

NIM Issue 20

MCI: For two-way interconnection trunks, should the parties apportion costs by applying “Relative Use Factor”?

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

MCI’s Position

The parties should apportion costs for two-way interconnection trunks by applying a “Relative Use Factor” (“RUF”). MCI has proposed a reasonable method, in accordance with FCC requirements, by which to allocate the shared costs of usage on two-way trunks by using a relative use factor (“RUF”) – a factor that allocates the costs of the trunks based upon the minutes each Party uses them. MCI’s proposal is supported by and consistent with the Act and the law. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (1996)(the “*First Report and Order*”), Paragraph 1062, pp. 507,508. In the *First Report and Order*, the FCC made clear that originating carriers must shoulder the burden of transporting the traffic originating on their network by their customers, stating that where such trunks are two-way, an “interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send the terminating traffic to the providing carrier.” (MCI Ex. 7.0, p. 37:885-88 (quoting *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 at ¶ 1062).)

SBC’s proposal to ignore, in the two-way trunk context, the directionality of the traffic ignores the clear direction of the FCC on this issue. MCI’s proposal to pay based on each Party’s use of shared trunks is the only proposal that is consistent with the FCC’s *First Report and Order* cited above. Accordingly, MCI respectfully requests that the Commission adopt MCI’s proposal which apportion costs by applying RUF for two-way interconnection trunks.

NIM Issue 21

MCI: Under what circumstances, if any, should MCI be required to establish meet-point trunking to every SBC Illinois access tandem in a given LATA?

SBC: Should MCI be required to establish a Meet Point Trunk Group to each SBC-13STATE Local/Access or Access tandem switch where MCI has homed its NXX codes?

MCI’s Position

For the reasons discussed in connection with issue NIM 15, the Commission should reject SBC’s attempt to require MCI to establish (and bear the costs of) meet-point trunking to every SBC access tandem located in Illinois. Doing so would be inefficient and uneconomic, and it would mean that trunk utilization rates would sink

even lower. Rather than establish more trunks, MCI should be permitted to combine all of its traffic on existing trunks and reduce the number of trunks it requires, which would help to ameliorate MCI's and SBC's tandem exhaust concerns. Finally, MCI should be free to configure its networks in the manner it deems most appropriate; it should not be forced to bear the expense of replicating SBC's architecture. (See MCI Ex. 7.0, p. 34:799-800; see *also* discussion of issue NIM 19, *infra*.)

NIM Issue 22

MCI: Does SBC Illinois's provision regarding the use of NXX codes have any application in a section establishing meet-point trunking arrangements?

SBC: Should each party be required to bear the cost of transporting FX traffic for their end users?

MCI's Position

SBC's provision regarding the use of NXX codes has no application in a section establishing meet-point trunking arrangements. SBC's attempts to dictate MCI's network architecture under any circumstance should be firmly rejected by the Commission. SBC cannot be allowed to impose arbitrary costs on CLECs. Without the language proposed by SBC, MCI will still be responsible for the carriage of any FX traffic to its end-user customers from its side of the POI. That is all that the Telecommunications Act of 1996 or Illinois law requires or permits. How MCI deploys its network, designs its products and assigns its NXXs is of no consequence to SBC. Neither SBC's revenues nor its costs change one iota if MCI's customers are actually located in the exchange in which an NPA-NXX is rated or not. Any costs incurred to transport a call to a distant local calling area from the dialing party are incurred by the carrier providing the service to the called party. There are no incremental costs to SBC to haul this traffic to the POI where they haul all local traffic under this Agreement. SBC's proposal attempt to continue its practice of attempting to excuse itself from the duties imposed on it by the Telecommunications Act of 1996. Consequently, MCI respectfully requests that the Commission reject SBC's proposed language to the contrary.

NIM Issue 24

MCI: Should facilities used for 911 interconnection be priced at TELRIC rates?

SBC: Should a non 251/252 facility such as 911 interconnection trunk groups be negotiated separately?

MCI's Position

The facilities – or more accurately, the trunk groups – provided by SBC to MCI for purposes of interconnecting with the SBC Selective Router should be priced at TELRIC rates. MCI is entitled to lease transport at TELRIC rates for the purpose of interconnection because the section 252(d)(1) pricing standard is the same for facilities used for interconnection, as for UNEs. In the First Report and Order (¶ 690), the FCC

made clear that the TELRIC methodology is used both for “setting prices of interconnection and access to unbundled network elements.” Thus, regardless of whether MCI is leasing transport facilities as a UNE, it is entitled to lease them at TELRIC rates if it is using them for interconnection. State law provides further support to the extent transport is used for interconnection to provide local exchange and exchange access telecommunications services. Section 13-801(g) states, “Interconnection . . . shall be provided by the incumbent local exchange carrier to requesting telecommunications carriers at cost based rates.”

Also, the Michigan Public Service Commission, in a decision upheld in federal district court, determined that transport leased for interconnection should be available at UNE rates. See *Airtouch Cellular/SBC Michigan* arbitration filed on April 29, 1999 in Case No. U-11973. The Michigan PSC in that case looked to the FCC’s *First Report and Order* paragraph 1062 for guidance on the issue. Paragraph 1062 pertained to the proxy rates for facilities before TELRIC rates were established. As noted by Michigan PSC at page 9 of the panel decision, the FCC made clear that the same rates applied to interconnection facilities as to UNEs. On March 27, 2002 the US District Court for the Eastern District of Michigan upheld the MPSC decision in *Michigan Bell Telephone Co. v. Airtouch Cellular*, 2002 U.S. Dist. LEXIS 6569, pages 12-13. In arriving at its conclusion, the court looked specifically at the FCC language from the *First Report and Order* and found that state commissions had plenary authority to set rates at TELRIC for interconnection facilities.

The question of whether certain facilities are “entrance facilities” has nothing to do with the interconnection obligations that are at issue here, but rather involve facilities that ILECs have typically provide to link with the networks of interexchange carriers. The trunks that SBC provides for purpose of terminating traffic to its 911 selective router are trunks provided to MCI (the CLEC) pursuant to SBC’s interconnection obligations under the Federal Telecommunications Act, and are thus in no way related to the discussion of “entrance facilities” provided to IXCs. MCI’s use of such trunks is expressly for the purpose of providing local telecommunications services. Thus, there is no valid public policy basis upon which to reject MCI’s proposals. Rather, the Commission should adopt MCI’s proposed language and reject SBC’s.

NIM Issue 25

What should the point of interconnection for 911 be?

MCI’s Position

MCI should be allowed to interconnect for 911 at any technically feasible point. MCI’s proposed section 10.7 states that MCI’s point of interconnection for 911 service “can be at the SBC ILLINOIS Central Office, a Collocation point, or via a facility provisioned directly to the SBC ILLINOIS 911 Selective Router.” SBC, in contrast, states that the point of interconnection “shall be at the SBC 911 Selective Router.” As in other instances, there is absolutely no legal justification for SBC to limit MCI to interconnection at the point it proposes. Under section 251(c)(2)(B), SBC is obligated to

provide interconnection at any technically feasible point. State law imposes the same requirement on SBC. 220 ILCS 5/13-801(b).

The parties usually have interconnected for purposes of 911 at MCI's collocations, with SBC establishing trunks back to the selective router. They have rarely interconnected at the 911 Selective Router, which is the point of interconnection SBC now proposes to make mandatory. MCI's existing interconnections with SBC in the Chicago metropolitan area are, in the majority of instances, at the point of the MCI collocation in the SBC end office, not the location of the SBC 911 selective router. Thus, in the majority of instances, SBC is responsible for the trunking, over its existing interoffice network facilities, from the POI to its 911 selective router.

The Commission should adopt MCI's proposals because it is consistent with MCI's rights and the parties' past practice. Moreover, there are significant disadvantages associated with SBC's approach. SBC's approach would have the effect of making MCI responsible for transmission facilities to a specific point in SBC's network – the location of the 911 selective router. And by allowing SBC to require that MCI establish a collocation where it has no business need – at a cost of tens or perhaps hundreds of thousands of dollars – would constitute a 180 degree shift from current interconnection methods.

NIM Issue 26

What terms and conditions should apply for inward operator assistance interconnection?

MCI's Position

MCI believes the parties should continue their current practice for the routing of inward operator assistance calls. MCI proposes language specifying use of that practice, while SBC wants to make that practice subject to an as yet unspecified agreement outside the bounds of the ICA. MCI's proposed language simply seeks to preserve the existing arrangements previously negotiated between MCI and the SBC's implementation team. The parties have been living under that provision since it went into effect and have been routing calls in accordance with that provision. There is simply no reason to change, much less to leave open ended the requirements for routing of inward operator assistance calls.

NIM Issue 28

For trunk blocking and/or utilization, what is the appropriate methodology for measuring trunk traffic?

MCI's Position

Sections 17 and 18 of the NIM Appendix relate to do trunk sizing and how the parties should determine whether trunk groups need to be augmented or reduced. The

parties have agreed to much of the language, but they disagree on the methodology for determining trunk requirements. In Section 17.1, MCI proposed that trunk forecasting requirements should be based on the “weekly peak busy hour average.” SBC, on the other hand, proposed that trunk requirements should be based on the “time consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (use Medium day-to-day Variation and 1.0 Peakedness factor until actual traffic data is available).” The disagreement here involves whether traffic analyses and forecasting methods that are appropriate for SBC should be extended to its CLEC customers. They should not as there is not a “one size fits all” solution that is appropriate here. CLECs face very different circumstances than ILECs.

A similar methodological issue exists in section 18.7. That section sets forth the circumstances under which a trunk group that is underutilized may be resized at the request of either party. The parties dispute concerns how the utilization of the trunks will be measured. MCI proposes that underutilization be determined based on a “weekly peak busy hour basis,” the same methodology it proposed for trunk forecasts. SBC proposes that underutilization be determined on “a monthly average basis,” rather than the time consistent busy season busy hour approach it proposed for trunk requirements in section 17.1 or the weekly peak busy hour approach proposed by MCI.

Clearly, the proper unit of analysis for forecasting is the “busy hour”, defined in Newton’s Telecom Dictionary (15th Edition) as “The hour of the day (or the week, or the month, or the year) during which a telephone system carries the most traffic. [...] The “busy hour” is perhaps the most important concept in traffic engineering – the science of figuring what telephone switching and transmission capacities one needs.” Trunks must be sized to accommodate traffic at the time the largest amount of traffic is flowing over the trunks.

MCI proposes to determine the peak busy hour by assessing its traffic data for peak traffic demand on a weekly basis. That is radically different from SBC’s methodology that relies on the “average busy season” rather than on recent data. MCI’s approach is much more appropriate. An “average busy season” method may be well suited for the characteristics of ILEC networks, but is not at all suited for CLEC networks. MCI’s network, in particular, is characterized by rapidly changing network loads, and those dynamic conditions mean that MCI cannot utilize analytical methods that were developed for and applicable to the static environments in which SBC operated for many decades. For MCI, the traffic in the past three months is generally likely to be higher than the traffic in even the busy season of the prior year (and far higher than the average busy season over a number of years). Indeed, it might be hard for MCI even to identify a “busy season” given that traffic demand is generally increasing steadily. Thus, in order for MCI to forecast trunk needs to accommodate peak traffic demands, it is more accurate to use recent data than to use data from a particular season in year’s past. That is how MCI forecasts traffic in installing its own trunks and also how it proposes forecasting traffic for SBC interconnection trunks.

MCI has serious concerns that using SBC's proposed methods would negatively impact its customers (present and future) by leading to significant blockage of calls. If MCI customers encounter busy or blocked trunk conditions, MCI must rely on SBC for support in augmenting the trunking that supports our customers. It usually takes 8 to 12 weeks to accommodate trunking requests. If traffic forecasts are too small because not based on recent data, it will be far more frequent that MCI needs to rapidly augment trunks, and SBC will not be able to accommodate MCI's needs. This is clearly a case where SBC's legacy traditions are wholly unsuited for use as a model for CLECs.

In addition to the dispute between the parties as to how to determine the busy hour to be used for forecasting, there is a dispute over the statistical tables or algorithms that are used to determine trunk quantities once the "busy hour" is identified and the amount of traffic in the busy hour is known. MCI's systems are programmed to use the Erlang B statistical tables. MCI uses the same Erlang B tables in forecasting traffic when deploying its own trunks as well as for forecasting traffic to be exchanged over interconnections with all other ILECs. The Erlang B statistical tables is one of the most, if not the most, widely used traffic model in the world. Despite this, SBC wants to specify in the ICA that MCI must use the "Neal-Wilkinson Trunk Group Capacity algorithms" for forecasting. There is simply no reason to require MCI to use scarce capital to switch to a different system, particularly since the Erlang tables and Neal-Wilkinson algorithms will generally yield similar results.

Furthermore, the validity of MCI's forecasting methods lies in the fact that, when MCI's analyses indicate trunk shortages, MCI's traffic monitoring systems have verified that additional trunks are needed. Mandating that MCI move from its existing – and proven – methods and systems to a system forced on the company by SBC would simply be a way for SBC to raise MCI's costs with no attendant benefits.

The parties also dispute the method to determine utilization of existing trunks to evaluate whether their size needs to be reduced. In these circumstances, SBC proposes use of a monthly average. But an "average" is an extremely poor measure of extremes, and as discussed above, the engineering of trunks is intended to ensure sufficient capacity to handle extreme, or peak, calling loads. Consider the following simple example. Assume a series of ten numbers: 1, 2, 3, 4, 5, 2, 3, 4, 5, 10. The average (arithmetic mean) of the series is 3.9 – the sum of the series (39) divided by the number in the series (10). If we export the example to mean that the average is somehow indicative of the number of calls a trunk group will be engineered to carry, the trunk group will only be able to handle the presented load half of the time. That is, when the presented load is 4 or 5 (each of which occurs twice in our hypothetical series) or 10, call failures will result. The only time call failures will not result is in the one-half of the instances when the presented load is less than the average. Again, this is why trunk capacity is based on peak rather than average loads, and why SBC's "average" language on this issue should be rejected.

MCI does not express any opinion on, or criticism of, the methods SBC chooses to use for purposes of its own network forecasts. Clearly, such matters are the responsibility of SBC. As regards the methods MCI utilizes for its own trunking

forecasts and the forecasts provided to SBC for interconnection trunks, such matters are the responsibility of MCI.

As set forth above, the parties' dispute involves SBC-proposed language that would require MCI to modify its trunk forecasting methodology. Therefore, the Commission should not follow Staff's recommendation, which does not relate to the parties' dispute.

NIM Issue 30

Should SBC Illinois be required to provision trunk augments within 30 days?

MCI's Position

MCI proposes to fix in the contract a particular period by which SBC must augment trunks if necessary. MCI has proposed a period of thirty days. This period is the same as the parties agreed to in Michigan, and, in MCI's experience is entirely workable. It is important for MCI to have the assurance that SBC will augment trunks in 30 days. If augmentation is necessary, failure to augment can lead to significant blocking. In order to protect its customers, MCI must be assured that SBC will augment trunks within a specified time period. Otherwise, MCI's customers will suffer degraded service.

In addition, if MCI cannot count on augmentation within 30 days, MCI will not be able to provide service to new customers in a reasonable amount of time. If a customer requests service and the relevant trunks are near capacity, MCI will not be willing to provide them service until the trunks are augmented. Otherwise, the new customers, as well as those already using the trunk groups, will suffer inferior service. MCI must therefore be assured that the trunk groups will be augmented in a reasonable amount of time, so that it can offer new customers a reasonable (and fixed) date when they will be able to obtain service.

In light of these requirements, SBC's proposals are inadequate. SBC proposes language under which SBC's obligations with respect to trunk augmentation periods would change if SBC changes its tariff. This proposal would render the contract relatively useless as a safeguard of MCI's interests, because SBC does not tie its proposal to the terms of the currently existing tariff.

