC’s October 21, 2002 filing on Three Consecutive Months of Performance Measure Results, November 15, 2002 Comments on BearingPoint’s October 30, 2002 OSS Evaluation Report, and November 21, 2002 Reply Comments on October 21, 2002 Submission of Performance Results.”

from a 13% market coverage in December 2000.<sup>93</sup> Market surveys conducted by the Commission Staff indicate a CLEC market share of 20% as of June 2002 compared to less than 8% in December 2000. The difference between SBC and the Staff results is largely attributable to what SBC estimates as the number of lines that the CLECs provide over their own facilities and what CLECs have actually reported to the Staff as presently occurring. Both SBC and the Staff results for CLEC lines provided via UNE-P, resale, or UNEs are very similar. Both reports indicate a significant increase in overall CLEC market coverage during the last 18 months. The FCC has indicated that “the most probative evidence that OSS functions are operationally ready is actual commercial usage.”<sup>94</sup>

### 3. BearingPoint’s Third-Party Test

As discussed earlier in this Report BearingPoint was retained by SBC in 2000 to conduct a third-party test of its OSS, interfaces, and processes as required by the Michigan Public Service Commission in its February 2000 order in Case No. U-12320. “Key business functions and transactions such as ordering, provisioning, billing, maintenance and repair, and account management were included in the scope of the review.”<sup>95</sup> The terms of its test plan were developed in collaborative sessions with BearingPoint, CLECs, Commission Staff, and SBC, resulting in a Master Test Plan submitted in Case No. U-12320 in August 2000. BearingPoint’s evaluation was organized into three test families: Performance Metrics Reporting, Processes and Procedures Reviews, and Transaction Verification and Validation. The evaluation of the latter two test families was largely completed at the time of BearingPoint’s October 30, 2002 report. Many ongoing tests continue in the area of Performance Metrics Reporting, which are discussed in greater detail elsewhere in this report. Of the 498 applicable evaluation criteria contained in BearingPoint’s Processes and Procedures Reviews and the Transaction Verification and Validation, 465 have been satisfied. Of the 25 criteria that have not been satisfied, only one relates to the Processes and Procedures Review. Eight other test criteria remain in an indeterminate status as of BearingPoint’s October 30, 2002 report. A number of the criteria BearingPoint has determined to be “not satisfied” are discussed separately below, including the 11 that relate specifically to the pre-order, order, and provisioning volume tests that BearingPoint conducted.

### 4. Performance Measurement Results

On October 21, 2002 SBC filed three months of performance results that it believed to be compliant with the Michigan Commission’s requirement specified in its February 2000 order in Case No. U-12320. The submission delineated more than 90 performance measures related to Checklist Item 2, 28 of which relate to the OSS portion of that checklist item and

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<sup>93</sup>SBC’s September 5, 2002 Request for Commission to Direct KPMG Consulting to Issue a Draft Final Report and to Schedule the Review Process of Such Report, p. 2.

<sup>94</sup>Bell Atlantic New York 271 Order, ¶89.

<sup>95</sup>BearingPoint’s October 30, 2002 OSS Evaluation Project Report, p. 9.

include sufficient volume and a standard against which performance may be judged.<sup>96</sup> The FCC has indicated that parity and benchmark standards do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. However, they can represent “informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.”<sup>97</sup> The FCC has indicated that if a measure does not indicate satisfactory results, it will examine the issue further and consider such things as the number of months a variation has existed and recent trends for the measure and whether the differences between retail and wholesale results have competitive significance in the marketplace. “Ultimately, the determination of whether a BOC’s performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.”<sup>98</sup>

#### D. Items in Controversy

##### 1. Completion of Third-Party Testing and Adoption of Compliance Proposals

###### a. SBC’s Position

In its September 5, 2002 filing, in spite of the fact that the BearingPoint third-party test has not yet been completed, SBC requested that it be “given the opportunity to demonstrate that it is providing nondiscriminatory access to its OSS consistent with the requirements of Section 271.”<sup>99</sup> In its opinion, the level of competition in Michigan offers the best evidence that its OSS operate successfully and support significant levels of volume. In SBC’s opinion, third-party test results are used by the FCC in the absence of commercial volume or when commercial volume is weak to support a BOC’s readiness to provide nondiscriminatory OSS. SBC believes it is its burden to prove that it now complies with the 14 point checklist. Similarly, it is the Commission’s responsibility to weigh the evidence to determine whether commercial activity, third-party tests, and performance measure results in their totality support a determination of nondiscriminatory access to OSS. In fact, it believes that the Master Test Plan itself contemplates that some exceptions and observations may remain open and that in the end it is the Commission’s call with respect to these open issues. It further proposed that the Commission adopt a compliance process for items the Commission believed required further enhancements or monitoring. SBC proposes a compliance plan for two operational concerns raised in BearingPoint’s testing: customer service record accuracy and directory listing accuracy. It also proposes internal plans for three other

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<sup>96</sup>SBC’s October 21, 2002 filing of Performance Results, Attachment B to the Affidavit of James D. Ehr.

<sup>97</sup>Georgia and Louisiana 271 Order, Appendix D, ¶8.

<sup>98</sup>Georgia and Louisiana 271 Order, Appendix D, ¶8.

<sup>99</sup>SBC’s September 5, 2002 Request for Commission to Direct KPMG Consulting to Issue a Draft Final Report and to Schedule the Review Process of Such Report, p. 44-45.

operational issues where it acknowledges that improvements could be made. Certain other exceptions SBC proposes continue to be addressed in normal retest. No compliance plan has been proposed for the metrics portion of the BearingPoint test because it requests that these tests continue to completion.

b. Other Parties' Positions

AT&T, WorldCom, and LDMI contend that before it is appropriate to commence a final review of SBC's compliance with the 14 point checklist, third-party testing by BearingPoint must continue until all components of the Master Test Plan have been successfully completed. In AT&T's opinion, it believes that the third-party testing "would serve to demonstrate what parts of the SBC OSS were adequate and, where they were not, the military-style (i.e., 'test until pass') testing would ensure that SBC implemented permanent, meaningful improvements to its systems and processes that it otherwise would not have."<sup>100</sup> AT&T, CLECA, and LDMI all request that the Commission end its review process and require SBC to pass the agreed-to tests prior to taking any further action. In addition, in the opinion of AT&T, TDS, WorldCom, and XO, compliance plans cannot be substituted for satisfaction of the requirements of the 14 point checklist. The CLECs unanimously indicate that the Performance Metrics Reporting portion of the test in particular indicates that SBC is wholly unprepared to demonstrate compliance with the requirements of the 14 point checklist. AT&T indicates that should the Commission determine that compliance plans should be pursued, the structure proposed by SBC is totally inadequate and must be changed. In addition, CLECs propose that the scope of any compliance plans be expanded to encompass many other operational matters identified by BearingPoint but as yet unresolved.

c. Discussion

The Commission has reviewed the supporting information submitted in this proceeding and, as discussed throughout this report, has determined that an analysis of SBC's compliance with the 14 point checklist requirements of Section 271 will proceed. Although the third-party testing results of BearingPoint are of considerable assistance to the Commission in reaching its determinations on these matters, it is not the sole basis on which its conclusions are reached even with regard to checklist item 2. It is the Commission's conclusion that it is now able to reach determinations regarding SBC's compliance with the 14 point checklist in spite of the fact that all aspects of BearingPoint's third-party test have not as yet been completed or, in some cases, have been completed without satisfactory results. As SBC has indicated, the Commission's judgments are based on the totality of the evidence that has been presented in this proceeding. BearingPoint's test results are one input, although a very large input, in reaching those conclusions. These third-party tests are also an input into the Commission's determinations that further actions will be required of SBC in the form of compliance and improvement plans, as identified below, to further improve performance in parts of its OSS operations. Certain portions of the test will also be

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<sup>100</sup>AT&T's November 15, 2002 Comments on SBC's Compliance Plan, Affidavit of Timothy M. Connolly, p. 7.

continued as discussed in an accompanying order issued today. Its Section 271 conclusions, however, will be reached at this point based on BearingPoint’s third-party test to date.

2. Timeliness of Pre-Order/Order Functions

a. SBC’s Position

SBC contends that its pre-order and order functions are provided in a timely and nondiscriminatory fashion. In its review of June, July, and August commercial performance measure results it indicates that in regard to pre-order inquiries it “met or exceeded the established benchmark in at least two out of the last three months for 36 out of the 38 categories with sufficient reported volume to permit analysis.”<sup>101</sup> In regard to order timeliness, SBC again maintains that Firm Order Confirmations, Service Order Rejections, and Service Order Confirmations were issued in a timely manner as well. In its October 30, 2002 Report, BearingPoint indicated that SBC had failed six test criteria related to timeliness of pre-order and order responses. Eighteen other tests regarding timeliness of pre-order and order responses were satisfied. The BearingPoint results for the six failed tests are as follows:

Test Reference	Evaluation Criteria	Test Results	Benchmark
TVV1-20	Provisioning Order Status Pre-order Queries (POSQ)	94.3% within 10 seconds excluding CC query type	95% less than or equal to 10 seconds
TVV1-22	Mechanized Rejects	96.1% within 1 hour	97% within 1 hour (PM 10.1)
TVV1-23	Electronic Non-Mechanized Reject Responses	90.5% within 5 hours	97% within 5 hours (PM 10.2)
TVV1-24	Manual Reject Responses	71.4% within 5 hours	97% within 5 hours (PM 10.3)
TVV1-26	Electronic Non-Mechanized Firm Order Confirmation Responses	83.3% timely  88.3% timely xDSL capable loop FOCs	95% within 5, 6, or 24 hours and 94% within 24 hours depending on product type (PM 5)  95% within 6 hours for xDSL Capable Loop FOCs

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<sup>101</sup>SBC’s October 21, 2002 filing on Performance Results, Affidavit of James D. Ehr, ¶44.



TVV1-28	Mechanized Completion Notices	95.5% within 1 business day	97% returned within 1 business day of Completion Date (PM 7.1)
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In its October 30, 2002 Compliance Plan Proposal, SBC proposes no further testing in regard to these six failed criteria. SBC indicates that in some cases its has met specified performance standards for commercial CLECs (TVV1-26 and TVV1-28) and in others the test activity would have passed a newly proposed benchmark that has been agreed to by CLECs (TVV1-22, TVV1-23, and TVV1-24). In the remaining case (TVV1-20), SBC indicates there is neither an established benchmark nor commercial CLEC activity for this pre-order inquiry. SBC indicates that its EDI interface returned 90.6% of POSQ responses within 10 seconds and its CORBA interface returned 98% of the POSQ responses within 10 seconds. It believes these times are sufficient to allow an efficient competitor a meaningful opportunity to compete, particularly considering the fact that POSQ is simply an optional supplement to the status notices that CLECs receive automatically.

b. Other Parties' Positions

AT&T opposes the fact that SBC has proposed to close the six not satisfied test criteria regarding pre-order and order timeliness without further action. First of all, it does not support closure of a BearingPoint exception based on a proposal to modify the performance standard in the 6-month review process. In AT&T's opinion, by the terms of the Master Test Plan, BearingPoint is required to test according to approved performance metrics, and therefore TVV1-22, TVV1-23, and TVV1-24 cannot be considered satisfied based on an unapproved performance standard. In regard to the TVV1-26 and TVV1-28 failures, AT&T indicates that SBC cannot rely on commercial results to satisfy BearingPoint tests, and all commercial results are not satisfactory in any case. AT&T refutes SBC's claim that the POSQ function is not utilized by CLECs and indicates that it is a necessary and useful tool to CLECs and one upon which poor performance should not be excused."<sup>102</sup> AT&T also objects to any attempt by SBC to consider two out of three months of performance measure results a satisfactory achievement of the Commission's requirements on metrics, as well as SBC's position that missing a benchmark by a small amount should be dismissed. Concerns about the methodology utilized to compute PM 2 (Percent Responses Received Within "X" Seconds - OSS Interfaces), the failures on FOC timeliness for local number portability (LNP), and the results for certain completion and reject measures were also raised by AT&T. XO objects to SBC's assertion that an overall 84% success rate for all submeasures for pre-ordering and ordering performance measures is satisfactory. WorldCom observes that SBC has failed to meet the requirement to deliver completion notices within one day of work completion for any of the three months submitted.

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<sup>102</sup>AT&T's November 15, 2002 Comments on SBC's Compliance Plan, Affidavit of Timothy M. Connolly, p. 31.

### c. Discussion

The Commission agrees that further testing is not needed and that SBC provides timely pre-order and order responses in a nondiscriminatory manner allowing an efficient CLEC an opportunity to compete. The Commission bases this determination on a number of considerations.

First, the Commission will now and in several cases below give strong weight to the degree of commercial activity present in this state. In particular, the growth in CLEC market share and CLEC lines during the last 18 months generally supports a position that an opportunity to compete is being provided.

Second, the results of commercial CLEC pre-ordering and ordering activity as represented in Performance Measures 2 (on pre-ordering activity), 5 (on Firm Order Confirmation or FOC timeliness), 7 and 7.1 (on mechanized completion notices), and 10-11.2 and 95 (on reject notices) has been strong during the June through August 2002 months reviewed.<sup>103</sup> In making its determinations, the Commission has also reviewed the performance measure results for September and October, which have become available since SBC's October 21, 2002 filing. The Commission is in agreement with AT&T, which suggests that the Commission has never indicated its adoption of SBC's proposal that meeting a benchmark of a performance measure two out of three months is "close enough."<sup>104</sup> On the other hand, the Commission does not believe that a uniform rule of compliance with every benchmark, every month without consideration of any other relevant information is appropriate either. A review of five months of performance data has enabled the Commission to reach its conclusions on a wide scope of information rather than being limited in any way to the two out of three approach that SBC proposes. The Commission has found that the benchmarks for many of the specified measures were indeed met in each of the three months included in SBC's submission. In some cases, where a benchmark was missed in June, July, or August, it was successfully met again in September and October (e.g., PM 5-03, 5-05, 7-01, and 11.1). In other cases, the amount by which the benchmark is missed is very small (e.g., PM 5-22, 10.1, and 10.2), or the volume for the particular disaggregation in question is small (e.g., PMs 5-12, and 5-16 on FOC timeliness for CIA Centrex and for UNE-P Complex Business lines). As discussed above, these are all considerations that the FCC has indicated are relevant. SBC's success in meeting the benchmark on PM 7-03 (timeliness of completion notices returned within one hour for combinations) has been spotty at best and involves a very high volume product. SBC failed to meet the benchmark in July, August, and September. The July miss in particular was significant (87% success vs. 97% benchmark). The Commission notes, however, that the misses in other months were much smaller (94.5%

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<sup>103</sup>The Commission also notes that after the issuance of a FOC, SBC must, in some cases, notify CLECs of a potential need for facilities modification that might require additional provisioning time. A number of PMs, CLEC WI 6, 7, 8 and 9, have been developed to address these facilities modifications issues. However, the volumes reflected in these measures are very low or non-existent for the months of June, July and August 2002. Volumes in excess of 10 were only reflected in 11 of the 63 disaggregations for the four measures, and all standards were met in 9 of these 11 cases.

<sup>104</sup>AT&T's November 5, 2002 Comments in Response to SBC's Filing of Performance Results, p. 6.

in September and 96.1% in August) and the benchmark was met and exceeded in October (98.3%). The Commission finds this trend to be positive. SBC has indicated that implementation of an approved exclusion for one measure will also affect the attainment of the benchmark (e.g., PM 7.1-04 ). Finally, the issue of the appropriate place at which to measure pre-order interface responses is addressed in greater detail in the following section. The Commission notes, however, the successful BearingPoint tests on many disaggregations of this performance measure (PM 2), where the business rule was implemented in a manner supported by many CLECs in this proceeding.<sup>105</sup> The Commission concludes that SBC's performance in regard to these metrics is satisfactory.

Third, BearingPoint's third-party test indicated success on numerous pre-order and order timeliness criteria and, in several cases specified in the chart above, failed criteria are by very small amounts (see test reference TVV1-20, 1-22, and 1-28 in particular).

Finally, in a number of instances SBC has indicated that new benchmarks have been agreed to by CLECs, although Commission approval has not yet been requested for these proposals. Application of the agreed to benchmarks would, in many cases, result in more satisfied test criteria. The Commission notes that BearingPoint was required to apply the approved performance measures with their related benchmarks in the tests it was conducting. The results of its tests are therefore correct. However, particularly when it has been agreed by both SBC and CLECs alike that benchmarks should in some cases be modified, it is unlikely that the Commission would reject such a joint proposal.

The Commission agrees that pre-order and order timeliness represent nondiscriminatory behavior on the part of SBC and that it is complying with this checklist item in that regard.

### 3. Pre-order/Order/Provisioning Volume Readiness

#### a. SBC's Position

In the spring of 2002, BearingPoint conducted a pre-order and order volume performance test in compliance with the provisions of the agreed-to Master Test Plan. According to the BearingPoint, "[t]he object of this test is to assess the performance of the interfaces and systems at calculated future volumes. The three interfaces evaluated were Electronic Data Interchange (EDI), Common Object Request Broker Architecture (CORBA), and Web Graphical User Interface (GUI)."<sup>106</sup> Both pre-order and order processes were evaluated in these tests, and test criteria included assessments of functionality, timeliness, and accuracy and completeness of responses received. In total, BearingPoint specified 44 evaluation criteria and determined that 25% of them (11 criteria) were not satisfied. Five of the 6 functionality criteria were satisfied, 21 of the 31 timeliness criteria were satisfied, and all 7 criteria regarding accuracy and completeness of responses received were satisfied. Of the 10 timeliness test criteria that were not satisfied, 9 related to pre-order transactions. SBC objected to BearingPoint's negative determinations regarding the volume tests. SBC believes that BearingPoint has improperly included protocol translation processing in the time

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<sup>105</sup>BearingPoint's October 30, 2002 OSS Evaluation Project Report, p. 1017-1020.

<sup>106</sup>BearingPoint's October 30, 2002 OSS Evaluation Project Report, p. 170.

intervals it compares to related performance measure benchmarks (PM 2), and according to SBC, this time is not included in the benchmarks for that measure. SBC also indicated that it had implemented a number of system enhancements during the course of the volume testing and that subsequent tests showed the positive effect of these enhancements. SBC believes that any remaining timeliness issues are not volume-related. It believes that BearingPoint has been unable to identify any choke points or capacity issues that the volume test is meant to identify.

SBC also addresses this issue in its October 30, 2002 Compliance Filing. Although it continues to opine that its current performance is satisfactory in this regard, it proposes an “internal improvement plan” on which it proposes to report quarterly progress.<sup>107</sup> The improvement plan is directed specifically toward improvement of EDI pre-order timeliness, although it notes a “significant shift and trend by CLECs to use the CORBA and Verigate interfaces, rather than the EDI interface for pre-order inquiries.”<sup>108</sup> According to SBC, it “has recently made a change to the configuration of its pre-order EDI translator software. Preliminary results show a decrease in translator processing time.” Additionally, SBC proposes that it “will upgrade the existing SBC commercial EDI translator to the most recent version of software in 2003” and that the new performance tuning recently completed would be carried over to the upgraded version as well. Finally, SBC indicates that a new version of EDI translator software to be released in late 2002 will be evaluated and implementation of that software would be considered depending on the evaluation between the vendor and SBC.<sup>109</sup>

#### b. Other Parties’ Positions

AT&T and WorldCom agree with BearingPoint that SBC is not complying with the business rule of PM 2 in its placement of a timestamp for purposes of determining the timeliness of pre-order responses. AT&T also questions SBC’s proposed improvement plan because “it cannot be determined that the decreased translator processing time (first step) has been placed into production; the 2003 upgrade (second step) is not explained as being compatible with all other software within the translator configuration and lastly, . . . cannot determine whether SBC even has ordered the software upgrade it promises in the third step of this “internal improvement plan.”<sup>110</sup>

#### c. Discussion

According to the FCC, the Commission must assess evidence of commercial readiness to determine whether the BOC’s OSS is able to handle current and projected demand. A third-party volume test is among the types of evidence that the Commission will

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<sup>107</sup>SBC’s October 30, 2002 Compliance Plan Proposal, p. 9.

<sup>108</sup>SBC’s October 30, 2002 Compliance Plan Proposal, p. 11.

<sup>109</sup>SBC’s October 30, 2002 Compliance Plan Proposal, p. 11.

<sup>110</sup>AT&T’s November 15, 2002 Comments on SBC’s Compliance Plan, Affidavit of Timothy M. Connolly, p. 34.

consider. The Commission has reviewed the results of BearingPoint's volume test as summarized in its October 30, 2002 OSS Evaluation Project Report. It has also reviewed information provided by SBC in formal response to the exceptions BearingPoint issued in relationship to its volume tests, as well as input from CLECs submitted in response to a number of questions that were posed by the Staff to SBC, BearingPoint, and CLECs relative to the volume tests. The Commission will assess three things: 1) whether the benchmarks utilized by BearingPoint in its pre-order timeliness tests are the appropriate benchmarks; 2) whether timeliness deficiencies identified by BearingPoint appear to be related to the high volume utilized in the test; and 3) whether and how any identified timing issues should be addressed.

As discussed above, BearingPoint is required to utilize the performance measures approved by this Commission in its third-party test analysis. The Commission believes that in the case of Performance Measure 2 that BearingPoint has done so. In reviewing the history of the pre-order timeliness metrics as SBC has presented it in its responses to BearingPoint's exceptions 112 and 113, it does not appear that the issue of timing for the protocol translation function was ever specifically addressed in the course of industry discussions in this region. If SBC is correct that the SWBT performance measures proposed and later adopted in part in the SBC region assumed that pre-order timeliness measures were to be time stamped after protocol translation had occurred, there is no evidence that this was discussed or clarified in any discussions in the SBC region. The Commission believes that it would have been appropriate for SBC to raise this issue if it had wanted a change, because it specifically differed from the manner in which protocol conversion had been treated in previous SBC performance measures adopted for the State of Michigan. The metrics adopted for Michigan in 1999 predate the history provided by SBC in its exception responses. However, at the time the Commission adopted SBC's original performance metrics, SBC had proposed that additional time be included in the pre-order timeliness measures to reflect what later came to be referred to as protocol translation functions. The Commission rejected that proposal and rejected a proposal by SBC to reconsider that decision.<sup>111</sup> If the newly proposed SWBT measures were to be taken after the protocol translation occurred, this change should have been noted. Absent such a discussion it is reasonable to assume that a change did not occur and that proposed benchmarks continued to incorporate the protocol translation function.

However, that having been said, the Commission does agree that the history presented indicates that there have been changes in the manner in which the protocol translation function is provided through interfaces being utilized today that warrant a re-examination of this issue. Indeed, the information presented in this proceeding indicates that there has been considerable discussion regarding this issue in the ongoing six-month review discussions between SBC, the Staff, and CLECs and that the dispute appears to concentrate on the length of time that should be allotted to the protocol translation function rather than on whether a time should be permitted at all. Should agreement on this issue not be reached, dispute resolution should be sought with the specifics of each party's position presented in a timely manner.

Secondly, in reviewing the information on the volume exceptions, the Commission concludes that the pre-order timeliness issues that were identified by BearingPoint do not

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<sup>111</sup>May 27, 1999 and September 3, 1999 Commission Orders in Case No. U-11830.

appear to be related to volume. That is, the data do not appear to represent that choke points or capacity issues have been identified that relate solely to the fact that volumes in excess of the normal expected volume were utilized in these tests. In comparing CORBA timeliness in normal and volume situations, almost no change in SBC's ability to meet benchmarks was noted. In regard to EDI pre-orders, the decrease in ability to meet benchmarks averaged less than 5%.<sup>112</sup> The Commission does not believe that this could be classified as significant or indicative of a capacity or choke point issue. The Commission concludes that to the extent that timeliness issues were identified, they are issues that exist in times of normal and increased volumes as well.

Finally, upon review of the submitted information the Commission agrees that alternatives to improve EDI pre-order timeliness should nevertheless be pursued by SBC. In some cases, even the allowance for protocol conversion, as SBC has proposed, would not have permitted compliance with the benchmark standards. In an order issued today, the specifics of those requirements for improvement are delineated.

The Commission, however, has concluded that notwithstanding the consideration of opportunities for improvement in pre-order processing, SBC complies with the requirements of nondiscriminatory access to these network elements. Notwithstanding BearingPoint's dispute with SBC regarding the appropriate place to apply timestamps for pre-order functions, SBC passed 25 of the 27 pre-order timeliness tests administered by BearingPoint in its test CLEC transaction testing.<sup>113</sup> In volume testing, SBC satisfied 6 of 8 pre-order timeliness test criteria for CORBA pre-orders, 7 of 9 for GUI pre-orders, and 5 of 9 for EDI pre-orders. The two failed test criteria related to CORBA pre-orders occurred in the original "normal day" test by BearingPoint. SBC satisfied the test criteria in a repeat of the normal day testing and in the peak day testing for those pre-order functions. SBC notes that there is a significant increase in the use of the CORBA interface for pre-order processing, although the EDI interface continues to have significant usage as well.<sup>114</sup> Review of commercial CLEC performance measure results also consistently show compliance with the vast majority of disaggregations for pre-order timeliness. The Commission concludes that the evidence supports a conclusion of commercial readiness of SBC's pre-order and order processes in volume situations.

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<sup>112</sup>Comparisons were based on Normal Day 1 Retest and Peak Day Retest 2 information contained in Tables 2-3 through 2-11 and 2-23 through 2-30. Normal Day testing information was not available for GUI pre-orders, and therefore comparisons were not made.

<sup>113</sup>Table A1 of BearingPoint's October 30, 2002 OSS Evaluation Project Report, p. 1017-1020.

<sup>114</sup>SBC's October 30, 2002 Compliance Plan Proposal, p. 11, and SBC responses to Exception 112.

#### 4. Flow-Through

##### a. SBC's Position

“Flow-through describes CLEC orders that pass through SBC’s ordering interface, and into SBC’s ‘back office’ or ‘legacy’ provisioning systems, without a need for manual intervention.”<sup>115</sup> SBC indicates that for the year through July 2002, it flowed through 94.3% of all Michigan CLEC orders eligible for flow-through.<sup>116</sup> In total, it indicates a flow-through rate of 79.2% for its UNE-P, Resale, LNP, and UNE-Loops commercial orders received between July 2001 and July 2002.<sup>117</sup> The three months of performance data submitted by SBC on October 21, 2002 indicate that SBC has not met the benchmarks for any of the flow-through measure disaggregations in June, July, or August.<sup>118</sup> SBC indicates, however, that “the rates for flow-through have been superior to those found adequate in past applications under Section 271, and more importantly the end results—timely order status notices, and timely and reliable provisioning work—show that the overall process is functioning well.”<sup>119</sup>

##### b. Other Parties' Positions

WorldCom and AT&T observe that SBC has failed to meet its flow-through benchmarks for June, July, and August for any of the disaggregations included in PM 13, the flow-through measure. In addition, WorldCom objects to the fact that PM 13.1, which addresses total flow-through rather than only the orders designed to flow-through, is not a remedied measure. In WorldCom’s opinion, this is the more critical measure to CLECs and SBC’s rate of flow-through, which was in general less than 80% during the June, July, and August timeframe, was totally insufficient.

