Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Michigan Bell Telephone Company, and	)	WC Docket No. 03-138
Southwestern Bell Communications Services,	)	
Inc. for Authorization To Provide In-Region,	)	
InterLATA Services in Michigan	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 2003 **Released: September 17, 2003**

By the Commission: Commissioners Copps and Adelstein issuing separate statements.

I. INTRODUCTION

1. On June 19, 2003, SBC Communications Inc., and its subsidiaries, Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively, Michigan Bell) filed this application pursuant to section 271 of the Communications Act of 1934, as amended,[1] for authority to provide in-region, interLATA services originating in the State of Michigan.[2] This is the fourth application Michigan Bell has filed for in-region, interLATA authority.[3] In this Order, we grant Michigan Bell's application based on our

[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as the Communications Act or the Act. *See* 47 U.S.C. §§ 151 *et seq*. We refer to the Telecommunications Act of 1996 as the 1996 Act. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-138 (filed June 19, 2003) (Michigan Bell Supplemental Application).

[3] *See Application by Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-1, Order, 12 FCC Rcd 2088 (1997) (*Ameritech Withdrawal Order*); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA* (continued….)

conclusion that Michigan Bell has taken the statutorily required steps to open its local exchange markets in Michigan to competition.

2. We wish to acknowledge the considerable effort and exemplary dedication of the Michigan Public Service Commission (Michigan Commission). The Michigan Commission reviewed Michigan Bell's section 271 compliance in open proceedings with ample opportunities for participation by interested third parties.[4] Michigan Bell has implemented – and the Michigan Commission has approved – comprehensive performance measures and standards, as well as a comprehensive Performance Remedy Plan designed to create a financial incentive for post-entry compliance with section 271.[5] In addition, the Michigan Commission required extensive third-party testing of Michigan Bell's operations support systems (OSS) offerings, and required comprehensive performance monitoring mechanisms to evaluate the quality of service Michigan Bell provides to its competitive local exchange carrier (LEC) customers.[6] As the Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purpose of the Act serve a vitally important role in the section 271 process.[7] The Michigan Commission has certainly demonstrated that commitment and we applaud them for it.

3. We also commend Michigan Bell for the significant progress it has made in opening its local exchange market to competition in Michigan. The Michigan Commission states that competitive LECs provide service to 21.7 percent of total lines,[8] including 519,809 business lines and 927,367 residential lines, as of December 2002.[9] Additionally, of the estimated 1,447,176 competitive LEC lines in Michigan, there were 58,617 resold lines, 932,667

(Continued from previous page)
Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997) (*Ameritech Michigan Order*); *Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-16, Memorandum Opinion and Order, FCC DA 03-1168 (Apr. 16, 2003) (*Michigan Bell Withdrawal Order*).

4 *See* Michigan Commission Comments at 1; *see also* Michigan Commission Supplemental Comments at 3.

5 *See* Michigan Bell Application at 4-5; Michigan Bell Application, App. A, Vol. 3a, Tab 9, Affidavit of James D. Ehr (Michigan Bell Ehr Aff.) at para. 277.

6 Michigan Bell Application at 3-4.

7 *See, e.g.*, *Application of Verizon New York Inc.*, *Verizon Enterprise Solutions*, *Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, FCC 01-208, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*).

8 Michigan Commission Supplemental Comments, Attach. A at 3. These numbers reflect competitive LEC participation in Michigan as of December 31, 2002.

9 *Id.* at 4.

lines served via UNE-platform, 264,600 lines served via unbundled network facilities, and an estimated 148,691 lines served over the competitive LECs' own self-provided facilities.[10] We believe that these results reflect the extensive efforts that Michigan Bell has made to open its local exchange markets to competition.

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.[11] Congress provided for Commission review of BOC applications to provide such service in consultation with the relevant states and the U.S. Attorney General.[12]

5. On January 13, 2003, the Michigan Commission determined that Michigan Bell complied with section 271(c),[13] and recommended that Michigan Bell be authorized to provide interLATA communications services in Michigan.[14] On January 16, 2003, Michigan Bell filed its third section 271 application. On February 26, 2003, the Department of Justice filed its evaluation finding that while Michigan Bell, under the guidance of the Michigan Commission, had made significant strides in opening its markets to competitive LECs, the Department of Justice remained concerned that those markets were not "irreversibly" open to competition.[15] Michigan Bell withdrew its application on April 16, 2003, stating that it would file a revised

---

[10] *Id.*

[11] *See* 47 U.S.C. § 271.

[12] 47 U.S.C. § 271(d)(2)(A), (B). The Commission has summarized the relevant statutory framework in prior orders. *See, e.g.*, *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., 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 Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint v. FCC*); *Application by SBC Communications Inc., Southwestern Bell Tel. Co. 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 Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*).

[13] Michigan Bell Application at 4; Michigan Commission Comments at 3; *see also In the matter, on the Commission's own motion, to consider SBC's, f/k/a Ameritech Michigan, compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996*, Case No. U-12320, Opinion and Order, (Michigan Commission Jan. 13, 2003) (*Michigan Commission Order*).

[14] *See* Letter from Michigan Public Service Commissioners to the Federal Communications Commissioners (dated Jan. 13, 2003).

[15] Department of Justice Evaluation at 3.

application that resolves the remaining issues of concern.[16]

6. On June 19, 2003, Michigan Bell filed the instant application.[17] Comments were filed with the Commission on July 2, 2003 and reply comments were filed on July 21, 2003.[18] The Michigan Commission filed a supplemental report on July 2, 2003 reaffirming its recommendation that Michigan Bell be authorized to provide interLATA services in Michigan.[19] The Department of Justice filed an evaluation on July 16, 2003, expressing concerns about Michigan Bell's wholesale billing, line splitting, and data reliability.[20] The Department of Justice stated that wholesale billing errors continue to persist, which suggests there may still be underlying problems that Michigan Bell needs to do more to identify and correct.[21] The Department of Justice also questioned whether Michigan Bell's current processes provide non-discriminatory access to line splitting and UNE-platform services.[22] Finally, the Department of Justice noted that the Commission should consider the totality of the evidence in determining whether "the current performance metrics are reliable, and that a stable and reliable reporting system will be in place to help ensure that the Michigan market remains open after [Michigan Bell's] application is ultimately granted."[23] The Department of Justice ultimately stated that, "because of serious outstanding questions concerning the accuracy of [Michigan Bell's] wholesale billing," the Department of Justice "is not in a position to support this application based on the current record," but recognized that the Commission may "be able to satisfy itself regarding these [billing issues] prior to the conclusion of its review."[24]

---

[16] *See* Letter from James C. Smith, Senior Vice President, SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 (filed Apr. 16, 2003); *see also Michigan Bell Withdrawal Order*.

[17] Because Michigan Bell incorporated its filings from the prior Michigan section 271 docket (WC Docket No. 03-16) into this proceeding, we refer to all filings made in this docket (WC Docket No. 03-138) as "supplemental" filings.

[18] AT&T, CLECA and TDS Metrocom incorporated their filings from WC Docket No. 03-16 into this proceeding. *See* AT&T Supplemental Comments at 2; CLECA Supplemental Comments at 24; TDS Metrocom Supplemental Comments at 1.

[19] *See* Michigan Commission Supplemental Comments at 12.

[20] Department of Justice Supplemental Evaluation at 2 (July 16, 2003).

[21] *Id*. at 6-9.

[22] *Id.* at 11-12.

[23] *Id*. at 14-15.

[24] *Id.* at 15. We note that the Department of Justice reiterated its concerns about Michigan Bell's billing systems in its Evaluation of Michigan Bell's OSS in the other states in the SBC Midwest region. *In the Matter of Joint Application by SBC Communications, Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin*, WC Docket No. 03-167, Department of Justice Evaluation at 8-15 (filed Aug. 26, 2003) (Department of Justice 4-State Evaluation).

A. Compliance With Unbundling Rules

7. One part of the required showing, as explained in more detail below, is that the applicant satisfies the Commission's rules governing unbundled network elements (UNEs).[25] In the *UNE Remand Order* and the *Line Sharing Order*, the Commission established a list of UNEs which incumbent LECs were obliged to provide: (1) local loops and subloops; (2) network interface devices; (3) switching capability; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) OSS; and (7) the high frequency portion of the loop.[26] However, the D.C. Circuit vacated these orders and instructed the Commission to reevaluate the network elements subject to the unbundling requirement.[27] The court's mandate was stayed first until January 3, 2003 and then until February 20, 2003. On February 20, 2003, we adopted new unbundling rules as part of our *Triennial Review* proceeding, and we released the order on August 21, 2003.[28] Consistent with our prior orders, however, we do not require Michigan Bell to demonstrate compliance with rules that were not in effect at the time its application was filed.[29]

8. Although the former unbundling rules were not in force at the time Michigan Bell filed its application in this proceeding, Michigan Bell states that it continues to provide nondiscriminatory access to these network elements.[30] As the Commission found in the *Bell Atlantic New York Order*, we believe that using the network elements identified in the former

---

[25] In order to comply with the requirements or checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3). 47 U.S.C. § 271(c)(2)(B)(ii).

[26] *See* 47 C.F.R. § 51.319*; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket Nos. 98-147, 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

[27] *See United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA*), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S.Ct 1571 (2003 Mem.)

[28] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147),* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) (*Triennial Review Order); see also FCC Adopts New Rules For Network Unbundling Obligations Of Incumbent Local Phone Carriers*, News Release, (rel. Feb. 20, 2003) (announcing adoption of an Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*) (*Triennial Review News Release*).

[29] *See Bell Atlantic New York Order* at 3967, para. 31. The new rules adopted in the *Triennial Review* proceeding will take effect on October 2, 2003.

[30] *See* Michigan Bell Application at 26, 29, 65, 66.

unbundling rules as a standard in evaluating Michigan Bell's application, filed during the interim period between the time the rules were vacated by the D.C. Circuit and the effective date of the new rules, is a reasonable way to ensure that the application complies with the checklist requirements.[31] We find it significant that no commenter disputes that Michigan Bell should be required to demonstrate that it provides these network elements in a nondiscriminatory way. Accordingly, for the purposes of this application, we will evaluate whether Michigan Bell provides nondiscriminatory access to the network elements identified under the former unbundling rules. We emphasize that, on an ongoing basis, Michigan Bell must comply with all of the Commission's rules implementing the requirements of sections 251 and 252 upon the dates specified by those rules.[32]

III. COMPLIANCE WITH SECTION 271(c)(1)(A)

9. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).[33] To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."[34] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[35] The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"[36] which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.[37]

---

[31] *See 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 No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3966-67, para. 30 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000). A similar procedural situation was presented in the *Bell Atlantic New York* proceeding. Bell Atlantic filed its application for section 271 authorization in New York after the unbundling rules had been vacated but before the *UNE Remand Order* had taken effect and, thus, at a time when no binding unbundling rules were in effect. Bell Atlantic suggested, and the Commission agreed, that it would be reasonable for the Commission to use the original seven network elements identified in the former unbundling rules in evaluating compliance with checklist item 2 for the application. *See id.* at 3966-67, paras. 29-31.

[32] *See SWBT Texas Order*, 15 FCC Rcd at 18368, para. 29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3967, para. 3.

[33] 47 U.S.C. § 271(d)(3)(A).

[34] 47 U.S.C. § 271(c)(1)(A).

[35] *Id.*

[36] *Application by Qwest Communications International Inc., for Authorization To Provide In-Region, InterLATA Services in Minnesota*, Memorandum Opinion and Order, FCC 03-142, WC Docket No. 03-90 at para. 60 (rel. June 26, 2003) (*Qwest Minnesota Order)*; *Application by SBC Communications Inc., Pursuant to Section 271 of the* (continued….)

10. We conclude, as did the Michigan Commission, that Michigan Bell satisfies the requirements of Track A in Michigan.[38] We base this decision on the interconnection agreements Michigan Bell has implemented with competing carriers in Michigan and the number of carriers that provide local telephone exchange service, either exclusively or predominantly over their own facilities, to residential and business customers.[39] No party challenges Michigan Bell's compliance with section 271(c)(1)(A).[40] In support of its Track A showing, Michigan Bell relies on interconnection agreements with AT&T, McLeodUSA, Talk America, TDS Metrocom, and MCI.[41] Specifically, the record demonstrates that AT&T, McLeod USA, Talk America, TDS Metrocom, and MCI each provide service to more than a *de minimis* number of residential and business customers over their own facilities, or through the use of UNEs.[42] Each of these carriers represents an actual "facilities-based competitor" to Michigan Bell in Michigan.[43]

IV. PRIMARY ISSUES IN DISPUTE

11. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather,

(Continued from previous page)
Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

[37] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6357, para. 42; *see also Ameritech Michigan Order,* 12 FCC Rcd at 20585, para. 78.

[38] Michigan Commission Comments at 29.

[39] Michigan Commission Comments at 28-29. As noted above, Michigan staff reports that as of Dec. 31, 2002, its survey of carriers found that 54 competitive LECs served approximately 1.45 million access lines in Michigan. Michigan Commission Supplemental Comments, Attach. at 4. Of those competitive LEC lines, there were 58,617 resold lines, 932,667 lines served via UNE-platform, 264,600 lines served via unbundled network facilities, and an estimated 148,691 lines served over the competitive LECs' own self-provided facilities. *Id.*

[40] CLECA asserts that SBC's estimate of competitive LEC market share for Michigan is inconsistent with Michigan SBC annual ARMIS filings. Letter from Roderick S. Cory, et.al., Counsel to CLECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 1-5 (filed Apr. 11, 2003) (CLECA Apr. 11 *Ex Parte* Letter). Sprint contends that SBC's competitive carrier line count inaccurately attributes local service lines to Sprint operations in Michigan that are in actuality "one-way Dial IP" lines not used for local exchange service and, therefore, the SBC estimates for competitive LEC line counts for the state may be unreliable. Sprint Comments at 1-2. We note that the Michigan Commission conducts and reports, on a regular basis, surveys of all access lines in the state and we need not rely on SBC estimates for overall competitive presence in Michigan. Michigan Commission Supplemental Comments at 10 & Attach. A and B; *see also* Michigan Bell Heritage Supplemental Reply Aff. at 4-8.

[41] Letter from Geoffrey M. Kleinberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. A at 19 (filed Mar. 17, 2003) (Michigan Bell March 17 *Ex Parte* Letter); *see also* Michigan Bell Heritage Aff., Tab B at 1-2, Tab E, at 1-3 (citing confidential portion); Michigan Bell Heritage Supp. Aff., Attach. C at 1-2 (citing confidential portion).

[42] Michigan Bell Heritage Supplemental Aff., Attach. C at 2-3 (citing confidential portion).

[43] 47 U.S.C. § 271(c)(1)(A).

we rely upon the legal and analytical precedent established in prior section 271 orders,[44] and we attach comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.[45] Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting service in the period from February 2003 through June 2003.

12. We focus here on the issues in controversy in the record. Accordingly, we begin by addressing issues concerning the accuracy and reliability of Michigan Bell's performance data. We also extensively discuss checklist items 2, 4, and 7, which address access to unbundled network elements, access to local loops, access to 911 and E911 services, and access to directory assistance services and operator services. Next, we discuss checklist items 1, 2, 10 and 13, which address interconnection, unbundled network element combinations, signaling and reciprocal compensation, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Michigan Bell has satisfied these requirements. Finally, we discuss issues concerning compliance with Track A, section 272 and the public interest requirement.

A. Evidentiary Case

1. Introduction

13. As a threshold matter, we reject challenges to the accuracy and reliability of the commercial performance data submitted by Michigan Bell. As explained fully below, we find that the commercial performance data submitted by Michigan Bell provide a reliable basis on which we may assess whether Michigan Bell has satisfied the demands of the checklist. Because we rely upon Michigan Bell's commercial performance data in evaluating its compliance with several different checklist items, however, we address this issue before discussing whether Michigan Bell has satisfied the checklist requirements. In other section 271 proceedings, the Commission has relied on a variety of factors – including the findings of third-party auditors, the availability of reconciliations and other raw data review by competitors, and the oversight of the relevant state commission – in assessing the reliability of an applicant's commercial performance data. There is no single *sine qua non* of data reliability, but the Commission has consistently demanded evidence that the data accurately represent the applicant's performance.[46]

---

[44] *Qwest Minnesota Order* at para. 10; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6241-42, paras. 7-10; *SWBT Texas Order*, 15 FCC Rcd at 18359-61, paras. 8-11; *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, paras. 17-20; *see also* App. C (Statutory Requirements).

[45] *See generally* App. B (Michigan Performance Data) and App. C.

[46] *See, e.g., Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9027-32, paras. 16-20 (2002) (*BellSouth Georgia/Louisiana Order*) (holding the extensive third-party auditing, internal and external data controls, open and collaborative metric workshops, the availability of raw performance data and data reconciliations, and the oversight (continued….)

14. Like previous applicants, Michigan Bell has submitted performance metric data with its application as evidence that it meets its obligation to provide nondiscriminatory access to its network. These metrics were developed during an open, collaborative proceeding conducted by the Michigan Commission.[47] As described below, Michigan Bell has submitted into evidence the results of two separate third-party tests – an in-progress review conducted by BearingPoint, formerly known as KPMG Consulting, Inc., and a completed audit conducted by Ernst & Young, LLP (E&Y).

2. The Third-Party Tests

a. The BearingPoint Test

15. In February 2000, the Michigan Commission required Michigan Bell to sponsor a third-party test of its OSS.[48] Michigan Bell retained BearingPoint to conduct the third-party testing, under terms developed in collaborative sessions including BearingPoint, Michigan Commission staff, competitive LECs, Michigan Bell, and other interested parties.[49] These terms were set forth in a Master Test Plan, which was submitted to the Michigan Commission in August 2000.[50] The BearingPoint evaluation included three major test families. The first two – "transaction verification and validation" and "processes and procedures review" – assessed the performance of Michigan Bell's OSS, and are described below.[51] The third – the "performance metrics review" (PMR) – evaluated the accuracy and reliability of Michigan Bell's data.[52] BearingPoint's PMR testing addressed five categories: (1) PMR 1 – Data Collection and Storage Verification and Validation Review; (2) PMR 2 – Metrics Definitions and Standards Development and Documentation Verification and Validation Review; (3) PMR 3 – Metrics Change Management Verification and Validation Review; (4) PMR 4 – Metrics Data Integrity Verification and Validation Review; and (5) PMR 5 – Metrics Calculations and Reporting

(Continued from previous page)
of state commissions ensured reliability of BellSouth data); *Bell Atlantic New York Order*, 15 FCC Rcd at 3959, para. 11 (explaining that the monthly review by the New York Commission of Bell Atlantic's raw data, the collaborative proceedings conducted by the New York Commission concerning the performance metrics, and the review by KPMG and the New York Commission of Bell Atlantic's internal controls surrounding the data collection process ensured that the performance data was accurate, consistent, and meaningful); *SWBT Texas Order*, 15 FCC Rcd at 18377-78, para. 57 (noting that SWBT's data had been subject to scrutiny and review by interested parties, that its accuracy for the most part had not been contested, and that in those instances where it had been disputed, the Commission would look to the results of data reconciliations between SWBT and competing carriers).

47 *See* Michigan Bell Ehr Aff. at paras. 12-20.

48 *See* Michigan Commission Comments at 6.

49 *See id.*

50 *See id.*

51 *See infra* Part IV.B.2.

52 *See* Michigan Bell Application, App. A, Vol. 1, Tab 6, Affidavit of Mark Cottrell at para. 26 (Michigan Bell Cottrell Aff.).

Verification and Validation Review.[53] BearingPoint's testing was analogous to that which BearingPoint has performed to evaluate performance in various states served by Verizon and BellSouth.[54]

16. Pursuant to a Michigan Commission request, BearingPoint prepared an interim report regarding its testing activities on September 23, 2002.[55] That report was updated on October 30, 2002, following further collaborative discussions, and has been updated regularly since then.[56] In its June 30, 2003 update, BearingPoint stated that more than half of the applicable PMR "test points" were "satisfied"; the remaining items were still subject to ongoing BearingPoint review.[57]

b. The E&Y Test

17. On July 30, 2002, Michigan Bell notified the Michigan Commission that it planned to supplement the state section 271 record with an independent review of the Michigan performance measurements conducted by E&Y, and intended to rely on that data audit to support its application.[58] The E&Y data audit differed from the BearingPoint data review in several respects. For example, E&Y limited its review to the issues arising under the PMR 4 test family,

---

[53] *See* Michigan Bell Ehr Aff. at para. 231.

[54] *See, e.g.*, *Bell Atlantic New York Order*, 17 FCC Rcd at 9027, para. 16; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd. at 9029-32, paras. 18-20. The BearingPoint PMR evaluation involved review of both "live" industry data and data generated from test transactions performed by a pseudo competitive LEC established by BearingPoint. *See* Michigan Public Service Commission, Ameritech OSS Evaluation Project Master Test Plan, Version 3.0 (April 2, 2002) at 22 (available at *http://www.osstesting.com/Documents/MI%20Docs/MPSC%20MTP%20Ver%203_0.pdf*). The evaluation techniques employed for the PMR testing included the physical review of process activities and products, including site visits, walk-throughs, read-throughs, and work center observations; the compilation and review of books, manuals, and other publications related to the processes and systems under study; the review and analysis of historical data, reports, metrics, and other information in order to assess the effectiveness of a particular system or business function; and the recalculation of performance metrics. *Id.* at 18-19, 23, 25, 27, 28, 30.

[55] *See id.* at 7.

[56] *See id.* BearingPoint issued its most recent supplemental reports on June 30, 2003 and August 29, 2003. Our inquiry below focuses on the June 30, 2002 Report (available at *http://www.osstesting.com/Documents/MI%20Docs/MI_OSS%20Evaluation_Metrics%20Report_063003.pdf*) (June 30 BearingPoint Report) because that was the most recent report available at the time comments and replies were filed in this proceeding.

[57] A "test point" reflects a single evaluation criterion. For example, the first two criteria for PMR 1 are PMR 1-1-A, "Metrics data collection and storage processes have complete and up-to-date documentation for the Pre-Ordering Measure Group" and PMR 1-1-B, "Metrics data collection and storage processes have complete and up-to-date documentation for the Ordering Measure Group." *See, e.g.*, June 30 BearingPoint Report at 7.

[58] *See* Michigan Bell Ehr Aff. at para. 198.

the PMR 5 test family, and parts of the PMR 1 and PMR 3 test families.[59] E&Y also employed a different "materiality" threshold, excluding failures from its analysis where the difference between Michigan Bell's results and its own findings was less than 5 percent and did not change a "passing" score for a particular performance metric into a "failing" score.[60] E&Y also utilized a more streamlined "retesting" methodology to assess Michigan Bell's efforts to remediate problems identified during the audit.[61] As further described below, E&Y's testing was analogous to the testing it undertook to evaluate performance in Missouri, and similar to the tests on which we relied in approving section 271 applications for Texas and California.[62]

18. E&Y issued a series of updates setting forth its findings, culminating in an April 16, 2003 Final Corrective Action Report. In that Report, E&Y concluded that all material problems identified either had been corrected or did not require corrective action.[63]

3. Discussion

19. In analyzing this issue, we are mindful of the Department of Justice's concern that the Commission "satisfy itself that . . . a stable and reliable performance measure system [is] in place to help ensure that the Michigan market remains open after [Michigan Bell's] application is . . . granted."[64] We agree with the Department of Justice that reliable performance data

---

[59] *See* Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. C at 6 (filed Mar. 14, 2003) (Michigan Bell March 14 *Ex Parte* Letter).

[60] *See* Michigan Bell Reply, Appendix, Second Affidavit of Daniel Dolan and Brian Horst at para. 18 (Michigan Bell Dolan/Horst Reply Aff.). This is the same materiality standard that E&Y uses when conducting merger compliance audits for the Commission. *See* Michigan Bell Dolan/Horst Reply Aff. at para. 18; Michigan Bell March 28 *Ex Parte* Letter, Attach. A at 9 n.29. BearingPoint employed a 1% materiality threshold. *See* Michigan Bell Supplemental Application, App. A, Vol. 2, Tab 5, Supplemental Affidavit of James D. Ehr and Salvatore T. Fioretti at para. 98 n.55 (Michigan Bell Ehr/Fioretti Supplemental Aff.).

[61] *See* AT&T Supplemental Comments, Declaration of Karen W. Moore and Timothy M. Connolly at paras. 121-31 (AT&T Moore/Connolly Decl.). The E&Y test differed from the BearingPoint analysis in other less significant ways as well. For example, the E&Y audit evaluated data from fewer months than the BearingPoint review. *See* Michigan Bell Ehr Aff. at paras. 204, 264.

[62] *See, e.g.*, Michigan Bell March 14 *Ex Parte* Letter Attach. C at 7; *see also Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 25650, 25685-89, paras. 73-79 (*SBC California 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 Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20726, para. 17 (2001) (*SWBT Arkansas/Missouri Order*); *SWBT Texas Order*, 15 FCC Rcd at 18401-03, paras. 101-04; *see also* AT&T Supplemental Comments, Declaration of Karen W. Moore and Timothy M. Connolly at para. 39 (AT&T Moore/Connolly Supplemental Decl.).

[63] *See* Michigan Bell Ehr/Fioretti Supplemental Aff., Attach. A.

[64] Department of Justice Supplemental Evaluation at 14-15.

constitute a "key input in determining whether a BOC is providing nondiscriminatory access to network services and facilities,"[65] and that "[s]uch data plays an important role both before and after [s]ection 271 approval in ensuring that local markets are and remain open to competition, and that the BOCs do not discriminate against local competitors."[66] As explained below, we are satisfied that the data presented here are accurate and reliable, and conclude that they can be used in evaluating Michigan Bell's satisfaction of the competitive checklist.

20. We note at the outset that our task here is to assess whether, on the whole, Michigan Bell's performance data form a sufficiently reliable and accurate basis upon which to evaluate checklist compliance. Thus, for example, in approving BellSouth's section 271 applications for Georgia and Louisiana, the Commission found that BellSouth's performance data were, "*as a general matter* . . . accurate, reliable, and useful."[67] While certain issues remained unresolved, the Commission concluded that "the problems identified have had, *for the most part*, only a small impact on the data presented to us."[68] Even where the evidence indicates an unremedied flaw in a discrete subset of Michigan Bell's performance metrics, that flaw will not necessarily doom Michigan Bell's application unless it is part of a larger pattern calling into question a substantial portion of the data. As described below, we find no such pattern here.

a. The Ernst & Young Audit

21. As noted above, E&Y's "Final Corrective Action Report" found that all identified instances of material noncompliance either have been corrected or do not require corrective action.[69] This conclusion constitutes important *prima facie* evidence that the data submitted are accurate and reliable for purposes of determining checklist compliance. Although E&Y's methodology is more streamlined than BearingPoint's, the Commission relied on an almost identical E&Y review in approving SWBT's section 271 application for Missouri, and has relied on similar audits in approving the California and Texas section 271 applications.[70] As discussed

---

65 Department of Justice Evaluation at 14.

66 *Id*. at 15-16.

67 *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9031, para. 19 (emphasis added).

68 *Id.* (emphasis added); *see also Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming,* WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26553, para. 465 (*Qwest 9-State Order*) ("We find that, at least for purposes of this application, Qwest's performance data are generally reliable and reflective of Qwest's wholesale performance."); *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd at 12275, 12364-65, para. 181 (2002) (*Verizon New Jersey Order*) ("[W]e find that, at least for purposes of this application, Verizon's performance data are generally reliable and reflective of Verizon's wholesale performance.").

69 *See supra* para. 18.

70 *See supra* note 62.

below, we reject commenters' arguments that the E&Y results cannot be credited here, either because of weaknesses in the E&Y methodology or because the very fact that the BearingPoint evaluation remains in progress alone casts doubt on E&Y's findings.

22. First, given our past reliance on the E&Y audit and audits employing similar methodologies, we reject commenters' arguments that the E&Y audit here is insufficiently rigorous to ground a finding that Michigan Bell's performance data are accurate and reliable.[71] Rather, we agree with the Department of Justice that "E&Y's work should not be disregarded simply because of its approach."[72] Nor do we believe that E&Y is somehow biased in Michigan Bell's favor. AT&T and CLECA state that the Securities and Exchange Commission (SEC) is investigating E&Y's alleged failure to remain neutral in auditing the books of its client PeopleSoft, and is seeking temporarily to prevent E&Y from taking on new auditing clients.[73] No commenter, however, has cited evidence that E&Y has acted improperly with regard to its evaluation of Michigan Bell's data. Absent specific evidence relating to this matter, the SEC's pursuit of claims unrelated to Michigan Bell is not sufficient to show a systemic problem with the accuracy and reliability of Michigan Bell's data.

23. Second, the mere fact that BearingPoint has not yet completed its review does not undermine the validity of the E&Y audit. AT&T suggests that the ongoing BearingPoint review, which "flatly contradict[s]" Michigan Bell's assertion that its data are reliable, precludes reliance on the E&Y audit.[74] As we explained above, however, we have previously approved at least three section 271 applications relying solely on the E&Y audit or on audits employing similar methodologies. Further, we have never required that an applicant complete even one data review, much less two such reviews.[75] Given that we have previously found the E&Y review sufficient, and have never required a second independent audit, we cannot here conclude that Michigan Bell's application must be rejected, or the E&Y audit disregarded, simply because the

---

[71] For example, AT&T contends that "E&Y's testing procedures were limited and flawed." AT&T Moore/Connolly Supplemental Decl. at para. 19. Its complaints include E&Y's failure to (1) test a full seven months' worth of data, as BearingPoint did, *id.* at para. 26; (2) utilize a pseudo-competitive LEC, as BearingPoint did, *id.* at para. 28; (3) "track the 'chain of custody' of the raw data completely through [Michigan Bell's] systems," as BearingPoint did, *id.* at para. 29; and (4) "perform[] regression testing to assess whether the corrective action that [Michigan Bell] has taken to resolve data defects had other, unintended consequences," as BearingPoint did, *id.* at para. 30. These methodological characteristics, however, do not distinguish the Michigan review from the reviews relied on in Missouri, Texas, or California.

[72] *See* Department of Justice Supplemental Evaluation at 14.

[73] *See* AT&T Moore/Connolly Supplemental Decl. at paras. 6-7 & Attach. A (describing SEC proceeding regarding E&Y's auditing activities for PeopleSoft); CLECA Supplemental Comments at 5 & Attach. 1 (same).

[74] AT&T Supplemental Comments at 45.

[75] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9028-29, para. 17 (citing commenters' criticisms regarding "the lack of a completed audit"); *id.* at 9031, para. 19 (concluding that "we cannot as a general matter insist that all audits must be completed at the time a section 271 application is filed at the Commission").

BearingPoint review remains in progress.[76] Where E&Y has validated a particular practice or procedure, the fact that BearingPoint simply has reached no conclusion with regard to the matter is not an indication that Michigan Bell's data are inaccurate or unreliable.[77]

b. The BearingPoint Review

24. Although we conclude that BearingPoint's testing does not, simply by virtue of its incompleteness, undermine the evidentiary force of the completed E&Y review, we recognize that BearingPoint has identified particular issues that do not appear to have been addressed in the context of the E&Y audit. Both Michigan Bell and the competitive LECs have provided testimony and other evidence regarding the BearingPoint results,[78] and we cannot ignore that evidence.[79] Nor can we assume that an issue identified by BearingPoint is inconsequential simply because it was not identified by E&Y.[80] Rather, we believe that the most appropriate response to the two audits is to accept the E&Y findings as *prima facie* evidence that Michigan Bell's data are generally accurate and reliable, but to consider whether any BearingPoint findings rebut that evidence. Thus, in this section, we discuss the general principles guiding our evaluation of the problems identified by BearingPoint, and then address BearingPoint's specific findings in each of the five "PMR" groupings. As we explain below, we conclude that BearingPoint's findings do not undermine our finding that Michigan Bell performance data are accurate and reliable for purposes of evaluating checklist compliance.

25. Four overarching principles guide our review of the outstanding BearingPoint issues. First, the fact that a BearingPoint issue remains "open" is *not* determinative for purposes of this application if the impact of the BearingPoint finding fails to satisfy the 5 percent materiality threshold that is applied by E&Y. As noted above, the E&Y review here employed a

---

[76] In reaching our conclusion, we note that the Michigan Commission itself has determined that E&Y's audit serves as a suitable substitute for BearingPoint's, notwithstanding the fact that BearingPoint had not completed its testing. *See* Michigan Commission Supplemental Comments at 5-6. Moreover, the Michigan Commission has required that the BearingPoint review be to completed, and has committed itself to ensuring that issues raised in the future will be addressed appropriately.

[77] As explained below, we do not overlook cases in which BearingPoint has identified material infirmities in Michigan Bell's commercial data not addressed in the course of the E&Y audit. We note that this approach is consistent with the Department of Justice's advice that in evaluating the integrity of Michigan Bell's data, we "consider the totality of the evidence in the record." Department of Justice Supplemental Evaluation at 15.

