

ICC Docket No. 05-0154, 05-0156, and 05-0174 (Cons.)

**Staff Initial Brief
Attachments A through C**

Attachment A

The Accessible Letters

SBC's issuance of the accessible letters, and the terms upon which the letters purport to offer UNEs and services, or to withdraw such offerings, are central to the disputes that give rise to this proceeding. Accordingly, recital of them at some length is warranted.

A. CLECALL 05-016

Accessible letter CLECALL 05-016, published February 11, 2005, purports to offer CLECs a service called an "Interim UNE P Replacement Commercial Offering" on the following terms:

The arrangement will be confirmed in a short-term agreement not to exceed a term of 6 months, i.e., September 11, 2005, from the effective date of the TRO Remand Order.

Under the Interim "UNE-P Replacement" Commercial Offering, the CLEC will have the ability to maintain its embedded base of Mass Market Unbundled Local Switching/UNE-P lines while continuing to acquire and provision new mass market local switch port with loop combinations for the term of the Interim "UNE-P Replacement" Commercial Agreement.

The 6-month period will allow sufficient time for negotiations of a long-term Commercial Agreement.

The monthly recurring price for all mass market local switch port/loop combinations under this Agreement (i.e., the CLEC embedded base as well as new installations) is \$23.50 plus usage until June 11, 2005, and \$25 plus usage for the duration of the Agreement.

This Commercial Offering is not subject to performance measurements or related payments.

B. CLECALL 05-017

Accessible letter CLECALL 05-017, published on February 11, 2005, purports to eliminate certain UNE-P offerings, providing in relevant part as follows:

[A]s of the date of the [TRRO], i.e., March 11, 2005, CLECs are no longer authorized to place, nor will SBC accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs¹ for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after March 11, 2005 will be rejected. The effect of the TRO Remand Order on New, Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P is operative notwithstanding interconnection agreements or applicable tariffs.

SBC stands ready to negotiate a commercial substitute for unbundled switching in combination with DS0 loops (either a short term arrangement as outlined in **CLECALL05-016**, or a longer term contract). Of course, other options offered by SBC remain available, such as Resale and UNE-L.

C. CLECALL 05-018

Accessible Letter CLECALL 05-018 purports to impose conditions upon the use of UNE-P, and provides as follows:

To: SBC Local Wholesale Customers

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Mass Market Unbundled Local Switching/UNE-P. These plans are in accordance with the TRO Remand Order and are described below with respect to the following two areas as outlined in the Order: 1) the 12-Month Transition Period for the Embedded Base and 2) Transition Pricing for the Embedded Base during the 12-month transition period.

¹ "LSR" is an acronym for Local Service Request, pursuant to which a CLEC requests service from an ILEC to serve a retail customer. 511 H. Newton, Newton's Telecom Dictionary (16th Ed. 2000)

As explained in **CLECALL05-017**, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after the effective date of the TRO Remand Order will be rejected.

Your embedded base of Mass Market Unbundled Local Switching and UNE-P arrangements will be treated in the following manner, as per the requirements of the TRO Remand Order. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order. To facilitate both parties meeting this obligation, attached is a sample amendment to your Interconnection Agreement. A signature-ready Amendment, along with instructions, will be available on CLEC-Online (<https://clec.sbc.com/clec>) not later than February 21, 2005, for you to download, print, complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005, to ensure prompt implementation of the TRO Remand Order requirements.

Transition Period for the Mass Market Unbundled Local Switching/UNE-P Embedded Base.

As established by the TRO Remand Order, the transition period for the Mass Market Unbundled Local Switching/UNE-P embedded base is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Mass Market Unbundled Local Switching/UNE-P lines to an alternative serving arrangement, e.g., Resale, Standalone Loops. SBC is prepared to accept and process transitional orders now.

SBC stands ready to negotiate Commercial Agreement alternatives with you during this Transition Period. Such alternatives are available on a short-term basis as announced in **CLECALL05-016**, as well as on a long-term basis. To the extent that you have not taken the necessary steps to transition your embedded base Mass Market Unbundled Local Switching/UNE-P lines within the mandated 12-month period, SBC will re-price such arrangements to a market-based rate.

Transition Pricing for the Mass Market Unbundled Local Switching/UNE-P Embedded Base.