##### c. Discussion

The Commission has reviewed the available information regarding order flow-through. The BearingPoint test criteria in this area were satisfied. Nevertheless, SBC has not met its benchmarks for flow-through during the three months relied upon in its application.

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<sup>115</sup>SBC’s October 21, 2002 filing of Performance Results, Affidavit of James D. Ehr, ¶59.

<sup>116</sup>SBC’s September 5, 2002 Request for KPMG Draft Final Report, p. 22, as updated at the collaborative meetings on October 15, 2002. Transcript, Case No. U-12320, p. 5047.

<sup>117</sup>October 15, 2002 transcript, Case No. U-12320, p. 5048.

<sup>118</sup>SBC’s October 21, 2002 filing of Performance Results, Attachment A, Performance Measure 13-01 through 13-06.

<sup>119</sup>SBC’s October 21, 2002 filing of Performance Results, Affidavit of James D. Ehr, ¶62.

Although there are six disaggregations for PM 13, more than 99% of the volume in the June through October timeframe was included in three of the six disaggregations: UNE loops, resale, and UNE-P. UNE-P alone comprised nearly 92% of the total flow-through orders measured during that timeframe. This measure is a parity measure. The parity or retail comparison for UNE-P has averaged around 98% during the examined five months of data, and UNE-P flow-through failed to meet this benchmark in all five months. However, the flow-through rate for these five months fell between 95.2% and 98%. Similarly, flow-through rates for UNE loops were less than 0.5% lower than the retail comparison in four of the five months reviewed, and line share flow-through and LNP flow-through rates have approximated 95% in most months as well in spite of the low volume in these disaggregations. Resale flow-through rates are of greater concern. The resale flow-through rate was less than 80% in two months, less than 90% in four months, and only in October did the rate approximate the retail comparison. Although the volume of resale orders is very low compared to UNE-P orders, the Commission is still concerned about the results of flow-through for resale orders and will continue to closely monitor these results. Nevertheless, since flow-through of UNE-P orders exceeds 95%, albeit short of the parity benchmark, the Commission finds SBC's overall performance in this area acceptable for Section 271 purposes, particularly considering its success on other order status and provisioning measures, which the FCC has indicated are of greater significance than the interim flow-through results.<sup>120</sup>

In regard to WorldCom's concern about SBC's total flow-through rate, the Commission finds SBC's present total flow-through rate to be acceptable and agrees with the FCC that the more important of the two flow-through measures is the one just discussed, which measures the portion of orders designed to flow-through that do indeed flow-through. The Commission, however, continues to urge SBC and the CLECs to work together in the change management process to continue progress in assuring that an increasing number of types of orders be designed to flow-through because this offers the best opportunity for timely and accurate processing of CLEC orders.

## 5. Other Pre-Order and Order Issues

### a. SBC's Position

BearingPoint has completed three transaction tests in the area of pre-ordering and ordering: the pre-order and order functional evaluation, the volume performance evaluation, and the order flow-through evaluation. It also performed two process tests: the pre-order and order work center evaluation and the manual order process evaluation. Of the 105 total evaluation criteria for this domain, 18 were not satisfied and 16 of these have been addressed above. The two remaining relate to functionality required to process ISDN-PRI and resale private line orders and completeness of firm order confirmation notices. Four observations are involved.<sup>121</sup> SBC indicates that all related fixes have been made and are in retest. It believes all observations will be satisfied in retest and that results in any case are not material

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<sup>120</sup>New York 271 Order, ¶162.

<sup>121</sup>Observations 242, 246, 588, and 682.



to checklist compliance. SBC does not believe that the test results of LSOG 4 should be discarded due to the release of LSOG 5 because it believes that the differences between the two versions are not significant and does not constitute a replacement of the earlier interface. In addition, it indicates that the backend systems that actually process transactions were not modified by the implementation of LSOG 5; only the interface was modified.

b. Other Parties' Positions

AT&T and WorldCom suggest that because the EDI interface tested by BearingPoint (LSOG 4) is to be retired in June 2003, it only makes sense that further testing occur on the LSOG 5 interface, which was deployed in April 2002.

c. Discussion

The Commission notes that all four observations related to processing functionality and FOC notices successfully closed in December 2002. The related test criteria have therefore been satisfied. In regard to the issue of LSOG 5 testing, the Commission does not believe that the test results of the LSOG 4 EDI interface, an interface which continues to be utilized by many CLECs, should be deemed irrelevant because it will be phased out in 2003. First of all, certain retesting has occurred using the newly implemented LSOG 5 GUI since the earlier GUI was immediately eliminated in April 2002. Test results on both GUIs therefore contributed to BearingPoint's test results. In regard to the EDI interface, given the duration of the third-party test, it is inevitable that new interfaces have been and will continue to be deployed. Continually testing the newest release could result in a nonsensical, never-ending third-party test. The third-party test is but one of the inputs into a determination of compliant OSS systems. The changes between LSOG 4 and 5 have been characterized by SBC as not significant. The changes were certainly not as extensive as SBC's upgrade from LSOG 1 Issue 7 to the LSOG 4 interface which BearingPoint has tested extensively. Test results of LSOG 4 are therefore important to consider as input into the Commission's determinations and need not be discarded.

6. Accuracy of Directory Listing Updates and Customer Service Record Updates

a. SBC's Position

BearingPoint's provisioning tests included two procedures tests on provisioning processes and on collocation and network design verification and validation. It also included one transaction test covering twelve different processes.<sup>122</sup> Of the 84 evaluation criteria in the provisioning domain, SBC failed two—one related to the accuracy of customer service

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<sup>122</sup>The twelve tested processes were directory listing, switch translations, coordinated UNE loop migrations with LNP, stand-alone LNP activation, ADSL line sharing, xDSL provisioning, IOF/DS1/DS3 provisioning, EEL provisioning, disconnect orders, service order completion, customer service record verification, and loss of line report verification. The proposed test of unbundled dark fiber provisioning was not completed due to lack of commercial activity for this product.

records (CSRs) and the other related to the accuracy of directory listings.<sup>123</sup> SBC proposes that further BearingPoint testing cease and that a compliance plan be put into effect for both issues. Its CSR compliance plan will focus on service representative training. Its directory listing plan proposes both system modifications and service representative training.

b. Other Parties' Positions

As discussed above, many CLECs propose that the adoption of any compliance plan be implemented through a collaborative process with an opportunity for review, input, and ongoing monitoring for all interested parties. AT&T identifies specific deficiencies that it proposes the Commission address before going forward with any plan to address these deficiencies.

c. Discussion

SBC has shown improvement in both CSR and directory listing accuracy during the several tests conducted by BearingPoint. CSR deficiencies have decreased from 12% in the initial test to 8% in BearingPoint's final test. Similarly, directory listing deficiencies have declined as well. Nevertheless, the tests still indicate that the 95% benchmark has not been met with 92% success for CSRs and 91.2% for directory listings. As discussed in an accompanying order issued today, SBC must implement compliance plans on both of these issues pursuant to the details specified in that order. However, the Commission does not believe that the amount by which the benchmark has been missed is of a level of significance to indicate discriminatory behavior on the part of SBC and failure of an opportunity to provide CLECs a reasonable opportunity to compete. Further monitoring of these issues will be required to help assure improvement.

7. Line Loss Notifications

a. SBC's Position

In its December 20, 2001 Order in Case No. U-12320 regarding compliance with checklist items, this Commission noted issues related to CLEC notification of line loss by SBC. The Commission indicated "this problem has a grave potential effect on competition for local exchange service and is one of the most serious of the problems raised in this case."<sup>124</sup> In addressing two satisfactorily closed exceptions in BearingPoint's testing on line loss notifications (LLN), SBC indicated that "the process improvements implemented by SBC during the period of the OSS evaluation have had the intended result, i.e., a reliable process for delivery of line loss notifications to CLECs."<sup>125</sup> Since December 2001, SBC has

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<sup>123</sup>BearingPoint's final disposition report on CSRs indicated final test results of 92% for CSR accuracy and 91.2% accuracy for directory listing information.

<sup>124</sup>Order, p. 6.

<sup>125</sup>SBC's October 30, 2002 Compliance Plan Proposal, p. 9.

also responded on numerous occasions to filings by Z-Tel and WorldCom, which have raised issues in regard to line loss notification processes. SBC indicates it has resolved these issues. In its most recent filing on this subject it indicates that “[s]ince the Commission issued its Order last year, SBC has worked with CLECs and Staff to improve the LLN process to achieve acceptable levels of LLN performance.”<sup>126</sup> BearingPoint test criteria on line loss notifications have been satisfied. Commercial performance measure data for June, July, and August 2002 indicate that SBC has met its benchmark for line loss notifiers on LNP and UNE-P for two of the three months submitted and has not been successful in meeting the benchmark for line loss notifiers in any of the three submitted months for resale. SBC indicates that modifications to the current line loss notifier performance measure have been agreed to by SBC and many CLECs in the 6 month review process and that an additional metric, which will measure average delay days for line loss notices that miss the one business day benchmark, will also be proposed. In its October 2002 Compliance Proposal, SBC has proposed a plan for improvement in the procedures used to notify CLECs of any future interruption of the line loss notification process. SBC proposes to utilize accessible letters and direct CLEC contact to provide immediate notice of line loss issues should they arise.<sup>127</sup>

b. Other Parties’ Positions

Z-Tel and WorldCom have raised issues to this Commission regarding line loss notifications since June 2001. Most recently, in an October 7, 2002 filing, WorldCom indicated that some issues were ongoing. Further information regarding recent line loss issues was also included in WorldCom’s and AT&T’s November 15, 2002 filings regarding BearingPoint’s test. At the November 25, 2002 hearing before the Commission, Z-Tel, WorldCom, AT&T, and Talk America again raised concerns regarding ongoing line loss issues. In November 5, 2002 filings in response to SBC’s three months of performance data, both AT&T and WorldCom note the failures on PM MI 13, the metric which measures the timely generation of line loss notifiers, and Z-Tel reiterates the impact these issues have in regard to Section 271 compliance. WorldCom further notes that this measure is not a remedied measure. AT&T finds SBC’s proposed improvement plan incomplete and inadequate to address the ongoing line loss issues. It proposes that the many unanswered questions in SBC’s proposal be clarified and specified if any chance for improvement is to occur.

c. Discussion

The Commission continues to find that the submission of timely line loss notifiers to CLECs is a matter of critical importance and, in spite of SBC’s recent indication that the line loss issues are not of significance to Section 271 compliance, this Commission believes that the ability to provide satisfactory notifiers does indeed affect compliance with Checklist Item 2 regarding nondiscriminatory access to unbundled network elements. As the Commission indicated in its December 2001 order, lack of timely notification to CLECs of

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<sup>126</sup>SBC’s October 24, 2002 Response to WorldCom’s Update on the Line Loss Notification Issue, p. 9.

<sup>127</sup>SBC’s October 30, 2002 Compliance Plan Proposal, p. 10.

line loss directly affects their ability to correctly bill end-user customers. As was indicated in its order, “Billing for services after they have been cancelled violates Section 502(1) of the Michigan Telecommunications Act, MCL 480.2502(1)(c), and may have serious negative effects on the reputations of both competitive providers.”<sup>128</sup>

SBC has satisfied the BearingPoint test criteria on line loss notifications.<sup>129</sup> Tests were repeated before BearingPoint’s criteria were satisfied. Performance metric results for line loss notifications in PM MI 13 indicate that benchmarks are not met uniformly. However, the trends are positive for the resale and LNP disaggregations. The UNE-P disaggregation includes approximately 95% of the volume for line loss notifiers. According to SBC’s performance metric results, line loss notifiers for the UNE-P disaggregation have been timely generated in more than 91% of the cases during the period of June through October and proposals are being discussed in the 6-month review process to amend the one hour benchmark, against which these metrics are judged, to a 24-hour window. Issues have continued to arise in this area, however, as is evidenced by the number of filings submitted by CLECs during the last year. On the other hand, SBC has become extremely proactive in trying to immediately address line loss issues. A number of system changes have been implemented to address problems that were identified. A cross-functional team was established nearly a year ago to “analyze the line loss notification process on a continuous basis to ensure loss notifications are correct, complete, and that any defects noted in the process are corrected.”<sup>130</sup> Billing reconciliation and training have occurred.<sup>131</sup> And most recently, SBC proposed to address one of the remaining troubling issues, more timely and informative notice to CLECs when issues do arise.<sup>132</sup> The Commission does not believe that enough experience has been garnered to assume that a trouble free environment will now exist in this area. Nor does the Commission believe, however, that critical issues remain unaddressed at this time. In an order issued today, the Commission has adopted additional measures in the area of line loss notifications that will incent SBC to continue to provide stable and improved line loss processes. These measures include the adoption of SBC’s proposed notification procedure to CLECs and further reporting requirements in regard to this issue. At this time, the Commission concludes that SBC has met its line loss obligations in regard to Section 271 checklist requirements.

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<sup>128</sup>December 20, 2001 Order in Case No. U-12320, p. 6.

<sup>129</sup>BearingPoint’s October 30, 2002 OSS Evaluation Project Report, pp. 936-937.

<sup>130</sup>SBC’s July 2, 2002 Final Report on the Line Loss Notification Issue, p. 4.

<sup>131</sup>SBC’s July 2, 2002 Final Report on the Line Loss Notification Issue, p. 6.

<sup>132</sup>In its October 30, 2002 Compliance Proposal, SBC has committed to the use of accessible letters and direct CLEC contact if and when further line loss issues arise so that CLECs may be informed of problems in an immediate timeframe.

## 8. Accuracy of Trouble Closure Reports

### a. SBC's Position

BearingPoint completed three transaction tests and three process and procedures tests in the area of maintenance and repair (M&R). BearingPoint performed a functional evaluation on SBC's M&R interfaces, performed a volume test on the M&R interface existing in December 2001, and evaluated through transaction tests its end-to-end report processing. In addition, evaluations were completed on the end-to-end M&R processes, the M&R work center support processes, and the network surveillance support, including network outage notification procedures. Of the 76 evaluation criteria utilized by BearingPoint in these tests, three were not satisfied.<sup>133</sup> Two of the three evaluation criteria not satisfied relate to accuracy of close out codes used to define trouble conditions. BearingPoint's November 21, 2002 testing results for Michigan indicate an accuracy rate for trouble coding of 84.8% for UNEs and 82.1% for specials. SBC emphasizes that these test criteria "do not relate to the speed or accuracy of maintenance work itself"—tests that were satisfactorily completed for resale, UNEs, and specials.<sup>134</sup> Rather, close out codes are used for billing and performance measure reporting purposes. SBC indicates that the same technicians handle both wholesale and retail trouble reports. In addition, it indicates that it initiated several initiatives to improve coding of trouble reports since BearingPoint's tests were performed in Michigan. SBC indicates tests in other states were performed after these initiatives were undertaken and that test results in other states showed significant improvement.

Nevertheless, SBC proposes an improvement plan to further address issues in this regard. These involve awareness sessions and quality reviews in each of the four operational work functions involved in trouble ticket closures and coding.

### b. Other Parties' Positions

AT&T emphasizes the negative results of inaccurate close-out coding. AT&T indicates that not only could improper coding result in improper exclusions for reported performance, but since closure codes are used as the basis to bill CLECs for dispatched technicians, inappropriate billing of CLECs could occur as well. Finally, AT&T highlights a finding of BearingPoint indicating that inaccurate close out coding could ultimately affect business decisions for both the ILEC and the CLEC. AT&T finds that SBC's proposed improvement is once again incomplete and insufficient.

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<sup>133</sup>Although BearingPoint's October 30, 2002 Report indicates that four criteria were not satisfied, continued testing permitted positive determinations to be made in regard to Test Reference TVV7-7, accuracy of end-to-end resale closeout trouble codes.

<sup>134</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 52.

c. Discussion

The Commission agrees with AT&T that the negative effect of inaccurate close out coding can negatively effect a number of crucial areas: posted performance results, billing of CLECs, and business decisions of ILECs and CLECs alike. Repeated tests have resulted in improved performance on the part of SBC, and the Commission notes that testing in the other four states has indeed exceeded the Michigan test results performed at an earlier date.<sup>135</sup> Nevertheless, SBC chose not to complete further testing in Michigan. The Commission notes that no performance measure exists for accuracy of trouble close out coding on which actual CLEC results may be reviewed. BearingPoint utilized its own benchmark of 95% accuracy to evaluate SBC's test results in this area. In an order issued today, the Commission adopts a compliance plan to help assure improvement in this area. However, in spite of these test results, the Commission finds that since results of performance in this area are at parity with retail coding and since SBC completed successful testing on the more important accuracy and timeliness of trouble repair itself a positive determination in regard to M&R nondiscrimination is warranted.

9. Other Maintenance & Repair Issues

a. SBC's Position

The sole remaining BearingPoint exception regarding M&R testing was issued during the volume test of the M&R interface and indicated that trouble ticket response times declined from those experienced during normal volume situations. SBC notes, however, that BearingPoint observed that response times were still similar to those delivered by other service providers in both wholesale and retail settings and therefore SBC proposed that this exception should not affect overall checklist compliance. SBC also indicated that it has met 95.4% of the M&R performance measures for two of the three months submitted for review. In response to CLEC comments that M&R volume tests by BearingPoint should be repeated because they were performed on an earlier version of SBC's M&R interface, it indicates that the volume tests are relevant to the new interface as well because BearingPoint has retested 75% of the interface functionality on the new interface and that "now almost one year after deployment, the EBTA system is utilizing only 20% of its current processing capacity to handle peak commercial volumes."<sup>136</sup>

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<sup>135</sup>UNE close out coding in Michigan was 84.8% accurate, compared to 93.5% - 94.9% success in the other four states. Close out coding for specials in Michigan was 82.1% accurate, compared to 87.5% - 94.7% accurate in the other four states.

<sup>136</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 57. EBTA is SBC's M&R interface. The volume test was performed on the GUI version of this interface.

b. Other Parties' Positions

AT&T objected to the closure of BearingPoint's M&R exception issued during the volume test. It does not believe that BearingPoint has supported its assertion that the results of SBC's test are similar to transaction timeliness delivered by other local service providers. Nor has it explained the cause of the difference between normal day and volume day timeliness in SBC's test. AT&T also suggests that the M&R volume tests be reiterated with SBC's April 2002 GUI.

c. Discussion

In regard to the M&R volume test failure, BearingPoint notes that its methodology presents a comparison between normal day timeliness and peak day volume condition timeliness. On this basis, it observed a "material degradation from the benchmark that was established."<sup>137</sup> However, it further notes that "even with the observed degradation, the observed 'peak day' MLT [Mechanized Loop Test] timeliness is similar to MLT transaction timeliness delivered by the other local service providers in both wholesale and retail settings. In general, MLT timeliness of 45 to 60 seconds is routinely observed in the industry."<sup>138</sup> The Commission concludes that these results are satisfactory. Further, in regard to the volume testing of the earlier M&R interface in November 2001, BearingPoint notes that the system evaluated in its volume test has been decommissioned and replaced with a new system that supports all 13 SBC states.<sup>139</sup> BearingPoint performed a functional comparison of the two systems. It noted that it did not disagree with SBC's assertion that the two systems are logically the same but physically different. It also noted some functional differences between the two systems. BearingPoint also noted that it was not practical to stage a volume test at the time of the system transition from the two versions of M&R interface because of the number of months over which the transition was to be staged and the fact that the projected test end date at that time was before the new M&R system was to be fully implemented.<sup>140</sup> Given the impracticality of further volume testing, SBC's assertion that, at this time, the new M&R system is utilizing only 20% of its current processing capacity to handle peak commercial volumes and the lack of evidence to the contrary, the Commission believes that SBC's M&R systems may be considered adequate under present and forecast volume loads.

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<sup>137</sup>BearingPoint's October 30, 2002 OSS Evaluation Project Report, p. 956.

<sup>138</sup>BearingPoint's October 30, 2002 OSS Evaluation Project Report, p. 956.

<sup>139</sup>BearingPoint's October 30, 2002 OSS Evaluation Project Report, p. 942.

<sup>140</sup>Transcript from October 17, 2002, Vol. 42, pp. 5646-5648.

## 10. CABS Billing Issues

### a. SBC's Position

BearingPoint performed two transaction billing tests (on functional usage and carrier bill evaluation) and four process and procedure tests (on the billing center and help desk, usage file returns, usage production and distribution, and bill production and distribution). Of the 93 evaluation criteria, SBC failed one test criteria in regard to the bill production and distribution process. Specifically, SBC's process for validating CABS bills was considered deficient. No improvement or compliance plan has been proposed by SBC because it proposes to continue the retest successfully.

### b. Other Parties' Positions

AT&T believes that SBC has diminished the scope of the deficiencies that BearingPoint has identified in the failed test criteria. It believes that all identified deficiencies must be addressed before this test criteria can be considered satisfied.

### c. Discussion

SBC has agreed to resolve the issues that BearingPoint has identified in regard to its CABS billing deficiencies. The Commission finds that this is the appropriate action to pursue and will continue to monitor SBC's performance.

## 11. Other Billing Issues

### a. SBC's Position

SBC indicates that it complied with its billing timeliness and daily usage feed timeliness by more than 99% in the three months of data submitted. The accuracy of its bills has also complied with performance standards as well. SBC indicates that although it has not met its billing completeness performance standard in the three months presented (PM 17), its performance still exceeded 84% and that changes in the business rule have been preliminarily accepted by CLECs in the six-month review collaborative, which would permit a longer period of time in which to expect billings. In any case, it indicates that the result of missing the standard is merely to delay the time that SBC may expect payment that it is due. SBC indicates that issues raised by Z-Tel and XO in regard to billing auditability are business-to-business issues, which should be handled directly with SBC and do not affect the performance results they purport to address.

### b. Other Parties' Positions

AT&T objects to SBC's dismissal of poor performance on PM 17. It indicates that late billing also increases accounting costs for CLECs and requires improvement. AT&T also objects to lack of certain billing tests by BearingPoint. Specifically it believes that BearingPoint should have observed a new billing process implemented by SBC on October 6,



2002 through the bills of a cooperating CLEC because the pseudo-CLEC did not utilize this process in its own billing operations. It also sought to have BearingPoint perform end-to-end billing tests “including the processing of the wholesale bills for ledgering in a CLEC bill processing and accounting system,” and believes that the lack of such a test leaves a significant gap in the Commission’s ability to determine nondiscriminatory access to billing.<sup>141</sup> Similarly, Z-Tel indicates that SBC’s bills are “essentially impossible to accurately audit and/or reconcile.”<sup>142</sup> XO is in agreement with that position. Z-Tel indicates that even when issues are identified, SBC’s billing dispute process is excessively difficult to navigate and is unacceptable.

c. Discussion

In regard to the results of SBC’s performance on its billing measures, the Commission finds its performance to be acceptable. In making these determinations, the Commission has reviewed the results of PMs 14-19 in which all benchmarks were met for each of the three months of data submitted with the exception of PM 17. The Commission notes again issues as delineated by E&Y regarding the reliability of the data reported in PM 14 and 19 regarding billing accuracy and daily usage feed (DUF) timeliness. However, the Commission also notes that BearingPoint completed a successful test in regard to all four disaggregations for these performance measures lending support for these issues. In regard to PM 17, the Commission notes the recent September and October results which, although still not at parity levels, represent a considerable increase in its level of performance to 97% in September and 92% in October. The Commission also notes the ongoing discussions regarding the interpretation of the business rule for this measure, and overall believes that the results of the billing measures are not indicative of discriminatory behavior. In regard to the issue of auditability of bills, which was an issue raised by several CLECs in this proceeding, the Commission does not find that these problems indicate discriminatory behavior by SBC per se, nor does the Commission believe that an end-to-end billing audit should be undertaken by BearingPoint. Nevertheless, in an order issued today, SBC will be required to submit a compliance plan to address this issue.

12. Change Management and Joint Testing Issues

a. SBC’s Position

BearingPoint performed five process and procedures tests in its so-called relationship management domain. These included evaluations of SBC’s change management processes, account establishment and management processes, help desk administration, CLEC training and interface development. SBC was evaluated positively on all 131 test criteria. The only change management performance measure, PM M1 15, did not include volumes sufficient to

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<sup>141</sup>AT&T’s November 15, 2002 Comments on SBC’s Compliance Plan, Affidavit of Timothy M. Connolly, p. 52.

<sup>142</sup>Z-Tel’s November 5, 2002 Comments With Respect to the Ernst and Young Report and SBC’s filing of Performance Results, p. 6.

reach conclusions on SBC's operations in any of the reported months. SBC objects to CLEC proposals that the Joint Testing Environment addressed by BearingPoint be expanded to test versions now in use. It believes, instead, that BearingPoint's test criteria was meant to focus on processes and procedures to ensure that "the testing environment for interfaces is updated to reflect changes in production versions on an ongoing basis" rather than testing any particular version of interface.<sup>143</sup> In SBC's opinion, therefore, the fact that these tests were passed is far more significant than the testing of any particular version in concern. SBC also references BearingPoint's test of timely notices of business rule updates. Satisfaction of these test criteria in SBC's opinion provides "compelling evidence that SBC is consistently communicating business rule changes to competing carriers."<sup>144</sup> Finally, SBC highlights its positive performance on BearingPoint tests relating to change management processes. It believes that BearingPoint's tests were exhaustive in this area and show that its change management practices are fully supportive of a competitive environment.

#### b. Other Parties' Positions

AT&T believes that BearingPoint's tests of both the joint testing environment and change management processes were incomplete and deficient. It believes that Hewlett Packard reported only on defects in the information submitted to it during joint testing. According to AT&T, Hewlett Packard failed to report on the more important issue of "incessant delays" SBC causes in the joint testing environment. In AT&T's opinion, this makes it impossible for the Commission to make positive findings regarding SBC's joint testing environment as required by the FCC. Issues in regard to change management processes are more serious, according to AT&T, and once again, due to the limited scope of BearingPoint's tests, these deficiencies could not have been identified. AT&T cites several examples of failures by SBC to follow its change management procedures, including timeframes and documentation related to its LSOG 4 and LSOG 5 migrations and specific problems it has encountered regarding "Working Service in Conflict" processes, failure to properly implement the capability to support multiple operating company numbers, and blocked voicemail orders due to unexplained errors. AT&T believes that this extensive experience documents the fact that "SBC has not deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and is not adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."<sup>145</sup>

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<sup>143</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 68.

<sup>144</sup>SBC's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, p. 69.

<sup>145</sup>AT&T's November 15, 2002 Comments on BearingPoint's October 30, 2002 OSS Evaluation Report, Affidavit of Walter W. Willard and Rebecca V. Webber, p. 38.

