

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Illinois Commerce Commission On Its Own Motion</b>	)	
	)	
<b>Investigation Concerning Illinois Bell Telephone</b>	)	<b>Docket No. 01-0662</b>
<b>Company's compliance with Section 271 of the</b>	)	
<b>Telecommunications Act of 1996</b>	)	

**PHASE II SURREBUTTAL AFFIDAVIT OF JAMES D. EHR**

**ON BEHALF OF**

**SBC ILLINOIS**

**SBC ILLINOIS EXHIBIT 2.3**

**DATED: March 17, 2003**

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

1. My name is James D. Ehr. My business address is 2000 W. Ameritech Center Drive, Location 4G60, Hoffman Estates, IL 60196. I am employed by SBC Management Services, Inc. in the position of Director of Performance Measures for Ameritech Corporation<sup>1</sup> (“SBC Midwest”). In that position, I am responsible for the development, implementation and ongoing administration of the wholesale performance measurements system used by SBC Illinois and its operating company affiliates in the Midwest region. I am the same James Ehr that submitted a Phase II affidavit on behalf of SBC Illinois on January 17, 2003, and I submitted a Phase II rebuttal affidavit on behalf of SBC Illinois on March 3, 2003. I also testified in person at the Phase II workshops held in Chicago the week of February 10, 2003.

**PURPOSE AND SCOPE OF AFFIDAVIT**

2. The purpose of my affidavit is to respond to comments filed on March 12, 2003 by several representatives of the Commission’s Staff and of competing local exchange carriers, on the following subjects: (a) SBC Illinois’ commercial performance results for September, October and November 2002, (b) the results of an independent audit of SBC Illinois’ reported performance results performed by the certified public accounting firm of Ernst & Young, LLP (“E&Y”), (c) the interim report of an independent review of SBC Illinois’ reported performance results performed by BearingPoint, Inc. (“BearingPoint”) (formerly known as KPMG Consulting), (d) the additional assurances of reliability the

Illinois Commission and Illinois CLECs have regarding SBC Illinois' performance measurement results, (e) the Compromise Performance Remedy Plan ("Compromise Plan") SBC Illinois is proposing in the Section 271 proceeding, (f) compliance with the Commission's Phase I-A order, and (g) unresolved issues from the collaborative "six-month review" of performance measurements.

#### **APPROACH TO PERFORMANCE MEASUREMENT ANALYSIS**

3. In my opening affidavit, I analyzed SBC Illinois' commercial performance results for September-November 2002. In most cases, SBC Illinois satisfied the applicable parity or benchmark standard, and where the parity or benchmark tests identified differences, I provided further discussion and demonstrated that the differences are not significant to overall checklist compliance. In my rebuttal affidavit, I provided further analysis regarding those performance shortfalls that were addressed or cited in the various comments (mostly, by Staff).
4. As in the opening comments, Staff takes a much different approach to the results than the CLECs. In their opening comments, the CLECs discussed performance briefly, as an afterthought to their main argument that the performance results are unreliable (which I rebut below). Their comments singled out a few performance measures that SBC Illinois "missed," took them out of context, and said they demonstrated non-compliance without even mentioning my analysis. In this round, the CLECs ignore the commercial performance results entirely, and they still have not provided any response to my analysis.

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<sup>1</sup> Ameritech Corporation is a wholly owned subsidiary of SBC Communications Inc. Ameritech Corporation

5. Staff, by contrast, takes a more thorough approach, and has taken the time to consider my analysis of individual performance results and to consider additional information, such as improvements in results after the September – November study period. As a result, Staff agrees that several performance issues identified in the opening round have been adequately addressed, and that several others are not significant enough to affect checklist compliance. While I do not agree with Staff on every issue, and while as a practical matter this rebuttal focuses on our remaining differences, I do appreciate the effort they have taken to address the subject in a cooperative and thorough manner. This sharing of information has further narrowed the issues to the point where Staff has consolidated its concerns onto a list of 17 “Key PMs Requiring Improvement.” I address those measures, and Staff’s comments on those measures, in the section that follows.
6. **Staff’s Numeric Guidelines.** Before proceeding, however, I would like to make three global observations regarding Staff’s methodology. The first relates to Staff’s numeric guidelines for approaching SBC Illinois’ performance results. One guideline states that an entire measure may be “failed” if more than 10 percent of the individual product categories within the measure show a shortfall. In my rebuttal affidavit, I stated that I did not object to Staff’s guidelines as a set of guidelines for seeking additional information, but that I did not agree to them as a hard-and-fast rule of decision. In particular, I noted that the “10 percent of the categories” guideline led Staff to declare several measures as “failed” in their entirety, based on small shortfalls in a single product category that had only a small percentage of the total volume for the measure. As I explained, it would be improper to declare a “100% failure” on the measure as a whole in that circumstance,

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owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. I

given that (1) SBC Illinois met or exceeded the standard for the categories that comprised the vast majority of commercial volume, (2) the differences in the category cited by Staff were small, and (3) SBC Illinois met the standard on related measures.

7. Staff Witness McClerren points out that, while Staff classified some measures as “failures” based on the 10 percent guideline, Staff did not include all of those measures on its list of “Key PMs Requiring Improvement.” I appreciate the clarification, and in this round I will focus on Staff’s “Key PMs.” Nevertheless, Staff’s opening comments classified the measures as “failures,” and Staff used, and continues to use, the number of “failures” (“key” and “non-key”) as evidence of non-compliance. I disagreed with Staff’s view on those failures, and that is why I explained in my rebuttal why Staff’s classification was incorrect.
8. Staff Witnesses McClerren and Staranczak state that Staff did not apply the 10 percent guideline “rigidly” but based its determinations on qualitative judgment. The Commission can see for itself from Staff’s opening affidavits that the 10 percent guideline played at least a major part in leading Staff to declare several measures “failed.” As a result, it was appropriate to explain why the guideline was flawed. At any rate, Staff overlooks the fact that my rebuttal was not just numeric, but involved my own qualitative judgment about the measures.
9. **Revisions to Performance Standards.** My second and third global points relate to Staff’s attempt to label my analysis of performance issues. Staff Witness McClerren classifies my responses into four groups: (1) “we’re working on it,” (2) “not important,” (3) “disagreement,” or (4) “not pertinent because the six month collaborative changed the

rule.” He then states some global comments on categories (1) and (4). At the outset, I do not think that such classifications are an accurate summary of my testimony. My approach to each shortfall was, and is, to look at the totality of the circumstances – not just the four circumstances cited by Staff, but also the size of the miss, the volume involved, the results for related measures, the results for other months, and the nature of the performance measure. Further, the rhetorical phrase “we’re working on it” is inaccurate, as in most cases the corrective action has already been taken, and Staff has seen for itself the improvement in results.

10. In addition, I disagree with Staff’s position on categories (1) and (4). Taking them in reverse order: Staff Witness McClerren states that it is not “appropriate for SBC Illinois to indicate a PM is no longer a problem because it has been revised in the most recent 6 month collaborative review” because “this proceeding has to focus on the business rules that were in effect in the three months that SBC Illinois chose, i.e. September, October, and November 2002.” My analysis *did* focus on the business rules that were in effect during that September – November period, and *all* the performance results I provided were calculated using those rules.
11. In a few cases (PMs 7.1; 10.1, 10.2 and 10.3; MI 2) I noted upcoming revisions to the business rules as one fact, among others, to consider in evaluating compliance with the current business rules. The upcoming revisions are relevant facts to help show that a current performance shortfall is immaterial. For example, let’s say that SBC Illinois’ current performance on a given measure is at 92 percent, short of the applicable benchmark of 95 percent. I still considered that to be a shortfall on the individual measure, and if the measure was subject to performance remedies SBC Illinois has paid

remedies for that shortfall. But my analysis here goes beyond looking at individual “makes” and “misses.” The issue is more global – whether the individual misses are material to overall checklist compliance. Thus, if the CLECs have agreed to a new benchmark of 90 percent, that shows that 92 percent performance is sufficient and that the difference between 92 and 95 percent is not material in the overall scheme of things. It also shows that there is no need to for SBC Illinois to implement (or for the Commission to analyze and verify) a separate, formal action plan to reach 95 percent performance, and that the parties’ priorities are better focused elsewhere.

12. **Corrective Actions.** SBC Illinois uses performance measures in the normal course of business to identify, on its own, areas for improvement. In several cases, I have shown that SBC Illinois has already implemented or is reviewing corrective action to address the concerns that Staff raised in reviewing the September – November results. And in some cases, SBC Illinois’ affiliate in Michigan has already agreed to a formal corrective action plan, which will benefit Illinois by virtue of SBC Midwest’s region-wide operations support systems. By reviewing results for December 2002 and January 2003, Staff has already noted that these corrective actions have led to improvement on some measures, and it has removed those measures from its list of “Key PMs.” However, Staff states that it has “no defined opportunity to verify that improvements have been made” on other measures. Staff Ex. 41.0 (McClerren), ¶ 29.
13. The Commission and its Staff have ample opportunity to verify improvements in performance. That is the very purpose of SBC Illinois’ ongoing monthly performance reports, which are available on the website and provided to Staff. The process works, as Staff has already seen improvement on several measures. In addition, to the extent

performance does not improve, SBC Illinois would remain subject to performance “remedies.” Staff’s position appears to be that all of the shortfalls it classifies as “key” *must* be resolved by a formal plan, with formal verification by a third party. In some cases, formal plans are in place. With respect to completion notices, SBC Illinois provided a written commitment to Staff, and BearingPoint will verify the results by normal re-testing as part of its third-party OSS test. With respect to line loss notices, SBC Michigan has presented improvement plans along those lines, and those plans will benefit wholesale operations in Illinois. However, I do not agree that a formal plan, with formal verification, is required in *all* instances, nor do I share Staff’s apparent view that the ongoing review of performance reports is not a sufficient method to verify improvement in the general case. As I show below, a formal plan is not warranted for most of the performance issues identified by Staff.

14. That said, in response to Staff’s request for additional assurances that SBC Illinois is following through on the corrective actions described with regard to the “Key PMs Requiring Improvement,” SBC Illinois proposes the following additional actions for Performance Measures 17-01, 37-01, 37-04, 55-1.1, 55.1-3, 65-03, 65-06, 65-08, 66-03 and 67-18:

- Development of a monthly report, to be delivered to ICC Staff on the first business day of the month (starting April 1, 2003), describing (a) the identified causes of performance that does not meet the parity or benchmark standard; (b) the corrective actions being taken for each of those PMs; (c) the schedule for those corrective actions to be completed; and (d) the current and most recent three months of performance results for those measures.
- Upon attaining two consecutive months performance within parity or meeting the benchmark for a measure, that measure will be removed from the report.

**SBC ILLINOIS' PERFORMANCE MEASUREMENT DATA DEMONSTRATE COMPLIANCE WITH THE PERTINENT SECTION 271 COMPETITIVE CHECKLIST**

15. Staff's latest round of testimony narrows its areas of concern to 17 performance measures under 4 checklist items (2, 4, 7, and 14). I address each of these checklist items, and the applicable performance measures identified by Staff, in the sections that follow. Below is a chart that summarizes my response on each measure.

Checklist Item	PM Number	PM Description	SBC Illinois Response
2	7.1	% Completion notices in one day	SBC Illinois has already committed to improvement plan, and results are to be tested by BearingPoint in re -testing completion notices. Differences from applicable standard are not significant to warrant further action, as over 98 percent of notices are currently delivered within the specified interval.
2	10.1	% Mechanized rejects returned in one hour	Differences from applicable standard are not material to overall checklist compliance (over 95 percent of electronic rejections are processed within benchmark interval). No need for future action, as standard has been revised and SBC Illinois would have met the revised standard.
2	10.2 and 10.3	% manual rejects returned in 5 hours	Differences from applicable standard are not material to overall checklist compliance (over 93 percent of electronic rejections are processed within benchmark interval). No need for future action, as standard has been revised and SBC Illinois would have met the revised standard.
2	17	% service orders posted within 30-day cycle	Reported shortfalls are not significant. Measure as defined allows for up to approximately 30 days for order to post to billing. Current implementation assesses frequency in which the service order is posted to billing prior to first bill cycle after order completion. Performance against 30-day standard would be higher; nevertheless, measure is to be subject to additional reporting and Staff supervision as described above.
14	37	Trouble reports per 100 lines: resale	Shortfalls not significant enough to affect checklist compliance; nevertheless, measure is to be subject to additional reporting and Staff supervision as described above.
4	55	Average Installation Interval (Loops)	For those categories that had data in all three months, SBC Illinois <i>met</i> the applicable parity standards in at least two of the three months. The few shortfalls were small, and isolated (no category showed a shortfall in more than one of the three months). Nevertheless, measure is to be subject to additional reporting and Staff supervision as proposed above.
4	56	% Installations within Customer Requested Due Date (Loops)	SBC Illinois <i>met</i> the applicable parity standards for all categories of this measure in at least two of the three months.
4	59	% trouble reports within 30 days of installation (Loops)	Shortfalls not significant enough to affect checklist compliance; nevertheless, measure is to be subject to additional reporting and Staff supervision as described above.
4	62	Average Delay Days (loops)	SBC Illinois met the applicable standard in at least two of the three months in all categories of this measure. The single shortfall identified by Staff in its opening comments stemmed from a one-time record-keeping entry that did not affect actual installation. Staff does not address the measure or SBC Illinois' analysis in its rebuttal.
4	65	Trouble Report Rate (loops)	Shortfalls not significant enough to affect checklist compliance; nevertheless, measure is to be subject to additional reporting and Staff supervision as described above.

