

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

In the Matter of)
)
Application by SBC Communications Inc.,)
Michigan Bell Telephone Company, and) WC Docket No. 03-16
Southwestern Bell Communications Services,)
Inc. for Provision of In-Region, InterLATA)
Services in Michigan)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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DOJ Nevada Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Nevada</i> , FCC WC Docket No. 03-10 (Feb. 21, 2003), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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<i>FCC Georgia/Louisiana Order</i>	Memorandum Opinion and Order, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , 17 FCC Rcd 9018 (May 15, 2002), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
<i>FCC Kansas/Oklahoma Order</i>	Memorandum Opinion and Order, <i>In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd 6237 (Jan. 19, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >, <i>aff'd in part, remanded in part, Sprint Communications Co. v. FCC</i> , 274 F.3d 549 (D.C. Cir. 2001).
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Illinois ALJ Memorandum	Memorandum, <i>Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act</i> , Illinois CC Docket No. 02-0160 (Sept. 11, 2002), available at < http://eweb.icc.state.il.us/e-docket/ >.
Illinois CC Certificate of Action	Certificate of Commission Action, <i>Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act</i> , Illinois CC Docket No. 02-0160 (Sept. 12, 2002), available at < http://eweb.icc.state.il.us/e-docket/ >.
Illinois CC Line Loss Notice Order	Order, <i>Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act</i> , Illinois CC Docket No. 02-0160 (May 8, 2002), available at < http://eweb.icc.state.il.us/e-docket/ >.
Michigan PSC Further Improvements Order	Opinion and Order, <i>In re: 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</i> , Michigan PSC Case No. U-12320 (Jan. 13, 2003), attached to SBC Br. App. C as Tab 134.
Michigan PSC Letter Comments	Letter from Michigan Public Service Commission to FCC (Jan. 13, 2003).
Michigan PSC Report	Report of the Michigan Public Service Commission, <i>In re: 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</i> , Michigan PSC Case No. U-12320 (Jan. 13, 2003), attached to SBC Br. App. C as Tab 133.
SBC Compliance and Improvement Plan Proposals	SBC's Compliance and Improvement Plan Proposals, <i>In re: 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</i> , Michigan PSC Case No. U-12320 (Feb. 13, 2003), available at < http://www.cis.state.mi.us/mpsc/comm/271/12320comp-plan.pdf >.
SBC's Application and Related Filings	
Ernst & Young Dolan/Horst Aff.	Affidavit of Daniel Dolan and Brian Horst Regarding Performance Measurement Audits, attached to SBC Br. App. A as Tab 8.
SBC Billing <i>Ex Parte</i>	SBC Communications, Inc., SBC <i>Ex Parte</i> Submission to the FCC, WC Docket No. 03-16 (Feb. 19, 2003).
SBC Br.	Brief in Support of Application by SBC for Provision of In-Region, InterLATA Services in Michigan, <i>In re: Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Jan. 16, 2003).

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SBC Ehr Aff.	Affidavit of James D. Ehr, <i>attached to</i> SBC Br. App. A as Tab 9.
SBC Heritage Aff.	Affidavit of Deborah O. Heritage, <i>attached to</i> SBC Br. App. A as Tab 16.
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AT&T Comments	Comments of AT&T Corp., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
AT&T DeYoung/Connolly Decl.	Joint Declaration of Sarah DeYoung and Timothy M. Connolly, <i>attached to</i> AT&T Comments as Tab C.
AT&T DeYoung/Willard Decl.	Joint Declaration of Sarah DeYoung and Walter W. Willard on Behalf of AT&T Corp., <i>attached to</i> AT&T Comments as Tab A.
McLeodUSA Comments	Comments of McLeodUSA Telecommunications Services, Inc., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
TDS Metrocom Comments	Comments of TDS Metrocom, LLC, <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
TDS Metrocom Cox Aff.	Affidavit of Rod Cox, <i>attached to</i> TDS Metrocom Comments as Tab A.
WorldCom Comments	Comments of WorldCom, Inc., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg, <i>attached to</i> WorldCom Comments as Tab A.
Z-Tel Comments	Opposition of Z-Tel Communications, Inc., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
Z-Tel Walters Decl.	Declaration of Ron A. Walters on Behalf of Z-Tel Communications, Inc., <i>attached to</i> Z-Tel Comments as Tab A.

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EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this Evaluation of the application filed on January 16, 2003, by SBC Communications, Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. to provide in-region, interLATA services in Michigan.