### c. Discussion

In regard to joint testing and change management processes, the Commission will rely on the test conclusions of BearingPoint. The Commission acknowledges the issues raised by AT&T. In an order issued today, the Commission will require that SBC propose a more comprehensive means for inclusion of items in the exceptions portion of its change management processes. However, the Commission does not believe that these issues warrant negative determinations regarding these Section 271 requirements. SBC's change management process complies with Section 271 requirements and SBC complies with the terms of that process. On joint testing and particularly with regard to change management processes, the Commission believes that BearingPoint's tests were extensive and positive determinations were reached in regard to all evaluation criteria on which the Commission may rely. Further testing on these matters is not warranted.

### E. Conclusion

The Commission has also reviewed results of a number of other performance measures related to OSS availability. For PMs 22 and 25 regarding answer timeliness at the Local Service Center and the Local Operations Center, SBC met the parity standard for June, July and August 2002 and SBC satisfied a BearingPoint test regarding PM 22 as well. Similarly, benchmarks for PM 4, OSS Interface Availability, were met for all three months for 14 of the 18 disaggregations. According to SBC the minor misses for the other four disaggregations related to Plan of Record releases in the spring of 2002. The Commission notes that the parity standards were met for all disaggregations for August, September and October. SBC missed the performance measure standards for some months for some disaggregations for both PM MI 12 (Average Time to Clear Service Order Errors) and PM MI 14 (regarding timeliness of notices following completion of maintenance work). The parity standard was again met in September and October for both disaggregations of MI PM 12. However, as discussed earlier, the reported results in PM MI 12 are still at issue in the E&Y audit and therefore will not be relied upon at this time. The standards for the manually returned, resale and UNE-P disaggregations of PM MI 14 continue to be missed by considerable amounts. SBC indicates the cause of these issues has not yet been identified. The negative results, however, indicate that further analysis is required so that improvements can begin. Finally, parity standards were not met in June and July for PM 12, Mechanized Provisioning Accuracy, but the standard was met again in August, September and October.

The Commission concludes that in reviewing the totality of the evidence, SBC has demonstrated compliance with Checklist Item 2. The Company has expended considerable effort in upgrading its OSS and implementing the procedures and processes required to provide access to these systems and to its pre-ordering, ordering, provisioning, maintenance and repair, and billing systems in such a manner as to provide a reasonable opportunity to compete. Although certain performance measures remain deficient and certain interfaces and processes still require additional work as specified in the accompanying order issued today, in the opinion of the Commission, when viewed in the totality, SBC's application, BearingPoint's test, and commercial usage support a positive determination in regard to Checklist Item 2.

### **Checklist Item 3 -- Poles, Ducts, Conduits, and Rights-of-Way**

#### **A. Description of the Checklist Item**

Pursuant to Section 271(c)(2)(B)(iii), SBC is required to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [it] at just and reasonable rates in accordance with the requirements of [47 USC 224].”

#### **B. Standard of Review**

Section 271(c)(2)(B)(iii) requires SBC to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by it at just and reasonable rates in accordance with the requirements of section 224. Section 224 requires a utility to provide a cable television system provider or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Section 224(c)(1) states that nothing in the section shall be construed to apply to or to give the FCC jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a state. The FCC has issued notice that Michigan regulates pole attachments.

#### **C. Summary of the Evidence**

##### **1. SBC’s Position**

SBC says that it has a long history of providing access to its poles, ducts, and rights-of-way and has been providing such access at least since the adoption of the Pole Attachment Act (47 USC 224) in 1978 and also under the Michigan Pole Attachment Act, MCL 460.6g (eff. March 31, 1981), and the MTA, MCL 484.2361. SBC's first tariff offering pole attachments and conduit occupancies to other carriers was effective on February 20, 1986, and it has had tariffs in effect continuously since that date.

SBC also points to Appendix ROW, which has been incorporated into its interconnection agreements approved by the Commission, and its tariff as establishing detailed rates, terms, and conditions for access to poles, ducts, conduits, and rights-of-way. Appendix ROW is the product of interconnection negotiations and arbitrations with CLECs pursuant to sections 251 and 252 of the Act.

CLECs that have recently included Appendix ROW in their interconnection agreements include American Fiber Network and National Net Communications Corporation. Also, any cable television provider or telecommunications carrier may access SBC's poles, ducts, conduits, and rights-of-way via SBC's Tariff No. 20R, Part 2, Section 6, which contains rates, terms, and conditions for pole attachments and conduit.

SBC states that Michigan has elected to regulate poles, ducts, conduits, and rights-of-way through the certification process, as permitted by 47 USC 224(c). SBC asserts that it complies with all the applicable requirements of Michigan statutes and Commission rules regarding access to structure, and also meets all the requirements of Section 224 and the

FCC's rules and orders. SBC's rates for use of attachments by telecommunications carriers in Michigan are the same rates SBC charges cable television operators.

SBC points out that the First Report and Order does not address charges for access to rights-of-way and in its recent Pole Attachment Telecommunications Rate Order, the FCC declined to adopt detailed standards that would govern all rights-of-way situations. Instead, the FCC stated that it would address complaints about rates for attachments on a case-by-case basis. SBC does not charge for access to rights-of-way owned or controlled by SBC when access to such rights-of-way is provided in connection with access to an SBC structure, such as a pole or conduit. Charges for access to other SBC rights-of-way are determined on a case-by-case basis, taking into account the size of the area to be used by the CLEC and the number of existing users of SBC's easement and other relevant factors.

SBC asserts that it provides nondiscriminatory treatment to all CLECs requesting to attach to SBC's structures. SBC's process is outlined as follows:

SBC provides for access to records, which includes maps and engineering records relating to SBC's poles, ducts, conduits, and rights-of-way in the same manner as SBC engineering personnel use to design their own construction projects, and access is available weeks or months in advance of an application for structure space.

SBC evaluates CLECs' requests for access to poles, ducts, conduits, and rights-of-way by using the same capacity, safety, reliability, and engineering standards that apply to SBC's own use of those facilities.

The First Report and Order does not permit an incumbent LEC to favor its future business needs over a competitor's current needs by reserving space on or in its own facilities. Therefore, to ensure that all available space is fairly allocated among all users, Appendix ROW and the tariff incorporate a nondiscriminatory means by which cable operators and telecommunication carriers, including SBC, many be assigned pole attachment or conduit occupancy space.

In general, SBC is responsible for make-ready work and the requesting carrier pays for that work. Make-ready work will be performed within the same time intervals that would apply if SBC were performing the work for itself. The requesting carrier, as a qualified contractor, or a mutually approved qualified contractor will be permitted to perform make-ready work when SBC cannot perform the work quickly enough to meet the requesting carrier's needs. In addition, the requesting carrier may offer to perform make-ready work proposed by SBC in accordance with SBC's specifications, and SBC will not, without due cause and justification, refuse to accept the requesting carrier's offer to perform the work.

At the requesting carrier's request and expense, SBC will modify its poles or conduit system to accommodate the requesting carrier's facilities consistent with the same capacity, safety, reliability, and engineering considerations that SBC would apply to itself if the work were performed for SBC's own benefit. In addition, capacity expansions will be performed within the same time intervals that would apply if SBC were performing the work for itself.

The Pole Attachment Act and the FCC's Pole Attachment Complaint Procedures require utilities to provide advance written notice to attaching cable system operators and telecommunications carriers before modifying or altering poles, ducts, conduits, and rights-of-way. 47 USC 224(h); 47 CFR 1.1404(c). The First Report and Order states that absent a private agreement establishing different notification procedures, written notification of a modification must be provided to attaching parties at least 60 days before commencement of

the modification. This notice requirement is incorporated in Appendix ROW in Section 2.5 and in SBC's Tariff.

The Pole Attachment Act also establishes a statutory “cost-causer pays” principle with respect to the rearrangement or replacement of attachments required as the result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of the pole, duct, conduit, or right-of-way. 47 USC 224(i). The First Report and Order similarly requires that the parties benefiting from the modification assume the costs of the modification and that if more than one party benefits, each such party must bear its proportionate share of the costs. In general, the party initiating the request will be the party benefiting. Both Appendix ROW and the tariff incorporate these principles.

The First Report and Order also provides that parties who pay for modifications may be entitled to obtain reimbursement from other parties (including the owner of the pole or conduit facility) who later use additional capacity created by the modification. First Report and Order, ¶1214. This reimbursement provision is incorporated in Section 2.7 of Appendix ROW and Sheet 8 of the tariff.

## 2. Other Parties’ Positions

WorldCom, McLeod, and the MCTA all filed comments that new providers do not have equal access to rights-of-way. They argue that SBC has preferential access to rights-of-way controlled by municipalities and other local units of government. They point out that while a cable television provider or a CLEC must acquire a local right-of-way permit or franchise and may be required to pay various fees for use of the rights-of-way, SBC claims a statewide franchise and denies any obligation to comply with local government regulation or pay fees.

WorldCom says that the Commission should address this disparity using authority under the MTA or FTA prior to signing off on compliance with Checklist Item 3.

## D. Performance Measures

Three performance measurements, PM 105 (Percent of Requests Processed Within 35 Days), PM MI 5 (Average Days Required To Process a Request), and PM 106 (Average Days Required to Process a Request) are designed to help enforce SBC's commitment to timely responses to applications for access. However, conclusions cannot be discerned from the reported results for these measures in June, July, and August 2002 due to the low (less than 10) or nonexistent volumes for each of the measures.

## E. Discussion

SBC is required to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way that it owns or controls. SBC's May 15, 2001 filing demonstrates that it complies with that obligation, and there are no allegations that SBC does not comply. MCTA, WorldCom, and McLeod argue that municipalities are failing to provide nondiscriminatory access to their rights-of-way. This does not appear to be an appropriate argument for SBC noncompliance. In any event, new legislation enacted in Michigan in 2002 has revised the state and local rights-of-way system and leveled the playing field. Public Act 48 of 2002

(PA 48), MCL 484.3101 et seq., requires all telecommunications providers to obtain local government rights-of-way permits or franchises and to pay essentially equivalent fees. SBC has committed to supporting the constitutionality of PA 48 as part of a settlement agreement approved by the District Court for the Eastern District of Michigan. The arguments raised by MCTA, WorldCom, and McLeod are no longer valid.

F. Conclusion

Based on the evidence, the Commission finds that SBC has demonstrated compliance with Checklist Item 3.

## **Checklist Item 4 – Unbundled Local Loops**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(iv) of the Act requires SBC to provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.” This obligates SBC to provision different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as Integrated Services Digital Network (ISDN), Asymmetrical Digital Subscriber Line, High-bit-rate Digital Subscriber Line, 1.544 Mbps digital (DS1 level) signals, and 45 Mbps digital (DS3 level) signals. A subloop unbundled offering, line sharing, and line splitting are all included within the scope of SBC’s obligation to provision and maintain unbundled loops. Loops must be provisioned in a nondiscriminatory manner.

### **B. Standard of Review**

The FCC will examine SBC’s performance in the aggregate (i.e., by all loop types) as well as its performance for specific loop types. In doing so, the FCC looks for any patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete. Primary reliance is placed on certain specific activities. With respect to new loops, the FCC reviews SBC’s performance on average completion intervals, missed installation appointments, trouble reports, and mean time to repair measures. With respect to access to xDSL-capable loops, a critical pre-ordering activity is timely access to loop information. Specifically, the BOC must “provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end-user loop is capable of supporting the advanced services equipment the requesting carrier intends to install.” This activity is measured in terms of timeliness of SBC’s responses to mechanized loop database queries as well as timeliness of SBC’s responses to manual loop qualification and engineering record requests. In addition, the FCC has identified the following activities as critical to competition for standalone xDSL: whether SBC timely returns firm order confirmations, whether SBC misses installation appointments, how long on average it takes SBC to provision an order, how many x-DSL loops provisioned to CLECs need repair during the first 30 days, how long on average it takes SBC to repair a troubled xDSL loop, and how often CLECs have to make repeated requests for xDSL loop repairs. The FCC examines similar measures when it reviews a BOC’s performance on Line-Shared Loops and High Capacity Loops.



## C. Summary of the Evidence

### 1. Access to Unbundled Loops

#### a. SBC's Position

SBC asserts that it provides nondiscriminatory access to stand-alone loops. Its unbundled loop offerings include 2-wire analog loops with no more than 8dB loss, 4-wire analog loops, 2-wire and 4-wire ISDN digital-grade lines, and various 2- and 4-wire loops capable of offering xDSL services. The local loop includes, but is not limited to DS1, DS3, fiber, and other high capacity loops to the extent required by applicable law. It indicates that there are separate performance measurement standards tailored to each loop product. For the small percentage of customers served by integrated digital loop carrier (IDLC) equipment, SBC provides unbundled loops through alternative facilities. SBC has committed to notify the requesting carrier of the IDLC issue within 24 hours of order confirmation.

SBC represents that it provides the ability to obtain and use the network interface device (NID) under terms and conditions established in SBC's interconnection agreements and tariff. CLECs may connect to the customer's inside wire at SBC's NID at no charge, or they may pay SBC to perform any NID repairs, upgrades, disconnects, or rearrangements they desire. SBC also provides and connects the NID at no additional charge when CLECs order an unbundled loop. CLECs can provide their own NID when serving multiple dwelling units, and connect directly with the end-user's premises wire, or the CLEC can connect to the end-user's premises wire via SBC's NID when necessary.

SBC further indicates that CLECs can order sub-elements of the local loop from SBC on an unbundled basis and access these sub-elements at technically feasible accessible points. Available sub-elements include 2-wire and 4-wire analog subloops (for voice or DSL service), 4-wire DS1 and DS3 subloops, and a 2-wire ISDN subloop, as well as loop distribution facilities (the segment of a loop between a remote terminal and an end-user's NID or other point of demarcation), a high-capacity segment between a Central Office and Remote Terminal, and the digital loop carrier. SBC states these satisfy the FCC's subloop unbundling requirements.

SBC states that to give requesting carriers fast confirmation of order receipt, and to conform to industry guidelines for electronic ordering, its FOCs include an estimated installation date based on standard provisioning intervals and workloads. In some cases, it may subsequently find that the facilities needed to fill the order are unavailable and that more time will be needed. SBC has developed a Facilities Modification policy that is designed both to reduce the number and length of any delays in provisioning, and to keep the requesting carrier apprised of the status of its order. The general terms of the policy are set forth in the Joint Report filed on December 27, 2000 in Case No. U-12320. Pursuant to the Policy, orders that entail routine modifications to existing facilities are generally processed without delay and without any additional charge for the work performed. For orders that require more complex work, SBC notifies the requesting carrier of the work, time, and additional cost, if any, that would be involved. The carrier may accept the quote or choose an alternative method (such as resale or the UNE-P) to serve the end-user. Procedurally, SBC's performance standards require it to give the requesting carrier notice of facilities delays within 24 hours of the initial FOC. SBC has also implemented a series of

performance standards that govern the time for detailed quotes of complex modifications, depending on the type of modifications involved.

SBC offers CLECs a choice between two different methods of coordinated conversions – the fully coordinated hot cut (CHC) process, and the frame due time (FDT) hot cut process. These processes were developed with CLEC input in SBC regional collaboratives. The processes are subject to the same performance standards used in Texas, Kansas, and Oklahoma, including Commission-approved performance standards that limit late or premature coordinated cutovers.

SBC says it has implemented, pursuant to Commission order and with Commission approval, a full complement of performance standards to ensure timely and reliable loop provisioning. These include the intervals for loop installation (expressed as an overall average, as the percentage meeting benchmark intervals, and as compared to due dates), for order status notices (such as order confirmation and completion notices), and for loop repairs. Further, SBC measures the rate of reported troubles on loops, both in general (to assess the quality of facilities) and within 30 days of installation (to help determine whether loops are provided in conformance with the order).

#### b. Other Parties' Positions

AT&T states the best measure of local competition is the quantity of local minutes being switched by the CLEC switches in Michigan. Another useful indicator is the number of unbundled local loops being purchased from SBC. AT&T states that SBC continues to provide CLECs late notice of facilities modification requirements that might delay the provisioning of AT&T's customers' orders. This gives AT&T little time to alert its customer of the change and thereby reflects negatively on AT&T. AT&T indicates in its June 2001 comments that hot cuts are just beginning to be provided pursuant to the recently implemented regionally negotiated hot cut process and that much more is required to show SBC is in compliance with Section 271. AT&T states that the Commission should continue to monitor SBC's performance and that it should continue to accept information provided by BearingPoint and CLEC commercial experience.

MCTA states that SBC has engaged in a pattern of missed deadlines and nonfulfillment of orders relating to the provision of high capacity telephone lines to support the deployment of high-speed internet service throughout Michigan. Cable companies have been forced to delay their deployment of Internet services due to SBC's poor untimely service. These competitive cable modem services directly compete with SBC's own DSL service.

WorldCom states there are too many past due orders in the provisions of DS1 Loops. Late provisioning frustrates the process, and results in customer dissatisfaction with WorldCom.

#### c. SBC's Response

In response to AT&T's concern over late facilities modification notice, SBC states in its July 2001 comments that the procedures are relatively new, that it agrees with AT&T that the Commission should continue to accept information provided by BearingPoint and CLEC commercial experience, but that those tasks are for later phases of this proceeding. No one

disputes that the procedures that the CLECs agreed to and SBC has implemented are sufficient to satisfy the checklist (subject to verification that SBC is performing in line with its commitment).

SBC has two responses to MCTA's DSL loop provisioning issue. For those issues dealing with special access provisioning DS1, special access is not relevant to this proceeding. For unbundled high capacity network elements, SBC has committed substantial resources to correct the problem.

#### d. Discussion

The Commission finds SBC has met its burden in regard to access to loops. Both the quantity of local minutes being switched by the CLEC switches in Michigan and the number of unbundled local loops being purchased from SBC has dramatically grown from the date of the comments. The total number of lines served by CLECs has grown to 1,118,437 as reported in the Staff's Competitive Market Conditions 2002 Mid-year Update. At the time of the filing, SBC had not put into affect the abilities for coordinated hot cuts, dial tone/ANI testing 48 hours prior to the due date and had just implemented frame due time hot cuts. The process for coordinated hot cuts was effective September 11, 2000 and was documented in the July 26, 2000 Accessible letter CLECAM00-073. On February 9, 1999, in Case No. U-11735, SBC was found to be in violation of the interconnection agreement and the MTA by imposing special construction charges against BRE Communications. Additionally, it violated the interconnection agreement by requiring BRE Communications to waive its rights under the interconnection agreement in order to purchase unbundled loops. SBC has since rectified that problem. The Commission is not persuaded that other problems presented by the parties above are not due to anything more than initial problems in implementing new processes. These seem to have been corrected over time in reviewing SBC's performance. The recent results of performance regarding the facilities modifications process is discussed earlier in this report under Checklist Item 2 – OSS. Discussion regarding other related performance results follows later in this section. It is undisputed that SBC has a significant volume of unbundled loops as found in the Commission's Competitive Market Conditions Mid-Year Update and therefore the Commission finds that SBC has met its requirements for Section 271 approval in regard to access to loops.

### 2. Nondiscriminatory Access to xDSL-Capable Loops for Advanced Services

#### a. SBC's Position

As with the systems the FCC reviewed and found sufficient in its Kansas & Oklahoma 271 Order, SBC offers various methods for requesting carriers to obtain loop qualification information. First, where such information already resides in SBC's loop qualification database, requesting carriers can access it using either one of SBC's two pre-order interfaces, and will obtain automatically the same information that is available to SBC personnel from the same electronic systems. SBC alternatively will provide "archived actual" loop information, if it is available, upon the CLEC's request. The requesting carrier can either proceed on the basis of the archived actual information, if available, or ask SBC to search its manual records. Manual search requests can be submitted via the pre-order

interfaces, and are processed by Outside Plant Engineering, the same group that handles SBC requests. It typically responds within three to five business days, by updating the information in the loop qualification database (where it is available for viewing by the CLEC) and, upon request, by returning the results of the look-ups directly by e-mail. As in the Kansas and Oklahoma situation, requesting carriers can use these methods to obtain useful qualification information about: (1) the composition of the loop (i.e. fiber or copper); (2) the existence, location and type of any electronic or other equipment on the SBC loop, (3) the loop's length, (4) its wire gauge, and (5) its electrical parameters. Further, the carrier can learn about the presence of other technologies in the same or adjacent loop binder groups that might disturb advanced services. The loop make-up information provides all relevant information possessed by SBC about the status of a particular loop, and permits the data CLEC to determine whether it can provide DSL service to a particular end-user via either the high-frequency portion of the loop (HFPL) UNE or a stand-alone loop. SBC provides loop qualification information at two levels, allowing CLECs to choose the degree of detail that best suits their needs. Pre-qualification is an optional screening tool that provides general information about SBC's facilities, allowing the requesting carrier immediately to draw some preliminary conclusions about whether advanced service may be appropriate for a given geographic area or for a particular customer and about the type of xDSL service that could be used. Qualification, meanwhile, involves information about the loop that serves a specific address or working telephone number. SBC has implemented performance measures to assess the speed and accuracy with which it provides loop qualification information. SBC measures the speed of each type of pre-order response; those SBC measures include separate categories dedicated solely to loop qualification inquiries. Further, SBC measures and reports the accuracy of actual loop make-up information provided in response to DSL inquiries.

To obtain loops for their advanced services, Michigan CLECs use ordering and provisioning systems and processes that are largely the same as those used to provision ordinary, stand-alone (uncombined) unbundled loops, and that are identical to those used by SBC's data affiliate. SBC engineering personnel process and fill orders without regard to their source. CLECs can select the precise conditioning desired and can pre-order whatever conditioning turns out to be necessary to provision the desired service over a given loop. In accordance with the SBC/Ameritech Merger Order, all necessary conditioning for loops of 12,000 feet or less is performed automatically and without charge. The Commission approved rates for conditioning in Case No. U-12540, which are incorporated into tariffs per the Commission's order, in new interconnection agreements at the CLEC's request, and in existing agreements according to their terms.

Line splitting refers to a situation in which a carrier that provides voice service using the UNE-P shares a loop with a data carrier that uses the HFPL. SBC indicates that it permits CLECs to engage in line splitting in full compliance with the FCC's rules. CLECs have the same options available for line splitting in Michigan as they have in Texas, Kansas and Oklahoma, which the FCC has found to comply with Section 271. In accordance with the FCC's rules and orders, including the Line Sharing Reconsideration Order, SBC supports line splitting where a CLEC purchases separate UNEs (including unbundled loops, unbundled switching, and cross-connects) and combines them with its own splitter (or the splitter of the CLEC's data partner) in a collocation arrangement. Specifically, a CLEC may purchase an xDSL-capable loop UNE from SBC and then provide both voice and data

service over the loop. Alternatively, a CLEC may provide voice service while a data partner provides data services. By accommodating line splitting in this manner, SBC's current offering meets all the FCC's requirements. SBC states the FCC requires incumbent LECs to accommodate line splitting only where a CLEC purchases an entire loop and provides its own splitter.

SBC also indicates that it has implemented line sharing in Michigan in accordance with the requirements set forth in the Line Sharing Order and in Commission orders. Data CLECs and SBC's affiliate, ASI North, have the same opportunity to access the HFPL UNE for carrying data traffic. After release of the Line Sharing Order, SBC, in conjunction with other SBC operating companies, conducted a collaborative line sharing trial to identify key aspects of operating in a line-sharing environment. SBC continues to work collaboratively with the CLECs to address additional issues that may arise. SBC makes line sharing available via its tariffs and through Commission ordered tariffs and amendments to its interconnection agreements with CLECs.

Orders for the HFPL UNE also are submitted in the manner and through the same interfaces as orders for xDSL-capable loops. Indeed, a request for the HFPL UNE is basically the same as for a stand-alone xDSL capable loop. The minor differences in the fields utilized when ordering the HFPL UNE are due to the unique aspects of line sharing. Unlike a standalone xDSL capable loop that does not have an associated telephone number, when a CLEC purchases the HFPL UNE, the CLEC must provide the telephone number of SBC's voice service that occupies the low frequency portion of the loop to be shared. The CLEC also must provide its desired assignment information related to the provision of the splitter. Just as with the stand-alone xDSL capable loop, when requesting the HFPL UNE, the CLEC simply submits a request either manually or electronically through LEX or EDI. Aside from the above-described differences in the request form itself, the process for the HFPL UNE follows the exact same flows as the xDSL-capable loop offering. SBC provisions the HFPL UNE to CLECs under terms and conditions in tariffs and negotiated in interconnection agreements. Just as with xDSL-capable loops, SBC offers CLECs HFPL provisioning intervals that are at parity with, or better than, the provisioning intervals available to SBC's advanced services affiliate, regardless of whether conditioning is required. Parity is the legal standard set forth in the Line Sharing Order, and the Texas 271 Order, as well as the Eighth Circuit's decision in Iowa. In short, SBC states it has the necessary pre-ordering, ordering and provisioning processes in place to provide the HFPL UNE to CLECs in a nondiscriminatory manner. The similarities between ordering and provisioning xDSL-capable loops and the HFPL UNE, coupled with the progress made during the cooperative line sharing trial, assures in SBC's opinion that it is in full compliance with the Line Sharing Order and provides the HFPL UNE in a nondiscriminatory manner. These nondiscriminatory processes ensure a level playing field among unaffiliated and affiliated advanced services providers.

Project Pronto is a network enhancement initiative whereby SBC announced plans to invest six billion dollars in its network. This investment will bring fiber to neighborhoods across most of SBC's 13-state region and dramatically increase the availability of xDSL services to customers who could not be served under the existing network architecture. Specifically, as the FCC has explained, SBC's operating companies (including SBC) will offer Broadband Services on a wholesale basis to affiliated and unaffiliated advanced services providers where Project Pronto DSL equipment is deployed. All carriers, including

SBC's affiliate, can purchase these wholesale services on the same nondiscriminatory terms, and through use of the same pre-ordering and ordering systems. These new offerings are *in addition* to all of the competitive options already available to CLECs under the law.

b. Other Parties' Positions

In its July 2001 comments, McLeod says SBC does not provide it and other CLECs with the OSS features and capabilities required for it to make an evaluation of the suitability of loops for DSL service. It claims SBC only provides access to a system where much of the pertinent data has been removed or is not completely accurate.

XO states its frustration with SBC's soft FOC. SBC will set up a FOC within 48 hours of XO submitting an order but 50% of the time XO is informed the order will be delayed because SBC does not actually have the facilities available to provision the service within the time initially stated within the FOC. SBC cancels XO's orders for DSL loops citing "loop makeup information not available" when in the same area SBC is providing DSL service.

WorldCom states that SBC has failed to provide line splitting with UNE-P in Michigan where there was previously line sharing. It complains that SBC requires the voice CLEC to provide the splitter when, typically, the data LEC has the splitter. It argues that SBC should not give data LECs 24 hours to refuse service when there is a change in the provider of the voice service. For migrations, WorldCom indicates that SBC must allow line splitting on existing lines and that SBC should not require existing lines to be converted to DS0.

AT&T states SBC is not meeting its requirement to provide line sharing over fiber-fed DSL configured loops including the Project Pronto offering. AT&T also indicated that it did not know how SBC was going to price its line sharing and line splitting offerings. SBC did not provide AT&T with adequate information concerning both the recurring and nonrecurring rates. SBC has continually tried to charge numerous nonrecurring charges when one charge should be made.

