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**BEFORE THE  
ILLINOIS COMMERCE COMMISSION**

AT&T Communications of Illinois, Inc.,	)	
TCG Illinois and TCG Chicago	)	
	)	
Petition for Arbitration of Interconnection	)	Docket No. 03-0239
Rates, Terms and Conditions and Related	)	
Arrangements With Illinois Bell Telephone	)	
Company d/b/a SBC Illinois Pursuant to	)	
Section 252(b) of the Telecommunications Act	)	
of 1996	)	

**SBC ILLINOIS' INITIAL POST-HEARING BRIEF**

Illinois Bell Telephone Company (“SBC Illinois”) respectfully submits its post-hearing brief.

The issues are organized by subject matter in the order in which the subjects appear in the Agreement, and numerically within each subject matter. For each issue, we identify the sections of the interconnection agreement that are tied to the issue and the SBC Illinois testimony on the issue. Then, “SBC Illinois Position” sets forth SBC Illinois’ position and briefly summarizes the grounds for it. Finally, there follows a Discussion of the issue.

The parties jointly filed Disputed Language Matrix sets forth the disputed contract language for each issue.

## DISCUSSION OF THE ISSUES

**GTC:**

**ISSUE 1.a:**       Should the change of law provision apply at the effective date of the agreement or from February 19, 2003?

**Section 1.3.0**

**SBC Illinois Testimony:**   None.<sup>1</sup>

### SBC ILLINOIS POSITION

It is impossible, as a practical matter, for the parties or the Commission to ensure that the Agreement fully reflects the law as it stands on the date the Agreement goes into effect. Accordingly, the Commission should, as Staff recommends, reject AT&T's proposal under which the only changes of law to which the Agreement must be conformed are those that occur before that date. The Commission should also reject AT&T's slightly modified proposal, which retains the Agreement's effective date as the trigger date for changes of law, but with an exception for the FCC's Triennial Review Order. This attempt to rescue AT&T's flawed proposal fails, both because it ignores all pre-effective date changes of law other than the Triennial Review Order and because it provides only that the Triennial Review Order "may" be a change of law event. The Commission should accept Staff's recommendation and adopt February 19, 2003, as the baseline date for the change in law provisions, because the parties' negotiations were premised on the law as it stood before that date.

### DISCUSSION

The General Terms and Conditions portion of the parties' agreement ("GT&C") will include, in section 1.3.0 *et seq.*, a "change of law" provision, which will permit either party to demand that the agreement be amended, after it is approved, to conform to changes in the statutes, rules, judicial decisions and Commission orders that constituted the legal framework for the negotiation and arbitration of the Agreement. The parties have three disagreements about the change of law provision, and the first of these is the date after which an event must occur in order to qualify as a "change of law" event. AT&T maintains the date should be the date on

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<sup>1</sup> SBC Illinois elected to file no testimony on a number of issues that are of the sort that are colloquially referred to as "legal issues," which SBC Illinois believes are most appropriately addressed on brief alone. SBC Illinois' election not to submit testimony on these issues does not by any means imply that SBC Illinois considers them unimportant. Quite the contrary, SBC Illinois chose to file no testimony on some of the most important issues in the arbitratin – issues on which SBC Illinois should prevail on legal grounds.

which the Agreement goes into effect. SBC Illinois maintains the date should be February 19, 2003, because the parties' negotiations were based on the law as it stood as of that date. Staff agrees with SBC Illinois.<sup>2</sup>

If interconnection agreements were negotiated, arbitrated and approved in Utopia, AT&T would be right – change of law events could occur only after an agreement was approved and went into effect. That is because in Utopia, each agreement, on the day it goes into effect, would reflect the law as of that date: The parties would somehow magically anticipate, during their pre-arbitration negotiations, every issue that would need to be arbitrated in light of the legal developments that would occur during the course of the arbitration, and the Commission would somehow magically ensure, by means of its arbitration decision and its conduct of the approval proceeding that follows, that every provision in the contract (except to the extent the parties might agree otherwise) was in synch with the law on the date the contract went into effect. And with the agreement in perfect conformity with the law as of the effective date, the agreement could not possibly need to be adjusted later to conform with any pre-effective date legal development – all that adjusting would already have been taken care of.

As Staff witness Zolnierек explains, however, interconnection agreements are not negotiated, arbitrated or approved in Utopia. “As a practical matter, it is possible for changes in applicable law too occur too late in this process for the parties and/or the Commission to be able to take such changes into account in negotiating or arbitrating an interconnection agreement.” Zolnierек lines 143-146. As a result of that practical reality, “[u]nder AT&T’s proposal, changes

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<sup>2</sup> The principal disputed contract language that pertains to this issue appears at the beginning of section 1.3.0, where AT&T’s proposed language states, “**The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the following, as of the effective date of this Agreement.**” and SBC Illinois’ proposed language states, “**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.**”

in law that occur during this gap period could be excluded from the change of law provision to the extent such changes occur prior to the effective date of the agreement. . . . Therefore, in my opinion, it is not sound policy nor policy consistent with [the] 1996 Act to require the parties to adopt language that might fail to permit parties the opportunity to comport the agreement to changes in applicable law. For this reason, I recommend the Commission reject AT&T's proposed Section 1.3.0 language." *Id.* lines 146-157.

After it saw Dr. Zolnierek's testimony, AT&T partly capitulated, and now proposes that there be a special carve-out for the FCC's Triennial Review Order. Under AT&T's revised proposal, section 1.3.0 – while retaining the effective date of the Agreement as the trigger date for all other changes of law (West Reply lines 49-52) – would state that the parties did not rely on the Triennial Review Order as the basis for negotiation of this Agreement and “as such agree that it may constitute a Change in Applicable Law pursuant to this section when such decision becomes legally binding” (*id.* lines 65-69).

AT&T's recognition that its position is untenable in light of the considerations discussed by Dr. Zolnierek is commendable. But AT&T's proposed “compromise” to meet those considerations falls woefully short, for two reasons. First, it says only that the Triennial Review Order “may” constitute a Change in Applicable Law. Left unsaid is how one determines whether that Order actually *is* a Change in Applicable Law – and what happens when SBC Illinois asserts its right to conform the contract to the Order under section 1.3.0 only to be told by AT&T that the Order is not, in AT&T's opinion (and for some reason that AT&T has not yet devised), a Change in Applicable Law. (This might seem too outlandish a position for AT&T to take, but it would be no more outlandish than AT&T's pre-Zolnierek position that disqualified the Triennial Review Order as a change in law event altogether.)

Second, AT&T's proposal addresses only part of the problem. Contrary to AT&T's assertion (West Reply lines 28-32), Dr. Zolnierek's stated concern, and the concern addressed by SBC Illinois' proposed language for section 1.3.0, is not merely "that AT&T's language might preclude parties from incorporating applicable provisions of the FCC's anticipated Triennial Review Order." Indeed, Dr. Zolnierek's entire three-page discussion of why AT&T's proposed section 1.3.0 should be rejected (Zolnierek lines 133-230) does not even mention the Triennial Review Order. Rather, the concern Dr. Zolnierek expressed is a general one – that changes in applicable law can occur too late in the process to be taken into account "in negotiating or arbitrating an interconnection agreement" (*id.* lines 143-146) and that *any* such changes in law could be excluded by AT&T's proposal (*id.* lines 146-148). The parties' negotiations were based on the law as it was prior to February 19, 2003 (*see id.* lines 265-269 and n.23), and post-February 19, 2003 legal developments therefore should be eligible for treatment as changes in law under the parties' agreement. The FCC's Triennial Review Order will almost certainly prove to be the most important such development, but that is no reason for it to be treated as the only one.

Accordingly, the Commission should accept Staff's recommendation on this issue and "adopt SBC's proposed date of February 19, 2003 as the baseline date for the change in law provisions." Zolnierek lines 280-281.

**ISSUE SBC-1:** Should the parties' interconnection agreement, when it is approved by this Commission (the "Agreement Approval Date"), reflect (i) order(s) and regulations, if any, that the FCC promulgates before the Agreement Approval Date in its Triennial Review proceeding, along with the decision of the United States Court of Appeals for the D.C. Circuit in *United States Telecom Association, et al. v. FCC*, No. 00-1012 ("USTA"); and (ii) the decision, if any, that the United States District Court for the Northern District of Illinois renders before the Agreement Approval Date in Case No. 02-C-6002, SBC Illinois' pending challenge to this Commission's 801 Order (the "801 Case").

**SBC Illinois Testimony:** None.

#### SBC ILLINOIS POSITION

In its Response to AT&T's Petition for Arbitration, SBC Illinois explained, at pages 1-4, why this Agreement should reflect the law as it exists on the date it is approved and goes into effect. SBC Illinois incorporates that explanation by reference here.

SBC Illinois also stated, however, that an acceptable alternative would be for the Commission instead to resolve GT&C Issue 1 in favor of SBC Illinois. Response at 4. That way, significant legal developments that have occurred since February 19, 2003 – even though they will not be reflected in the Agreement when it is approved and goes into effect – can be reflected in the Agreement later via the change of law provisions.

Staff has since recommended that the Commission "adopt SBC's proposed date of February 19, 2003 as the baseline date for the change in law provisions" (*i.e.*, resolve GT&C Issue 1.a in favor of SBC Illinois) (Zolnierek lines 280-81), and that the Commission not adopt SBC Illinois' alternative proposal to require the Agreement to reflect current law on the date it is approved (*i.e.*, resolve Issue SBC-1 against SBC Illinois) (*id.* line 234 *et seq.*).

The critically important point is that *either* GT&C Issue 1 *or* Issue SBC-1 must be resolved in favor of SBC Illinois. Otherwise, the parties (and the Commission) would be in the absurd position of having an interconnection agreement that is *never* brought into conformity with legal developments that occurred between February 19, 2003, and the Effective Date of the Agreement. SBC Illinois is content for the Commission to avoid that outcome by accepting Staff's recommendations on both GT&C 1.a and SBC-1.

## **DISCUSSION**

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

GTC:

ISSUE 1.b: Should either party be obligated to renegotiate a change in law that is not applicable and materially affects this agreement?

Section 1.3.0

SBC Illinois Testimony: None.

#### SBC ILLINOIS POSITION

AT&T proposes to add language to the change of law provision that would serve only to provoke unnecessary disputes for the Commission to resolve and to unnecessarily prolong the process of amending the Agreement to conform with changes of law. While AT&T may be correct – in theory – that the Agreement should be amended only to conform with *material* changes of law that affect *material* provisions in the Agreement, all that would be accomplished by adding a materiality requirement to the change of law provision would be to give the party resisting the change an excuse to initiate a dispute over whether the change is or is not “material.” The obviously sensible approach is to recognize that in instances where there clearly has been no material change (or no change affecting a material provision of the Agreement), neither party will insist on renegotiation.

AT&T’s separate proposal for a two-stage dispute resolution process – one to determine whether there has been an applicable change of law and another to determine how the Agreement should be amended to reflect that change – is cumbersome and impractical, and is transparently intended only to introduce delay into the change of law process. If either party demands renegotiation in light of an asserted change of law, the other party is free to contend that the asserted change does not warrant an amendment to the Agreement, but that party should not be permitted to leverage that contention into a protracted delay of the renegotiation and change of law process.

#### DISCUSSION

AT&T’s position is one of those that at first blush appears fairly reasonable, but that even a few moments’ thought shows is an invitation to disaster.

The issue has two parts. First, AT&T maintains that the interconnection agreement should be subject to amendment to conform with a change of law only if the change is a *material* change that *materially* affects a *material* provision in the agreement. This is reflected in AT&T’s proposed version of GT&C section 1.3.0, which reads in pertinent part (with emphasis added):

. . . . Change in Applicable Law shall be defined as any 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 *materially* revises, reverses, modifies or clarifies the meaning of the Act, the PUA or any of said rules, regulations, Orders, or judicial decisions which otherwise *materially* affect any of the *material* provisions set forth in this Agreement.

In theory, AT&T's position makes sense. Why would anyone want to amend a contract in light of a change of law that is *immaterial* or that has only an *immaterial* effect on the parties' contract? AT&T's proposed contract language, however, is horrendous. For changes of law that AT&T and SBC Illinois would agree are immaterial, the language is plainly unnecessary. And for changes of law about whose materiality the parties would disagree, the language guarantees pointless disputes that would be a nightmare for the Commission to have to resolve and that would produce only unnecessary delay.

If SBC Illinois approaches AT&T on account of a change of law that AT&T thinks is immaterial, AT&T can simply say so. If SBC Illinois agrees the change is immaterial, it will back off (or, more likely, it will not have raised the point in the first place). If SBC Illinois persists, that means, by definition, that SBC Illinois considers the change material. So now AT&T's language has created a new dispute – not a potentially nice, clean dispute about how to conform the contract to a change of law, but an intractable dispute about whether something is or is not “material.” And to make matters worse, AT&T's proposed language does not give a clue how to determine whether something is or is not “material.”<sup>3</sup> And to make matters still worse, AT&T's proposed language uses the word “material” to modify three different things, and invites separate disputes about the materiality of all three things: (1) the revision, reversal,

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<sup>3</sup> “Materiality” is a notoriously elastic term, and a search for a crisp, usable definition that the Commission might rely on to decide disputes of the sort that AT&T's language would provoke would leave the Commission as bereft of guidance as AT&T's proposed language does. The first three definitions of the term “material” in Black's Law Dictionary (4th ed.) are “important; more or less necessary; having influence or effect.” Not much help there.

modification or clarification of the change of law; (2) the provision in the Agreement; and (3) the affect of the change on the provision.

If either party ever insists on an amendment to conform the Agreement to a change of law that is arguably immaterial (an unlikely scenario), it will be much easier to arrive at an appropriate amendment (after all, if the change of law is so minor, there should not be much controversy about the amendatory language), than it would be to litigate the question whether the change is or is not “material.” AT&T’s materiality proposal should therefore be rejected.

The second part of GT&C Issue 1.b arises out of an even sillier AT&T proposal. AT&T contends that a change of law should not prompt negotiation of a possible amendment unless the change pertains to this Agreement. Of course it shouldn’t. And if SBC Illinois were to request renegotiation of this Agreement in light of a new FDA labeling regulation for tomato paste, SBC Illinois would fully expect AT&T to resist and to carry the day in this Commission if SBC Illinois were to push the point. But that does not justify AT&T’s proposed contract language for GT&C Section 1.3.0 that reads:

**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 or if the non-requesting Party refuses to engage in such renegotiation on the ground that there has been no Change in Applicable Law sufficient to require renegotiation under this Section, the dispute shall be resolved as provided in Section 9 of this Agreement.**

When one compares the workings of the change of law process with and without that language, one sees that AT&T’s proposal has nothing to do with making sure that the Agreement is not amended to conform to an inapplicable change of law, but is actually an attempt to build

delay into the change of law process.<sup>4</sup> Without AT&T's language, the process works like this: Either party, upon the occurrence of an event that it believes is a change of law that affects this Agreement, may demand renegotiation of the affected provision(s). If the parties do not agree on a conforming amendment within ninety days after the demand is made, they must attempt to resolve their dispute in accordance with section 1.9 of the General Terms and Conditions. Section 1.9 is the general "Dispute Resolution" portion of the Agreement. It provides for a sixty-day informal dispute resolution between the parties; commercial arbitration if the parties agree on arbitration; and formal dispute resolution by this Commission if need be. In any of these dispute resolution modes, the party upon which the demand for renegotiation was made can, of course, take the position that no amendment to the Agreement is called for because there has been no change of law that actually affects any of the legal premises on which the Agreement was based.<sup>5</sup>

AT&T's language would add an unnecessary and time-consuming layer to the process. Here is how the change of law provision would work if AT&T's language were adopted and if SBC Illinois were to demand renegotiation of a provision in light of a hypothetical court decision in 2004: AT&T, assuming it wishes to delay, discusses possible amendments with SBC Illinois, but also raises questions concerning whether the decision actually changed one of the legal

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<sup>4</sup> AT&T's desire to prolong the change of law process is manifest throughout the sub-parts of Issue 1. GT&C Issue 1.d concerns an AT&T proposal that would insulate the Agreement from amendment to conform to a change of law until the change of law is "final and non-reviewable" – which, as we discuss below, could be a matter of years for most important changes of law. And as we also show below, AT&T's proposed change of law language actually provides for *three* separate Commission proceedings between AT&T and SBC Illinois for a single change of law event.

<sup>5</sup> This procedure is established in SBC Illinois' proposed sections 1.3.0 and 1.3.1, which read in pertinent part, "In the event of any [change of law event], the Parties shall renegotiate the affected provisions in this Agreement in good faith and amend this Agreement to reflect such Change in Law. In the event that any renegotiation . . . 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."

premises on which language in the Agreement was based. Ultimately – perhaps after a month or two of renegotiation – AT&T declares that it is unwilling to further discuss a possible amendment because it has concluded, based on its review of the record of the parties’ 2002-2003 negotiations, that the recent court decision did not, in AT&T’s opinion, change any of the legal premises on which language in the Agreement was based. Then, under AT&T’s proposal, the parties would resort to dispute resolution under section 1.9 of the Agreement, *solely on the question whether there has or has not been an applicable change of law*.<sup>6</sup> Assuming the issue is an important one, the question will not be resolved informally between the parties, but instead will wend its way to this Commission. Then, if the question is resolved in SBC Illinois’ favor – *i.e.*, if the Commission determines there has in fact been an applicable change of law – the parties, under AT&T’s proposal, recommence their negotiations concerning language for an appropriate contract amendment. If those negotiations fail (which, again, is likely if the issue is an important one), SBC Illinois would then have to initiate another Commission proceeding to resolve that disagreement.

AT&T’s proposal to introduce a layer of preliminary dispute resolution on the question whether there has been an applicable change of law is patently absurd, and is patently intended for the sole purpose of prolonging the change of law process. To be sure, the party on whom a demand for renegotiation is made under section 1.3.0 must be allowed to assert the position that there has been no applicable change of law, *i.e.*, that no contract amendment is in order. SBC Illinois’ proposed procedure allows for that, but it appropriately contemplates that the question whether there has been an applicable change of law will be addressed concurrently with the question of how the contract should be amended if there has been such a change.

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<sup>6</sup> AT&T’s testimony makes clear that under AT&T’s proposal, this question would have to be resolved first, before dispute resolution could be undertaken on the question of possible amendatory language. *See* West Reply lines 123-128; 136-140.

The Commission should therefore approve SBC Illinois' proposed language for GT&C sections 1.3.0 and 1.3.1 and reject AT&T's.

GTC:

ISSUE 1.d:           Should there be a final and nonreviewable standard for dispute resolution related to change in law?

Sections 1.3.0 and 1.3.1

SBC Illinois Testimony: None.

SBC ILLINOIS POSITION

This Agreement is based on the law as it was when the parties negotiated it (and the Commission arbitrated it), and when there is a change in the law on which the Agreement was based, the party that the change favors is entitled to demand that the Agreement be amended to reflect the change. Accordingly, the parties should be permitted to invoke their change of law rights once the change of law event is “legally binding” – that is, once the judicial decision or Commission Order (for example) is in effect and is no longer subject to a possible stay. AT&T’s proposal – that a party that does not like a change of law should be allowed to delay the process of amending the Agreement until the change of law event is “final and nonreviewable” – leads to absurd results, because it would require the parties to continue to operate under old laws and old rules long after – sometimes years after – those laws and rules change.

DISCUSSION

SBC Illinois proposes that the parties be permitted to invoke their change of law rights under section 1.3.0 once the change of law event is “legally binding” – that is, once the judicial decision or Commission Order (for example) is in effect and is no longer subject to a possible stay.<sup>7</sup> AT&T, on the other hand, proposes that a party that does not like the change of law be allowed to delay the process of amending the Agreement until the change of law event is “final and nonreviewable” – that is, until the judicial decision or Commission Order (for example) is no

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<sup>7</sup> SBC Illinois’ proposed language for section 1.3.0 provides in pertinent part (with emphasis added), “In the event of any *legally binding* judicial decision . . . , amendment of the Act or the PUA, or [other] 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 the negotiations for this Agreement . . . , 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 [other] action . . . 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.*

longer subject to appeal.<sup>8</sup> AT&T's proposal must be rejected, because it would require the parties to continue to operate under old laws and rules long after – sometimes years after – those laws and rules change. Indeed, since this contract has only a three-year term (*see* GT&C Section 1.2.1), AT&T's proposal would render the change of law provision practically useless.

The absurdity of AT&T's position is nicely illustrated by AT&T's approach to the Triennial Review Order. As discussed above under GT&C Issue 1.a, AT&T's position, until Staff filed its testimony, was that to qualify as a change of law event, an event had to occur after the Agreement went into effect. When Staff explained why that position was untenable, AT&T proposed a special carve-out for the Triennial Review Order, so that that Order could be treated as a change of law event even though it would occur before the effective date of the Agreement. But that carve-out would be worthless (or nearly so) if AT&T's position on Issue 1.d were to prevail. The Triennial Review Order will be appealed, and can reasonably be expected to be litigated for years – at least if the appellate history of the FCC's previous unbundling rules is any guide.<sup>9</sup> Thus, AT&T's "final and nonreviewable" requirement would lead to the following ridiculous result: The Triennial Review Order, which makes significant changes in the unbundling rules that were the basis for this Agreement, is issued and becomes effective well before this Agreement does. After the Agreement is approved, SBC Illinois invokes its change of law rights in order to have the Agreement conformed to the new unbundling rules promulgated in the Triennial Review Order, but AT&T objects that those rules are not yet "final

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<sup>8</sup> AT&T's proposed language for section 1.3.0 provides in pertinent part, "either Party may petition the ICC for a determination that, during any portion of the period during which any Change in Applicable Law subject to this section 1.3 is still subject to review and has not yet become final and nonreviewable, the Parties should defer any renegotiation or dispute resolution pursuant to section 1.9.1.2 below.

<sup>9</sup> Some of the FCC's first set of unbundling rules under the 1996 Act, promulgated in August of 1996, were still on review in the United States Court of Appeals four years later, when the Eighth Circuit issued its decision in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000). Similarly, unbundling rules that the FCC issued in its *UNE Remand Order*, which was released on November 5, 1999, were still in play until *at least* May 24, 2002, when *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) was decided.

and nonreviewable.” Consequently, the parties continue to operate under an obsolete set of rules (or, more precisely, under contract language that was driven by an obsolete set of rules) until the Triennial Review Order has worked its way through the federal courts of appeals and, in all likelihood, the Supreme Court. In other words, until this Agreement has expired.

AT&T apparently recognizes the absurdity of this outcome. Accordingly, AT&T proposes, in connection with its carve-out for the Triennial Review Order on Issue 1.a, that the Triennial Review Order be subject to treatment as a change of law once it is “legally binding.”<sup>10</sup> That fixes the timing problem for the Triennial Review Order, but AT&T is still proposing the same absurd regime for all other change of law events. If, as AT&T recognizes, the Triennial Review Order should qualify as a change of law event once it is legally binding, so should any other FCC order, Commission order or federal court decision that changes the legal foundation on which this Agreement is based. Thus, AT&T’s concession to “legally binding” on Issue 1.a is an admission that AT&T’s “final and nonreviewable” proposal on Issue 1.d must fail.

AT&T may point out that its language does not absolutely preclude an event from being treated as a change of law until it is final and nonreviewable. And that is correct – AT&T’s proposed language “merely” provides that either party may, after the other party has invoked its right to demand renegotiation, petition the Commission for a determination that renegotiation should be deferred because the change of law event is not yet final and nonreviewable. That, though, actually makes AT&T’s proposal even less appealing, because it creates an opportunity for yet another Commission proceeding, this one on the question whether renegotiation should be deferred – a question that the Commission would apparently be asked to decide with no guidance

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<sup>10</sup> The pertinent language in AT&T’s proposal for Issue 1.a is, “The Parties acknowledge that the FCC’s 2003 Triennial Review Order was not relied upon as a basis for negotiation of this Agreement and as such agree that it may constitute a Change in Applicable Law pursuant to this section when such decision becomes legally binding.” See West Reply lines 65-69. AT&T then goes on to define “legally binding” in a way that mirrors SBC Illinois’ definition of that term.

(at least from the Agreement) on the criteria it should use to make its determination. In fact, though, renegotiation in light of a change of law should *never* be deferred, unless the parties agree to defer it. This Agreement is based on the law as it was when the parties negotiated it (and the Commission arbitrated it), and when there is a change in the law on which the Agreement was based, the party that the change favors is entitled to demand that the Agreement be amended to reflect the change. There is no plausible rationale for making that party wait for years before it can avail itself of that right.<sup>11</sup>

Finally, adoption of AT&T's "final and nonreviewable" language would have the potentially discriminatory effect of putting this Agreement on a different footing than all of SBC Illinois' interconnection agreements with other carriers that do not include that language (which is all or substantially all of SBC Illinois' other interconnection agreements). When a significant change of law event occurs, all of those interconnection agreements will be subject to amendment (and all carriers that enter into new interconnection agreements sufficiently after the change of law event will be subject to the new law with no need for amendment). No one, in other words, will be waiting for the event to become final and nonappealable – except, if AT&T has its way, AT&T.

Accordingly, the Commission should resolve GT&C Issue 1.d in favor of SBC Illinois, along with GT&C Issues 1.a and 1.b.

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<sup>11</sup> As one considers AT&T's change of law proposals, it becomes increasingly obvious that taken as a whole, they are designed to eliminate change of law as a workable concept for this Agreement. Under AT&T's proposals, a single change of law event could actually precipitate *three* separate Commission proceedings: one to decide whether an "applicable" change of law has actually occurred (*see* Issue 1.b); one to decide whether or not renegotiation should be deferred until the change of law event is final and nonreviewable; and one to resolve any differences the parties may have over amendatory language to reflect the new law.

GTC:

ISSUE 2.a: Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages when such unlimited damages were not factored into SBC's cost studies underlying the UNEs and services provided under this agreement?

Sections 1.7.1.2 and 1.7.2.1

SBC Illinois Testimony: Watkins Direct, lines 45-91; Watkins Rebuttal, pages 1-7.

#### SBC ILLINOIS POSITION

The parties' only disagreement is whether the limitation of liability on which they have agreed will or will not be subject to an exception for "obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC," as AT&T proposes. It should not be, particularly in light of SBC Illinois' acceptance (in its reply testimony) of an exception for payments required pursuant to the performance measures provisions in the Agreement. The additional exception proposed by AT&T is vague, unnecessary, and – to this point, at least – unexplained. The Commission should therefore direct the parties to include in their Agreement the limitation of liability provision that the Commission ordered when it arbitrated virtually the same issue last year in Docket No. 01-0623. SBC Illinois does not know whether Staff will support or oppose that proposal. In its testimony, Staff opposed the limitation of liability language that SBC Illinois initially proposed, but Staff's position was inconsistent with the Commission's decision in Docket No. 01-0623, and SBC Illinois' acceptance of the language the Commission approved in that arbitration moots some of the concerns that drove Staff's position.

#### DISCUSSION

The issue statement creates the impression that the question is whether or not there should be a cap on the damages for which each party may be liable under the Agreement. Actually, however, that is not the question, because the parties have agreed there will be such a cap. Specifically, they have agreed that each party's liability to the other for any loss arising out of the performance of the Agreement will not exceed the amount that was charged (or that would have been charged) for the affected services. The parties have also agreed on two exceptions to that general rule. One is that payments that either party is obliged to make pursuant to the indemnity provisions in the Agreement will not be subject to the cap. The other is that payments

that SBC Illinois is obliged to make to AT&T pursuant to the performance measures and remedy provisions in the Agreement will not be subject to the cap.<sup>12</sup> The only disagreement appears to be whether the Commission should require a third exception proposed by AT&T, for **“obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC.”**

AT&T’s testimony offers little explanation for the proposed exception, and the explanation it does offer is based on a false premise. All AT&T’s testimony says is that “[w]ithout recognition of these provisions, if the cap has been previously reached for other failures on the part of SBC Illinois, then AT&T would fail to receive the compensation it is entitled to for further service failures by SBC Illinois.” West lines 241-244. That is incorrect, because it overlooks the fact that the liability cap applies to “each Party’s liability to the other Party *for any Loss* relating to or arising out of such Party’s performance under this Agreement.”<sup>13</sup> As the italicized language makes clear, the cap applies to an individual *Loss*, not to all the losses a party might suffer over the entire course of the agreement, as AT&T’s testimony assumes. Contrary to AT&T’s testimony, therefore, the amount of damages that AT&T would be able to recover from SBC Illinois as a result of (for example) SBC Illinois performance shortfalls in providing AT&T with collocation space in March of 2005 will be unaffected by damages that AT&T may have recovered from SBC Illinois based on problems provisioning loops in the fall of 2004.

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<sup>12</sup> The language SBC Illinois initially proposed did not reflect this second exception. SBC Illinois subsequently modified its position, however, and now, as discussed below, proposes that the Commission require the parties to adopt the limitation of liability language that resulted from the Commission’s resolution of a similar issue in another docket, which includes this second exception.

<sup>13</sup> The quoted language appears in the portion of section 1.7.1.2 to which the parties previously agreed. Substantially identical language appears in the Commission-arbitrated language that SBC Illinois now endorses.

AT&T's proposed third exception, in addition to being unjustified by anything that AT&T has said, is also unacceptably vague. In particular, it does not explain what sort of FCC- or ICC-required service quality plan AT&T has in mind, and that is a notable failure because the one ICC-required service quality plan that does bear on SBC Illinois' performance of this Agreement is the Commission-approved performance measures plan, which is incorporated in this Agreement and is already subject to another exception (the one for performance measures payments) to which SBC Illinois has agreed. There is certainly no need for another exception to capture the same payments.