This is even more of a problem with respect to SBC's proposal regarding trunk augmentation. When trunk augmentation is needed, SBC proposes that it will accomplish this augmentation in accord with the period specified in the CLEC Online handbook. But this period will of course change if the handbook changes. SBC's proposal will thus permit it to lengthen the period under which it is obliged to augment trunks simply by changing the handbook.

The Commission should adopt MCI's proposals.

NIM Issue 31

MCI: For transit traffic exchanged over the local interconnection trunks, what rates, terms and conditions should apply?

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

MCI's Position

The transit traffic issues are another prime example of SBC's improper negotiation tactics, which the Commission decried in XO. Here, SBC effectively presented MCI with four different version of transit traffic issues, but claims it negotiated none. SBC simply ignores the fact that MCI's and SBC's pre-petition agreement on a joint Appendix Network Interconnection Method that raised transit traffic issues in Section 22. SBC also ignores what it means to negotiate. The Commission recently explained it in the XO arbitration. The Commission held that negotiation inherently involves, among other things, "identifying" one's own interests, XO Arb Order, p. 3, which is precisely what SBC did with respect to transit traffic on numerous occasions. Accordingly, transit traffic issue are clearly within the scope of this arbitration.

In view of SBC's conduct, however, the Commission should decide the transit traffic issues as framed when the petition was filed. That would be the most fair and equitable manner in which to deal with this issue and avoid unfairly prejudicing MCI, which has had no opportunity to fully negotiate SBC's transit traffic issues with SBC and only limited time to respond to them. In the alternative, however, the Commission should consider the version of the transit traffic appendix SBC attached to its 8/10/04 response to MCI's petition – that is the version of the appendix Staff appears to have critiqued even though SBC submitted a later version on 8/17/04, which is the version on which MCI witness Ricca commented. In view of this discrepancy, the Commission should incorporate the specific changes described by MCI witness Ricca into the 8/10/04 version of SBC's transit traffic appendix, *if the Commission even considers it, which it should not do*. The changes MCI witness Ricca described are in MCI Ex. 11.0, p. 20:466-71; p. 22:521-30; p. 23:540-46, and p. 24:562-69; MCI Ex. 13.0, pp. 11:274-13:325 and p. 14:334-340. One further change relates to Staff witness Dr. Liu's recommendation regarding transit traffic pricing. Dr. Liu recommended the use of the transit tandem switching rate rather than the interconnection rate for tandem switching. For the reasons to which MCI witness Ricca testified, the Commission should reject Staff's recommendation on this point. (MCI Ex. 13.0, p. 8:197-9:223.) In addition to the foregoing, there are various other problems with SBC's position on transit traffic.

As with traffic exchanged between MIC and an interexchange carrier ("IXC"), where SBC's only function is to switch the traffic between the originating and terminating carriers, SBC provides a similar switching function with respect to transit traffic, *i.e.*, local and/or ISP traffic exchanged between MCI and a third party CLEC. The transit service SBC provides is an interconnection function. (MCI Ex. 7.0, p. 40:962-64.) Thus, it falls within Section 251(c)(2) of TA96. (47 U.S.C. §§ 251(c)(2).) Accordingly, SBC is obligated to provide it, not just offer it on a voluntary basis. In fact,

the 6th Circuit recently affirmed a lower court order rejecting an SBC affiliate's claim that it need only make transiting available to CLECs as a "voluntary" offering. (*Michigan Bell Tel. Co. v. Chappelle*, No. 02-2168, 2004 U.S. App. Lexis 5985 (6th Cir. Mar. 23, 2004).)

¹ Additionally, Staff recommends that the Commission find that SBC is obligated to provide transit service because such service is essential for some carriers. (Staff Ex. 2.0, p. 84:1977-83.)

The conclusion that SBC is obligated to provide transit traffic service also follows from the provision of TA96. Section 251(a)(1) requires all carriers, including SBC, "to interconnect directly or indirectly with the facilities and equipment of other telecommunication carriers". (47 U.S.C. § 251(a)(1).) For ILECs, the general duty to interconnect, directly or indirectly, is fleshed out in greater detail in Section 251(c)(2). (47 U.S.C. § 251(c)(2).) Among other things, Section 252(c)(2)(A) obligates ILECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network (A) for the transmission and routing of telephone exchange service and exchange access" (47 U.S.C. § 251(c)(2)(A).)

According to SBC, transit trafficking service is an indirect form of interconnection. (SBC Ex. 2.0, p. 44:927-30.) And, as acknowledged by Staff, where such service is required, it is necessary for "the transmission and routing of telephone exchange service and exchange access". (See Staff Ex. 2.0 p. 84:1977-83.) Thus, ILECs like SBC are required to provide transiting service under TA96.

In view of the foregoing, the Commission should reject Staff's recommendation that the Commission order the parties to use the Commission-approved transit rates in connection with transit traffic. Based on the express provisions of Sections 251(c)(2)(D) and 252(d)(2) of TA96, SBC must provide transit traffic services at TELRIC rates. (47 U.S.C. §§ 251(c)(2)(D), 252(d)(2).)

NIM Issue 32

Should SBC Illinois be required to open NXX codes serving exchanges outside of SBC Illinois's incumbent territory?

MCI's Position

¹ Notably, SBC does not claim that it switches traffic between MCI and IXCs on a voluntary basis, and readily includes provisions governing that switching service in the parties' contract. (MCI's 7/16/04 Appendix Network Interconnection Method, § 9.) This fact seriously undermines SBC's claim that the contract should not cover transit traffic simply because such traffic is "between MCI and other carriers". (SBC Ex. 2.0, p. 43:910-13.)

In section 24.1, MCI has proposed that “SBC ILLINOIS will use commercially reasonable efforts to open NPA-NXX codes for MCI in SBC ILLINOIS tandems that serve exchanges which are not in SBC Illinois’ incumbent local exchange carrier exchange areas.” It is important that SBC make commercially reasonable efforts to open NPA-NXX codes that serve exchanges not in SBC’s territory to allow MCI customers in those areas to receive calls from SBC customers. If MCI serves local customers in territory near an SBC exchange using a new NPA-NXX code, calls from SBC’s customers to MCI’s customers will not get through if SBC does not open MCI’s new NPA-NXX code in its switches. While this will perhaps anger the SBC customers, it will have an even more significant effect on the MCI customers, as it is likely that a high percentage of the calls that they expect to receive will not get through. And this is not a hypothetical problem. There are now live disputes in three states where SBC is refusing to open new NPA-NXX codes in its tandems.

Under the existing interconnection agreement, SBC has performed the appropriate programming of its switches to facilitate the exchange of customer traffic without the distinction it now is seeking to enforce, and the companies have exchanged traffic without regard to such distinction. As SBC previously recognized, it does not matter that the traffic has a destination outside SBC’s legacy monopoly service territory boundaries. SBC is required to interconnect with MCI to pass all sorts of traffic that extends beyond the boundaries of SBC’s territory including, for example, interstate long distance calls. The actions MCI’s language would require SBC to take would all occur within its territory.

SBC has offered no coherent explanation as to why it refuses to adopt MCI’s proposed language. As noted above, the only function that MCI is seeking from SBC is the appropriate programming of its switches so that traffic can flow between the companies’ customers. The question of what rate center is served by a particular NPA-NXX code assigned to MCI by the North American Numbering Plan Administrator should be of no concern to SBC.

For all of the above reasons, MCI respectfully requests that the Commission adopt MCI’s proposed language in Section 24.1 and reject SBC’s proposed language and its commercially unreasonable Appendix “Out of Exchange Traffic.”

NIM Issue 33

MCI: Since other provisions of the agreement specify in detail the appropriate treatment and compensation of all traffic types exchanged pursuant to this agreement, is it necessary to include SBC Illinois’s additional “Circuit Switched Traffic” language in the agreement?

SBC Issue: (A) What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

(B) Is it appropriate for the Parties to agree on procedures to handle interexchange circuit switched traffic that is delivered over Local Interconnection [T]runk Groups so that the terminating party may receive proper compensation?

MCI's Position

It is not necessary to include SBC's additional "Circuit Switched Traffic" language in the agreement. As discussed above in reference to the VoIP portion of NIM Issue 19, this issue is more appropriately handled in the FCC Proceeding dealing specifically with the VoIP issue, and the parties can modify the agreement if and as necessary once the FCC has issued its decision in that proceeding. This issue should not be decided in this proceeding.

If the Commission should address this issue, however, it should adopt MCI's proposals. As MCI witness Ricca testified, MCI's VoIP-related proposals only encompass IP-PSTN traffic (and other enhanced services), not PSTN-IP-PSTN. (MCI Ex. 7.0, p. 12:298-13:318; MCI. Ex. 11.0, p. 27:654-55 ("MCI's definition of VoIP for which it seeks bill and keep treatment does not include VoIP in the middle.").) Moreover, they are based directly on the FCC's definition of "enhanced" services traffic, which provides: "traffic that undergoes a net protocol conversion between the calling and called parties, and/or traffic that features enhanced services that provide customers a capability for generating, acquiring storing, transforming, processing, retrieving, utilizing, or making available information." (MCI Ex. 7.0, p. 11:278-283.)

The FCC's *Access Avoidance Order*, which SBC purports to rely to support its position, does not support SBC. That order only addressed PSTN-IP-PSTN, not IP-PSTN, which the FCC is only now considering and which is the only VoIP traffic to which MCI's proposals relate. Because IP-PSTN falls squarely within the FCC's definition of "enhanced" services (MCI Ex. 7.0, p. 12:308-17), it ultimately should be determined that such services are not subject to access charges. Furthermore, just as the FCC characterized ISP-bound traffic as interstate traffic, rendering reciprocal compensation inapplicable to it, the interstate nature of IP-PSTN suggests that the FCC will reach the same conclusion about it. (MCI Ex. 7.0, p.11:292-297.) If so, just as MCI proposes, such services will be subject to bill-and-keep rules, not reciprocal compensation or charges. (See MCI Ex. 11.0, p. 27:654-55 ("MCI's definition of VoIP for which it seeks bill and keep treatment does not include VoIP in the middle.").)

Accordingly, the Commission should either defer its ruling on IP-PSTN service-related proposals (in view of the referenced FCC proceeding and the absence of any currently applicable rules) or should adopt MCI's proposals, which are consistent with applicable law. SBC's proposals in Appendix Reciprocal Compensation § 16 should not be adopted because they inappropriately encompass IS-PTSN, despite the fact that IP-PSTN fall directly within the FCC's definition of "enhanced" services. (See *above*.) SBC's proposals also contain other unreasonable requirements, such as a provision requiring the parties to jointly file suit if a third party improperly routes traffic over SBC's trunk groups. (SBC's 8/10/04 Response, Attachment B, Appendix Reciprocal Compensation, § 16.2.)

1. **Number Portability ("LNP") Issues**

LNP Issue 3

Which Party's terms and conditions for coordinated cutovers should be included in the Agreement?

MCI's Position

MCI's terms and conditions for coordinated cutovers should be included in the agreement because it is virtually identical to the language that SBC agreed to in both Michigan and Texas. Moreover, MCI's language will ensure that customers' telecommunications services are not disrupted if a cutover cannot be completed as planned by MCI and SBC. The language SBC proposes to add improperly limits SBC's obligations to provide MCI with non-discriminatory service under the Act, and attempts to permit SBC unilaterally to change mutually agreed upon scheduling.

Further, SBC's new proposed coordinated hot cuts appendix adds nothing to the parties' agreement, but it may inappropriately be seized upon as justification for billing additional and unwarranted amounts to MCI. Prices for services provided pursuant to this agreement are set forth in the pricing appendix. Therefore, SBC's proposal is unnecessary, duplicative, and potentially misleading. SBC's proposed language should be omitted from the Agreement.

2. Operations Support Systems ("OSS") Issues

OSS Issue 1

MCI: May MCI view Customer Proprietary Network Information (CPNI) prior to obtaining authorization to become the End User's local service provider?

SBC: To what extent should MCI be required to indemnify SBC ILLINOIS in the event of unauthorized access for use of SBC ILLINOIS'S OSS by MCI personnel?

MCI's Position

MCI should be permitted to view CPNI prior to obtaining authorization to become the End User's local service provider because accessing CPNI is critical to acquiring a potential customer in the first instance. MCI therefore objects to SBC's proposal to include language in the Agreement that would prohibit MCI from accessing CPNI – specifically, customer service records ("CSR"), as well as the contract termination liability information that should be included in the CSR – until after the sale to the customer is completed.

CPNI is specific customer information regarding the configuration of the customer's account. This may include information pertaining to the features or calling plans to which the customer subscribes, the customer's address and directory listing information, and other information necessary to understand the customer's service needs and requirements. The type of CPNI that MCI primarily seeks to access is the

customer service record (“CSR”). The CSR includes the customer’s name, address, telephone number, and the features and functions of the customer’s current subscription.

MCI accesses CPNI in responding to customer inquiries during inbound or outgoing telemarketing calls. When a potential customer contacts MCI and requests information about subscribing to MCI services, MCI first obtains the customer’s consent to view his customer service record and then accesses that customer’s CSR in order to work with the customer to ensure that the services that the customer has and wishes to keep are available in the MCI product offering. MCI does not access CPNI information in bulk or prior to obtaining individual consent. MCI does not maintain this information in a database or use it for any purposes other than working with the customer to order and provision service.

This is an extremely important issue for MCI, and MCI would be placed at a significant competitive disadvantage to SBC if the Commission does not adopt MCI’s position. Despite the clear intent of the FCC’s rules forbidding non-discrimination, SBC has proposed contract language that would prohibit MCI’s non-discriminatory access to SBC’s electronic pre-ordering systems until a prospective customer has chosen MCI as his/her local service provider.

All that SBC’s proposal would accomplish is to slow down the process of customer conversion by requiring that MCI receive the information manually, rather than electronically, during the pre-order process. SBC is seeking to significantly impair the way in which MCI presently does business in Illinois. The MCI position fully complies with applicable law and with its present practices throughout the country and has been accepted by Verizon, BellSouth, and Qwest. Indeed, SBC appears to be the only RBOC that has chosen to attempt to re-define the stages of customer migration to include a new pre “pre-order” process called “marketing.” The SBC position is not supported by the law and is contradicted by other portions of the “agreed to” language in the proposed interconnection agreement. MCI therefore respectfully requests that the Commission adopt MCI’s position on this issue.

OSS Issue 2

In the event of unauthorized access for use of SBC Illinois’s OSS by MCI personnel, should SBC be required to demonstrate that it incurred damages caused by the unauthorized entry before MCI is obligated to indemnify SBC?

MCI’s Position

SBC should be required to demonstrate that it incurred damages before MCI is obligated to indemnify SBC. SBC’s proposed language to Section 2.2 of the OSS Appendix is unreasonable, because it would require MCI to indemnify SBC absent any underlying fault on MCI’s part and absent any proof of damages. SBC’s proposed language is also unnecessary because the Parties have agreed to GT&C Section 16, a comprehensive indemnification provision.

Inclusion of SBC's proposed addition to Section 2.2 of the OSS Appendix would undermine the indemnity framework agreed to by the parties in GT&C Section 16. SBC's proposed additional language to Section 2.2 of the OSS Appendix would require MCI to indemnify SBC regardless of any underlying fault on MCI's part. In GT&C Section 16.1(a), the Parties have agreed to indemnify each other for "negligent acts or omissions, or willful misconduct." There is no reason to believe that the general indemnity language in the GT&C would not apply to the specific situation of unauthorized access to OSS, or for a different standard to apply in this circumstance. Moreover, unlike the GT&C indemnity provision, SBC's proposed language in Section 2.2 of the OSS Appendix is not a mutual indemnity – while SBC seeks an indemnity from MCI, it offers no corresponding indemnity to MCI. Nonetheless, the language SBC proposes is unnecessary.

