UNE Issue 24

What processes should apply to commingling requests?

MCI's Position

The processes delineated in MCI's proposed language should apply. As noted above in the discussion of UNE Issue 23, SBC has long resisted carriers' attempts to make more efficient use of their leased facilities. The issue here is one of processes to be used in accommodating MCI's commingling requests. While MCI agrees that there may be some commingled arrangements that MCI may want to order that SBC might be unable to anticipate, SBC should not be permitted to use the potential of uncertainty as an excuse to either block MCI's lawful orders or fail to provision them in a timely manner. MCI only asks that in the absence of final ordering processes, SBC accept MCI's orders via electronic spreadsheet and provision those orders within a reasonable time (14 days).

MCI agrees in part and disagrees in part with the recommendation of Staff witness Dr. Zolnierek on this issue, as discussed above in UNE Issue 20. MCI respectfully asks that the Commission adopt its proposed language on this issue.

UNE Issue 25

What should the scope of commingling obligations be?

MCI's Position

The scope of commingling obligations should be that delineated in MCI's proposed language. MCI's proposed language should be accepted because that language clearly specifies, in accordance with FCC regulations, the scope of SBC's obligations to provide commingling (specifically the obligations to commingle UNEs with services provided not only by SBC but also by third parties or by MCI itself). Contrary to SBC's assertion, MCI's proposal would not create disputes and is, in fact, necessary to avoid such disputes.

In Dr. Zolnierek's discussion of issue UNE 25, he states that his recommendation to reject MCI's proposed language in section 7.9 is made:

> … in part, with the belief and understanding that it will have little practical significance.

He then goes on to state at lines 1204 through 1208 that, depending on how the ICC resolves other questions, "then MCI's language should be accepted." For all the reasons set out UNE Issue 2, MCI again urges the ALJs to adopt MCI's recommended language for section 7.11 of Appendix UNE.

UNE Issue 27

Which Party's definition of a "Loop" should be included in the Agreement?

MCI's Position

MCI's definition should be included in the Agreement. SBC has proposed a basic definition that tracks 47 C.F.R. § 51.319(a), whereas MCI's definition attempts to capture both the basic definition of a local loop as well as the nuances of this definition discussed in the FCC's rules in places other than § 51.319(a). MCI's language should be accepted, because it provides a more robust definition that captures all the relevant attributes of the local loop.

MCI's definition recognizes that dark fiber facilities can also be considered a local loop, *see* 47 C.F.R. § 51.319(a)(6), as can DS1 and DS3 facilities, *see* 47 C.F.R. §§ 51.319(a)(1)(B)(4), (a)(1)(B)(5). Likewise, MCI's definition recognizes that the loop in some cases extends beyond the boundary of a customer's premises into the premises itself, and that in such cases, the end point of the loop is where SBC no longer maintains control of the facility. *See* 47 C.F.R. § 51.319(b)(2). By capturing these additional nuances of the local loop, MCI's definition is more accurate and comprehensive. And it does not impose any obligations on SBC other than those included in the FCC's rules. MCI's definition is entirely based on relevant FCC rules, and merely captures the various attributes of the local loop described in portions of the FCC's rules other than 47 C.F.R. § 51.319(a).

MCI respectfully requests that the Commission adopt MCI's proposed definition of local loop and include that definition in Section 9.1 of the UNE Appendix.

UNE Issue 28

Should SBC Illinois be required to build facilities where they do not exist?

MCI's Position

MCI's position is that when facilities may not be "available," SBC should explore routine network rearrangement or maintenance activities that could render those facilities available for assignment, just as SBC does for services provided to its retail customers. Put another way, MCI's position is that SBC should manage its network in a non-discriminatory fashion, regardless of whether the facility is used by MCI or by SBC's retail customers. By contrast, SBC's position is that where UNE facilities are not "available," MCI must use the lengthy and expensive Bona Fide Request ("BFR") Process to access those elements for purposes of serving customers, and only to the extent that SBC agrees to provide such elements via the BFR process.

The law, however, does not support SBC's position on this issue. Paragraphs 632 through 641 of the Triennial Order describe SBC's obligations related to modifying its network to provide unbundled loops to CLECs upon their request. This portion of the FCC's Order will hopefully defuse a long-running debate between CLECs and SBC

regarding SBC's responsibilities to provide facilities when some amount of network modification is required to ready the facility for use. In the past, SBC has argued that unless an unbundled loop is fully "connected through" and assignable without modification of any type, the facility is not "available" and additional charges (and time) are required to ready it for unbundling to the CLEC. The language at paragraph 634 of the *Triennial Order* directly conflicts with SBC's previous position, and likewise, conflicts with much of the language SBC proposes including in the Parties' Agreement at issue in this proceeding:

> …our operating principle is that incumbent LECs must perform loop modification activities that it performs for its own customers. By way of illustration, we find that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include, but are not limited to, rearrangement or cable splicing, adding a doubler or repeater, adding an equipment case, adding a smart jack, installing a repeater shelf, adding a line card, and deploying a new multiplexer or reconfiguring an existing multiplexer. [Footnotes omitted.]

Pursuant to the FCC's ruling, SBC may no longer make broad and unfounded claims about the extent to which its facilities may or may not be "available" for unbundling, but must instead employ the same standard of use it uses for its own retail customers, for whom SBC routinely makes network modifications to accommodate a service order.

This is precisely what the language proposed by MCI reflects and MCI respectfully requests that the Commission adopt MCI's proposed language. If, however, the Commission approves SBC's language or any other language that includes the term "available," the Commission should define that term. At sections 9.2, 15.2 and 20.1.19 of the UNE Appendix, SBC proposes to limit its responsibilities to providing only those UNEs that are "available" or that exist at the time of MCI's request. Likewise, SBC's language suggests that where such facilities are "not available," SBC will construct facilities only through the BFR process. The primary problem with this language is that SBC never defines what it means for a facility to be "available" (or "unavailable"). SBC's track record with this term has demonstrated that SBC uses this language to dramatically limit the number of loops to which its competitors receive unbundled access. Rather than rely upon SBC's undefined terms in this regard, MCI proposes that those terms be removed and that the FCC's network modification policy, as dictated by the Triennial Review Order, be used to resolve any dispute as to whether a particular loop could be provided with modifications no more extensive than those SBC would routinely use in the course of providing services to its retail customers. However, if the Commission approves of language that includes the term "available," that term should be defined in the same manner it was defined in Docket No. 02-0329. Specifically, the Commission should define "available" to mean:

> A facility is available if it is located in an area presently served by SBC and otherwise meets the criteria established by the Illinois Commerce Commission in ICC Docket No. 99-0593. This definition of "available" does not require SBC to construct network elements for the sole purpose of unbundling those elements for CLECs.

August 26, 2003 Arbitration Decision in *AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago*, Docket No. 02-0329 at 55.

UNE Issue 30

What requirements should apply when SBC proposes retiring copper loops?

MCI's Position

MCI proposes that language be added to Section 9.2.1 of the UNE Appendix requiring SBC to notify MCI whenever SBC intends to retire a loop that MCI is currently purchasing as a UNE loop. Specifically, MCI proposes that when SBC notifies the appropriate state or federal agency of its intention to retire a given facility, and when that facility includes a loop MCI is currently using in an unbundled format to serve its customers, SBC also provide a copy of that same notice to MCI. MCI is merely asking that it be provided the same notice given to the appropriate regulatory agency, within the same timeframe. Because most regulatory notification requirements provide some amount of lead-time before the facility itself is retired, MCI is confident that such lead time will enable it to find alternative means by which to serve its customer. Accordingly, MCI is not asking for any special treatment. Even so, SBC has refused to include this language.

The reasonableness of MCI's request can perhaps be best understood by observing the unreasonableness of SBC's position. SBC's position appears to be that it should be allowed to retire a loop facility, including facilities relied upon by its competitors to provide active service to their customers, without even notifying its UNE purchasers of its intentions. In this scenario, it is likely that MCI's customers would simply lose service upon the date of the retirement, and MCI would have no information as to why the loop was no longer functioning or why the service had been interrupted. Obviously, SBC's proposed framework is not the way in which a wholesale provider would operate in a competitive marketplace, but rather is characteristic of (indeed, only comprehensible as) the behavior of a monopolist. Because the Commission's role is to engender a competitive marketplace, MCI respectfully requests that the Commission, reject SBC's position and require the minimal level of notification requested by MCI.

UNE Issue 31

MCI: Should SBC Illinois be required to make hybrid loops available to MCI in a manner that permits MCI to provide broadband services over that loop?
SBC: ILLINOIS: Should any language obligating SBC ILLINOIS to unbundled broadband services be included in the Agreement?

MCI's Position

Section 9.3.1 of the UNE Appendix details the manner by which SBC will provide access to its hybrid loops (i.e., those loops provisioned in part over fiber optics and digital loop carrier electronics, and in part over copper distribution and drop facilities). The language proposed by MCI tracks directly the FCC's requirements related to SBC's obligation to provide unbundled access to its hybrid loops. SBC, on the other hand, has inserted language that is unnecessary and contrary to the FCC's rules. Specifically, SBC has inserted the following sentence: "SBC ILLINOIS will not provide broadband services on an unbundled basis."

Although the FCC's Triennial Review Order relieved SBC of its obligation to unbundled broadband services, the language proposed by SBC in Section 9.3.1 is an overly broad characterization of the FCC's Order. 47 C.F.R. § 51.319(a)(2)(ii) states as follows:

> (ii) Broadband services. When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide the requesting telecommunications carrier with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that hybrid loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between the incumbent LEC's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

The first sentence of this rule makes clear that CLECs can request access to a hybrid loop for purposes of providing broadband services. While the rule goes on to restrict such access to the non-packetized features of the facility, nonetheless, the CLEC can use the unbundled hybrid loop for purposes of providing broadband services. SBC's overly broad and declaratory statement proposed at Section 9.3.1 of the agreement is in conflict with 47 C.F.R. § 51.319(a)(2)(ii), because it states unequivocally that SBC will not provide broadband services on an unbundled basis. Clearly, SBC is obligated to do just that, so long as the requested facility (in hybrid form or not) does not require packetized facilities.

UNE Issue 32

Should the definition of "spare home run copper" include loops that are not terminated?

MCI's Position

The definition of spare home run copper should include loops that are not terminated. Otherwise, SBC will have incentive to bring copper to the central office but leave it un-terminated.

To address this concern, MCI proposes adding the following clarifying language at Section 9.3.2.2, as follows:

> 9.3.2.2 Provide nondiscriminatory access to a spare homerun Lawful UNE Copper Loop *(whether terminated or not)* serving that customer on an unbundled basis.

SBC opposes MCI's proposed language but without MCI's proposed modification, Section 9.3.2.2 could be read to require SBC to provide nondiscriminatory access to spare copper loops only where copper loops are serving a specific customer (e.g., "serving that customer"). This language is of concern because SBC is likely to take the position that spare facilities not terminated to the customer's premises are not "serving that customer" and hence, MCI would not be allowed access to those un-terminated, spare facilities on an unbundled basis. Because SBC does, in the normal course of its business, terminate un-terminated spare facilities to individual customer premises when it requires the use of those facilities to provide requested retail services, refusal to do the same for a CLEC on an unbundled basis is in conflict with the FCC's requirements that SBC undertake routine network modifications in a nondiscriminatory fashion. Put another way, MCI's proposed language will ensure that SBC is required to undertake that same routine network modification (i.e., terminating existing cables to a customer premises) on behalf of a CLEC requesting an unbundled loop. MCI's proposed language precludes SBC from interpreting Section 9.3.2.2 in an improperly discriminatory manner, as well as makes that provision more clear and consistent with the FCC's requirements. MCI therefore respectfully requests that the Commission adopt MCI's proposed language in Section 9.3.2.2.

UNE Issue 33

Which Party's proposal for caps on DS3 loops better implements the requirements of the *TRO*?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The *TRO* provides that an end user customer may lease a maximum of two DS3 loops for any single location (unless there has been a finding of non-impairment for that location). Both MCI and SBC propose language limiting MCI to two DS3 loops per any single end user location. But SBC states that if MCI orders a third loop at a particular location, SBC may either reject the order or, *at its option*, accept the orders but begin charging access charges for these loops. MCI objects to this language because it would permit SBC to unilaterally convert an unbundled loop order to an order for access services for which MCI must pay access rates.

If MCI orders too many unbundled loops, it is fine for SBC to reject the order. Indeed, MCI has proposed compromise language to SBC that makes clear that SBC can (and indeed should) reject the order. But SBC should not be able to decide that, rather than rejecting such an order for unbundled elements, it will accept the order but convert it to an order for access services for which MCI must pay access rates. MCI did not place any orders for loops at access rates. An analogy shows what is wrong with SBC's proposal. If a customer in a restaurant ordered a hamburger for $8.00 but the restaurant had no more $8.00 hamburgers, the restaurant could not provide the customer a $15.00 hamburger without first asking the customer whether he wanted it. Similarly, SBC should reject orders for UNEs where such orders are impermissible, not convert them to orders for access services without first asking MCI whether it wants the order placed at access rates. It should be MCI that decides whether it wants to order access services.

MCI therefore respectfully requests that the Commission adopt MCI's proposal for caps on DS3 loops and reject SBC's proposal regarding the same.

UNE Issue 34

What terms and conditions shall apply for routine modifications of local loops?

MCI's Position

The terms and conditions delineated in MCI's proposed contract language should apply for routine modifications of local loops. MCI has proposed contract language for Section 9.7.2 that precisely tracks the FCC's language pertaining to routine modifications, while SBC has proposed language in Sections 9.7.1, 9.7.2 and 9.7.3 that goes far beyond what is required and permissible under the FCC's regulations.

MCI's proposed language is taken virtually verbatim from the FCC's rules (see 47 C.F.R. § 51.319(a)(8)(ii)). In addition, consistent with paragraphs 636 and 637 of the TRO, MCI's proposed Section 9.7.2 goes on to exclude the following activities from the definition of routine network modifications: constructing new loops, installing new cable, securing permits or rights-of-way, constructing new manholes or conduits, and installing new terminals.

In contrast to MCI's proposed language, SBC's proposed language goes beyond the requirements set forth by the FCC in the TRO in several respects. First, according to SBC's proposed language, a routine network modification is "an activity that SBC ILLINOIS regularly undertakes for its own end user customers where there are no additional charges or minimum term commitments." SBC's mention of additional charges and term commitments has no basis in the TRO and could have the effect of inappropriately limiting the instances in which SBC would perform work for MCI as a routine network modification. MCI has no control over whether SBC levies additional charges on its end user customers for work performed or whether it offers term commitments to its end user customers. Accordingly, including these limiting factors in

the description of routine network modifications is inappropriate, especially when there is no basis for such limitations in the FCC's rules.

In addition, SBC attempts to further limit the instances in which it will perform routine network modifications for MCI by adding further limitations that have no basis in the FCC's rules. For instance, SBC's proposed language would exclude the following activities from the definition of a routine network modification even though the FCC did not speak to these limitations: 1) splicing cable at any location other than an existing splice point or at any location where a splice enclosure is not already present, 2) securing building access arrangements, 3) constructing/placing handholds, 4) constructing/placing ducts, 5) constructing/placing poles, 6) providing new space or power for requesting carriers, and 7) removing or reconfiguring packetized transmission facility. The first limitation listed above, i.e., splicing cable, is especially egregious considering that splicing cable is an activity that the FCC explicitly recognized as a routine network modification (47 C.F.R. §51.319(a)(8)(ii)).

Furthermore, SBC's entire proposed section 9.7.2.2 also includes restrictions related to packet-based facilities and the retirement of copper that have no basis in the FCC's routine network modifications rulings and has no place in the contract language pertaining to routine network modifications. It is simply unnecessary to address these issues within the context of routine network modifications.

MCI also objects to SBC's proposed language in 9.7.3. SBC's proposed language in Section 9.7.3 would allow SBC to assess non-recurring charges on MCI for performing routine network modifications, when these activities are already included in the recurring charges that MCI pays to SBC for a loop. The FCC recognized in the TRO (paragraph 640) that:

> the costs associated with these modifications often are reflected in the recurring rates that competitive LECs pay for loops. Specifically, equipment costs associated with modifications may be reflected in the carrier's investment in the network element, and labor costs associated with modifications may be recovered as part of the expense associated with that investment (*e.g.*, through application of annual charge factors (ACFs)). The Commission's rules make clear that there may not be any double recovery of these costs (*i.e.*, if costs are recovered through recurring charges, the incumbent LEC may not also recover these costs through a NRC).

SBC has simply not shown that the activities for which it attempts to levy additional charges are not already recovered in the recurring loop rates and should therefore not be allowed to double-recover its costs through non-recurring charges.

For all of the foregoing reasons, MCI respectfully requests that the Commission adopt MCI's proposed language to Section 9.7.2 of the UNE Appendix and reject SBC's proposed language to Sections 9.7.1, 9.7.2 and 9.7.3.

UNE Issue 35

What terms should apply for access to loops served over Integrated Digital Loop Carrier (IDLC)?

MCI's Position

The terms delineated in MCI's proposed language at Section 9.8.1 of the UNE Appendix should apply for access to loops served over IDLC. SBC's proposed language would require SBC, "where available," to move a customer from an IDLC to a Universal Digital Loop Carrier ("UDLC") or copper facility, so that the customer could be reached with an unbundled loop at the CLEC's request (without the need to unbundle the IDLC system). MCI does not disagree with this particular language. MCI does disagree, however, with SBC's proposal regarding situations where moving the customer to UDLC or copper is not an "available" option. In those situations SBC proposes that it simply notify MCI within 2 business days that there are no "available facilities." MCI would then have the option of canceling the order or paying unspecified fees associated with providing other arrangements to reach the customer (in some fashion presumably chosen by SBC). SBC's rather nebulous proposal is not satisfactory and hence, MCI has proposed language (at Section 9.8.1 of the UNE Appendix) detailing the technical options that SBC should explore in providing access to IDLC facilities if neither copper nor UDLC is available.

MCI's proposed language in Section 9.8.1 is drawn almost verbatim from the FCC's Triennial Review Order. In paragraph 297 of its recent Triennial Review Order, the FCC addressed this exact issue and specified ILECs' obligations where neither copper nor UDLC is an available option. MCI's proposed language, which would require that SBC, where neither UDLC nor copper facilities are available, to provide access using one of six non-exclusive methods. This language is consistent with paragraph 297 of the FCC's order referenced above. After placing an affirmative obligation on SBC to unbundle its IDLC facilities in paragraph 297 – even where neither spare copper nor UDLC facilities are available – the FCC went on, in footnote 855, to describe how ILECs could effectuate alternatives to copper and UDLC. The options described by the FCC in footnote 855 are the same options proposed by MCI at Sections 9.8.1.1 through 9.8.1.6 of the UNE Appendix. MCI has agreed to SBC's proposed language that would require MCI to pay SBC for expenses related to implementing the options it describes in MCI's proposed language.

For all of the foregoing reasons, MCI respectfully requests that the Commission adopt MCI's proposed language at Sections 9.8.1 through 9.8.1.6 of the UNE Appendix.

UNE Issue 36

Should access to loops that require high voltage protective equipment be ordered through the BFR process?

MCI's Position

The BFR is a process for requesting new, undefined UNEs and should not be used for what is essentially a service order process. MCI therefore objects to SBC's proposed language to the contrary and recommends that it be omitted from the Agreement.