Staff witness Omoniyi endorsed AT&T's proposed exceptions (there was more than one at issue when his testimony was filed), but his rationale is directly at odds with the Commission's January 16, 2002, Arbitration Decision in Docket No. 01-0623. Issue 15 in that arbitration was, "What limitations of liability should be included in the parties' interconnection agreement?" As shown on pages 9-11 of the Commission's Arbitration Decision, there were several disputed limitation of liability provisions. The one that is relevant here was Ameritech Illinois' proposed section 13.6, which provided:

13.6 Except for payments required pursuant to Section 15 Performance Measurements, including but not limited to any penalties, damages, service associated credits with the SBC and Ameritech merger or other penalties assessed by any state, and except for indemnity obligations under Section 14 Indemnity, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance under this Agreement, whether in contract, tort or otherwise, shall not exceed in total the amount SBC-13STATE or CLEC has or would have properly charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed. Notwithstanding the foregoing, in cases involving any Claim for a Loss associated with the installation, provision, termination, maintenance, repair or restoration of an individual Network Element or a Resale Service provided for a specific End User of the other Party, the negligent or breaching Party's liability shall be limited to the greater of: (i) the total amount properly charged to the other Party for the service or function not performed or improperly performed, and (ii) the amount such negligent or breaching Party would have been liable to its End User if the comparable retail service was provided directly to its End User.

The CLEC opposed that section in its entirety, but the Commission ruled that Ameritech Illinois' proposed language should be included in the parties' agreement. The Commission reasoned as follows, at pages 15-17 of the Arbitration Decision:

We agree that under the present state of the law, Ameritech should be able to limit its liability for services, equipment, and facilities provided to McLeod to the sum charged for a particular service or, in certain cases, up to the amount Ameritech would have to pay the end user if Ameritech had directly provided service to the end user. This limitation is not novel. Ameritech already has similar limitations in place when it provides these services to its retail customers. [Footnote deleted.] Thus, Ameritech is not avoiding a liability it would otherwise have by virtue of McLeod now intermediating between those retail customers and certain of Ameritech's telecommunications services. In such a situation, there are two ways to maintain the same liability posture. First, Ameritech could demand that McLeod obtain exactly this kind of limitation of liability from McLeod's own end users. Second, Ameritech could limit its liability to McLeod in the same way that its liability to end-users is normally limited. The second method, which is what Ameritech's language in section 13.6 effects, is simpler and has the virtue of not intruding into the business relations between McLeod and its end user customers.

McLeod's strongest argument against section 13.6 is that the proposed limitations of liability would relieve Ameritech of accountability for providing service negligently. Although we agree with McLeod that such accountability is important, we do not think that imposition of unlimited liability of Ameritech of the sort McLeod has proposed is required. It is as appropriate, however, to impose liability on Ameritech for willful misconduct in regard to section 13.6 damages as it is for damages arising under section 13.5 due to end users.

Additionally, there are numerous other forces at work that address the concerns McLeod raises. First, the Commission has already imposed extensive performance standards on Ameritech that are unaffected by the limitations of liability, a point that section 13.6 specifically reinforces. If Ameritech fails to meet these standards, we can require it to make payments and face other sanctions. Second, the Commission generally retains its designated role under the 1996 Act and its mandate from the Illinois legislature to monitor Ameritech's compliance with its obligations under the Act and under state law generally. We disagree with McLeod's suggestion that this provision somehow limits our authority under 220 ILCS 5/13-516. Third, Ameritech's effort in Docket No. 01-0662 to secure authorization to provide long distance service in Illinois under Section 271 of the 1996 Act gives it incentives to make sure that conditions for local service competition in Illinois remain healthy. Fourth, nothing in section 13.6 (or any other provision) would limit a McLeod suit against Ameritech for willful misconduct.

Then, at pages 16-17 of its Arbitration Decision, the Commission adopted Ameritech Illinois' section 13.6 as proposed, but with the addition of an exclusion "other than for white pages listings as described in Section 13.7."

The Commission's reasoning in that case applies equally here, and in light of the Commission's recent resolution of the issue, SBC Illinois now urges the Commission to require the same language for this Agreement, with such modifications as are necessary to conform with the section numbering, forms and usages of this Agreement.

Staff's testimony is contrary to the Commission's decision in Docket No. 01-0623 in two principal respects. First, by recommending rejection of the language SBC Illinois initially proposed, Staff was recommending rejection of substantially the same limitation of liability arrangement as the Commission approved in that docket. Second, the first rationale that Mr. Omoniyi gives for his recommendation runs directly counter to the Commission's decision in 01-0623. Mr. Omoniyi's rationale (lines 221-223) is that "it would be bad public policy for the Commission to impose a limitation of liability provision upon a party absent a bargained for agreement." In Docket No. 01-0623, however, the Commission concluded that it was good public policy to impose a limitation of liability upon McLeod – that is evident both in the result the Commission reached and in its discussion, quoted above. (Also, of course, SBC Illinois is not really asking the Commission to impose a limitation of liability in any event. The parties have agreed to a limitation of liability; the only question is whether the Commission will impose an exception to that limitation in addition to the two on which the parties have agreed.)

SBC Illinois assumes Staff was not cognizant of the Commission's decision in Docket No. 01-0623 when it formulated its position for this case, and anticipates that Staff may modify its position in its brief, particularly since SBC Illinois has modified its position by endorsing the 01-0623 language. Furthermore, the language that SBC Illinois is now endorsing eliminates two

of Mr. Omoniyi's other objections to SBC Illinois' position. The reasons for Staff's position that are set forth at lines 233-245 of Mr. Omoniyi's testimony both have to do with the concerns about performance measures payments that are now moot in light of SBC Illinois' acceptance of the language the Commission approved in Docket No. 01-0623.

Accordingly, SBC Illinois urges the Commission to require the parties to include as section 1.7.1.2 of their Agreement the above-quoted section 13.6 of the agreement the Commission arbitrated in Docket No.01-0623, but with such modifications as are necessary to conform with the section numbering, forms and usages of this Agreement.

**GTC:**

**ISSUE 4:           When AT&T orders out of a tariff, should AT&T be bound by the terms and conditions of the tariff, or may it pick and choose terms and conditions from the ICA for such tariff offerings?**

**Sections 1.1.1 and 1.30.2**

**SBC Illinois Testimony: Watkins Direct, lines 109-164; Watkins Rebuttal, pages 8-10.**

**SBC ILLINOIS POSITION**

The Commission should approve the language for GT&C sections 1.1.1 and 1.30.2 that flow from the recommendations of Staff witness Zolnierrek and that Staff has stated it supports. It appears that AT&T also supports this result.<sup>14</sup>

**DISCUSSION**

Staff witness Zolnierrek thoughtfully analyzed the parties' positions and testimony (Zolnierrek lines 290-347)<sup>15</sup>; discussed the various piece-parts of the competing proposals (*id.* lines 393-440); and ultimately concluded that the best resolution of this issue was "combining the language submitted by the parties." *Id.* line 452.<sup>16</sup> SBC Illinois asked exactly what language Dr. Zolnierrek would recommend (Watkins Rebuttal lines 12-15), and was informed that Staff supports the following language to resolve the issue:

1.1.1 This Agreement sets forth the terms, conditions and prices under which SBC-ILLINOIS agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) Unbundled Network Elements, or combinations of such Network Elements as set forth in Article 9 (Combinations), (c) Ancillary Functions, and (d) Interconnection to AT&T. This Agreement also sets forth the terms and conditions for the interconnection of AT&T's network to SBC-Illinois'

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<sup>14</sup> If it becomes necessary in light of the position AT&T takes in its initial brief,, SBC Illinois will provide a more detailed statement of its position in its reply brief.

<sup>15</sup> Our citations to rebuttal testimony and reply testimony indicate that the testimony is rebuttal or reply. Our citations to any witness' initial testimony (whether a Verified Statement by Staff or the Direct Testimony of a party witness) simply use the witness' name.

<sup>16</sup> Oddly, AT&T witness West states that Dr. Zolnierrek recommends adoption of AT&T's language, with just one discrete revision. West Reply lines 104-109. Mr. West is mistaken. In addition to the revision to AT&T language to which Mr. West refers (Zolnierrek lines 449-451), Dr. Zolnierrek also recommends rejection of other AT&T language (*id.* line 419 *et seq.*) and adoption of some SBC language (*id.* line 426 *et seq.*).

network and reciprocal compensation for the transport and termination of telecommunications.

1.30.2 Except as provided in Section 1.30.4, below, the Parties agree that the rates, terms and conditions of this Agreement will not be superseded by the rates, terms and conditions of any tariff SBC-Illinois may file, absent Commission order to the contrary. The Parties agree that AT&T is not precluded from ordering products and services available under any effective SBC-ILLINOIS tariff or any tariff that SBC-ILLINOIS may file in the future, provided that AT&T satisfies all conditions contained in such tariff and provided that the products and services are not already available under this Agreement. If AT&T chooses to order products or services under an SBC-Illinois tariff, it shall be bound by all applicable terms and conditions of the tariff and shall not seek to apply terms and conditions of this agreement to the items it orders from the tariff. AT&T is not precluded from amending the Agreement to incorporate by reference individual and independent rates, terms, and conditions available to other carriers through agreement or tariff, even when such products or services are already available under this Agreement, provided such incorporation by reference must include material terms and conditions that are applicable and legitimately related to the requested products or services.

Watkins Rebuttal, p. 9, line 15 – p. 10, line 12.<sup>17</sup>

SBC Illinois urges the Commission to adopt the Staff-supported language set forth above. SBC Illinois reserves for its reply brief most of its (potential) discussion of this issue, because it is uncertain what position AT&T will take. AT&T's witness said that "Dr. Zolnierek's recommendation for Issue GTC-4 is acceptable to AT&T" (subject to one note, which we address below) (West Reply lines 113-114), but SBC Illinois is not certain whether AT&T will say the same thing in its brief, because, as noted in footnote 15 above, AT&T's witness misunderstood Dr. Zolnierek's testimony.

Further clouding the picture is the fact that AT&T apparently conceived of its position on this issue as an assertion of its rights under Section 252(i) of the 1996 Act. *See* West lines 331-335 ("ATTCI seeks to exercise its rights under Section 252(i) of the Telecommunications Act");

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<sup>17</sup> In resolving this issue, the Commission should ignore the underlining that appears beneath the first phrase of section 1.30.2. Section 1.30.4, to which the underlined language refers, is the subject of GT&C Issue 5, and the resolution of that issue will determine whether the underscored language will or will not be included in section 1.30.2.

West Reply lines 100-102 (stating that Dr. Zolnierek’s recommendation “recognizes that SBC Illinois has an obligation pursuant to Section 252(i) of the Telecommunications Act . . .”). But Section 252(i) does not entitle AT&T to take *any* provisions from a tariff, and the rights AT&T is asserting on Issue 4 are absolutely not conferred by Section 252(i). By its terms, Section 252(i) permits requesting carriers only to adopt provisions that appear in Commission-approved *interconnection agreements*, not provisions that appear in tariffs.<sup>18</sup>

Accordingly, to the extent (if any) that AT&T’s brief opposes the Staff-supported language quoted above, SBC Illinois will address AT&T’s position in its reply brief.

AT&T did make one point in its reply testimony to which SBC Illinois responds now, however. Having initially proposed to take only “inextricably linked” terms and conditions from a tariffed offering, AT&T has apparently acquiesced in the “legitimately related” formulation promulgated by the FCC (*see* Watkins lines 128-140) and endorsed by Staff (Zolnierek lines 449-451). AT&T cautions, however, that “‘legitimately related’ must be narrowly construed by the Commission to ensure that AT&T may avail itself of tariff provisions that SBC makes available to all carriers without losing the benefits of all the terms negotiated under the ICA.” West Reply lines 109-113. If that means that the Commission should construe “legitimately related” *now*, the Commission should of course do no such thing. The Commission should merely require that the correct term be included in the Agreement. If a dispute arises later about how to construe that term, the Commission can deal with it then.<sup>19</sup>

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<sup>18</sup> Section 252(i) provides: “A local exchange carrier shall make available any interconnection, service, or network element provided *under an agreement approved under this section* to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provide in the agreement.” (Emphasis added.)

<sup>19</sup> SBC Illinois also notes for the record that “legitimately related” should not be narrowly construed.

GTC:

ISSUE 5: Should the TELRIC rates in the Pricing Schedule be automatically updated when the rates change based upon ICC or FCC proceedings affecting wholesale prices, including tariff revisions, or should an amendment be required to incorporate such rate changes?

Section 1.30.4 and Footnote to Pricing Schedule

SBC Illinois Testimony: Watkins Direct, lines 165-189.

SBC ILLINOIS POSITION

All changes to the prices the parties charge either other pursuant to the Agreement should be memorialized in an amendment to the interconnection agreement or to the pricing schedule in the Agreement. That will ensure that the Agreement always reflects the terms, conditions and prices on which the parties are doing business, and also creates an audit trail, so that if a disagreement arises concerning past billings, the parties can readily reconstruct (by consulting the contract amendments) what prices were in effect at what times. Accordingly, the Commission should accept Staff's recommendation to adopt SBC Illinois' language on this issue.

DISCUSSION

As SBC Illinois witness Watkins explained (Watkins line 173 *et seq.*), this issue is not complicated, and it has nothing to do with when changes to TELRIC prices will actually go into effect. The only disagreement is this: AT&T proposes that changes to TELRIC prices go into effect automatically and *not* be documented by an amendment to the interconnection agreement. SBC Illinois agrees that there should be no delay in giving effect to changes to TELRIC prices, but maintains that such changes should be memorialized in an amendment to the interconnection agreement or to the pricing schedule in the agreement. Staff witness Hanson agrees with SBC Illinois that "it would be a good administrative practice to make sure rates are incorporated into the pricing attachment of the agreement" (Hanson lines 67-68) and "recommend[s] that the Commission accept SBCI's language on this issue" (*id.* lines 68-69).

As Mr. Hanson indicates, SBC Illinois' approach is a simple matter of good record-keeping. To the extent possible, one should be able to look at the agreement at any moment in

time and find the current terms, conditions and rates under which the parties are doing business. If there is a change in pricing, that change should be reflected in the agreement. Watkins lines 181-184. In addition, an audit trail should be created whenever rates change, and the simplest way to provide such a trail is by means of a contract amendment. That way, if a disagreement arises in, say, September of 2005 concerning billings for the period from November, 2004, through March, 2005, one has to look only at the contract documents, including the amendments, to determine what prices were in effect at what times. *Id.* lines 184-189.

There is yet another reason for the Commission to approve SBC Illinois' proposed language: Carriers are free to negotiate interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251." 47 U.S.C. § 252(a)(1). Thus, if the Commission issues an Order in a generic docket that changes some TELRIC prices, AT&T and SBC Illinois could agree not to adopt all of those changes – though whichever party would benefit from the changes would presumably make such an agreement only in exchange for a concession of some sort by the other party. It could happen, though, and the fact that AT&T and SBC Illinois might some day agree not to incorporate new TELRIC prices into this Agreement (even if just a handful) is all the more reason to keep the record straight by requiring the Agreement to reflect all new TELRIC prices that the parties do adopt.

Finally, AT&T's proposed language suffers from an additional failing. While AT&T's proposed language contemplates that a pricing change alone will not be reflected in the Agreement, it does allow for amendment of the Agreement if the Order affecting rate changes also changes terms and conditions that are linked to the rate changes. The AT&T language that allows for this, however, is defective. It provides that where the "determination affecting rate changes includes *material* changes to *material* terms and conditions that are applicable and

*inextricably linked* to the rate changes, then either Party may seek amendment to this Agreement . . . .” (AT&T’s proposed language for GT&C section 1.30.4) (emphasis added). The use of the term “material” is ill-advised because, as discussed above in connection with GT&C Issue 1.b, it would accomplish nothing except provoke disputes about whether a change is material. And “inextricably linked,” as discussed above in connection with GT&C Issue 4, and as explained by Staff witness Zolnierek at lines 449-451 of his Verified Statement, is at odds with the FCC’s rule that requires “legitimately related” terms and conditions to be taken as a package.

**GTC:**

**ISSUE 6: Which audit language for PLU is appropriate?**

**Section 1.32.8**

**SBC Illinois Testimony: Pellerin Direct, lines 1697-1747.**

**SBC ILLINOIS POSITION**

This issue concerns discrete detail in competing provisions concerning audits of PLU (percent local usage data). SBC Illinois' proposed language is superior to AT&T's because (1) there is no good reason to ignore five percent variations between audit results and reported PLUs, as AT&T proposes; (2) the adjustments that are made to PLUs when an audit shows a variance should remain in place for the longer period proposed by SBC Illinois; and (3) it is important that consequences follow when there is significant underreporting of call detail usage, as SBC Illinois proposes.

**DISCUSSION**

GT&C section 1.32.8 governs audits of the PLU (percent local usage) data the parties will use to "measure and settle [bill] jurisdictionally unidentified traffic, including but not limited to calls for which calling party number (CPN) is not" transmitted "in connection with Article 21: Intercarrier Compensation." The PLU factor, which is provided by the billed party, provides the percentage of the traffic originated by that party that should be considered as local for billing purposes when that information is not identifiable in the call record detail. Moore lines 78-82. The purpose of the audit is to ensure the accuracy of the PLU factor provided by the billed party to the billing party for purposes of intercarrier compensation. *Id.* lines 82-84. Although all of the language proposed by each party is shown as disputed, there is actually a measure of agreement (including all the language of section 1.32.8 quoted in the first sentence above), and the real issue centers on two discrete disagreements. We identify the disagreements first, and then discuss them.

First, while the parties agree that certain consequences will follow if an audit shows that either party has overstated the PLU by 20% or more, SBC Illinois' language calls for those same consequences if an audit shows that either party has underreported the call detail usage by 20%

or more, while AT&T's language does not. (The consequences proposed by both parties are the same: reimbursement for the cost of the audit and payment of the cost of a follow-up audit nine months later.)

Second, the parties disagree on how the PLU will be adjusted if the audit reveals a discrepancy in the audited party's PLU data. Under SBC Illinois' proposal, "If the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the nine (9) month period following the completion of the audit." Under AT&T's proposal, on the other hand, "If the PLU audit results in a PLU calculation with a variance of more than five percent compared to the PLU provided by the Billed Party for the quarter audited, the corrected PLU will apply for the remainder of the current quarter and for the subsequent quarter." Thus, AT&T's formulation forgives a variation of five percent or less, which SBC Illinois' does not, and AT&T's formulation leaves the adjusted PLU in place for a shorter period than does SBC Illinois'.

The first of the two disagreements may be easily resolved, because AT&T did not explain in its testimony on this issue (Moore lines 48-126) why it objects to SBC Illinois' proposal to have consequences flow when an audit reveals an underreporting of call detail usage by 20% or more. As SBC Illinois' witness explains, it is important to correct such underreporting, especially when carriers are exchanging large volumes of traffic, because it is the volume of traffic that translates to real dollars when the PLU is applied. If the call detail usage is significantly underreported, the financial consequences (*i.e.*, the inaccuracies in amounts billed) may be significant even if the PLU is relatively accurate. Pellerin lines 1713-1716.

The second disagreement identified above has sub-parts. One is that AT&T's language calls for no action if the audit reveals a variance of five percent or less, while SBC Illinois' does not. AT&T's witness mentions the difference, but does not explain why AT&T's approach is superior. In fact, it is not superior. Forgiveness of a four percent variance (for example) might

be appropriate if the consequence of a variation were a penalty of some sort, but section 1.32.8 does not impose any penalties. All that would happen under SBC Illinois' proposal in the event of a four percent variance is that the PLU would be corrected. Unless AT&T can offer a cogent reason for not making PLUs as accurate as possible, its proposal to ignore variances of five percent or less should be rejected.

The remainder of the AT&T's language concerning what happens when an audit reveals appears reasonable at first blush, but it is problematic in light of the parties' agreement in GT&C section 1.32.1 that audits may be requested only once a year. The problem is illustrated by an example offered by SBC Illinois witness Pellerin (at lines 1725-1736):

Let's suppose that an audit completed in early March resulted in an adjustment of AT&T's PLU from 80% to 95%, a 15% increase. According to AT&T's language, the 95% PLU would be in effect for the remainder of March plus April, May and June. AT&T could then adjust the PLU for July through August to, say 83%, and then September through December to 79%. Since the March audit resulted in a 95% PLU, it would be understandable for SBC Illinois to question an adjustment to 83%, not to mention a further reduction to 79%. But because SBC Illinois is only permitted to request an audit once per year unless an error of 20% or more was discovered in an audit, it would be unable to initiate another audit until March of the following year. AT&T could continue the 83%, or 79%, or whatever percentage it decided, for an extended period of time during which SBC Illinois would have no ability to have the data verified, leaving it vulnerable to the possibility of an overstated PLU and/or underreported usage.

SBC Illinois' language cures that problem, because it provides that a PLU adjustment resulting from an audit will remain in effect for nine months, superseding the standard quarterly adjustments during that time. The premise is that a detailed audit of books, records, and other documents related to the development of PLU would result in the most accurate PLU possible. This accurate PLU should be sustained for nine months to forestall the imposition of a less accurate PLU that could not be audited. Pellerin lines 1738-1743.

SBC Illinois' proposed language for GT&C section 1.32.8 is reasonable and should be adopted.



GTC:

ISSUE 7: Should CLEC's be responsible for the cost associated with changing their records in SBC Illinois' systems when CLECs enter into a merger, assignment, transition, etc. agreement with another CLEC?

Section 1.47.1

SBC Illinois Testimony: Watkins Direct, lines 191-241; Watkins Rebuttal, pages 10-14.

SBC ILLINOIS POSITION

ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each End User account and/or circuit. These codes are used in all ILECs directory databases, network databases (LMOS, TIRKS, INAC, RCMAC, etc.), billing systems to identify, inventory, and appropriately bill the services provisioned on each service order. Any change to a company code requires service order activity on each and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within the ILEC but throughout the industry in such databases as LERG, which allows the industry as a whole to properly bill routed calls, (terminating and originating). When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a service order to be submitted by a "winning" Carrier. And like the "winning" carrier, AT&T should be responsible for the associated costs.

DISCUSSION

Operating Company Number (OCA) and Access Customer Name Abbreviation (ACNA) are ordering and billing codes (assigned to carriers by entities such as Telcordia Technologies and NECA) that are used by SBC Illinois' directory databases, network databases, and billing systems to identify, inventory, and appropriately bill the services provisioned on each service order. Watkins lines 215-219. Company codes are also utilized throughout the industry in databases such as LERG, which allows the industry as a whole to properly bill routed calls (terminating and originating). *Id.* lines 224-226. Any change to a company's code (which could result, for example, from a merger, assignment, acquisition, or similar agreement with another carrier) requires service order activity on every end user account and circuit in order to update all of SBC Illinois' systems. *Id.* lines 220-223. Indeed, whenever a company's code changes, all

the appropriate databases and downstream systems must be updated to ensure accurate billing. *Id.* lines 230-231.

The issue, as framed by the parties, is whether AT&T “should [ ] be responsible for the cost associated with changing [its] records in SBC Illinois’ systems when [AT&T] enter[s] into a merger, assignment, transition, etc. agreement with another CLEC.” Watkins Rebuttal page 10, lines 23-26; page 12, line 24; page 13, lines 1-3. SBC Illinois’ proposed language provides that AT&T “is responsible for costs of implementing any changes to its OCN/ACNA whether or not it involves a merger, consolidation, assignment or transfer of assets.” AT&T opposes that language, arguing that it should not be responsible for any service order costs associated with changing its OCA/ACNA. West lines 432-441. But AT&T’s only argument in support of its position is that it pays nonrecurring and recurring charges when it submits an order, and that it should not have to pay for SBC Illinois to “revis[e] its records as a result of a merger” or other agreement. *Id.* line 438. Such costs, AT&T asserts, “are normal costs of doing business that SBC Illinois should absorb as the service provider.” *Id.* lines 440-441. AT&T provide no support for these assertions, and they are wrong. When a company code change is associated with a transfer of assets, it is no different than a CLEC-to-CLEC migration which requires a service order to be submitted by the “winning” carrier. Watkins lines 236-238. And, in such instances, the CLEC is responsible for the cost to issue the service order. *Id.* lines 238-239. That is why language similar to that proposed by SBC Illinois was approved by the Texas Commission and currently appears in AT&T’s interconnection with SBC Illinois’ sister company in that state. *Id.* lines 211-212.

Staff agrees that SBC Illinois will incur costs in changing records and that SBC Illinois should be permitted to recover those costs from AT&T. *Id.* lines 96-107. But Staff goes on to propose that the BFR process be used to set the price. Hanson lines 100-104.

SBC Illinois respectfully submits that the Commission cannot properly consider Staff's proposal, because it creates an issue where there is none. The stated concern that underlines Staff's proposal is that SBC Illinois might overcharge AT&T by charging for each individual record change rather than passing on to AT&T the efficiency that Staff believes SBC Illinois could gain by processing hundreds of service order changes at one time. But the language that SBC Illinois is proposing says nothing about how SBC Illinois will charge AT&T, and AT&T and SBC Illinois have not presented the Commission with any disagreement concerning how much SBC Illinois should charge AT&T. All SBC Illinois' proposed language says is that AT&T will be responsible for the costs SBC Illinois incurs to implement changes to AT&T's OCN/ACNA. Once one decides that AT&T should be responsible for those costs – and Staff agrees AT&T should be – it follows that SBC Illinois' language should be approved. SBC Illinois' language does not authorize SBC Illinois to overcharge AT&T, and it does not prescribe any particular method of calculating the charges. Obviously, the inclusion of SBC Illinois' language will only entitle SBC Illinois to charge AT&T for its reasonable or appropriate costs. If SBC Illinois sends AT&T a bill that AT&T believes is too high, AT&T can dispute the bill, as other provisions in the interconnection agreement allow it to do. If such a dispute ever arises – and there is no particular reason to suspect it will – Staff's concern can be dealt with then, in the context of a concrete disagreement.

Putting this same point in different terms, Staff's proposal is an invitation for the Commission to decide an issue that the parties have not put before the Commission for arbitration. The issue the parties set forth for arbitration – and this is apparent both in the disputed language and in the way the parties framed their statement of the issue (“Should CLECs be responsible for the costs . . .”) – was simply whether AT&T should be responsible for certain costs. Staff, however, having answered that question in the affirmative, is asking the

Commission to decide an additional question: How should SBC Illinois go about charging AT&T in order to ensure that SBC recovers its proper costs without overcharging AT&T? As the Commission is aware, section 252(b)(4)(A) of the 1996 Act provides that the State commission as arbitrator must limit its consideration to the issues set forth by the parties.

If the Commission does consider Staff's proposal, it should reject it, because Staff has not shown that the BFR process is an appropriate mechanism for addressing charges of the sort that are at issue here. The BFR process is described in the SBC Illinois tariff to which Mr. Hanson refers at lines 109-111 of his testimony, and the pertinent tariff pages are Schedule HLW-1, attached to the Rebuttal Testimony of SBC Illinois witness Watkins. Given the purposes of the BFR process stated there (to allow CLECs to request new UNE products and/or combinations, not to request projects for which there are already established processes), and the nature of the process as described on those tariff sheets, it simply does not appear that this is an appropriate process for dealing with OCN/ACNA changes that must be made where the only question (at least as Mr. Hanson sees it) is the price. Watkins Rebuttal page 13, lines 15-20. Indeed, the BFR process would have to be redefined to accommodate Staff's proposal. *Id.* lines 20-22.

To decide the issue at hand, as the parties framed it, the Commission should simply adopt SBC Illinois' proposed language.

**INTERCONNECTION:**

**ISSUE 1:**           Where SBC elects to subtend another ILEC's tandem switch for exchange access and intraLATA toll traffic, may AT&T interconnect indirectly to SBC via such tandem for local traffic?

Sections 3.2.5.1 and 3.2.5.2

**SBC Illinois Testimony:** Mindell Direct, lines 835-908; Mindell Rebuttal, lines 20-43.

**SBC ILLINOIS POSITION**

In four rural exchanges in downstate Illinois, AT&T wants to drop off local traffic to SBC Illinois at a Verizon tandem located at least 20 miles from the SBC Illinois central office. This proposal violates the interconnection requirement of Section 251(c)(2)(B) of the Telecommunications Act of 1996 because it does not provide for interconnection "within" the SBC Illinois network. Equally important, AT&T's proposal appears to create legal obligations for Verizon to provide tandem switching capacity and transport facilities for AT&T's benefit. Verizon is not a party to this Agreement and AT&T should not presume to create duties for Verizon. For these reasons, SBC Illinois requests that AT&T's proposed language for section 3.2.5.1 be rejected. Staff concurs.

Staff proposes new language for section 3.2.5.2 which makes it clear that AT&T can indirectly interconnect to SBC Illinois through the facilities of a third party carrier (such as Verizon), so long as AT&T has the cooperation of the third party carrier. SBC Illinois does not object to this language, as long as language is added to the Agreement that makes it clear that the point of interconnection for any such indirect interconnection must be established within SBC Illinois' operating territory. SBC Illinois has proposed such language in section 4.3.1 (Interconnection Issue 9), and Staff agrees with that language. If it is adopted by the Commission, then Staff's changes to section 3.2.5.2 are acceptable to SBC Illinois.

**DISCUSSION**

In four downstate rural exchanges, AT&T wants to drop off local traffic to SBC Illinois at the Verizon tandems, all of which are located more than 20 miles from the SBC Illinois exchange. AT&T proposes language in section 3.2.5.1 to achieve this result.

