

**Master List of Issues - ILLINOIS MCI_m Negotiations
Next Generation Digital Loop Carrier (NGDLC) Decision Point List
8/10/04**

Issue #	SBC Overarching Issue Statement CLEC Specific Issue Statement	Appendix & Sections	MCI _m Language	MCI _m Preliminary Position	SBC ILLINOIS Language	SBC ILLINOIS Preliminary Position
	Access to packet switching and packetized features and functions of SBC Illinois' hybrid loops.	NGDLC				
NGDLC 1	<p>SBC ILLINOIS: Should MCI_m's proposed terms for a broadband end-to-end UNE that are in direct contravention of the FCC's TRO and implementing rules be rejected?</p> <p>MCI_m: Should MCI_m's proposed terms for NGDLC that are in absolute conformance with effective and binding Commission orders on the subject be included in the Agreement?</p>	Entire Appendix Next Generation Digital Loop Carrier (NGDLC)	MCI _m 's Proposed Appendix NGDLC.	MCI _m 's proposed language should be included in the ICA because it is consistent with the Commission's order on rehearing in Docket 00-0393. Furthermore, the appendix establishes terms and conditions for the other Project Pronto related components specifically addressed in the Commission order in that same docket.	None.	<p>Yes. First, as a preliminary matter, the issue of whether SBC ILLINOIS has to make available unbundled access to the packetized bandwidth, features and functions of its NGDLC (Project Pronto architecture) (which is clearly precluded by the <i>TRO</i>) is being addressed in a separate ICC proceeding (ICC Docket No. 00-0393) and, therefore, it is not appropriate for this issue to be addressed in this bilateral MCI_m arbitration. Rather, this issue should be subject to the outcome in the separate ICC proceeding in which this issue is being addressed on remand from federal district court (in light of the FCC's <i>TRO</i> and implementing rules and the <i>USTA I</i> and <i>II</i> decisions).</p> <p>In the event that it should be determined that this issue should (improperly) be addressed in this bilateral arbitration proceeding notwithstanding the fact that this issue is currently being addressed in Docket No. 00-0393, the FCC's controlling</p>

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						<p>mandate in its <i>TRO</i> definitively resolves this issue in SBC Illinois' favor.</p> <p>The FCC has found that SBC Illinois is not obligated to unbundle packet switching or the packetized bandwidth, features, functions and equipment of its hybrid loops. Because SBC Illinois has no such obligation under Section 251(c) of the Act, SBC Illinois hereby disputes MCI's submission of its NGDLC Appendix and associated issue for arbitration under Section 252 of the Act.</p> <p>MCI's purported issue with respect to its proposed Appendix NGDLC, which SBC Illinois is not required to offer under Section 251 (b) and (c) of the Act, cannot appropriately be addressed by the Commission in this proceeding.</p> <p>Even assuming that MCI could appropriately submit this issue to the ICC for arbitration under Section 252 of the Act, MCI's proposed language must be rejected for the following reasons.</p> <p>In its <i>TRO</i>, the FCC rejected the very arguments presented by MCI as to this issue and found that "on a national basis, that</p>

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						<p>competitors are not impaired without access packet switching, including routers and DSLAMs. Accordingly, we decline to unbundle packet switching as a stand-alone network element. We further find that the Commission's limited exception to its packet-switching unbundling exemption is no longer necessary. Lastly, our decision not to unbundle stand-alone packet switching is consistent with the goals of section 706 of the Act." <i>TRO</i>, ¶¶ 537, 539 and 540 (footnotes omitted).</p> <p>The FCC stated that "because packet switching is used in the provision of broadband services, our decision not to unbundle stand-alone packet switching is also guided by the goals of, and our obligations under, section 706 of the Act. In order to ensure that both [ILECs] and [CLECs] retain sufficient incentives to invest in and deploy broadband infrastructure, such as packet switches, we find that requiring no unbundling best serves our statutory goal. Thus, we decline to require unbundling on a national basis for stand-alone packet switching because it is the type of equipment used in the</p>