SBC's language inappropriately attempts to expand the use of the BFR process to issues for which it was not designed. The undisputed language of Section 1.1 of the BFR Appendix provides as follows:

> *Unless another procedure or process is specifically prescribed elsewhere in this Agreement* or by order of the Commission, this schedule shall govern the submission of requests by MCIm to SBC ILLINOIS for methods of interconnection, access to Lawful Unbundled Network Elements (including Combinations thereof), or customized services that are *not otherwise addressed in this Agreement* at the time of such request. (*emphasis added*)

The process by which MCI requests access to unbundled loops clearly falls outside of scope of the BFR process described in Section 1.1 of the BFR Appendix, because loops are "otherwise addressed in this Agreement," as Section 9 of the UNE Appendix. It is disingenuous for SBC to suggest, as it does in its proposed Section 9.10, that an unbundled loop – even one ordered in a high voltage area – would qualify as a new UNE or a customized service. The BFR process should therefore not apply to unbundled loops.

Moreover, the reason SBC uses to attempt to justify subjecting an unbundled loop to the BFR process (i.e., HVPE provisioning) should fall under routine network modifications, as described in Section 9.7 of the UNE Appendix.

Consistent with the undisputed language in Section 9.7.2 of the UNE Appendix, ensuring the safety and integrity of the network, the Parties' employees and/or representatives, and end-user customers (i.e., SBC's stated purpose of provisioning HVPE) are activities that SBC must regularly undertake when provisioning services to its own end use customers. In addition, while provisioning HVPE is not explicitly listed under routine network modifications, the language in Section 9.7 makes clear this list was not intended to be exhaustive, and the provisioning of HVPE is consistent with the listed activities. Moreover, the UNE loops SBC attempts to subject to the BFR process have already been constructed and would not involve constructing new loops or installing new cable. In these ways, provisioning loops that require HVPE is consistent with the description of a routine network modification and should be treated accordingly.

In addition, the BFR process, in and of itself, presents significant problems to MCI. As described in more detail under UNE Issue 51, the BFR process raises barriers for MCI by increasing delay, complexity and uncertainty. For instance, if SBC's proposed 9.10 were accepted, MCI would be forced to wait several months to serve customers with UNE loops in high voltage areas. This would not provide MCI with a reasonable opportunity to compete for these customers due to the lengthy delay. In addition, SBC's proposed language would hold MCI responsible for undefined HVPE costs that MCI has no way of knowing the magnitude of until SBC provides a BFR quote – five months after MCI's request for the UNE loop is made (*see*, Section 3.4.1.2 of the BFR Appendix).

In sum, MCI respectfully requests that the Commission reject SBC's proposed Section 9.10 of the UNE Appendix because the BFR process, by definition, does not apply to UNE loops because UNE loops are not new UNEs or customized services. In contrast, the process for making available UNE loops to MCI is already clearly defined in the contract, and thus falls outside the confines of the BFR process. Furthermore, the activity of provisioning HVPE is consistent with routine network modifications and should be treated accordingly.

UNE Issue 37

See UNE Issue 11.

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue have been resolved. In other words, since both parties and Staff believe that the additional contract language that has been proposed in connection with this issue should be excluded from the contract, albeit for very different reasons, the Commission need not consider this issue and should treat is as any other settled issue by adopting the parties' agreed language.

If, however, the Commission addresses the substance of this issue, it is MCI's position that in light of the D.C. Circuit's recent decision in USTA II, SBC's proposed additional sections to the UNE Appendix for loops, dark fiber, and transport are unnecessary.

In addition to addressing declassification in Section 5 of the UNE Appendix, SBC proposes that several sections of the UNE Appendix concerning particular UNEs contain independent declassification provisions.

First, SBC proposes that Section 9.11 of the UNE Appendix (and subsections thereof) contain detailed declassification procedures for loops. These procedures differ from SBC's general declassification procedure proposed for Section 5 of the UNE Appendix, namely in that they would offer even less protection for MCI than SBC's already unreasonable general declassification proposal. For instance, SBC proposes in Section 9.11.1, an absolute 30-day period for SBC to transfer MCI to an access service.

Second, SBC proposes that Section 12.13 of the UNE Appendix (and subsections thereof) contain similarly detailed and drastic procedures for disconnecting MCI from dark fiber, upon declassification of that UNE.

Third, SBC proposes that Section 15.5 of the UNE Appendix (and subsections thereof) establish a similarly restrictive declassification procedure for dedicated transport.

SBC's independent proposals for declassification of loops, dark fiber, and dedicated transport are simply unnecessary. As explained above, in light of the USTA II decision, including declassification procedures in the Parties' Agreement is unwarranted. That being said, even if including declassification procedures in the Parties' Agreement were warranted (which it is not), there is simply no reason to treat the Network Elements singled out by SBC differently from all others, and any desire on SBC's part to disconnect MCI from these UNEs as quickly as possible provides no sufficient reason.

Despite the fact that MCI believes it should win on the merits of its arguments above, MCI agrees with Dr. Zolnierek's recommendation that pursuant to the FCC's *Status Quo* Order, any disputes over the rates terms and conditions for unbundled access to switching, enterprise market loops, and dedicated transport should be resolved by simply ordering the parties to comply with the same rates, terms and conditions that applied under their interconnection agreements or tariffs as of June 15, 2004. As Dr. Zolnierek explained, the *Status Quo* Order essentially froze the parties' contractual and tariff obligations with respect to those issues as they were on June 15, 2004. Pursuant to this recommendation, SBC's proposed separate declassifications procedures for loop, dark fiber and transport would be rejected because these sections were not included in the parties' agreement as of June 15, 2004.

In light of the foregoing reasons and all of the reasons stated in UNE Issue 11 above, MCI respectfully requests that the Commission reject SBC's unnecessary proposed language concerning declassification in Sections 9.11.1, 12.13, and 15.5 of the UNE Appendix.

UNE Issue 38

Should SBC Illinois be required to provision UNE loops to cell sites or other locations that do not constitute an end user customer premise?

MCI's Position

MCI objects to SBC Illinois's proposed language in Section 9.12 that could allow SBC to deny providing UNE loops to MCI at all cellular sites. SBC's proposed language attempts to inappropriately limit MCI's access to UNE loops and is inconsistent with other agreed-to language in the Parties' Agreement.

The Parties agree that SBC should be required to provision UNE loops to customers' premises, as evidenced by the Parties' proposed definitions of an UNE loop

in Section 9.1.1 of the UNE Appendix. While the Parties disagree on what definition of a UNE loop to include in the Agreement, both Parties agree that the definition should include the following language: "a transmission facility between a distribution frame (or its equivalent) in SBC Illinois's Central Office and the loop demarcation point…*at an end user customer premises*…." (*Emphasis added.*)

As the agreed-to portions of the definition of a UNE loop demonstrate, the Parties agree that SBC should be required to provide UNE loops to end users' premises.

Nevertheless, SBC has proposed language in Section 9.12 that would allow SBC to deny providing an UNE loop to MCI for serving a customer's premises. For instance, SBC's proposed Section 9.12 states that SBC shall not be obligated to provision an UNE loop to cellular cites. The problem with this language is that cellular sites do oftentimes constitute an end user customer premises. Therefore, SBC's attempt to restrict MCI's access to UNE loops for serving cellular cites sweeps too broadly. Furthermore, the remainder of the language is unnecessary since the agreed-to portions of the definition of a loop make clear that UNE loops are used to serve end user customer premises.

SBC's proposed language sweeps too broadly specifically where it states that SBC "<u>shall not be obligated to provision any of the UNE loops provided for herein to cellular cites.</u>" However, many cellular sites are found at locations that are unquestionably "end user premises" (often cellular companies will locate cell sites at customers' premises, such as atop of strip malls, office buildings, banks, hotels, etc.). Therefore, SBC could interpret its language in such a way that would allow SBC not to provision UNE loops to MCI to serve the customer wherein the cell site resides. For instance, if a cell site was located atop of a shopping mall, SBC could interpret its proposed contract language so that it would not be obligated to provide MCI with UNE loops to serve any customer within that shopping mall. This would severely affect MCI's ability to compete and be wholly inappropriate since MCI has every right to obtain UNE loops to serve these customers. However, if SBC was allowed to include its proposed Section 9.12 in the agreement, there is the distinct possibility that SBC would nevertheless attempt to restrict access to UNE loops in just this way.

Indeed, SBC has an incentive to do so. The local loop is unquestionably a bottleneck element in the local telecommunications network, and, if left unchecked, SBC could wield considerable monopoly power over unbundled loops. Since SBC is competing with CLECs like MCI for local customers, while at the same time provisioning loops to its competitors to serve those customers, SBC has the incentive to restrict competitors' access to local loops in order to achieve a competitive advantage. Cellular sites that reside on customer' premises are usually located at the premises of business customers – customers that provide more revenue opportunities at a lower cost, relative to residential customers. Hence, SBC has added incentive to restrict competitors' access to loops that terminate to customers' premises where cell sites reside because it would severely restrict MCI's ability to serve business customers.

For all of the foregoing reasons, MCI respectfully requests that the Commission reject SBC's proposed language for Section 9.12 of the UNE Appendix.

UNE Issue 40

Should SBC Illinois's proposed definitions pertaining to Subloops be included in the Agreement?

MCI's Position

SBC's proposed definitions pertaining to Subloops should not be included in the Agreement because they are unnecessary. In Sections 10.2 and 10.3 of the Agreement, SBC proposes a multitude of detailed definitions related to the subloop UNE. In a nutshell, these numerous subsections would narrowly define what a subloop is. MCI opposes this language because all, or at least most, of SBC's proposed limiting "definitions" are inappropriate given SBC's obligation under federal law to allow access to its subloop facilities at any technically feasible point.

In its rules, the FCC defines a subloop rather broadly as "…a portion of a copper loop, or hybrid loop." 47 C.F.R. § 51.319 (b)(1). This definition is limited only by the extent to which the subloop can be reached at a point of "technically feasible access." *Id*. MCI does not oppose SBC's proposed language at Section 10 of the UNE Appendix that captures these definitional aspects of a subloop. MCI does oppose, however, SBC's attempt, through a great number of subsections, to substantially limit the flexibility in the FCC's definition by narrowly defining each and every type of subloop that SBC apparently believes to comprise the entire universe of subloops. In essence, by defining specific subloops that it is willing to provide, SBC's language attempts to exclude any other subloop arrangement that is not included, or that may emerge at a later date. SBC's proposed approach is not consistent with the FCC's definition and should be rejected.

As an example of language that SBC includes in its subloop definitions that has no basis in the FCC's rules, consider SBC's proposed language in Section 10.2.2 (which MCI opposes):

> 10.2.2 "Dead Count" refers to those binding posts which have cable spliced to them but which cable is not currently terminated to any terminal to provide service.

The Section 10.2.2 concept of "dead count" would, under SBC's approach, be used to restrict the meaning of "subloop" throughout the rest of SBC's subloop definition (and SBC's definition goes on to include 15 definitional subsections). But the FCC's rules make no distinction between live, working pairs and/or those pairs that might be considered by SBC to be "dead count." In fact, given the discussion in this testimony regarding "routine network modifications," it is highly possible that a facility considered by SBC to be "dead count" could be used as an accessible subloop for unbundling. Likewise, SBC's definitional matrix goes on to define each segment of the loop network (e.g., terminal to SAI, SAI to NID, etc.), with the patent intention of restricting MCI's

access to subloops that do not fall squarely within one of these definitions – and that are not mandated as the universe of subloops under the FCC's rules. By including these multiple "refinements" within its definition, SBC systematically (and inappropriately) limits the facilities that could be considered for subloop unbundling.

SBC's approach of agreeing to a limited number of subloop "products" will likely be used by SBC to deny MCI access to other legitimate, but unlisted, subloops on a timely basis. By creating a narrow list of subloops that it is willing to provide, SBC's proposal would, for all other subloop alternatives, as well as orders for other types of subloops, either preclude MCI from accessing those subloops, or, would require MCI to follow the time-consuming and costly BFR process to "create" new subloops.

There is substantial undisputed language concerning subloops in Section 10 of the Agreement. That undisputed language tracks the FCC's definition of a subloop nearly verbatim, and is thus sufficient for purposes of defining SBC's subloop obligations. Accordingly, MCI respectfully requests that the Commission reject SBC's subloop "refinements" in Sections 10.2 and 10.3 of the UNE Appendix.

UNE Issue 41

At what specific points should SBC Illinois be required to provide MCI with access to subloops?

MCI's Position

MCI has proposed language to Sections 10.5.1.3 and 10.5.1.5 of the UNE Appendix that would explicitly recognize that MCI can access a subloop at the main distribution frame (MDF) and the single point of interconnection (SPOI). In addition, MCI has proposed language under Section 10.6 that would require SBC to provide the following four subloops: from the MDF to the Serving Area Interface or Feeder Distribution Interface (SAI/FDI), from the MDF to the terminal, from the Optical Concentration Device (OCD) to the terminal, and from the OCD to the SAI/FDI.

Although SBC objects to this language, it is wholly appropriate. As described above in UNE Issue 40, SBC's obligation to provide MCI with subloops is limited only to the extent that the subloop is accessed at a point that is technically feasible (47 C.F.R. § 51.319(b)(1) "A copper subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant, including inside wire owned or controlled by the incumbent LEC, and the end-user customer premises.") It is technically feasible to access a subloop at the MDF, at the SPOI, and at the OCD, and, as such, MCI's proposed language is consistent with the FCC's rules.

The MDF, OCD, and SPOI are all definable points in the network where MCI can access a subloop without SBC being required to "remove a splice case" or otherwise rearrange the network. First, with respect to the MDF, SBC currently provides for a subloop element stretching from the main distribution frame in SBC's central office, to

its remote terminal. Indeed, this subloop is what is commonly referred to as the "feeder" component of a loop. The main distribution frame which defines one end of this particular subloop, is not a "terminal in the incumbent's outside plant," yet SBC provides this subloop just the same.

Second, the OCD is similar to a telecommunications switch (indeed, it is an ATM-capable edge-node), and each circuit that relies upon the OCD is definable at the OCD interface. As such, MCI would be able to identify a subloop beginning at the OCD, and ultimately terminating somewhere in the outside plant (i.e., the remote terminal or serving area interface - "SAI") wherein MCI could access the subloop. It is important to note that the point wherein MCI would access this particular subloop, is the very location it would access the feeder subloop discussed above that SBC provides without complaint (i.e., the access point would indeed be a point in the network wherein "…technicians can access the wire or fiber within the cable without removing a splice case). Accordingly, MCI's request for subloops in this regard is fully consistent with the FCC's subloop rules.

Finally, with regard to the SPOI, SBC actually agrees to include the "SPOI to NID" subloop as an enumerated subloop under Section 10.6 of the UNE Appendix, thereby acknowledging that it is technically feasible to access a subloop at the SPOI. However, SBC is inconsistent in that it objects to the inclusion of MCI's proposed Section 10.5.1.5 that would recognize the SPOI as a technically feasible point of access to subloops.

At least one other Commission has already agreed with MCI's interpretation of the rules regarding subloops. In MPSC Case No. U-13758, SBC objected to MCI's request to require SBC to provide access to subloops from the OCD (just as MCI requests in the instant docket). SBC argued in the Michigan docket that requiring a subloop from the OCD is inappropriate because the OCD was not a point in the incumbent LEC's outside plant. MCI responded that SBC's view of the FCC's rules on subloops was too narrow, as described above. The arbitration panel's ruling on this issue states as follows:

> The Panel finds MClm has offered the better resolution to this issue and therefore recommends its adoption to the Commission. This decision is supported by the analysis presented in MClm's PDAP.

Decision of the Arbitration Panel, Michigan PSC Case No. U-13758, p. 28

The Michigan PSC affirmed the decision of the arbitration panel in its August 18, 2003 Order. Michigan PSC Opinion and Order, Docket No. U-13758, August 18, 2003, pp. 18-19.

In accord with all of the foregoing reasons, MCI respectfully requests that the Commission adopt MCI's proposed Sections 10.5.1.3, 10.5.1.5 and 10.6. This

language is consistent with the FCC's rules governing subloops and has been approved by at least one other state commission.

UNE Issue 42

Should MCI be required to use the BFR process to request access to subloop segments not listed in Section 10.6 of this UNE Appendix?

MCI's Position

MCI should not be required to use the BFR process to request access to subloop segments not listed in Section 10.6 of this UNE Appendix. The undisputed language of Section 1.1 of the BFR Appendix provides as follows:

> *Unless another procedure or process is specifically prescribed elsewhere in this Agreement* or by order of the Commission, this schedule shall govern the submission of requests by MCIm to SBC ILLINOIS for methods of interconnection, access to Lawful Unbundled Network Elements (including Combinations thereof), or customized services that are *not otherwise addressed in this Agreement* at the time of such request. (*emphasis added*)

The issue regarding the process by which MCI requests access to subloops clearly falls outside of scope of the BFR process described in Section 1.1 of the BFR Appendix, because subloops *are* "otherwise addressed in this Agreement," as Section 10.9 of the UNE Appendix describes the process by which subloops are provided. That process, in which the parties enter into a Special Construction Arrangement (SCA), provides a mechanism for requesting interconnection to SBC subloops and establishing the costs for such interconnection. In a nutshell, MCI initiates the process for establishing a subloop access arrangement by submitting an application for an SCA (Section 10.9.2 of the Appendix UNE). Within 30 days after the receipt of an application, SBC will provide a written estimate of related costs (Section 10.9.3 of the Appendix UNE). SBC will complete construction of the SCA within 90 days of MCI's written approval and payment of 50% of the construction and provisioning costs (Section 10.9.9 of the Appendix UNE). As these provisions make clear, access to subloops are specifically addressed within the Agreement and the BFR process is thus not necessary, per Section 1.1 of the BFR Appendix.

The specific language that MCI disputes with regard to this issue appears in SBC's proposed language within a footnote to the Chart at Section 10.6 of the UNE Appendix. That proposed language would require MCI to submit a BFR for any subloop segment not specifically listed in the chart in Section 10.6. There is no good reason to default to the BFR process when Section 10.9 already establishes a specific application process for requests for access to subloop elements, and when Section 1.1 of the BFR Appendix makes clear that the BFR process only applies to services "not otherwise addressed in this Agreement." Adopting SBC's proposed language in Section 10.6

would only create additional and unnecessary cost, complexity, delay and uncertainty for MCI, particularly where other sections of the Agreement provide MCI with an expeditious means of ordering subloop segments and set forth the process for SBC to follow. Put simply, SBC's proposed reference to the BFR process in Section 10.6 is unnecessary and detracts from the subloop application process already agreed to by the parties in Section 10.9.

The language in the footnote that would require MCI to submit a BFR for a subloop segment extending from its SPOI is similarly inappropriate. As explained above, the Agreement already establishes a process by which MCI may request access to subloops and, as such, application of the BFR process to the SPOI/subloop scenario is inappropriate.

The impropriety of such language has been recognized by numerous state commissions that have determined that the BFR process is not required for subloop unbundling. *See* Testimony of Michael Starkey, lines 2823-31 in this Docket No. 04-0469.

For all of the above reasons, MCI respectfully requests that the Commission reject, in its entirety, SBC's proposed footnote to the chart at Section 10.6 of the UNE Appendix.

UNE Issue 44

Should collocation or a Special Construction Arrangement be required to access subloops?

MCI's Position

MCI objects to the language proposed by SBC in Sections 10.9.1, 10.9.2, and 10.9.8, which would restrict MCI from combining subloops with other MCI elements without, prior to ordering subloop facilities, establishing collocation using the collocation process or establishing a Subloop Access Arrangement (SAA) using the Special Construction Arrangement (SCA). MCI has proposed alternative language that would not require it to initiate a Special Construction Arrangement by submitting a Subloop Access Arrangement Application. SBC opposes the use of the word "may" at 10.9.2, and insists that the appropriate language is "will".

