

ISSUES FOR RESOLUTION

1. General Terms and Conditions (“GT&C”) Issues

GT&C Issue 7

How long should the term of the Agreement be?

MCI’s Position

MCI proposes a five-year contract term because the three-year term has proven to be too short. Where contract negotiation can start as early as 6 months before the parties’ contract terminates (see Staff Ex. 3.0, p. 10:194-98), the potentially “undisturbed” portion of a three year contract term would be only 2½ years. And where the law is in flux, as now, it is likely that the “undisturbed” portion of the contract term would be even shorter. As Staff recognizes, frequent contract renegotiation unnecessarily drains the resources of both the contracting parties and the Commission. (MCI witness Collins, p. 12:2-4; Staff Ex. 3.0, p. 12:239-45.) A five year contract term would provide increased stability of contractual relationships and decreases regulators’ and parties’ costs, while any material changes in law that occur during the term can be incorporated into the contract through its change-of-law provisions.

SBC’s claim that technological changes cannot be accommodated via change-of-law provisions is false. Such changes have been taken into account through change-of-law processes and industry wide fora on numerous occasions. Also, disputes about whether a legal development constitutes a “change of law” do not preclude the parties from utilizing their contract’s change-of-law provisions to amend their contract, if necessary. (SBC Ex. 12.0, p. 3:63-66.) The Commission rejected this notion in the recent AT&T arbitration, Docket 02-0239 (AT&T Order, p. 8), and the change-of-law provision MCI proposes to incorporate in the parties’ new ICA does not permit one party to block the other party’s use of that provision by disputing whether a change of law has occurred. Further working through the change-of-law process with respect to a limited number of issues is certainly less “cumbersome and time-consuming” than more frequently renegotiating an entire ICA, which process raises literally hundreds of issues. (SBC Ex. 12.0, p. 3:66-68.)

Finally, a five-year contract term will provide the parties with the incentive and opportunity to focus on doing business based upon reasonable ICA certainty, making only necessary amendments when required, rather than suffering a business cycle revolving around more frequent “tooth-and-tail” renegotiation.

GT&C Issue 8

MCI: If the parties are negotiating a successor agreement, should either party be entitled to terminate this agreement before the successor agreement becomes effective?

SBC: What terms and conditions should apply to the contract after expiration, but before a successor ICA has become effective?

MCI's Position

If the parties are negotiating a successor agreement, neither party should be permitted to terminate the existing agreement, except for material breach. Instead, consistent with language on which the parties agreed, their contract should remain in an "evergreen" status after the expiration of the initial term, provided that the parties are negotiating a successor agreement. This approach has been agreed to by the parties in their recent ICAs in Michigan, Ohio, California and Connecticut. SBC's proposal to transform the contract into a month-to-month agreement terminable upon written notice is plainly unreasonable and will not permit sound business planning.

GT&C Issue 9

Same as GT&C Issue 8.

MCI's Position

See MCI's position on GT&C Issue 8 above.

GT&C Issue 10

MCI: Which Party's Deposit clause should be included in the Agreement?

SBC: With the instability of the current telecommunications industry is it reasonable for SBC ILLINOIS to require a deposit from parties with a proven history of late payments?

MCI's Position

MCI's deposit clause should be included in the Agreement because it is drafted in a fair and even-headed manner that accounts for and is consistent with recent FCC guidance on the subject of security deposits. SBC's proposal, on the other hand, should be rejected because it is ambiguous, internally inconsistent and commercially unreasonable.

In accordance with the FCC's guidance, MCI's proposal permits a party to charge a deposit based on the other party's failure to make timely payments under the ICA. SBC's proposal, on the other hand, would permit the parties to charge a deposit based on any number of various triggers, some of which are so broadly defined, subjective, and ambiguous that they could be construed to require a party to pay a deposit even if that party were honoring its payment obligations under the ICA. Such a result is not commercially reasonable.

MCI's proposal is set forth logically and drafted in a clear, concise manner. SBC's proposal jumps from point to point, is not organized in any coherent fashion, and is internally inconsistent and grants SBC precisely the sort of discretion the FCC found

troubling. Accordingly, adopting MCI's proposal will further enhance the parties' ability to understand and comply with their ICA obligations. It will protect against potential credit risks while not imposing burdens so onerous as to be disruptive to business operations.

GT&C Issue 11

What terms and conditions should apply in the event the Billed Party does not either pay or dispute its monthly charges?

MCI's Position

MCI's proposed contract language calls for a simple procedure to be followed in the event that the Billed Party does not either pay or dispute its monthly charges.

Under MCI's proposal, upon the Billed Party's failure to pay all amounts due by the bill due date, the Billing Party may provide written demand that the Billed Party pay overdue amounts within five days. If the Billed Party does not respond to the written demand, the Billing Party may provide a second notice. If the Billed Party does not satisfy the second written demand to pay within five business days of receipt, the Billing Party may, *as to that BAN only*, (1) require provision of a deposit or increase an existing deposit; and/or (2) refuse to accept new, or complete pending, orders for the services billed in that BAN.

In contrast to this simple procedure, SBC's proposed requirements are one-sided, heavy-handed and unduly onerous. Although the proposed language is written in reciprocal terms, SBC's language is actually discriminatory in that the requirement for payment of disputed amounts for resale and UNEs, as well as the deposit requirement or increases, will in all likelihood apply only to MCI, as the purchaser of services under the ICA. The penalties imposed by SBC also are discriminatory in that the refusal to accept or complete orders and disconnection of service will only impact MCI's customers.

SBC's exercise of the foregoing penalties would be enormously disruptive to MCI and its customers, and ignores the fact that SBC's obligations under the Telecommunications Act of 1996 and its obligations under Illinois law do not evaporate due to an *alleged* default under the ICA. SBC's language would permit it to use a claimed default regarding one service as justification to terminate all other services provided under the ICA. The penalties proposed by SBC also are applied cumulatively, and without limitation as to reasonableness, proportionality, or fair-play.

Indeed, under SBC's proposal, a *de minimis* violation of the ICA's payment provisions can trigger the full panoply of penalties. As set forth in SBC's proposed section 10.1, the Billed Party's failure to pay *any* portion of any amount due can result in suspension or disconnection of *all* services, not just those services billed in that particular BAN.

In short, the Commission should adopt MCI's proposed language. MCI's proposal is fair and provides the proper incentives. It creates incentives for the Billed Party to timely pay unpaid charges while also ensuring that the Billed Party will not be subjected to onerous consequences, such as disconnection, that could adversely affect the Billed Party's end-user customers.

GT&C Issue 14

Which Party's audit requirements should be included in the agreement?

MCI's Position

MCI's language should be included in the ICA because it is appropriately circumscribed to protect the parties from disclosure of competitively sensitive business information and because it has been used successfully by the parties in other ICAs. SBC's proposed language is far too broad.

For example, SBC proposes language that would permit a party to initiate an audit for the purpose of "verifying" the Audited Party's "compliance with *any* provision of this Agreement that affects the accuracy of [the] Auditing Party's billing and invoicing of the services provided to [the] Audited Party." Such sweeping language too readily permits the Auditing Party to embark on a fishing expedition into the Audited Party's sensitive business records under the guise of "verifying" the Audited Party's compliance with the ICA's billing and invoicing provisions. For these reasons, the Commission rejected such proposed audit provisions in the *Global NAPs Illinois, Inc.* arbitration, Docket No. 02-0253. The commission should do so again because MCI is not only a customer of SBC, it is also a competitor. As such, MCI has a commercial interest in limiting to certain narrow circumstances SBC's right to inspect MCI's competitively sensitive business records. SBC's proposal unreasonably expands the parties' right to initiate audits.

GT&C Issue 18

Which Party's Intervening Law clause should be included in the Agreement?

MCI's Position

MCI's language should be included in the agreement because it has been used successfully by the parties in other ICAs. SBC has provided no explanation of its proposed changes. Moreover, SBC's proposal is confusing, repetitive, and overreaching.

MCI's proposal requires that the parties enter into negotiations and an appropriate contract amendment to effectuate an intervening law event. In contrast, SBC's proposal would permit SBC to unilaterally, and immediately, impose in the ICA its self-interested legal interpretation of an intervening law event, essentially forcing a de facto contract amendment. Under SBC's proposed provision, MCI would have no right to present its position, negotiate, and participate in dispute resolution until after MCI's

business was abruptly altered and disrupted by SBC's unilateral action. It is for this reason that the Commission, in the Sage arbitration, Docket No. 03-0570, Order dated December 9, 200, rejected the type of change of law provision SBC proposes.

It is important that an intervening law event be effectuated through an amendment rather than through notice by one party to the other for numerous reasons, but primarily because changes in the applicable law that are the basis for an interconnection agreement rarely, if ever, consist of bright-line rules that can be considered self effectuating. Negotiations between the parties to define the parameters of the law and translate them into contract language are essential to the process. In some instances, Commission intervention may also be necessary.

Finally, MCI's proposal confines itself to the subject of intervening law, SBC's proposal covers a hodgepodge of additional subjects, including yet another reservation of rights clause. Such unnecessary repetition creates ambiguities and leads to contractual uncertainty. Accordingly, the Commission should adopt MCI's proposed language.

2. **Definitions ("DEF") Issues**

DEF Issue 2

MCI: Should the agreement include a definition for end user customer?

SBC: Should IXCs, Competitive Access Providers (CAPs), and Wireless Carriers (CMRS providers) be included in the definition of an End User Customer?

SBC's definition of end user customer should be rejected. Among other things, it would preclude MCI from selling telecommunications services to some of the very entities to which this Commission (and others) has expressly held that CLECs may sell services. (See discussion of issues Resale 1 and UNE 5, *infra*; MCI Ex. 6.0-Rev., p. 105:2766-69.) Moreover, SBC's proposed definition is both unreasonable, discriminatory and contrary to the FCC's definition of "telecommunications service". Thus, it violates Section 251(c)(4) of TA96. 47 U.S.C. § 251(c)(4). (See MCI Ex. 6.0-Rev., p. 101-2670-102:2706, p. 103:2707-34.)

DEF Issue 4

Which Party's proposed definition of "Lawful" and "Lawful UNE" should be included in the Agreement?

