STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., and Intermedia Communications LLC	)	
	)	
Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Illinois Bell Telephone Company d/b/a SBC Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996	)	**Docket No. 04-0469**

DIRECT TESTIMONY

OF

SCOTT McPHEE

ON BEHALF OF

SBC ILLINOIS

EXHIBIT 9.0

Dated: August 17, 2004

ISSUES

SBC Recip Comp Issues 1a, 1b, 1c, 1d, 1e, 2, 4a, 4b, 5a, 5b, 5c, 7a, 8, 9, 10a, 10b, 12, 13, 14a, 14b, 15, 16, 17, 19, 20a, 20b, 21, 24, 25

SBC NIM Issues 11, 12, 19a, 20, 31, 33b

SBC UNE Issue 6

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DIRECT TESTIMONY OF J. SCOTT McPHEE

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.

A. My name is J. Scott McPhee. My business address is 311 S. Akard, Dallas, Texas 75202.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am an Associate Director – Local Interconnection Services for Southwestern Bell Telephone Company ("SWBT"). I work in SBC Communications Inc.'s 13-state Local Interconnection Marketing group on behalf of the SBC incumbent local exchange carriers ("SBC") in Illinois and the twelve other SBC states.

Q. WHAT ARE YOUR RESPONSIBILITIES AS ASSOCIATE DIRECTOR-WHOLESALE MARKETING?

A. I am responsible for researching, supporting, and communicating SBC's product policy positions in regulatory proceedings across thirteen states, such as this one.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I began employment with SBC in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC's 13-state region. My responsibilities included identifying policy and product issues to assist negotiations and witnesses for SBC's reciprocal compensation and interconnection arrangements, as well as SBC's transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping define SBC's positions on certain issues for Wholesale Marketing, and for ensuring that those positions are consistently articulated in proceedings before state commissions. Prior to joining SBC, I spent nine and a half years working in the insurance industry. My responsibilities included risk assessment of business entities, financial analysis, contract pricing negotiations, and working with clients to initiate or enhance their workplace safety programs. I had direct contact with large accounts and their representative brokers, and managed various aspects of their relationship with my company.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received my Bachelor of Arts degree with a double major in Economics and Political Science from the University of California at Davis in 1990.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY COMMISSIONS?

A. Yes, I have filed testimony and appeared in the state of Michigan, Lucre, Inc. v. SBC Michigan; MPSC Case No. U-13785; as well as in Ohio, "In the Matter of the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services"; Case No. 96-1310-TP-COI. I have also filed testimony in the state of Michigan, "In the Matter of the Application of Hiawatha Telephone Company, Midway Telephone Company, Ontonagon County Telephone Company, and Chippewa County Telephone Company to Determine if the Discontinuance of Intrastate IntraLATA Toll Service by SBC Michigan is Authorized," Case No. U-14100; in Nevada, In re Petition of Autotel for Arbitration of an Interconnection Agreement with Nevada Bell, Docket No. 02-8016; in Ohio, In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Regarding Local Circuit Switching in SBC Ohio's Mass Market, Case No. 04-34-TP-COI; and in Texas, Arbitration of Non-Cost Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821.

II. PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. I explain SBC Illinois' position on certain reciprocal compensation and interconnection issues including: calling scopes and definitions, rates issues (including application of the tandem reciprocal compensation rate), foreign exchange, FCC ISP Compensation Plan, bill and keep, and other billing issues. In particular, I direct the Commission's attention to the following key issues discussed in my testimony. The first key issue relates to the appropriate calling scope assigned to the various intercarrier traffic types, and the compensation mechanism applicable to each type of traffic. Second, I discuss the appropriate geographic coverage test to determine if a MCIm is entitled to the tandem interconnection rate. Another key issue relates to the treatment and routing of FX and FX-type traffic. This Commission should reaffirm its prior holding that FX and FX-type traffic should be subject to a bill and keep arrangement. The fourth key issue relates to application of the FCC ISP Compensation Plan, including appropriate application of the growth caps. Based on the FCC's and this Commission's prior rulings on reciprocal compensation, the Commission should adopt SBC Illinois' proposed contract language on these disputed issues.

III. CALLING SCOPES AND TRAFFIC DEFINITIONS

SBC Recip Comp Issues: [1]

[1] As MCIm stated in its petition for arbitration, MCIm did not undertake to identify in its filing the reciprocal compensation issues SBC Illinois wanted to arbitrate. As a result, the Reciprocal Compensation DPL that SBC Illinois filed displays many competing issue statements, *i.e.*, instances in which the parties characterize in different ways the issues presented by the competing contract language. In this testimony, I reference the SBC issues – and identify them as such – and not the MCIm issues. (In instances where SBC Illinois and MCIm have agreed on issue statements, I do not identify them as "SBC Recip Comp Issues.") The substance of my testimony, however, covers all the issues raised by MCIm that correspond with the SBC issues to which I make reference.

1a. ***What are the appropriate classifications of traffic that should be addressed in the Reciprocal Compensation Appendix?***

1b. ***What is the proper definition and scope of §251(b)(5) Traffic and ISP-Bound Traffic in accordance with the FCC's ISP Terminating Compensation Plan?***

1c. ***Is Section 251(b)(5) reciprocal compensation limited to traffic that originates and terminates within the same ILEC local calling area?***

1d. ***Is it appropriate to define local traffic and ISP-bound traffic in accordance with the ISP Compensation Order?***

5a: ***What is the appropriate treatment and compensation of ISP traffic exchanged between the Parties outside of the local calling scope?***

5b: ***What is the appropriate routing and treatment of ISP calls on an Inter-Exchange basis, either IntraLATA or InterLATA?***

Q. WHY DOES SBC ILLINOIS PROPOSE TERMINOLOGY DESCRIBING TRAFFIC TYPES IN THIS AGREEMENT THAT DIFFERS FROM ITS PRIOR AGREEMENT WITH MCI? (INTERCARRIER COMPENSATION SBC ISSUES 1A, 1B, 1C, 1D)

A. SBC Illinois proposes to use terminology that is consistent with the FCC's ISP Remand Order.[2] SBC Illinois proposes to use the term "Section 251(b)(5) traffic" to describe the type of traffic subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act, and "ISP-Bound traffic" to describe the type of traffic compensated under the FCC's ISP interim compensation plan ("FCC Plan") as set forth in the ISP Remand Order. Section 251(b)(5) traffic is defined as traffic that originates from an end user and is destined to another end user physically located within the same ILEC local exchange area (also referred to as mandatory local calling scope). ISP-Bound Traffic is defined as

[2] FCC's Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001)) ("ISP Remand Order"), which was remanded but not vacated in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

traffic that originates from an end user that is served by an Internet Service Provider (ISP) physically located within the same ILEC mandatory local calling scope.

Because these terms are used to identify the type of compensation that will be paid for different types of traffic, it is important that the traffic be defined with as much specificity as possible. MCIm proposes to use the potentially ambiguous term "Local Traffic." Recent rulings by the FCC, however, do not use the term "local traffic," and instead characterize traffic as either being included within the scope of Section 251(b)(5) traffic, or as being beyond the scope of Section 251(b)(5) traffic. For example, the FCC clarified that dial up traffic bound for ISPs is *not* Section 251(b)(5) traffic.[3] The ISP Remand Order exposes the shortcomings of the "Local Traffic" terminology used in the parties' prior agreement. In the ISP Remand Order, the FCC distinguished between two types of traffic that were previously included in the scope of the term "local traffic." First, the FCC identified Section 251(b)(5) traffic, or voice traffic, that originates and terminates to end users physically located within the same mandatory local calling areas. The FCC also identified ISP-Bound traffic and found that it was excluded from Section 251(b)(5) by Section 251(g). By following the FCC's lead from the ISP Remand Order of deleting reference to "local", and using terminology that better tracks the most recent rulings and orders, the parties to these new agreements will have less disagreement as to what one may 'think' is local or local-like traffic, versus what precedent exists for the determination of compensation for a certain type of traffic.

[3] *See* FCC 01-131. Yet the FCC also ruled, in certain circumstances, ISP-Bound traffic is subject to compensation in the same manner as §251(b)(5) traffic. See discussion of the FCC Compensation Plan elsewhere in my testimony regarding the application of rates to the termination of ISP-bound traffic.

Numerous disagreements have emerged in the past over what is or what is not "local traffic," such as a Foreign Exchange scenario where the end user's telephone number *looks* local to a calling area, but in reality the end user customer is not 'within' that local or mandatory local calling area. Just because a number looks local does not make it a local call, and prior Commission rulings detail these nuances. In its proposed terminology, SBC Illinois seeks to avoid future disputes over call classification by using definitions that comport with the current FCC rules.

Q. WHAT IS "ISP-BOUND TRAFFIC?" (INTERCARRIER COMPENSATION SBC ISSUE 1d)

A. SBC Illinois proposes to define "ISP-Bound Traffic" as traffic that originates from an end user and terminates to an ISP physically located within the same mandatory local calling area. This definition is consistent with the definition of ISP-bound Traffic in the ISP Remand Order.

As SBC Illinois invoked the FCC Plan on June 1, 2003, it is appropriate to distinguish ISP-Bound Traffic that is subject to the rates, terms and conditions of the FCC Plan from other traffic types within the agreement. An ISP call that originates and terminates to an ISP physically located within the same local mandatory calling area is ISP-bound Traffic subject to the FCC Plan rates. An ISP call that originates and terminates to an ISP physically located outside the local mandatory calling area is not ISP-Bound traffic subject to the FCC Plan. Instead, such ISP traffic remains Optional Extended Area Service (EAS) traffic subject to the Commission-approved EAS rate, IntraLATA or InterLATA toll traffic subject to access tariffs.

Q. ARE ALL CALLS TO AN ISP TREATED THE SAME UNDER THE PROPOSED AGREEMENT? (INTERCARRIER COMPENSATION- ISSUES 1d, 5, 5a, 5b)

A. No. Not all calls to an ISP are "ISP-bound traffic" subject to the FCC Plan rates, terms and conditions. To fall within the definition of ISP bound traffic subject to the FCC Plan, the calls must originate from an end user and terminate to an ISP physically located within the same ILEC mandatory local calling area. The ISP Remand Order does not address all ISP traffic. Rather, the ISP Remand Order targets only a narrow category of ISP traffic; i.e. ISP traffic that would otherwise be subject to reciprocal compensation because the ISP was served by a CLEC in the same exchange as the originating caller.[4] The FCC repeatedly states that it is dealing only with traffic that would otherwise be subject to state commission-established reciprocal compensation, i.e., traffic that is not interexchange. Consistent with its prior rulings, the ISP Remand Order stands for the limited proposition that the FCC retains authority over a subset of ISP traffic that, but for its character as information access, might otherwise be treated as local and subject to state commission-established reciprocal compensation rates. Based on the ISP Remand Order, SBC's proposed language specifies that the ISP Plan rates, terms and conditions apply only to calls that originate from an end user and terminate to an ISP physically located within the same ILEC mandatory local calling area. Due to the typically extended duration of calls to the internet, consumers do not want to incur toll charges to

[4] The limited scope of the ISP Remand Order is evident in Paragraph 13 of the Order, where the FCC discusses the basis of its Order:

> 13. As a result of this determination ['that section 251(b)(5) reciprocal compensation obligations 'apply only to traffic that originates and terminates within a local area' as defined by state commissions'], the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC.]

call their ISPs. ISPs commonly provision telephone numbers for their services to provide an access number in each local exchange in which they wish to attract business. These calls to access numbers within the mandatory local calling area fall within the definition of ISP-Bound traffic.

ISPs also frequently employ FX-type service arrangements where they have a virtual presence within a local calling area.[5] However, if an end user makes a long-distance call to an ISP, the user would likely be assessed toll charges by its long distance provider (or the call would apply toward its toll-call minutes-of-use).

Therefore, it follows that ISP-bound calls (like voice calls) that originate and terminate outside the local mandatory calling areas remain IntraLATA and/or InterLATA toll traffic subject to tariffed access charges. ISP FX-type calls should be compensated in the same manner voice FX-type calls are compensated. SBC Illinois proposes language within the agreements to clarify this point, and to avoid future possible disputes arising from the circumstance that one carrier's end user may call another carrier's ISP customer via a long distance call.

SBC Issue 5c: What types of traffic should be excluded from the definition and scope of Section 251(b)(5) traffic?