During the Mass Market Unbundled Local Switching/UNE-P Transition Period, the Mass Market Unbundled Local Switching/UNE-P embedded base rates will be modified beginning on the effective date of the TRO Remand Order, i.e., March 11, 2005. While the FCC's Order discusses the need to amend ICAs prior to the end of the transition period, it clearly sets forth provisions for the rate modifications to be retroactive to March 11, 2005. Therefore, to ensure accurate billing based on current lines in service each month, the most effective mechanism to facilitate the rate modification is to apply it beginning March 11, 2005, and eliminate the need for manual true-ups at the end of the transition period. The rates will be modified to a rate equal to the higher of (1) the rate your company paid for such Mass Market Unbundled Local Switching/UNE-P as of June 15, 2004 *plus \$1.00* or (2) the rate the state commission has established or establishes,³ if any, between June 16, 2004 and March 11, 2005 for Mass Market Unbundled Local Switching/UNE-P, *plus \$1.00*.

Should you have any questions regarding this implementation notice, please contact your Account Manager.

D. CLECALL 05-019

Accessible Letter CLECALL 05-019 purports to implement the TRRO with respect to high-capacity loops, and provides as follows:

To: SBC's Local Wholesale Customers

On February 4, 2005, the FCC issued its "TRO Remand Order", concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(a)(6), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to Dark Fiber Loops on an unbundled basis to requesting telecommunications carriers. The TRO Remand Order also finds, specifically in Rules 51.319(a)(4), (a)(5) and 51.319(e), that, as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to DS1/DS3 Loops or Transport or Dark Fiber Transport on an unbundled basis to requesting telecommunications carriers under certain circumstances. Therefore, as of March 11, 2005, in

accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements.

There are different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has included separate attachments for DS1 and DS3 Unbundled High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Unbundled Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport. Please refer to the appropriate attachment to determine how orders for each category of elements will be treated in light of the TRO Remand Order.

The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs.

...

LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops – Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) (“Affected DS1 and DS3 High-Capacity Loops”). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 High-Capacity Loops on or after March 11, 2005 will be rejected.

E. CLECALL 05-020

On February 11, 2005, SBC issues Accessible Letter CLECALL 05-020, providing as follows:

SBC’s Local Wholesale Customers

This letter is to share with you SBC’s plans to implement the FCC’s February 4, 2005 TRO Remand Order, as it pertains to Unbundled

Dedicated Transport and Unbundled High-Capacity Loops. These plans have been developed in accordance with the TRO Remand Order and are described in element-specific attachments to this Accessible Letter with respect to the following two areas as outlined in the TRO Remand Order: 1) the applicable Transition Period for the Embedded Base and 2) the applicable Transition Pricing for the Embedded Base. There are different transition periods defined and different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has set forth the different implementation plans in separate attachments for DS1 and DS3 High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport.

As explained in CLECALL05-019, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New, Migration or Move LSRs for unbundled high-capacity loops or transport, as is more specifically set forth in that Accessible Letter, and such orders will be rejected.

Your embedded base of the affected high-capacity loop and transport elements will be treated as is more specifically set forth in the attachments to this Letter, as per the requirements of the TRO Remand Order. Also attached is a sample amendment to your Interconnection Agreement. A signature-ready Amendment and instructions will be available on CLEC-Online (<https://clec.sbc.com/clec>) not later than February 21, 2005, for you to download, print, complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005.

Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order.

CLECALL05-020

LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to

DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) (“Affected Unbundled DS1 and DS3 High-Capacity Loops”).

As established by the TRO Remand Order, the transition period for the Affected Unbundled DS1 and DS3 High-Capacity Loops is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 High-Capacity Loops to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 High-Capacity Loops in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for embedded base Affected Unbundled DS1 and DS3 High-Capacity Loops to equal the higher of (1) the rate your company paid for such high-capacity loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such high-capacity loops, *plus 15%*.

TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Unbundled Dedicated Transport (UDT).

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 UDT in excess of the caps established by Rule 51.319(e)(2)(ii) and 51.319(e)(2)(iii) or on routes between pairs of Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(e)(2)(ii) and 51.319(e)(2)(iii) (“Affected Unbundled DS1 and DS3 High-Capacity Loops”).

As established by the TRO Remand Order, the transition period for Affected DS1 and DS3 UDT is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be

responsible for the transition of Affected DS1 and DS3 UDT facilities to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 UDT facilities in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for Affected DS1 and DS3 UDT to equal the higher of (1) the rate your company paid for such UDT facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such UDT facilities loops, *plus 15%*.

DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber High-Capacity Loops. As defined in the TRO Remand Order, the transition period for unbundled Dark Fiber High-Capacity Loops is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for the removal of services you are providing over these unbundled Dark Fiber High-Capacity Loops and for returning the Loops to SBC. To the extent that there are CLEC embedded base unbundled Dark Fiber High-Capacity Loops in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for embedded base unbundled Dark Fiber High-Capacity Loops to be modified to a rate equal to the higher of (1) the rate your company paid for such Dark Fiber High-Capacity Loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such Loops, *plus 15%*.

DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Transport. Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber UDT on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(iv) ("Affected Dark Fiber UDT").

As established by the TRO Remand Order, the transition period for Affected Dark Fiber UDT is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for removing services you are providing over the Affected Dark Fiber UDT and for returning these facilities to SBC. To the extent that there are CLEC embedded base Affected Dark Fiber UDT facilities in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for Affected Dark Fiber UDT to be modified to a rate equal to the higher of (1) the rate your company paid for such facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such facilities, *plus 15%*.

While you can enter into this Agreement any time between now and September 11, 2005, its term will expire no later than September 11, 2005. In order to avoid interruptions in new order processing effective March 11, 2005, as described in **CLECALL05-017**, the Agreement must be executed by close of business on March 4, 2005.

F. CLECALL 05-039

On or about March 11, 2005, SBC caused Accessible Letter 05-039 to be published. Accessible Letter 05-039 provides that:

To: SBC's Wholesale Customers

This is in response to inquiries SBC has received in the past couple of days with regard to the process for self-certification in order to

submit orders for high capacity loops and/or transport in non-impaired wire centers.

The FCC's Triennial Review Remand Order (TRRO), FCC 04-290, released February 4, 2005, at paragraph 234, requires that "to submit an order to obtain a high capacity loop or transport UNE, a requesting carrier must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI above and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3)."

SBC has filed with the FCC a list of the wire centers that meet the FCC's criteria for non-impairment as outlined in Rule 51.319 (see **CLECALL05-027**, **CLECALL05-031** and **CLECALL05-037**). In addition, SBC also has made available for CLEC review, in Washington D.C. and in the 13 states where the SBC ILECs are located, further data and information, specified by wire center, that shows the basis upon which SBC compiled that list. To obtain access to this information in a respective state, please call the attorney whose name appears on the list appended hereto as Attachment A. All of this information is being made available pursuant to and subject to the FCC's Protective Order in WC Docket 04-313 and CC Docket No. 01-338. In response to recent CLEC inquiries, early next week, SBC will make available the data underlying its certification on a further disaggregated basis.

Consistent with paragraph 234 of the TRRO, before a CLEC may submit orders for dedicated DS1, DS3 and dark fiber transport between Tier 1 and/or Tier 2 wire centers that SBC has identified as no longer eligible under the TRRO or that it is eligible to receive DS1 and DS3 loops in wire centers that SBC has identified as no longer eligible, the CLEC is under an affirmative duty (a) to perform a reasonably diligent inquiry regarding compliance with the requirements of parts IV, V, VI of the TRRO, and (b) to self-certify that, to the best of its knowledge, the CLEC is eligible to receive the UNEs it is requesting before submitting its request. As required by paragraph 234, that certification must "indicate" that the UNE meets the relevant factual criteria discussed in parts V and VI" of the TRRO. Accordingly, SBC is providing, as Attachment B, a form for CLEC "Self-Certification of Non-Impaired Wire Centers." Further, SBC requests that, in completing the Self-Certification of Non-Impaired Wire Centers, the CLEC should include, as an Attachment A to its self-certification, a list of the wires centers in which it will be requesting high capacity loops and/or transport including the

type(s) of UNE(s) that the CLEC is certifying it is eligible to obtain in each wire center. SBC also requests that the CLEC include, as an Attachment B to its self-certification, the factual or other basis for its belief that, notwithstanding the data supporting SBC's list of non-impaired wire centers, each of the wire centers identified in Attachment A do not meet the FCC's non-impairment criteria (that is, for each wire center, whether the CLEC contends that the wire center does not satisfy the relevant business line and/or fiber-based collocation criteria, and why), and thus why the CLEC believes it is entitled to the requested UNEs in each of those wire centers. [fn, noting that SBC recognizes its obligation to provide this UNE where a CLEC has self-certified].