[78] *See* Michigan Bell Ehr Aff. at paras. 231-64; Michigan Bell Ehr Reply Aff. at paras. 22-95; AT&T Reply Comments, Joint Reply Declaration of Karen W. Moore, Timothy M. Connolly and Sharon E. Norris at paras. 17-47 (AT&T Moore/Connolly/Norris Reply Decl.); Michigan Bell Ehr/Fioretti Supplemental Aff. at paras. 40-164; AT&T Moore/Connolly Supplemental Decl. at paras. 21-58.

[79] *See, e.g., Illinois Public Telecom. Ass'n v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997) ("The FCC's *ipse dixit* conclusion, coupled with its failure to respond to contrary arguments resting on solid data, epitomizes arbitrary and capricious decisionmaking.").

[80] Put differently, we will not "dismiss[], based solely on the findings of E&Y's review, problems identified by BearingPoint's findings." Department of Justice Supplemental Evaluation at 14.

"materiality" standard that cited problems only if the solution to the problem would either (a) alter an affected performance metric result by 5 percent or more; or (b) change a "passing" result to a "failing" result or a "failing" result to a "passing" result.[81] As also noted above, this is the same materiality threshold E&Y uses when conducting merger review audits for this Commission.[82] Given our conclusion that the E&Y audit, standing alone, would justify a finding that Michigan Bell's data were accurate and reliable, we must limit our review here to new problems that would have been deemed material if identified in the course of that review.

26. Second, we do not believe that evidence of problems that were remedied before the data at issue for purposes of this application were collected and processed has probative value in this proceeding. Our aim is to ensure that the performance data submitted by Michigan Bell in support of this application are accurate and reliable.[83] Performance problems that affected only the data for earlier months simply are not relevant to this proceeding.

27. Third, though we apply no bright-line rule in this regard, we focus our analysis on BearingPoint's "exceptions" – that is, those cases where testing revealed that a Michigan Bell practice, policy, or system was expected not to satisfy one or more of the evaluation criteria defined for the test – rather than on "observations" – that is, those cases where testing revealed that a Michigan Bell practice, policy, or system *might* result in a negative finding in BearingPoint's final report.[84] In the case of BearingPoint's replication tests, however, we recognize that any material mismatch between BearingPoint's figures and Michigan Bell's constitutes important (but not conclusive) evidence that the metric at issue might be unreliable, irrespective of whether BearingPoint has labeled the underlying problem an "exception."[85] Again, however, our aim is to determine only whether the data presented are sufficiently accurate and reliable to form a basis for conclusions regarding Michigan Bell's performance under the checklist. For this reason, we focus our analysis below on *critical* metrics – that is, those metrics upon which the Commission typically relies in evaluating checklist compliance – for which BearingPoint's replicated data fails to come within 5 percent of Michigan Bell's own data.

28. Fourth, we emphasize again that our task is to determine whether, "as a general matter," Michigan Bell's data are sound.[86] To the extent that BearingPoint issues remain open today or are identified going forward, we expect that those issues will be addressed in the context of the Michigan Commission's ongoing oversight of BearingPoint's review. That

---

81 *See* Michigan Bell Dolan/Horst Reply Aff. at para. 18.

82 *See supra* note 60.

83 As noted above, the months relevant to this application are February 2003 through June 2003.

84 One or more observations or exceptions may be associated with each unsatisfied test point.

85 During the "replication" tests, BearingPoint recalculates each measure using source data provided by Michigan Bell. *See infra* para. 35.

86 *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9031, para. 19.

commission has specified that irrespective of whether we grant Michigan Bell's section 271 application, the BearingPoint review will "continue until satisfactory results are achieved as determined by BearingPoint or are closed as determined by the Commission and its Staff."[87] Michigan Bell, moreover, has emphasized its own commitment "to completing the BearingPoint test according to the directives received from the [Michigan Commission]."[88]

(i) PMR 1 (Data Collection and Storage)

29. PMR 1 assesses the policies and practices according to which Michigan Bell collects and stores data.[89] As of June 30, 2003, BearingPoint maintained three open exceptions relating to PMR 1: Exceptions 186, 187 and 188. As explained below, these exceptions do not call into question the accuracy or reliability of Michigan Bell's data.

30. Exception 186 reflects BearingPoint's finding that various Michigan Bell systems had not retained performance data for the time period required by state regulation.[90] The evidence in our record indicates that this problem did not relate to data for any of the months at issue here. Moreover, Michigan Bell attests that it has remedied its data retention problems, and that data will, on a going-forward basis, be maintained for the appropriate period of time.[91] While we believe that adherence to data retention requirements is critical, and recognize that the Michigan Commission might choose to sanction Michigan Bell pursuant to any relevant state laws or regulations for failing to satisfy its data retention requirements, Exception 186 does not implicate the calculation or reporting of the actual performance metrics, and thus does not cast doubt on the accuracy or reliability of the performance measures at issue here.

31. Exceptions 187 and 188 reflect BearingPoint's finding that certain Michigan Bell technical documentation did not adequately describe the manner in which data was processed in the course of calculating performance measures.[92] Since these exceptions were issued, however, Michigan Bell has corrected inaccuracies, allowing BearingPoint to confirm that the documentation regarding numerous measures is now accurate.[93] Moreover, we disagree with AT&T's suggestion that these exceptions might signal improper calculation of the performance

---

87 Michigan Commission Reply Comments at 10; *see also* Michigan Commission Supplemental Comments at 3-4.

88 Michigan Bell Supplemental Reply, App., Tab 6, Supplemental Reply Affidavit of James D. Ehr and Salvatore T. Fioretti at para. 43 (Michigan Bell Ehr/Fioretti Supplemental Reply Aff.).

89 Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 70.

90 *See id.* at paras. 88-91; Exception 186 v.3 (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20186v3.pdf*).

91 *See* Michigan Bell Ehr/Fioretti Supplemental Aff. at paras. 90-91.

92 *See id. at para.* 76-83; Exception 187 v.5 (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20187v5.pdf*); Exception 188 v.5 (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20188v5.pdf*).

93 Michigan Bell Ehr/Fioretti Supplemental Aff. at paras. 76, 80.

measures themselves,[94] because a BOC could maintain incorrect documentation (and thus fail to satisfy test criteria in PMR 1) but still calculate its metrics properly (and thus satisfy all test criteria in PMR 4 and PMR 5). For this reason, while we believe PMR 1 is important, it does not directly impugn the accuracy of any metrics, and thus we rely primarily on PMR 4 and PMR 5 – not PMR 1 – to evaluate the accuracy of the actual performance metrics.[95] Thus, exceptions 187 and 188 raise questions regarding Michigan Bell's documentation, but *not* about the validity of the underlying data.

(ii) PMR 2 (Metrics Definitions and Standards) and PMR 3 (Performance Measurement Change Management)

32. BearingPoint has completed testing for PMR 2, which addresses metrics definitions and standards, and PMR 3, which addresses performance measurement change management. BearingPoint has deemed all test points for PMR 2 and PMR 3 to be "satisfied."[96] No commenter alleges that issues relating to either PMR 2 or PMR 3 stand as a barrier to approval of Michigan Bell's application here.

(iii) PMR 4 (Metrics Data Integrity)

33. PMR 4 addresses policies and practices used by Michigan Bell for processing the data used in the production of its reported performance results.[97] As of its June 30, 2003 Report, BearingPoint maintained only one open exception relating to PMR 4: Exception 181. This exception identified discrepancies between Michigan Bell's source systems and its processed records for a single diagnostic performance measure, PM 104.1 ("The average time it takes to unlock the 911 record.").[98] Michigan Bell states that beginning with July 2002 results, it and its vendors implemented several process changes, and that beginning with the January 2003 data, it implemented a series of computer code enhancements.[99] These efforts, Michigan Bell contends, have improved the accuracy of its PM 104.1 calculations. In any event, however, Michigan Bell states that the problem had no material impact on the reported measurements. No commenter has challenged these arguments here. In light of Michigan Bell's unrebutted evidence (1) that the only remaining PMR 4 issue affects just one measure, which is diagnostic in nature and thus involves no penalties for poor performance, (2) that it has worked to remedy the issue, and (3) that the issue did not materially affect any metric, we conclude that BearingPoint's PMR 4

---

94 *See* AT&T Moore/Connolly Supplemental Decl. at para. 54.

95 *See, e.g.*, Ehr/Fioretti Supplemental Reply Aff. at para. 49. As discussed below, moreover, we do not believe that open issues in PMR 4 or PMR 5 do undermine the accuracy or reliability of Michigan Bell's data.

96 *See* June 30 BearingPoint Report at 5.

97 Michigan Bell July 10 *Ex Parte* Letter, Attach. at 3.

98 *See* Michigan Bell Ehr/Fioretti Supplemental Aff. at paras. 115-16; Exception 181 (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20181vf.pdf*).

99 *See* Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 115.

results do not bar a finding that Michigan Bell's data are accurate and reliable.

(iv) PMR 5 (Metrics Calculation and Reporting)

34. PMR 5 assesses Michigan Bell's calculation of performance measurement results and its application of the business rules and exclusions. BearingPoint's PMR 5 test, which evaluates data from July, August, and September of 2002,[100] is still in progress. We address only the components of the PMR 5 review which have revealed problems.[101]

35. *PMR 5-2*. PMR 5-2 comprises the "replication" analysis of Michigan Bell's performance measures. During the course of its PMR 5-2 review, BearingPoint recalculates each measure using source data provided by Michigan Bell, attempting to match its findings to Michigan Bell's. As of June 30, 2003, Michigan Bell had failed to replicate successfully several of the critical performance metrics on which we generally rely in assessing a carrier's section 271 application. In only eight cases, however, did the mismatch meet the 5 percent E&Y materiality threshold.[102] We discuss each below.

36. The material mismatches fell into three categories. First, fully half of the mismatches resulted from a one-time calculation error by Michigan Bell personnel, which affected the August 2002 performance results for four metrics.[103] The error did not affect data in July or September, the other two months evaluated.[104] To ensure accurate reporting of these measures going-forward, Michigan Bell reinforced its "measurement process training within the

---

[100] *See* Michigan Bell Ehr Aff. at para. 264; Michigan Bell Ehr/Fioretti Supplemental Aff. at paras. 63, 135.

[101] PMR 5-1 evaluates whether Michigan Bell reports all required performance measure disaggregations. There are no open BearingPoint issues relating to PMR 5-1, and no commenter has alleged that problems in this area preclude a finding that Michigan Bell's data are accurate and reliable. PMR 5-4 comprises BearingPoint's evaluation of whether Michigan Bell has implemented exclusions in accordance with the applicable business rules. As of BearingPoint's June 30, 2003 report, no BearingPoint exceptions related to PMR 5-4. June 30 BearingPoint Report at 183-94; Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 130. No commenter has cited PMR 5-4 issues as a ground for denying Michigan Bell's application.

[102] Although BearingPoint does not itself adopt this threshold, it has validated Michigan Bell's assertions that the remaining mismatches fell within a 5 percent standard of error. *See* Michigan Bell Ehr/Fioretti Supplemental Aff. at Attach. C, Attach. D. The metrics for which the disparity was greater than 5 percent included PM 1.2 (Accuracy of Actual LMU Info Provided for DSL Orders Manually), PM 37 (Trouble Report Rate), PM 37.1 (Trouble Report Rate Net of Install & Repeat Reports), PM 58 (% SBC/Ameritech Caused Missed Due Dates), PM 114 (% Premature Disconnects (Coordinated Cutovers)), PM 114.1 (CHC/FDT LNP w/ Loop Provisioning Interval), PM 115 (% of SBC/Ameritech Caused Delayed Coordinated Cutovers), and PM 115.1 (% Provisioning Trouble Reports).

[103] The affected metrics were PM 114 (% Premature Disconnects (Coordinated Cutovers)), PM 114.1 (CHC/FDT LNP w/ Loop Provisioning Interval), PM 115 (% of SBC/Ameritech Caused Delayed Coordinated Cutovers), and PM 115.1 (% Provisioning Trouble Reports).

[104] *See* Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 141

applicable service delivery organization."[105] BearingPoint has closed the observation associated with these mismatches as "satisfied," and there is no evidence suggesting that the problem has affected data for the months at issue here. Thus, these four items do not undermine the accuracy or reliability of the four affected measures, much less that of Michigan Bell's data more generally.

37. Second, two of the material mismatches (relating to PM 1.2 (Accuracy of Actual LMU Info Provided for DSL Orders Manually) and PM 58 (% SBC/Ameritech Caused Missed Due Dates)) appear to have resulted from BearingPoint's improper application of the relevant business rules. In both of these cases, Michigan Bell has worked with BearingPoint to resolve the misinterpretation, and BearingPoint is in the process of retesting Michigan Bell's figures.[106] Under these circumstances, we cannot find that BearingPoint's inability to replicate the two measures in question undermines the accuracy or reliability of the two affected measures, or that of Michigan Bell's data more generally.[107]

38. Finally, the remaining two mismatches (relating to PM 37 (Trouble Report Rate) and PM 37.1 (Trouble Report Rate Net of Install & Repeat Reports)) appear to have resulted from a combination of BearingPoint's improper application of the relevant business rules and Michigan Bell's use of incorrect records while calculating the measures. Michigan Bell corrected the errors beginning with the February 2003 data, meaning that they should not affect the data for the months at issue in this application.[108] BearingPoint is now retesting these measures. Given Michigan Bell's efforts to remediate the problems identified, and the record evidence suggesting that those errors have not infected the data at issue here, we find that these mismatches do not undermine the accuracy or reliability of Michigan Bell's data.

39. *PMR 5-3*. PMR 5-3 comprises BearingPoint's analysis of whether Michigan Bell calculates performance results in accordance with the applicable business rules. As of BearingPoint's June 30, 2003 report, only two BearingPoint exceptions related to PMR 5-3.[109] The first, Exception 111, cited improper treatment of certain order types in the calculation of performance measures 66 through 68, which address the timeliness of repairs to unbundled loops.[110] Michigan Bell argues that it has responded to BearingPoint's finding by implementing

---

[105] *See* Michigan Bell July 10 *Ex Parte* Letter, Attach. Ev2 at 7.

[106] *See id*. at 1-2.

[107] As explained below, moreover, we do not rely on PM 1.2 in approving this application. *See infra* Part IV.B.2.b

[108] *See* Michigan Bell July 10 Ex Parte Letter, Attach. Ev2 at 3-4. Moreover, Michigan Bell has restated data for the months reviewed by BearingPoint. *See id.*

[109] June 30 BearingPoint Report at 174; Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 129.

[110] *See* Exception 111 v.2 (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20111v2.pdf*).

process enhancements and clarifying its business rules.[111] No commenter disputes this claim. The second exception, Exception 113, involved a dispute between BearingPoint and Michigan Bell regarding interpretation of the rules governing PM 2, which calculates the speed of responses to pre-order inquiries.[112] Michigan Bell states that it has recently clarified the rule to reflect its interpretation, and that the Michigan Commission has approved the clarification.[113] Again, no commenter has contested Michigan Bell's claims.

4. Conclusion

40. In sum, we conclude that the E&Y audit stands as *prima facie* evidence that Michigan Bell's data are, on the whole, accurate and reliable, and that BearingPoint's specific criticisms do not rebut this conclusion. In those cases where BearingPoint has identified specific concerns that it believes would likely affect performance measures critical to our evaluation, the problems cited generally either do not affect the data for the months at issue, have been remedied by Michigan Bell, or are not material under the standards this Commission has employed in prior proceedings. We therefore believe that the commercial performance data before us form an adequate evidentiary basis on which we can render judgments regarding Michigan Bell's satisfaction of the competitive checklist.

B. Checklist Item 2 – Unbundled Network Elements

1. Pricing of Unbundled Network Elements

41. Checklist item 2 of section 271 states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act.[114] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[115] Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, must be based on the cost of providing the network elements, and may include a reasonable profit.[116] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long-run

---

111 *See* Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 129; Exception 111 v.2 Disposition (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20111v2%20Disposition%202.pdf*).

112 Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 129; Exception 113 v.2 (available at *http://www.osstesting.com/Documents/Exceptions/Exception%20113v2.pdf*).

113 Michigan Bell Ehr/Fioretti Supplemental Aff. at para. 129 & n.74.

114 47 U.S.C. § 271(c)(2)(B)(ii).

115 47 U.S.C. § 251(c)(3).

116 47 U.S.C. § 252(d)(1).

incremental cost (TELRIC) of providing those elements.[117]

42. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state's pricing determinations.[118] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[119] We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

43. The analytical framework we employ to review section 271 applications in these situations is well established. As the Commission's previous decisions make clear, a BOC may submit as part of its *prima facie* case a valid pricing determination from a state commission. In such cases, we will conclude that the BOC meets the TELRIC pricing requirements of section 271 unless we find that the determination violates basic TELRIC principles or contains clear errors of fact on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.[120] Once the BOC makes a *prima facie* case of compliance, the objecting party must proffer evidence that persuasively rebuts the BOC's *prima facie* showing. The burden then shifts to the BOC to demonstrate the validity of its evidence or the state commission's approval of the disputed rate or charge.[121] When a party raises a challenge related to a pricing issue for the first time in the Commission's section 271 proceedings without showing why it was not possible to raise it before the state commission, we

---

[117] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515. Last year the Supreme Court upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs. *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 523 (2002). The Commission recently has initiated a proceeding to review its TELRIC rules. *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, FCC 03-224 (Sept. 15, 2003).

[118] *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17453, para. 55 (citations omitted) (2001) (*Verizon Pennsylvania Order*) (subsequent history omitted); *see also Sprint Communs. Co. v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001) ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

[119] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55 (citations omitted).

[120] *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12305, para. 68.

[121] *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20635-39, paras. 51-59 (1998) *(BellSouth Second Louisiana Order).*

may exercise our discretion to give this challenge little weight. In such cases, we will not find that the objecting party persuasively rebuts the *prima facie* showing of TELRIC compliance if the BOC provides a reasonable explanation concerning the issue raised by the objecting party.

44. With these principles in mind and after thoroughly reviewing the record in this application, we find that Michigan Bell's UNE rates in Michigan are just, reasonable, and nondiscriminatory, and satisfy checklist item 2. Before we discuss commenters' arguments and our conclusions, we summarize the pricing proceedings in Michigan.

a. Background

45. The Michigan Commission set UNE rates for Michigan Bell after an extensive review process through several pricing proceedings, as summarized below. The UNE rates in effect have all been approved by the Michigan Commission on a total service long run incremental cost (TSLRIC) basis, consistent with TELRIC methodology.[122] The Michigan Commission emphasized that its pricing proceedings "were comprehensive, evaluating [Michigan Bell]'s entire Michigan network and all services."[123]

46. After the issuance of the Commission's *Local Competition First Report and Order*, the Michigan Commission initiated its First Biennial Cost Docket, Case No. U-11280, to review the cost studies underlying Michigan Bell's prices for UNEs, interconnection, resale, and basic local exchange services.[124] This proceeding culminated in the Michigan Commission's *Generic Cost Order* on July 14, 1997, in which the Michigan Commission evaluated a number of Michigan Bell inputs such as cost of capital, fill factors, depreciation asset lives, nonrecurring charges, and shared and common costs.[125]

47. In the Second Biennial Cost Docket, Case No. U-11831, Michigan Bell submitted new cost studies addressing the network elements that the Michigan Commission and the Commission ordered unbundled at the time of filing, as well as caged, cageless, and virtual

---

[122] Michigan Commission Comments at 49; *see also Verizon Pennsylvania Order,* 16 FCC Rcd at 17454, para. 56 (approving Pennsylvania Commission's use of TSLRIC methodology).

[123] Michigan Commission Comments at 49.

[124] Michigan Bell Application, App. L, Tab 3, *In the Matter, on the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs and to Determine the Prices of Unbundled Network Elements, Interconnection Services, Resold Services, and Basic Local Exchange Services for Ameritech Michigan,* Case No. U-11280 (*Michigan Commission 1997 TSLRIC Proceeding*), Order Initiating Proceedings (Dec. 12, 1996); *see also* Michigan Bell Application at 31-33; Michigan Commission Comments at 49.

[125] Michigan Bell Application, App. L, Tab 5, *Michigan Commission 1997 TSLRIC Proceeding,* Opinion and Order (July 14, 1997). Michigan Bell revised its cost studies to conform to the *Generic Cost Order,* after which the Michigan Commission granted partial rehearing in September 1997 and further rehearing in January 1998. *See* Michigan Bell Application at 31-33; Michigan Bell Application, App. L, Tab 6, *Michigan Commission 1997 TSLRIC Proceeding,* Order Granting Rehearing in Part (Sept. 30, 1997); and Michigan Bell Application, App. L, Tab 7, *Michigan Commission 1997 TSLRIC Proceeding,* Order on Rehearing (Jan. 28, 1998).

collocation and reciprocal compensation.[126] This proceeding resulted in a final order on August 31, 2000.[127] As a result of this proceeding, the Michigan Commission required Michigan Bell to revise certain cost studies and implement a new collocation cost model.[128] The Michigan Commission first established the relevant rates for UNE combinations in this proceeding.[129]

48. The Michigan Commission set rates for other UNEs through a series of proceedings. In response to the Commission's *UNE Remand Order*[130] and *Line Sharing Order*,[131] the Michigan Commission established costs for new UNEs, including DS3 loops, standard xDSL loop conditioning, loop qualification, subloops, dark fiber, and for the high-frequency portion of the loop UNE in March 2001, in Case No. U-12540.[132] The Michigan Commission set rates for shared transport in conjunction with unbundled local switching in Case No. U-12622.[133] In June 2002, the Michigan Commission established UNE rates for the branding of operator service (OS) and directory assistance (DA) calls, and for the Customer Name Database downloads.[134]

49. The Michigan Commission recently addressed non-recurring charges (NRCs) in the *Second Cost Order*.[135] For a UNE-P migration, a single NRC must be applied, while for a non-migration installation, Michigan Bell may only charge the NRC for one of the underlying

---

126 *See* Michigan Bell Application at 33-34.

127 Michigan Bell Application, App. L, Tab 10, Opinion and Order, *In the Matter, on the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs for All Access, Toll, and Local Exchange Services Provided by Ameritech Michigan,* Case No. U-11831 (*Michigan Commission 1999 TSLRIC Proceeding*), Opinion and Order (Aug. 31, 2000) (*Michigan Commission Second Cost Order*); *see also* Michigan Bell Application, App. L, Tab 8, *Michigan Commission 1999 TSLRIC Proceeding,* Opinion and Order (Nov. 16, 1999); and Michigan Bell Application, App. L, Tab 9, *Michigan Commission 1999 TSLRIC Proceeding,* Opinion and Order (May 3, 2000).

128 *See* Michigan Bell Application at 34.

129 *See* Michigan Bell Application, App. A, Vol. 4, Tab 10, Affidavit of Kelly Ann Fennell (Michigan Bell Fennell Aff.) at paras. 6 and 17. The rates for UNE combinations were also addressed more recently in Case No. U-12320. *Id.* at paras. 7, 18, 44-45.

130 *UNE Remand Order,* 15 FCC Rcd 3696.

131 *Line Sharing Order*, 14 FCC Rcd 20912.

132 Michigan Bell Fennell Aff. at para. 13; *see also* Michigan Bell Application, App. A, Vol. 4, Tab 11, Affidavit of Richard J. Florence (Michigan Bell Florence Aff.) at para. 38; Michigan Bell Application at 34-35.

133 Michigan Bell Fennell Aff. at para. 14; *see also* Michigan Bell Florence Aff. at para. 39.

134 Michigan Bell Fennell Aff. at paras. 13, 16; *see also* Michigan Bell Application, App. L, Tab 43, *Application of Ameritech Michigan for Approval of Cost Studies Related to Calling Name Database Download and Branding of Operator Services and Directory Assistance Calls Delivered Over Shared Trunks,* Case. No. U-13347, Opinion and Order (June 21, 2002).

135 *See Michigan Commission Second Cost Order* at 10.

UNEs of the UNE-P – either the loop or the port.[136] In Case No. U-12320, the Michigan Commission determined that Michigan Bell may assess, as the NRC for a requested new combination, the NRC associated with one of the underlying UNEs comprising either a new UNE-P or a new enhanced extended link (EEL).[137] With respect to charges for conversion scenarios involving line sharing, the Michigan Commission concluded that when an end user receiving data service via a line sharing arrangement switches to a voice competitive LEC, the voice competitive LEC should pay the same NRC as if it had migrated the voice service to a UNE-P when no line-sharing arrangement is present.[138] The Michigan Commission also determined that the data competitive LEC would incur whatever costs may be associated with continuing its data service via line splitting with the new voice competitive LEC establishing its data service on a separate loop, or discontinuing its data service.[139]

b. Application of TELRIC Standard

50. Based on the evidence in the record, we find that Michigan Bell's charges for UNEs made available to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2. We find that the Michigan Commission followed basic TELRIC principles. As discussed above, the orders of the Michigan Commission provide numerous indicia that it followed a forward-looking approach that is consistent with TELRIC. We find that the Michigan Commission has worked diligently to set UNE rates at TELRIC levels. No commenter raises any checklist item 2 pricing issues in connection with Michigan Bell's UNE rates, except as discussed below.

c. Pricing of Directory Assistance Listings

51. CLECA argues that Michigan Bell does not provide directory assistance listings (DAL) at TELRIC rates.[140] We find that CLECA fails to allege a TELRIC violation that would

---

[136] *See* Michigan Bell Fennell Aff. at paras. 17-18, 41-43; *see also Michigan Commission Second Cost Order* at 10.

[137] *See* Michigan Bell Fennell Aff. at paras. 18, 44-45.

[138] *See* Michigan Bell Application, App. C, Tab 103, *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, Opinion and Order (Oct. 3, 2002) (*Michigan Line Sharing Order*); *see also* Michigan Bell Fennell Aff. at para. 19.

[139] *See Michigan Line Sharing Order* at 16; Michigan Bell Application, App. A, Vol. 1, Tab 5, Affidavit of Carol A. Chapman, at para. 89 (Michigan Bell Chapman Aff.).

[140] Although CLECA did not specifically raise this issue in its supplemental comments in the *Michigan II* proceeding, CLECA incorporated its prior comments by reference. CLECA Supplemental Comments at 24; CLECA Comments at 12-13. However, CLECA did not fully address the issue, instead relying upon arguments in MCI's (f/k/a WorldCom) comments from the *Michigan I* proceeding. CLECA Comments at 12-13. Therefore, to address CLECA's arguments completely, we must consider MCI's comments.

Because SBC does not provide customized routing, the Michigan Commission has required Michigan Bell to provide directory assistance listings as a UNE. MCI Comments at 20, n.45; *see also In the matter, on the* (continued….)

cause Michigan Bell to fail this checklist item.[141] Specifically, MCI alleges that the cost study underlying the DAL rates fails to spread the costs across all users of DAL, including Michigan Bell's own retail customers and those of its affiliates.[142] MCI states that Michigan Bell submitted this cost study to the Michigan Commission in December of 1999, and asserts that the Michigan Commission "rejected" the DAL cost study for that reason.[143] MCI further argues that despite this ruling, Michigan Bell submitted a UNE tariff for DAL in April 2002 based on the same "rejected" cost study.[144] MCI contends that the Michigan Commission then erred by approving the tariffed UNE rate, because it was based on the same December 1999 cost study.[145] MCI has requested that the Michigan Commission reconsider its ruling.[146]

52. We find that the Michigan Commission has made a valid determination that DAL prices are compliant, and find no violation of any basic TELRIC principles or any clear errors of fact.[147] The only alleged TELRIC error MCI raises with respect to DAL prices is Michigan Bell's failure to include "its own retail customers and those of its affiliates" in the DAL cost study.[148]

(Continued from previous page)
Commission's Own Motion, to Consider SBC's f/k/a Ameritech Michigan, compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996, Case No. U-12320, Opinion and Order at 14-16 (Dec. 20, 2001) (citing *UNE Remand Order,* 15 FCC Rcd at 3884, para. 444). Michigan Bell emphasizes it does not concede that the Michigan Commission's requirement that Michigan Bell provide DAL at cost-based rates is either lawful or relevant to compliance with section 271. Michigan Bell Reply at 48. We need not reach the issue of whether, under these circumstances, Michigan Bell is required under federal law to provide DAL as a UNE, because, as explained below, Michigan Bell has demonstrated that it is providing DAL at TELRIC-based rates approved via a valid pricing determination through the Michigan Commission, and commenters have not persuasively rebutted that showing.

[141] CLECA frames this argument as a violation of checklist item 7, while MCI appears to frame this argument as a UNE pricing issue. *See* CLECA Comments at 12-13; MCI Comments at 20-22. We conclude that there is no evidence in the record that warrants disapproval of this application based on such contentions, whether couched as a violation of checklist item 2 or of checklist item 7.

[142] Letter from Keith L. Seat, Senior Counsel, Federal Advocacy, MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 3 (filed Feb. 26, 2003) (MCI February 26 *Ex Parte* Letter) *see also* MCI Comments at 21 & Attach. D.

[143] MCI Comments at 21-22 & Attach. E, Attach. F.

[144] *Id.* at 22.

[145] *Id.* (citing Michigan Commission Comments at 108-09).

[146] *Id*; *see also* CLECA Comments at Attach. 3 (WorldCom Petition for Rehearing re: DAL Rates, filed with the Michigan Commission on January 24, 2003).

[147] *See* Michigan Commission Comments at 108-9; Michigan Commission Reply at 7-8 (explaining that issues related to DAL services, including the cost of such services, have been addressed in at least five docketed proceedings before the Michigan Commission and in court appeals of some of the orders issued in those proceedings). See Michigan Commission Reply at 8-10 for a detailed history of the Michigan Commission's proceedings related to DAL and DA services.

[148] MCI Reply at 24; *see also* MCI February 26 *Ex Parte* Letter at 3; MCI Comments at 21 & Attach. D.

As explained by both the Michigan Commission and Michigan Bell, however, because DAL is purchased as a complete database by LECs for use in their provision of directory assistance, DAL is a wholesale product with no retail DAL customers. Accordingly, there are no retail customers over which the costs must be spread.[149] Furthermore, MCI is wrong in its contention that the Michigan Commission rejected Michigan Bell's December 1999 DAL cost study. The Michigan Commission only ordered revisions to Michigan Bell's DA services (and not DAL) cost study, which Michigan Bell submitted in October of 2000.[150] Indeed, no party submitted any comments to Michigan Bell's October 2000 cost study, which included changes to the DA services portion of the cost study, but no changes to the DAL portion.[151] Accordingly, we find that commenters have failed to demonstrate a violation of checklist item 2.

d. Potential Future Price Increase

53. We reject the argument made by the CLECA that Michigan Bell's proposal to the Michigan Commission to increase its UNE prices precludes a finding of compliance with checklist item 2 or the Act's public interest requirement.[152] The CLECA contends that because the Michigan Commission has opened a proceeding on this issue, the "permanence" of Michigan Bell's UNE rates is an open question, and higher UNE prices may result in a "price squeeze."[153] There is no evidence that these filings have any impact on the rates currently in place and on which Michigan Bell is relying in support of its application. We have repeatedly held that "a BOC's submission of new cost data in an ongoing rate case does not prove that existing rates are outside a TELRIC range. . . . [W]e perform our section 271 analysis based on the rates before us."[154] Under section 271(d)(6)(A), we have the authority to review any future rate increases implemented by Michigan Bell.[155] If we determine that future rate increases are not TELRIC-compliant, we may suspend the rates, suspend or revoke Michigan Bell's section 271 authority,

---

149 Michigan Commission Reply at 8-9; Michigan Bell Reply at 45-46. The DAL service is different from the Directory Assistance (DA) service, which is offered on both a wholesale and retail basis and provides end user customers with access to individual directory listings from the company's database. Michigan Commission Reply at 8 n. 11; *see also* Michigan Bell Reply at 45.

150 Michigan Commission Reply at 8-9; Michigan Bell Reply at 45.

151 Michigan Commission Reply at 9.

152 CLECA Comments at 21-23.

153 *Id.*

154 *SBC California Order,* 17 FCC Rcd at 25668-69, para. 41; *see also SWBT Texas Order*, 15 FCC Rcd at 18394, para. 87 ("We again conclude that the section 271 process could not function as Congress intended if we adopted a general policy of denying any section 271 application accompanied by unresolved pricing and other intercarrier disputes. . . . If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome.")

155 47 U.S.C. § 271(d)(6)(A).

or impose other penalties.[156]

54. Similarly, we reject NALA's argument that SBC's imposition of a flat-rate OSS charge in other states is anticompetitive or discriminatory in Michigan.[157] NALA asserts that SBC imposes a charge of approximately $3,200 per month for access to OSS in Arkansas, Kansas, Missouri, Oklahoma, and Texas, and that SBC could assess a similar charge in Michigan.[158] As discussed above, we perform our analysis of a BOC's compliance with section 271 on the existing rates in the state at issue. Currently, Michigan Bell does not impose in Michigan the flat-rate OSS charge about which NALA complains. Therefore, the existence of this rate in other SBC states is not a basis for denying Michigan Bell section 271 authorization in Michigan.