[5] An FX – or Foreign Exchange - service allows a carrier to have a local presence in a given calling area even though it is not physically located in that area. This is done by assigning an NPA-NXX that is local to the desired calling area, even though the actual end user may be located in a distant exchange or LATA. Please see my testimony under Section "FX Service" for further discussion of this subject.

Q. YOU HAVE DESCRIBED WHAT SHOULD AND WHAT SHOULD NOT BE INCLUDED WITHIN THE DEFINITIONS OF SECTION 251(B)(5) AND ISP-BOUND TRAFFIC. SHOULD THIS AGREEMENT CONTEMPLATE OR ADDRESS OTHER FORMS OF INTERCARRIER TRAFFIC, SUCH AS INTRASTATE AND INTERSTATE ACCESS TRAFFIC? (INTERCARRIER COMPENSATION- ISSUES 5c)

A. Yes. The parties will exchange other types of traffic that are not included within the terms of Section 251(b)(5) Traffic or ISP-Bound Traffic. The agreement should contain terms and conditions to address the treatment of that traffic, whether it is by specifically applying a different rate within the contract, or by reference to another determining document, such as a state or federal tariff. SBC Illinois' proposed Reciprocal Compensation Appendix attempts to clarify which types of traffic are subject to reciprocal compensation and/or the ISP Plan and which types are not.

Recip Comp Issue 16: Should inter-switch UNE-P calls be compensated differently than other traffic?

Recip Comp Issue 17: Should intra-switch UNE-P calls be exempted from requirements to pay reciprocal compensation?

Q. SHOULD TRAFFIC ORIGINATED OR TERMINATED BY A THIRD PARTY CARRIER UTILIZING SBC ILLINOIS' SWITCH PURCHASED ON A WHOLESALE BASIS BE TREATED THE SAME AS OTHER SECTION 251(b)(5) TRAFFIC THAT IS ENTIRELY FACILITIES-BASED? (INTERCARRIER COMPENSATION- ISSUE 16, 17)

A. At the outset, under the D.C. Circuit's decision in *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir. 2004)(*USTA II*), the FCC's unbundling rule as to certain UNEs, including switching, was vacated and remanded to the FCC for reconsideration, and thus UNE-P is no longer available as a combination because certain UNEs which were a part of the UNE-P combination are no longer lawful UNEs. Under *USTA II*, it clearly appears that SBC Illinois is not required to unbundle, under Section 251 of the Act, a combination of network elements (primarily the switching elements) used to create an end to end circuit formerly referred to as "UNE-P". SBC Illinois has offered to continue to provide such network element platform on a commercially negotiated basis rather than on a Section 251 UNE basis. In order to facilitate that transition, SBC Illinois has agreed that through December 31, 2004, it will provide basic analog UNE-P arrangements for 1-3 lines and will not unilaterally increase the rates for such arrangements. SBC Illinois proposes that, in light of USTA II, the interconnection agreement should not use the term "UNE-P" and should refer instead to carriers that purchase or lease SBC's switch on a wholesale basis. This description could apply to both a UNE-P arrangement and any other type of wholesale arrangement in which another carrier uses SBC Illinois' switch.

Regardless of how an end to end circuit (formerly known as a "UNE-P") is provided, such traffic should be compensated the same as traffic that originates and/or terminates via a facilities-based provider. The Commission-established call termination charges are applicable to Section 251(b)(5) traffic regardless of how it is provided. Furthermore, nothing in the FCC's ISP Remand Order suggests that traffic originated through a UNE-P or other wholesale arrangement should be treated any differently than facilities-based traffic.

Q. DOES MCI AGREE THAT RECIPROCAL COMPENSATION APPLIES TO SECTION 251(B)(5) AND ISP-BOUND TRAFFIC TERMINATED VIA UNE-P?

A. According to MCIM's position statements in Issues 16 and 17, MCIm appears to agree that reciprocal compensation applies for the termination of UNE-P traffic. MCIm disagrees, however, with contract language proposed by SBC Illinois. SBC Illinois seeks to clarify in Sections 4.10 and 4.10.1 that reciprocal compensation charges apply for

UNE-P traffic on *interswitch* calls; but not for *intraswitch* calls. Of course, this contract language would only apply if and when this commission orders its inclusion in the ICA.

Q. MCIM DISAGREES WITH SBC ILLINOIS' PROPOSED LANGUAGE ADDRESSING COMPENSATION FOR UNE-P TRAFFIC, SAYING THAT SBC ILLINOIS IS ESSENTIALLY CHANGING THE TERMS OF THE ICA. IS THIS TRUE?

A. No. The language SBC Illinois proposes Sections 4.10 and 4.10.1 simply clarifies what has been the standard compensation mechanism for reciprocal compensation since the FTA was enacted. That is, reciprocal compensation applies to certain calls (Section 251(b)(5) and ISP-Bound calls) that are exchanged between two carriers. That compensation begins at *the first point of switching on the other Party's network.* Both Sections 4.10 and 4.10.1 conform to this principle. Due to the use of SBC's Local Switching by carriers, a call that is originated and terminated between two carriers where both carriers' end users are homed off the same end office switch is called an "intraswitch" call. In those circumstances, there is no "first point of switching on the other Party's network", and as such, no reciprocal compensation applies. There is nothing for the "terminating carrier" to recover.

SBC Recip Comp Issue 20a: What is the proper treatment and compensation for intraLATA Toll Traffic?

SBC Recip Comp Issue 20b: Is it appropriate to include the term "mandatory EAS traffic" in this agreement?

Q. WHAT IS THE APPROPRIATE FORM OF INTER-CARRIER COMPENSATION FOR INTRALATA TOLL TRAFFIC? (INTERCARRIER COMPENSATION- ISSUE 20a)

A. IntraLATA Toll traffic that is carried on the jointly provided ILEC network is subject to the access charges as contained within each carrier's respective tariff. While the specific access rates are not listed within the ICA, in order to ensure contractual completeness—

and to avoid potential future disputes—the ICA refers to the tariffs to provide the proper rates and terms to settle access traffic compensation payments.

Q. SHOULD THE INTERCONNECTION AGREEMENT INCLUDE THE TERM "MANDATORY EAS"? (INTERCARRIER COMPENSATION-SBC ISSUE 20B)

A. No, because SBC Illinois does not have "mandatory" EAS traffic. The beginning of Section 9.1 should read, "IntraLATA interexchange traffic, not considered EAS traffic and carried on the jointly-provided ILEC network, is considered . . . ." MCIm's proposed insertion of the word "mandatory" before "EAS" should be rejected, because there is no such thing as mandatory EAS traffic in Illinois.

IV. RATES

SBC Recip Comp Issue 10a: Based on the requirements of 47 C.F.R. 51-711(a)(3), is MCIm entitled to charge the end office switch rate only?

SBC Recip Comp Issue 10b: If a MCIm switch meets the geographic coverage test, should MCIm be entitled to the mileage sensitive tandem transport element for transport between switches when MCIm only has one switch?

Q. WHAT IS ISSUE 10A ABOUT?

A. The question presented by Issue 10a is what rate MCIm will charge SBC Illinois when MCIm terminates on its network a call that originates on SBC Illinois' network and that is subject to reciprocal compensation under Section 251(b) – the tandem rate or the end office rate. The answer depends on whether or not MCIm has proven that it satisfies 47 C.F.R. § 711(a)(3), which provides:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

Thus, the Commission's decision on this issue depends on whether or not MCIm has proven that its switch serves a geographic area comparable to the area served by an SBC Illinois tandem switch.

Q. HOW DOES SBC ILLINOIS PROPOSE THAT THE COMMISSION MAKE THAT DETERMINATION?

A. SBC Illinois' proposed contract language includes a specific test to determine whether MCIm is serving an area geographically comparable to a SBC Illinois switch. The test would be applied on a case-by-case basis.

For MCIm to charge the tandem interconnection rate, MCIm must affirmatively demonstrate that its switch (i) provides local dial-tone service to end-users with a minimum of ten (10) different Business or Residence premises addresses physically located per serving wire center in twelve (12) different SBC Illinois serving wire center areas per LATA; and (ii) terminates less than seventy-five percent (75%) of its total traffic to each of the twelve (12) different SBC Illinois serving wire center service areas served by the CLEC's switch. The twelve (12) SBC Illinois wire center service areas are the average number of end offices that subtend an SBC Illinois tandem switch. These parameters, when satisfied by a CLEC, demonstrate that the carrier has sufficient facilities-based service currently in place to meet a geographic area that can be used as a proxy for one of SBC Illinois' tandem switches.

SBC Illinois proposes the use of this 'test' on a LATA-by-LATA basis instead of asking that MCIm demonstrate its switch's geographic reach on a tandem-by-tandem basis. SBC Illinois' tandem interconnection rate test provides a reasonable means for a CLEC to demonstrate that it serves end users over a large geographic area in order to receive the tandem interconnection rate for that qualifying switch in that qualifying LATA.

Q. IF A CLEC SWITCH QUALIFIES, WOULD THE TANDEM INTERCONNECTION RATE APPLY TO ISP-BOUND TRAFFIC?

A. No. As noted earlier in my testimony, SBC Illinois has invoked the FCC Plan's terms and conditions, and there is a specific rate applied to the termination of ISP-Bound Traffic. If the CLEC switch qualifies, the tandem interconnection rate only applies to Section 251(b)(5) traffic – the same traffic for which SBC Illinois may charge CLECs a tandem interconnection rate.

Q. WOULD ALL THE ELEMENTS OF THE TANDEM INTERCONNECTION RATE APPLY ONCE A CLEC SWITCH QUALIFIES AS MEETING THE TANDEM 'TEST'?

A. No. Four rate elements make up the tandem interconnection rate: the end office switching rate, the tandem switching rate, and two transport elements that apply in order to recover costs associated with transporting a call between a tandem switch and an end office switch. One of these elements is "common transport termination per minute of use"; the other is "common transport facility per minute, per mile." The first transport element - like the other switching elements—applies on a Minute of Use ("MOU") basis. The second element, while also on an MOU basis, is calculated on a mileage basis as well. Because CLECs in almost all instances use one switch to qualify for the tandem interconnection rate in lieu of multiple switches provisioned in a tandem-to-end office hierarchy, there is no mileage basis from which to calculate that rate element because there is no distance between a CLEC's switches. Technically, then with zero mileage, the common transport facility per minute per mile element is rated at zero. Therefore, the

CLECs' tandem interconnection rate, totaling all the applicable elements, would be different than the tandem interconnection rate that SBC Illinois would apply to the traffic SBC Illinois terminates for the CLECs, as SBC Illinois' tandem-switched calls traverse a measurable distance between switches.

SBC Recip Comp Issue 19: Should MCIm be able to charge an Access rate higher than the incumbent?

Q. HAS THIS COMMISSION DECIDED THIS ISSUE BEFORE?

A. Yes, in an arbitration between SBC Illinois and TDS Metrocom, Inc., this commission found that TDS Metrocom's rates were unsupported and should mirror SBC Illinois' rates until such time as TDS Metrocom submitted a study to support their unique costs.[6]

Q. SHOULD MCIM BE PERMITTED TO CHARGE SBC ILLINOIS AN ACCESS RATE FOR INTRALATA TOLL CALLS THAT IS HIGHER THAN SBC ILLINOIS' RATE? (INTERCARRIER COMPENSATION- ISSUE 19)

A. No. MCIm agreed in its Section 5.1 to charge for termination of intraLATA toll calls in accordance with each Party's access tariffs, as opposed to local reciprocal compensation. SBC Illinois proposes additional language that would prevent MCIm from charging SBC Illinois intercarrier intraLATA toll rates greater than the rates SBC Illinois charges MCIm. MCIm objects to SBC Illinois' proposed language and contends that each carrier's tariff should apply, even if the switched access rates are asymmetrical. The question is whether, for the intraLATA toll traffic described in Section 5.1, a CLEC may charge SBC Illinois the CLEC's unsupported switched access rate, or whether a CLEC's rates should be capped at SBC Illinois' switched access rate, which has been filed by

[6] TDS Metrocom, Inc. Petition for Arbitration of Interconnection Rates Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996,Docket 01-0338, August 8, 2001

SBC Illinois with supporting costs and is subject to review by this Commission. SBC Illinois simply seeks to conform this Agreement to the Commission's determination in the TDS Metrocom arbitration; as well as to comport with the intent of the FCC's Access Charge Reform where CLEC interstate access rates were brought into line with ILEC interstate access rates.