If a CLEC believes that it is entitled to high capacity loops and/or transport in non-impaired wire centers, the CLEC is instructed to provide a completed and signed "Self-Certification of Non-Impaired Wire Centers" form to their account manager, a copy of which is appended hereto as Attachment B. Any additional questions regarding this accessible letter should also be directed to your account manager. C:\Documents and Settings\mg7438\Des C:\Documents and Settings\mg7438\Des 2 SBC recognizes that once a CLEC provides the self-certification required by paragraph 234 of the TRRO, it "must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."

SBC Ex. 1.1

Attachment B

IV. The Interconnection Agreements – Change of Law Provisions

A. The Cbeyond Complainants

1. Cbeyond

In its Complaint, Cbeyond points to the following Change of Law and Dispute Resolution provisions contained in the SBC Illinois – Cbeyond interconnection agreement, which provides, in full, the following:²

1.3 Changes in Law; Reservation of Rights.

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the following, as they were on February 19, 2003: the Act, the Illinois Public Utilities Act (including but not limited to 220 ILCS Section 13-801) (“PUA”), the rules, regulations and orders promulgated under the Act and the PUA by the FCC and by the Commission, and judicial decisions by courts of competent jurisdiction interpreting and applying said statutes, rules, regulations and orders. In the event of any legally binding judicial decision by a court of competent jurisdiction, amendment of the Act or the PUA, or legislative, federal or state regulatory action, rule, regulation or other legal action that revises, reverses, modifies or clarifies the meaning of the Act, the PUA or any of said rules, regulations, orders, or judicial decisions that were the basis of negotiations for this Agreement, or which otherwise affect any of the provisions set forth in this Agreement (individually and collectively a “Change in Law”), the Parties shall renegotiate the affected provisions in this Agreement in good faith and amend this Agreement to reflect such Change in Law. The term “legally binding” means that such judicial decision, amendment of the Act or the PUA, or legislative, federal

² Staff notes that there are apparently amendments to many of the complaining CLEC’s ICAs which may not be in the record. Some of these amendments are dated and signed, others are not. Generally, for the purposes of this Initial Brief, Staff will address only those ICA provisions (and closely related provisions) that the CLEC complainants pointed to in their respective complaints. Staff, however, reserves the right to address in its Reply Brief other relevant and operative ICA provisions and amendments that the other parties point out in their Initial Briefs. Staff urges the parties to clarify that the record contains the most recent operative ICA provisions.

or state regulatory action, rule, regulation or other legal action that has not been stayed, no request for a stay is pending, and if any deadline for requesting a stay is designated by statute or regulation, it has passed.

1.3.1 If any amendment to this Agreement pursuant to this Section 1.3 affects any rates or charges for the services provided hereunder, each Party reserves its rights and remedies with respect to the collection of such rates or charges on a retroactive basis. In the event that any renegotiation under this Section 1.3 is not concluded within ninety (90) days after one Party gives the other notice that it demands renegotiation pursuant to this provision, or if at any time during such ninety (90) day period the Parties shall have ceased to negotiate such terms for a continuous period of fifteen (15) business days, the dispute shall be resolved as provided in Section 1.9.1. This Section 1.3 sets forth terms and conditions for change in law events that are supplemental to the terms and conditions set forth in Section 1.30.4.

* * *

1.9.2.1 Dispute resolution under the procedures provided in this Section 1.9 shall be the preferred, but not the exclusive, remedy for all disputes between SBC Illinois and [Cbeyond] arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or court, agency, or regulatory authority of competent jurisdiction with respect to disputes as to which the Commission or such court, agency, or regulatory authority specifies a particular remedy or procedure. However, except for an action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suite to compel compliance with this Dispute Resolution process, no action or complaint may be filed in the Commission or a court, agency or regulatory authority of competent jurisdiction before the Informal Resolution of Disputes procedures set forth in Section 1.9.3 below have been followed, in good faith, by the Party commencing such action or complaint.