**Where SBC-Illinois's end offices subtend another ILEC's tandem switch for local traffic and/or exchange access, AT&T may, at its discretion, interconnect with SBC-Illinois for local traffic and/or exchange access via the other ILEC's tandem switch or at the SBC-Illinois end office.**

SBC Illinois and Staff oppose AT&T's language.

Staff has proposed alternative language that would make it clear that AT&T can interconnect indirectly through Verizon so long as it establishes a point of interconnection within SBC Illinois' service territory. Staff proposes to insert this language into section 3.2.5.2 as follows:

AT&T may, where it makes arrangements with a third party to do so, provide facilities on its side of the POI using a third party's tandem switch or other facilities. AT&T, however, remains responsible for the facilities on its side of the POI and for ensuring that any facilities provided by a third party comply with the provisions of this interconnection agreement.

This language is acceptable to SBC Illinois, provided that the SBC Illinois/Staff proposal for the resolution of Interconnection Issue 9 is also adopted, because that language makes clear that SBC is not similarly obligated to use Verizon's tandem to transport traffic to AT&T, and that for this traffic AT&T must establish a POI within the operating territory of SBC-Illinois.<sup>20</sup> Without the accompanying language from Interconnection Issue 9, the SBC Illinois/Staff proposal for Interconnection Issue 1 will be no better than the AT&T proposal it intends to replace.

AT&T's proposed language for section 3.2.5.1 should be rejected for the three reasons outlined by SBC Illinois witness Mindell and Staff witness Zolnierek. Mindell lines 869-884; Zolnierek lines 500-519. First, under Section 251(c)(2)(B) of the Telecommunications Act of 1996, interconnection takes place at "any technically feasible point *within* the carrier's network," so there must be a "point" of interconnection and that point must be located "within" SBC Illinois' network. AT&T's language fails on both counts. It does not establish a "point" of interconnection at all and it does not do so "within" SBC Illinois' network, rather it proposes a connection 20 to 25 miles away at a Verizon tandem.

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<sup>20</sup> See, SBC Illinois/Staff proposed language for section 4.3.1.

Second, AT&T's proposal creates potential legal obligations for Verizon by presuming that Verizon has sufficient tandem switching capacity and transport facilities to support this type of interconnection. Verizon is not a party to the Agreement, and the Agreement should remain a two-party arrangement between SBC Illinois and AT&T. AT&T also presumes that it can place *local* traffic over the existing interconnection arrangement between SBC Illinois and Verizon, which is currently limited to *access* traffic. Mindell lines 861-866.

There is some indication in AT&T's reply testimony that it intends its proposal to satisfy the requirements of Section 251(c)(2)(B) by establishing interconnection "within" SBC Illinois' network. Finney-Schell-Talbott Reply lines 70-74. It is unclear whether AT&T intends this to apply only to traffic from AT&T to SBC Illinois, or whether it also includes traffic from SBC Illinois to AT&T. In any event, none of this is reflected in AT&T's proposed language. AT&T also argues that no POI is required when it establishes indirect interconnection, Finney-Schell-Talbott Reply lines 50-54, but that argument is nonsense. Every interconnection arrangement must have a "point of interconnection" to determine compensation arrangements and responsibility for network infrastructure between SBC Illinois and AT&T. If AT&T interconnects through a third-party, it nonetheless remains responsible for the network facilities on its side of the POI. AT&T itself recognizes the crucial role of a POI in the direct testimony of its panel, lines 906-043, so SBC Illinois is surprised by its statement that a POI is not needed when AT&T interconnects indirectly.

In sum, the Commission should reject AT&T's proposal for section 3.5.1. Staff concurs. Staff has proposed language for section 3.5.2 that makes clear that AT&T can establish an "indirect" interconnection through Verizon. SBC Illinois can accept this language, so long as Staff's proposed language for Interconnection Issue 9 (section 4.3.1) is also adopted.

**INTERCONNECTION:**

**ISSUE 2: Does AT&T have the right to use UNEs for the purpose of network interconnection on AT&T's side of the POI?**

**Section 3.3.2**

**SBC Illinois Testimony: Pellerin Direct, lines 2056-2122;  
Pellerin Rebuttal, lines 141-176.**

**SBC ILLINOIS POSITION**

AT&T wants to lease UNE transport facilities from SBC Illinois on AT&T's side of the point of interconnection ("POI"). The Commission should reject this language because AT&T's request is not appropriate under FCC's rules. The FCC recently addressed this issue in its press release dated February 20, 2003 that summarizes its Triennial Review Order. In the press release, the FCC states that its Triennial Review Order redefines dedicated transport to make it clear that it is not available for interconnection between CLEC and ILEC switches. AT&T is requesting that very thing. Accordingly, any question about SBC Illinois' obligation to provide UNE transport for interconnection with AT&T's switch has been resolved in SBC Illinois' favor and the Agreement should reflect this result.

**DISCUSSION**

The only dispute with this issue concerns rates for AT&T to lease transport facilities from SBC Illinois on AT&T's side of the Point of Interconnection ("POI"). SBC Illinois proposes in section 3.3.2 that when AT&T leases transport facilities from SBC Illinois, it should be at rates found in the applicable access tariff. AT&T proposes that when it leases such facilities, it may do so at UNE-based rates under Article 9.

Language in bold underline type is AT&T's language that SBC Illinois disputes.

3.3.2 AT&T may obtain facility capacity for network interconnection trunking: (i) from SBC-Illinois under its access tariff, **(ii) from SBC-Illinois under Article 9 of the Agreement,** (iii) from AT&T's own facility inventory, or (iv) from an alternative access vendor.

The Commission should reject this language because AT&T's request to obtain a UNE on AT&T's side of the POI is not appropriate under FCC rules. It is AT&T's responsibility to interconnect with SBC Illinois using any of the methods outlined in section 3.3, (e.g., AT&T

facilities, third-party carrier facilities or SBC Illinois access services). While SBC Illinois will lease facilities to AT&T under its access tariff, it is not obligated to do so at UNE rates.

AT&T is correct when it states that an ILEC must provide interoffice transmission facilities on an unbundled basis to requesting carriers, and SBC Illinois does so under schedule 9.2.7 of the Agreement. However, AT&T is not asking for interoffice transmission facilities, rather AT&T wants to purchase UNE transport on its side of the POI to transport its own traffic to SBC Illinois. SBC Illinois is not obligated to offer transport facilities on AT&T's side of the POI at UNE rates.

The FCC recently addressed this issue in its Press Release dated February 20, 2003 that summarizes its Triennial Review Order. In the Press Release, the FCC states that its Triennial Review Order redefines dedicated transport to make clear that it is not available for interconnection between CLEC and ILEC switches: "The Commission redefines dedicated transport to include only those transmission facilities connecting incumbent LEC switches or wire centers." AT&T is requesting that it be permitted to use unbundled dedicated transport to interconnect its switch with that of SBC Illinois, which is inconsistent with the FCC's Triennial Review Order as described in the Press Release. Any question about SBC Illinois' obligation to permit AT&T to use unbundled dedicated transport for interconnection with its switch has been resolved in SBC Illinois' favor. This interconnection agreement should be based on these updated rules – not the outmoded rules that AT&T cites.

And there is another reason to rule in SBC Illinois' favor. AT&T has agreed in section 3.5.1 that SBC Illinois will lease facilities to AT&T for interconnection from its access tariff, and agrees in the undisputed portion of section 3.3.2 that it may avail itself of SBC Illinois' access tariff. If AT&T is dissatisfied with SBC Illinois' tariffed access rates for network interconnection facilities, it has the option to utilize its own facilities or lease from another

carrier. In fact, there a number of other providers of special access service in Illinois, particularly in the metropolitan areas, *e.g.*, MCI, XO Communications, Inc., Nextlink Communications, Inc., and Allegiance Telecom, Inc. AT&T is not restricted to using leased facilities from SBC Illinois.

In summary, SBC Illinois is not required to provide transport facilities on AT&T's side of the POI at UNE prices. The FCC's Triennial Review Order, as set forth in its Press Release, narrows the definition of unbundled interoffice transmission facilities and removes any possible doubt on this matter. AT&T's language in section 3.3.2 would permit it to use unbundled transmission facilities on its side of the POI for interconnection with SBC Illinois and should be rejected out of hand.

**INTERCONNECTION:**

**ISSUE 3:           What terms apply to AT&T's intra-building interconnection to SBC Illinois?**

**Section 3.3.3**

**SBC Illinois Testimony: Bates Direct, lines 240-425; Mindell Direct, lines 39-118.**

**SBC ILLINOIS POSITION**

AT&T's proposed language is unnecessary, contrary to law and inconsistent with agreed language in the Agreement. To the extent that AT&T is seeking to interconnect its facilities located in a condominium building shared with SBC Illinois, the parties have already agreed to language that permits that. But AT&T's language goes much further. AT&T seeks to dictate how SBC Illinois routes cables through its central office, in violation of FCC rules and contrary to agreed language in the Agreement. AT&T also seeks to use coaxial cable without restriction. SBC Illinois will agree to AT&T's use of coaxial cable on a case-by-case basis, taking into account technical feasibility, safety and space congestion issues, but AT&T's vague and open-ended language should not be adopted.

**DISCUSSION**

By its proposed contract language, AT&T has linked Interconnection Issue 3 and Collocation Issue 2(b). AT&T's proposes language as part of Collocation Issue 2(b) that references the language AT&T is proposing as part of Interconnection Issue 3. It makes sense, then, to discuss these issues together.

Through these two issues, AT&T is seeking to establish a new method of interconnection when it has a presence in the same building as SBC Illinois. AT&T's proposed language is unnecessary, contrary to law and inconsistent with language to which the parties have agreed.

AT&T devotes much of its testing on this issue to a discussion of the FCC's rules regarding interconnection at technically feasible locations. Finney-Schell-Talbott lines 681-733. This is much ado about nothing. To the extent that AT&T's proposed language for section 3.3.3 is purely about methods of interconnection for the mutual exchange of traffic, the language is unnecessary because the subject is already covered by agreed language in section 3.8.4.1.

Mindell lines 71-90. That provision describes a design that encompasses AT&T's proposal for "intra-building interconnection":

3.8.4.1 Design One: AT&T's fiber cable (four fibers) and SBC-AMERITECH's fiber cable (four fibers) are connected at a technically feasible point between AT&T and SBC-AMERITECH locations. This Interconnection point would be at a mutually agreeable location approximately midway between the two. The Parties' fiber cables would be terminated and then cross-connected on a fiber termination panel as discussed below under the Fiber Termination Point options section. Each Party would supply a fiber optic terminal at their respective end. The POI would be at the fiber termination panel at the mid-point meet.

Thus, AT&T and SBC Illinois have already agreed to interconnect their premises in a joint meet in which AT&T builds the interconnection facility across its premises and toward SBC Illinois' premises, and SBC Illinois does the same in the other direction. The arrangement AT&T seeks in its proposed section 3.3.3 (*i.e.*, two premises within a building or in adjoining buildings) is simply a subset of the general situation described in 3.8.4.1. Mindell lines 71-90.

None of AT&T's other justifications for its proposed language has merit either. First, AT&T complains that it will be billed monthly charges of \$686.47 for intra-building interconnection if its language is not adopted. Finney-Schell-Talbott lines 746-766. That is not true. Under the joint fiber meet provided for by section 3.8.4.1, two way traffic is contemplated and an entrance facility is not billed, because both companies benefit from the exchange of traffic over the facility. Mindell lines 91-96.

Second, AT&T asserts it should be permitted to interconnect with coaxial cable. Finney-Schell-Talbott lines 689-692. The use of coaxial cable is acceptable in some circumstances, but SBC Illinois has legitimate concerns about broad language that would permit it in all instances. These concerns include the technical feasibility of electrically connecting equipment between "ground planes," depletion of scarce central office cabling space and limitations on cable length (because regeneration is necessary when cables exceed certain lengths, and regeneration must

take place at a point equidistant from each end). Mindell lines 98-103; Bates lines 398-406.

However, subject to these technical concerns, and to the issues of routing the cable through the SBC Illinois central office, SBC Illinois is willing to consider interconnecting with coaxial cable. Mindell lines 98-103.

SBC Illinois objects to AT&T's proposed language, however, because it goes far beyond a description of a method of physical interconnection and dictates what SBC Illinois must do within its own premises. For example, AT&T's proposed section 3.3.3.2 proposes that "such cable will be installed via the shortest practical route between the SBC-Illinois's and AT&T's equipment." In the absence of a definition for "practical," this could obligate SBC Illinois to knock holes in walls, install new cable troughs or in some other way create custom routing through its own central office premise, without compensation. *Id.* lines 104-110.

SBC Illinois has the right to exercise control over the design of its network, including managing the manner in which cables are brought into and traverse its and central office space.<sup>21</sup> AT&T's proposed language would eviscerate that right, and would arguably allow AT&T to demand that SBC Illinois place riser, racking and conduit systems at locations dictated by AT&T. Efficiency and availability of scarce resources dictate entrance and routing paths (*i.e.* riser, racking) through SBC Illinois' central offices. Bates lines 286-294. SBC typically uses a vault as a central location to bring all CLECs into a central office and utilizes established routes through the central office that take advantage of the most efficient and effectively engineered paths to move through the office in an expeditious manner. *Id.* lines 335-344, 349-353. In contrast, simply running a cable from point "A" to point "B" in a straight line, as AT&T's language would allow AT&T to require, ignores consideration of efficiency and capacity issues

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<sup>21</sup> *In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, FCC 97-208 (rel. June 13, 1997) ("Second Report and Order"), ¶ 324.

in central offices, and does not allow SBC Illinois to manage its own central office space. *Id.* The party that owns the premises should have the right to decide which paths are the most reasonable and direct.

Indeed, AT&T itself recognizes that SBC Illinois, not AT&T, ought to determine the cable paths through its own central office space. In Collocation section 12.3.5.2, which deals with these same condominium arrangements, AT&T agrees that its cable shall “traverse the path designated by SBC-AMERITECH.” This is of course the reasonable and proper approach. AT&T’s attempt to back away from that agreed language and insist that AT&T determine the cable path through SBC Illinois’ central office should be rejected.

Moreover, SBC Illinois also has the right to be compensated for use of its premises. It is unreasonable for AT&T to offer no compensation for SBC Illinois’ placement of riser, racking, and cabling to and from AT&T’s condominium.

Finally, AT&T proposes in its language for Collocation Issue 2(b) (Collocation section 12.3.5.7) (and implicitly in its language for Interconnection Issue 3 (Interconnection section 3.3.3)) that it be permitted to access UNEs without maintaining a collocation presence in SBC Illinois’ central office. The language proposed by AT&T is vague and ill-conceived. As explained by SBC Illinois’ witnesses, SBC Illinois offers access to UNEs through several clearly defined methods and the parties have agreed to suitable language that would enable AT&T to achieve what it seems to be seeking. Mindell lines 71-90; Niziolek lines 309-324. To the extent that AT&T is proposing something different in its language for Collocation section 12.3.5.7, its proposal is vague and confusing. Thus, SBC Illinois is not in a position to agree, and the Commission has no basis on which to find, that such a “method” is technically feasible or required by law. If AT&T has something particular in mind, it ought to set forth its proposal, rather than advocate vague language. Bates line 408-417.

**INTERCONNECTION:**

**ISSUE 5:** Are there reasonable limitations on AT&T's right to interconnection with SBC Illinois free of any charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection, and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9.

**Section 4.3.1**

**SBC Illinois Testimony:** Mindell Direct, lines 119-205.

**SBC ILLINOIS POSITION**

The disputed language in section 4.3.1 is fully addressed in Interconnection Issue 9, below. SBC Illinois adopts and incorporates by reference all of its arguments for Interconnection 9. In a nutshell, section 4.3.1 properly reflects the law by requiring that a point of interconnection be established "within" SBC Illinois' network, pursuant to the requirement of Section 251(c)(2)(B) of the Federal Telecommunications Act of 1996. Staff agrees that SBC Illinois' proposed language for section 4.3.1 should be adopted.

**DISCUSSION**

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

**INTERCONNECTION:**

**ISSUE 6:** In one-way trunking architectures, does SBC Illinois have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by SBC Illinois if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?

**ISSUE 7:** When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by SBC Illinois.

Section 4.3.2.1, 4.3.2.2, 4.3.3, 4.3.3.1 and 4.3.3.2

**SBC Illinois Testimony:** Mindell Direct, lines 206-641; Mindell Rebuttal, lines 66-251.

**SBC ILLINOIS POSITION**

Issues 6 and 7 present the same question and should be resolved together. The question presented is whether AT&T can require SBC Illinois to route traffic past a nearby AT&T switch to an AT&T switch located an additional 25 miles away without bearing any of the costs for the additional transport it thereby imposes on SBC Illinois. Stated another way, when AT&T instructs SBC Illinois to deliver traffic to a distant switch rather to a nearby AT&T switch, can SBC Illinois recover its additional transport costs?

SBC Illinois should be compensated in this situation for three simple reasons. First, this is "expensive interconnection" under the principle set down by the FCC in its *Local Competition Order*. SBC Illinois demonstrates that it incurs up to an additional 12 million dollars in one-time capital costs to accommodate AT&T's routing instructions. By any standard, this increased cost – which does not even include ongoing expenses – is "expensive."

Second, AT&T has at least four switch locations in the Chicago LATA – Chicago, Lisle, Oak Brook and Rolling Meadows – and could at the very least instruct SBC Illinois to route traffic to the nearest AT&T switch location. AT&T does not do so. Instead, it instructs SBC Illinois to route traffic closest to the terminating location on AT&T's network, a practice that saves AT&T a great deal of transport which it would otherwise have to provide itself. The point is that SBC Illinois is not transporting calls those great distances because AT&T has only a single point of interconnection in the LATA. AT&T could just as easily instruct SBC Illinois to hand off the traffic at the closest switch location, but it does not do so. And will not do so as long as the Commission permits AT&T to get free transport.

Third, SBC Illinois' proposal is economically efficient because AT&T will use the appropriate amount of transport from SBC Illinois only when it has to pay a cost-based rate for that input. As long as AT&T gets the transport for free, it will have the incentive to use as much free transport as it can – regardless of the actual cost incurred by SBC Illinois and regardless of whether the parties could jointly agree upon a solution that resulted in lower overall costs for both parties.

Finally, SBC Illinois' proposal is designed to minimize the charges that AT&T would pay. The charge would be a Commission-approved TELRIC rate for interoffice transport and would apply to transport beyond 15 miles. In other words, on a 20 mile route, SBC Illinois would charge for only 5 miles – the first 15 miles are always free because transport charges would not apply to truly local calls. Moreover, SBC Illinois has recently revised its proposal to clarify that it would not charge for all of the terminating electronics involved in the transport. This further reduces the charge AT&T would have to pay to approximately 25% of the expected charges that AT&T identified in its testimony.

This Commission, the FCC and several courts have addressed the issue of whether ILECs can charge for excess transport in this situation. While the decisions have gone both ways, one thing that is clear is that federal law does not prohibit a commission from permitting an ILEC to impose these charges.

#### **DISCUSSION**

SBC Illinois will address Issue 6 and 7 together. The question presented is whether, when AT&T exercises its right to designate the points of interconnection within the LATA, it can do so without bearing any of the costs for additional transport it imposes on SBC Illinois. Stated another way, when can AT&T require SBC Illinois to transport calls to a distant AT&T switch when there are closer AT&T switches available and not bear any charges for additional transport?

We demonstrate below that the Commission should resolve Issues 6 and 7 in favor of SBC Illinois for the following reasons:

1. It is undisputed that AT&T's decision to route calls to distant switches rather than to nearby switches increases the cost of transporting certain calls;
2. Fundamental principles of fairness and economic efficiency dictate that AT&T bear the incremental costs caused by its routing decisions;
3. Pertinent legal precedents support the proposition that AT&T should bear the incremental costs caused by its decision to route calls to distant switches; and

4. The contract language that SBC Illinois has proposed is appropriately tailored to implement the correct allocation of incremental costs in a manner that is just and reasonable.

**A. Fundamental principles of fairness and economic efficiency dictate that AT&T bear the incremental costs caused by its routing decisions**

There are four main reasons why AT&T should compensate SBC Illinois for the excess transport provided. *First*, the interconnection selected by AT&T is “expensive interconnection” within the meaning of the FCC’s First Report and Order in CC Docket No. 96-98, FCC 96-325 (rel. August 8, 1996) (“*Local Competition Order*”). It costs SBC Illinois an additional 4.7 to 2.2 million dollars in one-time expenses to interconnect under AT&T’s proposal. This does not even include ongoing expenses associated with maintaining those facilities. An incremental expense, for all CLEC interconnections in the Chicago LATA of Illinois, of 12 million dollars is undeniably “expensive” and SBC Illinois is entitled to recover its costs. Mindell lines 522-560.

*Second*, AT&T does not, in fact, have a “single point of interconnection” architecture. It has several points of interconnection and several switches in Chicago, Lisle, Oak Brook and Rolling Meadows. Mindell Rebuttal lines 129-133. Thus, AT&T has a perfect opportunity to designate points of interconnection that *minimize* SBC Illinois’ transport costs. AT&T has failed to do this. In situations where AT&T has the opportunity to ask SBC Illinois to route traffic to a nearby AT&T switch, it does not do so. In many cases, AT&T insists that SBC Illinois transport traffic right past the nearby AT&T switch to another AT&T switch 35 miles away. For example, the distance between SBC Illinois’ Aurora switch and AT&T’s Lisle switch is just 14 miles. However, only 5% of the SBC Illinois/AT&T traffic originated at the Aurora switch is routed to Lisle. The remaining traffic is routed to switches that are 20, 25 and 35 miles away. Clearly, AT&T *could* easily minimize SBC Illinois’ transport, but chooses not to.

Similarly, the AT&T Rolling Meadows switch is just 13 miles from SBC Illinois' Elgin switch. However, only 15% of the AT&T traffic originating on SBC Illinois' Elgin switch is routed to Rolling Meadows. AT&T demands that SBC Illinois route 82% of that traffic 35 miles away to downtown Chicago. Mindell lines 188-189. While AT&T has the clear ability to accept traffic from SBC Illinois at closer locations, it chooses not to – and understandably so, because why would AT&T incur the cost of transport when it can have SBC Illinois transport that traffic for free? AT&T has absolutely no economic incentive to establish routing arrangements that minimize transport, and there is no mechanism in place that allows AT&T and SBC Illinois to figure out jointly what would be the least expensive form of transport *for both parties*. SBC Illinois' proposal cures this defect by having AT&T pay for the incremental transport it uses.

*Third*, section 251(c)(2)(D) requires that the SBC Illinois/AT&T interconnection be “on rates, terms and conditions that are just, reasonable and nondiscriminatory.” It is plainly just and reasonable for AT&T to bear the costs caused by AT&T's routing instructions. And it would just as plainly be unjust and unreasonable, and thus in violation of the 1996 Act, to require SBC Illinois to bear these costs.

In simple common sense terms, it is only fair that AT&T bear the additional costs it causes when it chooses an interconnection architecture that causes additional costs that AT&T bear those additional costs. This basic rule of fairness is reflected in a familiar economic principle to which this Commission consistently adheres: the cost causer pays<sup>22</sup>. The basis for

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<sup>22</sup> *E.g.*, Second Notice Order, *Adoption of 83 Ill. Adm. Code 550, “Non-Discrimination in Affiliate Transactions for Gas Utilities,”* Docket No. 00-0586, at p. 5 (July 26, 2001) (“Section 9-101 of the PUA requires all rates to be just and reasonable. In setting just and reasonable rates, the Commission is to assure that the cost of supplying public utility services is allocated to those who cause the costs to be incurred. (See 220 ILCS 1-102(d)(iii).) In order to ensure that cost causers pay, it is incumbent upon the Commission to assure that utilities are reimbursed for services provided to any taker . . .”); *Illinois Bell Tel. Co. v. AT&T Corp. and AT&T Comms. of Illinois, Inc., Complaint pursuant to Section 13-514 and Section 13-515 of the Public Utilities Act and request for temporary injunction*, Docket No. 97-0624 (February 27, 1998) (“AT&T is purchasing dedicated access from Ameritech and therefore is the customer on behalf of whom Ameritech must obtain space and power for its equipment in AT&T's POPs. As the “cost-causer,” AT&T is responsible for compensating Ameritech for these

the economic principle goes beyond notions of fairness. It is efficient, and therefore in the public interest, for a firm to bear the costs it causes, in order to encourage decisions that reduce costs and, ultimately, the prices paid by the consuming public.

*Fourth*, the rates proposed by SBC Illinois are entirely reasonable. SBC Illinois propose to charge only for transport beyond 15 miles at Commission-approved TELRIC rates for interoffice transport. Mindell lines 578-595. Moreover, as a compromise proposal to reduce these rates even further, SBC Illinois will only charge one of the two interoffice mileage termination charges. *Id.* lines 619-624. This will result in charges that are just 25% of what AT&T calculated in its testimony. *Id.* lines 592-595; Finney-Schell-Talbott lines 1400-1402. Thus, SBC Illinois' compensation proposal is a modest one.

**B. Pertinent legal precedents support the proposition that AT&T should bear the incremental costs caused by its routing decisions**

As the Commission sets out to decide who will bear the additional costs that flow from AT&T's routing decision, it is essential that the Commission begin with a clear view of the pertinent legal landscape. In a nutshell, and as demonstrated below, it is this:

- The FCC has ruled that it is *permissible* to require the CLEC to bear those costs, and that such a requirement is not inconsistent with the CLEC's right to choose a single point of interconnection.
- The FCC has also made clear that a CLEC that wishes an expensive interconnection must bear the cost of that interconnection, and a single point of interconnection is an "expensive interconnection."

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costs"); Arbitration Decision, *Covad Comms. Co. and Rhythms Links, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with the Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues*, Docket Nos. 00-0312 and 00-0313, at p. 63 (August 17, 2000) ("The Commission finds that Rhythms and Covad should pay Ameritech's costs to provide loop qualification information. Rhythms and Covad are the "cost causers" and, according to the holding of IUB, the cost of providing such information should be recovered from them"). Moreover, section 1.102 of the Public Utilities Act declares that an objective of the PUA is to make sure that costs are "allocated to those who cause the costs to be incurred."

- The two federal court of appeals that have touched on the subject contemplate that a CLEC that chooses a single point of interconnection will bear the resulting costs.
  - Thus, this Commission is free to find that AT&T should bear the incremental transport costs of its routing decisions.
1. **The FCC's treatment of interconnection in the *Local Competition Order* suggests that a CLEC should bear the incremental costs caused by its decision to route traffic to distant switches when closer switches are available.**

Section 252(c)(2) of the 1996 Act requires SBC Illinois to provide interconnection with its network for the transmission and routing of telephone exchange service and exchange access on terms and conditions that are just, reasonable and non-discriminatory. As the FCC found in its *Local Competition Order*, Section 252(c)(2) permits the CLEC to select the points in the ILEC's network at which it will deliver traffic. Recognizing, however, that "competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection," the FCC noted (*id.* ¶ 209) that "competitors have an incentive to make economically efficient decisions about where to interconnect." In this regard, the FCC reasoned that a "requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." *Id.* ¶ 199.

AT&T's routing scheme is "expensive interconnection" as the FCC used that term in paragraph 199, because AT&T causes SBC Illinois to route traffic to AT&T switches 35 miles away when closer switches are available. Mindell Rebuttal lines 183-195. Thus, the form of interconnection elected by AT&T is "expensive" as the FCC used that word in paragraph 199 of the *Local Competition Order* and, as the FCC there stated, a CLEC "would . . . be required to bear the cost of that interconnection, including a reasonable profit."

**2. The FCC Has Ruled That A CLEC's Right To Elect A Single POI Does Not Imply That The ILEC Should Bear The Additional Costs Caused By The CLEC's Election.**

The FCC ruled that a CLEC cannot be spared from bearing the additional transport costs on the ground that the CLEC has a right to elect a single point of interconnection. In Verizon's Pennsylvania 271 proceeding, CLECs argued that Verizon was violating its obligation to allow a single POI by requiring CLECs to pay for transport in exactly the situation that is at issue here. The FCC rejected the CLECs' argument, and distinguished between Verizon's duty to allow a single POI and a duty – hypothesized by the CLECs – to allow a single POI for free<sup>23</sup>:

Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that Verizon's policies do not represent a violation of our existing rules. Verizon states that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it permits carriers to physically interconnect at a single point of interconnection (POI). Verizon acknowledges that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities. The issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM. We find, therefore, that Verizon complies with the clear requirement of our rules, *i.e.*, that incumbent LECs provide for a single physical point of interconnection per LATA. Because the issue is open in our Intercarrier Compensation NPRM, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.

Similarly, in SWBT's Kansas/Oklahoma 271 proceeding, CLECs argued that SWBT was violating its SPOI obligation by requiring CLECs to pay for transport<sup>24</sup>. Once again, the FCC rejected the CLEC arguments and refused to invalidate the SWBT SPOI offer.

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<sup>23</sup> FCC, Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-0138, rel. Sept. 19, 2001 at ¶ 100 (“*Verizon 271 Order*”).

<sup>24</sup> In re Joint Application by SBC Communications, Inc. et al for Provision of In-Region, interLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (Released Jan 22, 2001) (“*Kansas/Oklahoma 271 Order*”).

