

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to consider Ameritech Michigan's compliance)
with the competitive checklist in Section 271 of the)
Federal Telecommunications Act of 1996)
_____)

Case No. U-12320

REPLY AFFIDAVIT OF

JAMES D. EHR

ON BEHALF OF

SBC AMERITECH MICHIGAN

DATED: November 20, 2002

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I, James D. Ehr, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION

1. My name is James D. Ehr. My business address is 2000 W. Ameritech Center Drive, Location 4G60, Hoffman Estates, IL 60196. I am the same James D. Ehr who submitted an Affidavit, on behalf of SBC Ameritech Michigan (“SBC”), in this proceeding on October 21, 2002. Consistent with the Commission’s Orders in this case, my initial Affidavit submitted three consecutive months of commercial performance results (June, July and August). Those performance results demonstrate that SBC is providing wholesale services to Michigan competitive local exchange carriers (“CLECs”) in a nondiscriminatory manner in compliance with the statutory competitive checklist requirements of Section 271 of the 1996 Act. My initial Affidavit also supplemented the record in this proceeding with two independent Audit Reports issued by Ernst & Young, LLP (“E&Y”). These audit reports examined SBC’s implementation of the Commission’s approved performance measures business rules, and SBC’s performance measurement reporting systems and controls.

PURPOSE AND SCOPE OF AFFIDAVIT

2. The purpose of my reply affidavit is to address the three basic claims raised in the November 5, 2002 comments filed by AT&T Communications of Michigan, Inc and TCG Detroit ("AT&T"), Competitive Local Exchange Carriers Association of Michigan (“CLECA”), LDMI Telecommunications, Inc. ("LDMI"), TDS

Metrocom, Inc. ("TDS"), WorldCom¹, XO Michigan, Inc. ("XO"), and Z-Tel Communications, In. ("Z-Tel") (as a group, the "CLECs") regarding my Affidavit.

3. First, the CLECs claim that SBC's filing of three consecutive months of performance results is not in compliance with the Michigan Public Service Commission ("MPSC" or "Commission") Orders issued on February 9, 2000 ("February 9, 2000 Order") and September 16, 2002. The primary complaint is that SBC's submission of performance results is premature because BearingPoint's Performance Metrics Review ("PMR") evaluation is still on-going. The CLECs twist the issue to create a procedural bar that does not exist. The real issues are, given the incomplete nature of BearingPoint's PMR review, (a) whether SBC's reported commercial performance results are sufficiently reliable to merit consideration, and (b) whether they show checklist compliance. I address these substantive questions in this reply affidavit, and show that the answers are yes.

4. Second, the CLECs criticize the reliability of SBC's performance data. The primary attack here is on the E&Y audit reports. Almost all of the CLECs claim that E&Y's findings should be given no weight based on two basic arguments: that the performance audits performed by E&Y were insufficient and not rigorous,

¹ WorldCom includes the following entities: MCI metro Access Transmission Services LLC, Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc.

and that E&Y's audits are "qualified" and, as interpreted by the CLECs, demonstrate that SBC's performance reporting is neither accurate nor reliable. Some CLECs also argue that the number of restatements made show that SBC's performance reporting systems are unstable. This reply affidavit demonstrates that each argument lacks merit. In particular I show that each of the issues raised by E&Y has either been corrected or will be corrected, and the remaining open items do not have a material impact on the reliability of the June, July and August results before the Commission. I also show that there are a number of other mechanisms that provide reasonable assurance that SBC's performance data are accurate and reliable, including: the fact that no CLEC has presented *any* evidence or claim that SBC's reported results are not accurate, the on-going independent third-party PMR review conducted by BearingPoint, the supplemental independent third-party performance audit being conducted by E&Y, SBC's improved internal controls in response to reviews performed by BearingPoint and E&Y, and the fact that BearingPoint's independent transaction testing of SBC's processes (in which BearingPoint independently timed and measured SBC's performance) corroborate SBC's reported performance results. All of this reaffirms SBC's position that its reported performance results are reasonably accurate and can be relied upon.

5. Third, some of the CLECs challenge the strength of SBC's wholesale performance. A few of the CLECs also assert that I applied the wrong standards to evaluate SBC's compliance with the applicable performance measurements. This reply affidavit demonstrates that, according to performance data, SBC

provides Michigan CLECs with a meaningful opportunity to compete in the local exchange market. In this regard, and as I detail further in this reply affidavit, two observations bear emphasis. First, the performance-related criticisms of the CLECs are limited to but a handful of SBC's over 3,100 Michigan submeasures. Second, the CLECs' discussions of SBC's performance consist of little more than a "stare and compare" recitation of the data. None of the CLECs provide any evidence that the performance it criticizes has harmed its ability to compete in the local exchange market, or has any commercial significance, or otherwise provides any analysis in keeping with the "totality of the circumstances" analytical framework required by the FCC. The simple reason being that performance "misses" raised by the CLECs are not commercially significant, and have no impact on competition.

SBC's OCTOBER 21, 2002 PERFORMANCE RESULTS FILING WAS IN COMPLIANCE WITH THE COMMISSIONS ORDERS IN THIS CASE

6. The CLECs assert that SBC is not in compliance with the February 9, 2000 Order because the data was submitted before BearingPoint finished its review and actual data itself was not audited before it was submitted. The CLECs claim that SBC has ignored the process agreed to by all of the Parties in various collaboratives, as well as the Commission orders addressing the timing of the submission of the three months of data demonstrating the actual compliance levels achieved during a consecutive three-month period. (See AT&T Affiant Connolly at ¶¶ 13-15; CLECA at page 2 and WorldCom at pps. 2-4).

7. SBC has not ignored the process or the Commission's orders. Rather, SBC acknowledged these issues in our July 30, 2002 and September 5, 2002 filings in this proceeding by requesting the Commission to direct BearingPoint to issue a report on a date certain, and by notifying the parties of our intent to supplement the record with audit reports from E&Y. This request, and the Commission's subsequent actions, were premised on the assumption that BearingPoint would not have completed the PMR-4 (Metrics Data Integrity) and PMR-5 (Metrics Calculations and Reporting) portions of the Performance Metrics Review Test when SBC made its filing of commercial performance results with the MPSC. As stated in that Notice, SBC had engaged E&Y in June 2002 to conduct a separate, independent audit of SBC's implementation of the MPSC's performance business rules and of the accuracy and reliability of SBC's performance measurement reporting systems and processes to supplement the record on this issue.² Therefore, the Commission's September 16, 2002 Order contemplated that SBC would file three months of commercial performance results on October 21, 2002,

² SBC chose to engage E&Y because of its extensive experience in auditing SBC's performance measurement systems and processes. For example, E&Y has been responsible for conducting the audit of SBC's compliance with the Carrier-to-Carrier Performance Plan contained in the SBC/Ameritech Merger Conditions, on behalf of the FCC, for the past three years in all thirteen SBC states: the five SWBT states, Pacific Bell (California), Nevada Bell, Southern New England Telephone (Connecticut), and the five Ameritech states. In addition, E&Y conducted a similar audit of Southwestern Bell Telephone Company's ("SWBT") performance measurement systems and processes for the Missouri Public Service Commission during its review of SWBT's Missouri Section 271 application, which was subsequently approved by the FCC. However, as the July 30, 2002 Notice indicated, the E&Y audit was not intended to replace or modify the intent or scope of BearingPoint's test, consistent with the terms of the Master Test Plan, Version 3.0, dated April 2, 2002.

even though BearingPoint's PMR review would be still be on-going. Clearly, there was no procedural bar to SBC's October 21 filing.

8. Likewise, AT&T Affiant Connolly's statement at page 5 that SBC submitted the E&Y report as a "substitute" for BearingPoint's PMR review apparently means that Mr. Connolly did not read the SBC's July 30, 2002 Notice or the Commission's September 16, 2002 order, both of which make very clear that E&Y's audit is a supplement, not a substitute.

9. WorldCom is also wrong when it refers to the E&Y audits as "secret" at page 14. The CLECs have participated in two collaboratives regarding the E&Y audit. The first was held on August 21, 2002, when the MPSC Staff arranged an industry collaborative meeting, which I attended. During this meeting, E&Y representatives provided a description of their audit scope, approach and methodology and responded to questions from MPSC Staff and CLECs. The MPSC also included the filing of a Draft Report by E&Y on September 23, 2002, and collaborative discussion of this report during Workshop held the week of October 14-18, 2002. These collaborative technical workshops were held at the MPSC offices in Lansing, Michigan to discuss the information presented in the Draft Report. E&Y provided a Final Report on October 18, 2002 reflecting compliance activities by SBC subsequent to the issuance of the E&Y Draft Report. That October 18, 2002 report was included with my October 21, 2002 Affidavit in Attachments N-P.