1.9.3.1 Upon receipt by one Party of written notice of a dispute, including billing disputes, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative informal dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the

representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

2. Global TelData

In its Complaint, GlobalTelData points to the Change of Law and dispute resolution provisions contained in the SBC Illinois – GlobalTelData interconnection agreement, which provides, in full, as follows:

28.2 Amendment or Other Changes to the Act; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment of the Act, or any legislative, regulatory, judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185 or any applicable Commission order purporting to apply the provisions of the Act (individually and collectively, an "Amendment to the Act"), either Party may by providing written notice to the other Party require that the affected provisions be renegotiated in good faith and this Agreement be amended accordingly to reflect the pricing, terms and conditions of each such Amendment to the Act relating to any of the provisions in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, such amendment shall be retroactively effective if so determined by the Commission and each Party reserves its rights and remedies with respect to the collection of such rates or charges; including the right to seek a surcharge before the applicable regulatory authority.

28.3 Regulatory Changes. If any legislative, regulatory, judicial or other legal action (other than an Amendment to the Act, which is provided for in Section 28.2) materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding), require that the affected provision(s) be

renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement.

* * *

27.4 Dispute Escalation and Resolution. Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a “Dispute”) arising under this Agreement shall be resolved in accordance with the procedures set forth in Section 27.4. In the event of a Dispute between the Parties relating to this Agreement and upon the written request of one Party, each of the Parties shall appoint within five (5) Business Days after a Party’s receipt of such request a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after the Parties’ appointment of designated representatives as set forth above, either Party may seek any relief it is entitled to under the Applicable Law. Notwithstanding the foregoing, in no event shall the Parties permit the pending of a Dispute to disrupt service to any Requesting Carrier Customer or Ameritech Customer.

3. Nuvox

In its Complaint, Nuvox points to the change of law and dispute resolution provisions contained in the SBC Illinois – Nuvox interconnection agreement, which provides, in full as follows:

29.3 Amendment or Other Changes to the Act; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based

on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment of the Act, or any final and nonappealable legislative, regulatory, judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket Nos. 96- 98 and 95-185 or any applicable Commission order or arbitration award purporting to apply the provisions of the Act (individually and collectively, an "**Amendment to the Act**"), either Party may by providing written notice to the other Party require that the affected provisions be renegotiated in good faith and this Agreement be amended accordingly to reflect the pricing, terms and conditions of each such Amendment to the Act relating to any of the provisions in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, each Party reserves its rights and remedies with respect to the collection of such rates or charges on a retroactive basis; including the right to seek a surcharge before the applicable regulatory authority.

29.4 Regulatory Changes. If any final and nonappealable legislative, regulatory, judicial or other legal action (other than an Amendment to the Act, which is provided for in Section 29.3) materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, on thirty (30) days' written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding and has otherwise become final and nonappealable), require that the affected provision(s) be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement.

4. Talk America

In its Complaint, TalkAmerica points to the change of law and dispute resolution provisions contained in the SBC Illinois – Talk America interconnection agreement, which provides, in full as follows:

21. Intervening Law.

21.1. This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms

and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). The affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

* * *

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No party may pursue any claim unless such written notice has first been given to the other Party. ...

B. The XO Complainants

1. Allegiance

In its Complaint, Allegiance points to the Change of Law and Dispute Resolution provisions in the SBC Illinois – Allegiance interconnection agreement, which provides, in relevant part, the following:

21. Intervening Law

21.1 This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98- 1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or its rights under this Intervening Law paragraph.

* * *

10.2 Alternative to Litigation

10.2.1 The Parties desire to expeditiously, economically and equitably resolve disputes arising under this Agreement without litigation. Accordingly, the Parties agree that the following Dispute Resolution procedures with respect to any controversy or Claim arising out of or relating to this Agreement or its breach are preferred. However, notwithstanding any other language in this Agreement, a Party may in its sole discretion invoke the informal or formal complaint procedures of the appropriate state or federal regulatory agency for any dispute arising out of this agreement or its breach which involves, in whole or in part, the application or interpretation of state or federal telecommunication laws and regulations upon conclusion of the informal Dispute Resolution procedures set forth in Section 10.5. In the event a Party invokes the jurisdiction of the appropriate state or regulatory agency, both Parties agree that the agency has jurisdiction to resolve all disputes arising under this Agreement to the extent permitted by Applicable Law.

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or Claim arising out of or relating to this Agreement or its breach. No Party may pursue any Claim unless such written notice has first been given to the other Party.

2. XO

The Change of Law and Dispute Resolution provisions in the SBC Illinois

– XO interconnection agreement provide, in relevant part, the following:

29.6a Intervening Law. This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Illinois Commerce Commission. In the event that any of the rates, terms and conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend

diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or its rights under this Intervening Law paragraph.

