

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to consider AMERITECH MICHIGAN'S compliance)	
with the competitive checklist in Section 271 of)	Case No. U-12320
the federal Telecommunications Act of 1996.)	
_____)	

**COMMENTS OF AT&T COMMUNICATIONS OF MICHIGAN, INC. AND TCG
DETROIT ON AMERITECH MICHIGAN'S SUBMISSION OF THREE
MONTHS PERFORMANCE DATA
AND THE ERNST & YOUNG AUDIT REPORT**

AT&T Communications of Michigan, Inc. and TCG Detroit ("AT&T"), pursuant to the Michigan Public Service Commission's ("Commission") Order dated September 16, 2002, hereby submit these Comments and the accompanying affidavits of Timothy M. Connolly and Karen W. Moore. As directed by the Commission, these comments and affidavits respond to Ameritech Michigan's submission of three months of performance data¹ and to the Final Report of Ernst & Young ("E&Y" and the "E&Y Report"), dated October 18, 2002.

INTRODUCTION

The requirement that as a prerequisite to receiving the Commission's recommendation on a Section 271 application Ameritech Michigan must submit a minimum of three consecutive months of compliant performance data stems back to the Commission's initiating order in this docket. Order, Case No. U-12320 (Feb. 9, 2002)

¹ SBC Ameritech Michigan's Submission of Three Consecutive Months of Actual Performance Results And Independent Performance Audit Reports Issue by Ernst & Young LLP, Case No. U-12320 (filed Oct. 21, 2002).

(“February 9 Order”). There, the Commission specified that Ameritech Michigan “shall complete a minimum of three consecutive months of data reporting its compliance with all performance measures required by the Commission’s orders in Case No. U-11830.” (February 9 Order, ¶ 13). From the beginning, Ameritech Michigan has been on notice that it will be required to demonstrate comprehensive compliance with the performance measures as part of the Commission’s evaluation of its compliance with the competitive checklist set forth in Section 271 of the Federal Telecommunications Act. 47 U.S.C. § 271 (2002).

What Ameritech Michigan has now submitted falls far short of what the Commission required. As shown below and in the accompanying affidavits of Karen W. Moore and Timothy M. Connolly, the data Ameritech Michigan submits – on their face – reveal frequent and pervasive instances of noncompliance with applicable metrics. Moreover, when this submission is analyzed in depth – as Ms. Moore and Mr. Connolly have done – what emerges is that the depiction of the data in the affidavit of Mr. Ehr supporting Ameritech Michigan’s three-months’ submission significantly and systematically understates the problems with Ameritech Michigan’s performance.

Most critically, Ameritech Michigan would change the standard for review of the data from the Commission requirement:

“a minimum of three consecutive months of data reporting... compliance with all performance measures”

to a standard of Ameritech Michigan’s creation:

“two out of three not necessarily consecutive months of data reporting that it is arguably close to compliance for many performance measures.”

Ameritech Michigan has not requested that the Commission alter this or other requirements of the February 9 Order.² Nor has Ameritech Michigan presented a justification for altering on its own the standard to be applied.

Ameritech Michigan's unilateral lowering of the bar is not the only difficult issue presented by this submission. The Connolly and Moore affidavits demonstrate, using the reported data, that Ameritech Michigan's performance measurement and reporting systems are unstable and unreliable. The unreliability of the data goes to the heart of the performance metrics process. Ameritech Michigan's attempt to dilute the Commission's required compliance standard from compliance with all metrics to "arguably close" compliance for some is bad enough. The unreliability of the data, however, means that the Commission can have no confidence that Ameritech Michigan is in fact meeting its requirements under *any* standard.

Thus, Ameritech Michigan has failed to supply one of the critical components necessary for progressing on a path to a Section 271 application. Ameritech Michigan cannot establish that its performance measurements results demonstrate that it is consistently providing wholesale services in a nondiscriminatory manner. Ameritech Michigan cannot even establish that its performance measurement systems deliver reliably accurate data. These two failures alone justify the rejection of Ameritech

² In fact, Ameritech Michigan's September 5, 2002 submission claimed that it would satisfy the Commission's three consecutive months requirement. Request For Commission To Direct KPMG Consulting To Issue A Draft Final Report And To Schedule The Review Process Of Such Report, Case No. U-12320, Attachment A, p. 8 of 11 (filed Sept. 5, 2002). In its "Compliance Status" exhibit to that filing, Ameritech Michigan correctly noted that the February 9 Order requires it to "complete a minimum of three consecutive months of data reporting its compliance with all performance measures required by the Commission's orders in Case No. U-11830." But in the "compliance" column of the chart, Ameritech Michigan indicates that it had no intention of complying, stating that it will file instead: "3 months of performance results demonstrating excellent performance (i.e., providing parity or benchmark performance on at least 90% of the PMs for 2 of the three months)." Thus, Ameritech Michigan all along appears to have been either unready or unwilling to even attempt to satisfy the Commission's requirements.