By themselves, these FCC decisions: (1) instruct that for this Commission to resolve this issue in SBC Illinois' favor would be consistent with the 1996 Act and the FCC's implementing regulations; and (2) *preclude* the argument that to resolve the issue in SBC Illinois' favor would be inconsistent with a CLEC's right to elect a single point of interconnection.<sup>25</sup>

### **3. FCC Rule 703(b) Does Not Bar The Cost Recovery SBC Illinois Seeks**

AT&T argues that FCC Rule 703(b) forecloses SBC Illinois' proposal. Rule 703(b) is irrelevant, however, because it has to do only with reciprocal compensation, not with anything that SBC Illinois is proposing here.

Rule 703(b) appears in Subpart H of the FCC's rules, which is entitled, "Reciprocal Compensation for Transport and Termination of Telecommunications Traffic." Subpart H begins with Rule 701(a), which provides, "The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications between LECs and other telecommunications carriers." Thus, when Rule 703(b) provides that a LEC "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network," it necessarily means that a LEC may not assess reciprocal compensation charges on any other carrier for such traffic.

What, then, is "reciprocal compensation"? It is, pursuant to Rule 701(a), compensation for "transport and termination of telecommunications traffic." And the "transport" that is comprised by reciprocal compensation is "the transmission and any necessary tandem switching of telecommunications traffic . . . *from the interconnection point between the two carriers to the*

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<sup>25</sup> To be sure, the FCC's decisions do not compel the conclusion that the issue *must* be resolved in SBC Illinois' favor. In fact, we acknowledged that the Wireline Common Carrier Bureau, acting in the shoes of the state of Virginia, ruled in favor of the CLEC. This in no way overrules the FCC's decision in the *Verizon 271 Order*, however, because it is a Bureau Order and because it merely found that the language proposed by the CLEC 'more consistent' with FCC rules – it did not find that the ILEC's position *violated* FCC rules. See *MCI Metro Access Transmission Services v. BellSouth*, No. 5:01-CV-921-H(H) (E.D.N.C. 2003) p. 12. ("*MCI Metro v. Bellsouth*")

*terminating carrier's end office switch that directly serves the called party . . . .*" (Emphasis added.) The transport that is the subject of this proceeding is not from the POI to the terminating carrier's end office switch; rather, it is transport from the originating carrier's switch to the point of interconnection. Thus, it is not within the scope of reciprocal compensation at all, is not the subject of Subpart H of the FCC's rules, and is unaffected by Rule 703(b) in particular.

This analysis is confirmed by the discussion of Rule 703(b) that appears in the *Local Competition Order*, as part of which the FCC promulgated the rule (at ¶ 1042):

We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier *for terminating LEC-originated traffic*. . . . As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier *for terminating LEC-originated traffic* and must provide that traffic to the CMRS provider or other carrier without charge. (Emphasis added.)

SBC Illinois is not proposing to charge CLECs for terminating SBC-originated traffic. Rather, it is proposing that CLECs bear the incremental transport costs caused by CLEC's decision to employ a distant POI architecture.

The FCC itself has made clear that what SBC Illinois is proposing does not run afoul of Rule 703(b), again, in the *Verizon 271 Order*. There, the FCC concluded that Verizon was not in violation of any FCC rule by virtue of its imposition of charges exactly like those that SBC Illinois proposes here. If AT&T were correct in its assertion that SBC Illinois' proposal runs afoul of FCC Rule 703(b), the FCC could not possibly have reached that conclusion.

#### **4. Other Authority Supports SBC Illinois' Position.**

*MCI Telecomm. Corp. v. Bell-Atlantic Pennsylvania*, 271 F.3d 491 (3d Cir. 2001), was an appeal from a federal district court's decision on challenges to an arbitration decision by the Pennsylvania Public Utility Commission. In the arbitration, the ILEC contended that the CLEC should be required to interconnect in each access serving area, even when there was more than one such area within a LATA, and the CLEC contended it could be required to interconnect at

only a single point per LATA. The PUC resolved the issue in favor of the ILEC (271 F.3d at 517), and the district court reversed. On appeal, the Third Circuit affirmed the district court, concluding, as SBC Illinois concedes here, that the CLEC was entitled to insist on a single point of interconnection. *Id.* at 518. Having so concluded, though, the Court went on to say, “To the extent, however, that [the CLEC’s] decision on interconnection points may prove more expensive to [the ILEC], the PUC should consider shifting costs to [the CLEC].” *Id.*

The Third Circuit did not go so far as to hold that the PUC *must* shift costs to the CLEC – the case as it was presented did not call for the Court to take that step (in part because there had apparently been no showing, as there has been here, that the CLEC’s decision would in fact cause incremental costs). Equally clearly, however, the Third Circuit’s opinion supports the view that a CLEC that chooses an expensive architecture should bear such incremental costs as its decision causes. And the opinion corroborates the FCC’s ruling in the *Verizon 271 Order* that the CLEC’s right to a single POI (or any other type of expensive interconnection routing) does not imply that the CLEC should not pay the costs caused by its exercise of that right.

A decision from the Ninth Circuit confirms this result. *In U.S. West Communications, Inc. v. Jennings*, 304 F. 3d 950 (9th Cir. 2002), the Ninth Circuit addressed the identical situation and reached the same result as the Third Circuit. The Court in *Jennings* observed that “to the extent that AT&T’s desire to interconnection points prove more expensive to U.S. West, we agree that the ACC should consider shifting costs to AT&T.” *Id.* at 961.

The SPOI issue was carefully considered by the North Carolina Utilities Commission (“NCUC”) in the AT&T/BellSouth Arbitration<sup>26</sup>. As in this case, all parties conceded that AT&T was entitled to interconnect at a single point within the LATA. As in this case, the issue

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<sup>26</sup> *In The Matter of Arbitration of Interconnection Agreements Between AT&T Comm. of the Southern States, Inc. and TCG of the Carolinas, Inc. and BellSouth Telecomm, Inc. Pursuant to the Telecom Act of 1996*, 2001 N.C. PUC Lexus (N. Car. Utils. Comm’n March 9, 2001).

was whether BellSouth could ask AT&T to pay for the additional transport cost incurred by virtue of the single POI architecture elected by AT&T. In a detailed discussion, the NCUC found that “AT&T’s proposal to establish only one POI per LATA would force BellSouth to incur additional transport costs to deliver local traffic from every exchange in the LATA to AT&T.” Order, p. 11. The NCUC also found that AT&T must consider the total cost of the transport arrangement, not just the costs it is asked to incur: “When it chooses the site of the POIs [AT&T] must consider the total of each alternative, not merely the direct cost, but also those of BellSouth that should properly be assigned to AT&T.” Order, p.11. AT&T strenuously argued that FCC Rule 703(b) prevented BellSouth from assessing transport charges to the SPOI. The NCUC rejected that argument and specifically concluded that Rule 703(b) does not apply to the question of who pays for transport when the CLEC uses a single point of interconnection architecture. The NCUC specifically held that “If AT&T interconnects at points within the LATA but outside BellSouth’s local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for transport beyond the local calling area. The NCUC further concluded that this holding does not violate any FCC rule or case law and that [it] is more equitable than not and in the greater public interest.” Order, p. 16.

This Order was upheld on appeal to the Eastern District of North Carolina. The Court rejected MCI’s arguments that the FCC’s rules prohibit CLECs from paying for the additional transport, and the Court specifically rejected the argument that Rule 51.703(b) mandates that result. As the Court stated:

All other courts addressing the issue appear to have found cost-shifting for an expensive interconnection was appropriate. The FCC and numerous federal courts have subsequently endorsed this holding. Indeed, the Ninth Circuit’s holding . . . adhered to this interpretation even after the Virginia Arbitration Order. [footnote omitted] In the absence of a clear ruling from the FCC or a federal appellate court to the contrary (which, in this court’s opinion, the Virginia

Arbitration Order is not), this court cannot conclude that cost-shifting in this context violates federal law.

*MCI v. BellSouth*, p. 13.

In summary, there is ample legal precedent to support a determinate that AT&T should pay for the incremented transport it uses. No precedent cited by AT&T or Staff precludes this result.

**INTERCONNECTION:**

**ISSUE 8:** When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX traffic originated by SBC Illinois.

Sections 4.3.3, 4.3.3.1, and 4.3.3.2

**SBC Illinois Testimony:** Mindell Direct, lines 643-831; Mindell Rebuttal, lines 252-329.

**SBC ILLINOIS POSITION**

Issue 8 presents an even more compelling case for the Commission than Issues 6 and 7 because it deals with the transport costs for "FX" traffic – not normal local traffic. In an FX arrangement, AT&T separates the "rating" and "routing" of a phone number so that what should have been a toll call (i.e, a call from Aurora to Chicago) appears to the billing systems as a local call (i.e, Aurora to Aurora). SBC Illinois gets hit twice: it cannot charge its end user for this call and it must transport the toll call for AT&T all the way to Chicago (35 miles away) for free. Unlike a normal local call that actually originates in Aurora and terminates in Aurora, AT&T bears no transport cost to return the call from the point of switching in Chicago back to Aurora. And unlike the normal local call that originates in Aurora and terminates in Aurora, AT&T cannot argue that the long haul transport is necessitated merely by the fact that its sole point of interconnection is located in Chicago. AT&T has switch locations much closer than Chicago where SBC Illinois could hand off the traffic. AT&T wants the call delivered in Chicago because that is the final destination of the call. Why else would it select Chicago as the handoff point, rather than its other switch locations at which it could exchange traffic with SBC Illinois that are much closer? As SBC Illinois proved, AT&T only occasionally asks SBC Illinois to deliver traffic to the closest AT&T switch. In all other cases, AT&T demands that SBC Illinois provide free transport to locations 20 or 35 miles away from the point of origination. If AT&T wants SBC Illinois to transport FX traffic to remote points on its network that are farther away than other available points of interconnection, AT&T should pay for that service at Commission-approved TELRIC based rates.

SBC Illinois fully developed the arguments that support its positions in Interconnection Issues 6 and 7 and will not repeat those arguments here. The main point is that the FX calling in Issue 8 is a unique situation which is singularly unfair and which calls out for immediate redress. The Commission should adopt SBC Illinois' language to remedy this problem.

## DISCUSSION

There are special calls for which it is particularly appropriate that AT&T bear the expense of transporting outside a local calling area. These are “Foreign Exchange” or “FX” calls, which are dialed as local calls but are really toll calls because they are directed to a party outside the local calling area. For these calls, SBC Illinois gets hit twice because it bears the entire expense of transport facilities without the ability to charge either its own customer or AT&T for the call. AT&T establishes its FX service by separating the *rating* point of a telephone number (*i.e.*, the geographic location which determines whether a call will be billed as local or toll) from the *routing* point of the number (*i.e.*, the location to which SBC Illinois must deliver the call). Mindell lines 682-723. For example, AT&T can establish its service so a group of telephone numbers are “rated” in Geneva so that anyone within the Geneva local calling area can place calls to those numbers without incurring toll charges. For those same numbers, however, AT&T can establish “routing” to Chicago, so that the calls are physically delivered by SBC Illinois to Chicago. By this device, AT&T is able to sell SBC Illinois-provided toll calls as an AT&T local service.

SBC Illinois does not quibble here about AT&T’s ability to do this. Nor does SBC Illinois claim that AT&T should pay it access charges, as AT&T would do for normal toll service. Both of these questions have been resolved by the Commission and are not at issue here. The sole issue is whether SBC Illinois must provide this long haul transport (*i.e.*, toll) service to AT&T without any compensation whatsoever. The answer is a resounding “no”, for all of the reasons explained in Interconnection Issues 6 and 7.<sup>27</sup>

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<sup>27</sup> SBC Illinois’ proposed language for section 4.3.3 through 4.3.3.3 would allow SBC Illinois to recover the costs of providing this transport to AT&T. If the Commission finds for SBC Illinois on Issue 8, but finds for AT&T on Issues 6 and 7, it should include section 4.3.3 through 4.3.3.3 in the interconnection agreement, but delete the words “local/intraLATA traffic and” that appear in the fourth line of section 4.3.3.

*First*, AT&T does not have just one point of interconnection with SBC Illinois' network. Rather, it has at least four switch locations dispersed throughout the Chicago area. If this were simply a matter of physical interconnection, AT&T would instruct SBC Illinois to deliver traffic to the AT&T switch closest to the point of origination. Instead, in the majority of cases identified by Mr. Mindell, AT&T instructs SBC Illinois to transport traffic further away than the nearest AT&T switch, and further away *in the same direction*. This cannot be explained by any requirement of the physical interconnection arrangement. Rather, the sole explanation is that AT&T prefers "free" transport whenever it can get it.

*Second*, the SBC Illinois proposal is consistent with the well established rule that the "cost causer" should pay. This Commission recognizes that the most efficient allocation of economic resources can only occur when users of a service pay for it. (See discussion in Interconnection Issues 6 & 7).

*Third*, SBC Illinois is only asking for modest cost recovery. In particular, it is proposing to charge Commission-approved TELRIC rates for the length of the facility being used, less 15 miles (the distance that SBC Illinois would provide for truly local calling). It also proposes to charge only one of the two interoffice mileage termination charges that would normally apply. Significantly, SBC Illinois is *not* asking that AT&T make any changes in its retail service. Mindell lines 798-805. AT&T can still provide FX service wherever and to whomever it likes and SBC Illinois is not attempting to dictate any particular network configuration for AT&T.

Staff witness Zolnierек raises two concerns with this proposal. First, Dr. Zolnierек criticizes the proposal because it is not "symmetrical", *i.e.*, if an AT&T end user calls an SBC Illinois FX customer, SBC Illinois does not propose to compensate for any long haul transport AT&T may provide. Zolnierек lines 971-983. This criticism is misplaced. In the first place, this situation would never occur because SBC Illinois does not have the flexibility to assign

numbers from one rate center to switches throughout the Chicagoland area as does AT&T, so AT&T would always deliver an FX call to SBC Illinois within 15 miles of the location where it originated. Mindell Rebuttal lines 318-325. In any event, SBC Illinois proposes new language for section 4.3.3.3. to make it clear that the provisions governing FX traffic should apply reciprocally to both parties<sup>28</sup>.

Dr. Zolnierек also argues that AT&T's proposal provides equal treatment because each party delivers FX traffic to each other just as they would local traffic. Zolnierек lines 985-998. There is no equal treatment, however. SBC Illinois is required to haul the FX calls as far as 35 miles, while AT&T *always has* a near-by SBC Illinois location to deliver the call. This is because SBC Illinois does not separate the "rating" and the "routing", as AT&T does. Mindell Rebuttal lines 318-325. Thus, the arrangement can never provide equal treatment, as Staff believes.

The legal arguments SBC Illinois developed in Interconnection Issues 6 and 7 apply with even more force here. For example, the *Virginia Verizon Arbitration Order* does not apply to this FX transport issue at all because it involves a question of whether FX traffic should be treated as toll traffic subject to access charges, not whether the CLEC should pay for transport charges to the POI. Similarly, this Commission's decision in Docket No. 01-0614 specifically "deferred" the FX issue and directed Staff to examine the costs and benefits of a reciprocal compensation rulemaking. *Order*, Docket No. 01-0614, June 11, 2002, ¶ 336. Nothing has come of this as of yet, so the Company believes that it is particularly appropriate for the Commission to use this opportunity to rule that AT&T is no longer entitled to free transport for what is, for all practical purposes, toll traffic that could be easily handed off at closer locations.

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<sup>28</sup> SBC Illinois' proposal for section 4.3.3.3. is: "The provision for payment of transport in excess of 15 miles for FX traffic shall apply reciprocally to both SBC Illinois and AT&T".

Similarly, neither the Essex Arbitration Order (Docket No. 01-0427) or the Verizon GNAPs Arbitration (Docket No. 02-0253) address the precise issue presented in this arbitration. Essex (like the *Virginia Verizon Arbitration Order*) focused solely on whether access charges should apply to FX traffic. In the Verizon GNAPs Arbitration, GNAPs proposed a single POI and did not have the multiple switch locations that AT&T has in this case.

Finally, it is beyond dispute that FCC Rule 51.703(b) cannot apply to FX traffic because, by definition, that rule applies only to traffic subject to reciprocal compensation under section 251(b)(5). FX traffic under current Illinois regulation is *not* considered to be section 251(b)(5) traffic at all and is not subject to reciprocal compensation. *Level 3 Arbitration Order*, Docket No. 00-0332, Aug. 30, 2000 at 9-10.

In summary, while SBC Illinois believes that it should be compensated for the excess transport it provides in all cases, FX calls present a special case because it is in reality, SBC Illinois toll traffic for which SBC Illinois can no longer bill. The point is not that SBC Illinois has lost toll revenue. The point is that these are not truly local calls. SBC Illinois is not trying to replace its lost toll revenues – it merely wants to recover its costs of providing transport to AT&T on these calls. For all these reasons, SBC Illinois respectfully requests the Commission to adopt its proposed language on this issue.

**INTERCONNECTION:**

**ISSUE 9:** When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX Traffic originated by SBC Illinois?

Sections 4.3.1 and 4.3.2

**SBC Illinois Testimony: Mindell Direct, lines 909-942; Mindell Rebuttal, lines 44-65.**

**SBC ILLINOIS POSITION**

SBC Illinois proposes language for section 4.3.1 and 4.3.2 to make it clear that AT&T must establish a point of interconnection "within" SBC Illinois service territory, as required by Section 251(c)(2)(B) of the Federal Telecommunications Act and Section 13-801(b)(1)(B) of the Illinois Public Utilities Act. AT&T objects and argues (as it did in Issue Interconnection 1) that no point of interconnection ("POI") is required when it indirectly interconnects through the facilities of a third party carrier. This is wrong. Every interconnection arrangement requires a POI to establish exactly where the compensation obligations begin and end. Similarly, a POI establishes exactly where a parties network maintenance obligations begin and end. It appears that AT&T would have all those questions decided by the traffic exchange agreements between SBC Illinois and Verizon, rather than accept responsibility to manage these interconnection issues for itself. While SBC Illinois has no objection to AT&T's use of a third party carrier's facilities to establish a POI within the SBC Illinois service territory, SBC Illinois does object to treating SBC Illinois/AT&T traffic as if it were SBC Illinois/Verizon traffic for purposes of compensation and network maintenance.

Staff concurs with SBC Illinois' proposed language. SBC Illinois urges the Commission to adopt its proposal for Section 4.3.1 and 4.3.2.

**DISCUSSION**

The question presented is whether the contract should make clear that the point of interconnection between SBC Illinois and AT&T must be "within" the operating territory of SBC Illinois. SBC Illinois proposes the following language:

**4.3.1. Each Party shall provision and maintain its own one (1)-way trunks to deliver calls originating on its own network and routed to the other Party's network. Each Party will be responsible (including financial responsibility) for providing all of the facilities and engineering on its respective side of each point of interconnection ("POI") except as set forth in Section 4.3.2 and 4.3.3**

**below. AT&T must establish one or more POI(s) within the operating territory in the LATA where Ameritech-Illinois operates as an incumbent LEC and such POI(s) must be used by AT&T to originate AT&T Local/IntraLATA traffic in such LATA. Ameritech Illinois shall deliver its originating traffic to AT&T at AT&T's switch or such other mutually agreeable POI(s) and such switch or POI(s), whichever is applicable, must be within the LATA and within Ameritech Illinois' operating territory where the traffic originates.**

**4.3.2 In a one (1) way trunking architecture, each Party originating Local/IntraLATA traffic ("Originating Party") shall compensate the Party terminating such traffic ("Terminating Party") for any transport that is used to carry such Originating Party's Local/IntraLATA traffic between the POI and the Terminating Party's switch serving the terminating end user or its designated Point of Presence ("POP") subject to the following conditions:**

This language is appropriate for two reasons.

First, Section 251(c)(2)(B) of the Telecommunications Act of 1996 requires interconnection to be "within" SBC Illinois' network. SBC Illinois' network extends only within its operating territory and that is where the parties should exchange traffic. Second, under AT&T's proposal, SBC Illinois would have to lease facilities – potentially at great expense – to connect to whatever far-flung location AT&T may choose. This a particular hardship in the rural LATAs in downstate Illinois where SBC Illinois has a single end office and could be forced to lease facilities to run to the other side of the LATA just for the convenience of AT&T. This precedent would not be limited to SBC. AT&T's theory is premised on Section 251(a), which applies to all local exchange carriers – including small rural carriers throughout the state of Illinois. Staff agrees with SBC Illinois' proposed language and recommends that 4.3.1 and 4.3.2 be approved. Zolnierek lines 1032-1093.

AT&T argues that the requirement to establish a POI will deprive it of its ability to indirectly interconnect with SBC Illinois. Finney-Schell-Talbott Reply lines 189-195. AT&T is wrong. AT&T may "indirectly interconnect" through the facilities of a third party carrier and at the same time designate a point of interconnection within SBC Illinois' operating territory.

AT&T sees a problem where one does not exist. As Dr. Zolnierek explained, AT&T can employ the facilities of a third party carrier to connect with SBC Illinois, but this does not relieve AT&T of its obligation to designate a point of interconnection within SBC Illinois service territory. Zolnierek lines 1079-1088. A POI between SBC Illinois-provided facilities and the facilities AT&T provides or procures from a third party must be accurately designated so that the parties understand where their compensation obligations begin and end. Both parties charge for transport *from the POI* back to the first point of switching and unless they know where the POI is located they will not know how much transport to include in the reciprocal compensation charge. Moreover, the POI establishes the point at which a party's network maintenance obligations begin and end. A POI always exists in reality because there is a demarcation between the network components the two companies are in fact supplying. It does not simply evaporate, as AT&T suggests.

One other point about AT&T's position. AT&T has made clear in its testimony (but not its proposed language) that it would transport traffic that originated on its network to a point within SBC Illinois service territory, at its own expense. Finney-Schell-Talbott Reply lines 70-74. What AT&T has not explained, however, is whether it would also be responsible for transporting SBC Illinois-originated traffic from the SBC Illinois exchange back to the Verizon tandem. In other words, for traffic that originates on SBC Illinois' network, it is AT&T's position that the POI for purposes of compensation is located within the SBC Illinois exchange, or is it at the Verizon tandem? AT&T has been silent on this issue, and if this silence means SBC Illinois would have to transport the traffic to the Verizon tandem at its own expense or at Verizon's expense, that provides yet another reason why the AT&T proposal should be rejected because this clearly would not be interconnection "within" SBC Illinois' network.

The SBC Illinois proposal for section 4.3.1 and 4.3.2 should be adopted. Staff concurs<sup>29</sup>.

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<sup>29</sup> Because of its position on Interconnection issues 6, 7 and 8, Staff's proposed language for section 4.3.2 does not contain the words "and 4.3.3" in the second sentence. Otherwise, Staff's proposal is identical to the Company's.

**INTERCONNECTION:**

**ISSUE 10:**           Should the charges for the use of each Party's SS7 network be reciprocal?

**Section 23.7.1**

**SBC Illinois Testimony:** Chapman Direct, lines 1708-1870; Novack Direct, lines 42-96.

**SBC ILLINOIS POSITION**

The questions presented is whether AT&T should adopt AT&T's proposal and let each party charge additional (and potentially asymmetrical) rates for SS7 signaling or whether the Commission should adopt SBC Illinois' proposal that the parties interconnect their SS7 networks on a peer-to-peer basis without additional compensation. SBC Illinois' proposal is superior for several reasons. First, there is no need for the parties to charge one another additional rates for SS7 signaling, as AT&T proposes. There are SS7 costs included in the reciprocal compensation rates that both parties charge one another and each party should be satisfied with that recovery of SS7 costs. Second, it appears that AT&T does not intend to establish local interconnection arrangements but prefers to put local signaling messages over the SS7 connection it established for access signaling. AT&T concedes that the established SS7 interconnection arrangement is an access arrangement. Accordingly, AT&T should not be permitted to apply terms from the interconnection agreement to its tariffed arrangement.

SBC Illinois' proposal is that each party pay its own costs of establishing STP-to-STP connections. Thereafter, each party can exchange SS7 signaling messages without the need to track usage and render bills, both of which generate unnecessary internal expenses. Moreover, this proposal eliminates any incentive a carrier may have to gain the regulatory process by seeking out terminating traffic – an issue that has caused endless problems in the ISP arena. Finally, much of the traffic that originates on the SBC Illinois network and terminates to AT&T is "FX" traffic, which by Commission order is exempt from reciprocal compensation. AT&T's proposal would, to some degree, permit it to access the very charges disallowed by that Commission order.

**DISCUSSION**

The question presented is whether the Commission should adopt AT&T's proposal that each party charge additional (and possibly asymmetrical) rates for SS7 signaling or whether the Commission should adopt SBC Illinois' proposal that the parties interconnect their SS7 networks on a peer-to-peer basis without additional compensation. AT&T's proposal should be rejected for several reasons.

First, there is no need for the parties to charge one another additional rates for SS7 signaling. As Ms. Chapman testified on cross-examination, there are SS7 costs included in the reciprocal compensation rates that both parties charge one another. Tr. 167 (Chapman). Each party should be satisfied with these SS7 costs they are currently recovering through these reciprocal compensation rates. AT&T offered no evidence to support its claim for additional for SS7 costs over and above that which it currently recovers.

Second, it appears that AT&T does not intend to establish local interconnection arrangements at all, but prefers to continue to put *local signaling messages* over the SS7 connections it established for its *access signaling*. If that is AT&T's desire, then the terms and conditions of SBC Illinois' access tariffs will control, and the contract language becomes irrelevant. Under no circumstances should AT&T be permitted to exchange SS7 signaling for *local traffic over access arrangements*. This would be contrary to the terms of the access tariffs from which it purchases SS7 services.

AT&T concedes that it only established a single SS7 interconnection arrangement – an access arrangement purchased from SBC Illinois' tariff. Tr. 71-73 (Hammond). This access arrangement was ordered using the unique ACNA codes assigned to AT&T's *long distance operations*, Tr. 73 (Hammond), and were in fact established as early as 1992 – well before the passage of the Telecommunications Act of 1996. Tr. 73 (Hammond). Thus, AT&T has never established an SS7 interconnection arrangement for local traffic under its interconnection agreement and apparently never intends to do so. Certainly, it cannot simply pass SS7 signals to SBC Illinois over its access arrangement and expect SBC Illinois to treat it as local traffic under the interconnection agreement. Where AT&T exchanges SS7 traffic with SBC Illinois through

its access arrangement, SBC Illinois understandably treats that traffic as access traffic, not local traffic<sup>30</sup>.

From a practical standpoint, the reciprocal payments AT&T wants could not be implemented accurately under these conditions. The reason is that it would be impossible to “jurisdictionalize” traffic coming from AT&T to SBC Illinois. Specifically, if AT&T’s proposal were accepted, SBC Illinois would not be able to isolate or measure the volume of local versus non-local traffic sent from AT&T’s network. That, in turn, would necessitate the use of estimated percentage factors in lieu of actual measurements to create a bill for AT&T. The Commission, at least in the context of voice traffic, has rejected such an approach. According to the Commission, such “trust-me” billing arrangements “are not commercially reasonable or cost effective” and in fact could require extensive modifications to SBC’s billing systems. *See, In Re Illinois Bell Telephone Company*, Docket No. 96-0404 (August 4, 1997), Section III(B)(1)(b). The Commission concluded that CLECs are “not unduly impeded from competing in the local market” by establishing separate interconnection arrangement for local traffic.<sup>31</sup>

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<sup>30</sup> The same applies for the “D” links for which SBC Illinois bills AT&T approximately \$30,000 per month. Those links are purchased from the *access tariff* and are used for *access traffic*. If there is incidental local traffic going over those links, SBC Illinois cannot distinguish it and SBC Illinois should not be expected to pro rate the D link charges to distinguish between access traffic and local traffic.

<sup>31</sup> In an Order issued August 4, 1997, in Docket No. 96-0404 (SBC Illinois’ first “Competitive Checklist” Docket), the Commission stated as follows:

The Commission further finds that the trunking options Ameritech provides are consistent with its obligation to transmit and route exchange access traffic. Ameritech provides one-way or two-way trunks for the purpose of integrating the end offices and/or tandem offices of carriers for the completion of local switched and interLATA toll traffic. As part of the options provided, Ameritech requires that CLECs use TCTs to carry interLATA toll-switched traffic. We agree with Ameritech’s contention that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volume of each type of traffic that terminates over a single trunk group, which in turn would necessitate the use of estimated, percentage factors in lieu of actual measurements to create a bill. Such billing arrangements are not commercially reasonable or cost effective in the present market, as they would require extensive modifications to both Ameritech’s billing systems for reciprocal compensation and its systems for billing IXC access charges. Ameritech’s trunking options, in contrast, permit each carrier to bill the originating carrier for actual minutes of use and actual rates at the time the call was made. We so found in the MCI and Sprint arbitrations, noting that it was not possible to obtain accurate

Third, AT&T's proposed language would require each party to charge the other for SS7 signaling at rates set forth in each parties respective tariff. AT&T's tariffed rate is \$.00255 per message, nearly twice SBC Illinois' tariffed rate of \$.001348. Chapman lines 1849-1855. Thus, under AT&T's proposed contract language, SBC Illinois would pay AT&T far more than AT&T would pay. There is no justification for this unfair result and it provides further evidence of the potential mischief to be created under the type of compensation scheme AT&T proposes.<sup>32</sup>

Moreover, the SBC Illinois access tariff out of which AT&T purchases SS7 services, by its own terms, provides SS7 signaling only for Feature Group B and Feature Group D access connections – not local traffic. Thus, the very access arrangements that AT&T prefers to use appear to foreclose its use for local traffic in the first place.

