

**ATTACHMENT E
TIER II REMEDY CALCULATIONS FOR BENCHMARK
MEASURES**

Range of Benchmark Result (x)	Failure Designation	Applicable Consequence (\$)
Meets or exceeds (1.5B-50)%	Indeterminate	0
Meets or exceeds (2B-100)% but worse than (1.5B-50)%	Market Impacting	$n \{d[x/(100-B)]^2 + eB[x/(100-B)]^2 + f[B/(100-B)]^2 + g\}$
Worse than (2B-100)%	Market Constraining	n25,000

For Table 5, x is the actually measured proportion and the coefficients are again given by:

$$d = 22500$$

$$e = -45000$$

$$f = 22500$$

$$g = 2500$$

The quantity n is the market penetration factor shown in Attachment F.

ATTACHMENT F
AMENDMENT
TO INTERCONNECTION AGREEMENT

By and Between

AMERITECH MICHIGAN

AND

The Interconnection Agreement, dated _____ (“the Agreement”), by and between Ameritech Michigan (“AMERITECH”) and _____ (“CLEC”) is hereby amended as follows:

- (1) Addition of Appendix PERFORMANCE MEASUREMENTS
- (2) Table of Contents modified to add additional Appendix
- (3) This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with the underlying Agreement.
- (4) This Amendment is intended to supersede and replace all provisions in the agreement related to Performance, including, but not limited to: Performance Measurements, Performance Benchmarks, Performance Breaches, Standards of Performance, Installation and Maintenance Intervals, Performance Activities and all associated remedies, liquidated damages, time frames and reporting periods. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT, and such terms are hereby incorporated by reference and the Parties hereby reaffirm the terms and provisions thereof.
- (5) This Amendment shall be filed with and is subject to approval by the Michigan Public Service Commission (“PSC”) and shall become effective ten (10) days following approval by such PSC in Michigan.
- (6) Performance Measure remedies shall be available based on performance data from the next full month following the Amendment's Effective Date.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate this _____ day of _____, 2001, by Ameritech, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

***AMERITECH MICHIGAN**

By: _____

Title: President – Industry Markets

Name: _____

(Print or Type)

Name: _____

(Print or Type)

Date: _____

January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999) (and on remand *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999). In addition, on July 18, 2000, the United States Court of Appeals for the Eighth Circuit issued its opinion in *Iowa Utilities Board v. FCC*, No. 96-3321, 2000 Lexis 17234 (July 18, 2000). In addition, on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Communications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). By executing this Amendment, Ameritech does not waive any of its rights, remedies or arguments with respect to such decisions and any remands thereof, including its right to seek legal review or a stay of such decisions, or its rights contained in the Interconnection Agreement. Ameritech further notes that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets Nos. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Communications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order.") By executing this Amendment and carrying out the terms of the intercarrier compensation rates, terms and conditions herein, Ameritech does not waive any of its rights, and expressly reserves all of its rights, under the ISP Intercarrier Compensation Order, including but not limited to its right to exercise its option at any time in the future to invoke the Repealing Law or Change of Law provisions and to adopt on a date specified by Ameritech the "ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the Commission's prescribed terminating compensation rates, and other terms and conditions.

ATTACHMENT G

APPENDIX PERFORMANCE MEASUREMENTS

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APPENDIX PERFORMANCE MEASUREMENTS

INTRODUCTION

- 1 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 2 As used herein, AM-MI means the applicable above listed ILEC doing business in Michigan.
- 3 As used herein, **Service Bureau Provider** means a company which has been engaged by CLEC to act as its agent for purposes of accessing SBC-LEC's OSS application-to-application interfaces.
- 4 The performance measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that AM-MI is limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this interconnection agreement.
- 5 Delays or other problems resulting from actions of a Service Bureau Provider acting as CLEC's agent for connection to SBC-LEC's OSS, including Service Bureau Provider provided processes, services, systems or connectivity shall be treated as excludable events.
- 6 Except as otherwise provided herein, the service performance measures ordered by the state Commission that approved this Agreement under Section 252(e) of the Act, including any subsequently Commission-ordered additions, modifications and/or deletions thereof, shall be posted on the SBC/Ameritech Internet site and incorporated into this Agreement by reference and shall supersede and supplant all performance measurements previously agreed to by the parties. In the event that the state commission that approved this Agreement subsequently orders liquidated damages/remedies with respect to performance measures in a proceeding binding on both parties, the parties agree to incorporate commission-ordered liquidated damages/remedies into this Agreement once the decision

approving such remedies becomes final, non-modifiable, and any appeals are exhausted. The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.