MCI respectfully requests that the Commission order that SBC's proposed indemnity language in Section 2.2 of the OSS Appendix be omitted.

3. **Operator Services ("OS") Issues**

OS Issue 1

Should the Operator Service Appendix refer to whether OS is a UNE?

MCI's Position

SBC should be required to provide OS as a UNE. OS is considered an unbundled Network Element that must be offered at TELRIC-based rates unless and until the CLEC (in this case, MCI) can truly take advantage of third-party providers (including self provisioning) via customized routing. As of now, SBC does not provide adequate customized routing. Accordingly, SBC must provide this service pursuant to the *Status Quo* Order. See discussion regarding CNAM 1. Section 271 of TA 96 and state law also obligate SBC to provide this service.

4. **Reciprocal Compensation ("Recip Comp") Issues**

Recip Comp Issue 1

MCI: Should Reciprocal Compensation be determined by the physical location of the end user customers?

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

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

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

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

e. Should non 251/252 services such as Transit Services be negotiated separately?

MCI's Position

The obligation to pay reciprocal compensation arises in connection with traffic subject to Section 251(b)(5) of TA96, 47 U.S.C. § 251(b)(5), and the physical location of end users is not dispositive with respect to Section 251(b)(5). Stated otherwise, the local traffic to which reciprocal compensation obligations generally apply is not limited to traffic between callers and end users physically located in the same geographic area.

The FCC has described the traffic subject to Section 251(b)(5) as traffic that “originates and terminates in the same local exchange area”, *i.e.* local traffic. (Staff Ex. 2.0, p. 95:2251-53; Local Competition Order at ¶¶1034, 1035.) This description shows that the FCC focuses on the traffic – not on the location of the parties making and receiving calls – to determine whether traffic is local. Similarly, the industry classifies calls as local based on the area codes and prefixes associated with the calls (*i.e.*, the calls NPA/NXX codes), which again focuses on technical characteristics of the calls rather than the physical location of the calling parties. (MCI Ex. 7.0, pp. 14:367-15:384.) Accordingly, the Commission also should determine whether calls are subject to reciprocal compensation, *i.e.*, originate and terminate in the same local exchange area, based on the nature of the calls rather than the location of the calling parties. The Commission’s past decisions regarding FX and vFX traffic fully support this conclusion.

FX and vFX traffic is traffic that is terminated in a calling area other than the geographic area in which the called party is physically located. Despite SBC’s erroneous claim that such traffic is “toll traffic masquerading as local traffic (AT&T Order, p. 35), this Commission continually has held that FX and vFX traffic is local exchange traffic. *Id.* Clearly, then, the physical location of calling and called parties cannot reasonably be given the significance SBC contends.

SBC falsely claims that the MCI’s use of the phrase “local traffic”, rather than “Section 251(b)(5) traffic” to describe traffic that is subject to Section 251(b)(5) is inconsistent with the FCC’s ISP Remand Order where the FCC concluded that ISP-bound traffic is not encompassed within Section 251(b)(5). However, in *Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), the court specifically rejected the FCC’s conclusion that ISP-bound traffic is not encompassed with Section 251(b)(5). Thus, the simple and generally understandable phrase “local traffic” should not be abandoned just because it may include traffic, like ISP-bound traffic, that is subject to separate intercarrier compensation billing rules. On the other hand, using the phrase SBC proposes, “Section 251(b)(5) traffic”, which must necessarily be construed to give it meaning, is likely to cause disputes.

Additionally, SBC’s proposed use and definition of the phrase “ISP-bound traffic” is very likely to lead to unnecessary confusion. By its definition, SBC seeks to divide ISP-bound traffic up along yet further lines. The geographic lines it uses this time are contract to the FCC’S Virginia Arbitration Order. There, the FCC’s Wireline Competition

Bureau interpreted reciprocal compensation rules to apply to ISP-bound traffic terminated to an ISP provider located in a calling area outside the calling party's local calling area. SBC's proposal would just allow SBC to collect access charges on some of the ISP-bound traffic that it terminates to an ISP served by MCI and at the same time avoiding the reciprocal compensation charges that would otherwise apply.

On a more practical note, the reasoning underlying the reciprocal compensation found in the Telecommunications Act of 1996 is simple and straight-forward: the customer originating the local telephone call pays for that call, at his or her local rates, to the local exchange carrier (LEC) serving that customer. Because the LEC serving the called party would receive no compensation for carrying that call to its customer, the Act requires the originating carrier to compensate the terminating carrier. Correspondingly, the Act goes on to forbid the originating carrier from collecting any rates from the terminating carrier for the transport of the call to the interconnection point between the two carriers.

That underlying reasoning does not change when the call is rated by its area code and prefix (NPA/NXX). Neither does it change if the actual location of the called party is outside of the local calling area in which the NPA/NXX is assigned by the industry. In this scenario, any additional costs are on the terminating carrier, not the originating carrier. Thus, the obligations on the originating carrier do not change.

Recip Comp Issue 4

MCI: Should reciprocal compensation arrangement apply to calls terminated to customers not physically located in the SBC Illinois local calling area, i.e., Foreign Exchange (FX) calls?

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

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

MCI's Position

FX traffic and vFX traffic should be treated the same for purposes of intercarrier compensation, because the conduct of CLECs is no different under a virtual FX scenario than SBC's conduct when it assigns telephone numbers to its own FX customers. Moreover, SBC expects and has consistently billed MCI's terminations to these FX customers at local service reciprocal compensation rates.

LECs, like SBC, assign all of their NPA-NXXs to both a rate center and, in a separate field, a switch that will handle the call when they enter their NPA-NXXs into the LERG. MCI's vFX calls are terminated in the switch assigned to the NXX just as SBC's FX calls are. The only difference is that MCI does not have a switch in every rate center and SBC does. SBC's serving switch and rate center are always the same for its NXX codes. This is not caused by the differences in SBC's FX service and MCI's vFX service, but rather, by differences in networks deployed by ILECs whose networks

evolved over a century of government-protected monopoly status and CLECs, whose networks are less than one decade old and emerged in a competitive environment.

Just as SBC first sends an FX call to its switch assigned to handle the NPA-NXX and then sends it over a private line to a distant location, so also MCI first sends an FX call to the switch assigned to handle the NPA/NXX and then sends it over a virtual private line to a distant location.

SBC witness McPhee's statement that the CLEC FX-like services create "precisely the type of arbitrage and imbalanced competition that the FCC and Illinois PUC have sought to avoid in the regulations surrounding Inter-carrier compensation" could not be more wrong. CLECs' use of vFX to meet customers' service needs is rooted in a sound business plan, and the offering is effectively the same as SBC's FX services. SBC has not identified any minutes that it has terminated to its own FX customers so that MCI could ensure these minutes were not billed by SBC for reciprocal compensation, nor has it submitted bills to MCI for intrastate switched access charges MCI or provided MCI with any of the necessary signaling information that would allow MCI to bill SBC switched access rates when an MCI customer calls an SBC FX customer. Thus, SBC's proposal would not result in CLECs and ILECs being treated similarly, but is rather another example of SBC seeking to preclude CLECs from providing competing telecommunications services in a manner different from SBC. To ensure that MCI and SBC are treated in a similar manner, the Commission should authorize MCI to collect reciprocal compensation for vFX calls, just as SBC collects reciprocal compensation for FX calls. (And, in this proceeding, SBC seeks to split ISP-bound traffic into two categories based on the geographic location of the calling parties.)

Since the passage of the Telecommunications Act of 1996, SBC has added to the complexity of inter-carrier compensation by urging further balkanization of traffic. First, after losing battles concerning this issue before numerous state commissions and courts and at the FCC, SBC finally prevailed in forcing "local" compensation into two categories—ISP-bound traffic and non-ISP-bound traffic. In the AT&T Arbitration, SBC further persuaded this Commission to carve local non-ISP vFX from the local mix and to set compensation for that traffic at a different rate from local non-ISP, non-vFX traffic. SBC also persuaded this Commission to sever local vFX ISP from local non-vFX ISP traffic for different compensation.

To summarize, local traffic has been sub-divided at SBC's urging into local non-vFX non-ISP-bound, local vFX non-ISP-bound, and local ISP-bound traffic. Thus far, neither intrastate nor interstate switched access rates have been further subdivided. Thus, there are now five categories of telecommunications traffic where there were once three, and in this proceeding, SBC advocates perpetuation of these five and one more.

This continued balkanization of telecommunications traffic is wholly without economic or public policy rationale. There is no economic basis for setting different compensation rates when SBC is entitled to recover only its economic cost of terminating telecommunications traffic. Each succeeding segregation of traffic means

that a departure is required from the industry standard practice of using the Local Exchange Routing Guide (“LERG”) to determine routing and billing of telecommunications traffic. This makes billing less precise and more costly. Billing is less precise because each step has added to the complexity of billing systems that were already quite complex. Billing is more costly because ever-increasing levels of complexity mandate changes to billing software. The ALJs and the Commission should take this opportunity to erase whatever distinctions within “local traffic” are under their control.

Recip Comp Issue 5

MCI: Given that SBC’s proposal for Recip Comp Section 2.12 does not carefully define categories of traffic that the parties will exchange with each other and how such traffic should be compensated, should SBC Illinois’s additional terms and conditions for internet traffic set forth in section 2.12 et. seq. be included in this Agreement?

- SBC**
- a. What is the appropriate treatment and compensation of ISP traffic exchanged between the Parties outside of the local calling scope?
 - b. What is the appropriate routing and treatment of ISP calls on an Inter-Exchange basis, either IntraLATA or InterLATA?
 - c. What types of traffic should be excluded from the definition and scope of Section 251(b)(5) traffic?

MCI’s Position

SBC’s additional terms and conditions for internet traffic set forth in section 2.12 et. seq. should not be included in this Agreement. SBC has proposed vague and confusing language that would appear to create further balkanization of traffic types, and it does so using ambiguous terms regarding the “trading” of “ISP” and “internet” traffic. SBC has never provided MCI with a clear explanation of what this language is intended to achieve. Since SBC has not provided clear and concise definitions of many of the terms used in this language, its inclusion in the Agreement can only lead to disputes between the parties. Moreover, the parties have, in other portions of the Agreement, taken great pains to carefully define categories of traffic that they will have to exchange with each other and how such traffic should be compensated. SBC’s proposed provision in this section 2.12 cannot be reconciled with these other portions of the contract, and MCI respectfully requests that the Commission not adopt SBC’s proposed language in section 2.12. See also MCI’s discussion of issue Recip Comp 1.

Recip Comp Issue 6

MCI: Should a party’s obligation to provide accurate data be limited to traffic that party originates?

SBC: Should each party be responsible for the accuracy and quality of the data submitted for traffic that originates on each Parties’ respective network?

MCI's Position

When one party provides data to the other, that party should be obligated to provide accurate data regardless of whether the traffic in question originated on that party's network. Moreover, a party also has an obligation to pass along any relevant, necessary and available data that it receives from a third party originator to the terminating party. This is the only manner in which the terminating party has information sufficient to bill the originating party. MCI respectfully requests that the Commission adopt its proposals and reject SBC's language, which unreasonably limits a party's obligation to provide accurate data to traffic that originated on that party's network. See MCI's discussion of issue Recip Comp 7.

Recip Comp Issue 7

MCI: Where CPN is not available, should the parties use equivalent signaling data instead?

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

b. Should the originating Party be responsible for providing equivalent signaling data to the terminating party for billing purposes if CPN is not available?

MCI's Position

MCI proposes that where CPN is not available, the parties instead should use any available equivalent signaling data that provides for accurate jurisdiction identification of calls. Providing for the use of equivalent signaling data would account for the fact that CPN is not always available. SBC's proposed language does not acknowledge this.

The parties agree that they should provide Calling Party Number ("CPN") information with all relevant traffic. However, for some reason, SBC objects to MCI's proposal to expressly state that: (i) the parties' obligation to exchange CPN applies to traffic exchanged pursuant to their contract; and (ii) where CPN is not available, the parties should exchange equivalent signaling data, as available. (7/16/04 Appendix Reciprocal Compensation, § 3.2.) Because SBC's objections are unreasonable, the Commission should disregard them and adopt MCI's proposed language.

First, the parties' ICA is not intended to govern traffic that the parties exchange outside of their contract. Accordingly, the Commission should disregard SBC's objection to limiting the applicability of the obligation to pass CPN information to traffic passed under the contract and reject SBC's affirmative proposal to apply Section 3.2 of the Reciprocal Compensation Appendix to such traffic. (*Id.*)

Second, in light of the parties' mutual recognition of the importance of CPN information, the parties should, as MCI proposes, include language designed to deal with situations where CPN data is not available, which can occur for a variety of

legitimate reasons. (MCI Ex. 7.0, p 26:627-33; see also SBC Ex. 9.0, p. 49:1133-35 and p. 50:1163-64.) In particular, in such circumstance, parties should “exchange equivalent signaling data”, if available. (*Id.*) SBC appears to oppose the requirement that the parties provide equivalent data because it prefers to have the opportunity to charge MCI access rates when MCI cannot provide CPN information for a certain percentage of calls. (See MCI Ex. 7.0, p. 686-95; SBC 8/10/04 revised Appendix Reciprocal Compensation, § 3.4; SBC 8/10/04 revised Recip Comp DPL, p. 12 at “SBC Position” on Issue 10.) However, as this Commission previously noted, a party should not be “automatically punished for a situation that may be beyond its control”. (AT&T Order, p. 136.)

SBC’s further claim that the phrase “equivalent signaling data” should not be used because it is not defined and SBC does not understand it (SBC Ex. 13.0, p.5:99-102), is a red-herring. Based on the contract language to which the parties agreed, “equivalent signaling data” naturally would include non-CPN data that identified the physical location of the end user customer who originated a call (7/16/04 Appendix Reciprocal Compensation, § 3.2), such as a jurisdictional indicator, the NPA/NXX of the originator’s rate center or other indicators on which the parties mutually agreed. If deemed necessary, the Commission could modify MCI’s proposed contract language to include such examples.

For all of the foregoing reasons, MCI respectfully requests that the Commission adopt MCI’s language, which accounts for the fact that CPN is not always available.

Recip Comp Issue 8

MCI: When CPN is unavailable, what processes should apply for accessing percent local usage to determine appropriate termination rates?

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

MCI’s Position

When CPN is unavailable, MCI proposes to use a factor (Percent Interstate Usage [“PIU”] or Percent Local Usage [“PLU”]) based on the originating carrier’s traffic measurements for the prior three months. MCI believes the use of such factors is an accurate and fair means by which to identify traffic for purposes of compensation. The fact that no CPN is available means that some kind of assessment and judgment must be made. The question is whether it is more reasonable to assume (as SBC apparently does) that all traffic without CPN should be considered as intrastate toll subject to the highest compensation rate that exists between the parties or whether the assumption that the proportion of traffic in each jurisdiction for calls with CPN provides a more reasonable basis for assessing reciprocal compensation charges. MCI believes that the latter assumption is the more reasonable one. Moreover, the Commission has already resolved this issue, adopting language similar to MCI’s, in the AT&T Arbitration. MCI respectfully requests that the Commission adopt MCI’s proposed processes for accessing percent local usage when CPN is unavailable.

Recip Comp Issue 9

MCI: Should the rate for reciprocal compensation be a unitary rate or a bifurcated rate?

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

MCI's Position

The rate for reciprocal compensation should be a unitary rate. MCI proposes a unitary rate with underlying economic costs that have been documented and litigated before, and approved by this Commission. By contrast, SBC has not provided any documentation that its bifurcated rates are similarly cost-based. Moreover, the Commission rejected SBC's attempt to impose this rate structure on AT&T in Docket No. 03-0293. MCI respectfully requests that the Commission also reject SBC's proposed rate structure in this proceeding.

Recip Comp Issue 10

MCI: Should MCI be permitted to charge the tandem interconnection rate?