27.4 Dispute Escalation and Resolution. Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth in this Section 27.4. In the event of a Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint within five (5) Business Days after a Party's receipt of such request a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party

to the other Party shall be honored. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after the Parties' appointment of designated representatives as set forth above, either Party may seek any relief it is entitled to under Applicable Law. Notwithstanding the foregoing, in no event shall the Parties permit the pending of a Dispute to disrupt service to any Requesting Carrier Customer or Ameritech Customer.

28.2 Amendment or Other Changes to the Act; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment of the Act, or any legislative, regulatory, judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185 or any applicable Commission order purporting to apply the provisions of the Act (individually and collectively, an "Amendment to the Act"), either Party may by providing written notice to the other Party require that the affected provisions be renegotiated in good faith and this Agreement be amended accordingly to reflect the pricing, terms and conditions of each such Amendment to the Act relating to any of the provisions in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, such amendment shall be retroactively effective if so determined by the Commission and each Party reserves its rights and remedies with respect to the collection of such rates or charges; including the right to seek a surcharge before the applicable regulatory authority.

28.3 Regulatory Changes. If any legislative, regulatory, judicial or other legal action (other than an Amendment to the Act, which is provided for in Section 28.2) materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, on thirty (30) days' written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding), require that the affected provision(s) be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement.

28.4 Interim Rates. If the rates, charges and prices set forth in this Agreement are "interim rates" established by the Commission or

the FCC, the Parties agree to substitute such interim rates with the rates, charges or prices later established by the Commission or the FCC pursuant to the pricing standards of Section 252 of the Act and such rates, charges and prices shall be effective as determined by the Commission or the FCC.

C. McLeodUSA

In its Complaint, McLeod points to the Change of Law and Dispute Resolution provisions in the SBC Illinois – McLeodUSA interconnection agreement, which provides, in relevant part, the following:

21. Intervening Law.

21.1. This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). In addition, the Parties acknowledge that on

November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). The affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

* * *

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No party may pursue any claim unless such written notice has first been given to the other Party. ...

Attachment C

The CLEC Complaints

While the CLEC complaints arise from the same operative facts, their individual allegations are somewhat different. Accordingly, recapitulation of them at some length is warranted.

A. The Cbeyond Complaint

The Cbeyond complainants each allege that they have an interconnection agreement with SBC Illinois, and each such interconnection agreement contains a change-of-law provision, pursuant to which the parties to such agreement are required to incorporate changes of law through negotiation. Cbeyond Complaint, ¶¶2-5, 14-16. The Cbeyond complainants further contend that the TRRO is not self-effectuating, but rather requires negotiations to incorporate its requirements into the terms of the interconnection agreements between each CLEC and SBC Illinois. Id., ¶¶20-33. The Cbeyond complainants argue that SBC (and by extension, SBC Illinois, its subsidiary), attempted, by issuing one, some or all of the accessible letters described above, to unilaterally alter the interconnection agreements between it and each CLEC, thereby anticipatorily breaching each agreement, in violation of the TRRO and applicable change-of-law requirements. Id., ¶¶34-38.

The Cbeyond complainants assert that, notwithstanding the provisions of the TRRO, SBC Illinois is obliged to provide UNE-P and EELs under Section 13-801 of the Illinois Public Utilities Act, 220 ILCS 5/13-801, as well as under the

Commission's *Section 13-801 Order*³. *Id.*, ¶¶39-47. Likewise, the Cbeyond complainants contend that SBC Illinois is required to provide these elements under its existing intrastate tariffs. *Id.*, ¶¶48-53. The Cbeyond complainants argue that the Section 13-801 Order, Section 13-801 itself, and the tariffs in question have never been preempted. *Id.*, ¶¶54-62.

The Cbeyond complainants further aver that, even were the above arguments to be discounted, SBC Illinois is required by the terms of its Section 271 approval to provide the UNEs at issue at “just and reasonable” rates. *Id.*, ¶¶63-65. Finally, the Cbeyond complainants argue that SBC Illinois must provide such UNEs under the terms of its merger agreement. *Id.*, ¶¶66-69.