SOLE REMEDY

- 1 These liquidated damages shall be the sole and exclusive remedy of CLEC for AM-MI's failure to meet specified performance measures and shall be in lieu of any other damages CLEC might otherwise seek for such breach through any claim or suit brought under any contract or tariff.

ATTACHMENT H

**AMENDMENT
TO INTERCONNECTION AGREEMENT**

By and Between

AMERITECH MICHIGAN

AND

[fill in name]

The Interconnection Agreement, dated _____ (“the Agreement”), by and between Ameritech Michigan (“AMERITECH”) and _____ (“CLEC”) is hereby amended as follows:

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- (5) This Amendment shall be filed the Michigan Public Service Commission (“PSC”) and shall become effective ten (10) days following such filing.
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IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate this ____ day of _____, 2001, by Ameritech, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

[In name]

SBC Telecommunications, Inc.
as agent for Ameritech Michigan

By: _____

le: _____

Title: President – Industry Markets

me: _____
(Print or Type)

Name: _____
(Print or Type)

te: _____

Date: _____

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APPENDIX PERFORMANCE MEASUREMENTS

INTRODUCTION

- 1.1 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.2 As used herein, AM-MI means the applicable above listed ILEC doing business in Michigan.
- 1.3 As used herein, **Collaborative Process** shall mean the OSS and performance measurement collaborative process established pursuant to Michigan Public Service Commission Case number U11830.
- 1.4 As used herein, **Service Bureau Provider** means a company which has been engaged by CLEC to act as its agent for purposes of accessing SBC-LEC's OSS application-to-application interfaces.
- 1.5 The performance measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that AM-MI is limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this interconnection agreement.
- 1.6 In addition to the exclusions described in the performance measures and remedy plans developed within the Collaborative Process, and unless otherwise ordered by the applicable state commission, AM-MI shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement to the extent that such noncompliance was the result of delays or other problems resulting from actions of a Service Provider Bureau Provider acting as CLEC's agent for connection to SBC-LEC's OSS, including Service Bureau Provider provided processes, services, systems or connectivity.

RESULTS OF COLLABORATIVE PROCESS

- 2.1 The parties agree that the performance measurements, remedy plans and Business Rules developed under the Collaborative Process, shall be incorporated, when finalized, into this Agreement by reference. The parties agree to accept and abide by the Performance Measurement Remedy Plan and Schedule, and the state-specific Business Rules, as posted on SBC/Ameritech's Internet website.
- 2.2 The parties agree that performance measurements, remedies and Business Rules may be revised through the Collaborative Process, and the parties agree to incorporate such changes that are voluntarily agreed to by all parties to the Collaborative Process when finalized. In the event a party disputes the adoption of a proposed revision from the Collaborative Process, the party seeking such adoption may raise the issue with the state Commission for resolution. Until a final state Commission order resolving the issue is effective, the parties agree to abide by the performance measures, remedy plans and Business Rules implemented by Ameritech in response to the Collaborative Process as then posted on SBC/Ameritech's Internet website. Each party reserves its rights, notwithstanding anything to the contrary, to seek appropriate legal and/or equitable review and relief from such state Commission order, and compliance with and implementation of any such order shall not represent a voluntary or negotiated agreement under Section 252 of the Act or otherwise, and does not in any way constitute a waiver by such party of its position with respect to such order, or of any rights and remedies it may have to seek review of such order or otherwise contest the applicability of the performance measures and remedy plan. The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.

, 2001

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PROJECT NO. 20400

ON 271 COMPLIANCE	§	PUBLIC UTILITY COMMISSION
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SOUTHWESTERN BELL	§	OF TEXAS
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**SOUTHWESTERN BELL TELEPHONE COMPANY'S
MOTION FOR REHEARING AND CLARIFICATION**

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Commission in the Open Meeting on December 13, 2000, prior to the most recent
one of the goals of the Six Month Review is to reduce the number of PMs.¹ The
Performance Remedy Plan does, however, recognize that changes to existing
performance measures may occur and that new measurements may be added. The plan
explicitly sets forth how such changes can occur or additional measurements can be

On this, the T2A is very clear:

Any changes to existing performance measures and this remedy plan
shall be by mutual agreement of the parties and, if necessary, with respect
to new measures and their appropriate classification, by arbitration.²

