

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Petition for Arbitration of Interconnection )  
Rates, Terms and Conditions and Related )  
Arrangements with Illinois Bell Telephone ) Docket No. 04-0469  
Company Pursuant to Section 252(b) of the )  
Telecommunications Act of 1996 )

**SUPPLEMENTAL REBUTTAL TESTIMONY**

**OF**

**MICHAEL STARKEY**

On behalf of

**MCIMETRO ACCESS TRANSMISSION SERVICES, LLC  
MCI WorldCom Communications, Inc.  
Intermedia Communications LLC**

**Exhibit 14.0**

September 8, 2004

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1 **I. INTRODUCTION AND SUMMARY**

2

3 **Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION FOR**  
4 **THE RECORD.**

5 A. My name is Michael Starkey. My business address is 243 Dardenne Farms Drive,  
6 St. Charles, MO 63304. I am currently employed as the President of QSI  
7 Consulting, Inc. ("QSI").

8

9 **Q. ARE YOU THE SAME MICHAEL STARKEY WHO FILED DIRECT**  
10 **TESTIMONY IN THIS PROCEEDING ON AUGUST 4, 2004?**

11 A. Yes, I am.

12

13 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

14 A. This testimony was prepared on behalf of MCImetro Access Transmission  
15 Services LLC, MCI WorldCom Communications, Inc. and Intermedia  
16 Communications LLC ("MCI").

17

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19 A. The purpose of my testimony is to respond to the testimony filed by the Staff of  
20 the Illinois Commerce Commission ("Staff") on August 31, 2004. Specifically,  
21 Staff Witnesses Jeffrey Hoagg and James Zolnierrek responded to my direct  
22 testimony on the following issues: UNE Issues 5, 6, 7, 8, 9, 11, 12, 13, 14, 31, 37,  
23 49 and 51. In the remainder of my supplemental rebuttal testimony, I will

24 respond to the testimony of Mr. Hoagg and Dr. Zolnierек on these issues.

25

26 **Q. ARE THERE ISSUES THAT YOU ADDRESSED IN YOUR DIRECT**  
27 **TESTIMONY THAT STAFF DID NOT ADDRESS?**

28 A. Yes. There are myriad issues I addressed in my August 4<sup>th</sup>, 2004 Direct  
29 Testimony that Staff did not address in its testimony. Those issues are listed as  
30 follows: Collo 2, Line Sharing 2, UNE 1, UNE 10, UNE 27, UNE 28, UNE 30,  
31 UNE 32, UNE 34, UNE 35, UNE 36, UNE 38, UNE 40, UNE 41, UNE 42, UNE  
32 44, UNE 45, UNE 46, Line Splitting 1, and Line Splitting 3. I understand that the  
33 scope of this round of testimony filed today is limited to responding to the  
34 testimony filed by Staff on August 31, 2004. Since Staff did not address the  
35 issues listed above, my rebuttal testimony will not further address these issues.  
36 For these issues, I recommend that the Commission adopt the recommendations  
37 set forth in my direct testimony.

38

39 **II. REBUTTAL TO STAFF WITNESS JEFFREY HOAGG**

40

41 **Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT MR. HOAGG'S**  
42 **TESTIMONY?**

43 A. Yes. Mr. Hoagg addressed the following issues to which I testified in my direct  
44 testimony: UNE 9, UNE 11, UNE 12, and UNE 31. The majority of Mr. Hoagg's  
45 testimony on these issues is well-reasoned and results in an appropriate resolution  
46 to the issue in dispute. For instance, I agree with Mr. Hoagg's recommendations

47 on UNE Issue 9, UNE Issue 11, and UNE 12. In addition, I generally agree with  
48 Mr. Hoagg's testimony regarding the practical effect of the FCC's Interim Order.  
49 While it is puzzling to me why Staff would object to MCI's Emergency Motion,<sup>1</sup>  
50 if Staff believes additional rounds of testimony are needed (*see*, Direct Testimony  
51 of Jeffrey Hoagg at 9-10), I generally agree that, pursuant to the FCC's Interim  
52 Order, SBC is obligated to provide UNEs at the rates, terms, and conditions  
53 applicable to the parties' interconnection agreement as of June 15, 2004.

54

55 **Q. DO YOU AGREE WITH ALL OF MR. HOAGG'S TESTIMONY THAT**  
56 **SUPPORTS HIS RECOMMENDATION ON THESE ISSUES?**

57 A. No. For instance, under UNE Issue 11, Mr. Hoagg testifies that it is appropriate  
58 for "the agreement [to] specifically identify those elements that have been  
59 'Section 251 declassified.'" <sup>2</sup> While I agree with Mr. Hoagg's recommendation on  
60 this issue, I generally do not agree that the agreement should list elements that  
61 have been "Section 251 declassified." Mr. Hoagg explains his reasoning for  
62 listing "Section 251 declassified" elements in the agreement at page 25 of his  
63 direct

64 The apparent premise underlying SBC's proposed language is  
65 that Section 251 declassification may result (under certain  
66 circumstances) in SBC discontinuing its provisioning of the  
67 element in question. I have shown that, as a general matter, this  
68 cannot lawfully occur. Rather, the fundamental effect of "Section

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<sup>1</sup> *See*, Petitioners' Emergency Motion to Strike or, In the Alternative, Extend Filing Date for Certain Rebuttal Testimony, and Request for Expedited Ruling, wherein MCI recommended that this proceeding be stayed pending final unbundling rules from the FCC (8/16/04). Staff opposed MCI's motion, *see*, Staff of the Illinois Commerce Commission's Response to MCI's Emergency Motion to Strike of for Relief in the Alternative, p. 3.

<sup>2</sup> Direct Testimony of Jeffrey Hoagg, p. 22.