10. WorldCom recommends a classic “Catch 22” arrangement, at pps. 2-5, arguing that SBC should have filed three recent months of audited data (E&Y did audit the three most recent months of data when they started the audit.) On the other hand, AT&T's Connolly at ¶¶ 15-17 is concerned that the E&Y opinion is limited to data reviewed from March 2002 to May 2002 and instead wants SBC to rely on the test report of BearingPoint which reviews data for an even earlier period (January 2002 through March 2002). Neither position has any merit. The February 9, 2000 Order does not require that the three-months of data submitted must itself go through an independent audit. If that were true, not even the BearingPoint test would meet the WorldCom criteria. The issue is not whether the submitted results were “audited,” but whether SBC’s reported commercial performance results for June, July and August are sufficiently reliable to merit consideration. As I discuss in the next few sections, the answer to that question is yes.

SBC’S REPORTED COMMERCIAL PERFORMANCE RESULTS ARE ACCURATE AND RELIABLE, DESPITE THE CLEC’S ASSERTIONS

11. The CLECs criticize the reliability of SBC’s performance data. The primary attack here is on the E&Y audit reports. Almost of the CLECs claim that E&Y’s findings should be given no weight based on two basic arguments: that the performance audits performed by E&Y were insufficient and not rigorous, and that E&Y’s audits are “qualified” and, in the CLEC’s judgment, demonstrate that SBC’s performance reporting is somehow not accurate or reliable. Some CLECs also argue that the number of restatements that SBC has made shows that it’s

performance reporting systems are unstable. Before I discuss the CLECs' interpretation of E&Y's audits and explain the nature of SBC's restatements, two observations are important.

12. First, none of the CLECs expressly alleges, based on evidence, that SBC's performance data are inaccurate. This is so, even though SBC's performance data have been subject to substantial scrutiny and review by the CLECs for over two years. If the CLECs had concerns over the accuracy of SBC's reported performance results, they have the ability to request a data reconciliation or a mini-audit. The CLECs have failed to request either nor have they presented any other contrary evidence. Second, there are a number of other mechanisms that provide reasonable assurance that SBC's performance data are accurate and reliable, including:

- The on-going independent third-party review conducted by BearingPoint, and the supplemental independent third-party audit being conducted by E&Y;
- SBC's improved internal controls in response to reviews performed by BearingPoint and E&Y;
- BearingPoint's independent transaction testing of SBC's processes (in which BearingPoint independently timed and measured SBC's performance) corroborate SBC's reported performance results.³

³ The high correlation between SBC's reported results and BearingPoint's own transaction test results is fully demonstrated in SBC's November 15, 2002 comments on BearingPoint's October 30 OSS Evaluation Report, which are incorporated by reference herein.

A. Data Reconciliation Has Not Been Requested

13. SBC's performance results are processed and published in monthly reports available to the Commission and CLECs operating in the State of Michigan through the Internet web site, CLEC OnLine, at <https://clec.sbc.com/clec/>. CLECs also receive monthly remedy payments based upon the performance results. Adjustments are made to remedy payments to reflect restatements. If a CLEC believes its remedy payments are not correct because the reported performance results are not accurate, the CLEC has the right to request a data reconciliation.

14. SBC is obligated, through its performance assurance plan ordered by the Commission, to work with CLECs to “resolve any issues regarding the accuracy and integrity of the data collected, generated and reported” pursuant to the performance assurance plan. This process is generally regarded as “CLEC reconciliation”, and was first addressed in the Commission’s May 27, 1999 order in U-11830 (page 11) with regard to retention of data and audits. In addition, should that collaborative effort not resolve the issues raised by the CLEC, SBC is obligated to allow and support an “independent audit of the data collection, computing and reporting processes” required to collect the necessary data and generate and report the results. Such audits are generally referred to as “mini-audits”. These features of the performance assurance plan, documented in section 6.6 of the remedy plan first ordered by the Commission in U-11830 on April 17, 2001, are there to provide a process, in situations where a CLEC believes the

results reported by SBC are incorrect, inaccurate or otherwise unreliable, by which SBC is required to work to with the CLEC to resolve their concerns.

15. Since the Commission Order establishing the requirement for data reconciliation and mini-audits, no CLEC has initiated either process. On several occasions (less than five), several CLECs (less than five) have requested that SBC provide either the records (e.g. orders, trouble tickets, etc.) that have been excluded from reporting per the business rules, or the raw data for the transactions (e.g. order, trouble tickets, etc.) submitted by the CLEC and included in the reporting process. One CLEC issued a standing request for detailed data beginning January 2002, which SBC been complying with. In none of these situations has any CLEC identified to SBC that there was any concern with data accuracy or any need for a reconciliation of the SBC data recorded for that CLEC's transactions with the CLEC' own records for those or other transactions. And no CLEC has requested a mini-audit of SBC in Michigan, or any other Ameritech state, regarding the performance reporting processes.

16. Interestingly, in keeping with this past history of no call for reconciliation of results and no call for mini-audits, no CLEC has asserted in their November 5, 2002 comments⁴ in this proceeding that the results SBC has reported differ from SBC's actual performance in serving that CLEC. As such, it is apparent that the

⁴ On November 15, 2002, Rod Cox, on behalf of TDS, filed an affidavit alleging that one of SBC's performance measures was not correctly reported. As I demonstrate below, however, Mr. Cox is raising an operational issue, not a performance reporting issue.

CLECs have relied upon SBC's reported results for at least the past year, and in fact have readily accepted liquidated damages remedy payments that rely upon the performance reported using the current performance measurement processes and systems.

17. AT&T's Karen W. Moore on p. 25 of her November 15, 2002 Affidavit states that, "Ameritech refuses to allow AT&T and other CLECs to independently verify the retail data used for comparison to wholesale data when determining performance results, claiming that data is so confidential that it cannot be released, even under seal. Moore also states on p. 26 of the same Affidavit that due to this, ". . . once BP concludes its OSS test, CLECs will be unable to independently verify the accuracy of Ameritech's remedy payments." SBC's retail data is highly sensitive and proprietary, however it is indeed audited. There is a 3rd party audit requirement that serves to cover the auditing of this retail data. Both BearingPoint and E&Y accessed and reviewed SBC's retail data during the scope of their work.

18. Finally, I am aware of only one case formal complaint regarding the accuracy of reported performance results⁵. In that case, the CLEC did not make any attempt to reconcile data with SBC prior to filing the complaint. In subsequent discussion between SBC, the CLEC became aware that it was not calculating results using its

⁵ See "Request for Emergency Relief" filed by ACD Telecom, in Case No. 13321, alleging in Count V that SBC falsified performance measure data.

data as defined in the business rules. SBC explained the points where its calculations needed to be changed, and that once those changes were made the results would essentially match those reported by SBC. Shortly after those discussions, other counts in the complaint were settled and the complaint was withdrawn, with no action required or problem found regarding data accuracy.

B. Continued Performance Reporting Improvements

19. As the Commission is aware, there are two independent validations of BearingPoint (formerly KPMG Consulting) and E&Y conducted on SBC's performance measurement data and process. SBC has committed to continuing both of these and believes any open issues can be handled outside of the Section 271 review process.
20. As a result of these reviews, SBC has improved its performance reporting controls. SBC's July 25, 2002 Response to Exception 20 (Version 2), explains the detailed documentation, methods and procedures that are in place to ensure that performance reporting is accurate and reliable. Before BearingPoint began its PMR review, SBC maintained extensive technical and data flow documentation, at the measure specific level, for all reported performance measures. For the purposes of the BearingPoint evaluation this documentation has been further expanded.
21. In addition to this documentation effort, SBC has implemented and documented a wide range of controls in its data transfer and performance measurement

production processes. SBC believes it has a robust set of controls in place, and is actively investigating opportunities to implement additional controls into the metrics reporting process. Examples of controls relating to the processing of data are: (a) copying and storing input and output PM data files, (b) header and trailer records/Control files to ensure the correct number of records are transferred, and (c) processing PM data multiple times to ensure consistent results. Controls have been placed throughout Ameritech's reporting process, including both manual and mechanized processes, for the following processes: (a) ICS/DSS performance measurement data collection, (b) MOR/Tel performance measurement data calculation, (c) manual calculation of performance measurement data, (d) SAS team calculation of performance measurement data, (e) PRS/PRS+ data transfer applications, and (f) RRS performance measurement data calculation.