The Cbeyond complainants allege that SBC's issuance of the several Accessible Letters constitutes a unilateral attempt to deprive CLECs of access to UNEs in violation of the obligations described above. Cbeyond Complaint, ¶¶70, *et seq.* More specifically, they contend that SBC's issuance of the Accessible letters constitutes a violation of each CLEC's interconnection agreement with SBC Illinois, which in the Cbeyond complainants' view, oblige SBC Illinois to provide UNEs and services pursuant to the terms of the agreement in effect until such time as it is amended. *Id.*, ¶¶70-76.

The Cbeyond complainants next claim that SBC Illinois is obliged to supply UNEs to them under Section 13-801(d)(3) and (d)(4) of the Public Utilities Act, as well as the *Section 13-801 Order*, and has, through the issuance of the Accessible Letters, breached this duty. *Id.*, ¶¶77-94. They further claim that SBC

³ Order, Illinois Bell Telephone Company: Filing to implement tariff provisions related to Section 13-801 of the Public Utilities Act, ICC Docket No. 01-0614 (June 11, 2002) (“Section 13-801 Order”).

Illinois has, through the issuance of the Accessible Letters, violated its own intrastate tariffs. Id., ¶¶95-99. Further, the complainants argue that issuance of the Accessible Letters constitutes a violation of the SBC / Ameritech Merger Order. Id., ¶¶100-104. They also assert that the issuance of the Accessible Letters constitutes a violation of paragraphs 233 and 234 of the *TRRO*. Id., ¶¶105-110. The Cbeyond complainants contend that all of the alleged violations set forth in paragraphs 70 through 110 of the Complaint were knowing violations. See, generally, Id. ¶¶70-110.

Finally, the Cbeyond complainants allege that SBC, by issuing the accessible letters, and by virtue of the other violations set forth in the complaint, additionally violated Section 13-514(1) of the Illinois Public Utilities Act, in that it has: (a) knowingly impeded the development of competition in any telecommunications service market, Id., ¶113; (b) unreasonably refused or delayed interconnections or collocation, or is providing inferior connections to the Cbeyond complainants, Id., ¶114; (c) unreasonably impaired the speed, quality, or efficiency of services used by the Cbeyond complainants, Id., ¶115; (d) unreasonably acted or failed to act in a manner that has a substantial adverse effect on the ability of the Cbeyond complainants to provide service to their customers, Id., ¶116; (e) violated the terms of or unreasonably delayed implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers, Id., ¶117; (f) unreasonably failed to

offer network elements that the Commission or the Federal Communications Commission has determined must be offered on an unbundled basis to another telecommunications carrier in a manner consistent with the Commission's or Federal Communications Commission's orders or rules requiring such offerings, Id., ¶1118; (g) violated the obligations of Section 13-801, Id., ¶1119; and (h) violated the Commission's Section 13-801 Order, an order regarding matters between telecommunications carriers. Id., ¶120.

B. The XO Complaint

The XO complainants argue that they each have an interconnection agreement with SBC. XO Complaint, ¶¶1-2. They assert that, on February 18, 2005, each contacted SBC Illinois by letter, formally requesting negotiations to conclude TRRO amendments to their respective interconnection agreements with SBC. Id., ¶¶8-9. They allege that, in response thereto, SBC Illinois directed letters to them, referring them to Accessible Letters CLECALL 05-017 and 05-019 and the associated draft interconnection agreement amendment, and stated that: (a) "it would not be appropriate, nor is it necessary to initiate negotiations at this time"; (b) the XO complainants should execute and return the draft interconnection agreement amendment to SBC Illinois; and (c) "notwithstanding [the XO complainants' interconnection agreements], orders for elements that have been declassified through a finding of nonimpairment by the [TRRO] will not be accepted beginning March 11, 2005." Id., ¶10; Exhibit C. The XO complainants allege that they jointly responded to SBC Illinois by letter dated

March 2, 2005, advising SBC Illinois of their view that SBC Illinois' actions violated the Public Utilities Act and federal Telecommunications Act of 1996, and requested that SBC Illinois cure the violations alleged within 48 hours. Id., ¶13, Exhibits D, E. The XO complainants assert that SBC responded by letter dated March 4, 2005, stating that, while it was prepared to undertake the requested negotiations, it nonetheless intended to discontinue the offering of certain UNEs on March 11, 2005, as it had originally indicated. Id., ¶15, Exhibit F.