MCI objects to SBC's proposed language in Section 10.9.1 and related language in Sections 10.9.2 and 10.9.8 because it could be read to require MCI to either (a) establish a collocation arrangement or (b) establish a Subloop Access Arrangement utilizing the Special Construction Arrangement when accessing a subloop. This requirement would add unnecessary expense and complexity that would prevent MCI from accessing these elements in an expeditious manner. Clearly, this would be to SBC's advantage and to MCI's disadvantage. Further, the language proposed by SBC is inconsistent with agreed to language in other parts of the Agreement concerning the appropriate process for accessing subloops.

The FCC's rules do not require that MCI establish a collocation arrangement to obtain access to subloops. Rather, the FCC's rules obligate SBC to provide numerous different methods for interconnecting and/or obtaining access to UNEs. For instance, 47 C.F.R. § 51.319(a)(1)(ii) states that "access to the copper subloop is subject to the Commission's collocation rules at §§ 51.321 and 51.323." Under § 51.321, the FCC requires incumbent LECs to "provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, *any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier*" (emphasis added). § 51.321 goes on to list several methods of interconnection and obtaining access to UNEs, of which collocation is only one. This language makes clear that collocation is not required as a prerequisite to obtaining access to subloops.

Nor should MCI be required to establish a subloop access arrangement utilizing the SCA. The MCI-proposed disputed language at Section 10.9.2 would provide MCI with the option to use the entire process advocated by SBC when accessing subloops, or, when circumstances dictate, to access subloops by means of the existing SAA. The process advocated by MCI in this case is consistent with the agreed to provisions of the SAA, and would allow MCI to access subloops more simply and expeditiously than the process advocated by SBC.

Indeed, SBC's proposed language has already been rejected by at least one other state commission. The Michigan Public Service Commission rejected a similar request by SBC Michigan to require MCI to establish collocation or a subloop access arrangement via the SCA when accessing subloops. See Decision of the Arbitration Panel, Michigan Case No. U-13758, pp. 28-29.

For all of the foregoing reasons, MCI respectfully requests that the Commission reject SBC's proposed Section 10.9.1 of the UNE Appendix in its entirety, adopt MCI's proposed language in Section 10.9.2, and reject SBC's proposed language in Section 10.9.8.

UNE Issue 45

What costs may SBC properly charge MCI for providing ECS?

MCI's Position

The ECS costs should be borne entirely by SBC because SBC chose to engineer its network in the discriminatory manner that necessitates ECS in the first instance.

SBC is obliged to provide unbundled access to subloop network elements, pursuant to 47 C.F.R. § 51.319. As such, with respect to subloops, SBC is entitled to recover the same forward-looking, TELRIC costs that apply to all unbundled network elements. A fundamental premise of TELRIC pricing is that the specific deployment characteristics in SBC's network are not relevant to determining the appropriate TELRIC-based rate. Instead, the appropriate cost recovery will depend on what is the least cost, forward-looking architecture, rather than SBC's embedded plant design.

By hardwiring the connections between SBC's NGDLC RTs and the associated SAI, SBC Illinois consciously designed its network in a manner that is unfriendly to CLECs. The language proposed by SBC in Sections 11.2.1 through 11.2.6 of the UNE Appendix, which would impose on MCI the costs of re-configuring SBC's network to bring it into compliance with SBC's obligation to provide non-discriminatory access, would unfairly disadvantage MCI. Since the ECS is not a component of an efficient, forward looking network, its costs are not appropriately considered in rates associated with accessing UNEs. Indeed, the ECS is a prime example of why the FCC's TELRIC rules allow recovery only for least cost network design. If SBC is allowed to engineer its network so as to preclude reasonable access by competitors, and then to charge those competitors for overcoming this engineered inefficiency, SBC will not only have complicated the process by which its competitors compete against it, but will be allowed to charge them for SBC's deliberate inefficiency. Therefore, ECS costs should be borne entirely by SBC, because it was SBC who chose to engineer its network in such a discriminatory manner. While MCI firmly believes that SBC should be responsible for the costs incurred relative to ECS because of its discriminatory network deployment decisions, if the Commission sees fit to allow SBC to recover ECS costs from CLECs, the Commission should require SBC to recover these costs in a manner consistent with TELRIC principles and existing FCC regulations.

Given the network architecture chosen by SBC, the ECS or similar cross-connect system becomes a necessary component of SBC's loop plant required for it to comply with its obligations under the Act (i.e., to allow non-discriminatory access to its network elements on an unbundled basis). As such, ECS is properly viewed as a critical component of the UNEs themselves (both loops and subloops). Indeed, given SBC's chosen architecture, the least cost, most efficient method of providing access to its subloops would be for SBC to construct an ECS (or a more robust cross-connect system) at each RT, cross-connect all feeder stubs through the ECS, and thereby establish a single cross connect point for all interested CLECs and for SBC itself. SBC should then recover the costs of the ECS in exactly the same manner it recovers all other equipment necessary either in provisioning its loop plant or providing access to it, i.e., via monthly recurring, TELRIC-based rates approved by this Commission (as a component of the monthly recurring rate associated with accessing a copper subloop).

The rates should be monthly recurring charges rather than the up-front, nonrecurring charges suggested by SBC in its proposed contract language because the ECS is an *investment* that allows all CLECs (not just the first CLEC to make a request) access to SBC's subloop elements. The ECS also benefits SBC in at least two ways: (1) it provides SBC the ability to better manage the capacity of its RT by providing a cross-connect point with which SBC can direct the entire capacity of its RT to any SAI subtending the ECS (currently prohibited by SBC's "closed architecture," as discussed above), and (2) it allows SBC to comply with the Act in providing nondiscriminatory access to its UNEs. Investments are recovered most efficiently over time from the parties that use them. As this Commission well knows, proper TELRIC methodology requires that an investment be properly recovered by establishing a stream of payments over the economic life of the equipment at issue based upon a reasonable cost of capital, depreciation schedule and estimated expenses for maintenance, taxes, etc.

This process allows SBC to recover its investment in a manner consistent with how it actually incurs expenses (i.e., capital expenses are actually amortized and removed from the carrier's books over time) and consistent with the manner by which the investment provides value (i.e., over time to multiple carriers who will use it, including SBC).

Rates based on monthly recurring charges in no way differs from the manner in which SBC recovers costs for other cross connect equipment in its network. For example, the FCC defines the "loop" as a dedicated transmission facility between a distribution frame (or its equivalent) in a SBC central office and an end user premises, including inside wiring. *See* 47 C.F.R. § 51.319(a)(1). Hence, when CLECs pay the monthly recurring charge for an unbundled loop, SBC recovers the costs for all loop-related equipment, including the SAI cross-connect that subtends the RT. No reasonable rationale supports recovering for the SAI (and the multitude of other equipment comprising the loop) via a monthly recurring charge, while recovering costs for the ECS in an upfront, carrier-specific, unapproved, non-recurring charge. To permit SBC to recover costs in this manner would only endorse SBC's anti-competitive network design practices and add complexity, increased costs and uncertainty to CLECs as they attempt to compete with SBC.

Even though SBC, at Section 11.2.4 of the UNE Appendix allows for reimbursement of costs if a second carrier requires the use of the ECS that the first carrier paid to build, this proposal is simply a partial (and unsuccessful) attempt to overcome the economic inefficiency (and inequity) associated with CLECs paying for the ECS as a nonrecurring charge based on time and materials costs. Indeed, the fact that SBC is forced to offer such a refund simply highlights the problem with its proposed payment structure. The administrative and record keeping functions necessary for such a scheme would constitute pure economic waste. As evidenced by the FCC's rules prohibiting such a "first come-first pay" structure, a refund does not fully mitigate the inefficiency or the inequity of SBC's proposed method of recovery. Nor does it make SBC's method of recovery compliant with pertinent FCC rules. If SBC is allowed to recover costs associated with the ECS at all (given that the ECS is required only because SBC Illinois chose a less efficient, more costly architecture intended to raise the costs of its competitors), ECS investments must be included in the derivation of monthly recurring loop (or subloop) costs and recovered in the resulting monthly recurring rate, consistent with the FCC's costing rules.

The type of rate structure proposed by SBC is actually prohibited by FCC rule. By its *UNE Remand Order*, (*Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, Released November 5, 1999), the FCC modified rule § 51.319 to incorporate requirements specific to subloop unbundling. 47 C.F.R. § 51.319(A)(2)(D) provides as follows:

> (D) *Rules for collocation*. Access to the subloop is subject to the Commission's collocation rules at §§ 51.321-323.

Further, in its *Advanced Services Order*, the FCC stated as follows in this regard:

51. We conclude, based on the record, that incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation. *Advanced Services Order First Report and Order,* ¶51.

Through its SCA proposal, SBC plainly would require the first collocator in the premises (i.e., the RT or ECS) to pay for the entire cost of site preparation. Further, while the FCC has on a number of occasions emphasized that collocation rates must be subject to its TELRIC rules, SBC's proposal ignores this requirement and instead charges unapproved "time and materials" charges.

In sum, SBC, through its own decision-making, created a situation that requires a "work around" solution in order for SBC to meet its federal obligations regarding subloop interconnection and access. Accordingly, SBC should be responsible for the costs related to the work around, and should not be allowed to recover these costs from MCI. If the Commission sees fit to allow SBC to recover costs from CLECs resulting from the inefficiencies created by SBC's anti-competitive network design (which it should not), SBC should be required to, consistent with the FCC's TELRIC pricing rules, capitalize and recover, over the facility's economic life, the cost of the facility from all carriers who use it (including SBC). SBC's proposal is inconsistent with TELRIC and has been previously rejected by the FCC. For these reasons, MCI respectfully requests that the Commission find that:

> (1) SBC is responsible for the costs related to ECS.
>
> (2) To the extent that SBC is not held responsible for ECS-related costs, any costs associated with such a facility must be capitalized and recovered in the monthly recurring, TELRIC-based rates assessed by SBC for access to its subloops. Those costs should be calculated by measuring the average costs of constructing such a cross-connect system, and dividing those costs amongst all loop facilities that will, or may, rely upon the cross connect system. Those costs should be included in SBC's standard subloop rates such that no additional charges would apply to a CLEC requesting access to subloops that require an ECS or similar facility. By paying the monthly recurring subloop rates, the CLEC would already be compensating SBC Illinois for constructing and maintaining the ECS.
>
> (3) SBC's proposed language for Sections 11.2.1, 11.2.2, 11.2.4, 11.2.5, and 11.2.6 of the UNE Appendix should be rejected and omitted from the agreement. The Commission should also reject SBC's proposed language not agreed to by MCI in Section 11.2.3, so that Section

11.2.3 of the UNE Appendix approved by the Commission reads as follows: "SBC ILLINOIS will either use existing copper or construct new copper facilities between the SAI(s) and the ECS, located in or at the remote terminal site."

UNE Issue 46

Should the Commission adopt SBC Illinois's language providing two options for implementing ECS?

MCI's Position

The Commission should not adopt SBC Illinois's language providing two options for implementing ECS because that language is unreasonable and inconsistent with FCC rules. SBC has proposed language at Section 11.3 of the UNE Appendix that would limit MCI's ability to access the ECS to one of two options – a "Dedicated Facility Option" or a "Cross-connected Facility Option." Under the proposed Dedicated Facility Option, SBC would splice the existing cable between the ECS and the serving area interface to MCI's subloop access arrangement facility (see SBC's proposed Section 11.3.1 of the UNE Appendix). Under the cross-connected facility option, SBC would build an ECS cross-connect junction on which to terminate MCI's subloop access arrangement facility (see SBC's proposed Section 11.3.2 of the UNE Appendix). SBC's proposed Section 11.3 is patently unreasonable and inconsistent with the FCC's Rules.

SBC's proposal is unreasonable because it would require MCI to pay for the unnecessary complication that stems from SBC's engineered inefficiency. In addition, SBC, in its proposed Section 11.3, also seeks to limit the ways in which CLECs can use the ECS to gain access to SBC's subloops. SBC's proposed limitation on how MCI may implement the ECS constitutes unlawful "discrimination" and violates the TA96, and the FCC Rules that are designed to implement the Act, in at least two ways.

First, since SBC and its data affiliates are not similarly limited with respect to how they may use or access SBC's distribution network (e.g., subloops), it is inappropriate for SBC to limit CLECs (including MCI) in this manner. As explained above, SBC is obligated under the Act and FCC Rules to allow non-discriminatory access to its network elements on an unbundled basis. Neither of the options put forth by SBC at Section 11.3 would fulfill this obligation, as there is no similar language limiting SBC's or its affiliates' access to subloops.

Second, as explained above, SBC is required to provide CLECs any technically feasible method of obtaining interconnection or access to unbundled network elements. Since SBC's proposed Section 11.3 would limit how MCI may access subloops (i.e., SBC would force CLECs to choose one of two options), SBC's language violates 47 C.F.R. § 51.321(a) and Section 251(c) of the Act.

For all of the foregoing reasons, MCI respectfully requests that the Commission reject the language proposed by SBC at Section 11.3 of the UNE Appendix.

UNE Issue 47

Should the demarcation points for access to dark fiber include remote terminals?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue have been resolved. In other words, since both parties and Staff believe that the additional contract language that has been proposed in connection with this issue should be excluded from the contract, albeit for very different reasons, the Commission need not consider this issue and should treat is as any other settled issue by adopting the parties' agreed language.

If, however, the Commission addresses the substance of this issue, MCI proposes to insert the term "Remote Terminal" in this section to include that as an accepted demarcation point for MCI to utilize SBC-provided dark fiber loops. The inclusion of the term is necessary because SBC sometimes serves multi-tenant buildings by placing a Remote Terminal in the building, and thus SBC's dark fiber would not terminate at an "end user customer premises." In such instances, and absent MCI's clarification, SBC could claim that it has no obligation to provide MCI with access to dark fiber loops. MCI therefore respectfully requests that the Commission adopt its proposed language.

UNE Issue 48

Which Party's requirements for routine network modification with respect to Dark Fiber should be included in this Agreement?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI believes that SBC's obligations to perform routine network modifications for dark fiber are no different than for other loops and transport. Thus, MCI has proposed language that cross references the routine network modifications set forth elsewhere in the agreement. SBC, in contrast, seems to be creating special limitations about routine network modification for dark fiber. But there is no need for a separate definition of routine network modifications here. MCI therefore respectfully requests that the Commission adopt MCI's proposed language, which incorporates the requirements for modification of loops and transport.

UNE Issue 49

Should MCI provide SBC Illinois, as a requirement of this contract, information relating to MCI's deployment of transport facilities?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI should not be required under this contract to provide these confidential and sensitive business plans to SBC. Nonetheless, SBC proposes language under Sections 12.12 and 15.6 of the UNE Appendix that would require MCI to provide to SBC information related to MCI's ability to deploy transport facilities, MCI's actual transport facility deployment, and the availability of transport from third parties.

MCI objects to this language for several reasons. First and foremost, the information that SBC seeks to obtain from MCI via its proposed Sections 12.12 and 15.6 is highly confidential and sensitive to MCI's business plans. It is completely inappropriate for SBC to attempt to require confidential information from its competitors as a requirement of an interconnection agreement.

Second, SBC's proposed language is an apparent attempt to force competitors to help SBC in delisting additional transport routes. For instance, the *TRO* established a framework that would allow SBC to attempt to prove to the Commission that it should no longer be required to provide unbundled transport for use by its competitors along particular routes (*see*, 47 C.F.R. § 51.319(e)(1), (e)(2), and (e)(3)). In ICC Docket No. 03-0596, SBC attempted to make this showing with regard to many specific transport routes in Illinois. *See,* SBC Illinois Rebuttal Notice for Local Loops and Dedicated Transport (October 6, 2003) and SBC Exhibit 1.0, Direct Testimony of Rebecca Sparks (November 24, 2003) in ICC Docket No. 03-0596. While SBC's attempt to make this type of showing to the Commission was authorized by the *TRO*, MCI should not be forced to provide SBC confidential transport information outside the context of a litigated proceeding in exchange for an interconnection agreement. If SBC believes that it should no longer be required to provide transport at a particular route, SBC should be required to abide by the rules governing discovery in order to prove its case, just as it did in Docket No. 03-0596. The *TRO* did not authorize a complete rewrite of the discovery process or authorize SBC's "fishing expedition," nor is there any basis elsewhere for adopting SBC's language. Simply put, such an anti-competitive reporting requirement would be unreasonable and contrary to the traditional discovery process that the parties' have used in contested cases for many years.

Moreover, even if it were appropriate for SBC to require such information in exchange for SBC executing an interconnection agreement (which it is not), SBC's language is not clearly defined and would essentially grant SBC unilateral control over these requests for information. For instance, SBC does not define what would constitute a "reasonable request." Would a request for this information on a monthly, weekly, or daily basis be reasonable according to SBC's proposed language? Furthermore, SBC's proposed language would require MCI to report to SBC on information that SBC itself could obtain. Case in point: SBC's language would require MCI to report on the availability of 3rd party provided transport. However, SBC could obtain this information just as MCI could obtain this information. Accordingly, SBC's

request boils down to an attempt on SBC's part to force its competitors to perform due diligence for SBC.

Despite the fact that MCI believes it should win on the merits of its arguments above, MCI agrees with Dr. Zolnierek's recommendation that pursuant to the FCC's *Status Quo* Order, any disputes over the rates terms and conditions for unbundled access to switching, enterprise market loops, and dedicated transport should be resolved by simply ordering the parties to comply with the same rates, terms and conditions that applied under their interconnection agreements or tariffs as of June 15, 2004. As Dr. Zolnierek explained, the *Status Quo* Order essentially froze the parties' contractual and tariff obligations with respect to those issues as they were on June 15, 2004. Pursuant to this recommendation, SBC's attempt to require MCI to provide, at least once per year, information regarding MCI's ability to deploy transport facilities, actual deployment of transport facilities and availability of third-party transport facilities, would be rejected because these requirements were not included in the parties' agreement as of June 15, 2004.

For all of the above reasons, MCI respectfully requests that the Commission reject SBC's proposed language for Sections 12.12 and 15.6 (and associated subparts) of the UNE Appendix and omit them from the agreement.

UNE Issue 51

Under what circumstances should SBC Illinois make switch features that are loaded but not activated available to MCI?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue have been resolved. In other words, since both parties and Staff believe that the additional contract language that has been proposed in connection with this issue should be excluded from the contract, albeit for very different reasons, the Commission need not consider this issue and should treat is as any other settled issue by adopting the parties' agreed language.

If, however, the Commission addresses the substance of this issue, MCI believes that SBC should be required to make switch features available to MCI on a nondiscriminatory basis and at parity. MCI should not be solely responsible for bearing costs related to SBC's unbundling obligations that may also accrue to the benefit of other CLECs and even SBC and its affiliates. SBC's proposed language in this regard is yet another attempt to severely restrict MCI's access to the features, functions, and capabilities of SBC's switches. SBC's proposed section 13.2.2 states that SBC will make available switch features that "are loaded and activated" in the SBC Illinois switch. Read in its entirety, SBC's language would severely restrict MCI's access to local switching and would allow SBC to determine unilaterally CLECs' level of access to SBC's switches.

