

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On its Own Motion)	
)	
Investigation concerning Illinois Bell)	Docket No. 01-0662
Telephone Company's compliance)	
with Section 271 of the)	
Telecommunications Act of 1996)	

INITIAL PHASE 2 COMMENTS OF
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.
AND TDS METROCOM, LLC

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I. INTRODUCTION AND SUMMARY OF POSITION

McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) and TDS Metrocom, LLC (“TDS Metrocom”) are submitting their initial comments in Phase 2 of this investigation. McLeodUSA and TDS Metrocom are competitive local exchange carriers (“CLECs”) that provide local exchange telecommunications service to retail customers in Illinois using both their own facilities and wholesale services and unbundled network elements (“UNE”) purchased from SBC Illinois (sometimes hereinafter referred to as “SBC”).

The ability of McLeodUSA, TDS Metrocom and other CLECs to provide local telecommunications services to Illinois retail customers and to compete effectively with SBC is vitally dependent on the provision and maintenance by SBC of an efficiently functioning operations support system (“OSS”) that allows CLECs to efficiently order and use UNEs and resale services in competition with SBC Illinois. As the Federal Communications Commission (“FCC”) emphasized in 1997, in rejecting an application by SBC Illinois’ affiliate Ameritech Michigan for authority to provide in-region, inter-LATA telecommunications services under Section 271 of the Telecommunications Act of 1996 (“Act”), 47 U.S.C. §271, “new entrants must have access to the functions performed by the systems, databases and personnel, commonly referred to as operations support systems, that are used by the incumbent LEC to support telecommunications service and unbundled elements”, and nondiscriminatory access to OSS is “critically important to the development of effective, sustained competition in the local exchange market.”¹

¹*Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC 97-298 (Aug. 19, 1997) (“Michigan Order”), par. 129, 130.

Of equal importance to CLECs such as McLeodUSA and TDS Metrocom is the establishment of confidence in SBC Illinois' data integrity and performance metrics calculation and reporting. These are the means by which CLECs, regulators and SBC itself can measure whether SBC is providing and maintaining an efficiently functioning OSS, in accordance with established, Commission-approved performance measures, that allows CLECs the opportunity to compete. Data integrity and reliable, accurate performance metrics are also integral to insuring that CLECs are properly compensated for any deficiencies in performance by SBC, in accordance with the terms of Commission-approved performance remedy plans.

The Commission initiated this proceeding to investigate the status of Ameritech Illinois' (now SBC Illinois) compliance with the requirements of Section 271, to hold hearings thereon, and to develop a comprehensive factual record in anticipation of this Commission's anticipated consultation with the FCC at such time as SBC Illinois files its application with the FCC pursuant to Section 271 for authority to provide in-region inter-LATA telecommunications service in Illinois. (Initiating Order issued Oct. 24, 2001; see 47 U.S.C. §271(d)(1), 271(d)(2)(a)) This Commission must advise the FCC as to whether SBC Illinois is in compliance with the "competitive checklist" set forth in Section 271(c) of the Act so as to insure that the local exchange service markets in SBC's region are irreversibly open to competition. In opening this investigation, the Commission emphasized that "Our goal in conducting this proceeding is to determine whether we believe Ameritech Illinois has satisfied the requirements of Section 271 for purposes of our consultation of the FCC" and that "The Commission will work with Ameritech Illinois, the CLECs, Staff and other interested parties to bring about any

necessary changes or improvements.” (Initiating Order, p. 3) The Commission ordered that this proceeding be conducted in phases:

The Commission notes that data derived from the OSS test results will not be available until March 2002, at the earliest. Thus, the Commission believes that this proceeding should be conducted in two or more phases with corresponding interim orders. The first phase shall cover as much of the competitive checklist as possible absent OSS test results. The second phase shall cover all remaining OSS issues and any other relevant issues that were not addressed in the first phase. To the extent that the status of an issue that is addressed in the first phase changes prior to the second phase order, the Commission will address that issue in the second phase order.” (*Id.*, pp. 3-4)²

The “OSS test results” the Commission referred to in the Initiating Order were the results of the independent, third-party testing of SBC Illinois’ OSS by KPMG Consulting, now known as BearingPoint. (“BP”). The Commission retained BP, pursuant to Condition 29 of its September 23, 1999, order in Docket 98-0555 approving the merger of SBC and Ameritech, to test SBC Illinois’ OSS and to review all SBC Illinois’ performance measures to verify SBC Illinois’ accurate and reliable compliance with its processes. Remarkably – and at the crux of the issues in Phase 2 of this proceeding – *March 2003* is now almost upon us, and yet SBC Illinois is still short of successfully completing testing of its OSS and verification of its performance metrics and data integrity by the Commission’s independent third-party auditor.