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

b. If a MCI switch meets the geographic coverage test, should MCI be entitled to the mileage sensitive tandem transport element for transport between switches when MCI only has one switch?

MCI's Position

Based on this Commission's order in the AT&T arbitration and the 7th Circuit's recent decision in *Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378 (7th Cir. 2004), it is clear that MCI, upon satisfying the applicable requirements, may charge SBC's tandem rate to terminate traffic subject to reciprocal compensation requirements. (MCI Ex. 7.0, p. 21:516-24:586.) The underlying basis of this right is FCC Rule 711(a)(3), which entitles CLECs to charge an ILEC's tandem rate if they can show that their switch "serves a geographic area comparable to the area served by the [ILEC's] tandem switch." (47 C.F.R. § 51.711(a)(3).)

In the AT&T arbitration, this Commission found that AT&T showed that its switch "serves a [comparable] geographic area" by demonstrating that its switch is "capable" of serving the same geographic area as SBC's tandem. (*AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with [SBC]*, Docket No. 03-0239, p. 143 (August 26, 2003).) As the Commission further noted:

We agree with the FCC's Wireline Competition Bureau's interpretation in the Virginia Arbitration Decision that the correct question is whether

AT&T's switches are capable of serving a geographical area that is comparable to the architecture served by the ILEC's tandem switch.

(*Id.* (citing *In re Petition of WorldCom, Inc.*, 17 F.C.C.R. 27039 at ¶ 309 (July 17, 2002)).)

In *McCarty*, the 7th Circuit similarly endorsed the Wireline Competition Bureau's findings regarding Rule 711.

Accordingly, the Commission should order the parties to conform the contract language MCI proposed in connection with issue Recip Comp 10 to the requirements of the law, as previously determined by the FCC's Wireline Competition Bureau, this Commission and the 7th Circuit. Specifically, the relevant contract language should provide:

4.4 Tandem Interconnection Rate Application

4.4.1 For MCI traffic that terminates to SBC, transport and termination rates will vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where MCI has not affirmatively demonstrated that its switch is capable of serving a geographic area comparable to the area served by SBC ILLINOIS's tandem switch, MCI shall be entitled to receive the End Office Switching rate set forth in Section 4.2.5.3 above.

4.4.1.1 To qualify for the tandem interconnection rate pursuant to 47 C.F.R. §51.711(a)(3), MCI must affirmatively demonstrate that its switch is capable of serving a geographic area comparable to the area served by SBC's tandem switch. For purposes of this Appendix, MCI's switch is capable of serving a geographic area comparable to the area served by SBC's tandem when MCI's switch is capable of providing local service to NPA-NXXs assigned or ported to MCI in the comparable geographic area. MCI shall be entitled to the tandem interconnection rates (tandem switching, tandem common transport termination, tandem transport common facility, end office set-up and end office duration) for all calls. MCI will use the Commission approved state-wide average of fourteen (14) miles for calculating the common transport facility rate set forth in Section 4.3.2. The Parties may mutually agree on a blended rate based on the above application of rates.

As previously indicated, MCI's above-proposed language is fully consistent with the direct testimony of MCI witness Ricca, (MCI Ex. 7.0, p. 21:516-24:586), and current law.

Further, the Commission should reject SBC's proposed contract language, which would condition MCI's ability to charge the tandem rate on MCI's ability to prove: (i) the functionality of its switch; (the former "functionality" test was abandoned long ago, and, as found in AT&T, "section 51.711(a)(3) is clear in requiring only a geographic area

test". (AT&T Order, p. 142.) and (ii) that its switch *actually* serves certain customers. (SBC Ex. 9.0, p. 13:282-95 and 298-99.) As the Commission found in AT&T:

the actual identification of customers by AT&T is not necessary. The reason being that within the next month AT&T could have lost or gained any number of customers in any location. At which point the ability of an AT&T switch to qualify for the tandem rate under SBC's proposal would change. That result would be nonsensical.

(AT&T Order, p. 143.)

The Commission also should reject SBC's contention that upon satisfying the requirements of FCC Rule 711(a)(3), MCI is not entitled to charge SBC's full tandem rate. (SBC Ex. 9.0. p. 14:309-15:327.) As SBC itself notes, FCC Rule 711 provides:

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

(SBC Ex. 9.0. p. 12:272-76 (quoting FCC Rule 711).)

Pursuant to the plain meaning of this language, upon satisfying the requirements of Rule 711, a CLEC is entitled to charge an ILEC's tandem rate. This right is not qualified in any way. Thus, SBC cannot properly insert any restrictions or limitations on it. (See *e.g.*, *Divane v. Chicago Board of Education*, 332 Ill. App. 3d 548, 553, 774 N.E.2d 361 (1st Dist. 2002); *People v. Young*, 92 Ill.2d 236, 241, 441 N.E.2d 641 (1982).) Moreover, there is no practical reason to limit a CLEC's right to charge an ILEC's full tandem rate. The fact that a CLEC's single switch can do what SBC must use multiple switches to do is a testament to the CLEC's efficiency. A CLEC should not be punished for that. (See AT&T Order, p. 142 ("This rule recognizes that while new entrants may adopt network architectures that differ from those of incumbents, the new entrants nonetheless are entitled to be compensated for their costs of terminating traffic.").)

Recip Comp Issue 11

MCI: Do MCI's switches serve a geographic area comparable to SBC's tandem switches?

SBC: See Issue 10 above.

MCI's Position

Each of MCI's local switches in Illinois serve or are capable of serving geographic areas at least as large as those served by SBC's tandems. MCI's position is consistent with the FCC's rules on tandem reciprocal compensation rates as well as the FCC's own interpretation of its rules as demonstrated in the Virginia Arbitration.

There is no reason to avoid this clarification in this Agreement. MCI therefore respectfully requests that the Commission adopt MCI's proposed language in Appendix Reciprocal Compensation Section 4.4.2, which acknowledges that MCI's switches serve an area comparable to SBC's tandem switchers.

Recip Comp Issue 12

MCI: Should SBC's confusing description in Section 4.4.3.1 be included in the agreement?

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

MCI's Position

Both parties agree that the growth cap established in the FCC's ISP Remand Order should be described in the contract. However, they differ on the manner in which the cap should be described. Review of the proposal shows that MCI's is superior. SBC's proposed language incorporates SBC's defined term "ISP-bound Traffic", which term really means only some ISP bound traffic. Thus, this term is inherently ambiguous and should not be included in the parties' contract. Additionally, SBC's proposed language uses the word "compensable" to modify the phrase "ISP-bound Traffic". The purpose of including "compensable" is unclear, and the meaning of the phrase "compensable ISP-bound Traffic" is uncertain. Accordingly, because MCI's proposed language describes the cap in clear and simple terms, MCI respectfully requests that the Commission adopt MCI's proposal.

Recip Comp Issue 13

MCI: Should traffic compensated pursuant to another agreement be counted toward ISP growth caps applicable only under this Agreement?

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

MCI's Position

Traffic compensated pursuant to the parties' previous agreement should not be counted toward ISP growth caps applicable only under this agreement. The Agreement between the Parties that expired on May 31, 2004, provided for no distinction between ISP-bound minutes and other compensable minutes, thus eliminating any minutes during that time from counting toward the growth cap on ISP minutes for 2004. There is thus no underlying rationale for classifying any minutes during this time frame as "ISP-bound."

The parties have been operating under a "13-State Reciprocal Compensation Agreement" that became effective on January 1, 2004, and continued in effect until May 31, 2004. SBC proposes to count every ISP minute from the beginning of 2004 as counting towards the gross cap established by the FCC in its *ISP Remand Order*. MCI

believes that none of those ISP minutes from January 1, 2004 through May 31, 2004 should count towards the ISP minute cap. One of the underlying principles of the 13-state agreement was that all minutes, including ISP minutes would be rated at a lower rate than the reciprocal compensation rates and ISP remand Order rates *without regard to the ISP traffic gross cap* established in the FCC remand Order. Thus, the parties have been operating under an Agreement that specifically acknowledges that the FCC ISP Remand Order's establishment of a gross minute cap *does not apply*. It is therefore not proper to count minutes of use previously compensated at the mutually agreed-to rates in that 13-state agreement against the ISP minute cap that will only come into effect on June 1, 2004. Moreover, since the parties knew that ISP minutes exchanged between January 1 and May 31 would not be counted toward the growth cap, MCI, at least, did not rate the calls exchanged during that period as ISP or non-ISP. Thus, it cannot accurately determine the number of ISP call minutes exchanged during that period.

Irrespective of the superiority of its position, MCI has suggested a compromise. If SBC agrees that ISP call minutes exchanged between January 1 and May 31, 2004 shall not be counted, MCI will agree that the growth cap applicable to 2004 may be prorated to reflect the percentage of the cap applicable to the seven months of 2004 during which ISP call minutes will be counted. (MCI Ex. 11.0, p. 14: 330-40.) MCI respectfully requests that the Commission adopt this compromise position.

Recip Comp Issue 14

MCI: Should SBC's proposed true-up mechanism for ISP traffic be included in the Agreement?

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

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

MCI's Position

SBC's proposed true-up mechanism for ISP traffic should not be included in the Agreement. In general, rates should not be set retroactively for any reason. The reason for this is simple and straightforward. Companies must have a reasonable level of certainty regarding the revenue they bill and collect pursuant to agreements or tariffs. MCI must be able to book revenue without the uncertainty that would be imposed by SBC's proposal. While a true-up for any disputes over compensation for ISP Bound traffic may be appropriate in some circumstances (when, for instance, there has been a violation of the Agreement's terms and conditions), it should not occur when an existing agreement has been followed. When circumstances arise that may render a true-up appropriate, it should be up to the Commission to determine if a true-up actually is appropriate, and the Agreement should be silent on the issue. Rather than insisting on a Commission decision in a vacuum in the context of this arbitration, it is better to allow

the Commission to make a decision only if and when the issue becomes ripe, and that is the basis for MCI's objection.

Nonetheless, under SBC's proposed language, in the event it ever is able to rebut the FCC's 3:1 presumption, a true-up shall occur and that true-up "shall be retroactive back to the date a Party first sought appropriate relief from the Commission". (MCI's 7/16/04 Petition, Attachment B, Appendix Reciprocal Compensation, § 4.8.1.) SBC's proposed language is plainly unreasonable and inappropriate. The date from which a true-up should occur, if any is even appropriate, would necessarily depend on the "proof" SBC presented during the Commission proceeding in which it sought to rebut the presumption as well as any and all other evidence adduced during that proceeding. The date on which the proceeding was initiated is purely arbitrary.

Further, SBC's proposal conflicts with language to which the parties agreed. As stated in Section 4.8.1 of the Appendix Reciprocal Compensation, "If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to Section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission's approval."

For all of the foregoing reasons, MCI respectfully requests that the Commission reject SBC's proposed true-up mechanism.

Recip Comp Issue 15

Has SBC demonstrated that more than 90% of the traffic it terminates to MCI is ISP-bound?

MCI's Position

SBC has not demonstrated that more than 90% of the traffic it terminates to MCI is ISP-bound. As MCI witness Ricca testified, SBC first claimed that it had rebutted the 3:1 terminating-to-originating presumption just before MCI filed its petition, and the parties never engaged in any negotiations relating to the significant issues raised by SBC's claim or the summary data on which its claims is based. (MCI Ex. 7.0, p. 6:169-7:184; MCI Ex. 11.0, p. 15:351-65 (noting, among other things, that: (i) "the total number of minutes terminating to SBC from MCI seems to be greatly understated by SBC [in its purported study]"; and (ii) the inability to negotiate significant issue regarding SBC's "study" and "how this might impact the other portions of the ISP compensation issues".)) Thus, issue Recip Comp 15 is not properly subject to arbitration. (See XO Arb Order, p. 54 (finding that "[a]s Staff observes, the ALJ ruled that future UNE declassifications that are not based on the TRO (as modified by *USTA II*) are beyond the scope of the arbitration here, because they were beyond the scope of the parties' limited negotiations."))

Moreover, the parties agreed language in Section 4.8.1 of the Appendix Reciprocal Compensation provides:

Either party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-bound Traffic by any means *mutually agreed by the Parties, or by any method approved by the Commission.*

(MCI's 7/16/04 Petition, Attachment B, Appendix Reciprocal Compensation, § 4.8.1 (emphasis added).)

The method by which SBC is seeking to rebut the 3:1 ISP presumption was neither agreed to by MCI nor approved by the Commission. Accordingly, the Commission also should decline to consider SBC's alleged rebuttal of the presumption for this reason.

MCI respectfully requests that the Commission reject SBC's proposed language in Reciprocal Compensation Section 4.8.1.1.

Recip Comp Issue 16

Should inter-switch UNE-P calls be compensated differently than other traffic?

MCI's Position

This issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Although this issue was not on SBC's or Staff's list of moot issues, it satisfies the same criteria as the issues that were listed and therefore should be added to the list. 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, it is MCI's position that inter-switch UNE-P calls should not be compensated differently than other traffic. MCI believes that all reciprocal compensation traffic should be treated equally and paid for by the party whose customer originated the call. TELRIC-based rates were developed and assigned with assumptions that all of the traffic was counted and used to determine the rates. The language proposed by SBC was given to MCI shortly before the DPL was to be filed and as a consequence, MCI had no opportunity to look at this issue in depth. Nonetheless, MCI believes that SBC's proposal is nothing more than piecemeal ratemaking to the detriment of its competitors. The competitors are without the market power to extract this kind of leverage for themselves. MCI respectfully requests that the Commission reject SBC's proposed language and thereby deny SBC's effort to further balkanize traffic types for billing and compensation.

Recip Comp Issue 17

Should intra-switch UNE-P calls be exempted from requirements to pay reciprocal compensation?

MCI's Position

As in Recip Comp Issue 16 above, 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. Although this issue was not on SBC's or Staff's list of moot issues, it satisfies the same criteria as the issues that were listed and therefore should be added to the list. 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 the issue, MCI's position is that intra-switch UNE-P calls should not be exempted from requirements to pay reciprocal compensation. This issue is intimately wrapped up in Recip Comp Issue 16 above. As noted above, MCI believes that all reciprocal compensation traffic should be treated equally and paid for by the party whose customer originated the call. For the same reasons discussed in Recip Comp Issue 16, MCI respectfully requests that the Commission reject SBC's proposed language.

Recip Comp Issue 18

MCI: Should SBC be required to provide MCI with call records for traffic MCI terminates on SBC's network to end user customers of third-party UNE-P providers?

SBC: a. What are the appropriate records SBC ILLINOIS will provide MCI in order for MCI to bill Inter-carrier compensation to a third party telecommunications carrier using an SBC ILLINOIS non-resale offering whereby SBC ILLINOIS provides the end office switching on a wholesale basis as set forth in SBC's proposed 13.1.1?

b. Under any circumstances should SBC ILLINOIS be required to pay Inter-carrier compensation on traffic that originate from a third party telecommunications carrier using an SBC ILLINOIS non-resale offering whereby SBC ILLINOIS provides the end office switching on a wholesale basis as set forth in SBC's proposed 13.1.1?

c. SBC: Should MCI have the sole obligation to enter into compensation arrangements with third party carriers that terminate traffic to MCI when SBC ILLINOIS is the ILEC entity providing the use of the end office switch (e.g., switching capacity) to such third party carrier, and if it does not enter into such arrangements, should it indemnify SBC ILLINOIS when the third party carriers seek compensation from SBC ILLINOIS?

MCI's Position

SBC should be required to provide MCI with call records for traffic MCI terminates on SBC's network to end user customers of third-party UNE-P providers. When MCI's UNE-LS customers receive local calls from a third-party CLEC's UNE-P customer, MCI can suppress the billing of such calls to SBC and re-direct them to the third-party CLEC only if SBC provides the proper call records to MCI. If information sufficient to suppress billing SBC and to bill the third-party CLEC for such calls is not provided to MCI, then MCI can only assume that the call in question came from SBC.

