BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 04-0469

Direct Testimony of Michael Kirksey
On Behalf of SBC Illinois

SBC Illinois Exhibit 16.0

August 17, 2004

ISSUES
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DIRECT TESTIMONY OF MICHAEL KIRKSEY

ON BEHALF OF SBC ILLINOIS

I. INTRODUCTION AND SUMMARY

Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A. My name is Michael Kirksey. My business address is Three Bell Plaza, 308 South Akard, Room 721, Dallas, Texas 75202. My title is General Manager - Network Regulatory for SBC Communications, Inc.

Q. PLEASE STATE YOUR CURRENT JOB TITLE AND EXPLAIN YOUR DUTIES AND RESPONSIBILITIES.

A. I am responsible for advising and supporting the SBC network organization on regulatory issues, including developing network policies, negotiating interconnection agreements, providing support for teams implementing regulatory mandates, and testifying in regulatory proceedings. I also assist in developing corporate strategy associated with new technologies, including Internet Protocol (IP)-based technologies and services.

Q. CAN YOU PLEASE SUMMARIZE YOUR WORK EXPERIENCE?

A. I have 24 years of experience in the telecommunications industry. I was first employed by Southwestern Bell Telephone Company (SWBT) in July 1980, in the position of Telephone Operator. From 1981 through 1985, I performed construction, rearrangements, and removal of outside plant. Beginning in 1989, I became responsible for the installation and maintenance of analog and digital special access services from
voice grade service up to and including optical transmitters. In May 1992, I was promoted to the position of Manager-Network Maintenance. While in this position, I was responsible for installation and maintenance of special access services, Signaling System 7 (SS7), local switching, tandem switching and power. My duties also included supervision of the central office installation organization with the responsibility of installation of central office equipment to meet customer needs. I was again promoted in April 2000 to the position of Area Manager - Network Regulatory. My current position is General Manager- Network Regulatory.

II. PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony addresses how traffic that relies on Internet Protocol (“IP”) technology should be treated for purposes of intercarrier compensation and traffic routing and trunking arrangements in the parties’ Interconnection Agreement. I will explain why this Commission should adopt SBC Illinois’ proposed contract language and reject MCI’s attempt to lump all such Internet Protocol-based traffic together with local calls. SBC Illinois’ proposals reflect and apply the FCC’s existing rules associated with intercarrier compensation and switched access to such traffic. SBC Illinois recognizes that the FCC is examining potential changes to those rules in the pending proceeding In the matter of IP-enabled Services Notice of Proposed Rulemaking, WC Docket No. 04-36. Until new FCC rules are issued, however, Agreement should clarify rates, terms and conditions for such traffic between the companies.
Q. IS THIS THE DEBATE REGARDING “VOICE OVER INTERNET PROTOCOL” OR “VOIP” THAT HAS BEEN TALKED ABOUT SO MUCH IN THE TRADE PRESS?

A. Yes, many commentators and carriers (including MCI) refer to IP-enabled services generically as “VoIP” services. However, because the term “VoIP” could apply to many different types of technology and traffic, all of which may transmitted over both an IP network and the circuit switched network, SBC Illinois’ proposed contract language does not use the term “VoIP.” Instead, SBC Illinois’ proposed language classifies calls (and determines compensation) based on the call path (e.g. PSTN-IP-PSTN or IP-PSTN) consistent with the existing intercarrier compensation regime.

Q. WHAT IS MCI’S PROPOSAL FOR IP TRAFFIC?

A. Basically, MCI proposes that the Agreement treat PSTN-IP-PSTN or IP-PSTN as if it were no different than ordinary dial-up modem calls to an Internet Service Provider. (See MCI’s proposal in section 16 of the Reciprocal Compensation Appendix). In particular, MCI proposes that such traffic be routed over local trunk groups and then somehow be jurisdictionalized to account for percentage of the VOIP traffic. SBC witness Albright addresses the problems with combining long distance traffic on the local trunk group (NIM Issue 19). In terms of intercarrier compensation, MCI’s proposal for Reciprocal Compensation section 16 would mean that PSTN-IP-PSTN or IP-PSTN traffic would be subject to ordinary local reciprocal compensation, rather than the higher rates for

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1 PSTN stands for “Public Switched Telephone Network.”
originating and/or terminating switched access. To address that obvious flaw, MCI proposes that “percentages” somehow be determined for IP-based usage, even if all the traffic is lumped together in mass on a single local interconnection trunk group. MCI’s reciprocal compensation proposal is untested, untried, and likely to generate post-Agreement disputes at the ICC.