McLeodUSA’s and TDS Metrocom’s position is that a grant of Section 271 authority to SBC Illinois is premature ***unless and until SBC Illinois successfully completes third-party testing of its OSS and validation of its performance metrics by the Commission’s independent third-party auditor, BP.*** Therefore, regardless of

²Phase 1 culminated in the issuance of a “Phase I Interim Order on Investigation” by the Commission on February 6, 2003.

when SBC decides to file its Illinois Section 271 application with the FCC, this Commission should **not** give a favorable recommendation to the FCC unless and until SBC Illinois has successfully completed the independent third-party testing of its OSS and validation of its performance metrics reporting. In addition, McLeodUSA and TDS Metrocom have deep concerns about the adequacy, accuracy and efficacy of SBC Illinois' wholesale billing systems, which, as detailed herein, are a source of constant frustration and distraction for us.

The principal points that McLeodUSA and TDS Metrocom wish to impress upon the Commission are the following:

1. The independent third-party testing of SBC Illinois' OSS and validation of its data integrity and performance metrics reporting by BP have not been successfully completed. At this time, based on the information compiled in this investigation, SBC's data integrity is insufficient and cannot furnish the basis for adequate performance metrics that support Section 271 entry. Nor has it been established to a satisfactory degree that SBC Illinois consistently and accurately calculates performance measures in accordance with Commission-approved business rules. SBC should not receive a favorable Section 271 recommendation from the Commission until testing and verification has been successfully completed, including completion, and successful retesting or verification by BP, of all necessary restatements and corrective actions.
2. The review of SBC Illinois' performance metrics conducted by its own privately-retained auditor, Ernst & Young ("E&Y") is in no way an acceptable substitute for successful completion of the independent third-party testing and verification of SBC's OSS and performance metrics by BP in accordance with the Illinois Master Test Plan. The E&Y review should be given no weight by the Commission in deciding whether and when to give SBC Illinois a positive Section 271 recommendation. Moreover, even the E&Y review shows that substantial problems remain to be addressed in SBC's performance metrics reporting.
3. SBC fails to produce readable, auditable and accurate wholesale bills. SBC's wholesale billing systems and practices are completely unacceptable. Based on McLeodUSA's and TDS Metrocom's experience, SBC's wholesale bills are replete with errors in such areas as backbilling, incorrect rates, double billing, miscoding and incorrect customer trouble

reports (which translate into wholesale billing errors). In fact, TDS Metrocom has ***never received a single accurate wholesale bill from SBC***. Because of the state of SBC's wholesale billing systems, SBC at this time fails checklist item 2, nondiscriminatory access to UNE and OSS. SBC Illinois should not receive a positive Section 271 recommendation from this Commission until SBC's wholesale billing problems have been remedied and SBC Illinois has demonstrated that it provides readable, auditable and accurate wholesale bills to its CLEC customers on a consistent and reliable basis.

4. It would **not** be in the public interest for SBC Illinois to receive Section 271 approval – or a positive Section 271 recommendation from this Commission -- until SBC Illinois has fully demonstrated, through passage of independent third-party testing, that it has fully functional and capable OSS, sufficient data integrity and reliable performance metrics reporting, including a demonstrated ability to produce accurate performance measurement results in accordance with approved business rules. While McLeodUSA and TDS Metrocom have no incentive – competitive or otherwise – to see SBC Illinois excluded from long distance markets indefinitely, the Commission must recognize that the “carrot” of Section 271 authority is the strongest tool this Commission has to insure that SBC will fix the problems identified in this investigation. If SBC Illinois is granted long distance authority before its local market is irreversibly open to competition, local competition may never develop.

II. SBC ILLINOIS HAS NOT ESTABLISHED ADEQUATE DATA INTEGRITY AND RELIABLE PERFORMANCE METRICS REPORTING, AND SHOULD NOT RECEIVE A POSITIVE SECTION 271 RECOMMENDATION UNTIL IT SUCCESSFULLY COMPLETES OSS TESTING AND PERFORMANCE METRICS VALIDATION BY BEARINGPOINT

This Commission retained BP (then known as KPMG Consulting) to conduct independent testing of SBC Illinois' OSS and to review all performance measures to verify SBC Illinois' accurate and reliable compliance with its processes. An Illinois Master Test Plan was developed (and subsequently modified) through an open process in which interested CLECs were allowed to participate along with BP and Commission Staff. The initial Master Test Plan was issued on March 30, 2000, and an updated Master Test Plan was issued on May 2, 2002. The wholesale performance measures

themselves had been developed among SBC Illinois and CLECs in a collaborative process pursuant to Condition 30 of the Commission's order in Docket 98-0555.³ On December 20, 2002, BP issued two reports (collectively, the "BP Reports") on the results of its work to date: (1) a report on the operational aspects of the testing, defined as the Transaction Verification and Validation and Processes and Procedures Review (the "BP Operational Report"), and (2) a report on SBC Illinois' performance metrics (the "BP PM Report").