To elaborate, while “loaded” and “activated” may not appear to be extremely restrictive limitations, SBC’s proposed language goes on to define these terms in very restrictive ways and introduces additional limitations. SBC’s Sections 13.2.2 and 13.2.3, read in their entirety, would require the BFR process for all switch features that do not meet each of the following criteria:

1. Included in the software installed in the switch

2. Licensing fees are current

3. No other license, right to use, or other fees need to be paid to third party

4. No enabling code or other mechanism or method needs to be obtained from a third party

5. Translations and USOCs are in place

6. Ordering, billing, and wholesale provisioning processes have been implemented

7. Has been requested or provisioned in a UNE environment

The numerous restrictions that SBC would impose with regard to competitive access to its switch are inconsistent with its obligation under 47 C.F.R. § 51.319 to provide “… a requesting telecommunications carrier with nondiscriminatory access to local circuit switching….” and the definition of local circuit switching that “includes all vertical features that the switch is capable of providing….” As such, SBC’s proposed language should be rejected.

Moreover, SBC’s restrictions are inconsistent with the BFR Appendix. Section 3.1 of the BFR Appendix states:

> 3.1 SBC ILLINOIS shall promptly consider and analyze the submission of a Bona Fide Request from MCIm for: (a) a method of Interconnection or access to a Lawful unbundled Network Element (including Combinations thereof) not otherwise provided hereunder at the time of such request; (b) a method of Interconnection or access to a Lawful unbundled Network Element (including Combinations thereof) that is different in quality to that which SBC ILLINOIS provides itself at the time of such request; or (c) a customized service for features, capabilities, functionalities or a Lawful unbundled Network Element or Network Element Combination not otherwise provided hereunder at the time of such request. Items (a), (b) and (c) above may be referred to as a “BFR Item”.

Since the language in Sections 13.2.2 and 13.2.3 does not pertain to methods of interconnection, BFR Items (a) and (b) above would not apply. Further, since SBC is obligated to provide the "features, functions and capabilities of the switch," (*See,* FCC Rule 51.319(d) and agreed-to Section 13.1.1 of the UNE Appendix), switch features and functions should not be classified as the third BFR item listed above (i.e., a customized service for features, capabilities, or functionalities…not otherwise provided hereunder at the time of such request). SBC blatantly attempts to lump many switch features into the "unavailable" category by imposing the multitude of restrictions described above so that any switch feature that does not meet this very narrow definition will be viewed as a "customized service," thereby triggering the BFR process. The Commission should reject SBC's invitation to inappropriately expand the use of the BFR to switch features that SBC is already obligated to provide in conjunction with ULS.

All of SBC's proposed limitations are, to some degree, within SBC's control. For instance, MCI and other CLECs do not have control over whether SBC keeps its license fees current or performs the proper translations. Simply put, SBC's proposed limitations not only conflict with the FCC's rules, but provide, at every step, opportunities for SBC to inappropriately limit MCI's access to its switch and raise barriers for MCI by requiring the BFR process to be employed.

The BFR process increases delay, complexity, uncertainty and cost for competitors. For instance, the BFR process would force competitors to wait over 150 days for a BFR quote from SBC (BFR Appendix, Section 3.3.4), during which time a competitor must submit a request (BFR Appendix, Section 2.1), wait for SBC's preliminary analysis (BFR Appendix, Section 3.3.4), respond to SBC's analysis (BFR Appendix, Section 3.4.1), and then wait again for SBC's BFR quote (Section 3.4.1.2). This process could be complicated further by SBC requesting additional information or meetings (BFR Appendix, Section 3.3.3). To exacerbate this complexity and delay, the BFR process has no deadline for when SBC must complete the BFR, and therefore, the CLEC has no idea at the outset when it can expect SBC to make the requested feature available – which means that the CLEC cannot effectively plan for making this feature available to its customers. Finally, the BFR process raises competitors' costs by requiring a specific CLEC to incur upfront developmental costs or deposits in the thousands of dollars (BFR Appendix, Section 3.3.1).

Finally, MCI objects to SBC's proposed language because it provides SBC with a disincentive to be efficient, to employ the latest software upgrades, and to keep pace with CLEC demand. For instance, a literal interpretation of SBC's proposed Sections 13.2.2 and 13.2.3 would suggest that SBC could forego upgrading its switches and keeping current on its license fees and require CLECs to bear the brunt of these actions (i.e., either by paying the costs that SBC imposes through the BFR process or foregoing the requested feature).

For all of the foregoing reasons, MCI respectfully requests that the Commission reject SBC's proposed language for Sections 13.2.2 and 13.2.3.

UNE Issue 53

Should the Lawful UNE Appendix contain a declassification plan for mass market switching?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue have been resolved. In other words, since both parties and Staff believe that the additional contract language that has been proposed in connection with this issue should be excluded from the contract, albeit for very different reasons, the Commission need not consider this issue.

If, however, the Commission considers the substance of this issue, it is MCI's position that the Lawful UNE Appendix should not contain a declassification plan for mass market switching. As a result of the D.C. Circuit's USTA II decision, there are at present no rules in place governing "mass market switching" as an unbundled element pursuant to Sect. 251(c)(3) of the Act and therefore no basis upon which to predicate a "declassification plan." Further, under state law, SBC is required to provide local switching to a telecommunications carrier seeking to provide end to end telecommunications services, within a LATA, to its end users or payphone service providers. Further, the question of what constitutes "mass market switching" is not relevant given the previous finding of the ICC, expressly stating that "a telecommunications carrier may use a network elements platform to provide service to an end user, without qualification as to the number of lines the end user has in service." *See* Docket No. 01-0614, Order dated June 11, 2002 at 138-40; 220 ILCS 5/13-801-(d)(4).

It would seem that SBC's position on issue UNE 53 [and 11] are improper attempts to restrict the applicability of state law, which establishes additional requirements for SBC with respect to the provision of network elements like local switching.

Although MCI has not proposed competing language in this section of the UNE Appendix, MCI believes that its proposed language regarding change of law provides the appropriate mechanism by which changes to the agreement can be effectuated. MCI therefore respectfully requests that the Commission omit SBC's proposed Section 13.3 declassification plan for mass market switching.

UNE Issue 54

To what extent should SBC Illinois be required to offer ULS to Enterprise Market customer?

MCI's Position

MCI withdraws its proposed language with respect to this issue.

UNE Issue 55

Under what rates, terms and conditions should SBC Illinois be required to provide Customized Routing to MCI?

MCI's Position

SBC must provide customized routing under rates consistent with its obligations for ULS. The same issue was decided by the FCC in MCI's Arbitration with Verizon in Virginia. The FCC held that Verizon's Advanced Intelligent Network ("AIN") based customized routing solution must be provided at a cost based rate. Moreover, such determination did not include recovery of development costs of the type SBC is seeking in this case.

The rates the FCC approved included the capabilities for MCI to place orders for customized routing via a line service record ("LSR") process, to receive AIN-based routing on a per line basis and to receive per line call records as part of the DUF for OS/DA calls. Verizon Virginia was required to provide cost study information to support its proposed charges. As a result of this cost study, the elements for the AIN-based customized routing which satisfied MCI's request to route calls to MCI's FDG trunks had a Recurring charge of $0.00084 per line per month.

MCI has proposed language that very closely tracks the FCC requirement for customized routing. Because MCI's requested customized routing affects the configuration of the switch, which is a UNE, such rates should be based on TELRIC principles and SBC should be required to file a simple cost study to justify those rates. MCI believes that tariff rates filed by SBC for the unbundled local switching network element necessarily include everything needed to accommodate MCI's requested method of customized routing whether SBC delivers it via Line Class Codes or Advanced Intelligent Network.

UNE Issue 56

See UNE Issue 55.

MCI's Position

See MCI's position on UNE Issue 55.

UNE Issue 57

See UNE Issue 55.

MCI's Position

See MCI's position on UNE Issue 55.

UNE Issue 58

See UNE Issue 55.

MCI's Position

See MCI's position on UNE Issue 55.

UNE Issue 59

Should MCI be required to submit a BFR for Feature Group D Customized Routing?

MCI's Position

MCI should not be required to submit a bona fide request ("BFR") for Feature Group D Customized Routing. The BFR process is used for CLECs to request new UNEs. Customized Routing over Feature Group D is not a new UNE but is a feature of the unbundled local switching UNE that SBC Illinois is already required to provide. Submitting MCI's request through a BFR process is not the proper procedure and would only serve to introduce unnecessary delay and costs associated with MCI's request.

In addition, there is no specific FCC rule or requirement that would necessitate the BFR process for ordering customized routing. Further, requiring MCI to submit a BFR proposal (a process reserved for the determination of new UNEs), is inappropriate under these circumstances since it shifts the burden of proof requirement for technical feasibility from SBC to MCI.

Aside from all that, the fact that Verizon is already providing MCI with the customized routing it requires over Feature Group D trunks makes any discussion of technical feasibility moot. Although Verizon is using AIN to achieve customized routing, the same Feature Group D customized routing can be accomplished via LCC as MCI has already demonstrated to SBC in the past.

UNE Issue 61

If MCI exceeds the cap on Dedicated DS3 transport, what procedures should apply?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

This issue is really the same as UNE Issue 33 except that it concerns transport, not loops. The FCC capped the availability of UNE transport at 12 DS3s. The question is what happens if MCI mistakenly orders more than 12 dedicated DS3 transport facilities as UNEs on a certain route. Under SBC's proposal, SBC is permitted to accept

MCI's order but treat the "excess" facilities ordered as an order for access facilities charged at access rates. In MCI's view, SBC should either reject orders for "excess" facilities or notify MCI that it has exceeded the cap and then MCI can decide whether to order access services. SBC should not be permitted to provision access services when MCI has not ordered any such services. MCI therefore respectfully requests that the Commission reject SBC's proposed language.

UNE Issue 62

Should the prices for network reconfiguration service be included in Appendix Pricing or outlined in SBC Illinois's tariff?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The prices for network reconfiguration should be include in Appendix Pricing. This dispute involves another attempt by SBC to narrow its obligation to provide network functions at cost-based rates. MCI believes that all prices should be in the agreement, thereby creating contractual certainty because both parties will now what will be paid for each element and service that is ordered. MCI disagrees with SBC's language that would point to an SBC interstate tariff, because that would have the effect of allowing SBC to alter this agreement by making changes to its interstate tariff. Likewise, it places MCI in a position of "accepting" contractual changes to which MCI has not agreed.

UNE Issue 63

Which Party's requirements for routine network modification with respect to Dedicated Transport should be included in this Agreement?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

This dispute involves language governing SBC's obligations to make "routine network modifications" in its transport network when MCI seeks to obtain dedicated transport from SBC. This issue is very similar to UNE Issue 28 pertaining to routine network modifications for loop plant. The specific disagreement is whose proposed language best captures the FCC's rules on this matter. Those rules are codified in 47 C.F.R., § 51.319(e)(5). MCI's proposed language tracks the FCC's rules precisely, unlike the language proposed by SBC. MCI therefore respectfully asks the Commission to adopt its proposed language on this issue.

UNE Issue 64

Should SBC's terms and conditions for cross connects be included in the Agreement?

MCI's Position

By its proposed Section 19, SBC proposes to include a section in the UNE appendix detailing that deployment of cross connects is the method by which UNEs will be connected, for example, and to detail the type of cross connects that will be used for various purposes. This section, however, is not a necessary part of the Agreement and should be omitted.

Section 4 of the UNE Appendix sets forth the terms for UNE connection methods. Section 19 is duplicative and risks creating inconsistency and ambiguity. Moreover, there is no need to specify the exact type of cross connects that will be used for various purposes. MCI should be permitted to order whatever type of cross connects it determines are appropriate for providing services to its customers.

In addition, there are substantive problems with SBC's proposed Section 19. Section 19.2, for example, states that "[n]othing in this section is a commitment to connect or leave connected any two or more UNEs." As this Commission is fully aware, under both federal and state law, SBC has a clear obligation to leave connected UNEs that are already connected and to connect UNEs at the request of CLECs. It creates substantial risk of litigation over issues that have been repeatedly litigated in the past while providing no benefit. Similarly, proposed section 19.4 describes applicable cross connects "for the purpose of MCI combining a SBC ILLINOIS Lawful Loop with another SBC ILLINOIS Lawful UNE," which could be read to imply that UNE-P is unavailable as loops must be combined to other UNEs by way of the described cross connects. Quite simply, SBC's proposed section 19 serves no purpose other than creating ambiguity and/or confusion as to its obligations under the agreement.

For all of the above reasons, MCI respectfully urges the Commission to omit SBC's proposed Section 19 from the Agreement.

UNE Issue 71

Which Party's Combination language should be included in the Agreement?

MCI's Position

MCI's Combination language should be included in the Agreement. It is beyond dispute that SBC Illinois is required to provide combinations of unbundled Network Elements, and the Parties' current agreement contains detailed and explicit provisions concerning these obligations. MCI's proposed Combination language, set forth as Section 21 of the UNE Appendix, properly adopts the standards for Combinations articulated in the FCC's rules, including 47 C.F.R. § 315. SBC Illinois has proposed a

massive rewriting of these existing provisions concerning combinations, but has shown no reason why this language should be changed.

MCI's Combination language is also supported by the recent UNE Interim Requirements Order. As Dr. Zolnierek correctly notes in his testimony, the FCC has ordered SBC, for at least six months after the publication of its Order, to honor any Section 251(c) obligations contained in interconnection agreements or state tariffs in effect on June 15, 2004. *See e.g.,* Zolnierek Direct Testimony at p. 18, lines 317-21.

Accordingly, pursuant to federal law, SBC is required to continue to provide MCI access to UNEs and combinations of UNEs pursuant to the interconnection agreement in effect between the parties on June 15, 2004 and pursuant to any tariffs reflecting those obligations. So, for example, SBC is required under federal law to provide access to UNEs pursuant to Article IX of the existing interconnection agreement between MCImetro and SBC. Among other things, Article IX provides that SBC will provide MCI with access to local loops, network interface device, switching capability, interoffice transmission facilities, signaling links, call related data bases, operations support systems, operator services and directory assistance and dark fiber. See Section 9.2. It also provides that SBC shall perform functions necessary to combine SBC's network elements, even if those elements are not ordinarily combined in SBC's network. *See* Section 9.33. Thus, it is clear that under federal law, pursuant to the FCC's August 20, 2004 UNE Interim Requirements Order, SBC is required to provide MCI with access to UNEs and combinations of UNEs at rates based on the FCC's Total Element Long Run Incremental Cost ("TELRIC") standard. Notwithstanding its federal obligations, SBC also is obligated under state law to provide access to network elements and combinations of network elements at cost-based rates pursuant to Section 13-801 of the PUA and the Commission's Order in Docket 01-0614. Thus, either way, MCI's proposed language is entirely consistent with the SBC's obligations under federal law, including the terms of the existing MCI/SBC interconnection agreement, and SBC's obligations under state law as reflected in SBC's tariffs. For all of these reasons, the Commission should adopt the language MCI proposed in connection with UNE Issue 71.

Moreover, it is MCI's position that SBC Illinois is obligated to provide combinations of unbundled Network Elements by Section 13-801(d)(3) of the Public Utilities Act. MCI's proposed language is taken directly from relevant portions of the tariff that SBC filed to comply with Section 13-801(d)(3) and the Commission's June 11, 2002 order in Docket 01-0614, which sets forth the Commission's interpretation of SBC's obligations under Section 13-801 of the Illinois Public Utilities Act ("PUA"). The tariff provisions in the tariff that SBC filed in response to the ICC's Order in Docket 01-0614 reflect, among other things, SBC's obligations under state law to combine any sequence of unbundled network elements that it ordinarily combines for itself, including but not limited to a specific list of UNE combinations that were identified in the proposed Illinois 271 Agreement Amendment ("I2A") found in schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company on or about March 28, 2001 with the Illinois Commerce Commission in Docket 00-0700. The "Provisions of Combinations of Network Elements" section of the tariff begins at ILL. C.C. No. 20, Part 19, Section 15,

7th Revised Sheet No. 1 and goes through ILL. C.C. No. 20, Part 19, Section 15, Original Sheet No. 17. An abridged description of the specific list of UNE combinations identified in the I2A are at ILL. C.C. No. 20, Part 19, Section 15, 5th revised Sheet No. 2 through 1st Revised sheet No. 2.1. *See also* Zolnierek Direct Testimony at p. 64, lines 1367-71. Thus, Section 13-801(d)(3) and the Commission's June 11, 2002 order in Docket 01-0614 fully support MCI's proposed language.

As noted in the testimony of MCI witness Don Price, SBC and other ILECs at times tried to disconnect facilities that were already combined; at times, they said that CLECs should not be permitted to combine elements themselves as they did not want CLECs to manipulate their network; at other times, they suggested CLECs should combine the elements but proposed inefficient ways for them to do so. Given this sordid history, the only purpose served by SBC's proposal would be to reopen a debate that has finally been resolved, albeit not to SBC's liking.

For this reason, and for all the reasons set out above, MCI respectfully requests that the Commission accept its proposed language on this issue.

UNE Issue 72

See UNE Issue 71.

MCI's Position

See UNE Issue 71 above.

UNE Issue 74

Should the Appendix contain an example describing how an EEL must terminate in a collocation agreement?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue have been resolved. In other words, since both parties and Staff believe that the additional contract language that has been proposed in connection with this issue should be excluded from the contract, albeit for very different reasons, the Commission need not consider this issue.

If, however, the Commission addresses the substance of this issue, MCI believes that SBC has proposed language that is incomprehensible and disagrees with its inclusion in the Agreement. First, the language is unnecessary. Although SBC appears to link its proposed language with FCC rule 47 C.F.R. § 51.318(b)(iv), inspection of the referenced rule demonstrates that the parties have already taken that into account in Section 22.3.1.2.8. Second, SBC's language begins with the phrase **"**by way of example *only*." (emphasis added). If it is for example only, the language serves no purpose in the Agreement. Thus, given (a) that there is no purpose for the language,

(b) that it is not clear, and (c) that it constitutes nothing more than a confusing example, MCI respectfully requests that the Commission omit this section proposed by SBC.

UNE Issue 76

Should MCI's definition of High Capacity EELs be included in the Agreement?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI believes that the contract should include a definition of High Capacity EELs because eligibility requirements apply only to these High Capacity EELs and not to low capacity EELs. MCI's definition precisely tracks the FCC's regulations. By contrast, SBC believes that high capacity EELs should effectively be defined in the course of delineating the eligibility requirements. (SBC also provides a circular definition in 22.4.1.1, defining a high capacity as "an EEL to which Section 2.14.2 of this Appendix applies."). But it is far easier simply to define the term once and then refer back to it.

UNE Issue 77

Does SBC Illinois's proposed introductory phrase in Section 22.2.1 have any contractual effect?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

SBC wants to add the following almost impenetrable introductory phrase to section 22.2.1: "Except as provided below in this Section 22 or elsewhere in the Agreement and subject to this Section and Section 6, Conversion of Wholesale Service to UNEs, . . ." This language is confusing, has no meaning, and should be omitted from the Agreement.

After reading the introductory phrase, someone trying to interpret the contract will be sent scurrying to section 22 or even the entire agreement to see if there are any exceptions to the directive established in subsection 22.2.1. SBC, of course, could readily point to such exceptions if it believed there are any, rather than suggesting inclusion of this opaque introductory phrase.

As for the language "subject to this Section and Section 6," this too is entirely unnecessary. Of course, each section in the document is "subject" to other sections. Subsection 22.2.1 is "subject" not only to Section 6 on conversions of wholesale services to UNEs, but also to Section 7 on commingling, Section 9 on loops, Section 15 on dedicated transport and indeed to the entire agreement. Selecting particular sections to highlight only sows confusion with no benefit whatsoever. Thus, MCI

respectfully requests that the Commission omit SBC's proposed introductory phrase from the Agreement.

UNE Issue 78

Which Party's language better implements the EELs service eligibility requirements set forth in the Triennial Review Order?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

While the parties have largely agreed to language implementing the EELs service eligibility requirements in the TRO, SBC has made several additional proposals that would impermissibly restrict MCI's access to the EELs.