Michigan's submission. As the FCC stated in its Kansas/Oklahoma Section 271 Order: “[T]he reliability of reported data is critical; the performance measures must generate results that are meaningful, accurate and *reproducible*.” Memorandum Opinion and Order, In the Matter of 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, CC Dkt. No. 00-213, FCC 01-29, ¶ 278 (January 22, 2001) (emphasis added); *see also*, Memorandum Opinion and Order, In the Matter of 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 Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas CC Dkt. No. 00-65, FCC 00-238, ¶ 429 (June 30, 2000) (performance data must be “above suspicion.”).

Ameritech Michigan's performance measurement results are not meaningful or accurate, nor have they been shown to be reproducible. The Commission should instruct Ameritech Michigan to intensify its efforts to establish the validity of these important processes – by redoubling its efforts to cooperate with BearingPoint in the satisfaction of the Performance Measurement tests that are nearing completion under the Michigan Master Test Plan. The relatively short time that it should take to allow BearingPoint to complete its testing is a small investment to be made by the Commission, Ameritech Michigan, the competitive carriers and Michigan end users that would be adversely affected by undetectably poor or discriminatory provision of wholesale service.

COMMENTS

In the remainder of these comments, AT&T will summarize and explain the detailed presentations submitted by Ms. Moore and Mr. Connolly. As they explain, the Commission should first understand that Ameritech Michigan's submission of data and the declaration of its affiant, Mr. James Ehr, amount to little more than a cleverly contrived "cover story" for why Ameritech Michigan cannot satisfy the requirement of three consecutive months of compliant data. Ameritech Michigan and Mr. Ehr resort to redefinition of the Commission's criterion and re-characterization of performance measurement failures in an unpersuasive attempt to convince the Commission that Ameritech Michigan is "close enough". While this effort is ultimately unsuccessful, as Ms. Moore demonstrates, it is also irrelevant because, as Mr. Connolly's explains, the data that Mr. Ehr and Ameritech Michigan rely upon cannot be validated. And the E&Y Report – while it identifies many major areas of concern in Ameritech Michigan's performance metric reporting systems – is of no utility in verifying the data that Ameritech Michigan has submitted to the Commission.

A. Ameritech Michigan's Submission Is An Attempt To Evade The Commission's Requirement That It Provide Three Consecutive Months Of Compliant Performance Measurement Data.

Ameritech Michigan's submission and Mr. Ehr's affidavit attempt to divert attention from, or explain away, the numerous instances in which Ameritech Michigan's reported performance data fail to meet the Commission's standard. In addition to changing the applicable standard, Ameritech Michigan endeavors to explain away numerous failures, and as to others suggests that the failures are not "meaningful." Each of these attempts at distraction should be disregarded by the Commission.

1. Ameritech Michigan manipulates its data to reach a more favorable result.

First, as noted above, Mr. Ehr has unilaterally and arbitrarily applied an extra “margin of error” to *all* of the measures on which Ameritech Michigan has reported. Whereas the Commission required three consecutive months of data showing compliance, Mr. Ehr simply declares that for any particular measure, two months of compliance out of three is adequate and qualifies as a “pass.” See, e.g., Ehr Aff., ¶ 31 (“But overall, Ameritech Michigan’s performance met or surpassed parity or benchmark standards for 88.5 percent, or 363 of the 410 performance measures having ten or more wholesale transactions *during at least two of the last three months* (June 2002 to August 2002) as provided in Attachment A.”) (emphasis added). Under Ameritech Michigan’s rubric, the two months need not even be consecutive. Moore Aff., ¶¶ 12-15. Nowhere does Mr. Ehr attempt to explain or justify why Ameritech Michigan’s has paid no heed to the “consecutive” requirement in the Commission’s February 9, 2000 Order.³ Certainly the Commission has never indicated that “two out of three” is “close enough.”⁴

³ The closest Mr. Ehr comes to a justification for Ameritech Michigan’s approach is to offhandedly claim that “the FCC has never required perfection....” Ehr Aff. ¶ 31. This evades the point. The submission of three consecutive months of compliant performance measurement data is a *Michigan* Commission requirement. Regardless, the FCC has routinely approved criteria similar to and even more stringent than that established by the Commission in this case. See, e.g., Memorandum Opinion and Order, In re Application of GTE Corp. and Bell Atlantic Corp., CC Docket No. 98-184, FCC 00-221, Attachment D, pp. 42-43 (rel. June 16, 2000) (requiring “an independent auditor to perform an examination engagement and issue an attestation report resulting in a positive opinion (with exceptions noted) regarding Bell Atlantic/GTE’s compliance with the Commission’s collocation requirements for *4 consecutive full months* after the Merger Closing Date.”) (emphasis added); Memorandum Opinion and Order, In The Matter Of Application By SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. D/B/A Southwestern Bell Long Distance, CC Docket 00-65, FCC 00-238, ¶ 422 (June 30, 2002) (approving three consecutive month remedy plan requirements).