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						<p>delivery of broadband.” <i>TRO</i> ¶ 541 (footnote omitted).</p> <p>In its <i>TRO</i>, the FCC specifically states that “we decline to require incumbent LECs to unbundled the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services....MCI, WorldCom, Covad and others urge the Commission to extend our unbundling requirements to the packet-based and fiber option portions of incumbent LEC hybrid loops. We conclude, however, that applying section 251(c) unbundling obligations to these next-generation network elements would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, in direct opposition to the express statutory goals of section 706. The rules we adopt herein do not require incumbent LECs to unbundle any transmission path over a fiber transmission facility between the central office and the customer’s premises (including fiber feeder plant) that is used to transmit packetized information.”</p>

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						<p>[Citing fn 833 which, in pertinent part provides: "[b]ecause we decline to require unbundling of packet-switching equipment, we deny WorldCom's petitions for reconsideration and clarification requesting that we unbundle packet-switching equipment, DSLAMs, and other equipment used to deliver DSL service." The FCC further stated: "Moreover, the rules we adopt herein do not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities...." <i>TRO</i>, ¶ 288 and fns 833, 1645 and 1661' <i>see also</i> 47 CFR 51.319(a)(2) <i>TRO</i> , ¶ 253.</p> <p>The FCC's national findings in this regard apply to both the mass market and enterprise market and prohibit the states from requiring that an ILEC provide unbundled access to stand-alone packet switching and the packetized bandwidth, functionalities and equipment of its hybrid loops. (<i>TRO</i>, ¶¶ 192-195 and FN</p>

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						<p>1645).</p> <p>In its <i>TRO</i>, the FCC stated “we decline to require incumbent LECs to provide unbundled access to their hybrid loops for the provision of broadband services.” However, the FCC found that “incumbent LECs must continue to provide unbundled access to a TDM-based narrowband pathway over its hybrid loops for the deployment of voice-band services by CLECs. Alternatively, the FCC found that an ILEC could make available a home-run copper loop. See 47 CFR 51.319(a)(2)(iii) and <i>TRO</i>, ¶¶ 200, 296, fn 627. Although this is not the issue with MCI_m (who is clearly seeking access to the packetized bandwidth, features and functions of SBC Illinois’ hybrid loops), to be clear, SBC Illinois will continue to make available unbundled access to the TDM-based features, functions and capabilities of its hybrid loops for the provision of narrowband services or alternatively, access to “homerun” copper loops in accordance with the FCC’s <i>TRO</i> and its implementing rules, which have been and remain available to MCI_m today (subject to any other</p>

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						<p>government actions impacting the parties' obligations in that regard, <i>e.g., USTA II.</i></p> <p>In addition, MCI may continue to order xDSL loops to provide xDSL-based service in Illinois via MCI's own, or its partnering CLEC's, central-office-based DSLAM collocated in the SBC Illinois serving central office (or to copper xDSL subloops via collocation at SBC Illinois remote terminals, to the extent space is available and it is technically feasible, to gain access to such subloops), in accordance with and subject to the collocation, xDSL and subloop provisions applicable between the Parties.</p> <p>However, as noted above, MCI's proposed language does not address access to unbundled loops and/or subloops as defined in the FCC's rules (including the TDM-based features and functions of SBC Illinois' hybrid loops for the provision of narrowband services), but rather is an attempt by MCI to inappropriately redefine unbundled loops to include packet switching functionality and fiber feeder subloops, in direct contravention of the FCC's <i>TRO</i> and implementing rules.</p>

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						<p>Tellingly, MCI's only basis for support of its positions on this issue is an ICC order that was issued <i>prior to</i> the FCC's <i>TRO</i> and adoption of new implementing rules (and the <i>USTA II</i> decision, in which the D.C. Circuit upheld all of the FCC's <i>TRO</i> findings and rules with respect to broadband).</p> <p>Equally significant, the prior ICC order MCI cites to support its position has since been appealed, remanded and ruled on in a draft opinion released on June 24, 2004 in that very same docket, ICC Docket No. 00-0393, in which these very issues have been decided entirely in SBC Illinois' favor as a result of the FCC's controlling mandate. In fact, in the ICC's Proposed Order on Reopening, the ICC vacates those portions of its earlier orders that, in pertinent part, required that SBC Illinois make available as an end-to-end UNE access to the HFPL portion of copper subloops, and to the packet switched, functions, features and capabilities including ILEC-owned ADLU line cards of its Project Pronto DSL architecture. In addition, the Proposed Order concludes that that SBC Illinois is not required to file a</p>