The FCC determined that EELs, like UNEs and UNE combinations generally, could be used to provide "qualifying services" and they could also be used to provide non-qualifying services. But the FCC foresaw some risk that carriers would attempt to use high capacity EELs (but not other UNEs or combinations of UNEs) to provide exclusively non-qualifying services. *TRO* ¶¶ 591-92. In particular, the FCC was concerned that providers of exclusively long distance services would attempt to use EELs. *TRO* ¶ 598. The FCC therefore laid out eligibility criteria for access to high capacity EELS. *See* 47 C.F.R. § 51.318.

The D.C. Circuit overturned the qualifying/non-qualifying distinction, making it unclear why EELs cannot be used to provide so-called non-qualifying services. Even if the FCC's eligibility criteria remained effective, they cannot be interpreted to impose substantial obstacles to use of EELs to provide qualifying services. The FCC made clear that "[a] central goal of the service eligibility criteria we establish in this Order is to safeguard the ability of bona fide providers of qualifying service to obtain access to high-capacity EELs while simultaneously addressing the potential for gaming." *TRO* ¶ 595. It attempted to eliminate "overly intrusive and onerous compliance requirements" that "serve as a drag on competitive entry," and replace them with far simpler requirements keyed to whether a competitor is providing local voice service. *TRO* ¶¶ 595-96. SBC, however, interprets the eligibility requirements to impose just such overly intrusive requirements. Such a result would be indefensible if the qualifying services restrictions were to remain in effect, and certainly are not defensible in the absence of those restrictions. The parties have six basic disagreements regarding how the EELs should be set forth in the ICA. Each will be addressed in turn.

The first disagreement between the parties is whether the eligibility criteria should be set forth as an affirmative obligation establishing that SBC must provide access to high capacity EELs when the eligibility criteria are met, or a negative limitation stating that SBC does not have to provide access to high capacity EELs unless the eligibility criteria are met. Thus, in UNE Appendix 22.3.1, MCI proposes that "SBC ILLINOIS shall provide MCIm with access to High-Capacity EELs that meet service

eligibility criteria." SBC, in contrast, proposes language stating that "SBC ILLINOIS is *not* obligated, and shall not, provide access to" high capacity EELS unless all of the eligibility criteria have been met.

MCI's proposed language is superior. A contract is supposed to establish the obligations of the parties. If it fails to do this, there may be no other source for these obligations. In contrast, there is no need to say what the contract does not require (except perhaps for clarification). If an obligation is not affirmatively established by the contract, the contract does not require it.

SBC's proposal gets this backwards. By stating only what SBC is not obligated to do, SBC's proposal fails to establish what SBC is obligated to do. If SBC's proposed language is adopted and MCI seeks access to high capacity EELs that meet the eligibility requirements, SBC could say that nothing in the ICA requires it to provide this access. But because MCI is entitled to such access under the governing FCC rules, MCI is equally entitled to a clear statement in the ICA that it can access high capacity EELS when the eligibility criteria have been met.

Second, although the parties agree that the eligibility requirements only apply to high capacity EELs, not low capacity EELs or other UNEs (*see TRO* ¶¶ 591-600), the parties disagree about where high capacity EELs should be defined. MCI proposes to define high capacity EELs in a subsection that is separate from the eligibility criteria themselves – in UNE Appendix 22.1.3. Section 22.3.1, which sets forth the eligibility criteria, would then simply provide that SBC shall provide MCI with high capacity EELs when the eligibility criteria have been met.

SBC, on the other hand, does not want to define the term high capacity EELs in a section separate from the substantive provision governing access to such EELs, but would instead include the definition of high capacity EELs in section 22.3.1 itself. SBC would not even use the term high capacity EELs in section 22.3.1. SBC's proposal is that section 22.3.1 state that SBC is not obligated to provide access to "(1) a Lawful unbundled DS1 loop in combination, or Commingled, with a Lawful UNE dedicated DS1 transport facility or service or a Lawful UNE dedicated DS3 (or higher) transport facility or service, or a (2) a Lawful UNE dedicated DS1 transport facility or service in combination, or Commingled, with a Lawful UNE DS1 loop or a Lawful UNE DS1 channel termination service, or a combination, or Commingled, with a Lawful UNE DS1 loop or a DS 1 channel termination service, or a Lawful UNE DS3 loop or a Lawful UNE DS3 (or higher) channel termination service . . . ." MCI believes it is much simpler and easier to interpret the contract if the term high capacity EELs is defined in a separate provision. Section 22.3.1 can then simply use the term high capacity EELs, rather than including the entire definition in a substantive provision explaining when MCI shall be able to access such EELs.

The importance of a general definition of the term high capacity EELs, rather than an operational definition embedded in section 22.3.1, is also clear from the fact that SBC itself proposes to use the term high capacity EEL in another section -- UNE

Appendix section 22.4.1. It is far easier simply to define the term once and then refer back to it.

Third, the parties disagree on the language in proposed section 22.3.1.2.1 to implement the eligibility requirement that "each circuit to be provided to each customer will be assigned a local number prior to the provision of service over that circuit." 47 C.F.R. § 51.318. First, MCI proposes to include language making clear that it is each "DS1" circuit that must have a local number. This is eminently clear from the *TRO*, which discusses "local number assignment to a DS1 circuit." *TRO* ¶ 602. Indeed, the *TRO* explains that a DS3 EEL must have one local number assigned to "each DS1-equivalent circuit." *Id*. *See also TRO* ¶ 597 ("to demonstrate that it actually provides a local voice service to the customer over every DS1 circuit, we find that the requesting carrier must have at least one local number assigned to each circuit.")

In addition, SBC proposes to graft onto the requirement that MCI have a local number for each circuit, the additional requirement that "MCI will *provide* the corresponding Local Telephone Number(s) as part of the required certification." UNE Appendix section 22.3.1.2.1 (emphasis added). This proposed requirement has no warrant in the *TRO*. The *TRO* requires only self-certification, not provision of information that would allow for a pre-audit. *TRO* ¶¶ 577, 623-624 & n. 1899. Indeed, the *TRO* does not require that competitors *keep* any specific type of records supporting their self-certification, much less that they provide them to ILECs with their self certification. *TRO* ¶ 629. And the *TRO* further states that the local number requirement can be satisfied in some circumstances by a carrier that does not yet have a local number. *TRO* ¶ 602. SBC's proposed requirement that MCI must provide the local number in order to satisfy the local number requirement would rule this out -- in flat contradiction of the *TRO*.

Fourth, the parties disagree concerning one aspect of the eligibility criterion that "[e]ach circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit." 47 C.F.R. § 51.318(b)(2)(iii). Although the parties generally agree on the language to implement this provision (UNE Appendix 22.3.1.2.3), they disagree on whether the language should make clear that it is each "DS1" circuit that is being discussed. The parties disagree even though, as was true for the local number requirement, the FCC made clear that the 911 requirement applies to each DS1 circuit. The *TRO* states that "to demonstrate that it actually provides a local voice service to the customer over every *DS1* circuit, we find that the requesting carrier. . .must provide 911 or E911 capability to each circuit." *TRO* ¶ 597 (emphasis added). *See also id.* ¶ 599 ("We apply the service eligibility requirements on a circuit-by-circuit basis, so each *DS1* EEL. . .must satisfy the service eligibility criteria.") *Id*. ¶ 599 (emphasis added). Thus, the clarifying language "DS1" circuit should be included.

Fifth, with respect to a number of the other eligibility criteria, set forth in the proposed UNE Appendix in 22.3.1.2.4, 22.3.1.2.5, and 22.3.1.2.7, MCI again added the language "DS1" to clarify that it is each DS1 circuit that must meet these criteria. As we have seen, it is explicit in the *TRO* that the eligibility criteria apply to each DS1 circuit. *See, e.g.*, *TRO* ¶¶ 599, 608. Nonetheless, SBC will not agree to this language.

Finally, SBC proposes to add language in UNE sections 22.3.1.2.9 and 22.3.1.2.10 that is confusing, unnecessary, and not required by the FCC's rules or the language of the TRO. SBC would add in section 22.3.1.2.9 the phrase "and the trunk is located in the same LATA as the end user customer premises served by the EEL." The agreed to language, i.e., up to the insertion of SBC's language, tracks the language of FCC Rule 51.318(d). 47 C.F.R. § 51.318(d). SBC should not be allowed to insert superfluous language. Then, in UNE section 22.3.1.2.10, SBC proposes language based on its unsupported language in the previous section. SBC's language would only provide grounds for it to reject MCI's efforts to utilize EELs pursuant to the FCC's eligibility criteria and/or lead to disputes between the parties. For these reasons, SBC's proposed language should be rejected.

In light of the foregoing discussion, MCI respectfully requests that the Commission adopt MCI's proposed language regarding implementation of the EELs and reject SBC's proposed language.

UNE Issue 79

Which Party's language better implements the EELs certification requirements set forth in the Triennial Review Order?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI's language better implements the EELs certification requirements set forth in the *TRO* and should be adopted.

The FCC said that carriers requesting high capacity EELs could self-certify that the eligibility criteria have been met. *TRO* ¶ 623. Moreover, the FCC explained, an ILEC that questions the requesting carrier's self certification cannot withhold the facilities but must instead initiate an audit process. *TRO* ¶ 623 n. 1899.

The FCC adopted the self-certification method because it understood that it should be as easy as possible for requesting carriers to establish that the eligibility requirements have been met. ILECs, including SBC, have consistently thrown up significant obstacles to use of EELs and have advocated severe restrictions on use of EELs at every turn. Thus, as the FCC explained, "[a] critical component of nondiscriminatory access [to EELs] is preventing the imposition of any undue gating mechanisms that could delay the initiation of the ordering or conversion process." *TRO* ¶ 623.

MCI's language better fulfills the FCC's intent. MCI proposes self-certification via e-mail or letter. Although the FCC did not specify the form of self-certification, it stated "that a letter sent to the incumbent LEC by a requesting carrier is a practical method." *TRO* ¶ 624. SBC in contrast proposes self-certification "on a form provided by SBC ILLINOIS." This would provide SBC unilateral control over what will be placed on the

form, as well as how such a form will be submitted. It would thus potentially allow SBC to impose undue gating mechanisms that would limit access to EELS in contrast to MCI's proposed approach, which the FCC itself proclaimed acceptable.

In addition to proposing use of its own (unspecified) form for self-certification, SBC proposes language requiring MCI to maintain specific records in order to establish that it has met eligibility requirements. This is flatly inconsistent with what the FCC said in the *TRO*. The FCC explained that while it "expect[ed] that requesting carriers will maintain the appropriate documentation to support their certifications," it would not impose "detailed recordkeeping requirements." *TRO* ¶ 629. To the contrary, the FCC specifically rejected ILEC demands that it require CLECs to maintain certain specific records. *Id.* But SBC now wants to reimpose the very requirements the FCC rejected.

That is not to say that MCI can just fail to keep any records showing it has met the eligibility requirements. SBC can always demand an audit. And if the auditor finds that MCI has not met the eligibility requirements, MCI will lose the right to ongoing use of the EELs in question and will also face a true-up of past charges. *Id*. at 627. Thus, as the FCC understood, there is no reason to require MCI to maintain particular records. MCI has every incentive to maintain sufficient records on its own.

For all of the above reasons, MCI respectfully requests that the Commission adopt MCI's proposed language implementing the EELs certification requirements set forth in the *TRO* and reject SBC's proposed language.

UNE Issue 81

Which Party's language better implements the EELs auditing requirements set forth in the Triennial Review Order?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI respectfully urges the Commission to reject SBC's overly broad language and adopt MCI's language that more closely tracks the FCC's discussion of audit provisions.

MCI's concern with the language proposed by SBC in section 22.5.1, stems from the portion of that language that begins: "In addition to any other audit rights provided for hereunder and those allowed by law, SBC ILLINOIS may… ." MCI objects to this language and the corresponding provisions proposed by SBC because it goes beyond the FCC's TRO in paragraph 626, which states in pertinent part:

> We conclude that incumbent LECs should have a limited right to audit compliance with the qualifying service eligibility criteria. In particular, we conclude that incumbent LECs may obtain and pay for an independent auditor to audit, on an

annual basis, compliance with the qualifying service eligibility criteria.

UNE Issue 82

Should the contract contain a non-waiver clause with respect to provisioning EELs?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The contract should not contain a non-waiver clause with respect to provisioning EELs. SBC's proposal for such a provision is unnecessary because the parties have agreed to a non-waiver provision of general application in GT&C Section 36. Moreover, the language SBC has proposed, referencing "estoppel, laches and other similar concepts in other situations," is hopelessly vague and incomprehensible. Its inclusion in the ICA could only lead to confusion between the parties.

UNE Issue 83

Should SBC Illinois's Reservation of Rights clause be included in this Agreement?

MCI's Position

SBC Illinois's Reservation of Rights clause should not be included in this Agreement. As with SBC's various other "reservation of rights" clauses, this proposal would permit SBC to unilaterally invoke a change in law without first seeking a contract amendment.

1. **Digital Subscriber Line ("xDSL") Issues**

xDSL Issue 1

Is the FCC's Triennial Review Order the sole source of SBC's obligations to provide xDSL?

MCI's Position

The FCC Triennial Review Order is not the sole source of SBC's obligations to provide xDSL. Rather, there are numerous sources of SBC's obligations to provide xDSL to MCI, including FCC regulations other than the TRO, applicable state law, and conditions of the interconnection agreement. MCI objects to SBC's proposed language asserting otherwise as an attempt to constrict SBC's obligations to provide xDSL and as an attempt by SBC to insert language that gives it a unilateral change-of-law right in the agreement.

xDSL Issue 3

Should the Commission adopt SBC's liability and indemnity language for the xDSL Appendix in addition to that contained in the GT&C?

MCI's Position

The Commission should not adopt SBC's liability and indemnity language for he xDSL Appendix. SBC's proposed language is unreasonable because it would make MCI liable to SBC even in the absence of any underlying fault on MCI's part. Moreover, SBC's proposed language is unnecessary since the parties have agreed to comprehensive liability and indemnity provisions of general applicability in the GT&C.

xDSL Issue 4

Should time and materials charges be set forth in Appendix Pricing or as set forth in SBC's tariff?

MCI's Position

All prices should be in the agreement, including time and material charges. Having prices in the agreement creates contractual certainty and clarity for both parties since both parties will know exactly what they will pay for each element and service that they order.

SBC has proposed that MCI be required to pay SBC for acceptance testing and other xDSL-related services pursuant to the terms of SBC's federal tariff, rather than having the prices clearly set forth in the ICA. Adopting SBC's proposal would give SBC the option of unilaterally altering the prices it charges MCI for providing these services. And SBC has significant latitude to amend its federal tariffs; certainly it would be far easier for SBC to unilaterally amend its federal tariff than to negotiate and obtain approval of an amendment to the prices in the ICA with MCI.

Indeed, the very point of SBC's position seems to be to give itself the unilateral option to raise the rates it charges MCI without allowing intervention or review by the Commission. Such a result would create uncertainty in the ICA's pricing structure, and could allow SBC to unilaterally amend the prices it charges MCI for various services without MCI's agreement, and without the oversight of the Commission. Such a result is inconsistent with the Commission's XO Arbitration Order. MCI respectfully requests that the Commission reject SBC's proposal.

xDSL Issue 5

Should there be an exception to MCI's obligation to pay for acceptance testing when certain performances standards are not met?

MCI's Position

As in the parties current ICA and in the current ICAs between SBC and MCI in Michigan and Ohio, there should be an exception in this Agreement to MCI's obligation to pay for acceptance testing for 60 days when SBC fails to properly condition DSL loops 90% of the time.

MCI must rely heavily on SBC meeting its performance obligations under the ICA in order to provide service to its end-user customers. Nowhere is this more true than in the context of DSL loop conditioning and provisioning. Put simply, when SBC fails to properly provision DSL loops as required under the ICA, MCI's business suffers, as does its relationship with its end-user customers. It is therefore crucial to MCI's ability to conduct its DSL business that SBC properly condition and provision DSL loops at the time of provisioning.

MCI therefore proposes that the parties continue to include provisions (9.4.1 et seq.) in their current ICA requiring that, when SBC fails to properly provision DSL loops 90% of the time, MCI will not be required to pay SBC for acceptance testing for a period of 60 days. These proposed provisions impose a modest, but needed, incentive for SBC to appropriately condition loops at the time of ordering. MCI respectfully requests that the Commission adopt MCI's proposed language and maintain the status quo.

xDSL Issue 6

Should SBC's intervening law provision be included in the xDSL Appendix?

MCI's Position

SBC's intervening law provision should not be included in the xDSL Appendix. As with SBC's various other "reservation of rights" clauses, this proposal would permit SBC to unilaterally invoke a change in law without first seeking a contract amendment. Moreover, comprehensive change of law provisions of universal application are contained in the GT&C of the Agreement. SBC's proposed provision, therefore, is unnecessary and self-serving. This provision is also contrary to the Commission's XO Arbitration Order which rejected language that would allow SBC to unilaterally determine what constitutes a change of law and unilaterally amend the ICA. MCI respectfully requests that the Commission reject SBC's xDSL Appendix intervening law provision.

xDSL Issue 7a

Are acceptance testing, cooperative testing, loop conditioning, maintenance and repair of xDSL loops within the scope of SBC's 251(c)(3) obligations?

MCI's Position

SBC proposes language limiting its obligations under 251(c)(3) of the Act pertaining to the provision of xDSL loops. Although the parties agree that SBC is obligated to provide MCI with access to DSL-capable loops, the disagreement pertains to the scope of SBC's obligations.

SBC's language ignores the plain requirements of the FCC's rules in this regard, specifically, 47 C.F.R. § 51.319(a)(1)(iii) and (iv). Those rules clearly require SBC to condition, maintain, repair and test xDSL loops provided to MCI. MCI respectfully requests that the Commission adopt MCI's proposed language on this issue.

xDSL Issue 7b

Has SBC waived argument that it did not voluntarily negotiate the items listed in 7a above?

MCI's Position

SBC has waived the argument that it did not voluntarily negotiate the items listed in 7a above. The very presence of agreed contract language should be prima facie evidence that SBC voluntarily negotiated the provisions in question and should not now be permitted to argue otherwise.

xDSL Issue 8

What terms and conditions should apply to YZP trouble tickets?

MCI's Position

The same terms and conditions applied for general trouble ticket dispatch should apply to YZP trouble ticket dispatch. These general requirements are set forth in the UNE Appendix of the agreement and require that each party bare the cost of dispatches it initiates in error.

The main dispute between MCI and SBC on this issue stems from SBC's position that it is not required to make the YZP available to MCI, but instead is doing so "voluntarily." SBC's proposed YZP language would require MCI to "acknowledge and agree" that YZP "constitutes a voluntary offering that is not mandated by the Act, is not being offered pursuant to sections 251 and 252 of the Act, and is not subject to the arbitration process set forth in section 252 of the Act."

However, it is not appropriate for SBC to make YZP trouble tickets available to MCI only as a "voluntary" offering. It is critical that MCI and all other CLECs be able to place orders via YZP. SBC readily admits that its own affiliates can utilize the YZP process; indeed, SBC itself proposed language for the YZP appendix stating that SBC will provide MCI with "access to the YZP ordering process on a non-discriminatory basis and at parity with the YZP ordering process it provides to itself or any of its affiliates in Illinois providing advanced service and other CLECs." The *Triennial Review Order* reiterated that SBC is required to make loops and (subject to the "grandfathering" rules) the HFPL available to MCI and other CLECs as UNEs, meaning they must be provided on the same terms and conditions that SBC offers to itself and its affiliates. 47 C.F.R. § 51.311(b). SBC's position that YZP is a "voluntary" offering seems to be a blatant attempt to end-run the FCC's nondiscrimination rules (as well as state prohibitions against discrimination).