MCI's Position

Based on the Commission September 9, 2004 decision in the XO arbitration, the word "lawful" and the phrase "lawful UNE" should not be used in the Agreement. As the Commission found, "[s]uch language is unnecessary, likely to trigger future disputes . . . and could be readily abused to delay XO's access to SBC services." However, if the Commission chooses to allow the usage of this terminology, the Commission should

adopt MCI's proposed definition of Lawful and Lawful UNE because it better describes the various legal requirements that may give rise to SBC's legal obligations. In addition, SBC's proposed definition does not tie SBC's obligations to those set forth in applicable law or in the Agreement and could be interpreted to permit SBC, unilaterally, to effect a contract amendment, outside of the change of law process.

3. Calling Name Database ("CNAM") Issues

CNAM Issue 1

Should SBC Illinois be required to provide bulk access to the CNAM database in addition to query access?

MCI's Position

The Agreement should require SBC to provide for bulk access to the CNAM database pursuant to the nondiscriminatory access provisions of Section 251(b)(3). These provisions mandate that: (1) data must be available to requesting carriers in the same manner it is available to providing carriers; (2) the same data must be available to all LECs or those eligible to receive the data; (3) the providing carrier may not impose restrictions on the use of the data; and (4) where, as here, the data is available from only one source, nondiscriminatory access also means the providing LEC cannot use price to discriminate against other carriers in the marketplace.

Since SBC has bulk access to the CNAM database, which means that SBC does not have to pay each and every time it queries the database, MCI is entitled to bulk access. Denial of such access to MCI, which would mean that MCI would have to pay for each individual database query regardless of how many times the same query was run, would be discriminatory. MCI would not have use of the database in the same readily accessible manner SBC enjoys. Also, batch access would allow MCI to avoid the use of SBC's SS7 network, which makes up the vast majority of the cost of per-query access. Limiting access to a per-query or "dip" basis discriminates against MCI and other CLECs by giving the ILEC an unfair advantage over costs, service quality and the provision of new and innovative services.

SBC may claim that it accesses the CNAM database on a per query basis as well, but any such statement is misleading. Although any database is accessed by providing a query, SBC owns or effectively owns the physical database and thus has the ability to access, manipulate, or use the database any way it likes – rights to which MCI is entitled but which cannot be implemented without bulk access.

Requiring MCI to dip into SBC's database or access the database on a "per query" basis forces MCI, which has deployed its own SS7 network and thus possesses the capability to query its own databases to obtain calling information, to pay for two sets of facilities to get to the same piece of information. MCI. Under SBC's proposal, MCI would be required to pay SBC not only a per dip charge for accessing its CNAM data, but also fees for using SBC's SS7 network to reach the database. SBC should

not be permitted to require MCI to purchase access to one element (i.e., the SS7) in order to reach another element (i.e., the CNAM database) – particularly where using SBC’s SS7 network constitutes the vast majority of the costs of per query. Such a requirement would force MCI to operate in an unreasonably inefficient manner, foregoing the use of its own physical SS7 network assets as a condition of obtaining access to SBC’s CNAM data. If the Commission permits MCI to obtain batch access to SBC’s CNAM database, MCI can utilize its own SS7 network for each CNAM query.

The economics of per query versus batch access are easily demonstrated. For example, each MCI subscriber typically has a few people that are repeat callers to their MCI household. For example, many spouses call each other every day from work. If as SBC proposes, MCI is limited to per-query access to CNAM information, MCI would possibly dip and pay SBC for access to its CNAM database 20 times a month for the same information. With download access, MCI would only pay for that information once.

If an SBC customer is a high volume caller like a telemarketer, an opinion pollster, or a charity that places numerous outbound calls, the customer may make calls to a thousand MCI customers with caller ID across the State in a single evening. In this instance, on that day alone MCI would incur charges for a thousand dips to SBC’s CNAM database for the same caller ID information as well as charges for its use of SBC’s SS7 network to reach the database.

For MCI to continue to provide quality service to its customers, per-query access forces MCI to incur development costs to implement additional and complex routing instructions within its signaling network. If, however, MCI maintains the database on its own platform, it can continue to utilize its existing routing algorithms and avoid the need for costly redevelopment. Thus, the per-query form of access is discriminatory, degrades service quality and unnecessarily foists additional costs on CLECs. As a result, SBC’s per-query access position adversely impacts competition. Accordingly, MCI’s proposal to allow bulk access upon reasonable terms should be approved.

Finally, MCI disagrees with SBC’s assertion that this issue is moot as a result of the FCC’s *Status Quo Order*. The August 20, 2004 *Status Quo Order*, which took effect on September 13, 2004 requires, pursuant to federal law, that Incumbent Local Exchange Carriers (“ILECs”), including SBC, continue to provide access to mass market local circuit switching (including shared transport and call-related databases like CNAM, LIDB, SS7, 800 and 911), enterprise market loops (i.e., DS1 and higher capacity loops and dark fiber) and dedicated transport (including dark fiber) under the same rates, terms and conditions that applied under SBC’s interconnection agreements and tariffs as of June 15, 2004 for six months or until the FCC’s permanent unbundling rules take effect, whichever occurs first. (See generally *Status Quo Order*, ¶¶ 1, 21, 29.) Hence, with respect to SBC’s federal unbundling obligations the *Status Quo Order* establishes, on an interim basis, federal requirements that maintain the *status quo* with respect to the federal unbundling obligations of ILECs as they existed in interconnection agreements and tariffs as of June 15, 2004. Thus, under federal law, SBC is required to provide access to the unbundled network elements listed above at rates based on the

FCC's Total Element Long Run Incremental Cost ("TELRIC") methodology until March 12, 2005, which is six months after the *Status Quo Order* was published, or until the FCC's permanent federal unbundling rules take effect, whichever date is sooner. These are all things that SBC is required to provide to MCI under the interconnection agreement in effect as of June 15, 2004 and/or SBC tariff. (See MCI Ex. 15.2.)

SBC's interim federal unbundling obligations likely will remain in effect well after the Commission issues its November 30, 2004 decision in this proceeding, and the Commission's decision must be based on the law currently in effect. Accordingly, the ICA should include contract provisions governing each of the unbundled network elements (and related facilities and functionalities) preserved by the *Status Quo Order*.

SBC's federal law obligations outside Section 251(c)(3), including Section 251(b)(3) and Section 271, and SBC's state law obligations under 220 ILCS 5/13-801 also mandate inclusion of all of MCI's proposed unbundling proposals as well as MCI's other proposed interconnection agreement language. MCI's proposals do not reflect anything that goes beyond SBC's independent federal and state law obligations. This is clear from the definitions of the terms "network element" and "telecommunications service" set forth in the PUA, which state:

Sec. 13-216. Network element. "Network element" means a facility or equipment used in the provision of a telecommunications service. The term also includes features, functions, and capabilities that are provided by means of the facility or equipment, including, but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Sec. 13-203. Telecommunications service. "Telecommunications service" means the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission.

Further, SBC's tariffs expressly reflect SBC's obligations to provide the following network elements: unbundled Operator Services and Directory Assistance ("OS/DA") (MCI Ex. 15.1 (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 15, 5th revised Sheet No. 4 and Sections 6 and 7); splitters (MCI Ex. 15.1 (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 15, original sheet No. 7.1 and Section 2)); loops, including the High Frequency Portion of the Loop ("HFPL") (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 2); Enhanced Extended Loops ("EELs") (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 20); unbundled local switching and unbundled local switching with shared transport (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Sections 3 and 21, respectively); unbundled tandem switching (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 5); access to

Signaling System 7 (“SS7”) (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 9); access to 800 database (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 10); access to Line Information Database (“LIDB”) (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 11); unbundled interoffice transport (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 12); access to Advanced Intelligent Network (“AIN”) databases (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 13); combinations of network elements (MCI Ex. 15.1 (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 15)); unbundled sub-loops (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 16); access to customer name database (“CNAM”) (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 17); unbundled dark fiber (Ameritech Tariff, ILL.C.C. No. 20, Part 19, Section 18).

Notwithstanding these undisputed facts, SBC believes that there is no need to include in the interconnection agreement terms and conditions that reflect SBC’s continuing federal law unbundling obligations. Staff’s position is somewhat less clear. MCI disagrees with both. With respect to this issue CNAM 1 and the many other issues SBC claims are moot, the Commission must render a decision in this case that reflects SBC’s obligations under current federal and state law. To the extent that SBC’s federal obligations are altered in the future, it is appropriate to implement any such legitimate changes through the change of law provisions contained in the interconnection agreement. To do anything else would ignore SBC’s current federal law obligations.

Also, irrespective of SBC’s federal unbundling obligations, the Commission’s decision must reflect SBC’s obligations under Section 251(b)(3), discussed above, Section 271 and applicable state law, all of which impose unbundling and other obligations on SBC. Relatedly, SBC’s proposed “Rider” is wholly inappropriate and outside this proceeding.

CNAM Issue 2

Should SBC Illinois be required to provide MCI with access to CNAM as an unbundled Network Element other than as part of unbundled local switching?

MCI’s Position

Pursuant to Section 251(b)(3), SBC should be required to provide MCI with access to CNAM, on a batch basis. Also, for all of the reasons noted in issue CNAM 1, this issue CNAM 2 is not moot, as SBC contends. Therefore, SBC also should be required to provide MCI with access to CNAM as a UNE.

CNAM Issue 3

If bulk downloads are required, should processes be delineated in the Interconnection Agreement?

MCI’s Position

The processes should be delineated in the Interconnection Agreement. The Interconnection Agreement provides the parties a forum for negotiation with Commission oversight and provides both parties with business certainty. Staff generally agrees that the ICAs such detail should be included in ICAs. MCI wants bulk download for CNAM provided for in the Interconnection Agreement because SBC has not offered to file a tariff offering bulk download access. By offering its own Appendix in this proceeding, MCI can better identify the issues of concern to MCI in this process rather than wait for SBC to develop a process and pricing for something it obviously objects to. Finally, for the reasons stated in issue CNAM 1, this issue is not moot, as SBC alleges.

CNAM Issue 4

What terms and conditions should govern access to Account Owner Information?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue are 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 this issue, principles of nondiscriminatory access should guide what terms and conditions govern access to information. Further, MCI should be entitled to the same data that is available to SBC. SBC's proposals should be rejected because SBC has constructed an elaborate hierarchy of terms and condition that actually should be handled with a simple recognition that MCI should be afforded nondiscriminatory access. Accordingly, if SBC is denied the data by another carrier, then SBC would not be obligated to provide it to MCI.

CNAM Issue 5

Is it necessary to include the language in section 4.16 about the accuracy of CNAM inquiries?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue are 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 it is not necessary to include language in section 4.16 about the accuracy

of CNAM inquiries. Such requirements apply only to query-based access. MCI will not query SBC's CNAM database if it has bulk download access to it. Thus, MCI objects to these provisions only on the basis that MCI wants bulk download access to CNAM data.