Putting all that aside, AT&T's compensation proposal has an additional problem. At its core, AT&T's proposal seeks some temporary benefit from the traffic imbalance that currently exists in Illinois. As Mr. Hammond testified on cross-examination, about 80% of the traffic between SBC Illinois and AT&T currently originates on SBC Illinois' network and terminates on AT&T's network. Mr. Mindell testified that the percentage is an 85/15, but in either case the point is that the traffic imbalance works in AT&T's favor if it is permitted to charge an SS7 usage charge. As Mr. Mindell explains, much of this traffic is FX traffic – not the traditional local calling that occurs between normal end users. Mindell Rebuttal lines 204-329. FX traffic presents a unique case because – as discussed in Interconnection Issue 8 – this Commission has held that CLECs may not charge SBC Illinois reciprocal compensation when they terminate FX

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measurements over combined trunk groups and stating in the Sprint decision that Sprint will not be unduly impeded from competing in the local market by the adoption of Ameritech's proposed solution. Sprint Arbitration Decision, 96- AB-008, at 6; MCI Arbitration Decision, 96-AB-006, at 14-15. The record evidence in this proceeding presents no reason to reach a contrary conclusion.

<sup>32</sup> Although Mr. Hammond suggested on cross-examination that symmetrical rates may be appropriate, that is not the proposal in AT&T's language.

calls. See *Level 3 Arbitration Order*. This is for the simple reason that FX is really toll traffic, but the system has been tricked to treat it as if it were local traffic. Accordingly, SBC Illinois gets no revenue for these calls, and in fact has to transport the calls great distances for free. To somewhat ameliorate the impact of this unfair situation, this Commission prevents CLECs from imposing reciprocal compensation charges on SBC Illinois when they terminate FX traffic. AT&T's SS7 proposal seeks to circumvent that prohibition by assessing SS7 usage charges on FX traffic – the very type of charges disallowed in the *Level 3 Arbitration Order*.

The Commission should prevent this by adopting SBC Illinois' proposal that AT&T connect its STPs to an SBC Illinois STP in each LATA and that each party be responsible for establishing the trunks and transport necessary to connect to the other parties SS7 network. Each party would use the other's SS7 network on a reciprocal basis without any compensation in addition to that included in the reciprocal compensation rate. Chapman lines 1747-1758. SBC Illinois proposes the following language to incorporate this into the Agreement:

23.7.1.1.1 Peer-to Peer interconnection of SS7 networks requires, separate from any access arrangement, STP B-Link quad interfaces at the AT&T designated POI to each SBC-Illinois STP in each LATA for the Parties exchange of Local ISUP SS7 Signaling Messages associated with Local Calls. "Local ISUP SS7 Signaling Messages" means local traffic Calls between AT&T's local end users only and SBC-Illinois local end users that originate or terminate in the same local calling area.

23.7.1.1.2 If the Parties implement the SS7 Interconnection in this agreement exchanging Local ISUP SS7 Signaling Messages and AT&T owns a substantially similar SS7 network to SBC-Illinois SS7 network, that AT&T uses for such exchange, then each party will pay for all SS7 elements in their respected networks on their side of the POI. No additional compensation associated with SS7 signaling will apply. All compensation for transport and termination for local call setup for both parties network will be recovered in the reciprocal compensation section of this agreement. A "substantially similar SS7 network" means an SS7 network interconnected on a "B" link basis in each LATA, including, without limitation, signaling links, STPs, and signaling (originating and destination) points, all of which are combined to form a "signaling network" utilized to transfer signaling messages between a Party's switches and the switches of the other Party and one or more third parties. Signaling messages

delivered to SBC Illinois from AT&T must be associated with Authorized Services traffic originating on AT&T's network.

This proposal is superior to AT&T's in several ways. *First*, it eliminates the need to track usage and render bills, both of which generate internal expenses that are better avoided. *Second*, parties should not pay one another for what it is a cooperative effort in support of local calling. SS7 charges, of course, should apply when a CLEC does not have a comparable SS7 network of its own and where it is merely accessing SBC Illinois' SS7 network via an A link<sup>33</sup>. *Third*, the modified bill and keep arrangement eliminates any incentive a carrier may have to game the regulatory process by seeking out terminating traffic – such as ISP traffic. The industry is just beginning to sort out the imbalances caused by the ISP terminating compensation phenomenon, and the Commission should be reluctant to re-ignite those same issues in the SS7 arena.

For all these reasons, SBC Illinois urges the Commission to adopt its modified “bill and keep” proposal for SS7 traffic in this proceeding and to reject AT&T's language for section 23.7.1.

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<sup>33</sup> This precisely the distinction SBC Illinois is attempting to make through its proposed change to section 23.7.1. The intent of that language is to make it clear that the rate elements set forth in section 23.7 apply for A Link access – but not when a carrier has a comparable SS7 network as described above.

**UNE:**

**ISSUE 1:**           Should the ICA definition of Network Elements be that from the Illinois Public Utilities Act?

Sections 91.1, 9.1.2, 9.1.3, 9.2.1, 9.2.3 and 9.2.5.1

**SBC Illinois Testimony:** Niziolek Direct, lines 138-196; Niziolek Rebuttal, lines 20-75.

**SBC ILLINOIS POSITION**

The Commission should adopt SBC Illinois' version of section 9.2.1, which defines the term "Network Element" as that term is defined in Section 13-216 of the PUA. AT&T's proposal to use the section 13-216 definition to define both "Network Element" and "Unbundled Network Element" should be rejected. The term "Unbundled Network Element," as used in the Agreement, should be understood to refer only to those Network Elements that ILECs have been ordered to unbundle in accordance with Sections 251(c)(3) and 251(d)(2) of the 1996 Act. In addition, AT&T's proposal to include references to "Network Elements" in addition to, or in place, of "Unbundled Network Elements" in sections 9.1.1, 9.1.2, 9.1.3, and 9.2.5.1 of the Agreement should be rejected because such references could be improperly construed to require SBC Illinois to provide AT&T with access to Network Elements that have not been unbundled. Such a construction would be inconsistent with the scope of Article 9, as expressed in the agreed on language of sections 9.1 and 9.3.1, and the requirements of federal and state law.

**DISCUSSION**

There are two related issues implicated by the sections of the Agreement identified with this issue in the DPL. One issue, which relates to section 9.2.1, involves the proper definition of "network element." The second issue, which relates to sections 9.1.1, 9.1.2, 9.1.3, 9.2.3 and 9.2.5.1, involves the scope of SBC Illinois' obligation to provide AT&T with access to "network elements," as defined in section 9.2.1.

On the first issue, SBC Illinois and AT&T agree that the definition of the term "network element" set forth in section 9.2.1 should track the definition of that term as set forth in Section 13-216 of the Illinois Public Utilities Act (the "PUA"). 220 ILCS 5/13-216. Where the two parties differ is that AT&T's proposed section 9.2.1 uses the section 13-216 definition of the term "network element" to also define the term "unbundled network element," and states that the

two terms (“network element” and “unbundled network element”) “are used interchangeably” in the Agreement.

AT&T’s proposed version of section 9.2.1 should be rejected. The term “unbundled network element,” as used in the Agreement, should be understood to mean those “network elements” which ILECs have been ordered to unbundle by the Federal Communications Commission (the “FCC”) or this Commission in accordance with Sections 251(c)(3) and 251(d)(2) of the federal Telecommunications Act of 1996 (the “1996 Act”). 47 U.S.C. §§ 251(c)(3), 251(d)(2). As such, “unbundled network elements” are a subset of “network elements,” as defined in section 9-216 and, therefore, the two terms are not “interchangeable.” Staff agrees with SBC Illinois on this point. Niziolek lines 47-59 (quoting Staff Response to SBC Illinois Data Request Item 2).

In the context of Article 9 of the Agreement, the distinction between the terms “network element” and “unbundled network element” is significant because the provisions of that Article which refer to SBC Illinois’ obligation to provide AT&T with access to “unbundled network element” should not be construed as requiring SBC Illinois to provide AT&T with access to all network elements as broadly defined in the 1996 Act or in Section 13-216 of the PUA. For example, the agreed-upon language of sections 9.3.1 and 9.3.2.5 require SBC Illinois to “provide *Unbundled Network Elements* to AT&T in a manner that allows AT&T to combine those Network Elements to provide a telecommunications service” (emphasis added). Similarly, the agreed on language of section 9.3.1 states that “[s]ubject to the provisions hereof, at the request of AT&T, SBC Illinois shall also combine for AT&T any sequence of *Unbundled Network Elements* that SBC Illinois ‘ordinarily combines’ for itself or its end users” (emphasis added). These sections should not, and legally cannot, be construed to require SBC Illinois to provide AT&T access to any and all “network elements,” as broadly defined in the 1996 Act or in

section 13-216, including network elements that SBC Illinois has not yet been ordered to unbundle in accordance with “necessary” or “impair” standards imposed by Section 251(d)(3) of the 1996 Act.

The second issue is related to the first. In sections 9.1.1, 9.1.2, 9.1.3, 9.2.3 and 9.2.5.1, AT&T proposes to include references to “Network Elements” in addition to, or in place of, the term “Unbundled Network Elements.” Thus, for example, in section 9.1.1, AT&T proposes language that would require SBC Illinois to provide AT&T with non-discriminatory access to “Network Elements on any unbundled or bundled basis, as requested,” whereas SBC Illinois’ proposed language refers to its obligation to provide AT&T with non-discriminatory access to “Unbundled Network Elements.” In each instance, AT&T’s proposed language should be rejected because it might be improperly construed as imposing an obligation on SBC Illinois to provide AT&T with access to network elements (or combinations of network elements), that SBC Illinois has not been required to unbundle in accordance with Sections 251(c)(3) and 251(d)(2) of the 1996 Act. Such a construction would be inconsistent with the agreed language for section 9.1, “Introduction – Access to Unbundled Network Elements,” which states that Article 9 “sets forth the terms and conditions pursuant to which SBC Illinois agrees to furnish AT&T with access to Network Elements *on an unbundled basis*, and terms under which SBC Illinois agrees to provide combinations of *Unbundled Network Elements* (“UNE Combinations on Combinations”) as more specifically defined in *Section 9.3*” (emphasis added).

The adoption of language that might be construed as requiring SBC Illinois to provide AT&T with access to any and all Network Elements would also be contrary to the 1996 Act, which provides that the *only* network elements that an ILEC is required to provide its CLECs are those that must be “unbundled” (47 U.S.C. §§ 251(c)(3), 251(d)(2), 252(d)(1)), and that the only network elements required to be unbundled are those that meet the “necessary and impair”

requirements of Section 251(d)(2) of the 1996 Act (47 U.S.C. § 251(d)(2)). The United States Supreme Court has found that the “necessary and impair” requirements of section 251(d)(2) express Congress’ recognition of the need for a “limiting standard” for CLEC access to network elements that is “rationally related to the goals of the Act.” *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 388 (1999). Consistent with this finding, the D.C. Circuit Court of Appeals recently held that “impairment” is the “touchstone” of the 1996 Act’s provisions on access to network elements. *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 425 (D.C. Cir. 2002).

The applicability of the above-referenced federal law requirements to Illinois interconnection agreements is codified in Section 790.320 of the recently amended Interconnection Rule (83 Ill. Admin. Code Part 790), which provides that the network elements to which an ILEC has an obligation to provide CLEC access are those which have been “unbundled” in accordance with the “requirements of Sections 251 and 252 of the Federal Act.” 83 Ill. Admin. Code Section 790.320(a). In adopting this rule, the Commission expressly agreed with SBC Illinois’ position that the Commission may add to the FCC’s list of network elements for which an ILEC must provide access to CLECs *only* if the Commission complies with and conducts all of the analyses required by the 1996 Act:

As discussed by Ameritech, delineating specific UNEs involves a detailed process geared toward satisfying the requirements of TA96. The record in this case is devoid of the appropriate inquiry. As a result, the Commission will not and cannot broaden or modify the list of UNEs.

*Order*, Docket 99-0511, pp. 125-26 (March 27, 2002), *modified in part*, *Second Notice Order* (Jan. 23, 2003). As in Docket 99-0511, the record in this proceeding is “devoid of the appropriate inquiry” that would enable the Commission to order SBC Illinois to provide AT&T with access to any network elements that SBC Illinois has not previously been ordered to unbundle.

SBC Illinois recognizes that the Commission Order in Docket 01-0614 interpreted Section 13-801(d)(4) of the PUA as eliminating the concept of “unbundling” in the context of an existing network element “platform” that includes an SBC Illinois-owned splitter. *Order*, Docket 01-0614, pp. 13-83 (June 11, 2002). This aspect of the Order in Docket 01-0614 is discussed in the Section of this Brief that addresses UNE Issue 16. The Order in Docket 01-0614 did not, however, interpret section 13-801 as eliminating the concept of unbundling, or the applicability of the “necessary and impair” standard, as they relate to CLEC requests for access to network elements outside of the context of an existing “network elements platform,” e.g., on a standalone basis or as part of new UNE combinations.

To the contrary, Section 13-801(a) of the PUA indicates that the provisions of section 13-801 are to be interpreted and applied in a manner that is “not inconsistent with” the 1996 Act, and “not preempted by orders of the Federal Communications Commission.” 220 ILCS 5/13-801(a). In this regard, the Commission’s interpretation of section 13-801(d)(4) in Docket 01-0614 relied heavily on the absence from that section of the word “unbundled,” in contrast to sections 13-801(d)(1) and 13-801(d)(3), which refer to SBC Illinois’ obligation to provide CLECs with access to “*unbundled* network elements” on an individual basis and as part of a new combination of “ordinarily combined UNEs.” An interpretation of these statutory provisions as eliminating the “necessary and impair” test for the provision of unbundled network elements would be inconsistent with the 1996 Act, and, therefore, also contrary to section 13-801(a).<sup>34</sup> Moreover, in its Order adopting the amended Interconnection Rule which, as previously discussed, expressly ties the ILECs’ network elements obligations to Section 251 of the 1996

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<sup>34</sup> SBC Illinois believes that Section 13-801(d)(4), as interpreted by the Commission, is inconsistent with, and preempted by, federal law and has challenged the validity of that Section in a complaint filed in federal district court. SBC Illinois is not, however, challenging the Commission’s interpretation of Section 13-801(d)(4) in this arbitration proceeding.

Act, the Commission stated that it has “endeavored to ensure that the new Part 790 is consistent with” section 13-801. *Order*, Docket 99-0511 at 1.

Consistent with the language of 13-801(a), the Order in Docket 99-0511 and federal law, the agreed upon language of section 9.3.1 provides that (i) SBC Illinois shall provided *Unbundled* Network elements to AT&T in a manner that allows AT&T to combine those Network Elements to provide a telecommunications service; (ii) “[s]ubject to the provision hereof and at the request of AT&T, SBC Illinois shall also provide AT&T with all pre-existing combinations of *Unbundled* Network Elements; and (iii) “[s]ubject to the provision hereof, at the request of AT&T, SBC Illinois shall also combine for AT&T any sequence of *Unbundled* Network Elements that SBC Illinois ‘ordinarily combines’ for itself or its end users” (emphasis added).

In sum, the references to “Network Elements” (as opposed to “Unbundled Network Elements”), contained in AT&T’s proposed versions of sections 9.1.1, 9.1.2, 9.1.3, 9.2.3 and 9.2.5.1, appear to be an anomaly at odds with the parties’ core understanding of SBC Illinois’ obligation to provide AT&T with access to Unbundled Network Elements as expressed in the agreed on language of sections 9.1 and 9.3.1. Accordingly, AT&T’s proposed versions of sections 9.1.1, 9.1.2, 9.1.3, 9.2.3, and 9.2.5.1 should be rejected to avoid unnecessary confusion and to eliminate any implication that the Agreement imposes obligations on SBC Illinois that are inconsistent with applicable federal and state law.

**UNE:**

**ISSUE 2:           Should the ICA definition of telecommunications services be as stated in the Public Utilities Act, or in the FCC Act?**

**Section 9.1.1**

**SBC Illinois Testimony: Niziolek Direct, lines 198-218; Niziolek Rebuttal, lines 76-83.**

**SBC ILLINOIS POSITION**

Consistent with its position in UNE Issues 1, 4, and 7, discussed elsewhere in this Brief, SBC Illinois proposes language for section 9.1.1 stating that “telecommunications service,” as used in Article 9, should be defined as set forth in the 1996 Act and, to the extent not inconsistent with the Act, the applicable Illinois statute (*i.e.*, Section 13-203 of the PUA (220 ILCS 5/13-203)). AT&T, on the other hand, proposes language for section 9.1.1. adopting the definition of “telecommunications service” as set forth in Section 13-203 of the Illinois Public Utilities Act, without reference to the 1996 Act. Under the 1996 Act, ILECs can only be required to provide CLECs with access to UNEs for the purpose of providing “telecommunications services.” 47 U.S.C. § 251(c)(3). As used in Section 251(c)(3), the term “telecommunications services” is defined in Section 3(46) of the federal Communications Act of 1934. 47 U.S.C. § 153(46). Thus, to the extent that the definition of “telecommunications service” in Section 13-203, when used in the context of SBC Illinois’ obligation to provide AT&T with access to UNEs under Article 9, would create a contractual obligation to provide UNEs that exceeds the obligation based on the definition of “telecommunications services” in Section 3(46) of the federal Act, such contractual obligation would be inconsistent with Section 251(c)(3) of the 1996 Act. To avoid the potential for such inconsistency, the Commission should approve SBC Illinois’ proposed version of section 9.1.1.

**DISCUSSION**

The foregoing statement of SBC Illinois’ position serves also as SBC Illinois’ discussion of this issue.

UNE:

ISSUE 3: Must AT&T utilize UNEs for the provision of local exchange service to end users in order to utilize UNEs for the provision of other services?

Section 9.1.2

SBC Illinois Testimony: Niziolek Direct, lines 220-237; Niziolek Rebuttal, lines 95-224.

SBC ILLINOIS POSITION

The Commission should approve SBC Illinois' version of section 9.1.2, which makes it clear that AT&T may not use combinations of UNEs solely for exchange access. SBC Illinois' position is supported by the FCC's *Supplemental Order Clarification* which imposes usage limitations to prevent CLECs from using UNE loop-transport combinations exclusively to provide exchange access service to other carriers. Staff has proposed alternative language to section 9.1.2 referring to the *Supplemental Order Clarification*. To be acceptable, Staff's proposed language must be revised to (i) accurately reflect the requirements of the *Supplemental Order Clarification* and (ii) eliminate any inference that SBC Illinois has an obligation to perform the work of combining network elements that SBC Illinois is not required to provided on an unbundled basis.

DISCUSSION

This issue, as framed in the UNE DPL, is whether section 9.1.2 should include the following language proposed by SBC Illinois: "UNEs shall not be used *solely* for exchange access service, but may be used as such in conjunction with local exchange service." SBC Illinois and Staff witness Staranczak both opposed AT&T's proposed section 9.1.2, which did not include this language, on the grounds that it was too open ended and failed to include the restrictions on the use of UNE combinations to provide exchange access service established by the FCC's *Supplemental Order Clarification*, in CC Docket No. 96-98, FC 00-0838 (rel. June 2, 2000). The *Supplemental Order Clarification* provides that a carrier may not use combinations of network elements to provide exchange access service to a customer, unless the carrier certifies that it provides a "significant amount of local exchange service to such customer" in accordance with one of three defined local use tests. *Id.*, ¶ 22.

Mr. Staranczak, however, did not endorse SBC Illinois' proposed language. Rather, he proposed alternative language for section 9.1.2 that includes an explicit reference to the *Supplemental Order Clarification*. As discussed by Ms. Niziolek, SBC Illinois can accept Staff's proposed language for section 9.1.2, provided that it is modified to read follows:

9.1.2 SBC Illinois shall also provide AT&T with combinations of Unbundled Network Elements that it "ordinarily combines" for itself pursuant to section 9.3 herein. ~~***including but not limited to unbundled network elements***~~. SBC Illinois shall not place any restrictions or limitations on AT&T's use of Network Elements or Unbundled Network Elements or Combinations of Unbundled Network Elements other than as set forth in this agreement, and other than those restrictions and limitations provided for by the Federal Telecommunications Act, the rules and regulations of the Federal Communications Commission and the Illinois Public Utilities Act and applicable state laws, rules orders and regulations. ~~***In situations where AT&T is not collocated and does not have Self or third party provided transport***~~. AT&T may not use Combinations of network elements to provide exchange Access service to a customer unless it provides a "significant Amount of local exchange service" to such customer in accordance with the requirements and definitions contained in paragraph 22 of the FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-0183.

Niziolek Rebuttal lines 204-221.

The modifications to Staff's proposed language identified above are necessary for three reasons. First, Staff's proposed language must be revised to omit the language indicating that the *Supplemental Order Clarification's* local use test applies only to the use of UNE combinations in "situations where AT&T is not collocated and does not have Self or third party provided transport." In support of this language, Mr. Staranczak cited language from the *UNE Remand Order* (par. 487)<sup>35</sup> indicating that if a CLEC is collocated and has self-provided or third party provided transport, but is purchasing unbundled loops, that carrier is permitted to provide only exchange access over those facilities. Staranczak lines 92-97. In that situation, however, the carrier would only be purchasing a stand-alone UNE loop, not a UNE combination, from SBC

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<sup>35</sup> Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket 96-98 (rel. Nov. 5, 1999).

Illinois. The local use test clearly *does* apply to a request for a UNE loop-transport combination by a carrier that is collocated. In fact, two of the FCC three local use tests applicable to such combinations can only be met if the requesting carrier is collocated. Thus, it is clear that to request a UNE combination for use in providing exchange access, AT&T must certify that it provides a significant amount of local exchange service to its end user customers, whether or not it is collocated. *Supplemental Order Clarification*, ¶ 22, pages 12-14; and ¶ 24. Niziolek Rebuttal lines 153-167.

Second, Mr. Staranczak's proposal states that SBC Illinois shall provide AT&T with "combinations of Network Elements that it 'ordinarily combines' for itself, including but not limited to unbundled network elements." In doing so, Mr. Staranczak revised language agreed on by SBC Illinois and AT&T for section 9.1.2 that indicates that the obligation to provide "ordinary combinations" applies only to *Unbundled* Network Elements. This revision may lead to the inaccurate assumption that SBC Illinois is obligated to combine network elements which SBC Illinois has not been ordered to unbundle (or, given the sentence structure, even that "unbundled network elements" are combinations in and of themselves). Mr. Staranczak does not include any explanation for this change, which is contrary to his acknowledgment that, in accordance with the Commission's Order in Docket 01-0614, SBC Illinois has no obligation to combine network elements if the requested combination "contains a network element that the Commission does not require the Company provide as an Unbundled Network Element." Staranczak lines 343 to 345. *Order*, Docket 01-0614, ¶¶ 167, 168 (June 11, 2002).

Third, Mr. Staranczak proposes to delete the reference to "restrictions and limitations provided for by the Federal Communications Commission" from the last sentence of section 9.1.2, as already previously agreed to by SBC Illinois and AT&T (the next to the last sentence of Mr. Staranczak's proposed version of section 9.1.2). As a result, Mr. Staranczak's

proposed language could be construed as providing that the *Supplemental Order Clarification* identifies the only federal restrictions and limitations that will apply to the AT&T's use of UNEs or combinations of UNEs under the terms of the Agreement. Again, Mr. Staranczak's proposal reflects a change to language that had already been agreed upon by SBC Illinois and AT&T. Mr. Staranczak offered no explanation for that change, and it should be rejected. Niziolek Rebuttal lines 189-198.

In his rebuttal testimony, AT&T witness Noorani proposed that Staff's proposed language for section 9.1.2 be modified to indicate that the *Supplemental Order Clarification's* local use requirement applies only to unbundled loop-transport combinations used "solely to bypass special access service." Noorani Rebuttal lines 71-85. Mr. Noorani's proposed revision should be rejected. The *Supplemental Order Clarification's* local usage requirement is not limited to the use of UNE loop-transport combinations for the "bypass of special access service." Rather, the local use requirement applies more generally to the use of UNE loop-transport combinations in the "exchange access market of which the special access market is a subset." *Supplemental Order Clarification*, ¶¶ 3, 10, 13 et seq.

**UNE:**

**ISSUE 4: May AT&T use UNEs to provide service to itself and its affiliates?**

**Sections 9.2.4 and 9.3.2.5**

**SBC Illinois Testimony: Niziolek Direct, lines 239-258.**

**SBC ILLINOIS POSITION**

The 1996 Act provides that ILECs must provide UNEs to a requesting telecommunications carrier for the “provision of a telecommunications service.” The Act defines “telecommunications service” as the “offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public.” AT&T may, therefore, use UNEs to provide telecommunications service to the public. It may not provide UNEs to provide service to itself or to its affiliates.

**DISCUSSION**

In sections 9.2.4 and 9.3.2.5 of the Agreement, AT&T proposes to include language that would expressly allow AT&T to use UNEs and UNE combinations to provide telecommunications services to itself and its affiliates, in addition to its end users. AT&T’s proposal should be rejected. Under the 1996 Act, ILECs are only required to provide CLECs with access to UNEs for the purpose of providing “telecommunications service.” 47 U.S.C. § 251(c)(3). The 1996 Act defines “telecommunications service” as the “offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public . . .” 47 U.S.C. 153(46) (emphasis added). AT&T may, therefore, use UNEs to provide telecommunications service to the public (*i.e.*, its end users). AT&T may not, however, use or resell the UNEs it obtains from SBC Illinois to provide service to itself or to its affiliates.

AT&T witness Noorani argued that AT&T’s position is supported by Section 13-801(d)(4) of the PUA. Noorani lines 955-967. That section, however, says nothing about a carrier’s use of UNEs for the provision of telecommunications services to itself or its affiliates. To the contrary, section 13-801(d)(4) provides that a telecommunications carrier may use a

network elements platform for the provision of telecommunications services to “its end users or payphone service providers.” 220 ILCS 5/13-801(d)(4). Agreed contract language allowing AT&T to use a network elements platform in accordance with section 13-801(d)(4) is included in section 9.3.1 of the Agreement.

**UNE:**

**ISSUE 5: Is AT&T entitled to interconnect at any technically feasible point? Is SBC required to physically cross connect AT&T's facilities with SBC Illinois' network?**

**Sections 9.2.5 (AT&T), 9.11, 9.13-9.16 (SBC)**

**SBC Illinois Testimony: Niziolek Direct, lines 260-402; Jarmon Direct, lines 27-163.**

### **SBC ILLINOIS POSITION**

The Commission should approve SBC Illinois' proposed section 9.11 which describes, and sets forth the terms and conditions applicable to, three technically feasible, and commonly available, methods available to CLECs for obtaining access to UNEs. By comparison, AT&T's proposed language for section 9.11 is extremely vague and could lead to unnecessary disputes. The Commission should also approve SBC Illinois' proposed sections 9.13-9.16, which identify the many types of cross connections available to AT&T. Contrary to AT&T's objections, SBC Illinois' proposed sections 9.11 and 9.13 do not "limit the options" available to AT&T. Rather, AT&T would have the ability to use the BFR process to request other methods of access or cross connections that it believes are technically feasible. AT&T has not, however, identified any such alternative methods of access or cross connections.

The Commission should also reject AT&T's proposed language for section 9.2.5 because it (i) improperly suggests that AT&T should be permitted direct access to SBC Illinois' Central Offices, including the Main Distribution Frame (see discussion in the Section of this Brief addressing Collocation Issue 3) and (ii) improperly suggests that SBC Illinois should be required to provide AT&T with demarcation points at non-standard locations unilaterally determined by AT&T to be "suitable." Requests for non-standard demarcation points should be made through the BFR process and should be subject to an analysis by SBC Illinois to confirm that such demarcation points are technically feasible and do not create operation problems that may jeopardize network reliability.

### **DISCUSSION**

UNE Issue 5 is not really about "interconnection," as suggested by the DPL's statement of the issue, as "interconnection" by definition is the linking of two networks for the mutual exchange of traffic. FCC Rule 51.5. This issue is really about accessing UNEs. And as indicated by the agreed-upon portions of section 9.1.1, there is no dispute as to the general requirement that SBC Illinois provide AT&T with non-discriminatory access to UNEs at any

technically feasible method. Rather, the issues here are (1) whether the Commission should approve the SBC Illinois version of section 9.11, which describes the methods by which AT&T may obtain access to UNEs and the conditions under which those methods are to be made available; (2) whether the Commission should approve SBC Illinois' proposed sections 9.13-9.16, which describe the cross-connects available to AT&T; and (3) whether the Commission should approve AT&T's proposed section 9.2.5, which suggests that AT&T would have the unilateral right to require SBC Illinois to provide AT&T with access to UNEs at non-standard demarcation points deemed "suitable" by AT&T.

### **Sections 9.11 and 9.13-9.16**

SBC Illinois' proposed version of section 9.11 identifies a set of three technically feasible and commonly accepted methods available to CLECs for obtaining access to UNEs. Each method also enables AT&T to combine UNEs. The methods are described as follows:

Method 1: States that SBC Illinois is responsible for extending its UNEs that require cross connects to AT&T's physical collocation point of termination ("POT"), when AT&T is physically collocated within the same central office where the UNEs are located.

Method 2: States that SBC Illinois is responsible for extending its UNEs that require cross connects to AT&T's frame located in a common room space (not collocation), within the same central office where the UNEs are located. This is the only method which requires AT&T to be collocated.

Method 3: States that SBC Illinois is responsible for extending its UNEs to AT&T's UNE frame that is located outside the SBC Illinois central office where the UNEs are to be combined in a closure provided by, and on, SBC Illinois premises.