2. Access to Operations Support Systems

55. Under checklist item 2 of section 271, a BOC must demonstrate that it provides nondiscriminatory access to its OSS – the systems, databases, and personnel that the BOC uses to provide service to customers.[159] Based on the evidence in the record, we find, as did the Michigan Commission,[160] that Michigan Bell is providing competitors nondiscriminatory access to OSS in compliance with checklist item 2. Consistent with past practice, we consider the entire record, including commercial performance and third-party testing, and focus our review on specific issues in controversy or areas where Michigan Bell fails to satisfy performance standards. As in prior section 271 orders, we do not address every aspect of Michigan Bell's performance where our review of the record satisfies us that Michigan Bell's performance is in compliance with the relevant parity and benchmark performance standards established in Michigan.[161] Instead, we focus our discussion on those areas where the record indicates discrepancies in Michigan Bell's performance that might show discrimination. As explained in prior section 271 orders, in making our assessment, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete. Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.[162]

---

156 *Id*.

157 NALA Supplemental Comments at 7-8.

158 *Id*.

159 *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83.

160 *See* Michigan Commission Comments at 76.

161 *See, e.g., Qwest Minnesota Order* at para. 15; *SBC California Order*, 17 FCC Rcd. at 25719-20, para. 124); *Verizon Connecticut Order*, 16 FCC Rcd 14147, 14151-52, para. 9; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9144, para. 219.

162 *See Qwest Minnesota Order* at para. 18; *Verizon Massachusetts Order*, 16 FCC Rcd 8988, 9055-56, para. 122.

a. Independent Third-Party Testing

56. As the Commission has held in prior section 271 proceedings, the persuasiveness of a third-party OSS review depends upon the conditions and scope of the review.[163] Based on our review of the evidence in the record describing the test process, and the evaluation that the Michigan Commission offered, we find that the third-party OSS test was broad and objective and provides meaningful evidence that is relevant to our analysis of Michigan Bell's OSS. The results of this test support our finding that Michigan Bell provides nondiscriminatory access to its OSS.

57. In August 2000, the Michigan Commission and Michigan Bell hired BearingPoint to conduct a third-party test of Michigan Bell's OSS.[164] The BearingPoint OSS evaluation covered 498 separate test criteria relating to pre-ordering, ordering, provisioning, maintenance and repair, billing, and relationship management and infrastructure.[165] The BearingPoint review included three major test families: transaction verification and validation, processes and procedures review, and performance metrics audit review.[166] BearingPoint examined documentation provided by Michigan Bell to competitive LECs, reviewed processes and procedures used by Michigan Bell, interviewed Michigan Bell personnel, and submitted test transactions to Michigan Bell.[167] In performing the third-party OSS test, BearingPoint took precautions to maintain the blindness and independence of the testing process. For example, BearingPoint relied on publicly available documents and processes, employed a pseudo-competitive LEC to place orders, arranged for its phone calls with Michigan Bell to be monitored randomly by the Michigan Commission, and conducted weekly conference calls with competitive LECs during which the competitive LECs could obtain information regarding the test process and raise concerns with BearingPoint.[168] The BearingPoint analysis employed a "military-style" test-until-pass methodology.[169] As explained above, competitive LECs participated in the design of the BearingPoint test.[170] Competitive LECs also provided live test

---

163 *See, e.g.*, *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services, in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, 18 FCC Rcd at App. F, para. 31 (*Qwest 3-State Order*); *SBC California Order*, 17 FCC Rcd at 25685, para. 73; *Ameritech Michigan Order*, 12 FCC Rcd at 20659, para. 216.

164 *See* Michigan Bell Cottrell Aff. at para. 25. Hewlett Packard Company also participated in the testing. *See id.*

165 *See supra* paras. 13-40 (discussing the evidentiary case).

166 *See* Michigan Bell Cottrell Aff. at para. 26.

167 *See id.* at para. 30.

168 *See id.* at para. 32.

169 *See id.* at para. 34.

170 *See supra* paras. 13-40 (discussing the evidentiary case); *see also* Michigan Bell Cottrell Aff. at para. 36.

cases as the evaluation progressed.[171]

58. BearingPoint filed its final update on its Michigan OSS Operational tests on April 30, 2003. In all, Michigan Bell satisfied 469 out of the 498 applicable test criteria – a success rate of over 94%.[172] We conclude that the BearingPoint results provide important evidence that Michigan Bell is providing nondiscriminatory access to its OSS. Below, we address Michigan Bell's commercial performance with respect to each of the key OSS functions, and any issues raised by commenters in each area.

b. Pre-Ordering

59. We find that Michigan Bell provides carriers in Michigan with nondiscriminatory access to all pre-ordering functions. In this section, we describe Michigan Bell's pre-ordering systems, address its performance, and reject commenters' criticisms regarding the availability of Michigan Bell's pre-ordering interfaces and the accuracy of its loop qualification database.

60. Competing carriers have access to three principal electronic interfaces, including Enhanced Verigate, which is a graphical user interface, as well as EDI and CORBA, which are application-to-application interfaces.[173] Enhanced Verigate provides competitive LECs with "real time" access to pre-order functionality on a "dial-up" or a "direct connection" basis. EDI and CORBA also provide "real time" access, but on a "direct connection" basis only.[174] Competing carriers are able to use any of the three interfaces to perform all of the key functions identified in prior section 271 orders.[175]

61. Performance data show that Michigan Bell generally meets every benchmark and achieves parity with every Michigan Bell retail analog, confirming that competitors enjoy

---

171 *See* Michigan Bell Cottrell Aff. at para. 35.

172 Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 5.

173 Michigan Bell Cottrell Aff. at para. 108.

174 *See id*. Dial-up connection is initiated in the same manner that an individual would use to dial into an Internet Service Provider. Direct connection is available to any competitive LEC that provisions a private circuit between its location and Michigan Bell's systems. *See id.* at para. 100.

175 *See SBC California Order*, 17 FCC Rcd at 25690 para. 81; *SWBT Texas Order*, 15 FCC Rcd at 18427, para. 209. Michigan Bell's pre-ordering systems allow carriers to perform functions required by our section 271 orders and some additional functions. The functions Michigan Bell's pre-ordering systems provide include the ability to: (1) retrieve customer service information (CSIs); (2) validate addresses; (3) select, reserve, and cancel telephone numbers; (4) obtain information on pooled telephone numbers; (5) determine services and features available to a customer; (6) obtain due date availability; (7) access loop qualification information; (8) view a customer's directory listing; (9) determine dispatch availability; (10) retrieve local primary intraLATA carrier and primary interexchange carrier lists; (11) access the Common Language Location Identifier code; (12) verify connecting facility assignments; (13) validate network channels and network channel interfaces; (14) determine order status and provisioning order status; and (15) perform a remote access to call forwarding inquiry. *See* Michigan Bell Cottrell Aff. at para. 109.

nondiscriminatory access to Michigan Bell's pre-order databases.[176] We also conclude that Michigan Bell provides competitive LECs with the information necessary to integrate its pre-ordering and ordering systems. Specifically, Michigan Bell's three pre-ordering interfaces provide "parsed" customer service information pursuant to the guidelines of the ordering and billing forum (OBF) – that is, information divided into identifiable fields.[177] As the Commission previously has held, a BOC's provision of pre-ordering information in a parsed format is a strong indicator that competitive LECs can integrate Michigan Bell's systems.[178] In addition, Michigan Bell explains that the three pre-ordering interfaces offer complete synchronization of every OBF-defined pre-ordering field, and certain additional nondefined pre-ordering fields, with the associated ordering fields.[179]

62. *Pre-Ordering Interface Availability*. We reject AT&T's claims that outages it has experienced in Michigan Bell's pre-ordering interfaces demonstrate that competitive LECs do not receive nondiscriminatory access to Michigan Bell's OSS. Specifically, AT&T states that from October 2002 through February 2003, its customer representatives were unable to access the CORBA interface for about 13.5 hours during the final three months of 2002.[180] We agree with Michigan Bell, however, that its performance provides no basis for a conclusion that pre-order outages have produced competitive harm. Michigan Bell's evidence indicates that across all competitive LECs, the CORBA system was down for only about five hours overall during the

---

[176] *See* Michigan Bell Ehr Aff. at paras. 38-39; Michigan Bell Ehr Supplemental Aff. at paras. 3-5; *see also* App. B. Michigan Bell has submitted actual commercial data for almost 125 submeasures relating to the timeliness, accuracy and availability of Michigan Bell's pre-ordering systems. With almost no exceptions, Michigan Bell satisfies all applicable metrics in the PM 1, PM 4, and PM MI 10 families – which measure timeliness of responses to pre-order queries, the availability of pre-ordering databases, and the incidence of "time-out" transactions – in all five relevant months.

[177] Michigan Bell Cottrell Aff. at paras. 122-23.

[178] *See SBC California Order*, 17 FCC Rcd at 25690-91, para. 82; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9078, para. 120.

[179] This means that OBF-defined pre-ordering fields and certain additional fields can be stored and automatically populated on associated ordering fields on the LSR without requiring a competitive LEC to adjust and/or reconfigure characters. *See* Michigan Bell Cottrell Aff. at para. 124.

[180] *See* Joint Supplemental Declaration of Sarah DeYoung and Walter W. Willard at para. 99 (AT&T DeYoung/Willard Joint March 15 Decl.), in Letter from Richard E. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 25, 2003) (AT&T March 25 *Ex Parte* Letter). In numerous filings, AT&T stated the duration of the CORBA interface's unavailability in terms of "user hours" – a figure derived by multiplying the number of hours for which the interface was unavailable by the number of AT&T representatives logged onto the system. *See* AT&T Comments at 11-12; AT&T DeYoung/Willard Decl. at paras. 52-53; AT&T Reply Comments at 14; AT&T DeYoung/Willard Reply Decl. at para. 57. AT&T did not provide specific details regarding the calculation of these "user hours." We question the propriety of the "user hours" approach. Multiplying the amount of time the interface was unavailable by the number of AT&T service representatives on duty might provide evidence relevant to the inconvenience suffered by AT&T, but it does not provide useful information as to the availability of the interface itself. Provided Michigan Bell's system has been engineered to handle a sufficient number of users (and we have received no evidence suggesting otherwise), AT&T's user hour calculation would appear to exaggerate the magnitude of the problem.

last three months of 2002.[181] Further, performance metric PM 4-17, which measures availability of the CORBA system, indicates that Michigan Bell generally met the relevant benchmark – 99.5 percent availability – in the five relevant months under consideration here.[182] AT&T has not otherwise demonstrated competitive harm – indeed, it has not cited any outages during the months at issue here.[183] Thus, we conclude that Michigan Bell's pre-ordering interface allows meaningful competition.

63. *Loop Qualification*. We also find, as did the Michigan Commission,[184] that Michigan Bell provides competitive LECs with nondiscriminatory access to loop qualification information.[185] Specifically, we find that Michigan Bell provides competitors with access to all

---

[181] Michigan Bell Cottrell/Lawson Reply Aff. at para. 82. In calculating interface availability, Michigan Bell considers outages that affect only certain aspects of the interface and outages that affect only certain competitive LECs, deriving a weighted average of availability across all competitors. *See* Michigan Bell March 17 *Ex Parte* Letter, Attach. A at 7. Thus, AT&T's claim that it experienced outages for about 13.5 hours over the final three months of 2002 is consistent with Michigan Bell's claim that on average, that system was down for less than half that amount of time. Indeed, Michigan Bell's evidence suggests that to the extent AT&T experienced more outages than the average competitive LEC, such outages were at least in part attributable to coding errors in AT&T's own systems. *See id.* at 5.

[182] *See* PM 4-17 (OSS Interface Availability -- CORBA Pre-Order). We note that in April and June, Michigan Bell missed the relevant 99.5% benchmark by 0.43% and 0.06%, respectively. Such narrow misses are competitively insignificant. AT&T contends that BearingPoint's Exception 188, which found errors in Michigan Bell's documentation for various metrics, prevents reliance on PM 4-17. *See* AT&T DeYoung/Willard Joint March 15 Decl. at para. 97; AT&T Moore/Connolly/Norris Reply Decl. at paras. 32-33. As explained above, however, we do not believe that Exception 188, on its own, casts doubt on the accuracy or reliability of Michigan Bell's performance data. *See supra* para. 31.

[183] In an *ex* parte filed September 12, 2003, AT&T raises issues regarding more recent CORBA outages. Letter from James P. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (filed Sept. 12, 2003) (AT&T September 12 *Ex Parte* Letter). Many of those outages are not within the five-month period of performance under our review. Moreover, as AT&T acknowledges, these outages were brought to our attention too late in the proceeding – just five days prior to the 90-day statutory deadline – for our full consideration of the issue.

[184] Michigan Commission Comments at 88.

[185] *See, e.g.*, PM 1.1 (Avg Response Time for Manual Loop Make-up Information); PM 1.2 (Accuracy of Actual LMU Info Provided for DSL Orders); PM1.3 (Accuracy of Actual LMU Info Provided for DSL Orders); PM 2 (% Responses Received). Although Michigan Bell missed two loop makeup information timeliness metrics for several months, we find that Michigan Bell's overall performance nonetheless remained high. Michigan Bell missed the 95% benchmark for PM 2-42 (% Responses Received within 30 seconds; OSS Interface; Actual LMU Information Requested (5 or less loops searched)) by an average of 11 percentage points for February through May 2003. However, this appears primarily to be attributable to a difficulty in disaggregating the data, and not due to a problem with actual performance. Michigan Bell states that the system changes necessary to monitor performance for searches of five or fewer loops were not in place until April 7, 2003. Michigan Bell Ehr. Supplemental Aff. at para. 19. Thus, searches of more than five loops, which are expected to take longer, were included with the results for searches of five or fewer loops up to that date. Michigan Bell's performance in May, following that correction, showed that it only missed the 95% benchmark by less than 1 percentage point, and it met the benchmark in June. *See* App. B. Given this upward trend, we find the misses to be competitively insignificant. Although Michigan Bell also missed the applicable 95% benchmark for PM 2-43 (% Responses Received within 60 seconds; OSS Interface; (continued….)

of the same detailed information about the loop that is available to itself and in the same time frame as any of its personnel obtain it.[186]

64. We reject TDS Metrocom's criticisms of Michigan Bell's loop qualification performance because those allegations, even if true, would fail to show discrimination. TDS Metrocom maintains that much of Michigan Bell's loop qualification information is inaccurate based on a comparison to data from Michigan Bell's DSL Tracking Inquiry (DTI) application and on TDS Metrocom's own field tests.[187] As an initial matter, Michigan Bell explains that it provides both its advanced services affiliate and unaffiliated competitive LECs access to the same loop qualification information through the same electronic and manual processes.[188] As the Commission has previously held, any inaccuracies or omissions in a BOC's database are not discriminatory to the extent they are provided in the exact same form to both retail and wholesale customers.[189] Moreover, it is not clear that the loop qualification data provided by Michigan Bell is as inaccurate or unreliable as TDS Metrocom alleges. Michigan Bell explains that the outputs of DTI should not be expected to perfectly match Michigan Bell's loop qualification data because DTI is not intended to be used for loop qualification. Instead, DTI is designed to provide only general information about facilities in geographic areas to assist competitive LECs in determining whether those areas theoretically could be suitable for marketing DSL.[190] Michigan Bell further argues that TDS Metrocom overstates alleged discrepancies in actual loop lengths uncovered in TDS Metrocom's "field tests," and that TDS Metrocom fails to consider factors that could account for the limited discrepancies that do exist.[191] We therefore conclude

(Continued from previous page)
Actual LMU Information Requested (greater than 5 loops searched)) by an average of 32 percentage points for April – June 2003, its average performance nonetheless remained better than the 60 second standard. Michigan Bell notes that PM 2-43 accounts for only a small portion of total loop make-up requests, and that the average response time for competitive LECs was seconds in April and 55 seconds in May - better than the 60 second standard. Michigan Bell Ehr Supplemental Reply Aff. para. 20. Accordingly we find these misses to be competitively insignificant.

[186] Michigan Bell Ehr Aff. at paras. 88-93; Michigan Bell Chapman Aff. at paras. 12-26; *see also* PM 1.1 (Avg. Response Time for Manual Loop Make-up Information).

[187] TDS Metrocom Cox Aff. at paras. 22-25.

[188] Michigan Bell Chapman Aff. at paras. 15-21; Michigan Bell Cottrell Aff. at para. 130; Michigan Bell Chapman/Cottrell Reply Aff. at para. 28.

[189] *Qwest 9-State Order,* 17 FCC Rcd at 26345-46, para. 69; *Verizon Massachusetts Order*, 16 FCC Rcd at 9024, para. 66.

[190] Michigan Bell Chapman/Cottrell Reply Aff. at paras. 19-26.

[191] *Id*. at para. 27. In addition, while not relying on the new metric, we note that, in the six-month state collaborative, participating competitive LECs and Michigan Bell agreed to suspend PM 1.2 (Accuracy of Actual LMU Info Provided for DSL Orders) and to replace it with a new, modified metric, PM 1.3 (Accuracy of Actual LMU Info Provided for DSL Orders), to measure Michigan Bell's loop make-up information accuracy. Michigan Bell Feb. 28 *Ex Parte* Letter, Exh. B, Attach. A at 8. Moreover, as noted above, Michigan Bell's loop qualification information is not discriminatory. Thus, we need not rely on PM 1.2 in determining Michigan Bell's compliance with checklist item 2.

that TDS Metrocom's allegations do not warrant a finding of checklist noncompliance.

c. Ordering

65. We find, as did the Michigan Commission,[192] that Michigan Bell satisfies checklist item 2 with regard to ordering. In this section, we first address Michigan Bell's performance and then discuss commenters' arguments that specific weaknesses in Michigan Bell's ordering performance warrant a finding of checklist noncompliance. These criticisms fall into three categories: (1) receipt of improper rejections; (2) Michigan Bell's requirement that carriers issue separate local service requests (LSRs) for multiple lines on a single account; and (3) Michigan Bell's definition of a "project." In each case, we reject commenters' claims that Michigan Bell is failing to provide nondiscriminatory access to its ordering OSS.

66. *Performance Metrics*. We find that Michigan Bell provides nondiscriminatory access to its ordering systems and processes and generally satisfies the performance standards governing the relevant performance measurements.[193] As we explain here, Michigan Bell's failures to satisfy a few ordering-related performance measurements for two or more of the five relevant months do not demonstrate discrimination. For example, although Michigan Bell's flow-through metrics reveal some failures to flow retail orders through its mechanized systems at rates matching the flow-through it achieves for its own retail operations, its wholesale flow-though levels remain within the range we have accepted in past applications.[194] Indeed, the flow-through figures at issue here are almost invariably higher than those at issue in several previous successful applications.[195] Moreover, we do not find Michigan Bell's flow-through rates

---

[192] Michigan Commission Comments at 76.

[193] Michigan Bell generally satisfies most metrics measuring its performance with regard to ordering functions. These include the PM 5, PM 6, PM 7, and PM 8 families (which report timeliness of completion notice delivery), the PM 10 and PM 11 families (which report timeliness of rejection and jeopardy notices), and the PM 13 family (which report flow-through rates).

[194] *See* PM 13-01 (Order Process Percent Flow Through - UNE Loops) (showing wholesale flow-through at levels ranging from 94.16% to 97.13%, resulting in failure to meet the 95% benchmark in only one of the five months at issue, by a margin of only 0.84%); PM 13-02 (Order Process Percent Flow Through – Resale) (showing wholesale flow-through at levels ranging from 87.98% to 91.01%, resulting in failures to achieve parity with retail flow-through in each month by margins ranging from 5.98% to 10.07%); PM 13-03 (Order Process Percent Flow Through - UNE-Ps) (showing wholesale flow-through ranging from 94.12% to 97.16%, resulting in a failure to achieve parity in four of the months at issue by a margin ranging from 0.56% to 3.75%); PM 13-04 (Order Process Percent Flow Through – LNP) (showing wholesale flow-through levels ranging from 91.94% to 97.90%, resulting in failure to achieve parity in three months by margins ranging from 1.1% to 5.93%); PM 13-05 (Order Process Percent Flow Through – LSNP) (showing wholesale flow-through levels ranging from 83.60% to 98.93%, resulting in failure to achieve parity in two of the five months at issue by margins ranging from 3.38% to 12.51%); PM 13-06 (Order Process % Flow Through - Line Sharing) (showing wholesale flow-through levels ranging from 90.17% to 97.46%, resulting in failures to achieve parity in two months by margins of 4.37% and 7.88%).

[195] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4039, 4048, paras. 166 n.512, 181 n. 569 (reporting flow-through rates of 59% to 63% for UNEs and 45% to 54% for resale); *Verizon Massachusetts Order*, 16 FCC Rcd at 9013, para. 49 (reporting total flow-through rates of 54% to 67%); *Application by Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon* (continued….)

concerning given that it consistently returns timely order confirmations and rejection notices,[196] accurately handles manually processed orders, and is able to scale its systems to process orders at projected future transaction volumes.[197] These factors suggest to us that flow-through problems are not competitively significant. Moreover, Michigan Bell has generally satisfied all metrics reporting jeopardy timeliness in each of the months for which they have been in use.[198]

(Continued from previous page)

Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, App. B (2002) (*Verizon Rhode Island Order*) (reporting resale flow-through rates of 42% to 56% and UNE flow-through rates of 60% to 79%); *Application of Verizon New England, Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization Pursuant to Section 271 of the Telecommunications Act of 1996 for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, App. B (2002) (*Verizon Vermont Order*) (reporting resale flow-through rates of 43% to 51% and UNE flow-through rates of 45% to 58%).

[196] Michigan Bell satisfied almost all applicable submeasures in the PM 5 family, which assesses FOC timeliness, in each of the five relevant months. Michigan Bell missed the applicable 95% benchmark for PM 5-14 (% FOCs Returned w/in 5 Bus Hrs; Elec Sub Req; Man Processed; UNE-P Simple Res & Bus) by 3.59% in February and by 2.63% in March. These narrow misses are not competitively significant. Michigan Bell missed by a much wider 18% margin in May, but has explained that this miss resulted from the implementation of a new desktop tool designed to produce more accurate FOCs. This new tool apparently increased the time taken to return manually processed FOCs, and this undermined performance in this area. Michigan Bell has since restricted deployment of the application, and uses it primarily to train its employees. *See* Michigan Bell Ehr Supplemental Reply Aff. at para. 22. Michigan Bell missed the applicable 94% benchmark for PM 5-32 (% FOCs Returned within 24 Clock Hrs; Man Sub Req; Complex Bus (1 to 200 Lines)) by 4% in March, by 0.25% in April, and by 3.09% in June. Michigan Bell emphasizes, though, that volumes for the types of FOCs at issue here are very low, meaning that a relatively small number of late FOCs will result in a failure to meet the benchmark. For example, March performance results reflected only 20 orders, among which two FOCs were late, and April results reflected only 16 orders, among which one FOC was late. *See* Michigan Bell Ehr Supplemental Aff. at para. 22. Michigan Bell missed the applicable 95% benchmark for PM MI 14-04 (% Completion Notifications Returned w/in 2 Hrs of Completion of Maintenance Trouble Ticket; UNE Loops Electronic) by 2.23% in February, 0.26% in April, and 1.13% in May, and missed the applicable 95% benchmark for PM MI 14-04 (% Completion Notifications Returned w/in 2 Hrs of Completion of Maintenance Trouble Ticket; UNE Loops Electronic) by 2.23% in February, 0.26% in April, and 1.13% in May. These narrow misses are not competitively significant. We note, moreover, that commenters here do not raise concerns about the timeliness of completion notices, suggesting that problems in this regard are not resulting in competitively significant harms.

Michigan Bell also satisfied almost all submeasures in the PM 10 and PM 11 families, which measure timely issuance of rejection notices. Michigan Bell did fail to satisfy three measures regarding timely issuance of rejection notices for two of the months at issue here: PM 10.1-01 (% Mechanized Rejects Returned w/in 1 Hour of Receipt of Order), PM 10.2-01 (% Manual Rejects Received Electronically & Returned w/in 5 Hrs), and PM 10.3-01 (% Manual Rejects Received Manually & Returned w/in 5 Hrs). Michigan Bell explains, however, that those metrics have been discontinued by the Michigan Commission and that performance for these measures is now captured by other measures subject to less stringent time demands. *See, e.g.*, Michigan Bell Ehr Supplemental Aff. at para. 25 n.14. Michigan Bell's performance to date under the revised metrics has generally satisfied the new benchmarks.

[197] *See, e.g.*, PM 10-01 (% Mechanized Rejects Returned Within 1 Hour of Receipt of Reject in MOR); PM 112-1 (% Directory Assistance Database Accuracy for Manual Updates).

[198] PM MI 2-16 (% of Orders Given Jeopardy Notices w/in 24 Hours of the Due Date - UNE-P - NFW) first took effect in March 2003.

While Michigan Bell has failed to satisfy one measure in two of the four months for which it has existed,[199] we note that its overall installation timeliness performance has been strong,[200] and conclude that high on-time provisioning performance rates undermine claims of competitive significant harm stemming from untimely jeopardy notices.[201]

67. *Rejections*. We find that Michigan Bell's reject rates are well within the range we have accepted in prior section 271 orders.[202] Although AT&T claims that it experienced a high level of rejections between September 2002 and January 2003,[203] we note that for the relevant five-month period, Michigan Bell's performance has generally improved.[204] At any rate, as explained in previous section 271 orders, the Commission does not perform a parity or direct benchmark analysis of a carrier's rejection rate, in part because a high rejection rate for one carrier does not necessarily indicate flaws in the BOC's OSS systems or processes, but instead could be attributable to the competitive LEC's own errors.[205]

---

[199] Michigan Bell failed to meet the applicable 5% benchmark for PM MI 2-16 (% of Orders Given Jeopardy Notices w/in 24 Hours of the Due Date - UNE-P - NFW) by 17.49% in March and by 2.02% in April, but met the benchmark in May and June, by margins of 3.29% and 3.13%, respectively.

[200] Michigan Bell has missed very few submetrics in the PM 28 family, which measures the percentage of installations performed within the customer-requested due date. *See, e.g.,* PM 28-01 (% Installations Completed Within Customer Requested Due Date - POTS - Res - FW); PM 28-02 (% Installations Completed Within Customer Requested Due Date - POTS - Res - No FW); PM 28-03 (% Installations Completed Within Customer Requested Due Date - POTS - Bus - FW). While Michigan Bell has missed the 97% benchmark for PM 28-04 in four of the last five months, it explains that it has assembled a team of wholesale sales support personnel charged with remedying this weakness, and notes that PM 29-04 (% SBC/Ameritech Caused Missed Due Dates - POTS - Bus - No FW) reflects almost no Michigan Bell-caused missed due dates. *See* Michigan Bell Ehr Supplemental Decl. at para. 165.

[201] In the *SBC California Order*, we concluded that even where Pacific Bell had missed its benchmark for providing competitors with timely jeopardy notices in each of the five months at issue, no competitive harm resulted, because Pacific Bell maintained high on-time provisioning performance rates. *SBC California Order*, 17 FCC Rcd at 25692-93, para. 84.

[202] During the *Qwest 9-State* proceeding, AT&T and other parties argued that Qwest's high overall rejection rate indicated an OSS problem. We explained that high rejection rates do not necessarily demonstrate a problem with the BOC's OSS. Qwest's commercial data showed that about 31% of LSRs submitted over its GUI, and about 22% of LSRs submitted over the EDI interface, were rejected in the relevant months. We found that these rates were within the range found acceptable in prior applications. *See Qwest 9-State Order*, 17 FCC Rcd at 26357, para. 89 n.314. Between February and June 2003, the rate of rejections caused by Michigan Bell errors ranged between 0.14% and 0.23%. These ranges are thus below the rates the Commission found acceptable in the *Qwest 9-State Order*.

[203] *See* AT&T Comments at 12-16.

[204] The rate of Michigan Bell-caused errors was 0.35% in January 2003, 0.23% in February 2003, 0.21% in March 2003, 0.20% in April 2003, 0.14% in May 2003, and 0.16% in June 2003. *See* PM 9-02 (Percent Rejects - Ameritech Caused Rejects (Re-flowed Orders).

[205] *See SBC California Order*, 17 FCC Rcd at 25691-92, para. 83; *SWBT Texas Order*, 15 FCC Rcd at 18442, para. 176. For example, in the *SWBT Texas Order*, the Commission noted that the order rejections varied widely by (continued….)

68. *Separate LSR Requirement*. We reject AT&T's claim that Michigan Bell's ordering system discriminates by requiring competitive LECs, in some cases, to submit separate LSRs for multiple lines on a single account. The Commission has previously rejected the argument that such behavior constitutes discrimination. In the *BellSouth Georgia/Louisiana Order*, we addressed complaints that BellSouth discriminated by requiring competitive LECs to issue multiple LSRs for orders and accounts with multiple lines, even though it did not require multiple orders for its retail customers.[206] The claims raised here are no different, and we therefore cannot conclude here that this process constitutes systematic discriminatory treatment of competitive LEC orders in Michigan.[207]

69. *Project Definition*. Finally, we are not persuaded that TDS MetroCom's argument that Michigan Bell's "woeful OSS documentation" with regard to the definition of a "Project" precludes approval of this application.[208] Specifically, TDS MetroCom states that Michigan Bell had presented to competitive LECs contradictory information regarding whether an order must be processed as a "Project."[209] According to TDS Metrocom, several of Michigan Bell's business rules identify Projects as orders for more than 100 lines, but others refer to Michigan Bell's web site for competitive LECs, which defines Projects as orders for more than twenty lines. Michigan Bell claims that this issue was raised during the recently concluded six-month collaborative meeting between it and the competitive LECs.[210] We agree with Michigan Bell that continued concerns should be addressed in the collaborative forum, not in the context of a section 271 application.

(i) Other Ordering Issues

70. *Line Loss Notification Reports*. We find, as did the Michigan Commission, that Michigan Bell's ability to provide timely, complete, and accurate line loss notifications

(Continued from previous page)
individual carrier, from 10.8% to higher than 60%, but concluded that these overall reject rates did not appear to indicate a systemic flaw in the BOC's OSS.

206 *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9107-08, para. 165. In the *BellSouth Florida/Tennessee Order*, we again rejected the argument that BellSouth unlawfully discriminated against competitive LECs by requiring them to use multiple LSRs for orders and accounts with multiple lines, even where BellSouth's retail division placed those accounts on a single account. *See In the Matter of Application By BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization to Provide In-Region, Interlata Services in Florida and Tennessee*, WC Docket No. 02-307, Memorandum Opinion and Order, 17 FCC Rcd 25828, 25876, para. 101 (2002) (*BellSouth Florida/Tennessee Order*).

207 *See* AT&T DeYoung/Willard Decl. at paras. 189-93.

208 TDS MetroCom Comments at 21.

209 *Id.* "Projects" are high-quantity orders subject to a special ordering process and a negotiated due date. *See id.*

210 *See* Michigan Bell Ehr Reply Aff. at para. 155.

(LLNs)[211] satisfies the requirements of checklist item 2.[212] We find that Michigan Bell's evidence about the accuracy, completeness, and timeliness of LLNs in the relevant months reveals an overall high level of performance. Although AT&T cites LLN problems that affected approximately 14,000 LLNs in the SBC Midwest five-state region during the last five months of 2002,[213] we do not find that these criticisms merit a denial of Michigan Bell's application. First, these problems fall outside of the relevant five-month period of review for the instant application. Moreover, no commenter points to any line loss problems relating to the time frame under consideration here.[214] In addition, Michigan Bell demonstrates that almost all of these issues involved isolated incidents, such as human error or one-time system changes, which were unrelated to one another.

---

[211] "Line loss" occurs when a competitive LEC loses a customer to another competitive LEC or to the incumbent LEC. A line loss notification signals to competing carriers that a customer has migrated to another LEC. Michigan Bell Cottrell Aff. at para. 178.

[212] Michigan Commission Comments at 69.

[213] AT&T Comments at 18-19; AT&T DeYoung/Willard Decl. at paras. 110-35; AT&T March 25 Ex Parte Letter at 4-6, Attach.; AT&T DeYoung/Willard Joint March 15 Decl. at paras. 101-39. Michigan Bell did not dispute the number of competitive LEC LLNs affected, but instead argued that, overall, the percentages of missing, inaccurate, and untimely LLNs had only minimal competitive significance. Michigan Bell Application at 50; Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. A at para. 16 (filed Mar. 14, 2003) (Michigan Bell March 14 *Ex Parte* Letter); *see also* Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. at Table 3, Table 4 (filed Mar. 20, 2003) (Michigan Bell March 20 *Ex Parte* Letter) (arguing that only approximately 4% to 5% of its LLNs were late, incomplete, or inaccurate); *see also* PM MI 13 (Percent Loss Notifications within 1 Hour of Service Order Completion).