Q. WHY IS SBC ILLINOIS' PROPOSED LANGUAGE FAIR?

A. MCIm's access rates bear no substantiated relationship to its costs. In contrast, SBC Illinois' commission-approved switched access rates and supporting costs sustained careful scrutiny before being adopted by the Commission. SBC Illinois' access rates serve as a reasonable proxy for a CLEC in the absence of any cost support supplied by the CLEC itself.

Q. WHY IS MCIM'S PROPOSAL UNREASONABLE?

A. MCIm is asking the Commission to require SBC Illinois to pay it access rates that are unsupported by any costs. MCIm has unilaterally set its access rates at levels if its choosing, and is free to change those rates at any time. Under MCIm's proposed language, SBC Illinois must deliver intraLATA toll calls to MCIm's customers at whatever rates MCIm charges under its tariff for IXCs. Yet SBC Illinois does not have the same option IXCs have to discontinue providing service to MCIm.

Q. WHY IS SBC ILLINOIS' PROPOSAL LOGICAL?

A. There is a compelling logic to SBC Illinois' proposal. Under the FCC's rules, SBC Illinois pays CLECs reciprocal compensation for Section 251(b)(5) Traffic at rates equal to the rates that SBC Illinois charges CLECs for terminating CLECs' local-originated traffic. (47 C.F.R. § 51.711.) The principle rationale for Rule 51.711 is that

SBC Illinois' costs for transporting and terminating local traffic are a reasonable proxy for CLECs' costs for performing the same functions.[7] That rationale, applied to intraLATA toll traffic, leads to the conclusion that SBC Illinois' tariffed switched access rates are a reasonable proxy for the rates that CLECs should charge SBC Illinois for performing the same service. Symmetrical compensation is consistent with the FCC's principle that like traffic should be compensated at like rates. Indeed, as the FCC has explained, the CLECs have advocated this principle on the theory that rate symmetry "is needed to ensure efficient competition" and "will lead to economically efficient outcomes."[8]

Q. WHY WOULD MCIM WANT COMPENSATION AT ASYMMETRICAL RATES?

A. Some CLECs may attempt to "game" the process by charging a higher rate than SBC Illinois could charge. While CLECs may have tariffed rates, they do not have to justify the cost basis for those rates. There is no evidence to suggest that CLECs' costs are higher than SBC Illinois's costs. In fact, their costs may be lower than SBC Illinois' costs.

Q. HAS THE FCC ADDRESSED CLEC ACCESS RATES WITH RESPECT TO IXCS?

A. The FCC addressed reform of access charges imposed by CLECs in its Seventh Report and Order, FCC 01-0146, *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange* Carriers, 16 FCC Rcd. 9923 (April 27,

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7 *First Report and Order* at ¶ 1085.

8 *Id.* at ¶¶ 1074-1075.

2001) ("*CLEC Access Reform Order*"). While the CLEC Access Reform Order specifically addresses CLECs' interstate access charges, the FCC's rationale represents sound logic that is pertinent to the intraLATA toll rate at issue here.

Q. BRIEFLY SUMMARIZE THE FCC'S CONCLUSIONS IN THE *CLEC ACCESS REFORM ORDER*.

A. The FCC recognized that CLECs' interstate access charges were, in many cases, far in excess of the ILECs' rates, and shifted an inappropriate share of the carriers' costs to the IXCs.[9] To avoid rate shock to the CLECs while rectifying this anomaly, the FCC instituted a three-year transition period with decreasing rate caps each year until the end of the third year, at which point the CLECs' rates could not exceed the rates of the relevant ILECs.[10] CLECs are permitted to negotiate higher rates with IXCs, but in the event they cannot reach agreement, the FCC's benchmark rate will prevail.[11]

Q. ARE THE FCC'S BENCHMARK RATES APPROPRIATE PROXIES FOR MCIM'S RATES?

A. No, they are not. The FCC's benchmark rates reflect a composite of all components of the interstate access rate structure, while ILEC to CLEC termination charges are generally limited to rate elements specific to intraLATA toll traffic exchanged between two local exchange carriers.

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9 *CLEC Access Reform Order* at ¶ 22.

10 *Id.* at ¶¶ 51-52.

11 *Id.* at ¶ 3.

Q. SINCE THE FCC'S BENCHMARKS SHOULD NOT BE APPLIED FOR PURPOSES OF THIS AGREEMENT, HOW IS THE FCC'S *CLEC ACCESS* REFORM *ORDER* RELEVANT?

A. The rationale underlying the *CLEC Access Reform Order* is relevant here. CLECs' access rates often unfairly shift the burden of their costs to other carriers. That is true regardless of the carriers involved, whether IXC or ILEC. The FCC plainly recognizes that the ILECs' rates are a reasonable proxy for CLECs. Importantly, the FCC concluded that CLECs may, in fact, negotiate access rates that are higher than the ILECs' rates, but if both carriers don't agree, the ILECs' rates prevail.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. MCIm is seeking to establish intraLATA toll terminating rates that are higher than SBC Illinois' and that can increase during the life of the agreement without SBC Illinois' consent or any meaningful Commission oversight. This invites opportunities for the CLECs to engage in arbitrage through provisioning ISPs and other high termination end users through numbers that would result in intraLATA toll charges. The Commission should adopt SBC Illinois' proposed language in Section 5.1 of Appendix Compensation.

SBC Recip Comp Issue 9: Does a bifurcated end office switching rate structure more accurately reflect the cost of terminating a local call?

Q. WHAT IS A "BIFURCATED RATE"? (INTERCARRIER COMPENSATION-ISSUE 9)

A. While I am not a cost expert, I do know the principles behind the bifurcated rate structure. A typical end office reciprocal compensation rate (non-bifurcated) contains rate components that account for different costs associated with the use of that switch to terminate calls. There are two different functions performed by an end office switch – the initial set-up of the call, and the switch port remaining "open" during that call. Both of these functions incur costs that are recovered in a non-bifurcated end office rate. When these rates were first promulgated, an assumption was made as to the average length of a call in order to associate the "duration" portion of a typical call with the "set up" portion of the call. These two costs were calculated into one resulting rate.

A bifurcated rate allows each of these portions of the call to be individually tracked and charged as they are actually incurred. The aforementioned assumption for the length of a call is inexact. As noted above, the characteristics of telephone calls have evolved dramatically over the past several years. While, as of 2000, a typical voice call averaged approximately 3 minutes, calls to ISPs were much longer, averaging 29 minutes in length. By way of example, the original rate only assumed a 3 minute call, and that "set up" charge was built-in to the rate over 3 minutes. Calls of a longer duration were over-compensated, since that one-time set up cost was repeatedly paid for each time the call went an additional increment over 3 minutes in duration. This bifurcated rate structure, while initially intended to more accurately account for the costs associated with ISP-Bound Traffic, continues to be the most accurate measurement for determining costs incurred by each parties' end office call termination functions. Since they are more accurate, SBC Illinois proposes that the Commission continue to use bifurcated rates.

V. FOREIGN EXCHANGE TRAFFIC

SBC Issue 4a: What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic?

SBC Issue 4b: If FX and FX-like traffic must be segregated and separately tracked for compensation purposes, how should that be done?

Q. WHAT IS AT ISSUE?

A. The Parties disagree as to how Foreign Exchange traffic should be compensated under this agreement.

Q. WHAT IS FOREIGN EXCHANGE (FX) TRAFFIC.

A. Foreign Exchange (FX) is the industry term for those calls that originate in one local exchange and terminate to another exchange that is not within the originating local calling scope. An FX call therefore travels to an exchange that is not local, called "foreign," to the originating exchange. The key is that FX traffic is dialed by the originating caller as a local telephone number, and thus the dialing end user does not incur any toll charges for placing the call.

Q. HOW DOES SBC ILLINOIS OFFER FX SERVICE?

A. SBC Illinois offers FX service by retail tariff, basically charging the recipient of the FX call for the toll charges that would have applied if the FX call had been placed as an ordinary toll call. SBC Illinois provisions its FX service via a dedicated circuit from the end office where the customer's NPA-NXX is actually assigned, to the end user's premise, which resides outside of the service area of the end office to which the NPA-NXX is actually assigned. Therefore, when another party calls that end user's telephone number, the call is routed to the proper resident end office switch, and from there the call is diverted over the dedicated circuit to the end user's remote location.

Q. HOW DO ILLINOIS CLECS OFFER FX SERVICE?

A. CLECs in Illinois could establish competing FX service in the same manner, by building dedicated circuits to deliver dial tone outside the local calling scope. Instead, however, CLECs typically create an "'FX-type"' arrangement by reassigning the telephone number to a switch that is different than the 'home' central office switch where that NPA-NXX is assigned as a local number. The assignment of NPA-NXX codes is governed by the North American Numbering (NPA-NXX) Code Administrator.[12] The CLEC tells the Code Administrator where it wishes to obtain numbers, and the Code Administrator goes to its database of available numbers for that location and makes the appropriate NPA-NXX assignment. The Code Administrator keeps track of the NXX code assignments under a given NPA, watching for number exhaust and the need for new NPAs (i.e. area code splits or overlays). But once issued, the Code Administrator does not check to see if the NPA-NXX code is actually deployed in that city. The CLECs take the assigned NPA-NXX code and, without telling the Code Administrator, deploy the NPA-NXX code in a switch miles away from the city in which it was assigned. As described in Issue #1, MCIm seeks to have calls rated and compensated as local if they are dialed as local, regardless of whether the end user is physically located within the same mandatory local exchange.

Q. WHY DO THE CLECS CREATE FX-LIKE SERVICE BY TAKING THEIR ASSIGNED NPA-NXX CODES AND DEPLOYING THEM IN DISTANT SWITCHES?

A. CLECs establish FX-like service to generate higher than normal reciprocal compensation traffic inbound to their network. The end result of SBC Illinois' dedicated circuit FX service and the CLECs' FX-type service is the same: it allows an end user customer to be assigned a telephone number and to receive calls as if he or she was located in a given

[12] The North American Numbering Code Administrator is currently Neustar Technologies, working under a governmental grant of authority from the North American Numbering Council, comprised of the U.S., Canadian, Caribbean and Mexican telecommunications regulatory agencies.

exchange, regardless of the physical location of that customer. The obvious result is that dialing end users are more likely to call a local telephone number than a toll number. In this manner, the CLECs' FX-like service collects artificially high intercarrier reciprocal compensation payments from the originating network (SBC Illinois) without having to charge the CLEC subscriber for the benefits of the FX-like service. This creates precisely the type of arbitrage and imbalanced competition that the FCC and Illinois PUC have sought to avoid in the regulations surrounding intercarrier compensation.

Q. IS SBC ILLINOIS ATTEMPTING TO DICTATE MCIM'S LOCAL CALLING AREAS?

A. No. Each local exchange carrier has the ability to define its own local calling areas for purposes of its retail calling plans, and SBC Illinois' proposed contract language so provides. SBC Illinois does not dispute MCIm's right to assign NPA-NXX codes associated with one local calling area to subscribers that physically reside in another local calling area. Thus, SBC Illinois' concern is not the assignment of such numbers or the service provided by MCIm to its customers. Rather, it is the appropriate intercarrier compensation associated with the delivery of calls to those customers. Calls that appear to be local because of the NXX assigned, but that are terminating to customers physically located outside of the originating party's local calling area should not be classified as local calls subject to local reciprocal compensation.

Q. HAS THE COMMISSION RULED ON THIS ISSUE PREVIOUSLY?

A. Several times. The issue was addressed in the Commission's decision in the Level 3 arbitration, ICC Docket No. 00-0332, under Issue No. 2b. There, the issue was:

"Whether an FX or NXX call that would not be local based on the distance it travels, is subject to reciprocal compensation." The Commission ruled:

> The reciprocal compensation portion of the issue is straightforward. The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701(a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which AI prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. Moreover, we are not alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling area, they are not eligible for reciprocal compensation. *See*, Docket No. 21982, July 13, 2000. On the basis of the record, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.[13]

Most recently, this Commission ruled in AT&T docket 03-0239 that FX and FX-Type calls are not subject to reciprocal compensation:

This issue has been before us on several occasions and very recently in the Global NAPS Arbitration. Docket 02-0253, Order on Rehearing at 17. In that Order we stated:

> Since we will not require either reciprocal compensation payments or access charges, the allocation of cost responsibility for virtual NXX traffic remains before us. In the Essex Telecom Order, the

[13] Arbitration Decision, Case No. 00-0332 (Aug. 30, 2000), at 9-10.