22. On a related issue, AT&T Affiant Moore, at ¶ 19, takes exception with my statement in ¶ 19 of my October 21, 2002 Affidavit that SBC "retains the performance data results provided to every Michigan CLEC and the data required to support auditing and CLEC reconciliation of reported results for three years as required by the Michigan Public Service Commission". Moore at paragraph 19. She claims that my statement is contradicted by BearingPoint's Exception 19, as well as Observation 668 and Exception 47. On October 30, 2002, SBC supplemented its response to Exception 19, and confirmed that all data needed to comply with the Commission's data retention requirements defined in U-11830

are properly retained. The other BearingPoint issues that Ms. Moore relies upon have been or will be successfully resolved.⁶

23. AT&T Connolly at 67 says that my statement that the reason not to computerize a process "where the volume of transactions involved is not sufficient to warrant a mechanized process" does not reconcile with the facts because in his opinion there are several manually processed measures that involved large volumes of transactions. AT&T Connolly's Exhibit TMC-02. Over the past 18 months, SBC has increased focus on improving or mechanizing manual performance measurement processes. Where efficient and economically feasible, those processes have been automated. Where they have not been automated, additional manual controls have been designed and implemented (e.g., process check sheets, multiple data input reviews, etc.). At the same time, these measures must be kept in perspective. Manual summarization of performance data occurs where the volume of transactions involved is not sufficient to warrant a mechanized process. The measurement categories involved here did not impact the preordering, ordering, provisioning or maintenance measures.

ERNST & YOUNG'S AUDITS PROVIDE FURTHER ASSURANCE THAT SBC'S REPORTED RESULTS ARE REASONABLY ACCURATE AND RELIABLE

24. TDS, XO, AT&T Connolly ¶¶ 15-17, 38; 50 and 67, and WorldCom at pps. 6 and 10, maintain that even if the E&Y report is considered, it should not be given

⁶ SBC has satisfied BearingPoint as to Exception 47; *see*, BearingPoint's Exception 47 Version 2 Disposition Report, dated 11/11/02.

much, if any weight because it is flawed, and because it relies on SBC's interpretations and promises for prospective changes. AT&T and WorldCom are concerned regarding exceptions identified by E&Y, but AT&T Moore at ¶ 52 does state she thinks SBC can "repair its system in a matter of weeks". TDS discusses Attachments A and B to the E&Y reports. My October 21, 2002 Affidavit included two attachments, Q and R, which addressed the status of SBC's update process for these issues. Attached to this Reply Affidavit is an updated Attachment Q (labeled as Version 2) that is essentially a "redline" of my prior attachment showing the progress SBC has made in resolving these issues. Also attached to this Reply Affidavit is a new compliance report being submitted by E&Y regarding the validation of updates made by SBC. (*See*, Attachment S.)

25. As I discussed in my October 21, 2002 affidavit, E&Y's report discussed certain items in its Attachment A designated as "Restatements", "Prospective Changes" and "Other Identified Issues".

A. Restatements

26. E&Y first identified several issues that were reported incorrectly in the March-May audit period, but were corrected by restatements afterwards. As I noted in my October 21 affidavit two types of restatements were considered, those that affected whether the measure was in "parity" and those that did not impact parity. Of the issues that impacted parity, the impacts were small: less than 1% of reported results in March, 2.1 % in April and 1.1% in May Aff. ¶ 184. At the

time of its October 18 reports, E&Y had validated SBC's restatements for 12 of the 17 issues identified that impacted parity, and 22 of the 24 issues identified that did not impact parity. Since that time E&Y has virtually completed its validation work. All of the restatement issues that impacted parity have been validated by E&Y. Only one of the issues that did not impact parity (Issue 13. PM IN1, a diagnostic measure) remains to be validated.. E&Y November 18, 2002 Report.

B. Prospective Changes To Performance Measurements

27. Attachment Q to my affidavit addressed the "Prospective Changes" and "other Issues" identified by E&Y. I am attaching an updated Attachment Q to this Reply Affidavit that provides an updated, current status for each item that was not completely resolved as of the October 18, 2002 E&Y Report.

28. The updated version of Attachment Q highlights current updates with the label "11-20-02 Update" and accompanying text in italics. I note the current statuses provided with the label "11-20-02 Update:" and accompanying text in italics. The status provided applies to the corrective action required, and any impact on the June - August 2002 results submitted with my October 21, 2002 Affidavit. (In several cases the issue had already been addressed for at least one month included in the filing. As such, the updates address only those months that had not already been corrected. Where no update is provided, that is because the issue had been completely addressed (any corrective action had already been taken and had been confirmed by E&Y, and any restatement, if needed, had been completed) as of the E&Y report filed with my affidavit on October 21, 2002.

29. I also note the impact that corrective action would have on the June – August results provided with the October 21, 2002 affidavit. In each case, analysis of the impact of the corrective action was undertaken to assess any changes in reported volumes and/or in reported performance. Note that this first-state analysis focused on the impact on a specific measure, as opposed to the overall materiality to results as a whole. Where there was no change in results, I indicated this by noting "None" in the column titled "Impact Upon June – August 2002 Results. As a general rule, where the change in volume for a given measure did not exceed plus or minus five percent of the previously reported volume, and the results did not change from a "HIT" to a "MISS", or vice versa, the results were not necessarily restated and the impact is noted as not material. Where analysis determined that a result could potentially change from a "HIT" to a "MISS", SBC already has or will be restating those results, as noted in the updated Attachment Q. In those cases, I perform additional analysis of the overall impact here.
30. E&Y's report of October 21, 2002 listed eighteen numbered items ("issues") discussing updates made to PM implementations on a basis prospective to the months of results audited by E&Y, March, April and May 2002. These eighteen issues identified thirty-one PMs as impacted by at least one of the issues. As of the October 21, 2002 filing of performance results each of these issues had been addressed and seven had been verified by E&Y. Nine additional have been verified as of this Filing, and two are currently within E&Y's verification process. Of the thirty-one PMs listed, only five require restatement of one or more of the

months' results filed on October 21, 2002 to address the issue described. The PMs requiring restatement as of this filing CLEC WI1, 10.4, MI2, 91, MI13.

31. Of the PMs that were corrected on a prospective basis, but still required restatements for June, July and/or August data, all but 5 have been restated. Of these remaining five PMs, June and July 2002 results for MI13 are scheduled for restatement on January 6, 2002. June 2002 results for CLEC WI1 are scheduled for restatement on December 5, 2002. June and July 2002 results for PMs 91, 10.4 and MI2 are scheduled for restatement on January 6, 2003.
32. Even though these results have not yet been restated, as discussed below, the restatements do not affect the overall analysis of SBC's service provided to CLECs in these areas.
33. For PM MI13, the restatement will address a timing issue where the volume of "line loss notices" sent was overstated (i.e. notices that were not sent until September were included in August 2002 results). The restated performance results is not expected to vary significantly, and the line loss notices that were erroneously included in the August results have already been reported properly in the September results made available to CLECs and the Commission on October 21, 2002. As I noted in my October 21, 2002 filing, there was a malfunction in August that delayed the actual issuance of line loss notices, which Ameritech Michigan has addressed.

34. For PM 91, the issue identified by E&Y affects reported performance only for certain orders that completed prior to the due date, which were erroneously not included in the reported results. In those situations, however, the specific order would meet the performance standard of implementation within industry guidelines, so exclusion of these orders means that Ameritech Michigan's performance was slightly understated. Ameritech Michigan updated its procedures to include these orders, and the August 2002 results included in the October 21 Filing reflect this enhancement. In reviewing the results provided for PM 91 (Attachment A to my opening affidavit), it can be seen that August 2002 results (which included the updated and corrected procedure) did not vary materially from the previous months' results (which did not reflect the correction, and have not yet been restated). The effect of the pending restatement, if any, is expected to result in improved performance for June and July.
35. PMs 10.4 and MI2, Percentage of Orders Given Jeopardy Notices and Percent of Orders Given Jeopardy Notices Within 24 Hours of the Due Date, respectively, required updates to address specific limited circumstances where jeopardies were not reported under the proper disaggregation or not counted in the results. Updates were made to both PMs to address these issues, effective with the August 2002 results included in the October 21 filing. As one would expect, the volume of jeopardies increased in the Unbundled Loops without LNP category in August. Otherwise, performance in August was consistent with prior months. Note also that jeopardy notices are issued when we *might* miss a due date – the rate of actual

missed due dates is not affected by this issue and I showed in my opening affidavit that Ameritech Michigan's due date performance was strong.

36. For CLEC WI1, Average Delay In Original FOC Due Dates Due To Delay Notices, the issue was addressed in the July and August results provided in the October 21 filing. While volume increased compared to June (July orders were 430 and August orders were 511, compared to 67 for June), performance improved significantly (average delay days for June was 29.36, while the July and August results are 7.70 and 4.37 days respectively).

C. Other Identified Issues

37. E&Y's report of October 21, 2002 listed thirty-two numbered items ("issues") where E&Y determined that an error had been made in the PM calculations and the error had not been addressed as of the date of their report. E&Y identified seventy-six PMs that were potentially affected but SBC's investigation of those issues and the affected PMs determined that the issues did not have a significant impact on June – August 2002 reported results for forty of the PMs listed. (As stated above, I consider a change significant where it affects volume by at least five percent, or whether it causes a measure to change from hit or miss or vice versa). The current status of each issue and affected PM is described below.