Checklist Item	PM Number	PM Description	SBC Illinois Response
4	66	% missed repair commitments (loops)	Shortfalls not significant enough to affect checklist compliance; nevertheless, measure is to be subject to additional reporting and Staff supervision as described above.
4	67	Mean time to Restore (loops)	Shortfalls not significant enough to affect checklist compliance; nevertheless, measure is to be subject to additional reporting and Staff supervision as described above.
7	104	Average Time to Update 911 Database	Shortfalls in parity are small and do not impact compliance with safety standards; further, the additional time required to process CLEC updates is at least partly attributable to CLEC errors. SBC Illinois has addressed Staff's request for information on actions taken to help CLECs prevent errors.
2	MI-2	% orders given jeopardy notices	Differences are not significant, given that jeopardy notices only indicate that due dates might be missed. SBC Illinois is successfully meeting due dates
2	MI-14	% maintenance completion notifications within "X" hours	Effective February 1, 2003, SBC Illinois has implemented a new process to deliver maintenance notices. Results of the new process will be posted on March 20, 2003. In the meantime, current differences are not significant, given that maintenance notices do not affect service or the actual work of repair and given performance of over 80 percent.
4	CLEC WI-6	% Form "A" within interval (Facilities Modification)	SBC Illinois met the applicable standards in at least two of three months for the categories that comprise most of the volume; the shortfalls here were small and relate to a single, low-volume category.

16. This paragraph intentionally left blank.

#### CHECKLIST ITEM (II) – ACCESS TO NETWORK ELEMENTS/OSS

##### Ordering

##### **Firm Order Confirmations**

17. Based on my analysis of Firm Order Confirmations, Staff Witness Weber now agrees that SBC Illinois issues these notices on a timely basis. Staff Weber Reply Affidavit¶ 50.

##### **Rejection Notices (Performance Measures 10.1, 10.2, and 10.3)**

18. The performance standard in effect for September – November 2002 specified that SBC Illinois should return 97 percent of rejection notices within one hour for orders rejected electronically (PM 10.1), and within 5 hours for orders rejected manually (PMs 10.2 and

10.3). For electronic rejections, SBC Illinois beat the standard in October but not in September or November; for manual rejections, SBC Illinois fell short of the standard in all three months.

19. The first question is whether the numeric shortfalls are large enough to affect overall checklist compliance. Staff contends that they are, but I disagree. In all three months, SBC Illinois issued well over 90 percent of electronic and manual rejections within the specified time frame. For the three months as a whole, SBC Illinois issued 95.6 percent of electronic rejections within one hour, and 93.2 percent of manual rejections within 5 hours (PMs 10.2 and 10.3 combined). Further, the average time to return rejections was approximately 10 *minutes* (0.17 hours) for electronic rejects (PM 11-01), and 4.7 hours for manual rejects (PMs 11.1 and 11.2 combined), which shows that the most rejections are processed well within the benchmark interval, and that the small percentage of rejections that did not occur within the specified interval was not far from the standard. No one has presented any evidence that the small differences on a small percentage of rejects had any commercial impact. To the contrary, the CLECs agreed in the six-month review to extend the benchmark intervals to correspond to those for firm order confirmations (roughly speaking, two hours for electronic rejections and 24 hours for manual rejections), and SBC Illinois' results for the study period would have met those benchmarks.
20. The second question is whether the Commission should require some formal corrective action plan (above and beyond the normal operation of performance reports and remedies) in this area. Staff argues that it should, but I do not agree that a special plan is necessary. As stated above and in my opening affidavit (¶¶ 70-71), SBC Illinois and the

CLECs agreed to revise the reject benchmarks, and SBC Illinois would have met those new benchmarks. There is no need to create a special plan to meet a standard that is about to become obsolete, and that will not even be in effect at the time the plan would be carried out.

### **Jeopardy Notices (Performance Measure MI-2)**

21. Performance Measure 10.4 measures the overall percentage of orders that receive jeopardy notices; in turn, Performance Measure MI-2 measures the percentage of jeopardies that are issued within 24 hours of the due date. Staff correctly notes that a “jeopardy” notice does not mean that the due date *will* be missed. Nevertheless, Staff cites SBC Illinois’ performance results on some of the categories in PM MI-2. As I explained in my rebuttal, one contributor to the “shortfalls” on some of the submeasures of PM MI 2 is the use of an artificial “parity” standard. SBC Illinois and the CLECs have now agreed to apply a benchmark standard of 5% to both PM MI 2 and PM 10.4. Staff points out that this does not explain *all* of the shortfall, as the percentages are still above 5 percent. So far as it goes, Staff is right, but that just leads to the bottom-line question: Is the remaining shortfall severe enough to affect overall compliance or require a formal improvement plan? In my opinion, it is not. Overall results for PM 10.4 show that less than one percent (0.94 percent for the three months September –November 2002) of the orders completed have a jeopardy notice for them. At the same time, results for PM MI 2 show that approximately half (45.4 percent) of the orders receiving jeopardy notices, or less than one-half of one percent of all orders completed, receive a notice on or within 24 hours of the due date. Thus, PM MI-2 addresses only a small subset of our total volume. Further, the difference between current performance and the 5 percent benchmark is not

significant; and most importantly, SBC Illinois is meeting the measures that count more – the measures for due dates actually made. Notably, only one of the many measures for due dates appears on Staff’s list of “Key PMs” and as I explain under checklist item 4 below, that measure (PM 56) is apparently listed by mistake, as SBC Illinois met the performance standard in all categories of that measure in at least two of the three months.

**Completion Notices: Installation (Performance Measure 7.1)**

22. As Mr. Cottrell explained in his rebuttal affidavit, SBC Illinois has committed to a formal improvement plan for issuance of service order completion notices, and the results are to be verified by BearingPoint in its re-testing on that issue. Thus, the remaining question here is whether the current shortfalls in performance are significant enough to warrant *more* action or to affect overall checklist compliance. The answer is no. While short of the current benchmark of 99 percent within 24 hours, SBC Illinois’ service order completion (“SOC”) timeliness was still consistently above 97%, averaging 98.25% over the study period for the Resale, UNE and Combinations submeasures of PM 7.1, which comprise over 98% of all SOCs reported for those three months. Going forward, the CLECs have agreed that 97% is an appropriate benchmark. For present purposes, the shortfalls are not material, and further improvements to meet a 99% benchmark are not necessary given that the benchmark will not exist by the time the improvements are implemented.
23. As to the fourth category, PM 7.1-04 (LNP Only service order completions), the September – November results are understated as they include CLEC-caused delays, even though the business rule allows SBC Illinois to exclude such delays from the

measurement. SBC Illinois corrected the measure in January 2003, and the results show that over 92% of SOCs for LNP Only orders were sent within one business day of work completion, a much better level of performance than the 46-70% rates for September-November. Given that the PM 7.1-04 results represent less than 2 percent of the volume of SOCs reported over the September – November 2002 period, the shortfall is not material.

### **Flow-Through**

24. I agree with Staff that the measure for flow-through is not a “Key PM Requiring Improvement.” As I said in my previous affidavits, flow-through only reflects one step in the overall ordering and provisioning process, and SBC Illinois’ flow-through performance has been good, albeit short of the artificial “parity” standard that is used in the business rules. I would like to clarify one point raised by Staff Witness Weber, and further discuss PM 13 and current performance.
25. As Ms. Weber notes, there are two measures for flow-through. PM 13 measures flow-through as a percentage of orders that are designed or “eligible” to flow through. Not all orders are designed to flow-through; by design, some orders (such as complex orders) are designed to require manual intervention. PM 13 shows whether the orders that are designed to flow through are, in fact, flowing through as intended. The FCC refers to this measure as “achieved” flow-through, and it has said that this is the “primary” measure of flow-through that it considers. *New Jersey 271 Order*, ¶ 32 (“We generally find the achieved flow-through measure is the most indicative of the BOC's ability to electronically process orders.”). As I showed in my previous affidavits, the rates of

achieved flow-through are well above 90 percent, and higher than in successful section 271 applications by other BOCs.

26. PM 13.1, meanwhile, measures flow-through as a percentage of *all* orders, even those that are not designed to flow through. By definition, the percentage is lower than the result for achieved flow-through, PM 13 -- not because the systems are not working, but because CLECs are submitting orders that are designed to “fall out” and that the CLECs know will fall out. The systems *are* working as designed and submitting those orders for manual intervention. Still, SBC Illinois’ results on this measure were high (consistently above eighty percent for the highest volume category, UNE-P, and consistently above 76% across all categories combined). More importantly, the proper context for flow-through is to look at the end results that really matter (processing and filling orders).
27. While the performance on PM 13 is as good or better than other ILECs at the time of their Section 271 approvals, SBC Illinois did not meet the “parity” standard, not because of an OSS problem, but because the parity comparison is not at all precise. While Resale and UNE-P are “like” retail products, the processing of these types of requests are not the same. The retail process begins with the manual entry of information used for service order creation. Wholesale requests, however, arrive in the form of a mechanical Local Service Request submitted via an interface, which SBC Illinois then translates into a service order. In mechanically processing these requests, an issue might arise (for example, in checking for telephone numbers, analyzing pending orders, or verifying feature availability) that requires manual intervention and resolution. Thus, the order does not flow through. Plainly, if SBC Illinois were to ignore these types of issues and

just flow the order downstream, then the CLEC's end user customer could be negatively impacted, either by not getting the service they ordered, or not getting service at all.

28. In addition to the above, some of the product and service categories in this measure have no comparable analog on the retail side. Number Portability, Number Portability with Loop, and Advanced Services (ie. DSL Broadband) are much more complicated types of orders than a retail residence or business POTs type of service.
29. While SBC Illinois has maintained strong flow through performance, it has also met the requirements of the 24 Month Performance Plan negotiated with the CLECs. Along with the Plan of Record implementation, SBC Illinois implemented nine enhancements during 2002, which added additional flow through capabilities. This year there are plans for at least eight more enhancements. SBC Illinois remains committed to increasing overall flowthrough (as measured in PM 13.1) and maintaining the current high levels of flow-through for orders that are designed to (as measured in PM 13). SBC Illinois is working, and will continue to work, through the collaborative process, to address the issue of "apples-to-oranges" parity comparisons on PM 13.

**Provisioning Accuracy**

30. Ms. Kinard clarifies her request regarding PM 12 to be the replacement of the current PM 12 with the PM 12.1 adopted in Texas for SBC Illinois' SWBT affiliate. As I indicated in my rebuttal affidavit, the proper vehicle to address that issue is the collaborative process to modify PMs. In that forum SBC Illinois has indicated its willingness to do so in conjunction with other negotiated changes.

## Line Loss Notification

31. Mr. Cottrell discusses operational issues and improvements related to “line loss” notices. Staff does not include the current performance measurement for such notices (PM MI 13) in its list of “Key PMs” and we have previously agreed to Staff’s proposal that the revised measure for line loss notices (which was established during the recent “six-month review” and which will be implemented with March 2003 results) will be a “medium” priority measure for remedy purposes. However, Staff Witness Weber asks two questions about the measure, which I will address briefly here.
32. First, some background is in order. In the most recent six-month PM collaborative, SBC Illinois and the participating CLECs agreed to make changes to the current PM MI 13. The principal change relates to the “start time” for measuring the interval in which SBC Illinois issues LLNs. Currently, the clock starts with the issuance of a completion notice to the winning carrier; under the new business rules, the clock will start with completion on installation work on the “winning” carrier’s service order. In addition, new PM MI 13.1 (Average Delay Days For Mechanized Line Loss Notifications) was added. This new measure will assess the average delay days for those line losses that are not sent with one business/system processing day of work completion on the “winning” carrier’s service order. These changes are before the ICC for approval.
33. Staff Witness Weber asks whether the current or new measures for line losses include results for lines lost to SBC Illinois. With respect to the current measure, line loss notifications sent to CLECs where the “winning” carrier is SBC Illinois Retail (a “winback” situation) are not captured within the current results. This is because the implemented measure defines the interval as “the elapsed time from the time that the

completion notice (EDI 865 message) is transmitted to the new carrier to the time that the loss notification (EDI 836 message) is transmitted” to the “losing” carrier. As SBC Illinois retail does not receive EDI 865 service order completion messages, the interval for those line loss notifications resulting from a “winback” cannot be calculated.