> Commission instructed the parties "to adopt a bill-and keep regime for FX-like calls between the two systems." *Id.* at 25. We will do the same here. Under bill-and-keep, which is authorized under the Federal Act36, Verizon will retain its local service revenues and Global will keep whatever it is able to charge for a virtual NXX. This arrangement is consistent with our determination, above, that each carrier will be responsible for its own transport to and from the parties' POI. It is similarly consistent with the Commission's directive in the Global-Ameritech Arbitration Order, at 15, that "each party should bear its own costs on its side of the POI for FX and FX-like traffic." As Verizon recognizes, it will incur no more additional cost for transporting a virtual NXX call to the POI than it does for transporting any other Global bound local call to the POI37, and we have already found that such additional cost will be trivial.

Neither AT&T nor the FCC in its ISP Remand Order has given us reason to change our decision in this arbitration. Similarly the Virginia Arbitration Decision does not provide support for AT&T's decision. In the Virginia Arbitration Decision, the FCC did not rule that the CLEC was correct, but rather that Verizon's proposal, which is similar to SBC's here, was unworkable. Our Staff indicates that in this proceeding it believes SBC's proposal is workable.[14]

Q. DOES SBC ILLINOIS' POSITION COMPORT WITH THE COMMISSIONS' PREVIOUS RULINGS APPLYING BILL & KEEP TO FX AND FX-LIKE TRAFFIC?

A. Yes. The Commission's application of bill and keep to such traffic addresses SBC Illinois' concerns regarding toll-avoidance and access arbitrage opportunities previously associated with CLECs provisioning large numbers of FX-type services for ISP customers. The Commission's determinations and the FCC Plan have been positive steps toward remedying the problem of compensation distortion in the marketplace caused by

[14] *Arbitration Decision*, Docket 03-0239, August 26, 2003, pp. 123-24.

massive reciprocal compensation payments to CLECs serving ISPs with FX telephone numbers.

Q. DOES THE COMMISION'S BILL AND KEEP REGIME FOR FX AND FX-LIKE SERVICES EXTEND TO ISP-BOUND TRAFFIC?

A. Yes. Consistent with both the Award in Docket No. 02-0239, and the FCC's ISP Remand Order, bill and keep is the appropriate mechanism for both voice and ISP-Bound FX traffic. Essentially, the two orders complement each other; this Commission has consistently ruled that reciprocal compensation is not and has never been an approved – or appropriate – mechanism for the treatment of FX or FX-type traffic. The FCC's ISP Remand Order establishes that, where "carriers are not exchanging traffic pursuant to interconnection agreements prior to the adoption of this Order….carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period."[15] The Commission in Docket No. 02-0239 acknowledged:

> In the ISP Remand Order, the FCC stated that where a state commission had instituted a bill and keep arrangement for ISP bound traffic, that arrangement would remain in place. In Illinois, we have repeatedly held that FX-like traffic is not subject to reciprocal compensation, but rather we have instituted a bill and keep regime. . . . In our limited role of upholding FCC orders concerning ISP bound traffic, we conclude that ISP bound FX traffic will continue to be subject to bill and keep. To do otherwise would contradict the FCC's stated policy goals to reduce carriers' reliance on carrier to carrier payments.[16]

[15] FCC ISP Remand Order ¶ 81.

[16] *Arbitration Decision,* Docket 03-0239, August 26, 2003, p. 120

Q. MCIM WITNESS RICCA ACCUSES SBC ILLINOIS OF ATTEMPTING TO EXTEND THE SCOPE OF THIS COMMISSION'S PRIOR RULINGS BY PROPOSING LANGUAGE THAT TREATS ISP-BOUND FX TRAFFIC AS BILL AND KEEP. IS MR.RICCA CORRECT?

A. Absolutely not. If Mr. Ricca believes that this Commission has ruled only that FX *voice traffic* is subject to Bill and Keep, he is simply wrong. As I have just described, this Commission squarely ruled in SBC Illinois' arbitration with AT&T just last year that all FX traffic is to be treated under Bill and Keep – including traffic destined to Internet Service Providers.

Q. IS TEN-DIGIT TRACKING OF FX TELEPHONE NUMBERS BOTH REASONABLE AND APPROPRIATE? (INTERCARRIER COMPENSATION-SBC ISSUE 4b)

A. Yes. SBC Illinois has implemented a billing project in order to be able to suppress its FX customers' telephone numbers from reciprocal compensation billing to other carriers. The suppression of the actual telephone numbers from billing is much more accurate than the process (or, more accurately, non-process) suggested by MCIm, such as a proxy percentage factor being used for applying Bill and Keep to a portion of each carrier's traffic. Even though SBC Illinois advocates the use of actual records wherever possible, SBC Illinois has also offered contract language that, upon agreement of the parties, allows the use of a proxy percentage in the absence of actual traffic recordings.

Q. DOES SBC ILLINOIS' PROPOSED FX TRACKING LANGUAGE IN SECTION 15 ALLOW FOR REASONABLE METHODS OF IDENTIFYING, TRACKING AND SEGREGATING FX TRAFFIC FROM COMPENSATION PAYMENTS?

A. Yes, SBC Illinois' proposed Section 15, "Segregating and Tracking FX Traffic," provides appropriate terms under which the Parties can comply with this Commission's determination the FX traffic is not subject to compensation payments. MCIm witness Ricca is mistaken when he laments that SBC Illinois' language ". . . would remain silent on any specific methodologies to accomplish this end." As I previously discussed, SBC Illinois' proposed language allows for either a factual recording of FX telephone numbers and minutes of use, or an option where the Parties can agree to something else. These provisions are hardly daunting or unworkable. SBC Illinois has systems in place to identify and track its own retail FX customers. That information would be used as proposed in Section 15.1 and 15.2

Mr. Ricca claims that financial circumstances may make it difficult for MCIm to implement such a tracking system. While I believe it is both companies' responsibility to accurately bill each other, circumstances may indeed warrant the use of alternatives to the exchange of actual records. Hence, SBC Illinois proposes Section 15.3, where the Parties may determine some other agreeable means to not bill each other for FX traffic compensation. Certainly Mr. Ricca does not believe that such an open-ended offer to mutually determine the methods and means of determining proxy FX percentages would be cumbersome. While Mr Ricca likens identifying FX customers to identifying ISPs on page 19 of his testimony, they are entirely different. An ISP is a type of customer; the FCC and this Commission are correct to say that it is difficult to identify a LEC's customers based upon what they do, such as provide dial-up internet services. FX customers, on the other hand, are *provisioned* differently. That is, their NPA-NXX is *reassigned* to a different local calling area. That obviously implies that the reassigner – in this case MCIm – *knows* that the customer is using a foreign exchanged telephone number. Furthermore, at least from SBC Illinois' perspective, retail FX service is a value-added service for which SBC Illinois charges its customers a premium; therefore, records exist which denote that telephone number (or customer) as an FX customer.

VI. FCC ISP COMPENSATION PLAN

SBC Issue 12: Should there be a growth cap for ISP- Bound Traffic in accordance with the FCC's ISP Compensation Order?

Issue SBC 13: Should all of the ISP-Bound minutes of use compensated by the Parties in Calendar Year 2004 be counted towards the growth cap in Calendar Year 2004?

Q. WHAT IS ISSUE 12?

A. MCIm has proposed language in Section 4.4.3.1 which makes the contract provision more general and open to interpretation and dispute. SBC Illinois proposes more specific language in order to better define the applicability of the Minutes of Use growth cap as imposed under the FCC ISP Remand. While both Parties appear to agree in concept that the MOU growth cap applies, SBC Illinois' proposed language in Section 4.4.3.1 is more specific; it identifies the individual Parties to which to provisions apply, and also qualifies the specific types of traffic ("compensable ISP-Bound Traffic") for which the growth cap truly applies. MCIm's language attempts to lump all "ISP-Bound Traffic" under the parameters of the growth cap, yet as I previously explained above, not all ISP-Bound traffic may be subject to the FCC ISP rate plan, and therefore not subject to the growth cap limitation.

Q. SHOULD ALL OF THE ISP-BOUND MINUTES OF USE COMPENSATED BY THE PARTIES IN CALENDAR YEAR 2004 BE COUNTED TOWARDS THE GROWTH CAP IN CALENDAR YEAR 2004? (INTERCARRIER COMPENSATION- ISSUE 13)

A. Yes. While the Parties' proposed contract language contains terms for the compensation of Section 251(b)(5) traffic at Commission-approved rates, and for ISP-Bound traffic at the FCC Plan rate, there are still circumstances where certain traffic will be subject to a bill and keep arrangement as provided for in the ISP Remand Order. The ISP Remand

Order expressly provides that bill and keep will apply in two instances: (a) new market entry and (b) when a carrier's ISP-bound traffic exceeds the growth caps established in the ISP Remand Order. It did this to cure certain marketplace distortions caused by the advent of dial up access to the internet. In the ISP Remand Order, the FCC noted that some carriers appeared to use reciprocal compensation payments not as a *cost recovery component* as the Act intended, but rather as their *business plan for profitability*. The FCC implemented mechanisms to reduce CLECs' reliance on this type of compensation as a means of revenue (instead of cost-recovery).

The FCC found that bill and keep was the appropriate compensation mechanism when a carrier's traffic exceeds the growth cap on ISP-Bound Traffic as follows:

> We impose an overall cap on ISP-bound minutes for which compensation is due in order to ensure that growth in dial-up Internet access does not undermine our efforts to limit intercarrier compensation for this traffic and to begin, subject to the conclusion of the NPRM proceedings, a smooth transition toward a bill and keep regime. [17]

All the ISP-Bound MOUs compensated by the parties in 2004 should apply toward the ISP MOU growth cap under the ISP Remand Order. The FCC did not distinguish the MOU growth caps (or their rate caps for that matter) based upon the duration of time the parties have been in their current agreement. The MOU growth caps, as set forth in the ISP Remand Order, are based upon calendar year measurements; that is, from January 1st of a year until December 31st. Even though these successor agreements will not be effective until after January 1st 2004, for purposes of complying with the FCC Plan, the measurement of ISP-Bound MOUS should begin January 1st.

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[17] FCC ISP Remand Order ¶86.

This approach is consistent with the method the FCC used to calculate the initial "snapshot" of a carrier's MOUs for purposes of determining the benchmark for applying the MOU growth cap. The FCC annualized the MOUs, beginning with traffic that was exchanged as of January 1, 2001, notably, *before the Order was even issued*.[18] In keeping with the ultimate intent of the FCC's ISP Remand Order, to begin measurement of ISP-Bound Traffic *only after* a successor agreement is in place would improperly prolong the reciprocal compensation subsidization the FCC clearly desires to curtail.

Q. WHAT IF THE TERMS OF THE PRIOR AGREEMENT, EFFECTIVE AFTER JANUARY 1ST 2004, DID *NOT* INCORPORATE THE TERMS OF THE FCC PLAN?

A. The MOUs applied to the cap are still measured beginning January 1st 2004. Even if the ISP-Bound MOUs were not being paid at the FCC Plan rates, MCIm *was* compensated for those ISP-Bound minutes at the contract rate.

Furthermore, SBC Illinois invoked the terms of the FCC Plan to be effective September 1, 2003. Therefore, the entirety of MOUs exchanged between SBC Illinois and MCIm are under the scope of the FCC Plan. In other words, all CLECs in Illinois were notified of SBC Illinois' invocation, and all parties knew that the MOUs after SBC

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[18] " We also impose a cap on total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine our goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Growth above these caps should be based on a carrier's ability to provide efficient service, not on any incentive to collect intercarrier payments." FCC ISP Remand Order at ¶ 8.

Illinois' date of invoking the Plan would be paid under the plan's terms, including the January 1, 2004, initiation date for measurement of the MOU cap.

Q. DOES IT MATTER THAT MCIM WAS COMPENSATED FOR ISP-BOUND TRAFFIC AT A SPECIFIC ISP-BOUND TRAFFIC RATE IN ITS PREVIOUS INTERCONNECTION AGREEMENT WITH SBC ILLINOIS?