69 251 declassification” is that any element(s) involved no longer  
70 need be provisioned at TELRIC prices.  
71

72 First, as Mr. Hoagg acknowledges, SBC’s clear intent by specifically identifying  
73 “Section 251 declassified” elements is to discontinue provisioning them as soon  
74 as possible, which is not lawful under Section 271 of TA96 and/or Illinois statute.  
75 Second, contrary to Mr. Hoagg’s assertion, it is not clear at this point whether, in  
76 fact, “Section 251 declassified” elements need to be provisioned at prices  
77 different from TELRIC in Illinois. Section 13-801 of the PUA requires network  
78 elements to be provided at “cost based rates.” While I concede that the  
79 Commission has employed non-TELRIC forms of cost based pricing in Illinois,  
80 such as LRSIC-based pricing for SBC’s access charges,<sup>3</sup> unless and until the  
81 Commission establishes different cost based rates for network elements, pursuant  
82 to Section 13-801(g), TELRIC prices must remain in effect. This issue is  
83 addressed in more detail in the rebuttal testimony of MCI Witness Don Price.  
84

85 **Q. DO YOU DISAGREE WITH MR. HOAGG ON ANY OTHER POINT(S)?**

86 A. Yes. Mr. Hoagg notes that the Administrative Law Judge’s proposed arbitration  
87 decision (“PAD”) in ICC Docket No. 04-0371, as revised by Mr. Hoagg, is  
88 instructive in the instant docket. I generally agree that changes in unbundling  
89 obligations should be pursued through the change-of-law provisions, as the PAD

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<sup>3</sup> See, ICC Order in Docket No. 97-0601/0602 (consol.), May 16, 2000. [2000 Ill. PUC LEXIS 480 \(Ill. PUC .2000\)](#)

90 provides, but Mr. Hoagg’s further recommendation that the ICA include an  
91 exception to its change of law provision for “declassifications” under Section 251  
92 – specifically, that in connection with “declassifications”, the ICA provide for a  
93 maximum 30-day implementation period after which time SBC unilaterally could  
94 implement a change – should be rejected. Allowing SBC to unilaterally  
95 implement a change to its unbundling requirements pursuant to Section 251 thirty  
96 (30) days after it provides written notice would subvert the dispute resolution  
97 process provided for in the parties’ agreement and essentially reduce the change-  
98 of-law provision to a mechanism whereby SBC could unilaterally implement its  
99 interpretation of future FCC orders and rules. Moreover, because SBC, following  
100 a “declassification”, still may be required to provision a declassified element  
101 under state law at cost based rates, SBC cannot be permitted to unilaterally  
102 implement changes relating to “declassifications”. This Commission, not SBC,  
103 sets cost based rates.

104  
105 **Q. WHAT IS THE PROPER PROCESS FOR RESOLVING DISPUTES THAT**  
106 **ARISE THROUGH THE CHANGE-OF-LAW (OR INTERVENING LAW)**  
107 **PROVISION IN THE PARTIES’ AGREEMENT?**

108 A. MCI’s proposal for the Intervening Law provision would require that if the parties  
109 cannot agree within sixty (60) days about the appropriate change(s) to the parties’  
110 agreement stemming from the Commission, FCC, or court of competent  
111 jurisdiction promulgating legally effective statutes, rules, regulations, or orders  
112 which materially affect the provisions of the parties’ agreement, “then the Parties

113 shall resolve their dispute under the applicable procedures set forth in Section 12  
114 (Dispute Escalation and Resolution).”<sup>4</sup> Section 12 (Dispute Escalation and  
115 Resolution), which is largely undisputed, provides three (3) options for resolving  
116 disputes (*see*, Section 12.3 of the GT&C Appendix), none of which allow either  
117 party to make unilateral changes to the parties’ agreement. As such, not only is  
118 Mr. Hoagg’s thirty (30) day time-frame for negotiating Section 251 unbundling  
119 disputes inconsistent with the time-frames in the parties’ agreement, but the PAD  
120 language to which Mr. Hoagg cites and apparently supports, which would allow a  
121 party to unilaterally make changes to the parties’ agreement after this thirty (30)  
122 day period, conflicts with the dispute resolution process – a process on which  
123 SBC and MCI largely agree – and Illinois law.

124

125 **Q. WOULD YOU LIKE TO COMMENT ON ANY OTHER ASPECT OF MR.**  
126 **HOAGG’S TESTIMONY?**

127 A. Yes. Mr. Hoagg’s testimony makes it appear as if SBC is no longer obligated to  
128 provide MCI the High Frequency Portion of the Loops (HFPL) pursuant to  
129 Section 251 of the Act. Mr. Hoagg identifies HFPL as having been declassified  
130 per the TRO, not vacated by the USTA II ruling and not re-instated by the FCC  
131 Interim Order.<sup>5</sup> This aspect of Mr. Hoagg’s testimony is unclear and does not  
132 properly reflect the current status of HFPL.

133

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<sup>4</sup> Section 23.1 of the GT&C Appendix (Intervening Law).

<sup>5</sup> Direct Testimony of Jeffrey Hoagg, p. 8.

134 **Q. WHY IS MR. HOAGG'S TESTIMONY UNCLEAR ON HFPL?**

135 A. SBC must continue to provide HFPL according to the transitional line sharing  
136 provisions in 47 C.F.R. § 51.319(a)(1)(i)(B). This requires SBC to provide HFPL  
137 for three years following the effective date of the TRO and allows CLECs to  
138 obtain HFPL for new customers for one year following the effective date of the  
139 TRO. I have been informed that this transition plan was not vacated by the USTA  
140 II ruling. Furthermore, recent press accounts suggest that the FCC will soon  
141 release a supplemental interim order that extends the availability of HFPL for  
142 serving new customers beyond the one-year time-frame mentioned above.<sup>6</sup>  
143 Hence, the record should reflect that SBC *is* obligated to provide HFPL and, to  
144 the extent that the FCC sees fit to extend the availability of HFPL beyond the  
145 existing transitional provisions, SBC should abide by those rules.

146

147 **Q. DO YOU AGREE WITH MR. HOAGG'S RECOMMENDATION ON UNE**  
148 **ISSUE 31 IN TOTAL?**

149 A. No. As an initial matter, I am pleased that Mr. Hoagg saw fit to recommend  
150 rejection of SBC's proposed language for Section 9.3.1, though I believe his  
151 testimony that "SBC's proposal might be phrased somewhat more precisely"<sup>7</sup>  
152 gives SBC's position on this issue entirely too much credit. As I explained at  
153 page 85 of my direct testimony, SBC's proposed language directly conflicts with  
154 47 C.F.R. §51.319(a)(2)(ii), and since the remainder of Section 9.3.1 is agreed-to

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<sup>6</sup> E.g., *FCC Releases Interim UNE Order Without Planned Changes*, Communications Daily, August 23, 2004. *FCC's Interim Order Prompts More Litigation*, Telecom Policy Report, August 25, 2004.

<sup>7</sup> Direct Testimony of Jeffrey Hoagg, p. 29.