It is important to emphasize that the BP testing and verification process has been an open, public process conducted under the supervision of the Commission Staff and with full opportunity for interested CLECs to participate. As noted above, the Illinois Master Test Plan was developed, and has been modified, through an open process. Development of the performance measurements themselves was also an open, collaborative process that resulted in a set of performance measures to which SBC agreed. The actual testing was conducted using a "test until pass" approach. As described in BP's PM Report:

The test has been conducted using a "test until pass" approach. If an issue or problem was encountered during the test, BearingPoint informed the ICC Staff and SBC Ameritech by documenting an Observation or Exception describing the situation and providing an assessment.

- An Observation was created if Bearing Point determined that a test indicated one of SBC Ameritech's practices, polices or system characteristics might result in a negative finding in the evaluation final report.
- An Exception was created if BearingPoint determined that a test indicated one of SBC Ameritech's practices, polices or system

³ The agreed set of performance measurements were initially filed with the Commission on February 5, 2001, as Appendix A to the Joint Petition of SBC Illinois and certain CLECs in Docket 01-0120.

characteristics did not satisfy one or more of the evaluation criteria defined for the test.

If SBC Ameritech made a change to a process, system, document or performance measure in response to an Exception or Observation, BearingPoint conducted retesting as appropriate. If the issue raised by the Exception was not resolved, analysis and retesting continued until closure was reached, no further action by BearingPoint was warranted or possible, or the ICC Staff specifically exempted the Exception from further testing. . . .

The ICC Staff, BearingPoint and SBC Ameritech discussed Observation and Exception status weekly. CLECs and other interested parties were able to listen to calls as observers and ask clarifying questions. CLECs and the public at large were able to view Observations, Exceptions, and related documents on a Web site maintained by BearingPoint (www.osstesting.com). (BP PM Report, pp. 6-7)

Of perhaps the greatest concern to McLeodUSA and TDS Metrocom at this time are the incomplete and unsatisfactory results of BP's testing and evaluation of SBC Illinois' performance metrics reporting. It is critically important that confidence be established, through successful independent third-party testing of SBC's performance metrics reporting, in SBC's processes and procedures for (1) collecting and storing relevant unprocessed performance data, (2) transferring unprocessed data to systems that will calculate performance measures while maintaining the integrity of the data, (3) correctly and consistently applying Commission-approved business rules to the data to calculate performance measures, and (4) reporting the resulting performance measurement results in a timely and accurate manner. Without accurate and reliable performance metrics reporting by SBC, the ability of CLECs and the Commission to monitor whether SBC's wholesale service quality performance and the functional performance of its OSS are meeting established standards will be impaired and potentially rendered ineffectual – SBC Illinois' published performance results will be

meaningless if not misleading. As BP stated, “Data integrity problems such as missing data or incorrect transformation of data may result in performance measures being misstated.”⁴ Further, without accurate and reliable performance metrics reporting by SBC, the determination of whether and to what extent payments are to be made by SBC to CLECs and the State of Illinois under the Commission-approved performance remedy plan will adversely impacted. In short, without accurate and reliable performance metrics reporting by SBC Illinois, actual wholesale service quality performance will be indeterminate and unknown, and the performance remedy plan will fail to achieve its intended objectives.

The data available to date in this investigation does not establish adequate confidence in the accuracy and reliability of SBC Illinois’ performance metrics reporting, particularly with respect to data collection and storage, data processing, and performance metrics calculation and reporting. BP’s performance metrics review is evaluating SBC’s performance metrics reporting under five broad categories of criteria, as follows:

PMR 1, Data Collection and Storage Validation Verification Review: Evaluates SBC Illinois’ policies and practices for collecting and storing unprocessed data that is processed through SBC Illinois’ information systems, as well as processed data that is used in the creation of performance metrics and retail analogs. (BP PM Report, p. 13)

PMR2, Metrics Definition and Standards Development and Documentation Verification and Validation Review: An assessment of SBC Illinois’ policies and practices for developing, documenting, and publishing metrics definitions, standards and reports. (BP PM Report, p. 20)

PMR3, Metrics Change Management Verification and Validation Review: An assessment of SBC Illinois’ overall policies and practices for managing changes

⁴BP response to Staff Advance Question M7.

to metrics and for communicating these changes to the Commission and the CLECs. (BP PM Report, p. 23)

PMR4, Metrics Data Integrity Verification and Validation Review: Evaluates the overall policies and practices for processing the data used by SBC Illinois in the production of the reported performance metrics and standards. (BP PM Report, p. 29)

PMR5, Metrics Calculations and Reporting Verification and Validation Review: An assessment of the processes used by SBC Illinois to calculate performance measurements results and retail analogs, and an assessment of consistency between the Commission-approved metrics business rules and the rules used by SBC Illinois to calculate the metrics. (BP PM Report, p. 32)

Within each of these broad categories, BP has applied numerous more detailed review criteria. The BP PM Report shows that, overall, SBC Illinois has failed to satisfy more than two-thirds of the 303 total evaluation criteria applied by BP (see BP PM Report, p. 8)⁵:

Total Number of Evaluation Criteria:	303
Satisfied:	64
Not Satisfied:	116
Indeterminate:	91
Not Applicable:	32

The results within the five PMR test families show that the current status is particularly unsatisfactory with respect to PMR1, PMR4 and PMR5⁶:

⁵Following are the definitions of the four categories of results: (1) **Satisfied**: the norm, benchmark, standard and/or guideline was met or exceeded. (2) **Not Satisfied**: the norm, benchmark, standard and/or guideline was not met. (3) **Indeterminate**: insufficient evidence has been collected to determine a result. (4) **Not Applicable**: The evaluation criterion could not be evaluated. (BP PM Report, p. 6)

⁶BP response to Staff Advance Question M1.