A. No. SBC Illinois and MCIm entered into a contract amendment called "*Amendment Superceding Certain Reciprocal Compensation, Interconnection and Trunking Terms,*" which expired May 31, 2004. That Amendment contained terms addressing ISP-Bound Traffic at a specific rate which was lower than the rate paid for Section 251(b)(5) Traffic. MCIm argues that the ISP-Bound Traffic minutes of use compensated under this Amendment are not subject to the total annual MOU growth caps for 2004. This argument has no merit; the FCC ISP Remand Order specifically uses an annual measurement of the minutes – not the associated rate paid for that traffic – as the determining calculation of the MOU growth cap. Clearly, the total ISP-Bound Traffic MOUs exchanged between SBC Illinois and MCIm, starting January 1, 2004, should be included in the calculation of MCIm's 2004 MOU growth cap. SBC Illinois' proposed contract language in Sections 4.4.3.1 and 4.4.3.2 seek to clarify and contractualize those specific terms, each consistent with the terms outlined in the FCC ISP Remand Order.

Q. MCIM WITNESS RICCA ARGUES THAT THE AMENDMENT YOU JUST REFERREED TO SHOULD GOVERN PAYMENT OF ISP-BOUND TRAFFIC PRIOR TO JUNE 1, 2004. DO YOU AGREE?

A. Yes, the agreed-upon amendment between the Parties is the appropriate document to determine payment of ISP-Bound Traffic prior to June 1st 2004. However, Mr. Ricca's argument is mixing *payment* with *minutes applicable toward an annual total.* While Mr. Ricca uses some confusing mathematics in his testimony on pages 44 and 45, the fact remains the same; the FCC determined an annual number of minutes back in 2001 which would serve, on a going-forward basis, as an annual determinant of total compensable ISP-Bound minutes. And while Mr. Ricca is correct in asserting that all 2004 minutes paid under the amendment were at one rate for all Section 251(b)(5) and ISP-Bound traffic, that fact does not preclude the parties from calculating the appropriate (non-rebutted) presumption that uses the FCC's 3:1 terminating to originating ratio in order to determine the accurate number of ISP-bound Minutes of Use for the period up to June 1st 2004. Again, Mr. Ricca confuses rates with numbers of minutes - - two separately calculated and reconciled quantities.

Furthermore, while Mr. Ricca expounds upon the fact that MCIm was paid at a rate lower than the current FCC ISP Remand rate, he conveniently fails to mention that that rate included payment on Foreign Exchange traffic – a type of traffic which this Commission has already ruled is not subject to reciprocal compensation. And finally, let the Commission not be misled; both SBC Illinois and MCIm entered into the 13-state Amendment voluntarily, during a time when there *was* less certainty as to the treatment of ISP-bound traffic, FX traffic, and even Points of Interconnection requirements. The Amendment had "gives and takes" for both Parties. Now that there is more certainty in the marketplace with regard to interconnection, new contract terms are better suited to current times.

Q. DO YOU HAVE ANY OTHER COMMENTS ABOUT MCIM'S ARGUMENTS REGARDING THE 13-STATE RECIPROCAL COMPENSATION AMENDMENT?

A. Yes, I do. Mr. Ricca argues that some of the traffic was paid at a proxy bill and keep regime because it was paid at a rate lower than the FCC's ISP Remand rate. While I do not agree with Mr. Ricca's logic, the fact that MCIm has been paying rates lower than those in the FCC Plan raises the issue of whether, in fact, MCIm should continue to pay lower rates or even, bill and keep. The overall intent of the FCC's Order was to curb market distortion; that is, stop the subsidization of CLECs via reciprocal compensation (which is a *cost-recovery mechanism, not a revenue source).* The FCC opined that its ISP Plan rates were to be used as price ceilings in order to transition away from higher rates for ISP-Bound traffic and to a bill and keep regime:

> Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.[19]

This logic would imply that rates paid for ISP-Bound traffic should be decreasing, not increasing. While SBC Illinois has not taken this position, a reasonable voice may conclude that – because MCIm is *already* paid at a rate lower than the FCC ISP Remand rate – their rate for ISP-Bound Traffic should not increase to the FCC's ISP price ceiling of $.0007 per MOU. I point this out because MCIm, like SBC Illinois, voluntarily agreed to enter into the 13-state Amendment; that amendment has expired, and with it, all of its terms and conditions.

[19] FCC ISP Remand, p. 6

Q. DO THE GROWTH CAPS CONTINUE BEYOND THE 2003 DATE SPECIFICALLY MENTIONED IN THE FCC ISP REMAND ORDER?

A. Yes. The growth caps in the FCC Plan continue into 2004 and thereafter until further FCC action. The intent of the FCC ISP Compensation Order was to provide a *transition from the current reciprocal compensation payments for ISP-Bound Traffic.* As a transitional device, it would defy logic to revert back to terms in place prior to the Order. In Paragraph 78 of the FCC ISP Remand Order discussing the growth cap, no explicit provision is made for 2004 and beyond. However, in describing the interim rates for ISP-bound traffic in Paragraph 8, the FCC determined that the final interim rate would remain in effect from the thirty-sixth month or "until further Commission action (whichever is later)." In the transition from the rates to the caps, the FCC spoke of imposing a cap on the minutes receiving "this" compensation. "This" compensation refers to the rates, terms and conditions adopted in the interim compensation regime including the growth caps, which of course will remain in effect until further FCC action.

It would be nonsensical and contrary to the FCC's intent to contend that even though the FCC Plan rates apply, the growth caps do not apply. To the contrary, while the FCC Plan outlined in the FCC ISP Remand Order is an *interim* measure, it is intended to remain in place until the FCC completes a further examination of inter-carrier compensation under the Notice of Proposed Rulemaking, FCC 01-132. To apply the growth caps for three years only to revert back to no growth cap is senseless.

SBC Recip Comp Issue 14a: Should rates be subject to a true-up upon the conclusion of state proceedings to rebut the 3:1 presumption?

14b. Should the date for retroactive true-up of any disputes relating to the rebuttable presumption be set as the date such disputing Party first sought to rebut the presumption at the Commission?

Q. SHOULD THE AGREEMENT CONTAIN PROVISIONS CONTRACTUALIZING THE REBUTTED PRESUMPTION OF ISP-BOUND TRAFFIC? (INTERCARRIER COMPENSATION ISSUE 14A)

A. Yes. Since the actual amount of traffic exceeds the FCC's proxy 3:1 presumption, that factor should be embodied in the Agreement. SBC Illinois has conducted traffic studies on the amounts of Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between SBC Illinois and MCIm. SBC Illinois found that over 90% of combined Section 251(b)(5) and ISP-Bound Traffic was indeed ISP-Bound Traffic.

Q. IF AT SOME POINT IN THE FUTURE MCIM WERE TO SUCCESSFULLY REBUT THE 3:1 TERMINATING TO ORIGINATING PRESUMPTION, WHAT DATE SHOULD THE PARTIES USE FOR PURPOSES OF TRUE-UP? (INTERCARRIER COMPENSATION-SBC ISSUE 14b; MCIm -14)

A. The parties should true up compensation payments or arrangements (in the case of bill and keep for the excess ISP Bound Traffic) effective as of the date that a party first sought appropriate relief from this Commission. The ISP Remand Order clearly provides for true-up back to the date a party seeks relief, provided the party continues to pay on the disputed amounts during the pendency of the proceeding.[20] By including these specific terms in the contract, the parties are ensured contractual certainty as to how to handle a dispute over any rebutted presumption of the ratio of Section 251(b)(5) traffic versus ISP-Bound traffic. Furthermore, MCIm's proposal to leave the effective true-up date undecided would create unnecessary uncertainty.

By injecting the uncertainty of an indefinite true up date, MCIm seeks to extend or prolong the subsidization of reciprocal compensation payments on ISP-Bound traffic.

[20] ISP Remand Order ¶ 79: "During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings."

Under those circumstances, MCIm could seek to lobby a commission for a more favorable (recent) true-up date if it fails to rebut the presumption. As the FCC's 3:1 presumption would be rebutted based upon actual facts, such as traffic measurements and recordings, it makes common sense to acknowledge the initiation of that fact-based dispute by having the true-up specified to coincide with the start of the dispute.[21]

MCIm seeks instead to have unclear terms regarding any type of true-up for this traffic, going as far as to say: "While a true-up for any disputes over compensation for ISP Bound traffic may be appropriate in some circumstances, MCIm believes the appropriate true-up should be determined on a case-by-case basis by the Commission and not prejudged in this Agreement." MCIm's position clearly contradicts the intent of the FCC in the FCC ISP Remand where they discuss the obligations of LECs to continue to pay reciprocal compensation at the "…presumptive rates, subject to true-up upon the conclusion of state commission proceedings."[22]

SBC Recip Comp Issue 1d: Is it appropriate to define local traffic and ISP-bound traffic in accordance with the ISP Compensation Order?

SBC Recip Comp Issue 10a: Based on the requirements of 47 C.F.R. 51-711(a)(3), is MCI m entitled to charge the end office switch rate only?

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[21] Please see MCIm Issue 14: MCIm objects to any type of true-up provision whatsoever, in clear contradiction of ¶ 79 of the ISP Remand.

[22] FCC ISP Remand, ¶ 79.

Q. WILL COMPENSATION ON ISP-BOUND TRAFFIC UNDER THE FCC PLAN VARY ACCORDING TO WHETHER THE TRAFFIC IS ROUTED THROUGH A TANDEM SWITCH, OR DIRECTLY TO AN END OFFICE SWITCH? (INTERCARRIER COMPENSATION- ISSUE 1d, 10a)

A. No. In Section 4.4.1.1 MCIm has proposed that the tandem interconnection rate applies for all calls. Pursuant to the FCC ISP Remand, the rate for compensation of ISP-Bound traffic is the same regardless of the routing of that particular call. In paragraph 79 of the ISP Remand Order, the FCC created the rebuttable presumption of ISP-Bound traffic based on a 3:1 terminating to originating ratio for circumstances where a carrier cannot identify whether traffic is Section 251(b)(5) or ISP-Bound traffic. The FCC further explains that *all* traffic identified as ISP-Bound traffic is “subject to the compensation mechanism set forth in this Order.”[23] That compensation mechanism is clearly described as well: “Specifically, we adopt a gradually declining cap on the amount that carriers may recover from other carriers for delivering ISP-bound traffic.”[24] That capped rate is further described as $0.0007 per MOU for all ISP-Bound Traffic under the MOU growth cap. The FCC, in adopting that rate, intended to reduce the subsidization that has occurred due to carriers relying upon reciprocal compensation payments from the termination of ISP-Bound traffic. The FCC specifically held that “…the rate caps we impose are not intended to reflect the costs incurred by each carrier that delivers ISP traffic.”[25] The FCC has stated ISP-Bound traffic is not Section 251(b)(5) traffic, and it is

[23] FCC ISP Remand Order ¶ 79.

[24] FCC ISP Remand Order ¶ 7.

[25] First Report and Order, ¶ 7.

not subject to the Commission-approved cost-based reciprocal compensation rates that include the tandem-switching rate that some CLECs desire.

Recip Comp Issue 15: Has SBC demonstrated that more than 90% of the traffic it terminates to MCIm is ISP-bound?

Q. CAN SBC ILLINOIS DEMONSTRATE THAT MORE THAN 90% OF THE TRAFFIC IT TERMINATES TO MCIM IS ISP-BOUND TRAFFIC?

A. Yes, SBC Illinois has the ability to track traffic destined to MCIm's network. Consistent with the FCC ISP Remand Order, a Party can seek to rebut the proxy 3:1 terminating-to-originating ratio which determines ISP-Bound traffic. SBC Illinois exercises this provision of the Order by demonstrating in this proceeding that more than 90% of the Section 251(b)(5) and ISP Bound Traffic SBC Illinois originates to MCIm is actually ISP-Bound Traffic.

Q. WHAT KIND OF TRAFFIC STUDY DID SBC ILLINOIS CONDUCT TO DETERMINE THE AMOUNT OF ISP-BOUND TRAFFIC BEING SENT TO MCIM?

A. SBC Illinois looked at traffic records between the Parties for a certain period of time, most recently for the month of June, 2004 a summary of which is attached as exhibit JSM-1. The study included all calls originated by SBC Illinois and terminated by MCIM as well as all calls originated by MCIm and terminated by SBC Illinois for that period of time. By looking at the records of the traffic, SBC Illinois was able to determine which calls were bound for Internet Service Providers.