SWBT is committed to the Six Month Review Process as it has developed and as
defined in the T2A and believes that the collaborative tone and substance are
fair, appropriate, and productive. The first Six Month Review and its "gives and
takes" led to results and PMs to which SWBT ultimately agreed, as they were
agreed at the time. This most recent review, however has resulted in a few changes
to PMs which are regrettably unacceptable to SWBT. These changes, in SWBT's
view, provide no benefit to CLECs or to the public, and will only lead to disputes as to
their application in the future. SWBT's specific concerns include:

- As explained in greater detail below, SWBT opposes being required to implement new measurements that would assess to its performance under the interstate and intrastate tariffs for the provisioning of retail Special Access services. Special Access services are provided only as a consequence of and in accordance with tariffs; they are not part of the T2A and thus cannot legally be subject to the Performance Remedy Plan.
- The implementation of PM 1.2 as defined in this second Six Month Review is unacceptable because it cannot be implemented as directed. SWBT had offered its interpretation of how to report data for PM 1.2, and that is the only way that SWBT is aware that the intent of PM 1.2 can be accomplished.

¹ See discussion of the Commission, Open Meeting, December 13, 2000, pp. 87-91.
² Attachment 17: Performance Remedy Plan – TX, Section 6.4 (emphasis added).

- Finally, the order regarding PM 13 is confusing as to whether it requires punitive penalties, for which there is no basis. SWBT requests clarification as to the intent of the Commission with regard to PM 13.

As a result, SWBT respectfully requests the Commission to reconsider and clarify its order relative to each of these three matters in light of SWBT's arguments below. If the Commission grants the requested modifications on rehearing, SWBT will not be able to mutually agree to these modifications or their implementation.³ According to the criteria set forth in Section 6.4 of the Commission's Order on Rehearing, dated August 17, SWBT will seek to resolve any disputes concerning any potential Special Access measures and PMs 1.2 and 13 through the remedies set forth in the Commission's Order on Rehearing.

II. REQUEST FOR RECONSIDERATION

THERE IS NO BASIS UNDER THE T2A'S PERFORMANCE REMEDY PLAN TO ORDER THE IMPLEMENTATION OF SPECIAL ACCESS PMs.

In its June 1, 2001, Order, the Commission stated that "to the extent that a CLEC elects to use special access in lieu of UNEs, SWBT's performance shall be measured as if it were at the same level of disaggregation in all UNE measures."⁴ At the Open Meeting on May 24, 2001, there was discussion regarding whether Special Access performance measures were necessary. Former Chairman Wood concluded the discussion with a direction to the Commission to "see if there's really a disagreement"⁵ about whether the CLECs must order special access services as UNEs or whether they must use the Special Access Tariffs.

³ In any event, the Performance Remedy Plan is a form of liquidated damages to which both parties must mutually agree in order for the remedy to be lawful and binding, as was done in the T2A. SWBT does not agree to liquidated damages for these identified PMs and any attempt to compel a negotiated settlement would constitute a violation of SWBT's constitutional right to due process.

⁴ Order No. 33, June 1, 2001, p. 88.

⁵ Open Meeting Transcript, Thursday, May 24, 2001, p. 28. The discussion regarding Special Access is found within pp. 19-28. A review of that transcript demonstrates a significant amount of uncertainty.

In preparing for the workshop to address this issue, SWBT investigated whether it has been forced to order out of either the interstate or intrastate tariffs for Special Access, and SWBT has been unable to locate a single instance in which a CLEC was forced to order out of the Special Access Tariffs. Further, the Commission has brought forth no specific evidence. They merely make generalized statements, which are not supported by any specific facts. Under these circumstances, there is no record that would support instituting any special access measurements, and SWBT cannot agree to do so. In the workshop held just last Friday, June 29, 2001, SWBT was asked for specific examples and none were provided by the CLECs. In fact, more, in the workshop last Friday, it appeared that this issue had gone well beyond the very limited instruction of the Commission on the application of Special Access. SWBT is now required to comment on WorldCom's far more global proposal.⁶ SWBT believes the Commissioners rejected such a global approach at the Open Meeting of June 29, 2001.

SWBT and other carriers have provided Special Access services for over twenty years since divestiture. Competition in the special access arena is alive and well, and Special Access service is classified as non-basic under Public Utility Regulatory Act (PURA) in recognition of options which customers have for Special Access. Indeed, a wealth of services has resulted in a keenly robust and competitive market. Because multiple providers for these services exist, there is no need to establish measurements assessing carrier performance in providing such mature services, particularly not the kind of

⁶ At the workshop on Special Access took place this past Friday, June 29, 2001, SWBT may present this motion after review of the transcript.

measures which have been previously developed for the provision of wholesale (e.g., DS1 loops) utilized to provide local exchange service.