[214] *See infra* Part IV.B.2.f (addressing MCI's mismatched records allegations). MCI discusses a LLN issue that it recently discovered when it asked Michigan Bell for information on 487 Michigan lines for which MCI was being billed that either were not its lines or for which Michigan Bell should not have transmitted line losses. *See* MCI Supplemental Lichtenberg Decl. at para. 21. Michigan Bell admitted that, for approximately 75% of those lines, Michigan Bell had sent MCI line losses in error. Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 46. However, all but three of those erroneous LLNs were sent to MCI prior to January 2003. *Id.* Therefore, the vast majority of errors occurred prior to the relevant time period for this application. MCI also claims that Michigan Bell incorrectly sent MCI 414 line loss notifications on June 3, 2003. Letter from Keith Seat, Senior Counsel, Federal Advocacy, MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, at 8-9 (filed Sept. 8, 2003) (MCI September 8 *Ex Parte* Letter). According to MCI, these notifications were sent to MCI where it had not actually lost the customer. *See id*. We do not find MCI's allegations to be competitively significant. First, it appears from the record that only 16 of these LLNs involved lines served by MCI. *See id*. at 9; *see also* Geoffrey M. Klineberg, Counsel to Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 4 (filed Sept. 12, 2003) (Michigan Bell September 12 *Ex Parte* Letter). Second, Michigan Bell states that this incident was the result of a single manual error by one retail service representative. Further, the error was reported and fixed within 10 days after the June performance data results were posted, which, according to Michigan Bell, was the earliest date this type of error could have been discovered. Michigan Bell September 12 *Ex Parte* Letter, Attach. at 4-5. Thus, we find that this was an isolated incident that was resolved in a timely fashion.

71. Moreover, we find Michigan Bell's performance data and the third-party testing demonstrates that it provides competitive LECs with nondiscriminatory access to LLNs.[215] Michigan Bell's recent performance data for PM MI 13-05 (percent mechanized line loss notifications returned within one day of work completion-all orders) show that it generally meets the 97 percent benchmark.[216] Moreover, notwithstanding certain limitations in the scope of the test cited by AT&T,[217] BearingPoint's OSS test supports our finding that Michigan Bell provides nondiscriminatory access to LLNs. Although it did not review the format or content of LLNs as received by competitive LECs, BearingPoint did look specifically at Michigan Bell's LLN process and performance, testing whether Michigan Bell prepared LLNs accurately, and testing the number of LLNs that Michigan Bill provided within one hour.[218] BearingPoint found that Michigan Bell met the relevant 95 percent LLN benchmarks set by BearingPoint, providing 95.6 percent accurate LLNs and 96.2 percent timely LLNs.[219] We therefore conclude that Michigan Bell generally provides timely, accurate, and complete LLNs.[220]

---

[215] *See* Michigan Bell Supplemental Application at 27 (stating that in the combined March/April data, 98.94% of all LLNs were sent within one business day, exceeding the 97% benchmark for PM MI 13-05).

[216] Michigan Bell provided over 99 percent timely LLNs in March 2003; over 98 percent timely LLNs in April 2003; over 97 percent timely LLNs in May 2003; and over 99 percent timely LLNs in June 2003. *See* PM MI 13-05 (percent mechanized line loss notifications returned within 1 day of work completion-all orders). We note that the metric we rely upon, PM MI 13-05, includes LLNs associated with winbacks. We also note that AT&T challenges the data Michigan Bell provided in its March 14 *Ex Parte* Letter. Letter from Alan C. Geolot, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attach. C at 1-2 (filed Apr. 3, 2003) (AT&T April 3 *Ex Parte* Letter). Because we do not rely on the data in Michigan Bell's March 14 *Ex Parte* Letter, and instead rely on the restated PM MI 13-05 data described above, we need not address these allegations.

[217] AT&T DeYoung/Willard Supp. Decl. at paras. 120-23.

[218] Michigan Bell Application, App. C, Vol. 19a-b, Tab 114, BearingPoint's OSS Evaluation Report, at 936-37.

[219] *Id*.

[220] Although Michigan Bell's restated performance data do not include several general categories of LLNs, including mechanized LLNs that fall out for manual handling and LLNs associated with line sharing, we find that these exclusions affect only a small number of LLNs. Michigan Bell March 20 *Ex Parte* Letter, Attach. at para. 3, Table 3. Indeed, Michigan Bell demonstrates that each of these categories likely includes only a small number of LLNs, which likely would have an insignificant impact on its performance as a whole. *Id.* at para. 3 and n.5 (stating that the percentage of LLNs that were processed manually for all competitive LECs due to system or service order error averaged less than 0.30% from November 2002 to January 2003); Michigan Bell March 14 *Ex Parte* Letter at 9. We thus reject AT&T's concerns about errors in the raw PM MI 13 data it received. AT&T April 3 *Ex Parte* Letter, Attach. C at 1. Ultimately, we find that Michigan Bell adequately demonstrates that AT&T's concerns do not undermine the reliability of its aggregate results. We also reject AT&T's concerns regarding the accuracy of Michigan Bell's restated PM MI 13 data and its use of the one-day benchmark pursuant to the new PM MI 13. Letter from Amy L. Alvarez, District Manager-Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 19, 2003) (AT&T March 19 *Ex Parte* Letter). We find that Michigan Bell has adequately described the source of this data. Michigan Bell March 14 *Ex Parte* Letter, Attach. at paras. 1-4; Michigan Bell March 28 *Ex Parte* Letter, Attach. C at 4-5. Further, although the restated data rely on new PM MI 13's one day benchmark, rather than the one hour benchmark associated the old PM MI 13, we note that competitive LECs agreed to this benchmark in the latest six-month state collaborative. We also note that a (continued….)

72. For the past year and a half, we note that Michigan Bell has undertaken significant efforts to address its past LLN problems. The Michigan Commission identified LLN problems as a concern more than a year ago, and worked extensively with Michigan Bell to ensure significantly improved LLN performance.[221] In evaluating Michigan Bell's performance for purposes of section 271, the Michigan Commission found that Michigan Bell "has become extremely proactive in trying to immediately address line loss issues" by establishing a team to analyze and correct line loss problems, in addition to implementing additional training for Michigan Bell billing personnel.[222] Michigan Bell also provides evidence that it has been proactive in resolving LLN issues and has implemented several process enhancements to address and prevent missing or incorrect LLNs.[223] For example, Michigan Bell has conducted several collaborative meetings and workshops with competitive LECs, and as a result of these meetings it has implemented several process enhancements.[224] Altogether, the record reflects that Michigan Bell made significant systems and process changes to address past LLN concerns and prevent future problems, including the creation of a more robust software system and institution of several additional lines of communication with competitive LECs regarding LLN issues.[225]

(Continued from previous page)
competitive LEC's receipt of an LLN within one day, rather than one hour, is unlikely to significantly increase the likelihood of double billing of the end user.

[221] Pursuant to a "Line Loss Communications Plan" approved by the Michigan Commission on March 26, 2003, Michigan Bell now files a monthly report (the "LLN Report") describing the total number of "line loss incidents," including the cause and duration of each incident, the number of LLNs and competitive LECs affected, and the actions taken by Michigan Bell to address the issues. Michigan Commission Order at 6; *see also* Michigan Bell March 13 *Ex Parte*, Attach. D; Michigan Commission March 26 *Ex Parte* Letter. The April, May and June 2003 LLN Reports reveal only a few isolated incidents, which were quickly resolved. For example, the May 2003 LLN Report indicates that there were no reportable LLN incidents in April. Michigan Bell Supplemental Application at 27-28. The June 2003 LLN Report indicates that Michigan Bell delayed the delivery of approximately 120 LLNs to seven competitive LECs in the SBC Midwest region in mid-May. *Id.* Michigan Bell states that this problem was corrected in two days. *Id.* at 28. We are persuaded that these reporting requirements will ensure that Michigan Bell continues to be held accountable for its performance and continues to respond promptly to any unexpected LLN problems. We note that AT&T cites several alleged shortcomings in Michigan Bell's LLN compliance plan. AT&T DeYoung/Willard Supp. Decl. at paras. 124-26. We consider, however, the LLN compliance plan only to the extent that its expanded reporting requirements allow us to more closely review Michigan Bell's recent LLN performance. Thus, concerns expressed by AT&T regarding alleged shortcomings in the LLN compliance plan do not warrant a finding of checklist noncompliance.

[222] Michigan Commission Comments at 69.

[223] Michigan Bell Application at 50; *see also* Michigan Bell Cottrell Aff. at paras. 178-94 (describing Michigan Bell's remedial LLN activities).

[224] Michigan Bell Cottrell Aff. at paras. 87-88. From February 2002 through November 2002 Michigan Bell instituted several systems enhancements that were designed to identify the cause of the LLN errors, and accordingly made EDI software updates to correct the discrepancies. *Id.* at para. 88.

[225] Michigan Bell Cottrell Aff. at paras. 87-88.

73. We thus find that the historical instances of LLN problems cited by commenters do not demonstrate overall discriminatory LLN performance.[226] In reaching this conclusion, we rely on the performance data demonstrating that Michigan Bell provides timely LLNs. We are also persuaded that Michigan Bell has thoroughly investigated competitive LECs' claims, and for each incident has identified the root cause and taken corrective action to prevent similar issues from recurring.[227] Nevertheless, we expect that Michigan Bell will continue to work closely with all affected carriers to resolve any outstanding line loss discrepancies.

74. *Billing Completion Notices*. We also find that Michigan Bell provides billing completion notices (BCNs) in a manner that provides competitors a meaningful opportunity to compete.[228] BCNs inform competitors that all provisioning and billing activities necessary to establish service or migrate an end user from one carrier to another are complete, and that the competitor can thus begin to bill the customer for service.[229] BCNs are an industry standard feature of the most recent versions of Michigan Bell's EDI interface (known as LSOG 5 and LSOG 6).

75. We reject AT&T's argument that Michigan Bell fails to provide BCNs to competitive LECs in a reliable and consistent manner.[230] AT&T alleges that it has experienced two separate problems since converting to LSOG 5 in December 2002; one concerns Michigan Bell performance during a time period outside of our consideration in this proceeding,[231] and the other is related to the database reconciliation discussed in the billing section below.[232] As such,

---

226 AT&T Comments at 18-19; AT&T DeYoung/Willard Decl. at paras. 110-35.

227 Michigan Bell March 17 *Ex Parte* Letter, Attach. A at 13.

228 Michigan Bell refers to these notices as "Post to Bill Notifications." *See* Michigan Bell Reply at 22-23.

229 *See, e.g.*, *In the Matter of Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, Memorandum Opinion & Order, 17 FCC Rcd 18660, 18717-18, para. 99 (2002) (*Verizon New Hampshire/Delaware Order*); *Verizon Pennsylvania Order*, 16 FCC Rcd at 17446, para. 43.

230 In an *ex parte* filed September 12, 2003, AT&T raises an issue regarding the posting of BCNs and Michigan Bell's alleged actions to "win back" end-user customers prior to the posting of BCNs. *See* AT&T September 12 *Ex Parte* Letter at 2. However, as AT&T acknowledges, the issue was raised too late in the proceeding – just five days prior to the 90-day statutory deadline – for the Commission to give full consideration to the issue.

231 AT&T alleges that Michigan Bell's systems caused a failure of more than 12,000 BCNs in December and January 2003. *See* AT&T DeYoung/Willard Reply Decl. at para. 67. Michigan Bell contends that in February 2003 it cured the underlying system flaw that delayed those BCNs. *See* Michigan Bell Cottrell/Lawson Reply Aff. at para. 125.

232 *See infra.* Part IV.B.2. f. AT&T alleges that Michigan Bell and the other SBC Midwest companies purposely withheld transmission of more than 10,000 BCNs throughout the SBC Midwest region in January, February, and March 2003, while conducting an internal billing reconciliation. *See* AT&T Reply, Joint Reply Declaration of Sarah DeYoung and Walter W. Willard at paras. 69-70 (AT&T DeYoung/Willard Reply Decl.); Letter from Richard D. Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (continued….)

we do not need to consider them here.

76. Michigan Bell, however, does acknowledge a more recent BCN problem that is relevant to the instant application. Specifically, Michigan Bell explains that approximately 107,500 BCNs were delayed in the SBC Midwest region between May 14 and May 22, 2003 due to a software "patch" that was intended to eliminate errors appearing on internal reports.[233] Michigan Bell states that it corrected the software problem and sent all of the delayed BCNs by close of business on May 23, 2003.[234]

77. We find that Michigan Bell's BCN delay in May does not warrant a denial of this application. We also note that Michigan Bell expediently addressed this issue. Specifically, Michigan Bell removed the patch on May 22, as soon as the problem was confirmed, and sent the delayed BCNs to competitive LECs by May 23.[235] In addition, Michigan Bell's OSS customer support team contacted affected competitive LECs individually. Furthermore, we note that Michigan Bell has taken several steps, including implementing a daily review process of its Local Access Service Request (LASR) reports to quickly identify any BCN delays, to ensure that competitive LECs are provided prompt notice of any issues that may affect the delivery of BCNs.[236] Therefore, because the record reflects that this was an isolated occurrence and that Michigan Bell promptly resolved this BCN issue, we conclude that Michigan Bell's delivery of BCNs provides competitive LECs using Michigan Bell's OSS a meaningful opportunity to compete.

d. Provisioning

78. We find, as did the Michigan Commission,[237] that Michigan Bell satisfies checklist item 2 with regard to provisioning in Michigan. The record demonstrates that Michigan Bell provides nondiscriminatory access to its provisioning systems and processes and consistently satisfies the performance standards for the relevant performance measurements.

(Continued from previous page)
(filed Mar. 19, 2003) (AT&T March 19 *Ex Parte* Letter). Michigan Bell responds that it did not delay BCNs during the reconciliation, but instead prevented service orders from posting to CABS during the reconciliation process. Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 46. As soon as service orders posted to CABS, Michigan Bell explains, the BCNs were sent on a timely basis. *Id.*

233 Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 50-1. The notification outage was caused by SBC's failure to document and test all possible scenarios affected by the software patch. As a result, an error in the software patch was not discovered prior to implementation. *Id.*

234 *Id.* at para. 51.

235 *Id.*

236 Michigan Bell Supplemental Application at 24-25; *see also* Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 52.

237 Michigan Commission Comments at 76.

The third-party test conclusions generally support our findings in this regard.[238]

79. *Provisioning Timeliness*. Metrics measuring provisioning timeliness demonstrate, with few exceptions, nondiscriminatory performance by Michigan Bell.[239] For example, the record reflects that Michigan competitive LECs generally encountered a lower percentage of missed due dates that delayed installation by more than 30 days for each of the four types of UNE-P orders, *i.e.*, residence and business installation both with and without field work, than did Michigan Bell's retail POTS residence and business customer orders.[240] Michigan Bell also met the standard in three of the last four months for UNE-P installations, for both the field work required and no field work required submetrics, for business customers requesting certain due dates.[241] We thus find that Michigan Bell's overall performance in meeting due dates

---

[238] *See generally* Michigan Bell Dolan/Horst Aff. at Attach. B, C; Michigan Bell Application, App. C, Vol. 19a-b, Tab 114, BearingPoint's OSS Evaluation Report.

[239] Michigan Bell generally met the parity standard for the primary indicator of provisioning timeliness, PM 29 (the percent of Michigan Bell caused missed due dates), with certain *de minimis* exceptions, discussed below. Michigan Bell missed PM 30-04 (percent Ameritech caused missed due dates due to lack of facilities; UNE-P business) from February through June by a relatively small amount, with Michigan Bell missing 9, 16, 20, 17 and 18 due dates respectively; *see also* PM 30-02 (percent Michigan Bell missed due dates due to lack of facilities business for all missed POTS (resale) business orders) (showing 18 total missed due dates from February to June 2003). We also find that the relevance of Michigan Bell's misses in all five months for PM 28-04 (percent POTS business installations completed within a customer requested due date with no field work required) is not competitively significant given the low number of Michigan Bell caused missed due dates, as reflected by the data for PM 29-04 (Michigan Bell caused missed due dates for business loops with no field work required), which Michigan Bell passed all five months. Moreover, we note that Michigan Bell missed the 97% benchmark for PM 28-04 by relatively few installations. For example, Michigan Bell completed 94.73% (1,187) of competitive LECs' 1,253 orders by the requested due dates in March and 400 (91.74%) of competitive LECs' 436 orders by the requested due dates in April. Ehr Supplemental Aff. at n.57. Michigan Bell states that a root cause investigation has identified several factors that have contributed to the out-of-parity performance on PM 28-04. Ehr Supplemental Aff. at n.57. For example, Michigan Bell states that certain complex business wholesale products that are included in the POTS business submeasure results have standard intervals that were not being taken into account when assessing performance. *Id*. The PM system would determine these non-field work issues to require same day or next day commitment, where the standard interval defined for a no-field work order for these products is longer. Further, Michigan Bell states that it has assembled an ongoing performance management team comprised of wholesale sales support personnel and network personnel to improve performance for PM 28-04. *Id*. We thus find that these misses do not warrant a finding of noncompliance.

[240] Ehr Supplemental Aff. at paras 121-23.

[241] We reject AT&T's argument that we cannot rely on two performance metrics measuring installation timeliness, PM 27 (mean installation interval) and PM 28 (percent POTS/UNE-P installations completed within the customer requested due date) because of problems previously identified by E&Y. AT&T Moore/Connolly/Norris Reply Decl. at para. 56; AT&T Moore/Connolly Decl. at para. 137. Michigan Bell states that it implemented new code to properly exclude internal orders that were previously included in the calculation of these metrics beginning with results for February 2003, *i.e.*, AT&T's argument concerns data that pre-dates our five month review period. Accordingly, we conclude that we are able to rely on Michigan Bell's recent installation timeliness data, which reflect the revised code, in assessing Michigan Bell's performance under these metrics.

demonstrates that Michigan Bell provides nondiscriminatory provisioning timeliness.[242] Our conclusion is reinforced by the fact that no commenter expresses concern about Michigan Bell's provisioning timeliness.[243]

80. *Provisioning Quality*. Similarly, metrics measuring provisioning quality demonstrate adequate performance, with few exceptions. Specifically, we find that the isolated misses for certain metrics regarding the installation of UNE-P and POTS lines do not indicate a systematic problem warranting a finding of checklist noncompliance.[244] We note that overall the misses were slight, and that there were low volumes for several of the metrics. Because we find that Michigan Bell has demonstrated nondiscriminatory performance during the relevant review period, we also reject claims raised during Michigan Bell's prior section 271 application that have largely been resolved or are no longer reflected in the commercial results.[245] Lastly, we

---

[242] In its *Michigan I* comments, incorporated by reference in this proceeding, AT&T argues that Michigan Bell's performance in PM 29-07 warrants a finding of checklist noncompliance. AT&T Moore/Connolly Decl. at paras. 151-52. We disagree and find that, because the recent data show that Michigan Bell met the parity standard in four of the last five months, Michigan Bell demonstrates that it provisions UNE-P on a nondiscriminatory basis.

[243] For the other few metrics missed, we agree with Michigan Bell that the difference in performance for competitive LECs versus Michigan Bell customers (or the applicable benchmarks) was slight. Moreover, Michigan Bell argues that missed due date performance more directly reflects the degree of impact to the end customer than the average installation interval. We agree and conclude, as we have in prior section 271 orders, that the missed appointment/installation commitments met metrics, which Michigan Bell passed with very few exceptions, is a more reliable indicator of provisioning timeliness. Based on the installation commitments met data we find that Michigan Bell meets its obligation with respect to timely provisioning. *See, e.g., Qwest 9-State Order*, 17 FCC Rcd at 26402, para. 163.

[244] Michigan Bell generally met the relevant standard regarding provisioning quality, with certain *de minimis* exceptions. *See* PM 35 (percent trouble reports within 30 days of installation). For example, although Michigan Bell missed the parity standard for two out of the last five months (February and March) for PM 35-02 (percent trouble reports within 30 days of installation; POTS; residential; no field work), Michigan Bell met the parity standard for the April, May and June with competitive LECs experiencing lower trouble report rates of 4.52%, 3.43%, and 3.74% versus trouble report rates for Michigan Bell's retail customers of 6.18%, 5.83%, and 6.26% respectively. Michigan Bell also missed the parity standard for four out of five months for PM 35-03 (percent trouble reports within 30 days of installation; POTS; business; field work). The record reflects, however, that Michigan Bell missed the standard for PM 35-03 by relatively few installations. Specifically, with relatively low levels of competitive LEC ordering activity over this period, Michigan Bell missed the standard for parity from February through June 2003 by an average of less than six trouble reports a month out of an average of 90 orders a month. In light of Michigan Bell's overall POTS installation performance, we do not find these misses to be competitively significant. Nonetheless, Michigan Bell states that it is addressing this shortfall by creating a daily report to identify all POTS trouble reports occurring within 30 days of installation for employee coaching opportunities, including additional training on proper use of metallic tests and leakage tests (which identify less noticeable high resistance-type trouble), designed to strengthen the reliability of the network facilities at the time of service order completion.

[245] We reject AT&T's argument that these scattered misses warrant a finding of checklist noncompliance. AT&T Moore/Connolly Decl. at paras. 151-52; AT&T DeYoung/Willard Reply Decl. at para. 75; AT&T Moore/Connolly/Norris Reply Decl. at paras. 136-37; AT&T DeYoung/Willard Supp. Decl. at paras. 140-41. We note that Michigan Bell has instituted additional training to fix the root causes of the few remaining provisioning troubles, including reinforcing technicians' use of network testing procedures. Michigan Bell Ehr Aff. at paras. (continued….)

note that no party raises any new issues in this proceeding regarding Michigan Bell's provisioning quality.[246]

e. Maintenance & Repair

81. We conclude that Michigan Bell provides nondiscriminatory access to maintenance and repair OSS functions. We find that Michigan Bell has deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions that Michigan Bell provides to itself.[247]

82. We find that Michigan Bell's performance data support a finding of checklist compliance in this area. Specifically, we find that Michigan Bell restores service to competing carriers' customers in substantially the same time and manner[248] and with a similar level of quality[249] as it restores service to its own customers, with a few exceptions. Although we note that Michigan Bell missed the parity standard from February to June 2003 for PM 37-04 (trouble report rate; UNE-P business), the overall trouble report rates for Michigan competitive LECs' UNE-P business lines and Michigan Bell's own retail business lines are minimally different by an average of 0.13 over the five month period.[250] We find that this small difference between

(Continued from previous page)
144-45; Michigan Bell Muhs Aff. at paras. 23-25; Michigan Bell Ehr Reply Aff. at para. 10; Michigan Bell Muhs Reply Aff. at n.15.

[246] AT&T raises an issue regarding Michigan Bell's loop provisioning process for new UNE-P orders in an *ex parte* filed on September 12, 2003. *See* AT&T September 12 *Ex Parte* Letter. However, as AT&T acknowledges in its letter, the issue was raised too late in the proceeding – just five days prior to the 90-day statutory deadline – for the Commission to give full consideration to the issue.

[247] *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 211. Michigan Bell provides competing carriers with several options for requesting maintenance and reporting troubles. Competing carriers may use the Electronic Bonding Trouble Administration/Graphical User Interface (EBTA/GUI) and the Electronic Bonding Trouble Administration application to application interface (EBTA). Michigan Bell Cottrell Aff. at para. 197.

[248] Michigan Bell met the relevant parity and benchmark standards regarding timeliness of maintenance and repair, with certain *de minimis* exceptions. *See* PM 38 (percent missed repair commitments); PM 39 (receipt to clear duration); PM 38-06 (percent missed repair commitments; UNE-P residential; no dispatch); PM 38-05 (percent missed repair commitments; UNE-P residential; dispatch).

[249] Michigan Bell generally met the relevant parity and benchmark standards regarding maintenance and repair quality, with a few *de minimis* exceptions described below. *See* PM 37.1 (trouble report rate net of installation and repeat reports); PM 40 (percent out of service trouble reports); PM 41 (percent repeat reports); PM 42 (percent trouble reports with no access).

[250] Michigan Bell also missed the 95% benchmark three out of the five month review period with regard to PM MI 14-04 (percent completion notifications returned within 2 hours of completion of maintenance trouble ticket – UNE Loops – electronic). The record reflects, however, that Michigan Bell's performance is minimally deficient for those months, with the five-month average performance above the 95% benchmark. We note that Michigan Bell missed the 95% benchmark in four months out of the five month review period with regard to PM MI 14-05 (percent completion notifications returned within "X" hours of completion of maintenance trouble ticket – UNE-P – manual next day). We find, however, that in light of Michigan Bell's overall maintenance and repair performance (continued….)

wholesale and retail provisioning quality is unlikely to have adversely affected Michigan competitive LECs, given that overall competitive LECs encountered a low trouble report rate of 0.95 for UNE-P business lines, and that Michigan Bell's performance is generally sufficient across all PM 37 (trouble report rate) submeasures.[251] The third-party test conclusions also support our finding on functionality.[252]

83. We thus reject the general assertions by AT&T and CLECA that Michigan Bell fails to perform repairs in a timely manner.[253] In addition to AT&T's and CLECA's unsupported allegations regarding Michigan Bell's maintenance and repair performance for competitive LECs, CLECA cites Michigan Bell's general maintenance and repair performance for its retail customers as reported in standard Commission data collections, unrelated to section 271.[254] As an initial matter, this data does not provide any evidence of discriminatory performance since it pertains solely to Michigan Bell's performance for retail customers. Further, this data relates to Michigan Bell's performance in 2001, which substantially pre-dates our review period for this section 271 application. Thus, in light of Michigan Bell's overall satisfactory performance in achieving parity of maintenance and repair offerings, we conclude that the commenters' generalized and unsupported allegations do not overcome Michigan Bell's affirmative showing of nondiscriminatory performance and checklist compliance.[255]

84. Similarly, we reject TDS Metrocom's assertion that Michigan Bell's Electronic Bonding Trouble Administration (EBTA) interface is inadequate because of unspecified "outages and errors."[256] Michigan Bell responds that all of the problems with EBTA that TDS Metrocom has brought to its attention were resolved by September 2002.[257] Moreover, we note that Michigan Bell's performance data indicate that the EBTA interface has been consistently

(Continued from previous page)
that these isolated misses, which reflect that Michigan Bell has returned approximately 91.5% of these notifications on time, do not warrant a finding of checklist noncompliance.

251 *See*, *e.g.*, PM 37.1 (trouble report rate net of installation and repeat reports) (showing that Michigan Bell met the parity standard for all five months from February 2003 to June 2003 for all four PM 37.1 measurements – POTS business, POTS residence, UNE-P business, and UNE-P residence).

252 Michigan Bell Dolan/Horst Aff. at Attach. B, C; Michigan Bell Application, App. C, Vol. 19a-b, Tab 114, BearingPoint's OSS Evaluation Report, 717-28; 729-52; 1023-25. Michigan Bell failed to satisfy certain BearingPoint test criteria relating to closeout coding, as discussed below.

253 CLECA Supplemental Comments at 8-10; AT&T Comments at 17.

254 *See* CLECA Supplemental Comments at 9.

255 *Bell Atlantic New York Order*, 15 FCC Rcd at 3973, para. 50.

256 TDS Metrocom Cox Aff. at paras. 18-19.

257 Michigan Bell Cottrell/Lawson Reply Aff. at para. 130.

available, with few outages, for each of the last five months.[258]

85. We also reject commenters' allegation of discriminatory performance by Michigan Bell regarding closeout codes used to notify competitive LECs of how trouble tickets were resolved. A number of competitive LECs report inaccuracies in Michigan Bell's closeout codes,[259] and also note that Michigan Bell failed two BearingPoint evaluation criteria relating to the accuracy of closeout codes.[260] As an initial matter, we note that the same technicians handle coding for trouble reports for both wholesale and retail repairs, indicating that closeout coding errors would not necessarily have a discriminatory affect on competitive LECs. Michigan Bell's trouble tickets also include a narrative field that provides greater information about the trouble in addition to any information reflected in the closeout code.[261] Further, Michigan Bell notes that if trouble tickets were being closed when the trouble was not actually fixed, the repeat trouble report rate likely would be high.[262] Michigan Bell's performance data, however, shows that it met the relevant standards for repeat trouble report metrics.[263] Michigan Bell also offers an escalation process for competitive LECs to raise concerns about improper trouble ticket coding, which TDS Metrocom has used in the past.[264] Lastly, we note that Michigan Bell's policies help ensure that competitive LECs do not face improper charges in such instances.[265] We conclude,

---

[258] *See* PM 4-04 (OSS interface availability; EB/TA); PM 4-05 (OSS interface availability; EB/TA; GUI); *see also* Michigan Bell Cottrell Aff. at para. 197; Michigan Bell Cottrell/Lawson Reply Aff. at paras. 130-32.

[259] AT&T Comments at 17; AT&T DeYoung/Willard Decl. at para. 108; AT&T Moore/Connolly Decl. at para. 148; TDS Metrocom Comments at 23-24; TDS Metrocom Cox Aff. at paras. 27-43; Letter From Mark Jenn, TDS Metrocom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 (filed Mar. 24, 2003) (TDS Metrocom March 24 *Ex Parte* Letter).

[260] Michigan Bell Application, App. C, Vol. 19a-b, Tab 114, BearingPoint's OSS Evaluation Report, 780-81. Although BearingPoint's OSS Evaluation Report states that Michigan Bell initially failed the test criteria regarding the accuracy of end-to-end resale closeout code troubles, in addition to certain other closeout code criteria, continued retesting allowed Michigan Bell to achieve a satisfactory result for end-to-end resale closeout coding. Michigan Commission Comments at 70 n.133; *see also* Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 8 (stating that BearingPoint has now found that Michigan Bell satisfied the evaluation criteria for end-to-end resale closeout coding). Michigan Bell also states that it has implemented several initiatives to improve its coding of trouble reports, including additional training for technicians to reinforce current procedures for coding trouble reports and updating methods and procedures documentation to more accurately record close out coding. *Id.*

[261] Michigan Bell Application, App. C, Vol. 23, Tab 122, at 52-53.

[262] Michigan Bell Muhs Reply Aff. at para. 17.

[263] *See* PM 41 (percent repeat reports); PM 53 (percent repeat reports); PM 69 (percent repeat reports).

[264] Michigan Bell Muhs Reply Aff. at para. 18-23.

[265] Specifically, Michigan Bell states that if the technician reports that there was no appearance of a network interface device (NID) at the customer location, Michigan Bell does not impose trouble isolation charges (TICs) for trouble tickets closed as no trouble found (NTF) or as isolated to customer premises equipment. Michigan Bell Muhs Reply Aff. at para. 31.

therefore, that the record reflects that Michigan Bell does not discriminate against competitive LECs with regard to closeout coding.[266]

86. We likewise do not find a checklist violation in TDS Metrocom's alleged instances of improper conduct by Michigan Bell technicians. For example, TDS Metrocom states that it has received reports of Michigan Bell technicians being rude to customers, disparaging TDS Metrocom, or marketing Michigan Bell services, although it provides little specific information.[267] Michigan Bell states that it is aware of five alleged instances of improper discussions between a Michigan Bell technician and a TDS Metrocom customer over the past year in the entire SBC Midwest region.[268] Michigan Bell explains that in each case the matter was brought to the technician's attention and appropriate action was taken in accordance with the SBC Code of Conduct.[269] We conclude that the incidents cited by TDS Metrocom appear to be isolated occurrences, rather than systemic failures, which we conclude do not demonstrate discriminatory performance.

f. Billing

87. Michigan Bell demonstrates that competing carriers have nondiscriminatory access to its billing systems.[270] In particular, a BOC seeking section 271 approval must provide two essential billing functions: (1) complete, accurate, and timely wholesale bills; and (2) complete, accurate, and timely reports on the service usage of competing carriers' customers.[271] Wholesale bills are issued by incumbent LECs to competitive LECs to collect compensation for the wholesale inputs, such as unbundled network elements, used by competitive LECs to provide service to their end users.[272] In contrast, service-usage reports generally are issued to competitive

---

[266] We also note that although TDS Metrocom argues that it sometimes is unable to perform remote testing to check Michigan Bell's repairs due to the lack of a NID. TDS Metrocom Cox Aff. at para. 38. TDS Metrocom also states that Michigan Bell has not installed network interface devices (NIDs), which would allow competitive LECs to conduct remote testing to verify if Michigan Bell technicians have correctly identified and coded the service problem, in many end user premises in Michigan. *Id.* For purposes of section 271 approval, however, although we do require BOCs to offer nondiscriminatory access to their NIDs, we have not previously required BOCs to add new NIDs where not previously installed. *UNE Remand Order*, 15 FCC Rcd at 3801, para. 232; *see also, e.g., Qwest 9-State Order*, 17 FCC Rcd at 26495-96, para. 348. TDS Metrocom, however, does not claim that Michigan Bell fails to offer nondiscriminatory access to existing NIDs.

[267] TDS Metrocom Cox Aff. at paras. 36-37, 40-43.

[268] Michigan Bell Muhs Reply Aff. at para. 28. For example, at least one dispute involved a technician in Illinois. *Id*.