CNAM Issue 6

May SBC Illinois block access to CNAM in the event of misuse?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue are 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 SBC may not block access to CNAM in the event of claimed misuse. Additionally, it would be discriminatory for SBC to determine how MCI may use CNAM and to have sole discretion whether to deny access based on alleged misuse. In effect, SBC's proposed terms amount to a veto power over uses MCI may wish to lawfully put database information. Under Section 251(b)(3), such veto power is impermissibly discriminatory..

CNAM Issue 7

For what purposes may MCI use CNAM information?

MCI's Position

First, for the reasons stated in MCI's position on issue CNAM 1, this issue is not moot, as SBC claims it is, and the Commission should decide it.

To achieve the pro-competitive purposes of the Act, MCI should be able to use the information included in call-related databases, including CNAM, for any lawful purpose. SBC should not be allowed to dictate how MCI uses the information or place use restrictions on MCI's use of CNAM data. Such restrictions would be blatantly discriminatory. State or federal law, however, may impose requirements or limitations on use of the information by all parties.

More specifically, in order to provide nondiscriminatory access to call-related databases, ILECs should not be permitted to impose use restrictions they themselves do not, by law, have to follow. Thus, for instance, it would be improper for SBC to restrict MCI from using information contained in call-related databases to provide services other than those provided by SBC.

CNAM Issue 8

See CNAM Issue 9.

MCI's Position

See MCI's Position for CNAM Issue 9.

CNAM Issue 9

What forecasting requirements for CNAM should 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. Thus, the disputes relating to this issue are 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 should decline to include forecasting requirements for CNAM in the Agreement. Such requirements apply only to query-based access. Because MCI wants bulk-access to the CNAM database, MCI will not query SBC's CNAM database.

CNAM Issue 10

Should MCI be required to make its LIDB information available to SBC Illinois through a separate agreement?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue are 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, this language should apply only where MCI chooses to have SBC administer its LIDB. MCI has not chosen to have SBC administer its LIDB. Accordingly, such language is inappropriate in the CNAM Appendix.

CNAM Issue 11

Should the Commission adopt SBC Illinois's liability and indemnity language for CNAM in addition to that contained in the General Terms and Conditions?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue are 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 the disputed issue, but should adopt the language on which the parties agreed.

If, however, the Commission addresses the substance of this issue, the Commission should not adopt SBC's liability and indemnity language for CNAM. It is unnecessary and duplicative of the indemnity provision contained in the General Terms and Conditions. There is nothing unique about CNAM or the CNAM Appendix that requires such additional liability or indemnity provisions. The liability and indemnity provisions in the General Terms and Conditions of the Agreement are reasonable and adequate.

4. Collocation ("Collo") Issues

Collo Issue 2

MCI: What augment interval should be available for CLECs for DS0s?

SBC: Should MCI have a faster augment interval for DS0s than is offered to other Illinois CLECs?

MCI's Position

The Commission should adopt MCI's proposed language for Section 2 of the Collocation Appendix concerning augment interval. Due to the critical role of augments, i.e., equipment and or cable that expands capacity, in relation to a CLEC ability to attract and provide service to new customers, MCI's proposal includes more reasonable augment intervals for new DSO pairs. Long augment intervals unfairly result in competitive disadvantage because customers, particularly those seeking internet service, will not wait for months for their service to be turned up. Instead, the customer is long gone, having turned to the local cable company or SBC for his/her broadband needs.

SBC's Collocation Tariff sets an interval of 60 days for augments. See Illinois Bell d/b/a SBC Tariff I.C.C. 20, Part 23, Section 4, 4th revised sheet 31.3. However, MCI consistently experiences augment intervals for new DS0 pairs of 80 calendar days or more from the time the application is approved. If this practice continues, it will

ultimately result in a loss of new customers for MCI. As indicated above, the nature of the broadband business is such that, quite often, the need for added capacity in a given central office or market hits very quickly, often more quickly than capacity planning can anticipate the need. In the provision of data services, MCI must rely on forecasts provided by ISPs that can increase rapidly depending on customer promotions or other offerings. The cost of overbuilding the pairs in all central offices would be prohibitive, and MCI pays for unused pairs in most locations now as it is.

The purpose of MCI's proposed contract language is to provide SBC with an incentive to provide new pairs on a reasonably prompt basis. SBC's 60-day interval provided for in SBC's tariff is insufficient for MCI's business purposes and, as shown above, commercially unreasonable.

Also, it is important to note that SBC's inadequate augment order completion time has a longer lasting unfair and anti-competitive effect as well. Studies show that customers are more likely to stay with a provider from whom they also have DSL. (See Investor Update, Randall Stephenson, Chief Financial Officer, SBC Communications Inc., presentation to Lehman Brothers Telecom Trends and Technology Conference, December 9, 2003, slide 11, which can be accessed at: http://www.sbc.com/Common/files/pdf/SBC_Lehman.pdf, showing that customers are 61% less likely to switch carriers once they add DSL to their loop.) As a result, the provider who reaches the customer first has a first mover advantage in retaining customers. In today's market, this can translate into at least \$26.95/month per customer. (This is SBC's lowest DSL rates for residential customers. See http://www01.sbc.com/DSL_new/content_new/1,,18,00.html?pl_code=MSBC245C8952P192190B0S0)

Thus, unfair competitive advantages accrue to SBC when it delays the completion of augments on behalf of MCI, in two ways. First, the longer SBC can forestall completing the augments, the greater the possibility of customers signing up with SBC instead of MCI for their telecommunications services. Second, if MCI cannot serve a customer's data needs because of SBC's lengthy augment intervals and the customer signs up with SBC instead, there is a greater likelihood that the customer will stay with SBC. Thus, SBC's long augment intervals, coupled with SBC's ability to quickly serve customers' data needs, will allow SBC to attract a "stickier" customer base than its competitors, thereby creating a more stable revenue stream for SBC and lowering SBC's customer retention, winback, and marketing costs.

Notably, when ruling on augment intervals for Verizon in New York, the New York Public Service Commission found as follows:

Because augments involve far fewer steps than complete collocation installations, it is reasonable to shorten the overall interval for augments at this time. A 45 business day interval is appropriate for all augments--cable and splitter--for line sharing and line splitting. Verizon's work force management argument is not compelling, as it has not

demonstrated that more efficient scheduling and operation is overly burdensome.

State of New York Public Service Commission Opinion No. 00-12, Case 00-C-0127. *Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities*, Effective: October 31, 2000, p. 13.

Accordingly, MCI respectfully requests that the Commission adopt MCI's proposed language for Section 2 of the Collocation Appendix, which provides for shorter, more reasonable augment intervals.

5. **Directory Assistance ("DA") Issues**

DA Issue 1

Should the Directory Assistance Appendix reference whether DA is a UNE?

MCI's Position

The Directory Assistance Appendix should reference the fact that DA is a UNE. DA 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. What SBC currently characterizes as customized routing is inadequate and will not enable to obtain DA service from a provider other than SBC.

As stated above, DA must be offered as a UNE until customized routing becomes an actual reality. Additionally, however, SBC must provide DA as a UNE based on the *Status Quo Order*. See MCI's discussion of the *Status Quo Order* in issue CNAM 1.

6. **Invoicing ("INV") Issues**

INV Issue 1

Which Party's proposal for recording reciprocal compensation usage should be included in the Agreement?

MCI's Position

MCI's proposal should be adopted because it reflects the terms and conditions for recording reciprocal compensation usage that the parties agreed to and memorialized in Appendix Recording and Reciprocal Compensation. Moreover, MCI's proposal is consistent with the traditional practice of the parties, and SBC has shown no reason for departing from this practice. Further, it is unnecessary and unwise to repeat the same terms in different sections of the contract. To do so would violate basic principles of contract construction, which counsel for clear, non-repetitive language.

INV Issue 2

If a party disputes a reciprocal compensation bill, should that party be required to place the disputed amount in escrow?

MCI's Position

A party should not be required to place disputed bill amounts in escrow. A Billed Party should be entitled to withhold payments on disputed amounts. Absent the ability to withhold, the financial responsibility for invalid charges lies on the Billed Party (MCI), not the Billing Party (SBC), who is made responsible by other sections of this ICA and various state and federal tariffs to produce a timely and accurate invoice.

Further, the rights of the billed party to dispute charges are codified in any number of state and interstate tariffs throughout SBC's territory. Indeed, the parties' historical practice has been to "withhold and dispute" – that is, to withhold payments on disputed amounts. Nonetheless, SBC proposes to add language to the ICA requiring that disputed amounts be placed in escrow. Such a proposal is unwarranted and unreasonable, particularly given the long history the parties have of successfully settling such disputes without having to expend resources to create and administer escrow accounts.

Moreover, in the TDS Metrocom arbitration, Docket 01-0338, the Commission resolved this issue by finding escrow accounts unnecessary. At page 6 of its decision, the Commission stated:

Given even an above average level of errors, TDS could be forced to escrow significant amounts to contest these alleged errors. The Commission is of the opinion that requiring TDS to escrow disputed amounts could have the effect of reducing TDS' ability to compete. The Commission determines that the language on escrow requirements should be deleted.

MCI respectfully requests that the Commission decide this issue consistent with its prior treatment in the TDS Metrocom arbitration.

INV Issue 3

When a party disputes a bill, how quickly should that party be required to provide the other party all information related to that dispute?

MCI's Position

When a party disputes a bill, that party should be required to provide the other party all information related to that dispute within 90 days. Given the complexity of the billing performed pursuant to this agreement, 90 days is a reasonable time within which

the parties should be required to provide all information related to disputed amounts and backbilling. Moreover, given that MCI has agreed to a pay-and-dispute regime for most of the bills it receives from SBC, MCI certainly has an incentive to resolve disputes as quickly as possible.

INV Issue 4

How should credits for disputed amounts be applied?

MCI's Position

Disputes must be filed within the applicable stake date, which is stated directly in MCI's proposed language. Absent raising a dispute within the applicable stake date, a party will lose its ability to dispute the bill in question. By contrast, SBC's proposal muddies the picture by making a vague reference to how credits are applied. Credits should be applied upon settlement of disputes legitimately opened by the applicable stake date. But, the application of credits does not impact the date by which disputes must be filed. MCI's proposed language is more clearly drafted and concise.