Q. HOW COULD SBC ILLINOIS DETERMINE WHICH CALLS WERE DESTINED FOR ISPS ON MCIM'S NETWORK?

A. In general, ISP-Bound calls have different characteristics than typical voice calls. The average voice telephone call is approximately 4 minutes in duration, while a dial-up call to an ISP is typically 29-30 minutes in average duration. SBC Illinois looked at calls originated by its end users which were destined to MCIm that averaged over 20 minutes in duration – and to telephone numbers that received over 5 calls per hour. By using this dual-prong test, SBC Illinois identified a number of MCIm telephone numbers which "looked" like they may be ISP telephone numbers. SBC Illinois then used an auto-dialer to call the MCIm telephone numbers that met both criteria (long call duration and high call frequency). The auto dialer then determined whether the answering party was a voice, a fax modem tone or an ISP modem tone.

In the end, calls to those numbers which have reasonably been identified as ISP modems constituted over 90% of all traffic from SBC Illinois to MCIm for the test period of time.

Q. HOW OFTEN DOES SBC ILLINOIS REASSESS MCIM'S WORKING TELEPHONE NUMBERS TO DETERMINE WHETHER OR NOT THEY ARE TERMINATEING TO INTERNET SERVICE PROVIDERS?

A. SBC Illinois looks at all telephone numbers via the call duration and call frequency criteria on a quarterly basis. Once working telephone numbers are identified, then all traffic sent from SBC Illinois to those MCIm working telephone numbers gets categorized as ISP Bound Traffic for the remainder of that quarter. By regularly revisiting the criteria for ISP-Bound calls, SBC Illinois closely tracks which traffic is destined for Internet Service Providers.

Q. IS THE TEST "SNAPSHOT" SUFFICIENT TO DETERMINE TOTAL TRAFFIC PATTERNS BETWEEN SBC ILLINOIS AND MCIM FOR THE DURATION OF THE AGREEMENT?

A. Yes, the provided test data is sufficient to rebut the FCC's presumption as described in paragraph 79 of the ISP Remand Order. Furthermore, contract language exists which allows for either party to challenge or rebut this newly-established traffic pattern if and when the amount of ISP-Bound Traffic differs from its current 90%. Either Party has the right to provide new information at any time during the period the Agreement is in place.

VII. TRANSIT SERVICE

SBC Recip Comp Issue 1e: Should non 251/252 services such as Transit Services be negotiated separately?

SBC Recip Comp Issue 25: Should non 251/252 services such as Transit Services be negotiated separately?

SBC NIM Issue 31: Should a non-section 251/252 service such as Transit Service be arbitrated in this section 251/252 proceeding?

Q. PLEASE DESCRIBE THIS ISSUE.

A. All three issues deal with transit traffic. SBC Illinois proposes that the Agreement be silent on transit traffic because this type of traffic is not covered by section 251 of the Telecommunications Act of 1996. SBC Illinois recognizes that there is a need in many situations for carriers to handle transit traffic in order to ensure interoperability of networks, but the arrangements for handling this type of traffic should be worked out on a commercial basis. SBC Illinois offers such a commercial arrangement and has agreed to provide that arrangement to MCI outside the context of this 251/252 arbitration.

Q. PLEASE BRIEFLY DESCRIBE TRANSIT TRAFFIC.

A. Transit traffic originates on the network of a third-party carrier, is handed off by that carrier to SBC Illinois, and then is handed off by SBC Illinois to MCIm for termination on MCIm's network. Transit traffic moves in the opposite direction as well, from MCIm to a third party.

Q. WHAT IS THE CURRENT COMPENSATION SCHEME WHEN SBC ILLINOIS IS THE TRANSITING CARRIER FOR TRANSIT TRAFFIC?

A. SBC Illinois charges the originating carrier a fee to transit the traffic, and the terminating CLEC is entitled to charge the originating carrier for services that it provides in completing the call. Most transit traffic carries with it calling party originating information that includes the originating carrier's identity as part of the call setup information. Thus, SBC Illinois receives the identifying information from the originating carrier and passes that information along to the terminating CLEC when it hands the call off to that CLEC. Based on the originating telephone number and other information, the terminating CLEC can identify the originating carrier and can charge the originating carrier the appropriate reciprocal compensation. In these instances, SBC Illinois merely serves as an intermediate provider of facilities over which traffic is transported; SBC Illinois neither originates nor terminates the traffic.

Q. DOES TRANSIT TRAFFIC PROPERLY FALL WITHIN THE SCOPE OF § 251?

A. The 1996 Act requires Illinois to provide "interconnection with the local exchange carrier's [SBC Illinois'] network." (47 U.S.C. § 251 (c)(2)). It does not require SBC Illinois to furnish a connection between MCI's network and the networks of third parties. There is no mention of transiting anywhere in the 1996 Act or in the FCC's *First Report and Order* implementing the requirements of the 1996 Act. Any contention that an incumbent carrier's duty to provide interconnection with its own network implies a duty to provide transiting to third party networks was foreclosed by the *First Report and Order*, in which the FCC concluded (¶ 176) that the term "interconnection" under section 251(c)(2) refers *only* to the *physical linking* of two networks for the mutual exchange of traffic" (emphasis added), *and* that interconnection does *not* include the transport or termination of traffic. That, coupled with the absence of any other provision in the Act that requires transiting, leads to the conclusion that transiting is not required by the Act.

Furthermore, the Act does not appear to contemplate the use of incumbent LECs' networks as bridges between other local networks. Section 251(a)(1) requires *all* telecommunications carriers, not just ILECs to interconnect their facilities and equipment. It provides:

> Each telecommunications carrier has the duty…to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

Thus, if MCI wishes to exchange traffic with a third party carrier, say AT&T, the statute imposes a duty to interconnect on MCI and on AT&T. It requires nothing of SBC Illinois with respect to such traffic.

Q. HAS THE ILLINIOS COMMISSION ADDRESSED THIS ISSUE BEFORE?

A. Yes. This Commission has recognized that transiting is not required under the 1996 Act. The Commission first addressed the issue in its November 26, 1996, Arbitration Decision in *AT&T Communications of Illinois, Inc., Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a SBC Illinois,* Docket Nos. 96 AB-003 *et al.* The Commission there held (at p. 10): "Is transiting required by the Act, the [First Report and] Order or state law? It is not." *See also* the Commission's January 6, 1997, Arbitration Decision in *Sprint Communications L.P., d/b/a Sprint Communications Company, L.P., Petition for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with*

Illinois Bell Telephone Company d/b/a SBC Illinois, Docket No. 96 AB-008, at p. 11 ("The Act does not *require* transiting").

Q. WHAT CONCLUSION DO YOU DRAW FROM THIS ANALYSIS?

A. The logical conclusion from this analysis is that the entire subject of transiting is not subject to arbitration and that MCI's request to include contract language to cover transit traffic should be rejected.

Q. IF THE COMMISSION ACCEPTS YOUR RECOMMENDATION, WILL SBC ILLINOIS CONTINUE TO OFFER TRANSIT SERVICES TO CARRIERS WHO REQUEST IT?

A. Yes. SBC Illinois will continue to offer a transit service for carriers that would prefer to use SBC Illinois' network to reach third party carriers. However, the terms of SBC Illinois' transit service are contained in a separate commercial agreement outside the scope of a Section 251/252 negotiation. The Transit Traffic Service Agreement is an offering made by SBC Illinois for CLECs to negotiate if they desire. Like other non Section 251 offerings, transit traffic service should not be part of the Section 251/252 negotiation process; rather it is an optional service that SBC Illinois negotiates separately with carriers.

Q. WHAT IS MCI'S POSITION ON THIS ISSUE?

A. MCI witness Ricca argues that section 251 requires SBC Illinois to transit traffic and cites a case from the United States Court of Appeals for the Sixth Circuit. Although this is primarily a matter for legal briefs, my understanding of that case is that it was decided primarily on state law grounds.

Q. IF THIS COMMISSION DETERMINES THAT TRANSIT TRAFFIC TERMS SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT, DOES SBC ILLINOIS ADVOCATE CERTAIN PARAMETERS FOR THE USE OF ITS NETWORK FOR TRANSIT PURPOSES?

A. Yes. All parties need to abide by certain terms and conditions to ensure the proper routing and billing of Transit Traffic. In the event this Commission rules that transit provisions must be included under the Interconnection Agreement at issue here, then SBC Illinois has proposed contract language to provide clarity and certainty as to each party's responsibilities and is preferable to MCI's proposed language. That language, proposed under SBC Illinois' "Transit Traffic Service Appendix" and attached here as Exhibit JSM-2, would be contained within the reciprocal compensation attachment/appendix.

Q. HOW DO THE CONTRACT PROPOSALS OF MCI AND SBC ILLINOIS DIFFER?

A. MCI's proposal, in its entirety is:

> 7.1 The originating Party is responsible for payment of the appropriate rates unless otherwise specified. The rates that the parties shall charge for transiting traffic are outlined in Appendix Pricing.

This language says nothing about the obligations, terms or conditions surrounding the transmitting and delivery of transit traffic. It simply appears to be a placeholder in order to note within the contract that transit service is an obligation under this agreement. MCIm's language does nothing to ensure that transit traffic is treated properly,, routed appropriately, that network enhancements are made in a timely and proper manner, or that proper call identification information is provided within the traffic.

In contrast, SBC Illinois' language would provide comprehensive terms for the treatment, routing and compensation of transit traffic. Without comprehensive terms and conditions to address the treatment of SBC Illinois' transit service, MCIm's vague inclusion of one sentence would attract disputes with regard to every aspect of transit traffic with exception to the rate to be paid. For example, the obligations surrounding financial obligations between the call originator and call terminator would be silent; this contractual gap may be incorrectly construed by MCIm to mean that SBC Illinois is the default payor on transit traffic it sends to MCIm, thereby allowing MCIm to bill SBC Illinois for call origination (reciprocal compensation).

Q. WHY DOES SBC ILLINOIS OFFER A TRANSIT SERVICE?

A. SBC Illinois realizes that not all smaller carriers are able to directly interconnect with the myriad of other telephony providers in a given area such as a LATA. As a matter of economics, there may not be a large enough "community of interest" (or levels of traffic) between two smaller carriers to make direct interconnection an efficient option. SBC Illinois, therefore, offers to provide its transit service as a means for these smaller carriers to exchange traffic with all other carriers until such time as those two parties directly interconnect.

Q. WHAT ARE SOME OF THE MAJOR PROVISIONS ADDRESSED IN SBC ILLINOIS' PROPOSED TRANSIT TRAFFIC SERVICE APPENDIX?

A. The Appendix is an all-encompassing document that addresses all aspects of transit traffic service, from applicable definitions of terms to responsibilities of the Parties, rate application, transit traffic routing to direct trunking requirements. By specifically addressing all terms and conditions in this Appendix the possibility for disputes are drastically reduced. The terms contained in SBC Illinois' proposed Appendix are very similar to the transit terms under which SBC Illinois provides transit traffic service to others. Two differences from other transit terms are that 1) definitions are included in the Appendix; and 2) terms for treatment and distribution of Accessible Letter are included. These topics are addressed here because this transit Appendix may also be used as a stand-alone document.

Q. WHAT IS THE ESTABLISHED PROTOCOL FOR BILLING OF TRANSIT SERVICES?

A. The transit service provider serves on behalf of the carrier that originates the telephone call. The terminating carrier simply receives the call from the transit provider "on behalf" of the originating carrier. Under the current reciprocal compensation regime, the originating carrier pays the terminating carrier reciprocal compensation to reimburse the terminating carrier for completing the originating carrier's end user's call. It follows that the originating carrier also pays the transit service provider, because the originating carrier's end user has initiated the call and therefore incurred the additional costs associated with transiting that call. SBC Illinois' current practices conform to this compensation mechanism for transit services. This is reflected in SBC Illinois' proposed language.

Q. WHAT DO YOU RECOMMEND THE COMMISSION DO ON THE TRANSIT ISSUE?

A. I recommend that the Commission find that the Interconnection Agreement need not address transit traffic. If this recommendation is not accepted by the Commission, then the Commission should find that SBC Illinois' proposed language to govern transit traffic appropriately addresses the transit issues.

VIII. BILLING ISSUES

SBC Recip Comp Issue 8: What terms and conditions should govern the compensation of traffic that is exchanged without the CPN necessary to rate the traffic?