In addition, MCI proposes striking all references to VoIP in the Invoicing Appendix (regarding general intercarrier billing and payment terms) and in the Network Interconnection Methods Appendix, even though these same important IP traffic concerns present themselves in those topics as well.

Q. WHY DO YOU THINK IT IS SO IMPORTANT FOR THE COMMISSION TO ADDRESS THESE ISSUES IN THIS PROCEEDING?

According to industry sources, carriers such as AT&T, MCI, Sprint and Comcast have all developed and are marketing their own VoIP services. In addition, there are a raft of smaller service providers whose services utilize IP technology, such as Vonage, 8X8, and Free World Dialup. As carriers move to this new technology, it is critical that all parties understand and agree upon the trunking and compensation mechanisms for these calls so that carriers cannot use IP-enabled services to engage in access arbitrage and avoid paying lawful compensation for this traffic.

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2 MCI Witness Ricca, Direct Testimony lines 274-318.
Q. CAN YOU PROVIDE SOME EXAMPLES OF WHY THE AGREEMENT SHOULD ADDRESS THE GROWING CONCERN WITH VOIP?

A. Yes. The Agreement will be in effect for at least three years. Absent an affirmative ruling by the FCC, the parties could easily end up in dispute over provisions for traffic that relies on Internet Protocol technology. According to published reports, within three years there could be nearly 13 million subscribers receiving services that rely on Internet Protocol technology. MCI is certainly part of this trend, because its public websites openly tout the coming age of IP Telephony.

III. DISCUSSION

A. NIM ISSUE 33 AND RECIPROCAL COMPENSATION ISSUE 23

Q. WHAT IS THE DISPUTE ON THESE ISSUES?

A. SBC Illinois proposes the same language for NIM (section 25) and Reciprocal Compensation (section 16) that describes how traffic— including IP traffic— should be handled for trunking and compensation purposes. MCI opposes all of this language.

Q. WHAT IS THE TYPICAL ROUTING TREATMENT AND COMPENSATION FOR TRADITIONAL INTEREXCHANGE TRAFFIC?

A. A typical interexchange call begins over a local exchange carrier’s circuit-switched network and is delivered to an interexchange carrier, who transports the traffic across its network in circuit-switched format and delivers the traffic to a different exchange for

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3 The Yankee Group Report, June 2004
termination over a local exchange carrier’s circuit-switched network. If the points of origination and termination are in the same state, the call is subject to intrastate access charges. If the points of origination and termination are in different states, the call is subject to interstate access charges.

Q. WHAT IS PSTN-IP-PSTN TRAFFIC OR IP-IN-THE-MIDDLE TRAFFIC?

A. PSTN-IP-PSTN Traffic (also known as “IP-in-the-middle” Traffic) is traffic that originates over a local exchange carrier’s circuit-switched network and is delivered to an interexchange carrier that converts the traffic to IP format, transports that traffic across its network, reconverts the traffic to the circuit-switched format, and delivers the traffic to a different exchange for termination over a local exchange carrier’s circuit-switched network. This use of IP technology is entirely transparent to the end user as it does not make the interexchange service any more functional or flexible. Indeed, the interexchange services that use IP in the transport component of the call are marketed, sold, and priced no differently than interexchange services that do not employ IP technology.