INV Issue 7

Should SBC Illinois's disclaimer about VOIP be included in the Agreement?

MCI's Position

SBC's disclaimer about VOIP should be deleted from this Agreement because the FCC is addressing the matter in another docket. Thus, it would be an inefficient use of the Commission's and the parties' resources to separately litigate that issue in this proceeding. When the FCC rules on the issue in its other proceeding, the parties can negotiate an amendment to incorporate the appropriate terms and conditions in this Agreement if necessary.

7. Line Information Database ("LIDB") Issues

LIDB Issue 2

Should the definition of Service Platform 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. Thus, the disputes relating to this issue are 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 the definition of Service Platform proposed by SBC should not be included in the Agreement. SBC's definition of Service Platform is vague and overbroad.

LIDB Issue 3

Should the LIDB Appendix contain SBC's proposed acknowledgement concerning the ownership of LIDB.

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 them. Thus, the disputes relating to these issues are 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 the disputed issue, but should adopt the language on which the parties agreed.

If, however, the Commission addresses the substance of this issue, it is MCI's position that the LIDB Appendix should not contain SBC's proposed acknowledgement concerning the ownership of LIDB because SBC is unwilling to provide MCI with nondiscriminatory access to CNAM and LIDB under the same rates and terms it provides CNAM and LIDB to SNET DG. The fact that SBC provides information wholesale to another company yet refuses to provide MCI with CNAM in bulk format is discriminatory, as is the fact that SBC will not agree to provide MCI access to CNAM and LIDB at the cost-based rates it provides this information to SNET DG.

LIDB Issue 4

Other than per-query access through ULS, should SBC Illinois be obligated to provide access to LIDB as a UNE?

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 them. Thus, the disputes relating to these issues are 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 the disputed issue, but should adopt the language on which the parties agreed.

If, however, the Commission addresses the substance of this issue, it is MCI's position that SBC remains obligated to provide nondiscriminatory access to LIDB under Section 251 of the 1996 Act. Also, for reasons noted in issue CNAM 1, this issue LIDB

4 is not moot, as SBC contends. Therefore, SBC also should be required to provide MCI with access to LIDB as a UNE.

LIDB Issue 5

If SBC Illinois is obligated to provide access to LIDB as a UNE other than through ULS, what rate should apply to that access?

MCI's Position

First, for reasons stated in CNAM Issue 1, this issue is not moot, as SBC claims it is. Therefore, the Commission should address the merits of the parties' disagreement. Based on the *Status Quo* Order, SBC should be required to provide MCI with access to LIDB as a UNE, at TELRIC-based rates.

SBC also is obligated to provide nondiscriminatory access to LIDB under Section 251(b)(3) of the 1996 Act. Under that section, services must be provided at cost-based rates.

Among other things, nondiscriminatory access means nondiscriminatory pricing because pricing is one way of controlling access to the data. Since call-related database information such as LIDB and CNAM is generated by SBC's service order process when a customer initiates service, and because SBC line share represents a majority of the marketplace, SBC has a lock on the information comprising these databases for subscribers. Market-based pricing for a monopoly bottleneck service such as this has no basis where SBC is required to provide nondiscriminatory access to the listings. Market-based prices are inherently discriminatory because there is little, if any, market if the only place to get the information on the vast majority of subscribers is from SBC. There is no "market" upon which SBC can base "market-based" prices.

MCI respectfully asks that the Commission adopt the contract language MCI has proposed in connection with this issue and reject SBC's language.

LIDB Issue 6

Should MCI be prohibited from using LIDB information other than for its end user customer?

MCI's Position

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

MCI should not be prohibited from using SBC's LIDB data for anything other than MCI's end user. Such a provision is an example of an impermissible use restriction. As such, it improperly discriminates against MCI. While SBC may sell its LIDB to any user,

MCI is restricted to using it only for its end-user subscribers. Such a restriction prohibits MCI from allowing its affiliates to provide LIDB validation for calls made through the affiliate's subscribers and prohibits MCI from participating in the competitive LIDB market that SBC claims already exists.

In addition to providing service to facilities-based customers in Illinois, MCI also provides services to other carriers and resellers. MCI would use the data to provide call-validation, caller-ID services or other types of services to these customers and their end-user subscribers. Accordingly, MCI respectfully requests that the Commission reject the language proposed by SBC limiting MCI's use of LIDB data.

LIDB Issue 7

Should SBC Illinois's choice of which LIDB query it uses be subject to nondiscrimination and parity obligations?

MCI's Position

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

SBC's choice of which LIDB query it uses should be subject to nondiscrimination and parity obligations. Where SBC offers LIDB as a UNE, it may not treat its customers differently than those of the CLEC.

LIDB Issue 8

Should MCI be required to use audit provisions from SBC's CNAM-Administration Services (AS) where MCI will not be using SBC Illinois's CNAM-AS services?

MCI's Position

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

MCI does not wish to utilize SBC's Administration Storage services, and therefore rejects any provisions relating thereto. While SBC administers data for MCI's UNE-P or ULS customers by virtue of the fact that those customers reside on SBC's platform, MCI, unlike perhaps other CLECs, manages its own LIDB and CNAM databases and does not wish to store that information with SBC as provided for in the SBC LIDB-AS Appendix. MCI objects to any language that would require MCI to participate in or purchase the LIDB-AS product. MCI does not wish to submit any data to SBC or give SBC any control over that data when SBC cannot even agree to share its LIDB and CNAM information with MCI on a nondiscriminatory basis (or as required by the *Status Quo* Order). MCI should not be forced to agree to any language pertaining to a product it does not wish to purchase. MCI should therefore not be

required to use the audit provisions from SBC's CNAM-AS because MCI will not even be using SBC's CNAM-AS services.

LIDB Issue 9

Which Party's terms and conditions for access and restricted third party data should be included in the Appendix.

MCI's Position

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

MCI's terms and conditions for access and restricted third-party data should be included in the Appendix because SBC's new language is impermissibly discriminatory against MCI. The language at issue is contained in Appendix LIDB, Sections 3.19, 7.7, and 7.8.

Section 3.19 of the LIDB Appendix would restrict MCI's access to certain information in the LIDB database. MCI's concern is that SBC would not be restricted from the same information and that SBC is imposing discriminatory terms and conditions on MCI's access to LIDB data.

With regard to the provisions of 7.7 and 7.8, SBC impermissibly imposes restrictions that are discriminatory, since SBC itself is not so restricted. For example, 7.8 restricts use of customer proprietary network information ("CPNI") for the purposes identified under the Agreement only. Such a restriction would be more restrictive than what SBC is subject to under the CPNI provisions of Section 222 of the Act. Furthermore, any such liability would be better handled through the GT&Cs of the entire agreement.

LIDB Issue 10

Which Party's statement of LIDB query cost recovery should be included in Appendix LIDB?

MCI's Position

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

MCI's statement of LIDB query cost recovery should be include in Appendix LIDB because it reflects the fact that in a ULS situation, SBC generates the query on behalf of MCI's customer. Moreover, MCI's proposed language makes it clear that the LIDB queries performed by SBC are included in the ULS cost rather than as a separate cost that SBC would consider "market-based".

LIDB Issue 11

See LIDB-CNAM AS 1 (LIDB 11 Consolidated) below.

LIDB Issue 12

What Party's term should apply in the event of unauthorized use of LIDB information?

MCI's Position

It is MCI's position that this issue has effectively been settled because the parties agree that the interconnection agreement should not include any terms and conditions addressing it. Thus, the disputes relating to this issue are 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 no additional liability or indemnity provisions are necessary in the LIDB Appendix. SBC must offer MCI nondiscriminatory access to its LIDB information. Permitting SBC to insert its proposed terms into the agreement would subject MCI's actions to SBC's interpretation, amounting to a veto power over uses MCI may wish to lawfully put database information. Such a veto power would be discriminatory. Also, matters involving liability and indemnity are fully addressed in the GT&Cs of the ICA. There is nothing peculiar about the LIDB Appendix that would require additional liability or indemnity provisions. Accordingly, MCI respectfully requests that the Commission reject SBC's discriminatory and unnecessary insertion of additional provisions regarding liability and indemnity.

LIDB Issue 13

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

MCI's Position

MCI withdraws its proposed language with respect to this issue; this, the disputes relating to this issue are 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, notwithstanding MCI's withdrawal, it is MCI's position that the Commission should reject SBC's liability and indemnity language for LIDB. Matters involving liability and indemnity are fully addressed in the GT&Cs of the ICA and that should be adequate to

address both carriers' concerns. There is nothing unique about the LIDB Appendix that would require additional liability or indemnity provisions.

LIDB Issue 14

Should SBC Illinois be required to provide MCI access to Originating Line Number Screening Query?

MCI's Position

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

SBC (not SNET DG) is required to provide MCI access to Originating Line Number Screening ("OLNS") in Illinois since it provides MCI this service in Texas. Importantly, SBC Texas agreed to the language proposed here by MCI.

The feature allows for screening and blocking of certain call features from the originating line (e.g. third party call or long distance blocking). This is a feature that SBC use to provide when it was required to offer LIDB as a UNE. Per the *Status Quo* Order, SBC is required to provide LIDB as a UNE. Therefore, SBC must provide OLNS as it did as of June 15, 2004. Also, it appears that because SBC has "abdicated" its LIDB database to SNET DG, it will offer some but not all of the features it once offered. OLNS is an important feature whether or not SBC or SNET DG provides it, and MCI is entitled to access it. Accordingly, MCI respectfully requests that the Commission adopt MCI's proposed language requiring SBC to provide MCI access to Originating Line Number Screening Query.

8. Line Sharing Issues

Line Sharing 2

**MCI: Are there obligations that apply equally to Line Sharing and Line Splitting?
SBC: Should line splitting-specific provisions be included in the Parties' Appendix Line Sharing?**

MCI's Position

The Commission should include MCI's proposed Section 3.3 of the Line Sharing Appendix in the ICA. From a technical and functional standpoint, line sharing and line splitting are identical, and the FCC's regulations require SBC to provide access and support for both in the same manner. MCI's language is designed to reflect SBC's obligation to support MCI's ability to provide voice and data services over a single loop, via both line sharing and line splitting.

Line sharing and line splitting consist of an SBC-provided loop, a cross-connect to the collocation of MCI or its data partner, and another cross-connect either back to

the SBC switch port or to MCI's collocation from which the MCI switch port can be connected. The FCC, recognizing this reality, defines line sharing and line splitting very analogously and shows that these two offerings provide the exact same functionality:

Line Sharing

...the process by which a requesting telecommunications carrier provides digital subscriber line service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop.