Method 1 is, by its terms, available through physical collocation. Methods 2 and 3 are (a) available to both collocated and non-collocated CLECs, and (b) subject to SBC Illinois space and equipment availability. Niziolek lines 311-325.

AT&T presented no testimony identifying any concerns with the methods of access, or the terms and conditions applicable to those methods, spelled out in SBC Illinois' proposed

version of section 9.11. AT&T also did not explain what, if any, objections it has to SBC Illinois' proposed sections 9.13-9.16, which identify the numerous cross connections offered by SBC Illinois. AT&T's only argument for rejecting SBC Illinois' proposed language for sections 9.11 and 9.13 is that it "limits the options available to those identified" in those sections. Noorani lines 991-993. This argument is without merit. Although SBC Illinois believes that the three methods of access identified in section 9.11, and the cross connections identified in sections 9.13-9.16, are the methods that are technically feasible, AT&T would be able to use the Bona Fide Request ("BFR") process, set forth in Schedule 2 of the Agreement, to request other methods that it believes to be technically feasible. Niziolek lines 356-57.

Furthermore, the three methods of access identified and described in SBC Illinois' proposed section 9.11 are the same methods of access referenced in AT&T's interconnection agreements with SBC ILEC affiliates in Wisconsin, Ohio, and Connecticut. Niziolek lines 345-350. AT&T has never issued a BFR for an alternative method of access; nor has it ever suggested that any other technically feasible options exist or should be made available. *Id.* lines 360-361, 365-369.<sup>36</sup>

AT&T's proposed version of section 9.11 includes a restatement of the general proposition that it is entitled to access to UNEs at any technically feasible point, including at any point set forth in Article 12 (Collocation), but contains no language with respect to the methods by which access to UNEs will be provided. Moreover, unlike SBC Illinois' proposal, AT&T's proposed language does not spell out the terms and conditions applicable to the methods of access. (AT&T proposed no language whatsoever dealing with cross connections). AT&T's

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<sup>36</sup> In the context of commenting on Issue 12, Mr. Noorani asserted that, of the methods of access offered by SBC Illinois, "combining network elements in collocation spaces is the only method that is currently available from SBC Illinois." Noorani lines 1153-1154. This assertion is incorrect. As indicated in subsection 9.11.2.2 of SBC Illinois' proposal, only Method of access 1 requires collocation. Methods 2 and 3 do not. Niziolek lines 381-383.

proposed language should be rejected because it is extremely vague and, therefore, could lead to unnecessary disputes. Niziolek lines 276-280, 290-291.

#### **Section 9.2.5**

The language proposed by AT&T for section 9.2.5 should be rejected for two reasons. First, that language suggests that AT&T desires to have direct access to SBC Illinois' Central Offices, including the Main Distribution Frame. Jarmon lines 53-55. For the reasons discussed in the Section of this Brief addressing Collocation Issue 3, SBC Illinois has no obligation to provide such access. Second, AT&T's proposed language would require SBC Illinois to provide for UNEs ordered by AT&T, "access to such demarcation point, which AT&T agrees is suitable." This language is confusing and could be construed as allowing AT&T to unilaterally define for itself the demarcation points within SBC Illinois' network. Jarmon lines 68-69, 87-89.

A demarcation point is the point where responsibility for the UNE or UNE combination is transferred from SBC Illinois to the CLEC. Jarmon lines 73-75. The standard demarcation point is at the end of the cabling that SBC Illinois extends to the collocation space. For those methods of access to UNEs that do not require collocation, the standard demarcation point is at the CLEC end of the arrangement. Another standard demarcation point is at the network interface device ("NID") located at the end-user' premises. These points all must be defined in advance because of the work necessary to implement them. *Id.* lines 92-98. AT&T's proposed language for section 9.2.5 improperly suggests that SBC Illinois is required to provide demarcation points at non-standard locations deemed "suitable" by AT&T without consideration of all necessary factors. *Id.*, lines 99-100.

In this regard, it is not SBC Illinois' position that AT&T has no right to request a non-standard demarcation point. In fact, it can do so through the BFR process, in which case a project team would be assembled to evaluate whether the requested demarcation point is

technically feasible. Jarmon lines 111-116. In evaluating whether the requested non-standard point is technically feasible, a number of factors would need to be considered. For example, if AT&T desired access to a UNE in a manner that could interfere or disrupt other carriers or SBC Illinois customers, the Company would deem that type of request as technically infeasible. *Id.* lines 120-123.

Once technical concerns were considered, the Company would then evaluate operational concerns, such as ordering, testing (troubleshooting), billing, and database management. Jarmon lines 120-125. For example, even when a non-standard demarcation point is possible, the request must be denied if the requested demarcation point does not allow for troubleshooting and maintenance, or might otherwise jeopardize network reliability. *Id.* lines 129-135. Moreover, demarcation points cannot simply be specified at the time of a service order. They have to be developed, engineered, deployed and maintained. New demarcation points must be added to the network as a whole to avoid the risk that a weak link may cause outages and disruptions. *Id.* lines 135-138.

For all these reasons, the Commission should reject AT&T's proposed section 9.2.5 language insofar as it purports to give AT&T the right to demand access to any demarcation points that it deems to be "suitable." As the owner and operator of the network, SBC Illinois has the ultimate responsibility for maintaining and operating that network in a manner that will enable it to meet its obligations to all of its own customers, including AT&T and other CLECs. As such, SBC Illinois has the responsibility for ensuring that actions are not taken that could jeopardize the integrity and reliability of the network. Accordingly, it is important that SBC Illinois maintain the ability to fully analyze and consider alternative demarcation points as they might actually be requested, without already being obligated to honor any and all requests for new demarcations that AT&T has decided are "suitable." Niziolek lines 393-399.

**UNE:**  
**ISSUE 6:** Should SBC be obligated to provide AT&T, in connection with an order for a UNE or UNE Combination, with any technically feasible network interface as described in industry standard technical references?

Sections 9.2.3 (AT&T), 9.2.5 (SBC)

SBC Illinois Testimony: Niziolek Direct, lines 404-447; Jarmon Direct, lines 164-211.

#### SBC ILLINOIS POSITION

SBC Illinois cannot be required to construct or deploy new interfaces that have not yet been deployed in its network. Moreover, the FCC rules do not provide that AT&T may specify where in SBC Illinois' network AT&T will connect. Rather, it is appropriate for SBC Illinois to designate the appropriate network interface.

#### DISCUSSION

This issue involves the network interfaces that SBC Illinois will provide when it fills an order for UNEs or UNE combinations. A network interface refers to the physical handoff of a UNE or UNE combination and specifies the hardware used and electrical or optical characteristics to be employed for that handoff. Jarmon lines 177-178.<sup>37</sup> SBC Illinois is willing to provide the interfaces that currently exist in its own network, comply with industry standards, and are available to all requesting carriers. AT&T, on the other hand, wants to have the right to force SBC Illinois to create new interfaces that do not exist in SBC Illinois' network. Specifically, AT&T's proposed language for section 9.2.3 states, in part, that "AT&T, at its option, may designate any technically feasible network interface, including without limitation, DS0, DS-1 and DS-3 interfaces, and any other interface described in the applicable Telcordia and any other industry standard technical references."

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<sup>37</sup> The network interface is distinguishable from the demarcation point (addressed in UNE Issue 5), which refers to the physical location in the network where responsibility changes between the parties. Jarmon lines 183-185.

AT&T's proposal should be rejected. AT&T's reference to "any technically feasible network interface" and "any other interface described in the applicable Telcordia and any other industry standard technical references" is extremely broad and contains no limiting language, such as "where interfaces currently exist in the network" or "when available." Moreover, while all of the interfaces that SBC Illinois has deployed in its network meet industry and Telcordia standards, there are interfaces which meet such standards that SBC Illinois does not employ. Jarmon lines 205-207.

Accordingly, AT&T's proposed section 9.2.3 could be construed as requiring SBC Illinois to incur significant expense to construct or deploy, upon AT&T's demand, new facilities and additional types of technology that do not currently exist in SBC Illinois' network. Jarmon lines 192-201. Such a requirement would violate the 1996 Act, which requires ILECs to provide "access to" network elements that the FCC has required to be unbundled, 47 U.S.C. § 251(c)(3), but *not* to create new facilities upon demand. *Iowa Utils. Bd. v. FCC*, 120 F.3d 953, (8th Cir. 1997) ("subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network"); *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000); Memorandum Opinion and Order, *Petitions of WorldCom, Inc. et al.*, CC Docket Nos. 00-218, 00-279, and 00-251, at ¶ 468 (rel. July 17, 2002).

Moreover, AT&T has the option under the BFR process to request additional interfaces that are not ordinarily used by SBC Illinois. Jarmon lines 186-191. It is possible that SBC Illinois would have no objection to a specific request for a particular interface made through the BFR process. However, the broad language of AT&T's proposal suggesting that AT&T has the right to command deployment is unreasonable. Moreover, AT&T's language does not address any cost recovery for SBC Illinois on interfaces not currently deployed. Through a BFR, those cost recovery issues can be addressed if and when AT&T makes a particular request. While this

does not mean SBC Illinois has an obligation to deploy a new interface, or agree to reach agreement via the BFR process, SBC Illinois' proposed language does permit the parties to discuss a specific request in light of the factual situation existing at the time the request is made, rather than imposing a broad obligation without any ability by SBC Illinois to address particular situations that might arise.

For these reasons, the Commission should reject AT&T's proposed section 9.2.3, and approve SBC Illinois' proposed section 9.2.5, which states that "Access to UNEs is provided under this Agreement over such routes, technologies and facilities as SBC Illinois may elect at its own discretion."

**UNE:**

**ISSUE 7:           What criteria should be used to determine whether network elements or unbundled network elements are “available”?**

**Section 9.2.5.1**

**SBC Illinois Testimony: Niziolek Direct, lines 449-489; Niziolek Rebuttal, lines 85-91.**

**SBC ILLINOIS POSITION**

The Commission should adopt SBC Illinois’ version of section 9.2.5.1, which provides that, whether or not unbundled network elements are “available” will be determined pursuant to applicable federal law and FCC regulations and, where consistent with federal law and FCC regulations, the rulings of the Illinois Commerce Commission and applicable state law. AT&T’s proposal to define “available” by reference solely to the Commission Order in Docket 99-0593 will unnecessarily require SBC Illinois to invoke the Change of Law provision in the event that the FCC or a court defines “available” in a manner inconsistent with the Order in Docket 99-0593.

**DISCUSSION**

The language proposed by AT&T for section 9.2.5.1 is intended to require that SBC Illinois’ provision of UNEs – in this case the determination of whether a UNE is “available” – should be governed solely by the Commission’s Order in Docket 99-0593, without regard to whether that Order is consistent with federal law. SBC Illinois’ proposed language, on the other hand, provides that whether or not the facilities are “available” will be determined pursuant to applicable federal law and FCC regulations and, where consistent with federal law and FCC regulations, the rulings of the Commission (including the Order in Docket 99-0593) and applicable state law.

The Order in Docket 99-0593 defines a facility as “available” if it is “located in an area presently served by SBC Illinois” where “the term ‘presently’ refers to the time at which the facility is requested.” *Order*, Docket 99-0593, p. 21 (Aug. 15, 2000). SBC Illinois challenged that definition in a complaint filed in federal district court on the grounds that the definition violates federal law to the extent that it may be construed to require SBC Illinois to construct

new facilities to provide a CLEC with an unbundled loop where no loop currently exists. *Iowa Utils. Bd. v. FCC*, 120 F.3d 953, (8th Cir. 1997) (“subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC’s existing network”); *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000); Memorandum Opinion and Order, *Petitions of WorldCom, Inc. et al.*, CC Docket Nos. 00-218, 00-279, and 00-251, at ¶ 468 (rel. July 17, 2002). That complaint proceeding is currently pending. In its brief in that case, the Commission clarified that the definition of “available” “does not require [SBC Illinois] to construct brand new loop facilities for the sole purpose of unbundling those loop facilities for CLECs.” (“Commission’s Opening Brief In Opposition to Ameritech Illinois’ Opening Brief On the Merits” in Case No. 00 C 7050, United States District Court, Northern District of Illinois, p. 16). The Commission also argued that its definition is not inconsistent with federal law. Niziolek lines 472-481.

The Commission should approve SBC Illinois’ proposed language for section 9.2.5.1 because it would eliminate any inference that the definition of “available” adopted for purposes of the Agreement is one that could be inconsistent with federal law. If the Commission adopts AT&T’s proposed language, which ties the definition of “availability” to that adopted in Docket 99-0593 without any reference to the need for consistency with federal law, then SBC Illinois will be required to unnecessarily invoke the Change of Law provision in the event that the FCC or a court issues a ruling in the future adopting a definition of “availability” which is inconsistent with the definition in Docket 99-0593. On the other hand, adoption of SBC Illinois’ proposed language should not prejudice AT&T because it would be deemed to incorporate the definition of “availability” set forth in the Order in Docket 99-0593 unless the courts or the FCC take action in the future that makes it clear that the Docket 99-0593 definition is inconsistent with federal law. This is because SBC Illinois’ proposed language provides that the “availability” of facilities be determined in accordance with state law and the Commission’s

rulings to the extent that such law and rulings are consistent with federal law and FCC regulations.<sup>38</sup>

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<sup>38</sup> To avoid any unnecessary disputes in the event that the Commission deems it appropriate to adopt AT&T's proposed language for section 9.2.5.1, that language should be modified to incorporate the clarification made by the Commission in its brief on appeal, i.e., that the definition of "available" in the Order in Docket 99-0593 "does not require SBC Illinois to construct network elements for the sole purpose of unbundling those elements for CLECs."

UNE:

ISSUE 8.a: When SBC services are converted to UNE combinations, must SBC guarantee that service to the end user will never be disconnected during conversion?

ISSUE 8.b: What charges may SBC recover for such a conversion?

Sections 9.3.1.2 (AT&T), 9.3.2.1(SBC)

SBC Illinois Testimony: Chapman Direct, lines 1127-1490;  
Niziolek Direct, lines 491-569; Jarmon Direct,  
lines 213-277.

#### SBC ILLINOIS POSITION

When converting a service to UNEs, SBC Illinois will not separate UNEs that are already combined and does not expect to disrupt service. However, there are a number of steps and variables involved in migrating an existing service to an existing UNE combination, and SBC Illinois cannot guarantee that service will never be disconnected and facilities will never be slightly rearranged, and cannot reasonably be required to provide such a guarantee. SBC Illinois' language provides that there will not be an unnecessary disruption to the end user's services. Accordingly, the Commission should approve SBC Illinois' proposed section 9.3.2.1 and reject AT&T's proposed section 9.3.1.2.

AT&T's arguments regarding line splitting, which its witness presented in testimony purporting to address Issues 8 and 13, bear no relation to the contract language being contested in UNE Issue 8 and, in any event, were fully considered and rejected by the Commission earlier this year in Docket 01-0662. Accordingly, AT&T's line splitting arguments should be disregarded.

#### DISCUSSION

AT&T's proposed section 9.3.1.2 would require that, whenever AT&T requests a network elements platform for which field work outside the central office is not required, SBC Illinois shall be required to provide the requested platform "without any disruption to the end user's services." SBC Illinois objects to AT&T's proposed language to the extent that it might be construed to be a guarantee that there will never be any disruption in service in the circumstances described in section 9.3.1.2. Niziolek lines 498-503.

Consistent with the requirements of FCC Rule 51.315(b), SBC Illinois agrees that it will not disconnect or separate UNEs that are already combined when it is requested to migrate a

customer over a UNE platform. Moreover, SBC Illinois agrees that there should be no disruption to the customer's service as a result of such a migration. Niziolek lines 506-509. However, whenever a line is converted from retail or resale to an existing UNE combination, SBC Illinois needs to perform billing and switch translation changes and issue change of ownership, class of service and line USOC. The FCC found no fault with this process in SBC's Section 271 application for Texas, even though the process involves a brief "functional disconnect[ion]" of service when it "disconnects the existing service configuration in the switch and replaces it with a new configuration established by the competitive LEC's local service request." *Texas 271 Order*, CC Docket 00-65, FCC 00-238, ¶¶ 219-220 (rel. June 30, 2000). *Id.* lines 517-527.

Also, although, ideally, no physical changes should occur in the circuit during migration activity, the possibility of an inadvertent error does exist. Niziolek lines 521-523. On occasion, the assignment and provisioning systems may reassign ports, possibly resulting in a momentary disruption, although normally the end-user would be unaware of the change. Jarmon lines 273-276. In addition, switch translations may cause a few milliseconds of service disruption although, once again, such interruption is generally unnoticeable by the customer. Niziolek lines 523-525; Jarmon lines 276-277. Moreover, any such disruption would be the same for SBC Illinois' customers who add and/or delete features. *Id.*

Accordingly, while SBC Illinois' goal is always to avoid service interruptions during migration from a service to a network elements platform, SBC Illinois cannot reasonably be expected to absolutely guarantee that there will never be a service disruption. The Commission

should, therefore, reject AT&T's proposed section 9.3.1.2 and approve SBC Illinois' proposed section 9.3.2.1.<sup>39</sup>

AT&T did not present testimony addressing UNE Issue 8, as framed by the DPL, *i.e.*, whether it is reasonable to require SBC Illinois to guarantee that there will never be a disruption of service on a platform migration when no field work outside the central office is required. Rather, AT&T witness addressed Issue 8 as if it were entirely related to line splitting, *i.e.*, the use by one or more CLECs of an unbundled xDSL-capable loop for the provision of voice and data services where the ILEC (e.g., SBC Illinois) provides neither the voice nor the data service. Specifically, Mr. Noorani argued that SBC Illinois should be required to provide line splitting as a "UNE platform" that would be provisioned and maintained by SBC Illinois on behalf of the CLECs wanting a line splitting arrangement. Noorani lines 1334-1339.

In addition to the fact that Mr. Noorani's testimony regarding line splitting has no apparent relationship to the contract language in dispute under UNE Issue 8, Mr. Noorani's position should be rejected because it is nothing more than a rehash of the arguments that AT&T made, and that the Commission rejected, in SBC Illinois' 271 proceeding, Docket 01-0662 – once in the Phase I Order issued February 6, 2003, and again in the Phase II Order issued May 13, 2003. *See* May 3, 2003 Order, Docket 01-0662, ¶¶ 1580-1611 (incorporating the Phase I Order) and ¶¶ 1721-1726. Chapman lines 1149-1163. SBC Illinois directs the attention of the ALJs and the Commission to SBC Illinois witness Chapman's direct testimony (lines

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<sup>39</sup> While the UNE DPL identifies, as Issue 8b, "what charges may SBC recover for such a conversion," it is unclear whether a dispute actually exists. SBC is entitled to recover the cost of the work completed by SBC for AT&T whenever a conversion of service is necessary. Currently, there are two non-recurring charges (NRCs) identified. The first NRC, a record work only charge, applies to the migration of a retail or resale end user to UNE-P. The second NRC, also a record work only charge, applies to the conversion of a special access circuit to a combination of UNEs. The second NRC is also subject to true-up. Under the provisions of the Agreement related to the pricing schedule, these charges will change in accordance with any changes ordered by the Commission. Niziolek lines 534-540.

1128-1490) for a thorough refutation of AT&T's position on line splitting. As Ms. Chapman explained, and the Commission in Docket 01-0662 recognized, SBC Illinois is not required to, and indeed cannot, provide line splitting as a "UNE platform." The UNE platform is wholly contained within the ILEC's network. It does not include the CLEC's splitter and, therefore, voice and data service cannot be provided using the UNE-P product offerings. Rather, in order to engage in line splitting, the UNE-P arrangement must be taken apart and a splitter installed between the loop and switch port. Chapman lines 1219-1231. *See* May 13 Order, Docket 01-0662, ¶ 1599 (stating with respect to Scenario A, in which a UNE-P provider seeks to engage in line splitting for the provision of data service, "[a]s the Commission found in Docket 00-0393, the loop will need to be disconnected from the switch in order to insert a splitter"); *Id.*, ¶ 1723 (finding that, with respect to Scenario A, SBC Illinois has demonstrated that it has in place a "workable," "operational" and "nondiscriminatory" "process for the conversion of UNE-P to line splitting").

For the sake of brevity, and in light of the Commission's recent rejection of AT&T's position, SBC Illinois has chosen not to fully summarize Ms. Chapman's extensive testimony on this issue in this Brief, but reserves the right to address in its reply brief any arguments regarding line splitting that AT&T chooses to make in its initial brief.

UNE:

ISSUE 9.a: May AT&T combine UNEs with other services (including access services) obtained from SBC Illinois?

ISSUE 9.b: May AT&T combine network elements made available by SBC Illinois with other SBC Illinois provided Network Elements?

Section 9.3.2.5

SBC Illinois Testimony: Niziolek Direct, lines 571-614; Niziolek Rebuttal, lines 227-278.

SBC ILLINOIS POSITION

AT&T's proposed language for section 9.3.2.5 should be rejected because it would require SBC Illinois to permit and/or provide UNE combinations to an extent much broader than that required by governing law. In particular, AT&T's language does not guard against impermissible "commingling" of non-local and local services.

DISCUSSION

With respect to UNE Issue 9a, AT&T included language in its proposed section 9.3.2.5 requiring SBC Illinois to permit AT&T to "combine Unbundled Network Elements with other services (including access services) obtained from SBC Illinois." This language should be rejected because it would improperly allow AT&T to circumvent the rule against impermissible "commingling" (*i.e.*, the combining of loops or loop-transport combinations with access services) adopted by the FCC in its *Supplemental Order Clarification* in CC Docket No. 96-98, FCC 00-183, ¶ 28 (rel. June 2, 2000). In Docket 01-0614, this Commission also rejected the proposal of certain CLECs, including AT&T, to include in the Company's EEL tariff a "shared usage" provision that would permit UNEs and special access services to share the same physical facilities, *i.e.*, permit "commingling." *Order*, Docket 01-0614, June 11, 2002, at page 85.

Staff witness Staranczak agreed with SBC Illinois that AT&T should not be allowed to combine UNEs in a manner that would circumvent the FCC's commingling restrictions, and proposed revised language for section 9.3.2.5 that includes a specific reference to the FCC's

*Supplemental Order Clarification.* Staranczak lines 138-160. However, in revising section 9.3.2.5, Mr. Staranczak, without explanation, retained the language proposed by AT&T allowing it to “combine any Unbundled Network Elements with other services (including access services).” Niziolek Rebuttal lines 243-257. This language may lead to confusion and should be stricken because it appears to be directly at odds with Mr. Staranczak’s recognition that “commingling,” *i.e.*, combining UNEs with access services, violates existing FCC rules, as referenced in the last two lines of Mr. Staranczak’s proposed language for section 9.3.2.5. Niziolek Rebuttal lines 258-265.<sup>40</sup>

With respect to UNE Issue 9b, the agreed-upon portion of section 9.3.2.5 indicates that SBC Illinois will, at AT&T’s request, provide UNEs in a manner that will allow AT&T to combine those UNEs to provide telecommunications service and will permit AT&T to combine such UNEs obtained from SBC Illinois with compatible network elements provided by AT&T or by third parties. At the end of section 9.3.2.5, however, AT&T proposed to include the following language:

Notwithstanding the foregoing, without additional components furnished by AT&T or itself as through third parties, SBC Illinois shall permit AT&T to combine Network Elements made available by SBC with other SBC Illinois provided Network Elements.

SBC Illinois and Staff both objected to this language for several reasons, including that it was somewhat confusing and, to the extent it was intended to allow AT&T to combine UNEs obtained from SBC Illinois, redundant of the agreed upon language of section 9.3.2.5. On rebuttal, AT&T agreed to strike this language. Noorani Rebuttal lines 104-105.

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<sup>40</sup> Consistent with SBC Illinois’ position regarding UNE Issue 4, SBC Illinois also objects to inclusion of the term “and its affiliates” in the language proposed by Mr. Staranczak for section 9.3.2.5.

UNE:

ISSUE 10:           Should the ICA contain the limitations on an ILEC's obligation to combine which are set forth in *Verizon Comm. Inc.*?

Sections 9.3.3, 9.3.3.9 and 9.3.3.11

SBC Illinois Testimony: Niziolek Direct, lines 616-633; Niziolek Rebuttal, lines 280-319.

#### SBC ILLINOIS POSITION

The issue statement is misleading because it suggests that SBC Illinois will not agree to combine network elements for AT&T. To the contrary, SBC has agreed to combine unbundled network elements, subject to the limitations the Supreme Court set forth in *Verizon Comm. v. FCC*, 535 U.S. 467 (2002). In that decision, the Supreme Court held that “the [combination] duties imposed under the rules are subject to restrictions limiting the burdens placed on the incumbents” 535 U.S. at 535, and it went on to enumerate those restrictions. As a federal court recently held when AT&T and SBC litigated this very issue, an interconnection agreement that does not reflect the *Verizon* restrictions violates the 1996 Act.

#### DISCUSSION

AT&T and SBC have litigated this issue in federal court, and SBC won, in a decision issued last December. The Commission should follow that federal court precedent.

The pertinent legal background begins two years earlier. The United States Court of Appeals for the Eighth Circuit, in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 759 (8th Cir. 2000), held that the FCC rules that required incumbent carriers to combine unbundled network elements for competing carriers were unlawful, and vacated them. The United States Supreme Court, in *Verizon Comms. Inc. v. FCC*, 535 U.S. 467 (2002) (“*Verizon*”), reversed the Eighth Circuit and upheld the FCC rules requiring incumbent LECs to combine UNEs for competing LECs. In doing so, however, the Supreme Court emphasized that “the duties imposed under the rules are subject to restrictions limiting the burdens placed on the incumbents.” 535 U.S. at 535. Among other things:

- An incumbent’s duty to combine UNEs for a competitor “only arises when the entrant is unable to do the job itself.” *Id.*

- An incumbent’s obligation, when it exists, is only to “perform the functions necessary to combine [the UNEs], not necessarily to complete the actual combination.” *Id.*
- The competing carrier “must pay a reasonable cost-based fee for whatever the incumbent does” in order to combine the UNEs requested. *Id.*
- “[T]he incumbent’s duty arises only if the requested combination does not discriminate against other carriers by impeding their access [to the incumbents’ network], and only if the requested combination is technically feasible.” *Id.* (internal quotation marks omitted).

These *Verizon* limitations on SBC Illinois’ obligation to provide UNE combinations to AT&T must be included in the Agreement. If they are not, the Agreement will not comply with the 1996 Act. That self-evident proposition was sustained by the United States District Court for the Southern District of Indiana in a case that arose out of the most recent arbitration between AT&T and SBC in that state.

In the arbitration, the Indiana Utility Regulatory Commission (“IURC”) ruled that the parties’ interconnection agreement should require SBC Indiana (then Ameritech Indiana) to provide new UNE combinations to AT&T, but did not limit SBC Indiana’s duty to so in accordance with the *Verizon* limitations. SBC Indiana challenged the IURC’s ruling on that ground, and the district court held that an interconnection agreement that requires an ILEC to provide UNE combinations without regard to the *Verizon* limitations is contrary to the 1996 Act. As the court explained,

Ameritech concedes that the Supreme Court’s ruling in [*Verizon*] requires Ameritech to provide new unbundled network element (“UNE”) combinations for AT&T. . . .

However, Ameritech is correct that it must not be made to offer new UNE combinations under all circumstances. *See* [*Verizon*], 122 S.Ct. at 1685 (“The duties imposed under the [combining] rules are subject to restrictions limiting the burdens placed on the incumbents.”). First, an ILEC must combine elements for a CLEC only when the CLEC is unable to do the combining itself. *Id.* Second, the ILEC must provide only the “functions necessary to combine” the elements, not necessarily the actual, complete combination. *Id.* . . . Third, the CLEC must pay

a reasonable fee for the combination. *Id.* Finally, the ILEC's duty to provide new UNE combinations arises only when the requested combinations will not discriminate against other carriers and are "technically feasible." *Id.* . . .

. . . . While the agreement complies with the Act by requiring Ameritech to provide AT&T new UNE combinations, the agreement does not reflect the limitations on Ameritech's duty as recently set forth by the Supreme Court. In that sense, the agreement is not consistent with the Act.

*Indiana Bell Tel. Co. v. McCarty*, 2002 U.S. Dist. LEXIS 24071, \*10-11 (S.D. Ind. Dec. 13, 2002). Accordingly, the district court ordered the parties to reform the agreement to comply with the *Verizon* limitations. *Id.* \*11.