[269] *Id*. at paras. 28-31. Michigan Bell states that violations of the code of conduct can lead to disciplinary action, including suspension or termination of employment. *Id.* at paras. 24-26.

[270] *Qwest 9-State Order*, 17 FCC Rcd at 26374, para. 114.

[271] *Id*. at 26374, para. 115.

[272] *Id*. These bills are usually generated for competitive carriers on a monthly basis. *Id.*

LECs that purchase unbundled switching and measure the types and amounts of incumbent LEC services that a competitive LEC's end users use for a limited period of time, usually one day.[273]

(i) Wholesale Bills

88. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[274] Michigan Bell submitted evidence of its commercial billing performance, successful third-party testing, and internal billing processes and procedures showing that it can provide complete, accurate, and timely wholesale bills. Michigan Bell also demonstrates that it has substantially resolved the prior mismatch issue between certain UNE-P records in its provisioning and wholesale billing databases that was a central area of contention in the previous proceeding. Notwithstanding this showing, competitive LECs expressed a variety of concerns about the accuracy of Michigan Bell's wholesale bills, the adequacy of its billing processes and procedures, and Michigan Bell's resolution of the UNE-P records mismatch. As discussed below, Michigan Bell responds by showing that it has internal processes to expeditiously address problems as they arise, and that where problems have occurred, they have quickly been addressed. Indeed, one competitive LEC states that it "has seen a marked improvement in the accuracy of [Michigan Bell's] bills" since January 2003, and that any billing problems it has experienced do not appear to "constitute vast, systemic or procedural billing problems. These problems are discreet and independent occurrences in a very complex system."[275] Assessing the totality of the circumstances, we find that Michigan Bell's evidence shows that the commenters' concerns are isolated instances of errors typical of high-volume carrier-to-carrier commercial billing, rather than systemic problems, and thus do not find that the allegations about billing raised in this record warrant a finding of checklist noncompliance.[276] In making this finding, we are mindful of our precedent, which makes clear that the checklist does not require perfect billing systems or other supporting processes. It is inevitable, particularly considering the complexity of billing systems and volume of transactions handled in Michigan, that there will be errors and carrier-to-carrier disputes. The question before us is whether Michigan Bell's processes are adequate to ensure that competitors have a meaningful opportunity to enter the market and pose a competitive alternative to Michigan Bell. We find that Michigan Bell's billing processes do provide competitors such an opportunity. We begin our analysis with an overview of Michigan Bell's wholesale billing systems and processes, and then address the specific areas of concern raised by commenters.

---

273 *Id*. These bills are usually generated for competitive carriers on a daily basis. *Id.*

274 *Id*.

275 Letter from Connie F. Mitchell, Chief Administrative Officer, VarTec Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 2 (filed July 14, 2003) (VarTec July 14 *Ex Parte* Letter).VarTec states that it operates in all five states in the SBC Midwest region. *Id*. at 1.

276 As the D.C. Circuit recently held, weighing conflicting evidence is "a matter peculiarly within the province of the Commission." *Z-Tel Communications, Inc. v. FCC*, No. 01-1461, slip op. at 17 (D.C. Cir. July 1, 2003).

89. Michigan Bell uses two primary billing systems to deliver wholesale bills to competitive carriers. For competitive LECs that are reselling services, Michigan Bell uses the Resale Billing System (RBS). RBS extracts information from Michigan Bell's Ameritech Customer Information System (ACIS) provisioning database, which is the same system Michigan Bell uses for its retail customers.[277] For competitive carriers that purchase UNE and interconnection products such as loops, switch ports, loop and port combinations, local transport, and interconnection, Michigan Bell uses the Carrier Access Billing System (CABS).[278] In order to improve wholesale billing of UNE-P, Michigan Bell migrated its billing of UNE-P switch ports from RBS to CABS beginning on August 18, 2001.[279] Michigan Bell states that it completed this conversion process and consolidated billing for UNE-P charges into CABS in October 2001.[280]

90. Michigan Bell provides adequate evidence to demonstrate that competitive carriers have sufficient access to its billing systems to allow such carriers a meaningful opportunity to compete. This evidence includes commercial performance, third-party testing, and internal billing processes and procedures. Michigan Bell generally met the relevant parity and benchmark standards regarding the timeliness and accuracy of its wholesale billing.[281]

---

[277] Michigan Bell Application, App. A, Tab 12, Affidavit of Michael E. Flynn at paras. 4-5 (Michigan Bell Flynn Aff.).

[278] *Id*. at para. 6.

[279] Michigan Bell Reply, App. A, Reply Affidavit of Justin W. Brown, Mark J. Cottrell and Michael E. Flynn (Michigan Bell Brown/Cottrell/Flynn Reply Aff.) at para. 19; Michigan Bell Application, App. H, Accessible Letter CLECAM01-236 (Aug. 18, 2001). Michigan Bell states that prior to the conversion, UNE-P switch port charges were billed out of RBS, while UNE-P loop charges were billed out of CABS. Michigan Bell Brown/Cottrell/Flynn Reply Aff. at n.14; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 26.

[280] Michigan Bell Flynn Aff. at para. 6; *see also* Michigan Bell Brown/Cottrell/Flynn Reply Aff. at para. 17; Michigan Bell Supplemental Application, App. A, Tab 2, Supplemental Affidavit of Justin W. Brown, Mark J. Cottrell and Michael E. Flynn (Michigan Bell Brown/Cottrell/Flynn Supplemental Aff.) at paras. 25-27.

[281] *See* PM 14 (Billing Accuracy); PM 15 (% Accurate & Complete Formatted Mechanized Bills); PM 17 (Billing Completeness); PM 18 (Billing Timeliness (Wholesale Bill)). We reject AT&T's challenges to the reliability of Michigan Bell's billing data. AT&T Supplemental Reply at 42-46. As discussed above, we find that we may rely on these data. *See supra*, Part IV.A. We likewise reject commenters' claims that Michigan Bell's performance measurements are inadequate to demonstrate Michigan Bell's billing accuracy. *See, e.g.*, TDS Metrocom Comments at 25-26; Supplemental Comments of AT&T Corp., WC Docket No. 03-16 at 13 (filed Apr. 9, 2003) (AT&T April 9 Comments); Letter from Ross A. Buntrock, Counsel for Sage, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 6 (filed July 18, 2003) (Sage July 18 *Ex Parte* Letter). Michigan Bell states that its performance metrics resulted from extensive collaborative proceedings and measure important aspects of its billing systems, and that parties are discussing refinements and supplements to these metrics in ongoing billing metric collaboratives. Michigan Bell Ehr Reply Aff. at paras. 151-54; Michigan Bell Ehr Supplemental Aff. at paras. 183-87; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 148. While the Commission looks first to commercial performance when evaluating compliance with the requirements of section 271, our review is not limited solely to commercial performance demonstrated through billing metrics. We agree with the Department of Justice that Michigan Bell's "performance metrics have limited utility in catching a wide range of potential billing errors." Department of Justice Supplemental Evaluation at 9 n.44. We find, however, as discussed below, that the totality of Michigan Bell's evidence is sufficient to demonstrate adequate (continued….)

Michigan Bell also satisfied 100 percent of BearingPoint's tests of its wholesale billing systems and processes.[282]

91. In addition, Michigan Bell explains that the mechanized processing of service orders is unlikely to lead to database errors.[283] In 2002, Michigan Bell reviewed its ACIS provisioning database, used to update the billing records in CABS, in preparation for its implementation of its "line in service" report, which provides competitive carriers with a list of the lines they currently serve according to Michigan Bell provisioning records.[284] Errors were found in only approximately 0.05 percent of the records reviewed, and any identified errors were fixed.[285] Michigan Bell states that approximately 90% of all orders flow through mechanically, and that processes are in place to identify and correct errors in manual processing.[286] Further, Michigan Bell's Quality Review Process involves the daily review of a sample of manually handled service orders during which Michigan Bell personnel conduct a field-by-field comparison with the competitive LEC local service request (LSR).[287] Michigan Bell creates Service Order Quality Assurance Reports that track errors and corrections in data for particular LSR fields, as well.[288] In each bill period, Michigan Bell reviews the CABS Bill Data Tapes for format, completeness, and accuracy.[289] The CABS control system automatically tracks monthly access charges, usage charges, a category of charges called "other charges & credits," and total bill amounts, and generates warnings if there are significant discrepancies between two

(Continued from previous page)
wholesale billing performance. Moreover, we note that additional measures will soon be in place as a result of the ongoing billing metrics collaborative operating under the oversight of the Michigan Commission. In particular, the collaborative is considering changes to PM 17 (Billing Completeness) and the adoption of new metrics addressing billing dispute resolution, billing rate table updates and accuracy, and the overall accuracy of Michigan Bell's bills. Michigan Bell Ehr Supplemental Aff. at paras. 183-87.

[282] BearingPoint found that Michigan Bell met the relevant benchmarks regarding the accuracy of its wholesale bills, the timeliness of delivering its wholesale bills, and the timeliness of posting resale and UNE-loop service order activity to the billing systems. *See* Michigan Bell Supplemental Application, App. C, Tab 15, BearingPoint Michigan Bell OSS Evaluation Project Report, Final Results Update, at 6 (Apr. 30, 2003) (BearingPoint Michigan Final Report); Michigan Bell Application, App. C, Tab 114, BearingPoint OSS Evaluation Report at 998-1011 (Oct. 30, 2002) (BearingPoint Michigan Interim Report); *see also* Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 7-24.

[283] Michigan Bell Supplemental Reply, App., Tab 2, Supplemental Reply Affidavit of Justin W. Brown, Mark J. Cottrell and Michael E. Flynn (Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff.) at paras. 48-52.

[284] *Id*. at paras. 43-44.

[285] *Id*.

[286] *Id*. at paras. 49-56; *see also* PM 13 (Order Process % Flow Through); PM 13.1 (Total Order Process % Flow Through). This avoids any risk of error associated with the manual handling of orders.

[287] Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 54. The LSR is submitted by competitive LECs to order products or services from Michigan Bell.

[288] *Id*. at para. 55.

[289] *Id*. at para. 63.

months.[290]

92. Michigan Bell also has processes in place to ensure that rate changes are implemented in a timely and accurate manner.[291] BearingPoint testing verified Michigan Bell's timely and accurate posting of rate table updates.[292] Michigan Bell routinely audits the rates for a sample of the most commonly ordered products on a monthly basis to ensure that the correct rates are being applied.[293] Even though Michigan Bell recently identified errors in certain loop zone rates in its rate tables and in its classification of business and residential loops,[294] by June 2003, Michigan Bell had corrected these errors, as validated by E&Y.[295]

93. Michigan Bell shows that it provides auditable bills and offers effective procedures to resolve wholesale billing disputes. Michigan Bell provides wholesale bills in industry standard BOS/BDT format, for which substantial training and documentation is available to competitive LECs.[296] The bills also provide sufficient detail, including the universal service order code (USOC) for the particular charge and a description of the product or service, to allow competing carriers to audit the bills and identify any disputed charges.[297] Michigan Bell explains that its CLEC Handbook establishes the procedures by which the local service center (LSC) addresses such billing disputes.[298] The LSC is tasked with reaching a final resolution of claims within 30 days.[299] Attainment of the 30-day target is monitored on a case-by-case basis by LSC managers and by the LSC management team as part of a Quality Review Process.[300] Michigan Bell policy specifies that any denials of competitive LEC claims are provided to the competitive LEC via e-mail and include a description of the reasons for denial, including citations to documents or resources used by Michigan Bell to make its determination.[301] The Michigan Commission also approved a billing compliance plan, pursuant

---

290 *Id*. at para. 64.

291 Michigan Bell Brown/Cottrell/Flynn Reply Aff. at paras. 25-30; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 73-76.

292 Michigan Bell Brown/Cottrell/Flynn Reply Aff. at para. 31.

293 Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 62.

294 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 80-108.

295 *Id*. at paras. 83, 85, 86, 93-100, 106-08. Specifically, these problems were corrected by Michigan Bell and validated by E&Y during March through June 2003. *Id*.

296 Michigan Bell Brown/Cottrell/Flynn Reply Aff. at paras. 9-11.

297 *Id*. at para. 10. A USOC is a code associated with a particular Michigan Bell product or service.

298 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 115-17.

299 *Id*. at para. 116.

300 Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 77.

301 *Id*. at para. 79.

to which Michigan Bell revised the documentation for use by its LSC employees in resolving claims, and is engaged in an ongoing dialog with competitive LECs to address billing dispute resolution issues through a sub-committee of the CLEC User Forum.[302] Michigan Bell states that it has resolved 32 of the 56 billing issues raised since the creation of the billing sub-committee on February 19, 2003.[303]

94. Michigan Bell also provides evidence that it has resolved the UNE-P billing records mismatch responsible for inaccurate wholesale bills throughout 2002 and January 2003. In January 2003, Michigan Bell informed competitive LECs that problems related to the late-2001 conversion of UNE-P bills from the RBS to the CABS wholesale billing format resulted in a mismatch between Michigan Bell's provisioning database and its billing database.[304] Michigan Bell explains that the UNE-P records mismatch resulted from a series of systems and human errors. When service order activity was held during the migration to CABS in August-October 2001, this created an unexpectedly large backlog of service order activity that required posting to CABS.[305] An associated OSS software problem affected mechanized efforts to post both the held backlog of service orders and new UNE-P orders from November 2001 to late spring 2002.[306] This resulted in a low flow-through rate for the mechanized posting to CABS of service order activity, with many orders falling out for manual handling.[307] During Michigan Bell's efforts to manually post these orders to CABS, its service representatives posted some service order activity in the incorrect sequence, leading to mismatches between the billing and provisioning records.[308] Michigan Bell also states that the OSS software problem directly caused data errors

---

[302] Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 118-19 (citing plan approved by the Michigan Commission on March 26, 2003); Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. *Bill Auditability and Dispute Resolution Plan* at 1 (filed Aug. 1, 2003) (Michigan Bell August 1 *Ex Parte* Letter) (providing the Michigan Commission with a status report on its implementation of the compliance plan).

[303] Michigan Bell August 1 *Ex Parte* Letter , Attach. *Bill Auditability and Dispute Resolution Plan* at 1. We reject TDS Metrocom's contention that Michigan Bell's application cannot be granted unless a billing collaborative is established in Michigan. TDS Metrocom Supplemental Comments at 19-20. As Michigan Bell points out, a billing collaborative is not required to demonstrate checklist compliance. Michigan Bell Supplemental Reply, App., Tab 7, Supplemental Reply Affidavit of Robin M. Gleason (Michigan Bell Gleason Supplemental Reply Aff.) at paras. 9-16.

[304] AT&T Reply, Joint Reply Declaration of Sarah DeYoung and Shannie Marin at para. 24 (AT&T DeYoung/Marin Reply Decl.).

[305] Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 1-3 (filed April 3, 2002) (Michigan Bell April 3 *Ex Parte* Letter).

[306] *Id*. at 3; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 27-31.

[307] *Id*.

[308] Michigan Bell April 3 *Ex Parte* Letter at 3-4; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 32.

in CABS.[309]

95. Michigan Bell reconciled CABS with the ACIS provisioning database between January 2003 and March 2003 and found that the billing error had affected approximately 138,000 UNE-P circuits, resulting in at least $16.9 million in incorrect billings.[310] Michigan Bell states that nearly all of the $16.9 million in debits and credits appeared on wholesale bills in February 2003.[311] E&Y has verified that Michigan Bell properly performed the reconciliation of the ACIS and CABS databases and correctly provided competitive LECs with appropriate debits and credits.[312]

96. Michigan Bell also argues that it has taken steps to ensure that the records mismatch will not recur. Michigan Bell states that the large backlog of held service order activity was a consequence of the CABS conversion.[313] Michigan Bell also claims that by June 2002 it fixed the OSS software problems that led to low flow-through rates and CABS records errors.[314] In support of this assertion, Michigan Bell provides internal data showing improved flow-through of mechanized postings to CABS. This internal data shows that mechanized flow-through of service order activity to CABS improved from 71 percent in December 2001 to 93 percent by the end of July 2002, and to 94 percent by July 2003.[315] E&Y has validated both the

---

309 Michigan Bell April 3 *Ex Parte* Letter at 2; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 31.

310 Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. B at 2 (filed Feb. 19, 2003) (Michigan Bell February 19 *Ex Parte* Letter).

311 Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. D at 2 (filed Mar. 28, 2003) (Michigan Bell March 28 *Ex Parte* Letter).

312 Michigan Bell Supplemental Application, App. A, Tab 7, Affidavit of Brian Horst (Michigan Bell Horst Supplemental Aff.) Attach. A at 1, Attach B at 4-8; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 41-64. Commenters note that the E&Y audit does not purport to have evaluated every aspect of Michigan Bell's billing systems. *See, e.g.*, AT&T Supplemental Comments at 33-34; MCI Supplemental Comments at 8-9; TDS Metrocom July 30 *Ex Parte* Letter at 4-5. However, we find, and no commenter disagrees, that we may rely on the audits with respect to those issues that they do address. We further find that AT&T's concerns about use of proprietary information in E&Y's billing audit do not warrant a finding of checklist noncompliance. AT&T argues that Michigan Bell disclosed AT&T's proprietary information to E&Y for purposes of this audit, in violation of the parties' interconnection agreement. AT&T Supplemental Reply, Joint Reply Declaration of Sarah DeYoung and Shannie Tavares (AT&T DeYoung/Tavares Supplemental Reply Decl.) at para. 8. AT&T's complaint, however, does not allege a systemic problem with Michigan Bell's systems. We note that this concern is more properly raised with this Commission or the Michigan Commission, as appropriate.

313 Michigan Bell April 3 *Ex Parte* Letter at 1-3.

314 *Id*. at 4-5; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 33-34.

315 Michigan Bell April 3 *Ex Parte* Letter at 5; Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. 2 (filed Aug. 14, 2003) (Michigan Bell August 14 *Ex Parte* Letter).

underlying data used by Michigan Bell and the calculations used to determine these flow-through percentages.[316]

97. Other evidence further supports Michigan Bell's assertion that it has corrected the underlying problems that led to the records mismatch. Michigan Bell demonstrates that its service representatives are now better trained and equipped, reducing the possibility that manual posting of service order activity will lead to errors.[317] Following the reconciliation, E&Y audited a statistically valid sample of Michigan Bell's UNE-P circuit records in ACIS and CABS and found that more than 99 percent of the records matched as of April 23, 2003.[318] Because approximately 46 percent of the circuits E&Y tested had service order activity between the reconciliation and April 23, 2003, the 99 percent records match demonstrates that the service order activity correctly posted to CABS.[319]

98. We conclude, as did the Michigan Commission,[320] that Michigan Bell satisfies its evidentiary burden of demonstrating that its wholesale bills give competitive LECs a meaningful opportunity to compete. We are persuaded that Michigan Bell has taken sufficient steps to address the billing problems it has experienced, and that the remaining issues identified by competitive LECs are isolated rather than systemic problems. Specifically, Michigan Bell has addressed isolated billing errors as they have arisen, and has implemented processes to ensure

316 Michigan Bell Horst Supplemental Aff., Attach. A at 1; Attach. B at 9.

317 Michigan Bell April 3 *Ex Parte* Letter at 4; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 35-39.

318 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 65; Michigan Bell Horst Supplemental Aff., Attach. B at 11-12.

319 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 66; Michigan Bell Horst Supplemental Aff., Attach. C at 30-31. In addition, August and September 2002, BearingPoint successfully tested SBC Midwest billing systems in Illinois, Indiana, and Wisconsin following the remediation of the billing OSS software problems and shortcomings in manual handling of service order activity. Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 21-23; Michigan Bell Supplemental Application, App. C, Tab 21, BearingPoint Illinois Bell OSS Evaluation Project Report, at 9 (May 1, 2003); Michigan Bell Supplemental Application, App. C, Tab 25; BearingPoint Indiana Bell Interim OSS and Performance Measurement Status Report, at 10 (May 12, 2003); Michigan Bell Supplemental Application, App. C, Tab 27, BearingPoint Wisconsin Bell OSS Evaluation Project Interim Report, at 10 (Jan. 15, 2003). We find that we can rely on this testing as further evidence that the underlying problems were resolved because Michigan Bell's billing systems are the same those used throughout the SBC Midwest region. BearingPoint Michigan Final Report at 22-24. Although BearingPoint noted that it had "not validated all aspects" of the assertion that SBC Midwest's billing systems are regional, it stated that "its experience is consistent with that assertion." BearingPoint Michigan Final Report at 22-24, 815-16. The Michigan Commission likewise concluded that the results of BearingPoint testing from Illinois, Indiana, and Michigan could be used in evaluating Michigan Bell's billing performance in Michigan. Letter from Chairman Laura Chapelle, *et al*., Michigan Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. at 3 (filed Mar. 24, 2003) (Michigan Commission March 24 *Ex Parte* Letter). We rely on the conclusions of BearingPoint and the Michigan Commission in concluding that Michigan Bell's billing systems are regional in nature.

320 Michigan Commission Comments at 73-74; Michigan Commission Supplemental Comments at 7-9.

that its underlying databases, and the resulting wholesale bills, are accurate. Michigan Bell further shows that many of competitive LECs' concerns relate to small numbers of errors due to manual processing. As discussed in detail below, we reject commenters' concerns that the evidence in the record demonstrates a systemic problem with Michigan Bell's billing systems. Specifically, commenters' contentions are centered around four major issues: (1) apparent mismatches between competitive LECs' wholesale bills and their internal records, (2) complaints regarding Michigan Bell's wholesale billing processes and procedures, (3) concerns about the UNE-P data reconciliation, and (4) a variety of other specific problems with Michigan Bell's wholesale bills. We address each of these in turn below.

99. *Records Mismatches*. We reject AT&T's argument that the apparent mismatches between the customers for which Michigan Bell bills AT&T and the customers that AT&T acknowledges are its customers based on internal records warrants a finding of checklist noncompliance.[321] AT&T reviewed its March bill and identified approximately 1,900 instances where it either received bills for customers that its records indicated were not AT&T customers, or failed to receive bills for AT&T customers.[322] Most of these mismatches remained on AT&T's May bill.[323] Michigan Bell shows that approximately 75 percent of the 1,900 mismatches identified by AT&T actually were due to "record-keeping errors" by AT&T.[324] These problems include AT&T's failure to record the actual telephone number assigned to a customer when the number originally requested was not available and AT&T's failure to update its records with a customer's new telephone numbers after issuing an order to have the customer's original telephone number changed.[325] Michigan Bell acknowledges that the balance

---

[321] BullsEye Telecom also generally references experiencing similar mismatches, but does not provide detail or supporting evidence. Letter from Leland R. Rosier, Counsel for CLECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 1 (filed July 14, 2003) (CLECA July 14 *Ex Parte* Letter). We therefore conclude that its allegations do not warrant a finding of checklist noncompliance.

[322] AT&T DeYoung/Tavares Supplemental Decl. at paras. 7-12.

[323] *Id*. at para. 12.

[324] Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 2 (filed July 28, 2003) (Michigan Bell July 28 *Ex Parte* Letter); Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at paras. 25-26. AT&T argues that it is not receiving usage data from Michigan Bell for some of these numbers, demonstrating that the telephone numbers are not actually serving AT&T customers. Letter from Jacqueline G. Cooper, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 1-5 (filed Aug. 25, 2003) (AT&T August 25 *Ex Parte* Letter). As AT&T concedes, however, Michigan Bell describes circumstances that might result in no usage for those lines. *Id*. Since AT&T does not refute Michigan Bell's contention that lines might not have usage in some instances, we conclude that AT&T does not demonstrate that the lack of usage on these numbers for certain months, standing alone, is evidence that they do not belong to AT&T customers, or that AT&T is being misbilled.

[325] Michigan Bell July 28 *Ex Parte* Letter at 2; Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at paras. 25-26. At AT&T's request, Michigan Bell performed a further review of 395 mismatched numbers that Michigan Bell attributed to AT&T record-keeping errors. AT&T August 25 *Ex Parte* Letter, Attach. at 1-5. Of the 395 numbers, Michigan Bell only concluded that 17 actually were due to Michigan Bell errors, and reiterated its conclusion that the remainder were due to AT&T record-keeping errors. *Id*. We do not find that this small (continued….)

of the mismatches identified by AT&T reveal a small number of errors due to mistakes in manual processing.[326] We are persuaded by Michigan Bell's evidence that the errors alleged by AT&T do not reveal a billing problem of significant scope. As we have stated in the past, we recognize that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate, and we find that the limited instances of manual processing errors do not demonstrate checklist noncompliance.[327]

100. We likewise reject MCI's argument that similar mismatches between its customer records and the customers for which Michigan Bell bills MCI warrant a finding of checklist noncompliance. Using a test run of software that it is developing to automatically review its bills, MCI found it is being billed for 487 customers that its records indicated are not MCI customers.[328] In addition, MCI compared the "lines in service" report it receives from Michigan Bell with its own customer records and states that it found "thousands" of lines in the report that its internal records indicate do not relate to MCI customers.[329] Michigan Bell states that most of the 487 mismatches identified by MCI's software were due to erroneous LLNs sent during 2001 and 2002, which caused MCI to receive LLNs for customers that it had not actually lost.[330] Michigan Bell explains that these LLN problems have long since been resolved through the

(Continued from previous page)
adjustment alters Michigan Bell's showing that the vast majority of these mismatches are due to AT&T record-keeping errors.

[326] Specifically, Michigan Bell found that at most approximately 25% of AT&T's 1,900 mismatches were due to Michigan Bell problems, primarily due to manual processing. Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at paras. 25-26, 53. Further, Michigan Bell states that even if all 1,900 errors alleged by AT&T represented actual billing problems, they would affect only a very small percentage of AT&T's total lines in Michigan. *Id.* at para. 25. The Department of Justice contends that Michigan Bell "appears to call into question the attribution of all of these errors to AT&T," and cites a letter sent by Michigan Bell to AT&T discussing specific mismatches. Department of Justice 4-State Evaluation at 13 n.56. (citing a letter Michigan Bell sent to AT&T on July 25, 2003, included as a confidential attachment to the Michigan Bell July 28 *Ex Parte* Letter). We disagree that Michigan Bell's letter to AT&T "call[s] into question" Michigan Bell's record evidence on this issue. Michigan Bell July 28 *Ex Parte* Letter at 2; Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at paras. 25-26. In any event, we instead rely on Michigan Bell's affirmative statements on the record in this docket, which are made pursuant to "procedural rules requiring that parties submit accurate, reliable and truthful information." *Verizon New Jersey Order*, 17 FCC Rcd at 12316, para. 92 (citing 47 C.F.R. § 1.65).

[327] *See In The Matter of Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-384, Memorandum Opinion and Order, 18 FCC Rcd 5212, 5227, para. 28 (*Verizon 3-State Order*).

[328] MCI Supplemental Comments at 2; MCI Supplemental Comments, Declaration of Sherry Lichtenberg (MCI Lichtenberg Supplemental Decl.) at paras. 18-22; MCI Supplemental Reply, Reply Declaration of Sherry Lichtenberg (MCI Lichtenberg Supplemental Reply Decl.) at para. 4.

[329] MCI Supplemental Comments at 2-4; MCI Lichtenberg Supplemental Decl. at paras. 23-24.

[330] *Id*. at paras. 40-41, 46.

Michigan Commission's LLN collaborative.[331] Michigan Bell states that mistakes in manual processing were responsible for the small number of remaining mismatches identified by MCI.[332] We find that Michigan Bell has adequately demonstrated that the vast majority of MCI's mismatches are due to a long-resolved problem unrelated to its billing systems, and that the remaining problems demonstrate only isolated errors that are not significant in scope. Moreover, we note that MCI only recently provided these "thousands" of mismatches from its lines in service report to Michigan Bell for evaluation.[333] Similar to its analysis of AT&T's mismatches, Michigan Bell determined that only approximately 25% of the 5,612 mismatches identified by MCI were attributable to Michigan Bell errors due to mistakes in manual processing .[334] We are persuaded by Michigan Bell's evidence that the errors alleged by MCI also do not reveal a billing problem of competitively significant scope. Therefore, we do not find that the mismatches cited by MCI warrant a finding of checklist noncompliance.

101. *Process Concerns*. We reject competitive LECs' general concerns about certain Michigan Bell processes related to wholesale billing. Commenters claim, without providing specific details, that Michigan Bell lacks adequate internal processes to identify billing problems or ensure the accuracy of bills.[335] Commenters also challenge Michigan Bell's dispute resolution process, arguing that it can take several months – or more – for disputes to be resolved. Such delays tie up revenues if the carriers' interconnection agreements require them to pay the disputed amounts or place them in escrow while the disputes are pending.[336] In addition, commenters claim that Michigan Bell provides insufficient explanation of its billing adjustments or its reasons for denying a dispute.[337] TDS Metrocom further asserts, based on a dispute regarding improper charges for joint SONET facilities, that even when Michigan Bell acknowledges an error, it is sometimes slow to fix the underlying problems and issue proper

---

331 *Id*. at paras. 41, 46. Michigan Bell notes that only three of the LLNs responsible for part of those mismatches were sent in 2003.

332 Specifically, Michigan Bell found that manual processing errors could be responsible for a number of the few MCI mismatches not attributable to past LLN problems. Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at paras. 25-26, 53.

333 Letter from Keith L. Seat, Senior Counsel-Federal Advocacy, MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 6-7 (filed Sept. 8, 2003) (MCI September 8 *Ex Parte* Letter).

334 *Id*.

335 TDS Metrocom Supplemental Comments at 12.

336 MCI Supplemental Comments at 6-8; NALA Supplemental Comments at 7; TDS Metrocom Supplemental Comments at 15; Letter from Leland R. Rosier, Counsel for CLECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. (filed July 14, 2003) (CLECA July 14 *Ex Parte* Letter).

337 AT&T Supplemental Reply at 25; AT&T DeYoung/Tavares Supplemental Reply Decl. at para. 15; MCI Supplemental Comments at 6-7; TDS Metrocom Supplemental Comments at 15; NALA Supplemental Comments at 7; CLECA July 14 *Ex Parte* Letter, Attach.

credits.[338]

102. Michigan Bell responds to the general process concerns by describing the extensive processes and procedures it has in place to identify and correct errors and resolve billing disputes, as discussed in greater detail above.[339] Based on the evidence in the record as a whole, we find that Michigan Bell has adequately provided accurate bills and sought to resolve outstanding disputes. Regarding TDS Metrocom's joint SONET billing dispute, Michigan Bell states that in October 2002 it corrected the system problem that led to the erroneous billing, and provided the vast majority of credits to TDS Metrocom by May 2003.[340] We find that the specific dispute raised by TDS Metrocom is being resolved by Michigan Bell on a business-to-business basis. In the absence of other specific evidence that shows a systemic flaw in Michigan Bell's wholesale billing processes, we do not find these concerns to be unusual given the tremendous amount of competitive activity in this state. Accordingly, we find that Michigan Bell has not denied competing carriers a meaningful opportunity to compete. To the extent that any of these carriers wish to pursue a specific claim, they may raise their concerns with this Commission or the Michigan Commission, as appropriate.

103. We also reject commenters' claims that Michigan Bell does not provide auditable wholesale bills. Commenters argue that the format of Michigan Bell's bills and the limited information included on the bills makes them difficult to audit.[341] Michigan Bell responds that it provides wholesale bills in industry standard BOS/BDT format, for which substantial training and documentation is available.[342] Michigan Bell states that the bills also provide significant detail, including the USOC for the particular charge and a description of the product or service.[343] Further, BearingPoint verified that Michigan Bell's bills are auditable, and Michigan Bell satisfied the relevant performance standards for providing complete and properly formatted electronic bills.[344] We previously have found such evidence sufficient to demonstrate the auditability of wholesale bills,[345] and again conclude that Michigan Bell's provision of bills in industry standard format with a level of detail that BearingPoint verified as auditable is adequate

338 TDS Metrocom Supplemental Comments at 11.

339 *See supra* paras. 90-93.

340 Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 95. Michigan Bell notes, however, that since that time TDS Metrocom has identified one additional SONET node that was misbilled, and for which Michigan Bell will provide proper credits. *Id*.

341 AT&T DeYoung/Tavares Supplemental Reply Decl. at para. 15; MCI Lichtenberg Supplemental Decl. at paras. 39-40; TDS Metrocom Cox Supplemental Aff. at para. 21; TDS Metrocom Reply at 5.

342 Michigan Bell Brown/Cottrell/Flynn Reply Aff. at paras. 9-11.

343 *Id*. at para. 10; Michigan Bell Flynn aff. at para. 17.

344 Michigan Bell Brown/Cottrell/Flynn Reply Aff. at para. 12 (citing BearingPoint Michigan OSS Evaluation Project Report at 56 and TVV9-26 at 1009); PM 15 (Percent Accurate and Complete Formatted Mechanized Bills).