155 and precisely tracks the FCC’s pronouncements on this issue, SBC’s proposed  
156 language in Section 9.3.1 should be viewed as an attempt to restrict MCI’s access  
157 to offerings to which MCI is entitled under the FCC’s rules.

158           However, I do not believe that Mr. Hoagg’s proposed replacement  
159 language is appropriate. As an initial matter, Mr. Hoagg does not provide a  
160 definitive recommendation for replacement language, but rather states that “I  
161 recommend that SBC’s proposed language...be replaced with language taken  
162 from the text of the TRO (*such as the following*)...”<sup>8</sup> I read Mr. Hoagg’s  
163 testimony as an open-ended suggestion to replace SBC’s inappropriate language  
164 with more language taken directly from the TRO. Such open-ended suggestions  
165 are inappropriate as the Commission should be provided discrete proposals for  
166 contract language that clearly specifies the parties’ rights. The primary dispute  
167 between the parties concerns one sentence proposed by SBC that goes beyond the  
168 FCC’s rules (as Mr. Hoagg expressly acknowledges) and the proper solution to  
169 this problem is to simply strike the offensive language rather than replace it with  
170 language that neither party proposed or had the ability to negotiate. Furthermore,  
171 Mr. Hoagg point out that “[t]he rest of Section 9.3.1 (which is undisputed)  
172 specifies the features, functions and capabilities of hybrid loops to which MCI  
173 will have access”,<sup>9</sup> but does not explain why that remaining language is  
174 insufficient for clearly delineating the parties’ obligations with regard to access to  
175 hybrid copper/fiber loops.

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<sup>8</sup> Direct Testimony of Jeffrey Hoagg, p. 29 (*emphasis added*).

<sup>9</sup> Direct Testimony of Jeffrey Hoagg, p. 29.

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**Q. WOULD YOU LIKE TO COMMENT ON THE EXAMPLE OF REPLACEMENT LANGUAGE THAT MR. HOAGG HAS PROVIDED?**

A. Yes. Mr. Hoagg recommends (at 30) that SBC’s language be replaced with text taken from the TRO “(such as the following)”:

SBC Illinois is not required to provide MCI with nondiscriminatory access to 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. Nor is SBC Illinois required to provide nondiscriminatory access to any electronics or other equipment used to transmit packetized information over hybrid loops.

This language is duplicative and unnecessary. As the language above shows, Staff’s apparent concern is that the language in the contract should reflect the FCC’s pronouncement that MCI is not entitled to features, functions and capabilities of the hybrid loop that are used to transmit packetized information. However, the agreed-to language in Section 9.3.1 of the UNE Appendix already makes this clear. Consider the following excerpt from Section 9.3.1, which is undisputed: “This access shall include access to all features, functions, and capabilities of the Lawful UNE Hybrid Loop *that are not used to transmit packetized information.*” (Emphasis added.) This language tracks FCC Rule 51.319(a)(2)(ii) precisely and, therefore, inserting additional language from ¶288 of the TRO that repeats this same limitation is unnecessary.

**Q. SO YOU DISAGREE WITH MR. HOAGG’S ALTERNATIVE SOLUTION**

203 **TO THIS ISSUE?**

204 A. Yes. I believe that the appropriate resolution to this issue is to simply reject  
205 SBC's proposed language in Section 9.3.1, which states that "**SBC ILLINOIS**  
206 **will not provide broadband services on an unbundled basis.**" The remaining,  
207 agreed-to language in Section 9.3.1 accurately sets forth the FCC's rules with  
208 regard to SBC's obligation to provide unbundled access to its hybrid loops.  
209 Staff's proposed alternative language is duplicative and unnecessary.

210

211 **III. REBUTTAL TO STAFF WITNESS JAMES ZOLNIEREK**

212 *a. UNE 5*

213

214 **Q. DR. ZOLNIEREK DISAGREES WITH YOUR TESTIMONY THAT THE**  
215 **COMMISSION'S AT&T ARBITRATION DECISION IS DEFINITIVE ON**  
216 **THE ISSUE OF WHETHER MCI SHOULD BE ABLE TO USE UNES TO**  
217 **PROVIDE SERVICES TO OTHER TELECOMMUNICATIONS**  
218 **CARRIERS (ZOLNIEREK DIRECT AT 11). WOULD YOU LIKE TO**  
219 **RESPOND?**

220 A. Yes. First, I agree with the majority of Dr. Zolnierrek's testimony on this issue  
221 which acknowledges that MCI should have the ability to utilize UNES to provide  
222 service to other telecommunications carriers, in most instances. However, I  
223 believe Dr. Zolnierrek's testimony is a bit misleading. While he testifies that the  
224 AT&T Arbitration Order is not definitive on this issue, he testifies on the very  
225 next page that the "AT&T Arbitration, which did permit AT&T to use UNES to

226 provide services to other telecommunications providers in certain instances, was  
227 consistent with the Commission's implementation of Section 13-801 of the  
228 PUA."<sup>10</sup> Dr. Zolnierек then goes on to explain that the Commission's 13-801  
229 Implementation Order placed a restriction on the reselling of EELs.<sup>11</sup> Hence, it is  
230 not the AT&T Arbitration Order that was not definitive on this issue as Dr.  
231 Zolnierек suggests, rather it was the Commission's 13-801 Implementation Order  
232 that contains the language that Dr. Zolnierек apparently believes raises questions  
233 regarding the ability of MCI to provide UNEs to serve other telecommunications  
234 carriers. As such, the AT&T Arbitration Order is not unclear on this topic as Dr.  
235 Zolnierек suggests.

236

237 **Q. WITH THAT CLARIFICATION, DR. ZOLNIERЕК TESTIFIES THAT**  
238 **THE 13-801 IMPLEMENTATION ORDER PLACED A RESTRICTION**  
239 **ON THE RESELLING OF EELS AND THAT THIS DECISION SHOULD**  
240 **BE REFLECTED IN THE PARTIES' AGREEMENT (ZOLNIERЕК**  
241 **DIRECT AT 13-14). DO YOU AGREE?**

242 **A.** Absolutely not. The 13-801 Implementation Order to which Dr. Zolnierек cites  
243 should not serve as the basis for language in the parties' agreement – particularly  
244 when the parties have not had the opportunity to negotiate such language –  
245 because the Order was expressly based on the inadequacy of the record, not on  
246 evidence affirmatively supporting the Commission's ruling. The Commission's

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<sup>10</sup> Direct Testimony of James Zolnierек, pp. 11-12.