This application to the Federal Communications Commission (“FCC” or “Commission”) is the second for Michigan. It is the first application, except for the earlier Michigan application, for SBC’s Midwest region, comprising the five states – Michigan, Ohio, Indiana, Illinois, and Wisconsin – in which Ameritech was the original regional Bell Operating Company (“BOC”). This application follows SBC’s successful applications in other regions for long distance entry in Texas, Kansas, Oklahoma, Arkansas, Missouri, and California.²

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

² See generally *FCC Texas Order*, *FCC Kansas/Oklahoma Order*, *FCC Arkansas/Missouri Order*, *FCC California Order*. SBC’s application for long distance entry in Nevada is pending at the FCC. See DOJ Nevada Evaluation.

As the Department has explained, in-region, interLATA entry by a regional BOC should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.³ This standard seeks to measure whether the barriers to competition that Congress sought to eliminate with the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competitive local exchange carriers (“CLECs”) will continue to have nondiscriminatory access to the facilities and services they will need from the BOC in order to enter and compete in the local exchange market. In applying its standard, the Department considers whether all three entry paths contemplated by the 1996 Act – facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC’s network (“UNEs”), and resale of the BOC’s services – are fully and irreversibly open to competitive entry to serve both business and residential customers.

The Department believes that SBC has made significant strides in opening its Michigan markets, as demonstrated by the levels of entry achieved to date. Nevertheless, serious concerns, suggesting that the progress made may not be irreversible, remain at this time. These concerns preclude the Department from supporting this application based on the current record. The Department does not, however, foreclose the possibility that the Commission may be able to determine that these concerns have been adequately addressed prior to the conclusion of its review.

I. State Commission Proceedings

The Michigan Public Service Commission (“Michigan PSC”) has facilitated the development of competition in the local telecommunications markets by establishing wholesale performance measurements⁴; conducting extensive pricing proceedings that established

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

⁴ Michigan PSC Report at 5-6.

wholesale rates for UNEs⁵; and adopting a Performance Remedy Plan.⁶ The Michigan PSC’s review of SBC’s Section 271 filing included an independent third-party test of SBC’s Operations Support Systems (“OSS”) by BearingPoint (f/k/a KPMG Consulting) and Hewlett Packard.⁷ BearingPoint’s report to the Michigan PSC indicates that SBC has satisfied 465 of the 498 applicable Processes and Procedures Review and Transaction Verification and Validation test criteria, the portion of the test focusing on OSS and related support processes. Testing for the Performance Metrics Reporting criteria is, for the most part, still in progress, with many Observations and Exceptions open and unresolved.⁸ To supplement the BearingPoint performance measures evaluation, SBC submitted reports by Ernst & Young on examinations of two SBC attestations: one regarding the compliance of SBC’s performance reports with the relevant business rules and one regarding the effectiveness of controls over the accuracy and completeness of reported data.⁹ SBC subsequently submitted to the Michigan PSC two additional reports by Ernst & Young concerning corrective actions taken by SBC in response to

⁵ *Id.* at 49.

⁶ *Id.* at 142.

⁷ BearingPoint OSS Evaluation Project Report at 9.

⁸ *See id.* at 13; Michigan PSC Further Improvements Order at 3; Michigan PSC Report at 7 (“Nearly half of the applicable BearingPoint testing criteria for [the performance metrics] part of the test remained in a ‘Not Satisfied’ status and determinations on another 40% of the criteria were as yet undetermined.”). The Michigan PSC ordered SBC to address the outstanding Exceptions and Observations in BearingPoint’s Processes and Procedures Review and Transaction Verification and Validation tests but decided that for these tests only specified new or refresh tests should be undertaken. For the performance metrics audit, the Michigan PSC decided that “tests should continue unchanged by BearingPoint at this time . . . BearingPoint shall file a report on progress in these tests every other month beginning at the end of February 2003. Once again, the [Michigan PSC] will determine what action, if any, should be taken upon the filing of each of those reports.” Michigan PSC Further Improvements Order at 3.

⁹ *See* Ernst & Young Dolan/Horst Aff. ¶¶ 19-20 & Attachs. B-C.

issues found in the initial Ernst & Young reports.¹⁰ The Michigan PSC recommended that the FCC approve SBC's Section 271 application.¹¹

Continuing its commitment to open its local market, and based on its thorough review of the record, the Michigan PSC also adopted an order requiring SBC to develop supplemental compliance and improvement plans as to certain issues.¹² SBC submitted its proposed plans on February 13, 2003. The Michigan PSC further required SBC to participate in collaborative discussions with the CLECs under the PSC's sponsorship on March 4, 2003. SBC must then submit modified compliance and improvement plans on March 13, 2003.¹³ The Department has had the opportunity to review only SBC's proposed plans, filed with the Michigan PSC on February 13, 2003, and, where appropriate, comments on them in this Evaluation. The Commission may have before it at the time of its decision the final compliance and improvement plans.