34. However, the new performance measures for line loss *will* include winback activity. This issue will be addressed in the implementation of the new PMs MI 13 and MI 13.1. An additional language clarification is also being made to those measures as filed, so as to ensure a clear understanding of the appropriate means of calculating results. The language was presented to the CLECs on Friday, March 14, 2003, and SBC Midwest awaits their response and concurrence before proceeding with filing of update tariff pages.
35. WorldCom Witness Kinard states that it is “shocking” that the current measure does not include win-back activity. As I stated above, that is simply a natural result of the business rules to which WorldCom and the other CLECs previously agreed. But the more important point is that the entire issue is moot, as the new measures will be in place with March 2003 results (thus, before the Commission’s scheduled Phase II order.)
36. To approximate what line loss notification timeliness performance would have been for the period under review if PM MI 13 had been defined such that line loss notifications resulting from “winback” activity could be included, SBC Midwest has conducted analysis to determine what the elapsed system processing days between the completion of the last service order associated with a CLEC LSR or a retail (winback) service order, and the date the line loss notification was sent to the CLEC, would be on a regional (five-state) basis. However, because of time constraints, this approximation of performance:

- Does not take the allowed exclusion for CLEC caused misses and delays. The implementation of this exclusion would only improve SBC performance results.
- Does not include line losses that were intended to be sent electronically but were sent manually. In the production implementation of new MI13, these will be reported. This is expected to be a small number and expected to have a minimal impact on overall results.
- Does not include any special logic on handling situations where the CLECs reported errors with line losses they received.
- Did not involve a complete restoration of all databases and tables for each prior processing month (i.e. current referential tables for things like active CLECs and current data available on the platform were used to reprocess the results. Typically, only minor changes occur from month to month.)
- Does not include all line sharing line losses. We experienced some difficulty in matching some line sharing line losses to the completion of the service orders. This issue will be resolved before the production implementation of the new MI13.

37. The results of that process demonstrate that performance on line loss notification has been good, as depicted in the table below.

Month	Mechanized Line Losses Sent Within 1 Day of Work Completion	Total Mechanized Line Losses	Percent Met	Original MI 13 Aggregate Result
Nov 2002	96,473	106,277	90.78%	96.43%
Dec 2002	97,821	102,060	95.85%	97.61%
Jan 2003	123,040	126,280	97.43%	92.19%

38. This paragraph intentionally left blank.

**Completion Notices: Maintenance (Performance Measure MI-14)**

39. Performance Measure MI-14 relates to SBC Illinois’ performance in delivering completion notices after performing maintenance work on lines that already “belong” to the CLEC. As I pointed out in my rebuttal, and as Staff Witness McClerren agrees, this is separate and apart from the measures for completion notices on new installations.

40. Staff Witness McClerren includes this measure among Staff's "Key PMs for Improvement." This is an area in which SBC Illinois has already taken steps in the normal course of business to improve performance. The principal source of the delays in notices was the fax process used for sending notices for trouble tickets that were submitted manually (CLECs that submit trouble tickets electronically receive notice of maintenance work via the applicable interface). As I noted in my rebuttal affidavit and at the workshop, effective February 1, 2003 SBC Illinois is no longer sending manual notices by fax but by posting them to a web site. The new process was established by agreement with the CLECs in the CLEC User Forum.
41. Staff acknowledges this change, and does not object to its substance. The only remaining issue appears to be that at the time of the testimony Staff has not yet had the chance to observe the results. Results for February 2003, the first month under the new process, will be posted in March 2003, and it is our hope that Staff will agree that this measure has been sufficiently addressed when the parties file proposed orders on March 24.
42. For present purposes, the September – November shortfalls in this measure are not sufficient to affect checklist compliance. First, keep in mind that this measure does not affect service or the actual work of maintenance. The trouble tickets captured by PM MI 14 have been cleared already, and service is working. Given the limited scope of the measure, the shortfalls in performance were not material even under the old fax process. While it did not achieve the 95 percent benchmarks, SBC Illinois still issued over 83 percent of maintenance notices within the interval specified by the performance standard, and the percentage did not fall below 74 percent in any category in the three-month study period.

**Billing (Performance Measure 17)**

43. There is no dispute that SBC Illinois provides bills and usage information on a timely basis. The separate joint affidavit of Mr. Cottrell and Ms. Kagan addresses operational issues relating to billing accuracy.
44. The sole issue with respect to reported performance results relates to Performance Measure 17, which addresses the rate at which service orders post to billing. The applicable standard calls for SBC Illinois to measure the percentage of orders posted within 20 bill cycles, roughly 30 days. As I said in my opening affidavit, the reported results on billing completion reflect assessment against a higher standard: the percent of orders posting to billing within one bill cycle. Even so, the percentage of wholesale orders posted within *one* cycle is very high (96.6% in September, 94% in October, and 91.55% in November). Further, for the few orders that are not posted to billing prior to the first bill cycle for the account after the order completes in the ordering systems, there is no impact on a CLEC's ability to bill their end-customers. The SOC notice provides confirmation to the CLEC that the order is complete and the service is in place to their customer.
45. The first question, then, is whether performance on this measure affects overall checklist compliance. Given (i) that over 90 percent of orders are posted much more quickly than the objective defined in the PM 17 business rule, and (ii) the fact that posting does not affect the CLEC's ability to bill end users, the answer to that question is no.
46. The second question is whether a formal improvement plan is necessary. The answer to that question is also "no." As a result of the recently-completed six-month review

collaborative, this measure will soon be revised to provide for more appropriate comparisons of like products to the retail equivalent process.

47. Staff Witness Staranczak does not dispute my explanation. Instead, his main response is that SBC Illinois should “live” with the higher standard it uses in its reports. We do “live” with the higher standard, in the sense that we pay performance remedies on this measure even though, for the reasons I described above, our reports do not give us full credit for good performance. The question here, though, is not whether we pass every single performance standard (no BOC has ever done so), but whether our overall performance demonstrates checklist compliance. In addressing that question, it is essential to know not just what measures were “passed” or “missed,” but also what the performance results mean, and how they affect the big picture.

**CHECKLIST ITEM (IV) – UNBUNDLED LOCAL LOOPS**

48. In my opening affidavit, I showed that SBC Illinois provides nondiscriminatory access to unbundled local loops and to UNE combinations by providing provisioning and maintenance results for DSL loops (both xDSL-capable – or “stand alone” – and line shared loops), 2 wire digital (“BRI”) loops, high capacity (i.e., DS1 and DS3) loops, 2 wire analog loops, unbundled network element – platform (UNE-P) arrangements, and coordinated conversions. SBC Illinois met the applicable performance standard for 140 of the 151 (92.7%) unbundled local loop submeasurements in at least two of the three study period months.
49. Staff has only one measure, PM 37-04, related to the UNE Platform on its list of “Key PMs.” For unbundled loops, Staff Witness Zolnierrek agrees, in part, with my

assessment, but raises concerns with respect to the following measures: 55, 56, 59, 62, 65, 66, 67, and CLEC WI 6. I address each of these measures below.

### **Provisioning**

50. **Performance Measure 55 (Average Installation Interval).** Staff Witness Zolnierek contends that I did “not address the Company’s problem meeting parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3.” But the results do not show a problem in meeting parity criteria. The following chart summarizes the results for all categories of Performance Measure 55-01.

	Wholesale Volume	Wholesale Performance	Standard	Was statistical test passed?
<b>PM 55-01.1</b>				
September	4,431	4.68 days	5.42	Yes
October	4,329	4.76 days	4.97	Yes
November	2,655	4.79 days	4.54	No
<b>PM 55-01.2</b>				
September	312	18.77	7.49	No
October	602	8.56	7.99	Yes
November	348	10.18	9.20	Yes
<b>PM 55-01.3</b>				
September	0	0	0	N/A
October	49	10	10.85	Yes
November	23	10	5.79	No

51. This paragraph intentionally left blank.
52. As the chart shows, SBC Illinois met the applicable parity criteria in two out of three months for the two categories with the largest volume: PM 55-01.1 (2 wire analog loops, orders for 1-10 lines), and PM 55-01.2 (2-wire analog loops, orders for 11-20 lines), in all three months. For the third category, 55.1-03, SBC Illinois met parity in one month and missed in one month (in the third, there was no volume). Further, SBC Illinois met parity criteria in all three months for several related average installation interval measures: PM 55-02 (digital), PM 55-03 (DS1), 55.1-02 (DSL line sharing without conditioning), 55.1-03 (DSL stand-alone with conditioning). For the other related category with sufficient volume, PM 55.1-04, SBC Illinois met parity in two out of three months. Finally, SBC Illinois met the applicable standard in at least two out of three months for all other measures of loop provisioning timeliness (e.g. missed due dates). In short, the process as a whole works.
53. Staff Witness Zolnierек nevertheless states that “the Company failed parity criteria for installation intervals for voice-grade loops more than 37% of the time.” I disagree with that assessment, as it stems from a misreading of the performance results. It appears that

Staff's "37%" reference comes from taking the eight categories with sufficient data in Performance Measure 55-01 (3 months of data for PM 55.01.1, 3 months of data for PM 55-01.2, and two months of data for PM 55-01.3), and dividing it by the three total categories with shortfalls (one month in each category). That does not mean that SBC Illinois "failed" for more than 37 percent of the *installations*: to the contrary, two of the three shortfalls cited by Staff occurred in low-volume categories, while the third shortfall was small (one-quarter of a day, for PM 55-01.1 in November). More importantly, Staff's percentage overlooks the important qualitative facts: SBC Illinois achieved parity in two out of three months in the two measures that had by far the most volume; the shortfalls were small in amount or volume; *no* category fell short of parity for more than one month; and SBC Illinois achieved parity in related measures of installation timeliness.

54. **Performance Measure 56 (Percent Installations Completed Within Customer Requested Due Date).** I do not understand why Staff includes this measure on its list of "Key PMs Requiring Improvement," nor do I understand Staff Witness Zolnierrek's comment that "Mr. Ehr does not address the Company's failure to meet parity standards with respect to PMs 56-01.1 and 56-01.2." SBC Illinois *met* the applicable parity standards in all categories of this measure in at least two of three months (and in many categories, including PM 56-01.1, SBC Illinois met the standard in all three months). Under Staff's numeric guidelines, this result would demonstrate compliance, absent some other evidence to the contrary. But Staff has not presented any such contrary analysis: In fact, Dr. Zolnierrek even states that "the Company's performance has improved" and that "[t]he Company has passed all parity tests for these measures in both December 2002 and

January 2003.” And his summary and recommendation does not specifically address this measure.

55. **Performance Measure 59 (Installation Trouble Reports).** Staff Witness Zolnierек reiterated his concerns with SBC Illinois’ performance on PM 59-03, stating that I provided “no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected and will not recur.” Zolnierек Rebuttal ¶ 15. I provided, in my rebuttal affidavit (paragraph 50), a list of the additional actions SBC Illinois has taken and is taking to address performance on DSL Lineshare maintenance and repair. SBC Illinois’ Network organization has advised me that those additional activities have been undertaken to address performance issues on PMs 59, 65, 65.1, 66, 67 and 69. This measure would be subject to the proposal for additional monitoring by the SBC Illinois Network Staff and the ICC Staff that I outlined above.
56. **Performance Measure 62 (Average Delay Days).** As with PM 56, I do not understand why this measure remains on the list of “Key PMs Requiring Improvement.” SBC Illinois met the applicable standard in two out of three months in all four of the categories with sufficient data. Staff’s opening comments on three categories were positive: On PM 62-02 (Average Delay Days for AIT Caused Missed Due Dates – DSL – Linesharing), Staff Witness Zolnierек quite correctly stated “that delay days caused by Company caused missed due dates for CLECs are approximately equal to delay days caused by Company caused missed due date for the Company’s affiliate.” On PM 62-03 (Average Delay Days for AIT Caused Missed Due Dates – 8.0 dB Loops without Test Access), Dr. Zolnierек noted that performance fell short in September, but also

acknowledged that “relative performance improved, however, in October and November 2002 with the Company’s retail customers receiving longer delays than CLEC customers.” And on PM 62-04, Dr. Zolnierек acknowledged that delay days for wholesale were significantly *better* than for retail.