⁴ No Commission order has indicated that it intends to retreat from the three consecutive month requirement. In a July 16, 2002 letter to the OSS collaborative participants in this case, the Commissioners stated that it had not modified the Master Test Plan in effect, or the “set of 153 performance metrics approved by the Commission.” If it were the case that the Commission intended to modify the three consecutive month requirement, it could have done so in its most recent order establishing the current schedule. It did exactly the opposite, indicating that it would “terminate this review... if it conclude[d] on the information provided up to that date that Ameritech Michigan is unlikely to be able to show successful

Mr. Ehr's unilaterally revised two out of three standard systematically disguises the extent of Ameritech Michigan's failure to achieve adequate performance. With respect to UNE-P, for example, which all⁵ acknowledge to be of vital importance to broad competition, Mr. Ehr claims that Ameritech Michigan met 93.5 percent of the performance standards relating to provisioning and maintenance. Ehr Aff. ¶ 29. Taking into account *three, consecutive* months, however, the percentage falls to 86 percent. Moore Aff., ¶ 14. Indeed, using data that encompasses the entire preordering, ordering, provisioning, maintenance, and billing processes for UNE-P, the data as reported show that Ameritech performed at only a 83% rate. *Id.*; *see also* Exhibit KWM-02. That is an unacceptable level of performance under any standard.

There are other similar examples. Mr. Ehr contends that Ameritech Michigan responds timely to pre-order inquiries because it met the established benchmark for "two out of three" months for "36 of the 38 categories with sufficient reported volume to permit analysis." (Ehr. Aff. ¶ 44.) In reality, Ameritech Michigan met only 187 of the 246 total OSS measures for all three months – a percentage of 76% that clearly indicates that Ameritech Michigan's performance is severely degraded and discriminatory. Moore Aff. ¶ 25. As is apparent from this analysis – which can be found in broader detail in Ms. Moore's affidavit⁶ – when the correct standard (three out of three months) is applied, Ameritech Michigan's claim that it is "close" to passing cannot be accepted.

operation of its OSS and compliance with the performance measurements." Opinion and Order, Case No. U-12320, p. 3 (Sept. 16, 2002).

⁵ This includes Mr. Ehr. *See* Ehr Aff., ¶ 61.

⁶ *See* Moore Aff., ¶¶ 21-50. As Ms. Moore explains in this portion of her affidavit (and summarizes in her Exhibit KWM-03) the numerous checklist areas where Ameritech Michigan's claim of successful performance is in conflict with the data it has supplied. For example, Ms. Moore establishes that Ameritech Michigan's claimed compliance with performance measures relating to Interconnection services (¶¶ 21-23), access to OSS interfaces (¶¶ 24-30), electronic notices (¶¶ 30-31), line loss notifiers (¶32),

There are other similar flaws in Ameritech Michigan's presentation of its data. For example, Ameritech Michigan averages the results for a performance measure for the three months in the evaluation period, and then compares that overall average to the benchmark or parity standard. The Commission never has suggested, much less approved, an averaging method for performance measurement compliance of the type used in Ameritech Michigan's submission. Indeed, such an average (which appears to be unweighted), obscures several instances of Ameritech Michigan's failure to meet a PM standard for one or more months. *See Moore Aff.*, ¶ 15. For example, Mr. Ehr states that, over the three month interval, ISDN BRI Loop installation trouble reports averaged 9.40% vs. 10.12% for Ameritech Michigan retail loops, meeting the parity standard. *Ehr Aff.* ¶ 127. In actuality, Ameritech Michigan reported installation troubles for CLECs in June at 15% and for Ameritech Michigan retail at 9.03%, and in July 8.82% and 12.53%, and in August 6.7% and 9.17%. *Moore, Aff.*, ¶ 15. Averaging the results not only obscures the one month of failure, but also hides the huge variation in performance. *Id.*