47 C.F.R § 51.319(a)(i).

Line Splitting

the process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop.

47 C.F.R § 51.319(a)(ii).

As the above definitions demonstrate, both line splitting and line sharing provide the functionality of one carrier providing voice service over the low frequency portion of the loop, while another carrier provides data service over the high frequency portion of the loop.

SBC is obligated to provide both line sharing and line splitting to MCI, (see 47 C.F.R § 51.319(a)(ii) and 47 C.F.R. § 51.319(a)(1)(i)(B); 220 ILCS 5/13-801), and MCI's proposed Section 3.3 requires nothing more than that, as mandated by the FCC's rules. MCI's language simply recognizes that SBC must support MCI's ability to provide voice, data, or combined voice and data services over a single loop. As an initial matter, there should be no dispute between the parties that SBC must support MCI's ability to provide voice service and data services over a stand-alone unbundled loop. With regard to SBC's obligation to support MCI's ability to provide combined voice and data services over a single loop via both line sharing and line splitting, SBC's obligation is also clear, as evidenced by the FCC's rules shown above.

Even though MCI's proposed Section 3.3 does not impose obligations on SBC that are not already provided for in the FCC's rules, it is important that it be included in the Parties' Agreement because of SBC attempts to create an inappropriate distinction between line sharing and line splitting that would unnecessarily increase cost and complexity for MCI when serving customers via line splitting. SBC's position would result in longer provisioning intervals and insufficient testing and maintenance/repair processes for line splitting, when compared to line sharing, which would result in

service-affecting problems for MCI's customers. Since there is no discernable difference between line splitting and line sharing, there is no basis for this distinction or disparate treatment. Further, SBC providing inferior support for line splitting relative to line sharing is anti-competitive.

In a line sharing scenario, SBC provides the voice service and a CLEC provides the data service. This allows SBC to receive retail revenue for the voice service and wholesale revenue for the data service. In a line splitting scenario, however, CLECs provide both the voice and data services provided over the loop, which allows SBC to receive wholesale revenue only. Thus, when compared to line sharing, line splitting provides SBC with a lower level of total revenue and results in SBC losing a direct relationship with the end-user (since the end-user would now receive its retail services from competitor(s) of SBC). For this reason, SBC possesses the incentive to promote line sharing over line splitting, and SBC's attempt to provide inferior support for line splitting suggests that SBC is behaving accordingly. The Commission should not endorse SBC's actions and, instead, should rule in a manner that puts line splitting on an even footing with line sharing so that competitors have a reasonable opportunity to provide *both* voice and data services over the same loop, as required by the FCC.

This proposal also is necessary because the FCC has adopted a plan to transition away from line sharing over the next few years. As a result, line sharing may not be available to MCI in the future. If SBC is allowed to memorialize its proposed disparate treatment for line splitting in the parties' agreement at this time (e.g., longer provisioning intervals, insufficient maintenance and repair support, inadequate testing procedures), once line sharing is removed, SBC will have been successful in "lowering the bar" for supporting competitors' sole ability to provide voice and data services over the same loop. In addition, the purpose of the FCC's line sharing transition plan is to encourage a smooth transition away from line sharing over a three-year period. However, if line sharing is afforded superior levels of provisioning, testing, and maintenance/repair, MCI will be encouraged to keep customers on line sharing longer than would otherwise be necessary if line splitting were treated similarly. For instance, if MCI's data customer will receive a lesser degree of maintenance and repair support from SBC when MCI transitions that customer from line sharing to line splitting, MCI will be hesitant to make that transition. The FCC's objective, as embodied in the TRO, is for line splitting to eventually replace line sharing as the means by which competitors can serve a customer both voice and data services over the same loop. SBC's approach would frustrate this transition.

For all of these reasons, MCI requests that the Commission include MCI's proposed Section 3.3 of the Line Sharing Appendix in the parties' agreement.

Line Sharing 3

MCI: Is HFPL available in conjunction with UNE-P?

SBC: Is the HFPL available in any scenario where SBC ILLINOIS is not the retail voice provider over the same loop?

MCI's Position

The HFPL should be made available to MCI when it is serving a customer via UNE-P. The FCC reaffirmed in the *Triennial Review Order* that CLECs are impaired without unbundled access to ILECs' copper loops, and are entitled to access copper loops as a UNE. *TRO* ¶ 248. The FCC's rules require that MCI have access to all of the "features, functions, and capabilities" of unbundled loops. 47 C.F.R. § 51.307(c). In a UNE-P arrangement, MCI is leasing the entire loop from SBC; therefore, MCI should be entitled to access the HFPL as one of the features, functions, and capabilities of the loop.

SBC's position appears to be based on that part of the *Triennial Review Order* in which the FCC found that ILECs are not required to separately unbundle the HFPL if the ILEC is not providing the voice service to the end-user. *TRO* ¶ 269. That part of the *TRO* only provides that the ILECs do not have to *separately* unbundle the HFPL if they are not providing the voice service. It has no application to the situation in which MCI is already providing service to the end-user using UNE-P and seeks to use the HFPL to provide DSL-based service to that same customer. In that scenario, the FCC's rules requiring that MCI have access to all the "features, functions, and capabilities" of the loop apply.

Indeed, the scenario under which MCI is providing POTS service using UNE-P, and seeks to use the same loop to provide DSL-based service, is not even a "line sharing" scenario at all, because SBC is not providing the voice service. This is a prime example of SBC reading far too much into the FCC's line sharing rules in an attempt to restrict MCI from providing service to its customers in accordance with well-established FCC rules.

Furthermore, under Illinois law, HFPL is most definitely available where a CLEC seeks to provide end-to-end service using a "network platform", which is analogous to UNE-P service. The Commission recently so found, stating:

Based upon our review of the current statutes, we conclude that a splitter is a network element because it is equipment used in the provisioning of the transmission of information by electromagnetic or light means. Because the splitter falls squarely within the definition of a network element and section 13-801(d)(4) forces the provision of a platform consisting of, apparently any and all, "combined network elements," we conclude that the legislature must have intended that splitters be provided to any requesting carrier that seeks to provide service through the purchase of a platform, without regard to whether the carrier wishes to provide voice grade or high speed service.

Docket No. 01-0614, Order dated June 11, 2002 at 20.

Both SBC and Staff Witness Hoagg maintain that SBC is no longer required to provide access to HFPL or line sharing. While the TRO did change significantly SBC's obligations to unbundle the high frequency portion of the loop, SBC has continuing obligations related to both line sharing and line splitting. Most significantly, as further discussed below in Line Sharing Issue 5, SBC is required to make line sharing available to MCI's "grandfathered" end users (those end users receiving line sharing prior to October 2, 2003) indefinitely, unless the end user chooses to terminate his line sharing service with MCI. Similarly, new end users obtained by MCI during the period from October 2, 2003 through October 2, 2004, are subject to a three-year transition period (see agreed-to Sections 4.2 and 4.3 of Appendix Line Sharing). Moreover, SBC is still required to provide MCI with access to the high frequency portion of the loop for line splitting. These continuing obligations have been negotiated by the parties and are reflected in Appendix Line Sharing and Appendix Line Splitting of the ICA.

Line Sharing 5

MCI: What terms and conditions should apply for MCI's "grandfathered" HFPL customers (those prior to October 2, 2003)?

SBC: ILLINOIS: Should the grandfathered end user provision in the contract reflect the FCC's TRO findings?

MCI's Position

MCI's terms and condition for "grandfathered" HFPL customers should be included in the agreement because they track the FCC's regulations implementing its finding in the Triennial Review Order. By contrast, SBC's confusing language goes beyond the FCC's requirements and would impermissibly limit MCI's ability to continue to serve these grandfathered customers. MCI objects to SBC's terms and conditions because it has proposed making MCI's ability to serve grandfathered customers subject to two unacceptable conditions.

First, SBC proposes that SBC no longer be required to provide line sharing to an MCI customer if MCI's "xDSL-base service to the end-user customer is disconnected *for any reason.*" (emphasis added). This language is unnecessary and unacceptable. It is unnecessary because the agreed-to language already provides that SBC need only continue providing line sharing to end-user customers "for which [MCI] (or its successor or assign) has not ceased providing HFPL to that end user." It is unacceptable because, read literally, SBC's proposal that it no longer be required to provide line sharing if MCI's service is disconnected "for any reason," could allow SBC to shut off service to the customer even if, for example, the customer's service were disconnected inadvertently by SBC. That plainly was not the FCC's intent. SBC has identified no legitimate need for this redundant and confusing language.

Second, SBC proposes that pricing for grandfathered customers continue only until "the FCC issues its Order in its Biennial Review Proceeding or any other relevant government action which modifies the FCC's HFPL grandfather clause established in its *Triennial Review Order.*" This language is vague and confusing. It potentially would

allow SBC to take the position that *any* order or rule, from *any* authority, that could be construed as having an impact on the FCC's grandfather line sharing rules would immediately relieve SBC of its obligation to provide line sharing to MCI's grandfathered customers. Certainly nothing in the *TRO* itself supports SBC's proposal that it be relieved of this obligation based on any order. Again, this appears to be an attempt by SBC to read the FCC's transitioning rules far too restrictively, in order to interfere with MCI's ability to serve its line sharing customers during the transition period. MCI therefore respectfully requests that the Commission reject SBC's proposed language.

Line Sharing 10

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

MCI's Position

SBC's proposed reservation of rights is unnecessary and self-serving. 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. SBC's proposal of this unilateral and onerous right for itself is not fair or reasonable, and should be rejected. Moreover, SBC's change of law language is unnecessary in Appendix Line Sharing given the change of law provision of universal application in the GT&C. Accordingly, MCI respectfully requests that the Commission reject SBC's proposed language regarding reservation of rights and intervening law included in Appendix Line Sharing.

9. Network Interconnection ("NIM") Issues

NIM Issue 1

Should SBC Illinois's definition of "Access Tandem Switch" be included in the Agreement?

MCI's Position

SBC's definition of "Access Tandem Switch" relates to certain substantive issues in dispute with respect to Appendix NIM. Accordingly, it should be resolved in a manner consistent with the resolution of the related substantive issues.

NIM Issue 2

Should SBC Illinois's definition of "ISP Bound Traffic" be included in the Agreement?

MCI's Position

SBC's proposed definition of "ISP-Bound Traffic" should be omitted from the Agreement because it creates a misleading and unnecessary distinction among local traffic types that are subject to reciprocal compensation.

