

and 15.2 thereto. Accordingly, MCI's proposed language is wholly consistent with the Commission's determinations in the Arbitration Decision, and the Commission should adopt MCI's proposals. (SBC also has obligations to provide combinations under Section 271 of the Act. *See* 47 U.S.C. § 271.)

Specifically, Article IX of the existing interconnection agreement between the Parties lists certain combinations that SBC is required to provide and states that SBC shall perform functions necessary to combine SBC's network elements, even if those elements are not ordinarily combined in SBC's network. *See* §§ 9.3.3 and 9.3.4 of Article IX of the Parties' existing contract, attached as Exhibit 5.

SBC's Section 13-801 conforming tariffs (which implement Section 13-801) require SBC to, among other things, combine any sequence of unbundled network elements that it ordinarily combines for itself, including but not limited to the list of specific UNE combinations identified in the proposed Illinois 271 Agreement Amendment ("I2A") found in schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company on or about March 28, 2001 with the Illinois Commerce Commission in Docket 00-0700.¹⁰

Additionally, in accordance with the Commission's finding that: (i) "SBC's obligations to provide elements at TELRIC rates under PUA Section 13-801 (and the Commission's currently effective Order in Docket 01-0614) remain unchanged", and (ii) "this should be reflected in provisions produce by the parties", *see* AD at pp. 221-22, MCI's contract language proposals properly require SBC to provide combinations at TELRIC rates.

¹⁰ The "Provisions of Combinations of Network Elements" section of SBC's tariff begins at ILL. C.C. No. 20, Part 19, Section 15, 7th Revised Sheet No. 1 and goes through ILL. C.C. No. 20, Part 19, Section 15, Original Sheet No. 17. An abridged description of the specific list of UNE combinations identified in the I2A are at ILL. C.C. No. 20, Part 19, Section 15, 5th revised Sheet No. 2 through 1st Revised sheet No. 2.1.

Finally, the Parties have agreed to contract language that incorporates the additional Commission directives regarding UNE 71. *See* AD at pp. 236-37; Ex. 3 at §§ 2.2.10 and 21.5.2. Accordingly, the Commission should resolve UNE 71 and UNE 72 by adopting MCI's contract proposals. *See* Ex. 3 at §§ 21.2 – 21.9.17. SBC's proposals should be rejected because they constitute an inaccurate and unnecessary re-write of the Parties' rights and obligations with respect to combinations.

PRICING 39

Pricing 39 concerns the recurring rate elements MCI will have to pay SBC for Directory Assistance Listing Information ("DALI") services. Based on the Commission's finding that MCI improperly inserted this issue into the arbitration after filing its arbitration petition, *see* AD at p. 161, the Commission did not resolve Pricing 39. As a result, the Parties have been unable to agree on the DALI-related rates that should be included in the price list attached to their Agreement.

MCI asserts that the price list should include cost-based DALI rates. As MCI demonstrated during the arbitration proceedings, in Illinois, DALI is generated by SBC's service order process when a customer initiates service. Because SBC's line share represents a majority of the marketplace, SBC has the vast majority of DALI listings in the State of Illinois. Thus, there is no "market" upon which SBC can base "market-based" prices since all market participants obtain the vast majority of their listings from SBC. *See* MCI Ex. 4.0 at pp. 37:924-38:957 and 39:985-40:997.¹¹ Notwithstanding SBC's market control, during the arbitration,

¹¹ The FCC recognized that cost-based rates for DALI were appropriate in its Local Competition Third Report & Order, when it stated that, "Because an incumbent LEC would have the incentive to discriminate against competitors by providing them with less favorable terms and conditions than it provides to itself, we conclude that the term 'nondiscriminatory', as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself." *Local*

SBC's position was that the price list should include market-based DALI rates. Based on the Commission's resolution of Pricing 39, SBC now contends that the price list should not include prices for DALI, despite the fact that MCI will continue to purchase DALI from SBC.

In the absence of a determination by the Commission, agreed DALI rates will be excluded from the Parties' price list or will be shown as disputed by MCI, and the Parties will experience recurring billing disputes regarding the proper rates for DALI. Such disputes will unnecessarily drain the Parties' resources and ultimately may be presented to the Commission for resolution in another context. Worse yet, if MCI does not agree to purchase DALI at the "market-based" rates SBC can be expected to demand, SBC may refuse to provide DALI to MCI altogether.

Accordingly, because the Parties negotiated and briefed the substantive DALI issue, because both Parties acknowledged that this issue was in dispute, because the Parties cannot agree on DALI pricing and because MCI will continue to seek to obtain DALI from SBC, the Commission should resolve this issue. In particular, the Commission should conclude that SBC must provide DALI at cost-based rates, because Section 251(b)(3) of the federal Act mandates nondiscriminatory access between all competitive providers. 47 U.S.C. § 251(b)(3). Further, until such time as the Commission establishes cost-based DALI rates, the Commission should order SBC to provide MCI with DALI at the TELRIC rates proposed by MCI. *See Price*

Competition Third Report & Order, FCC 99-227, ¶ 129 (1999), citing *Local Competition Second Report and Order*, at ¶¶ 100-05, and *Local Competition First Report and Order*, at ¶ 217. The FCC reaffirmed that incumbents must "make available to unaffiliated entities all of the in-region telephone numbers they use to provide nonlocal directory assistance service at the same rates, terms and conditions they impute to themselves", *see* MCI Ex. 4.0 at pp. 38:969-39:984 (citing *FCC Forbearance Order* at ¶ 2) and "comply with the nondiscrimination requirements set forth in section 272(c)(1)". *Id.* (citing *FCC Forbearance Order* at ¶ 15).

List appended to the Parties' Pricing Appendix at lines 963 - 979, an excerpt from which is attached as Exhibit 6.

Dated: February 24, 2005

Respectfully submitted,

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