<u>Category</u>	<u>Satisfied</u>	<u>Not Satisfied</u>	<u>Indeterminate</u>	<u>Not Applicable</u>
PMR1	13	59	54	0
PMR2	3	0	0	0
PMR3 ⁷	26	4	0	0
PMR4	2	12	26	32
PMR5	20	41	11	0

We emphasize again that PMR1, PMR4 and PMR5 relate to establishing confidence in SBC's processes and procedures for performing the critical functions of data collection, data storage, data transformation and processing and calculation of performance results in conformance with Commission-approved business rules.

A number of important BP Exceptions remain open at this time.⁸ While McLeodUSA and TDS Metrocom have great interest in all the Observations and Exceptions that have resulted from the BP OSS testing to date (the progress of which we have been readily able to follow as a result of the open process established by this Commission), we have been particularly concerned (consistent with the general focus of these comments) with Observations and Exceptions concerning Performance Metrics and Billing Accuracy and Completeness. The following open Exceptions continue to be of tremendous concern to McLeodUSA and TDS Metrocom:

⁷Total for PMR3 and PMR3B

⁸As reported on BP's weekly "Ameritech OSS Test Open Exceptions Status Report" dated February 18, 2003, as posted on www.osstesting.com.

Exception	Category	Description
20	PM Calculation (PMR1, PMR4, PMR5)	The procedures and controls SBC has in place for performance measurement calculation and reporting are inadequate.
41	PM Change Management (PMR3)	SBC's metrics change management process does not require the identification of changes to source data systems that impact metrics reporting and the communication of those changes to relevant parties.
111	PM Calculation (PMR5; TVV7)	Timeliness measures of UNE loop repairs, excluding UNE Loop and Port combinations, are compared to retail results using dissimilar data points creating incorrect comparison results relative to the timeliness of services provided.
119	Billing Accuracy and Completeness (PPR13)	SBC does not follow a systematic process for verifying the accuracy and assuring the proper formatting of bills produce by the Carrier Access Billing System (CABS).
134	PM Calculation (PMR4)	SBC incorrectly populated the product name field in the Regulatory Reporting System (RRS). The product name is populated as "UNKNOWN" for as many as 29,662 records in the January 2002 RRS "install_hicap_subrate_detail" table. This table supports the reporting of 29 performance measures, all of which may have been affected by this error.
174	PM Calculation (PMR4)	SBC is using incorrect data in the calculation of Performance Measurement MI11 (Average Interface Outage Notification).
175	PM Calculation (PMR4)	SBC is using incorrect data in its calculation of Performance Measurements 114 (Percentage of Premature Disconnects (Coordinated Cutovers)) for the months of January through June 2002.
176	PM Calculation (PMR4)	SBC's March 2002 performance measurement data is missing daily usage feed (DUF) records used in the calculation of Performance Measurement 19 ("Daily Usage Feed Timeliness").
186	PM Data Retention (PMR1)	SBC has been unable to demonstrate that certain system-of-record and/or reporting system data have been retained in compliance with regulatory requirements.

McLeodUSA and TDS Metrocom need access to SBC Illinois' OSS to utilize its preorder, order, maintenance and repair, billing and directory listing systems in order to compete with SBC Illinois for customers. Access to these systems must be available and operational on a daily basis as well as being accurate and timely. The Commission should insist that each and every BP test of SBC Illinois' OSS functions, including preordering, ordering, provisioning, maintenance and repair, and billing must be completed in a satisfactory manner in accordance with the Master Test Plan before the Commission can give a positive Section 271 recommendation to the FCC for SBC Illinois. As the FCC itself cautioned in rejecting the previous application of SBC Illinois' affiliate Ameritech Michigan for Section 271 authority, in any subsequent application:

We would expect Ameritech to demonstrate, at a minimum, that both individual and combinations of unbundled network elements can be ordered, provisioned, and billed in an efficient, accurate and timely manner, and that its operations support systems supporting such functions are designed to accommodate both current demand and projected demand of competing carriers.⁹

McLeodUSA and TDS Metrocom emphasize that they, and they believe many other CLECs, have placed substantial reliance in the BP independent third-party OSS testing and performance metrics validation process that has been conducted in an open, public manner pursuant to the Illinois Master Test Plan under the close supervision of the Commission Staff. The Commission initiated this process in 2000 as an independent, open process for verifying that SBC Illinois' OSS systems functioned properly (as measured by agreed performance measurements) and that parties dependent on the validity of SBC's data integrity and performance metrics reporting could have confidence in those functions. McLeodUSA and TDS Metrocom – and we