NIM Issue 3

Should SBC Illinois's definition of "Local Tandem" be included in the Agreement?

MCI's Position

SBC's definition of "Local Tandem" relates to certain substantive issues in dispute with respect to Appendix NIM. Accordingly, it should be resolved in a manner consistent with the resolution of the related substantive issues.

NIM Issue 4

Should SBC Illinois's definition of "Local/Access Tandem Switch" be included in the Agreement?

MCI's Position

SBC's definition of "Local/Access Tandem Switch" relates to certain substantive issues in dispute with respect to Appendix NIM. Accordingly, it should be resolved in a manner consistent with the resolution of the related substantive issues.

NIM Issue 5

Which Party's definition of "Local Interconnection Trunk Group" should be included in the Agreement?

MCI's Position

MCI has proposed language stating that "Local Interconnection Trunk Groups' are used by the Parties to interconnect their networks for the exchange of local, intraLATA toll, interLATA and transit traffic in accordance with the applicable terms of this Appendix Network." SBC has proposed that "Local Interconnection Trunk Group is defined as trunks carrying (1) Section 251(b)(5) Traffic, (ii) ISP-Bound Traffic, (iii) IntraLATA toll Traffic originating from an end user obtaining local dial tone from MCI where MCI is both the Section 251(b)(5) Traffic and IntraLATA toll provider, and/or (iv) IntraLATA Toll Traffic originating from an end user obtaining local dial tone from SBC ILLINOIS where SBC-Illinois is both the Section 251(b)(5) Traffic and IntraLATA toll provider." As discussed below in NIM Issue 19, MCI's language is consistent with the FCC's rulings and the Act.

There are several key differences between these proposals. First, rather than using the term local traffic, SBC says that local interconnection trunks carry "Section 251(b)(5) Traffic" or "ISP-Bound Traffic." Second, SBC excludes from its definition of

local interconnection trunk groups any trunk groups that carry interLATA traffic. Third, SBC also excludes trunk groups that carry intraLATA toll traffic unless that traffic originates from an end user who obtains local dial tone, “251(b)(5)” service and intraLATA service all from MCI or all from SBC.

There is no point to SBC’s use of the term “251(b)(5) traffic.” It appears to be SBC’s confusing way of saying local traffic. But by separating the term 251(b)(5) traffic from the term “ISP-bound traffic,” SBC appears to be suggesting that ISP-bound traffic is not subject to 251(b)(5) of the Act, which is the reciprocal compensation provision. Thus, SBC appears to be using the ICA to influence an unrelated debate. There is no need for the term 251(b)(5) traffic.

There are some serious consequences of SBC’s exclusion of interLATA and certain intraLATA traffic from the definition of local interconnection trunk groups. Some of the provisions in the NIM appendix apply only to local interconnection trunk groups. For example, section 8.2, which establishes the requirement of two-way trunking, applies only to local interconnection trunk groups. Section 4.4.2, which pertains to interconnections established by a fiber meet, says that only local interconnection trunk groups shall be provided over this facility. And much of SBC’s proposed section 3.7 would apply only to local interconnection trunk groups. Under SBC’s proposal, these provisions would not apply to trunk groups that include any interLATA traffic or certain types of intraLATA traffic.

For these reasons, MCI requests that the Commission adopt MCI’s proposed language in Section 1.10 and reject SBC’s proposed language.

NIM Issue 6

Should SBC Illinois’s definition of “Local/IntraLATA Tandem Switch” be included in the Agreement?

MCI’s Position

SBC’s definition of “Access Tandem Switch” relates to certain substantive issues in dispute with respect to Appendix NIM. Accordingly, it should be resolved in a manner consistent with the resolution of the related substantive issues.

NIM Issue 9

Which party’s definition of “points of interconnection” should be included in the Agreement?

MCI’s Position

Under settled federal and state law, MCI has the right to establish a single point of interconnection (“SPOI”) on SBC’s network in each LATA. (47 U.S.C. § 251(c)(2); 220 ILCS 5/13-801(b).) This right is recognized and acknowledged by both SBC and

Staff. (SBC Ex. 2.0, p. 63:473-78; see Staff Ex. 2.0, p. 52:1233-36.) Staff witness Dr. Quin Liu’s proposed definition of “points of interconnection” (“POI”), including the sentence “Each party remains responsible for the facilities on its side of the POI” is consistent with this right. Accordingly, MCI requests that the Commission order the parties to incorporate Dr. Quin Liu’s proposed definition of POI into their ICA.

The Commission should reject SBC’s proposal, which is much more than a definition. It is an attempt to materially erode MCI’s right under the Telecommunications Act of 1996 to a single POI per LATA. For example, SBC’s proposed definition states: “In many cases, multiple POI(s) will be necessary to balance the facilities investment and provide the best technical implementation of interconnection requirements to each Tandem within a LATA. Both Parties shall negotiate the architecture in each location that will seek to mutually minimize and equalize investment.” This is not definitional language. SBC language reflects yet another location in the contract where SBC again attempts to insert language that would deny MCI’s right to interconnect its network at a single POI per LATA, which issue is addressed at Issues NIM 14 and 21.

NIM Issue 11

Should SBC Illinois’s definition of “Section 251(b)(5) Traffic” be included in the Appendix NIM of the Agreement?

MCI’s Position

SBC Illinois’s proposed definition of “Section 251(b)(5) Traffic” should be omitted from the appendix. As noted by Staff witness Liu, 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.) SBC improperly attempt to import a requirement that such traffic originates from and terminates to end user customers physically located in the same local exchange area, and to wholly distinguish it from ISP-bound traffic. 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). (That is not to say that ISP-bound traffic is subject to reciprocal compensation. It is not, which both parties recognize.)

NIM Issue 12

Should SBC Illinois’s definition of “Section 251(b)(5)/IntraLATA” traffic be included in Appendix NIM of the Agreement?

MCI’s Position

MCI’s position is that SBC’s definition of “Section 251(b)(5)/IntraLATA” traffic should not be included in Appendix NIM of the Agreement. In proposed section 1.17, SBC defines Section 251(b)(5)/IntraLATA traffic in parallel to its definition of “local interconnection trunk groups” discussed in NIM Issue 5. That is, SBC defines such

traffic to include “251(b)(5) traffic,” “ISP-Bound Traffic,” and certain intraLATA traffic, but exclude some intraLATA and all interLATA traffic.

The term is not used in the ICA except in SBC’s proposed language (e.g., proposed section 3.7), which should be rejected for other reasons, and thus a definition is unnecessary. In any case, as was discussed in issue NIM 5 above, SBC seems to be attempting to force MCI to carry interLATA traffic and certain intraLATA traffic on different trunk groups. There is no justification for forcing this inefficiency on MCI. Nor should the Commission permit SBC to use the term 251(b)(5) and ISP-bound traffic to create confusion rather than using the term local traffic.

NIM Issue 13

Should MCI be solely responsible for the facilities that carry OS/DA, 911, mass calling and Meet-Point trunk groups?

MCI’s Position

MCI should not be solely responsible for the facilities that carry OS/DA, 911, mass calling and Meet-Point trunk groups, because such facilities may not be used exclusively by MCI. (See MCI Ex. 7.0, p. 41:982-86.). Even a cursory reading of the agreed portions of Sections 9 through 13 (e.g., Sections 10.1 and 12.2) of this Appendix reveals that both Parties have obligations and responsibilities for these trunk groups that are already delineated. MCI requests that the Commission reject SBC’s proposed language which would undo those sections in which agreement about the divisions of responsibilities has already been achieved.

NIM Issue 14

MCI: Should the Agreement include language reflecting the well-established legal principle that MCI be entitled to interconnect at a single POI per LATA?

SBC: a. Where should MCI interconnect with SBC in Illinois?

b. Should MCI be required to bear the cost of selecting a technically feasible but expensive form of interconnection such as a single point of interconnection or a point of interconnection outside the Tandem Serving Area?

MCI’s Position

The Agreement should include language reflecting the well-established principle that MCI is entitled to interconnect at a single POI per LATA, because in various sections of the ICA, SBC attempts to undermine this right.

Under settled federal and state law, MCI has the right to establish a single point of interconnection (“SPOI”) on SBC’s network in each LATA. (47 U.S.C. § 251(c)(2); 220 ILCS 5/13-801(b).) However, SBC’s proposed language would require MCI to establish multiple POIs in a LATA, essentially penalizing MCI for having a more efficient network architecture. This is impermissible and directly contravenes applicable law. In

the Commission's recent AT&T Arbitration Decision, Docket No. 03-0239, the Commission found: "A CLEC, such as AT&T, may elect to interconnect with SBC's network using a single POI or using multiple POIs, pursuant to Section 13-801(b)(1) of the Act and also Section 251 of TA96."

In AT&T, the Commission also found "SBC cannot charge AT&T for transport on SBC's side of the POI. Thus, notwithstanding SBC's attempt to limit its obligation to absorb the costs of transporting calls that originate on its network to MCI's POI, as Staff expressly acknowledged, SBC's has an unqualified obligation to do so, as the Commission recently reiterated in the AT&T arbitration. (Staff Ex. 2.0, pp. 53:1260-54:1269.) As reflected in FCC Rule 703(b), SBC may not charge MCI or any other competing carrier for the cost of transporting calls that originate on SBC's network to the POI, even if the competing carrier has elected to interconnect at a single POI within a LATA. FCC Rule 703(b) specifically states that a carrier "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the [originating carrier's] network." Moreover, the courts in both, *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, 348 F.3d 482 (5th Cir. 2003) and *MCI/metro Access Transmission Services v. BellSouth Telecommunications*, 352 F.3d 872 (4th Cir. 2003), rejected the position SBC is taking on this issue. Therefore, when SBC's customers call MCI's customers, SBC must bear the cost of delivering calls to MCI's POI. When MCI's customers call SBC's customers, MCI bears the cost of delivering the call to its POI with SBC. This principle is fair and equitable. Accordingly, the Commission should reject any proposals by SBC that would require MCI to bear the costs SBC incurs in delivering traffic to the top of MCI's network. Equally clear is that SBC's "expensive interconnection" argument fails. See Global NAPS Arbitration, Order on Rehearing, Docket 02-0253 at 11. MCI respectfully requests that the Commission reaffirm that position here.