2. Ameritech Michigan uses inappropriate "materiality" filters.

Second, where changing the standard is insufficient, standing alone, to give Ameritech a "passing grade," Ameritech Michigan and Mr. Ehr invokes a repertoire of rhetorical devices in an effort to mischaracterize failures as acceptable performance. Many "misses," for example, are described as "immaterial." *See Ehr Aff.*, ¶ 31, 35-36, 45, 54, 57, 136 & 173. Nowhere does Mr. Ehr define or attempt to justify a standard for "materiality" in this context. Whatever Mr. Ehr's standard, he ignores that materiality

flow-through (¶ 33), maintenance (¶ 34), and billing (¶ 35) cannot be accepted. Similarly, Ms. Moore shows that Ameritech Michigan's claimed compliance with the measures for the provision and repair of unbundled network elements (¶¶ 36-50), when correctly restated, show poor or highly variable

cuts both ways. In other words, by Mr. Ehr's logic any close “pass” should be reevaluated for materiality and considered instead to be a “miss.” *See, e.g., Moore Aff.*, ¶ 16. Mr. Ehr labels other results as “temporary” or subject to “prospective change.” *See Ehr Aff.*, ¶ 173, 185. But the Commission’s February 9 Order plainly contemplates actual “compliance” during the three consecutive months, not “prospective” compliance at some indeterminate time in the future. *See also Connolly Aff.*, ¶ 80 (“in contrast to the BearingPoint testing methodology, in the E&Y audit approach there is no way of knowing whether the fix (a) actually took place (in the case of a prospective action) (b) actually fixed the problem, or (c) ended up creating other problems.”) Operational support systems are in a constant state of flux, but the standard must be compliance notwithstanding evolution of the systems. Otherwise there is no point to having any performance measure standard, because virtually any “miss” could be written off at any time as subject to change.

3. *Ameritech Michigan skews its data with subjective interpretations.*

A *third* rhetorical device employed by Mr. Ehr is to characterize many other missed measures as not “competition affecting” or not depriving CLECs of a “meaningful opportunity to compete.” Mr. Ehr applies this device on multiple occasions to dismiss sub-par results. *See, e.g., Ehr Aff.*, ¶¶ 125-126.⁷ But the performance measures established in the wake of the Commission’s requirements in Case U-11830 are not and never have been divided into “competition affecting” and “non-competition affecting.”

performance, suggesting that Ameritech Michigan’s overall service level is discriminatory to competitive carriers.

⁷ In fact, during the October 14-18 Technical Conferences, Ameritech Michigan took the remarkable position that *no* performance measurement process would or could affect competition, because competition already exists in Michigan. Tr. 5056-5057. Such strained reasoning should raise substantial concerns

They are simply performance measures, and Ameritech Michigan has missed a substantial number of them. Mr. Ehr cannot, by applying labels, change those results.

In any event, attempts to divide such measures into “competition-affecting” and “non competition-affecting” are misconceived. At any point in time virtually any one of these measures can be competition affecting if it leads to a customer being dissatisfied with a CLEC’s service or the process of switching local carriers. Further, parties would have endless disputes over whether particular measures did or did not affect competition. That is why neither the Commission nor the FCC has attempted such distinctions. If the measures are worth having at all, it should be assumed that all are important and potentially competition affecting.

In short, in addition to changing the standard with its “two out of three” rule, Ameritech Michigan has employed a series of invented categories as a screen or filter of its performance results, thus providing a supposed “excuse” for many of the “misses” that appear in Ameritech Michigan’s results. None of these labels or categories has been endorsed or even suggested by the Commission, however, as a reason for ignoring substandard performance. A miss is a miss; any other categorization plunges the Commission and the parties into the realm of subjectivity.

B. The Unreliability Of the Data Undermines Ameritech’s Reported Results

Even more profoundly disturbing than Ameritech Michigan’s attempt to change the standard for review is the underlying fact that Ameritech Michigan’s performance measurement and reporting systems are neither accurate nor reliable. Indeed – as evidenced, in particular, by the striking frequency with which Ameritech Michigan

regarding Ameritech Michigan’s willingness to maintain workable performance measurement systems in the future.

restates prior results⁸ – its performance measurement and reporting systems are unstable and rest on data of questionable (and in all events undemonstrated) integrity.

Data integrity lies at the foundation of performance reporting. Moore Aff., ¶ 19. Without confidence in the underlying or “raw” data, there can be no confidence in the results. Or as BearingPoint’s Mr. John Eringis succinctly put it:

MR. ERINGIS: Well, simply put, the data integrity is essential to the accuracy of the reports and, therefore, ultimately, the reliability of the reports. If the data does not have integrity, the reports are unreliable. So even -- this is why the test is constructed where there is actually a review, a PMR 5 review of the calculations. The calculations can all be right in the performance reporting systems that are evaluated in a test such as this, but if the way that the data is collected and the way that the data is transformed prior to being processed, if you will, if that process doesn't have integrity, then the math can be right at the end, and yet you would not be able to say that the reports themselves, that the results of the PMs as published would be reliable.
(Tr. 4989-90)

Indeed, the lack of confidence in the data goes not only to the misses, but also to the claimed passes. Without reliable data, the Commission cannot know for certain whether Ameritech Michigan has actually passed or failed any measure. What is required, then, is the BearingPoint *replication* methodology, which examines this issue in a fundamental and systematic way that the E&Y audit approach has not and cannot.