57. The only category that Staff challenged in the opening round was PM 62-06. In the opening comments Dr. Zolnierек stated that the November result for that measure “indicates that there was a significant meltdown in the Company’s provisioning.” As I explained at the workshop and in my rebuttal, however, there was no “meltdown,” only a simple record-keeping entry for a single order that had no impact on service. SBC Illinois “closed out” the record of an order that had been provisioned months earlier, and the performance reports showed that order as if it were a November installation that took 323 days, even though the actual installation had been completed months earlier, and the actual installation time was much shorter.
58. In this round, Staff does not rebut my analysis or respond to it. In fact, although Staff’s list of “Key PMs” includes Performance Measure 62 and references Staff Exhibit 44 for rebuttal testimony on that measure, Staff Exhibit 44 does not discuss the measure at all.

### **Maintenance and Repair**

59. **Performance Measure 65 (Trouble Report Rate).** With regard to PM 65, the explanation I provided previously addressing DSL Lineshare repair under the heading for PM 59 applies here to submeasure 65-03. Steps have been taken to focus SBC Illinois Network resources to making the needed improvements to the DSL repair processes, and improved results are expected in the near future. These same activities are expected to

address any process or system issues on PMs 65-05 (BRI Loops) and PM 65-08 (DSL Loops). I have included this measure in my proposal for additional monitoring above.

60. **Performance Measure 66 (Missed Repair Commitments) and 67 (Mean Time To Restore).** Staff's concerns with the next two performance measures, PMs 66 and 67, relate to the time it takes to repair DSL Lineshare loops. SBC Illinois Network organization management staff have already taken the following steps to address performance in this area as discussed in my Rebuttal Affidavit (¶ 50), and above with regard to PM 59-03:

- Institution of weekly DSL Lineshare repair and maintenance performance conference calls, including line and staff management, to ensure appropriate management focus on improving service;
- Creation of new daily reports for line and staff management to proactively assess DSL Lineshare repair and maintenance performance on a daily basis;
- Retraining of technicians regarding maintenance and repair procedures for DSL Lineshare circuits
- Development of additional job-aids for technicians on DSL Lineshare maintenance
- Scheduling and execution of quality checks of SBC-owned splitter equipment conditions in central offices
- Requirement of new quality reviews checking workmanship on DSL Lineshare orders and trouble reports
- Institution of a new checklist to be completed by the technician for each non-ASI order
- Additional new checklists and review processes for Chicago Metro area managers to verify their technician's work.

Nevertheless, I include these measures in my proposal for additional monitoring above.

61. Staff Witness Zolnierrek misconstrues my testimony with regard to PM 66-03, stating that I argued "that the Commission-approved standard is irrelevant". I did no such thing. SBC Illinois takes the standards defined for each of the PMs very seriously, whether

parity or a benchmark. When parity measures are missed, by whatever degree or margin, remedy payments are made to the extent that the measures are subject to remedy.

Similarly, when a benchmark measure is missed, remedy payments are due (assuming the PM is subject to remedies). This proceeding is assessing checklist compliance, and the review that should be conducted is the totality of the evidence, not simply discrete performance results. Therefore, while Staff and I may disagree about a specific submeasure and its impact on checklist compliance, I am not contending that there was no shortfall or that no remedies should be due; rather, I am only saying that the differences are not material in the perspective of overall performance.

### **Facilities Modification**

62. The Facilities Modification (“FMOD”) measures provide a good example of how this proceeding has helped to narrow the issues. In the opening round, Staff’s principal concern was with SBC Illinois’ ability to meet due dates on Facilities Modification orders. After seeing the improving trend, however, Staff Witness Zolnierrek recommends “that the Commission find that the Company is meeting FMOD due dates.” The sole remaining issue is with respect to “Form A,” the initial notice that informs the CLEC that an order will go through the FMOD process.
63. **Performance Measure CLEC WI-6 (Facilities Modification: Form A).** Before I proceed to the specific measurement category addressed by Staff, the Commission should keep in mind two important pieces of context. The first is to consider the “Form A” process as a whole. SBC Illinois met the applicable performance standard for issuing Form “A” in at least two out of the three “study period” months for all but one product

category, DSL loops. Considering the three months as a whole, and considering all product categories in the aggregate, SBC Illinois issued over 97 percent of Form As within the specified interval – well over the 95 percent benchmark.

64. Staff’s concern relates to Form A’s in one product category, stand-alone DSL loops. Thus, another important piece of context is to consider how SBC Illinois processed orders for DSL as a whole. Over the three-month period, SBC Illinois confirmed nearly 10,000 orders for standalone and lineshare DSL loops.<sup>2</sup> SBC Illinois surpassed the benchmark for DSL FOCs in all three months. Staff’s concern relates only to those orders that enter the FMOD process and receive a Form A, which comprises about 3½ percent of total DSL orders. As such, while SBC Illinois has made the changes to more accurately report results for PM CLEC WI 6, the vast majority of DSL Loop orders do not even enter the FMOD process. In fact, based on the current DSL Loop products being ordered, SBC Illinois expects DSL Loop volume for PM CLEC WI 6 to be at or near zero in the future. The first FMOD form that will be called for on these loops, if required, would be Form C. Performance on the FMOD process should be assessed accordingly.

65. This paragraph intentionally left blank.

**CHECKLIST ITEM (VII) – 911, E-911, DIRECTORY ASSISTANCE, AND OPERATOR SERVICES**

66. There is no dispute with respect to SBC Illinois’ compliance on operator services, directory assistance, and the directory assistance database. The sole remaining issue relates to one of the measures for 911 database access: Performance Measure 104, which measures the average time to process updates to the 911 database, in minutes.

67. Staff Witness Schroll expresses concern that SBC Illinois is not doing enough to assist CLECs in improving the quality of their updated files as one method to increase the speed of processing and thus meet parity on PM 104. SBC Illinois believes it demonstrated that it provides adequate support to CLECs, as described in the rebuttal affidavit of Gene Valentine filed March 3, 2003. SBC Illinois will address the performance standard of parity in the next six-month review PM collaborative.

**CHECKLIST ITEM (XIV) – RESALE**

68. **Performance Measure 37 (Trouble Report Rate).** PM 37 remains on Staff’s “Key PM’s Requiring Improvement” table, due to the fact that Staff has not seen sustained improved performance in December 2002 and January 2003 results. While SBC Illinois has implemented a manual work-around process to address the issue with the facilities assignment system I discussed in my rebuttal affidavit, the system changes had not yet been implemented to formally address the issues. That system enhancement was implemented in early March 2003. SBC expects this issue to be resolved and performance should return to parity. Nevertheless, I include this measure in my proposal for additional monitoring above.

**SBC ILLINOIS’ PERFORMANCE MEASUREMENTS RESULTS ARE RELIABLE**

69. In this section, I provide further comments on the E&Y audits and on BearingPoint’s ongoing Performance Measurement Review.

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<sup>2</sup> Total number of standalone and line share DSL loop orders FOC’s is obtained by combining the volumes across the three months of the study period for PMs 5-18, 5-19, 5-20, 5-21, 5-42, 5-43, 5-44, and 5-45.

**THE ERNST & YOUNG AUDIT PROVIDES ADDITIONAL ASSURANCES OF DATA RELIABILITY.**

70. Staff Witness Weber discusses E&Y at ¶¶ 36 – 43 of her Reply Affidavit and AT&T Witness Connolly discusses E&Y at ¶¶ 41 – 51 of his Rebuttal Affidavit. I address some of their assertions below.
71. Staff Witness Weber again questions the reliability of data reported after the implementation of corrective action to address E&Y’s findings. There is not much new I can say, other than that E&Y reviewed our corrective actions when we implemented them, and we have no incentive to change procedures or reverse corrective actions.
72. At ¶ 38 and footnote 19, Staff Witness Weber appears to be confusing E&Y’s defined term “material non-compliance” with the business rules, with the definition of a “material” change that triggers a restatement. In the E & Y report, issues were identified where SBC Illinois did not comply with the business rules. This does not necessarily mean that the issue identified would “materially” change the report results (change a make to a miss or change a miss by 5% or more). Subsequent to the filing of the initial E&Y report, SBC Illinois has in some cases been able to perform additional analysis to show that the issue would not materially impact performance results even though the issue may have met E&Y’s definition of material non-compliance in its audit sampling activities.
73. For the 12 Category V exceptions addressed by Ms. Weber at ¶ 38, I stated at ¶ 230 of my Initial Affidavit that no restatements were planned at this time because SBC Illinois’ analysis of the issues did not result in a determination that prior results would be materially negatively impacted. Staff Witness Weber states that there is no “guarantee”

of immateriality. While nothing in life is guaranteed, we performed an extensive analysis of each measure (typically by using a worst-case scenario and assuming that all transactions affected by the issue were “misses”). As a result, I believe that if anything we took a conservative approach.

74. As I stated at ¶ 99 of my Reply Affidavit, Staff Witness Weber was that the SBC Illinois had not implemented corrective actions for the fifteen issues identified in Category V at the time of filing my Initial Affidavit. However, I showed that a number of these issues have, in fact, fact been addressed since the filing of my Initial Affidavit, specifically the following: Section V, Issues 1, 2, 4, 5, 7, 8, 13, and 15. Each of these issues was addressed with January 2003 results reported February 20, 2003. I also included the following table addressing the issues that remain to be addressed, and their current status.

<b>Status of Remaining Issues from Ernst &amp; Young Audit as of February 28, 2003</b>			
<b>E&amp;Y Issue (From Attachment Q)</b>	<b>Affected PM(s)s</b>	<b>Current Status of Corrective Action</b>	<b>Impact On Previously Reported Results</b>
Sec. V, Issue 14	104.1	Computer coding enhancements to exclude CLEC-caused delayed 911 Database record unlocks is to be implemented with February 2003 results to be reported March 20, 2003.	Corrective action will only improve results as delayed unlocks will lengthen the average time to unlock the record (the result reported fin PM 104.1). This is a diagnostic measure with no performance standard defined
Sec. V, Issue 3	91	Computer coding enhancements to include project orders are to be implemented with February 2003 results to be reported March 20, 2003.	Analysis of project data identified that, for June through August 2002, projects excluded from the results represent 1.05% or less of orders reported, with no impact on attainment of the benchmark. No restatement of prior month's results is planned.
Sec. V, Issues 6	28, 29, 30, 31, 32, 33	Computer coding enhancements to exclude internal orders correcting the CLEC account in SBC Illinois wholesale system when the end customer transfers service to SBC Illinois are to be implemented with February 2003 results to be reported on March 20, 2003.	Analysis of ordering activity of customers migrating partial accounts to SBC Illinois indicates that less than 5% of all “winback” orders are “partial winback” orders. The impact of this small volume of orders (less than 1% of all orders reported in the results for these PMs) is not material.

<b>Status of Remaining Issues from Ernst &amp; Young Audit as of February 28, 2003</b>			
<b>E&amp;Y Issue (From Attachment Q)</b>	<b>Affected PM(s)</b>	<b>Current Status of Corrective Action</b>	<b>Impact On Previously Reported Results</b>
Sec. V, Issue 9	96, 97	Computer coding enhancements to add logic to relate LNP and Loop orders when the related order field is not populated on the LNP order are to be implemented with February 2002 results to be reported on March 20, 2003.	This issue could result in the orders being reported in the incorrect disaggregation of these PMs. The number of orders affected is limited, both disaggregations report against the same benchmark, and all orders are included in results.
Sec. V, Issue 12	MI 14	Computer coding enhancements to report UNE-P trouble ticket completion notices provided electronically separately from Resale notices provided electronically (both are reported combined currently) is to be implemented with February 2003 results reported on March 20, 2003.	Both UNE-P and Resale trouble ticket completion notices are measured against the same standard, and all have been included in the results for the Resale electronic submeasure. Performance has been consistently above 99% sent within one hour.
Sec. V, Issue 10	WI 1	Computer coding enhancements to exclude customer-caused no access reports are to be implemented with February 2003 results to be reported on March 20, 2003.	Exclusion of customer-caused no access reports will result in improved performance once implemented.
Sec. V, Issue 11	CLEC WI 5	Computer coding enhancements to include resold specials and UNE dispatches to customer premise are to be implemented with February 2003 results to be reported on March 20, 2003.	SBC Illinois' procedures for moving the NID (assessed in PM CLEC WI 5) do not differentiate between retail and wholesale end customers. Reported results indicate no failures on the PM, and the performance is expected to continue.

75. At ¶ 40 Staff Witness Weber address the seven remaining E&Y exceptions described at ¶113 of my Reply Affidavit and states her belief that these are “failings” that undermine the ability of “any party” to properly evaluate SBC Illinois’s performance results. I have already presented my analysis to show why these issues were not material.
76. Finally, Ms. Weber addresses the frequency and timing of restatements at ¶ 41 of her Reply Affidavit. However, as I stated at ¶ 140 of my Rebuttal Affidavit, even BearingPoint no longer uses restatement frequency as a general indicator of procedural and control deficiencies. As far as Ms. Weber’s belief that restatements to correct errors six months after posting should be deemed unacceptable, SBC Illinois restates results that need to be restated as quickly as possible. Restatement of results more than three months

in the past are typically the result of one of two issues; first, there are issues that take some time to develop and test the solution and reprocess data from prior results, such that it may take several months to implement the restatement; second, there can be other reasons, such as an audit finding, that might require SBC Illinois to restate results for an issue farther back than might otherwise be done.