II. Entry into the Local Telecommunications Markets

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹⁴ The Department does

¹⁰ *Id.* ¶¶ 22-24 & Attachs. F-H. BearingPoint's ongoing audit is still covering areas previously examined by Ernst & Young. The issues found by Ernst & Young were the subject of written responses by SBC. Ernst & Young reviewed those responses in its supplementary reports. Michigan PSC Report at 7-9 (describing results of Ernst & Young initial review, including Ernst & Young's findings, *inter alia*, of data "control deficiencies," and Ernst & Young follow-up review of SBC management's assertions regarding corrective actions).

¹¹ Michigan PSC Letter Comments at 1-2. The Michigan PSC qualifies its affirmative recommendation by stating that it "is predicated on the FCC's continuation of policies and rules that allow competitors access to [the] UNE-[platform] for the foreseeable future and throughout an orderly transition to facilities-based competition." *Id.* at 2. WorldCom has submitted a petition for rehearing of the portion of the Michigan PSC's Section 271 decision relating to the pricing of Directory Assistance Listings. WorldCom Comments at 22 & Attach. 3.

¹² Michigan PSC Further Improvements Order at 13.

¹³ *Id.*

¹⁴ *See* DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or

not, however, broadly presume that all three entry tracks – facilities-based, UNEs, and resale – are open or closed on the basis of an aggregate level of entry alone.¹⁵ The following table reports CLEC entry in Michigan in terms of shares of total residential and business lines served and shares of residential and business lines served by means of each mode of entry.

CLEC Entry in Michigan¹⁶

Total Lines¹⁷		5,874,567
Total Bus. Lines		2,518,486
Total Res. Lines		3,356,081
CLEC Shares	% Total Lines	26.0
	% Total Bus.	25.2
	% Total Res.	26.6
	% Bus. Fac-B	18.5
	% Bus. UNE-P	5.7
	% Bus. Resale	1.0
	% Res. Fac-B	2.8
	% Res. UNE-P	23.1
	% Res. Resale	0.7

The amount of entry and the absence of evidence that entry has been unduly hindered by problems with obtaining inputs from SBC lead the Department to conclude that opportunities are available to serve business customers via facilities in Michigan. Although residential entry

geographic areas within a state, so the Department looks for evidence relevant to each market in a state.” (Footnote omitted.)).

¹⁵ See, e.g., DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

¹⁶ See SBC Heritage Aff. ¶ 8 tbl.1 n.8 & Attach. E at 1, 2, 6. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC’s own network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

¹⁷ Figures report total lines in SBC’s service area in Michigan. There are incumbent local exchange carriers other than SBC serving parts of Michigan.

through the UNE-platform, in particular, appears noteworthy, the concerns identified below preclude a conclusion based on the existing record that the local market in Michigan is and will remain open to competitive entry.

III. Change Management Process

SBC's change management process was the subject of extensive argument and consideration at the Michigan PSC.¹⁸ It continues to be a subject of controversy in CLEC Comments before the Commission.¹⁹ The Michigan PSC believed that SBC's process is sufficient to support its Section 271 application. Nevertheless, the Michigan PSC was troubled by this issue. It found that although "SBC did comply with the letter of its change management process," some of SBC's "changes were not announced prior to their implementation and did indeed negatively affect the CLECs."²⁰ The Michigan PSC required SBC to submit a compliance and/or improvement plan to address this issue.²¹

The Department shares the Michigan PSC's concerns. SBC apparently does comply with its formal change management process for major changes, such as new OSS releases.²² CLEC Comments suggest, however, that SBC has often failed to inform the CLECs of other changes in processes, procedures, and policies that significantly affect their operations.²³ These problems have occurred, according to the CLECs, in situations when SBC was planning to make these

¹⁸ See Michigan PSC Report at 74-76.

¹⁹ See, e.g., AT&T Comments at 24-26; McLeodUSA Comments at 9-14; TDS Metrocom Comments at 21-22; WorldCom Comments at 11.

²⁰ Michigan PSC Further Improvements Order at 10.

²¹ *Id.*

²² *See id.*

²³ AT&T points out, for example, that in late November 2002 SBC changed the manner in which its LSOG 4 ordering system handled certain information fields. The change was made without notice to the CLECs. It caused rejection of some 15,000 AT&T service orders. It was disclosed only after inquiries by AT&T. Processing of AT&T's 15,000 rejected orders was not completed until December 6. AT&T Comments at 12-13; AT&T DeYoung/Willard Decl. ¶¶ 62-64 & tbl.

changes, but failed to inform the CLECs,²⁴ and also when the changes were unplanned mistakes.