345 *See, e.g.*, *SBC California Order*, 17 FCC Rcd at 25650, 25697, para. 90.

to provide competitors a meaningful opportunity to compete. In addition, as noted above, the Michigan Commission also approved a compliance plan regarding billing auditability, pursuant to which Michigan Bell provides additional training to competing carriers, and is engaged in ongoing discussions in the CLEC User Forum to address bill auditability issues.[346]

104. *Reconciliation-Related Issues*. We also conclude that Michigan Bell has adequately remedied the ACIS/CABS records mismatch problem, described above, and taken steps to ensure that such problems will not recur. Specifically, Michigan Bell demonstrates that it corrected the UNE-P records mismatch as well as the underlying problems that caused the errors.[347] E&Y and BearingPoint testing confirmed significant aspects of these results.[348] In light of this significant evidence, including third-party verification that the reconciliation was performed properly and the underlying systems problems were fixed, we reject those concerns of commenters, raised in the prior proceeding, which arose due either to the lack of information available at the time or a misunderstanding of the reconciliation process.[349]

105. We find that Michigan Bell properly issued debits and credits for misbilled circuits corrected through the reconciliation. We reject commenters' contentions that Michigan Bell's use of data from its Common Ameritech Message Processing System (CAMPS) is inappropriate for calculating debits and credits.[350] Michigan Bell states that when its ACIS provisioning database is updated, that data flows through to update the CAMPS usage system.[351] Michigan Bell states that CAMPS retains data for a longer historical period than ACIS and that the format of CAMPS data made it easier to use for calculating debits and credits.[352] In a few instances, CAMPS did not contain adequate historical data to determine the actual date Michigan

346 *See supra* para. 93.

347 We reject AT&T's argument that the ACIS-CABS UNE-P data reconciliation is not yet complete. AT&T states that in June 2003 it received a new list of numbers that were reconciled. AT&T Supplemental Comments at 28-29. Michigan Bell responds that the billing for these telephone numbers actually was reestablished in March 2003, but these telephone numbers inadvertently were not included on the list sent to AT&T until June. Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para 31. Based on Michigan Bell's showing that these numbers were reconciled well before they were provided to AT&T, we thus find that these telephone numbers do not rebut Michigan Bell's evidence that the reconciliation is complete.

348 *See supra* paras. 95-96.

349 *See, e.g.*, AT&T April 9 Comments; Supplemental Comments of TDS Metrocom, WC Docket No. 03-16 (filed Apr. 9, 2003) (TDS Metrocom April 9 Comments). To the extent that commenters' concerns remained following Michigan Bell's explanations regarding the reconciliation, they are addressed below. *See infra* paras. 106-07.

350 AT&T Supplemental Comments at 27-28, 30-31; AT&T DeYoung/Tavares Supplemental Decl. at paras. 23-29; MCI Supplemental Comments at 6.

351 Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 29.

352 *Id*.

Bell began improperly billing a competitive LEC for a circuit.[353] In those instances, Michigan Bell calculated the credit using either the initial date the competitive LEC was billed for the circuit or the date of the CABS conversion, whichever was later.[354] We agree with Michigan Bell that it was reasonable to use CAMPS data, rather than data from the ACIS database, because CAMPS data is generated by ACIS, and is presented in a more manageable format. We further find that Michigan Bell's use of the circuit or the date of the CABS conversion when providing credits where actual data was unavailable minimized any harm to competitive LECs. Thus, we find that Michigan Bell's calculation of reconciliation-related debits was adequate for purposes of its compliance with the competitive checklist.

106. AT&T also claims that Michigan Bell misinterpreted its interconnection agreement when limiting the time period for which it issued reconciliation-related credits to AT&T, but we find that this claim does not demonstrate checklist noncompliance.[355] AT&T does not allege either a systemic failure or discriminatory billing performance on the part of Michigan Bell, but simply a dispute over the terms of its interconnection agreement. We therefore do not find that AT&T's allegation warrants a finding of checklist noncompliance. We note that AT&T could raise its concern with this Commission or the Michigan Commission, as appropriate.

107. We likewise reject commenters' criticisms that Michigan Bell failed to issue required debits and credits in conjunction with the reconciliation. Specifically, commenters note that the reconciliation did not result in any debits or credits for non-recurring charges (NRCs) or usage charges associated with the misbilled UNE-P circuits.[356] Further, MCI notes that Michigan Bell has thus far only issued credits and debits for circuits with ongoing misbilling at the time of the reconciliation.[357] Michigan Bell responds that competitive LECs were billed improperly for circuits only when the circuits migrated to another carrier but that activity failed properly to post to CABS.[358] Thus, the original NRC was proper, and no new NRC would have been imposed because the service order activity failed to post to CABS.[359] Michigan Bell further states that nothing in the underlying records mismatch or subsequent reconciliation should have resulted in improper usage charges that would need to be adjusted.[360] Michigan Bell also explains that the only way a circuit would no longer be listed as in service in CABS at the time of the

353 *Id*. at para. 30.

354 *Id.*; Michigan Bell Horst Supplemental Aff., Attach. B at 5-6. This credit actually provided also would be limited by any applicable time restrictions for credits contained in a particular carrier's interconnection agreement. Michigan Bell Horst Supplemental Aff., Attach. B at Attach. 1.

355 AT&T DeYoung/Tavares Supplemental Decl. at para. 27.

356 MCI Supplemental Comments at 5; MCI Lichtenberg Supplemental Decl. at paras. 25-27.

357 MCI Lichtenberg Supplemental Decl. at para. 11.

358 Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 36.

359 *Id*.

360 *Id*.

reconciliation is if it had been disconnected through the normal posting of service orders.[361] No improper charges would have been imposed by CABS if the service orders posted properly.[362] We find that Michigan Bell has adequately demonstrated that the concerns raised by commenters would not have resulted from the problems that caused the ACIS/CABS records mismatch.

108. We also reject AT&T's argument that Michigan Bell must restate its performance metric PM 17 to demonstrate checklist compliance.[363] Michigan Bell states that its reported results for PM 17 did not "disguise" the problem, as AT&T alleges. Instead, Michigan Bell explains, the ongoing efforts to post the manual backlog of held service order activity until approximately October 2002 appeared in the results of PM 17, causing Michigan Bell to miss parity in 11 months in 2002.[364] Michigan Bell admits, however, the service order activity still being held after October 2002 was not included in PM 17 because it was cancelled as part of the reconciliation, rather than being posted to CABS through the standard process.[365] Although we see no reason why Michigan Bell should not, in fact, restate its performance for PM 17 for some months under its restatement policy, we believe that this issue is more appropriately addressed by the Michigan Commission.[366] At any rate, given that the vast majority of the reconciliation took place in January 2003, any restatement of PM 17 would primarily affect periods outside our current review of Michigan Bell's performance data.

109. *Specific Billing Disputes*. Although commenters raise a host of specific Michigan Bell billing mistakes and other disputes between the parties, as discussed below, we do not find in this instance that these specific billing claims warrant a finding of checklist noncompliance. Commenters claim that Michigan Bell's bills are inaccurate because of specific instances of improper charges for products or services or the application of incorrect rates.[367] Michigan Bell shows that these problems generally were caused by isolated manual errors, which it has corrected, and for which appropriate credits have been issued.[368] Michigan Bell demonstrates

---

361 *Id*. at para. 35.

362 *Id*.

363 AT&T Supplemental Comments at 29.

364 Michigan Bell Supplemental Reply, App., Tab 5, Supplemental Reply Affidavit of James D. Ehr (Michigan Bell Ehr Supplemental Reply Aff.) at paras. 5-6.

365 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 40 n.50.

366 Michigan Bell Ehr. Reply Aff. at para. 49.

367 AT&T Supplemental Comments at 29-30; AT&T DeYoung/Tavares Supplemental Reply Decl. at paras. 10-15; MCI Lichtenberg Supplemental Decl. at paras. 12-13, 33-45; CLECA July 14 *Ex Parte* Letter, Attach.; TDS Metrocom Reply at 4-5; TDS Metrocom Cox Aff. at para. 64; TDS Metrocom Supplemental Comments at 12-14; Sage Supplemental Comments at 11; Sage July 18 *Ex Parte* Letter, Attach. at 4.

368 Michigan Bell Brown/Cottrell/Flynn Reply Aff. at paras. 44, 47; Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 87-108, 144-65; Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Decl. at paras. 85, 97; *see also* AT&T DeYoung/Tavares Supplemental Reply Decl. at paras. 14-15 (noting that billing (continued….)

that other alleged problems actually relate to interconnection disputes that it is addressing on a business-to-business basis.[369] In addition, TDS Metrocom expresses concern about problems with back billing,[370] Michigan Bell's imposition of late payment charges on disputes amounts,[371] and the manner in which Michigan Bell allocates credits.[372] Michigan Bell demonstrates that each of the cited back billing incidents were isolated occurrences to which Michigan Bell has responded by addressing the underlying problems and issuing appropriate credits.[373] Regarding the late payment charges, Michigan Bell explains that its LSC policies call for any late payment charges incurred while a bill was being disputed to be credited if the dispute is resolved in favor of the competitive LEC.[374] Further, Michigan Bell states that its practice of issuing credits at the invoice level is a long-standing industry practice that allows competitive LECs to control the manner in which their credits are allocated.[375]

110. We find that Michigan Bell has demonstrated that the vast majority of these billing disputes are historical problems that Michigan Bell has resolved, or are disputes that Michigan Bell is addressing on a business-to-business basis. We note that a number of commenters' allegations are largely anecdotal in nature and lack sufficient supporting

(Continued from previous page)
problems were brought to its attention by Michigan Bell, which had already corrected the problems and provided appropriate credits).

[369] Michigan Bell Chapman/Cottrell Reply Aff. at paras. 33-35; Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 86. For example, Sage alleges it is being billed by SBC for incoming collect calls that its customers accept, in violation of its interconnection agreement. Sage Supplemental Comments at 11. Michigan Bell disagrees with Sage's interpretation of the interconnection agreement, and indicates that its policy regarding Incollect calls is its standard industry practice, applied to all competitive LECs, raising a question about whether the policy violates our rules or is denies competitors a meaningful opportunity to compete. *See* Michigan Bell Reply at 50-51; Michigan Bell Alexander Reply Aff. at paras. 11, 13. As another example, MCI argues that its loop rates have been misbilled. MCI Lichtenberg Supplemental Aff. at paras. 36-37. Michigan Bell states that it has charged MCI the proper UNE-P loop rates as clearly stated in the parties' interconnection agreement. Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 86. Nonetheless, Michigan Bell willingly negotiated with MCI regarding this issue, although Michigan Bell continues to argue that MCI would need to amend its interconnection agreement to incorporate the revised UNE-P tariff loop rates. *Id*. To the extent competitors believe discrimination exists, they may initiate enforcement action through state commission enforcement processes or this Commission in the context of a section 208 complaint proceeding. *See Verizon 3-State Order*, 18 FCC Rcd at 5301, para. 151.

[370] TDS Metrocom Cox Aff. at paras. 51-61; TDS Metrocom Supplemental Comments at 10-14.

[371] TDS Metrocom Cox Supplemental Aff. at para. 8.

[372] Letter from Mark Jenn, TDS Metrocom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 2-3 (filed Mar. 14, 2003) (TDS March 14 *Ex Parte* Letter).

[373] *See* Michigan Bell Brown/Cottrell/Flynn Reply Aff. at paras. 46-48 & n.30; Michigan Bell Supplemental Reply, App., Tab 1, Supplemental Reply Affidavit of Scott J. Alexander (Michigan Bell Alexander Supplemental Reply Aff.) at para. 3 n.2.

[374] Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at paras. 81-82.

[375] Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 152.

evidence.[376] Accordingly, we do not find that these claims are sufficient to overcome Michigan Bell's affirmative evidence that its billing systems meet the Commission's requirements.[377]

111. We reject TDS Metrocom's complaint that the scope of BearingPoint's testing was inadequate to identify certain problems it experienced.[378] Michigan Bell notes that BearingPoint's OSS test is similar to that relied upon in prior section 271 applications in numerous states.[379] Further, the Master Test Plan was developed with the input of competitive carriers and the Michigan Commission, and was not designed or intended to identify every conceivable problem with Michigan Bell's systems.[380] For these reasons, we conclude that the BearingPoint billing test was adequate for use in evaluating Michigan Bell's performance. Moreover, we note that we rely on the totality of Michigan Bell's evidence in concluding that Michigan Bell allows competing LECs a meaningful opportunity to compete.

112. Despite Michigan Bell's historical problems in producing accurate wholesale bills,[381] after a review of the evidence in this record of Michigan Bell's performance during the period we are assessing, we find that competitive LECs have not offered sufficient evidence to overcome Michigan Bell's demonstration that competitors are provided a meaningful opportunity to compete. The Department of Justice noted that competitive LECs allege a number of problems with their wholesale bills, and as a result, concluded that Michigan Bell's evidentiary showing fails to demonstrate checklist compliance.[382] Although the Department of Justice recognizes that Michigan Bell addresses "specific billing errors as they arise,"[383] it finds

---

376 TDS Metrocom, for example, argues generally that it has "never received an accurate bill from Michigan Bell." TDS Metrocom Comments at 25 (further stating that TDS Metrocom has a team of five employees that spend 30% of their time reviewing SBC's bills and disputing billing inaccuracies and improper charges); *see also* TDS Metrocom Cox Aff. at paras. 46-68. CLECA makes several general allegations of wholesale billing problems based on the historical problems of a single competitive LEC, which have been resolved by Michigan Bell. CLECA Supplemental Comments at 10-11, Attach. 2 at 2-3 (citing alleged problems with LDMI's November 2002 bill); Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 84.

377 *Qwest 9-State Order*, 17 FCC Rcd at 26511, para. 378 n.1423 ("When considering commenters' filings in opposition to the BOC's application, we look for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice.") (quoting *SBC Texas Order*, 15 FCC Rcd at 18375, para. 50).

378 Letter from Mark Jenn, Manager – CLEC Federal Affairs, TDS Metrocom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 1-4 (filed July 30, 2003) (TDS Metrocom July 30 *Ex Parte* Letter).

379 Michigan Bell Cottrell Aff. at para. 26 & n.17.

380 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 8.

381 *See supra* para. 94.

382 Department of Justice Supplemental Evaluation at 8-9; *see also* Department of Justice 4-State Evaluation at 12-15 (asserting that Michigan Bell's responses to concerns raised by competitive LECs in Michigan are inadequate to demonstrate checklist compliance).

383 Department of Justice Supplemental Evaluation at 8.

such evidence insufficient to overcome the competitive LECs' billing allegations.[384] Notably, however, the Department of Justice does not contend, nor put forward any additional evidence to suggest, that Michigan Bell's billing system is systemically flawed. The Commission has previously found that the BOC meets its evidentiary burden by showing that it has adequately responded to problems as they have arisen, because there inevitably will be errors and carrier-to-carrier disputes, particularly considering the complexity of billing systems and volume of transactions handled in states like Michigan.[385] As we have discussed above, many of the "billing systems" problems raised by competitive LECs actually are interconnection disputes, are attributable to isolated mistakes on the part of Michigan Bell employees, arise out of the ACIS/CABS reconciliation, or are historical problems with other aspects of Michigan Bell's OSS unrelated to its billing systems. We conclude that commenters fail to demonstrate that Michigan Bell's errors are indicative of a systemic problem, rather than isolated instances of problems typical of high-volume carrier-to-carrier commercial billing.[386] Indeed, the Department of Justice acknowledges that many of the competitive LECs' complaints "individually may not rise to a level of concern that would warrant denial of SBC's application, or may encompass disputes more appropriately resolved elsewhere."[387] We find that Michigan Bell's evidence that

---

[384] Department of Justice Supplemental Evaluation at 8-9 (stating that Michigan Bell's efforts to address specific billing problems are "commendable," but concluding that Michigan Bell must submit additional evidence to demonstrate checklist compliance); *see also* Department of Justice 4-State Evaluation at 14 (arguing that responses to the specific billings problems raised by competitive LECs in the SBC Midwest region are inadequate to demonstrate checklist compliance in the absence of additional information).

[385] *See, e.g.*, *Verizon 3-State Order* 18 FCC Rcd at 5227-32, paras. 28-34 (finding that "[w]hile competing carriers advance a number of arguments about Verizon's billing, many of these problems appear to be resolved historical problems," and thus the claims are "not reflective of a systemic problem that would warrant a finding of checklist noncompliance"); *SBC California Order*, 17 FCC Rcd at 25696-702, paras. 90-95 (finding that the competitive LECs' disputes "have little relevance to the effectiveness of Pacific Bell's billing systems," and "did not provide sufficient information to rebut Pacific Bell's response that it took appropriate action with regard to these disputes," and thus concluding that "[m]any of the problems identified by commenters appear to be resolved historical problems, and even in the aggregate, these claims do not overcome Pacific Bell's demonstration of checklist compliance"); *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214 , Memorandum Opinion and Order, 17 FCC Rcd 21880, 21901-12, paras. 40-55 (2002) (*Verizon Virginia Order*) (finding that "[w]hile competing carriers advance a number of arguments about Verizon's billing, many of these problems appear to be resolved historical problems and, even in the aggregate, these claims do not overcome Verizon's demonstration of checklist compliance" where the claims "do not indicate current systemic or recurring billing problems"); *Verizon New Jersey Order*, 17 FCC Rcd at 12336-37, para. 126 (finding that the Commission "cannot, without further evidence find that the parties have demonstrated systemic inaccuracies in Verizon's wholesale bills that would require a finding of checklist noncompliance").

[386] As noted above, the D.C. Circuit recently held that weighing conflicting evidence is "a matter peculiarly within the province of the Commission." *Z-Tel v. FCC*, slip op. at 17.

[387] Department of Justice Supplemental Evaluation at 6. Likewise, VarTec Telecom states that it "has seen a marked improvement in the accuracy of [Michigan Bell's] bills" since January 2003, and that any billing problems it has experienced do not appear to "constitute vast, systemic or procedural billing problems. These problems are discreet and independent occurrences in a very complex system." VarTec July 14 *Ex Parte* Letter at 2.

it addresses billing problems as they arise is sufficient to respond to the competitive LECs' specific billing allegations, and demonstrate checklist compliance.[388] Although we judge Michigan Bell's wholesale billing at the time of its application, we recognize that access to OSS is an evolutionary process, and we expect that Michigan Bell will continue to improve its wholesale billing in the future.

(ii) Service Usage Reports

113. We find, as did the Michigan Commission,[389] that Michigan Bell complies with its obligation to provide complete, accurate, and timely reports on service usage. The record in this proceeding indicates that Michigan Bell provides competitive carriers with daily usage files (DUFs), which allow competitive carriers access to usage records, including end user, access and interconnection records.[390] We find that the commercial performance results and BearingPoint testing demonstrate that Michigan Bell provides timely and accurate reports on service usage.[391] Based on the record evidence, we conclude that Michigan Bell's provision of service usage data through the DUF meets its obligations in this regard.

114. We reject AT&T's criticism that, upon reviewing credits from the ACIS/CABS reconciliation, it identified 187 instances where it received a credit indicating that the customer had migrated to another carrier, but for which AT&T had continued to receive usage data for some time.[392] Michigan Bell responds that AT&T misunderstood how credit dates were

---

[388] For these same reasons we find no evidence to suggest that Michigan Bell's various billing problems result from errors "in the underlying databases from which bills are calculated and in the processes by which data is entered into and extracted from those databases," contrary to the claims made by commenters and the Department of Justice. Department of Justice Supplemental Evaluation at 9; *see also* MCI Lichtenberg Supplemental Decl. at para. 22; MCI Lichtenberg Supplemental Reply Decl. at para. 7; AT&T Supplemental Reply at 21.

[389] Michigan Commission Comments at 74.

[390] Michigan Bell Flynn Aff. at para. 12. Competitive LECs can use the DUFs to: (1) bill their end-user customers; (2) bill interconnecting carriers; and (3) reconcile their wholesale bills. Competitive LECs may elect to have their DUF delivered electronically, or via magnetic tape/cartridge, and have the option of receiving their DUF file on a daily basis. Michigan Bell Flynn Aff. at para. 12.

[391] Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at paras. 7, 15; *see also* App. B. We reject AT&T's claim that the third-party test results regarding Michigan Bell's DUF reporting are unreliable because the data reported by Michigan Bell are inaccurate. AT&T Moore/Connolly Decl. at 40-41 (noting that 667 of 1,799 DUF records were missing from the March 2002 data); *see also* Michigan Commission Report at 22 (stating that reliance on this measure "should be cautioned"). Michigan Bell explains that, as of December 2002, it had resolved the reporting error. Michigan Bell Ehr Aff., Attach. P at 7. Consequently, Michigan Bell's DUF performance data are reliable for the time periods currently under review, and we find that the reporting error has sufficiently been resolved.

[392] Letter from Alan C. Geolot, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 2-3 (filed Apr. 14, 2003) (AT&T April 14 *Ex Parte* Letter); AT&T Supplemental Comments at 30-31; MCI Lichtenberg Supplemental Decl. at paras. 28-29. AT&T also notes that DUF charges were incorrectly applied in Indiana and that Michigan Bell recently disclosed that a coding error in a software release resulted in DUF file errors. AT&T DeYoung/Tavares Supplemental Decl. at para. 17; AT&T (continued….)

calculated during the reconciliation.[393] Specifically, Michigan Bell states that the "from" date for a reconciliation-related credit was not always the date on which the customer migrated from AT&T.[394] In some instances the actual date the customer migrated was no longer available, so, to avoid disadvantaging the competitive LEC, Michigan Bell provided a credit for charges from the date the competitive LEC was first billed for the circuit.[395] In these instances, the time period covered by the credit would include dates before the customer actually migrated, and during which the competitive LEC would properly have been receiving usage data.[396] We conclude that AT&T has identified only a few, isolated problems with Michigan Bell's DUF files, which, in light of Michigan Bell's DUF metric performance and successful third-party tests, we do not find to be competitively significant.

115. We similarly reject MCI's complaint that between February and April 2003 it identified approximately 700 usage records for customers for which it had received a LLN and was no longer receiving wholesale bills.[397] MCI states, however, that on June 3, 2003, Michigan Bell informed it that a number of the mismatches between MCI's records and the usage data were attributable to historical LLN problems.[398] As discussed above, these problems have largely been resolved through the Michigan Commission's LLN collaborative.[399] MCI states that Michigan Bell acknowledged that other mismatches were due to manual errors by LSC personnel, but Michigan Bell was providing the appropriate credits.[400] Michigan Bell further states that it makes LSC resources and bill dispute processes available to allow resolution of such problems to the extent that they occur.[401] We find that the DUF problems attributable to errors in Michigan Bell's billing systems, rather than historical, resolved LLN problems, constitute only a limited number of isolated problems. As we stated above, in light of Michigan Bell's DUF metric performance and successful third-party tests, we do not find such limited

(Continued from previous page)
DeYoung/Tavares Supplemental Reply Decl. at para. 16; *see also* MCI Lichtenberg Supplemental Decl. at para. 30 (discussing the coding error). However, these problems appear to have already been resolved. Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 83; AT&T DeYoung/Tavares Supplemental Reply Decl. at para. 16.

393 Michigan Bell Brown/Cottrell/Flynn Supplemental Aff. at para. 137.

394 *Id*.

395 *Id*. As noted above, however, no credit was provided for a date prior to the CABS conversion or for a longer period of time than allowed for in the relevant interconnection agreement. *See supra* para. 105.

396 *Id*.

397 MCI Lichtenberg Supplemental Decl. at para. 28. MCI also identified 513 allegedly incorrect usage records in November 2002, however that is outside the time period currently at issue in this review.

398 MCI Lichtenberg Supplemental Decl. at paras. 28-29.

399 *See supra* para. 100.

400 MCI Lichtenberg Supplemental Decl. at paras. 28-29.

401 Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 37.

problems to be competitively significant.

116. We also reject Sage's claim that Michigan Bell fails to provide accurate call detail records necessary for Sage's collection of access revenues.[402] Michigan Bell states that Sage first informed it of missing records for Michigan on June 25, 2003, and it is currently working with Sage to obtain the additional information necessary to investigate and resolve this issue.[403] Without specific evidence of systemic errors in Michigan Bell's systems, we do not find that this problem, which Michigan Bell is addressing on a business-to-business basis with Sage, warrants a finding of checklist noncompliance.[404]

g. Change Management

117. We conclude that Michigan Bell demonstrates that it satisfies checklist item 2 regarding change management. In its prior orders, the Commission has explained that it must review the BOC's change management procedures to determine whether these procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS.[405] In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.[406] After determining whether the BOC's change

---

[402] Sage Supplemental Comments at 11-12. TSI also argues that Michigan Bell fails to provide billing detail necessary for TSI to "determine accurate signaling message counts and proper jurisdictional billing treatment associated with those calls." Letter from David J. Robinson, TSI, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (filed July 18, 2003) (TSI July 18 *Ex Parte* Letter). We note that TSI provides no details regarding its complaint and thus, consistent with prior section 271 orders, we do not find that its claim overcomes Michigan Bell's affirmative showing of checklist compliance. *See Verizon 3-State 271 Order*, 18 FCC Rcd at 5225, para. 24 ("[W]e give little, if any, weight to allegations in a section 271 proceeding without the minimum amount of detail necessary for us to determine whether the applicant fails the checklist."). Furthermore, TSI is not a telecommunications carrier so we do not review Michigan Bell's performance in providing bills to TSI under section 271. 47 U.S.C. § 271(c)(2)(B).

[403] Michigan Bell Brown/Cottrell/Flynn Supplemental Reply Aff. at para. 89.

[404] *See Verizon 3-State 271 Order*, 18 FCC Rcd at 5225, para. 24.

[405] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, paras. 102-03; *SWBT Texas Order*, 15 FCC Rcd at 18403-04, paras. 106-08.

[406] *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 108. We have noted previously that we are open to consideration of change management plans that differ from those already found to be compliant with section 271. *Bell Atlantic New York Order*, 15 FCC Rcd at 4004, para. 111; *SWBT Texas Order*, 15 FCC at 18404, para. 109.

management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan.[407]

118. *Adequacy of Change Management Plan*. Michigan Bell's change management plan (CMP) in Michigan is the same CMP that is used throughout SBC's thirteen-state region.[408] With the exception of the revised notice provisions discussed below, the Commission reviewed and approved this CMP in the Arkansas/Missouri and the California section 271 proceedings.[409] We find no compelling reason to deviate from our previous finding regarding the basic framework of the CMP and, as discussed below, we conclude that the design of Michigan Bell's CMP is adequate.

119. We rely on Michigan Bell's revised CMP, adopted by the Michigan Commission on March 26, 2003.[410] We find that the revised CMP clarifies that Michigan Bell must provide notice of all competitive LEC-impacting changes, including any "new edits initiated by SBC" and "new edits in response to a CLEC-impacting defect."[411] Michigan Bell explains that the new CMP is designed to "facilitate communicating system changes that occur between releases and more specifically, for the types of changes that were the basis for the comments filed by AT&T and noted by the [Michigan Commission]."[412] We agree with Michigan Bell, and find that Michigan Bell's CMP adequately requires Michigan Bell to notify competitive LECs before implementing any changes that affect competitive LECs.[413]

120. *Adequate Documentation*. We also conclude that Michigan Bell provides the documentation and support necessary to provide competitive LECs nondiscriminatory access to Michigan Bell's OSS.[414] We reject competitive LECs' assertions that, because of several

---

407 *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4004-05, paras. 101, 112.

408 Michigan Bell Application at 56; Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 22.

409 *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20725, para. 15; *SBC California Order*, 17 FCC Rcd at 25650, 25702, para. 96. Michigan Bell also adds that much of the current CMP was taken from its predecessor, SBC's eight-state CMP, which was reviewed and approved by the Commission in the Texas and Kansas/Oklahoma Section 271 applications. Michigan Bell March 14 *Ex Parte* Letter, Attach. D at 1-2. *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. at 6318, para. 166; *SWBT Texas Order*, 15 FCC Rcd at 18403, para. 105.

410 *In the Matter, on the Commission's Own Motion, To Consider SBC's, f/k/a Ameritech Michigan. Compliance With the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, Opinion and Order (Michigan Commission Mar. 26, 2003) (Michigan Commission Compliance Plan Order).

411 Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. F at 4 (filed Mar. 13, 2003) (Michigan Bell March 13 *Ex Parte* Letter).

412 Michigan Bell March 13 *Ex Parte* Letter, Attach. F at 2.

413 Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 21.

414 *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6318-19, para. 167; *SWBT Texas Order*, 15 FCC Rcd at 18409-20, paras. 116-34.

revisions to the documentation for past LSOG releases, Michigan Bell fails to provide adequate documentation.[415] For instance, AT&T contends that Michigan Bell issued more than 1,000 pages of revisions to LSOG 5 between August 2001 and August 2002.[416] MCI states that Michigan Bell has issued five sets of documentation changes for LSOG 5.02, three sets of changes for LSOG 5.03, and one set of changes for LSOG 6.[417] Other than stating the number of revisions for each release, however, AT&T's and MCI's allegations of historical problems contain little supporting detail for this Commission to make a determination that Michigan Bell fails to provide adequate documentation.[418] Moreover, we note that other than MCI describing one documentation revision made for LSOG 6, no party raises any specific issues regarding Michigan Bell's documentation for its recent release.[419] Thus, we conclude that no widespread problems exist with Michigan Bell's documentation that would undermine a carrier's access to Michigan Bell's OSS.

121. *Testing Environment*. Based on the record, we reject AT&T's argument that

---

[415] AT&T DeYoung/Willard Decl. at paras. 186-95; MCI Lichtenberg Supplemental Decl. at paras. 75-77.

[416] AT&T DeYoung/Willard Decl. at para. 187.

[417] MCI Lichtenberg Supplemental Decl. at paras. 74-75. We also reject MCI's allegation that the number of "defects" with Michigan Bell's LSOG 6 release prevents competitive LECs from moving to the latest LSOG version. *Id.* at para. 76. Based on the record before us, we are unable to determine either the scope or effect of any defects in LSOG 6 (which, according to MCI's figures, are less than the number of defects for LSOG 5.02 and LSOG 5.03), and, further, whether these alleged problems actually affect Michigan competitive LECs. For example, MCI states that LSOG 6 "already" has 53 defects, and that LSOG 5.02 and LSOG 5.03 have 65 and 111 defects respectively. *Id.* MCI, however, acknowledges that less than two-thirds of the total number defects for all three releases (146 out of 229) apply to the "SBC-Ameritech region." *Id.* Thus, according to MCI's figures we are unable to determine how many defects in LSOG 6 relate to Michigan competitive LECs. We also reject MCI's argument that an increase in reported defects for LSOG 6.0, from 44 to 79 defects during the month of August 2003, demonstrates that Michigan Bell's OSS performance is deteriorating. MCI September 8 *Ex Parte* Letter at 8. Michigan Bell demonstrates that this figure does not represent an increase in actual defects, but only an increase due to expanded reporting requirements as required under the new Change Management Communications Plan. Michigan Bell September 12 *Ex Parte* Letter, Attach. at 1. MCI also claims that Michigan Bell "artificially" reduces the number of reported defects. MCI September 8 *Ex Parte* Letter at 8. Michigan Bell, however, demonstrates the reductions in the number of reported defects are largely due to improperly reported defects, *e.g.*, programming that complies with the business requirements, being reclassified as change requests. Michigan Bell September 12 *Ex Parte* Letter, Attach. at 3. Finally, MCI describes only one defect in LSOG 5.02 – a version that MCI no longer uses.

[418] For example, to support its claim that Michigan Bell "develops OSS ordering requirements on an ad hoc, on-the-spot" basis, AT&T describes only one type of order for which it was unable to find documentation – when a customer with multiple lines requests disconnection of its billing telephone number. AT&T DeYoung/Willard Decl. at para. 188-95. It appears from AT&T's comments, however, that Michigan Bell has actively sought to resolve AT&T's concerns on a company-to-company basis. Nonetheless, we do not find this one problem to be indicative of a systemic problem.

[419] We note that TDS Metrocom previously stated that it experienced numerous problems during its attempts to transition from LSOG 4 to LSOG 5. TDS Metrocom Comments at 22. However, TDS Metrocom does not provide sufficient detail regarding this issue for the Commission to reach a different conclusion.

Michigan Bell fails to maintain an adequate test environment because Michigan Bell limits the amount of retesting of successful orders to three resubmissions.[420] AT&T argues that this limit puts competitive LECs at a competitive disadvantage because Michigan Bell is able to test transactions and changes as often as it wants.[421] Michigan Bell, on the other hand, asserts that it should not be expected to bear the burden of repetitious testing for the purpose of allowing AT&T to validate its own back-end and upstream systems.[422] Because Michigan Bell demonstrates that it allows competitive LECs to submit multiple test transactions, we are unable to conclude that Michigan Bell's testing environment is flawed or that the retesting limit has an impact that is competitively significant. Thus we find that Michigan Bell's test environment satisfies the requirements of checklist item 2. Moreover, the same testing processes and systems that are used to perform testing in Michigan were reviewed and approved in the Arkansas/Missouri and the California proceedings.[423]

122. *Adherence to the CMP*. The remaining issue is whether the BOC has demonstrated a pattern of compliance with this plan.[424] We find that Michigan Bell has demonstrated a pattern of compliance in notifying competitive LECs of changes to its interfaces and systems.[425] We note, however, that several commenters in the *Michigan I* proceeding claimed that Michigan Bell implemented unannounced changes to its OSS interfaces that interfered with their ability to submit orders, and that these changes demonstrate lack of adherence to the CMP.[426] We address below competitive LEC concerns regarding Michigan Bell's adherence to its CMP and conclude that each of these claims has been resolved by Michigan Bell's adherence to its revised CMP.