Based on MCI's unqualified right to establish a single point of interconnection, the Commission should reject Staff witness Dr. Quin Liu's recommendation that the Commission restrict MCI's ability to alter established interconnection arrangements in the absence of "identifiable justification". Dr. Liu's concern that MCI could "reconfigure its network, simply to impose cost burdens on SBC" is unfounded and provides no legitimate basis on which to restrict MCI's legal rights and ability to manage its network in the most efficient way possible. MCI would not engage in the conduct posited by Dr. Liu because doing so would impose unnecessary costs on MCI. To establish POIs, MCI makes significant investments. For example, in many instances, MCI has established POIs jointly with SBC, MCI being responsible for providing one of the fiber pairs comprising a fiber ring between the MCI switch location or an initial POI and a distant SBC tandem and SBC being responsible for providing the other fiber pair. In order to dismantle this type of interconnection arrangement, MCI would lose its investment in the fiber pair it had provided. However, where MCI has business reasons that may prompt MCI to dismantle a POI, it should be free to do so, at its sole discretion. One example of a business reason that might prompt MCI to decide to decommission a POI would be if SBC materially increased its rates for leased facilities used by MCI to connect its switches to other POIs in a LATA. If SBC's rate increases resulted in rates that were uneconomical to MCI, MCI should have the ability to reduce the number of

POIs it maintains if MCI determined such action was appropriate. MCI must have the flexibility to make decisions based upon the economics of each POI.

The restrict Dr. Liu recommend also is unfair. MCI only agreed to and has established a POI at every SBC tandem in the Chicago LATA, whether economically efficient for MCI or not, because SBC agreed to compensate MCI for every vFX minute of use at a unitary rate notwithstanding any applicable regulatory rulings. SBC no longer operates in accordance with this agreement. Further, it would result in more regulation rather than less.

NIM Issue 15

**MCI: Should MCI be permitted to elect LATA-wide terminating interconnection?
SBC: Should MCI be required to trunk to every Tandem in the LATA?**

MCI's Position

MCI should be permitted to elect LATA-wide terminating interconnection. MCI would then be obligated to compensate SBC for the use of SBC's terminating facilities from the POI to the SBC tandem switch serving the customer (as adjusted by the RUF) and from the tandem office to the end user customer at reciprocal compensation rates. Thus, SBC would be fully compensated via either cost-based reciprocal compensation or switched access rates for all traffic terminating from MCI to SBC. Whether MCI should be required to trunk to every tandem in a LATA is a separate matter because, the establishment of trunk groups does not depend on the number of POIs MCI has. On this point, Staff witness Russel W. Murray explained, there is no direct relationship between a single POI architecture and tandem exhaust. "The number of POIs in a LATA does not in itself cause or for that matter alleviate tandem exhaust. It is my opinion that to alleviate or forestall tandem exhaust one should utilize direct trunking when it is justified. . . . Direct trunking, even from a single POI, reduces the volume of traffic through the tandems."

Due to potential problems of tandem exhaust, which can detrimentally impact both MCI's and SBC's customers, MCI is committed to working cooperatively with SBC to establish either direct office trunking or tandem trunking, where traffic patterns so warrant. (See MCI. Ex. 13.0, p. 6:151-54 and p. 7:155-57.) However, in doing so, it is critical that both parties recognize their responsibility to pay for any such trunks. As explained by MCI witness Ricca:

To the extent that DEOTs [*i.e.*, direct end office trunks] carry one-way traffic from MCI for termination to SBC, MCI should bear all of the costs of the trunks. To the extent that DEOTs carry one-way traffic from SBC for termination to MCI, SBC should bear all of the costs of the trunks. To the extent that these trunks carry two-way traffic between the parties, it is appropriate to apply the RUF [*i.e.*, relative use factor] as discussed in my Direct and Rebuttal Testimony relating to issue NIM 20, so that each carrier pays for the trunks in direct proportion to the total

minutes it originates on its network and sends to the other party for termination compared to the total minutes that traverse those trunks. (Ricca Direct at pp. 36-39; Ricca Rebuttal at pp. 24-26.)

(MCI. Ex. 13.0, p. 7:169-8:178.)

In view of the foregoing, the Commission should reject the contract language proposed by SBC, as it would require MCI to “establish trunks: 1) that it otherwise might not need; or 2) that traffic may not justify; or 3) that may in fact be SBC’s responsibility to establish.” (MCI Ex. 11.0, p. 27:642-45.) The Commission also should reject SBC’s improper attempt to use the banner of tandem exhaust to force MCI to bear all of the costs of alleviating the potential exhaust problem. Alleviating tandem exhaust should be a goal and is the responsibility of both parties.

Instead, MCI willingly agrees to continue its cooperative work with SBC to apportion the bandwidth on the interconnection facilities to establish direct end office trunking where necessary. Neither party is served by any acceleration of SBC’s tandem exhaust. More particularly, the interests of neither MCI and its customers nor SBC and its customers are served by the blocking of telephone calls that may result from tandem overload. However, just as MCI is willing to make significant trunking investments and switch translation changes when new tandems are deployed, SBC should be willing to make significant investments in deploying new tandems. Because the parties have not negotiated contract language to achieve these goal, the Commission should adopt MCI’s proposed language, which gives MCI the option to determine the trunks necessary for it to properly provide service to its customers.

NIM Issue 16

When is mutual agreement necessary for establishing the requested method of interconnection?

MCI’s Position

As with many of the disputed issues in the NIM Appendix, this issue is based on MCI’s right to establish interconnection points at any technically feasible location in SBC’s network. This issue primarily has to do with whether SBC can dictate to MCI where it will interconnect by unilaterally refusing to establish a fiber meet point at a location selected by MCI. SBC seeks to obtain this ability by injecting a requirement that the parties mutually agree on methods of interconnection. SBC ignores the fact that “mutual agreement” is not recognized by the FCC’s Local Competition Order as a condition for CLECs to interconnect with SBC. (See MCI Ex. 6.0-Rev., p. 39:973-981; 41:1036-42:1050.) The only basis on which the FCC permits an ILEC to refuse interconnection requested by the CLEC is technical infeasibility. (Id., at p. 39:965-969; see also 220 ILCS 5/13-801(b)(2).

Specifically, MCI has the right pursuant to the Act, FCC regulations, and the *Local Competition Order*, to require any technically feasible method of interconnection,

including a fiber meet point arrangement. As an incumbent local exchange carrier, SBC has the duty to provide interconnection for the facilities and equipment of any requesting telecommunications carrier at any technically feasible point. Telecom Act, Section 251 (c)(2)(B). The FCC's regulations on interconnection provide that:

Except as provided in paragraph (e) of this section [concerning collocation], an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, *any technically feasible method of obtaining interconnection* or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

47 C.F.R. § 51.321(a) (emphasis added).

MCI's preferred interconnection architecture would require each company to provide half of the fiber interconnection loop and provide the electronics at its own end. Thus, MCI and SBC would jointly provision the fiber optic facilities that connect the two networks and would equally share in the capital investment (each pays for one half of the fibers, and each purchases its own Fiber Optic Terminal at its own end). Neither party would charge the other for the use of the interconnection facility because it is built jointly. MCI and SBC have utilized this method in the past for interconnection in Illinois. (Id., at p. 40:1001-1014.) Therefore, it clearly is technically feasible, as evidenced by agreed language in Sections 2.2 and 4.4.1 of Appendix NIM. (Id., at p. 41:1017-1019.)

Moreover, MCI's proposed arrangement is consistent with meet point method expressly described by the FCC in its FCC's *Local Competition Order* (First Report and Order, *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996*, CC Docket No. 96-98, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, FCC 96-325, Released: August 8, 1996). And the required build out is appropriate and consistent with the "limited build out" to meet point used in the meet point arrangement described by the FCC. In connection with the "limited build out" to meet point arrangement, the FCC found the financial responsibility of each party to be part of the "reasonable accommodation of interconnection." *Local Competition Order* ¶ 553.

As evidenced by the agreed language of Section 2.2 and 4.4.1, SBC generally agrees to the fiber meet method of interconnection and the allocation of costs discussed above. However, SBC then improperly attempts to take it back. In proposed section 4.4.1, SBC proposes that the fiber meet interconnection "can occur at any mutually agreeable and technically feasible point." This provision would give SBC leeway to refuse to agree to the fiber meet arrangement proposed by MCI. Further, in proposed section 4.4.4.3, SBC proposes that there are two basic fiber meet design options and that the option selected must be mutually agreeable to both parties. Again, this would permit SBC to veto MCI's preferred option. This is confirmed by SBC's proposed

language for Section 4.4.4.3.1, which gives SBC the right to refuse to interconnect in the manner proposed by MCI if fibers are not already available and there is no “mutual benefit” to both parties, and Section 4.5.1, which requires mutual agreement for any other form of technically feasible interconnection. These proposals violate MCI’s federal law rights.

SBC’s proposals also conflict with state law. Section 13-801(b)(2) of the Public Utilities Act in part states:

An incumbent local exchange carrier shall make available to any requesting telecommunications carrier, to the extent technically feasible, those services, facilities, or interconnection agreements or arrangements that the incumbent local exchange carrier or any of its incumbent local exchange subsidiaries or affiliates offers in another state

SBC provides mid-span meets in Indiana. Moreover, in a complaint case in Indiana, the Indiana Commission ruled that SBC Indiana did not have veto power over a CLEC proposed mid-span meet arrangement and that each party must bear its own costs, holding that SBC must “bear the cost of providing those facilities.” *See Complaint Of Fbn-Indiana, Inc. Pursuant To 170 Iac 7-7 For Expedited Review Of A Dispute With Indiana Bell Telephone Company, Inc. D/B/A Ameritech Indiana Concerning Its Failure To Interconnect With Fbn Under A Commission Approved Interconnection Agreement. Complaint Of Fbn-Indiana, Inc. Pursuant To 170 Iac 7-7 For Expedited Review Of A Dispute With Indiana Bell Telephone Company, Inc. D/B/A Ameritech Indiana Concerning Its Failure To Interconnect With Fbn Under A Commission Approved Interconnection Agreement*, Cause No. 42001-INT-01-RD-01; Cause No. 42001-INT-01-RD-02, Indiana Utility Regulatory Commission, 2002 Ind. PUC LEXIS 415, October 16, 2002, at *32, 40-41. The Massachusetts Department of Telecommunications and Energy (“DTE”) reached the same conclusion, finding that has found, in an arbitration raising the same issue, that: “because a mid-span meet arrangement is technically feasible, Verizon must provide this method of interconnection to Media One and Greater Media. Verizon cannot condition this type of interconnection, as it claims, on the mutual agreement of the parties, or on the availability of facilities.” *Petition of Media One, Inc. and New England Telephone and Telegraph, for arbitration*, D.T.E 99-42/43, 99-52 (Mass. DTE at 24), August 25, 1999, at ¶ 199.