In the latter circumstance, SBC failed to disclose the changes for some time after they were discovered.²⁵ SBC's failures may adversely affect the CLECs' ability to compete. CLEC customers suffer service deficiencies and the CLECs must consume their resources to discover the cause of the deficiencies, when SBC could simply have informed them in the first place.²⁶

When the changes are mistakes, moreover, SBC's failure to inform the CLECs upon discovery deprives SBC of feedback information that could be used expeditiously to correct the situation.²⁷

As noted above, the Michigan PSC has required SBC to submit a remedial plan addressing this issue. The Department supports this action. The Commission, as well as the Michigan PSC, should examine SBC's final plan with some care.²⁸ The Commission should satisfy itself that the final plan adequately addresses the problem.

IV. Operations Support Systems

²⁴ TDS Metrocom alleges that until February 2002, when TDS ordered DSL-capable loops, SBC routinely honored its requests for loop conditioning, including removal of bridged taps. In February, however, SBC changed its policy so that it would no longer remove bridged taps shorter than 2,500 feet. SBC did not inform TDS of this change. TDS discovered the change when its customers began experiencing problems with DSL loop connectivity. Only after TDS's inquiries did SBC issue an accessible letter indicating that, in order to obtain removal of bridged taps shorter than 2,500 feet, CLECs must go through an additional process and incur additional expense. TDS Metrocom Comments at 28; TDS Metrocom Cox Aff. ¶¶ 69-82.

²⁵ AT&T points out that SBC discovered an error in its LSOG 5 ordering system on December 5, 2002. Because of the error, CLECs using LSOG 5 were failing to receive some portion of their billing completion notices. Without these notices, a CLEC cannot be sure that the BOC has successfully posted the order to its billing system, which is necessary before the CLEC can submit some orders to accommodate changes requested by the customers. SBC undertook to correct the error, which it did on January 24, 2003. It did not, however, notify affected CLECs of the error until it issued an accessible letter on January 29, 2003, almost two months after it discovered the problem. In the meantime, AT&T asserts, it had failed to receive thousands of billing completion notices. AT&T Comments at 16-17; AT&T DeYoung/Willard Decl. ¶¶ 91-100.

²⁶ See *supra* notes 23, 24 & 25.

²⁷ See *supra* note 25.

²⁸ SBC's proposed change management improvement plan contains several positive steps. It apparently does not, however, address SBC's failure to inform CLECs of mistakenly introduced changes and of the efforts SBC is undertaking to correct those mistakes. SBC's Quality Assurance Program for this plan, moreover, provides for reviews to be conducted only "on a quarterly basis for six months." SBC Compliance and Improvement Plan Proposals Attach. F at 6. The Commission and the Michigan PSC should consider whether a more extensive review is necessary to prevent the recurrence of problems.

CLEC commenters raise a number of issues concerning SBC's Operations Support Systems as employed in Michigan.²⁹ Some of these issues are matters of concern and merit the Commission's attention. SBC has, as the Michigan PSC finds, made substantial progress in this area. Nevertheless, as the Michigan PSC also notes, "certain performance measures remain deficient and certain interfaces and processes still require additional work."³⁰

A. Line Loss Notification

CLEC commenters vigorously argue that SBC's performance in issuing line loss notifications has been incomplete, untimely, and unreliable.³¹ The issue was similarly argued before the Michigan PSC, which noted the progress in this area made by SBC.³² Nevertheless, the Michigan PSC noted SBC's history of problems in this area. Until more experience is gained, the Michigan PSC observed, it cannot "assume that a trouble free environment will now exist."³³ The Michigan PSC responded to this uncertainty by requiring SBC to submit a plan that identifies a series of specific improvement measures.³⁴

The Department shares the Michigan PSC's concerns, and believes that the Commission should carefully examine SBC's final improvement plan. Precise delivery of line loss notifications is vital for a healthy competitive environment in Michigan. Line loss notifications inform a CLEC when its customers have left for other carriers, either other CLECs or SBC.

²⁹ See, e.g., AT&T Comments at 10-21; WorldCom Comments at 2-13; Z-Tel Comments at 2-7.

³⁰ Michigan PSC Report at 76.

³¹ AT&T DeYoung/Willard Decl. ¶¶ 109-32; WorldCom Lichtenberg Decl. ¶¶ 20-22; Z-Tel Walters Decl. ¶¶ 5-10.

³² Michigan PSC Report at 68. "At this time," the PSC concluded, SBC "has met its line loss obligations in regard to Section 271." *Id.* at 69.

³³ *Id.*

³⁴ Michigan PSC Further Improvements Order at 6. Among other measures, SBC must issue accessible letters and contact individual CLECs within 24 hours after determining that a line loss notification interruption has occurred, issue notices to CLECs upon change of line loss notification procedures, and file periodic reports with the Michigan PSC about line loss issues. SBC's proposed improvement plan reflects these measures. SBC Compliance and Improvement Plan Proposals Attach. D.