Given this circumstance, there also is no reason for the Commission to exceed its jurisdiction with respect to these retail Special Access services. Research shows that approximately 94% of Special Access services in Texas are ordered from an interstate tariff (FCC Tariff 73) over which the FCC has jurisdiction. Moreover, even with respect to SWBT's intrastate Special Access Tariff, the tariff terms and conditions control the provision of access and this Commission cannot unilaterally change the tariff terms and conditions. Further, those tariffs contain their own performance standards in the tariff or by contract with SWBT. Such potential double recovery is prevented by the Performance Remedy Plan itself, which says that it is the exclusive remedy. Significantly, the Remedy Plan measures SWBT's performance under T2A. The T2A does not include the provision of Special Access services. Accordingly, there is no permissible way to unilaterally extend the coverage of the interconnection agreements to services which are clearly interstate services.

It is of no consequence that some carriers may make a business decision to offer retail special access services for providing local exchange service, instead of wholesale UNEs. The purpose of this Commission having originally established PMs in the checklist was to ensure SWBT's FTA Section 271 compliance with the 14-point checklist after SBC Communications Inc. became authorized to provide long distance service in Texas. The checklist does not address retail Special Access services, and the Commission has on three occasions concluded that performance relative to provisioning of Special

s services is not relevant to checklist compliance.⁷ Consequently, there is no
ation for directing SWBT to institute any such measures for this additional reason.

SWBT is not agreeable to measuring its Special Access performance, either
ate and intrastate, within the framework of the T2A.

PM 1.2 CANNOT BE IMPLEMENTED AS DIRECTED.

PM 1.2 was proposed to compare loop makeup information⁸ provided to any
including ASI, with loop makeup information contained in SWBT's engineering
ation/design layout records (DLR). When a CLEC orders loop makeup
ation, SWBT retrieves that information from its loop assignment system for the
oled plant facilities capable of serving the location. Then, a CLEC may or may
er a loop. If the CLEC waits any significant amount of time, that loop information
ange or it may not be the same for the loop, which is actually provisioned for the

PM 1.2 does not in any way accomplish the intended purpose, the
ement of the accuracy of SWBT's loop make-up information. As described in
elow, SWBT cannot agree to implement PM 1.2, as recently interpreted, for the
ing reasons:

- The network is dynamic and therefore "accuracy" cannot be reliably measured;

ation of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long
e), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global
s Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket
, Memorandum Opinion and Order, FCC 01-130, released April 16, 2001, n. 489 ("As we held in
3T Texas and Bell Atlantic New York Orders, we do not consider the provision of Special Access
pursuant to tariffs for purposes of determining checklist compliance. *SWBT Texas Order*, 15
d at 18504, para. 335; *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340.")

make-up information is used by carriers to assist them in determining whether the loop facilities
of serving a particular customer location might be suitable for use in the provision of advanced
, which are sensitive to characteristics of the loop plant. The information may include: loop
ength by segment, length by gauge, 26 gauge equivalent (calculated), presence of load coils,
of load coils (if applicable), presence of bridged tap, length of bridged tap (if applicable),
e of pair gain/Digital Loop Carrier equipment, and source of data (actual or designed).

- PM 1.2 creates a "Catch 22" discouraging SWBT from improving the network or its records;
 - The recommendation to implement a "sampling" technique to measure "false positive" returns is unworkable and could place enormous new and unrecoverable costs on SWBT; and,
 - SWBT should not have to, and is not legally required to, provide superior quality information to the CLECs than it does for itself.
1. **The network is dynamic and therefore "accuracy" cannot be reliably measured.**

The Business Rules⁹ were established to measure parity when possible, or to set a benchmark when there is no retail analog to the wholesale item being measured. The Commission's recommendation and the Commission's Order on the interpretation of PM 1.2 go beyond the scope of the Business Rules themselves, and it requires action that never be achieved by the requirements of this measurement. This measure simply does not measure whether SWBT's loop facility assignment system (LFACS) assigns the exact loop facilities for which loop qualification results were forwarded to the CLEC. This will not be done simply cannot occur if the CLEC has requested conditioning or if SWBT has requested a line and station transfer (LST) on the CLECs' behalf, situations that often occur. Thus, the measurement, as interpreted, cannot be met.