SBC admits that it is required to provide MCI with call records for traffic that MCI terminates on SBC's network to end user customers of third-party UNE-P providers. (SBC Ex. 13.0, p. 5:115-16.) Accordingly, the Commission should adopt the contract language MCI proposed in connection with this issue. Consistent with SBC's admission, MCI's language obligates SBC to provide such records, and it properly and clearly requires that the records SBC must provide must be those records "necessary to bill such calls as described in Appendix Recording", which solely consists of language on which the parties agreed. (7/16/04 Appendix Reciprocal Compensation, § 4.11.)

Further, because the language proposed by SBC is inappropriate, the Commission should reject it. SBC's language unreasonably: (i) requires MCI to enter into an intercarrier compensation arrangement with the third-party telecommunications carrier; (ii) if MCI does not enter into such an arrangement, it absolves SBC of any liability; (iii) requires MCI, in the absence of such an arrangement, to indemnify, defend and hold SBC harmless against any and all losses; (iv) authorizes SBC to provide other telecommunications carriers with information regarding traffic between MCI and the third-party carrier; (v) obligates SBC to provide records *appropriate* for billing (apparently, as judged by SBC), rather than records consistent with the parties' agreed to Appendix Recording; and (vi) dictates the purpose for which MCI may use the information SBC provides.

Every one of SBC's proposed provisions reflect gross and unnecessary overreaching. For example, SBC cannot be permitted to dictate to MCI how MCI should conduct its business with third parties, and SBC certainly should not be permitted to require MCI to defend and hold it harmless against untold and unlimited claims by such third parties. Moreover, SBC does not even attempt to offer any legitimate or credible explanation (let alone justification) for its outlandish proposals. All SBC says is that its proposals should be adopted because they "provide[] much greater detail". (SBC Ex. 13.0, p. 6:123-25.) It is that very detail that demonstrates why SBC's proposal should be summarily rejected.

For all of the foregoing reasons, MCI respectfully requests that the Commission adopt MCI's proposed language in Appendix Reciprocal Compensation Section 4.11.

Recip Comp Issue 19

MCI: Should the rates MCI can charge for terminating IntraLATA toll calls be capped at the rate in SBC's tariff?

SBC: Should MCI be able to charge an Access rate higher than the incumbent?

MCI's Position

MCI believes that the rates it can charge for terminating IntraLATA calls should not be capped at the rate in SBC's tariff. With its proposed language, SBC has unilaterally attempted to cap MCI's switched access charges at SBC's own level. MCI opposes this proposed language because MCI should have ability to charge based on its own switched access tariff.

Recip Comp Issue 20

MCI: What billing arrangements should apply to IntraLATA interexchange traffic?

SBC: a. What is the proper treatment and compensation for intraLATA Toll Traffic?

b. Is it appropriate to include the term "mandatory EAS traffic" in this agreement?

c. Is it appropriate to address a delivery process for MPB Access Usage Records in relation to IntraLATA Toll Traffic Compensation?

d. What is the appropriate time frame to provide Access Usage Records?

MCI's Position

The parties agree that intraLATA interexchange traffic should be treated in the same manner as any other switched access non-local traffic. (See MCI 7/16/04 Appendix Reciprocal Compensation, § 9.1.) To the extent that MCI may have understood Section 9 of the appendix to refer to traffic carried by IXCs, its misunderstanding would have been cleared up had the parties had an opportunity to discuss their differences with respect to the Appendix Reciprocal Compensation. (See MCI's Petition for Arbitration at ¶¶ 19-22.)

While SBC claims to not offer an optional EAS product in Illinois, it should not be heard to suggest that if it decides to do so in the future, such calls would be subject to reciprocal compensation instead of switched access charges. If SBC's proposed language is allowed without the word "mandatory" modifying "EAS," SBC would be able to game the system. If, on the other hand, the word "mandatory" is included, SBC would not be able to do so. In the event SBC never offers an optional EAS arrangement, the status quo will not be affected by the use of the word "mandatory." MCI therefore respectfully requests that the Commission adopt MCI's proposed language for this section of the contract simply to prevent future disputes or gamesmanship.

Recip Comp Issue 21

MCI: Should the parties follow MECAB guidelines for billing special access and meet-point traffic?

SBC: Is it appropriate to include terms and conditions for “Special Access” as a dedicated private line service in the Reciprocal Compensation Appendix?

MCI’s Position

MCI believes that the parties should follow the Multiple Exchange Carrier Access Billing (“MECAB”) guidelines for calculating special access compensation. These guidelines provide the only national standard that covers joint billing of special access facilities. MCI believes that there is no reason to depart from the MECAB guidelines for special access facilities owned jointly by MCI and SBC Illinois.

Nevertheless, SBC claims that MCI’s position here should be rejected for two reasons: 1) Appendix Reciprocal Compensation contains terms for the treatment of Intercarrier traffic, not facilities; and 2) Special Access has nothing to do with Intercarrier traffic. (SBC Illinois Ex. 9.0 at 55:1287-91.) SBC’s sole stated objection is with the location of this material. (*Id.* At 55:1287 - 56:1299.) SBC even suggests that this is more appropriately located elsewhere, but does not provide an alternative location in the ICA. “Reciprocal Compensation” is a title of the Appendix, but as such has no controlling effect on what is or is not contained in that appendix. Shared network facilities for a third party end-user customer are thus appropriately covered in the Reciprocal Compensation Appendix. Further, there is nothing in Sections 251 and 252 of the Act that restricts interconnection for exchange of telecommunications services to switched telecommunications services. There is no indication anywhere except in SBC’s testimony that provides that telecommunications carried over end-to-end special access facilities is excluded from telecommunications traffic. There is no justification for SBC’s conclusion that the only manner in which a CLEC is entitled to compete for special access services is through its own facilities at each end of a point-to-point special access circuit. If that were the case, there would be no need for MCI to arbitrate this issue. Mr. Ricca made clear in his Direct Testimony why there is a need to use the MECAB guidelines to coordinate the rates, terms and conditions of such trunks (see Ricca Direct (MCI Ex. 7) at 45:1066-75. Finally, by suggesting there are other more appropriate references for jointly provided special access services, SBC tacitly agrees that the issue is properly one for inclusion in the ICA, just not in the Reciprocal Compensation Appendix.

Recip Comp Issue 23

What is the proper compensation treatment for Voice Over Internet Protocol traffic?

SBC: a. What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

b. Is it appropriate for the Parties to agree on procedures to handle Switched Access Traffic that is delivered over Local Interconnection Trunk Groups so that the terminating party may receive proper compensation?

MCI's Position

First, MCI believes that the issue is not appropriately dealt with in the context of this bilateral arbitration because VoIP is the subject of another proceeding presently before the Federal Communications Commission. The ALJs and the Commission should therefore take no action in this proceeding on any VoIP issues until the FCC has issued its order in its Intercarrier Compensation Rulemaking proceeding. When the FCC reaches a decision in this proceeding, the parties may invoke change of law provisions to bring this agreement into conformance with the FCC's decision in that other proceeding.

If, however, the Commission chooses to take up the merits of the VoIP issues, MCI recommends adoption of its proposed language, which relates to the type of VoIP (IP-PSTN) traffic that the FCC currently is considering and has never before ruled on. IP-PSTN is completely different than the PSTN-IP-PSTN VoIP traffic on which the FCC ruled and on which SBC bases its proposal. Thus, that FCC ruling is not applicable to IP-PSTN traffic. Therefore, SBC's broad and all encompassing proposal, which applies to both IP-PSTN and PSTN-IP-PSTN is unreasonable and inappropriate.

Recip Comp Issue 24

Should SBC's additional intervening law provision be included in the Reciprocal Compensation Appendix?

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

MCI's Position

SBC's additional intervening law provision should not be included in the Reciprocal Compensation Appendix. Since the parties have negotiated the reciprocal compensation provisions of this agreement under the guidelines set forth in the FCC's ISP Traffic Order, SBC's proposed reservation of rights is unnecessary and self serving. Similarly, SBC's change of law language is unnecessary given the change of law provision of universal application in the GT&C. Moreover, as with SBC's proposed language in Section 23 of the GT&C, this proposal would permit SBC to unilaterally invoke a change in law without first seeking a contract amendment. Such a unilateral invocation is unacceptable to MCI. Accordingly, MCI respectfully requests that the Commission reject SBC's proposed intervening law provision in the Reciprocal Compensation Appendix.

Recip Comp 25:

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

MCI's Position

Transit Services should not be negotiated separately because SBC is obligated to provide these services in under Section 251(c)(2) of TA96. See issue NIM 31.

5. Resale Issues

Resale Issue 1

May MCI resell, to another Telecommunications Carrier, services purchased from Appendix Resale?

MCI's Position

Section 251(c)(4) of the Act prevents SBC from prohibiting or imposing unreasonable or discriminatory conditions or limitations on resale. Not only is SBC prohibited from placing this restriction on MCI's use of resold services, but there is absolutely no basis for such a restriction. The FCC has made it clear that the only reasonable prohibition that can be placed on the resale of services is a restriction against "cross-class" selling. This type of restriction limits MCI from purchasing wholesale residential services and reselling them to business customers, and also purchasing wholesale lifeline service and selling them to customers not eligible to receive lifeline assistance. Obviously these restrictions have nothing to do with the disputed language at issue. These two restrictions are the sum total of the permissible resale prohibition. In its *First Report and Order*, the FCC made it a point to state:

We also conclude that all other cross-class selling restrictions should be presumed unreasonable. Without clear statutory direction concerning potentially allowable cross-class restrictions, we are not inclined to allow the imposition of restrictions that could fetter the emergence of competition. As with volume discount and flat-rated offerings, we will allow incumbent LECs to rebut this presumption by proving to the state commission that the class restriction is reasonable and non-discriminatory.

Id. at ¶1964.

SBC has not provided a reasonable basis for proposing this restriction against the resale of services to Telecommunications Carriers. The language proposed by SBC is directly and completely at odds with the FCC's interpretation of "telecommunications services" that the parties have incorporated into this Agreement.

Indeed, as explained above, the FCC has interpreted the definition of "telecommunications service," as that term is defined in Section 3(a)(51) of the Act, on a few occasions since the enactment of the Act in 1996. According to these FCC decisions, the term "telecommunications service" was not intended to create a

wholesale/retail distinction, or to limit “the public” to “end users” of a service. The only restriction that the FCC has placed on “telecommunications service,” as that term is defined in the Act, is that the services must be provided on a common carrier basis. See *Virgin Islands Telephone Corporation v. Federal Communications Commission*, 198 F.3d 921, 930 (U.S.App.D.C., 1999).

Moreover, MCI’s right to resell telecommunications services as it sees fit also is protected under state law. Section 13-801 (f) of the Public Utilities Act states:

Resale. An incumbent local exchange carrier shall offer all retail telecommunications services that the incumbent local exchange carrier provides at retail to subscribers who are not telecommunications carriers, within the LATA, together with each applicable optional feature or functionality, subject to resale at wholesale rates without imposing any unreasonable or discriminatory conditions or limitations.

This too prohibits the type of restrictions SBC seeks to impose.

Finally, MCI objects to SBC’s limitation on the resale of services because MCI could not refuse such resale even if it wanted to. Section 251(b)(1) of the Act prevents MCI from prohibiting or imposing unreasonable or discriminatory conditions or limitations on the resale of its own services. Thus, SBC not only has proposed a resale restriction that is prohibited by the Telecom Act and FCC rulings, but will also cause MCI to violate the requirements of the Telecom Act.

Staff witness Dr. Liu’s recommendation does not address the dispute presented. As noted above, this dispute concerns SBC’s proposal to insert the word “not” into Section 1.3 of Appendix Resale. Moreover, she assumes that a new service is involved when it is not. SBC asks that the Commission agree with SBC’s position that no services provided under Appendix resale can be resold by MCI to other telecommunications carriers. But for all the reasons already discussed, such a position is not consistent with federal law.

Resale Issue 4

Should MCI be permitted to aggregate traffic for multiple end user customers onto a single service?

MCI’s Position

MCI should be permitted to aggregate traffic for multiple end user customers onto a single service. MCI objects to SBC’s proposed restrictions on legal and operational grounds.

From a legal standpoint, SBC Illinois’s language effectively reverses the FCC’s position that resale aggregation restrictions are presumptively unreasonable. SBC

Illinois has failed to rebut this presumption, and therefore these restrictions should be found to be unreasonable.

In its *First Report & Order*, 11 F.C.C.R. 15499 (1996), the FCC specifically addressed the issue of end user aggregation for the purpose of qualifying for volume discounts. The FCC made clear that it “has traditionally not permitted [aggregation] restrictions on resale of volume discount offers” and that such restrictions would frequently produce anticompetitive results. *First Report & Order*, ¶ 953. The FCC went on to “conclude that such restriction should be considered presumptively unreasonable.” *Id.*

Contrary to the FCC’s position, SBC Illinois, by way of its proposed language, would assume that sharing and aggregation restrictions *apply* unless specified otherwise in the tariff. This is in clear contrast to the FCC position that such restrictions are unreasonable and *do not apply* unless and until SBC Illinois can make the proper showing to the Commission.

From an operational standpoint, the restrictions are unreasonable and anti-competitive because they prevent MCI from qualifying for volume discounts that SBC Illinois is able to offer its customers.

Resale Issue 8

Which Party’s proposal for the resale of Customer Specific Arrangements (CSA) should apply?

MCI’s Position

MCI’s proposal should apply. MCI has proposed language that sets forth in a straightforward manner the obligations SBC has to resell services to MCI in assuming a customer specific pricing arrangement. SBC seeks to add unnecessary or ambiguous language. MCI respectfully asks that the Commission adopt MCI’s proposed language on this issue.

6. Signaling System 7 (“SS7”) Issues

SS7 Issue 1

Under what circumstances should SBC Illinois be required to provide signaling to MCI as an unbundled Network Element?

MCI’s Position

MCI and SBC have both proposed language to make clear SBC’s obligations to provide signaling to MCI (as a UNE) when MCI is obtaining local switching from SBC on an unbundled basis. The dispute involves additional language proposed by SBC that “all other use of the SS7 signaling is pursuant to the Access Tariff.” MCI disagrees.

SBC's interconnection obligations under § 251 of the Act encompass more than the interconnection trunks themselves. Rather, those obligations relate also to the signaling links by which the companies' networks exchange signaling information for the operation of those interconnection trunks. The terms and conditions for such interconnection are pursuant to the network appendix in this agreement, and not in SBC's access tariffs. State law also obligates SBC to provide this service. 220 ILCS 5/13-801. MCI respectfully requests that the Commission reject SBC's unnecessary language.

SS7 Issue 2

See SS7 Issue 1.

MCI's Position

This issue is similar to NIM Issue 24. The dispute is whether MCI is entitled to obtain SS7 signaling links at cost based rates, and it is clear that SBC has an obligation both under § 251 of the Act and under Illinois law to provide interconnection – including signaling – at cost based rates.

SS7 Issue 3

See SS7 Issue 1

MCI's Position

This is the same as the issue described above in SS7 1 and 2. MCI respectfully asks the Commission to reject SBC's effort to narrow its legal obligations on these SS7 issues.

7. Unbundled Network Elements (“UNE”) Issues

UNE Issue 1

What are the appropriate geographic limitations of SBC Illinois's obligation to provide access to network elements?

MCI's Position

The appropriate geographic limitations of SBC Illinois's obligation to provide access to network elements is set out in the agreed-to section 2.12.1 of the GT&Cs. SBC's proposed language is unnecessary. In SBC's proposed language, instead of focusing on "...portions of Illinois in which SBC ILLINOIS is deemed to be the ILEC under the Act" (undisputed language from GT&C Appendix, Section 2.12.1), SBC attempts to limit the geographic area to "...SBC ILLINOIS's incumbent local exchange area." MCI is concerned that SBC's proposed language does little to clarify SBC's UNE obligations, but instead, substantially muddies the water and, more likely, could be read

to limit SBC's obligations far beyond that required by the Act and the FCC. Therefore, the ALJs and the Commission should reject SBC's proposed language.