⁹ *Michigan Order*, par. 161.

believe other CLECs – are willing to accept successful completion of OSS testing and performance metrics validation by BP in accordance with the Master Test Plan as demonstration that these objectives have been achieved. Further, based on SBC Illinois' Phase 2 presentation, there is reason to believe that it may not take much longer for BP's reviews and evaluations to be successfully completed. SBC Illinois affiant James Ehr identified numerous open items that are expected to be completed during the second quarter of 2003 or sooner:

- SBC Illinois and BP have developed a plan to complete the PMR1 evaluation, along with specific tasks and target dates. The projected completion date is within the second quarter of 2003. (Affidavit of James D. Ehr on Behalf of SBC Illinois ("Ehr Aff."), par. 251, 270)
- SBC Illinois and BP have developed a detailed project plan that identifies each of the activities required to complete the PMR4 evaluation, along with specific tasks and target dates; the projected completion date for PMR4 is the second quarter of 2003. (*Id.*, par. 252, 273)
- A number of BP's findings of "Not Satisfied" and the related Observations for PMR4 involved instances in which BP found SBC was not calculating performance measures in accordance with established business rules. These findings could be satisfied by adoption of changes to the applicable business rules, which have been proposed to CLECs as part of the on-going six month review. (*Id.*, par. 291) On February 10, 2003, SBC Illinois made a tariff filing with the Commission to implement agreed-to changes to the business rules intended to resolve many of these findings.
- Each of the open test criteria for PMR5, which are currently in retesting, is expected to be successfully resolved in retesting. (*Id.*, par. 253)¹⁰

Given SBC Illinois' (and BP's, per its agreement to the plans and schedules for completing the performance metrics reviews) apparent expectation that the BP testing in accordance with the Illinois Master Test Plan will be successfully completed during

¹⁰According to SBC Illinois, as of February 19, 2003, there have been no changes in these anticipated completion dates for PMR1, PMR4 and PMR5. (SBC Responses to McLeodUSA's and TDS Metrocom's 2/11/03 Workshop Questions Directed to James Ehr (Feb. 19, 2003))

the second quarter of this year, there is no reason to jump the gun and prematurely endorse SBC Illinois' Section 271 application. The Commission should not arrive at a favorable Section 271 recommendation for SBC Illinois until the process it initiated some three years ago has been successfully completed.

III. THE REVIEW OF SBC ILLINOIS' PERFORMANCE METRICS CONDUCTED BY E&Y IS NOT AN ACCEPTABLE SUBSTITUTE FOR SUCCESSFUL COMPLETION OF THE BEARINGPOINT PERFORMANCE METRICS VALIDATION; MOREOVER, THE E&Y REVIEW SHOWS PROBLEMS REMAIN WITH SBC'S PERFORMANCE METRICS REPORTING

In October 2002, SBC Illinois retained E&Y to conduct a review of certain aspects of SBC Illinois' OSS performance metric reporting. (E&Y Response to Staff Advance Question 1). E&Y commenced this engagement on October 28, 2002 (Tr. 3487), and produced two reports dated January 17, 2003.¹¹ One report is an examination of the accuracy and completeness of SBC Illinois' reported performance measurements for the months of September, October and November 2002 under PMR1, PMR 4 and PMR5 of the Illinois Master Test Plan. (The alert reader will immediately recognize that these are the three areas of the BP performance metrics review in which significant numbers of evaluation criteria remain "Not Satisfied" or "Indeterminate."¹²) The second report is an examination of the effectiveness of controls over SBC Illinois' process to calculate performance measurements for the months of

¹¹Attachments N through V to the Ehr Affidavit constitute in the aggregate E&Y's two January 17, 2003 reports.

¹²In fact, on November 21, 2002, SBC Illinois advised the Commission that it did not believe BP would complete its on-going reviews for the PMR4 and PMR5 portions of the performance metrics review test before the date on which SBC desired to file its three months of commercial performance results with the Commission in this docket. (Ehr Aff., para. 216)

March, April and May, 2002. SBC Illinois has offered E&Y's reports in this docket as "further assurance that SBC Illinois' results are reliable." (Ehr Aff., par. 216)

The Commission should reject the E&Y reports as in any way representing an acceptable substitute for the B&P reviews, or as providing a basis for providing a positive Section 271 recommendation for SBC Illinois prior to successful completion of the BP performance metrics review in accordance with the Illinois Master Test Plan.¹³ Numerous factors compel this result.

First, the Commission should not consider E&Y to be truly independent of SBC. E&Y is the accounting firm that is the principal outside financial auditor for SBC. In contrast, this Commission's independent third-party auditor, BP, has no such relationship with SBC.