1. Implementation Complete/Restatement Complete or Scheduled if Needed

38. SBC has completed analysis and updates to the PM implementation (as needed) for sixteen of the thirty-two issues as of the filing of this affidavit, which affected

41 PMs. Of those 41, restatements, if needed, have been completed for the months of June, July and August for 25 of the affected PMs. The remaining 16 PMs (5, 7, 8, 10.4, 55.1, 56, 58, 74, 75, 78, 91, 93, MI2, MI10, MI13 and MI16) are scheduled for restatement affecting June, July and/or August results, to the extent applicable, on December 5th or January 6th.

39. The implementation of PMs 7, 8, 10.4, and MI2 have been updated effective with October 2002 results (which were reported November 20th), and prior months are scheduled for restatement on January 6th. These updates and restatements address an issue where one specific LNP with Loop product had not been included in the results for the LSOG4 and Issue 7 interface categories for the June-August data provided in the October 21 Filing. The absence of these orders impacts the volumes reported for the five LNP with Loop submeasures of PM 5, and the single measure for PM 93, to a very small degree. Performance reported for June through August consistently exceeded the benchmark for these measures. As the volume impact will be very low, and the systems that process these orders are the same as for other products, overall performance is not expected to vary materially. An additional issue pertinent to PMS 7 and 8 has also been addressed to ensure that the most accurate completion date is captured for certain orders that are manually completed.

40. The implementation of PMs 74, 75 and 78 have been updated as of September results reported October 21st, and are scheduled for restatement on December 5th, to address an issue where Ameritech Michigan excluded interconnection trunk

projects from the results. The Results for these excluded projects are expected to underperform against the PM standards as significant long-duration project work was completed in July and August and was not reported previously. However, none of the affected interconnection trunk projects caused traffic blockage. Moreover, each of these three PMs were reported as "misses" in SBC's October 21, 2002 filing and therefore, this particular issue should have no impact on the Commission's overall hit or miss analysis. Likewise, this level of performance has not caused significant commercial impact since CLECs continue to add trunks on net growth basis.

41. The implementation of PMs MI10 and MI16 have been updated effective with October 2002 results (reported November 20th), and prior months' results are scheduled for restatement on December 5th, to address an issue where SBC did not include certain rejected and timed-out pre-order inquiries initiated via the "TCNet" interface, and to include certain inquiries submitted over the "EDI LSOG1" interface, which had not previously been included in the results. As requests processed through these interfaces represent a small percentage of the total requests made by CLECs, and the issue impacts only certain transactions from this small subset, the overall pre-ordering results are not expected to materially change. For example, the total address verifications reported as submitted via EDI LSOG1/TCNET represent less than 10% of the total address verification requests. In addition, the EDI LSOG1/TCNet interface is scheduled for retirement on November 27, 2002, so any past performance issues related to these interfaces can have no impact on competition in the future.

42. The implementation of PM MI13 has been updated effective with October 2002 results, and prior months are scheduled for restatement on January 6th, to address an issue where Ameritech Michigan did not include projects in the reported results.

2. Implementation Scheduled/Restatement Scheduled, if Needed

43. SBC has scheduled updates to PM implementations to address an additional nine of the thirty-two issues, which affect 45 PMs identified by E&Y. These updates are scheduled primarily for November and December results. Of those 45 PMs, results submitted for June July and August are not impacted for 27. Of the remaining eighteen PMs, twelve (PMs 28, 43, 44, 55.1, 55.2, 55.3, 56, 56.1, 58, 91, 93, and ~~and~~MI12) are scheduled for restatement on either December 5th or January 6th. For the remaining six PMs (5, 6, 92, 95, 99, and MI9) restatement has not yet been scheduled.
44. PMs 5, 91 and 93 are scheduled for update with November results (to be reported December 20, 2002), and prior months are scheduled for restatement on January 6, 2003. These actions are to address an issue where one specific LNP with Loop product has not been included in the results for the “LSOG4” and “Issue 7” interface categories. Performance reported for June through August consistently exceeded the benchmark for these measures. As the volume impact will be very low, and the systems that process these orders are the same as for other products, overall performance is not expected to vary materially.

45. The implementation of PMs 7, 8, 91, 93 and MI9 will be updated with November results reported December 20th. PMs 7, 8, 91 and 93 are scheduled for restatement on January 6th, with restatement of PM MI9 under evaluation. The update and restatements is to address an issue where SBChad excluded certain LNP with Loop orders from the PMs in the specific situation where the loop portion of the order was rejected and then later corrected. The number of occurrences of this specific situation occurring are very small, with the volumes reported in the UNE submeasure of PMs 7 and 8 expected to increase by less than five percent, a small increase in the number of partial LNP conversions reported in PM 91, a corresponding small increase in volume for PMs 93, and MI9. The updates to these PMs are not expected to materially change the performance reported, but will impact the volumes reported.
46. The implementation of PMs 43, 44, 55.1, 55.2, 55.3, 56, 56.1, and 58 will be updated with December results (to be reported January 20th), and prior months are scheduled for restatement on January 6th, to address an issue where Ameritech Michigan had not used the correct field to determine the customer requested due date. This projected impact of this change on the previously reported results has not yet been determined. That same issue impacts PM 28, and the implementation of PM 28 will also be updated with December results. Timing of any restatement of PM 28 for that issue is yet to be determined. Additionally, a problem obtaining source data that affected certain LNP with Loop CHC and FDT orders completed in June has been addressed, with restatement planned for

January 6th. As this issue impacted only a portion of the orders processed, the reported results for these PMs is not expected to vary significantly.

3. Implementation Under Review

47. Seven issues affecting 13 PMs are yet to be addressed and have not had an implementation update scheduled as of this filing. The PMs affected are 7.1, 10.4, MI2, 65, 65.1, 66, 67, 68, 69, 91, 95, MI13 CLEC WI5.
48. The implementation of PMs 10.4 and MI2 will be updated with November results reported December 20th for four of the sub-issues identified by E&Y. Determination of the need to restate for those sub-issues is underway but not yet complete. The two additional sub-issues are also under assessment as to the scheduling of the update and any need to restate. These updates and, if needed, restatements are to address an issue where Ameritech Michigan did not report a portion of the jeopardy notices due to a coding issue that did not properly match jeopardies to LSRs when a supplement was processed. While impact of these updates on past reported performance is still being assessed, most of the sub-issues relate specifically to LASR, and thus would only impact jeopardies and orders issued through LSOG5, a subset of all orders received and all jeopardies sent. Again, this does not affect the more important measure of missed due dates.
49. The issue impacting PMs 65, 65.1, 66, 67, and 69 centers on reporting of trouble reports for the Lineshare product. SBC is working to confirm the changes that need to be done to address the issue and is working to schedule the work and any

appropriate restatements. For these six performance measures, only the Lineshare submeasure is impacted. This affects two of seventeen submeasures for PMs 65, 65.1, 67 and 69, and two of four submeasures for PM 66.

50. The issue impacting PM 91 centers on inclusion of data from the LASR system, reporting by telephone number (“TN”) instead of by order, and properly applying exclusions for due dates requested outside industry guidelines. Each of these issues is in the process of being scheduled for implementation, and any need for restatement is also being assessed. The issue of reporting by TNs instead of by orders is not expected to have a material impact on results, as performance for each TN is the same as for the order. Inclusion of orders that should have been excluded due to due dates requested beyond industry guidelines will result in improved performance as orders implemented later than the industry guidelines per CLEC request would be identified as misses against the performance standard.
51. The issue impacting PM 95 centers on exclusion of projects where there is no exclusion specified in the business rules. Update to the implementation of PM 95 is currently being assessed and scheduled. Initial analysis indicates that restatement will not be required, as projects typically are not rejected.
52. The issue impacting PMs CLEC WI5, CLEC WI6, CLEC WI7 and CLEC WI8 center on Ameritech Michigan’s exclusion of orders. For CLEC WI5, E&Y found that Ameritech Michigan’s results for the percentage of protectors not moved after technician visit only reflected resale POTS and UNE-P orders. As

such, the volume reported is low. Reported results for the period, however, show that on no occasions did Ameritech Michigan fail to move the protector. Ameritech Michigan is continuing analysis to determine if the results will change when UNE and resold special are added, and will restate the results should there be a material change. The current implementation of PM CLEC WI5 is expected to be updated within the next two months.

D. Interpretations Of Business Rules

53. WorldCom complains that E&Y obtained certain interpretations from SBC management but obtained no input from CLECs or Michigan Staff. At p. 12 WorldCom states that, "E&Y then used these SBC management "interpretations" to find that SBC's practices were not in violation of the Business Rules. This is akin to putting the fox in charge of the hen house. Relying on this aberrant and biased methodology, the E&Y PM Report addressed 43 of the 150 distinct general PMs (several more than once) to find compliance on a discrete portion of a Business Rule." AT&T Connolly at ¶ 50 states that business rules cannot "be interpreted unilaterally". He also states at ¶ 53 that changes in the six month review collaborative have not been agreed to by CLECs and that there has not been any assessment of the interpretations to determine which ones AT&T has agreed to in the six month review collaboratives. He states at ¶ 73 that the interpretations in the E&Y Attachment B "indicates a source of probable dispute". Obviously, in order to implement the business rules, there must be some degree of

interpretation by the implementer, and in doing so the business rules must be interpreted in the first instance by SBC.