Because the network is constantly changing, loop makeup information is merely a "snapshot" of the loop plant that exists as of the date and time that the information is provided. In many instances, new services are installed and other services are disconnected between the time that the loop qualification request is issued and when the loop is actually provisioned. As a result of these and other factors, the loop that is eventually assigned some days or weeks later could be different than what was indicated

⁹ Business Rules describe the implementation of the specific PMs.

loop makeup information was returned. The more time that separates a loop makeup request from provisioning, the less likely it is that the facility used will be the same. SWBT cannot reserve pairs for every loop qualification performed because the carriers often do not issue an order for any loop, even if that loop is acceptable for the provision of advanced services. Thus, PM 1.2 is measuring the accuracy of loop qualification which may never be used and for which no method exists to measure the accuracy of the information provided.

2. PM 1.2 creates a "Catch 22" discouraging SWBT from improving the network or its records.

Given that loop makeup information and DLR information are retrieved from the same databases, comparing the two does not serve any meaningful purpose, but that is what PM 1.2 would require. At the time a loop makeup request is processed, the DLR information and loop makeup information for the same loop, by definition, are essentially the same. Proposed PM 1.2, however, penalizes SWBT for updates to its DLR information and loop makeup information, which occur after a loop makeup request has been processed. Further, it will also penalize SWBT for any updates in assignment of the loop and any work done in the network, including conditioning and line and station work. It thus creates the incentive for SWBT to cease maintaining, correcting, and updating its network records in order to avoid any future discrepancy between loop makeup information and DLR information, and the accompanying imposition of penalty payments. In effect, PM 1.2 creates the opposite incentives than those that SWBT believes the Commission intended.

PM 1.2, as presently written, places SWBT in a "Catch 22" position. Updating network records and correcting existing data errors will impose penalty payments upon

. Stop updating the records and correcting the existing data errors and business processes unmanageable for both SWBT and the CLECs. SWBT does not believe that performance measurement for actual loop makeup information is necessary, since plant design and database records are maintained at parity levels for both SWBT and the CLECs. PM 1.2, as is now being interpreted, simply does not accomplish what the data CLECs were attempting.

3. The recommendation to implement a "sampling" technique to measure "false" returns is unworkable, and could place enormous new and unrecoverable costs on SWBT.

Performing a statistically valid sample to validate those responses that were recorded would be expensive, time consuming and take away from other critical services that are very important. Performing manual tests, physical plant inspections and other time consuming evaluations of engineering records are the only methods available for conducting such a sampling. It also must be considered that if the sample did not reach a level of "accuracy" that was not acceptable (which it is likely to do considering how high the benchmark has been set), there is no means to increase the "accuracy" of the records in the databases (primarily LFACS) without spending an adequate amount of resources. Further, the costs to perform sampling are estimated to be millions annually, and to test the entire network for accuracy and update the records would exceed a billion dollars over a multi-year period.

Imposing a sampling methodology would also force SWBT to remove data from the database when there is suspicion that the data is not accurate. This would increase the amount of theoretical "worst case" data in more instances. For example, if it were determined that a particular geographic area was problematic, SWBT would not have the resources to measure all of the loops in that area and would instead remove the

matic area of the plant from records. This would remove both "accurate" ions as well as "inaccurate" ones. Moreover, this sampling methodology and any ated broad testing of the network is only valid as long as the facility remains bled. As soon as the components in the network "churn," that data must be ed as tested data only applies to that physical loop for the duration it remains in nfiguration. Testing does not serve to address the accuracy of the component f the network and is never a permanent solution.

Should CLECs desire actual field confirmations of loop makeup information, let the supplementation of field information, SWBT will be compelled to pursue the ry of the additional costs. Not surprisingly, the CLECs have not even suggested ey would be required to bear any portion of these costs. In any event, the s gained from SWBT's development of real-time electronic access to loop p information would be eviscerated if SWBT were required to manually recheck it, as suggested through the use of this unprecedented "sampling" technique.

4. SWBT is not required to provide CLECs loop make-up information that is superior in quality to that available to itself.

Even if this PM was modified to attempt to accomplish what the CLECs desired, easure of accuracy of the loop makeup information, SWBT should only be d to supply the information it has, not to create superior information. SWBT's eords show the general location and condition of the plant, i.e., the cables, es, and equipment in the field. These records have been developed over a long of time in the provision of voice services, and are used by SWBT personnel in perations. The loop makeup information made available to affiliate and non-

CLECs is derived from this same source, thus ensuring nondiscriminatory access to the records by all network users.