The XO complainants argue that the conduct in which they allege SBC Illinois to have engaged constitutes a violation of the obligation to negotiate in good faith, its interconnection agreements with the XO complainants, and federal and state law, including Section 252 of the federal Telecommunications Act of 1996, 47 U.S.C. §252; FCC Rule 51.809(a), 47 C.F.R. §51.809(a); Article IX of the Illinois Public Utilities Act, 220 ILCS 5/9-101, *et seq.*; and Section 13-514(1-2), (4-6), (8), (11), and (12) of the Illinois Public Utilities Act, 220 ILCS 5/13-514(1-2), (4-6), (8), (11-12). Id., ¶¶11, 16. The XO complainants further allege that SBC Illinois has “knowingly” impeded competition within the meaning of Section 13-514 of the Illinois Public Utilities Act. Id., ¶17.

C. The McLeodUSA Complaint

McLeodUSA's complaint is similar in its gravamen to that of the Cbeyond complainants. McLeodUSA alleges the issuance by SBC of Accessible Letters CLECALL 05-017 through 05-020 comprises bad faith negotiating and violates the SBC-Illinois/McLeod interconnection agreement and state and federal law.

McLeod USA Complaint, ¶15. McLeodUSA further contends that, on February 22, 2005, it contacted SBC Illinois by letter, formally requesting negotiations to conclude a *TRRO* amendment to its interconnection agreement with SBC, and stating to SBC that it took the view that the Accessible Letters did not reflect SBC's obligations or McLeodUSA's rights under the *TRRO*. Id., ¶13. McLeodUSA alleges that SBC replied by letter on March 1, 2005, generally rejecting McLeodUSA's contentions, and stating that "notwithstanding [McLeodUSA's interconnection agreement], orders for elements that have been declassified through a finding of nonimpairment by the [*TRRO*] will not be accepted beginning March 11, 2005." Id., ¶14. McLeodUSA states that it notified SBC Illinois by letter dated March 9, 2005 that it viewed SBC Illinois' position as violating the parties' interconnection agreement, the *TRRO*, the federal Telecommunications Act of 1996, and "other sources of SBC's unbundling obligations[.]" including Section 13-801 of the Illinois Public Utilities Act, the Commission's Section 13-801 Order, the FCC's SBC / Ameritech Merger Order, Section 271 of the federal Telecommunications Act of 1996, and SBC Illinois' intrastate tariffs. Id., ¶¶16(d), 19. In the same letter, McLeodUSA demanded that SBC Illinois cure these alleged violations within 48 hours. Id., ¶19.

McLeodUSA alleges that SBC Illinois responded by letter dated March 11, 2005, in which it in essence reiterated its position, and further referring McLeod to SBC Illinois' complaint and motion for temporary restraining order filed in the federal District Court for the Northern District of Illinois on February 25, 2005, in which SBC Illinois sought a temporary restraining order prohibiting the

Commission from enforcing Section 13-801 of the Public Utilities Act. Id., ¶¶20-21. McLeodUSA alleges that SBC Illinois stated that it would not reject orders for UNE-P and ULS until the court issued an order in that case. Id. McLeod contends that, in the course of a telephone call that took place on March 11, 2005, counsel for SBC Illinois advised its counsel that, while SBC's position was that emergency relief granted to the Cbeyond complainants and the XO complainants was applicable only to those entities, it was not possible to differentiate between orders for unbundled DS1 loops and dedicated transport placed by the Cbeyond complainants or the XO complainant, and such orders placed by other carriers. Id., ¶22. McLeodUSA also alleges the issuance by SBC of Accessible Letter CLECALL 05-039. Id., ¶23. It nonetheless contends that SBC has not cured the legal deficiencies of which McLeodUSA apprised it in its March 9, 2005 letter. Id., ¶24.

McLeodUSA argues that the conduct in which it alleges SBC Illinois to have engaged constitutes a violation of the obligation to negotiate in good faith, its interconnection agreement with McLeodUSA, and federal and state law, including Section 252 of the federal Telecommunications Act of 1996, 47 U.S.C. §252; FCC Rule 51.809(a), 47 C.F.R. §51.809(a); Article IX of the Illinois Public Utilities Act, 220 ILCS 5/9-101, *et seq.*; and Section 13-514(1-2), (4-6), (8), (11), and (12) of the Illinois Public Utilities Act, 220 ILCS 5/13-514(1-2), (4-6), (8), (11-12). Id., ¶26. McLeodUSA further alleges that SBC Illinois has "knowingly" impeded competition within the meaning of Section 13-514 of the Illinois Public Utilities Act. Id., ¶27.