Q. WHAT IS THE PROPER TREATMENT AND COMPENSATION FOR PSTN-IP-PSTN TRAFFIC?

A. Traffic that originates and terminates on the PSTN and that is routed or transported in whole or part using IP technology is a telecommunications service subject to applicable intrastate (and interstate) switched access charges. The FCC has, in fact, conclusively resolved the debate over the application of switched access charges to PSTN-IP-PSTN
traffic. In its Access Avoidance Order,\(^4\) the FCC concluded that PSTN-IP-PSTN services are telecommunications services, and that, as a result, interexchange carriers who carry PSTN-IP-PSTN traffic must pay applicable access charges. According to the FCC, access charges are due for “calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN.”\(^5\)

Key to the FCC’s determination was its observation that, in the absence of applying access to this IP-in-the-middle traffic, “carriers would convert to IP networks merely to take advantage of the cost advantage afforded to voice traffic that is converted, no matter how briefly, to IP and exempted from access charges.”\(^6\) As the FCC stated, “IP technology should be deployed based on its potential to create new services and network efficiencies, not solely as a means to avoid paying access charges.”\(^7\) The FCC further clarified: “[o]ur analysis in this order applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport [and] we are adopting this order to clarify the application of access charges to these specific services to remedy the current situation in which some carriers may be paying access charges for these services while others are not.”\(^8\)

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\(^{4}\) Order, In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephone Services are Exempt from Access Charges, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) (Access Avoidance Order).

\(^{5}\) Access Avoidance Order, ¶19.

\(^{6}\) Access Avoidance Order, ¶18.

\(^{7}\) Access Avoidance Order, ¶18.

\(^{8}\) Access Avoidance Order, ¶18.
Therefore, consistent with the FCC’s Order, this Agreement should explicitly prohibit unlawful access avoidance by including language in the interconnection agreements reflecting the FCC’s determination that tariffed access charges are due on PSTN-IP-PSTN traffic. In practice, this means that if the points of origination and termination for PSTN-IP-PSTN traffic are in the same state, the call is subject to intrastate access charges. If the points of origination and termination for such traffic are in different states, the call is subject to interstate access charges. SBC Illinois’ proposal for NIM section 25 and Reciprocal Compensation section 16 does just that.

Q. **HOW SHOULD PSTN-IP-PSTN TRAFFIC BE ROUTED?**

A. Interexchange Circuit-switched traffic including PSTN-IP-PSTN traffic should be routed over Feature Group trunk groups. Carriers should not be allowed to evade tariffed switched access charges by routing such traffic over local interconnection trunk groups, which are not intended for access traffic and do not permit SBC Illinois to bill access charges to them. If a carrier is allowed to avoid paying the proper compensation for the use of SBC Illinois’ local exchange carrier network, they would not be paying the same rates as carriers who do not inappropriately attempt to avoid access charges. Such access avoidance also would potentially threaten the ability of SBC Illinois to offer affordable and universally available telephone service, “a policy goal that remains intertwined with the interstate and intrastate access charge regime.”

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8 *Access Avoidance Order*, ¶19.
Q. **WHAT IS IP-PSTN TRAFFIC?**

A. IP-PSTN Traffic is traffic that originates from the end user’s premises in IP format and is transmitted in IP format to the switch of its service provider. The service provider then converts that traffic to circuit-switched format and delivers that traffic (either by itself or by partnering with other service providers) to a local exchange carrier on the PSTN for termination over that carrier’s circuit-switched network. Stated another way, one end of the call is on an IP network and the other end of the call is on the PSTN.

Q. **WHAT IS THE PROPER TREATMENT AND COMPENSATION FOR IP-PSTN TRAFFIC?**

A. Under existing FCC precedent and rules, providers of IP-PSTN services, like all users of access services, are subject to the obligation to pay intrastate and interstate access charges when they send traffic to the PSTN, unless specifically exempted from doing so. In its comments on the FCC’s *IP-Enabled Services NPRM*, SBC has emphasized that IP-PSTN traffic is jurisdictionally interstate because it offers users the ability to communicate with other users and information services dispersed across the internet.\(^9\) As the FCC has