The parties' disagreement of SBC's YZP proposal does not revolve solely around the issue of whether the offering is voluntary. Nevertheless, that is certainly the main issue, and if the Commission agrees with MCI on that point, it should simply reject SBC's proposal to include any separate appendix in the ICA, and order that MCI may place YZP orders via the ICA's regular ordering provisions.

However, if the Commission decides that a separate appendix for YZP is appropriate, it must ensure that the appendix does not contain any of SBC's proposed anti-competitive language restricting MCI's use of the HFPL that the Commission presumably will reject in other areas.

For example, SBC's proposed appendix would allow SBC to establish prices for work on YZP trouble tickets based on SBC's federal tariff, and provides that the rates "shall be deemed to be automatically revised and updated in the event that the referenced tariffed rates are modified during the term" of the ICA. This presents basically the same problems as SBC's proposal in Issue xDSL 4 above, and should be rejected for the same reasons. Essentially, SBC seeks again to give itself unilateral authority, by amending its federal tariff, to amend the rates in the ICA. SBC's proposal would again allow it to change rates in the ICA in a way that is arguably not subject to review by the Commission.

In addition, pursuant to SBC's position that YZP is a "voluntary" offering, it has proposed a provision that would allow either party to terminate the YZP appendix upon 30 days' notice. But as discussed above, YZP is not a "voluntary" offering, and SBC thus should have no right to terminate the offering at its whim.

To address these concerns, if the Commission decides that a separate appendix is appropriate for YZP, it should order that the terms of that appendix be consistent with the ICA's standard ordering provisions for loops or line splitting.

2. **800 Database ("800") Issues**

800 Issue 1

Should MCI be permitted to copy, store, or maintain 800 Database information obtained from SBC Illinois?

MCI's Position

MCI should be permitted to copy, store, or maintain 800 Database information obtained from SBC Illinois. The FCC identified the 800 database as a call-related database and granted nondiscriminatory access to this database in the same manner as the CNAM and LIDB databases. As with other call-related databases, the toll free calling (800) database is not subject to use restrictions imposed by SBC Illinois. Thus, MCI may use the database to provide *any* telecommunications service not prohibited by the Act or other federal or state law.

800 Issue 2

Should MCI be prohibited from using 800 Database information other than for its end user customers in SBC Illinois?

MCI's Position

For all of the reasons discussed with respect to the LIDB database, SBC Illinois should not be permitted to impose use restrictions on MCI's use of the 800 Database.

800 Issue 3

In what manner should SBC Illinois provide MCI with access to its 800 Database?

MCI's Position

SBC Illinois should be required to provide MCI nondiscriminatory access to all of its call-related databases, including its 800 Database.

3. **LIDB and CNAM – AS Issues**

LIDB Issue 1

Should SBC be responsible for administering the Line Records for MCI's end-user customers served via UNE-P in the same manner that SBC administers its Line Records for its retail end-use customers and in accordance with the 13-state Change Management Process?

MCI's Position

SBC must administer MCI's Line Records for MCI's UNE-P customers on a nondiscriminatory basis and in accordance with the 13-state Change Management Process. In seeking such administration, MCI simply seeks parity and nondiscriminatory treatment of those records.

LIDB-CNAM AS 1 (LIDB 11 Consolidated)

For non-UNE-P MCI end-use customers, whose information is not stored in SBC's LIDB database, should this ICA include a provision to address how SBC should administer such customers' Line?

MCI's Position

No such provision is necessary because MCI does not store its customers' information in the LIDB database, with the exception of UNE-P customer information that SBC Illinois adds to the database. If and when MCI houses information in the LIDB database, a separate agreement can then be negotiated.

4. **Line Splitting Issues**

Line Splitting Issue 1

Which Party's description of the Line Splitting obligation should be included in this Agreement?

MCI's Position

MCI's description should be included in the Agreement because MCI's language accurately describes SBC's obligations to provide access to line splitting as an unbundled network element. The major difference between MCI's description of line splitting and SBC's description is that MCI's definition recognizes that line splitting is a cohesive service offering, while SBC's definition focuses on the individual piece-parts of line splitting. Specifically, MCI is requesting that the Commission find that line splitting is an unbundled network element, while SBC describes line splitting as the process of combining a 2-wire xDSL capable loop, shared transport, and local switching in a way that allows MCI to engage in line splitting.

To explain why MCI's approach is superior, it is important to look at the potential consequences of adopting SBC's language. SBC's language is replete with examples in which line splitting is described as separate, unrelated UNEs, e.g., SBC's proposed Sections 1.1, 2.8.1, 3.5, 3.9 and 3.10. The result of this approach is to increase the cost and complexity involved in line splitting. As discussed in the testimony of MCI Witness Sam Tenerelli, one implication of SBC's disjointed view of line splitting greatly increases the testing and trouble resolution for line splitting because SBC requires a trouble ticket for the different piece parts of line splitting. Similar complexities currently plague the service order process for line splitting. Furthermore, SBC's refusal to include data migration scenarios in its proposed batch hot cut process submitted in ICC Docket No. 03-0593 (TRO Batch Hot Cut Proceeding) (*See,* Direct Testimony of Carol Chapman, SBC Ex. 1.0, in ICC Docket No. 03-0593, p. 65 (January 9, 2004)), demonstrates that SBC is intent on raising the barriers for competitors and making it as difficult as possible for MCI to serve customers via line splitting. This anti-competitive behavior should not be allowed.

MCI's proposed language, on the other hand, defines line splitting as a UNE in order to capture the cohesive, end-to-end nature of the circuit used to provide line splitting. In this way, MCI's definition preserves the obligations regarding unbundled network elements separately for the line splitting circuit as opposed to the individual components of the line splitting offering. This may be the only way to provide the correct signals to SBC to take steps to avoid service-affecting problems and provide a reasonable opportunity to compete via line splitting. Because the line splitting circuit comprises UNEs, MCI believes that these obligations exist for line splitting regardless of how line splitting is described in the agreement, but considering SBC's proposed disjointed description and numerous inappropriate limitations SBC attempts to place on line splitting, it is highly unlikely that SBC will follow through on these obligations once the agreement is approved. That is why it is important that the line splitting offering be memorialized as an unbundled network element in the parties' agreement.

While the FCC has not specifically designated line splitting as an UNE, the FCC has not prohibited the state commissions from doing so. The FCC's list of unbundled network elements is meant to serve as a minimum list of UNEs that all ILECs must provide, and not intended to be an inclusive list to which no state can add. The FCC has recognized the importance of line splitting, as it pertains to unbundling by adding specific line splitting rules to 47 C.F.R. § 51.319 "Specific Unbundling Requirements." These rules obligate SBC to provide for line splitting whether or not the CLEC utilizes SBC's unbundled local switching and to make "all necessary network modifications" to support line splitting. The FCC has also relied more heavily upon line splitting to promote innovation and competition by phasing out line sharing.

Moreover, defining line splitting as an UNE is consistent with the public interest. It would provide regulatory certainty by which competitors can make critical entry and investment decisions. It will use the telecommunications network efficiently by utilizing both the high frequency portion and low frequency portion of the loop to provide data and voice service over the same loop. Furthermore, by increasing choice and lowering prices for residential and small business customers for combined voice and data services, the line splitting UNE will benefit public welfare.

The Commission should also reject the remainder of SBC's proposed language concerning Line Splitting because that language is peppered with "qualifiers" that appear to be attempts on SBC's part to limit the availability of line splitting. The most problematic language is addressed below.

Section 3.5: SBC's proposed language would require dial-tone for voice service provided by MCI over a combination of UNEs to originate from the SBC end office switch where the arrangement is requested. This requirement is not grounded in the FCC's rules and is another attempt by SBC to read into the FCC's rules limitations on line splitting that do not exist. This language is unnecessary since, if MCI is using SBC's unbundled local switching in a line splitting arrangement, it will be provided the ULS port that SBC provides. SBC's apparent attempt to turn its obligation to provide unbundled local switching into a restriction on MCI's use of that element should be rejected.

Section 3.9: SBC's proposed language in 3.9 highlights a major problem with SBC's view of line splitting discussed above, i.e., that line splitting should be treated as separate and unrelated UNEs as opposed to an end-to-end offering. For instance, MCI witness Sam Tenerelli explains the problems that MCI experiences when attempting to resolve trouble with the line splitting circuit due to SBC's insistence to inventory and treat the line splitting components as stand-alone UNEs. In addition, SBC imposes two confusing restrictions on reusing the loop when converting line sharing to line splitting. The first limitation would require the data CLEC to disconnect the HFPL when the customer disconnects SBC voice service. SBC never explains how disconnecting both voice service and data service would be considered a conversion from line sharing to line splitting or why this is necessary in order to reuse the loop that was previously used for line sharing for line splitting. A conversion from line sharing to line splitting, in MCI's opinion, should be a seamless transition, and forcing the data CLEC to disconnect the

HFPL once SBC's voice service is disconnected would not fulfill this objective. The second limitation appears to be an attempt by SBC to govern the relationship between the data and voice CLEC involved in line splitting. For instance, if SBC's voice service is disconnected and the data CLEC assumes the full stand-alone loop, SBC should not be allowed to require the data CLEC to have a line splitting arrangement in place in order to reuse the loop. If a data CLEC assumes the full stand-alone loop to continue to provide data service once SBC's voice service is disconnected, whether or not it has a line splitting arrangement in place, the loop should be reused (since it will already be xDSL capable). Furthermore, SBC's language which states that "the existing data CLEC providing *voice service* over the HFPL" is confusing since data service, not voice service, would be provided over the HFPL. Moreover, these limitations are unnecessary. If line sharing is already being provided over the loop, then the loop must already be xDSL capable, and therefore capable of supporting line splitting. Hence, there should be no additional limitations imposed on reusing the current loop.

Section 3.10: SBC's language in this section, once again, illustrates its view of line splitting as separate and unrelated UNEs, as opposed to a cohesive service offering. In addition, SBC's requirement that MCI "make all cross-connections within its collocation space" is unnecessary since MCI is solely responsible for performing the activities *within its collocation space* that are necessary in order for MCI to serve its customer. Since work within MCI's collocation cage does not involve SBC and no party would reasonably expect SBC to perform cross connections within MCI's collocation space, this language has no place in the parties' agreement.

If the Commission does not adopt MCI's primary recommendation on Line Splitting (i.e., adopt MCI's Language for Sections 1.1, 2.8 AND 2.8.1, and reject SBC's proposed language for Sections 3.5, 3.9, 3.10 AND 3.11), MCI has, in the spirit of compromise, attempted to craft an alternative that resolves the biggest concerns MCI has with SBC's proposed language, while providing a definition of line splitting consistent with a definition used by MCI and BellSouth in BellSouth's territory. The alternative proposal is embodied in the following language:

> 1.1 This Appendix Line Splitting sets forth the terms and conditions under which SBC ILLINOIS will provide MCIm with access to UNEs (including the 2-wire xDSL Loop offering and the Unbundled Local circuit Switching port with Unbundled Shared Transport), pursuant to Appendix xDSL and Appendix UNE and other applicable terms and conditions under this Agreement, in a manner that allows MCIm to engage in UNE Line Splitting as described herein. In addition to the terms and conditions of this Appendix Line Splitting, this Appendix is also subject to the applicable terms and conditions of Appendix UNE and Appendix xDSL. In the event of a conflict between the terms of this Appendix Line Splitting and Appendix xDSL, or between this Appendix Line Splitting and Appendix UNE, the Parties agree that the terms of this Appendix Line Splitting shall control. SBC

ILLINOIS shall support MCIm's ability to provide combinations of voice services, data services, or voice and data services over a single xDSL Loop.

2.8 "Line Splitting" is the process in which one CLEC (which may include MCIm) provides narrowband voice service over the low frequency portion of an unbundled xDSL Loop and a second CLEC (which may include MCIm) provides digital subscriber line service over the high frequency portion of that same Loop.

2.8.1 Line Splitting is a UNE service offering that allows a provider of data services (a "Data CLEC") and a provider of voice services (a "Voice CLEC") to deliver voice and data service to end users over one loop. The voice and data carriers may be the same or different carriers. End users currently receiving voice service from a CLEC through a UNE platform (UNE-P) may be converted to Line Splitting arrangements by CLECs ordering Line Splitting Service. Line Splitting network elements consist of an analog loop from the serving wire center to the network interface device (NID) at the end user's location, a collocation cross connection connecting the loop to the collocation space, a second collocation cross connection from the collocation space connected to a voice port, and a splitter over which MCI will maintain control. The Data CLEC provides data service over the high frequency portion of the loop purchased by the Voice CLEC, utilizing a Voice CLEC or Data CLEC provided, collocated DSLAM and splitter equipment. This may be the Voice CLEC's or the Data CLEC's collocation area.

3.5 *Intentionally Left Blank*

3.9 When converting to a UNE Line Splitting arrangement from an existing UNE-P arrangement, SBC ILLINOIS will reuse loop facilities unless the existing loop is not xDSL-capable. When converting to a UNE Line Splitting arrangement from an existing line sharing arrangement (as described in Appendix Line Sharing), SBC ILLINOIS will reuse the existing loop facility.

3.10 SBC ILLINOIS shall also connect the unbundled local circuit switching element to the CFA specified by MCIm.

3.11 Two cross connects are required when MCIm engages in UNE Line Splitting (one cross connect for the unbundled

> local circuit switching port and one for the 2-wire xDSL loop). This is the same number of cross connects as that required when another CLEC (including SBC ILLINOIS's advanced service affiliate) engages in Line Sharing using a CLEC-owned collocated Splitter as described in Appendix Line Sharing.

MCI's alternative language uses SBC's proposed language as a starting point and then makes revisions to resolve MCI's major concerns described above. This alternative is a reasonable compromise because it recognizes line splitting as a cohesive offering and not a grouping of separate UNEs, but does not require the Commission to make a finding that line splitting is a separate UNE.

In sum, MCI respectfully requests that the Commission adopt MCI's proposed language for Sections 1.1 and 2.8 of the Line Splitting Appendix and omit SBC's proposed Sections 2.8.1, 3.5, 3.9, 3.10 and 3.11 from the agreement in their entirety. In the spirit of compromise, however, MCI has proposed an alternative resolution to this issue that fixes the most egregious problems with SBC's proposed language. If the Commission does not see fit to adopt MCI's primary recommendation, it is important that MCI's alternative be adopted so that, at a minimum, the major problems with SBC's language do not get included in the parties' agreement.

Line Splitting Issue 3

What terms and conditions should apply for line splitting with a CLEC-owned switch?

MCI's Position

MCI's proposed language delineating the terms and conditions should be included in the Agreement. In its proposed language regarding this issue, SBC has simply proposed that it will abide by the outcome of any statewide collaboratives in providing Line Splitting with a CLEC-owned switch. By contrast, MCI's proposed language details the technical process necessary to permit MCI to combine a Line Split loop with MCI's own switching. In light of the fact that UNE-P may soon not be ubiquitously available and that the FCC has set forth a plan to grandfather Line Sharing, Line Splitting with a CLEC-owned switch is an increasingly important service delivery method for competitive carriers. Therefore, SBC's proposal that MCI await the outcome of a collaborative proceeding that may be months or years away when a simple solution is readily available, is insufficient and anti-competitive.

MCI's proposed language is also supported by the FCC's rules. First, 47 C.F.R. § 51.319(a)(1)(ii)(B) states that "an incumbent LEC must make all necessary network modifications…for loops used in line splitting arrangements." In addition, the immediately preceding subsection (A) states that "[a]n incumbent LEC's obligation…to provide a requesting telecommunications carrier with the ability to engage in line splitting applies regardless of whether the carrier providing voice service provides its

own switching or obtains local circuit switching as an unbundled network element pursuant to paragraph (d) of this section." While SBC's obligation under this rule is broad (indicated by the FCC's use of the term "all network modifications"), MCI sets forth a specific process for necessary modifications to make available a line splitting arrangement in conjunction with an MCI-owned switch. As such, MCI's language is consistent with FCC rules and asks nothing of SBC that it is not already obligated to provide under federal law.

Second, the specific modifications that MCI proposes be delineated in the parties' agreement are consistent with the FCC's Collocation Remand Order, wherein the FCC stated that "in provisioning cross-connects, incumbent LECs should use the most efficient interconnection arrangements available" and that the FCC's requirement "merely allows the collocator to use the existing network in as efficient a manner as the incumbent uses it for its own purposes." *Collocation Remand Order*, ¶76. In fact, the FCC further recognized that "[c]ross-connects can run through the main distribution frame or an intermediate distribution frame when being used to connect two pieces of equipment." *Id.* ¶ 58. MCI's proposed language is consistent with each of these FCC requirements, because it allows the parties to utilize the existing network and results in the most efficient arrangement for line splitting with a CLEC-owned switch. SBC had pursued, as an alternative to this arrangement, cage to cage cabling, which is more expensive, is inefficient, is inconsistent with the FCC's pronouncements described above, and strains existing network capacity.

MCI has good reason to be concerned with SBC's proposal to address line splitting solely in collaboratives. The line splitting collaborative, thus far, has been unsuccessful in resolving this issue and there is no reason to believe that the parties will ever reach agreement on this issue in collaboratives. Essentially, SBC has rejected the concept of a CLEC switched line splitting arrangement that includes connections at the main distribution frame in the line splitting collaborative unless and until CLECs accept the following conditions:

1. CLECs must forfeit their rights to raise this issue in ongoing regulatory and legal proceedings.

2. CLECs must agree to release SBC from its obligations under sections 251/252 of the 1996 Telecommunications Act before SBC develops a viable process for CLEC switching line splitting.

3. CLECs must agree to pay hypothetical "market based rates" to obtain viable processes for CLEC switched line splitting.

These unreasonable conditions would preclude CLECs from ensuring that an efficient, cost-effective, non-discriminatory line splitting process is developed for CLECs' use. It would also absolve SBC of its obligation to provide cross-connects at TELRIC rates, by allowing SBC to charge "market based rates" that, in SBC's view, should be

higher than what is required by TELRIC. In addition, SBC's conditions would force CLECs to forego the protections granted to them by federal law (and state law, *supra*) in exchange for SBC's development of an efficient line splitting process – a process SBC is already legally obligated to provide. Furthermore, SBC's conditions attempt to strip this Commission of its authority to render a decision on line splitting in this docket. Indeed, when one considers SBC's attempt to persuade the Commission that the line splitting collaborative is the appropriate venue for addressing this important issue, while at the same time imposing unreasonable restrictions in the collaborative, it becomes evident that SBC's true objective is to forestall the development of a viable line splitting arrangement and enjoy the competitive advantages (i.e., additional data customers/revenue, a more stable customer base, etc.) of such anti-competitive behavior.

Finally, MCI is concerned with SBC's proposal to abide by the outcome of the collaboratives because SBC has ultimate veto power in the collaborative process (as illustrated by SBC's refusal to provide an efficient CLEC switched line splitting arrangement), and therefore has nothing to lose by agreeing to abide by the outcome of these collaboratives. All indications from the collaboratives suggest that SBC's proposed Section 7.3 of the Line Splitting Appendix is, in effect, no more than a commitment to *not* provide an efficient CLEC switched line splitting arrangement (as it is unlikely that SBC will change its position on this issue in the collaboratives).

Moreover, despite testifying that in Texas Docket 29175 that SBC was "willing to consider such arrangements on a business-to-business basis," here, where MCI has attempted to address this issue through a "business-to-business" agreement with SBC, SBC has yet again balked and invoked the collaborative "solution" – despite that SBC has refused to provide such arrangements in the collaboratives. The Commission should reject SBC's blatant "forum shopping" on this issue.