Clearly Ameritech Michigan retained E&Y in an attempt to short-circuit the current process of validating its data and bringing its performance measurement systems up to par, and, in so doing, to substitute for the current “fail” from BearingPoint a “pass”

⁸ See Connolly Aff., ¶ 18, 26. The E&Y Report demonstrates that Ameritech Michigan’s performance measurement systems abound with problems and deficiencies: (a) E&Y reports that 69 restatements of performance measure results have been made during the Evaluation Period (and, as Mr. Connolly explains in his affidavit) actually understates the total by reporting according to its own “materiality” criterion). Put another way: the number of restatements reflects the number of times that Ameritech Michigan’s noncompliance with a Business Rule was detected by any source and Ameritech Michigan attempted to correct that error.

on the PMR 4 and PMR 5 sections of the Master Test Plan from E&Y. That move has backfired, however, as E&Y's work has only highlighted shortcomings with Ameritech Michigan's performance measurement data, systems and processes.

First, the E&Y audit does not even purport to validate the three months of data that Ameritech Michigan has submitted for consideration by the Commission. E&Y's "Evaluation Period" was the months of March, April, and May. (Supplemental Report, p. 1.) Ameritech Michigan's performance data submission is for June, July and August. In other words, there has been *no audit* of the data upon which Ameritech Michigan is suggesting the Commission rely to base its Section 271 consultation.⁹ E&Y's opinion is expressly limited to the Evaluation Period of March through May, and it emphasized orally at the October 14th technical conference that its findings do not apply to other months and *cannot form the basis of a prediction of future performance*:

MR. CONNOLLY: So if they've got some new procedure that was brought in, let's say in July, and has an effect from July forward, that's not part of your analysis at all?

MR. HORST: Well, we would look at it to determine if it impacted March, April and May. Obviously if it would have changed March, April or May had it been implemented back in those months instead of just prospectively, we'll take a look at that. But if it's something that we have in our report and it just made us restate it, let's say June, July forward, no.

(Tr. 4696.)¹⁰

⁹ Under the Bearing Point methodology, as distinguished from the E&Y audit approach, an audit of the actual months for which performance data is submitted would not be essential, because the test would provide confidence in the integrity of the data and the adequacy of the systems and processes used to provide the results on an ongoing basis.

¹⁰ See also Tr. 4724-25, 4743, 4755 (no examination of new or changed controls or future compliance). This approach contrasts negatively with the requirements of the Master Test Plan, which requires a test until you pass or military-style methodology. Michigan Master Test Plan Version 3.0, April 2, 2002 at Section Part II, § F. Thus, BearingPoint's analysis would be based upon the iterative Observation and Exception process, and the requirement that re-testing occur before closure of an Exception is approved.

Indeed, E&Y's Attestation Report with respect to the effectiveness of controls over the accuracy and completeness of reported data states:

[P]rojections of any evaluation of controls over the process to calculate and report accurate and complete performance measurements with the requirements referenced above to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In short, there is no basis on the record before the Commission whatsoever for concluding that the three months' data proffered by Ameritech Michigan are accurate (*i.e.*, that the underlying performance reporting systems conform to the business rules and the data has integrity) or a reliable indicator of future performance by Ameritech Michigan.

Second, as demonstrated in the Connolly Affidavit, the E&Y Audit slants the results in ways that misleadingly improve Ameritech Michigan's apparent performance.¹¹ In particular, E&Y's methodology effectively accepts without critique or analysis Ameritech Michigan's unilateral "interpretations" of its business rules¹² – interpretations that E &Y did not independently create. Tr. 4704-4705, 4709-4710; Connolly Aff., ¶ 49. Additionally, the E&Y findings rely on prospective changes to the business rules that have not been agreed to by the CLEC community, and certainly have never been brought before and approved by the Commission. Connolly Aff., ¶ 54. Thus, its findings are inconsistent with the Master Test Plan that governs this test.

¹¹ Connolly Aff., ¶¶ 18, 48-60.

¹² These rules are the interpretive guidelines that establish the correct way to calculate the performance measures identified by the Master Test Plan (*i.e.* they govern the calculations that indicate whether or not Ameritech Michigan passes or fails a particular performance measurement standard). Connolly Aff., ¶ 11. E&Y conducted this audit by reviewing the procedures and methods Ameritech Michigan used to calculate its performance measurement data for March, April and May of this year ("Evaluation Period"), even though, as discussed further below, Ameritech Michigan has submitted performance data from June through August that was not audited by E&Y. *Id.*

Despite these built in biases in the audit methodology in favor of Ameritech, the E&Y Report itself explicates serious deficiencies in Ameritech Michigan’s performance measurement reporting systems and processes. In particular, and again as shown in the Connolly affidavit, the frequent and often serial restatements of performance results by Ameritech is compelling evidence that its performance reporting systems and processes are flawed and unstable. *See, e.g.*, Connolly Aff., ¶ 31. As the E&Y Report itself states:

Our examination disclosed that certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer program coding and modifications, did not include certain controls to ensure the accuracy of the reported performance measurements. These control deficiencies contributed to the need to restate certain data and modify certain performance measurements on a prospective basis.