Unless timely notifications are sent, the CLEC must assume that it still provides service to the customers in question. It will thus bill its now former customers for time in which it had been replaced. The new carriers will also bill the same customers for the service they actually provide, and the customers will be double-billed. The customers naturally will blame the former carrier. Such double-billing, as the Michigan PSC observes, “may have serious negative effects on the reputations of . . . competitive providers.”³⁵ CLECs also consume resources investigating and fixing these avoidable problems.

In their Comments, CLECs report a long list of problems, past and present, related to line loss notifications.³⁶ These problems include missing notifications,³⁷ notifications lacking conversion dates,³⁸ notifications omitting the disconnected telephone number,³⁹ and unreadable notifications.⁴⁰ The problems associated with SBC’s line loss notification system – a system common throughout the Ameritech region – were also the subject of a litigated finding in an action brought by Z-Tel at the Illinois Commerce Commission.⁴¹ The Illinois Commerce Commission found that “Ameritech has unreasonably impaired the speed, quality, or efficiency of

³⁵ Michigan PSC Report at 68-69 (quoting Michigan PSC December 20, 2001, Order in Case No. U-12320). Z-Tel asserts, for example, that it has fielded thousands of complaints from its former customers over double-billing from this cause, and that many such complaints have been filed with regulatory bodies and customer groups. Z-Tel Walters Decl. ¶ 8.

³⁶ The Michigan PSC’s current performance metric concerning line loss notification, MI 13, has only limited utility in measuring the problems about which the CLECs complain. It measures only the proportion of notifications actually sent within one hour of the time a new carrier is assigned, and does not measure instances in which notices are faulty or in which notices are not sent in the first place. *See* SBC Ehr Aff. Attach. A at 187. The Department understands that SBC, the CLECs, and the Michigan PSC are discussing some supplemental line loss notification metrics.

³⁷ Z-Tel Walters Decl. ¶ 6; AT&T DeYoung/Willard Decl. ¶ 111; WorldCom Lichtenberg Decl. ¶ 20.

³⁸ Z-Tel Walters Decl. ¶ 6; AT&T DeYoung/Willard Decl. ¶ 125.

³⁹ AT&T DeYoung/Willard Decl. ¶ 114.

⁴⁰ *Id.* ¶ 117; WorldCom Lichtenberg Decl. ¶ 21. The number of faulty line loss notices appears to be substantial. AT&T asserts that, in the five months from August to December 2002, 10,000 of its line loss records were affected. AT&T DeYoung/Willard Decl. ¶ 131.

⁴¹ *Z-Tel Communications, Inc. v. Illinois Bell*, Illinois CC Docket No. 02-0160.

services used by Z-Tel through the provisioning of late and inaccurate” line loss notifications, and that these actions “have had an adverse effect on the ability of Z-Tel to provide service to its customers.”⁴²

Although the Illinois Commerce Commission has lifted its order for emergency relief, based on SBC’s plan to fix its systems,⁴³ the possibility that these problems may recur warrants this Commission’s serious attention. The Michigan CLECs allege in this proceeding that they have continued to encounter problems with line loss notification virtually until the present moment.⁴⁴ SBC has made progress in this area, but it has not established a suitable level of performance. To do so, SBC must introduce further evidence sufficient to show that it is currently capable of providing effective wholesale support in this area.

B. Billing Errors

Several CLEC commenters raise issues about the accuracy of, and the ability to audit, SBC bills.⁴⁵ The CLECs’ Comments are short on specifics. It does appear, however, that SBC has had trouble generating accurate bills. This trouble is revealed in a reconciliation that SBC itself recently conducted following consolidation of its billing for UNE-platform into a single billing system.⁴⁶ SBC discovered a significant number of prior billing errors.⁴⁷

⁴² Illinois CC Line Loss Notice Order at 16.

⁴³ See Illinois CC Certificate of Action. See generally Illinois ALJ Memorandum.

⁴⁴ See, e.g., WorldCom Lichtenberg Decl. ¶ 21; AT&T DeYoung/Willard Decl. ¶ 126.

⁴⁵ Z-Tel Walters Decl. ¶¶ 11-13; TDS Metrocom Cox Aff. ¶¶ 44-68. WorldCom believes there may be billing problems, but as of the date of its Comments, it had “only just begun to review the accuracy of its wholesale bills.” WorldCom Lichtenberg Decl. ¶ 23-24.

⁴⁶ SBC Billing *Ex Parte* Attach. B at 2.