77. AT&T Witness Connolly makes some specific assertions at ¶¶ 46 – 49, which I address below.
78. At ¶ 47, he states E&Y found that “SBC failed to identify DSL transactions by geographic region as required by the business rules governing PMs 55.1, 55.3, 56, 58, 59, 60, 61, 62, 63, and 65” and “SBC states that it has implemented a new code to correct these problems and *plans to restate* its July through December 2002 results in the second quarter of 2003.” What he fails to state is that the results in the aggregate for these measures are correct and that all orders were reported and assessed against the correct standard. The *only* issue is the classification by geographic area.
79. At ¶ 47, Mr. Connolly addresses the exclusion of some records from PM MI 12 identified by E&Y. SBC is evaluating the potential restatement for PM MI 12 in accordance with its Change Management policy, as it does with all restatements, and if one is required per the policy it will be done. In other words, the issue is being addressed, and if it is determined that prior months results are materially negatively affected, and data is available to recast the results, a restatement can be done in accordance with SBC Illinois restatement guidelines within its Change Management policy.

80. The six issues listed by Mr. Connolly at ¶ 48 are really “non-issues” because (as Mr. Connolly should be aware) the analysis of these issues was already provided in the E&Y Third Corrective Action Report and SBC Illinois has asserted, and E&Y has attested, that the issues are immaterial. This Third Corrective Action Report is an update from E&Y on SBC Midwest’s progress in addressing the remaining issues. The Report communicates what remains to be done (which has also been consistently communicated in the earlier reports) and the items discussed in it are not new. The schedule to resolve the remaining items is still with February 2003 results reported in March 2003.
81. The two outstanding E&Y coding issues identified by Mr. Connolly at ¶ 49 of his affidavit will be reviewed by E&Y as set forth in SBC Michigan’s commitment to do updates to actions. The complete code review and transaction testing, called for in E&Y’s audit methodology was not possible given that the two issues were fixed for February 20, 2003 posting the Third Corrective Action Report was filed by E&Y on February 28, 2003. Note, however, that this is simply a matter of E&Y validating corrective action that has already been taken.

**BEARINGPOINT’S REVIEW**

82. In my previous affidavits, I analyzed the current status of each test domain in BearingPoint’s ongoing Performance Measurement Review. I discussed the various Observations and Exceptions, describing how they came about, what they meant, and what SBC Illinois had done in response. I showed that many of the Observations and Exceptions noted by Staff and the CLECs have already been closed or significantly narrowed in scope, and that many of the test points that were marked “Not Satisfied” as

of the December 20 BearingPoint report have since been satisfied. I addressed the bottom line – that SBC Illinois’ performance results are reliable -- by considering the BearingPoint test in context of all the other evidence of reliability in the record, in particular the E&Y audits described in the preceding section.

83. For the most part, neither the CLECs nor Staff have really confronted my substantive analysis. (In fact, their discussion of the “current” status of BearingPoint’s test stops with December 2002, and ignores test points that have been since been satisfied.) Rather, they try to shift the focus elsewhere. Their rebuttal comments can be summarized as follows:

- (a) AT&T uses a legal argument, contending that my analysis is inconsistent with SBC Illinois’ burden of proof;
- (b) Because the Observations and Exceptions on which they previously relied have been closed, AT&T and Staff cite newly issued Observations and Exceptions (mostly, those that were issued in BearingPoint’s ongoing “blind replication” of SBC Illinois’ performance results for July – September 2002);
- (c) Staff contends that the Michigan Public Service Commission’s decision – which held in SBC Michigan’s favor – actually supports Staff’s view that our performance reports are unreliable;
- (d) AT&T goes even farther out of state, contending that BearingPoint’s results in Illinois now (when the test is not complete) are “worse” than the results of tests in the BellSouth and Verizon states (at the time those tests were complete).

84. I respond to each of those arguments below.

#### **BURDEN OF PROOF**

85. AT&T Witness Connolly argues that my analysis of BearingPoint’s test is “shifting” the burden of proof in this proceeding from SBC Illinois to the CLECs. I am not a lawyer, and I will not comment on his discussion of what “burden of proof” is required by law, or when it “shifts.” The important point, however, is that AT&T is completely

mischaracterizing my position. I have never suggested that BearingPoint's PMR test is complete, or that the results of that test, standing alone, are sufficient to satisfy whatever burden of proof SBC Illinois has as a legal matter. That is why SBC Illinois supplemented the record with the E&Y audits. What I have said throughout is that when one considers *all* of the evidence of reliability (including the E&Y audits, and the availability of data reconciliations with CLECs), SBC Illinois has demonstrated that its reports are sufficiently reliable. AT&T's argument is not really about the legal rules for burden of proof; rather, it is based on AT&T's suggestion that the Commission *ignore* the proof SBC Illinois has presented, a position I rebutted in my analysis of the E&Y audit.

#### **RECENT "OBSERVATIONS" REPORTED BY BEARINGPOINT**

86. Mr. Connolly cites Observations that BearingPoint issued since his last affidavit and attempts to make two points (paragraphs 29-39 of AT&T Connolly Rebuttal Affidavit). First, he asserts that the existence of newly issued observations, in and of itself, indicates "deficiencies in SBC's performance monitoring and reporting processes". Second, Mr. Connolly suggests that the existence of multiple observations associated with the same performance measure in the "blind replication" test means that SBC Illinois cannot generate accurate reported results.<sup>3</sup> On both counts his evaluation is flawed.
87. On the issue of new observations, Mr. Connolly argues that BearingPoint continues to find "systemic faults" in SBC Illinois' performance measurement reporting system. That conclusion rests on his continued assumption that any and all published exceptions and observations are an affirmative finding of fault.<sup>4</sup> As I stated in my rebuttal, Mr. Connolly's assumption is contrary to the whole nature of BearingPoint's test

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<sup>3</sup> Connolly reply regarding BearingPoint (¶ 34-40) and Connolly attachment 10.

methodology, and it ignores the real-world facts that underlie BearingPoint's observations. BearingPoint's observations and exceptions do not represent a conclusion about any test. Rather, BearingPoint performs its review and if it finds a condition that *may* result in a test point failure, it issues an observation or an exception to bring the matter to the attention of SBC Illinois and the Commission. SBC Illinois is then given an opportunity to respond: in many cases, the response may be as straightforward as providing BearingPoint with additional information so that BearingPoint better understands the facts, or revising its technical documentation.

88. The Illinois Master Test Plan (MTP) describes Observations and Exceptions in the following manner.

If an issue or problem is encountered during the test, KPMG Consulting will inform the Commission and Ameritech by documenting an Observation or Exception describing the situation and providing an assessment:

An Observation will be created if KPMG Consulting determines that a test reveals one of Ameritech's practices, policies, or system characteristics *might* result in a negative finding in the final report; (*emphasis added*)

An Exception will be created if KPMG Consulting determines that a test reveals one of Ameritech's practices, policies, or system characteristics *is not expected* to satisfy one or more of the evaluation criteria defined for the test. (*emphasis added*)

89. Neither of these definitions reflects an affirmative conclusion of failure. There are many examples of Observations and Exceptions that BearingPoint has issued which have subsequently been closed simply because SBC Illinois provided an explanation to BearingPoint.

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<sup>4</sup> Connolly Rebuttal, ¶8.

90. For example, BearingPoint's Observation 714 stated that "SBC's results for Performance Measurements 79 and 91 are not posted correctly for July, August, or September 2002." If one were to read that in isolation and consider it a final conclusion, one might think there was an actual error in the results, and of course that is the kind of reading Mr. Connolly tries to foster. But BearingPoint closed this Observation on January 28, stating that it agrees with SBC Illinois' interpretation of the business rules and that its results now match our reports.
91. Similarly, BearingPoint's Observation 721 stated that "SBC is improperly applying exclusions in the calculation of Performance Measurement 40 for the July, August, and September 2002 data months." But BearingPoint subsequently determined that SBC's application of state specific exclusions is correct, and it closed this Observation on March 4, 2003.
92. AT&T is well aware of this fact, as many of the observations and exceptions they have cited in previous testimony were resolved shortly after AT&T had cited them as evidence of test failures. As a result, Mr. Connolly's rebuttal affidavit carefully selected Observations that were issued in mid-February or later, where SBC Illinois has not yet completed its investigation and submitted a reply. I will not accept AT&T's apparent invitation to respond to these observations outside of the normal test process. The important point is that Observations and Exceptions are not, standing alone, an affirmative finding of deficiencies in SBC's performance measurement processes. They are communication mechanisms that BearingPoint uses to facilitate discussions. The observations cited by AT&T can hardly be said to "disclose systemic faults in SBC Illinois' PMR systems."

93. In the same vein, AT&T Witness Connolly notes that some performance measures have had multiple observations during the ongoing “blind replication” and suggests that the existence of multiple observations means that there are serious problems. Here too, Mr. Connolly mischaracterizes the normal iterative process which represents the normal course of the test.
94. The PMR5 test was constructed by BearingPoint using four independent test criteria; (1) posted values agree; (2) blind replication; (3) calculate according to the business rules; and (4) exclude according to the business rules. Given that observations and exceptions are used to inform SBC and commissions that BearingPoint has identified an issue which needs to be addressed in some fashion, an observation or exception can be issued on any or all of the four criteria. In addition, nearly all of the performance measures have more than one category, and some have retail comparison data. BearingPoint evaluates each of these components independently.
95. The blind replication process itself is another reason that multiple observations can be issued for the same performance measure. As I explained in my previous affidavits, BearingPoint is not just verifying our calculations; it is attempting to independently perform the same calculations, using its own processes and systems to re-process the vast amount of raw performance data. We perform thousands of calculations each month, on thousands of pieces of data, to generate results in thousands of performance measurement categories. It is not surprising that BearingPoint, as an outsider attempting to perform such a vast undertaking on its own, would generate a large number of practical questions about all the details involved.

96. To be sure, some past observations during the course of the test (particularly early on) were closed after SBC Illinois made modifications to program code, documentation or processes. Given the meticulous, indeed forensic, nature of the BearingPoint PMR test, this is to be expected. However, the Commission's focus is on recent performance results, and the E&Y audit provides sufficient additional assurance that those results are reliable for 271 purposes.
97. The bottom line is that the number of observations issued on any performance measure, standing alone, is not important. They are observations, and by BearingPoint's own definition they do not represent an affirmative finding of failure. AT&T presents no substantive analysis of why the observations were issued. It simply suggests the worst-case scenario: that BearingPoint affirmatively found that the results in all of the categories in a measure were seriously wrong. There is no basis for that assumption.

#### **RECENT "EXCEPTIONS" ISSUED BY BEARINGPOINT**

##### Exception 186

98. AT&T mischaracterizes BearingPoint's recent Exceptions in the same way as the recent Observations. First, Mr. Connolly implies that Exception 186 means that BearingPoint found all of the SBC Illinois' procedures and policies for the collection and storage of performance data to be inconsistent with regulatory requirements. This is simply not true. As I explained in my rebuttal affidavit, Exception 186 demonstrates that SBC Illinois is in substantial compliance with requirements established by BearingPoint, and has been for several months. Originally, BearingPoint issued Exception 19, which raised concern with all measurement data source systems; BearingPoint closed this exception on February 10, 2003, because it confirmed that SBC Illinois is retaining source and

reporting system data, for the retention periods that BearingPoint has determined to be appropriate, for over 50 systems – in other words, all but nine systems of record and reporting systems. Further, BearingPoint found that data is being retained, on a going forward basis, for all source systems.

99. BearingPoint's Exception 186 covers the only issue remaining: namely, looking *backward* 9 systems have not retained historical data in BearingPoint's desired format for the retention period that BearingPoint has determined to be appropriate.
100. Of the 9 systems identified in Exception 186, BearingPoint has verified that five of them retained data in the desired format for more than one year (14 to 17 months). And as I explained in my rebuttal affidavit, the September – November 2002 data that are the focus of the Commission's present analysis have *all* source measurement data retained in the format desired by BearingPoint.
101. What about before then? AT&T Witness Connolly tries to make it sound as if *no* data were retained, and that data reconciliation would be impossible. That is not true. First, as I noted above, Exception 186 applies to only nine systems out of over 60, and for 5 of those nine systems SBC Illinois has been retaining data in BearingPoint's required format for over a year. For the remaining systems, we still retain a wealth of raw data, sufficient to perform an audit. AT&T should know that, as we have been providing raw data to AT&T for approximately a year. Instead, BearingPoint's exception relates to the fact that we did not retain data for the 9 systems in exactly the format and duration BearingPoint desired.