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						<p>state tariff for what has been known as the Pronto/Broadband UNE and authorizes SBC Illinois to withdraw the tariff it had previously filed to comply with pre-TRO commission rulings. The Proposed Order also rejects CLECs arguments that there is any basis upon which for the ICC to order that the former Pronto/Broadband UNE be provided under state law, stating that such a finding would conflict with federal law, which would place the ICC on the path of preemption, "a place we will and need not go." See p. 49 Proposed Order. Finally, the Proposed Order declines to find, as the CLECs urged, that 13-801 would require SBC Illinois to offer unbundled access to its Project Pronto network independent of federal law and regulations. See p. 50 Proposed Order.</p> <p>In its TRO, the FCC stated that "where appropriate...we adopt uniform rules that specify...the network elements that must not be unbundled, in any market, pursuant to federal law....<u><i>We find that states do not have plenary authority under federal law to create, modify or eliminate unbundling</i></u></p>

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						<p><i>obligations.” TRO, ¶ 187 (emphasis added). The FCC found that Section 251(d)(3) of the Act “preserves the states’ authority to establish unbundling requirements pursuant to state law to the extent that the exercise of state authority does not conflict with the Act and its purposes or our implementing regulations...” See Paragraph 191 and FN 607 of the TRO, citing Section 251(d)(3) of the Act.</i></p> <p>The FCC acknowledged some states had added UNEs to the national list under state law, but noted it does “not agree with those that argue that the states may impose any unbundling framework they deem proper under state law, without regard to the federal regime.” The FCC found that these arguments overlook restraints on state action pursuant to state law in Section 251(d)(3) of the Act, the general restraints found in Sections 261(b) and (c) of the Act and long-standing federal preemption principles.</p> <p>The FCC noted that under federal preemption principles, “states would be precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts</p>

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						<p>or frustrates the federal regime adopted in this Order.” The FCC found that “state action, whether taken in the course of a rulemaking or during the review of an interconnection agreement, is limited by the restraints imposed by subsections 251(d)(3)(B) and (C)” and “must be consistent with section 251 and must not ‘substantially prevent’ its implementation.” Finally, the FCC found: “If a decision pursuant to state law were to require the unbundling of a network element for which [the FCC] has either found no impairment – and thus has found that unbundling that element would conflict with the limits in section 251(d)(2) – or otherwise declined to require unbundling on a national basis, we believe it unlikely that such decision would fail to conflict with and ‘substantially prevent’ implementation of the federal regime, in violation of section 251(d)(3)(C). Similarly, we recognize that in at least some instances existing state requirements will not be consistent with our new framework and may frustrate its implementation. It will be necessary in those instances for the subject states to amend their rules and to alter their decisions to conform to</p>

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						<p>our rules." See Paragraphs 192, 194-195 of <i>TRO</i>, see also Paragraph 193.</p> <p>For these reasons, the states are clearly preempted from ordering the unbundling of the packetized features, functions and equipment associated with SBC Illinois' broadband architecture for the deployment of broadband services and from ordering the unbundling of DSLAMs which the FCC found that ILECs are not required to unbundle. The FCC premised these findings on sound public policy reasons, and determined that the deregulation of these features, functions and equipment would actually promote the deployment of advanced telecommunications capabilities consistent with Section 706 of the Act.</p> <p>However, consistent with its obligation under the <i>TRO</i>, SBC Illinois will continue to make available unbundled access to a narrowband TDM-based pathway over its hybrid loops for CLECs' deployment of voice-grade services or "homerun" copper loops in accordance with the FCC's <i>TRO</i> and its implementing rules, which are already available to MCI.</p>

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						<p>See 47 CFR 51.319 (a)(2); <i>TRO</i>, ¶ 200 n. 627.</p> <p>In addition, MCI_m may continue to order xDSL loops and/or subloops to provide xDSL-based service in Illinois.</p> <p>In sum, MCI_m's positions and proposed language are without support. The FCC has now squarely addressed this issue in its <i>TRO</i> and the FCC's findings in this regard were recently upheld in their entirety by the D.C. Circuit, on appeal of the <i>TRO</i> in its <i>USTA II</i> decision, the mandate of which issued on June 16, 2004. Moreover, the ICC's Proposed Order also definitely disposes of MCI_m's proposed NGDLC Appendix and associated issue in this proceeding. Therefore, MCI_m's proposals must be rejected in full.</p>

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