Penalizing SWBT for not providing loop qualification information which matches closely with the actual state of SWBT's plant would require SWBT to provide the records with more accurate loop makeup information than SWBT provides itself. This argument directly contradicts the Eighth Circuit ruling in *Iowa Utilities Board II et al.*, 219 F.3d 744 (8th Cir. 2000, *cert. granted*).¹⁰ In that decision, the Eighth Circuit reversed its earlier holding that incumbent carriers need not provide CLECs access to their records for services:

We again conclude the superior quality rules violate the plain language of the Act. . . . Subsection 251(c)(2)(C) requires the ILECs to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself. . . ." Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors. The phrase "at least equal in quality" establishes a minimum level for the quality of interconnection; it does not require anything more. We maintain our view that the superior quality rules cannot stand in light of the plain language of the Act. . . . We also note that it is self-evident that the Act prevents an ILEC from discriminating between itself and a requesting competitor with respect to the quality of the interconnection provided.

Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utilities Board II v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999), decision on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000) (*Iowa Utilities Board II*), petitions for cert. granted sub nom. Verizon Communications Inc. v. FCC, 121 S. Ct. 1000 (2001).

58. As this extended discussion makes evident, the ILECs' legal obligations are equal by parity. The FCC has repeatedly recognized the same in its Section 271 rulemakings, requiring incumbent carriers to provide non-discriminatory access, not otherwise. ¹¹

Moreover, the FCC addressed this issue most directly in the *UNE Remand Order* stating: "an incumbent LEC must provide the requesting carrier with non-discriminatory access to the same detailed information about the loop that is available to the incumbent. . . ." ¹² Further, the FCC found that incumbent LECs are not required to:

maintain a loop catalogue, inventory and make available to competitors loop qualification (loop-make-up) information through automated OSS even when it has no such information available to itself. If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. ¹³

Therefore, SWBT is only required to provide CLECs with the same information that is in its databases – and SWBT should not be penalized for inaccuracies in this information.

¹¹ Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Review of Order Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service, ¶ 44, CC Docket No. 00-65 (June 30, 2000) ("[W]here a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, and affiliates, in terms of quality, accuracy, and timeliness."); Bell Atlantic New York Order, 15 FCC Rcd 10000, ¶ 44; Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1996, as amended, CC Docket No. 97-137, 12 FCC Rcd 20543, 20618-19.

¹² *Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking*, CC Docket No. 96-98 (Oct. 5, 1999) ("*UNE Remand Order*"), ¶ 427. (Emphasis added).

¹³ ¶ 429.

C. THE RESTATEMENT OF PM 13 DATA SHOULD NOT SUBJECT SWBT TO PUNITIVE PENALTIES.

The following provision in the June 1, 2001, Order regarding PM 13 is unclear in its intent:

The Commission finds that, based on the discrepancy of corrected data that overstated its performance delivered to CLEC, SWBT shall pay liquidated damages. Such damages shall be set at high level on a per occurrence basis without a measurement cap to individual CLECs. In addition SWBT shall also pay Tier – 2 penalties based on the corrected data on a per occurrence basis.¹⁴

The level for Tier-1 penalties for PM 13 was previously set at the low level. SWBT has paid penalties to the individual CLECs on this basis. Information which was developed at the second Six Month Review lead Staff and SWBT to the understanding that SWBT had not been capturing and reporting the data as the Commission had originally intended, despite the fact that SWBT understood it was fully complying with this new PM. Therefore, SWBT has agreed to restate the data for PM 13 and to submit to an audit of its processes and data calculation. The above provision however, appears to order that the penalty level for Tier-1 be changed for the recalculation of that data from the low level to the high level. Retroactively increasing the level is tantamount to implementing a punitive penalty. There is no basis under the Performance Remedy Plan or the law to retroactively increase the level of payments. To make it clear, SWBT is willing to retroactively make any necessary payments that results from the restatement or audit described above — these payments however should be at the level established for this PM when it was developed, the low level. SWBT cannot agree that the Tier – 1 damage level should be changed retroactively

¹⁴ Order No. 33, June 1, 2001, p. 78.

without a measurement cap. This cannot be the
seeks further clarification as to the meaning of the Comn

WHEREFORE, SWBT requests that the Commissio
Month review with regard to PM 1.2 be set aside, that the ruli
and that no Special Access levels of disaggregation be added to
such other and further relief to which SWBT may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cynthia F. Malone, Senior Counsel, for Southwestern Bell Telephone
certify that a copy of this document was served on all parties of record in this p
on the 2nd day of July, 2001 in the following manner: By hand delivery, facsim
by U.S. Mail.