The problem is that restatements are being experienced on a regular, monthly basis in the Ameritech region. Connolly Aff., ¶ 26. Mr. Ehr makes no claim that the performance measurements system is stable or reliably operated such that restatements are the exception and not the norm. In AT&T’s view, no other ILEC’s performance results manifest the frequency of restatements seen with Ameritech Michigan’s. *Id.* Worse, as indicated by the following chart, the restatements have become more and more pervasive during the period of E&Y’s evaluation:

Restatement Report Month (2002)	March Results Affected	April Results Affected	May Results Affected
May	4	0	0
June	8	0	0
July	8	54	0
August	8	31	32
September	8	24	82
October	132	138	138
total	168	247	252

(See Exhibit TMC-3 to the Connolly Affidavit for a printout of the restatement information published for each month on the CLEC Online website.)

The above chart strikingly illustrates that the Commission simply cannot rely on the three months of performance data submitted by Ameritech Michigan remaining stable. Indeed, it is almost assured that the June, July and August data presented by Ameritech Michigan and Mr. Ehr will be restated in the future, and if the recent past provides any indication, will be restated on several occasions with dramatic results.

Further, there is a discrepancy between the number of restatements reported by E&Y and the number reported here. This discrepancy stems from two factors. First, E&Y reports only the number of instances of non-compliance with the Business Rules (*i.e.* the reasons for restatement reported), whereas Mr. Connolly (from whose affidavit this chart is reproduced) report the number of performance measures impacted by the failure to comply with the Business Rules.¹³ Second, E&Y reported only those restatements that passed its invented “materiality” threshold.

Accordingly, the E&Y Report does not completely disclose, and indeed obscures, the restatements’ full impact on Ameritech Michigan’s reported performance. The E&Y Report is inadequate because it does *not* list the number of performance measures that went from pass to fail (or vice versa) on account of a Restatement. E&Y acknowledges that 18 Restatements were made that had a material impact on the result of at least one performance measure, but does not state that these Restatements changed the pass / fail result for a staggering *99 performance measures* during the Evaluation Period – roughly **65%** of the total number of performance measures. Connolly Aff., ¶ 29.

¹³ Connolly Aff., ¶ 28.

Whatever the considerations are that might support the use of a materiality standard for reporting errors with respect to a single performance measure, such considerations are irrelevant here. What is relevant to the Commission's analysis is the sheer volume of the performance measures that have needed to be restated thus far as a result of Ameritech Michigan's failures to comply with the Business Rules: **667!** Connolly Aff., ¶ 31. "Material" or not –mistakes on that scale demonstrate that Ameritech Michigan's performance systems and processes that are not performing as they should and are not subject to adequate controls, as the E&Y reports point out.

Even with its limitations and shortcomings as discussed above, E&Y has submitted a highly "qualified" opinion on the extent of compliance of Ameritech Michigan's reported results with the Business Rules. That fact in and of itself should send a message to Ameritech Michigan's management and be a red flag to this Commission. E&Y's opinion, a product of the conventions of the financial auditing world, states overall that Ameritech Michigan is compliance, "subject to" the "material instances of *noncompliance*" otherwise detailed in its report. In layman's terms, what E&Y is saying is that it has uncovered numerous and widespread instances of noncompliance of Ameritech Michigan's performance measurement reporting with the business rules, and that should be of the highest concern to the Commission. It alone demonstrates that the Commission's fundamental requirement that Ameritech Michigan submit three months of data showing its "compliance" with the relevant measures remains unmet. *See* Connolly Aff., ¶ 39, 83-84.¹⁴

¹⁴ The fact that Ameritech Michigan has submitted, and is relying upon, performance data from three months *other* than the period evaluated by E&Y may well reflect Ameritech Michigan's recognition that, by virtue of the instances of material noncompliance identified in the E&Y report, the underlying performance data necessarily was noncompliant.

C. Where The Commission Should Go From Here

The September 16, 2002 Order in this docket made it very plain that the Commission has no intention of wasting its resources on what amounts to a fools errand. It noted that because “Ameritech Michigan has asked to depart from the previously approved procedures, it should understand that the Commission may terminate this review at any time if it concludes on the information provided up to that date that Ameritech Michigan is unlikely to be able to show successful operation of its OSS and compliance with the performance measurements.” Opinion and Order, Case No. U-12320, p. 3 (Sept. 16, 2002). The information that has now been made available permits only one conclusion: Ameritech Michigan cannot at this time show successful operation of its OSS and compliance with the performance measurements.