<sup>11</sup> Direct Testimony of James Zolnierек, p. 12.

247 conclusion on this issue is as follows:

248           Given the lack of an adequate record on this matter, We conclude  
249           that, at this time, CLECs purchasing EELs may not resell them, but  
250           must use them to provide service the CLEC end users or pay  
251           telephone providers, no matter how the EEL is purchased.  
252

253           Thus, in the Commission’s own words, it did not have an adequate record on this  
254           matter in Docket No. 01-0614. Further, paragraph 607 of the Order states that  
255           “[n]o other party [other than Novacon and SBC] responded to this issue, which is  
256           unfortunate given the assertions by Novacon that the language had results that  
257           may or may not have been intended by Staff in making its proposal.” Moreover,  
258           the Commission’s Order demonstrates the possibility of this restriction changing  
259           in the future: “As noted above, this order defers issues relating to the applicability  
260           of the local usage test to a new docket. The Commission will investigate the issue  
261           of the advisability and legality of allowing the reselling EELs in that docket as  
262           well.”<sup>12</sup> Hence, I disagree with Dr. Zolnierrek’s recommendation to insert  
263           language into the parties’ agreement (language that neither party endorses) based  
264           on a Commission ruling that the Commission itself it admits was based on an  
265           inadequate record and a ruling in which the Commission expressed its intent to  
266           review its finding to determine whether it is grounded in public policy and legally  
267           sustainable. This is an especially inappropriate recommendation coming from Dr.  
268           Zolnierrek, who testified in Docket No. 01-0614 that he was unaware of any  
269           restriction that would prevent a CLEC from reselling an EEL (*See*, ICC Order in  
270           Docket No. 01-0614, p. 167, ¶607, referencing Tr. 781).

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<sup>12</sup> ICC Order in Docket No. 01-0614, p. 176, ¶608.

271 Also, as I will explain below, SBC could use any language regarding  
272 restrictions on “reselling” UNEs to restrict MCI’s ability to provide MCI-branded  
273 service to end-user customers via an “agent” relationship with a third party that is  
274 collocated in a particular wire center. Moreover, MCI has provided ample  
275 evidence *in this docket* that the definition of end user should not exclude  
276 telecommunications carriers.<sup>13</sup> Since the Commission’s conclusion regarding the  
277 reselling restriction in Docket No. 01-0614 was based on the definition of end-  
278 user, the arrangement described above would not run afoul of the Commission’s  
279 restriction. Therefore, while MCI will abide by governing Commission orders  
280 and rules (and is required to abide by governing orders and rules whether or not  
281 such language is specifically included in the parties’ agreement), it is unnecessary  
282 and inappropriate to adopt Staff’s proposed language.

283

284 **Q. DO YOU HAVE ANOTHER PROBLEM WITH DR. ZOLNIEREK’S**  
285 **PROPOSAL ON THIS ISSUE?**

286 A. Yes. Dr. Zolnierек explains his recommendation as follows

287 I recommend simply that the Commission order the parties to  
288 conform the agreement to state law. Presumably, if there are any  
289 disagreements between the parties with respect to any specific  
290 resale scenarios, and the parties cannot resolve these disputes  
291 without Commission guidance, the parties will bring these disputes  
292 to the Commission for resolution.

293

294 Rather than provide a concrete proposal, Dr. Zolnierек recommends that the  
295 Commission order the parties to conform the agreement to state law. This

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<sup>13</sup> See, Direct Testimony of Don Price, pp. 99-103.

296 recommendation is unnecessary and adds no meaningful clarity to the situation at  
297 hand, since the parties are already required to operate in conformance with state  
298 law. While Dr. Zolnierrek correctly observes that disagreements about what the  
299 law calls for can be brought before the Commission for resolution, the entire  
300 purpose of arbitrating this issue is to clearly delineate the parties' obligations so  
301 that disagreements of this nature are held to a minimum.

302

303 **Q. DR. ZOLNIEREK QUESTIONS THE RELEVANCE OF THE MICHIGAN**  
304 **ORDER TO WHICH YOU REFER IN YOUR DIRECT TESTIMONY**  
305 **(ZOLNIEREK DIRECT AT 13). CAN YOU PROVIDE ADDITIONAL**  
306 **INSIGHT INTO THE MICHIGAN COMMISSION'S DECISION ON THIS**  
307 **ISSUE?**

308 A. Yes. I'm not sure exactly what evidence will allay Dr. Zolnierrek's skepticism  
309 that the Michigan PUC's decision on this issue is relevant to the instant issue,  
310 considering in direct that I explained that SBC proposed the same use restriction  
311 that is proposes in the instant docket in Docket U-13758 in Michigan and the  
312 Michigan PUC found that MCI may provide service to other telecommunications  
313 carriers using UNEs purchased under the interconnection agreement.<sup>14</sup> That  
314 being said, I provide excerpts from the Michigan PUC's U-13758 Order below to  
315 further describe the Michigan PUC's reasoning on this issue.

316 Definition of End-User Customer

317

318 With regard to Issue 6, which concerns whether to include within

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<sup>14</sup> Direct Testimony of Michael Starkey, pp. 47-48 and fn. 45.

319 the interconnection agreement a definition of "end-user" that  
320 explicitly excludes all other providers, the arbitration panel found  
321 that MCI's position was the more reasonable and should be  
322 adopted. SBC Michigan objects and argues that the  
323 proposed definition is based on its approved tariff, and is  
324 appropriate on its own merits.

325  
326 Although SBC Michigan agrees with the arbitration panel that  
327 provision of service to other providers for administrative use  
328 would be a legitimate use of unbundled network elements (UNEs),  
329 it argues that the Commission should not be deterred from  
330 adopting the proposed definition so that the interconnection  
331 agreement will closely track SBC Michigan's tariffs.  
332

333 The Commission concludes that the decision of the arbitration  
334 panel should be affirmed on this issue. The proposed definition  
335 would prevent MCI from providing service with UNEs that even  
336 SBC Michigan admits is permissible. The Commission finds the  
337 cited reference to SBC Michigan's tariff unpersuasive to SBC  
338 Michigan's point. That provision reads:  
339

340  
341 End-user means a residence or business that subscribed to  
342 telecommunications services provided by either the  
343 Telecommunications Carrier or the Company with respect to any  
344 item or service obtained under this Tariff.  
345