Here, SBC Illinois proposes language for UNE section 9.3.3.9 that is consistent with, and for the most part compelled by, the Supreme Court's *Verizon* decision, and that must be included in the Agreement in order to comply with the 1996 Act. Specifically, SBC Illinois proposes the following:

**9.3.3.9 Without affecting the other provisions hereof, SBC's UNE combining obligations referenced in this Section 9.3 apply only in situations where each of the following is met:**

**9.3.3.9.1 it is technically feasible, including that network reliability and security would not be impaired; *Verizon Comm. Inc. v. FCC*, 122 S.Ct. 1646, 1685 (May 13, 2002);**

**9.3.3.9.2 SBC-AMERITECH's ability to retain responsibility for the management, control and performance of its network would not be impaired;**

**9.3.3.9.3 SBC-AMERITECH would not be placed at a disadvantage in operating its own network;**

**9.3.3.9.4 it would not impair the ability of other Telecommunications Carriers to obtain access to UNEs or to interconnect with SBC-AMERITECH's network. *Verizon Comm. Inc. v. FCC*, 122 S.Ct. 1646, 1685 (May 13, 2002); and**

**9.3.3.9.5 CLEC is**

**.3.3.9.5.1 unable to make the combination itself; *Verizon Comm. Inc. v. FCC*, 122 S.Ct. 1646, 1685 (May 13, 2002) or**

**9.3.3.9.5.2 a new entrant and is unaware that it needs to combine certain UNEs to provide a telecommunications service (*Verizon Comm. Inc. v. FCC*, 122 S.Ct. 1646, 1686 (May 13, 2002), but such obligation under this Section 3.9.3 ceases if SBC-13STATE informs CLEC of such need to combine.**

**9.3.3.11 In the event that SBC-AMERITECH denies a request to perform the functions necessary to combine UNEs or to perform the functions necessary to combine UNEs with elements possessed by CLEC pursuant to Section 9.3.3.9, SBC-AMERITECH shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. If such dispute cannot be resolved to the mutual satisfaction of the parties, either Party may initiate a proceeding before the Commission. In any such proceeding, SBC bears the burden of proof to demonstrate that the requested combination does not satisfy the requirements in Section 9.3.3.9.**

It is impossible to determine from AT&T's testimony what parts of that language AT&T opposes, because AT&T's witness, while purporting to discuss UNE Issue 10 along with a batch of related UNE issues (Noorani lines 762-882) never actually addresses the *Verizon* limitations or any of the disputed language that is the subject of UNE Issue 10. Also, some of SBC Illinois' proposed language (e.g., proposed section 9.3.3.9.2), even if not directly tied to *Verizon*, is unobjectionable on its face. Accordingly, we reserve for reply our responses to whatever AT&T's objections may be to the language proposed by SBC Illinois.

Staff apparently opposes SBC Illinois' proposed language, but its testimony pertains only to only one discrete part of that language and, even in that regard, is demonstrably unfounded. Staff witness Staranczak, starting at line 207 of his Revised Verified Statement, acknowledges that the Supreme Court noted in *Verizon* that "an ILEC's duty to combine elements only arises when the entrant is unable to do the job itself." He then goes on to offer his own interpretation of what it means for an entrant to be unable to do the job himself (lines 209-225) and, based on his interpretation, recommends adoption of "AT&T's proposed language for section 9.3.3" (line 223). That recommendation should be rejected, for several reasons:

*First*, the suggestion that the Commission interpret what the Supreme Court meant when it ruled that an ILEC’s duty to combine elements only arises when the entrant is unable to do the job itself is bad advice. There is no need for the Commission to address that question in order to decide UNE Issue 10, and it would be imprudent, to say the least, for the Commission to venture an interpretation of the Supreme Court’s words when (1) there is no need for it to do so; (2) neither party has asked it to do so; and (3) neither party has expressed any view on the meaning of the Supreme Court’s words. The correct approach is for the Agreement simply to incorporate the Supreme Court’s words, without interpreting them one way or the other, which is exactly what SBC Illinois’ proposed language does. If there are disagreements later about what the Supreme Court meant when it said an incumbent’s duty to combine UNEs for a competitor “only arises when the entrant is unable to do the job itself” (535 U.S. at 535) – and there is no indication in the record that AT&T and SBC Illinois do disagree about that – those disagreements can be dealt with then.

*Second*, given Mr. Staranzak’s recognition that the Supreme Court ruled an “ILEC’s duty to combine elements only arises when the entrant is unable to do the job itself” (Revised Staranzak lines 207-208), Staff’s recommendation that the Commission adopt AT&T’s language because it is “more consistent with the Act and FCC rules” is incomprehensible. AT&T’s language says *nothing* about an ILEC’s duty to combine elements arising only when the entrant is unable to do the job itself. How can that be more consistent with the Supreme Court’s *Verizon* decision than SBC Illinois’ proposed language, which directly quotes *Verizon* on this point?

*Third*, Mr. Staranzak’s testimony addresses only SBC Illinois proposed section 9.3.3.9.5.1. It therefore cannot possibly justify a recommendation that *all* of SBC Illinois’ proposed language be rejected.

SBC Illinois' proposed language for UNE Issue 10 is consistent with, and for the most part compelled by, the same Supreme Court decision that requires SBC Illinois to provide new UNE combinations to AT&T in the first place. As the federal court held in the one instance where AT&T and SBC litigated the issue, the *Verizon* limitations must be included in an interconnection agreement in order for the agreement to comply with the 1996 Act as the Supreme Court has interpreted it. The Commission should therefore direct the parties to include in their Agreement the language SBC Illinois has proposed for UNE Issue 10.

UNE:

ISSUE 11.a: Should the ICA contain language specifically obligating AT&T to follow the FCC's Supplemental Order Clarification when utilizing EELs or does the Parties agreed to language in Section 9.1.1 adequately describe AT&T's obligation?

ISSUE 11.b: Is SBC Illinois required to combine UNEs with non-251(c)(3) offerings?

Sections 9.3.3 and 9.3.3.14

SBC Illinois Testimony: Niziolek Direct, lines 635-659; Niziolek Rebuttal, lines 321-369.

#### SBC ILLINOIS POSITION

SBC Illinois' language in section 9.3.3.14.1 sets forth the FCC's limitations on the use of EELs and incorporates the FCC's Supplemental Order Clarification. This language is consistent with the Company's tariff approved by the Commission in Docket 01-0614 and is supported by Staff.

SBC Illinois' language in section 9.3.3.14.2 makes it clear that SBC Illinois is not required to combine UNEs with non-UNE offerings. Pursuant to FCC rules, SBC Illinois is only obligated to combine UNEs, and to combine UNEs with network elements possessed by CLECs. As discussed in the Section of this Brief addressing UNE Issue 1, the only network elements SBC Illinois can lawfully be required to provide to AT&T at all – whether in combination or not – are those network elements that have been “unbundled.” The Supreme Court's decision in *Verizon Comm. Inc.* does not alter the law regarding the unbundling of network elements, nor does it obligate SBC Illinois to combine UNEs with non-251(c)(3) offerings. According to the Supreme Court: “Rule 315(c) requires an incumbent to ‘perform the functions necessary to combine *unbundled network elements* in any manner, even if those elements are not ordinarily combined.” *Verizon Comm. Inc.*, 122 S.Ct. at 1684. Similarly, in Docket 01-0614, the Commission interpreted Section 13-801(d)(3) of the PUA as not requiring SBC Illinois to combine UNEs with network elements that have not been unbundled.

#### DISCUSSION

SBC Illinois' proposed section 9.3.3.14 makes it clear that nothing in the Agreement shall impose any obligation on SBC Illinois to provide UNEs or UNE combinations beyond the obligations imposed by the 1996 Act, the rules and orders of the FCC and *Verizon Comm. Inc.* and, to the extent not inconsistent therewith, the rules and orders of the Commission and any

other applicable law. Staff witness Staranczak testified that SBC Illinois' language for section 9.3.3.14 is acceptable. Staranczak line 259.

Section 9.3.3.14.1 states that SBC Illinois is only required to provide AT&T with enhanced extended links ("EELs") (*i.e.*, a combination of UNE loop and UNE dedicated transport) to the extent that the EEL is used to provide a significant amount of local exchange service to a particular end user in accordance with the requirements of the FCC's *Supplemental Order Clarification*. This language, which Staff witness Staranczak also found to be acceptable (Staranczak line 249), is consistent with the language proposed by Staff for section 9.1.2, as revised in the manner proposed by SBC Illinois and discussed above in connection with UNE Issue 3. The language of section 9.3.3.14.1 is also consistent with the Company's EEL tariff (Tariff, No. 20, Part 19, Section 20), approved by the Commission in Docket 01-0614, which incorporates the *Supplemental Order Clarification's* "significant amount of local service" requirement. Niziolek lines 649-652.

Section 9.3.3.14.2 provides that SBC Illinois will not combine UNEs with non-251(c)(3) (*i.e.*, non-UNE) offerings. This language should be accepted because SBC Illinois has no legal obligation to combine network elements that are not UNEs, or to combine UNEs with services or other non-UNEs. As previously discussed in connection with UNE Issue 1, the only network elements that SBC Illinois can lawfully be required to provide AT&T – either individually or as part of a combination – are those network elements that ILECs have been ordered to unbundle in accordance with Sections 251(c)(3) and 251(d)2) of the 1996 Act. SBC Illinois' position in this regard is consistent with the Commission's Order in Docket 01-0614, implementing Section 13-801(d)(3) of the PUA, which requires SBC Illinois to combine, at a CLEC's request, unbundled network elements that SBC Illinois ordinarily combines for itself or its end users. 220 ILCS 5/13-801(b)(3). The Commission approved tariff language that provides that SBC Illinois is not

required to provide a requested new combination of network elements if the combination “contains a network element that the Commission does not require the Company to provide as an Unbundled Network Element.” *Order*, Docket 01-0614, ¶¶ 167, 168 (June 11, 2002). The Commission expressly ruled that this language should be included in all the tariffs governing network elements combinations, including the tariff applicable to the network elements platform. *Id.* Agreed language incorporating this limitation on SBC Illinois’ obligation to combine network elements is included in section 9.3.1. *Id.*

AT&T’s proposed language for section 9.3.3 is overly broad and could be construed to require SBC Illinois to provide network elements that have not been unbundled. As such, AT&T’s proposed section 9.3.3 is directly contrary to the Order in Docket 01-0614 and the agreed language of section 9.3.1 as discussed above. For this reason and the other reasons discussed in the Section of this Brief which address UNE Issue 10, AT&T’s proposed section 9.3.3 should be rejected.

Staff witness Staranczak also recommended rejection of AT&T’s proposed section 9.3.3 on the grounds that it “is too broad and asks SBC Illinois to combine elements it normally would not combine and does not take into account restrictions on the definition of ordinarily combined as ordered by the FCC in Docket 96-98.” (Staranczak lines 266-269). Mr. Staranczak, however, took issue with SBC Illinois’ proposed language for section 9.3.3.14.2, and suggested alternative language which states, in part, that “SBC Illinois shall perform the functions necessary to combine SBC Illinois’ Network Elements of those Network Elements that are ordinarily combined in SBC Illinois’ own network.” Staranczak lines 271-284. Mr. Staranczak’s proposal, like AT&T’s, should be rejected to the extent that it would require SBC Illinois to combine network elements that have not been unbundled, or to combine a UNE with a non-UNE offerings in contravention of federal and state law.

**UNE:**

**ISSUE 12:** Is SBC entitled to compensation for work performed to combine UNEs as set forth in *Verizon Comm. Inc.*?

**Sections 9.3.3.8 and 9.3.3.12**

**SBC Illinois Testimony:** Niziolek Direct, lines 661-692; Niziolek Rebuttal, lines 397-420.

**SBC ILLINOIS POSITION**

SBC Illinois' proposed sections 9.3.3.8 and 9.3.3.12 provide that to, the extent that SBC Illinois provides UNEs or UNE combinations for which rates are not listed in the Pricing Schedule, or requires work not covered by those rates, SBC Illinois is entitled to be compensated for the necessary work to provide such UNEs or UNE combinations. It is inappropriate to deny SBC Illinois compensation for work performed to combine UNEs. In *Verizon Comm. Inc.*, the United States Supreme Court rules that CLECs must pay "a reasonable cost-based fee" for "whatever the incumbent does" to perform the functions necessary to combine. *Verizon Comm. Inc.*, 122 S.Ct. at 1685.

**DISCUSSION**

The Agreement allows AT&T to request UNEs and UNE combinations that are not specifically identified in the Agreement through the Bona Fide Request ("BFR") and/or Bona Fide Request-Other Combinations ("BFR-OC") processes. SBC Illinois' proposed sections 9.3.3.8 and 9.3.3.12 are intended to make it clear that, to the extent that SBC Illinois provides UNEs or UNE combinations for which rates are not listed in the Pricing Schedule, or requires work that is not covered by those rates, SBC Illinois is entitled to be compensated for the necessary work to provide such UNEs or UNE combinations. Niziolek lines 681-687. SBC Illinois' position proposed language is supported by the Supreme Court's ruling in *Verizon Comm. Inc.* that CLECs must pay "a reasonable cost-based fee" for "whatever the incumbent does" to perform the functions necessary to combine, and that the fee should reflect the cost of the actual work performed. Niziolek lines 689-692.

AT&T witness Noorani objected to sections 9.3.3.8 and 9.3.3.12, arguing that they would allow SBC Illinois to obtain "double recovery of costs because "time and material charges are

already reflected in the non-recurring charges for each elements.” Noorani lines 1081-1084.

Mr. Noorani’s argument is misplaced. SBC Illinois understands that, for those UNE combinations specifically identified in the Agreement and for which non-recurring charges are specifically listed in the Pricing Schedule, it would not assess charges that are not listed in the Pricing Schedule, except in the event that additional charges (or increases to the existing charges) are approved by the Commission and become effective for the Agreement, pursuant to the terms of section 1.30 of the General Terms and Conditions. As previously stated, sections 9.3.3.8 and 9.3.3.12 are applicable to UNEs and UNE combinations provided through the BFR or BFR-OC process and for which rates are not listed in the pricing schedule. Accordingly, there would be no “double recovery.” Niziolek lines 671-676.

Staff witness Hanson expressed agreement with SBC Illinois’ position, as reflected in sections 9.3.3.8 and 9.3.3.12, that SBC Illinois is entitled to be compensated for work it performs to combine UNEs at the request of AT&T. Mr. Hanson, however, proposed two revisions to section 9.3.3.8, as follows:

In addition to any other applicable charges, AT&T shall be charged a reasonable ~~TELRIC~~<sup>cost</sup>-based fee for any combining work that is required to be done by SBC-AMERITECH or pursuant to a BFR or BFR-OC, as set forth in SBC-AMERITECH’s tariff ILL C.C. No. 20, Part 19, Section 1~~applicable, under Schedule 2.2 of this Agreement~~. Such fee shall be calculated using the Time and Material charges as reflected in State-specific pricing. SBC-AMERITECH’s preliminary substantive response to the BFR or BFR-OC, as applicable, shall include an estimate of such fee for the specified combining.

Hanson, lines 163-74.

SBC Illinois can accept Mr. Hanson’s proposal to include a reference to “TELRIC” based fees (recognizing, of course, that should TELRIC no longer be the standard applicable for UNEs under the 1996 Act, then the Agreement’s “change of law” provisions would be applicable).

Niziolek Rebuttal lines 410-411.

SBC Illinois, however, objects to Mr. Hanson's proposal to change the Section's reference to the BFR and BFR-OC under Schedule 2.2 of the Agreement to a reference to the BFR and BFR-OC as set forth in SBC Illinois's UNE tariff. SBC Illinois and AT&T have agreed that the BFR and BFR-OC processes applicable to this Agreement are those set forth in Schedule 2.2. The terms and conditions of Schedule 2.2 are not in dispute and are not on the list of issues to be arbitrated in this proceeding. Furthermore, Staff has not submitted any testimony challenging the parties' agreement in this regard. Accordingly, section 9.3.3.8 should refer to the BFR and BFR-OC processes under Schedule 2.2 and not to the terms of the Company's tariff. Niziolek Rebuttal lines 411-420.

UNE:

ISSUE 13: Should the ICA should contain terms and conditions relative to "pre-existing" and new combinations as proposed by SBC Illinois?

Section 9.3.3.1, 9.3.3.2

SBC Illinois Testimony: Chapman Direct, lines 1127-1490;  
Niziolek Direct, lines 694-860.

#### SBC ILLINOIS POSITION

The Commission should approve SBC Illinois' proposed section 9.3.3.1, which sets forth a definition of "pre-existing combinations." It is important to make a distinction between pre-existing UNE combinations (*i.e.*, UNEs that are currently physically combined at the time of the CLEC request) and new UNE combinations for which work must be performed by SBC Illinois to combine UNEs. That distinction has been recognized by the Commission in Docket 01-0614 and is reflected in the agreed upon language of section 9.3.1. The definition of pre-existing combination contained in section 9.3.3.1 is reasonable and is consistent with the agreed upon terms of other provisions of the Agreement, as well as the definition of "Pre-existing combination" contained in the Company's tariff filed in compliance with the Order in Docket 01-0614. The Commission should also approve SBC Illinois' proposed section 9.3.3.2, which provides that reconfigurations of existing qualifying special access services to combinations of loop and dedicated transport on terms and conditions consistent with the *Supplemental Order Clarification* are not to be considered a new UNE combination.

#### DISCUSSION

SBC Illinois' proposed section 9.3.3.1 sets forth a definition of a "Pre-existing combination." The Commission should approve section 9.3.3.1 because it is appropriate to make a distinction between pre-existing UNE combinations (*i.e.*, UNEs that are currently physically combined at the time of the CLEC's request), and new UNE combinations for which work must be performed by SBC Illinois to combine UNEs. First, the distinction reflects SBC Illinois' obligation to not separate UNEs that are currently combined pursuant to FCC Rule 51.315(b). Second, the distinction is necessary due to differences in the type and amount of work that SBC Illinois must perform to provide a new combination, as compared to a pre-existing combination. As a consequence, the distinction is necessary to reflect the fact that different non-recurring

charges should and do apply to new combinations than to pre-existing combinations. Niziolek lines 708-22. Staff witness Staranczak agreed with SBC Illinois' analysis and indicated that sections 9.3.3.1 and 9.3.3.2 are acceptable to Staff. Staranczak lines 304-317.

Although AT&T objects to SBC Illinois' proposed section 9.3.3.1, the basis for that objection is unclear, particularly in light of the fact that section 9.3.1, which contains language agreed on by both parties, also makes a distinction between "pre-existing" and new UNE combinations. Niziolek lines 719-722. Furthermore, AT&T's position is inconsistent with the Order in Docket 01-0614, in which the Commission rejected a proposal by the Joint CLECs (which included AT&T) to eliminate the distinction between new, or "ordinarily combined", UNE-P combinations and preexisting, or currently combined, UNE-P combinations. The UNE-P tariff filed by SBC Illinois in compliance with the Order in Docket 01-0614 includes a definition of "Pre-existing" combinations that is very similar to the one proposed by SBC Illinois in this case.<sup>41</sup>

Mr. Noorani (lines 821-858) took issue with certain of the criteria governing the definition of a Pre-Existing Combination when it includes a local loop UNE with unbundled local switching, as set forth in subsections 9.3.3.1(2)(a)-(d), as follows:

- (2) if the Pre-Existing Combination includes a local loop UNE with unbundled local switching, to activate that Pre-Existing Combination for AT&T (a) without any change in features or functionality that was being provided at the time of the order, and/or (b) the only change needed to route the operator service and directory assistance ("OS/DA") calls from the End User customer to be

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<sup>41</sup> The UNE-P tariff filed in compliance with the Order in Docket 01-0614 states as follows: "Pre-Existing ("Currently Combined") is the situation when a telecommunications carrier orders all the Ameritech Unbundled Network Elements required to provide service to and convert a Company end-user customer, another telecommunications carrier's pre-existing UNE-P end-user customer, or a telecommunications carrier's resale end-user customer to a pre-existing UNE-P (a) without any change in features or functionality that was being provided by the Company (or by telecommunications carrier on a resale basis) at the time of the order and/or (b) with only the change needed to route the end user customer's operator service and directory assistance (OS/DA) calls to the telecommunications carrier's OS/DA platform via customized routing where such customized routing has already been established to the telecommunications carrier's OS/DA platform from the relevant Company" (emphasis added) (Ill. C.C. No. 20, Part 19, Section 15, 5th revised sheet No. 2). Niziolek lines 732-744.

served by that Pre-Existing Combination to AT&T's OS/DA platform via customized routing, and/or (c) with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service, *e.g.*, call waiting for residential local service, and/or (d) at the time of the order and when the order is worked by SBC-Illinois, the End User customer in question is not served by a line sharing arrangement as defined herein (or, if not so defined, by applicable FCC orders) or the technical equivalent, *e.g.*, the loop facility is being used to provide both a voice service and also an xDSL service. (Section 9.3.3.1.1(2)(b) only applies to orders involving customized routing after customized routing has been established to AT&T's OS/DA platform from the relevant SBC-Illinois local switch, including AT&T's payment of all applicable charges to establish that routing.)

Mr. Noorani's objections were unsubstantiated. The criteria listed in 2(a) and (b), above, are the same as the criteria listed in the definition of a "pre-existing" combination set forth in the tariff approved in Docket 01-0614, as discussed above. The criterion in 2(c) ("with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service") is not, contrary to Mr. Noorani's suggestion, a restriction. In fact, the purpose of that language is to acknowledge that simply changing or adding new features has no bearing on whether a combination is pre-existing or not. As long as the other criteria are met, if AT&T requests new features or changes to the features resident on the existing UNE combination, that combination will be treated as pre-existing and, therefore, not subject to the non-recurring charges applicable to new combinations. Niziolek lines 801-809.

Finally, the criterion in 2(d) provides that "at the time of the order and when the order is worked by SBC-Illinois, the end user customer in question is not served by a line sharing arrangement as defined herein (or, if not so defined, by applicable FCC orders) or the technical equivalent, *e.g.*, the loop facility is being used to provide both a voice service and also an xDSL service." This language is appropriate because AT&T has agreed in section 9.2.2.1.1 of Schedule 9.2.2 of the Agreement that SBC Illinois is not obligated to provide line splitters for

line sharing or line splitting. Therefore, the only line sharing or line splitting arrangements that AT&T would be involved in are those in which AT&T, or another CLEC, provides the line splitter. Recognizing that fact, any AT&T line sharing or line splitting arrangement would of necessity involve situations in which the combining is taking place outside of SBC Illinois network, and could not, therefore, be considered a pre-existing combination of SBC Illinois provided network elements. Niziolek lines 814-827; Chapman lines 1219-1236.

For all the reasons discussed, SBC Illinois' proposed language for sections 9.3.3.1 and 9.3.3.2 is reasonable and should be approved by the Commission.

UNE:

ISSUE 14: Whether the ICA should include language stating that SBC Illinois may reserve the right to incorporate subsequent regulatory, judicial or legislative orders that address UNEs and/or the obligation to provide combinations of UNEs, in addition to the change of law provisions covered in Article 29, section 29.4?

Section 9.3.3.2

SBC Illinois Testimony: Niziolek Direct, lines 862-872.

SBC ILLINOIS POSITION

SBC's proposed language accurately acknowledges that the Supreme Court's *Verizon* decision made a distinction between the ILEC's "duty to 'perform the functions necessary to combine,'" and "complet[ing] the actual combination," and appropriately provides for an immediate application of that finding when there is a further ruling or guidance on what constitutes "functions necessary to combine" as opposed to work required to "complete the actual combination."

DISCUSSION

As discussed above in connection with UNE Issue 10, the Supreme Court, in *Verizon Comms. Inc. v. FCC*, 535 U.S. 467 (2002) ("*Verizon*"), held that incumbent local exchange carriers' duties to combine unbundled network elements are "subject to restrictions limiting the burdens placed on the incumbents." *Id.* at 535. One of these restrictions is that "the rules specify a duty to 'perform the functions necessary to combine,' not necessarily to complete the actual combination." *Id.*

SBC Illinois would be well within its rights insisting that the Agreement set forth that limitation, along with the other *Verizon* limitations that are the subject of UNE Issue 10. Instead, SBC Illinois has taken an approach to this limitation that gives AT&T more than it is entitled to. Foregoing for now its right to have the Agreement set forth this limitation, SBC Illinois instead proposes to reserve its right to do so in the future. This approach is eminently reasonable, and the Commission should encourage SBC Illinois to take the same approach when similar

circumstances arise in the future by approving SBC Illinois' proposed language for UNE section 9.3.3.2 and its three subsections – 9.3.3.2.1; 9.3.3.2.2; and 9.3.3.2.3.

Section 9.3.3.2 itself is plainly unobjectionable, because all it does is to accurately recite the pertinent background. It states that *Verizon* relied on the distinction between performing the functions necessary to combine and completing the actual combination; states that there has been no post-*Verizon* guidance on what functions are and what functions are not necessary to such combining; and states that SBC Illinois is willing, notwithstanding the *Verizon* distinction, to complete the actual physical combination as well as to perform the necessary functions. All of this is indisputably accurate, and AT&T can have no cogent objection to it.

Proposed section 9.3.3.2.1 should also be unobjectionable, because it merely provides that SBC Illinois is not waiving its right to seek legal review or a stay of any decision regarding UNE combinations, including any order issued on remand from *Verizon* or any other rights with respect to *Verizon*. AT&T cannot plausibly contend that SBC Illinois is waiving any such rights. At most, AT&T may contend that this section is unnecessary because it is obvious that SBC Illinois is waiving nothing. If that is AT&T's position, though, SBC Illinois should be allowed the comfort of including the non-waiver language in the Agreement.

It is proposed section 9.3.3.2.2 that will in all likelihood be the focus of AT&T's objection. It provides when there is regulatory, judicial or legislative clarification concerning what functions are necessary, and what functions are not necessary, for combining UNEs, SBC Illinois will be relieved of any obligation under this Agreement to perform functions that are identified as not necessary. AT&T will probably oppose this section on the ground that there should not be a special provision to govern what happens in the event of such a clarification, and that any such clarification should instead be subject to the change of law provisions in the

General Terms and Conditions portion of the Agreement. Any such argument should fail, for two related reasons:

First, AT&T would surely argue, when such a clarification issues, that it is not a change of law. The basis for AT&T's argument would be that the clarification is not in any way a reversal of or inconsistent with prior law, but instead is a mere elaboration on what the Supreme Court meant by "necessary functions" – an explanation of the law that was the basis for the parties' Agreement. Without prejudging that argument, it would certainly not be a frivolous one.

Second, SBC Illinois is voluntarily agreeing *not* to insist on its right – a right that it has as of today – to have the Agreement provide, in accordance with *Verizon*, that SBC Illinois' duty is only to perform functions that are necessary to combine. In exchange, SBC Illinois should be permitted to assert that right immediately upon the issuance of regulatory, judicial or legislative guidance concerning what those necessary functions are. By permitting this, the Commission will encourage SBC Illinois to take such reasonable approaches when similar circumstances arise in the future.

The last of the four sections that is the subject of this issue is proposed section 9.3.3.2.3, which sets forth what should be a non-controversial method for amending the contract to set forth those functions that go beyond SBC Illinois' obligation to perform the functions necessary to combine UNEs and to expressly relieve SBC Illinois of any obligation under the Agreement to perform those functions.

The Commission should approve the language SBC Illinois has proposed in connection with UNE Issue 14.

**UNE:**

**ISSUE 15: Under what circumstances is a CLEC able to combine for itself?**

**Sections 9.3.1.3.6, 9.3.1.3.7, 9.3.2.2, 9.3.3.9.5.3, 9.3.3.10 (and subsections)**

**SBC Illinois Testimony: Niziolek Direct, lines 874-928; Niziolek Rebuttal, lines 371-394; Jarmon Direct, lines 278-301; Jarmon Rebuttal, lines 13-75.**

#### **SBC ILLINOIS POSITION**

The Supreme Court's order in *Verizon Comm. Inc.* was specific in stating that an ILEC is only obligated to combine when either the CLEC is (1) unable to combine for itself or (2) unaware that it needs to combine. It is SBC Illinois' position that a CLEC is able to combine for itself when it has the collocation method of access to do so. When a CLEC is collocated in an SBC Illinois Central Office (or has an adjacent collocation arrangement), that method of access allows the CLEC to perform the functions necessary to combine. Therefore, when AT&T is collocated, SBC Illinois is not obligated to perform the function of combining the UNEs per the obligations set out by *Verizon Comm Inc.*

#### **DISCUSSION**

This issue is related to UNE Issue 10. As previously discussed, that issue is whether the Agreement should contain the limitations on an ILEC's obligation to combine UNEs on behalf of a CLEC which are set forth in *Verizon Comm., Inc.* SBC Illinois' understanding of those limitations is set forth in its proposed section 9.3.3.9. Under that section, one of the conditions necessary to trigger an obligation on the part of SBC Illinois to perform the work to create a new UNE combination for AT&T is that AT&T is unable to make the combination for itself. *See* SBC Illinois' proposed subsection 9.3.3.9.5.1. Issue 15 involves the question of under what circumstances AT&T should be deemed to be able to combine UNEs for itself.

As indicated in SBC Illinois' proposed section 9.3.3.9.5.3, AT&T should be deemed to be able to create a UNE combination for itself when the UNEs sought to be combined are available to AT&T at an SBC Illinois premises where AT&T is physically collocated or has an adjacent collocation arrangement. Consistent with section 9.3.3.9.5.3, SBC Illinois' proposed

section 9.3.2.2.3 provides that if AT&T is collocated, it is able to combine for itself the UNEs necessary to create a new UNE-P and SBC Illinois is not required to combine those UNEs for AT&T. Before SBC Illinois would begin to reject orders for new UNE combinations on the basis that AT&T has the ability to combine the UNEs for itself, however, SBC Illinois will give AT&T 30-days notice.

SBC Illinois' proposals are supported by the testimony of Michael Jarmon, who explained that combining UNEs is accomplished through the use of cross-connects. Jarmon lines 284-290; Jarmon Rebuttal lines 42-49. To complete the required cross-connects, it is necessary to place appropriate jumpers, or wiring, between the termination points of the ordered UNEs. Jarmon Rebuttal lines 45-47. As Mr. Jarmon further explained, in situations where AT&T is collocated, AT&T is able to run cross-connects to combine UNEs in the same manner that SBC Illinois would be required to if it were to combine those UNEs for AT&T. Jarmon lines 295-303.