UNE Issue 2

MCI: What procedures should apply when there has been a change of law event affecting the obligations to provide UNEs?

SBC: Should the UNE appendix contain a Lawful UNEs requirement in addition to change of law rights?

MCI's Position

As with any change of law event, a change in applicable law affecting the parties' rights and obligations regarding unbundling should be effectuated through the negotiation-and-amendment process set forth in MCI's proposed intervening law provision in Section 23 of the GT&C. Inclusion of SBC's proposed language in the UNE Appendix would be tantamount to giving SBC a unilateral right to amend the Agreement and MCI respectfully requests that the Commission reject SBC's proposed language. This result is fully consistent with the Commission's determination in the XO Arbitration Order that rejected SBC contract language that would give SBC the unilateral ability to determine when a change of law has occurred and unilaterally change the ICA. XO Arbitration Order, pp. 46-50.

MCI also notes that Mr. Hoagg's testimony regarding this issue appears to be limited to Appendix UNE section 1.1.1 (see lines 333-334), and therefore does not address all of the ICA sections that are included in this issue. This is of some concern to MCI because two of the sections under this issue – sections 7.11 and 7.12 of Appendix UNE – contain SBC-proposed language merely reiterating many of the commingling restrictions it has proposed elsewhere in section 7 of Appendix UNE.

Of additional concern to MCI is that the treatment recommended by Dr. Zolnierek for section 7.9 of Appendix UNE (UNE Issue 25) does not take into account the interplay between the language of sections 7.9, 7.11, and 7.12. Thus, the Staff has not given any guidance to the ALJs or the parties as to resolving the parties' disputes on those sections.

UNE Issue 5

Should MCI be permitted to use SBC Illinois's unbundled Network Elements to provide service to other Telecommunications Carriers?

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. Although this issue was not on SBC's or Staff's list of moot issues, it satisfies the same criteria as the issues that were listed and therefore should be added

to the list. 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 it as any other settled issue by adopting the parties' agreed language.

If, however, the Commission addresses the substance of the issue, it is MCI's position that MCI should be permitted to use SBC's unbundled Network Elements to provide service to other Telecommunications Carriers. The restrictions imposed by SBC's proposed language, designed to prohibit MCI from using SBC's UNEs to provide service to other carriers, are contrary to the TA96, FCC regulations, and state law, and should thus be rejected by the Commission.

The TA96 requires, upon a showing of impairment, ILECs to provide UNE access "to any requesting telecommunications carrier for the provision of a telecommunications service." 47 U.S.C. § 251(c)(3). In turn, the Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). According to the FCC, the term "telecommunications service" was not intended to create a wholesale/resale distinction, or to limit "the public" to "end users" of a service (as opposed to other carriers). Rather, the FCC has made clear that "section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers." *Local Competition Order* ¶ 356.

The FCC has only placed two restrictions on the meaning of "telecommunications service," as that term is defined in the Act. First, the FCC has established the "qualifying service" limitation, which refers to type of service, not to the end-user to which the service is provided, see *TRO* ¶ 140 (and which has, in any event, been rejected by the D.C. Circuit). More to the point, the "qualifying service" is merely a condition of eligibility for UNE access, not an absolute bar on providing the covered services. Such an absolute bar directly conflicts with the *Triennial Review Order*, which provides that "once a requesting carrier has obtained access to a UNE to provide a qualifying service, as defined above, the carrier may use that UNE to provide any additional services, including non-qualifying telecommunications and information services." *TRO* ¶ 143 Thus, SBC's proposed limitation directly conflicts with the FCC's rules (as well as the D.C. Circuit's bar on use restrictions). In addition, there is simply no basis in the *TRO*'s "qualifying services" provisions for SBC's proposed use restrictions, which are based on *end-user*, not *type of service*.

Second, the FCC has required that services be provided on a common carrier, rather than private carriage, basis, see *TRO* ¶ 150 ("The Commission has interpreted 'telecommunications services' to mean services offered on a common carrier basis, and the D.C. Circuit has affirmed that interpretation. Thus, to obtain access to a UNE, a requesting carrier must use the UNE to provide at least some services on a common,

rather than private, carriage basis.”). Again, this FCC requirement does not authorize an ILEC to restrict CLECs’ use of UNEs based on type of *end-user*, as SBC’s proposed language would do.

SBC’s Proposed language would also run afoul of state law. In interpreting Section 13-801 of the Public Utilities Act, the Commission held, “we agree with AT&T that they are entitled to use UNEs to provide service to itself and its affiliates” *AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago*, Docket No. 03-0239, Order dated August 26, 2003 at 49. Relatedly, with respect to resale rights under Section 13-801(f), the Commission held, “the CLECs proposal to resell intraLATA toll to IXCs is allowed.” June 11, 2002 Arbitration Order in *Illinois Bell Telephone Company Filing to implement tariff provisions related to Section 13-801 of the Public Utilities Act*, Docket 01-0614 at 140.

Moreover, the Michigan Public Service Commission (“MPSC”) recently rejected the very same proposal that SBC makes here. As the MPSC stated, SBC’s proposal to “exclude all telecommunications providers from the possibility of being an end-user . . . goes too far.” *In re SBC Michigan*, Docket No. U-13758 (Mich. PSC Aug. 18, 2003), at 7; see *id.* at 30 (agreeing that “MCI may provide service to other telecommunications carriers using UNEs purchased under the interconnection agreement”).

Finally, while MCI agrees with the majority of Dr. Zolnierek’s testimony on this issue, which acknowledges that MCI should have the ability to utilize UNEs to provide service to other telecommunications carriers in most instances, MCI also believes that Dr. Zolnierek’s testimony on this issue is a bit misleading. While Dr. Zolnierek testified that the AT&T Arbitration Order is not definitive on this issue, he testified on the very next page that the “AT&T Arbitration, which did permit AT&T to use UNES to provide services to other telecommunications providers in certain instances, was consistent with the Commission’s implementation of Section 13-801 of the PUA.” Direct Testimony of James Zolnierek, pp. 11-12. Dr. Zolnierek then went on to explain that the Commission’s 13-801 Implementation Order placed a restriction on the reselling of EELs. Direct Testimony of James Zolnierek, p. 12. Hence, it is not the AT&T Arbitration Order that was not definitive on this issue as Dr. Zolnierek suggests, rather it was the Commission’s 13-801 Implementation Order that contains the language that Dr. Zolnierek apparently believes raises questions regarding the ability of MCI to provide UNEs to serve other telecommunications carriers. As such, the AT&T Arbitration Order is not unclear on this topic as Dr. Zolnierek suggests.

With this clarification, Dr. Zolnierek testified that the 13-801 Implementation Order placed a restriction on the reselling of EELs and that this decision should be reflected in the parties’ Agreement. MCI does not agree with Dr. Zolnierek’s testimony in this respect. The 13-801 Implementation Order to which Dr. Zolnierek cites should not serve as the basis for language in the parties’ agreement – particularly when the parties have not had the opportunity to negotiate such language – because the Order was expressly based on the inadequacy of the record, not on evidence affirmatively supporting the Commission’s ruling. The Commission’s conclusion on this issue is as follows:

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

Thus, in the Commission's own words, it did not have an adequate record on this matter in Docket No. 01-0614. Further, paragraph 607 of the Order states that "[n]o other party [other than Novacon and SBC] responded to this issue, which is unfortunate given the assertions by Novacon that the language had results that may or may not have been intended by Staff in making its proposal." Moreover, the Commission's Order demonstrates the possibility of this restriction changing in the future: "As noted above, this order defers issues relating to the applicability of the local usage test to a new docket. The Commission will investigate the issue of the advisability and legality of allowing the reselling EELs in that docket as well." ICC Order in Docket No. 01-0614, p. 176, ¶608. Hence, MCI disagrees with Dr. Zolnierek's recommendation to insert language into the parties' agreement (language that neither party endorses) based on a Commission ruling that the Commission itself admits was based on an inadequate record and a ruling in which the Commission expressed its intent to review its finding to determine whether it is grounded in public policy and legally sustainable.

Also, SBC could use any language regarding restrictions on "reselling" UNEs to restrict MCI's ability to provide MCI-branded service to end-user customers via an "agent" relationship with a third party that is collocated in a particular wire center. Moreover, MCI has provided ample evidence *in this docket* that the definition of end user should not exclude telecommunications carriers. See, Direct Testimony of Don Price, pp. 99-103. Since the Commission's conclusion regarding the reselling restriction in Docket No. 01-0614 was based on the definition of end-user, the arrangement described above would not run afoul of the Commission's restriction. Therefore, while MCI will abide by governing Commission orders and rules (and is required to abide by governing orders and rules whether or not such language is specifically included in the parties' agreement), it is unnecessary and inappropriate to adopt Staff's proposed language.

For all of the above reasons, MCI respectfully requests that the Illinois Commerce Commission, consistent with its prior rulings, follow the MPSC's lead and reject SBC's inappropriate restriction.

UNE Issue 6

Which Party's definition of Qualifying Services" and "Non-Qualifying Service" are in accordance with the FCC's requirements and should be included in this Agreement?

MCI position

MCI agrees with Staff's recommendation that Section 3 of the Parties' UNE Appendix be removed because in light of the USTA II ruling, the debate about Qualifying Services has become moot. Specifically, MCI respectfully requests that the Commission remove Section 3 in its entirety and mark that section "Intentionally Left Blank."

UNE Issue 7

In defining "Qualifying Services," should the contract include SBC Illinois's definition of "Common Carrier from *NARUC II*?"

MCI Position

See MCI Position to UNE Issue 6.

UNE Issue 8

Should SBC Illinois's additional terms and conditions for Qualifying Service be included in the contract?

MCI Position

See MCI position to UNE Issue 6.

UNE Issue 9

MCI: Since the contract clearly specifies the extent of SBC Illinois's obligation to provide access to UNE, is it necessary to include a disclaimer concerning what SBC Illinois is not obligated to provide?

SBC: Should the UNE appendix limit SBC ILLINOIS's obligation to provide UNEs or UNE combination to only that required by Applicable Law?

MCI's Position

SBC's proposed language is unnecessary and should be omitted from the agreement. Throughout the Parties' lengthy Agreement, SBC's obligations, including those concerning the provision of UNEs, are clearly delineated. SBC's proposed disclaimer is thus unnecessary, because MCI's rights regarding UNEs are already limited by the relevant substantive portions of the Agreement, which comprehensively set forth the Parties' mutual obligations. Moreover, as a statement of the parties' legal rights, SBC's proposal is inaccurate because it could be read to impermissibly restrict the Commission from ordering access to SBC's network elements under state law, or other sources of law independent of Section 251 of the Act, such as FCC orders or judicial decisions concerning other portions of the Act.

To the extent that SBC's proposed language – buried at the end of its lengthy Qualifying Services proposal – is intended actually to have some additional substantive

effect, it is even more troubling. SBC's proposed language could be read to modify the Change of Law provisions located elsewhere in the Agreement, by permitting SBC unilaterally to suspend access to UNEs based upon SBC's interpretation of future changes in the FCC's rules or upon judicial decisions interpreting the Act and the FCC's rules. Were this provision to allow SBC to suspend UNE access in such situations, it would completely undermine the Change of Law provisions of the Parties' Agreement. These Change of Law provisions contain a comprehensive mechanism for amendment of the Parties' Agreement upon changes in controlling law, and do not permit unilateral suspension of UNE access based upon SBC's interpretation of legal developments.

MCI respectfully requests that the Commission reject SBC's proposed Section 3.7 and omit it from the Agreement.

UNE Issue 10

Should MCI be required to purchase collocation for access to unbundled loops?

MCI's Position

MCI should not be required to purchase collocation for access to unbundled loops and the language proposed by MCI at Section 4.2.4 simply clarifies this. SBC's proposed language is ambiguous and begs the question, "Is collocation the only manner by which MCI may access unbundled loops?" The answer to this question is clearly "no," and MCI's proposed language simply spells out a number of other methods by which MCI can gain access. MCI's language is consistent with the FCC's rules, and does not bestow upon MCI any rights or opportunities not already afforded it. MCI's language is being proposed to make those rights clear in the ICA.

The FCC recently made clear in the *TRO* that CLECs need not collocate to access UNEs, in the course of addressing EELs (a UNE combination consisting of an unbundled loop and unbundled transport, and may include additional electronics). *TRO*, ¶ 571. At ¶ 576 of the *TRO*, the FCC stated as follows:

Based on the record before us, we conclude that EELs facilitate the growth of facilities-based competition in the local market. The availability of EELs extends the geographic reach for competitive LECs because EELs enable requesting carriers to serve customers by extending a customer's loop from the end office serving that customer to a different end office in which the competitive LEC is already located. In this way, EELs also allow competitive LECs to reduce their collocation costs by aggregating loops at fewer collocation locations and then transporting the customer's traffic to their own switches. Moreover, we find that access to EELs also promotes self-deployment of interoffice transport facilities by competitive LECs because such carriers will eventually self-provision transport facilities

to accommodate growing demand. We further agree that the availability of EELs and other UNE combinations promotes innovation because competitive LECs can provide advanced switching capabilities in conjunction with loop-transport combinations. (footnotes omitted)

The above language makes clear that CLECs are not required to establish collocation arrangements in order to access unbundled loops in a particular central office. Indeed, the FCC found that allowing CLECs to access unbundled loops without collocation “facilitate[s] the growth of facilities-based competition” and “promotes innovation.” In essence, the FCC required EELs so that the CLECs can “reduce their collocation costs,” thereby leaving it up to the CLEC to decide whether collocation is the most economical way to access unbundled loops. This is the precise objective of MCI’s proposed language for Section 4.2.4.

Indeed, given the FCC’s clear stand on the issue, it should not be surprising that SBC has previously conceded this issue in another proceeding. SBC recently touted EELs as a viable means for competitors to utilize their switches to serve a broad geographic region without collocating in all SBC wire centers. Specifically, in the Triennial Review Proceeding, Docket No. 03-0595 (Mass Market Switching Proceeding), SBC Witness William Deere stated as follows:

The only relevant difference between a purely stand-alone unbundled loop and an unbundled loop used as part of an EEL is the location of the CLEC’s collocation space. If the CLEC has collocation space in the customer’s serving wire center, then a purely stand-alone unbundled loop is connected directly to the CLEC’s collocation space. On the other hand, if the CLEC does not have collocation space in the customer’s serving wire center, it can use an EEL to extend the customer’s stand-alone unbundled loop to another SBC Illinois wire center where it does have collocation space.

Direct Testimony of William Deere, ICC Docket No. 03-0595, December 2, 2003, p. 37.

Furthermore, in direct testimony in the same proceeding, SBC Illinois Witness Taylor, at page 10, stated “...the CLEC must decide how to serve customers in particular ILEC wire centers to which it has already offered service: whether to incur fixed costs of collocation or to serve the customers through EELs.”

SBC should not be permitted to argue in one proceeding that EELs provide pro-competitive benefits by allowing the competitor to access customers’ loops without collocation and reduce costs, but then refuse to include an acknowledgement of this (and similar) arrangement(s) in SBC’s contracts with CLECs. SBC’s vacillation on this issue creates sufficient ambiguity as to whether SBC will fulfill its obligation to provide

access to unbundled loops without collocation, and supports including the clarifying language MCI proposes.

Finally, Section 4.2.2 of the UNE Appendix contains language that no party disputes in this arbitration proceeding. That section reads as follows: “[a]ccess to Lawful unbundled Network Elements via Method 2 and Method 3 is available to both Collocated and Non-Collocated CLECs.” It is puzzling that SBC would agree to explicitly allow MCI access to UNEs without collocation in one section of the agreement (Section 4.2.2), and then refuse to recognize this obligation only two sections later (Section 4.2.4).