346 The cited tariff provision appears in the provisions for obtaining  
347 the calling name (CNAM) database, and excludes the requesting  
348 carrier and the incumbent provider from being an end-user. In that  
349 context, the exclusion makes sense and is consistent with the law.  
350 However, the definition for end-user that SBC Michigan proposes  
351 to include in the present interconnection agreement goes well  
352 beyond the tariff provision, and would exclude all  
353 telecommunications providers from the possibility of being an end-  
354 user. As the arbitration panel succinctly pointed out, the proposed  
355 definition goes too far and should be rejected.  
356

#### 357 358 Sales to Other Telecommunications Providers

359  
360 In Issue 56, SBC Michigan proposed language for Section 1.3 of  
361 the Resale appendix that would prohibit MCI from reselling any  
362 services that it purchases under that appendix to other  
363 telecommunications providers. MCI proposed that the language  
364 unlawfully restricted its use of wholesale services. The arbitration

365 panel determined that SBC Michigan's proposed language "seeks  
366 to prohibit more than it can lawfully prevent." The panel  
367 recognized that this issue related to Issue 6, discussed earlier.  
368

369 SBC Michigan objects and argues that the arbitration panel  
370 reached an incorrect conclusion with regard to Issue 56. SBC  
371 Michigan reiterates the arguments that it put before the arbitration  
372 panel.  
373

374 The Commission is unpersuaded that the arbitration panel reached  
375 an incorrect result. No matter what language is in the  
376 interconnection agreement, MCI may not provide services in an  
377 unlawful manner, or to accomplish unlawful purposes. However,  
378 SBC Michigan's language attempts to forbid more than it can  
379 lawfully prevent. Therefore, the Commission finds that the  
380 decision of the arbitration panel should be affirmed on this issue.<sup>15</sup>  
381

382 I have also provided the complete arbitration award that sets forth in more detail  
383 the reasoning behind the Commission's conclusions on these issues as Attachment  
384 MS-3 to this testimony, *see*, Attachment MS-3, pages 6-7 and 20-21. This  
385 information sufficiently demonstrates that the issues on which the Michigan PUC  
386 ruled in Michigan Docket U-13758 are identical to those being litigated in this  
387 docket, and are directly relevant to Issue 5, since not only did the Michigan PUC  
388 specifically reject SBC's proposed prohibition of using UNEs to provide services  
389 to other telecommunications carriers, but the Michigan PUC also rejected SBC's  
390 proposal to exclude telecommunications providers from the definition of end user.  
391 If Dr. Zolnierek or the Commission is still unconvinced after reviewing this  
392 information that the circumstances surrounding this issue in Illinois are the same  
393 as those in Michigan, the Michigan PUC provides electronic access to all case

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<sup>15</sup> [2003 Mich. PSC LEXIS 206 \(Mich. PSC, 2003\)](#).

394 files for Docket U-13758 (similar to the Illinois e-docket system) at the following  
395 URL: <http://efile.mpsc.cis.state.mi.us/efile/comm.html>

396

397 **Q. DR. ZOLNIEREK TESTIFIES THAT “NEITHER PARTY PROVIDED**  
398 **ANY SPECIFIC SCENARIOS UNDER WHICH MCI MIGHT SEEK TO**  
399 **PROVIDE RESOLD SERVICE USING SBC UNES” (ZOLNIEREK**  
400 **DIRECT AT 14). CAN YOU PROVIDE SUCH A SCENARIO FOR DR.**  
401 **ZOLNIEREK?**

402 A. Yes. MCI would essentially act as an agent for other telecommunications  
403 carriers, whereby MCI would purchase a UNE loop as MCI and terminate it in  
404 Carrier X’s collocation. Carrier X would provide MCI-branded service to the  
405 customer using the MCI purchased loop. In this arrangement, the UNE loop is  
406 being utilized to provide MCI-branded service to an end-user. SBC’s language  
407 could be interpreted to prohibit this type of arrangement. Further, if the  
408 Commission adopts Staff’s nebulous proposal, SBC is likely to use any ambiguity  
409 that may remain to restrict MCI’s ability to engage in such an arrangement.

410

411 **Q. AFTER REVIEWING STAFF’S TESTIMONY ON THIS ISSUE, HAVE**  
412 **YOU CHANGED YOUR RECOMMENDATION?**

413 A. No. I stand by my original recommendation that the Commission simply reject  
414 SBC’s proposed insertion of the word “not” in Section 2.3 of the UNE Appendix  
415 and reject SBC’s proposed Section 3.1.2 of the UNE Appendix in its entirety.

416 *b. UNE 6, 7, 8*

417

418 **Q. DR. ZOLNIEREK'S RECOMMENDED SOLUTION TO THESE ISSUES**  
419 **IS THAT SECTION 3 OF THE PARTIES' UNE APPENDIX BE**  
420 **REMOVED. DOES MCI AGREE WITH THIS PROPOSAL?**

421 A. Yes. In light of the USTA II ruling, the debate between the parties about  
422 Qualifying Services have become moot. MCI therefore agrees with Staff's  
423 recommendation to remove Section 3 of the UNE Appendix from the parties'  
424 agreement. Specifically, Section 3 of the UNE Appendix should be removed in  
425 its entirety and marked "Intentionally Left Blank."

426

427 **Q. HAS SBC AGREED WITH STAFF'S PROPOSED SOLUTION TO THE**  
428 **DISPUTE?**

429 A. I do not know. As of September 7, 2004, it is my understanding that SBC has, for  
430 unknown reasons, been unable to agree that these issues are resolved. If for some  
431 reason the Commission sees fit to rule on the merits of the parties' original  
432 disputed language on these issues, the Commission should adopt the  
433 recommendations set forth in my direct testimony. To be clear, however, the  
434 Commission should remove Section 3 of the UNE Appendix in its entirety.

435

436 *c. UNE 13*

437

438 **Q. WHAT IS YOUR UNDERSTANDING OF DR. ZOLNIEREK'S**

439 **RECOMMENDATION ON THIS ISSUE?**

440 A. Dr. Zolnierek recommends that the Commission accept SBC's proposal  
441 referencing eligibility criteria that are applicable to combinations, but reject  
442 SBC's reference to qualifying services eligibility criteria vacated by USTA II.<sup>16</sup>  
443 While Dr. Zolnierek does not specifically state as much, I believe his  
444 recommendation would mean that the last sentence of SBC's proposed language  
445 for Section 6.1 of the UNE Appendix would be rejected, while the remainder of  
446 SBC's proposed language for Section 6.1 of the UNE Appendix and SBC's  
447 proposed Section 6.6 of the UNE Appendix would be accepted.