⁴⁷ SBC found 76,000 UNE-platform circuits that were provisioned, but were not being billed, for which SBC will send out bills in February 2003 totaling \$7.6 million. It also found 62,000 UNE-platform circuits that were inactive, but that were being billed, for which SBC will issue credits of \$9.3 million. The total number of incorrectly billed UNE-platform circuits is 138,000, in a state with fewer than one million total UNE-platform lines. *Id.*; SBC Heritage Aff. ¶ 8 tbl.1. SBC attributes the billing errors to mismatches between the records in its provisioning and billing databases. SBC Billing *Ex Parte* Attach. B at 2. It is unclear, therefore, whether the underlying cause of the billing errors is due to problems in SBC’s billing system or its order processing system.

In previous Section 271 proceedings, both the Department and the FCC have recognized that proper billing is essential to competition.⁴⁸ The Department noted in its Pennsylvania Evaluation, for example, that “[a]ccurate and auditable electronic bills are an important factor in making local telecommunications markets fully and irreversibly open to competition.”⁴⁹ In the same proceeding, the FCC noted that undependable billing diverts CLEC resources to bill reconciliation and bill correction, hampers CLEC ability to raise capital because improper overcharges are carried on the CLEC’s financial reports, diminishes CLEC capacity to adjust prices and expenses in response to competition, and deprives CLECs of revenue because they are unable to backbill previously undercharged end users.⁵⁰

SBC’s billing problems in Michigan may already be on the verge of resolution. The Michigan PSC has required SBC to submit an improvement or compliance plan addressing “issues related to [CLEC] inability to audit bills received from SBC and to utilize its billing dispute resolution process once issues arise.”⁵¹ More easily audited bills will enhance the CLECs’ ability timely to discover and challenge inaccurate bills.⁵² In addition, SBC credibly asserts that its consolidation of billing platforms, and the subsequent reconciliation process, will

⁴⁸ The relevant Michigan performance metrics have limited utility in measuring the correctness of bills incorrectly generated for the reasons revealed by SBC’s reconciliation. The most relevant metric, MI 14, is designed to determine whether bills are correctly being calculated according to SBC’s billing tables. *See* SBC Ehr Aff. Attach. A at 33. Such a metric cannot, of course, show whether the underlying information about the lines themselves, for which the rates are then calculated, is accurate.

⁴⁹ DOJ Pennsylvania Evaluation at 11.

⁵⁰ *FCC Pennsylvania Order* ¶ 23.

⁵¹ Michigan PSC Further Improvements Order at 9. In its proposed plan SBC commits itself to working with the CLECs, both in a collaborative forum and individually, to help resolve bill auditability concerns. SBC Compliance and Improvement Plan Proposals Attach. G at 4-5. Similar discussions could also be used to help resolve remaining billing problems.

⁵² Some CLECs assert in their Comments before the Commission that their bills are unauditable. The CLECs provide insufficient information, however, for the Department independently to evaluate these assertions or their potential impact on competition.

help it generate more accurate bills in the future.⁵³ The Commission should assure itself that these measures will resolve SBC's remaining billing problems.

C. Working Service Conflict Notification

WorldCom and AT&T point out in their Comments that when SBC sends "working service conflict" notices to CLECs, it does so by fax and not via any automated process. A "working service conflict" question arises when a CLEC requests a new line at a location where working service is already provided. SBC inquires in its notice whether the CLEC actually wants to provision a second line or to reuse the existing service. In the absence of a response SBC cancels the order.⁵⁴

SBC's use of faxed messages, in combination with its policy to cancel orders for which no response is forthcoming, creates a potential for significant problems.⁵⁵ WorldCom and AT&T assert that the procedure often leads to delays and cancelled orders.⁵⁶ Information about how and why this procedure was instituted in the first place might shed light on its impact. As WorldCom concedes, moreover, SBC proposes to introduce automatic electronic notification, at least for orders processed in the new LSOG 6 system, when it introduces LSOG 6, anticipated in September 2003.⁵⁷ The Commission should review the CLECs' concern and take any responsive measures it considers appropriate.

D. Line-Splitting

⁵³ SBC Billing *Ex Parte* Attach. B at 2.

⁵⁴ AT&T Comments at 13-14; WorldCom Comments at 7-8; WorldCom Lichtenberg Decl. ¶¶ 12-15.

⁵⁵ The Department has long emphasized the importance of using automated, electronic processes in inter-carrier ordering and provisioning communications, in part to reduce the possibility that simple errors will interfere with order processing. *See, e.g.*, DOJ Oklahoma I Evaluation at 28 & App. A at 68-71; DOJ New York Evaluation at 17-18, 29-30, 31-33.