Sprint states that SBC must unbundle its Project Pronto architecture to allow competitors to efficiently provision DSL service to its customers by allowing CLECs to purchase the sub-loop and other elements of the broadband offerings.

c. SBC's Response

SBC stated that an enhancement to the OSS, with an August 2001 release, addresses McLeod's concerns regarding access to loop qualification information.

XO needs to order a manual loop qualification if the information isn't available electronically. According to SBC, a DSL capable loop could be available next to a house that does not have a DSL capable loop due to one having been conditioned.

SBC responded that it had complied with all the requirements of the FCC rules and Commission Orders in terms of line splitting.

SBC's obligation to provide access to the HFPL over fiber loops depends on what SBC actually deploys in its existing network and the technical capabilities of that network, not on what CLECs would like SBC to deploy in its network. SBC will provide "fiber

sharing” where technically feasible; no specific fiber sharing obligations have been placed on SBC.

In Case No. U-12540 (July 25, 2001) both AT&T and WorldCom sought rehearing of the Commission’s decision to not require SBC to unbundle, at that time, the network elements associated with Project Pronto. As with this request of Sprint, the Commission decided not to require the unbundling of Project Pronto and therefore this is not required for SBC to meet its Section 271 standards.

d. Discussion

The Commission finds SBC has met its burden in regard to access to xDSL-capable loops used for advanced services. On December 20, 2001, in Case No. U-12320, the Commission found that SBC must facilitate the migration of voice service from itself to a CLEC when line-splitting over UNE-P. Further collaborative discussions occurred during the summer of 2002. On October 3, 2002, in Case No. U-12320, the Commission issued another decision that required SBC to bring its procedures for line sharing and line splitting into compliance with the requirements and specified those requirements. The order required SBC to file a compliance plan within 30 days of the order. It found that SBC’s proposed ordering and pricing methods did not comply with the Commission’s directives that a voice CLEC should be able to obtain migration of voice service, despite the presence of a data CLEC in a line sharing arrangement. The line sharing customer’s voice service should be permitted to migrate to line splitting without the need to obtain the data CLEC’s permission. SBC was ordered to provide the loop to a requesting voice CLEC as an existing loop, and the Commission indicated SBC must do so in a seamless process that does not disrupt existing DSL services to the end-user. The Commission also found that SBC may not require a DSL provider (such as an SBC affiliate) to continue to provide service after a migration from line sharing to line splitting.

On November 4, 2002, SBC filed its compliance plan in response to the October 3, 2002 order and further modified that plan on December 11, 2002. The amended compliance plan clarified the rates for the plan, presented new procedures for migrating line sharing to UNE-P and clarified that data service is disconnected as a decision of the end-user, not the voice CLEC or SBC. The Commission finds that implementation of that plan by December 16, 2002 will permit SBC to satisfy its line splitting obligations. SBC has on file with the Commission tariffs that implement the rates for recurring and nonrecurring charges as it relates to line sharing and line splitting. In an accompanying order issued today the Commission will require further collaborative discussions regarding other line sharing/line splitting scenarios which have been raised as well.

In response to CLEC concerns over SBC’s treatment of their access to Project Pronto, the Commission noted in Case No. U-12540 on March 7, 2001 that the FCC has adopted SBC’s commitment to provide other alternatives to CLECs in association with the Project Pronto architecture. In that order, the Commission determined that the obligations required by the order will provide an immediate opportunity to move forward in the provisioning of DSL services.

These orders of the Commission in conjunction with the performance measures and the volumes as reported in the Commission’s Competitive Market Conditions Mid-Year

Update give adequate assurance that SBC has met its burden of providing nondiscriminatory access to xDSL-capable loops used for advanced services.

### 3. Performance Measures

#### a. SBC's Position

SBC, in the October 21, 2002 affidavit of James D. Ehr, presents three months of performance data detailing SBC's performance results for the months of June, July, and August 2002. He states that it demonstrates that SBC provides Michigan's CLECs with nondiscriminatory access to the pertinent items of the 14 point competitive checklist specified in Section 271(c)(2)(B) of the Act.

In regard to checklist item 4, unbundled local loops and combinations (as identified in Checklist Item 2), Mr. Ehr's Attachment B shows there are 57 measures that relate. Of those 57 measures, (41 measures having volumes greater than 10, and upon which, SBC relies) there are 7 measures SBC discusses, where it did not meet the standards for certain disaggregations for 2 of the 3 months and therefore failed in SBC's view. Those PMs fall within the provisioning (installation) and maintenance or repair areas (trouble reports).

With regard to Trouble Report rates, SBC indicates it missed PM 37 (Trouble Report Rate – UNE Loop and Port Combos) for UNE-P business loops. This is a parity measure. SBC points out that Michigan CLECs have experienced a trouble report rate of just 1.2% during the last three months. Although higher than the 1.0% rate for the retail operations, SBC states the small difference (and the low rate of trouble overall) does not materially affect competition and the CLEC's ability to compete. In regard to PM 38 (Percent Missed Repair Commitments, POTS residential – no dispatch), SBC's miss rate is less than 1.7% which it believes is low enough to not materially affect competition and the CLEC's ability to compete. Finally, in looking at DSL loop installations, and trouble reports within 30 days of install (PM 59, subcategory of DSL loops without line sharing), SBC states it has missed all 3 months of this PM but the trend shows that the last 2 months have been near the benchmark and headed in the right direction.

SBC notes two general installation PMs for which it has not yet achieved the measure. Those areas are PM 55, Average Installation Interval, UNE, DS1 loop (includes PRI) and PM 55.1 Average Installation Interval, DSL, without line sharing, without conditioning. SBC notes it has missed PM 55 for the June through August time period but as shown by other PMs, SBC's average installation intervals for CLECs are much better than the average installation intervals for its retail customers which points to nondiscriminatory access. Additionally, SBC points out that the percentages have mostly improved over time, even with increasing volumes. For PM 55.1, SBC suggests the degree to which it missed the standard is not large and the margin of the miss is on a decreasing trend. SBC contends these failures should not adversely affect competition.

The second area regarding installations, which SBC identifies as missing the metric, is PM 56 (Percent Installations Completed within customer requested due date). The performance measure benchmark is 95%, which for the three months filed data SBC notes it has barely missed each time.

Finally, SBC notes it has consistently missed on PM 114, Percentage Premature Disconnects (Coordinated Cutovers) – FDT – LNP W/Loop. While SBC has missed this



PM, it has gone from 8.78% to 6.89% to 3.49% miss in the 3-month period filed showing a trend toward the 2% benchmark, and therefore no sign of systemic problems that would negatively affect CLECs' ability to compete.

b. Other Parties' Positions

AT&T, MCI, XO and TDS addressed checklist item 4 performance measurements in their November 5, 2002 comments. AT&T discusses many of the sub-measures, whereas the comments of the other CLECs are predominantly more general in nature. MCI does focus certain of its comments to specific geographically disaggregated areas.

In general, as discussed earlier regarding OSS, AT&T asserts that PMs were to be met for 3 consecutive months, not 2 of 3. With respect to checklist item 4, AT&T also takes issue with SBC's reasoning that near misses are to be considered hits, but near hits are not asked to be considered misses.

AT&T comments on several Trouble Report measures. AT&T comments that SBC missed the August criteria for PM 35-07, UNE-P Business Field Work. AT&T believes the field work repair criteria is the most telling criteria for parity in repair because it requires scheduling of work with a technician, who then must be directed to physically make the repair. MCI also noted trouble report failures for UNE-P business. Continuing with Trouble Report measures, AT&T takes issue with PM (37-4) Business Trouble Report Rate for UNE-P. AT&T points out that SBC missed all 3 months of this PM. In AT&T's view, the 1.2% average obscures the three months of data that range from 1.31% to 1.01%.

With respect to DSL maintenance, AT&T points to two measures it believes SBC is failing, the first, without line sharing (PM 59-04 Trouble Reports within 30 days of install), and the second, with line sharing (PM 66 -03, percent missed repair commitments). AT&T notes that SBC did not meet the benchmark for any month for PM 59-04, and the June error rate of 14.52% shows a significant flaw in SBC's performance. As to PM 66-03, AT&T states that with too small of a sample size, parity cannot be determined with any reliability. MCI, XO and TDS also generally comment on the SBC misses for PM 59. XO notes that when trouble reports within 30 days of installation occur, it reflects poorly on CLEC's ability to provide adequate service to customers, and as such it is important for SBC to achieve the benchmarks for the PM.

Commenting CLECs take issue with SBC's performance regarding several installation intervals and SBC caused missed due dates for installation. AT&T, MCI, XO and TDS all point to what they consider poor performance for certain loop installation performance measures (55, 55.1, 56, and 58). In particular, for 55.1, 56 and 58 MCI notes that SBC indicates these measures do not accurately disaggregate results between loops requiring conditioning and those that do not. This makes it very difficult for CLECs to discern what is being measured, and how, as updates and corrections are later made.

Starting with PMs for Average Installation Intervals, AT&T identifies several instances where SBC has missed the mark for one or more of the three months of reported data. AT&T identifies four Average Installation PMs for loops where SBC missed the benchmark for all three months (PM 55-01.1, analog loops, 1-10 loops, PM 55.1-04, DSL with no line sharing, PM 55-02.1, 2 wire digital loops, 1-10 loops, and 55-03, DS1 loops). These results, in AT&T's view, indicate a flaw in SBC's systems and processes. The performance measures establish a minimum standard to support competition that needs to be

met. With respect to PM 55.1-04, AT&T further contends SBC's "just falls short" argument should be rejected when one looks at the results of 7.09 days, 6.99 days and 6.12 days as compared to the benchmark of 5 days. MCI notes this is an average of 6.67 days, missing the 5-day benchmark by more than 33%. AT&T also states the PM for 2 wire analog lops (55-01.1) represents a minimum standard that should be reached to support competition.

MCI's comments regarding average installation intervals are in keeping with the concerns raised by AT&T. MCI is particularly concerned with DS1 loop provisioning performance, particularly in the major population areas of Michigan. Generally addressing PM 55, MCI takes issue with SBC's justification that its poor performance can be blamed on the small volume of orders. MCI responds, the problem is that when a CLEC first enters the market and performance is bad, the reputation of the CLEC is damaged, making even the early entry and "small volume of orders" very important to CLECs. XO is similarly concerned with how SBC's misses on PMs harms business reputations.

Moving to the related performance measurement area of percent of installations completed within the customer requested due date, AT&T details certain PMs where SBC missed the established benchmark during the June to August three month reporting period. Identified are PM 56-01.2, 2 wire analog loops, 11-20 loops, PM 56-02.1, 2 wire digital loops, 1-10 loops, and PM 56-03, DS1 loops. AT&T notes SBC missed two out of three, or all three (PM 56-02.1), and comments as it did with respect to the missed average installation intervals. Also, specifically AT&T argues the justification presented by SBC that it is able to process smaller groups of loops (PM 56-01.1) is troubling, since this area shows SBC has trouble completing larger orders on time.

AT&T discusses several PMs which measure the percent of SBC-caused missed due dates (PM 58-06, Percent SBC-Caused Missed Due Dates – BRI Loops with Test Access, PM 58-08, Percent SBC-Caused Missed Due Dates, and PM 62-06 Average Delay Days for SBC-Caused Missed Due Dates – DS1 Loops with Test Access). AT&T says while these show that SBC is meeting or nearly meeting parity, SBC is offering poor service to both its retail and wholesale customers. There is no assurance that the parity shown is not the result of SBC's re-assignment of resources to CLEC transactions for Section 271 purposes, and that those resources will not be re-assigned back to SBC after approval. (AT&T also indicates this claim is applicable to PMs 55 and 56).

Finally, with regard to installations, AT&T discusses two PM's related to hot cuts. For PM 55.2-01.2 (Average Installation Interval for Loop with LNP – Coordinated Hot Cuts, 11-20 Loops) AT&T notes SBC met the standard in June and August but not July. July had an increase of coordinated hot cuts to 245 from 179. AT&T contends this suggests that SBC cannot handle the increased volumes, as with PM 56.01. AT&T notes that for PM 55.2-01.1 (Average Installation Interval for Loop with LNP – Non-CHC Coordinated Conversions) SBC praises the fine "near miss" even though it doesn't meet the passing criteria for any of the three-month period.

AT&T and XO discuss certain PMs regarding percent premature disconnects (PM 114-01, LNP With Loop, FDT and PM 114-02, LNP with loop, CHC). With regard to PM 114-01, AT&T argues SBC tries to expunge its failures by noting the data was restated because the actual start time could not be derived prior to September 20, 2002. Operational changes were made to capture the actual start time data and a "conservative" start time was estimated for the past months, which suddenly produced near-perfect results. These results were based on an estimate, and therefore no conclusions should be reached until compliance

is confirmed. XO states that when customers convert their service from SBC to a CLEC and are prematurely disconnected, they are needlessly left without service. This clearly discourages customers from switching their service to a CLEC. In XO's view, this demonstrates that SBC is not in compliance with an important aspect of the Section 271 checklist. For PM 114-02, AT&T notes the subject process begins when the CLEC initiates the disconnect, so by definition, the disconnect can never be premature, yet SBC praises its performance.

The PM (1.1-01) Average Response Time for Manual Loop Make-Up Information, AT&T notes SBC states is a "near miss". SBC has failed to meet parity for any of the 3 months. The standard was missed by nearly 3 days in June and nearly 4 days in July.

The last item AT&T comments on is PM 61.05 (Average Delay Days for Missed Due Dates Due to Lack of Facilities – 8.0 dB Loops). AT&T states that delays were significant and parity must have been reached due to a small sample size for SBC. This is apparent by the large fluctuations in delays, i.e., June at 3.66 days, July at 8 days and August at 5 days. Therefore, SBC's systems and processes are not very stable.

### c. SBC's Response

SBC filed responses to the CLEC comments on performance measures on November 20, 2002. SBC initially states that it is not relying on performance results at the geographic level of disaggregation as evidence of commercial performance, and as a result will not address MCI's comments in that regard. SBC does respond to MCI comments regarding DSL performance, wherein MCI noted for PM 55.1-04, that reported results demonstrate the average installation interval is 6.67 days as compared to the 5-day standard. AT&T took issue with this metric as well. SBC responds, that a more meaningful measure is PM 56-12.2. This PM measures the percent of orders for the same product, completed by the customer requested due dates. For this measure SBC meets the PM by more than 97% for all three months, exceeding 99% in two of the three months.

SBC argues it meets this high level of DSL performance, despite the other issue raised by MCI, that being the error in PM 56 (56.12.2) regarding the inclusion of installations requiring conditioning, along with those not requiring conditioning. When properly stated (removing the longer standard 10 day interval for those requiring conditioning, as opposed to 5 days for no conditioning), the results will be much improved, alleviating the concerns raised by MCI.

In response to another CLEC comment regarding DSL loops, SBC discusses AT&T's concerns regarding trouble reports. AT&T had indicated that for DSL circuit repair, the sample size was too small to demonstrate parity. SBC responds that it did not intend for this simple mathematical comparison to equate to parity.

With respect to UNE-P installation and repair, and trouble report rates, SBC notes that AT&T, and MCI (although MCI's comments were general in nature) discuss PMs 35-05 and -07, and 37-4. However, these measures are for business customers, rather than the much more important measures for residential customers, which show installation volumes of several times greater than business, and performance that met the parity standard every month. SBC contends this shows it is adequately supporting competition.

In response to AT&T comments on SBC's performance for the installation of 2 wire digital loops (55-02.1) and DS1 loops SBC responds that while it did not meet the standards,

the performance does not miss by a large degree. SBC notes the same is true of the corresponding PMs for percent installations by customer requested due date for these loop types. SBC also takes issue with AT&T's statement that such PMs should represent the minimum standard to support competition. SBC notes the FCC, in prior Section 271 orders, has stated that it assesses performance on the entirety of the evidence, and that it does not define standards as absolute minimums and maximums.

As for analog loop installation, SBC contends AT&T takes the same approach as it did with other PMs, to note only where there was a limited degree of misses for certain PMs, and ignore other evidence for similar measures which showed adequate performance. AT&T also advances its argument for the minimum standard as a necessity for competition in this area also (PM 55-01.1). SBC points to the related PM, PM 56-01.1 which measures the percentage of installations completed within customer requested due date for analog loops. The results show SBC met this PM 98.5 percent of the time for the three months. Although a slightly different view, the measures observe the same orders and processes, and offer a more complete picture of the level of performance of SBC. The last PM regarding analog loops raised by AT&T to which SBC responds is PM 61-05 (average delay days due to lack of facilities, 8.0 dB loops). For this measure, SBC met the benchmark for all three months, but AT&T took issue with the evidence of parity, arguing it was only met because of a small sample size (shown by the fluctuation in days). In point of fact, SBC notes, the wholesale performance was better than retail, which demonstrates SBC is providing superior service to CLECs, not just parity.

Turning to the comments on SBC caused missed due dates (58-06, 58-08, and 62-06), SBC notes AT&T did agree that parity was achieved, but takes issue with the fact that both wholesale and retail show low or poor service. The standard is parity, and the performance is well above the parity standard.

SBC notes several CLECs discuss the performance results for Coordinated Hot Cuts (PMs 55.2 and 114). As to PM 114-01, SBC refers back to its October 21, 2002 submission, wherein Mr. Ehr's affidavit explained that SBC is unable to capture the actual start time, and uses an estimate. SBC again asserts that the actual performance delivered to CLECs is better than reported, and CLECs have not presented any information contrary to that assertion.

#### d. Discussion

As stated earlier, the PMs for UNE-P are discussed under checklist item 4, to coincide with SBC's discussion and presentation, and the comments of other parties. In reviewing SBC's performance on the PM's dealing with checklist item 4 (and UNE-P), the non-passing measures included by the commenting parties generally are 1.1, 35, 37, 55, 56, 58, 59, 61, 66, and 114. Overall, SBC met the standards for all disaggregations in 2 out of 3 months for 34 out of the 41 measures related to these issues. As indicated earlier in discussing OSS, the Commission does not utilize a strict 2 out of 3 standard, and looks to additional information or considerations in evaluating SBC's performance. The Commission has reviewed the performance measure results for September and October, which became available after parties filings in October and November. The Commission has determined that a review of five months of data allows a more comprehensive overview of SBC's performance, than the 2 out of 3 SBC proposes.

Of those measures that failed one or more months, there seems to be legitimate response from SBC for the miss in many instances, and consideration of five months of results is additionally instructive. Many of the disputed measures, while failing some months, or narrowly missing standards for the June through August results, either passed in September and October, or showed a trend of improvement that is compelling (PMs 55-01.1 55.1-04, 59-04, 55-02.1, 56-02.1 and 56-03, 56-01.2 and 114-01). In other cases, CLECs have identified a particular sub-measure in a category SBC has failed during the three month reporting period, but that sub-measure either has small volumes, or is only one of several reported. For instance, AT&T takes issue with SBC's performance results for UNE-P installation and repair and UNE-P trouble report rates (PM 35-07 and PM 37-4 respectively). The PMs identified by AT&T relate to business only, which has significantly lower customer volume activity than residential UNE-P, which had positive performance results. SBC did fail residential PM 38-06, % missed repair commitments UNE-P residential, no dispatch, but the miss was slight. The Commission agrees it is reasonable to consider SBC's performance in an entire area, and, particularly in the case of these examples, the evidence is persuasive. If the standard was narrowly met or narrowly missed, AT&T is concerned about post-Section 271 approval and whether there will be continued improvement (PMs 55-02.1, 56, 61-05 and certain sub-measures for PM 58, SBC caused missed due dates). The Commission does not expect SBC to purposely take steps that would inhibit competition, following Section 271 approval by the FCC, as intimated by AT&T. Continued Commission oversight and existing remedy plans are meant to specifically address these situations should they arise. For other measures, insufficient volumes have made the results inconclusive, or the volumes were so low that it does not necessarily predict noncompliance when commercial volumes are achieved for a particular product (PMs 55.2-01.2 and 66-03). PM 37-04 for example, shows improved performance as volumes are increasing, as did PMs 56-02.1 and 56-03.

The Commission notes in the case of PM 1.1, regarding manual loop make up information, the standard was missed by three hours in June and approximately four hours in July, instead of the three and four days suggested by AT&T. The Commission also notes the results indicate SBC passed this measure in both September and October. MCI presents information relative to performance on a geographically disaggregated level. For purposes of this Section 271 report and consistent with FCC precedent, the Commission has reviewed only statewide aggregate results.

As stated above, no comments in this proceeding have pointed to a PM that consistently fails by a significant amount. While some measures do not have the volumes to make a strong statement of a passing grade, there is no sign of what the Commission would describe as a pattern of systemic performance failure. With respect to AT&T's position that the performance measure standards should be viewed as minimums, the Commission notes the FCC has not assessed performance on this basis. The FCC has not looked at performance based on minimums or maximums but analyzes performance given the entirety of the evidence. The Commission also notes that there are a number of measures on which SBC relies for support of checklist compliance for UNE combinations and unbundled loops which the Commission has identified as potentially problematic given the E&Y audit results to date. These include the UNE-P provisioning performance measure 28 and the UNE loop provisioning measures 55, 55.1, 56 and 56.1. However, the results from the UNE-P provisioning measures 27, 29, 30, 31, 32, 33 and 35 and the UNE loop provisioning measures 58, 59, 60, 61, 62 and 63 do not suffer from this potential flaw. Similarly, the UNE loop

maintenance and repair measures 65 and 65.1 and the maintenance and repair measures related to certain business applications (such as ISDN and DS3 addressed in PMs 54 and 54.1) may also be less reliable given E&Y's results. Again, however, the results of all the UNE-P maintenance and repair measures (including PMs 37, 37.1, 38, 40, 41, and 42) and other of the UNE loop maintenance and repair measures (including PMs 66, 67, 68 and 69) are supported by the E&Y results. SBC has also completed successful BearingPoint transaction tests related to UNE provisioning (specifically PMs 58, and 59), and maintenance and repair (PMs 66, 67 and 68) as well as successful tests regarding coordinated conversions (PMs 114, 114.1 and 115) which the Commission also considers in support of SBC's application.<sup>146</sup>

#### D. Conclusion

Based on the evidence of record, the Commission finds that SBC has demonstrated compliance with Checklist Item 4.

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<sup>146</sup>BearingPoint's October 30, 2002 OSS Evaluation Project Report, Table A1, p. 1017-1026.

## **Checklist Item 5 – Unbundled Local Transport**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.” The FCC has concluded that ILECs must provide interoffice transmission facilities or “transport” facilities, on an unbundled basis, to requesting telecommunications carriers pursuant to Section 251(c)(3). The FCC has further concluded that “interoffice transmission facilities” include both dedicated transport and shared transport.

### **B. Standard of Review**

The FCC has held that ILECs must provide unbundled dedicated transport or transmission facilities between LEC central offices or between such offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices and service wire centers (SWCs), SWCs and interexchange carrier (IXC) points of presence, tandem switches and SWCs, end offices or tandems of the ILEC, and the wire centers of ILECs and requesting carriers. The FCC has further concluded that the ILEC must also provide all technically feasible capacity-related transmission services, such as DS1-DS3 and OC3-OC192. The ILEC must also provision dark fiber as a UNE. Additionally, the FCC has held that ILECs must provide unbundled shared transport, which consists of transmission facilities shared by more than one carrier, including the ILEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the ILEC’s network. Therefore, to satisfy its obligations under this subsection of the competitive checklist, an applicant must demonstrate that it is offering both dedicated and shared transport to requesting carriers.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC states that it provides unbundled local transport pursuant to tariffs and interconnection agreements. SBC indicates that it provides access to both dedicated and shared interoffice transport consistent with the unbundling requirements.

SBC states that dedicated transport is available at standard transmission speeds of up to OC-48 between all points required by law, including wire centers or switches owned by SBC, a CLEC, or third-parties acting on behalf of a CLEC. Higher speeds are available through a BFR process. SBC also permits CLECs to use dark fiber for dedicated transport. In addition, SBC allows CLECs to use its digital cross-connect system to exchange signals between high-speed digital circuits without returning the circuits to analog electrical signals, with the same functionality that SBC provides its IXC customers.

SBC makes available shared transport between SBC central office switches, between SBC tandem switches, and between SBC tandem switches and SBC central office switches. The shared transport offering also includes a transiting function. CLECs may use shared

transport to carry originating interexchange access traffic from and terminating interexchange access traffic to customers to whom the CLEC is providing local exchange service, while collecting the associated access charges. CLECs may also use shared transport to provide intraLATA toll service, consistent with the Commission's determinations in Case No. U-12622 and FCC merger requirements.

## 2. Other Parties' Positions

AT&T argues, as it did with respect to checklist item 2, that its original existing interconnection agreement provides for the unrestricted use of shared transport.<sup>147</sup>

SBC responds to AT&T, arguing that any dispute concerning the provision of shared transport under a prior generation interconnection agreement or tariff is irrelevant to a checklist compliance review today.

## D. Performance Measurements

There are several provisioning and maintenance and repair performance measurements for local transport, although the activity level was almost nonexistent. For both DS1 and DS3 dedicated transport, SBC's own embedded base showed no trouble reports submitted that qualified for inclusion for the three-month period measured and evaluated. Thus the DSI and DS3 dedicated transport trouble report rates (PM 65) and trouble report rates net of installation and repeat reports (PM 65.1) surpassed the retail parity comparison standard in each of the three report months of performance results.

## E. Discussion

The Commission gives limited weight to the performance results reported for this checklist item due to issues discussed earlier in regard to E&Y's audit. The number of performance measures with volume for this checklist item was extremely limited anyhow. In the Commission's view, the record demonstrates that SBC complies with the requirements and standards for the provision of unbundled local transport, both dedicated and shared. The only noteworthy comment on this checklist item came from AT&T. Pursuant to the Commission's order in Case No. U-12622 regarding unbundled local switching and shared transport, and the subsequent incorporation of the terms of that order into its new interconnection agreement with SBC, AT&T's issues have been addressed.

## F. Conclusion

Based upon the record, the Commission finds that SBC has demonstrated compliance with Checklist Item 5.

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<sup>147</sup>On March 21, 2002 in Case No. U-12465, the Commission approved the Mi2A for AT&T and SBC.



## **Checklist item 6 – Unbundled Local Switching**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(vi) requires a BOC to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.” In the Local Competition First Report and Order, the FCC required BOCs to provide ULS that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities include the basic switching function as well as the same basic capabilities that are available to the BOC’s customers.

### **B. Standard of Review**

Unbundled local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions. In the Local Competition First Report and Order, the FCC held that BOCs must permit CLECs to purchase unbundled switching in a manner that permits competing carriers to offer, and bill for, exchange access and the termination of local traffic. Additionally, the BOC must demonstrate that it offers equivalent access to billing information for this checklist item. The FCC indicated, therefore, that the ability of a BOC to provide billing information necessary for a CLEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching. Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.