54. In all instances where some degree of interpretation has been necessary in order to operationally and reasonably implement, SBC believes it has applied a reasonable and appropriate interpretation. SBC is not suggesting that changes or clarifications to the business rules which are under consideration in the six month review should be “retroactively” implemented. Rather, SBC is simply pointing out that in some instances, where some degree of interpretation was required in order to implement, SBC’s interpretation was indeed reasonable, and the reasonableness of that interpretation is further evidenced by the fact that the clarification to reflect how the rule was implemented, when proposed in the 6 month review, was not opposed by participating parties. Additionally, specific agreement discussed in the six-month review collaborative session on September 6, 2002 was that CLECs were to review the red-lined business rules and the proposal matrix and indicate by month end any proposals and changes not agreed to. Absence of any objections was to be considered acceptance of the proposal and red-lined changes. WorldCom and AT&T did comment on a limited set of proposals, but did not object to any of the changes supporting the interpretations listed in Attachment R to my October 21, 2002 Affidavit.

55. Unless addressed at the 6-month review, SBC must make interpretations in order to implement the business rules. Hundreds if not thousands of interpretations are possible, however, as the business rules discuss the processes being measured at a

relatively generic level. E&Y fully disclosed their list of interpretations that they readily found, determined and documented during their audit scope. My October 21, 2002 Attachment R provides the clear rationale for SBC's interpretation. It also delineates any correction action (only a few action items necessary) to be taken.

SBC'S RESTATEMENTS IMPROVE THE ACCURACY OF REPORTED RESULTS

56. AT&T Connolly addresses restatements extensively. However, the issue of restatements was discussed fully by SBC in its September 10, 2002 Supplement to its July 25, 2002 Response to Exception 20. In that response, SBC pointed out that BearingPoint's method of analysis significantly overstated SBC's restatement rate. This would also apply to AT&T Witness Connolly's statement at ¶ 30 that "667" performance measures have been restated.

57. SBC also pointed out in its September 10, 2002 response that when analyzed completely, SBC's restatement rate for the period of January 2002 through August 2002 is 7.75% of the fully disaggregated measures that SBC is obligated to publish, rather than the 30% figure cited by BearingPoint. More importantly, this debate about the number of restatements is secondary. The question is whether the restatements were significant. The rate of restatements that actually changed a measure from "pass" to "fail" or "fail" to "pass" is less than one half of one percent (.36%) of the fully disaggregated measures that SBC publishes. Obviously, AT&T Connolly's alleged "failure rate" of 86% for the months of April, May and June 2002 at ¶ 68 is an overstatement.

58. Reporting performance measures is perhaps one of the most complex service tracking processes ever established. In SBC, we track nearly 2,000,000 sub-measures, each with their own numerator, denominator, wholesale results, retail or equivalent benchmark, Z-score (if applicable) and unique business rules. The amount of data points gathered is unparalleled in the history of our business and requires that the data be produced and validated in a three-week period. The process required to implement and post results is inherently complex and because human beings are involved, errors at times will be made. These errors may necessitate the restatement or reposting of performance data in the future. Nonetheless, SBC is dedicated to making every effort to minimize restatements going forward, and the results for this year show that we have made more than sufficient progress.

SBC's REPORTED PERFORMANCE RESULTS DEMONSTRATE COMPLIANCE WITH THE NONDISCRIMINATORY ACCESS REQUIREMENTS OF THE COMPETITIVE CHECKLIST

A. Performance results need to be evaluated based on the ‘totality of the circumstances.’

59. SBC’s reported commercial performance results demonstrate that SBC continues to provide Michigan CLECs with a meaningful opportunity to compete in the Michigan local telephone market. In particular, these results demonstrate that SBC provides Michigan CLECs nondiscriminatory access to the pertinent 14 point checklist items specified in Section 271 of the Telecommunications Act of 1996 (“the Act”).

60. According to the data, SBC's performance met or surpassed the applicable parity or benchmark standard, in at least two of the last three months concluding in August 2002, for 88% (360 out of 410) of *all* measures (including submeasures) for which data were generated.⁷ On an individual-month basis, SBC met the applicable performance standard for 87% of all measures in June, 87% in July, and 86% of all measures in August. Looking at Tier 1 and Tier 2 measures, SBC's performance met or surpassed the applicable parity or benchmark standard, in at least two of the last three months concluding in August 2002, for 90% (289 out of 322) of *remedied* measures (including submeasures) for which data were generated. On an individual-month basis, SBC met the applicable performance standard for 89% of remedied measures in June, 88% in July, and 88% of remedied measures in September.
61. The CLEC's criticisms of very limited aspects of SBC's performance relative to checklist items *i* (interconnection trunks) *ii* (OSS/unbundled network elements ("UNEs")) and *iv* (unbundled local loops) do not undermine the foregoing empirical data demonstrating SBC's overall performance for the pertinent checklist items as a whole. Nor do their criticisms undermine SBC's performance for the checklist items they target.

⁷ The source for the percentages and numbers in this paragraph is "Revised Attachment A" being filed with this Reply Affidavit. A calculation error was made in the comparison for three submeasures (55-0.1, 55-01.2 and 55-02.1) in the original Attachment A included with my October 21, 2002 Affidavit. A "Revised Attachment A-1" is also being submitted with this Reply Affidavit because the sub-measures are also reported on that attachment.

62. First, as noted above, these commenters ignore SBC's overall performance, both with respect to SBC's measures as a whole, and to those measures encompassing the only three checklist items they discuss. Second, the CLECs ascribe significance to fairly minor statistical shortfalls without showing how (if at all) their competitive opportunities have been adversely impacted. These considerations bear emphasis, though ignored by the CLECs, because it is well understood that "[p]erformance disparity in one measurement or sub-measurement is unlikely to result in a finding of checklist noncompliance, unless the disparity is dramatic, or absent evidence of competitive impact."⁸ Third, even where SBC has initiated performance improvement plans, the commenters either make no reference to these initiatives or dismiss them as "paper promises" – even though the FCC's "totality of the circumstances" analytical framework envisions "examin[ing] the evidence further"⁹ and even though statistical evidence shows that these improvements are having a positive effect on SBC's performance. Finally, these CLECs imply that SBC can only prove the efficacy of its systems and processes if its measured performance is perfect. As is apparent from the foregoing discussion, the FCC does not subscribe to this view. In any case, the CLECs' criticisms of isolated and incidental shortfalls which are not

⁸ *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*, Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶ 136 (2001) ("Kansas/Oklahoma Order").

⁹ *Id.*, ¶ 31.

commercially significant and do not undermine the ample evidence that SBC continues to provide efficient Michigan CLECs a meaningful opportunity to compete.

B. The Standard of Review

63. WorldCom at page 16, and AT&T Affiant Moore at paragraph 8 state that SBC has attempted to "spin" the performance results reported to demonstrate compliance. WorldCom takes exception to my highlighting the percentage of metrics passed by SBC "without focusing on how the percent of failed metrics figure in the viability of CLEC business plans." AT&T's Moore at ¶¶ 11-18 asserts that SBC have ignored the criteria established by the MPSC of "three consecutive months" and unilaterally created criteria of "two out of three, and not necessarily consecutive" and also averaged results for comparison purposes
64. My analysis using "2 out of 3" and averaging, is based on my review of past FCC orders when it has stated it may examine performance data on a more disaggregated level, take note of how long a variation in performance has existed and what the trend has been in recent months, look for steady improvements in performance over time and, where appropriate, conclude that while statistically significant differences in measured performance exist, "such differences have

little or no competitive significance in the marketplace.”¹⁰ The type of analysis I performed, including the use of a “hit or miss” report based on two out of three months, has been accepted as the standard of review by State commissions and the FCC in all of its SWBT Section 271 approvals.¹¹

65. Specifically, AT&T Moore has provided three exhibits where she assumes to demonstrate the new standard of review AT&T believes should be utilized by state commission and the FCC, instead of the standard discussed above. Moore's exhibits KWM-01, KWM-02 and KWM-03 are simply her attempts to impose her "3 out of 3" standard on Ameritech Michigan. She recalculates and averages the data presented by Ameritech Michigan but, interestingly enough, does not state

¹⁰ *New York 271 Order*, ¶ 59. Similarly, the FCC explained that the Commission would “examine whether any differences in the measured performance are large enough to be deemed discriminatory under the statute.” *Texas 271 Order* at ¶ 58. The FCC also states that it “may find that the performance differences are slight, or occur in isolated months, and thus suggest only an insignificant competitive impact.” *Kansas/Oklahoma 271 Order*, ¶ 32. “The Commission may find that statistically significant differences exist, but conclude that such differences have little or noncompetitive significance in the marketplace.” *Arkansas/Missouri 271 Order*, Appendix D at ¶ 8.