448

449 **Q. WHAT REASONING DOES DR. ZOLNIEREK PROVIDE FOR**  
450 **DISAGREEING WITH YOUR RECOMMENDATION TO STRIKE ALL**  
451 **OF THIS LANGUAGE?**

452 A. Dr. Zolnierek simply states that:

453 I disagree with Mr. Starkey that SBC's reference to eligibility  
454 criteria defined elsewhere in the contract is inappropriate.  
455 Eligibility criteria for Section 251 UNEs and UNE combinations  
456 are applicable whether those UNEs are the product of a conversion  
457 or the product of SBC work to combine previously unconnected  
458 UNEs. If SBC attempts to improperly impose eligibility criteria,  
459 MCI can, as it presumably would, seek dispute resolution or other  
460 remedial measures.

461

462 **Q. DID DR. ZOLNIEREK'S TESTIMONY ADDRESS THE ENTIRETY OF**  
463 **YOUR CONCERNS ON THIS ISSUE?**

464 A. No. As the quote above demonstrates, Dr. Zolnierek focuses only on the fact that

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<sup>16</sup> Direct Testimony of James Zolnierek, p. 20.

465 I objected to including such language in Sections 6.1 and 6.6 because eligibility  
466 requirements are defined elsewhere in the contract. However, Dr. Zolnierек does  
467 not mention that my primary disagreement is that the eligibility language in  
468 Sections 6.1 and 6.6 is vague and could lead to SBC rejecting conversion requests  
469 without just cause.<sup>17</sup> Indeed, I testified in direct that “SBC fails to define with  
470 specificity the situations wherein it might find such a conversion request to be  
471 ineligible.” Accordingly, adopting SBC’s language for Sections 6.1 and 6.6  
472 would be tantamount to allowing the “fox to guard the henhouse,” so to speak,  
473 with regard to combinations of UNEs.

474

475 **Q. CAN YOU PROVIDE AN EXAMPLE OF A CONCERN YOU DISCUSSED**  
476 **IN YOUR DIRECT TESTIMONY PERTAINING TO SBC’S LANGUAGE**  
477 **TO WHICH DR. ZOLNIERЕК DID NOT RESPOND?**

478 A. Yes. SBC’s proposed language includes the following excerpt:

479 Upon MCI’s request, SBC ILLINOIS shall convert a wholesale  
480 service, or group of wholesale services, to the equivalent lawful  
481 unbundled Network Element, or Combination of Lawful  
482 unbundled Network Elements so long as the MCI and the  
483 wholesale service, or group of wholesale services, meets the  
484 eligibility or other criteria that may be applicable for such  
485 conversion. (By way of example only, the Qualifying Service  
486 requirement is one such eligibility criterion.)

487

488 In my direct testimony, I explained that MCI objects to the language proposed by  
489 SBC because this broad language could be read by SBC to permit it to refuse to  
490 convert wholesale services to UNEs if SBC unilaterally determines that MCI, the

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<sup>17</sup> Direct Testimony of Michael Starkey, p. 74.

491 service in question, or any group of services in question are not ‘eligible’ for  
492 conversion. SBC fails to provide any explanation as to what might properly  
493 render a proposed conversion ‘ineligible,’ but instead provides only a single  
494 example (i.e., that the services are not “qualifying” services as described  
495 elsewhere in the agreement).”<sup>18</sup> While Dr. Zolnierrek recommends rejection of the  
496 language pertaining to the Qualifying Services example (the language in  
497 parentheses), my understanding of his recommendation is that the remaining  
498 language should survive. However, the remaining language would still cause the  
499 problem I identified in my direct testimony (i.e., SBC’s eligibility criteria are not  
500 defined), and would even be more nebulous because with the rejection of the  
501 Qualifying Services language, there is absolutely no detail as to what SBC would  
502 consider eligibility criteria.

503

504 **Q. AFTER REVIEWING DR. ZOLNIERREK’S TESTIMONY ON THIS ISSUE,**  
505 **HAVE YOU CHANGED YOUR RECOMMENDATION?**

506 A. No. Dr. Zolnierrek’s alternative recommendation for this issue suffers from the  
507 same shortcomings as SBC’s original proposal (albeit, to a lesser degree, since  
508 Staff would delete the Qualifying Services language), and should be rejected. I  
509 re-iterate my recommendation for the Commission to reject SBC’s proposed  
510 language to Section 6.1 and 6.6 of the UNE Appendix (this language is shown in  
511 bold, underlined language at page 73 of my direct testimony).

512

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<sup>18</sup> Direct Testimony of Michael Starkey, pp. 73-74.

513 *d. UNE 14*

514

515 **Q. DR. ZOLNIEREK CRITICIZES YOUR DIRECT TESTIMONY FOR NOT**  
516 **SUFFICIENTLY SUPPORTING THE NEED FOR MCI'S PROPOSED**  
517 **LANGUAGE. WOULD YOU LIKE TO RESPOND?**

518 A. Yes. As I explained in my direct testimony (at 75), SBC has a clear incentive to  
519 maintain as many of its services on a wholesale/retail basis as possible, and  
520 frustrate MCI's attempts to convert these services to UNE. That being said, the  
521 most convincing source of information supporting MCI's proposal on UNE 14 is  
522 the FCC's statements on the issue. Dr. Zolnierrek's testimony does not address  
523 this language or explain why, in this instance, the parties' agreement should not  
524 reflect the FCC's TRO.

525

526 **Q. WHAT DID THE FCC SAY ON THIS MATTER?**

527 A. ¶588 of the TRO states as follows:

528 *588. We conclude that conversions should be performed in an*  
529 *expeditious manner in order to minimize the risk of incorrect*  
530 *payments. We expect carriers to establish any necessary*  
531 *timeframes to perform conversions in their interconnection*  
532 *agreements or other contracts. We decline to adopt ALTS's*  
533 *suggestion to require the completion of all necessary billing*  
534 *changes within ten days of a request to perform a conversion*  
535 *because such time frames are better established through*  
536 *negotiations between incumbent LECs and requesting carriers. We*  
537 *recognize, however, that converting between wholesale services*  
538 *and UNEs (or UNE combinations) is largely a billing function.*  
539 *We therefore expect carriers to establish appropriate mechanisms*  
540 *to remit the correct payment after the conversion request, such as*  
541 *providing that any pricing changes start the next billing cycle*  
542 *following the conversion request. (footnotes omitted, emphasis*  
543 *added)*

544

545 The FCC’s language makes the following points clear: 1) the FCC expects  
546 conversions to be performed in an expeditious manner, 2) the FCC identifies  
547 minimizing the risk of incorrect payments as the primary objective of timely  
548 conversions, 3) the FCC expects parties to establish timeframes for conversions in  
549 interconnection agreements, 4) the FCC found that converting between wholesale  
550 and UNEs is largely a billing function, 5) the FCC found that price changes  
551 should, and by implication can, be reflected starting with the next billing cycle  
552 following the conversion request.