In previous Section 271 orders, the FCC held that a BOC must make available trunk ports on a shared basis and routing tables resident in the BOC’s switch, as necessary to provide access to the shared transport functionality. Also, a BOC may not limit a CLEC’s ability to use unbundled local switching to provide exchange access by requiring CLECs to purchase a dedicated trunk from an IXC’s point of presence to a dedicated trunk port on the local switch. Therefore, to satisfy its obligation under this subsection, an applicant must demonstrate compliance with these requirements on unbundled local switching.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC states that it provides nondiscriminatory access to local switching, making available the features, functions, and capabilities of the switch through its tariffs and interconnection agreements. SBC provides CLECs unbundled local switching capability with the same features and functionality as are available to SBC’s own retail operations in a nondiscriminatory manner. SBC will also provide tandem switching and packet switching in accordance with the UNE Remand Order and FCC rules.

SBC provides requesting carriers access to line-side and trunk-side switching facilities, plus the features, functions, and capabilities of the switch. SBC’s offerings include, among other things, the connection between a loop termination and a switch line card, the connection between a trunk termination and the trunk card, all vertical features the switch is capable of providing, and any technically feasible routing features, as well as a

number of unbundled switch port types.<sup>148</sup> SBC also provides CLECs with the necessary cross-connects for local switching, and provides access to all call origination and completion capabilities of the switch, including capabilities for intraLATA and interLATA calls.

With regard to billing information, SBC also furnishes CLECs with usage records that enable them to collect from their customers all exchange access toll and reciprocal compensation charges associated with these capabilities. SBC gives any CLEC using unbundled local switching a daily usage feed showing per-call billing detail for each line-side ULS port.

## 2. Other Parties' Positions

AT&T argues, as it did with respect to checklist item 2 and UNE combinations, that its original existing interconnection agreement provides for the unrestricted use of unbundled local switching.<sup>149</sup> SBC responds to AT&T by arguing that any dispute concerning the provision of unbundled local switching under a prior generation interconnection agreement or tariff is irrelevant for a checklist compliance review today.

### D. Performance Measurements

The performance measurements for unbundled local switching cover installations, trouble reports, etc. There was no activity in any of the measurements. CLECs are not currently purchasing stand-alone unbundled local switching from SBC. However, as support, SBC relates that the same wholesale provisioning processes are in place for this UNE as would be applicable to other wholesale products. Thus, the performance, if the product were being purchased, would be expected to be comparable to the UNE products, including the UNE-P.

### E. Discussion

The record demonstrates that SBC complies with the requirements and standards for the provision of unbundled local switching. The only specific comment on this checklist item came from AT&T. Pursuant to the Commission's order in Case No. U-12622 regarding unbundled local switching and shared transport, and the subsequent incorporation of the terms of that order into its new interconnection agreement with SBC, AT&T's issues have been addressed.

### F. Conclusion

Based on the evidence in the record, the Commission finds that SBC has demonstrated compliance with checklist Item 6.

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<sup>148</sup>SBC's May 15, 2001 Checklist Informational Filing, Deer affidavit, ¶177-178.

<sup>149</sup>On March 21, 2002 in Case No. U-12465, the Commission approved the Mi2A for AT&T and SBC.

## **Checklist Item 7: 911, E911, Directory Assistance, and Operator Calls**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(vii) of the competitive checklist requires a BOC to provide “[n]ondiscriminatory access to . . . 911 and E911 services; . . . directory assistance services to allow the other carrier’s customers to obtain telephone numbers; and . . . operator call completion services.”

### **B. Standard of Review**

A BOC must provide CLECs access to its 911 and E911 services in the same manner that a BOC obtains such access (i.e., at parity). Specifically, the BOC must maintain the 911 database entries for CLECs with the same accuracy and reliability that it maintains this database for its own customers. For facilities-based carriers, a BOC must provide unbundled access to the 911 database and 911 interconnection. To meet subsections 2 and 3 of this checklist item, a BOC must be in compliance with the rules implementing Section 251(b)(3) of the Act. Directory assistance (DA) services “allow the other carrier’s customers to obtain telephone numbers,” and the FCC has indicated that operator call completion services referred to in this checklist item include “any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.”

The FCC has held that “nondiscriminatory access to directory assistance and directory listings” means “customers of all telecommunications service providers should be able to access each LEC’s DA service and obtain a directory listing on a nondiscriminatory basis.” Nondiscriminatory access to OS means that “a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.” The FCC has stated that competing carriers may provide OS and DA by either reselling the BOC’s services or by using their own personnel and facilities to provide these services. The FCC’s rules require BOCs to permit CLECs wishing to resell the BOC’s OS/DA to request the BOC to brand their calls and competing carriers wishing to provide OS/DA using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a “read only” or “per dip” basis from the BOC’s DA database or by creating a database by subscriber listing information in the BOC’s database.

The FCC originally concluded that BOCs must provide OS/DA on an unbundled basis pursuant to sections 251 and 252. In its 1999 UNE Remand Order, the FCC indicated that OS/DA would be removed from the list of required unbundled network elements at such time as an ILEC provides customized routing or a compatible signaling protocol to requesting telecommunications carriers. 47 CFR 51.319(f). The FCC also has stated that checklist items that do not fall within a BOC’s UNE obligations still must be provided in accordance with sections 201(b) and 202(a) of the Act, which require that rates and conditions be just and reasonable and not unreasonably discriminatory.

## C. Summary of the Evidence

### 1. SBC's Position

#### a. 911 and E911

SBC must provide nondiscriminatory access to 911 and E911 services. SBC states that it satisfies this requirement by providing CLECs with access to 911 and E911 services at parity with the manner in which SBC itself obtains such access. The obligation to do so is reflected in SBC's 911 tariff and interconnection agreements. Access to 911 and E911 services is provided to local municipalities pursuant to tariff and contract. SBC provides CLEC customers access to the 911 services selected by the municipality in a manner identical to the 911 service supplied to SBC's own customers. CLECs can provide 911 service directly to municipalities or may interconnect with SBC's existing services arrangement at the request of the governmental body.

SBC states that facilities-based CLECs obtain nondiscriminatory access to 911 and E911 service through dedicated trunks from their facilities to the 911 control office, which SBC provides at parity with what it provides to itself. SBC also provides CLECs with a wide variety of tools to submit, update, and correct customer information in the 911 database in the same manner as SBC. Among other things, SBC provides CLECs with all necessary street address information for the areas where the CLEC operates in order to allow the CLEC to create the necessary customer files for automatic location identification. This makes administration of the master street address guide (MSAG), which contains the criteria for routing 911 calls and identifies the responding agencies, more efficient for the 911 customer and the CLEC. It also reduces the potential for error by maintaining a single mechanized MSAG that is under the control of the 911 customer (the municipality) and utilized by all service providers who interconnect with the 911 systems provided by SBC. A CLEC can view a copy of the MSAG electronically, including individual end-user records, and can periodically obtain its own mechanized copy of the MSAG.

SBC and its 911 database services provider, SCC Communications Corporation, detect and correct data errors for CLEC customers in the 911 databases in the same manner and by the same employees that detect and correct errors for SBC's customers. Each switch-based service provider is responsible for electronically uploading and maintaining the 911 database information for its customers. When files containing a CLEC's customer records are uploaded, the transaction services system (TSS) in the MSAG processes the file and the CLEC receives a statistical report confirming the number of records processed and an error file with any records that failed the system edits. The error file provides codes explaining the reason each record failed to pass the edits, and the CLEC is then responsible for correcting the record and resubmitting it to the TSS. SBC states that it also provides CLECs with an electronic comparison file containing the 911 database information for the CLEC's customers served through UNE switch ports. The CLEC can use that file to check accuracy and submit any necessary corrections to SBC. This comparison process was recently implemented in Michigan and, subject to CLEC feedback, will be finalized and then posted on the SBC.CLEC.Online website. Resellers are able to provide 911 service to their customers in the same manner SBC does for its customers. End-user records for resale customers are included in the files that SBC uploads to TSS for its own customers.

If SBC's error file shows an error for a resale customer record, SBC or SCC employees correct errors that can be resolved without issuing a service order. SBC recognizes that both the Commission and FCC had concerns about the accuracy of 911 databases when SBC first sought Section 271 relief in 1997. SBC took numerous steps to correct those problems at the time and has continued to work on maintaining the accuracy of the 911 database, including giving CLECs a wide variety of new tools to ensure the accuracy of the end-user information they submit for 911 purposes. These include both dedicated 911 managers to facilitate CLEC 911 service and different electronic tools for inputting, reviewing, and correcting end-user data.

b. OS/DA

SBC states that it meets its obligations under Section 251 of the Act and Checklist Item 7 by providing CLECs with nondiscriminatory access to the following services: (1) OS, including adjunct operator call completion services, (2) DA services, including information call completion/directory assistance call completion, (3) directory assistance listings (DAL) in bulk format, and (4) direct access to the DA database on a query-by-query basis.

Since SBC's last Section 271 application in 1997, SBC states that it has made numerous improvements and enhancements to OS/DA that specifically address the issues raised by the CLECs during the application process and by the FCC in its order.<sup>150</sup> As a result of collaborative sessions supervised by the Commission, SBC upgraded its OS/DA switches to make branding capability available to CLECs in Michigan utilizing shared trunking. This branding option is available to resale CLECs and facilities-based carriers that use SBC's unbundled local switching. In its UNE Remand Order, the FCC ruled that incumbent LECs are no longer required to make OS/DA services and directory assistance listings available as unbundled network elements where the incumbent LEC provides custom routing for OS/DA traffic. Custom routing allows a CLEC to route OS/DA traffic from its end-user customers to an OS/DA platform of its own or another company that provides OS/DA services on behalf of the CLEC. Moreover, the FCC specifically declined to expand the definition of OS/DA to include an affirmative obligation "to provide directory listings updates in daily electronic batch files." The FCC regarded such a finding as unnecessary because this obligation "already exists under Section 251(b)(3) and the relevant rules promulgated thereunder."

According to SBC, neither Section 251(b)(3) nor the related FCC rules require provision of access to such listings on an unbundled basis. Rather, under these rules, SBC is required to make such listings available on a nondiscriminatory basis and with no unreasonable dialing delays. Custom routing is available to CLECs throughout Michigan and is included in Michigan interconnection agreements. This custom routing uses the same technology used by SBC to route OS/DA traffic from its end offices to SBC's operator switches. Thus, SBC states that it provides nondiscriminatory custom routing capabilities. Competing carriers in Michigan, therefore, can route their OS/DA traffic to a platform of their own or another provider of OS/DA services, or choose SBC as the provider of OS/DA

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<sup>150</sup>FCC 96-333 Second Report and Order and Memorandum Opinion And Order (Second Report and Order) and CC Docket 96-98, Appendix B - Rules, Amendments to the Code of Federal Regulations, Part 51, Subpart D.

services on the CLEC's behalf. SBC's custom routing option meets the FCC's requirements, as recently affirmed in the Kansas & Oklahoma 271 Order.

Nevertheless, pursuant to the Commission's decision in Case No. U-12622, SBC currently makes OS/DA services available as UNEs at TELRIC-based rates. Incumbent LECs are still bound by their obligations under Section 251(b)(3) to provide nondiscriminatory access to operator services, directory assistance services, and directory assistance listings to competing providers. SBC provides nondiscriminatory access to operator services, directory assistance, and directory assistance listings pursuant to Section 251(b)(3). SBC has implemented DA service arrangements for 13 facilities-based CLECs and 10 resale CLECs in Michigan, and has implemented OS arrangements for 11 facilities-based CLECs and 31 resellers in Michigan.

Operator services provided by SBC include automated call assistance and manual call assistance (including operator assistance, busy line verification, busy line verification interrupt, and operator transfer service) and are identical to the services available to SBC itself. Likewise, SBC's DA services offering complies with the terms of the Act and 47 CFR 51.217(c)(3). Services provided by SBC to CLECs are identical to the services provided by SBC's own retail operation and include provisioning of subscriber listing information, address and published phone numbers, and call completion. SBC further ensures nondiscriminatory access to OS and DA by processing all calls in the order they are received from all end-users accessing OS or DA (i.e. first in, first served). Because the operator switch and the calls waiting queue cannot discern any difference among callers, handling every call on a first-in, first served-basis, end-user customers of other carriers inherently receive exactly the same answer performance that SBC end-users receive. As the Commission observed in its performance measurement docket, Case No. U-11830, "without the ability to distinguish between callers that are end-user customers of the ILEC and those that are end-user customers of the CLEC, there can be no lack of parity in treatment."

c. Directory Assistance Listings and Direct Access to DA Database

SBC also has obligations under the Act, FCC rules, and current interconnection agreements to provide DAL information. SBC states that it will provide DAL information in bulk format to a CLEC that chooses to provide its own DA services and has amended its interconnection agreements to provide for access to DAL information to CLECs via magnetic tape, cassette, or electronic transmission. Daily updates are provided by SBC in compliance with 47 CFR 51.217(c)(3)(ii). In addition, SBC states that it offers nondiscriminatory access to directory assistance listing information. Consistent with the FCC's rule that any telephone customer should be able to access any listed number of any carrier on a nondiscriminatory basis, SBC offers an agreement whereby a CLEC receives SBC's DA bulk listing information on a statewide, geographic area, or class of service basis. In compliance with FCC rules, SBC provides all the listings in its DA database to such carriers regardless of the identity of the end-user's underlying local exchange provider. In addition, SBC offers CLECs physical interconnection with direct access, on a query-by-query basis, to the same DA database that is accessed by SBC operators for DA purposes and in the same format as is available to those operators. SBC states that it provides CLEC end-users nondiscriminatory access to OS and DA services through the same dialing arrangements that SBC uses for its

own customers. As a result, there is no unreasonable dialing delay, consistent with the FCC's rules issued in CC Docket 96-98.

## 2. Other Parties' Positions

### a. 911 Issue

The Michigan Consumer Federation states that this checklist item is of particular concern to consumers as it directly relates to health and safety. The Michigan Consumer Federation states that the ongoing and comparatively high profile case involving 911 service in the city of Southfield is particularly instructive as to SBC's corporate state of mind regarding "compliance."

Nearly five years after the city brought its first complaint against SBC regarding numerous problems with the 911 service, those problems have still not been fixed, even as the city has been forced to wage protracted and expensive battle against SBC in the courts. In some respects it would appear that SBC is largely sincere in its ongoing efforts to correct the 911 problems in Southfield. However, given the number, nature, and longstanding existence of such problems, it suggests that it is time to ask why SBC is apparently content to keep paying the daily fines rather than incur whatever cost is necessary to correct what appear to be serious problems of competency. Given the City of Southfield experience, it is hard to accept the benign picture SBC paints of this Checklist item.

### b. OS/DA

WorldCom states that when a customer chooses it for local service in Michigan and Illinois, the customer will not receive SBC branding for OS/DA calls for 5 business days after migration. Moreover, even after this 5-day period, there has been a random pattern of customers receiving SBC branding. The five-business day delay causes confusion for customers. WorldCom states that SBC is not presently capable of performing correct branding, and its assertion that it satisfies the checklist requirement for operator services and directory assistance is not accurate.

Z-Tel states that SBC's tariffs clearly establish that Z-Tel is to pay a one-time branding charge per trunk in Michigan. Despite this clear and unequivocal language, Z-Tel continues to receive bills imposing a "pay-for-use" branding charge. This defect in SBC's billing system was first noticed in January 2001 and is not solely limited to Michigan, but also occurs throughout the SBC region. In an attempt to resolve this matter, Z-Tel eventually had to initiate a formal billing dispute with SBC in April 2001. Despite Z-Tel's best efforts, SBC has not responded to the formal dispute and continues to incorrectly bill this branding charge.

AT&T states that SBC has failed to comply with its obligations concerning access to operator services and directory assistance by insisting that AT&T must use separate trunk groups for local and long distance OS/DA calls.

c. DA Listing

WorldCom states that the March 19, 2001 order in Case No. U-12622 requires SBC to provide unbundled OS and DA services at TSLRIC rates. These are the only rates that are nondiscriminatory and just and reasonable. Yet SBC's tariffs for OS/DA contain additional charges that were never raised in the Commission's TSLRIC docket, let alone approved by the Commission. Also, in its June 2001 comments, WorldCom indicated that SBC did not issue correct bills for OS/DA. In fact, it had yet to issue a bill to WorldCom despite the fact that WorldCom has been using unbundled OS/DA since December 2000. WorldCom states that SBC should be required to issue proper OS/DA bills at the approved TSLRIC rates (as opposed to the unapproved, but purportedly presently tariffed rates) before SBC can claim that it appropriately provides OS/DA in Michigan.

WorldCom states that SBC today does not offer DAL at TSLRIC rates. Also, the DAL that SBC does provide is riddled with numerous deficiencies which to date SBC has failed to correct. WorldCom states that it is clear that SBC does not have a Commission approved TSLRIC cost study for directory assistance listings. This was specifically noted by the Commission in its March 29, 2001 order in Case No. U-12765. Essential to the ability of WorldCom to compete in the directory assistance marketplace, is WorldCom's ability to receive the DAL database at reasonable and nondiscriminatory prices. WorldCom states that it is perfectly clear that SBC must provide this DAL information to WorldCom and that it be priced at TSLRIC, which is the only nondiscriminatory and reasonable pricing for this type of information. SBC has ignored Michigan law that defines what "just and reasonable" pricing means. The MTA provides that the pricing standard for elements related to interconnection is TSLRIC.

Accordingly, federal law, while not requiring TSLRIC pricing for elements that the FCC does not require to be unbundled under Sections 251(c) and (d) of the FTA, nonetheless requires "just," "reasonable," and "nondiscriminatory" pricing for DA and DAL regardless of whether directory assistance is required to be unbundled pursuant to Sections 251(c) and (d). Michigan law, on the other hand, requires TSLRIC pricing for DA and DAL, as this is the only pricing that is just, reasonable, and nondiscriminatory. These must be provisioned at TSLRIC and tariffed as such because this is the only pricing that is just and reasonable and not unreasonably discriminatory and consistent with both state and federal law. Yet the pricing of DAL is not based on TSLRIC. In addition to pricing problems, the quality of the DAL that SBC provides to WorldCom is also deficient. WorldCom has a number of issues related to the quality of data it receives from SBC, both on a state-by-state and region-wide basis.

Some of these issues are described here. While SBC has generally provided WorldCom with reloads of the DAL data to correct errors, WorldCom has received 5 reloads in a 13-month period. This is a greater number of reloads than WorldCom has needed from any other LEC in the country. Of recent and most particular concern is an unexplained fluctuation in the number of individual directory assistance listings WorldCom receives for the entire SBC region. From one month to the next, there has been a fluctuation of 4 million listings. While one would expect that the number of listings would change from month to month, one would not expect a fluctuation of this magnitude. WorldCom is concerned it is not receiving all the data it is entitled to by law and under its interconnection agreement. Another issue of concern is that WorldCom continues to experience "unmatched deletes" to



its DAL data. This occurs when a listing deleted in an SBC daily update file is not found in the WorldCom-SBC database. This experience leads WorldCom to conclude that it is not receiving all the data to which it is entitled by law or under the interconnection agreement. WorldCom is increasingly concerned about the overall quality of data it receives for the SBC region.

### 3. SBC's Response

#### a. 911 and E911

The Michigan Consumer Federation is the only party to challenge SBC's filing with respect to 911 and E911 services, but it fails to present any evidence in support of its claims that SBC has not met the requirements of the checklist for 911 and E911 services. By contrast, the data filed by SBC in accordance with the Commission's September 30, 1997 order in Case No. U-11229 demonstrate that SBC has met its checklist obligations with respect to the provision and maintenance of E911 services and the 911 database. Following an initial review of 100% of its E911 database, SBC determined that only 2.77% of the over 7 million records had discrepancies and these records were immediately corrected. Subsequent to this verification, SBC implemented a monthly verification process of 100% of the changes submitted to the database. Of over 17 million record updates processed over a three-year period, only 265 (or 0.0015%) were erroneous. Of those, all but 22 were SBC records.

Furthermore, over the last three years, SBC has taken 20,302 trouble reports from public safety answering points (PSAPs). Of those, 2,243 were not resolved within one business day. Of those delayed, 108 (or 5%) were due to SBC, 1,273 were due to municipalities, and 862 were due to other telephone companies. In total, over the three years, SBC paid \$390,000 in fines to the State of Michigan for the delayed resolution. These fines were more significant at the beginning of the three-year period and, in some months, there were no fines at all. Finally, SBC has introduced tools for use by other carriers to ensure that their data are accurate and complete in SBC's E911 database. SBC introduced these tools in response to the FCC's Michigan 271 Order, in which issues related to those in Case No. U-11229 were raised. These undisputed facts soundly rebut MCF's unsupported allegations. SBC is properly maintaining its E911 database and resolving any real or perceived errors on a timely basis. For these reasons, MCF's claims should be rejected.

#### b. OS/DA

The comments here also do not challenge SBC's offering, only the price. Contrary to WorldCom's claims, SBC's pricing of OS/DA is reasonable and consistent with the Commission's orders in Cases Nos. U-12622 and U-11831. And while WorldCom makes the odd complaint that it has yet to receive a bill from SBC for OS/DA services, WorldCom has in fact received bills for the months of March through June of 2001. Z-Tel's opposition to SBC's per-call branding charge ignores the fundamental difference between calls transported over dedicated trunks and calls transported over shared trunks. For switch-based CLECs that choose SBC as their wholesale OS/DA provider, there is no per-call charge for branding because OS/DA calls are transported from the CLEC's switch to SBC's operator

platform via dedicated trunks. By contrast, OS/DA calls for resale or UNE-based CLECs are transported over shared trunks and a per-call query is required to identify the underlying local exchange carrier and to trigger the carrier-specific brand. This per-call query results in a per-call charge, which is detailed in accessible letter CLECAM00-074 53 issued on April 1, 2000 in direct response to CLEC requests to develop branding for OS/DA calls transported over shared trunks.

### c. DA Listings and Direct Access to DA Database

SBC states that WorldCom's claims that directory assistance listings should be priced as an unbundled network element are similarly without merit because they were rejected in the UNE Remand Order. There, the FCC recognized that DAL is a competitive wholesale service and declined to expand the definition of OS/DA to include DAL. UNE Remand Order, ¶ 444. The FCC has further recognized that where a checklist item is not an unbundled network element, it would be counterproductive to require an ILEC to provide that element at forward-looking prices. In addition, the FCC has approved, as consistent with the checklist, interconnection agreements for Texas, Kansas, and Oklahoma that used market-based prices, rather than UNE pricing for DAL. WorldCom is trying to confuse pricing for OS/DA service with pricing for DA listings, a tactic the FCC rejected in the UNE Remand Order. WorldCom's claims about the quality of DA listings should also be rejected. While WorldCom claims that there has been an "unprecedented" number of reloads, it ignores the fact that these reloads were made free of charge at WorldCom's request. Notably, four of the reloads requested by WorldCom occurred in the second half of 2000, the last of which was more than seven months ago. The "fluctuations" in the number of listings that concern WorldCom actually reflect SBC's proactive efforts to have more LECs give permission to release their listings into SBC's database. Finally, WorldCom's claims regarding "unmatched deletes" are without merit. SBC Michigan has investigated this issue and, in each instance, it was found that the deleted listing did match a listing WorldCom had received previously.

### D. Discussion

#### 1. 911

SBC filed its final report in Case No. U-11229 on July 23, 2001 regarding fines due as a result of the 1996 City of Southfield complaint. The report filed in July 2001 covered the period of August - October 2000 and SBC paid fines of \$8,000 for that three-month period where trouble reports to 911 databases were not resolved within the required time period. Reporting was required for three years after the Southfield order. No further complaints have been received, and the performance measures that have been reviewed support SBC's claims.

#### 2. OS/DA

The Commission, in its December 20, 2001 order in this docket, stated that it appeared that the existence of new branding charges could be traced to SBC's tariff filing

following the Commission's March 19, 2001 order in Case No. U-12622, an order dealing with shared transport. Following that order, SBC filed with the Commission Advice No. 3064, which contained the company's proposed shared transport tariffs. However, included in those proposed tariffs were the two additional branding charges at issue here. Before that filing, the only branding charge in the unbundled OS tariff was a one-time trunk charge of \$403.64. SBC enclosed cost support for both new charges with Advice No. 3064. However, neither the general issue of branding nor additional charges for branding was even mentioned in Case No. U-12622. It appears that SBC unilaterally determined that it should insert these two new branding charges in its proposed tariffs following the March 19 order. In its December 2001 order, the Commission determined that such unilateral changes to tariffs was not lawful or appropriate. The Commission indicated that if SBC desired to propose these charges, it must take appropriate steps to gain Commission approval. Until that time, SBC could not impose these charges, including the per call branding charge. The Commission had previously required SBC to offer OS/DA as a UNE at TSLRIC-based rates in the March 19 order. The Commission indicated the obligation would continue in effect until SBC provided reasonable accommodations for the problems presented by dedicated end-office trunking and other technological issues that inflated the CLECs cost of obtaining access to competitive OS/DA services. Issues raised in the December order were addressed in a new proceeding, Case No. U-13347. An order was issued in June 2002 and required tariffs and supporting cost studies were filed by SBC on July 22, 2002. Branding charges as well as OS/DA rates have now been established at TSLRIC rates and comply with the Commission's December 2001 order.

### 3. Pricing of Access to DA Listings

WorldCom complains that SBC does not offer DA listings at TSLRIC rates. It points out that SBC does not have a Commission approved cost study for DA listings.<sup>151</sup> In fact, WorldCom argues, SBC's argument that it did not have an obligation to provision unbundled DA listings persuaded the Commission to defer issuing a DA listing costing decision in Case No. U-11831. Thus, WorldCom argues, it is SBC's fault that it has no currently approved cost study for DA listings. WorldCom asserts that its ability to access the DA listing database at reasonable and nondiscriminatory prices is essential to its ability to compete. In WorldCom's view, pricing DA listings at TSLRIC would meet those criteria. It argues that under Michigan law, DA and DA listings are required to be priced at TSLRIC.

SBC responds that the Commission should reject WorldCom's claim that DA listings should be priced at TSLRIC. It argues that WorldCom's suggestion was rejected in the UNE Remand Order,<sup>152</sup> in which the FCC recognized DA listings as a competitive wholesale service and declined to expand the definition of DA to include DA listings or to require DA listings to be provided at forward-looking prices. Moreover, SBC asserts, the FCC has

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<sup>151</sup>March 29, 2001 Commission order in Case No. U-12765.

<sup>152</sup>FCC Order 99-238, In re the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No 96-98, rel'd November 5, 1999.

approved Section 271 applications for states in which SBC's affiliate charges market-based rates for access to DA listings.

The Commission in its December 20, 2001 order in this case found that SBC read too much into the cited portion of the UNE Remand Order. In the cited paragraph, the FCC declined to "expand the definition of OS/DA . . . to provide directory assistance listing updates in daily electronic batch files . . . [because] the obligations already exist under Section 251(b)(3), and the relevant rules promulgated thereunder."<sup>153</sup> Specifically, 47 CFR 51.217(c)(3)(i) requires that an ILEC permit CLECs to have access to the ILEC's "DA services, including directory assistance databases . . . on a nondiscriminatory basis . . ."