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explained, internet communications “interact with a global network of connected
computers,” and thus “involve computers in multiple locations, often across state and
national boundaries.” Accordingly, IP-PSTN traffic should be subject exclusively to
interstate access charges. Until such time as the FCC rules on this matter, however, this
Commission should find that SBC Illinois should be compensated for terminating
interexchange IP-PSTN traffic at the applicable “jurisdictionalized” access rate (interstate
or intrastate) for such traffic in accordance with SBC Illinois’ existing switched access
tariffs. To effectuate such compensation for IP-PSTN traffic, which may be
geographically indeterminate on the IP side of a call, this Commission should find that
SBC Illinois should apply the provisions in its existing tariffs that contain various
methods to deal with the lack of geographically accurate endpoint information, such as
the use of calling party number (“CPN”) information together with other data. Thus, for
example, to the extent the CPN associated with a particular IP-PSTN call identifies that
call as an intrastate interexchange call, intrastate access charges would apply -- unless
and until the FCC rules otherwise in its pending proceeding. By making the findings
discussed above, this Commission will preserve the regulatory status quo for intercarrier
compensation until the FCC completes its IP-Enabled Services NPRM.

Q. HOW SHOULD “INTEREXCHANGE” IP-PSTN TRAFFIC BE ROUTED?

A. Just as interexchange PSTN-IP-PSTN traffic should be routed over Feature Group trunk
groups, so should “interexchange” IP-PSTN traffic. MCI should not be allowed to evade

10 ISP Remand Order at 9178 ¶ 58.
tariffed switched access charges by routing such interexchange traffic over local interconnection trunk groups, which are not intended for access traffic and do not permit SBC Illinois to bill access charges to MCI.

Q. SHOULD THE PARTIES ESTABLISH PROCEDURES FOR HANDLING CERTAIN SWITCHED ACCESS TRAFFIC THAT IS IMPROPERLY DELIVERED OVER LOCAL INTERCONNECTION TRUNK GROUPS SO THAT THE TERMINATING PARTY WILL RECEIVE PROPER COMPENSATION?

A. Yes. As discussed by SBC Illinois witness Scott McPhee, SBC Illinois has proposed contract language that provides that the parties will establish procedures for handling improperly routed interexchange switched access traffic delivered to either party over local interconnection trunk groups by a third party when the traffic is destined to the other party.

Q. HOW DO YOU RESPOND TO MCI WITNESS PRICE’S CONTENTION (LINES 944-957) THAT THE COMMISSION SHOULD NOT ADDRESS VOIP ISSUES IN THIS PROCEEDING?

A. SBC Illinois’ proposed language clarifies the fact that, as it stands today, VoIP traffic is subject to intrastate or interstate switched access charges as supported by the section 69.5(b) of the FCC’s rules. The current interconnection agreement is silent on the matter.

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11 Id. At 9178 ¶ 58 n.115.
and SBC Illinois’ intent is to make all parties aware of how we intend to treat VoIP traffic. By including this language, future disputes on the treatment of VoIP traffic may be avoided.

Q. HOW DO YOU RESPOND TO MCI WITNESS RICCA’S FALL BACK ARGUMENT (LINES 274-318) THAT VOIP TRAFFIC SHOULD BE TREATED NO DIFFERENTLY THAN ISP-BOUND INTERNET TRAFFIC FOR COMPENSATION PURPOSES?

A. Mr. Ricca makes the assumption that VoIP traffic should, for compensation purposes, be treated the same as a call to an ISP. Such assumption is inappropriate given the impending decision at the FCC. At this time, VoIP traffic should not be treated as ISP-bound traffic for compensation purposes. Until the FCC rules otherwise, VoIP traffic should follow the current interstate and intrastate jurisdictional convention of other traffic.

Q. HOW DO YOU RESPOND TO MCI WITNESS RICCA’S ARGUMENT (LINES 319-338) THAT VOIP TRAFFIC SHOULD BE ROUTED OVER LOCAL TRUNKS AND IDENTIFIED BY MEANS OF A USAGE FACTOR PROVIDED BY MCI?