NIM Issue 17

MCI: Should facilities used for 251(c)(2) interconnection be priced at TELRIC rates?

SBC: Should a non-section 251/252 service such as Leased Facilities be arbitrated in this section 251/252 proceeding?

MCI’s Position

Section 251(c)(2)(D) of the Act provides that CLECs may obtain interconnection in accordance with the pricing requirements of §252. Thus, facilities used for 251(c)(2) interconnection should be priced at TELRIC rates. The FCC clearly delineated this requirement in its First Report and Order and, as SBC acknowledges, in the TRO, held: “to the extent that requesting carriers need facilities in order to ‘interconnect[] with the [incumbent LEC’s] network, section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission’s interpretation of this obligation.” (SBC Ex. 2.0, p. 34:728-35:734.)

It is important to note that this is not a question of what elements are or are not considered unbundled. Thus, the question of whether some component of SBC’s network is or is not an unbundled element under §251(c)(3) of the Act is separate and distinct, and has no bearing on SBC’s obligations regarding interconnection.

NIM Issue 18

MCI: Should SBC Illinois be permitted to limit methods of interconnection?

SBC: a. Should MCI be required to interconnect on SBC’s network?

b. Should the Fiber Meet Design option selected be mutually agreeable to both Parties?

MCI’s Position

See MCI’s position on issue NIM 16. For the reasons states there, MCI respectfully requests that the Commission accept its proposed language and reject SBC’s proposed language on this issue.

NIM Issue 19

MCI: If MCI provides SBC Illinois with the jurisdictional factors required to rate traffic, should MCI be permitted to combine InterLATA traffic on the same trunk groups that carry Local and IntraLATA traffic?

SBC: a) What is the proper routing, treatment and compensation for interexchange traffic that terminates on a Party’s circuit switch, including traffic routed or transported in whole or part using Internet Protocol?

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

c. What is the proper routing, treatment and compensation for traffic originated on customer premises equipment of the end user who originated and/or dialed a call in the Internet Protocol format and transmitted to the switch of a provider of voice communication applications or services when such switch utilizes Internet Protocol?

MCI’s Position

MCI proposes to include section 7.1.1 and 7.1.1.1, which explicit provide that MCI is permitted to carry local, intraLATA and interLATA traffic on the same trunk group provided such combination of traffic is not for the purpose of avoiding access charges. This relates to Issues NIM 5 and 12. MCI's proposal is both reasonable and appropriate because in many cases, it will be far more efficient for MCI to use one set of trunks rather than two to carry its interconnection traffic, which point SBC does not dispute. (See Direct Testimony of Thomas "Mark" Neinast, SBC Area Manager – Network Regulatory, PUC Docket 28821 (pp. 37 – 43) (testifying that "Two-way trunks conserve network resources by reducing the number of switch ports needed"). The efficiencies that Mr. Neinast discusses resulting from the use of trunks to carry two-way versus one-way traffic also would result if the interconnecting carriers were to combine multiple "types" of traffic on the same trunk group. In other words, MCI's proposal to combine traffic on the same trunk group similarly "conserve[s] network resources by reducing the number of switch ports needed." The network efficiencies – inuring to both MCI and SBC -- realized from combining traffic are no less real than those described by SBC witness Neinast in his Texas testimony.

SBC's proposal disregard these admitted efficiencies. Under SBC's proposals, MCI would have to maintain separate trunks to carry interLATA traffic (and some intraLATA traffic) in all instances if it wished the protections of the ICA to apply. If MCI included all of the traffic on a single trunk group, the trunk group would no longer be considered to be a local interconnection trunk group subject to many of the provisions of the ICA.

There is nothing in the Telecommunications Act or FCC rules that requires MCI to segregate its traffic on different trunks. To the contrary, the FCC has made clear its general view that carriers should not be forced to use two separate trunk groups when one will suffice. Indeed, in the context of its discussion of commingling, the FCC recognized the efficiencies of using a single set of facilities, explaining that "the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one network 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. Going even further, the FCC made clear that SBC cannot not deny MCI access to UNEs "on the grounds that such UNE or UNE combination shares part of [SBC Illinois's] network with access or other non-UNE services", which unambiguously demonstrates that the FCC certainly regards the combination of different types of traffic on SBC facilities as permissible, if not a right. *TRO* footnote 1793. Similarly, in its discussion of qualifying services, the FCC made clear that once an element is unbundled to use for a qualifying service, a carrier may use that UNE for non-qualifying services as well, because such an approach "maximizes the use of a network element" rather than imposing unnecessary costs of duplicative facilities. *TRO* ¶¶ 143-48. The same reasoning applies to interconnection – MCI should be able to deploy and use the most efficient network architecture available, which often will entail use of the same facilities to carry interLATA, intraLATA and local traffic.

In the Commission's AT&T arbitration (Docket 03-0239), the Commission stated:

Although the Commission may agree with AT&T in principle that combining traffic on Feature Group D trunks is more efficient, AT&T's proposal is incomplete.

From the context of the Commission's discussion, it appeared to have been concerned that AT&T's proposal complicated SBC's intercarrier billing due to the different rates SBC charges for various types of traffic that would all be passed over the combined Feature Group D interconnection trunks. While it is true that allowing traffic to be combined on the same trunk groups adds additional complexity to SBC's intercarrier billing, there is a significant question as to the extent of that additional complexity and the costs of that additional complexity weighed against the benefits of the trunking efficiencies that MCI and others, *including SBC*, would enjoy as a result of combining traffic. In other words, that complexity is certainly not dispositive of the question, and after consideration, should not outweigh the significant countervailing benefits of combining traffic.

Further, as far back as 1995, in the Commission's Customer's First Order in Docket 94-0096, issued April 7, 1995, the Commission found that there should be no difference in reciprocal compensation and access rates, thus expressing the goal of equalizing these rates. (*See Illinois Bell Telephone Company: Proposed introduction of a trial of Ameritech's Customers First Plan in Illinois, Illinois Bell Telephone Company: Addendum to proposed introduction of a trial of Ameritech's Customers First Plan in Illinois, AT&T Communications of Illinois, Inc.: Petition for an investigation and Order establishing conditions necessary to permit effective exchange competition to the extent feasible in areas served by Illinois Bell Telephone Company, Illinois Bell Telephone Company: Proposed introduction of a trial of Ameritech's Customers First Plan in Illinois (refiled)*, Consolidated Dockets 94-0096; 94-0117; 94-0146; 94-0301, Order dated April 7, 1995 at 208 – 209.) If this goal were implemented, it would wholly eliminate the only arguable detriment (i.e., added billing complexity) to be weighed against the benefits to be realized by allowing CLECs to efficiently utilize the interconnection trunks – benefits clearly and expressly touted by the FCC. In addition, in an order issued March 29, 2000 in Docket 97-0601/97-0602/97-0516, the Commission directed SBC Illinois to reduce its in-state access rates to cost-based rates. That Order, reaffirming an earlier decision, the Customer's First Order in Docket 94-0096, held that there should be no difference between reciprocal compensation and access rates.

CLECs would not be the only ones to benefit from MCI's proposals. There can be no dispute that allowing the use of combined trunk groups, which results in a more efficient use of trunking capacity, would ameliorate the trunk exhaustion complaints SBC has articulated in this proceeding. It also would positively address SBC's complaints that MCI's trunks currently are underutilized. Permitting MCI and other CLECs to combine traffic also would spur innovation. Thus, consumers would benefit as would all participants in Illinois' developing telecommunications market.

Further, as indicated above, the “additional complexity” about which SBC complains has never been defined. Nonetheless, it is a resolvable issue, notwithstanding SBC’s conclusory contention that reliance on usage factors applied to the aggregate traffic would lead to “unacceptably imprecise” billing. MCI already has agreed to provide SBC with jurisdictional use factors or, alternatively, actual measurements of jurisdictional traffic in accordance with the provisions of the Reciprocal Compensation Appendix. The terms and conditions pertaining to information exchanged for billing purposes; terms and conditions that are set out in that Appendix contain *agreed to* language in Sect. 3.2 that obligates both parties to provide Calling Party Number “when including such information is technically feasible.” The *agreed to* language in that section further states:

If either Party identifies improper incorrect or fraudulent use of local exchange services (including, but not limited to PRI, ISDN, and/or Smart Trunks) or identifies stripped, altered, modified, added, deleted, changed and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action.

With this agreed language, MCI has committed both to providing Calling Party Number information on every call where “such information is technically feasible” and to cooperating fully with any necessary investigation as to any instances where CPN appears questionable. And beyond these commitments by MCI, because CPN is not always available on every call, MCI has proposed language – to which SBC objects – in that same Section of the Reciprocal Compensation Appendix as a remedy for those exceptions:

Where CPN is not available the Parties agree to exchange equivalent signaling data that may be available.

Together, these provisions demonstrate the falsity of SBC’s statement that it will be unable “to identify the traffic” if combined on a single trunk group. To the contrary, SBC will be provided CPN on every call where it is technically feasible. In addition, the above referenced language belies any claim by SBC that it must “rely on billing factors.” Further, MCI is willing to work with SBC, in good faith, to develop other possible procedures to address potential billing issues.

Because MCI, SBC and others would enjoy substantial trunking efficiencies and because tandem exhaust and potential trunk underutilization would be ameliorated, the Commission should adopt MCI’s proposals. SBC’s objections to MCI’s use of combined traffic on interconnection trunk groups should be rejected for all of the reasons discussed, not the least of which is the fact that SBC’s concerns regarding tandem exhaust (NIM 15) and allegations of trunk underutilization (NIM 28) fly in the face of SBC’s objection to MCI’s proposal to combine traffic and increase traffic on the interconnection trunk groups.

Finally, MCI believes that the VoIP-related issue is not appropriately dealt with in the context of this bilateral arbitration because VoIP is the subject of another proceeding presently before the FCC. The Commission should take no action in this proceeding on any VoIP issues. When the FCC reaches a decision in the other proceeding, the parties may invoke change of law provisions to bring this agreement into conformance with the FCC's decision in that other proceeding. Should the Commission chooses to take up the merits of the VoIP-related issue, it should do so consistent with MCI's recommendation in Reciprocal Compensation Issue 23.

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.