Exception 187

102. Exception 187 relates to the technical documentation that we use to describe our methods and procedures for calculating performance results. Mr. Connolly argues that Exception 187 refutes my statement that I expect SBC Illinois to satisfy the related test criteria (PMR 1-1 & 1-2) which remain under review by BearingPoint. Exception 187 does not affect my conclusion; in fact, I addressed that Exception in my rebuttal affidavit.
103. Of the 150 total measures that SBC Illinois reports, the Exception relates to 55. Of these, BearingPoint and SBC Illinois have already resolved the issues BearingPoint identified for 9 PMs.
104. SBC Illinois has responded to BearingPoint regarding an additional 40 measures, and BearingPoint is reviewing our response. Given the successful resolution of the nine measures already reviewed by BearingPoint, I expect BearingPoint to find our responses complete and adequate.
105. The remaining 6 PMs will be resolved in the normal course. The technical requirement documentation for measures 54, 55.1, 56 and 56.1 will be updated upon the completion of a minor processing change, and we will respond at that time. The technical requirement documentation for measure 70 is being investigated to ensure columns listed in a processing spreadsheet are properly titled in the existing documentation, and the technical documentation for MI 15 is undergoing minor update to further detail the exclusions provided in the measures's Business Rules.

Exception 188

106. AT&T Witness Connolly continues to mischaracterize the issues that are the subject of Exception 188. In his view, Exception 188 means that we did not have enough

documentation of systems and processes to do our job of reporting performance results. That is simply not true. Prior to BearingPoint's initial review of SBC Illinois' data flow diagrams and data element maps, SBC Illinois had sufficient documentation to perform the day-to-day functions of processing and reporting performance results. BearingPoint's testing methodology, however, is designed around 100% replication and a correspondingly detailed analysis of all of SBC's processes and systems. The documentation that BearingPoint expected to see as part of its testing methodology was far more detailed than that needed by SBC Illinois to perform the normal daily operations, so BearingPoint did not find our existing documentation had enough detail to complete its review. Hence, the Exception.

107. The result is like giving someone directions in Chicago. If you have lived in Chicago for years, you do not need very detailed directions to find someone's house. If you are visiting Chicago for the first time, you would want something more detailed and precise. Similarly, documentation requirements are very much dependent on the audience. We have worked with our systems and performance measures as our daily routine for some time, and our "road map" has long been sufficient for us to perform our jobs. We have since prepared more specific documentation to give BearingPoint for its use, because BearingPoint does not have the same hands-on experience that we do. Exception 189 reflects the testing methodology used by BearingPoint, not a deficiency in our day-to-day business processes.

108. The following provides a more current view of the status of Exception 188:

109. Of the 150 total measurements, Exception 188 relates to 42. BearingPoint and SBC Illinois have resolved BearingPoint's issues for 7 measures.

110. SBC Illinois has responded to BearingPoint's issues for an additional 30 measures and based on our experience with the seven issues already reviewed by BearingPoint I expect BearingPoint to find our responses complete and adequate.
111. The remaining 5 PMs will be resolved in the normal course. Data element maps and data flow diagrams for measures 5, 6, 11.2 and 99 are being updated to reflect the current processing in the ICS / DSS reporting system. , SBC is also investigating a BearingPoint issue raised on measure CW 1, in particular concerning the source systems detailed in the current DEM and DFD documentation.
112. This paragraph intentionally left blank.

#### **MICHIGAN COMMISSION FINDINGS**

113. Staff Witness Weber characterizes the section 271 decision by the Michigan Commission as if the Michigan Commission found that SBC Michigan's performance results were not reliable. There is no basis for Staff's reading. After all, the Michigan Commission has endorsed SBC Michigan's application, and in so doing it said that SBC Michigan's performance results were sufficiently reliable for that purpose. Further, the Michigan Commission stated that the reported results for the vast majority of the categories were either accurate or conservatively stated.<sup>5</sup>
114. With respect to the BearingPoint performance measurement review, the MPSC noted that the test of SBC Michigan's practices for developing, documenting and publishing metric definitions, standards, and reports (PMR 2) has been "satisfied," and that the test of

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<sup>5</sup> Specifically the Commission concluded that for Section 271 purposes, SBC relies upon approximately 40% of the performance measures on which it reports on a monthly basis. The Commission found that the results of more than 85% of those disaggregations may be considered to be reliable or to have under-reported actually achieved results of the activity in question.

change management (PMR 3), although not completely finished, “support(s) a conclusion that the processes are “adequate and function appropriately.”<sup>6</sup> In regard to the unsatisfied portions of the data collection and storage test (PMR 1), the MPSC observed that SBC Michigan had responded to the unsatisfied items and that they were in retest and indeterminate. Finally, with regard to the data integrity (PMR 4) and metrics calculations test (PMR 5), the MPSC did note that the BearingPoint report itself did not provide sufficient evidence, given its incomplete status, but it found that E&Y’s audit provided sufficient evidence.<sup>7</sup> Notably, BearingPoint’s test is now even further along than it was at the time of the Michigan decision. Thus, to the extent this Commission considers the decision of its Michigan counterpart, that precedent favors SBC Illinois, not Staff.

#### COMPARISONS TO BEARINGPOINT TESTS IN OTHER REGIONS

115. Mr. Connolly spends a good deal of time comparing the current status of SBC’s BearingPoint test with the results of completed tests in other states served by other BOCs.<sup>8</sup> That is not a fair comparison. For starters, third party test plans differ among states. More importantly, AT&T is comparing the BearingPoint test here, which is not complete, to tests that were substantially complete. All Mr. Connolly is doing, then, is finding another way of saying what we all knew all along: that the BearingPoint test here is not complete. But SBC Illinois does not rely solely on the BearingPoint PMR test. BearingPoint’s PMR 2 and 3 are substantially complete, and BearingPoint’s PMR 1 is partially complete. With respect to PMR4 and PMR5, and the remainder of PMR 1, E&Y’s audit is the relevant third-party test.

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<sup>6</sup> MPSC Consultative Report at 15.

<sup>7</sup> Id at 21

<sup>8</sup> Connolly Reply, ¶ 67-91

116. Thus, in comparing SBC Illinois to other BOCs, one must consider *all* third-party testing, not just BearingPoint testing. Take Georgia, for example. At the time it received approval under section 271, BearingPoint's Audit III (PMR) for Georgia was still in process (and in fact, some aspects of that test are still ongoing). As SBC already demonstrated in its March 14, 2003 Ex-Parte to the FCC<sup>9</sup>, the status of the third-party testing in Michigan at filing was very similar to BellSouth's experience in Georgia<sup>10</sup>. The updated chart below further demonstrates that when you consider all third-party testing in Illinois, the current overall results compare favorably to BellSouth's experience in Georgia.

Bearing Point Test Activities	Status of the KPMG Audit III Prior to 271 Authorization in Georgia & Louisiana <sup>11</sup>	Status of Ernst & Young Audit as of February 28, 2003	Status of BearingPoint's PMR Test on March 7, 2003 <sup>12</sup>
PMR-1 (Data Collection and Storage)	90% Complete	100% (Data Collection) <sup>13</sup>	25% Satisfied <sup>14</sup>
PMR-2 (Standards and Definitions)	100% Complete For Month I, 100% Complete For Month II, and 95% Complete (4 Measures In Progress) For Month III	N/A	100% Satisfied <sup>15</sup>
PMR-3 (Change	85% Complete	100% <sup>16</sup>	93% Satisfied <sup>17</sup>

<sup>9</sup> See Attachment C from the Ex-Parte regarding Data Integrity filed with the FCC on March 14, 2003, regarding the Application of SBC for 271 approval, WC Docket No. 03-16.

<sup>10</sup> The third-party review of BellSouth's performance data was not complete at the time of the Commission's issuance of the Georgia/Louisiana Order. In fact, based on the BellSouth Georgia OSS Testing Evaluation Interim Status Report dated January 15, 2003, portions of this test are still continuing in Georgia. The BellSouth Georgia OSS Testing Evaluation Interim Status Report dated January 15, 2003 can be found at <http://www.psc.state.ga.us/telecom/isr/bp011503.pdf>.

<sup>11</sup> All data is from May 3, 2002 ex-parte filed by BellSouth in Docket 02-35.

<sup>12</sup> BearingPoint's March 7, 2003 report regarding Michigan.

<sup>13</sup> The E&Y audit only addressed data collection, not data storage. See January 16, 2003 Dolan/Horst Aff. Attachments D & E, and March 4, 2003 Second Dolan/Horst Aff. at par. 17, WC Docket No. 03-16, pending Michigan 271 proceeding.

<sup>14</sup> As of BearingPoint's March 7, 2003 report for Michigan (the most recent summary of results for the regionwide testing), 31 of 126 applicable PMR 1 test criteria have been satisfied.

<sup>15</sup> As of the Michigan March 7, 2003 report, all 3 applicable PMR 2 test criteria have been satisfied.

<sup>16</sup> The E&Y audit addressed portions of change management.

Bearing Point Test Activities	Status of the KPMG Audit III Prior to 271 Authorization in Georgia & Louisiana <sup>11</sup>	Status of Ernst & Young Audit as of February 28, 2003	Status of BearingPoint's PMR Test on March 7, 2003 <sup>12</sup>
Management)			
PMR-4 (Data Integrity)	27% Complete	95% Satisfied <sup>18</sup>	5% Satisfied <sup>19</sup>
PMR-5 (Data Replication)	84% Complete For SQM Reports & 67% Complete For 271 Charts	95% Satisfied <sup>20</sup>	28% Satisfied <sup>21</sup>

117. Contrary to Mr. Connolly's strained apples to oranges comparisons, no two PMR tests are the same. Commission requirements are different, performance measures are different, processing environments are different, and the infrastructure of processes and systems is different. Thus, comparing tests as done in the foregoing table is a very general comparison at best and cannot be an exact science. However, a high-level comparison of SBC and BellSouth Georgia, considering the E&Y audit, yields similar success ratios.

**PROPOSED COMPROMISE REMEDY PLAN**

118. In my previous affidavits, I have described SBC Illinois' proposed section 271 remedy plan ("Compromise Plan"), and responded to the questions and claims of the other comments, at length. Here, I will focus only on new allegations or claims.

<sup>17</sup> As of the Michigan March 7, 2003 report, 27 of 29 applicable PMR 3 test criteria have been satisfied

<sup>18</sup> As of February 28, 2003, 126 of 133 issues have been verified as corrected. See January 16, 2003 Dolan/Horst Aff. Attachment E and March 4, 2003 Second Dolan/Horst Aff. at par. 19, WC Docket No. 03-16, pending Michigan 271 proceeding.

<sup>19</sup> As of the Michigan March 7, 2003 report, 2 of 40 applicable PMR 4 test criteria have been satisfied.

<sup>20</sup> As of February 28, 2003, 126 of 133 issues have been verified as corrected. See January 16, 2003 Dolan/Horst Aff. Attachment D and March 4, 2003 Second Dolan/Horst Aff. at pars. 20 - 25, WC Docket No. 03-16, pending Michigan 271 proceeding.

<sup>21</sup> As of the Michigan March 7, 2003 report, 20 of 72 applicable PMR 5 test criteria have been satisfied.

**The Compromise Plan Is More Stringent Than Plans Found Sufficient By The FCC And More Stringent Than The Modified Texas Plan Touted By AT&T**

119. There is no dispute as to my principal argument, that the Compromise Plan leads to significantly higher remedies than plans that have already been found sufficient for section 271 purposes by the FCC. I provided an extensive “pro forma” calculation of remedies to support that conclusion. AT&T Witness Kalb, however, contends that the plan used by SWBT in Texas, Kansas, Oklahoma, Arkansas, and Missouri is not an appropriate benchmark for section 271 purposes. He points out that recently – over two years after SWBT received approval under section 271 -- the Texas Commission modified the Texas remedy plan, and he contends that the modified Texas plan is a more appropriate benchmark. But AT&T’s reference to the modified Texas plan only provides more -- and in fact conclusive -- support for the Compromise Plan proposed here. The Compromise Plan is not only more stringent than the Texas plan as it stood when the FCC reviewed it for sufficiency under section 271 (which I believe is the more appropriate “benchmark” for purposes of advising the FCC on section 271) but also more rigorous than the *modified* Texas plan cited by Dr. Kalb.
120. As I explained in my previous affidavits, the original Texas plan used a “K table” under which Tier 1 (CLEC) remedies were not assessed on the first few performance shortfalls for a given CLEC, due to the fact that the statistical tests for assessing performance had a built-in 5 percent “false alarm” rate caused by random variation. If the number of shortfalls exceeded the “K” threshold, the plan had a specific “priority” method for picking which shortfalls were to be excluded and which were to be paid: namely, shortfalls on “low” priority measures were excluded first. The Texas Commission’s recent order retained the K table, but modified the priority system. Under the modified

plan, shortfalls are excluded in order of dollar value, rather than priority – shortfalls that lead to lower remedy dollars are excluded first. Further, a measure that shows a shortfall in consecutive months is not excluded at all.