The inability of Ameritech Michigan to validate its performance measurement systems should come as no surprise to anyone familiar with this issue. The performance measurement Exception Reports issued by BearingPoint indicate that there are systemic problems with Ameritech Michigan’s data retention practices, as well as its processes and procedures for calculating and reporting of results. *See, e.g.*, BearingPoint Exception Report No. 19; BearingPoint Exception No. 20; October 30, 2002 BearingPoint OSS Evaluation Project Report, p. 12 (high level summary showing 248 of 303 (or 81% of test criteria “not satisfied” or “indeterminate” for the Performance Metrics Reporting test). As discussed above, the E&Y audit, however unintentionally, only confirms that Ameritech Michigan’s data retention and reporting processes are not reliable.

In the current circumstances, the Commission cannot rely on the BearingPoint test for the crucial data integrity and reporting process portions of the performance metric

audit review portions of the test, because that test, while progressing, is uncompleted. Nor should the Commission permit the substitution of E&Y for BP for purposes of determining compliance with these crucial portions of the test. Instead, it should require completion of BearingPoint's work on PMR 1, 4, and 5 in order to assure that the PM data that Ameritech Michigan produces and will produce in the future is valid and reliable.

This was the plan agreed to by the parties after extensive collaborative effort and subsequently approved by the Commission. To depart from that plan now would be to ignore all of the work that went into the establishment of the Master Test Plan.

The only "justification" for this departure from the approved plan is Ameritech Michigan's desire to expedite its Section 271 plans. Had Ameritech Michigan performed adequately in this test, however, and had it adequately supported the test from the outset, we would not be in this position: The test would have been completed successfully by now. The fact is that Ameritech Michigan inexplicably got off to an exceedingly slow start, deferring activities such as creation of the test bed accounts and basic responses to BearingPoint/KPMG Consulting requests for information week after week. Connolly Aff., ¶¶ 86-90. Ultimately, by Ameritech Michigan's own admission, the deficiencies uncovered by BearingPoint in its Performance Metric Audit Review, in particular PMR 4 and PMR 5, and Ameritech Michigan's inadequate responses to these exceptions, are what have stalled the Third-Party Test and are the principal impediment to its successful completion. The test *should* have been completed by now, but Ameritech Michigan has only itself to blame.

The E&Y audit does not satisfy the Master Test Plan or the Commission’s needs. As Mr. Connolly demonstrates in his Affidavit, the E&Y “audit” methodology does not approach the rigor of the BearingPoint methodology, in particular in areas of remediation and retesting – the very areas that are critical to a “military style” test. Connolly Aff., ¶ 77. As a result, the E&Y audit does not adequately address the critical issue of data integrity and the reliability of performance results going forward. The BearingPoint methodology, in other words, is necessary for the Commission to have adequate assurances that there will be no “backsliding” after interLATA authorization is granted. See Memorandum Opinion and Order, In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket 99-295, FCC 99-404, ¶ 429 (rel. Dec. 22, 1999) (describing importance of performance monitoring to securing a “strong assurance that the local market will remain open” after Section 271 authorizations).

The Commission is faced with a difficult decision at this juncture. Competition has started to take hold in Michigan, and the pressure for interLATA relief has only increased as other RBOCs have gained long distance authority. Ameritech Michigan is proposing to short-circuit the process in place for validating its performance metric measurement and reporting systems. It is asking the Commission to accept what is at best a highly “qualified” report of its auditors, and rely on its promise to implement a “compliance plan” to address the issues that E&Y has found. In the meantime, Ameritech Michigan is asking the Commission to give its PM systems a “green light” for Section 271 purposes.

The Commission should not abandon the fundamental requirement that compliance with the Act's requirements be satisfied and be shown to be satisfied before giving that "green light" for Section 271 approval. Once that approval is received, Ameritech Michigan's incentive to meet and adhere to the nondiscrimination requirements of the Act – and the Commission's "influence" over Ameritech Michigan to achieve that result – will quickly vanish. The Commission is aware first-hand of the many instances of Ameritech Michigan's intransigence in the face of Commission requirements that it did not like, and that is before Section 271 approval.¹⁵ The time to validate Ameritech Michigan's OSS and performance metrics is now, while Ameritech Michigan has a reason (and the Commission has the leverage to require it) to pay attention.