For all of the reasons explained above, MCI respectfully requests that the Commission reject SBC's proposed language for Section 7.3 of the Line Splitting Appendix in favor of MCI's proposed language.

Line Splitting Issue 4

What provisioning intervals should apply for Line Splitting?

MCI's Position

MCI's proposed interval of three business days should apply for Line Splitting. This issue involves a dispute over the interval by which SBC must provision line splitting orders. MCI has proposed a simple interval of three days for SBC to provision a line splitting order. MCI's proposal simply incorporates the interval for line sharing that currently is in effect throughout the SBC region. SBC has articulated no reason why the interval for line sharing should not apply equally to line splitting, which involves the same functions from a network provisioning perspective.

In addition, under Illinois state law, unless and until the ICC establishes a different specific maximum time interval, the maximum time interval is "one business day for the provision of the high frequency portion of the loop (line-sharing) for at least 95% of the requests of each requesting telecommunications carrier for each month." 220 ILCS 5/13-801(d)(5).

In contrast to MCI's proposal of a set three-business-day interval, SBC has proposed a confusing patchwork of intervals with no discernible concrete timeframe. SBC has proposed that the provisioning interval be based on what SBC believes to be the "activity with the longest due date." SBC purports to be concerned that CLECs may try to take advantage of what SBC believes would be a shorter interval for line splitting than for what SBC believes are the provisioning intervals for some components of line splitting. Importantly, however, SBC has not articulated any reason why, from a network perspective, it cannot provision line splitting under the same interval as line sharing. Perhaps SBC is unable to do so because from a network and operations perspective there is no discernible difference between the two. The Commission should adopt provisioning intervals that allow customers to obtain DSL-based services from their provider of choice as quickly as possible. MCI's three-business-day provisioning interval is best-suited to accomplish this and should be adopted.

Line Splitting Issue 6

What terms and conditions for maintenance and repair should apply to Line Splitting?

MCI's Position

The Commission should adopt MCI's proposed procedures found at sections 8.2 and 8.2.1 of MCI's proposed ICA. Again, these are the same procedures to which SBC has agreed in California, Michigan, and Ohio, and it is surprising that SBC will not agree to them in Illinois. MCI's proposed procedures are designed to make clear that SBC and MCI should coordinate when responding to a trouble ticket to ensure that service to MCI's DSL customer is not disrupted.

By contrast, SBC has not proposed *any* specific maintenance and repair provisions for line splitting. Rather, SBC's proposed ICA language merely refers to the practices for the particular UNEs SBC believes comprise line splitting. SBC offers no assurance that the implementation of these UNE intervals will receive appropriate coordination to ensure that MCI's DSL customers do not experience service interruptions. Line splitting is a crucial input into MCI's (and I assume many CLECs') DSL businesses. It is unacceptable and inappropriate that SBC will not agree to *any* maintenance procedures specific to line splitting in Illinois, particularly when it has agreed to these same procedures elsewhere. MCI respectfully requests that the Commission adopt MCI's proposed procedures found at sections 8.2 and 8.2.1 of MCI's proposed ICA.

Line Splitting Issue 7

Should SBC Illinois's Mechanized Loop Testing be limited to when MCI is leasing the ULS-ST UNE in a Line Splitting arrangement?

MCI's Position

SBC Illinois's Mechanized Loop Testing ("MLT") should not be limited to when MCI is leasing the ULS-ST UNE in a Line Splitting arrangement. The MLT allows CLECs to conduct an automatic test of the loop to ensure that it is in good working order. This is very important to MCI in all contexts, including line splitting, because it allows for quick and easy diagnosis of problems when trouble has been reported by MCI's customers. Even so, under its proposed language, SBC would refuse to give MCI access to MLT for a customer's loops unless MCI is leasing unbundled circuit switching for the customer. That is, SBC's language restricts the availability of the MLT function to only the voice provider, meaning that the DLEC cannot test the customer's loop.

SBC does not appear to contend that there are any operational reasons why MLT cannot be made available to the DSL provider in a line splitting arrangement, and it has provided MCI with no valid explanation as to why MLT should only be made available to MCI when it is leasing local circuit switching. SBC seems to think it is not "appropriate" for the CLEC providing DSL-based services in a line splitting arrangement to have access to MLT. But SBC's apparent belief provides no basis for the Commission to deny MCI and other CLECs access to an important diagnostic tool that can expedite the resolution of trouble tickets. MCI respectfully requests that the Commission reject SBC's proposed language limiting MLT to when MCI is leasing the ULS-ST UNE in a Line Splitting arrangement.

Line Splitting Issue 8

What terms and conditions should apply for Line Splitting turn-up testing?

MCI's Position

The terms that MCI has proposed should apply for Line Splitting turn-up testing. This issue concerns the testing SBC does when MCI orders line splitting. Under the current practice between the parties, SBC performs what is known as a "turn-up" test when provisioning line sharing. This test involves several steps aimed at verifying the cross-connects, ensuring that no load coils are present on the loop, and that the phone number is verified at the time of provisioning. MCI has proposed a line splitting turn-up test that is consistent not only with what exists in other contracts between the parties, but also reflects the actual practice in place today. MCI respectfully requests that the Commission adopt MCI's proposed language with respect to Line Splitting turn-up testing.

Line Splitting Issue 9 (i.e. 10)

Should SBC's reservation of rights and intervening law language be included in this Appendix Line Splitting?

MCI's Position

SBC Illinois's proposed "reservation of rights" and intervening law language should not be included in this Appendix Line Splitting. As with SBC's various other "reservation of rights" and intervening law clauses, this language would permit SBC to unilaterally invoke a change in law without first seeking a contract amendment. Moreover, comprehensive change of law provisions of universal application are contained in the GT&C of the Agreement. SBC's proposed provisions are therefore unnecessary and self-serving. MCI respectfully requests that the Commission reject SBC's Appendix Line Splitting "reservation of rights" and intervening law provisions.

5. **NGDLC Issues**

NGDLC Issue 1

MCI: Should MCI's proposed terms for NGDLC that are in absolute conformance with effective and binding Commission orders on the subject be included in the Agreement?
SBC: Should MCIm's proposed terms for a broadband end-to-end UNE that are in direct contravention of the FCC's TRO and implementing rules be rejected?

MCI's Position

MCI's proposed terms for NGDLC should be included in the Agreement. MCI has proposed an appendix containing language consistent with the Commission's order on rehearing in Docket 00-0393 requiring SBC to unbundle its so-called Project Pronto architecture. Although the Commission's decision may have been remanded for further proceedings, that decision has not been vacated. Thus, the decision represents current law and SBC's objections are without merit. MCI therefore respectfully requests that the Commission adopt MCI's proposed language on this issue.

6. **Price Schedule (Price List) Issues**

Price Schedule Issue 3a

Prior to conformance of the ICA being negotiated, should the disaggregated NRCs that SBC included in the Price List be shown as currently effective rates if SBC is precluded from delaying their effective date?

MCI's Position

This dispute relates to the implementation of certain provisions of the Commission's June 9, 2004 Order in *Illinois Bell Telephone Company Filing to Increase Unbundled Loop and Nonrecurring Rates*, Docket No. 02-0864 ("Order").

In ICC Docket No. 02-0864, the Commission ordered SBC to disaggregate its line connection and service order non-recurring charges ("NRCs") into "connection" and "disconnection" charges. Order at 198-99. The Commission also ordered SBC to disaggregate the "connection" and "disconnection" charges into separate charges for the initial loop ordered and additional loops per order. Order at 203-04. Based on SBC's purported need for time to implement system changes that would allow it to assess the NRCs on a disaggregated basis, the Commission allowed SBC to delay implementing the disaggregated charges until no later than the end of the first quarter of 2005.

In addition to the foregoing, the Commission's Order in Docket 02-0864 also authorized SBC to assess certain charges for Electronic UNE-P POTS, UNE-P line connection and UNE-P basic line port install. As SBC admitted in its July 1, 2004 "Accessible Letter", its systems are not yet capable of reflecting the above rate elements. *See* SBC Accessible Letter, CLECAM04-159, July 1, 2004. Notwithstanding this fact, SBC arranged to begin charging its competitors for these rate elements by developing a "work-around", i.e., it increased certain other charges so as to immediately reap the benefit of the Commission-sanctioned charges for the above-listed rate elements.

If SBC can implement a "work-around" to benefit itself, it also should be required to implement a "work-around" to enable its competitors to reap the benefit of Commission directives favorable to them. Inconsistent implementation of the foregoing provisions of the Commission's Order is discriminatory and wholly unwarranted. Thus, the Commission should order SBC to establish procedures pursuant to which the disaggregated NRCs SBC included in the Price List will be immediately available and should require SBC, from the date of the Order in Docket 02-0864, to true up any non-disaggregated, i.e., combined, NRCs it assessed in connection with charges the Commission ordered disaggregated. Similarly, to the extent that SBC failed to disaggregate any charges as required by the Commission's Order, the Commission should grant MCI equivalent relief. The Commission also should reject SBC Illinois' proposed Footnote 7, which purports to allow SBC the maximum amount of delay possible before having to provide the disaggregated charges ordered by the Commission.

Additionally, MCI believes that SBC has not properly implemented the Commission's Order in Docket 02-0864, and as a result the aggregated and disaggregated NRCs reflected in SBC's proposed rates are inflated and not in compliance with the Commission's directives. Moreover, as indicated above, it is not clear that SBC disaggregated all charges it was required to disaggregate. Accordingly, if any of SBC's relevant charges are revised prior to the effective date of the Parties' ICA, the revised disaggregated charges should be included in the ICA without the Parties having to resort to the ICA's intervening law provisions. Finally, because MCI's

Footnote 7 is only intended to provide a procedure for revising relevant charges included in the Price Schedule prior to the effective date of the Parties' ICA, MCI's Footnote 7 should be removed from the Price Schedule when the ICA is conformed to comply with the Commission's order in this Docket.

Staff witness Mark Hanson addressed this issue in his testimony. As MCI understands Mr. Hanson's recommendation, it is that the rates SBC will file in March 2005 should be used in lieu of the rates provided by SBC in the price schedule. This recommendation would impact all rates that are footnoted by footnote 7. Assuming that the rates that will be filed by SBC to take effect in March 2005 are the same rates SBC provided in the price schedule, MCI disputes those rates for the following reasons.

First, MCI does not agree that the rates provided by SBC appropriately reflect the ICC's June 9, 2004 Order in *Illinois Bell Telephone Company Filing to Increase Unbundled Loop and Nonrecurring Rates*, Docket No. 02-0864 ("Order"). One concern is that SBC's line connection rates for DS0 loops reflect costs that are for "design loops" and thus are not appropriate for DS0 loops. This concern was one of several raised by MCI and others in their *Joint CLEC Application for Rehearing* in ICC Docket 02-0864, filed July 7, 2004.

Second, MCI cannot determine whether SBC has implemented the Commission's Order as to the disaggregated prices provided by SBC. This can be demonstrated by comparing the disaggregated prices to the prior aggregated prices.

For example, if one looks at the "initial connection" and "additional disconnection" prices at lines 142 and 144 of the price list, the disaggregated rates SBC will charge for the two functions after March 2005 for "line connection" for a DS0 loop sums to $58.50 for connection and disconnection. This compares to an aggregated price prior to March 2005 of $50.13, at line 141.

If one then looks at the "additional connection" and "additional disconnection" prices for a DS0 loop at lines 143 and 145 of the price list, those two rates sum to $40.95, compared to the aggregated price at line 141 prior to March 2005 of $50.13.

The obvious conclusion to be drawn from this comparison is that SBC has developed its rates assuming that it will have virtually the same number of "additional connections" as "initial connections" (and the same number of "additional disconnections" as "initial disconnections"). The validity of such an assumption is not intuitively obvious, and that is because most residential customers no longer have second lines and most customers converting service to a CLEC would likely not switch both lines on the same order.

If, as is a more reasonable assumption, there will be more "initial" charges than "additional" charges, SBC's assumption allows it to benefit by the "sum of the [disaggregated] parts" being greater than the [aggregated] "whole." In other words, SBC will charge a sum of $58.50 for connection and disconnection of the initial line (Price list lines 142 and 144) (compared to the aggregated rate of $50.13) more often

than it will charge the sum of $40.95 for connection and disconnection of the additional line. (Price list lines 143 and 145) The result is that SBC will be unjustly enriched by the assumption that the "initial" and "additional" charges will occur in roughly the same volumes.

Price Schedule Issue 4a

Prior to conformance of the ICA being negotiated, should the Illinois Price List be updated to exclude combined rates that the ICC ordered SBC to disaggregate if SBC is prohibited from charging combined rates?

MCI's Position

As discussed in Price Schedule Issue 3a above, SBC should not be permitted to continue to assess combined charges for services the Commission ordered SBC to charge for on a disaggregated basis. Since necessary but incomplete system changes are apparently not preventing SBC from immediately recovering costs for Commission-authorized rate elements, system changes purportedly needed to assess disaggregated charges similarly should not prevent SBC from immediately providing CLECs the benefit of Commission ordered disaggregated rates. Accordingly, MCI respectfully urges the Commission to reject SBC's proposed Footnote 8, which purports to allow SBC to continue assessing combined charges, rather than disaggregated charges, for as long as arguably possible.

Additionally, MCI does not believe the combined charges SBC proposed are appropriate. Accordingly, if SBC is not precluded from assessing those charges and those charges are revised prior to the effective date of the Parties' ICA, the revised combined charges should be included in the ICA without the Parties having to resort to the ICA's intervening law provisions.

Finally, because MCI's Footnote 8 is only intended to provide a procedure for revising relevant charges included in the Price Schedule prior to the effective date of the Parties' ICA, MCI's Footnote 8 should be removed from the Price Schedule when the ICA is conformed to comply with the Commission's order in this Docket.

Price Schedule Issue 5

Should there be a rate for line station transfer?

MCI's Position

There should not be a rate for line station transfer. The term refers to a process that is not uncommon in telephony. There are various reasons why a line station transfer might occur. For example, when SBC replaces copper feeder with fiber feeder in its loop plant, it will need to disconnect the old copper feeder at the distribution terminal and reconnect the distribution pairs to the terminals fed by the new fiber plant. Other reasons for a line station transfer include instances where a bad pair is identified.

The process of taking that bad pair out of service and reconnecting the end user to a working pair is a line station transfer.

The rate for line stations transfer should be $0.00. This is because SBC's costs associated with line station transfers are not directly recovered on a case-by-case basis. Rather, those costs are averaged in to SBC's one-time charges for line connection. In other words, allowing SBC to recover those costs via a direct charge as well as through the aggregate costs that it recovers via its line connection rate would mean that SBC is recovering the same costs – and MCI paying the same costs -- twice.

Price Schedule Issue 6

Should SBC be permitted to charge differently for removal of bridge tap under the modified maintenance process?

MCI's Position

This dispute involves the rates proposed by SBC for removal of bridge tap. As the Commission is aware, removal of excessive bridge tap is necessary for a loop to be capable of carrying DSL-based services.

The only rate that SBC should charge MCI for removal of bridge tap is the TELRIC rate approved by the Commission, which is $14. This Commission-approved rate is reflected at lines 95 and 99 of the Price List. There is no reasoned basis for the excessive rates, which range from $286.75 to $742.35, proposed by SBC.

Price Schedule Issue 7

Should the broadband prices be included in the price list?

MCI's Position

This dispute involves whether to include in the price list rates previously approved by the ICC.

These prices should be included in the agreement. The broadband rates in the price list are the TELRIC rates that the Commission ordered. Having the prices in the agreement creates contractual certainty and clarity for both parties, allowing both parties to know exactly what will be paid for each element and service ordered under the agreement.

Price Schedule Issue 8

What are the appropriate rates for acceptance and cooperative testing?

MCI's Position

This dispute involves whether SBC should levy an explicit charge for acceptance and cooperative testing.

As discussed above on Price Schedule Issue 5, certain costs incurred by SBC are recovered on an averaged basis. That is, rather than assessing explicit fees for the functions, they historically have been recovered in one-time fees applied when the customer initiates service. That practice is reasonable because turning up service typically involves a certain amount of testing. Otherwise, SBC's personnel would have no way of knowing that the service is working properly.

For this reason, the rate for acceptance and cooperative testing should be $0.00, because the costs are already recovered via SBC nonrecurring charge(s). Allowing SBC to charge a rate for theses services in addition to the nonrecurring rate is allowing SBC to charge MCI twice for the same function.

Price Schedule Issue 9

What are the appropriate rates for maintenance of service charge and/or service call charge?

MCI's Position

This dispute involves the appropriate rates for certain maintenance functions provided by SBC at MCI's request. The appropriate rate should be the Commission ordered forward-looking TELRIC cost based rate, and MCI has proposed such rate as its labor rate in Issue Price Schedule 10 below. Maintenance and service calls are an integral part of furnishing telecommunications service. Therefore, the pricing of maintenance and service calls should be consistent with the pricing of the services to which they relate. Accordingly, maintenance and service calls for services provided at TELRIC rates should be priced at TELRIC rates.

Price Schedule Issue 10

What are the appropriate labor rates?

MCI's Position

This dispute involves the appropriate labor rates for application to certain functions provided by SBC at MCI's request.

The appropriate rates should be Commission ordered forward-looking TELRIC cost based rates, which MCI has provided. As with the maintenance and service functions noted above on Price Schedule Issue 9, these costs are incurred as an integral part of furnishing telecommunications service and the pricing should be consistent with the pricing of the services to which they relate. Accordingly, labor rates associated with services provided at TELRIC rates should be priced at TELRIC rates. Further, MCI believes that these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both

parties will know exactly what will be paid for each element and service ordered under the agreement.

Price Schedule Issue 11

What are the appropriate rates for central office to engineering control splice, central office to remote terminal, central office to serving area interface, and central office to terminal subloops?

MCI's Position

This dispute involves the appropriate rates for certain functions provided by SBC at MCI's request. Until the Commission orders permanent rates for central office to serving area interface and central office to terminal subloops, the interim rates set forth in SBC Illinois's Tariff 20, Part 19, Section 16 that was effective on May 17, 2003 should apply, and these are the rates that MCI has proposed in the price list. For the other rates, until the Commission orders permanent rates, these rates should be interim. And these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI believes that Mr. Hanson incorrectly assumes in his testimony that SBC "is no longer obligated to provision feeder subloops as part of a UNE." (lines 127 – 128.) SBC's obligation under federal law is the same as it was on June 15, 2004. Moreover, the *USTA II* decision did not impact in any way SBC's obligations under Illinois state law.

Price Schedule Issue 15

What are the appropriate rates for entrance facility?

MCI's Position

The appropriate rates should be Commission-ordered forward-looking TELRIC cost based rates, which MCI has provided in the price list. These rates are identical to the rates set forth in SBC Illinois's Tariff 20, Part 19, Section 12, effective on April 18, 1998. These Commission-approved prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

Price Schedule Issue 16

What are the appropriate rates for dedicated transport network reconfiguration service?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The appropriate rate should be the Commission-ordered forward-looking TELRIC cost based rate and not the rates in SBC's FCC Tariff No. 2. Furthermore, allowing SBC to point to its FCC tariff for these prices allows it unilaterally to make changes to this agreement by changing its tariff and places MCI in the position of accepting contractual changes to which it has not agreed. All prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

Price Schedule Issue 17

What are the appropriate rates for digital cross-connect system?

MCI's Position

The appropriate rate should be the Commission ordered forward-looking TELRIC cost based rate. However, because the ICC has not established such a rate for digital cross-connect system, MCI has proposed the Texas PUC's approved rates as a proxy until such time as the Commission establishes rates for digital cross-connect system.