Second, in contrast to the open, public process through which the BP reviews have been conducted, under the supervision of the Commission Staff, the E&Y reviews were conducted through a closed, private process between E&Y and SBC. Other than one meeting with several Commission Staff representatives in November 2002, E&Y did not during the course of its work meet with the Staff of this Commission, the staffs of other commissions, or CLECs to discuss its review. (E&Y Response to Staff Advance Question 22) Upon identifying an Issue in the course of its review, E&Y did not post the Issue on a website or other public-accessible forum, the way BP posted all of its Observations and Exceptions on the OSS testing website.

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XXXXXXXXXXXXXXXXXXXXXXXXXXXXNor did E&Y meet with Commission Staff or CLEC

¹³SBC Illinois itself recognizes that "the E&Y audit is not intended to replace or modify the intent or scope of BearingPoint's test." (Ehr Aff., par. 216)

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It may be that E&Y's determination that an Issue should not be reported as an Exception or an Interpretation was correct as to many of the Issues listed on the Master Issue List. Unfortunately, based on the closed process E&Y followed, those were determinations made by E&Y and SBC, with no opportunity for Commission Staff or representatives of CLECs to participate or even observe. Moreover, it appears that it would now be impossible (or extremely impractical) to re-trace the process E&Y went through and the documentation it reviewed to conclude that an Issue should be disposed of and not classified as an Exception or an Interpretation – xxx

Third, E&Y applied a threshold for "materiality" to the Issues it identified that had to be crossed before an Issue would be classified as an Exception and included in E&Y's published report. The "materiality" standard was that the Issue had to result in a reported performance measure result for a month being either (i) changed by more than

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5%, or (ii) changed from “pass” to “fail” or vice versa with respect to meeting the applicable parity or benchmark standard for the month. (See Ehr Aff., Attach. N, p. 6 and Attach. P, p. 1) The obvious problem with this “materiality” standard, of course, is that although an error or deficiency in collecting and storing data or calculating a performance measure may have had an “immaterial” impact in the three months that E&Y examined, the same error or deficiency could have a “material” impact in another month. Such an impact could occur, for example, if SBC had failed to include in the PM calculation data for certain types of orders or transactions that had low volumes in the months examined by E&Y, but much higher volumes in subsequent months due to growth in use of the product. Perhaps more significantly, E&Y applied its “materiality” test on a performance measure-by-performance measure basis to each Issue, even though many of the Issues it identified impacted multiple performance measures (as shown by the “PM#” column of the Master Issues List); and where a performance measure was impacted by multiple Issues, E&Y did not evaluate the cumulative impact on the reported performance measure of all Issues that impacted that performance measure, because “this was not within the scope of our engagement.”¹⁶ (Tr. 3370-71; E&Y Response to Staff Advance Question 42)

Fourth, E&Y did not submit its own transactions (orders) to SBC’s OSS during the course of its evaluation. (E&Y Response to Staff Advance Question 13) This omission deprived E&Y of the ability to compare the data it submitted in an order or other transaction to SBC’s OSS with the data as captured, stored and transformed by

¹⁶ Each of the 113 performance measure that was impacted by an E&Y Exception was impacted on average by a total of 3.7 Exceptions. (E&Y Response to Staff Advance Question 40)

SBC. Obviously, the ability of SBC's systems to accurately receive, record and pass to other systems the information received from customers in orders and other transactions is a critical step in accurate and reliable performance measurements results reporting. In contrast, this Commission's independent auditor, BP, established a "Test CLEC" that submitted actual transactions to SBC. As described in BP's Operational Report:

The Test CLEC was devised for several tests within the Master Test Plan that required simulation of real-world business situations. To this end, numerous transactions and operations were conducted using the systems and procedures developed by SBC Ameritech for CLEC use. During the test, a wholesale account relationship was established and system interfaces were built to interface with SBC Ameritech's OSS, in accordance with SBC Ameritech's published documentation. After setting up for "business", the Test CLEC acquired "customers" (provided by SBC Ameritech and CLECs) and serviced these customers through submission of orders, receipt of bills, and conduct of maintenance and repair activities. (BP Operational Report, p. 6)

This process gave BP a vehicle to, among other things, test SBC Illinois' data integrity by comparing data submitted by the Test CLEC into SBC's OSS to the data as recorded, stored and transformed by SBC's systems. It also gave BP the opportunity to test SBC's billing systems and processes by verifying bills submitted to the Test CLEC by SBC against the products ordered and volumes used by the Test CLEC.

Fifth, there appear to have been scope limitations on E&Y's engagement that do not apply to BP's testing and evaluation work, as well as other differences in process and approach between BP and E&Y. Some of these differences have been noted earlier. Others are manifested in **xx** For example, with respect to BP Exception 19 relating to PMR1 -- one of BP's most significant Exceptions, which on

February 18, 2003 was subsumed under Exception 186¹⁷ -- E&Y simply noted **xxx**

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This would seem to be a rather significant omission in a review of whether SBC Illinois meets the PMR1 evaluation criteria, defined as a review that “evaluates SBC Ameritech’s policies and practices for collecting and storing unprocessed data that is processed through SBC Ameritech information systems, as well as processed data that is used in the creation of performance metrics and retail analogs.” (BP PM Report, p. 13)

There are undoubtedly many more reasons for the Commission to decline use the E&Y reports as evidence that SBC Illinois has satisfied PMR1, PMR 4 and PMR5. Unfortunately, in the limited time available in the extremely expressed schedule adopted by the Commission in response to SBC Illinois’ request, McLeodUSA and TDS Metrocom have not had adequate time to review all the materials and information that are still being provided with respect to the E&Y reviews. Indeed, E&Y’s answers to Advance Questions and questions propounded during the February 12 workshop, as well as copies of E&Y workpapers, were still being received the day before the filing date for these comments.