121. By contrast, the Compromise Plan here eliminates the K table entirely. *No* shortfalls are excluded from remedies. Plainly, this goes farther than the Texas Commission’s order, which still provides for the K table exclusions, and simply addresses the method for picking *which* shortfalls are to be excluded. Thus, given AT&T’s representation that the modified Texas plan represents a reasonable benchmark, AT&T has effectively agreed that the Compromise Plan goes above and beyond what is sufficient for section 271.

**The 0120 Plan Punishes SBC Illinois For Good Performance, And It Is Not Appropriate In The Current Environment.**

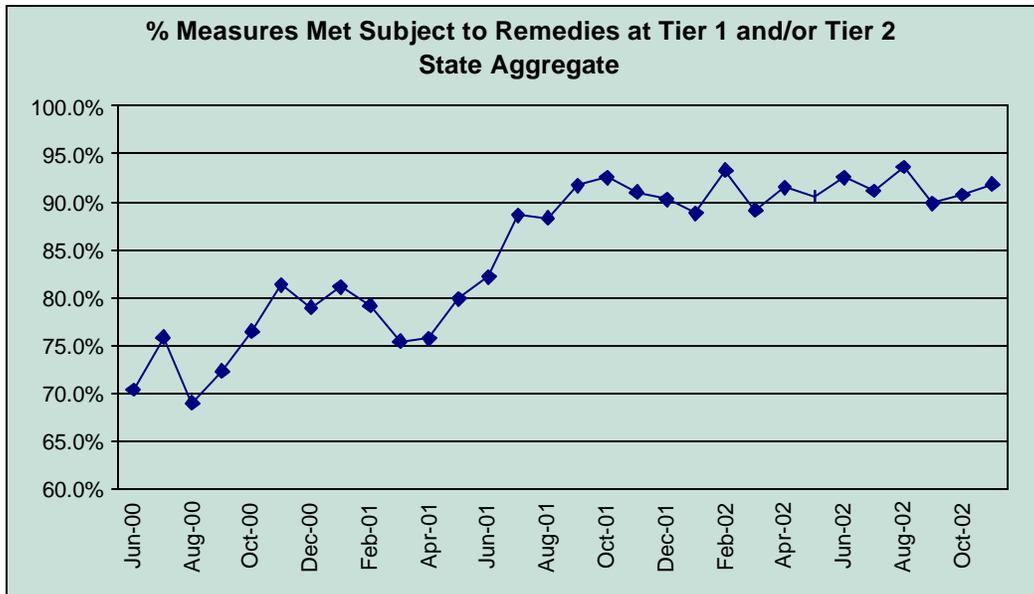
122. The opposing comments continue to advocate that the Commission retain the plan imposed by the Commission in the merger-related Docket No. 01-1020 (“0120 Plan”). Before addressing their latest substantive arguments, I would first like to address a recurring rhetorical point. Staff and AT&T contend that it is “un-rebutted” that the 0120 Plan is sufficient for purposes of section 271. For starters, the principal issue here is the one I addressed above: whether the Compromise Plan is sufficient for purposes of section 271. But at any rate, I fail to see how anyone could read my affidavits and think that I support the 0120 Plan, or that the 0120 Plan has been “un-rebutted.” I have shown at length that the 0120 Plan was not designed in, and is not suited to, the current performance environment. In my opening affidavit, I showed that SBC Illinois’ wholesale performance has improved significantly since late 2000 (when the record closed in Docket No. 01-0120). The 0120 Plan (which was based on the entirely different performance environment that existed shortly after the SBC/Ameritech merger)

is no longer appropriate. As a result, as I showed in my opening affidavit, that plan would require SBC Illinois to make “remedy” payments of approximately \$3 million each month despite good performance. That amount is over *nine* times the amount of payments that would have been found sufficient by the FCC for purposes of section 271 for the three months of the study period. To the extent Staff and the CLECs are saying that those facts are “un-rebutted” they are correct, but those facts support my argument and show that the 0120 Plan is punitive.

123. AT&T Witness Kalb also tries a different rhetorical argument. His view is that “it is the height of arrogance to presume that private negotiations of SBC and two evidently disengaged parties should substitute for the Commission’s reasoned judgment, reached after 17 months of testimony, hearings, and briefing in Docket No. 01-0120.” His statement is wrong on multiple levels. First, and most importantly, SBC Illinois is not even taking the position he describes as the “height of arrogance.” We do not contend that the Commission should accept the Compromise Plan based solely or even principally on the fact that it was reached through negotiation. Rather, we are asking the Commission to approve the Compromise Plan on its *substantive merits* – by applying its reasoned judgment to the record in this case, which is indisputably more extensive and more current than the record in Docket No. 01-0120. The fact that the plan reflects negotiations and arm’s-length agreement with two active CLECs is simply an additional fact for the Commission to consider, and contrary to Dr. Kalb’s argument that negotiation and agreement are somehow *bad* things, I think those facts weigh in favor of the Compromise Plan.

124. Second, Dr. Kalb offers no support for his attempt to diminish TDS – a party that is actively competing in Illinois and has actively participated in this docket and in Docket No. 01-0120 – as “evidently disengaged.” Nor could he, as the plan to which TDS agreed is several times more stringent than plans approved by the FCC, and contains a number of pro-CLEC features (such as the “gap closure” process and new rules for “step-up” and “step-down” of remedies for measures missed in consecutive months) that go beyond even the 0120 Plan. Finally, having negotiated across the table from TDS in the development of the Compromise Plan and in the region-wide performance measure collaboratives, I can state from personal experience that TDS’ representatives were and are aggressive advocates and negotiators for their company. Time Warner, which has also agreed to the Compromise Plan, has been an active participant in collaboratives and section 271 proceedings in the other Midwest states.
125. Third, Dr. Kalb is overstating the procedure in Docket No. 01-0120. His reference to “17 months of testimony, hearings, and briefing” simply measures the time in between the February 2001 initiating order and the October 2002 “order on reopening” in the docket. Plainly, the parties were not writing testimony or sitting in hearings that entire time. Rather, the record shows that there were two rounds of written testimony on each side, an evidentiary hearing (paralleled by the workshops here), followed by post-hearing briefs (the same as here), and briefs on exceptions, rehearing and the like (all of which are available here). More importantly, the “17 months” of proceedings in Docket No. 01-0120 were founded on a record that closed with December 2000 results, while the proceedings here are based on more current performance data that have been the subject of extensive analysis.

126. And finally, we are not asking the Commission to *replace* all of the decisions that went into the 0120 Plan, or the procedure that went into that plan. Many features of the Compromise Plan are identical to the 0120 Plan – in particular, we are not asking the Commission to revisit the complex statistical issues that were presented in Docket No. 01-0120.
127. That brings us to the substantive point: whether continuation of the 0120 Plan would be appropriate in a post-271 performance environment. The initial round of opposing comments agreed that performance had improved, but contended that the 0120 Plan was the reason for that improvement. I responded that the improvements in SBC Illinois’ performance occurred well *before* the 01-0120 Plan even took effect, thus, that Plan is not the cause of SBC Illinois’ improvements. Rather, it is penalizing SBC Illinois *despite* its improvements. As can be seen from the chart below (which I reproduce from my rebuttal affidavit), performance improved from a low of 70 percent measures met in second quarter 2000 to the recent level of greater than 90 percent prior to the 0120 Remedy Plan being in effect. With regard to remedy plans, the original Condition 30, or “Texas”, remedy plan was in place during the time of this improvement.



128. That demonstration leads the commenters to drop their original theory and try a new one. Their new theory is that the real cause of improved performance was SBC Illinois' desire to obtain section 271 approval. But that argument just proves my point -- that the 0120 Plan was not the cause of improved performance -- and it disproves their original argument. More fundamentally, the commenters have effectively agreed with the underlying point that I made at the beginning of this Phase of the proceedings: that a remedy plan is not the sole incentive that SBC Illinois has for achieving and maintaining good wholesale performance, thus a plan does not have to be designed in a punitive fashion as if it stands alone.
129. AT&T Witness Kalb infers at paragraph 20 of his Reply Affidavit that the reduction in remedies paid under the 0120 Plan between October 2002 and November 2002 demonstrate that SBC Illinois responded to the 0120 Plan and somehow dramatically improved performance between those two months. That is not the case. SBC Illinois' performance was at, and remained at, a high level. The source of the higher payment

amounts in October 2002 was due to one-time restatements for prior months' performance, and was not related strictly to performance provided to CLECs participating in the plan in October.

130. That brings us back to the bottom-line question for purposes of section 271: how to prevent “backsliding” in performance after section 271 approval is granted? The opposing commenters make it sound as though SBC Illinois’ wholesale performance will immediately drop from its current high levels once section 271 approval has been granted, absent the continued use of the 0120 Plan. But this Commission and the FCC will still exist after that date, and they will still monitor performance. Further, there would still be a remedy plan even if SBC Illinois’ proposal here is accepted: namely, the Compromise Plan. Even at the current high levels of performance, the Compromise Plan indisputably leads to remedies of approximately \$1.2 million per month, approximately *four* times the amounts under plans that the FCC has found are sufficient to prevent “backsliding.” Moreover, if overall performance were to drop from its current high levels (in other words, if SBC Illinois were to “backslide” as the opponents contend), the indexing feature of the Compromise Plan would lead to even higher remedy amounts across the board.

**Staff’s Proposed “Hybrid” Plan**

131. SBC Illinois appreciates Staff’s effort to adjust the 0120 Plan, but as I had anticipated in my rebuttal affidavit the calculated results of Staff’s “Hybrid” Plan (provided in response to Staff Data Request MKP-17 and addressed in Ms. Patrick’s supplemental affidavit) show that the Hybrid Plan retains the 0120 Plan’s punitive character.

132. The “Hybrid” Plan results in remedy payments, using the same data as that used for the earlier comparisons of the Texas, Compromise and 0120 Remedy Plans, that are approximately \$2.5-\$2.7 million per month. The resulting payments would still be several times greater than the amounts deemed sufficient by the FCC, and still more than double the payments that would be called for under the Compromise Remedy Plan.

**Method for Testing Parity With Retail and Affiliates**

133. As I stated at the workshop and in my rebuttal affidavit, the Compromise Plan (like the 0120 Plan) calls for SBC Illinois to assess parity by comparing wholesale performance to the applicable retail or affiliate analog, whichever shows “better” performance. The only difference is that if there are fewer than 30 affiliate transactions, SBC Illinois proposes to use the retail analog instead of the affiliate result, as the retail result would be more representative of our overall performance.

134. AT&T Witness Kalb portrays this exception as a scheme by SBC Illinois to discriminate in favor of its affiliate. This is consistent with AT&T’s general approach: rather than actually analyzing the substantive meaning of Compromise Plan provisions, AT&T uses sky-is-falling rhetoric to denounce them. I showed in my opening affidavit that the differences in Compromise Plan language that AT&T criticized on the first round were, in substance, both minor and sensible (and in some cases, there was no difference in plan language at all, and AT&T was simply misreading or failing to read the Compromise Plan). AT&T has provided no substantive response, only a curt “we disagree” dismissal.

135. AT&T’s latest charge here suffers from the same lack of substance. On any type of transaction where our affiliate does enough business with us to matter (for example, line sharing) the Compromise Plan would still compare wholesale performance to affiliate

performance, in exactly the same way that the 0120 Plan does. The exception under the Compromise Plan applies – by definition -- only to immaterial, incidental transactions where the affiliate volume is low (and thus makes no real difference) and where there would be no incentive for SBC Illinois to discriminate in the way that AT&T suggests. Even where affiliate volumes are low, the exception has an impact only where affiliate performance is better than retail; otherwise, even under the 0120 Plan the parity comparison would be to retail. Thus, AT&T’s suggestion is that our scheme would be to disadvantage *ourselves* on a large volume of transactions so as to benefit our affiliate on a small volume of transactions, and that would make no sense.

136. The limited dollar amounts involved further disprove AT&T’s conspiracy theory. In response to a Staff data request, I provided an analysis of the dollar impact of the “under 30” exception for affiliate comparisons. If one were to follow AT&T’s suggestion and eliminate this component of the Compromise Remedy Plan, remedies would actually *decrease* by \$245. The impact of this feature is clearly insignificant.