Q. WHY SHOULD CARRIERS PROVIDE CPN INFORMATION WITH THEIR INTERCARRIER TRAFFIC? (INTERCARRIER COMPENSATION ISSUE 8)

A. Most calls that the Parties deliver to each other under this interconnection agreement will include Calling Party Number ("CPN") information that will allow the receiving carrier to determine whether the call is Section 251(b)(5) traffic (and subject to reciprocal compensation) or not (and therefore subject to appropriate access charges, or, where appropriate, bill and keep). The Parties recognize, however, that they will probably deliver some traffic to each other that does not contain CPN. Intercarrier Compensation language [MCIm sections 13.1.1 through 13.3 and SBC Illinois 3.4] addresses how the Parties will compensate each other for such traffic. The Parties agree on the treatment of such traffic so long as it is less than 10% of the traffic that one carrier delivers to the other – it will be billed on a Percent Local Usage ("PLU") basis, as I describe below. The disagreement concerns *excessive* levels traffic that either carrier delivers to the other without CPN, *i.e.*, traffic constituting 10% or more of the traffic delivered by that carrier.

Recognizing that virtually all traffic is capable of carrying CPN, SBC Illinois' proposed language in Appendix Compensation allows a Party one month to correct a condition where it is sending excessive levels of traffic without CPN. If the Party fails to correct the situation after one month, that Party is charged terminating access rates for the excess traffic it delivers without CPN. In contrast, MCIm proposes language that would continue the PLU treatment for the excessive traffic without CPN during an open-ended exchange of data and correction period. Whereas SBC Illinois provides a one-month timeframe to correct the situation, MCIm would not impose any timeframe at all. In doing so, MCIm's proposal provides no incentive for the offending Party to cure the problem and resolve the compensation dispute. MCIm's language simply masks the problem by 'allowing' the carriers to audit one another every six months instead of correcting the problem. This type of remedy is costly, time consuming and a band-aid approach at best.

Q. PLEASE DESCRIBE IN MORE DETAIL HOW THE PARTIES TREAT TRAFFIC PASSED WITHOUT CPN WHEN SUCH TRAFFIC DOES NOT EXCEED 10% OF THE TOTAL AMOUNT EXCHANGED.

A. MCIM and SBC Illinois agree that there will likely be some small amount of traffic that is passed between their networks without CPN. CPN is a standard part of an SS7 signaling message, and the vast majority of intercarrier traffic contains CPN information. However, there are a few circumstances where a call may not contain CPN, such as when the call is originated off the SS7 network (via a rural multi-frequency network, for example). When CPN is lacking, the carrier to which the traffic is delivered cannot determine (at least in the normal course) where the traffic originated and, therefore, whether the call is Section 251(b)(5) traffic subject to reciprocal compensation.

The Parties also agree that when 90% or more of the traffic that either carrier delivers to the other contains CPN, the traffic without CPN—which has to be billed as local or intraLATA toll but cannot be identified as either one without the CPN—will be billed as local or intraLATA toll in direct proportion to the PLU (percent local usage) factor calculated in a manner agreed upon by the parties.

Q. WHAT IS PLU AND WHY WOULD IT BE USED?

A. When local and toll traffic are combined on the same trunk group and are to be compensated at different rates, a PLU factor is sometimes used to bill for traffic on the trunk group that cannot be identified as local or toll. The PLU factor is calculated by examining traffic that can be identified as local or intraLATA toll and dividing the local minutes delivered for termination by the total minutes terminated. The result is a ratio of the percent of the traffic that is local traffic ("PLU"). This ratio is then applied to the traffic that cannot be identified as local or intraLATA toll. For example, if almost all of the traffic on a trunk group can be identified as local or intraLATA toll based on CPN and a study shows that 74% of the identifiable traffic is local, 74% is the PLU, and the unidentifiable traffic is treated as 74% local and 26% intraLATA toll.

Q. WHAT IS THE BASIS FOR THE TEN PERCENT THRESHOLD PROPOSED BY SBC ILLINOIS?

A. As long as no one is trying to game the system by intentionally stripping CPN from intraLATA toll calls that originate on its network, the percentage of traffic that does not contain CPN will rarely exceed 10%. Thus, SBC Illinois' proposed 10% threshold serves its intended purpose—to discourage arbitrage—while having little if any effect in the normal course of business.

Due to the make up of today's telephone network signaling systems (SS7), the volume of unidentified traffic should be small. The vast majority of all carriers' traffic is technically capable of passing CPN information. The minimal unidentified amount reflects occasional software errors where CPN is not generated at call origination.

Q. WHAT IS SBC ILLINOIS' CONCERN RELATIVE TO UTILIZING PLU FOR EXCESSIVE UNIDENTIFIED TRAFFIC?

A. MCIm proposes that excessive unidentified traffic be compensated based on the PLU factor regardless of the volume. MCIM further proposes that the Parties exchange data on an occasional basis to determine a proxy PLU percentage. While this may sound reasonable, it fails to address two important concerns: 1) traffic deliberately passed without CPN; and 2) traffic passed without CPN by a CLEC lacking motivation to rectify the problem. With respect to the first concern, if all unidentified traffic were billed using PLU, some carriers would have an incentive not to pass CPN information on calls that originate on their networks, even though the information is available. By "stripping" the CPN from their intraLATA toll calls, such carriers would be billed for those calls based on the proxy PLU. This would create an arbitrage opportunity by which carriers could game the compensation regime by paying reciprocal compensation on their intraLATA toll calls instead of the higher access rates that should apply. To reduce the opportunity for arbitrage, PLU should be used only for the relatively modest volume of traffic (less than 10%) for which it is reasonable to anticipate that CPN is actually unavailable. To allow for a PLU factor to apply for unidentified traffic above a reasonable amount (10%) invites arbitrage opportunities and incentives for carriers to pass CPN on all non-toll calls, and not pass *any* CPN on toll calls, thereby paying for all traffic at the "proxy PLU of 100%".

And second, MCIM's language continues the data audit process indefinitely, during which time the PLU factor established for traffic with CPN would apply to excessive unidentified traffic. Faced with an uncooperative CLEC, SBC Illinois' only possible recourse would be dispute resolution. Yet MCIM's language has no provision for dispute resolution, and there is no indication as to when it could be invoked. The Parties would simply continue to utilize the established PLU factor indefinitely.

SBC Recip Comp Issue 7a: Should CPN be sent with all categories of traffic, including Section 251(b)(5) Traffic, IntraLATA Toll Traffic, Switched Access Traffic, and wireless traffic?

Q. SHOULD CPN BE SENT WITH ALL CATEGORIES OF TRAFFIC, INCLUDING SECTION 251(B)(5) TRAFFIC, INTRALATA TOLL TRAFFIC, SWITCHED ACCESS TRAFFIC, AND WIRELESS TRAFFIC? (INTERCARRIER COMPENSATION – SBC ISSUE 7a)

A. Yes, CPN should be sent on all types of traffic contemplated under this Agreement. Today, CPN exists for all traffic types, and in order to accurately jurisdictionalize, rate and bill intercarrier traffic, all calls must include CPN where SS7 connections are available. To only require CPN on certain types of traffic would defeat the purpose of requiring it on *any* traffic. Such a contractual loophole could lead to potential arbitrage opportunities by allowing some traffic to be mis-jurisdictionalized. As standard telephone industry practice already requires carriers to pass along CPN with calls, to specify the specific traffic types within the contract is reasonable in order to ensure contractual certainty and conformance with "standard practice".

IX. MISCELLANEOUS COMPENSATION ISSUES

SBC Recip Comp Issue 24: Is it appropriate to include a specific change in law provision to address the FCC's NPRM on Intercarrier Compensation?

Q. IS IT APPROPRIATE TO INCLUDE A SPECIFIC CHANGE IN LAW PROVISION TO ADDRESS THE FCC'S NOTICE OF PROPOSED RULEMAKING (NPRM) ON INTERCARRIER COMPENSATION? (INTERCARRIER COMPENSATION- ISSUE 24)

A. At the same time that the FCC issued its ISP Remand Order (01-131), it also issued a Notice of Proposed Rulemaking ("NPRM") to address intercarrier compensation on a more general basis.[26] The FCC recognized that current market distortions in the intercarrier compensation regime would not be completely addressed within the ISP Remand Order regarding the treatment of ISP-Bound Traffic:

> We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the *Unified Intercarrier Compensation NPRM*, released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the *NPRM* initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep." The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion.[27]

In reality, then, the FCC's NPRM is a continuation of the FCC's ISP Remand Order. It will provide long-term guidance as to the treatment of intercarrier traffic in addition to the interim remedies offered in the ISP Remand Order.

> Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding.[28]

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[26] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking (rel. April 27, 2001).

[27] FCC ISP Remand Order, ¶ 2. [footnotes omitted]

[28] FCC ISP Remand Order ¶ 7.

Q. SHOULD THE SUCCESSOR AGREEMENT CONTAIN PROVISIONS ACKNOWLEDGING THE FCC'S NPRM, INCLUDING LANGUAGE ADDRESSING HOW TO IMPLEMENT ANY RESULTING CHANGES?

A. Yes. The FCC clearly acknowledged within the ISP Remand Order that the compensation mechanism contained in the Order was meant to be interim, with more direction to follow as a result of the NPRM. The FCC clearly intends to further review and potentially revise intercarrier compensation. The parties should include contractual terms to ensure a smooth transition to whatever changes the FCC orders. By acknowledging that a change of law event is imminent upon release of the FCC's pending intercarrier compensation order, SBC Illinois and MCIm can continue to operate with contractual certainty as to when and how that order will be implemented.

Q. CAN SBC ILLINOIS RELY UPON OTHER GENERAL CHANGE OF LAW PROVISIONS CONTAINED WITHIN THE CONTRACT IN ORDER TO IMPLEMENT ANY FCC CHANGES THAT RESULT FROM THE NPRM?

A. Because the FCC specifically expressed its imminent intent to further review and revise the intercarrier compensation regime, it is only reasonable to acknowledge that fact and to provide for an efficient transition to whatever new compensation regime is ordered.

SBC Recip Comp Issue 2: When should the Parties' obligation to pay Intercarrier Compensation to each other commence?

Q. WHEN SHOULD THE PARTIES BEGIN TO PAY EACH OTHER COMPENSATION FOR INTERCARRIER TRAFFIC? (INTERCARRIER COMPENSATION - ISSUE 2)

A. The parties should begin paying each other compensation for intercarrier traffic on an agreed upon date. That date should be the day the parties agree the network is complete and ready to handle traffic of all pertinent types. This includes traffic types other than Section 251(b)(5) and ISP-Bound traffic, such as 911 traffic and traffic routed over High Volume Call-In ("Choke") trunks for purposes of taking large volumes of calls for high-volume bursts of traffic such as radio station contests. Even though intercarrier compensation arrangements may not apply on all different traffic types, such as Information Services traffic, the network must be considered "complete" by both parties prior to exchanging and compensating for "live" traffic. Before passing this live traffic, carriers often send test calls over various portions of the network to ensure that the network is routing and completing calls in an appropriate manner. SBC Illinois' contract language clarifies that under no circumstances is this test traffic—no matter the volume of it—to be compensated under intercarrier compensation provisions in the contract.

SBC Recip Comp Issue 21: Is it appropriate to include terms and conditions for "Special Access" as a dedicated private line service in the Reciprocal Compensation Appendix?

Q. SHOULD CONTRACT LANGUAGE BE INCORPORATED IN APPENDIX RECIPROCAL COMPENSATION TO ADDRESS THE COMPENSATION OF SPECIAL ACCESS? (INTERCARRIER COMPENSATION-SBC-ISSUE 21)

A. No. MCIm has proposed that Section 11.12 be included in Appendix Reciprocal Compensation under the Meet Point Billing section. This is inappropriate for two reasons. Appendix Reciprocal Compensation contains terms for the treatment of intercarrier *traffic,* not facilities; and Special Access has nothing to do with intercarrier traffic.

Special Access such as T1, DS1, DS3 provide a dedicated private line service that provides a point-to-point connection between two parties, not using the Public Switched Telephone Network. Intercarrier Compensation does not apply because both end points of that special access circuit are on one Party's network – not *between* two Parties' networks. Traffic which traverses that private line service is not intercarrier traffic, and therefore its inclusion in this intercarrier Appendix is inappropriate. If MCIm seeks to purchase special access from SBC Illinois, there are other, more appropriate references from which to determine the proper terms, conditions and pricing of that service.

X. INTERCONNECTION ISSUES

SBC NIM Issue 20: Except when the CLEC selects an expensive form of interconnection, should each party be financially responsible for the facilities on its side of the POI?

Q. WHAT IS THE DISPUTE IN NIM/ITR ISSUE 20?

A. The question presented is who will pay for the facilities that connect the networks of the parties? SBC Illinois proposes that the parties continue to follow the traditional approach in which each party bears the costs of providing its facilities to the designated point of interconnection. MCI, on the other hand, proposes a new approach it calls a "Relative Use Factor".