In light of the foregoing, MCI respectfully requests that the Commission adopt MCI’s proposed clarifying language in section 4.2.2.

UNE Issue 11

Should SBC’s proposed UNE declassification procedures be included in the 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. Although this issue was not on SBC’s or Staff’s list of moot issues, it satisfies the same criteria as the issues that were listed and therefore should be added to the list. 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 it as any other settled issue by adopting the parties’ agreed language.

If, however, the Commission considers the substance of this issue, SBC’s proposed UNE declassification procedures should not be included in the Agreement. In light of the D.C. Circuit’s recent decision in USTA II, SBC’s proposed language is inappropriate and should be omitted from the agreement. In USTA II, the Court clearly found unlawful FCC rules delegating impairment findings to state commissions. Since SBC’s language is meant to effectuate the findings made by the Commission pursuant to such delegated authority, it is clearly no longer necessary to include it in the agreement. Changes in applicable law related to unbundling should be effectuated through MCI’s proposed Intervening Law provision, Section 23 of the GT&C.

Further, SBC’s proposal has the potential to confuse the Parties’ obligations, and could be read to improperly allow SBC to discontinue UNE access before this Commission has made the proper unbundling findings. In particular, SBC’s proposal is flawed because, among other things:

(1) it would permit FCC rulings (in addition to orders of this Commission) to trigger declassification, even though the FCC specifically ruled in the *TRO* that it would not seek to override the Section 252 process of permitting state commissions to be the ultimate arbiters of unbundling;

(2) it would extend the scope of the declassification provisions beyond the implementation of the *TRO*, even though the entire premise of these proceedings is to amend the Parties' Agreements for consistency with the FCC's new rules; and

(3) it would permit SBC Illinois to suspend UNEs that "are subject to Declassification" as well as those "that have been Declassified," see SBC Illinois Sections 1.1, 5.2, which could be read by SBC to allow termination of UNE access prior to formal declassification, so long as SBC deemed a UNE "subject to Declassification" (a phrase without a knowable meaning).

Finally, SBC's proposed list of declassified elements in Section 5.1.1 is unnecessary and confusing. This Commission is the appropriate arbiter of which Network Elements are declassified, and thus there is no reason for the Parties to include a non-exhaustive list of examples in their Agreement.

SBC's proposed language not only fails to track any declassification requirements imposed by the FCC, but it is unnecessarily confusing and could be read by SBC to allow for the premature suspension of UNE access – that is, prior to a ruling of this Commission that declassification is warranted, for lack of impairment. Furthermore, it appears that SBC's position is an improper attempt to restrict the applicability of state law, which establishes additional requirements for SBC with respect to the provision of network elements. For all of these reasons, MCI respectfully requests that the Commission reject SBC's proposed additions to Sections 1.1, 5.1, 5.1.1, and 5.2 of the UNE Appendix.

UNE Issue 12

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. Although this issue was not on SBC's or Staff's list of moot issues, it satisfies the same criteria as the issues that were listed and therefore should be added to the list. 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 it as any other settled issue by adopting the parties' agreed language.

If, however, the Commission addresses the substance of this issue, MCI requests that the Commission reject SBC's unnecessary language. With respect to the actual transition process for the Parties to follow upon declassification, SBC proposes that it must provide MCI with written notice that it considers a particular Network Element declassified. SBC also says that a 30-day transitional period should follow such written notice, during which MCI will continue to receive UNE service, and that if MCI does not submit a request for discontinuation or disconnection of that UNE during the 30-day period, that at the end of the 30-day period SBC will convert MCI to an analogous access service. SBC also proposes that if no analogous access service is available, the Parties should seek to agree on an alternative arrangement, and if that does not occur within a certain period of time, SBC may disconnect the UNE. Finally, SBC says that if a declassified UNE is eventually converted to an access service, that the terms and conditions of SBC's applicable access tariff should apply.

MCI is not proposing competing language since, in light of the D.C. Circuit's USTA II decision, such language is unnecessary. Even so, SBC's proposal lacks merit. Specifically:

(1) Respect for Change of Law Provisions. SBC would insert language into Section 5.3.1 of the UNE Appendix limiting its Declassification obligations "[i]n accordance with, but only to the extent required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders." This restrictive language is unnecessary because the Parties' Agreement will contain a change of law provision that will serve this function. SBC's proposed restriction is also confusing, as it could be read by SBC as a unilateral change of law provision, permitting SBC to modify its obligations based on future FCC orders and court rulings, without resort to the Change of Law provisions of the Parties' Agreement. Finally, this restriction could be read to prohibit (inappropriately) the Commission from imposing independent declassification obligations as a matter of State law, or under other sources of law.

(2) Negotiation Absent an Analogous Access Service. For those UNEs without a substitute service, SBC's proposal would permit SBC to disconnect access at the end of the 30-day transition period, if the Parties are unable to negotiate an alternative. See UNE Appendix Section 5.3.4. It is unrealistic to expect that the Parties would be able, within 30 days, to negotiate alternative arrangements for

those UNEs for which there are no analogous access services.

For the foregoing reasons, and for all of the reasons stated in UNE Issue 11 above, MCI respectfully requests that the Commission reject SBC's unnecessary, unreasonable, and confusing proposed language.

UNE Issue 13

MCI: Are there eligibility requirements that are applicable to the conversion of wholesale services to UNEs?

SBC: When converting wholesale services to UNE, what should the contract specify regarding eligibility criteria and qualifying service requirements?

MCI's Position

MCI objects to the language proposed by SBC because SBC's broad language could be read by SBC to permit it to refuse to convert wholesale services to UNEs if SBC determines that MCI, the service in question, or any group of services in question are not "eligible" for conversion. SBC does not explain in detail what might render a proposed conversion "ineligible," but instead provides only a single example (i.e., that the services are not "qualifying" services as described elsewhere in the agreement).

SBC's proposed language is especially troubling because it is vague, and its lack of precision could be used by SBC to reject conversion requests without just cause. Because SBC fails to define with specificity the situations wherein it might find such a conversion request to be ineligible, choosing instead to provide a lone example, the language is too broad and is likely to cause confusion as to what is, or is not, an "eligible" conversion. More to the point, even in situations precluding MCI from converting services to UNEs (such as the qualifying services example noted by SBC), those considerations are already thoroughly accounted for elsewhere in the agreement. Hence, there is no need to include the less precise language in this particular section that has been proposed by SBC.

Dr. Zolnierек recommended that the Commission accept SBC's proposal referencing eligibility criteria that are applicable to combinations, but reject SBC's reference to qualifying services eligibility criteria vacated by USTA II. Direct Testimony of James Zolnierек, p. 20. While Dr. Zolnierек does not specifically state as much, it appears that his recommendation would mean that the last sentence of SBC's proposed language for Section 6.1 of the UNE Appendix would be rejected, while the remainder of SBC's proposed language for Section 6.1 of the UNE Appendix and SBC's proposed Section 6.6 of the UNE Appendix would be accepted.

Dr. Zolnierек simply states that:

I disagree with Mr. Starkey that SBC's reference to eligibility criteria defined elsewhere in the contract is inappropriate.

Eligibility criteria for Section 251 UNEs and UNE combinations are applicable whether those UNEs are the product of a conversion or the product of SBC work to combine previously unconnected UNEs. If SBC attempts to improperly impose eligibility criteria, MCI can, as it presumably would, seek dispute resolution or other remedial measures.

As the quote above demonstrates, Dr. Zolnierек focuses only on the fact that MCI objected to including such language in Sections 6.1 and 6.6 because eligibility requirements are defined elsewhere in the contract. However, Dr. Zolnierек does not mention that MCI's primary disagreement is that the eligibility language in Sections 6.1 and 6.6 is vague and could lead to SBC rejecting conversion requests without just cause. Direct Testimony of Michael Starkey, p. 74. Indeed, MCI witness Mr. Starkey testified in direct that "SBC fails to define with specificity the situations wherein it might find such a conversion request to be ineligible." Accordingly, adopting SBC's language for Sections 6.1 and 6.6 would be tantamount to allowing the "fox to guard the henhouse," so to speak, with regard to combinations of UNEs.

Dr. Zolnierек's alternative recommendation for this issue suffers from the same shortcomings as SBC's original proposal (albeit, to a lesser degree, since Staff would delete the Qualifying Services language), and should be rejected. MCI therefore respectfully requests that the Commission reject the disputed language proposed by SBC in Section 6.1, as well as SBC's proposed Section 6.6 in its entirety.

UNE Issue 14

What processes should apply to the conversion of wholesale services to UNE?

MCI's Position

The reasonable processes delineated in MCI's proposed language should apply. MCI has proposed language at Section 6.2 of the UNE Appendix that would require SBC both to convert wholesale services to UNEs in a reasonable timeframe, and to recognize those conversions in SBC's billing system within a 30-day interval. MCI's proposed language would also require SBC to work with MCI to undertake conversions on a "project" basis when appropriate. SBC has rejected MCI's proposed language in favor of its own language that would allow SBC to have near-unilateral control over the provisioning and billing parameters that would apply to MCI's conversions.

This is troubling to MCI because SBC has a clear incentive to maintain as many of its services on a wholesale/retail basis as possible, forestalling MCI's attempts to convert those services to UNEs. SBC's incentive in this regard has been borne out in practice, as MCI has experienced a somewhat slow, cumbersome, and administratively intense conversions process from SBC, even though, for the most part, the only change required on the part of SBC to complete a conversion is a billing/records change (i.e., generally, no facility changes are required). Given its experience with SBC's

conversions processes, MCI is convinced that SBC must be governed by contract language in order to convert MCI's services in a timely and efficient manner. Left to its own devices, SBC will not establish the timely conversion process MCI requires.

There are components of SBC's proposal that are particularly troubling to MCI. Consider the following clause proposed by SBC concerning conversions, at Section 6.2 of the UNE Appendix: "Where processes for the conversion requested pursuant to this Agreement are not already in place, SBC ILLINOIS will develop and implement processes, subject to any associated rates, terms and conditions." SBC's language is completely vague concerning the timeframe within which such "processes" might be developed or implemented and/or any rates, terms or conditions that might apply. It is exactly this sort of undefined latitude for SBC that most concerns MCI. The FCC's *Triennial Review Order*, as well as its previous orders, provides a relatively thorough roadmap of the services that can, and those that cannot, be converted. See, TRO ¶¶ 575, 577, 586-590, 593, 615, 624, and 693-694. Accordingly, it is not reasonable for SBC to wait until it receives a request for such a conversion before it determines how it will process such a request or how it will bill for such a request. Indeed, such tactics on the part of a wholesale carrier would never be tolerated in a competitive marketplace, because the underlying purpose of SBC's proposal is clearly to slow the conversion process and make conversions far more complicated and time-consuming than necessary.

In his testimony, Dr. Zolnierек criticizes this argument as not sufficiently supporting the need for MCI's proposed language. But Mr. Starkey explained in his testimony (at page 75) that SBC has a clear incentive to maintain as many of its services on a wholesale/retail basis as possible, and to frustrate MCI's attempts to convert these services to UNEs. Specifically, since special access rates are generally higher than UNE rates, converting special access circuits to UNEs in a timely fashion is not in SBC's best interest. The FCC explained this point as follows: "[t]he conversion of existing tariffed special access circuits to EELs will, in many cases, significantly reduce the CLEC's expense and commensurately decrease the ILEC's income for those facilities." *In the Matter of Net2000 Communications, Inc., Complainant, v. Verizon - Washington, D.C., Inc., Verizon - Maryland, Inc., and Verizon - Virginia, Inc., Defendants*, File No. EB-00-018, 17 FCC Rcd 1150; 2002 FCC LEXIS 119. Publicly available information shows that converting special access circuits to EELs would reduce one carrier's monthly recurring charges by approximately 25%, for a total monthly reduction of \$123,186 for three conversion requests. *Id.* at ¶35, fn. 68. Hence, each additional billing cycle that SBC charges CLECs special access prices instead of UNE rates for the same facilities results in SBC being enriched at the expense of its competitors. It was this precise outcome the FCC was attempting to avoid through the requirements of ¶588 of the TRO.

¶588 of the TRO states as follows:

588. We conclude that conversions should be performed in an expeditious manner in order to minimize the risk of

incorrect payments. We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts. We decline to adopt ALTS's suggestion to require the completion of all necessary billing changes within ten days of a request to perform a conversion because such time frames are better established through negotiations between incumbent LECs and requesting carriers. We recognize, however, that converting between wholesale services and UNEs (or UNE combinations) is largely a billing function. We therefore expect carriers to establish appropriate mechanisms to remit the correct payment after the conversion request, such as providing that any pricing changes start the next billing cycle following the conversion request. (footnotes omitted, emphasis added)

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

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

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

For all of the foregoing reasons, MCI respectfully requests that the Commission adopt MCI's proposed Section 6.2.

UNE Issue 16

Must conversions be comprised solely of UNEs or as otherwise provided in this Appendix?

MCI's Position

Section 6 of the ICA concerns the conversion of wholesale services to UNEs. SBC would like to add unnecessary and harmful language specifying that Section 6 only applies to situations where the wholesale service, or group of wholesale services is comprised solely of UNEs offered or otherwise provided for in this Appendix.” SBC’s proposal, however, does not make any sense. Wholesale services are never comprised of UNEs, so SBC’s proposed provision is meaningless. Indeed, read literally it would mean that Section 6 of the agreement would never apply.

Moreover, the *TRO* does not contain any limitations like the one that SBC is proposing. To the contrary, the *TRO* provides that carriers may “convert wholesale services to UNEs. . . , so long as the competitive LEC meets the eligibility criteria that may be applicable.” *TRO* ¶ 586. It places no condition on the wholesale services that are being converted. Indeed, the *TRO* makes clear that even when only part of a current wholesale offering can be converted to a UNE, such a conversion is permissible. Thus, for example, if a competitor is currently ordering a wholesale special access service that includes service over both a loop and transport component, but the transport route is one for which there has been a finding of non-impairment, the competitor can convert just the loop piece to UNE pricing. *TRO* ¶ 594. To the extent SBC’s proposed contract language has any meaning at all, it would seem to rule out just such a conversion, as it would rule out conversions in which the entire wholesale service is not composed of UNEs. In this example, the transport piece would be unavailable as a UNE.

To take an even more problematic example, SBC could change all of its wholesale tariffs to include as a component of each wholesale service something that is never available as a UNE. Under the provision that SBC proposes, it would then be able to argue that these wholesale services are not subject to conversion to UNEs because not all of their components are available as UNEs. That would be preposterous. It has no warrant in the FCC’s rules and, in fact, would entirely undermine those rules.

For the above reasons, MCI respectfully requests that the Commission omit SBC’s confusing and inaccurate proposed language from the Agreement.

UNE Issue 17

See UNE Issue 2.

MCI's Position

See MCI's Position on UNE Issue 2.

UNE Issue 18

Should the definition of Commingling include wholesale services purchased “pursuant to any method other than unbundling under Section 251 (c)(3)”?

MCI's Position

MCI's language concerning commingling should be used in the Agreement because it tracks the FCC's rules, and there is no reason to deviate from those rules here. See 47 C.F.R. § 51.5, *TRO* ¶¶ 579-84.

MCI's language also makes explicit that the services or facilities with which UNEs can be commingled include any that MCI “has obtained at wholesale from SBC ILLINOIS *pursuant to any method other than unbundling under Section 251(c)(3) of the Act.*” (Proposed ICA provision 7.2.1 (emphasis added). Exclusion of the italicized phrase, as SBC proposes, does not make this explicit.