¹¹ *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunication Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FOCC Rcd 18354, (2000) (“*SBC Texas Order*”); *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunication Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, 16 FCC Rcd 20719, (2001) (“*SBC Arkansas/Missouri Order*”); *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*, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001) (“*SBC Kansas/Oklahoma Order*”).

that the individual performance measure data provided by Ameritech Michigan is wrong - only the method of presentation.

66. AT&T Moore claims at ¶ 44 that benchmark standards represent the minimum standard to support competition. This is incorrect. The benchmark standard represent the level at which any efficient competitor has the ability to compete. Ms. Moore's conclusion that performance below the standard is discriminatory or inhibits competition requires a detailed cause-and-effect analysis that AT&T does not attempt to provide. She also ignores this perspective when performance is in parity and she perceives the level of service provided to wholesale customers to be low or unacceptable, regardless of the fact the defined standard of comparison is met or exceeded.

C. SBC's Commercial Performance Results

67. In their reply comments and affidavits, the CLECs make a number of claims regarding the performance results data provided in the October 21st filing and in the analysis provided in my affidavit accompanying those results. In this section of my reply affidavit I address those comments.
68. Overall, the CLEC's comments take two flavors: either they point out (as I did in my initial testimony) areas where performance levels reported do not meet or exceed the standard of comparison and in some cases apply their own version of what those results indicate, or they take issue with my analysis and conclusions. In the second case, the CLECs several times assert results reported that do not

meet or exceed the standard of comparison are evidence of discrimination by SBC (WorldCom p. 24, Moore ¶¶16 and 29, XO p. 6). These claims are pure conjecture, as no party provides any evidence of commercial significance, let alone discrimination, to support their claims. That is because they know full well that simply failing to meet a performance standard does not indicate, in and of itself, that any discrimination has occurred. Determining discrimination requires an understanding of the actual activities and processes that took place and what the true underlying cause for missing the standard was. The FCC has found that "parity and benchmark standards established by state commissions" do not necessarily represent "absolute minimum or maximum levels of performance necessary". Further, the FCC also indicates that discrimination can only be determined, in the situation where performance standard is not met, after examination of additional evidence.¹²

1. Pre-Ordering

69. AT&T addresses the performance results for PM 1.1 reporting the average response time for manual loop make-up information. (Moore ¶42) She correctly states the performance reported, but apparently her real issue is she does not like the fact that the measure is a parity comparison and that the detail data regarding volumes for the SBC's affiliate's results are not made available to her. She does not acknowledge the improved performance for the CLECs over the three months period, with the best performance being in the month with the highest volume.

¹² *BC Kansas/Oklahoma Order at ¶ 31.*

Her issues regarding the comparison are best addressed in the collaborative process.

70. The CLECs discuss pre-ordering measurement PM 2 (Percent Responses Received Within “X” Seconds – OSS Interfaces), expressing concern that the results do not include transactions processed through the LSOG 5 interface implemented in April 2002 (Moore ¶24) and that the PM2 implementation is not in compliance with the Business Rules (Moore ¶26). This second item is well documented in the responses and discussions on BearingPoint’s Exception 113.

71. In response to the first issue, Ms. Moore “spins” the situation as how she would like to recall it. She fails to state that SBC volunteered proposed changes to the current PM 2 business rules to include LSOG 5 transactions at the first meeting of the current six-month review collaborative held on March 5, 2002. The proposed revisions to PM2 would have made PM2 essentially identical to the implementation in SBC’s affiliate, Southwestern Bell Telephone or “SWBT” (to which AT&T had agreed through the collaborative process), and where the LSOG 5 functionality had been in place for a number of months. SBC made this proposal well in advance of the LSOG5 release being implemented in the SBC Ameritech region. The collaborative participants proceeded to actively negotiate on specific details of the proposal, focusing on the actual benchmarks proposed and were very near agreement. Only upon the issuance of Exception 113 did AT&T withdraw their support for the proposed changes in the collaborative process.

72. Additionally, Ms. Moore is incorrect when she states, “the newly implemented OSS interface (LSOG5) has no performance measurement results.” SBC provided notice in the six-month review collaborative, as requested by the participants, defining how LSOG5 transactions would be addressed in PM2 prior to implementation of a new version of the PM. A document titled “Reporting of LSOG5 Transaction under Current PM 2: Percent Responses Received Within “X” Seconds – OSS Interfaces” was provided to the collaborative participants in April 2002 and clearly indicated the Web Verigate sub-measures of PM2 would be reporting only LSOG5 transactions, effective with the implementation of the LSOG5 release.

2. Ordering

73. The CLECs comments on the Ordering measurement results attempt to paint SBC’s performance in a negative light, when it clearly is very strong performance. For example, AT&T Witness Moore provides lengthy discussion on a single submeasure of the firm order confirmation timeliness measure, PM 5, a measure that has 54 separate reported submeasures. (Moore ¶29) Ms. Moore here discusses a submeasure of PM 5 that reports the timeliness of FOCS for LNP orders with less than 20 lines that are submitted electronically and processed manually. Ms. Moore fails to note that the cause for an electronically submitted order being processed manually can be some discrepancy or issue with the data submitted by the CLEC. Her strained “analysis” is further undercut by its reliance on pure speculation, unsupported by any fact or rationale reasoning. She states that “these varied results occur as a result of SBC assigning personnel “as

needed” to process orders manually”. This claim is strange enough, since SBC certainly does assign forces where needed. SBC’s ability to assign personnel, however, does not support Ms. Moore’s conclusion that SBC’s systems and procedures thus are nothing less than a “band aid” approach to providing service to CLECs. Indeed, the results Ms. Moore cites, clearly contradict her claim. She correctly notes that reported results are over 92% in each of the three months, with one month over 97%, one essentially at 95% (94.91%) and a third at nearly 93%. However, when the results for the three months are weighted for monthly volume and averaged, the resulting performance of 95.3% of FOCs returned with five hours (the performance standard 5-22 Ms. Moore discusses) clearly exceeds the 95% benchmark, and clearly demonstrates that Ms. Moore’s analysis is flawed and her assertions are baseless.

74. Ms. Moore also discusses performance results for two reject measures, PMs 10.1 and 10.2 (Moore ¶30), and concludes that that “the reported results also fail the benchmark for the return of FOCs” and asserts that the performance does not meet the standards discussed and supported by AT&T in the current six-month review collaborative. I am surprised that she apparently does not understand that a critical component of the discussions regarding aligning reject standards with FOC standards is changing the number of hours within which the notification needs to be provided. The current standard for PMs 10.2 and 10.3 is to return the manual reject within 5 hours 97% of the time. Our reported performance provides the percent of manual rejects returned with the 5 hours. However, the corresponding benchmarks for manual FOCs range from 5 hours to 48 hours, and

the proposed benchmarks corresponding to the current PMs 10.2 and 10.3 are 8 hours and 24 hours respectively. Simple math and common sense would indicate that reported performance will be significantly improved when a benchmark of 5 hours is increased to 8 hours and 24 hours. Ms. Moore apparently overlooks that the FOC measures have different objectives based on how the response is processed.

75. Completion notice timeliness is discussed by Ms. Moore (¶31) with regard to PM 7, and by WorldCom (pp. 18-19) regarding PM 7.1. Ms. Moore takes issue with the fact that I do not call out the performance results on PM 7. One reason I do not is that the CLECs have advised me they find little value in PM 7, and instead focus on PM 7.1. The results for PM 7, however, stand on their own. Three submeasures are reported, and results for two of the three met or exceeded the standard in at least two of three months, and in those two submeasures performance was never below 95%. Ms. Moore calls out the performance for UNE-P, or combinations, as not meeting or exceeding that standard two out of three months, which it did not. However, one month was passed at greater than 99%, while a second month was at 96.1%, narrowly missing the 97% benchmark. Ms. Moore fails to provide any commercial significance to this slight miss, because there is none.

76. WorldCom discusses the more important measure (as the CLECs have advised me), PM 7.1. However, their statement does not track at all with the reported results. WorldCom comments that “Completion notices delivered within 1 day of

work completion have been failed and have failed to meet the benchmark (never reaching a rate higher than 78%) for any of the three months.” With a very plain review of the performance results provided, one can see this is not true. There are four submeasures of PM 7.1, disaggregating the completion notices by resale, UNE, Combinations or UNE-P, and LNP Only. Apparently WorldCom has chosen to focus on LNP Only, without recognizing that performance for the other three, much higher volume measures are consistently met. WorldCom also conveniently ignores my testimony (Ehr ¶56) where I explain that the LNP Only submeasure is missed due to the CLEC delaying completion of the order, and thus the delivery of the completion notice. My analysis therefore stands unrebutted and demonstrates a reasonable basis for the performance results at issue.