⁵⁶ AT&T Comments at 13-14; WorldCom Comments at 8; WorldCom Lichtenberg Decl. ¶ 14.

⁵⁷ WorldCom Lichtenberg Decl. ¶ 15. WorldCom states that it would prefer e-mail as an interim solution. *Id.*

AT&T raises several issues concerning SBC's provision of line-splitting service. Two of these issues merit the Commission's consideration.⁵⁸ AT&T has entered into a partnership with Covad that could provide significant competition to the combination of voice and DSL services now offered by and through the incumbent local telephone companies. On the same split line AT&T provides voice service via UNE-platform, while Covad provides DSL service. AT&T has, however, encountered several obstacles to implementing the partnership's combination of services in SBC's Michigan service area.

The Michigan PSC found generally that SBC has satisfied its line-splitting obligations based on a previously submitted amended compliance plan. The PSC acknowledged, however, that "other possible scenarios for line sharing/line-splitting may occur that have not been

⁵⁸ AT&T points to a concern that arises when a customer with voice service from AT&T, and DSL service from Covad, decides to drop the DSL service. AT&T must, it has been told by SBC, submit three orders: one to disconnect the unbundled DSL loop; one to disconnect the unbundled switch port; and one to order a new loop and port combination. SBC's representative went on to say that a CLEC/DLEC customer who drops only the DSL service will lose voice service for up to seven days while the loop is removed from the DLEC's DSLAM, and further risks the possibility upon reconnection of being assigned a different telephone number. It is even possible, AT&T says it was told, that facilities shortages could prevent the customer from being reconnected altogether. In these circumstances, AT&T asserts, it has no alternative but to leave the loop in Covad's cage, burdening Covad and making the port unavailable for another customer. AT&T Comments at 53-54; AT&T DeYoung/Connolly Decl. ¶¶ 20-21.

SBC will, the Department presumes, supply a resolution for this problem in its Reply Comments. The Commission should examine those Reply Comments carefully. If in fact what AT&T was told is true, and a customer could not delete DSL service provided by a voice/DSL partnership without incurring a seven day service interruption and risking loss of the telephone number, competition in this important arena would be seriously threatened.

AT&T also points to line-splitting problems that stem from SBC's practices in versioning its EDI software. SBC properly supports several versions of its EDI software. AT&T asserts, however, that because of a peculiarity unique to SBC's order processing system, once an order is placed, all subsequent related orders must be placed using the same EDI version. AT&T alleges that this requirement imposes a burden on its and Covad's competitive provision of voice and DSL service. Once AT&T places an order for UNE-platform voice service, Covad cannot send its DSL order unless it uses, as it normally does not, the same EDI version as AT&T. AT&T Comments at 22-23; AT&T DeYoung/Willard Decl. ¶¶ 138-40. Again, SBC will presumably discuss in its Reply Comments any measures it is considering to resolve this problem. The solution may well also require the cooperation of the affected CLECs. The Michigan PSC's collaborative discussions should provide a forum in which the parties can work toward a mutually satisfactory result.

Somewhat related but different concerns about the peculiarity in SBC's versioning policy are raised by AT&T and also by McLeodUSA. AT&T Comments at 22-23; AT&T DeYoung/Willard Decl. ¶¶ 138-140; McLeodUSA Comments at 14-15.

envisioned or addressed in SBC's plan."⁵⁹ It directed CLECs to identify further line-splitting and line sharing issues by February 13, 2003, and expects these issues to be included in the collaborative discussions scheduled for March 4.⁶⁰ Presumably, AT&T will raise its issues in that forum, and SBC will submit a responsive compliance plan. The Commission should review that plan and SBC's Reply Comments in this proceeding and take any supplemental measures it deems necessary.

V. Reliability of Reported Performance Data

CLEC commenters challenge the reliability of SBC's Michigan performance measure data.⁶¹ Reliable performance measure data is important. It serves as the key input in determining whether a BOC is providing nondiscriminatory access to network services and facilities.⁶² CLEC complaints about data reliability in Michigan are based largely on the fact that the third-party audit of SBC's performance metric data being conducted by BearingPoint is yet incomplete, with many BearingPoint Observations and Exceptions remaining open and unresolved. CLECs protest SBC's submission of an alternate data integrity review by Ernst & Young, which the CLECs argue is less rigorous, to substitute for the incomplete portions of BearingPoint's test.⁶³ The CLECs argue that the Michigan PSC should have waited for BearingPoint to complete its testing before proceeding to utilize the data in its review of the checklist items.

⁵⁹ Michigan PSC Report at 88.

⁶⁰ Michigan PSC Further Improvements Order at 10-11.

⁶¹ AT&T Comments at 29-49; TDS Metrocom Comments at 10-19; WorldCom Comments at 13-19.