123. In the *Michigan I* proceeding, commenters identified several historical instances

---

420 AT&T DeYoung/Willard Decl. at paras. 177-85.

421 AT&T DeYoung/Willard Decl. at para. 180. TDS Metrocom claims that the test environment from LSOG 4 to LSOG 5 was not "sufficiently rigorous" but no further details were provided. TDS Metrocom Comments at 21-22.

422 Michigan Bell Cottrell/Lawson Reply Aff. at para. 70; *see also* Michigan Bell Cottrell/Lawson Supplemental Aff. at para. 15 ("[Michigan Bell] has complied with all CMP notification, documentation, and testing requirements that applied to the June 2003 release [of LSOG 6]").

423 *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20725, para. 15; *SBC California Order*, 17 FCC Rcd at 25702, para. 96.

424 *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4004-05, para. 101, 112.

425 We note that TDS Metrocom complains that that Michigan Bell introduced a new DSL loop qualification process (called the "YZP Process") without notifying competitive LECs of the change. TDS Metrocom Comments at 22; TDS Metrocom Cox Aff. at para. 26. Because the YZP process was an additional optional process, we find that Michigan Bell's failure to notify TDS Metrocom of this change did not violate the CMP. *See* Michigan Bell Reply, App. A, Reply Affidavit of Carol A. Chapman and Mark J. Cottrell, at para. 29 (Michigan Bell Chapman/Cottrell Reply Aff.).

426 *See, e.g.,* AT&T Comments at 12-16, 24-26; AT&T Reply at 5-13; TDS Metrocom Cox Aff. at paras. 21-22; TDS Metrocom Reply at 2, 8-9.

in which Michigan Bell made unannounced changes to its interfaces or systems.[427] Additionally, TDS Metrocom stated that Michigan Bell "does not use the CMP effectively" because it imposes new business rules without following the CMP.[428] Lastly, several commenters claimed that Michigan Bell's failure to notify competitive LECs of system changes occurred when Michigan Bell implemented LSOG 4 and LSOG 5.[429]

124. We conclude that Michigan Bell demonstrates that it adheres to its current CMP, which requires it to provide notice of all competitive LEC-impacting changes, including changes raised by commenters in the *Michigan I* proceeding.[430] As noted above, Michigan Bell has revised its CMP to contain increased notice requirements, including additional training for Michigan Bell personnel and quarterly status reports to the Michigan Commission. We find that Michigan Bell's first quarterly status report describing its compliance with the new CMP, filed with the Michigan Commission on April 30, 2003, supports a finding that Michigan Bell complies with the notice provisions of the CMP.[431] Moreover, we emphasize that all of the unannounced changes raised by commenters in *Michigan I* have been resolved prior to the filing of the instant application and, moreover, no party raises any issues with Michigan Bell's compliance with the new CMP.[432]

125. Accordingly, based on the record, we find that the past problems with Michigan Bell's change management process identified by commenters do not warrant a finding of checklist noncompliance, particularly in light of Michigan Bell's recent performance and its commitment to provide notice of all competitive LEC-impacting changes. Moreover, we find that the record in this proceeding shows that Michigan Bell's change management process, and its performance under this process, is comparable to or better than what we have approved in the

---

[427] For example, according to AT&T, unannounced changes made by Michigan Bell in the five months preceding the filing of the *Michigan I* application affected more than 50,000 of its orders in the SBC Midwest region – approximately one third (or 16,000) of which are attributed to Michigan. Letter from Richard E. Young, Esq., Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Joint Supplemental Declaration of Sarah DeYoung and Walter W. Willard at para. 11 (filed Mar. 25, 2003) (AT&T March 25 *Ex Parte* Letter) (AT&T March 25 DeYoung/Willard Decl.); *see also* AT&T DeYoung/Willard Decl. at paras. 65, 70, 77-79, 82-90, 106.

[428] TDS Metrocom Cox Aff. at para. 21 (TDS Metrocom complains that Michigan Bell imposed new rules regarding removal of non-excessive bridged taps without going through the CMP).

[429] AT&T Comments at 25-26; TDS Metrocom Comments at 21-22; *see also* AT&T March 25 DeYoung/Willard Decl. at para. 16.

[430] Michigan Bell Cottrell/Lawson Supplemental Reply Aff. at para. 21-23. Michigan Bell states that it has implemented the revised CMP on a 13-state basis. *Id.* at 22.

[431] Michigan Bell Supplemental Application, App. C, Tab 12, Michigan Bell CMP Status Report.

[432] Likewise, we reject MCI's allegations that Michigan Bell fails to respond to change management requests. MCI Lichtenberg Supplemental Decl. at para. 79. Even accepting MCI's allegations that several requests for changes remain outstanding, MCI fails to cite any provision of the CMP that Michigan Bell violates. Thus, we are unable to find that Michigan Bell violates the CMP.

past section 271 applications.[433] Therefore, we conclude that Michigan Bell complies with the change management requirements of checklist item 2.

126. We note that, while we find Michigan Bell's performance to be adequate here, we believe it is essential for Michigan Bell to follow through on its commitment to continue to improve its change management process and adherence, particularly in regard to notifying competitive LECs of all the types of changes that Michigan Bell now knows to be competitive LEC-affecting. It is critical that Michigan Bell continue to work collaboratively with competitive LECs on providing timely notice of competitive LEC-affecting changes. Failure to observe an effective change management process could lead to review by the Michigan Commission or enforcement action by this Commission in accordance with section 271(d)(6).

C. Checklist Item 4 – Unbundled Local Loops

127. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[434] Based on the evidence in the record, we conclude, as did the Michigan Commission, that Michigan Bell provides unbundled local loops in accordance with the requirements of section 271 and our rules.[435] Our conclusion is based on our review of Michigan Bell's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, high-capacity loops, as well as our review of Michigan Bell's processes for hot cut provisioning, and line sharing and line splitting.[436] As of the end of December 2002, competitors in Michigan have acquired from Michigan Bell and placed into use approximately 272,000 stand-alone loops (including DSL loops) and approximately 933,000 UNE-P loop and switch port combinations.[437]

128. *xDSL-Capable Loops*. We find, as did the Michigan Commission,[438] that Michigan Bell provides xDSL-capable loops to competitors in a nondiscriminatory manner.[439]

---

[433] In prior section 271 proceedings, we have found that an isolated instance of noncompliance with CMP does not rise to a level of checklist noncompliance when a BOC shows a pattern of adherence to its CMP. *Qwest 9-State Order*, 17 FCC Rcd at 26394, para. 148 (finding that an isolated instance of noncompliance with CMP was not sufficient to undercut Qwest's overall performance); *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia*, Memorandum Opinion and Order, 17 FCC Rcd 21880, 21913, para. 57 (2002) (*Verizon Virginia Order*) (finding that an "isolated incident" did not undermine Verizon's pattern of adherence to its CMP).

[434] 47 U.S.C. § 271(c)(2)(B)(iv); *see also* App. C (setting forth the requirements under checklist item 4).

[435] Michigan Commission Comments at 95.

[436] See Part IV.A for a general discussion of our approach to reviewing Michigan Bell's performance for purposes of this application.

[437] Michigan Commission Supplemental Comments, Attach. A, Staff Report, Results of Fourth Competitive Market Conditions Survey at 4 (May 2003).

[438] Michigan Commission Comments at 84, 88-89.

Although Michigan Bell missed two installation interval metrics for DSL loops for several months,[440] as we have noted in prior section 271 orders, we accord the installation interval metrics little weight because results can be affected by a variety of factors outside the BOC's control that are unrelated to provisioning timeliness.[441] Instead, we conclude that the missed due date metric is a more reliable indicator of provisioning timeliness. In this regard, Michigan Bell's met the applicable standard for missed due dates for all five months under review.[442]

129. We reject TDS Metrocom's argument that Michigan Bell fails to condition loops in accordance with Commission rules. TDS Metrocom asserts that in February 2002 Michigan Bell adopted a new policy requiring a separate process to remove bridged taps of less than 2,500 feet, rather than removing them as part of standard loop conditioning.[443] TDS Metrocom alleges that Michigan Bell "continues to block the provisioning of DSL loops" to TDS Metrocom

(Continued from previous page)

[439] Michigan Bell generally met the relevant parity or benchmark standard regarding provisioning and maintenance and repair of xDSL-capable loops. *See, e.g.*, PM 58-04 (Percent Ameritech-Caused Missed Due Dates; DSL; No Line Sharing); PM 59-04 (Percent Trouble Reports Within 30 Days of Installation; DSL; No Line Sharing); PM 65-04 (Trouble Report Rate; DSL; No Line Sharing); PM 67-04 (Mean Time to Restore; Dispatch; DSL; No Line Sharing); PM 67-19 (Mean Time to Restore; No Dispatch; DSL; No Line Sharing); PM 69-04 (Percent Repeat Trouble Reports; DSL; No Line Sharing); *see also* App. B.

[440] Michigan Bell missed PM 55-12 (Average Installation Interval; DSL Loops Requiring No Conditioning; Line Sharing) in February through April 2003 by an average of 0.8 days. Michigan Bell states that the misses for PM 55-12 were due largely to DSL loop orders where no loop makeup information was initially available and the loop ultimately did not require conditioning. Michigan Bell automatically assigns such loops extended 10-day due date intervals, resulting in a longer average installation interval for such loops. Michigan Bell implemented processes and improved oversight to help reduce the number of orders assigned 10-day due dates. Michigan Bell Ehr Supplemental Aff. at para. 64 & n.33. In light of the lack of evidence to the contrary, we find this explanation persuasive.

Michigan Bell also missed PM 55-13 (Average Installation Interval; DSL Loops Requiring Conditioning; No Line Sharing) in May and June 2003. However, Michigan Bell missed the ten day benchmark for those months by only a small amount (0.69 days in May and 0.17 days in June).

[441] *See, e.g.*, *Bell Atlantic New York Order*, 15 FCC Rcd at 4061, paras. 202-10 (listing factors beyond the BOC's control that affect the average installation interval metric: "(1) competitive LECs are choosing installation dates beyond the first installation date made available by Bell Atlantic's systems (the 'W-coding' problem); (2) for non-dispatch orders, competitive LECs are ordering a relatively larger share of services and UNEs that have long standard intervals (the 'order mix' problem); and (3) for dispatch orders, competitive LECs are ordering a relatively larger share of services in geographic areas that are served by busier garages and, as a result, reflect later available due dates (the 'geographic mix' problem)."); *see also Qwest 9-State Order*, 17 FCC Rcd at 26402, para. 163; *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25896-97, para. 136 & n.463.

[442] PM 58-04 (Percent Ameritech-Caused Missed Due Dates; DSL; No Line Sharing).

[443] TDS Metrocom Comments at 27-28; TDS Metrocom Cox Aff. at paras. 69-80. In the context of its discussion of change management, the Department of Justice also notes that TDS Metrocom's argument, if true, could adversely affect competitive LECs' ability to compete. Department of Justice Evaluation at 7 and n.24.

customers in Michigan.[444] Contrary to TDS Metrocom's assertion, Michigan Bell explains that the removal of bridged taps in its standard loop conditioning process has not changed. Michigan Bell's routinely removes bridged taps of 2,500 feet or more,[445] but has offered the removal of bridged taps of less than 2,500 feet through the bona fide request (BFR) process.[446] Michigan Bell developed this loop conditioning process in consultation with various competitive LECs, based on industry standards, and this is the loop conditioning process specified in TDS Metrocom's existing interconnection agreement.[447] Michigan Bell states that carriers only infrequently have used the BFR process to seek removal of bridged taps of less than 2,500 feet, with approximately 100 requests between July 2002 and February 2003, all from Michigan Bell's affiliate Ameritech Advanced Data Services (AADS).[448] Based on the evidence in the record, we find that Michigan Bell is simply using a different process to remove bridged taps of less than 2,500 feet and that these processes have been applied in a nondiscriminatory manner. Notably, there is no evidence that Michigan Bell has denied a request by TDS Metrocom to use the BFR process. Accordingly, Michigan Bell has not prevented TDS Metrocom from provisioning DSL service.[449]

130. We also find that TDS Metrocom's criticisms of the creation of the Yellow Zone Process (YZP)[450] for ordering xDSL-capable loops do not warrant a finding of checklist

---

444 TDS Metrocom Comments at 27-28; TDS Metrocom Cox Aff. at paras. 69-80; *see also* Letter from Mark Jenn, Manager – CLEC Federal Affairs, TDS Metrocom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 4 (filed Mar. 14, 2003) (TDS Metrocom March 14 *Ex Parte* Letter).

445 Michigan Bell Chapman/Cottrell Reply Aff at paras. 30-35.

446 Michigan Bell Chapman/Cottrell Reply Aff. at paras. 33-34. This process allows competitive LECs to submit a trouble ticket to have bridged taps less than 2,500 feet removed after the loop has been provisioned and found unable to support xDSL service. *Id*. Michigan Bell also has introduced the option of having such bridged taps removed through a trouble ticket process. *Id*.

447 *Id*. at paras. 31-32; Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. A at 18 (filed Mar. 17, 2003) (Michigan Bell March 17 *Ex Parte* Letter).

448 Michigan Bell March 17 *Ex Parte* Letter, Attach. A at 17; *see also* Michigan Bell Application, App. B, Volume 1a, App. DSL-SBC-13 State at 9; Michigan Bell March 17 *Ex Parte* Letter, Attach. A at 17.

449 Michigan Bell Chapman/Cottrell Reply Aff. at para. 35 & n.48. We note that TDS Metrocom remains free to negotiate alternative loop conditioning arrangements with Michigan Bell if it so chooses, as Michigan Bell itself acknowledges. Michigan Bell Chapman/Cottrell Reply Aff. at para. 35. We also note that Michigan Bell is exploring the possibility of developing an LSR ordering process for the removal of bridged taps less than 2,500 feet. Michigan Bell March 17 *Ex Parte* Letter, Attach. A at 18.

450 Under the YZP, a competitive LEC performs a mechanized loop qualification and then submits an LSR for an xDSL-capable loop with a five-day due date or an LSR for a high-frequency portion of the loop (HFPL) UNE with a three-day due date. On the day after the due date, the competitive LEC may test the line to ensure it is working properly. If its tests are unsuccessful, the competitive LEC will submit a trouble ticket. If needed, the competitive LEC also may request loop conditioning at that time, to be performed within five additional business days. Michigan Bell Chapman Aff. at paras. 27-31.

noncompliance. TDS Metrocom claims that Michigan Bell did not provide adequate documentation when the YZP was introduced, and that the YZP was created by Michigan Bell outside of the Change Management Process or CLEC Users Forum.[451] As an initial matter, we note that the YZP process is optional and is provided by Michigan Bell in addition to its standard process for ordering xDSL-capable loops.[452] Further, this optional process was developed with input from any interested competitive LECs through their participation in voluntary trials.[453] TDS Metrocom thus remains free to use Michigan Bell's standard process for ordering xDSL-capable loops. Michigan Bell's addition of this optional alternative method of ordering xDSL-capable loops does not warrant a finding of checklist noncompliance.

131. We also reject MCI's criticism that Michigan Bell currently is unable to include UNE-P lines and lines served using a stand-alone port in the same "hunt group."[454] Under Michigan Bell's current processes, stand-alone ports are used in a line splitting arrangement.[455] Michigan Bell responds that its systems are not currently configured to include UNE-P lines and lines served using a stand-alone port in the same hunt group, and is not sure whether it is technically feasible to modify its systems to do so.[456] Michigan Bell states that MCI first expressed interest in such an arrangement in mid-June 2003, at which time it offered an alternative, currently available, arrangement to MCI involving the use of call forwarding.[457] Michigan Bell further states that if MCI is unsatisfied by this alternative, it is willing to work on alternative arrangements.[458] As the Commission has held in prior section 271 applications, BOCs need not have in place processes for all possible scenarios for line splitting at the time of its application, where the BOC is working with competing LECs in a state collaborative to develop appropriate procedures.[459] Given that MCI only recently requested this feature and Michigan

---

451 TDS Metrocom Cox Aff. at para. 26.

452 Michigan Bell Chapman Aff. at paras. 27-31.

453 Michigan Bell Chapman/Cottrell Reply Aff. at para. 29.

454 MCI Supplemental Reply at 4; MCI Supplemental Comments at 10-11; MCI Supplemental Reply, Reply Declaration of Sherry Lichtenberg at para. 17 (MCI Lichtenberg Supplemental Reply Decl.). A hunt group is a series of telephone lines, and their associated telephone numbers and switch ports, which are organized so that if a call comes in to a line in the hunt group that is busy, the call will be passed to the next line in the hunt group until a free line is found. Michigan Bell July 30 *Ex Parte* Letter, Attach. at 1.

455 Michigan Bell September 12 *Ex Parte* Letter at 7.

456 Michigan Bell July 30 *Ex Parte* Letter, Attach. at 1.

457 *Id*.

458 *Id*.

459 *See, e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9090-92, paras. 180-81; *see also Line Sharing Reconsideration Order* at para. 22 n.41 ("We also encourage participants in state collaboratives and change management processes to develop specific ordering procedures associated with a variety" of line splitting scenarios.)

Bell appears to be working in good faith to accommodate MCI's request, we do not find that this warrants a finding of checklist noncompliance.

132. *Voice-Grade Loops, Digital Loops, Dark Fiber and Hot Cuts*. Based on the evidence in the record we find, as did the Michigan Commission,[460] that Michigan Bell demonstrates that it provides voice-grade loops,[461] digital loops,[462] dark fiber[463] and hot cuts[464] in

---

460 Michigan Commission Comments at 84, 88-89, 93-95.

461 *See, e.g.,* PM 58-05 (Percent Ameritech-Caused Missed Due Dates; 8.0 dB Loops); PM 59-05 (Percent Trouble Reports Within 30 Days of Installation; 8.0 dB Loops); *see also* App. B. However, Michigan Bell also missed PM 55-01.1 (Average Installation Interval; UNE; 2 Wire Analog (1-10)) by a small amount in April and May 2003 (with installation intervals for competitive LECs exceeding the three-day benchmark by an average of 0.17 days for those months). We find the miss to be competitively insignificant and, at any rate, as discussed above, we accord the installation interval metrics little weight because results can be affected by a variety of factors outside the BOC's control that are unrelated to provisioning timeliness. *See, e.g.*, *Qwest 9-State Order*, 17 FCC Rcd at 26402, para. 163; *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25896-97, para. 136 & n.463; *Bell Atlantic New York Order*, 15 FCC Rcd at 4061, paras. 202-10.

Michigan Bell generally met the relevant parity or benchmark standard regarding maintenance and repair of voice grade loops. *See, e.g.*, PM 66-04 (Percent Missed Repair Commitments; UNE; 2 Wire Analog 8 dB Loops); PM 67-05 (Mean Time to Restore (Hours); Dispatch; 8.0 dB Loops); PM 67-20 (Mean Time to Restore (Hours); No Dispatch; 8.0 dB Loops); PM 68-01 (Percent Out Of Service (OOS) < 24 Hours; 2 Wire Analog 8.0 dB Loops); PM 69-05 (Percent Repeat Reports; 8.0 dB Loops).

462 *See, e.g.*, PM 58-06 (Percent Ameritech-Caused Missed Due Dates: BRI Loops with Test Access); PM 58-08 (Percent Ameritech-Caused Missed Due Dates; DS1 Loops); PM 59-06 (Percent Trouble Reports Within 30 Days of Installation; BRI Loops with Test Access); PM 59-08 (Percent Trouble Reports Within 30 Days of Installation; DS1 Loops with Test Access); *see also* App. B. Michigan Bell missed PM 54.1-02 (Trouble Report Rate Net of Installations and Repeat Reports; Resold Specials; DS1) in February through April 2003. We note, however, that Michigan Bell's performance has been improving, with Michigan Bell achieving parity in May and June 2003. Michigan Bell also missed certain installation interval submetrics for several months. Michigan Bell missed PM 55-02.1 (Average Installation Interval; UNE; Digital (1-10) (days)) in February and May 2003 and missed PM 55-03 (Average Installation Interval; UNE; DS1 Loop (includes PRI) (days)). As discussed above, we accord the installation interval metrics little weight because results can be affected by a variety of factors outside the BOC's control that are unrelated to provisioning timeliness. *See, e.g.*, *Qwest 9-State Order*, 17 FCC Rcd at 26402, para. 163; *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25896-97, para. 136 & n.463; *Bell Atlantic New York Order*, 15 FCC Rcd at 4061, paras. 202-10. Instead we conclude that the missed due date metric is a more reliable indicator of provisioning timeliness.

Michigan Bell generally met the relevant parity or benchmark standard regarding maintenance and repair of digital loops. *See, e.g.*, PM 65-06 (Trouble Report Rate; BRI Loops with Test Access); PM 65-08 (Trouble Report Rate; DS1 Loops with Test Access); PM 67-06 (Mean Time to Restore (Hours); Dispatch; BRI Loops with Test Access); PM 67-21 (Mean Time to Restore (Hours); No Dispatch; BRI Loops with Test Access); PM 69-06 (Percent Repeat Reports; BRI Loops with Test Access); PM 67-08 (Mean Time to Restore (Hours); Dispatch; DS1 Loops with Test Access); PM 67-23 (Mean Time to Restore (Hours); No Dispatch; DS1 Loops with Test Access); PM 69-08 (Percent Repeat Reports; DS1 Loops with Test Access); *see also* App. B.

463 Michigan Bell Deere Aff. at paras. 80, 94-100.

464 *See* PM 114 (Percentage Premature Disconnects (Coordinated Cutovers); PM 114.1 (CHC/FDT LNP w/Loop Provisioning Interval); PM 115 (Percent Ameritech-Caused Delayed Coordinated Cutovers); *see also* Michigan Bell (continued….)

accordance with the requirements of checklist item 4. Our conclusion is further supported by the fact that commenters do not criticize Michigan Bell's performance in these areas.

133. *Line Sharing and Line Splitting*. Based on the evidence in the record, we find, as did the Michigan Commission, that Michigan Bell provides nondiscriminatory access to the high frequency portion of the loop (line sharing).[465] Michigan Bell had approximately 73,000 high frequency portion of the loop (HFPL) UNEs in service as of the end of 2002.[466] Michigan Bell's performance data for line shared loops demonstrate that it is generally in compliance with the parity and benchmark measures established in Michigan.[467]

134. Michigan Bell also provides access to network elements necessary for competing carriers to provide line splitting.[468] Michigan Bell demonstrates that it has a legal obligation to provide line splitting through nondiscriminatory rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and to combine it with unbundled switching and shared transport.[469] Michigan Bell provides line splitting carriers with access to the same pre-ordering capabilities as carriers that purchase unbundled DSL loops or line sharing, and has implemented OSS processes for line splitting.[470] In addition, the Michigan Commission required Michigan Bell to implement a compliance plan establishing procedures for migrations from line sharing to line splitting, line sharing to UNE-P, and UNE-P to line splitting.[471]

135. We reject AT&T's complaint of alleged shortcomings in BearingPoint's testing.[472] Michigan Bell states that although BearingPoint did not test the new single-order process for establishing line splitting, it did test the three individual service orders required to establish line

(Continued from previous page)
Brown/Muhs Aff. at paras. 18-20. Michigan Bell missed PM 114-01 (% Premature Disconnects (Coordinated Cutovers); FDT; LNP w/Loop) in March and April 2003. Michigan Bell responds that it prematurely disconnected just seven FDT conversions in March and ten FDT in April. Michigan Bell Ehr Supplemental Aff. at para. 137. We further note that Michigan Bell has met the benchmark in both May and June 2003.

465 Michigan Commission Comments at 88; Michigan Commission Supplemental Comments at 9-10.

466 Michigan Bell Chapman/Cottrell Reply Aff. at n.17.

467 *See, e.g.*, PM 58-03 (Percent Ameritech-Caused Missed Due Dates; DSL; Line Sharing); PM 65-03 (Trouble Report Rate; DSL; Line Sharing); PM 66-03 (Percent Missed Repair Commitments; DSL; Line Sharing); PM 67-03 (Mean Time to Restore; Dispatch; DSL; Line Sharing); PM 67-18 (Mean Time to Restore; No Dispatch; DSL; Line Sharing); PM 69-03 (Percent Repeat (Trouble) Reports; DSL; Line Sharing); *see also* Appendix B.

468 Michigan Bell Chapman Aff. at paras. 82-88.

469 *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

470 Michigan Bell Chapman Aff. at paras. 82-88; Michigan Bell Chapman/Cottrell Reply Aff. at paras. 3-18.

471 Michigan Commission Comments at 88.

472 AT&T Comments at 51-52; AT&T DeYoung/Connolly Decl. at paras. 7-12.

splitting at that time.[473] Under the new single order process, Michigan Bell's internal systems generate those same three orders, which were reviewed by BearingPoint.[474] We conclude that the successful BearingPoint test provides evidence that we may consider in our overall evaluation of Michigan Bell's line splitting performance.

136. We also reject AT&T's argument that Michigan Bell failed to make the requisite showing regarding line splitting due to lack of commercial volumes of line splitting orders.[475] Michigan Bell states that it has performed more than 400 UNE-P to line splitting migration orders from competitive LECs in the SBC Midwest region.[476] Moreover, although Michigan Bell did not submit into the record commercial volumes of line splitting specifically in Michigan, commercial volumes are not necessary to make the required showing regarding line splitting.[477] We find instead, as we have in previous section 271 applications, that the terms and conditions of Michigan Bell's interconnection agreements and the successful BearingPoint testing satisfy Michigan Bell's required affirmative showing regarding line splitting.[478]

137. We reject the commenters' claims regarding allegedly discriminatory procedures for competitive LECs to discontinue a line splitting arrangement. Specifically, they note that when migrating from line splitting to UNE-P, Michigan Bell generally provisions a new loop, rather than reusing the existing loop.[479] The commenters argue that Michigan Bell's process could cause the customer to lose voice service for up to seven days, creates a risk that a facilities

---

473 Michigan Bell Chapman/Cottrell Reply Aff. at para. 16.

474 *Id*.

475 AT&T Comments at 51-52; AT&T DeYoung/Connolly Decl. at paras. 7-12.

476 Michigan Bell Supplemental Reply, Supplemental Reply Affidavit of Carol A. Chapman at para. 3 n.8 (Michigan Bell Chapman Supplemental Reply Aff.).

477 BOCs have been able to make the required showing of checklist compliance regarding line splitting obligations in prior section 271 applications without showing commercial volumes. *See, e.g.*, *SBC California Order*, 17 FCC Rcd at 25724-25, para. 132; *In The Matter of Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Nevada*, WC Docket No. 03-10, Memorandum Opinion and Order, 18 FCC Rcd 7196, 7228, para. 65 (*SBC Nevada Order*).

478 Michigan Bell Chapman Aff. at paras. 82-88; Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 3 (filed July 7, 2003) (Michigan Bell July 7 *Ex Parte* Letter). Several commenters raise concerns regarding Michigan Bell's processes and procedures relating to line splitting, which we discuss below.

479 AT&T March 18 *Ex Parte* Letter at 2-3; AT&T March 18 *Ex Parte* Letter at 1-3; Letter from Alan C. Geolot, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 at 5-7 (filed Mar. 28, 2003) (AT&T March 28 *Ex Parte* Letter); Letter from Amy L. Alvarez, District Manager – Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16, Attach. at 2 (filed Apr. 11, 2003) (AT&T April 11 *Ex Parte* Letter); AT&T Supplemental Comments at 12-15; MCI Supplemental Comments at 10-11; MCI Lichtenberg Supplemental Reply Decl. at paras. 14-16.

shortage could prevent reconnection, and results in increased non-recurring charges (NRCs).[480] Commenters also assert that if a customer wishes to discontinue xDSL service provided through line splitting, the voice competitive LEC must submit three orders to convert the unbundled xDSL-capable loop and switch port used for line splitting to a UNE-P arrangement to provide only voice service.[481] Commenters state that the only alternative to the three-order process is for the competitive LEC providing voice service to leave the loop in the former DSL provider's collocation cage, using a port on the Digital Subscriber Line Access Multiplexer (DSLAM).[482] The Department of Justice notes that these issues "merit the Commission's consideration."[483]

138. We conclude that the existence of these two policies do not warrant a finding of checklist noncompliance.[484] As the Commission has held in prior section 271 applications, BOCs need not have in place processes for all possible line splitting scenarios at the time of its application, where the BOC is working with competing LECs in a state collaborative to develop appropriate procedures.[485] We note that as a result of a request in the CLEC User Forum, Michigan Bell and MCI are testing a manual process that would permit the re-use of the xDSL-capable loop in the UNE-P on an interim basis, and Michigan Bell is committed to developing a longer-term solution that will address this issue in a manner that meets the needs of the broader competitive LEC community.[486] Thus, Michigan Bell is collaborating with competitive LECs to address this issue in Michigan. Given this collaboration, which was expressly contemplated by the Commission to address new line splitting scenarios,[487] and the fact that Michigan Bell

---

480 *Id*.

481 AT&T Comments at 53-54; AT&T DeYoung/Connolly Decl. at paras. 20-21; MCI Lichtenberg Supplemental Reply Decl. at para. 18.

482 *Id*.

483 Department of Justice Supplemental Evaluation at 11.

484 *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9075, para. 114. ("[D]isputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.")

485 *See, e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9090-92, paras. 180-81.

486 Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 2 (filed July 9, 2003) (Michigan Bell July 9 *Ex Parte* Letter); Michigan Bell July 7 *Ex Parte* Letter, Attach. at 6; Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 3-4 (filed Aug. 21, 2003) (Michigan Bell August 21 *Ex Parte* Letter). Because Michigan Bell has not only made these commitments, but has begun to execute them, we find no reason in the record to agree with MCI that SBC will not actually make available to competitive LECs a solution that would permit the re-use of the xDSL-capable loop. MCI September 8 *Ex Parte* Letter at 3-4.

487 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of (continued….)

commits to make available a manual process to meet competitors' needs during the pendency of such collaboration, we find that the competitive LECs' claims do not warrant a finding of checklist noncompliance.

139. Regarding Michigan Bell's three-order process, Michigan Bell states that the commenters misunderstand the options available to them.[488] The competitive LEC providing voice service has the option to submit a single LSR to Michigan Bell to convert the existing switch port used in a line splitting arrangement for use with a new UNE-P arrangement.[489] If it chooses, the competitive LEC can submit a second request to disconnect the remaining xDSL-capable loop that was used in the line-splitting arrangement.[490]

140. For the same reasons, we reject the commenters' claims regarding the inadequacy of Michigan Bell's procedures regarding certain other line splitting scenarios. As discussed above, we previously have held that BOCs need not have in place processes for all possible line splitting scenarios where the BOC is working with competing LECs in a state collaborative to develop appropriate procedures.[491] As discussed above, the Michigan Commission required Michigan Bell to establish procedures for migrations from line sharing to line splitting, line sharing to UNE-P, and UNE-P to line splitting.[492] AT&T expresses concern about other line splitting scenarios, including possible problems with errors in the ordering documentation provided by Michigan Bell identified during a test by AT&T.[493] MCI complains about alleged

(Continued from previous page)
Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101, 2111-12, para. 21 (2001) (*Line Sharing Reconsideration Order*).

488 Michigan Bell Chapman/Cottrell Reply Aff. at paras. 7-10 & n.14.

489 Michigan Bell Chapman/Cottrell Reply Aff. at para. 9; Michigan Bell Chapman Supplemental Reply Aff. at paras. 21-28. We also reject commenters' assertion that Michigan Bell's single order process for converting from line splitting to UNE-P is "unworkable" because it is manually handled. AT&T March 19 *Ex Parte* Letter at para. 10; MCI Supplemental Reply at 5. As discussed above, collaborative processes currently are ongoing in Michigan to address the procedures for these line splitting scenarios. Michigan Bell Chapman/Cottrell Reply Aff. at para. 14 & n.13; Michigan Commission Comments at 88; Michigan Commission Reply, Attach. at 11; Department of Justice Evaluation at 14; Michigan Bell March 24 *Ex Parte* Letter at 1-3. Consistent with our decisions in prior section 271 proceedings, where such state collaboratives are developing particular line splitting processes, the fact that such processes are not complete at the time of the application, standing alone, does not warrant a finding of checklist noncompliance. *See, e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9091-92, paras. 180-81 ("[T]he *Line Sharing Reconsideration Order* does not require [a BOC] to have implemented an electronic OSS functionality to permit line splitting. Rather, the Commission's *Line Sharing Reconsideration Order* recognizes that a state-sponsored xDSL collaborative is the appropriate place for [BOCs] to evaluate how best to develop this functionality.").