77. WorldCom discusses jeopardies (WorldCom p. 20), which can only be assumed to be the results for PMs 10.4 and MI2 as WorldCom does not indicate a specific PM. The real issue seems to be the absence of a Z-score. However, Z-scores are only required for measures that are not diagnostic. As the business rules indicate that these are diagnostic PMs, no Z-score is provided.

78. The CLECs discuss SBC’s performance on Line Loss Notification timeliness as reported for PM MI13 (Moore ¶32, Z-Tel pp. 2-5, WorldCom pp. 19-20). As SBC has asserted to the Commission in other proceedings, line loss notification is an issue the Company does not take lightly, and significant resources have been, and continue to be, expended to ensure the best possible line loss reporting performance possible. Importantly, in the current six-month review the

collaborative has agreed to replace the current PM MI13 with two PMs, one to measure the timeliness of line loss notifications in a manner preferred by the CLECs (within 1 business day of work completion instead of within one hour of service order completion notice delivery) and a second to measure the average delay days for line loss notices that miss the one business day benchmark. However, the CLECs feel the need to misrepresent the current status of the proposed line loss measures in the six-month review. The fact that the parties agree to modify one agreed performance measure with another agreed performance measure is not a checklist compliance issue, but a reflection of the need for periodic PM change management reviews.

79. WorldCom states that “SBC has refused to increase remedies for the timeliness metric” (WorldCom p. 19). That is patently false. The current timeliness metric PM MI13 is not subject to remedies. In the current six-month review, the new MI13 measure includes revisions as desired by the CLECs, and remedies will apply, as desired by the CLECs. This is clearly an increase in remedies; from no remedies to remedies apply. Apparently WorldCom feels the need to mislead the Commission, but clearly the proposed measure will be subject to remedies. And the additional average delay days measure is not appropriate to be remedied as the line loss notification failing to meet the 1 business day standard will be subject to remedies in the new PM MI13, and it is not appropriate to remedy the same performance twice. More outlandishly, Z-Tel attempts to mislead the Commission into thinking that line loss notification is included somewhere in the FCC’s 14-point checklist with the statement that “nondiscriminatory access to line

loss information is a material OSS issue and Ameritech has not met this 271-checklist item” (Z-Tel p. 3). It clearly is not. And, important to note, the FCC has approved the Section 271 applications of SBC’s affiliate SWBT multiple times without SWBT providing any line loss notices at all, much less a performance measure on line loss notices.

80. WorldCom (p. 18) titles a section of their comments “Order Accuracy”, yet appears to discuss line loss notices. In fact, the first paragraph is a duplicate of the first paragraph under the Line Loss heading. SBC is left to assume it is an error and disregarded the text. The second paragraph criticizes the use of a Z-score for parity results. As WorldCom well knows, the parity standard is the preferred standard of comparison for many states and the FCC, and the Z-score is the commonly accepted statistical measure used to assess of disparity. Should WorldCom prefer a different standard, they are welcome to propose just that in the collaborative process. Other than to discuss the nature of the Z-score, WorldCom’s comments really point to no concern with performance other than they would like it to be higher.

81. Under the heading of “Flow-Through” in its comments, WorldCom (WorldCom pp. 16-17) discusses PMs 13 and 13.1. AT&T also discusses flow-through results (Moore ¶33). An issue with these PMs is that they call for a parity comparison to a process that is fundamentally different – different OSS, different M&P, etc. While the standard of comparison has been defined, any analysis of flow-through performance must recognize that the processes being compared are dissimilar, and

comparison to a parity flow-through standard is necessarily subjective. WorldCom incorrectly claims that a performance measure assessing how many different product and order types have been programmed to flow through is meaningful as evidence of the ability for CLECs to compete. Clearly, flow-through performance has no direct impact on the end-user, as flow through is only a measure of SBC's internal efficiency of receiving orders and processing them through to provisioning systems and processes in an automated fashion. As such, SBC has internal incentive to automate the processing of CLEC orders to reduce processing costs. Accordingly, there is an ongoing flow-through improvement plan and process in which the CLECs participate. And many more important measures exist, such as Orders Installed Within Customer Requested Due Date, that truly reflect the level of service provided to the CLEC's end-customer. In any event, SBC's flow through rates are high and none of the comments have provided any evidence that they have any commercial impact.

3. Provisioning & Maintenance

82. SBC's performance on the installation and maintenance measurements was discussed by several of the CLECs. In several instances (pp. 21-22), WorldCom provides their summary analysis of performance at the geographic level of disaggregation. However, SBC is not relying on those results as evidence of commercial performance, and as a result will not address WorldCom's observations on geographically disaggregated results. WorldCom does address DSL performance (p. 22), as does AT&T (Moore ¶¶39-43). Both Ms. Moore and WorldCom call out the performance reported for PM 55.1-04, taking note of the

fact that the reported results demonstrate that the average installation interval is 6.67 days as compared to a 5-day standard. However, an equally if not more important measure is PM 56-12.2, which measures the percent of orders for the same product that are completed within customer requested due dates. Performance results for this measure show that SBC meets the customer requested due data more than ninety-seven percent of the time in each month, with performance in two of the three months exceeding ninety-nine percent.

83. This performance level demonstrates a high level of service on DSL installations, even with the issue I present in footnote 55 of my October 21st Submission (as WorldCom did note). That issue centers on the fact the results reported for PM 56-12.2, which reports on DSL installations with no Lineshare that do not require conditioning, include a number of DSL installations with no line sharing which *required* conditioning. Orders that require conditioning have a ten day standard interval, versus the five day standard interval for those orders not requiring conditioning. So, when the results for PM 56-12.2 are properly stated, and the longer duration orders requiring conditioning are excluded, the results for PM 56-12.2 (the “percent within” measure that correlates to the “average installation interval” measure) will actually be better than reported. As such, the concerns expressed by the CLECs regarding the average installation interval for certain DSL circuits is overridden by the fact that performance meeting customer requested due dates is very high.

84. AT&T Witness Moore briefly discusses DSL circuit repair performance (Moore ¶41), and correctly notes that I indicated that the sample size is too small to determine a statistically-reliable parity comparison. However, she asserts that I “go on to argue that such data demonstrates parity”. Upon review of my testimony, it is clear I provide a simple, straightforward comparison between the reported wholesale results and the corresponding affiliate results. However, nowhere in my discussion do I propose that this mathematical comparison equates to parity, and in fact, the word parity does not appear in my discussion regarding the actual results reported.
85. SBC’s performance results for UNE-P installation and repair are discussed by AT&T Witness Moore (Moore ¶37-38), where she notes specifically that in one month (August) SBC’s performance did not meet or exceed the parity standard for PM 35-07. While Ms. Moore devotes several more sentences to the importance of the Field Work submeasure, she chooses to ignore SBC’s performance on PM 35-05, which reports on the same process for residential customers as opposed to business customers. The results reported for PM 35-05 show installation volumes for residential orders between six and seven times greater than for business orders, and performance that met the parity standard every month. As such, it is readily apparent that SBC’s installation trouble report performance on UNE-P is not an issue, and adequately supports competition.
86. Ms. Moore also discusses the UNE-P trouble report rate for Business lines (PM 37-4). Again, a ready contrast is the trouble report rate results for UNE-P

residence lines, with an embedded base of more than five times the UNE-P business lines in each month. The trouble report rate for residence UNE-P lines is within parity each month, again demonstrating that reviewed in proper context, UNE-P trouble report rate performance, like UNE-P installation trouble report performance, is more than adequate to support competition. And while Ms. Moore asserts that the UNE-P results do not establish that CLECs have non-discriminatory access, the wholesale performance reported closely tracks and, for the greatest volumes, exceeds the comparable retail performance. Clearly these performance levels demonstrate that there are no installation or maintenance obstacles to the CLECs ability to compete using the UNE-P product offerings.

87. WorldCom's discussion of SBC's UNE-P performance under the heading "Installation Trouble Reports" (P. 23) is limited to a vague assessment, with no specifics provided, that performance for the UNE-P residence field work disaggregation (the PM 35-05 reports Installation Trouble Reports for UNE-P) ranged from adequate to far below standard. However, as discussed above, the results for PM 35-05 clearly indicate parity in each of the three months relied on here. As such, it is quite inaccurate for WorldCom to state "It is quite inaccurate for SBC to claim as it did that it has achieved parity during the June 2002- August 2002 period". The opposite, in fact, is obvious in the results provided for PM 35-05.
88. UNE installation and repair other than DSL is discussed by AT&T (Moore ¶¶ 43-47) and more generally by XO (XO pp. 5-6). While Ms. Moore does address

specific results in her analysis (which I respond to below), XO chooses to draw a very bold conclusion on what appears to be a very cursory review of the performance results. Without discussing any specific results, XO states that “It is blatant discrimination for Ameritech not to meet its obligations regarding provisioning of UNEs.” As XO has provided no analysis to support their conclusion, and neither the results themselves nor the E&Y report they discuss provides support for that conclusion, it must be disregarded by the Commission.