Q. PLEASE DESCRIBE MCIM'S PROPOSAL

A. MCIm proposes that the Parties use a "Relative Use Factor" (RUF) to apportion the costs associated with interconnection facilities that they use for the exchange of traffic. While MCI's proposal is not at all clear, it appears that one party would provide the facility that connects the networks, and that the other party would pay a portion of the "cost" based on that party's proportionate use of that facility. As an example, if SBC Illinois originates 900 minutes of Section 251(b)(5) and ISP-Bound traffic over that facility to MCIm, and MCIm originates 100 minutes of the same types of traffic to SBC Illinois, then under the terms of MCIm's proposed contract language, SBC Illinois would be liable for 90% of the costs associated with that facility.

Q. WHAT IS WRONG WITH THIS PROPOSAL?

A. First and foremost, MCIm's proposed language for a RUF in Section 8.6.1 is inconsistent with MCIm's proposed language in Section 3.2, which states *"Each Party is financially responsible for providing all of the facilities and engineering on its respective side of the POI and may utilize any method of Interconnection described in this Appendix."* While SBC Illinois disputes the language under Section 3.2 in a separate issue, the language illustrates MCIms inconsistent and unclear approach to financial obligations of interconnection facilities.

Second, MCIm's proposed language for relative use factor contains a vague cost standard in that it provides no rate or rate structure. MCIm's proposal does not clarify what rate or rates would apply, nor does MCIm support the rates as either cost-based or even reasonable. In summary, MCIm's proposal is a vague and contradictory provision of which the Commission should deny.

Q. IS THIS TYPE OF ARRANGEMENT DONE TODAY WITH CLECS?

A. No. There are other compensation mechanisms in place that are used to assign financial responsibility for each Party's portion of the network. Currently, each Party is financially responsible for the facilities on their respective side of the POI except when a CLEC selects an expensive form of interconnection like Single Point of Interconnection. Furthermore, neither the Act nor the FCC Order provides for the use of a Relative Use Factor to apportion financial responsibilities of interconnection or transport facilities for a Party's facilities to get to the POI.

Q. IS THERE A POTENTIAL FOR AN UNFAIR OUTCOME UNDER MCI'S PROPOSAL?

A. The approval of such a vague interconnection provision could have far-reaching implications for how carriers would interconnect in the future. If MCIm's proposal is adopted, the provision could be used by CLECs to avoid capital investment in establishing physical facilities to link networks together. Furthermore, such a provision may influence traffic patterns of CLECs such that they seek to terminate more traffic than they originate in order to be paid a greater relative use factor. This type of market distortion would be similar to the recently-addressed ISP Remand Order's treatment of ISP bound traffic to reduce CLECs' reliance on reciprocal compensation payments.

Q. IS IT CLEAR THAT MCI'S PROPOSAL ONLY APPLIES TO INTERCONNECTION FACILITIES?

A. No, in fact there is a great deal of ambiguity on this point. On the one hand, MCIs' language appears to apply only to interconnection facilities (and not to facilities on SBC Illinois' side of the POI) because MCI elsewhere objects to paying anything for transport beyond the POI. (See MCI's proposal for NIM/ITR section 3.3). On the other hand, MCI's language might apply to the facilities on SBC Illinois' side of the POI because MCI elsewhere says that each party is financially responsible for all facilities on its side of the POI – a proposition that is fundamentally inconsistent with its RUF proposal. (See MCI's proposal for NIM/ITR section 3.2).

It is also not clear whether the proposal applies to trunks (which Mr. Albright explains are the software and electronics within a carrier's network) or to facilities (which Mr. Albright explains are the physical copper and fiber pipes that run in the ground). MCI's term is "trunk facility", so it is not clear which costs they propose to share.

Q. YOU MENTIONED THAT THERE ARE OTHER MECHANISMS CURRENTLY IN PLACE TO ALLOW FOR COST RECOVERY ASSOCIATED WITH ONE PARTY USING ANOTHER PARTY'S NETWORK TO EXCHANGE TRAFFIC. WHAT IS THAT MECHANISM?

A. Reciprocal compensation is the current and appropriate mechanism for a carrier to recover the costs associated with the use of another party's network for the exchange of Section 251(b)(5) Traffic and ISP-Bound Traffic. Reciprocal compensation recovers the costs associated with the *transport and termination* of Section 251(b)(5) and ISP-Bound traffic. So by attempting to apply a RUF to the facilities between SBC Illinois and MCIm, MCIm is simply trying to gain a double-recovery of the costs associated with deploying its network. First, MCIm recovers costs by charging a RUF based upon traffic imbalances due to ISP-Bound traffic, and second, it charges reciprocal compensation rates that separately recover the transport and termination of traffic from SBC Illinois to MCIm. Not only would MCIm achieve a double recovery, but SBC Illinois would pay twice for the same terminations.

Q. ARE THERE OTHER CONCERNS WITH THE MCIM PROPOSAL?

A. Yes. Even if the use of a Relative Use Factor was a reasonable approach to cost-recovery (and it is not), MCIm's proposal fails to specify how it would be implemented or executed. MCIm has not proposed specific applicable rates; it has not explained how trunks would relate to the trunk facilities; and it has not proposed how this information would be captured and used for purposes of applying a RUF. In short, the implementation of a RUF for interconnection facilities would disrupt the current mechanisms in place to allow carriers to recover the costs associated with intercarrier call termination. Furthermore, the implementation of MCIm's proposal would undoubtedly lead to further disputes over the proper method for calculating and applying a RUF to an interconnection facility, as well as the applicable rate to charge.

Q. HOW SHOULD THE COMMISSION RSOLVE THIS ISSUE?

A. The Commission should reject MCI's proposed language for sections 8.6 and should instead adopt SBC Illinois' language.

NIM Issue 11: Should SBC ILLINOIS's definition of "Section 251(b)(5) Traffic" be included in the Appendix NIM of the Agreement?

Q. SHOULD THE NIM/ITR APPENDIX INCLUDE A DEFINITION FOR "SECTION 251(B)(5) TRAFFIC"?

A. Yes. Obviously, the Agreement should contain definitions for all terms used in the document whose meaning is not readily apparent from normal usage. The term "Section 251(B)(5) Traffic" is such a term. The NIM/ITR Appendix provides the terms and conditions for establishing interconnection facilities and trunks groups between the parties. Some of those provisions pertain only to specific types of traffic classifications, one of which is specifically intended to be Section 251(b)(5) Traffic. SBC Illinois has not made up this classification of traffic. Rather, it has been used by the FCC in its ISP Remand Order**,** and pursuant to that order certain compensation obligations attach to this type of traffic. As I described earlier, the term "Section 251(b)(5) Traffic" best defines a specific category of traffic that traditionally has been akin to the previous "local traffic" terminology. The parties deal with this type of traffic in the Agreement – in both the

NIM/ITR and the Reciprocal Compensation Appendices – so it is only common sense to provide for a definition of the term.

NIM Issue 12: Should SBC ILLINOIS's definition of "Section 251 (b)(5)/IntraLATA" traffic be included in Appendix NIM of the Agreement?

Q. SHOULD THE NIM/ITR APPENDIX INCLUDE A DEFINITION FOR "SECTION 251(B)(5)/INTRALATA TRAFFIC"?

A. Yes. As I describe above, it is important to incorporate appropriate definitions for terms used in the Agreement. The definition of Section 251(b)(5)/IntraLATA is an abbreviated form of describing the four types of traffic listed in Section 1.17; (i) Section 251(b)(5) Traffic, (ii) ISP-Bound Traffic, (iii) IntraLATA toll Traffic originating from an end user obtaining local dial tone from MCIm where MCIm is both the Section 251(b)(5) Traffic and IntraLATA toll provider, and/or (iv) IntraLATA Toll Traffic. Each of these traffic types may be delivered over Local Interconnection Trunk Groups. By not defining this term, the aforementioned traffic types would need to be specifically identified each time it was appropriate and could inadvertently add confusion to the contract language or render the language so complex that the provision would become undecipherable. SBC Illinois simply proposes that these terms all be used under the umbrella definition of "Section 251(b)(5)/ IntraLATA Traffic" for contractual ease and clarity.

NIM Issue 19 b.): Should the agreement include procedures for handling interexchange circuit-switched traffic that is delivered over Local Interconnection Trunk Groups so that the terminating party may receive proper compensation?

NIM Issue 33 b.): Is it appropriate for the Parties to agree on procedures to handle interexchange circuit-switched traffic that is delivered over Local Interconnection Grunk Groups so that the terminating party may receive proper compensation?

Q PLEASE DESCRIBE THE DISPUTE IN NIM/ITR ISSUES 19(B) AND 33(B)

A. This issue concerns the proper treatment of traffic that is mis-routed by a party over the wrong trunks. As Mr. Albright explains, SBC Illinois proposes to preserve the current routing arrangement in which local/intraLATA toll traffic is routed over one set of trunks groups and interLATA traffic is routed over a separate set of trunks groups. The fundamental reason for this arrangement to is enable the parties to properly distinguish local/intraLATA toll traffic (which is subject to one set of termination rates) from access traffic (which is subject to different rates). My testimony is limited to NIM/ITR section 25.2,[29] which deals with the process the parties should follow when access traffic is improperly routed over local trunk groups.[30]

Q. HOW DOES SBC ILLINOIS PROPOSE TO HANDLE THIS SITUATION?

A. In NIM section 25.2 we propose a straightforward process for dealing with this traffic. First, the party to whom the traffic is improperly routed may object by providing written notice to the other party. The parties thereafter agree to work cooperatively to correct the situation by removing the traffic from the local trunks groups. If the party mis-routing the traffic does not fix the problem within sixty (60) days, the parties agree to jointly file some proceeding before the Commission to get resolution of the dispute.

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[29] This same language appears in section 16.2 of the Reciprocal Compensation Appendix

[30] While section 25.2 is part of SBC Illinois' proposal relating to VOIP traffic, the procedures I describe should apply whether or not the Commission approves SBC Illinois' proposal for dealing with VOIP. For that reason, I urge the Commission to adopt section 25.2 even if for some reason it does not adopt all of the remaining language in section 25.

Q. WHY IS THIS PROCEDURE REASONABLE?

A. Because it relies primarily on the parties to identify and resolve in good faith disputes surrounding the mis-routing of traffic. In the event that the parties cannot work out some resolution, then the parties seek the assistance of the Commission.

Q. HOW DOES MCI RESPOND TO THIS PROPOSAL?

A. MCI does not make any response. MCI's position is that all local, intraLATA toll, and interLATA traffic should be routed over a single trunk group, so in MCI's view, there is no need to address what happens when traffic is routed over the wrong trunk group.

Q. HOW SHOULD THE COMMISSION DECIDE THIS ISSUE?

A. I recommend that the Commission adopt SBC Illinois' proposal for the mis-routing of traffic as set forth in our language for NIM/ITR section 25.2 and Reciprocal Compensation 16.2

XI. OTHER ISSUES

UNE Issue 6: Which party's definition of "Qualifying Service" and "Non-Qualifying Service" are in accordance with the FCC's requirements and should be included in this Agreement?

Q. SHOULD "LOCAL" BE REFERENCED AND DEFINED WITHIN APPENDIX UNE? (UNE ISSUE 6)

A. Yes, the term "local" as it is used within Appendix UNE should be referenced and defined as part of SBC Illinois' proposed language addressing the definition of "Qualifying Service".[31] Specifically, local is defined in order to accurately describe the

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[31] My testimony is intended to support the inclusion of the term "local" within this definition; SBC Illinois witness Fuentes Niziolek provides testimony as to the definitions contained within UNE Issue 6 as a whole.

scope of SBC Illinois' operations as they have traditionally existed; that is, as a provider of local Plain Old Telephone Service (POTS) to residential and business customers.

In order to accurately describe SBC Illinois' traditional operations, the term local is used to help characterize those operations. SBC Illinois' Section 3.1.2.2 of Appendix UNE simply refers to a standard definition for how the term 'local' is used in this context. For purposes of retail calling plans, local calls in Illinois are identified as "Band A" and "Band B," *i.e.*, calls to all customers served by COs within 15 miles of the calling parties' CO. By including reference to local in Section 3.1.2.2, SBC Illinois seeks to clarify where a requested Lawful UNE is or is not provided.

Q. DOES THIS END YOUR TESTIMONY?

A. Yes.