553

554 **Q. IS MCI’S PROPOSED LANGUAGE CONSISTENT WITH THE FCC’S**  
555 **STATEMENTS?**

556 A. Yes. To make this point clear, I have provided MCI’s language below

557 6.2 Unless otherwise agreed to in writing by the Parties, such  
558 conversion shall be completed in a manner so that the  
559 correct charge is reflected on the next billing cycle after  
560 MCI’s request. For purposes of this Agreement, the  
561 Parties’ acknowledge that MCI has purchased a number  
562 of “special access” circuits from SBC ILLINOIS that  
563 terminate to an MCI collocation cage. SBC ILLINOIS  
564 agrees that MCI may request the conversion of such  
565 special access circuits on a “project” basis by submitting a  
566 spreadsheet to SBC ILLINOIS describing the circuits. In  
567 accordance with the requirements of Section 6.4 below,  
568 SBC ILLINOIS shall process such conversions within  
569 thirty (30) days of MCI’s request and shall reflect billing  
570 changes as described above. For other types of  
571 conversions, until such time as the Parties have agreed  
572 upon processes for such conversions, SBC ILLINOIS  
573 agrees to process MCI’s conversion requests on a case-  
574 by-case basis and without delay.

575

576

577 MCI's language tracks the FCC's language in ¶588 precisely. First, it echoes the  
578 FCC's expectation that conversions should be performed expeditiously. Second,  
579 it identifies correct charges as the reason for pursuing timely conversions. Third,  
580 consistent with the FCC's expectation, it establishes timeframes for conversions  
581 in the parties' agreement. Fourth, MCI's language recognizes that conversions  
582 are largely a billing function by establishing a thirty (30) day timeframe for  
583 conversions so that the correct charges are reflected in the next billing cycle  
584 following a conversion request. Finally, MCI's language identifies specific  
585 conversions that entail only a billing change and describes the specific process  
586 that would be utilized to ensure timely conversions.

587

588 **Q. ARE YOU SAYING THAT SBC'S EXISTING CONVERSION PROCESS**  
589 **IS IRRELEVANT TO THE PROPER RESOLUTION OF THIS ISSUE?**

590 A. Yes. SBC should be required to perform conversions that entail only a billing  
591 function in compliance with ¶588. Based on the FCC's pronouncements on this  
592 issue, it is apparent that the FCC found it important to clarify the requirements for  
593 conversions so as to ensure that incumbents do not follow incentives to  
594 unnecessarily delay applying the proper charges following a conversion request.  
595 Thus, contrary to Dr. Zolnierek's testimony (at 24-25), MCI is not requesting  
596 SBC to perform conversions for MCI differently than for other carriers; rather,  
597 MCI is requesting conversions that are consistent with the FCC's pronouncements  
598 on this issue.

599

600 **Q. DR. ZOLNIEREK APPARENTLY DISAGREES WITH YOUR**  
601 **CONTENTION THAT SBC POSSESSES THE INCENTIVE TO**  
602 **FRUSTRATE MCI'S ATTEMPTS TO CONVERT SERVICES TO UNES.**  
603 **IS THERE EVIDENCE YOU CAN POINT TO THAT SUPPORTS YOUR**  
604 **CONTENTION?**

605 A. Yes. Since special access rates are generally higher than UNE rates, converting  
606 special access circuits to UNEs in a timely fashion is not in SBC's best interest.  
607 The FCC explained this point as follows: "[t]he conversion of existing tariffed  
608 special access circuits to EELs will, in many cases, significantly reduce the  
609 CLEC's expense and commensurately decrease the ILEC's income for those  
610 facilities."<sup>19</sup> Publicly available information shows that converting special access  
611 circuits to EELs would reduce one carrier's monthly recurring charges by  
612 approximately 25%, for a total monthly reduction of \$123,186 for three  
613 conversion requests.<sup>20</sup> Hence, each additional billing cycle that SBC charges  
614 CLECs special access prices instead of UNE rates for the same facilities results in  
615 SBC being enriched at the expense of its competitors. It was this precise outcome  
616 the FCC was attempting to avoid through the requirements of ¶588 of the TRO.

617  
618 **Q. DR. ZOLNIEREK ASSERTS THAT YOU DID NOT SUPPORT THE 30-**  
619 **DAY PROVISIONING INTERVAL INCLUDED IN MCI'S LANGUAGE.**  
620 **IS HE CORRECT?**

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<sup>19</sup> In the Matter of Net2000 Communications, Inc., Complainant, v. Verizon - Washington, D.C., Inc., Verizon - Maryland, Inc., and Verizon - Virginia, Inc., Defendants, File No. EB-00-018, 17 FCC Rcd 1150; 2002 FCC LEXIS 119.

<sup>20</sup> *Id.* at ¶35, fn. 68.

621 A. No, Dr. Zolnierек is wrong. As I explained at page 75 of my direct testimony,  
622 MCI's proposed thirty (30) day interval is designed so that the rate change that  
623 will result from the conversion is recognized in the next billing cycle following  
624 the conversion request. Moreover, I have explained above that this timeframe  
625 was taken directly from ¶588 of the FCC's TRO. While Dr. Zolnierек claims that  
626 I did not offer any evidence that SBC could meet MCI's conversion provisioning  
627 interval, the FCC has already found that MCI's proposed interval is reasonable  
628 and feasible.