The FCC further referenced its prior Directory Information Listing Order,<sup>154</sup> in which the FCC reaffirmed its previous conclusions that incumbent LECs must provide DA listing access equal to that which they provide themselves. It stated that "any standard that would allow a LEC to provide access to any competitor that is inferior to that enjoyed by the LEC itself is inconsistent with Congress' objective of establishing competition in all telecommunications markets."<sup>155</sup> The Commission found that the requirement to provide nondiscriminatory access to DA listings required that it be provided at cost-based rates consistent with Case No. U-11831 parameters, and on a basis equal to that which the incumbent provides itself. In other words, SBC must permit CLECs to access the DA listings electronically and to order directory listings in an electronic format.

As to SBC's claim that the FCC found DA listings to be a competitive wholesale service, the Commission found in its December 2001 order that the FCC conclusion relates only to ILECs that provide customized routing. The Commission previously found that SBC did not provide reasonable customized routing. Moreover, although the FCC may have approved Section 271 applications for states in which the incumbent charged market rates for DA listings, SBC does not cite a particular portion of those orders discussing the issue. If an issue was not raised in a case, the FCC's failure to reject the application on that basis does not carry persuasive weight in the Commission's determination in this case.

The December order found that the prices were noncompliant. SBC filed a revised tariff in April 2002, and is now compliant with the Commission's requirements in this area.

#### E. Performance Measurements

SBC indicates that its performance measurement results for June, July, and August 2002 show that Michigan CLECs receive nondiscriminatory access to 911, E-911, and directory assistance databases. SBC states that it achieved 100% performance for those

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<sup>153</sup>FCC order 99-238, ¶ 444.

<sup>154</sup>9 FCC Order 99-227, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket Nos. 96-115, 96-98, and 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, rel'd September 9, 1999.

<sup>155</sup>FCC Order 99-227 ¶ 129 and ¶152.

measurements associated with this checklist item. In general, the CLECs' customer information is incorporated and maintained in SBC's database systems as quickly, accurately, and efficiently as are SBC retail customers' data.

SBC indicates it has provided the CLECs with ample access to operator services. The benchmark has been achieved by SBC during each of the filed three months for PM 80-01 (Directory Assistance Average Speed Of Answer) and PM 82-01 (Operator Services Speed Of Answer). Note that these measures are calculated at the aggregate level, for all calls by CLEC and retail customers alike. Calls cannot be segregated by carrier, or for comparison between wholesale and retail, because SBC's systems do not and cannot differentiate between carriers. The best possible protection against discrimination is the technical impossibility of doing so, or "parity by design." For that reason, the Commission has held that SBC need not measure operator services separately by carrier: "Without the ability to distinguish between callers that are end-user customers of the ILEC and those that are end-user customers of the CLEC, there can be no lack of parity in treatment. As long as this lack of ability to distinguish exists, measuring the answer speed would provide a quality of service assessment, rather than offering any assistance in determining parity."<sup>156</sup>

SBC states that it has also provided comparable service to the CLECs in updating their 911 records. In fact, SBC processed 100 percent of all CLEC update files by the next business day after receipt (PM MI 8-02). Further, the performance data for PM MI 6-02 (Erred Customer Record Update Files Not Returned by Next Business Day – Electronically Received) show that SBC has achieved parity in each of the three months presented for the number of erred customer records not returned by the next business day to the CLECs. In fact, this error return rate has been less for the CLECs (0.0%) than it has been for SBC (0.3%) over these three months. And while SBC is not responsible for the actual submission of CLEC data (and thus is not responsible for CLEC errors), the results for PM MI 7-02 [Percent Accuracy for 911 Database Updates (Facility-Based Providers) – Electronically Received] show that Michigan CLECs have had smaller error rates to their 911 updates (4.5%) than have been experienced by SBC (5.0%) over the three months presented.

Similarly, performance results for PM 110-01 (Percentage of Updates Completed into the DA Database Within 72 Hours for Facility Based CLECs) demonstrate that SBC consistently has updated 99.7% of Michigan CLECs' customers' records in the directory assistance database within 72 hours in each of the past three months (June -August 2002). In addition, the results for PM 111-01 (Average Update Interval for DA Database for Facility Based CLECs) show that the average interval required to update the directory assistance database for CLECs' customers' records during each of the filed three months has been below the 48-hour benchmark. The monthly average 19.3-hour interval required to update the directory assistance database for Michigan CLECs' customers' records is significantly less than the benchmark of 48 hours.

SBC states that the accuracy of the directory assistance database updates by SBC also has been superb. SBC has exceeded the 97% benchmark during each of the three months for both PM 112-01 (Percentage DA Database Accuracy For Manual Updates) and PM 113-01 (Percentage of Electronic Updates that Flow Through the Update Process Without Manual Intervention). The Commission agrees that performance results for 911, directory assistance, and operator services by SBC support a determination that Michigan CLECs are provided

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<sup>156</sup>May 27, 1999 Commission Order in Case No. U-11830, p. 36.

nondiscriminatory access and have a meaningful opportunity to compete. All performance standards have been met for all 911, OS/DA and DA database measures for which volumes were recorded in the June, July, and August data months.

#### F. Conclusion

In its filing, SBC recognizes that both the Commission and the FCC had concerns about the accuracy of 911 databases when SBC first sought Section 271 relief in 1997. SBC took numerous steps to correct those problems at the time and has continued to work on maintaining the accuracy of the 911 database. To monitor these processes on an ongoing basis, SBC reports performance data on the percentage of 911 update files not processed by the next business day (PM MI 8) and the percentage of error notices not returned to the applicable CLEC by the next business day for correction (PM MI 6) and the percent accuracy for 911 database updates (PM MI 7). All are subject to standards that require nondiscrimination. The benchmark has also been achieved by SBC during the June, July, and August 2002 timeframe for PM 80-01 (Directory Assistance Average Speed Of Answer) and PM 82-01 (Operator Services Speed Of Answer) and all DA database measures (PMs 110-113). SBC's performance measurement results in this checklist item have all been achieved and show that Michigan CLECs receive nondiscriminatory access to 911, E-911, OS and DA services and directory assistance databases. The issues of OS/DA branding charges and the pricing of access to DA listings have been addressed by the Commission as noted above. Based on the evidence in the record, the Commission finds that SBC has demonstrated compliance with Checklist Item 7.

## **Checklist Item 8 -- White Pages**

### **A. Description of the Checklist Item**

Section 271(c)(B)(viii) of the Act requires SBC to provide “[w]hite pages directory listings for customers of other carrier’s telephone exchange service.”

### **B. Standard of Review**

Section 251(b)(3) requires all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings. The FCC has ruled that, consistent with its interpretation of “directory listing” as used in Section 251(b)(3), “white pages” as used in Checklist Item 8 refers to the alphabetical directory that includes the residential and business listings of the customers of the local exchange provider and includes, at a minimum, the subscriber's name, address, telephone number, or/and combination thereof. The FCC has determined that a BOC can satisfy the requirements by demonstrating that it (1) provides nondiscriminatory appearance and integration of white pages directory listings to CLECs' customers and (2) provides white pages listings for competitors’ customers with the same accuracy and reliability that it provides its own customers. The FCC has rejected arguments that a BOC did not meet this checklist item even though CLECs experienced problems with the BOC’s processes for altering customer listings and incorporating changes into the white pages directory, but indicated that a systemic problem, involving a significant number of listings, would warrant a finding of noncompliance.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC asserts that it provides white pages directory listings for customers of the other carrier's telephone exchange service by ensuring that its directory publishing affiliate publishes and integrates the primary listings of a CLEC’s customers located within the geographic scope of the white pages directories serving SBC’s customers, in the same manner (and integrated into the same directory) as the listings of SBC’s customers. SBC and independent telephone company listings in SBC’s directories all include the subscriber’s name, address, and telephone number. SBC says that it takes reasonable and appropriate steps to ensure that CLEC customer listings are maintained with the same accuracy and reliability as SBC customer listings.

SBC states that a primary white pages listing for each end-user is furnished to a CLEC providing services via resale and UNE-P in the same manner (including size, font, and typeface) as SBC provides for its own retail customers. In addition, carriers who provide local exchange service through the purchase of unbundled local switching, or some combination of unbundled network elements and their facilities, or solely through their own facilities, can also include their customers’ primary listings in SBC’s white pages directory in the same manner as SBC provides for its own retail customers.

SBC says it provides resellers and CLECs that use UNE-P with instructions for proper submission of white pages listings by offering instructions on its CLEC Handbook website (<https://clec.sbc.com>) and by offering a variety of training workshops. As a result of negotiations in the Wisconsin collaborative, made binding in Michigan pursuant to the Joint Report on OSS filed on December 22, 2001, SBC has committed to implement an enhancement that will allow CLECs to request white pages listings from SBC's publishing affiliate at the same time (and via the same interface) as they submit an order for local service.

SBC asserts that it treats all CLEC end-user white pages listings in the same manner as it treats its own retail listings. The same database contains names, addresses, telephone numbers, directory listing format, and directory delivery information for SBC and CLEC end-users. SBC's white pages database updates the directory assistance database each night and treats all updates in the same manner, regardless of the underlying carrier. White pages directory listings for CLEC end-users reach SBC's white pages database in the same manner and within the same time frame as white pages directory listings for SBC's retail end-users.

SBC offers CLECs the option of receiving two verification review reports. SBC's performance standards require it to correct 95% of the corrections by the second review or otherwise waive the charge for the second verification report. SBC must correct 99% of corrections requested in the second review in time for the final published directory.

Each subscriber of CLEC resale and UNE-P services will receive delivery of the SBC white pages directory in the same manner and at the same time as copies are delivered to SBC's retail subscribers during the annual delivery of newly published directories. In addition, SBC has agreed to provide secondary delivery (i.e., between annual delivery dates) of white pages directories to customers of CLEC resellers and UNE-P users on the same basis as its own retail customers. SBC says it has arranged with its directory publishing affiliate so that a CLEC may include customer-contact information (for example, the CLEC's business office, residence office, and repair bureau telephone numbers) in SBC's white pages directory on the same "index-type" informational page that lists SBC contact information. Performance measure CLEC WI 4 measures accuracy of processing CLEC corrections based on review of directory information. However, no volume was contained in that measure for the June, July, and August 2002 review period.

## 2. Other Parties' Positions

XO asserts that SBC fails to provide white pages listings for customers of XO with the same accuracy and reliability as it provides its own customers. XO utilizes a software application supplied by SBC known as the Ameritech Customer Entry System or ACES. After XO transmits a new or revised listing, XO receives a confirmation that SBC is in receipt of the request. With respect to 30% of the requests for new or revised directory listings, XO states it receives a confirmation from SBC, even though SBC does not actually input those requests.

Compounding this problem, XO states that it has difficulty reviewing records within the SBC database when it attempts to insure the accuracy of its customers' listings.

XO says that this establishes that SBC fails to provide white pages listings for competitors' customers with the same accuracy and reliability as it provides its own customers.



XO further asserts another difficulty with SBC's white pages listings related to using SBC's ACES computer application. While XO attempts to enter additional listings, the application repeatedly provides "run time error" messages. In order to continue to enter listings after receiving this error message, the XO employee must reboot his/her computer. SBC has attempted to solve this problem by providing new applications of ACES to download. These new downloads, however, have not been able to solve this problem. Thus, XO does not have the same ability to input white pages listings as SBC.

McLeod states that during the course of negotiations pursuant to SBC's proposed 13-state interconnection agreement, McLeod attempted to secure a commitment from SBC to publish the white pages listings of McLeod customers similar to the provisions in the current interconnection agreement requiring SBC to publish the white pages directory listings for McLeod customers. SBC has refused to negotiate any such requirement and has merely directed McLeod to deal directly with SBC's publishing company, Dontec. By refusing to negotiate with McLeod for directory listings and putting McLeod at the mercy of Dontec, SBC has failed to provide white page directory listings for the McLeod customers in violation of Checklist Item 8.

### 3. SBC's Response

SBC asserts that XO's 30% failure rate is unsubstantiated and contrary to its data. It again asserts that its directory publishing affiliate, AAS, receives, inputs, and processes all listings from SBC and other providers in the same way. Further, SBC asserts that XO's claims that it is not allowed to view the most current customer record contained in SBC's listing database and to verify the accuracy of XO's customer listings are wrong. It says that through TCListLink, XO has inquiry access to verify its listings via the same tool that AAS provides to other CLECs and to SBC's wholesale and retail business offices. Further, AAS instructs CLECs to submit a listing trouble report (LTR) to AAS if they find inaccurate listing data on the TCListLink website following the three-day update timeframe. From January 1 to July 15, 2001, AAS received only one LTR from XO documenting erroneous Michigan listings on TCListLink. AAS investigated XO's LTR and identified two new types of errors that could be rejected electronically to CLECs as part of the ACES front-end interface processing, which it says have now been converted. XO also has access to at least one pre-BOC report showing its customers' listings prior to each directory close since XO began providing local service in Michigan and now has access to two pre-BOC reports for each directory.

XO's claim that the ACES software package it utilizes for submitting listing orders experiences "run time errors" at least three times a week is unsupported and contrary to the facts. From January 1 to June 30, 2001, AAS received only two notices of claimed run-time errors from XO. AAS expeditiously resolved both errors.

SBC states that McLeod's claim that while negotiating SBC's proposed 13-state interconnection agreement, SBC refused to commit to publish white pages directory listings for McLeod's customers, directing McLeod to deal with SBC's publishing company Dontec (sic) is mistaken or confused. SBC says that McLeod acknowledges that its current interconnection agreement with SBC provides for white pages directory listing. Also, DonTech is not and never has been "SBC's publishing company." DonTech is a yellow pages advertising sales entity operating in Illinois, not Michigan. Second, SBC does not

publish the white pages directories that include listings for McLeod's customers. Since 1994, SBC's directory publishing affiliate, AAS, publishes the white pages directories on behalf of SBC. Since 1998, McLeod and AAS have been parties to a directory agreement in Michigan. There are listings of McLeod's customers in AAS white pages publishing database as of June 30, 2001. The facts demonstrate that McLeod's customers' white pages listings are in SBC's white pages directories as required by Checklist Item 8.

#### D. Conclusion

While XO and McLeod have raised allegations concerning this checklist item, they are not compelling. XO has not substantiated its contentions. The testing by BearingPoint in regard to accuracy of directory listing has not yet met benchmark levels, but the most recent tests indicated a 91% success rate. Further remedial action will also be taken as discussed in more detail in the Checklist 2-OSS portion of this report. McLeod, on the other hand, asserts a failure to negotiate an appropriate interconnection agreement, which appears at odds with the facts for white pages listings.

The BearingPoint testing substantiates that directory assistance, while not without problems, is adequate and nondiscriminatory.

The Commission finds that SBC has demonstrated compliance with Checklist Item 8.

## **Checklist Item 9 – Numbering Administration**

### **A. Description of the Checklist Item**

Section 271(c)(B)(ix) of the Act requires that a BOC provide “[u]ntil the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers.” After that date, it must comply with the numbering guidelines, plan or rules.

### **B. Standard of Review**

The FCC designated NeuStar, Inc., as the North American Numbering Plan Administrator (NANPA) in 1998.<sup>157</sup> As the NANPA, NeuStar is responsible for area code relief planning and the assignment of central office codes (CO codes or NXXs), blocks of 10,000 telephone numbers, to carriers for assignment to end-user customers. In addition, the FCC designated NeuStar as the National Thousands-Block Number Pooling Administrator in 2001. As the Pooling Administrator, NeuStar is responsible for administering thousands-block number pools, enabling participating carriers to receive telephone numbers in blocks of 1,000.<sup>158</sup>

At the time of NeuStar’s designation as the NANPA, BOCs ceased to be responsible for the assignment of telephone numbers to other telephone carriers. Rather, BOCs now must demonstrate that they follow the industry numbering administration guidelines and the FCC’s rules.<sup>159</sup> The Commission has received delegated authority from the FCC on numbering initiatives and has issued orders implementing number conservation methods.<sup>160</sup>

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<sup>157</sup>See [www.nanpa.com](http://www.nanpa.com)

<sup>158</sup>[www.nationalpooling.com](http://www.nationalpooling.com) or FCC Daily Digest, Federal Communications Commission’s Common Carrier Bureau Selects NeuStar, Inc. As National Thousands-Block Number Pooling Administrator, June 18, 2001.

<sup>159</sup>Pennsylvania 271 Order, Appendix C, ¶61; Second BellSouth LA 271 Order at ¶261.

<sup>160</sup>In the Matter, on the Commission’s Own Motion, to Consider the Implementation of Limited Number Pooling Trials, Case No. U-13086, November 20, 2001, or In the Matter of Number Resource Optimization, Michigan Public Service Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC 99-200, DA 01-2013, August 23, 2001.

## C. Summary of the Evidence

### 1. SBC's Position

SBC stated that until March 29, 1999, when NeuStar was designated by the FCC to become the NANPA, SBC acted as the CO Code Administrator for the state of Michigan. SBC stated that it provided nondiscriminatory access to telephone numbers for all carriers, in accordance with industry guidelines, and was subject to oversight and complaint jurisdiction of the FCC.<sup>161</sup> SBC also stated that, as the CO Code Administrator, SBC assigned 697 CO codes to 19 different CLECs, representing 6,970,000 telephone numbers in Michigan. SBC denies refusing any valid request for CO codes in Michigan.

SBC also stated that, when a CO code is assigned, the carrier applicant assumes control over the assignment and administration of all 10,000 individual telephone numbers within the assigned CO code and that the NANPA is not involved in individual telephone number assignment to end-users.

### 2. Other Parties' Positions

No other participants in this proceeding filed comments on this issue. No party has complained or commented about numbering administration issues or challenged the programming of CLECs' CO codes in SBC's switches.

## D. Conclusion

Of the three performance measures designed to track activity for this checklist item (PMs 117, 118, and 119) none recorded either sufficient wholesale or retail comparison data volume during the June, July, August reporting months on which to assess performance. No issues have been raised by the parties to this proceeding.

Based on the record, the Commission find that SBC has demonstrated compliance with Checklist Item 9.

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<sup>161</sup>SBC's May 15, 2001 Checklist Informational Filing, Jeffrey Mondon affidavit, ¶10.

## **Checklist Item 10 – Databases and Associated Signaling**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(x) of the Act requires SBC to provide “[n]ondiscriminatory access to databases and associated signaling for call routing and completion.”

### **B. Standard of Review**

In the Local Competition First Report and Order, the FCC identified signaling networks and call-related databases as network elements, and concluded that LECs must provide the exchange of signaling information between LECs necessary to exchange traffic and access call related databases. The FCC also requires BOCs to demonstrate that they provide nondiscriminatory access to (1) signaling networks, including signaling links and signaling transfer points, (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer points linked to the unbundled database, and (3) service management systems (SMS). The FCC also requires that a BOC design, create, test, and deploy advanced intelligent network (AIN) based services through the SMS through a service creation environment. The FCC further clarified this checklist item by defining call-related databases to include those used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service. Also, in the Local Competition First Report and Order, the FCC required ILECs to provide unbundled access to their call-related databases, including, but not limited to, the line information database, the toll-free calling database, the local number portability database, and AIN databases. In the UNE Remand Order, the FCC clarified that the definition of call-related databases includes, but is not limited to, the calling name database, as well as the 911 and E911 databases.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC states that it provides for nondiscriminatory access to all its signaling networks and call-related databases used for call routing and completion and therefore is in full compliance with this checklist item.

SBC states that it provides nondiscriminatory access to its signaling links and signal transfer points (STPs) on an unbundled basis. 47 CFR 51.319(e). SS7 interconnection service is provided to CLECs for their use in furnishing SS7-based services to their end-users or the end-users of other CLECs subtending the SBC service switching point (SSP) or STP of the interconnecting CLEC. This arrangement, which is identical to the one used by SBC itself, permits CLECs to use SBC’s SS7 signaling network for signaling between CLEC switches, between CLEC switches and SBC’s switches, and between CLEC switches and the networks of other parties connected to the SBC SS7 network. When a CLEC purchases unbundled switching capability from SBC, SBC provides access to its signaling network in the same manner as it provides such access to itself. Because all unbundled switching elements are provided on switches that SBC uses to provide service to its own customers, all

signaling functions are identical. SBC's signaling access service provides access to the SBC SS7 network. Access to the network is provided by subscribing to a dedicated network access link as described in SBC Operating Companies Tariff F.C.C. No. 2, Section No. 8, and a dedicated STP port for telecommunications carriers with their own STPs and/or SSPs. Access is also provided for the carrier subscribing to the unbundled local switching service.

The FCC's rules interpret Section 271(c)(2)(B)(x) of the Act to require nondiscriminatory access to call-related databases. 47 CFR 52.319(e). As described more fully in the affidavits of Messrs. Deere and Alexander, SBC states that it meets the requirements of the Act by providing CLECs nondiscriminatory unbundled access to SBC's AIN database, the toll free calling/800 database, nondiscriminatory unbundled access to the same line information database (LIDB) and calling name (CNAM) delivery used by SBC, and SBC's LIDB service management system, known as the operator services marketing order processor. All data in each of these databases is maintained in accordance with the confidentiality requirements of the Act.

## 2. Privacy Manager and AIN Features

### a. Other Parties' Positions

Z-Tel comments that SBC does not provide the unbundled features and functions that would permit a UNE-P carrier to provide its customers the service equivalent of what SBC markets as "Privacy Manager." The privacy manager service rejects all calls showing on a caller ID unit as private, blocked, or unavailable. Privacy manager asks the caller to record his or her name and will play it back to the called party so that the called party may decide whether or not to accept the call. The elements necessary to provide this type of service are not made available to UNE-P providers, and Z-Tel states that SBC is not in compliance with this item of the checklist.

WorldCom comments that SBC is not making certain AIN features available as part of the UNE-P service. WorldCom states that SBC refuses to provision certain AIN-based features, including call control, privacy manager, and talking call waiting. According to WorldCom, the only AIN feature that the FCC has excused SBC from provisioning is Privacy Manager. This is a product for which SBC has applied for a patent, and the FCC considered the product to be a trade secret and not generally known by nor discernable by competitors. UNE Remand Order, ¶ 409. WorldCom further states that other AIN-based features such as call control and talking call waiting that SBC has refused to provision apparently have no pending patent applications and appear to be similar to products offered by other LECs.

AT&T's comments filed on November 15, 2002 state that, for months, AT&T waited for SBC to furnish it with details of the process it intends to provide for accessing its service creation environment (SCE). Only recently did SBC provide that process. After a long wait and much anticipation, AT&T was disappointed to learn that the "process" that SBC needed several months to develop was nothing more than its BFR process. Thus, today, SBC cannot claim that it provides nondiscriminatory access to its SCE. As such, SBC must provide access to its AIN features in accordance with the UNE Remand Order. Unfortunately, SBC has refused to offer the ability to purchase AIN features as well. SBC's position to provide

access to its SCE only through a BFR process and outright refusal to provide access to Privacy Manager shows that SBC has not yet fully complied with Checklist Item 2.

The proprietary nature of Privacy Manager is not the real issue, however. Rather, as noted above, SBC is looking for a means to prevent its customers from migrating to competitive carriers, and Privacy Manager is simply the latest vehicle by which SBC seeks to achieve that goal. Indeed, it is readily apparent that SBC uses Privacy Manager as a “win-back” tool. In its well-oiled win-back campaign, SBC offers end-users free access to the Privacy Manager service. Because SBC concurrently will not make Privacy Manager available to AT&T, AT&T is at a great competitive disadvantage in attempting to compete in the Michigan marketplace.

Clearly, AT&T does not believe that it is a coincidence that, consistent with its refusal to permit access to Privacy Manager, SBC also decided recently to remove the feature called “Anonymous Call Rejection” from all but 14 of its switches across its 5 state region. SBC no longer offers this feature to its customers because Privacy Manager effectively and functionally has replaced the need for that feature. This is another example of where, when faced with emerging competition, SBC is removing features from its switches and replacing them with AIN features, while simultaneously denying CLECs access to them. SBC SBC’s conduct is discriminatory, anticompetitive, and in violation of the Section 271 checklist.

To summarize, AT&T’s ability to offer its customers “Privacy Manager” or a similar features is essential to AT&T’s consumer and business offerings in Michigan. Under the UNE Remand Order, SBC must either provide AT&T access to SBC’s AIN features, including Privacy Manager, or provide nondiscriminatory access to its SCE in order for AT&T to design, create, test, and deploy its own Privacy Manager feature. Today, SBC refuses to do either on a nondiscriminatory basis. Instead, SBC effectively uses Privacy Manager as a marketing (i.e., win-back) tool to AT&T’s great competitive disadvantage. SBC SBC’s conduct evidences its failure to satisfy Checklist Item 2 of Section 271.

#### b. SBC’s Response

SBC responds that WorldCom and Z-Tel both seek the same access to proprietary AIN services that the FCC denied them in the UNE Remand Order. Even WorldCom points out that the FCC specifically cited Privacy Manager as an example of a proprietary offering that need not be unbundled. SBC goes on to state that the UNE Remand Order makes it clear that Privacy Manager was only one example of a proprietary AIN-based offering that an ILEC need not provide to a CLEC. SBC states that it provides CLECs access to the underlying functionality, including SBC’s service creation environment, so that they can create their own AIN-based offerings.

The FCC stated in paragraph 402 of the UNE Remand Order:

We conclude that requesting carriers’ ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LEC’s AIN platform and architecture. Thus, we find that incumbent LECs, upon request, must provide nondiscriminatory access to their AIN platform and architecture. We also conclude, however, that service software created in the AIN platform and architecture is proprietary and thus analyzed under the “necessary” standard of Section 251(d)(2)(A). Based on our “necessary” standard, we conclude that incumbent LECs are not required to unbundle the

services created in the AIN platform and architecture that qualify for proprietary treatment.

The FCC further stated in paragraph 419:

We agree with SBC that unbundling AIN service software such as “Privacy Manager” is not “necessary” within the meaning of the standard in section 251(d)(2)(A). In particular, a requesting carrier does not need to use an incumbent LEC’s AIN service software to design, test, and implement a similar service of its own. Because we are unbundling the incumbent LECs’ AIN databases, Service Creation Environment (SCE), Service Management System (SMS), and STPs, requesting carriers that provision their own switches or purchase unbundled switching from the incumbent will be able to use these databases to create their own AIN software solutions to provide services similar to SBC’s “Privacy Manager.” They therefore would not be precluded from providing service without access to it. Thus, we agree with SBC and BellSouth that AIN service software should not be unbundled.

SBC states that it is in full compliance with this checklist item.