490 *Id*.

491 *See, e.g.*, *Verizon Massachusetts Order*, 16 FCC Rcd at 9090-92, paras. 180-81.

492 Michigan Commission Comments at 88.

493 AT&T March 28 *Ex Parte* Letter at 3-5; AT&T April 11 *Ex Parte* Letter, Attach.; AT&T Supplemental Reply at 6. Michigan Bell responds that although it initially identified certain errors in its documentation when AT&T (continued….)

discrimination in the process that applies when a line splitting customer migrates to a new competitive LEC or to Michigan Bell.[494] Because collaborative processes, under the supervision of the Michigan Commission, are ongoing in Michigan to address these issues and because there is little evidence establishing a discriminatory affect, we are not persuaded that Michigan Bell is not in compliance with its obligations under this checklist item.[495]

141. We likewise find that the specific, isolated instances of line splitting problems experienced by MCI do not warrant a finding of checklist noncompliance. MCI reports that in eight of 212 instances where customers have migrating from UNE-P to line splitting in the SBC Midwest region, the customers have lost dial tone for several days, and MCI had difficulty reporting the troubles when the loss of dial tone occurred.[496] Indeed, Michigan Bell shows that six of the eight instances of loss of dial tone reported by MCI were due to MCI errors in completing the LSRs, and that Michigan Bell worked quickly to restore service within an average of two days.[497] Michigan Bell states that it has also implemented internal procedures to help it identify such competitive LEC-caused problems in advance.[498] Michigan Bell also states that MCI did not follow the correct process when seeking to report the troubles.[499] Since these outages occurred, Michigan Bell shows that it has successfully processed more than 400 UNE-P to line splitting conversions in the SBC Midwest region without similar problems.[500] Based on the evidence submitted by Michigan Bell establishing the isolated nature of the problems, we conclude that the limited problems experienced by MCI in the early stages of deployment to not

(Continued from previous page)
initially experienced problems, its line splitting processes were corrected on March 20, 2003. Michigan Bell March 24 *Ex Parte* Letter, Attach. at 6-7.

494 Specifically, MCI states that when Michigan Bell wins back a line splitting customer, it leaves the xDSL-capable loop in place without informing the competitive LEC of the need to have that loop disconnected. MCI Lichtenberg Supplemental Reply Decl. at para. 40. In contrast, according to MCI, if a competitive LEC wins a line sharing customer from Michigan Bell, the customer is required to ask his or her xDSL provider to cancel service prior to the migration. MCI Lichtenberg Supplemental Reply Decl. at para. 41. Michigan Bell states that MCI misunderstands its processes. First, when Michigan Bell wins back a line splitting customer, it sends the competitive LEC a line loss notifier (LLN) that contains different information than is included in an ordinary UNE-P LLN. Michigan Bell July 30 *Ex Parte* Letter, Attach. at 2. According to Michigan Bell, this LLN includes information not ordinarily included on UNE-P LLNs, which allows the competitive LEC to identify that it relates to a line splitting customer, indicating that the competitive carrier must determine whether to disconnect the loop. *Id*. Second, line sharing customers are not required to call their xDSL providers to cancel service prior to migrating to a competitive LEC. *Id*. The competitive LEC can submit LSRs that disconnect the xDSL service and migrate the voice service to UNE-P. *Id*.

495 Michigan Bell Chapman/Cottrell Reply Aff. at para. 14 & n.13; Michigan Commission Comments at 88; Michigan Commission Reply, Attach. at 11; Department of Justice Evaluation at 14.

496 MCI Supplemental Comments at 22-23; MCI Lichtenberg Supplemental Reply Decl. at paras. 15-16.

497 Michigan Bell July 7 *Ex Parte* Letter at 3-4.

498 *Id.*; Michigan Bell Chapman Supplemental Reply Aff. at para. 5.

499 Michigan Bell July 7 *Ex Parte* Letter at 3-4; Michigan Bell Chapman Supplemental Reply Aff. at para. 4.

500 Michigan Bell Chapman Supplemental Reply Aff. at para. 3 n.8.

demonstrate that Michigan Bell's existing line splitting processes and procedures are inadequate.

142. We reject commenters' challenges to Michigan Bell's NRCs associated with certain line-splitting process.[501] First, Michigan Bell shows that there is no difference between the NRCs associated with establishing a UNE-P when migrating back from line splitting than are imposed when establishing a new UNE-P in the first instance.[502] Second, these charges have been approved by the Michigan Commission.[503] Third, if there is no change in the splitter, only a $0.35 NRC applies.[504] If there is a change in the splitter, the higher NRCs compensate Michigan Bell for the central office work required by the change.[505] We thus find that Michigan Bell has adequately justified these charges.

143. Finally, we reject commenters' argument that Michigan Bell's ordering policy creates complications that deny competitive LECs the opportunity to engage in line splitting arrangements with other carriers. Specifically, commenters note that Michigan Bell requires competitive LECs that engage in line splitting to use the same EDI software version.[506] For example, if a voice competitive LEC has migrated to the most recent version of EDI and its partner data competitive LEC submits a line splitting order to Michigan Bell using the voice competitive LEC's Operating Company Number (OCN), the data competitive LEC must submit the order using the same version of EDI that the voice competitive LEC utilizes or the order will be rejected.[507] We find that the record reflects that the parties are actively negotiating on this issue through the collaborative state process discussed above.[508] In particular, Michigan Bell

---

501 DeYoung/Connolly Supp. Decl. at para. 12; MCI Lichtenberg Supplemental Decl. at paras. 59, 66.

502 Michigan Bell March 24 *Ex Parte* Letter, Attach. at 7-9.

503 Specifically, all of the individual prices have been approved by the Michigan Commission. *Id*.; Michigan Bell Chapman Supplemental Reply Aff. at para. 31. In addition, in a filing with the Michigan Commission, Michigan Bell described these charges in the context of certain line splitting scenarios, including line sharing to line splitting and UNE-P to line splitting scenarios where the data provider remains the same. Michigan Bell Application, App. C, Tab 126, SBC Ameritech Michigan's Amended Compliance Plan As Required by October 3, 2002 Opinion and Order (filed Dec. 11, 2002). The Michigan Commission found that implementation of that plan would allow Michigan Bell "to satisfy its line splitting obligations." Michigan Commission Comments at 88; *see also* Michigan Bell Application, App. C, Tab 134, Opinion and Order, MPSC Case No. U-12320 (Jan. 13, 2003) (approving the pricing in Michigan Bell's Amended Compliance Plan).

504 Michigan Bell March 24 *Ex Parte* Letter, Attach. at 7-9; Michigan Bell Chapman Supplemental Reply Aff. at para. 31.

505 *Id*.

506 AT&T Comments at 21-22; AT&T Supplemental Comments at 16; MCI Supplemental Comments at 12.

507 AT&T Comments at 22. AT&T states that Michigan Bell characterizes the problem as an operational issue between AT&T and the other "data" competitive LEC. AT&T DeYoung/Willard Decl. at para. 156.

508 For example, AT&T describes one negotiation where Michigan Bell's proposed to accommodate AT&T's request for basing versioning on Purchase Order Numbers (PONs), rather than OCNs, in return for relieving Michigan Bell of certain versioning requirements. AT&T DeYoung/Willard Decl. at paras. 153-54 (citing Accessible Letter No. CLECALLS02-111, dated September 19, 2002).

states that it has identified an alternative involving a previously unused LSR field that could address the commenters' concerns.[509] Accordingly, we do not find that this issue rises to the level of checklist noncompliance. We expect that Michigan Bell will continue to work closely with carriers engaging in line splitting through the state collaborative or carrier-to-carrier negotiations to resolve this and any additional operational issues.

D. Checklist Item 7 – Access to 911/E911 and Operator Services/Directory Assistance

1. Access to 911/E911

144. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to 911 and E911 services."[510] A BOC must provide competitors with access to its 911 and E911 services in the same manner that it provides such access to itself, *i.e.*, at parity.[511] Specifically, the BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[512] We find, as did the Michigan commission,[513] that Michigan Bell provides nondiscriminatory access to 911 and E911 services.[514]

145. We reject the argument, raised by AT&T and MCI, that Michigan Bell's policies regarding population of the E911 database violate the competitive checklist. On June 20, 2003, SBC delivered to all competitive LECs within its entire 13-state region an accessible letter offering "clarification" of its E911 policies (June 20 Accessible Letter). The letter addressed "those instances in which a CLEC(s) [sic] wishes to engage in line splitting by reusing facilities previously used as part of a UNE-P or line shared arrangement."[515]

146. In the June 20 Accessible Letter, SBC indicated that it would retain end-user information upon the transition from UNE-P or line sharing to line splitting, but explained that because "[t]he CLEC may physically rearrange or disconnect the UNEs used in the original line splitting arrangement … without [SBC] having any knowledge or information as to the change in service," it was "the responsibility of the CLEC to ensure the 911/E911 database accurately

---

509 Michigan Bell July 7 *Ex Parte* Letter, Attach. at 1-2 & Exh.

510 47 U.S.C. § 271(c)(2)(B)(vii).

511 *Qwest 3-State Order*, 18 FCC Rcd at 7389, para. 109.

512 *Id.* (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256).

513 Michigan Commission Comments at 111.

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

515 Letter from Geoffrey M. Klineberg, Counsel to Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. at 1 (filed July 8, 2003) (Michigan Bell July 8 *Ex Parte* Letter).

reflects its end-user customer's information" after the transition.[516] SBC followed the June 20 Accessible Letter with a July 15 accessible letter, delivered only to competitive LECs within the five-state SBC Midwest Region (July 15 Accessible Letter).[517] This second letter further clarified SBC's policy, explaining that the June 20 Accessible Letter "was intended solely to address a potential situation in which a CLEC initially engages in line-splitting by reusing facilities previously used as part of a UNE-P or line-shared arrangement, but subsequently physically rearranges the UNE loop and switch port within the CLEC's collocation arrangement (or that of its partnering CLEC)."[518] The July 15 letter also made clear that the policy applied only in cases involving a change in "the customer's physical service address," and emphasized that "SBC Midwest 5-State remains responsible for implementing MSAG changes" – that is, changes of general applicability, such as modifications of a town name, a street name, or the directional rules governing a street.[519]

147. We do not believe that the policy, as clarified, constitutes discriminatory provision of 911 or E911 services in violation of checklist item 7.[520] Michigan Bell explains that "the CLEC is in physical control of the loop and the switch port once those have been provided to the CLEC's collocation space, and because the CLEC has the ability to disconnect and rearrange the original combination, Michigan Bell cannot be responsible for changes made without its knowledge."[521] AT&T argues, however, that a competitive LEC would not make such changes, for fear of service interruptions.[522] Given the crucial importance of 911 database accuracy and its role in protecting public safety, we find what matters is not whether such action by a competitive LEC is likely, but whether it is possible. We are persuaded that competitive LECs could change a customer's address without notifying Michigan Bell,[523] and believe that

---

516 *Id.*

517 Letter from Geoffrey M. Klineberg, Counsel for Michigan Bell, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138, Attach. (filed July 15, 2003) (Michigan Bell July 15 *Ex Parte* Letter).

518 *Id.*

519 *Id; see also* Michigan Bell Valentine Supplemental Reply Aff. at para. 22.

520 Nor do we believe that the activity about which AT&T and MCI complain violates checklist item 10. *See, e.g.*, AT&T Supplemental Comments at 18. Irrespective of whether that checklist item is relevant to a BOC's purported failure to provide nondiscriminatory access to 911 and E911, checklist item 10 does not set forth requirements with respect to 911 and E911 services that are distinct from the obligations imposed by checklist item 7. Therefore, because we conclude that Michigan Bell satisfies checklist item 7, we also conclude that it satisfies checklist item 10 with respect to any obligations that item might impose regarding the provision of 911 and E911.

521 Michigan Bell Valentine Supplemental Reply Aff. at paras. 9, 19-20.

522 AT&T Supplemental Comments at 21.

523 *See* Michigan Bell Valentine Supplemental Reply Aff. at para. 19 ("When a CLEC employs a line-splitting arrangement, it controls the physical connection of both the switch port and the unbundled loop to a splitter located within its collocation arrangement (or the collocation arrangement of a partnering CLEC). Unlike a typical resale or UNE-P scenario, wherein SBC Midwest maintains control of all physical connections in the network, and can thus (continued….)

this possibility justifies Michigan Bell's policy requiring competitive carriers to notify it of a line splitting customer's post-conversion change of address.

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

149. Third, MCI charges that the July 15 Accessible Letter is "oblique," and that the class of cases in which a competitive LEC must submit an LSR updating end-user E911 information "remains unclear."[528] We disagree. As set forth above, the July 15 Accessible Letter stated plainly that the policy described applied "solely" to "situation[s] in which a CLEC initially engages in line-splitting by reusing facilities previously used as part of a UNE-P or line-shared arrangement," and only required competitive carriers "to provide updated end-user

(Continued from previous page)
ensure that the physical end-user service address associated with the loop is appropriately reflected in the E911 database, SBC Midwest loses that capability in the line-splitting scenario – even where the switch port and loop were previously elements of a UNE-P."); *see also id.* at para. 20.

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

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

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

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

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

service address information based upon a change in the customer's physical service address."[529]

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

2. Access to Operator Services/Directory Assistance

151. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.[533] Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to ... operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[534] Based on our review of the record, we conclude, as did the Michigan Commission,[535] that Michigan Bell offers nondiscriminatory access to its directory assistance services and operator services (OS/DA).[536]

152. We reject NALA's arguments that SBC's practices with respect to the branding of OS/DA services require rejection of its application. NALA contends that SBC requires competitive LECs to either brand the OS/DA services they use on an unbundled basis or adopt "silent" branding (also known as "unbranding") – as opposed to using SBC's branding – and

---

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

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

531 *Id*. at para. 66.

532 According to Michigan Bell, all but two of the approximately 50 erroneous records were remedied before this application was filed, and the rest were fixed before day 20 of this proceeding. *See* Michigan Bell July 30 *Ex Parte* Letter, Attach. at 4.

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

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

535 Michigan Commission Comments at 111.

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

charges competitive LECs one-time branding fees equaling approximately $4,000 per switch.[537] NALA claims that this practice violates the Commission's requirements. Michigan Bell, however, offers evidence that it does, in fact, permit competitive LECs that use its OS/DA services to default to SBC branding, and that carriers choosing SBC branding are not subject to the non-recurring loading changes applied to carriers electing their own branding or silent branding.[538] In fact, according to Michigan Bell, approximately fourteen competitive LECs in Michigan currently subscribe use Michigan Bell's unbundled OS/DA services with SBC branding.[539] NALA has not presented any evidence to rebut this claim.[540]

V. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

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

---

537 NALA Supplemental Comments at 9.

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

539 *See id.*

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

541 47 U.S.C. § 271(c)(2)(B)(i).

542 47 U.S.C. § 251(c)(2).

543 47 U.S.C. § 252(d)(1).

544 *See* Michigan Commission Comments at 40.

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

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

154. *Call Blocking*. We disagree with NALA's claim that Michigan Bell's call blocking policies violate the competitive checklist. NALA contends that Michigan Bell disclaims responsibility for the effectiveness of its call blocking services, and charges competitive LECs for usage-based services that their end users consume, even when Michigan Bell is supposed to prevent the use of such services.[548] NALA, however, has provided no specific evidence upon which we could conclude that Michigan Bell is, in fact, allowing calls that should be blocked to proceed. Michigan Bell's testimony indicates that there are several different call blocking options available to competitive LECs in Michigan, each of which blocks different services.[549] NALA does not describe the specific type of call blocking its members have attempted to establish. Indeed, the one specific complaint discussed in NALA's filing appears to involve a competitive LEC that failed to order the blocking services relevant to the call types for which it was billed.[550] It is clear, moreover, that Michigan Bell has made competitive LECs aware that some calls simply will not be blocked, and that Michigan Bell's Multi-State interconnection agreement – available to all carriers in Michigan[551] – expressly places on competitive LECs the financial responsibility for any such calls placed by their end-

---

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

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

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

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

550 *See id.* at paras. 14-19.

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

user customers.[552] NALA has not denied that its members' interconnection agreements with SBC contain similar, or identical, provisions.[553] If NALA or its members wish to revise their agreements with SBC, the appropriate context for doing so would be a section 252 negotiation or arbitration proceeding, not this section 271 proceeding.[554]

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

156. TDS Metrocom contends that Michigan Bell's collocation practices result in improper charges, because Michigan Bell bills TDS Metrocom for more power than TDS Metrocom actually uses.[557] Michigan Bell responds that TDS Metrocom did not raise this issue before the state commission, although the collocation arrangements have been in place, and Michigan Bell has been billing for redundant power in this manner, for over two years.[558]

---

[552] According to the agreement:

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

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

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

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

[555] *See* Michigan Commission Comments at 36.

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

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

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

Michigan Bell also alleges that, if competitive LECs believe they are being billed for power they do not use, they may reconfigure their DC power arrangements to better align their recurring monthly power charges with their current, actual collocation equipment needs.[559]

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

B. Checklist Item 2 – UNE Combinations

158. In order to satisfy section 271(c)(2)(B)(ii), a BOC must show it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements, and that it does not separate already combined elements, except at the specific request of a competing carrier.[561] We conclude, as did the Michigan Commission,[562] that Michigan Bell provides nondiscriminatory access to combinations of unbundled network elements (UNE combinations) in compliance with the Commission's rules. Michigan Bell demonstrates that competitive LECs may order already-combined UNE combinations, and Michigan Bell will not separate these UNE combinations unless requested to do so by the competitive LEC.[563] Michigan Bell also shows that, in accordance with its interconnection agreement, the "Mi2A," Michigan Bell combines UNEs, including new UNE-P combinations and enhanced extended links, for competitive carriers when requested.[564] For competitive LECs that choose to combine their own UNE combinations, Michigan Bell shows it provides UNEs in a manner that permits competitive LECs to combine them.[565] No commenting parties raise any issues with Michigan Bell's provision of UNE combinations.

---

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

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

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

562 Michigan Commission Comments at 47.

563 Michigan Bell Application at 27.

564 *Id*. at 28.

565 *Id*. at 27-29.

C. Checklist Item 10 – Databases and Signaling

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

160. TSI argues that Michigan Bell is violating checklist item 10.[569] Specifically, TSI claims that it should be able to purchase signaling from Michigan Bell as an unbundled network element at TELRIC rates, rather than from tariffs at higher rates.[570] Pursuant to section 271(c)(2)(B) of the Act, Michigan Bell only is required to make checklist items available to other telecommunications carriers.[571] TSI, however, is not a telecommunications carrier.[572] Therefore, we find that Michigan Bell has no obligation under the Act to provide signaling services to TSI at UNE rates.[573] Thus, TSI's allegations do not warrant a finding of checklist noncompliance.

D. Checklist Item 13 – Reciprocal Compensation

161. Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[574] In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable.[575] The Michigan Commission found Michigan Bell's rates for reciprocal compensation consistent with TSLRIC costing principles, and that Michigan Bell has demonstrated compliance with this checklist item.[576] In its supplemental application filed on June 19, 2003, Michigan Bell explained that it

---

566 47 U.S.C. § 271(c)(2)(B)(x).

567 Michigan Commission Comments at 126.

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

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

570 *Id.*

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

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

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

574 47 U.S.C. § 271(c)(2)(B)(xiii).

575 47 U.S.C. § 252(d)(2)(A).

had elected to invoke the rate structure set out in the *ISP Remand Order*, and the rate structure change would be effective in Michigan on July 6, 2003.[577] This rate change occurred after comments were filed on Michigan Bell's supplemental application.[578]

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

163. We find that a waiver is appropriate in these circumstances. Michigan Bell has changed its rates subsequent to filing its application.[584] In prior cases in which the Commission has considered post-filing rate changes, our primary concern has been to ensure that "this is not a situation where a BOC has attempted to maintain high rates only to lower them voluntarily at the

(Continued from previous page)

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

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

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

[579] 47 C.F.R. § 1.3.

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

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

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

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

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

eleventh hour in order to gain section 271 approval."[585] We find no evidence that Michigan Bell has engaged in this type of gamesmanship in this case. Michigan Bell changed its rate structure for reciprocal compensation for ISP-bound traffic to the rate caps set forth in the Commission's *ISP Remand Order*, not as part of a strategy to win approval of this application.[586]

164. Another major concern that we have identified in prior cases where rates have changed during a proceeding is that interested parties be afforded a sufficient opportunity to review the new rates, and that the analytical burden of doing so is not too great in light of the time constraints inherent in the section 271 application process.[587] Again, we find no cause for concern with respect to Michigan Bell's post-filing rate structure change. When Michigan Bell filed its section 271 application on January 16, 2003, it explained that it had elected not to invoke the *ISP Remand Order's* rate caps for section 251(b)(5) traffic, but reserved its right to do so in the future.[588] In a June 16, 2003, Accessible Letter, Michigan Bell notified competitive LECs that it had elected to invoke the rate structure set out in the *ISP Remand Order*, and that the rate structure change would be effective in Michigan on July 6, 2003.[589] Given that carriers received notice of the rate structure change before Michigan Bell filed its supplemental section 271 application, we find that they had sufficient opportunity to review the new rates and so waiver of the complete-as-filed rule is appropriate in this instance.

165. *Reciprocal Compensation Discussion*. We find that commenters' allegations regarding Michigan Bell's reciprocal compensation policies and rate structure in Michigan do not cause Michigan Bell to fail this checklist item or the public interest standard. AT&T argues that Ameritech's region-wide policy precluding competitive LECs from adopting state-approved reciprocal compensation provisions for the exchange of local traffic found in interconnection agreements entered into by Ameritech violates the *ISP Remand Order* and section 252(i) of the Act.[590] According to AT&T, the Commission in the *ISP Remand Order* prohibited competitive LECs only from opting in to terms of agreements then in existence.[591] AT&T asserts that Michigan Bell must make available to all competitive LECs the reciprocal compensation provisions in interconnection agreements adopted pursuant to section 252 that became effective after the *ISP Remand Order* was published in the Federal Register.[592] Michigan Bell contends

---

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

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

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

588 Michigan Bell Alexander Aff. at para. 107.

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

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

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

592 *Id.*

that such reciprocal compensation provisions are not available for adoption under section 252(i) in light of the *ISP Remand Order*.[593]

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

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

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

---

593 Michigan Bell Reply at 51.

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

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

596 CLECA Supplemental Comments at 12-13.

597 Michigan Bell Reply Aff. at para. 21.

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

evidence that Michigan Bell failed to correct the problem with respect to other competitive LECs. We thus conclude that CLECA's complaint does not warrant a finding of checklist noncompliance.

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

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

VI. SECTION 272 COMPLIANCE

170. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[608] Based on the record, we conclude that Michigan Bell has demonstrated that it will comply with the requirements of section 272.[609] Significantly, Michigan Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Michigan as it does in Texas,

---

599 47 U.S.C. § 271(c)(2)(B)(iii).

600 47 U.S.C. § 271(c)(2)(B)(v).

601 47 U.S.C. § 271(c)(2)(B)(vi).

602 47 U.S.C. § 271(c)(2)(B)(viii).

603 47 U.S.C. § 271(c)(2)(B)(ix).

604 47 U.S.C. § 271(c)(2)(B)(xi).

605 47 U.S.C. § 271(c)(2)(B)(xii).

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

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

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

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

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

VII. PUBLIC INTEREST ANALYSIS

A. Public Interest Test

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

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

B. Assurance of Future Performance

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

---

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

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

612 47 U.S.C. § 271(d)(3)(C).

613 47 U.S.C. § 271(d)(4).

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

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

175. Michigan Bell notes that the Michigan Commission approved the PRP because it is modeled on a plan that has been approved by this Commission and by other states, that it computes the remedies according to the number of violations, and that it can be modified to the unique circumstances of Michigan Bell's service area.[617] Because this is essentially the same PRP that has been adopted successfully in other states to foster post-entry compliance and prevent backsliding, we are not persuaded by AT&T's assertion that the penalties at stake under this plan are not sufficient to ensure future compliance.[618] Specifically, AT&T argues that the monetary penalties will not give Michigan Bell adequate incentive to modify its behavior.[619] We disagree. The penalties under the plan are comparable to what we have accepted in other 271 proceedings. The plan places at risk more than $303 million which represents 36% of annual net return from local exchange service[620] – a percent consistent with PRPs in other states that have been approved by this Commission.[621] Further, if the remedies exceed this procedural cap,

---

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

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

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

617 Michigan Bell Application at 98 (footnote omitted).

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

619 *Id.*

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

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

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

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

C. Other Issues

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

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

622 Michigan Commission Comments at 142.

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

624 *See* AT&T Reply at 35-36.

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

626 *See* TDS Supplemental Comments at 18-19.

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

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

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

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

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

---

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

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

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

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

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

634 47 U.S.C. § 252(i).

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

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

January 15, 2003. Thus, any discrimination that may have existed was cured prior to the filing of the instant application. To the extent any past discrimination existed, we anticipate that any violations of the statute or our rules will be addressed expeditiously through federal and state complaint and investigation proceedings.[637] We further note that, if such proceedings find that this or other agreements should have been filed with the Michigan Commission under section 252(a)(1), we would consider any filing delays to be extremely serious. As we have noted previously, the Commission clarified the obligation of incumbent LECs to file interconnection agreements under section 252(a)(1) in the *Qwest Declaratory Order* released October 4, 2002.[638] Given that incumbent LECs have had adequate notice of their legal obligations under section 252(a), we will consider appropriate enforcement action when carriers fail to meet those obligations.[639]

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

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

---

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

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

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

640 NALA Supplemental Comments at 5-7.

641 *Id*. at 6.

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

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

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

application to interconnection agreements. NALA does not point to security deposit terms in negotiated or arbitrated interconnection agreements in Michigan as the basis for its complaint, but rather complains about proposed language in a generic agreement. If a carrier does not agree to the security deposit terms in SBC's generic 13-state interconnection agreement, its statutory remedy is to negotiate different terms pursuant to section 252(a), or to arbitrate the issue before the state commission pursuant to section 252(b).[645] In addition, a carrier may opt in to existing interconnection agreements with less onerous security deposit requirements pursuant to section 252(i).[646] Our policy statement cited by NALA addressed security deposit requirements in access tariffs pursuant to sections 201 and 202 of the Act, not interconnection agreements pursuant to sections 251 and 252.[647] The access tariffs at issue in the policy statement proceeding were applicable and binding on all access customers. The security deposit provisions in SBC's generic 13-state agreement, however, are not binding on any carrier, absent a voluntary agreement by the carrier to adopt the provisions pursuant to negotiation, or a finding by the state commission that the terms are just, reasonable, and non-discriminatory pursuant to an arbitration. Therefore, we find that the claim raised by NALA regarding language in a generic interconnection agreement does not demonstrate that grant of Michigan Bell's section 271 authorization is inconsistent with the public interest, convenience, and necessity.[648]

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

---

645 47 U.S.C. § 252(a), (b).

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

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

648 47 U.S.C. § 271(d)(3)(C).

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

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

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

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

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

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

---

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

653 AT&T Comments at 54-55.

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

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

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

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

658 *See* TDS Metrocom Comments at 36.

2001 approved the TDS Metrocom-Michigan Bell interconnection agreement that specifically includes the off-site arrangement.[659] Since then, to Michigan Bell's knowledge, neither TDS Metrocom nor any other competitive LEC has requested such an off-site arrangement.[660] TDS Metrocom also makes a general allegation that Michigan Bell communicates with competitors only through the telephone, but does not supply any supporting evidence of this contention.[661] We do not find that such unsupported allegations are sufficient to demonstrate that this application is not in the public interest. In addition, CLECA asserts that Michigan Bell's toll prices for intraLATA calling are significantly higher than its competitors, and that, through court delays and anti-competitive long-term contracts, Michigan Bell has accrued huge profits.[662] As a result, CLECA argues that we should find that a grant of this application is not in the public interest. Michigan Bell notes, however, that it is in compliance with both Michigan Commission and Michigan Supreme Court rulings.[663] Also, these allegations appear to be irrelevant to this section 271 proceeding – CLECA's allegations pertain only to Michigan Bell's retail toll prices and profits from retail operations, not to the wholesale rates, terms, and practices at issue here.

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

---

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

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

661 TDS Metrocom Comments at 36-38.

662 CLECA Comments at 17-21.

663 Michigan Bell Gleason Reply Aff. at 6.

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

665 *Id.*

666 *Id.*

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

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

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

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

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

IX. CONCLUSION

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

X. ORDERING CLAUSES

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

---

668 47 U.S.C. § 271(d)(6).

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

670 47 U.S.C. § 271(d)(6)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Commenters in WC Docket No. 03-138
Michigan Bell II

Commenters	Abbreviation
AT&T Corp.	AT&T
Competitive Local Exchange Carrier Association of Michigan, Small Business Association of Michigan, Michigan Consumer Federation (Joint filing)	CLECA
MCI (f/k/a WorldCom)	MCI
Michigan Attorney General Michael A. Cox	
Michigan Public Service Commission	Michigan Commission
National ALEC Association/Prepaid Communications Association	NALA
Sage Telecom, Inc.	Sage
Sprint Communications Company	Sprint
TDS Metrocom, LLC	TDS Metrocom

Reply Commenters	Abbreviation
SBC Communications Inc.	SBC
MCI	MCI
AT&T Corp.	AT&T

SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Michigan (WC Docket No. 03-138)*

Few states have achieved the level of competition that exists in Michigan today. The Michigan Public Service Commission has been both vigilant and diligent in its efforts to ensure that competitive carriers have the opportunity to compete. For its part, SBC has approached this application process in good faith and now has shown that that it meets the requirements of Section 271 in Michigan. I commend both the Michigan Public Service Commission and SBC for their efforts.

Nonetheless, serious questions were raised during the course of this application concerning wholesale billing. Despite some past difficulties in this area, the record does not demonstrate that there are ongoing violations that call into question the current openness of the local market in Michigan. In addition, questions were raised concerning line splitting. I believe that line splitting will provide an important platform for future broadband competition. Based on the current record, I expect that through collaborative efforts SBC and competitive carriers will be able to iron out any future process difficulties as they arise.

I believe that moving ahead now is the right thing to do, but our approval must be combined with essential, rigorous and sustained follow-through if we are serious about serving the public interest. Without a rigorous and sustained monitoring process to follow the grant of long distance authority, we will fail our statutory charge to monitor and enforce all aspects of Section 271 compliance. With such a process, however, we can ensure that consumers in Michigan continue to reap the benefits of competition as envisioned by Congress in the 1996 Act—greater choice, lower prices and better services. The state of Michigan has moved to put a part of that process in place. Now it is up to the Commission to do our part.

SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Michigan (WC Docket No. 03-138).

Today, we grant SBC authority to provide in-region, interLATA service originating in the state of Michigan. I congratulate SBC for opening its operations in Michigan to competition. Obtaining Section 271 authority for the first state in the former Ameritech region marks a significant achievement and holds promise for Michigan consumers. I also extend my thanks to the Michigan Public Service Commission and to the staff of our Wireline Competition Bureau for their hard work reviewing this application.

I am pleased to support this Order. At the same time, I would like to address two areas that warrant special attention on a going-forward basis -- the provision of wholesale bills to competitive LEC customers and the processes for line splitting, the method by which competitive carriers may offer both voice and DSL services over the same local loop.

Section 271 requires the Bell Companies to provide nondiscriminatory access to unbundled network elements, which includes the obligation to provide competitors with complete, accurate, and timely wholesale bills. Much of the record in this proceeding has focused on the adequacy of SBC's wholesale billing practices and I want to thank the Department of Justice for its contributions to this analysis. This Order finds that SBC has satisfied the standard required under our precedent for wholesale billing, based in part on a recognition that the complexity of telephone company billing systems and the high volume of transactions make some level of carrier-to-carrier disputes inevitable. Given the importance of timely and accurate billing to the carrier-customer relationship, I believe that it is imperative that both SBC and its wholesale customers continue to develop and enhance the billing processes.

Similarly, this Order notes concerns raised about line splitting processes in Michigan. To date, Michigan competitors have sparingly used line splitting, but I expect that decisions in the Triennial Review Order will increase demand for line splitting. If competitors are to successfully bring broadband services to the mass market, it is essential that there be effective line splitting processes that can accommodate increasing volumes. I am pleased that SBC is engaged in collaborative testing of new line splitting procedures that would address many of the concerns raised.

In the Public Interest section of this order, we find sufficient assurance that local markets in Michigan will remain open even after SBC receives Section 271 authorization. This finding is a prerequisite for a successful application, given Congress' direction in Section 271(d)(6) that the market-opening provisions of Section 271 are an on-going obligation. With this provision in mind, I would like to encourage SBC, the Michigan Commission, and our staff here at the FCC to continue their diligent efforts to ensure that Congress' standard is met.