629

630 **Q. IS DR. ZOLNIERЕК'S POSITION ON THIS ISSUE INCONSISTENT**  
631 **WITH HIS POSITION ON OTHER ISSUES?**

632 A. Yes. Though unstated, Dr. Zolnierек creates a burden for MCI to prove that  
633 SBC's existing processes are deficient and that SBC can meet the thirty (30) day  
634 timeframe in MCI's proposed contract language, despite the fact that the FCC  
635 already requires such an outcome. However, in his positions on UNE Issues 19,  
636 71 and 72, Dr. Zolnierек recommends that the Commission impose an explicit  
637 burden of proof requirement on SBC to prove that commingling and combining  
638 are technically infeasible in certain circumstances.<sup>21</sup> Dr. Zolnierек does not  
639 explain why the same reasoning does not apply for UNE 14. The FCC has  
640 already found that conversions can be reflected in the billing system on the next  
641 billing cycle following the request, and requiring MCI to prove this again is  
642 unnecessary. If a burden of proof is placed on any party, SBC should carry the

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<sup>21</sup> Direct Testimony of Dr. Zolnierек, pp. 44 and 67.

643           burden to prove that the FCC’s findings in ¶588 should not be reflected in the  
644           parties’ agreement.

645  
646           **Q.   DR. ZOLNIEREK ALSO DISAGREES WITH MCI’S PROPOSED**  
647           **LANGUAGE BECAUSE IT WOULD APPLY TO COMBINATIONS FOR**  
648           **WHICH SBC DOES NOT CURRENTLY HAVE PROCESSES IN PLACE.**  
649           **WOULD YOU LIKE TO RESPOND?**

650           A.   Yes. I think that Dr. Zolnierек focuses on the wrong issues. Essentially, Staff is  
651           ignoring the clear pronouncements of the FCC regarding timely conversions  
652           because he is concerned that MCI’s language could be interpreted to require  
653           conversions within thirty (30) days for conversions that have not been requested  
654           to date and for which processes are not in place. First, there is no mention of this  
655           issue in ¶588, which suggests that the FCC did not share Staff’s concern. Rather,  
656           the FCC made clear that conversions that consist largely of a billing change  
657           should be reflected in the next billing cycle after the conversion request. Thus, if  
658           the yet-to-be-defined conversions consist of largely a billing change, as described  
659           in ¶ 588 of the TRO, then they should be provided within the thirty (30) day  
660           timeframe. In addition, MCI’s language recognizes that until processes are in  
661           place for other conversions, SBC will process such conversions on a case-by-case  
662           basis without delay. This language is reasonable and does not “lock in” the 30  
663           day timeframe for all conversions. Consistent with Dr. Zolnierек’s  
664           recommendations on UNE Issues 19, 71 and 72, it should be up to SBC to prove  
665           that conversions cannot be processed within thirty (30) days.

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**Q. AFTER REVIEWING DR. ZOLNIEREK’S TESTIMONY, HAVE YOU CHANGED YOUR RECOMMENDATION?**

A. No. I stand by the recommendation made in my direct testimony for the Commission to adopt MCI’s proposed Section 6.2 of the UNE Appendix.

*e. UNE Issues 37, 49, 51*

**Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF DR. ZOLNIEREK’S RECOMMENDATION TO THE COMMISSION ON THESE ISSUES.**

A. Dr. Zolnierек testifies that, “ as a practical matter, any disputes over the rates, terms, and conditions for unbundled access to switching, enterprise market loops, and dedicated transport should be resolved by simply ordering the parties to comply with the same rates, terms and conditions that applied under their interconnection agreements or tariffs as of June 15, 2004.” Dr. Zolnierек explains this recommendation as follows: “the FCC has, in essence, frozen the parties contractual and tariff obligations with respect to those issues as they were on June 15, 2004. Thus, because this proceeding has not yet altered the parties interconnection agreement, the FCC’s Order requires the parties to do business as they are today with respect to these issues.” As a result, Dr. Zolnierек recommends that, “the Commission require SBC to continue to offer Section 251 unbundled mass market local switching, enterprise loops, and dedicated transport, as it did in the interconnection agreement between the parties or tariffs relied on

689 by the parties as of June 15, 2004.”

690

691 **Q. DID DR. ZOLNIEREK MAKE THE ABOVE RECOMMENDATION**  
692 **SPECIFICALLY FOR UNE ISSUES 37, 49 AND 51?**

693 A. Yes, he apparently did. UNE Issues 37, 49 and 51 are included in the list  
694 provided at page 71 of Dr. Zolnierек’s testimony.

695

696 **Q. WHAT WOULD BE THE PRACTICAL EFFECT OF SUCH A**  
697 **PROPOSAL?**

698 A. My understanding of Dr. Zolnierек’s recommendation is that, to the extent that  
699 the language proposed by a party under these issues differs from the language that  
700 governed the parties’ agreement on June 15, 2004, it would be rejected.

701

702 **Q. CAN YOU PROVIDE AN EXAMPLE OF A PARTY’S PROPOSAL THAT**  
703 **WOULD BE REJECTED UNDER STAFF’S RECOMMENDATION?**

704 A. Yes. Under UNE Issue 49, SBC is attempting to require MCI to provide, at least  
705 once per year, information regarding MCI’s: ability to deploy transport facilities,  
706 actual deployment of transport facilities, availability of third-party transport  
707 providers. MCI is not required to provide SBC such information under the  
708 parties’ agreement that was in effect on June 15, 2004, and as a result of Staff’s  
709 recommendation, it is my understanding that SBC’s proposed language for

710 Sections 12.12 and 15.6 of the UNE Appendix (which includes the  
711 aforementioned requirements) would be rejected. Likewise, it is my  
712 understanding that SBC's proposed separate declassifications procedures for loop,  
713 dark fiber and transport under UNE Issue 37 would also be rejected under Staff's  
714 recommendation because these sections were not included in the parties'  
715 agreement as of June 15, 2004.

716

717 **Q. IS DR. ZOLNIEREK'S RECOMMENDATION APPROPRIATE FOR UNE**  
718 **ISSUES 37, 49 AND 51 APPROPRIATE?**

719 A. Yes. With regard to Issues UNE Issues 37, 49, 51, requiring the parties to operate  
720 under the terms of the parties' agreement as of June 15, 2004 is appropriate. I  
721 cannot speak to whether Dr. Zolnierек's recommendation is appropriate for the  
722 other issues listed on page 71 of his direct testimony. However, if the  
723 Commission sees fit to rule on the merits of the parties' (i.e., MCI and SBC)  
724 arguments in this proceeding on these issues, the Commission should rule in favor  
725 of MCI for the reasons provided in my direct testimony. These recommendations  
726 can be found at pages 72-73, 133 and 141 of my direct testimony.

727

728 **Q. DOES THAT CONCLUDE YOUR TESTIMONY AT THIS TIME?**

729 A. Yes, it does.