### **Tier 2 Assessments**

137. In an order entered March 12 2003, the ALJ requested additional information as to “Tier 2” remedy assessments. The Texas, 0120, and Compromise Plans all use a two “tiered” structure. Tier 1 payments are provided to individual CLECs, based on SBC Illinois’ performance with respect to that CLEC. Tier 2 payments are made to the State, based on SBC Illinois’ aggregate performance for all CLECs, regardless of whether or not they have opted into the remedy plan. The proposed Compromise Plan here would retain the same treatment as exists under the 0120 Plan.

138. To illustrate how Tier 1 and Tier 2 work, consider a single measure that is subject to both Tiers (say, the rate of missed due dates on installations of unbundled loops), and assume there are three CLECs: A, B, and C. SBC Illinois would measure its performance separately for each CLEC’s installations, and for all three CLECs in the aggregate. Let’s also assume for purposes of illustration that a rate of 5 percent or less would satisfy the applicable parity test, and that the results were as depicted in the following chart.

	CLEC A	CLEC B	CLEC C	Aggregate
Missed Due Dates	6	4	6	16
Total Installations	100	100	100	300
Miss Rate	6%	4%	6%	5.33%
Standard	5%	5%	5%	5%
Test Passed?	No	Yes	No	No

139. SBC Illinois met parity for CLEC B, so no remedies would be due to B. SBC Illinois did not meet parity for A and C, so each CLEC would receive a “Tier 1” payment. Because SBC Illinois did not meet the 5% standard overall, there would also be a shortfall at the Tier 2 level. If the aggregate shortfall continues for two more consecutive months, Tier 2 payments would be due. (This treatment, and the three-month rule, are identical under the 0120 Plan and the Compromise Plan. Note also that even under the Texas plan, no K table is applied to Tier 2.) Conversely, if SBC Illinois missed parity for one CLEC but achieved parity overall (for example, if CLEC C in our illustration had no missed due dates, and the aggregate missed due dates were 10/300 or 3.33%), the affected CLEC would still receive a payment under Tier 1, but no Tier 2 payment would be assessed. The basic idea is that Tier 2 applies for shortfalls that extend across time and across CLECs generally, as opposed to shortfalls that isolated to only one CLEC or one or two months.

140. On their own, Tier 2 assessments do not escalate for misses in consecutive months under either the 0120 Remedy Plan or the Compromise Remedy Plan. Actually, Tier 2 assessments themselves are, for many PMs, a form of escalation for Tier 1 remedy payments made to CLECs. As Tier 2 assessments are only paid when a measure is missed three consecutive months, they provide for extra payments on Tier 1 measures that have been missed for at least some CLECs each month during that three month period.
141. In my opening affidavit, I presented a comparative analysis of Tier 1 and Tier 2 payments under the Compromise Plan, the 0120 Plan, and the Texas plan (which was used as a baseline for the FCC's standards). That analysis is reproduced below.

	% of Remedied Standards Met (Aggregate of All CLECs)	“Texas” Plan	0120 Plan	Compromise Plan	Updated Compromise Remedy Plan
September 2002 Tier 1		\$ 34,200	\$2,438,300	\$1,151,970	\$1,115,002
September 2002 Tier 2		\$251,500	\$ 707,000	\$ 142,200	\$ 151,000
<b>September 2002 Total</b>	<b>89.8%</b>	<b>\$285,700</b>	<b>\$3,145,300</b>	<b>\$1,294,170</b>	<b>\$1,266,002</b>
October 2001 Tier 1		\$ 91,050	\$2,309,000	\$1,046,785	\$1,018,380
October 2002 Tier 2		\$204,600	\$ 637,000	\$ 142,200	\$ 142,200
<b>October 2002 Total</b>	<b>90.7%%</b>	<b>\$295,650</b>	<b>\$2,946,000</b>	<b>\$1,188,985</b>	<b>\$1,160,580</b>
November 2002 Tier 1		\$207,775	\$2,520,000	\$1,156,800	\$1,128,078
November 2002 Tier 2		\$194,000	\$ 561,000	\$ 114,200	\$ 114,200
<b>November 2002 Total</b>	<b>91.8%</b>	<b>\$401,775</b>	<b>\$3,081,000</b>	<b>\$1,271,000</b>	<b>\$1,242,278</b>
<b>September -November 2002 Total</b>	<b>93.4%</b>	<b>\$983,125</b>	<b>\$9,172,300</b>	<b>\$3,752,365</b>	<b>\$3,668,860</b>

142. The estimated remedy payments for the Compromise Remedy Plan have been updated slightly as a result of Staff’s data requests. These updates result from (1) the addition of logic to present the effect of the “floors and ceilings” that were part of the negotiated plan with TDS MetroCom; and (2) implementation of the cap on payments when remedies to be paid exceed the revenues due SBC Illinois from the CLEC. The current view of the Compromise Remedy Plan numbers is included in the right-hand column of the table above. As can be seen, these numbers do not materially change the analysis.

143. As you can see from the chart, Tier 2 payments represent a lower percentage of the total payments under the Compromise Plan than under the 0120 Plan or the Texas plan. This is because many features of the Compromise Plan (for example, the elimination of the K

table) are more geared toward increasing remedies to CLECs (who are most directly affected by performance shortfalls) than to the State. Further, the Compromise Plan contains several other features, above and beyond the 0120 Plan, that are specifically geared to address continued shortfalls and thus perform the same function as Tier 2 payments do: namely, the “gap closure” process and the more stringent rules for escalation and “step down” of remedies for continued shortfalls.

144. That said, the proper focus here should be on remedies in total, rather than on the allocation of remedies between Tiers. The FCC has never held that any specific allocation is required, and in fact several Verizon plans (including the one in effect for Illinois) have no Tier 2 at all. A dollar is a dollar, and a dollar of remedies provides the same incentive towards good performance whether it goes to a CLEC or to the state.

**Method of Payment**

145. AT&T Witness Kalb contends that the Compromise Plan is not “self-executing” because it requires a CLEC tell us where to send the check and who to list as payee if they want their remedies paid by check (otherwise, we would pay the remedy as a credit to the CLEC’s wholesale bill). AT&T’s argument has nothing to do with section 271 or the FCC’s criterion for self-executing remedies. The FCC’s concern is that payments be reasonably self-executing, not with the form that they take or the common administrative paperwork that is needed if the CLEC wants to receive a check. And the reason why the FCC prefers self-executing payments is so that CLECs need not engage in protracted litigation, not so that CLECs can avoid the few minutes it takes to complete a form for payment information. I cannot imagine that any CLEC would really want us to guess where to send its check or who to list as the payee, which is the only way we could fill

Dr. Kalb's definition of "self-executing"; still less do I believe that section 271 or any law would require us to do such a thing.

**Audit Requirement**

146. Staff Witness McClerren restates his position on the audit provisions called for in the Compromise Remedy Plan.<sup>22</sup> And while I can appreciate his concerns, they are based primarily on the 0120 Plan audit provisions as opposed to the proposed Compromise Remedy plan provisions. In Section 6.6 of the Compromise Remedy Plan, which was attached to my Initial Affidavit as Attachment Z, the scope, timing and governance of the periodic audits are defined. Remedy calculations, one of the areas Mr. McClerren expressed concern with, are specifically listed as within the scope of the periodic audit.
147. SBC Illinois specifies that the audit frequency would initially be eighteen months after the later of approval of the Compromise Remedy Plan or the conclusion of the BearingPoint PMR test. Beyond that, periodic audits would be scheduled as deemed necessary by the Commission. SBC Illinois expects an audit of the scope called for by the Compromise Remedy Plan, based on SBC's experience with performance measurement audits, to take 4-6 months to complete. If this audit were to be required annually, we would spend up to half of each year undergoing audits. SBC Illinois proposed the eighteen-month timeframe to address this undue burden.
148. In addition, as specified in Section 6.6, the Compromise Plan calls for a regional audit, with the auditor proposed by SBC and approved by the various commissions. Staff Witness McClerren contends that SBC Illinois "must ... assume the detriments and costs for such a [regionwide] system." I do not believe that SBC Illinois should be punished

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<sup>22</sup> McClerren Rebuttal Affidavit, ¶¶ 79-81

for regionwide OSS, which give CLECs the benefit of uniformity in providing service across states. The real point is that the commissions in all five states can take similar advantage of our regionwide systems and coordinate an efficient process. If each state required a separate audit, whether annually or some other periodic interval, of the same regional performance measurement systems and processes, SBC Midwest would be subject to five overlapping and duplicative audits. Staff's approach would not reduce waste but create it.

### **Implementation Of The Compromise Plan**

149. Staff Witness McClerren also seeks clarification on several statements in my Rebuttal Testimony with regard to the Opt-In provisions.<sup>23</sup> Mr. McClerren correctly points out a typographical error in paragraph 238 of my Rebuttal Affidavit. The phrase “nearly none out of every ten orders” should have stated “nearly nine out of every ten orders” as was clear from the context. SBC Illinois will be submitting a corrected version for the formal record.
150. Staff Witness McClerren continues by discussing his perspective that unless all CLECs participate in the remedy plan, the analysis and estimates provided in my testimony are useless. That is not true. First, the majority of business volume today is subject to the 0120 Plan, and that is the primary driver in potential liability. Nor does every single CLEC need to participate in a plan for it to provide a meaningful anti-backsliding incentive. We use common systems and processes for all CLECs, so if the majority are under a given plan, the remainder will benefit from any improvements that the plan

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<sup>23</sup> McClerren Rebuttal Affidavit, ¶¶ 82-83

yields. The key with either the 0120 Plan or the Compromise Remedy plan is volume of activity generated by the participating CLECs, not the raw number of CLECs participating.

151. Regarding the issue of the term of the Compromise Remedy Plan, I believe Staff Witness McClerren and I are in agreement. The only variation is that SBC Illinois contemplates that the “proceeding” envisioned by Staff would be preceded by collaboration and negotiation to come to agreement or at least streamline the issues. This collaboration and negotiation would take place prior to whatever proceeding is deemed necessary, and would serve to focus that proceeding on the issues that really need to be worked out through that process.

**STATUS OF DISPUTED ITEMS FROM THE SIX-MONTH REVIEW**

152. WorldCom Witness Kinard and ICC Staff Witness Weber both address the disputed issues identified in Ms. Kinard’s Reply Affidavit. Ms. Kinard suggests that the ICC should add remedies to the new PM 13.1, while Ms. Weber supports SBC Illinois’ position.<sup>24</sup> Ms. Kinard also applauds Staff Witness Weber’s proposal to increase remedies on PM MI 13 to “Medium”, without acknowledging that SBC Illinois indicated its concurrence in my Rebuttal Affidavit.<sup>25</sup> Ms. Kinard also attempts to restate WorldCom’s case on PM MI 12<sup>26</sup>, without responding to the detailed description of what PM MI 12 and PM 17 measure that I provided in my Rebuttal Affidavit.<sup>27</sup> As Staff Witness Weber recognizes the duplicative nature of WorldCom’s proposal, she seeks SBC Illinois confirmation that PM 17 assesses the timeliness in which all service orders

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<sup>24</sup> Weber Reply Affidavit, ¶ 64

<sup>25</sup> Ehr Rebuttal Affidavit ¶ 241

<sup>26</sup> Kinard Rebuttal Affidavit ¶ 18

are posted to billing. I can confirm here that PM 17 results are not based only on those service orders that are posted on time. PM 17 assesses all wholesale services orders (except for those excluded by the PM) to determine whether or not the service order posted to billing prior to the first bill cycle for the account after completion of the service order in the ordering system. Based on that confirmation, I understand Staff Witness Weber to agree with SBC Illinois' position on WorldCom's PM MI 12 dispute.

### **STATUS OF DISPUTED ITEMS FROM PHASE I**

153. Staff Witness Zolnieriek maintains that the upcoming measures for EELs (which were the subject of negotiation and agreement in the six-month review) are inadequate because they do not cover the "pre-certification" process. The short answer is that the measures for EELs were developed with the agreement of the CLECs, and that any proposed modifications can be brought in the next periodic review, when the parties can evaluate results for the first few months of implementation. In addition, any attempt to revise EELs measures now would seem premature, given that the rules for EELs may change in the forthcoming FCC order on the Triennial Review.

### **CONCLUSION**

154. SBC Illinois has implemented the Performance Measurements approved by the Illinois Commission in a manner that provides accurate and reliable results. Further, the three consecutive months of performance data for September, October and November 2002 demonstrate that SBC Illinois is providing to CLECs nondiscriminatory access to interconnection, access to network elements and resold services in full compliance with

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<sup>27</sup> Ehr Rebuttal Affidavit ¶¶ 244-248

the competitive checklist requirements of Section 271. Finally, for purposes of performance assurance going forward, the Commission should approve the Compromise Plan proposed here as consistent with section 271.

155. This concludes my affidavit.