⁶² See DOJ Georgia/Louisiana I Evaluation at 31 ("The Department and the FCC place great weight on performance data in evaluating the actual commercial experience of BellSouth's competitors.").

⁶³ AT&T Comments at 37-47; TDS Metrocom Comments at 10-17; WorldCom Comments at 14-17.

The FCC has not required a completed audit as a condition of undertaking Section 271 review.⁶⁴ Instead, the FCC's aim is to assure that the performance data can be relied upon, and an audit, completed or uncompleted, is one piece of evidence, albeit a highly regarded type of evidence, that is considered in making the determination of reliability.⁶⁵ The fact that the BearingPoint audit is ongoing does not itself necessitate a finding that the performance measure data is generally unreliable. In its current investigation, the Commission should satisfy itself that there are sufficient other indicia of reliability to support the Michigan performance data.⁶⁶

The availability of multiple methods does not of course diminish the importance of accurate and reliable data in the Section 271 process. Such data plays an important role both before and after Section 271 approval in ensuring that local markets are and remain open to competition, and that BOCs do not discriminate against local competitors. The Michigan PSC appropriately intends to "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

⁶⁴ *FCC Georgia/Louisiana Order* ¶ 19 ("We recognize that BellSouth's data continues to be subjected to third-party audit, but 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."), ¶ 19 n.68 ("Indeed, the Commission has not required a completed audit of the data in past Section 271 orders, but has said that it will give greater weight to evidence that has been audited, or has been made available to competing carriers, and for which a data reconciliation has been conducted when questions about the accuracy of the data have been raised.").

⁶⁵ *Id.* ¶ 19 n.68 ("If an audit is underway, an interim status report from the third party conducting the audit that states how much of the audit is complete, what problems or exceptions have been found, and the nature and size of those problems, also weigh heavily in our analysis."). Besides third-party audits, other indicia of reliability cited by the FCC include the BOC's internal and external data controls, open and collaborative metric workshops, the availability of the raw performance data, the BOC's willingness and ability to engage in data reconciliations, and the oversight of the state commission. *Id.* ¶ 19. The reconciliation indicium seems especially noteworthy here. Company-specific raw data is available, SBC states, to the CLECs in Michigan. Under the Michigan PSC's orders CLECs may request formal reconciliations and "mini-audits" of this data. Yet, according to SBC, no CLEC has requested that either procedure be undertaken. SBC Ehr Aff. ¶¶ 267-71.

⁶⁶ The Department is somewhat concerned that some metrics might fail to depict in a meaningful way the actual experience of SBC's competitors. In its Comments AT&T describes several situations in which SBC incorrectly rejects valid orders. AT&T DeYoung/Willard Decl. ¶¶ 17, 26, 28. AT&T contends further that due to delays and other problems with SBC's manual processes for correcting improper rejections, it feels compelled to push these orders through by submitting supplemental orders, which are not reflected in the performance metrics, and that as a result the reported metrics do not reflect SBC's actual performance. *Id.* ¶¶ 27-28. These practices, if done with sufficient frequency, could affect the validity of the relevant performance metrics. The Commission should take this phenomenon into account when it considers the affected metrics.

dependable system will be in place in the very near future.”⁶⁷ Further testing and refinement of the performance measures will permit effective monitoring of SBC’s wholesale performance even after Section 271 authority is granted. The Department recommends that the Commission satisfy itself that a stable and reliable performance measure system will be in place to assure that the Michigan market remains open after the application is approved. The BearingPoint audit should be complete, or nearly complete, by the time the remaining state commissions in the Ameritech region – those of Illinois, Indiana, Ohio, and Wisconsin – take up SBC’s Section 271 applications. Those state commissions undoubtedly will consider any problems revealed by completion of the audit.

VI. Conclusion

Under the guidance of the Michigan PSC, SBC has made significant strides in opening its Michigan markets. Nevertheless, the concerns discussed in this Evaluation particularly implicate the irreversibility prong of the Department’s “fully and irreversibly open” standard, and thus preclude the Department from supporting this application based on the current record. The Department does not, however, foreclose the possibility that the Commission may be able to determine that these concerns have been adequately addressed prior to the conclusion of its

⁶⁷ Michigan PSC Report at 22. In the same paragraph, the Michigan PSC expresses concern whether “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.” *Id.* There is a tension between the PSC’s conclusions about the utility of the Michigan performance data to evaluate the openness of Michigan’s market today and about the stability of the performance measure system to enable the monitoring necessary to assure nondiscriminatory behavior in the post-Section 271 future.

review. The Department urges the Commission to give careful attention to the issues raised in this Evaluation.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on February 26, 2003.

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