A. VoIP traffic should be routed over the proper trunk groups based on the appropriate jurisdiction of the traffic. Interstate and intrastate VoIP traffic is subject to access charges and should be routed over Feature Group trunks. Routing all VoIP traffic improperly over local trunks and utilizing a usage factor would result in revenue losses
for SBC Illinois by bypassing the access trunk groups. It would also create serious
disputes as SBC Illinois attempts to identify and bill for improperly routed access traffic.

Q. WHAT DO YOU RECOMMEND THE COMMISSION DO ON VOIP TRAFFIC
IN THIS PROCEEDING?

A. I recommend that the Commission take the proactive step of implementing mechanisms
to preserve the status quo pending the FCC resolution of some fundamental issues
surrounding VOIP. SBC Illinois’ language does that and should be adopted.

B. INVOICING ISSUE 7

Q: SHOULD THE NEW ICA OPERATE TO RELEASE THE PARTIES FROM
CLAIMS RELATED TO THE INCORRECT ROUTING OF SWITCHED
ACCESS TRAFFIC AND/OR THE STRIPPING OR MODIFYING OF CPN ON
SWITCHED ACCESS CALLS?

A. No. MCI has proposed contract language stating that neither party may “backbill” the
other party for more than a 12 month period. SBC Illinois does not agree to a
“backbilling” or any other type of contractual limitation on its ability to recover for
outstanding claims related to the misrouting of traffic and stripping or modifying of
calling party information (“CPN”). SBC Illinois proposes language designed to protect
the rights of both parties pending the FCC’s determination of how VoIP traffic should be
compensated. While SBC Illinois has agreed to billing and liability limitations for other
purposes, it proposes language specifically excepting from those limitations any claims
related to: (i) interexchange traffic that terminates on a Party’s circuit switch (including traffic routed or transported in whole or in part using IP) that is not delivered to the terminating Party over Feature Group D access trunks; (ii) any and all information services traffic or traffic either Party claims is Voice over Internet Protocol (“VoIP”), (iii) any and all traffic delivered to the terminating Party in which the CPN has been stripped, altered, modified, added, deleted, changed, or incorrectly assigned, (iv) any and all third party claims, (v) claims for fraud and/or misrepresentation, and (vi) any claims for indemnification related to the traffic described in subsections (i) through (v).

In the situations listed, if traffic is mis-routed and one party suffers a loss as a result, the Agreement should not prevent the wronged party from pursuing recovery before the Commission or otherwise. Put another way, the Agreement should not create a “safe harbor” for the wrongdoer. To my knowledge, there is nothing in the Telecommunications Act, nor any FCC or state Commission order, that requires SBC Illinois to waive its potential claims against MCI or any other party, and, therefore, the Commission should order the inclusion of SBC Illinois’ language.

IV. CONCLUSION

Q. HOW SHOULD THE COMMISSION DECIDE THE ISSUES DISCUSSED IN YOUR TESTIMONY?

A. To ensure the consistent application of switched access rules and regulations to all carriers and to interexchange traffic, and to ensure that SBC Illinois and its customers are protected from unlawful access charge avoidance schemes that could jeopardize the
affordability of local rates, the Commission should maintain the regulatory status quo by approving SBC Illinois’ proposed contract language. SBC Illinois’ proposed language provides that all interexchange switched access traffic, including interexchange PSTN-IP-PSTN traffic and interexchange IP-PSTN traffic, is subject to intrastate (and interstate) switched access and delivered over Feature Group access trunks to ensure proper billing. Furthermore, the Commission should adopt SBC Illinois’ proposed language providing that the parties will establish procedures to move specific interexchange traffic from local interconnection trunks to FG-B or FG-D trunks to ensure the appropriate rate application to that traffic. It should also adopt SBC Illinois’ proposed language that requires MCI to use local interconnection trunks for local traffic and switched access trunks for toll traffic not covered by the FCC’s limited exceptions. Finally, the Commission should side with SBC Illinois by declining to adopt language that would contractually limit SBC Illinois’ ability to recover for outstanding claims related to the misrouting of traffic and stripping or modifying of CPN.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.