Moreover, remarkably – even with everything noted above – E&Y’s review **does not** “provide further assurance that SBC Illinois’ results are reliable” (Ehr Aff., par. 216)

¹⁷As noted earlier, while Exception 19 is technically “closed”, it is not clear that the underlying issue has been resolved.

E&Y reported 128 Exceptions, or “instances of material noncompliance with the Business Rules during the Evaluation Period”. (Ehr Aff., Attach. O, p.1) These 128 Exceptions affected one or more of 113 of the overall 150 performance measures (approximately 75%). (E&Y Response to Staff Advance Question 40) Of the 128 Exceptions, 53 resulted in restatement of data by SBC for the March through May, 2002 period. (Ehr Aff., Attach. Q, pp. 1-10) For another 51 Exceptions, which collectively affected one or more of 72 of the overall 150 performance measures, SBC did not restate data; yet E&Y did not determine why SBC did not restate data in response to these Exceptions, responding to Staff only that this question should be directed to SBC. (Id., pp. 11-12; E&Y Response to Staff Advance Questions 33-34) For another seven Exceptions, SBC Illinois planned to take no corrective action. (Ehr Aff., Attach. Q, pp. 25-27) Fifteen additional Exceptions were reportedly in the process of being corrected as of the date of E&Y’s report (January 17, 2003, se Id., pp. 28-32)), **xxx**

E&Y also found that results for 108 performance measures had to be restated by SBC with respect to the months covered by E&Y’s evaluation. (E&Y Response to Staff Advance Question 24)

E&Y’s review also reported a total of 50 Interpretations, i.e., instances in which E&Y found that SBC’s calculation of a performance measure was based on an interpretation by SBC of a business rule that E&Y concluded did not appear in the business rule. (Ehr Aff., Attach. R) E&Y noted with respect to many of these Interpretations that in the recently-completed Six-Month Review Performance Measurements Collaborative, SBC and the other collaborative participants reached

agreement on changes to the previously-approved business rules to bring the published business rules into conformity with the way in which SBC had been interpreting the business rule. (Id.) The generic problem this discloses, of course, is that SBC Illinois was applying its own interpretations of the published business rules before getting CLECs' agreement to the interpretation or to a modification to the applicable business rules, and before filing revised business rules incorporating the interpretation with this Commission for its approval. How many other sub rosa interpretations of business rules will SBC Illinois apply to its performance measurement reporting once all the auditors have left the scene?

E&Y's "Controls" report to SBC management stated that "Our examination disclosed that certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer program code and modifications, did not include certain controls to ensure the accuracy of the reported performance measurements." (Ehr Aff., Attach. S) E&Y stated this conclusion more starkly in its "BearingPoint Findings and Observations Review" (another allegedly "confidential work paper" which TDS Metrocom obtained from E&Y only with great effort): In reviewing BP's Exception 20 ("The procedures and controls SBC has in place for performance measurement calculation and reporting are inadequate"), E&Y stated

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IV. SBC FAILS TO SATISFY CHECKLIST ITEM 2 BECAUSE IT DOES NOT PROVIDE READABLE, AUDITABLE AND ACCURATE WHOLESALE BILLS

The FCC has stated, in the context of ruling on a Section 271 application, that an ILEC seeking Section 271 authority “must demonstrate that it can produce a readable, auditable, and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2.”¹⁸ The FCC stated that CLECs need readable, accurate and auditable wholesale bills for a number of reasons:

First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT formats thus represent a crucial component of OSS.¹⁹

SBC’s billing systems and processes, however, do not produce readable, auditable and accurate wholesale bills. The Affidavit of Rod Cox, Manager of Carrier Relations for TDS Metrocom and formerly employed by McLeodUSA in ILEC Relations positions, which is being submitted with these comments, attests to the serious and significant billing problems that TDS Metrocom has encountered and continues to encounter with SBC’s wholesale bills. Since TDS Metrocom began operations in 1998, it has *never* received an accurate bill from SBC. (Cox Aff., par. 6) TDS Metrocom has a

¹⁸*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* (Sept. 19, 2001) (“*Pennsylvania Order*”), par. 22.