The reason that this is important is that SBC is already attempting to impose limitations on MCI's ability to utilize commingling. (See UNE Issue 23 below) For example, SBC wants to preclude CLECs from commingling facilities that SBC leases to them based on its obligations under the section 271 checklist. SBC thus does not seem to think it is obliged to commingle with UNEs any services or facilities that MCI has obtained at wholesale pursuant to any method. But the *TRO* and FCC rules contain no such limitation. Indeed, all the reasons for permitting commingling generally apply to commingling with wholesale services or facilities obtained under any method.

MCI agrees with Dr. Zolnierek's reasoning discussed in his testimony at lines 671-693 and understands from his discussion that he recommends that MCI's language should be adopted, a recommendation with which MCI agrees.

For all of the above reasons, MCI respectfully requests that the Commission adopt MCI's proposed language regarding commingling.

UNE Issue 19

Under what circumstances is SBC Illinois obligated to perform the functions necessary to carry out commingling?

MCI's Position

SBC arduously has sought to make it as difficult as possible for CLECs to engage in commingling. Such efforts likely are because CLEC use of commingling might in some circumstances make facilities-based competition possible. Although SBC controls the facilities that would need to be connected to permit commingling, SBC

proposes language under which it will have no obligation to perform commingling under five different scenarios:

- (i) the CLEC is able to perform those functions itself;
- or
- (ii) it is not technically feasible, including that network reliability and security would be impaired; or
- (iii) SBC Illinois' ability to retain responsibility for the management, control, and performance of its network would be impaired; or
- (iv) SBC Illinois would be placed at a disadvantage in operating its own network; or
- (v) it would undermine the ability of other Telecommunications Carriers to obtain access to UNEs or to interconnect with SBC Illinois' network; or
- (vi) CLEC is a new entrant and is unaware that it needs to Commingle to provide a telecommunications service.

But none of these exceptions are set forth in the *TRO*. The *TRO* says simply that “an incumbent LEC *shall* perform the functions necessary to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC.” *TRO* ¶ 579. The rules implementing the *TRO* say the same thing. See 47 C.F.R. § 51.309 (e). The only exceptions set forth in the *TRO*, and not set forth in the rules, are if the ILEC proves to the state commission that a combination“ is not technically feasible or would undermine the ability of other carriers to obtain access to UNEs or to interconnect with the incumbent LEC’s network.” *TRO* ¶ 574. Thus, of the exceptions SBC proposes, the first, third, fourth, and sixth have no warrant at all in the *TRO*. The second and fifth exceptions have a basis in the *TRO*, but only if SBC proves to this Commission that commingling is not technically feasible in the particular circumstances at issue or would undermine the ability of other carriers to obtain access to UNEs. SBC’s language ignores its burden of proof.

While exceptions ii and v have some grounding in the *TRO*, it is not advisable to include these exceptions in the ICA. As a general matter, it is difficult to imagine circumstances in which commingling is not technically feasible or would undermine the ability of other carriers to obtain access to UNEs or to interconnect with the incumbent LEC’s network. Indeed, commingling is the type of activity the ILECs routinely perform for themselves in their networks. *TRO* ¶ 581 & n. 1790. See also *TRO* ¶ 583 (addressing billing and operational issues raised by Verizon and finding they did not warrant a commingling restriction). To the extent there is some serious – but now unforeseen -- problem with a particular request for commingling, SBC can of course

return to this Commission, as the *TRO* allows. But SBC should not be permitted to include exceptions that enable SBC to make the subjective judgment not to permit commingling or not to perform the tasks needed for commingling.

Even if the exceptions (i, iii, iv and vi) were not flatly inconsistent with the rules, there would be no basis for such exceptions. The point of the *TRO* is to make it easy for competitors to use EELs, including doing so by commingling traffic. The exceptions SBC proposes to commingling requirements are simply an effort by SBC to make it difficult to use EELs. With respect to SBC's first exception, for example, that it will not commingle facilities or services if the CLEC is able to do so itself, this Commission is well aware of the years of litigation over the combination rules. 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. This debate should not be repeated here generating years of further litigation.

The ILECs own the facilities and provide the services that will be commingled. They should do the combining. Indeed, it is doubtful that there is any way for CLECs to do the combining that would not be extremely inefficient. SBC certainly has not proposed such a method. More important, SBC did not convince the FCC to create any exception to the commingling requirement where ILECs assert that CLECs can do the commingling themselves.

The other exceptions SBC poses fare no better. Some are unnecessary. SBC failed to convince the FCC, for example, that there were circumstances in which commingling would disadvantage the ILECs in running their networks – or at least that the risk of this was sufficient to justify litigation over the scope of any such exception. Other exceptions proposed by SBC are so vague as to give SBC virtually unfettered discretion. What does it mean for example to create an exception where a CLEC is a new entrant and is unaware that it needs to commingle to provide a telecommunications service? Because commingling is a simple activity, the FCC adopted a simple requirement – commingling should be permitted, and the ILECs should do the commingling. SBC's proposed language should be rejected.

At lines 912 – 916 of his testimony, Dr. Zolnierek makes an important clarification regarding the referenced sections of Appendix UNE; specifically, that those sections should contain:

... language assigning the burden of proof to SBC regarding circumstances where commingling is technically infeasible or would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

MCI believes that such language would largely alleviate the concerns expressed above as to certain of SBC's proposed provisions.

The exception to that is his recommendation regarding SBC's proposal to use the BFR process for all commingling requests. MCI's concerns in this regard are discussed in the context of issues UNE 20 and 24 below, consistent with the manner in which Dr. Zolnierек's testimony addressed those issues.

For all of the foregoing reasons, MCI respectfully requests that the Commission omit SBC's proposed language regarding commingling in Section 7.3.1.

UNE Issue 20

Is the BFR the appropriate vehicle for submitting certain commingling requests?

MCI's Position

There is no need for a BFR process for SBC to perform the functions necessary to commingle or to complete the commingling. A request to commingle is essentially the submission of a service order of the sort that SBC routinely handles every day. Commingling is simply a term of art for what SBC is doing constantly – taking one wire from one place and combining it with a different wire from someplace else. The only thing different is that the traffic from the two wires previously were treated differently in terms of pricing.

The BFR process is intended for requests for new functionalities and previously undefined UNEs that would require analysis to determine whether they should be provided at all and at what cost and under what conditions. It is a costly and cumbersome process that takes months to complete. Under the language in the BFR appendix, SBC has 30 days after receiving a BFR to provide a preliminary analysis as to whether SBC will fulfill the request or has concluded that the BFR is not technically feasible or is one SBC is not required to provide. MCI then has 30 days to request a BFR quote. SBC then has 90 days to provide a BFR quote as to the first date of availability, installation intervals, applicable rates, development and processing costs, and terms and conditions by which the item will be made available. Finally, MCI has 30 days to confirm its order. Thus, the BFR process takes approximately 180 days to establish a date sometime thereafter when SBC will fulfill MCI's request.

For these reasons, the BFR process is rarely used. In fact, in preparing this testimony, MCI witness Price was able to find only one Texas instance in the past eight years since MCI's first ICA with SBC where the BFR process was utilized. Thus, although the parties have agreed on the language in BFR Appendix, MCI agreed only because it does not anticipate having using to use it.

The BFR process is entirely inappropriate for commingling requests. In connection with commingling requests, there certainly is no need, as the BFR appendix anticipates, to consider the installation intervals, the applicable rates, and the terms and conditions by which commingling will be made available. These questions are intended to apply only when an entire process is being established for the first time. As for the pricing/billing issues, the FCC concluded these were simple enough to be resolved

within the period provided by change of law provisions in the ICAs. *TRO* ¶ 583. Thus, requiring a commingling request to be submitted through the BFR process would only serve to radically and unnecessarily slow down or preclude commingling – just as it would if some or all requests for unbundled loops or unbundled transport facilities had to be submitted through the BFR process.

SBC's proposed use of the BFR process for all commingling requests for which it has not yet developed ordering procedures – which currently is 100% of all such requests – should be rejected. SBC's proposal is simply another attempt by SBC to throw a major obstacle in the way of commingling and thus create a major obstacle to the use of EELs. It is exactly the sort of unreasonable and unnecessary requirement, the FCC ruled out in paragraphs 577, 581, 584, and 588 of the *TRO*.

Dr. Zolnierrek recommends that SBC be allowed 30 days to “develop rates, terms, and conditions” for commingling. Staff Ex. 6, lines 1036 – 1039. Dr. Zolnierrek's recommendation could be read to permit SBC 30 days to consider each and every commingling request MCI would submit to SBC, and MCI strongly disagrees that such a result constitutes sound public policy.

On the other hand, MCI would generally agree with Dr. Zolnierrek if his recommendation is for SBC to be permitted 30 days – on a one-time basis—to come up with rates, terms, and conditions for commingling. The most likely commingling scenarios will involve activities that SBC personnel do countless times each day. That is, SBC personnel in a C.O. would cross-connect a UNE loop to an access multiplexer leased by MCI. The only difference between that activity and what SBC performs for MCImetro the CLEC or MCI the interexchange carrier is the price paid for the various pieces of wires. In the CLEC scenario, the wires that are cross-connected are the UNE loop and the IDF into MCI's collocation – both of which are priced pursuant to the FCC's TELRIC rules. In the IXC scenario, the wires that are cross connected are considered part of a special access line (namely, the channel termination to the customer's premises and the interoffice component equivalent to dedicated transport) and are priced pursuant to the SBC access tariff.

No reasonable public policy objective is served by permitting SBC to take a minimum of one month, for every commingling request, to “develop rates, terms, and conditions for provisioning” of each request. Such a conclusion would effectively treat every commingling request as a Individual Case Basis contract, raising the possibility of separate and different rates, terms and conditions for each and every request. While it is true that there may be some variations in the requests made, such variations are certainly not unique to the area of commingling, as any cursory review of SBC's special access tariffs will demonstrate. SBC has implemented standard procedures for ordering the various special access offerings from a tariff containing literally **hundreds** of possible options, features, and capabilities. Given that, it is simply not plausible that SBC requires 30 days to determine how to respond to each and every commingling request. Permitting such delays would certainly serve SBC's corporate interest in keeping MCI on higher-priced services for as long as possible, but would serve no reasonable public policy objective.

For all of the foregoing reasons, MCI respectfully requests that the Commission omit SBC's proposed language in Section 7.3.2 that would require use of the BFR process for all commingling requests.

UNE Issue 21

Which Party's "ratcheting" proposal should be included in the Agreement?

MCI's Position

MCI's proposed ratcheting language should be accepted. MCI agrees with SBC that the FCC did not require ratcheting – the blending of rates for billing a single circuit with commingled traffic. But MCI's language precisely tracks the FCC's discussion. MCI's language also specifies what the FCC makes clear: that SBC shall not deny MCI access to UNEs "on the grounds that such unbundled Network Element(s) share part of [SBC Illinois'] network with access or other non-unbundled Network Element services." *TRO* at footnote 1793. SBC's proposed language does not say this, potentially allowing SBC additional wiggle room to attempt to evade the commingling requirements.

At lines 1097 through 1100, Dr. Zolnierек recommends that the Commission adopt "MCI's position regarding the relationship between FCC ratcheting pronouncements and denial of commingled arrangements." If MCI understands his recommendation correctly, it is that the Commission accept MCI's proposed language at the end of section 7.5.1, which reads:

... provided, however, that the lack of a ratcheting requirement does not permit SBC Illinois to deny or refuse MCI access to an unbundled Network Element or a Combination of unbundled Network Elements on the grounds that such unbundled Network Element(s) share part of SBC Illinois's network with access or other non-unbundled Network Element services.

If in fact this is the intent of Dr. Zolnierек's recommendation on this issue, MCI agrees with his recommendation.

UNE Issue 22

Which Party's proposal about tariff restrictions should be included in the Agreement?

MCI's Position

MCI's proposed language should be accepted. MCI's proposed language will help ensure that SBC cannot escape its obligations to provide commingling by placing improper restrictions in its tariffs. This is not merely a hypothetical concern, as some companies have already made modifications to their federal tariffs that have the effect

of precluding MCI from commingling. SBC's proposed language potentially allows SBC additional wiggle room to evade the commingling requirements.

MCI disagrees with Dr. Zolnierek's conclusion on this issue, for the following reasons. As a preliminary matter, it may be helpful to recall that section 7 of Appendix UNE sets out the obligations of both parties as to commingling. In that context, MCI's proposed language in section 7.6.1 is intended to *preserve* the obligations that are granted by the ICC in this Interconnection Agreement. That is, some language in the Agreement is necessary to prevent the situation where SBC circumvents its obligations under the Agreement by making a unilateral change in its federal access tariff. Thus, MCI believes Dr. Zolnierek misses the mark in characterizing MCI's language as intending to "impose conditions on the application of SBC's [federal access] tariffs." (Lines 1140 – 1142.)

UNE Issue 23

Is SBC Illinois obligated to allow commingling of section 271 checklist items?

MCI's Position

SBC is obligated to allow commingling of section 271 checklist items. Even so, SBC has proposed contract language that would preclude MCI from commingling facilities acquired pursuant to section 271 of the Act. See Proposed Interconnection Agreement, Section 7.10 ("Neither Commingling nor a Commingled Arrangement shall include, involve or otherwise encompass an SBC ILLINOIS offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).") But such a limitation is not found anywhere in the *TRO*. To the contrary, the *TRO* provides that CLECs may commingle UNEs with "facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to *any* method other than unbundling under section 251(c)(3) of the Act." *TRO* ¶ 579; 47 C.F.R. § 51.5. A CLEC that has obtained facilities under section 271 has done so pursuant to such a method and is thus entitled to commingle them with UNEs where the CLEC meets the eligibility requirements. SBC is attempting to graft onto the rules a requirement that is entirely inconsistent with the language of the rules. That is part of its longstanding attempt to create obstacles to the use of EELs.

Moreover, SBC's proposal is inconsistent with the purpose of the FCC's rules. The FCC eliminated its prior commingling restriction on the basis that this restriction "puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one dedicated to local services and one dedicated to long distance and other services – or to choose between using UNEs and using more expensive special access services to serve their customers." *TRO* ¶ 581.

The FCC understood that to operate efficiently carriers must be able to mix all of their customers' traffic on shared facilities. If a carrier has local traffic and long-distance traffic, for example, that proceeds along the same route, it generally will combine and

concentrate that traffic on a single high-capacity line. A commingling restriction forbids such efficient deployment of facilities. Instead, CLECs would be forced to lease and operate two sets of transport lines and concentration facilities. And although the requesting carrier likely would not be able to use either at full capacity, it would, of course, have to lease both at full price. Carriers simply cannot compete with ILECs when the ILECs can operate one network while competitors are forced to pay for two.

The same rationale that justifies commingling of local and access traffic applies to all sorts of commingling, including commingling of traffic on facilities leased under sections 251 and 271. Consider, for example, a situation in which a CLEC leased a number of loops and combined the traffic on one leased transport facility, but subsequently non-impairment was found with respect to some of those loops. Under section 271 of the Act, Congress determined that the CLEC would still have the right to lease these loops (although perhaps at different prices). Yet under SBC's proposed contractual provision, the CLEC could no longer combine on a single transport facility the traffic from these loops with the traffic from the "section 251" loops. It would either have to lease separate transport facilities for the section 271 and section 251 loops – thereby purchasing two sets of transport facilities with neither used at full capacity – or abandon the plan to lease loops under section 271 altogether. This would render largely useless Congress' direction that BOCs must continue to lease elements on the 271 checklist even after a finding of non-impairment under section 251. (Of course, the foregoing example assumes that state law would not require SBC, a BOC, to provide access to the particular loops, because if SBC were required to provide access to the loops under state law, commingling would continue to be permissible even under SBC's proposed language. See 220 ILCS 5/13-801(d)(4).)

MCI agrees with Dr. Zolnierek's reasoning discussed in his testimony at lines 671-693 and understands from his discussion that he recommends that MCI's language should be adopted.

MCI respectfully requests that the Commission adopt MCI's proposed language and reject SBC's proposed language regarding the commingling of section 271 checklist elements.