WorldCom and Z-Tel claim that SBC should provide certain AIN-based services in conjunction with unbundled local switching or UNE-P. According to SBC, both are incorrect, for the same reason. The FCC has held that incumbent LECs may create AIN-based offerings that are unique or innovative in order to differentiate its services, and that they need not turn such proprietary services over to competitors. UNE Remand Order, ¶ 409. Both CLECs seek the same access to proprietary AIN services that the FCC denied them. Z-Tel wants access to Privacy Manager, but WorldCom itself correctly points out that the FCC specifically cited Privacy Manager as an example of a proprietary offering that need not be unbundled. WorldCom comments at 29. Where WorldCom falters is that it fails to apply the same FCC principle to other AIN-based services that qualify for the same protection as Privacy Manager. The UNE Remand Order at ¶ 409 makes clear that Privacy Manager was only one example of a proprietary AIN-based offering that an ILEC need not provide to a CLEC. At any rate, SBC provides CLECs access to the underlying functionality, including SBC’s service creation environment, so that they can create their own AIN-based offerings.

### c. Discussion

The Commission agrees that the particular service “Privacy Manager” is not required to be unbundled per the FCC’s order as it meets the “necessary” standard in Section 251(d)(2)(A), and ¶ 419 of the FCC’s order clearly states that AIN service software should not be unbundled. This Commission agrees with the FCC in ¶419 of the UNE Remand Order that because the incumbent LEC must unbundle the AIN databases, SCE, SMS, and STPs that requesting carriers that provision their own switches or purchase unbundled switching from the incumbent will be able to use these databases to create their own AIN software solutions. Therefore, as long as SBC is unbundling the AIN databases, it is not required to unbundle the AIN service software.



### 3. Access to SS7 A-links

#### a. Other Parties' Positions

Item 10 of the checklist requires SBC to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. TelNet states that it took six months to establish A-links to the SS7 database, which were required to allow TelNet to commence operations in additional Michigan LATAs. TelNet states that at times it had to go through great pains to determine "local dialing parity." SBC withdrew tools used to determine this information, making it much more difficult and error prone to determine it. There is no indication that these problems have been solved.

#### b. SBC's Response

SBC responds that while it did take several months to install the additional A-links, Mr. Iannuzzi fails to note TelNet's changing service requests in his description of the interactions between SBC and TelNet. SBC and TelNet entered into negotiations for additional interconnections facilities in May of 2000. TelNet indicated it would be using SBC for SS7 signaling services. A pre-planning letter that described the work to be done for these new interconnections was issued in September 2000 (upon resolution of outstanding TelNet issues regarding exact building location, and network/trunking architecture). SBC issued orders for interconnection trunks from SBC's switches to TelNet's switches shortly thereafter. TelNet did not submit the order (access service request or ASR) for A-links until January 2001. At that time, TelNet requested that four new switch point codes be pointed to existing A-links that terminated on the TelNet Southfield switch. This meant that TelNet was requesting SBC to open multiple new point codes on A-links to an existing switch. SBC advised TelNet that this was not common practice. However, SBC agreed to follow the instructions.

In late January or early February 2001, upon completion of the A-link order, TelNet advised SBC that the plan did not work in their switch as originally anticipated. TelNet informed SBC that it would need to establish new separate A-links for each switch and remove the additional point codes from the existing set of links. These new ASRs were sent around mid-March 2001. The orders had multiple errors, and SBC was advised on April 24, 2001 that TelNet would be ready to work the link orders on April 30, 2001. On April 26, 2001 SBC discovered that TelNet had failed to issue the necessary ASRs to remove the point codes from the existing links. Directing a point code to two different A-links could have caused a network failure. TelNet took action to correct the error at that time. Upon receipt of a correcting ASR, the A-links for these switches were finally completed in the mid-May 2001 timeframe.

In short, after each and every request made by TelNet, SBC worked diligently to provide nondiscriminatory access to the SS7 signaling network. However, it is up to each CLEC to execute its orders in a timely and accurate manner. The incident mentioned by Mr. Iannuzzi highlights how SBC has worked with TelNet to provide nondiscriminatory access to the SS7 signaling network.

### c. Discussion

SBC states that it provides for nondiscriminatory access to its signaling networks and call-related databases used for call routing and completion. It provides nondiscriminatory access to its signaling links and STP on an unbundled basis. 47 CFR 51.319(e). SS7 interconnection service is provided to CLECs for their use in furnishing SS7-based services to their end-users or the end-users of other CLECs subtending the SSP or STP of the interconnecting CLEC. This arrangement, which is identical to the one used by SBC itself, permits CLECs to use SBC's SS7 signaling network for signaling between their switches, between their switches and SBC's switches, and between their switches and the networks of other parties connected to the SBC SS7 network. 47 CFR 51.319(e)(1) (Level 3, App. SS7, Sec. 2.2.1). (Tariff, Sec. 9) The issue of the installation of the A-links appears to have been resolved.

## 4. CNAM Issues

### a. Other Parties' Positions

WorldCom states that SBC should comply with the Michigan Commission's order to start to take active steps to comply with the requirement to provide CNAM download to World Com. WorldCom states that another CNAM problem arises in certain circumstances after customers switch to WorldCom from SBC for local service and their numbers are ported to WorldCom. The problem is that in some cases the data SBC has for the ported number is just plain wrong. WorldCom provided the example of a specific case in Illinois of a travel agency who is now a WorldCom customer who was previously an SBC local customer. When this travel agency made telephone calls placed to SBC local customers and the SBC local customer had caller ID with name, the travel agency was being identified as a funeral home. This occurred because SBC failed to update its CNAM database, which is the source of the name displayed in the caller ID with name unit. Even though this example is from Illinois, the systems and processes from SBC are the same for this issue between Illinois and Michigan and therefore this Illinois experience is relevant to this Michigan filing. While SBC will correct the wrong information as each wrong piece of data is noticed, there is no present timetable for a permanent solution so as to prevent wrong information from being displayed.

WorldCom's comments on November 15, 2002 state that the CNAM download issues have not yet been resolved. The pending issues were outlined in earlier WorldCom comments and highlighted the unlawful restrictions that SBC places on the CNAM download.

### b. SBC's Response

WorldCom states that in some cases when a customer switches from SBC to WorldCom for local service, and their numbers are ported to WorldCom, incorrect CNAM data is transmitted to the called customer. It never explains how this is possible, other than to say "the data SBC has for the ported number is just plain wrong." A CLEC has the option of using SBC's CNAM data. However, a CLEC may choose to store its CNAM data in a

database operated by a third-party. In either case, the CLEC is responsible for administering the data stored in the database. If data stored in the CNAM database are incorrect, WorldCom has control of that data and must assist in correcting it.

WorldCom has informed SBC that it has chosen to use a third-party supplier (Illuminet) for its CNAM data storage. In Attachment A to his affidavit, Mr. Lehmkuhl identifies three customers that have experienced incorrect CNAM displays when calling other customers. Two of those have telephone numbers in NPA-NXX codes assigned to WorldCom switches and therefore would not be ported telephone numbers. It appears that WorldCom has not updated the national routing guides for database queries to reach its third-party database. Until this routing guide (the CNARG) is updated, SBC's network cannot retrieve the information from that database. Since early this year, SBC has been working with WorldCom's CNAM service provider to remove all WorldCom records from the SBC database that are stored in the Illuminet database.

Prior to April 2001, SBC did not purchase CNAM information associated with ported numbers if such CNAM information was stored on a non-SBC CNAM database. Therefore, when the subscribers to those ported numbers called an SBC end-user, the caller's name did not display on the Caller ID unit. If a CLEC with ported numbers did select SBC as its CNAM database, SBC did store the CNAM information. Therefore, when the subscribers to those ported numbers called an SBC end-user, the caller's name displayed on the Caller ID unit.

In March 1999, SBC offered a new option to CLECs that stored their name information on another company's CNAM database. If the CLEC would jointly store its information on both platforms (SBC's and the foreign CNAM database), SBC would retrieve the CNAM information from its CNAM database and forward it on to the called party for display on the Caller ID unit. SBC offered this dual storage ability at no charge.

In January 2001, SBC began work on enhancements to purchase the CNAM information associated with ported numbers on foreign databases. SBC completed those enhancements in April 2001. Also in April 2001, SBC stopped accepting requests to jointly store data (because there was no further need). For SBC's enhancement to take full effect, however, numbers that had previously been jointly stored need to be removed from SBC's CNAM database.

SBC has coordinated with WorldCom's CNAM database provider for such removal. In June 2001, Illuminet issued a "Special Report" that notified its customers that SBC would now access Illuminet's database for ported CNAM information. This "Special Report" went to all of Illuminet's CNAM customers and requested that they contact Illuminet for assistance in making the changes necessary for SBC to begin accessing their data on Illuminet's CNAM database. Illuminet agreed to collect the information and forward it to SBC, which will in turn delete the numbers from its CNAM database. Once those numbers have been deleted, SBC will query Illuminet for the CNAM information stored on Illuminet's CNAM database. SBC is aware of four CLECs that store data with Illuminet. Two of those CLECs have provided lists of numbers to be deleted from the SBC database and two have not. WorldCom is one the companies that has not provided the list.

SBC states that what is now needed is for either WorldCom or Illuminet to give SBC a list of the numbers that were jointly stored. SBC will use that list to remove the numbers from its database. With the removal of those numbers, SBC will begin querying Illuminet for name information associated with ported numbers. In addition, WorldCom must also put

the correct routing information into the national routing guides (NPAC and CNARG). Without that correct information, SBC's CNAM queries will not reach Illuminet—even if those numbers are removed from the SBC database.

WorldCom's argument that SBC should already have complied with the Commission's apparent directive in the March 7, 2001 order in Case No. U-12540 to allow downloads of its CNAM database, as opposed to per-call queries, is, according to SBC, unavailing. What is missing from WorldCom's argument is any recognition that, until July 25, 2001, the Commission's CNAM decision was subject to SBC's petition for rehearing, filed April 6, 2001. In that petition, SBC set forth the legal basis for a complete rejection of the download concept, based principally on the FCC's clear mandate that per-call queries are sufficient and downloads are not required. But, more importantly for instant purposes, neither the Commission's brief discussion of the topic in the order nor WorldCom's cryptic comments submitted in Case No. U-12540 permitted SBC to know exactly how to comply with the Commission's decision. Indeed, WorldCom's proposed CNAM solution lacked any meaningful, understandable detail regarding the manner in which the download would be accomplished, technical feasibility, cost, or pricing, and the Commission's order does not shed light on these ambiguities. Thus, SBC believed that, at a minimum, the Commission would seek additional evidence or otherwise clarify its ruling. As it turns out, however, the Commission denied SBC's petition on July 25, 2001. Against this backdrop, it is simple common sense that SBC would not have, indeed could not have, implemented CNAM downloads by this time. SBC is at this time going forward with implementation activities (including provisioning and pricing) to ensure that it will be able to implement the decision in a timely fashion. SBC sought rehearing of just two issues in its petition: CNAM downloads and certain limited cost issues pertaining to dark fiber. SBC has fully implemented the dark fiber aspects of the March 7, 2001 order in Case No. U-12540. SBC has appealed the Commission's decision, and it is in the briefing stage with the US District Court. No stay of the order was granted.

### c. Discussion

In the Commission's December 20, 2001 order in this docket, the Commission found that SBC's argument that the CNAM database is not a UNE must be rejected. In the Commission's view, FCC precedent supported a finding that the CNAM database is a UNE. For example, in Appendix D of the UNE Remand Order, the FCC lists call-related database as a UNE. The FCC held, in the same order, that call-related databases include the CNAM database. *Id.*, ¶ 406. The Commission need not go through the "necessary and impair" analysis, because the FCC has already completed that analysis and found that CNAM databases are critical for CLECs. *Id.*, ¶416. The Commission further rejected SBC's argument that the unbundled element is only "access to" the database and not the database itself. In 47 CFR 51.317(e)(2)(B), promulgated in the UNE Remand Order, the FCC refers to the ILEC's "general duty to unbundle call-related databases."

The Commission found two additional problems with SBC's tariff. First, SBC's proposed tariff did not include the entire offering, but referred to a separate website contract amendment. The Commission concluded that such a tariff does not comply with the Commission's standards, which require that a UNE or other regulated service be made available to any provider completely from the tariff, with all rates, terms, and conditions set forth within that tariff. Second, the proposed tariff attempted to establish restrictions on the

use of the CNAM database. The Commission found that the tariff need not contain restrictions on the use of the CNAM database information. WorldCom is bound by the same laws as SBC for use of this information. Moreover, the information may be lawfully used only to provide a telecommunications service. However, the ILEC may not impose restrictions on the type of telecommunications service for which a UNE may be used by a CLEC. See, First Report and Order,<sup>162</sup> ¶292.

However, the Commission rejected WorldCom's claim that SBC should provide the updates on a different basis than the ILEC proposes. SBC provides updates to itself on the same basis that it offers to provide WorldCom. WorldCom may be able to negotiate a different schedule for updates, but must pay SBC for any increased costs incurred for providing the change. As to the program used for downloading, WorldCom may use the program that SBC has installed for this purpose, or it may pay the costs incurred by SBC to alter the program used for providing this UNE, assuming that installation and operation of such a program would be technically feasible.

On June 21, 2002, the Commission issued an order in Case No. U-13347 and ordered SBC to file cost studies for the CNAM database download as modified by the order. SBC filed revised cost studies and tariffs in conformity with the order. In an order issued today in this docket, the Commission concludes that the terms and conditions of the revised tariff comply with the Commission's orders on this issue.

#### E. Conclusion

The Commission agrees that the particular service "Privacy Manager" is not required to be unbundled pursuant to the FCC's order as it does not meet the "necessary" standard in Section 251(d)(2)(A), and ¶419 of the UNE Remand Order clearly states that AIN service software need not be unbundled. This Commission agrees with the FCC that because the incumbent LEC must unbundle the AIN databases, and related functions, they will be able to use these databases to create their own AIN software solutions. Therefore, as long as SBC is unbundling the AIN databases, it is not required to unbundle the AIN service software. The issue of the installation of the A-links appears to have been resolved. The CNAM issue has been reviewed by this Commission as to the costs in an order issued in Case No. U-13347 on June 21, 2002, although it is under appeal. The issues relating to the terms and conditions of the CNAM offering have been addressed in an order issued today in this docket, and have been resolved.

The Commission finds that SBC has demonstrated compliance with Checklist Item 10.

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<sup>162</sup>11 FCC Order 96-325, In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, rel'd August 8, 1996.

## **Checklist Item 11 – Number Portability**

### **A. Description of the Checklist Item**

Section 271 (c)(2)(B)(xi) of the Act requires a BOC to provide “[u]ntil the date by which the [FCC] issues regulations pursuant to section 251 . . . to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible.” After that date, it must comply fully with those regulations. The Act defines “number portability” as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” 47 USC 153(30).

### **B. Standard of Review**

This checklist item requires SBC to comply with number portability regulations adopted by the FCC pursuant to Section 251 of the Act. Section 251(b)(2) requires LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC].” The FCC requires LECs to offer interim number portability “to the extent technically feasible” and requires LECs to gradually replace interim number portability with permanent number portability.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC states that it has not only met its obligations under the Act and implemented regulations through its deployment of LNP throughout Michigan, but has done so in a collaborative manner through its participation and leadership in state and federal sponsored industry groups. SBC states that it has deployed LNP not only in the top metropolitan statistical areas specified within the FCC’s requirements, but also in all of the other exchanges it serves. As a result, as of February 2001, SBC has equipped all 462 switches within its operating territory with LNP capabilities, representing 100 percent of its access lines. In so doing, SBC has adhered to the FCC’s technical, operational, architectural, and administrative requirements. SBC’s full compliance with the Act and federal regulations has allowed competing carriers to port over 205,000 telephone numbers from SBC through March 2001. SBC’s most recent interconnection agreements with facilities-based providers include provisions stating that both parties will provide LNP in conformance with the Act and FCC rules. Further, SBC states that it has implemented a series of performance standards to ensure the timely provisioning of LNP.

In addition, SBC continues to be an active participant in numerous industry groups to resolve issues and to develop and improve processes on a going-forward basis. For example, SBC has agreed to use an unconditional 10-digit trigger (UCT) feature for LNP orders, and UCT became available on most such orders beginning April 1, 2000. For the limited instances where UCT will not be available, and for the conversion of certain large, complex

services, SBC works with the CLEC to arrange a coordinated cutover. The FCC has ordered “an exclusively federal recovery mechanism” for the costs associated with LNP implementation of “long-term number portability.” In adopting such a mechanism, the FCC allowed incumbent local exchange carriers to recover their directly-related, carrier-specific costs by establishing tariffs with the FCC for a monthly number portability charge starting no sooner than February 1, 1999, and a number portability query service charge. SBC’s tariffs for monthly and query charges comply with the FCC’s Memorandum Opinion and Order in CC Docket 95-116 (rel. December 14, 1998, as amended January 8, 1999), and with the FCC’s July 1, 1999 order directed specifically to SBC tariffs (FCC Tariff No. 2, Transmittal Nos. 1186 & 1187).

## 2. Other Parties’ Positions

XO commented that in some instances SBC does not remove the translations from its switch, which means that any SBC customer that originates from the SBC switch where the XO customer’s number resided prior to the conversion will receive a “ring no answer” when attempting to contact the XO customer. The reason for this failure is because SBC’s switch thinks that this number resides in the same switch where the call originated and, therefore, the calls terminate to a “ring-no-answer” to SBC’s frame. XO states that the impact to XO and its customers is great and the customers do not understand that SBC was the cause of the problem, especially because the customers never experienced a similar problem as an SBC customer.

## 3. SBC’s Response

SBC states that it has implemented long-term number portability in every single one of its switches and for every single one of its customers, in advance of the schedule set by the FCC. Nevertheless, some CLECs contend it does not satisfy this checklist item. Their arguments lack merit. XO contends that SBC has failed to remove switch translations, causing “no answers” when a party served by one central office calls a ported number that happens to be in the same central office. That objection was obviated when SBC implemented 10-digit triggers, which allow calls to be routed to the CLEC’s switch without releasing the translations. When the CLEC sends the “activate” message, the number is ported to the CLEC switch and all future calls are routed to the CLEC.

## D. Performance Measurements

SBC states that the performance results clearly demonstrate that it provides nondiscriminatory access to number portability services. As shown in SBC’s Attachment L to its October 21, 2002 filing, SBC achieved 92.6% performance for those measurements associated with this checklist item. For example, the average time out of service for a CLEC LNP conversion has never reached the 60-minute threshold in any of the past three months for PM 100-01 (Average Time Out Of Service for LNP Conversions). LNP conversions have averaged only 12.6 minutes out of service during the last twelve months.

On the other hand, SBC has failed to achieve the 96.5% benchmark for PM 91-02 (Percentage of LNP Only Due Dates within Industry Guidelines - Partial). Otherwise, SBC

states that the performance results for LNP-related services make it evident that Michigan CLECs are provided a meaningful opportunity to compete.

AT&T in its filing on November 5, 2002 states that SBC promotes overall performance rate of 92.6% for number portability, but that when the correct three-out-of-three-months standard is applied, the rate falls to 76%, which plainly constitutes substandard performance and therefore is not in compliance with the checklist item.

#### E. Conclusion

The Commission agrees that XO has not sufficiently proven its claims on this record. On this record, SBC has subsequently passed more of the performance measurements for this checklist item.<sup>163</sup> In the instance where the performance measurements was not met for PM 91-02 in June and July, the standard was again not met in September and October. The Commission notes that volumes in this measure were less than 35 in each of the three months included with SBC's submission. The Commission also observes successful BearingPoint tests for LNP PM 97 on timely application of 10-digit triggers prior to due dates and on PM 98 on trouble rates within 30 days of LNP cutovers. Based on the record evidence and the fact that SBC has met all but one of the performance measurements for this checklist item in at least 2 of the 3 filed data months, the Commission finds that SBC has demonstrated compliance with Checklist Item 11.

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<sup>163</sup>The Commission considers PMs 56.1, 114, 114.1, and 115, under Checklist Item 4.



## **Checklist Item 12: Local Dialing Parity**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(xii) of the Act requires SBC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)” of the Act. “Dialing parity” is defined in the Act to mean that a CLEC “that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among 2 or more telecommunications services providers (including such local exchange carrier).” 47 USC 153(15).

### **B. Standard of Review**

Section 251(b)(3) of the Act requires SBC “to provide dialing parity to competing providers of telephone exchange service and . . . to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.” The FCC’s rules implementing Section 251(b)(3) require that customers of competing carriers must be able to dial the same number of digits that BOCs’ customers dial to complete a local telephone call. Customers of competing carriers also must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC states that it is in compliance with this checklist item.<sup>164</sup> The FCC rules, 47 CFR 51.207, specify that local dialing parity means that telephone exchange service customers within a local calling area may dial the same number of digits to make a local telephone call, regardless of the identity of the customer’s or the called party’s carrier. SBC states that its interconnection arrangements fully meet this requirement. The FCC’s Second Report and Order, ¶ 71, stated that local dialing parity is achieved through the implementation of the interconnection, number portability, and nondiscriminatory access to telephone number requirements of Section 251 of the Act. SBC states that it has implemented each of these in accordance with the Act and the FCC rule. SBC states that its interconnection arrangements do not require any CLEC to use access codes or additional digits to complete local calls to SBC customers. Nor are SBC customers required to dial any access codes or additional digits to complete local calls to the customers of any CLEC. The interconnection of SBC networks and the networks of CLECs are seamless from a customer perspective. Because the CLEC central office switches are connected to the trunk side of the SBC tandem

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<sup>164</sup>SBC’s May 15, 2001 Checklist Informational Filing, Deer Affidavit, ¶ 285-287.

or central office switches in the same manner as SBC and other local exchange companies, there are no differences in dialing requirements or built-in delays for CLEC customers.

## 2. Other Parties' Positions

CLECA states that this checklist item requires nondiscriminatory access to allow for local dialing parity. Telnet has experienced problems with SBC on this front, and it has been a difficult and protracted process. It took 6 months to establish A-links to the SS7 database, which were required to allow TelNet to commence operations in additional Michigan LATAs. CLECA states that at times they have had to go through great pains to determine "local dialing parity". SBC withdrew tools used to determine this information, making it much more difficult and error prone to determine it. There is no indication that these problems have been solved.

## 3. SBC's Response

SBC states that the FCC's rule, 47 CFR 51.207, defines local dialing parity to mean telephone exchange service customers within a local calling area may dial the same number of digits to make a local telephone call, no matter the carrier of the customer or the called party. SBC's interconnection arrangements fully meet this requirement. The FCC's Second Report and Order, ¶ 71, stated that local dialing parity is also achieved through the implementation of the interconnection, number portability, and nondiscriminatory access to telephone number requirements from Section 251 of the Act. As described in its May 15 filing, SBC states that it has implemented each of these in accordance with the Act and the FCC rule.

SBC states that its interconnection arrangements do not require any CLEC to use access codes or additional digits to complete local calls to SBC customers. Neither are SBC customers required to dial any access codes or additional digits to complete local calls to the customers of any CLEC. The interconnection of SBC networks and the networks of CLECs are seamless from a customer perspective. Since the CLEC central office switches are connected to the trunk side of the SBC tandem or central office switches in the same manner as SBC and other local exchange companies, there are no differences in dialing requirements or any built-in delays for CLEC customers.

SBC states that it is unaware of what "great pains" that TelNet has had to go through to determine that it has dialing parity with SBC or what "tools" it believes have been withdrawn that it needs to determine dialing parity. In its filings, TelNet has provided no data specifying what either these "great pains" or "tools" are.

## D. Conclusion

There are no performance measures related to this checklist item. The Commission finds that CLECA has not provided sufficient evidence on this record of its claims. Based on the record, the Commission finds that SBC has demonstrated compliance with Checklist Item 12.

## **Checklist Item 13 – Reciprocal Compensation**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(xiii) of the Act requires SBC to offer “[r]eciprocal compensation arrangements in accordance with section 252(d)(2)” of the Act. Reciprocal compensation arrangements are agreements between interconnecting carriers regarding the charges that each carrier will apply for the transport and termination of certain telecommunications traffic of the other carrier. Section 252(d)(2)(A) requires reciprocal compensation arrangements that provide for “mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier. . . .”

### **B. Standard of Review**

The FCC requires that a BOC show that (1) it has reciprocal compensation arrangements in place in accordance with section 252(d)(2) of the Act, and (2) it is making timely reciprocal compensation payments. The FCC has held that traffic bound for the Internet, and other types of traffic excluded by Section 251(g), are not subject to reciprocal compensation provisions of the Act. In the Pennsylvania 271 Order, the FCC again stated its conclusion that whether a carrier pays reciprocal compensation on Internet-bound traffic “is irrelevant to checklist item 13.” The FCC rejected assertions regarding payment of reciprocal compensation on Internet-bound traffic by parties opposing Verizon’s entry into the long distance market in Pennsylvania. In addition, the FCC rejected attempts by opposing parties to use the Section 271 process to supplant the process of negotiation and arbitration established by Section 252. And the FCC has also declined to utilize the Section 271 process as a means to resolve factual disputes between carriers.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC states that it is subject to numerous interconnection agreements that provide for reciprocal compensation in accordance with Commission orders and the FCC’s rules (subject to negotiation or a regulatory or judicial determination as to the effect of the FCC’s April 27, 2001 order on remand regarding intercarrier compensation for ISP-bound traffic). SBC has paid all undisputed amounts due for reciprocal compensation through March 31, 2001.<sup>165</sup> SBC states that the Commission has reviewed and approved SBC’s rates for reciprocal compensation, finding them consistent with TSLRIC costing principles.<sup>166</sup> There are separate rates for tandem and end office switching, tandem transport, and termination, which reflect

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<sup>165</sup>SBC’s May 15, 2001 Checklist informational Filing, Affidavit of Scott Alexander, ¶ 117, 126.

<sup>166</sup>January 23, 2001 order, Case No. U-12696.

the costs of the interconnection facilities used.<sup>167</sup> Further, each rate contains a separate component for call setup costs (applied per message) and call duration costs (applied per minute of use). *Id.* ¶120, 123. The FCC has found that a BOC's payment of intercarrier compensation on traffic delivered to ISPs is "irrelevant to checklist item 13."<sup>168</sup> The Commission has ordered SBC to pay such compensation under certain interconnection agreements. SBC states that it is in compliance with all such Commission orders, pending judicial review.

## 2. Other Parties' Positions

On September 22, 2000, in Case No. U-12630, MichTel filed with the Commission a complaint against SBC and a request for an emergency relief order to cease and desist from intentional anticompetitive conduct. The complaint was the result of SBC's refusal to compensate MichTel from November through September 2000 for local traffic termination for local telephone calls destined for ISPs pursuant to the interconnection agreement. Despite the fact that the Commission had, on six previous occasions, ruled that ISP-bound traffic was subject to reciprocal compensation under interconnection agreements with essentially the same language as contained in the MichTel interconnection agreement, SBC persisted in maintaining that calls delivered to an ISP by SBC's competitors are not local calls under the terms of the MichTel interconnection agreement. The amount of compensation unlawfully withheld by SBC, \$151,595.53, was significant to MichTel and placed MichTel, a competitor of SBC, at a competitive disadvantage, under which it suffered irreparable harm in its ability to serve customers and develop its position in the marketplace.