BearingPoint is well along in its PMR review. The latest BearingPoint project plans in other states show the process concluding sooner rather than later – in a matter of weeks. There is no reason (other than Ameritech Michigan's lack of support) why the test cannot be concluded in Michigan promptly.¹⁶ The lengthy delays in resolving Michigan observations and exceptions have been caused solely by Ameritech Michigan. Connolly Aff., ¶ 92. These avoidable delays must be placed at Ameritech Michigan's door-step and not at the Commission's, BearingPoint's, or CLECs. Had

¹⁵ Only several weeks ago Ameritech Michigan filed its notice of appeal with the Sixth Circuit Court of Appeal challenging U.S. District Court Judge Tarnow's decision upholding the Commission in Case No. U-12622, involving UNE shared transport. Ameritech Michigan appealed that order in the face of an equally recent FCC forfeiture order, which levied a fine of \$6,000,000 for Ameritech Michigan's violation of its merger conditions relating to shared transport. *See Forfeiture Order, In the matter of SBC Communications, Inc. Apparent Liability for Forfeiture*, File No. EB-01-IH-0030, FCC 02-282 (rel. Oct. 9, 2002).

¹⁶ Several critical testing issues must be decided promptly by the Commission as AT&T has suggested in its recent Motion, or in the Alternative, Petition for Rehearing, pending in this docket. These issues, however, may be decided quickly and finally by the Commission, and will not delay the completion of the test.

Ameritech Michigan been diligent, had it been committed to resolving the BearingPoint-reported problems, the test results and the Ehr Affidavit would have been before the Commission far sooner.

The Commission should recognize that other states have faces similar situations (RBOC reluctance to invest the necessary assets to complete a third-party test) and that ultimately the consistent but reasonable pressure of the state commission caused the company to comply. As Mr. Connolly recounts in his affidavit (discussing his own personal experience in the New York Commission's test of Bell Atlantic's OSS), there came a time when Bell Atlantic realized that inaction on its part was the reason the test progress had dramatically slowed. Connolly Aff., ¶ 92. The view among the participants in the test was that it was not responding to test Exceptions sufficiently to allow BearingPoint (then KPMG Consulting) to stage, conduct, and evaluate results from retests. According to Mr. Connolly, it later became obvious when Bell Atlantic's senior management began to devote suitable time, effort, and resources to answer the test Exceptions and propose the necessary solutions. In other words, something happened so that Bell Atlantic finally "woke up" to the reality that it would be required to complete the test and not just wear down the parties in an attempt to avoid the expense of repairing its systems and proving that they provided nondiscriminatory access. *Id.*

Mr. Connolly's opinion is shared by other neutral parties. Earlier this Summer in a meeting in Chicago before the Illinois Commerce Commission, the BearingPoint executive who managed the test in New York also recalled that point when a significant attitude shift was felt and testing got back on a progressive track. Mr. Ray Sears recalled:

MR. SEARS: I think the dam probably broke when I got a call from the executive vice president saying we're ready to test pre-

orders now and we hear you are holding it up, and I said, well I'll give you the 11 trouble ticket numbers that we have open on the 11 of 12 pre-orders that don't work at all, and somebody woke up to the fact they couldn't bluff their way through this.

CHAIRMAN MATHIAS: That was the vice president of what company?

MR. SEARS: Verizon.

CHAIRMAN MATHIAS: So the incumbent local exchange carrier woke up to the recognition that they had to comply with the test?

MR. SEARS. I will not pretend to know what the New York commissioner was doing during this time. I have no idea, but there was clearly a point where things - - in fact we almost became overwhelmed with the pace of things that were getting fixed and how much good stuff was being thrown at us during that time period.

CHAIRMAN MATHIAS: So the incumbent local exchange carrier became more responsive to your requests and observations?

MR. SEARS: I think there was a - - begrudging acceptance that we were right more often than we were wrong when we found problems.

Transcript of proceedings before the Illinois Commerce Commission, at p. 90-91. The transcript pages of the proceedings before the Illinois Commerce Commission are attached to these comments as Exhibit 1. Obviously, there are other states where third-party tests have commenced and concluded, and other RBOCs that have completed such tests and successfully crossed the hurdle to Section 271 authority, and there is no good reason why Ameritech Michigan should not be required to do so as well. Connolly Aff., ¶¶ 90-93.

CONCLUSION

The Commission appropriately has required BearingPoint to continue its testing to fulfill the requirements of the MTP. The decision made in 2000 to use the OSS test to move the Ameritech Michigan systems to operational readiness in support of an eventual Section 271 application was the right choice and one that needs to be executed to completion. The performance measurements systems within the Ameritech Michigan OSS must be brought into compliance with the Business Rules that the Commission approved and to do so, BearingPoint Observations and Exceptions must be responsibly addressed by Ameritech Michigan. The systems, once they are brought into compliance, can reasonably be considered to produce timely, accurate, and complete reports of Ameritech Michigan's operations in the wholesale and retail markets. Until that occurs, the Commission will not have an accurate gauge of Ameritech's performance in Michigan or the extent to which Ameritech Michigan has approached satisfying its Section 271 checklist obligations.

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Respectfully submitted,

**AT&T COMMUNICATIONS OF
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