¹⁹*Pennsylvania Order*, par. 23 (citations omitted).

dedicated billing team comprised of five employees who spend an estimated 30% of their time reviewing SBC bills and disputing billing inaccuracies and improper charges. (Cox Aff., par. 10) Mr. Cox provides specific examples of SBC billing practices that have cost TDS Metrocom considerable expense and delay, thereby impairing its ability to compete by having to redirect limited resources into resolving billing disputes. (Cox Aff., par. 7-26) One representative example is the instance in which SBC was billing TDS Metrocom for the same circuit on two separate collocation invoices for a period of five months. After conducting research, TDS Metrocom discovered that SBC switched the billing for this circuit from one invoice to another and, in the midst of that unexplained "invoice change," it proceeded to double bill TDS Metrocom for those five months by billing for the same circuit on both invoices. (Cox Aff., par. 14)

Mr. Cox also explains that SBC's performance measurements relating to billing are not capturing information about backbilling, incorrect rates, double billing or miscoding. Performance Measurement 14, Billing Accuracy, for example, measures whether CLEC and retail bills are consistent with billing tables. This is akin to measuring whether or not your printed receipt at the grocery store matches the data in the bar code scanner that produces the printed receipt. It does nothing to assess whether or not the price in the scanner is correct or that it matches the posted price for the product, (i.e. the tariffed rate for the UNE). The PM that comes closest to capturing the problems encountered by TDS Metrocom, PM 17 - Billing Completeness, actually reports that SBC is achieving a high rate of compliance. It simply makes no sense that SBC can be achieving high compliance under the billing performance measurements, while TDS Metrocom has never received an accurate bill from SBC and must dedicate

more than 50 employee-hours every week to review, correct, and dispute SBC's invoices. (Cox Aff., par. 8)

A key problem is that SBC is not proactively monitoring its own bills. SBC must be required to develop a validation process to ensure the accuracy of its bills. BearingPoint has noted this in its testing of SBC's OSS. BearingPoint opened Exception 119 under the category "Billing Accuracy and Completeness." This exception says, "SBC does not follow a systematic process for verifying the accuracy and ensuring proper formatting of bills produced by the Carrier Access Billing System (CABS)." Until SBC satisfies this Exception (and others), it cannot be considered in compliance with the Section 271 competitive checklist. (Cox Aff., par. 9)

Mr. Cox's Affidavit details many more examples of the woefully inadequate performance of SBC's billing systems and processes. SBC's poor provisioning of wholesale bills to TDS Metrocom has impaired TDS Metrocom's ability to provide local exchange service and compete with SBC by diverting personnel and financial resources in order to resolve unnecessary disputes.²⁰ (Cox Aff., par. 11, 28)

Because of the state of SBC's wholesale billing systems, SBC at this time fails checklist item 2, nondiscriminatory access to UNE and OSS. SBC Illinois should not receive a positive Section 271 recommendation from this Commission until SBC's wholesale billing problems have been remedied and SBC Illinois has demonstrated that it provides readable, auditable and accurate wholesale bills to its CLEC customers on a consistent and reliable basis.

²⁰Although the specific examples cited by Mr. Cox have been experienced by TDS Metrocom, the examples are, in the aggregate, representative of similar problems he encountered with SBC's wholesale billing systems and processes while employed by McLeodUSA in ILEC Relations positions. (Cox Aff., par. 29)

V. THE COMMISSION SHOULD NOT ACT PREMATURELY TO GIVE SBC ILLINOIS A POSITIVE SECTION 271 RECOMMENDATION

As McLeodUSA and TDS Metrocom have emphasized above, it would **not** be in the public interest for SBC Illinois to receive Section 271 authority – or a positive Section 271 recommendation from this Commission – until SBC Illinois has fully demonstrated, through passage of independent third-party testing, that it has fully functional and capable OSS, sufficient data integrity and reliable performance metrics reporting, including a demonstrated ability to produce accurate performance measurement results in accordance with the Commission-approved business rules. While McLeodUSA and TDS Metrocom have no incentive – competitive or otherwise – to see SBC Illinois excluded from in-region, interLATA long distance markets indefinitely, the Commission must recognize that the “carrot” of Section 271 authority is the strongest tool this Commission has to insure that SBC will fix the problems identified in this investigation.

The E&Y report provides a (perhaps perverse) illustration of this reality – during the six months that the E&Y review was in progress (i.e., dating from June 2002 when E&Y commenced a similar review in Michigan to January 2003 when it submitted its Illinois reports), SBC responded with stunning swiftness to hundreds of issues raised by E&Y. The speed with which SBC responded to issues raised by E&Y contrasts markedly with the long periods of time that some of the BP Exceptions and Observations have remained open. SBC’s motivation was obvious – to achieve completion of the E&Y reviews and issuance of E&Y’s reports in a time frame that would support management’s internal Section 271 filing objectives. While SBC might better have devoted its energies to closing out BP’s Exceptions and Observations, the lesson

for this Commission should be obvious – the incentive of Section 271 approval for SBC to achieve swift and complete compliance with regulatory requirements is one that will not be easily replaced when it is gone. If SBC Illinois is prematurely granted long distance authority before its local market is irreversibly open to competition, local competition may never have the opportunity to develop.

Respectfully submitted,

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