SBC's refusal to pay the reciprocal compensation was in direct disregard of several rulings by the Commission. In each and every one of those cases, the Commission held that ISP-bound calls should be treated as local telephone calls for the purpose of reciprocal compensation. Only after the filing of the complaint did SBC agree to compensate MichTel for such traffic, resulting in a settlement of the complaint and withdrawal of the complaint by MichTel.

On December 21, 2000, SBC filed an application and complaint against MichTel in Commission Case No. U-12756. The complaint was brought on the grounds that a failure to agree to SBC's unilateral imposition of new rates for reciprocal compensation for end office local termination placed MichTel in violation of Section 352 of the MTA, MCL 484.2352, because MichTel was charging rates different from those approved by the Commission in its most recent SBC biennial cost docket. The Administrative Law Judge, sitting as a mediator pursuant to Section 203a of the MTA, MCL 484.2302a, ruled that there was no provision in the interconnection agreement that permitted one party to unilaterally change rates for reciprocal compensation and the Commission adopted the Administrative Law Judge's recommendation.

On October 27, 2000, SBC filed an application with the Commission for approval to revise its reciprocal compensation rates and rate structure and to classify foreign exchange

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<sup>167</sup>Order on Remand and Report and Order, In re Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 & 99-68 (rel. April 27, 2001). Alexander Aff., ¶122, 124.

<sup>168</sup>Kansas and Oklahoma 271 Order, ¶ 251.

service as non-local exchange traffic and exempt it from reciprocal compensation. In response to SBC's application, the Commission approved the reciprocal compensation rates proposed in the application, subject to the provisions of existing interconnection agreements and denied SBC's application to reclassify foreign exchange service for reciprocal compensation purposes.

MichTel states that as these three proceedings highlight, although SBC enters into interconnection agreements pursuant to Sections 251 and 252 of the FTA, it then proceeds to litigate terms and conditions that SBC later finds do not favor its interests. MichTel also criticizes SBC for asking the Commission to approve updated reciprocal compensation rates— even though the Commission agreed and approved the new rates in Case No. U-12696.

### 3. SBC's Response

SBC states that there is no dispute that it is paying reciprocal compensation in accordance with all Commission and FCC orders, pending judicial review. MichTel complains that SBC refused to pay it reciprocal compensation on Internet traffic, but MichTel's own comments acknowledge that the dispute has been settled, and in any event, the FCC has repeatedly held that the payment of compensation on Internet traffic is irrelevant to this checklist item.<sup>169</sup> Finally, MichTel's charge that SBC somehow fails this checklist item because it asked the Commission to approve new rates for reciprocal compensation is absurd on its face. As the Commission knows, SBC asked it to approve updated rates, and the Commission (after notice and an opportunity for comment) did in the January 23, 2001 order in Case No. U-12696.

MichTel claims that SBC has in the past “failed to comply with the provisions of the MichTel Interconnection Agreement” which resulted in two proceedings before the Commission (specifically, MichTel's September 22, 2000 request for emergency relief order and complaint in Case No. U-12630 and SBC's December 21, 2000 complaint in Case No. U-12756). As a preliminary matter, it is SBC's understanding that the FCC has concluded that intercarrier compensation for Internet-bound traffic is not governed by Section 251(b)(5) and, therefore, is not covered by, or relevant to, compliance with Checklist Item 13. SBC addressed the two cases raised by MichTel. MichTel's September 22, 2000 complaint involved SBC's alleged refusal to pay reciprocal compensation for traffic that originated on SBC's network and was delivered to ISPs through MichTel's network. Because the dispute centered on the interpretation of language dealing with reciprocal compensation and its application to Internet-bound traffic, SBC withheld payment of reciprocal compensation on such traffic from November 1999 through September 2000, as permitted under Section 28 of the interconnection agreement. SBC contended that the language in the interconnection agreement differed significantly and substantially from the language in other agreements that were litigated in previous Commission cases dealing with the payment of reciprocal compensation for ISP traffic. Furthermore, SBC disputed and denied that Internet-bound traffic is subject to the payment of reciprocal compensation under either Section 251(b)(5) of the Act or under the terms of the agreement. SBC also contended that Section 4.7.2 of the agreement specifically excluded Internet-bound traffic from the payment of reciprocal compensation.

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<sup>169</sup>Connecticut 271 Order, ¶ 67; Massachusetts 271 Order, ¶ 215; Kansas & Oklahoma 271 Order, ¶251; Texas 271 Order, ¶386; New York 271 Order, ¶377.

Nevertheless, SBC, in good faith, reached a settlement with MichTel, and agreed to pay reciprocal compensation on the disputed traffic.

The second occasion where MichTel claims SBC violated the terms of the agreement concerns SBC's December 21, 2000 complaint in Case No. U- 12756. SBC filed this complaint in good faith to obtain relief that it believed it was entitled to receive. The complaint concerned the specific rate MichTel could charge for calls made by SBC customers to ISPs served by MichTel pursuant to the interconnection agreement pricing schedule. Notably, the rates in MichTel's interconnection agreement were higher than those approved by the Commission in the order in Case No. U-11831 and later in the Commission's January 23, 2001 order in Case U-12696. SBC's position was that the interconnection agreement posted on SBC's website was the correct agreement and that it contained a footnote allowing SBC to require that the agreement be modified to reflect new rates or charges ordered by the Commission. Pursuant to the language in that footnote, SBC sought to modify the reciprocal compensation rate for end office local termination to reflect the Commission's August 31, 2000 order. The mediator's January 31, 2001 recommended settlement, however, concluded that the agreement on file with the Commission, which did not contain the footnote in question, was the correct agreement. The mediator recommended that the case could be resolved by using the reciprocal compensation rate for end office local termination that was in effect prior to the Commission's August 31, 2000 order for all previously invoiced minutes of use for local termination through April 10, 2001. SBC voluntarily agreed to the mediator's recommended settlement.

On page 6 of its June 29, 2001, comments, MichTel labels SBC's October 27, 2000 application to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation in Case No. U-12696 as "an application to significantly reduce the reciprocal compensation paid to CLECs." However, MichTel ignores the fact that, in that same case, the Commission approved SBC's proposed rates and rate structure for all future agreements, and existing agreements in accordance with the terms of those agreements, stating, "SBC's showing that a rate structure predicated upon dual charges for per-call setup and per-minute usage better reflects cost causation has not been rebutted by the other carriers." The Commission has approved those rates and the rate structure, and MichTel has voluntarily opted into the Coast to Coast interconnection agreement, which contains the reciprocal compensation rates and rate structure based on SBC's proposal in Case No. U-12696.

#### D. Conclusion

In its filing, SBC states that it is subject to numerous interconnection agreements that provide for reciprocal compensation in accordance with Commission orders and the FCC's rules (subject to negotiation or a regulatory or judicial determination as to the effect of the FCC's April 27, 2001 order on remand regarding intercarrier compensation for ISP-bound traffic). The Commission agrees with SBC when it states that the Commission has reviewed and approved SBC's rates for reciprocal compensation, finding them consistent with TSLRIC costing principles, in the January 23, 2001 order in Case No. U-12696. There are separate rates for tandem and end office switching, tandem transport, and termination, which reflect the costs of the interconnection facilities used. In the instances cited by MichTel, SBC reached a settlement with MichTel, and agreed to pay reciprocal compensation on the

disputed traffic, and in another SBC voluntarily agreed to the mediator's recommended settlement. The Commission has approved SBC's bifurcated reciprocal compensation rates and rate structure, and the Commission would note that MichTel has voluntarily opted into the Coast to Coast interconnection agreement, which contains the reciprocal compensation rates and rate structure based on SBC's proposal in Case No. U-12696. For the reasons stated above, the Commission finds that SBC has demonstrated compliance with Checklist Item 13.

## **Checklist Item 14 - Resale**

### **A. Description of the Checklist Item**

Section 271(c)(2)(B)(xiv) of the Act requires SBC to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)” of the Act. Section 251(c)(4) requires SBC “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers that are not telecommunications carriers” and “not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the [FCC] . . . prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.” Section 252(d)(3) sets forth requirements for the determination of wholesale rates by state commissions.

SBC must also demonstrate that it provides nondiscriminatory access to OSS for the resale of its retail telecommunications services. Timely and accurate billing also is an important aspect of the competitive marketplace for resold services.

### **B. Standard of Review**

The FCC requires SBC to commit in its interconnection agreements and tariffs to make its retail services available to competing carriers at wholesale rates without unreasonable or discriminatory conditions or limitations.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

Section 271(c)(2)(B)(xiv) requires a BOC to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)” of the Act. SBC states that its resale offerings meet this requirement and allow CLECs to enter the local market in Michigan with virtually no capital investment or delay. The telecommunications services that SBC provides CLECs for resale are identical to the services that SBC furnishes its own retail customers. CLECs are able to resell these services to the same customer groups and in the same manner as SBC. SBC offers wholesale discounts on promotional offerings lasting more than 90 days. For retail services that SBC offers to a limited group of customers (such as grandfathered services), SBC allows resale to the same group of customers to which it sells the services. SBC’s customer-specific contracts are available for resale to similarly situated customers without triggering termination liability charges or transfer fees to the end-user. SBC is subject to numerous performance standards designed to ensure that resellers can access preordering, ordering and provisioning, maintenance and repair, and billing functions for resold services in an efficient and nondiscriminatory manner.

The Commission established, in Case No. U-11831, a general wholesale discount rate of 18.15% to 3.42% for all assumed contracts and 4.95% for new ICB contracts. Those



discounts have been incorporated into SBC Tariff M.P.S.C. No. 20R, Part 22, and are available to all CLECs.

On January 9, 2001, the Court of Appeals for the D.C. Circuit issued its ASCENT decision, in which it effectively concluded that SBC's separate advanced services affiliate—ASI North—was obligated, under Section 251(c), to sell to competing carriers at a wholesale discount the telecommunications services it provides at retail. To comply with this new requirement, a model interconnection agreement is available from ASI North. A CLEC seeking an interconnection agreement with ASI North can review that agreement and either adopt it as is or pursue negotiations with ASI North. As the FCC urged in the Kansas & Oklahoma 271 Order, SBC has thus “act[ed] promptly to come into compliance with section 251(c)(4) in accordance with the terms of the court’s decision.” Under the terms of the ASCENT decision, ASI North’s new obligations are not limited to resale under Section 251(c)(4). Therefore, the model agreement, to the extent appropriate and applicable, will provide for interconnection, unbundled network elements, and collocation pursuant to the requirements of Section 251(c).

## 2. Other Parties’ Positions

McLeod states that SBC’s performance has been very poor, giving numerous examples. Also, SBC consistently fails to meet firm order commitment dates for the turn-up of service to McLeod resale customers and consistently provisions service faster to its own customers than to McLeod customers. Additionally, it typically takes SBC 21 days to add a feature or to change a PIC for McLeod, although SBC usually accomplishes these tasks in one day for its own customers.

AT&T states that it should not have to enter into an interconnection agreement with ASI in order to resell DSL services. It states that it should be able to go through SBC for this service as well as not having to use ASI’s OSS. AT&T states that SBC should be required to make all DSL services available for resale because it holds itself out as a provider of “stand-alone” described as “DSL Transport” or “retail DSL services” directly to end-user customers. AT&T also states that the ASCENT decision requires that SBC, ASI, and any other SBC affiliates be viewed together for purposes of Section 251(c). Because SBC is offering its DSL services to Michigan end-users, it must make them available to CLECs on an unbundled basis with an appropriate wholesale discount.

Z-Tel states that SBC fails to ensure that the resale of DSL will be available in Michigan. SBC should be developing corresponding performance measures, OSS testing, and appropriate remedial measures with respect to xDSL service.

CLECA states that the reseller’s discount is not available for any Centrex arrangement that has been “grandfathered” and that it turns out that five out of the six SBC Centrex offerings have been “grandfathered”. Also, CLECA states that SBC technically makes resale available, but the process of beginning resale is very laborious. Difficulties abound, from incorrect guidance on ordering and pricing to expensive methods for order and service transaction processing. SBC provides no access to the electronic records necessary for TelNet to bill its customers. SBC provides no advance notice of changes to their ordering system. Telnet has lost time and money sending staff to training classes, only to be told the class was canceled.

### 3. SBC's Response

SBC agrees with McLeod that its performance level needs to be improved, but it is also not as poor as the narrow evaluation that McLeod makes it out to be.

To the extent AT&T is seeking to resell the bundled DSL Internet access service that SBC's affiliate AIMS provides at retail, SBC states that the claim must be rejected. The FCC rejected an identical request in its Connecticut 271 Order, which was the first time the FCC has applied the ASCENT decision in a Section 271 application. There, the FCC flatly rejected a similar claim that Verizon make available for wholesale resale its bundled retail DSL Internet access service.

Further, SBC's advanced services affiliate (ASI North) is in compliance with Section 251(c)(4) by offering an interconnection agreement through which CLECs can obtain at a wholesale discount all telecommunications services that ASI North provides at retail (along with interconnection, unbundled access, and collocation). It is necessary to enter into a separate interconnection agreement with ASI, and it is necessary to use ASI's separate OSS, because ASI provides these advanced services. The services are not provided by SBC. Accordingly, ASI makes available to all CLECs a generic interconnection agreement that covers all five SBC states.

AT&T's error is that ASI North provides DSL transport service almost entirely to ISPs, not to "end-user customers" as AT&T claims. The FCC has held "that section 251(c)(4) does not apply where the incumbent LEC offers DSL services as an input component to Internet Service Providers."

Section 251(c)(4) does apply to DSL services offered to end-users, as opposed to ISPs. Although ASI North's end-user sales are rare, it offers the identical services to requesting carriers for resale, via its standard interconnection agreement. Thus, AT&T is dead wrong when it claims that end-user services are not offered for resale.

SBC states that it does not have any DSL resale performance measures simply because it does not provide DSL service.

SBC answers that CLECA is also wrong about Centrex contracts. First, in Michigan, a grandfathered SBC Centrex retail contract can be assumed by a CLEC, and the CLEC would receive the Commission-approved wholesale discount of 3.42 percent. Second, most SBC Centrex customers are purchasing services that are not "grandfathered". For such contracts, the CLEC can elect to terminate the assumed retail contract and replace it with one of greater term and volume at the full Michigan wholesale discount of 18.15% without incurring any termination charges.

#### D. Performance Measures

##### 1. SBC's Position

The affidavit of James D. Ehr presents three months of data detailing SBC's performance results for June, July, and August 2002 reflecting the level of service provided to Michigan CLECs. He states that it demonstrates that SBC provides Michigan's CLECs with nondiscriminatory access to the pertinent items of the 14 point competitive checklist specified in Section 271(c)(2)(B) of the Act.

In regard to Checklist Item 14, resale, there are 23 measures that relate. Of those 23 measures, there are 3 disaggregations of 3 measures where SBC did not meet the standards for two of the three months and therefore failed its test of success in two out of three months.

PM (35) is Percent Trouble Report Within 10 Days (1-10) of Installation – Except UNE Loop and Port Combos. SBC states that it met the measure on one of the three months, and these misses appear to be a temporary occurrence. SBC states the full results for this measure do not indicate that it has a recurring performance problem.

PM (38) is Percent Missed Repair Commitments - Except UNE Loop and Port Combos. SBC states that it met the measure on one of the three months, and these misses appear to be a temporary occurrence. SBC states the full results for this measure do not indicate that it has a recurring performance problem.

PM (54) is Failure Frequency –Resold Specials – DDS. SBC states that it met the measure on one of the three months, and these misses appear to be a temporary occurrence. SBC states the full results for this measure do not indicate that it has a recurring performance problem.

## 2. Other Parties Positions

Mr. Ehr promotes overall performance for resale at 95.9%. AT&T indicates that when the correct three-out-of-three months standard is applied, the percentage goes down to 80%.

## E. Discussion

The Commission finds that SBC has met its burden in regard to its resale offering. McLeod's complaints of poor service and preferential treatment are areas that performance measures are designed to detect. Lacking any detection from those measures, the Commission finds that SBC has corrected those problems. The Commission finds that AT&T's objections to SBC's DSL resale offering does not put SBC in violation of the checklist. In the November 16, 2001 Arkansas and Missouri 271 Order, the FCC found a similar situation not to be a violation of Checklist Item 14. The FCC declined at that time to reach a decision in the context of a Section 271 proceeding and instead decided to initiate a proceeding and complete it as soon as possible.<sup>170</sup> Likewise, Z-Tel's request for performance measures for resale of SBC's affiliates services is rejected at this time. Finally, the Commission rejects the argument of CLECA in regard to the resale of Centrex contracts. This issue regarding resale discounts on contracts appears to have been a misunderstanding.

In reviewing the results of resale performance measures, the measures included by the parties that commented included 35, 38 and 54. No comments in the record have pointed to a performance measure that could be considered so far from its standard or parity that it would not allow for effective competition. While some measures do not have the volumes to make a strong showing of a passing grade, there is no sign of what the Commission would describe as a pattern of systemic performance disparities. The Commission reiterates its concern about the reliability of a number of the performance measures used in support of this checklist item. Our analysis of the E&Y findings suggests that the data reported in the June,

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<sup>170</sup> Arkansas and Missouri 271 Order, ¶82.

July, and August 2002 timeframe for provisioning performance measures 28, 43, and 44 and maintenance and repair performance measures 54 and 54.1 may or may not be accurate. Nevertheless, 56 of the 58 disaggregations containing volumes in the resale provisioning performance measures 27, 29, 30, 31, 32, 33, 35, 45, 46, 47, and 50 and maintenance and repair performance measures 37, 37.1, 38, 39, 40, 41, and 42 have been satisfied in at least two of the three months presented by SBC. In addition, SBC has successfully completed BearingPoint tests on performance measures 38, 39, and 40 as well. SBC has committed to making its retail services available to CLECs at wholesale rates through interconnection agreements and tariffs. The Commission agrees with SBC that its performance in this area has improved and finds in consideration of all available information that SBC has met its requirements for Section 271 approval in regard to resale.

F. Conclusion

Based on the foregoing and the evidence of record, the Commission finds that SBC has demonstrated compliance with Checklist Item 14.

## **Performance Remedy Plan**

### **A. Description of the Issue**

On April 17, 2001 the Commission adopted a Performance Remedy Plan for SBC. The plan provides for self-executing remedies in the form of monetary payments for failure to meet certain of the performance standards established by the Commission. The Plan provides for “Tier 1” payments which are paid to the CLECs for noncompliance with performance standards that affect their customers and “Tier 2” assessments, which are paid to the State of Michigan for noncompliance that affects the development of competition. The plan imposes remedies based on the number of occurrences of noncompliance (except for a few measures that are treated on a per-measure basis) and chronic poor performance results in higher remedies. A procedural cap to remedy payments was adopted at 36% of SBC’s net return. Should this cap be reached, a hearing will be conducted to determine whether SBC should be required to pay amounts above the limits.

### **B. Standard of Review**

The FCC has stated that a performance remedy plan is not a requirement for Section 271 approval but indicated 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 after a grant of such authority. The FCC articulated five key elements that it examines to determine whether a performance incentive plan is sufficient to foster post-entry checklist compliance. First, the FCC will consider the total liability at risk under the plan. Second, the FCC will consider whether a plan has clearly-articulated, predetermined measures and standards. Third, the FCC will consider whether the plan is reasonably structured to detect and sanction poor performance. Fourth, the FCC will consider whether the plan is self-executing. Finally the FCC will consider whether performance measures are meaningful, accurate and replicable.

### **C. Summary of the Evidence**

#### **1. SBC’s Position**

SBC indicates that the Remedy Plan adopted by this Commission in April 2001 is based on similar plans developed in collaborative proceedings in Texas and approved by the FCC in its Texas and Kansas & Oklahoma 271 Orders. In its May 15, 2001 Checklist Filing, SBC indicates the remedy plan adopted by this Commission complies with the five elements specified by the FCC regarding the sufficiency of a performance incentive plan to incent post-entry checklist compliance. First, SBC indicates the potential remedy at stake is easily sufficient to provide a meaningful incentive for it to meet its performance obligations. Under the Michigan plan the potential liability exceeds that which was found acceptable in the Texas 271 Order. Although the Texas plan incorporates a cap on remedies of 36% of net return, the Michigan plan specifies that the 36% is only a procedural cap at which time an inquiry would be initiated to determine if continued remedies or even additional remedies or fines are warranted. Second, SBC indicates its performance measures and standards are

“comprehensive in scope, rigorous in application, and exhaustive in detail.”<sup>171</sup> In addition it represents that the measurements and standards are designed to keep up with industry and legal developments by incorporating a six month review process where a comprehensive review of the measurements is undertaken in collaborative session with CLECs and other interested parties. Third, SBC indicates that the structural elements of its Michigan remedy plan, as described above, are similar to those utilized in Texas, Kansas and Oklahoma and are designed to detect and sanction poor performance when it occurs. Fourth, the Michigan remedy plan provides for self-executing enforcement mechanisms that are “swift and sure.”<sup>172</sup> The remedy payment is automatic and cannot be withheld except in very limited circumstances defined in the plan at which time an expedited dispute resolution process may be invoked. Finally, in regard to data accuracy, SBC represents that an annual audit of performance data utilized to compute remedy payments is required by the Michigan Commission and this will help assure the reliability of the remedy payments made.

## 2. Other Parties’ Positions

In comments filed jointly on February 25, 2002, AT&T and WorldCom urged several modifications to the Michigan remedy plan including the reinstatement of a multiplier on remedy payments presently suspended by the Commission, the elimination of the so-called “k table” exclusions, the implementation of a requirement to audit the remedy plan and a requirement to conduct a hearing to verify the accuracy of performance measure results as well as to examine the remedy plan payment data. XO and ACD Telecom, Inc. also urged the reinstatement of the multiplier. In November 15, 2002 comments filed by AT&T in response to the BearingPoint test results, AT&T further proposed that this Commission adopt the remedy plan recently adopted by the Illinois Commerce Commission which is presently undergoing court review. In particular AT&T indicates that the Illinois remedy plan eliminates “k table” exclusions and doubles per occurrence Tier 1 and Tier 2 remedy payments.

## D. Discussion

The Commission concludes that the Michigan remedy plan complies with the criteria delineated by the FCC regarding the provision of a performance incentive plan sufficient to foster post-entry checklist compliance. The plan was originally adopted by the Commission in April 2001 and partially modified in July 2001. The provisions of the remedy plan became available to CLECs pursuant to tariff offerings or to amendment to existing interconnection agreements immediately thereafter. Although the Michigan plan is similar to that which has been found to be acceptable by the FCC in Texas, Kansas and Oklahoma, parts of the Michigan plan are also more stringent. First, the cap on payments is only a procedural cap; should the cap be reached, further proceedings will be initiated to determine whether additional remedies will be payable. Second, statistical tests are not applied to benchmark standards because the Commission found that benchmark standards are already set at less than 100% which leaves sufficient flexibility for the random errors that are

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<sup>171</sup>SBC’s May 15, 2001 Checklist Filing, p. 92.

<sup>172</sup>SBC’s May 15, 2001 Checklist Filing, p. 94.

addressed by the statistical tests applied to parity standards. Third, the Commission has declined to adopt a prioritization of performance measures on which a low, medium or high level of remedy payment applies. The Commission found that such a ranking has different effects on different market strategies and introduces an unnecessary level of complexity and controversy into the plan. Rather, all measures are ranked of medium priority. Fourth, the Michigan plan requires comparison of CLEC activity to both SBC's retail operations and to the service it provides to its own affiliate. Although SBC argued that operations with its affiliate could be addressed outside of the terms of the remedy plan, the Commission declined to adopt that position indicating that the nondiscrimination requirements of the FTA supported the comparison of SBC's service to CLECs with that which it offers to its own retail customers as well as with that which it offers its affiliate. Finally, the Michigan plan requires SBC to make direct payments to CLECs rather than permitting a bill credit system as originally proposed by SBC. The Commission believes that particularly with these modifications the Michigan remedy plan complies with the requirements of the FCC. BearingPoint completed a test to assess whether processes are in place to cause remedy payments to be recalculated when performance measures are restated. All fourteen criteria in this test were satisfied. The Commission also notes, that as discussed elsewhere in this report, the accuracy and ability to replicate performance measure results is an issue already being addressed in great detail as a result of the Commission-ordered first audit of SBC's performance measure results, the BearingPoint testing and the E&Y audit. The Commission believes that this component of the FCC's requirements is also being addressed.

The Commission notes that, as with performance measures themselves, the Michigan remedy plan may continue to evolve in its structure as more experience with its operation is gained. As such, comments concerning the elimination of the "k table" exclusions, the reinstatement of a payment multiplier and a third-party audit of the operation of the remedy plan itself and the payments being made under that plan continue to be reviewed by the Commission. Other proposals such as the public posting of remedy payments made and the incorporation of the Michigan remedy plan as a standard appendix in SBC's 13-state generic interconnection agreement (rather than as an alternative remedy plan which may be requested) will also be considered by the Commission. Further orders in this regard will be issued by the Commission in the Michigan performance measure docket Case No. U-11830. In resolving these issues the Commission will be particularly cognizant of its intent to pursue ongoing oversight and monitoring of post-Section 271 activities to assure that any backsliding is addressed and prevented.

#### E. Conclusion

The Michigan remedy plan, along with other oversight and enforcement authority of this Commission and the FCC, should be recognized by the FCC in its public interest deliberations as support and incentive for SBC to continue to comply with the checklist requirements of the FTA.

## ATTACHMENT A

AirTouch Cellular, Inc.  
AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T)  
Attorney General Jennifer M. Granholm (Attorney General)  
BRE Communications, LLC d/b/a McLeodUSA (McLeod)  
Building Communications, Inc.  
Coast to Coast Telecommunications, Inc.  
Colin Communications, Inc.  
Competitive Local Exchange Carriers Association of Michigan (CLECA)  
Competitive Telecommunications Association  
CoreComm Michigan, Inc.  
Focal Communications Corporation  
Horizon Telecommunications, Inc.  
IP Communications Corporation  
Long Distance of Michigan, Inc. (LDMI)  
MCImetro Access Transmission Services, Inc.; Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc. (WorldCom)  
MediaOne Telecommunications of Michigan, Inc.  
Michigan Pay Telephone Association (MPTA)  
Michigan Cable Telecommunications Association (MCTA)  
Michigan Bell Telephone Company d/b/a SBC Ameritech Michigan (SBC)  
Michigan Public Service Commission Staff (Staff)  
Michigan Consumer Federation (MCF)  
MichTel Inc.  
New Edge Networks  
Prism Michigan Operations, LLC  
Qwest Communications Corporation and LCI International Telecom Corp., d/b/a Qwest Communications Services  
Rhythms Links (participation later withdrawn)  
Sprint Communications Company, L.P. (Sprint)  
Talk America, Inc. (Talk America)  
TDS Metrocom, Inc. (TDS)  
Telecommunications Resellers Association (TRA)  
Telecommunications Association of Michigan (TAM)  
Teligent, Inc.  
TelNet Worldwide, Inc. (TelNet)  
WinStar Wireless of Michigan, Inc.  
XO Michigan, Inc., f/k/a NEXTLINK Michigan, Inc. (XO)  
Z-Tel Communications, Inc. (Z-Tel)