Price Schedule Issue 18

What are the appropriate rates for central office to remote terminal dark fiber loop/subloop?

MCI's Position

Until the Commission orders permanent rates for central office to remote terminal dark fiber loop/subloop, the interim rates set forth in SBC Illinois's Tariff 20, Part 19, Section 16, effective on May 17, 2003, should apply. These are the rates that MCI has proposed in the price list, and MCI believes these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

Price Schedule Issue 19

What are the appropriate rates for routine modifications?

MCI's Position

This issue is similar to the disputes on Issues Price Schedule Issues 5 and 8 discussed above, and arises out of the historic practice for recovery of such costs. As noted in the referenced discussions, certain costs have historically been recovered indirectly rather than through an explicit charge. For that reason, MCI proposes a rate

for routine modifications of $0.00, because SBC has recovered the costs via other rates. Allowing SBC to charge a rate for this service in addition to the other rates is allowing SBC to charge MCI twice.

Price Schedule Issue 20

What are the appropriate rates for line information database?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The appropriate rates should be Commission ordered forward-looking TELRIC cost based rates, which MCI has provided in the price list. These rates are identical to the rates set forth in SBC Illinois's Tariff 20, Part 19, Section 11, effective on July 22, 2003, and MCI believes these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo Order*. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo Order*, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 21

Should calling name bulk download (CNAM) rates be included in the interconnection agreement.

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

CNAM rates should be included in the interconnection agreement. The CNAM Appendix refers to this Appendix for the particular rate, and not the SBC tariff. Moreover, the appropriate rates should be based on a Commission approved cost study, not a unilateral "market-based" rate set by SBC. This is particularly true because there is no market for CNAM. The rates MCI proposes were taken from SBC MI's tariff: 20R, Part 19, Section 4.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status*

Quo Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 22

What are the appropriate rates for 800 database?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The appropriate rates should be Commission ordered forward-looking TELRIC cost based rates, which MCI has provided in the price list. These rates are identical to the rates set forth in SBC Illinois's Tariff 20, Part 19, Section 10, effective on April 18, 1998. MCI believes that these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 23

What are the appropriate rates for SS7?

MCI's Position

The appropriate rates should be Commission ordered forward-looking TELRIC cost based rates, which MCI has provided in the price list. These rates are identical to the rates set forth in SBC Illinois's Tariff 20, Part 19, Section 10, effective on April 18, 1998. MCI believes that these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 25

What are the appropriate rates for coordinated hot cuts?

MCI's Position

The appropriate rates should be Commission ordered forward-looking TELRIC cost based rates. The cost based rates that should be included in the Agreement are the comparable rates MCI proposed in Docket No. 03-0593, which are set out in the following table. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

Table Pricing Schedule 25

Offering	MCI Proposed Rate
Enhanced Daily Process - CHC Basic Option	$0.64

Price Schedule Issue 26

What are the appropriate rates for ISDN Prime, digital trunking, ULS trunking, ISDN prime trunk port, per port – add/rearrange changes, ULS trunk port, subsequent ULS trunk port, ISDN PRI port, ISDN – prime trunk port – custom, digital trunking trunk port, DS1 trunk port, and ISDN PRI port features?

MCI's Position

MCI withdraws it proposed language with respect to this issue.

Price Schedule Issue 27

Should the Pricing Schedule include a listing of applicable rate elements and associated rates for specific UNE-P combinations?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI believes that the price list should include applicable rate elements and associated rates for specific UNE-P combinations given that the ICC has ordered SBC to provide these combinations. These combinations are identical to the combinations found in SBC's prior service tariff. MCI attempted to map the rates from the old tariff to SBC's recently filed tariff, but was unable to do so in every instance because of changes made by SBC to certain of the rate structures. In discussions with SBC, MCI was unable to resolve all questions as to the changed rate structures. Where MCI could map the new rates back to the old structure, the rate proposed is from SBC's new tariff.

Where MCI could not accomplishing that mapping due to SBC's changes, MCI proposed the rate(s) from SBC's old tariff. Section 21 of Appendix UNE contains language explaining these combinations. MCI also believes that these prices should be in the Agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 28

Should the Schedule include a listing of applicable rate elements and associated rates for specific EEL configurations?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

MCI believes that the price list should include applicable rate elements and associated rates for specific EEL combinations since the ICC has ordered SBC to provide these combinations. These combinations are identical to the combinations found in SBC Illinois' old service tariff. (MCI was unaware until after the petition was filed that SBC's new tariff had superseded the EELs combinations in the old tariff. Thus, the rates MCI has proposed in the price schedule are from SBC's old tariff.) Section 21 of Appendix UNE contains language explaining these combinations. MCI also believes that these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 29

What are the appropriate rates for DS1 interoffice unbundled dedicated transport – non – collocated, 4 wire DS1 digital loop to DS1 interoffice dedicated transport non-collocated and DS3 interoffice unbundled dedicated transport – non – collocated?

MCI's Position

First, for all of the reasons state in CNAM Issue 1, this issue is not moot as SBC claims it is and the Commission should address the merits of the parties' disagreement.

The appropriate rates should be Commission-ordered forward-looking TELRIC cost based rates, which MCI has provided in the price list. These rates are identical to the rates set forth in SBC Illinois's Tariff 20, Part 19. MCI believes that these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 30

What are the appropriate recurring rates for directory assistance, per call, national directory assistance, and reverse directory assistance?

MCI's Position

The appropriate rate should be the Commission-ordered forward-looking TELRIC cost based rate. And because the ICC has not yet ordered such rates for directory assistance, MCI has proposed to use as a proxy the TELRIC rates approved by the Michigan PSC until such time as the Commission establishes rates for SBC provided directory assistance functions.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 31

What are the appropriate nonrecurring rates for OS and DA branding initial/subsequent load?

MCI's Position

MCI believes that the appropriate rate should be the Commission-ordered forward-looking TELRIC cost based rate, which is $299.73, and not SBC's market

based rate of $1800. As stated in footnote 3, MCI's proposed rate is per the Second *Status Quo* Order in ILL. C.C. Docket Nos. 96-0486/0569 Consolidated, dated February 17, 1998.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 32

What are the appropriate recurring rates for OS/DA branding per call?

MCI's Position

MCI believes that the appropriate rate should be the Commission-ordered forward-looking TELRIC cost based rate. Because the ICC has not yet ordered such a rate for OS/DA branding per call, MCI has proposed as a proxy the TELRIC rates approved by the Texas PUC until such time as the Commission establishes rates for SBC provided operator services and directory assistance branding functions.

MCI generally agrees with the testimony of Dr. Zolnierek on this issue in which he suggests that it has been resolved by the FCC's *Status Quo* Order. Thus, Dr. Zolnierek's recommendation at lines 1554 - 1557 is that, pending further resolution of SBC's obligations beyond the first six-month interim period set out in the FCC's *Status Quo* Order, the rates that SBC charged for each of these functions on June 15, 2004 should continue.

Price Schedule Issue 33

Should rates for ancillary message billing compensation be included in the interconnection agreement?

MCI's Position

MCI does not believe that rates for ancillary message billing compensation should be included in the interconnection agreement because the agreement contains no terms and conditions for ancillary message billing.

Price Schedule Issue 34

What are the appropriate nonrecurring rates for non-published emergency number service?

MCI's Position

The appropriate rate for non-published emergency number service is a cost-based, nondiscriminatory rate based on a Commission-approved cost study. MCI cannot provide this service itself because SBC Illinois does not provide non-published numbers to MCI as a part of the DALI. Thus MCI has no alternative but to rely on SBC to provide this emergency notification service. Because MCI is precluded (by SBC) from offering this service itself, a TELRIC rate should be imposed on SBC's non-published emergency number service.

Price Schedule Issue 36

What are the appropriate rates for transit service?

MCI's Position

MCI believes that the appropriate rates should be Commission-ordered forward-looking TELRIC cost based rates, which MCI has provided in the price list. These rates are identical to the rates set forth in SBC Illinois's Tariff 20, Part 19, and these prices should be in the agreement. Having the prices in the agreement creates contractual certainty and clarity for both parties because both parties will know exactly what will be paid for each element and service that is ordered.

Price Schedule Issue 39

What are the appropriate recurring rate elements (i.e. classification and/or rate structure) for Directory Assistance Listing?

MCI's Position

SBC is required to provide Directory Assistance Listing ("DALI") at a TELRIC-based non-discriminatory rate. SBC, however, seeks to charge what they presumably see as a "market-based" rate. But such a rate is wholly inappropriate where SBC Illinois is the only source for DALI. Market-based pricing for a monopoly bottleneck service such as DALI has no basis in this proceeding because these prices are inherently discriminatory to competitive providers. SBC Illinois, a monopoly provider, has a lock on how the data is generated in Illinois.

In Illinois, DALI information is generated by SBC's service order process when a customer initiates service. Because SBC's line share represents a majority of the marketplace, SBC Illinois simply has the vast majority of DALI listings in the State of Illinois. In essence, there is no "market" upon which SBC can base "market-based" prices since everyone gets the vast majority of their listings from SBC.

In SBC's 271 Proceeding in Illinois, this issue was addressed only in the context of whether DALI was a UNE. Although MCI advocates cost-based rates, it does so here because such rates are non-discriminatory in a monopoly environment, not because DALI is a UNE. SBC Illinois is required to provide nondiscriminatory access to DALI pursuant to FTA Section 251(b)(3). That obligation, which applies to all LECs including MCI, also extends to pricing because pricing is an integral part of access to the data.

The FCC recognized that cost-based rates for DALI were appropriate in its *Local Competition Third Report & Order*, when it stated that, "Because an incumbent LEC would have the incentive to discriminate against competitors by providing them with less favorable terms and conditions than it provides to itself, we conclude that the term 'nondiscriminatory', as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself.'" *Local Competition Third Report & Order*, FCC 99-227, ¶ 129 (1999), citing *Local Competition Second Report and Order*, at ¶¶ 100-05, and *Local Competition First Report and Order*, at ¶ 217. Indeed, the FCC reaffirmed that incumbents must "make available to unaffiliated entities all of the in-region telephone numbers they use to provide nonlocal directory assistance service at the same rates, terms and conditions they impute to themselves" (*FCC Forbearance Order* at ¶ 2) and "comply with the nondiscrimination requirements set forth in section 272(c)(1)." *Id.* at ¶ 15.

Because Section 251(b)(3) mandates nondiscriminatory access between all competitive providers, SBC must provide DALI at the same price it provides the data to itself. MCI therefore respectfully requests that the Commission adopt TELRIC-based rates for accessing DALI.

SBC Improperly Inserted Issues

SBC UNE Issues 1-6

SBC UNE 1: Should SBC Illinois be required to provide DS1, DS3, or higher capacity loops as an unbundled, TELRIC-priced offering?
SBC UNE 2: Should SBC Illinois be required to provide Dark Fiber as an unbundled, TELRIC-priced offering?
SBC UNE 3: Should SBC Illinois be required to provide Unbundled Local Switching (ULS), Shared Transport, and associated call-related databases and functions at TELRIC-priced offerings?
SBC UNE 4: Should SBC Illinois be required to provide Dedicated Transport as an unbundled TELRIC-priced offering?
SBC UNE 5: Should SBC Illinois be required to provide new and/or existing combinations of Declassified Network Elements as TELRIC-priced offerings?
SBC UNE 6: Should "local" be referenced and defined within Appendix UNE? (UNE Issue 6)

MCI Position

These issues are not properly before the Commission. In a disingenuous attempt to justify its unilateral insertion of new, non-negotiated issues into this docket – issues that conflict with the Parties' prior agreements – SBC claims that it proposed these new issues as a result of the June 15, 2004 issuance of the mandate in USTA II, which SBC claims eliminated certain federal unbundling obligations. But SBC's explanation of its proposals is belied by the history of the Parties' negotiations regarding UNE-related issues, and SBC's characterization of the effect of USTA II is wrong.

Contrary to SBC Illinois' contention, *USTA II* did not "eliminate" federal unbundling obligations. Rather, *USTA II* vacated then-existing FCC rules on some UNEs and remanded the case to the FCC to issue new unbundling rules consistent with the court's order. (As previously noted, the FCC has not yet issued rules implementing *USTA II*.) Meanwhile, there has been no change to the core requirement of the Federal Telecommunications Act of 1996, 47 U.S.C.A. § 251, *i.e.*, pursuant to federal law, SBC Illinois continues to be obligated to provide network elements without which CLECs' ability to provide local service is impaired.

Significantly, with respect to existing UNEs, there has never been a finding of no impairment by any regulatory agency or court. Premised on its conclusion that *delegation* of UNE determination to the states was invalid, the *USTA II* court only reversed certain of the FCC's unbundling rules and remanded the issue to the FCC for it to develop new rules in light of the order. Nowhere did the court invalidate unbundling rules on *substantive* grounds. Nowhere did the court find that the CLECs were not impaired without particular network elements. Thus, it is possible that the FCC could find, consistent with the *USTA I* and *USTA II* decisions, that existing UNEs should remain as UNEs.

In sum, while the federal UNE rules are now again before the FCC for review, the federal UNEs themselves have never been invalidated or otherwise removed as UNEs. Thus, SBC Illinois continues to be obligated to provide UNEs pursuant to federal law and to provide network elements pursuant to state law.

Further, SBC's attempt to explain its proposal to insert new, non-negotiated UNE-related issues into this Docket on the basis of the issuance of the mandate in *USTA II* is plainly disingenuous. The decision in *USTA II* was handed down on March 2, 2004, fifteen weeks before the mandate issued and more than nineteen weeks before the Petition was filed. All of the Parties' negotiations regarding UNE-related issues and all of their agreements on language to be included in the UNE appendix and on disputed UNE-issues (*i.e.*, those included in the agreed joint UNE DPL MCI filed with the July 16, 2004 Petition) were conducted and reached *after USTA II* was decided, *not before* as SBC Illinois falsely asserts. Moreover, as reflected in the Parties' joint DPL, the Parties expressly took *USTA II* into account during their negotiations regarding UNE-related issues, with SBC Illinois expressly qualifying its proposals by noting that they depended on the *issuance of the mandate in USTA II*. Thus, during the Parties' negotiations, SBC Illinois proposed UNE-related terms reflecting the manner in which it believed *USTA II* should be implemented. Accordingly, the June 2004 issuance of the mandate in *USTA II* did not even arguably justify SBC's untimely attempt to insert new, non-negotiated UNE issues into this Docket. SBC's new proposals were nothing more than SBC's attempt to insert in this Docket what apparently constituted its newly conceived interpretation of *USTA II.* The Commission should not countenance this maneuver and should not consider SBC's improperly inserted issues.

The Commission should decline to consider these improperly considered issues for another reason. SBC waived its right to assert such issues. As set forth above, *USTA II* was handed down well *before* the Parties' negotiated, compromised and

reached agreement on the disputes they would jointly present to this Commission. In negotiating, compromising and reaching agreement on those issues, both MCI and SBC expressly took *USTA II* into account. Thus, with respect to UNE-related issues, SBC agreed to the non-disputed language it did and agreed to the presentation of the disputed issues included in the agreed joint UNE DPL in light of its alleged "*USTA II* rights". Accordingly, to the extent that SBC Illinois can be said to have compromised its perceived "*USTA II* rights", it did so knowingly and intentionally. As a consequence, SBC Illinois waived its right to assert perceived "*USTA II* rights" that are not reflected in the agreements it reached with MCI. *See Hamilton v. Williams*, 214 Ill.App.3d 230, 241-42, 573 N.E.2d 1276, 1283-84 (2d Dist. 1991). The fact that SBC may now regret making the agreements it did does not mean that SBC may later simply act as if it did not make them. Therefore, in view of the Parties' prior agreements, the Commission should find that SBC Illinois waived its right to assert any of the alleged "*USTA II* rights" it claims are not reflected in the language of the Parties' agreed appendices and DPLs.

In view of the benefit SBC gained as a result of its prior agreements and in view of MCI's detrimental reliance on the representations SBC Illinois made during the Parties' UNE-related negotiations, SBC Illinois should be estopped from evading the UNE-related issues the Parties agreed to present to the Commission for resolution in this Docket. In negotiating UNE issues with SBC Illinois, MCI compromised certain of its rights in order to reach agreements with SBC Illinois. In doing so, MCI relied, to its detriment, on SBC Illinois' representations regarding relevant issues and committed to forego its right to dispute certain issues. As a result, the UNE Appendix MCI filed with the Petition includes language that does not fully preserve and protect MCI's rights. After exacting concessions from MCI and gaining the benefit of certain MCI compromises, SBC should not be permitted to arbitrate new issues that are inconsistent with the Parties' prior agreements. Instead, SBC Illinois should be estopped from unilaterally altering the basis on which the Parties agreed to present UNE-related issues to the Commission. *See Department of Transportation v. Coe*, 112 Ill.App.3d 506, 509, 445 N.E.2d 506, 508 (4th Dist. 1983); *Geddes v. Mill Creek Country Club*, 196 Ill.2d 302, 313-14, 751 N.E.2d 1150, 1157 (2001).

As explained above, SBC Illinois' proposed new UNE-related language is inconsistent with existing federal law. In addition, it directly contravenes applicable state law. The UNEs SBC Illinois seeks to withhold from MCI are UNEs, or "network elements", that SBC Illinois is required to provide to MCI at cost-base rates pursuant to Section 13-801 of the Illinois Public Utilities Act, 220 ILCS 5/13-801, as previously interpreted by this Commission. *See e.g., AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago*, Docket No. 03-0239, Order dated August 26, 2003 and *Illinois Bell Telephone Company Filing to Implement tariff provisions related to Section 13-801 of the Public Utilities Act*, Docket 01-0614, Order dated June 11, 2002. Accordingly, the Commission should not consider these issues that were improperly inserted into this proceeding by SBC.

In any event, it appears that these issues have been effectively settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing them. Thus the disputes relating to these issues are resolved. In

other words, since both parties and Staff believe that the contract language that has been proposed in connection with these five issues should be excluded from the contract, albeit for very different reasons, the Commission need not consider these issues and should treat these issues the same as any other settled issues by approving the parties' agreed contract language that was never in dispute.

SBC CNAM Issue 1, SBC CNAM Issue 2,
SBC LIDB Issue 1, SBC 800 Issue 1, SBC Line Sharing 1

SBC CNAM 1: Now that USTA II is official, should the Agreement contain a CNAM Appendix at all?

SBC CNAM 2: This issue is the same as issues LIDB 1 and LIDB & CNAM-AS 1.
SBC LIDB 1: Now that USTA II is official, should the Agreement contain a LIDB Appendix at all?
SBC 800 1: Now that USTA II is official, should the Agreement contain an 800 Appendix at all?
SBC Line Sharing 1: Should time and materials charges be set forth in appendix pricing as set forth in SBC's tariff?

MCI Position

For all of the reasons explained above with regard to SBC UNE issues, these issues are not properly before the Commission.

If, however, the Commission considers them, it is MCI's position that USTA II did not affect SBC's obligation to continue to provide MCI access to the LIDB, CNAM, and 800 databases. SBC remains obligated to provide MCI nondiscriminatory access to these call-related databases under the nondiscriminatory access provision of Section 251(b)(3) of the Act. That section provides that each LEC has a duty to:

> Provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

Moreover, pursuant to the FCC's *Status Quo Order*, SBC is obligated to provide MCI access to these databases because they are all related to switching. Finally, SBC is required to provide such access pursuant to Sections 13-801 and 13-216 of the Illinois Public Utilities Act and Section 251(b)(3) of TA96.