89. AT&T Witness Moore discusses SBC’s performance on Missed Installation Appointments for Digital loops (PMs 58-06, 58-08 and 62-06) and notes that performance was, in fact, in parity. She takes issue, however, with the fact that retail performance in her assessment was “unacceptable low”. However, unacceptable low retail performance is not at issue here – compliance with the PMs (meeting or exceeding the defined standard) is the issue, and clearly SBC’s performance was well above the parity standard. Ms. Moore goes further, however, and asserts that the results demonstrate that SBC’s systems are of poor quality. As I do not believe Ms. Moore is a subject matter expert in SBC’s systems, I’m not sure how she can draw that conclusion. Regardless, the performance reported demonstrates parity, the standard of performance required.

90. Ms. Moore also discusses performance results reported for 2-wire digital loops under PMs 55-02.1 (Average Installation Interval), 56-02.1 (Percent Installations Completed Within The Customer Requested Due Date), and performance reported for DS1 loops under the same PMs, 55 and 56. While performance reported did

not meet or exceed the standards, performance does not miss the standard by a large degree in any assessment. Ms. Moore, however, expresses her opinion that “the benchmarks establish a *minimum* standard to support competition.” It is important to note that the FCC does not share her opinion. In prior orders¹³ the FCC is on record as stating that they do not view the defined standards as absolute minimums or maximum, and assess performance given the entirety of the evidence. The FCC has established the standard of analysis, and it is not what Ms. Moore asserts.

91. AT&T Witness Moore discusses SBC’s reported performance on analog loop installation (Moore ¶¶ 45-47) in much the same vein as the other UNEs. She selects specific disaggregations that show some limited degree of performance shortfall, and in some cases assesses performance that actually met the standard of comparison as “missed” performance, while ignoring the other measures which report on the same processes. For example, she points out that performance for PM 61-05 for wholesale orders is not as good as she would like. However, the results speak for themselves, as they all exceed the parity standard of comparison defined for the measure. In fact, in two of the three months wholesale performance showed that average delay days for lack of facilities for 8.0 dB loops was better than the retail compare by multiple days (3.66 days for wholesale compared to 7.49 for retail in June, and 5.04 days for wholesale compared to 7.71 for retail in August). This data demonstrates that SBC provided *superior* service

¹³ *SBC Kansas/Oklahoma Order at ¶ 31.*

to CLECs in those months on such orders, as opposed to simply equivalent levels of performance.

92. Ms. Moore also discusses average installation interval performance for 2-wire analog loops (PM 55-01.1), noting that the three-day benchmark was not met in any months. As with 2-wire digital loop performance discussed above, Ms. Moore again asserts that the benchmark presents a “*minimum* that must be reached in order to support competition”. As I discussed above with regard this same assertion, the FCC has established an analysis approach that does not agree with Ms. Moore. However, I point to the performance reported for PM 56-01.1, which measures the percentage of installations completed within customer requested due date for the 2-wire analog loop product. These results report that SBC met the customer desired due date over 98.5 percent of the time in each of the three months. Accordingly, when reviewing measures that report on the same orders and the same process in a slightly different manner, we get a clearer perspective of the level of service provided by SBC, and the performance provided clearly poses no barrier to competition.

93. The results reported for Coordinated Hot Cuts PMs 55.2 and 114 are discussed by several of the CLECs. (Moore ¶ 48-49, XO p. 7, WorldCom p. 20-21) Regarding comments on PM 114-01, which measures the percentage of premature disconnects on LNP with Loop conversions executed using the Frame Due Time process, in my testimony included in the October 21st submission I explain that performance is understated due to the inability for SBC to capture the actual start

time and having to approximate it. I assert again that actual performance delivered to the CLECs is better than reported, and none of the CLECs provides any data or information indicating anything to the contrary or otherwise refuting my assertion.

94. AT&T discuss performance on Maintenance Completion Notice timeliness, PM MI14. (Moore ¶34, WorldCom pp. 19-20) Generally, Ms. Moore restates what I stated in my affidavit – performance results reported are not meeting or exceeding the standard of comparison, and SBC is aware of implementation issues that are preventing complete results from being provided. Important to note in Ms. Moore’s testimony is that there is no discussion of how the performance on this PM has any commercial significance or any impact on a CLEC’s ability to compete. That is because common sense tells us that CLECs do not rely on maintenance completion notices. CLECs have several ways to determine when a trouble is fixed, primarily submission of their own queries as to status of the trouble report via either a system interfaces, an automated call answering system, or a call to a maintenance representative. WorldCom discusses PM MI14 under the heading Line Loss and attempts unsuccessfully, or at least poorly, to equate Maintenance Completion Notices to flow-through. As with Ms. Moore, though, WorldCom does not provide any insight into how a measure of maintenance completion notice timeliness is at all commercially significant or important to competition.

4. Billing

95. The CLECs comment on performance results for PM 17(Moore ¶35, WorldCom p. 23) and PM 14 (Z-Tel p. 6, XO pp. 4-5). PM 17 reports on how quickly an order is posted for billing after work is completed. As discussed in my testimony filed in the October 21st Submission, SBC's current implementation of PM 17 is conservative and underreports actual performance provided to CLECs. This conservative implementation is due to ill-defined business rules, and those business rules have been improved in proposed revisions to PM17 that SBC has presented, and have been discussed with and reviewed by CLECs, in the current six-month review. The reason the standard of comparison is at such a high level is that it reflects performance for SBC's affiliate. The affiliate orders primarily, and almost exclusively, DSL Lineshare. Performance under PM 17 for this limited product set ordered by the affiliate is very good in isolation, and as a result does not provide an good comparison analog to the product mix ordered by the CLECs, as their product mix includes a much wider variety of products and corresponding bill completion processes.
96. With regard to PM 14, XO and Z-Tel's comments, while represented as discussing performance results, actually are silent on the reported results and instead present operational concerns they have with billing accuracy, their ability to audit bills, and issues they have with the billing dispute resolution process. Both quote the E&Y report, but choose to be silent on any assessment of the reported performance. As such, it appears they really have no issue with the performance results reported, and are simply taking the opportunity to argue

issues that are more appropriate for ongoing business-to-business discussions, which Z-Tel states it is currently engaged in with SBC.

SBC WILL CONTINUE TO COMPLY WITH ITS OBLIGATION TO PROVIDE NONDISCRIMINATORY ACCESS AFTER IT RECEIVES SECTION 271 APPROVAL

97. AT&T at page 20 of its Comments claims that SBC's incentive to meet and adhere to the nondiscrimination requirements of TA 96 will "quickly vanish" once the MPSC agrees that SBC is providing nondiscriminatory access and recommends to the FCC that SBC's application for Section 271 relief be granted. AT&T claims the MPSC's "influence" over SBC will simply go away. Nothing could be further from the truth. The MPSC will continue to monitor SBC's performance.¹⁴ And SBC, as AT&T is well aware, has other incentives to continue to provide nondiscriminatory access. Additionally, as the FCC has observed in prior 271 applications that it has approved, it has multiple means to assure that a BOC continues to comply with its 271 obligations after Section 271 approval, including the authority of the FCC under Section 271 itself to suspend long-distance relief.¹⁵

98. AT&T provides no evidence to support their claim that that an ILEC would allow performance to "backslide" after Section 271 approval. However, I can provide evidence that that performance reported for SBC's affiliate SWBT in Texas

¹⁴ SBC's PM results are actually monitored under a separate docket for this 271 proceeding, Case No. U-11830.

¹⁵ *SBC Texas Order* at ¶ 421.

demonstrates improved performance after it was granted permission to enter the Texas interLATA market on June 30, 2000. Attachment T to this Reply Affidavit is a chart showing that SWBT's performance has improved since SWBT was permitted in the Texas long distance market. This chart shows that the average performance level achieved by SWBT prior to Section 271 authorization, for the months of January 2000 through and including June 2000, was 89.4%, while the performance level achieved after June 2000 was always above 90%, with the most recent month of September 2002 at 93.2%. This counters AT&T's claim that any incentive to provide nondiscriminatory service vanishes after Section 271 authorization, rather, it is compelling evidence of improved performance maintained at high levels subsequent to Section 271 approval.

CONCLUSION

99. SBC's Performance Measurements have been implemented consistent with the Commission's orders in Case No. U-11830, and in a manner that provides results that can be relied upon as accurately reflecting the level of service SBC provides to CLECs. Further, the three consecutive months of performance data for included with my October 21, 2002 Affidavit demonstrate that SBC is providing to CLECs nondiscriminatory access to interconnection, access to network elements and resold services in full compliance with the competitive checklist requirements of Section 271. As a result, the CLECs have a meaningful opportunity to compete in the Michigan local exchange market

100. This concludes my affidavit.