Specifically, AT&T would order the necessary cross-connects that extend the UNEs to its collocation arrangement. These cross connects would be placed by SBC Illinois to the facilities designated by AT&T on their service orders. Once these cross connects are in place, AT&T is then able to make cross connects in its collocation arrangement to combine the UNEs requested. AT&T may place the cross connects within its collocation arrangement at anytime, even prior to placing the order for the UNEs to be cross-connected to their collocation arrangement. In addition, AT&T has the ability to combine UNEs for itself under the terms and conditions of all the standards physical collocation offerings including "Adjacent Collocation". Adjacent

Collocation is described in the effective collocation tariff<sup>42</sup>, as yet another method of accessing UNEs. Jarmon Rebuttal lines 53-63.

Although AT&T and Staff both objected to SBC Illinois' proposed sections 9.3.3.9.5.3 and 9.3.2.2, neither AT&T nor Staff presented any testimony disputing SBC Illinois' position that, as a factual matter, AT&T is able to combine UNE for itself in situations where it is collocated or has an adjacent collocation arrangement. Rather, AT&T and Staff simply argue that SBC Illinois should be legally required to combine UNEs on behalf of AT&T regardless of AT&T's ability to do so for itself. Thus, if the Commission rejects the legal position of AT&T and Staff, and adopts SBC Illinois's position on UNE Issue 10, then the Commission should also adopt SBC Illinois' proposed contract language reflecting its un rebutted position regarding the circumstances in which AT&T should be deemed to be able to combine UNEs for itself.

AT&T witness Noorani asserted that "in insisting that UNE combinations occur only in collocation space, SBC Illinois knows that it is only a matter of time, possibly within this contract period, before space in its end offices for CLECs to combine network elements is depleted." Mr. Noorani further asserted that "in this manner, SBC Illinois can prevent customers that want an alternative to its local service from obtaining them." Noorani lines 1221-1228. These assertions mischaracterize SBC Illinois' position. The UNE methods of access available to AT&T under the Agreement include methods other than collocation. Niziolek lines 920-21. Furthermore, SBC Illinois will perform the work to create new UNE combinations for AT&T, subject to the terms of the Agreement, in situations where AT&T does *not* have the ability to combine UNEs for itself, including in those situations where the UNEs are not available to AT&T at an SBC premises where AT&T is collocated or has an adjacent collocation

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<sup>42</sup> Ill. C.C. No. 20, Part 23, Section 4, 3rd revised Sheet #8

arrangement. *Id.*, lines 922-926. Moreover, SBC Illinois' proposed section 9.3.2.2 makes it clear that SBC Illinois does *not* require AT&T to be collocated to receive UNE-P. Accordingly, AT&T's concern regarding the availability of collocation space are misplaced.

UNE:

ISSUE 16: Does UNE-P include operator service, directory assistance, tandem switching and call-related databases?

Sections 9.3.1.1 and 9.3.1.3.4

SBC Illinois Testimony: Niziolek Direct, lines 929-1085; Novack Direct, lines 98-182.

#### SBC ILLINOIS POSITION

AT&T wants to include two unnecessary provisions that would impose obligations that are incorrect as a matter of law. In Section 9.3.1.1, SBC Illinois seeks to expand the definition of the “UNE platform” to include things such as operator services, directory assistance, tandem switching and call related databases like LIDB and CNAM. This is wrong because the UNE platform consists of the local loop, the switch port, shared transport and (in limited circumstances) an existing line splitter. It does not broadly include all other UNEs that can be accessed through the UNE-P. It is not clear whether AT&T’s motivation in offering this expansive definition is to impact the rate for UNE-P or perhaps to create sharp differences between federal and state law on this issue. In any event, as Staff witness Staranczak observes, AT&T’s language is unnecessary because its end users served by the UNE-P have full access to operator services, directory assistance call related databases without AT&T’s proposed language.

AT&T’s proposal for Section 9.3.1.3.4 is equally flawed. There, AT&T proposes language that would prevent *any* restrictions on its use of the UNE-P, other than those restrictions set forth in state law. This provision is unnecessary because there is agreed-upon language in Section 9.2.1 that already fully addresses this point. Moreover, AT&T’s language is wrong as a matter of law because it only recognizes limitations created by state law and ignores those created by federal law. Curiously, AT&T’s position is in conflict with its Agreement in Section 9.2.1 that federal limitations *do apply*.

#### DISCUSSION

This issue contains two subparts to address AT&T’s proposed language in 9.3.1.1 which unfairly broadens the definition of UNE platform (“UNE-P”) and AT&T’s proposed language in Section 9.3.1.3.4 that seeks overly broad (and incorrect) language that would prevent *any* federal restrictions on the use of the UNE-P. In each case, SBC Illinois’ proposal is to simply delete AT&T’s language. SBC Illinois is not sponsoring language of its own.

**A. Section 9.3.1.1**

AT&T's proposed language to define a "UNE-P" is both unnecessary and incorrect. It is unnecessary because there is already agreed-upon language in the Agreement which obligates SBC Illinois to provide combinations of unbundled network elements to provide a telecommunications service. For example, Section 9.3.1 provides that: "Subject to the provisions hereof, at the request of AT&T, SBC Illinois shall also combine for AT&T any sequence of unbundled network elements that SBC-Illinois "ordinarily combines" for itself or its end uses". In addition, the following language specifically requires SBC Illinois to provide a "network elements platform" as required by Illinois law:

As required by Section 13-801(d)(4) of the Illinois Public Utilities Act and all Illinois Commerce Commission rules and orders interpreting Section 13-801(d)(4), AT&T may use a Network Elements platform consisting solely of combined Network Elements of SBC-Illinois to provide end-to-end telecommunications service for the provision of existing and new local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunications services within the LATA to its end users or payphone service providers without AT&T's provision or use of any other facilities or functionalities.

Section 9.3.1. Thus, under the already agreed-upon language the "UNE platform" is available to AT&T under the Agreement.

The UNE-platform available to AT&T is fully consistent with federal and state law. It consists of a loop, unbundled local switching and shared transport, all of which allow an end user full access to the public switch telephone network. Novack lines 112-117. In particular, it permits an AT&T end user full access to other UNEs such as tandem switching, operator services and directory assistance and call related databases that assist in call processing such as the line information database ("LIDB") and the calling name and address ("CNAM") database. Novack lines 119-151.

AT&T's proposed language is incorrect because it redefines the UNE platform to include tandem switching, operator services, directory assistance, customized routing and call related databases. This is incorrect both as a technical matter and as a matter of law. As Mr. Novack testified, the UNE platform is limited to those elements that are used in the course of normal call processing. This certainly includes the local loop, the network interface device ("NID"), the local switching port with associated switch functionality, and shared transport. Novack lines 103-116. In Illinois, this also includes an existing line splitter as set forth in Docket No. 01-0614. The additional physical elements that AT&T argues should be included in the UNE-Platform are not assigned to or associated with AT&T UNE-P end users, as are the physical elements that comprise UNE-P elements. While these additional physical elements may be used in the course of normal call processing, they are dynamically assigned if and only if an end user dials a particular type of call. For example, calls from a UNE-P end user are not always routed through an SBC Illinois tandem switch. When a UNE-P end user places a call that requires tandem switching, it is certainly available to that end user. It is not like the local switch port, however, which is dedicated to the use of that end user. The same is true for OS, DA and call related databases. Novack lines 139-159. Customized routing is not part of the UNE platform. In fact, it is not a UNE at all; it is a network routing option that is available to CLECs to route traffic to its own OS/DA switch. SBC Illinois makes available at least two forms of customized routing and AT&T seeks a third form in this case. That dispute is tied up in UNE issues 23 and 24, and apparently AT&T is attempting to inject it into this issue as well. That attempt should be rejected.

AT&T's position is also incorrect as a matter of law. Operator services are a good case in point. Operator services are not part of an existing UNE combination because the operator services platform is not physically linked to the loop-port combinations that provide service to

the end user. Similarly, operator services cannot be part of a new UNE combination because SBC Illinois does not “ordinarily combine” an operator services platform and to its own loops or ports. While operator services remain accessible to a UNE-P customer – it never becomes a physical part of the UNE platform.

As Staff witness Staranczak aptly observes, AT&T has access to operator services and directory assistance services on a nondiscriminatory basis as unbundled network elements and there is no reason to redefine the term “UNE-P” to include them. Staranczak lines 365-375. Consequently, Staff agrees with SBC Illinois that AT&T’s language should be rejected.

**B. Section 9.3.1.3.1**

AT&T’s proposed language should be rejected because it is both unnecessary and incorrect. It is unnecessary because this topic is fully addressed in agreed-upon language that appears in section 9.1.2 of this Agreement:

SBC Illinois shall not place any restrictions or limitations on AT&T’s use of Network Elements or Unbundled Network Elements or Combinations of Unbundled Network Elements other than as set forth in this Agreement and other than those restrictions and limitations provided for by the Federal telecommunications Act, the rules and regulations of the Federal Communications Commission and the Illinois Public Utilities Act and applicable state laws, rules, orders and regulations.

In this section, AT&T has already agreed to language that governs the restrictions on its use of UNEs and UNE combinations – additional language is unnecessary and duplicative.

AT&T’s proposal is also wrong. It says that the only restrictions on UNEs are those provided for under state law. This is wrong because it ignores *all* federal limitations on the use of UNEs and because it ignores AT&T’s agreement in Section 9.1.2 that federal limitations *do apply* to its use of UNEs.

For all these reasons, AT&T’s proposed language for section 9.3.1 1 and 9.3.1.3.4 should be rejected.

UNE:

ISSUE 17: Should the Agreement state that SBC will follow OBF EMI guidelines rather than stating the specific detail that may be included in such guidelines, when such detail is subject to change by the OBF forum during the term of the Agreement?

Section 9.3.1.3.1

SBC Illinois Testimony: Read Direct, lines 27-140; Read Rebuttal, lines 7-29.

SBC ILLINOIS POSITION

This issue is nearly identical to Comprehensive Billing Issues 3 and 4.a and should be resolved the same way. AT&T's legitimate need to know the identity of the originating carrier can be satisfied by use of the ACNA information SBC Illinois provides, or can be otherwise obtained by AT&T, through LBID databases.

The Commission should *not* create a special requirement that forces SBC Illinois to provide the originating carrier number ("OCN"). SBC Illinois incorporates by reference its discussion on these points in Issues Comprehensive Billing 3 and 4.a. In addition, SBC Illinois notes its agreement with Staff's proposed language and is willing to provide billing records to AT&T in OBF EMI format and to retain those records for a period of one-year. AT&T's proposal that specific OBF standards be incorporated in the contract would prevent SBC Illinois from adjusting its billing as OBF guidelines are reviewed, updated and improved and would further prevent SBC Illinois from maintaining a *uniform* billing system.

DISCUSSION

The question presented is whether the Commission will require SBC Illinois to provide call records with the originating carrier number ("OCN") included. The proposals for Article 9, section 9.3.1.3.1. are as follows. SBC Illinois proposes:

**In accordance with section 9.2.7.4.4 of Schedule 9.2.7 'Interoffice Transmissions Facilities' and 27.14.4 of Article 27 'Comprehensive Billing', SBC Illinois will provide the records to AT&T in OBF EMI format.**

AT&T proposes:

**SBC Illinois shall maintain and provide records of sufficient detail for UNE-P to enable AT&T billing of its end users and other carriers for all call types (i.e., call details for originating and terminating calls). SBC Illinois will provide the records to AT&T in standard OBF EMI format. The originating carrier number (OCN) will be included in the EMI records according to**

**current industry standards. The UNE identifier will be included in all EMI records involving unbundled services or elements.**

Staff proposes:

In accordance with Section 9.2.2.4.4 of Section 9.2.7 “Interoffice transmission facilities” and 27.14.4 of Article 27 “Comprehensive Billing”, SBC Illinois will provide the records to AT&T in OBF EMI format and retain these records for one year.

Revised Staranczak lines 430-436. Staff is recommending exactly what SBC Illinois proposes, except Staff is adding a requirement that SBC Illinois retain the records in question for one year. That requirement is acceptable to SBC Illinois.

This issue is nearly identical to Comprehensive Billing Issue 4.a and involves the same issues as Comprehensive Billing Issue 3. These issues must therefore be resolved in unison. Although there are other issues raised in UNE 17 (e.g., whether the contract should, without limitation, make SBC Illinois responsible for providing records to “enable AT&T billing of its end users and other carriers for all call types . . .”), the primary issue – *i.e.*, the provision of OCN information – should be resolved in Comprehensive Billing 3 and 4.a because the Comprehensive Billing section of the agreement (Article 27) is devoted to billing. The UNE section (Article 9), in contrast, is focused on access to UNEs and should not be the place where critical billing issues are addressed. Since this “OCN” issue is fully addressed in Comprehensive Billing Issues 3 and 4.a, SBC Illinois incorporates by reference here its arguments on those issues.

AT&T’s proposal should be rejected for at least for three additional reasons. First, SBC Illinois agrees to provide billing records in industry-approved (OBF-EMI) format. This is a commercially reasonable approach because the specific billing detail that SBC Illinois provides to CLECs is not determined by AT&T alone, but by the entire industry activity through the Ordering and Billing Forum (“OBF”) – an open industry forum for billing issues. AT&T’s

language would set current industry guidelines in stone for the three year term of the Agreement and would prevent SBC Illinois from adjusting its billing as OBF guidelines are reviewed, updated and improved. It would also undermine the very collaborative nature of the OBF process in which all industry players agree on uniform solutions to *national* billing issues. The result would be customized billing to each CLEC, an absurd result which would only lead to unnecessary complexity and problems for the entire industry. Read lines 104-117.

Second, AT&T's language would require SBC Illinois to provide OCN information which, as discussed in Comprehensive Billing Issues 3 and 4.a, is not necessary for AT&T to identify the originating carrier. The OCN information that AT&T seeks is not network information that is provided in the call stream that SBC Illinois gets from other carriers and SBC Illinois is not deleting OCN information or otherwise withholding it from AT&T. In fact, in order to provide the OCN information that AT&T requests, SBC Illinois would have to look it up in other databases – something that AT&T could do for itself. Read lines 73-85.

Third, it establishes a very broad, very vague requirement that SBC Illinois provide records that will “enable” to bill its end users and other carriers. This standard does not define what SBC Illinois must provide; rather, it establishes a standard that – AT&T could argue – entitles AT&T to *whatever* information it wants, *i.e.*, whatever records “enable AT&T to issue *any sort* of bill.” Read lines 65-72.

In summary, the language proposed by SBC Illinois as modified by Staff is the commercially reasonable approach to the billing language in the UNE Article and should be adopted.

UNE:

ISSUE 18.a: Whether SBC is obligated to modify its OSS to accommodate AT&T and its third party agent and their inter-CLEC communication to enable the HBSS to place orders on AT&T's behalf for Line Splitting.

Schedule 9.2.2, Section 9.22.5.1

SBC Illinois Testimony: McNeil Direct, lines 366-551; McNeil Rebuttal, lines 153-192.

#### SBC ILLINOIS POSITION

AT&T requests that SBC Illinois make fundamental changes to its Operations Support Systems ("OSS"). This Commission recently found in the 271 proceeding (Docket 01-0662) that SBC Illinois' OSS are made available to CLECs on a nondiscriminatory basis. Therefore, AT&T's claim – which is based on the notion that it does not have nondiscriminatory access to OSS -- is foreclosed as a legal matter. Beyond that, AT&T and Covad have available to them several alternatives to achieve the seamless type of ordering they seek. It should be up to AT&T and Covad to invest the time and resources necessary to perfect their joint ordering processes. That job should not be given to SBC Illinois. This is especially true since AT&T's desire to partner with Covad may easily change tomorrow, next week or next month. Finally, it is inappropriate to arbitrate such a request in a two-party proceeding when there are established industry processes that address issues of this type. This is not merely a procedural point; all CLECs in the 5-state SBC Midwest area operate on a single OSS and any change to the OSS can have significant impacts on all of them. Moreover, the OSS is constantly evolving and improving and it is the CLEC industry as a whole that gives its input on the prioritization of improvements – a single CLEC should not be able to end-run that process.

#### DISCUSSION

The question presented is whether SBC Illinois must modify its Operation Support Systems ("OSS") to accommodate a strategy that AT&T may (or may not) use to provide DSL service. At issue is section 9.2.2.5.1 of schedule 9.2.2. The agreed upon language is set forth below. The bold underlined language is proposed by AT&T and opposed by SBC Illinois:

Use of High Bandwidth Services Supplier. AT&T may identify one or more CLECs as an authorized High Bandwidth Service Supplier ("HBSS"), authorized by AT&T to add, change or delete High Bandwidth Services capabilities on a xDSL-capable Loop employed or ordered by AT&T. If AT&T chooses to utilize HBSSs under this section, the orders issued by the HBSS must appear, in all ways, as if the orders were submitted by AT&T. For orders submitted under this

schedule 9.2.2, SBC-AMERITECH will treat the order in exactly the same manner as if AT&T, and not a third party, submitted the order. **Provided, however, that AT&T and the HBSS are not required to be on the same LSOG version.**

AT&T's proposed language should be rejected for several reasons.

*First*, while AT&T does not articulate the legal basis for its theory that SBC Illinois must revise its OSS to accommodate this new-found strategy of AT&T, it is presumably the notion that SBC Illinois must provide access to its OSS on a nondiscriminatory basis. Such an argument fails for the simple reason that this Commission has already determined that SBC Illinois *does* provide nondiscriminatory access to its OSS. *See*, Docket No. 01-0662 ¶¶ 1326-1371. In fact, AT&T raised the very argument it is raising here and complained that SBC Illinois' "versioning" policy unfairly harmed its ability to compete. The Commission rejected this argument. *Id.*, ¶¶ 17-26. This result is not surprising because in 271 proceedings state commissions and the FCC have found that SBC provides nondiscriminatory access to its OSS in seven other states where SBC does not support the "versioning" that AT&T requests.<sup>43</sup>

*Second*, OSS issues are particularly ill-suited for arbitration. The FCC and state commissions have established comprehensive industry collaborative processes to address OSS issues. These include, for example, the change management process ("CMP") and the CLEC User Forum. McNiel lines 424-432. It is through these industry collaboratives that CLEC desires for new ordering functionality are evaluated, prioritized and implemented. All CLECs can participate so that the OSS – which is a single platform used by all CLECs throughout the five-state Midwest region – can be revised with full industry input. It is particularly inappropriate to resolve these industry wide issues in the context of an expedited, two-party arbitration process because the industry loses its ability to prioritize the development of new

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<sup>43</sup> These states include California, Nevada, Texas, Missouri, Kansas, Oklahoma and Arkansas.

capabilities; the industry loses its ability to access whether a proposed change will have unintended, harmful consequences; and the industry loses its ability to plan within an established process. Rather than decide the OSS-related issues in this arbitration, SBC Illinois urges the Commission to defer to the established industry processes for resolution. This applies not only to UNE Issue 18.a, but to OSS Issue 2 as well.

It is particularly appropriate with UNE Issue 18.a, however, because AT&T's language, if adopted, would place SBC Illinois in an immediate breach of the interconnection agreement. This in turn would force SBC Illinois to choose between ignoring the established industry processes for changing its OSS, or taking the proposal through the industry processes, thereby potentially compounding its breach with the passage of time. It is not commercially reasonable to impose this Hobson's choice upon SBC Illinois, especially since both AT&T and SBC Illinois have described a potential alternative (the LSP authorization or "LSPAUTH" proposal) which is currently being addresses in the industry processes and which would apparently meet AT&T's needs and resolve this issue.

*Third*, SBC Illinois should not be *required* to modify its OSS to fix a problem of AT&T's own making. As Mr. McNiel explained, SBC Illinois' long-standing position is that it preferred to support only one LSOG version. At the insistence of CLECs, however, SBC Illinois modified its OSS to allow "versioning" *i.e.*, the simultaneous support of as many as three different versions of OSS at one time so that CLECs do not have to always use the latest versions. McNiel lines 386-389. AT&T is now faced with a consequence of its earlier victory, *i.e.*, orders submitted to SBC Illinois on different OSS "versions" will not be treated as if they were submitted on the same version. It would be fundamentally unfair to now require SBC Illinois to submit to contract language which requires it to act as if there is no difference in the versions of the OSS which it supports, when in fact there are important differences.

*Fourth*, AT&T's proposal would be especially unfair since there are at least four alternatives open to AT&T and Covad. These include using the Graphical User Interface ("GUI"); submitting the order via Electronic Data Interchange ("EDI") or Common Object Request Broker Architecture ("CORBA"); or having Covad program its EDI to process AT&T's orders via the version of the LSOG that AT&T uses. McNiel lines 469-505. A fourth alternative, use of the LSP authorization field ("LSPAUTH") appears promising. In any event, the point is that AT&T and Covad have open to them viable alternatives. Rather than foist this problem upon SBC Illinois, AT&T and Covad should accept the responsibility of developing a solution that works for their unique application.

UNE:

ISSUE 19: Whether the DSL/PSD parameter or Proof of continuity parameter test is appropriate to assess the loop DSL qualifications.

Schedule 9.2.2, Sections 9.2.2.12.1.1, 9.2.2.12.1.2, 9.2.2.13.2.1.3, 9.2.2.13.2.1.4, 9.2.2.13.2.3.2, 9.2.2.13.2.3, and 9.2.2.13.2.3.

SBC Illinois Testimony: Chapman Direct, lines 64-305; Odle Direct, lines 48-363.

#### SBC ILLINOIS POSITION

AT&T's language would make SBC Illinois responsible for providing a DSL service – not merely for providing the basic copper loop. Since SBC Illinois has no role in provisioning DSL service (that is exclusively AT&T's service) AT&T's proposal is unreasonable on its face. AT&T's proposal should also be rejected because SBC Illinois has no control over the critical characteristics of the local loop that impact the performance of the DSL service. These include, but are not limited to, loop length, loop gauge, loop conditioning and the type of DSL equipment employed by AT&T. All of these factors impact the line bit rate (data transfer speed) and other performance characteristics of DSL service (referred to as "DSL/PSD mask" by AT&T) and are exclusively within the control of AT&T. In fact, through the loop qualifications process, AT&T knows in advance the loop characteristics such as loop length and loop gauge and has relevant information to determine whether or not a particular loop will support the DSL service it wants to provide. Based on these facts, it is commercially unreasonable to allow AT&T to reject a loop – and thereby avoid any charges for a loop – simply because it turns out not to meet its needs. In this situation, SBC Illinois has provisioned a loop pursuant to the express instructions of AT&T and is fully entitled to be compensated for its activities. Finally, AT&T's language would require SBC Illinois to "perform work necessary to correct the situation" if a particular loop ordered by AT&T turns out not to support AT&T's desired xDSL service. This is technically infeasible.

The more reasonable and commercially appropriate solution is that SBC Illinois be responsible for providing a "good" copper loop (*i.e.*, one that is free of defects, tested, and guaranteed for continuity). SBC Illinois' proposed language does just that and should be adopted by the Commission.

#### DISCUSSION

Issues 19 & 21 are very similar, and this discussion pertains to both. These issues involve disputes over seven sections of schedule 9.2.2. The single question presented is whether SBC Illinois must guarantee that the xDSL-capable loops it provides will support AT&T's

desired bit rate speed, even though SBC Illinois does not (and cannot) control the factors that ultimately establish the bit rate speed AT&T can provide.

AT&T believes that SBC Illinois should be responsible for the bit rate speeds that AT&T can achieve and other performance characteristics of AT&T's DSL service (referred to by AT&T as the "DSL/PSD mask"). SBC Illinois objects to AT&T's proposal because it would make SBC Illinois responsible for matters completely outside of its control. SBC Illinois points out that since the only thing it is providing is a basic copper loop, the standard for acceptance testing should measure whether it has provided a good copper loop – and nothing more.

Since this issue involves the provisioning of services that support digital subscriber line ("DSL"), it is quite complicated. Both Ms. Chapman and Mr. Odle provide cogent explanations of these complex issues in their direct testimonies. This brief will only summarize their salient points.

DSL is an advanced telecommunication service that AT&T can provide using a copper loop and sophisticated electronics called DSLAMs. There are many different types of DSL service that AT&T can provide, each of which provides faster or slower transmission rates for data as it is going to (downstream) or from (upstream) the end user. Odle lines 149-172; Chapman lines 81-83. The physical characteristics of a copper loop create critical limitations on a carrier's ability to provide DSL service to a particular end user. The primary limitation is one of length. Typically, DSL service works best when loops are no more than 15,000 feet, and cannot work well at all at distances over 18,000 feet. Odle lines 251-260. Another limiting factor are the devices that SBC Illinois has deployed in its network that make voice calls better, but cause problems for data signals. These devices, such as load coils and bridged tap, can be removed at AT&T's option in a process called "line conditioning". Chapman lines 113-116. AT&T has access to all relevant loop information (*i.e.*, length, gauge, etc.) possessed by SBC

Illinois that AT&T needs to determine whether a particular loop has the technical characteristics to support the DSL service it wishes to provide. This is called “loop qualification”. Chapman lines 283-317.

SBC Illinois’ role in the DSL provisioning process is merely to provide a “good” copper loop, *i.e.*, a loop that is free of defects, tested and guaranteed for continuity. Odle lines 75-77. SBC Illinois cannot refuse to provide a loop for DSL, cannot refuse to condition such a loop, and cannot refuse to allow a CLEC to deploy its chosen DSL technology over that loop. Chapman lines 100-128.<sup>44</sup>

Based on all this, it is clear that AT&T is in the driver’s seat as to all decisions associated with its deployment of DSL. Specifically, it is up to AT&T to determine: 1) whether to order DSL capable loops; 2) whether to request that such loops be conditioned; 3) whether to deploy DSL technology given the loop length, and 4) what DSL technology to deploy on the loop. In turn, SBC Illinois’ only role is to provision the loop AT&T requests and to condition the loop, if requested.

One more definition – PSD mask. This stands for Power Spectral Density Mask, and – in simple terms – refers to the limits on signal power densities across a range of frequencies so as to minimize interference. Odle lines 146-147. It is essential to understand that a PSD mask includes strict assumptions about the length of the loop, the conditioning performed on the loop, and the characteristics of the signal deployed over the loop. Thus, the criteria of a PSD mask can only be met when the correct loop length, conditioning, and signal characteristics are all present.

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<sup>44</sup> See Paragraph 53 of the FCC’s Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket 98-147 (rel. Aug. 7, 1998) (FCC 98-188). See also Paragraphs 68 and 69 of FCC’s *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48 in CC Docket 98-147, 14 FCC Red 4761 (rel. March 31, 1999). See also Paragraphs 172-173 and 191 of the FCC’s *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-238, released November 5, 1999 (“*UNE Remand Order*”) and 47 C.F.R. Section 51.319(a)(3).

Chapman lines 76-87. This is confirmed by an industry standards body – the T1E1 Committee – that has issued a standards document making it clear that the DSL level of service over a loop is contingent on factors such as loop length and type of equipment used.<sup>45</sup>

Against this backdrop, AT&T’s proposal that SBC Illinois guarantee that the loop support any sort of “DSL/PSD mask” is technically infeasible. The disputed language is reproduced below. The bold language is SBC Illinois’ proposal and the bold underlined language is AT&T’s proposal. The rest of the language is agreed upon:

**9.2.2.12.2.1.4** If the Acceptance Test fails **the loop Continuity Test**

**DSL/PSD Mask** parameters, as defined by Schedule **9.2.2 9.2.1** for XDSL-Capable loops, the LOC technician will take any or all reasonable steps to immediately resolve the problem with AT&T on the line, including, but not limited to, calling the central office to perform work or troubleshooting for physical faults. If the problem cannot be resolved in an expedient manner, the technician will release the AT&T representative, and perform the work necessary to correct the situation.

Under AT&T’s language, once SBC Illinois provisions a loop in response to an AT&T order, AT&T need not accept that loop unless the loop will support whatever DSL technologies AT&T may have decided to deploy over the loop. Not only is AT&T free to reject the loop, the language requires SBC Illinois to “perform work necessary to correct the situation” and thus makes SBC Illinois obligated to do the impossible. This language should be rejected for several reasons.

*First*, AT&T is responsible for determining whether the loop is suitable for its chosen DSL service prior to ordering an xDSL-capable loop. SBC Illinois’ obligation is provide a metallic loop upon AT&T’s request. It is up to AT&T to use that loop as an input to create whatever DSL services that loop may be able to support. It is not SBC Illinois’ responsibility to ensure that the loop can create any particular DSL technologies. AT&T appears to recognize this

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<sup>45</sup> See T1E1 document T1-417-2001, section 5.

when it agreed, in section 9.2.2.12.1 of schedule 9.2.2, that “SBC-Ameritech will not guarantee that the local loop(s) ordered will perform as desired by AT&T for xDSL-based, HFPL, or other advanced services, but will guarantee metallic loop parameters including continuity.”

*Second*, the “DSL/PSD mask” parameters and bit rate speed depends on factors completely outside of SBC Illinois’ control and wholly within AT&T’s control, including loop length, loop conditioning, and the type of DSLAM equipment used. Through the loop qualification process AT&T has full knowledge about loop length, loop gauge and other loop characteristics before it ever orders a DSL capable loop. Only AT&T can determine whether the loop will suit its needs, and therefore only AT&T assumes the risk if it turns out to be wrong. All SBC Illinois can do is provision that loop. It cannot change the physical fact that a particular loop happens to be 18,000 feet and it cannot change the fact that DSL technology may not perform a loop of that length. Odle lines 251-260.

*Third*, SBC Illinois incurs costs to provision the loop according to AT&T’s instruction, regardless of whether AT&T is ultimately able to use that loop to support the DSL services or not. AT&T cannot avoid the costs that SBC Illinois incurs on its behalf.

*Fourth*, AT&T will not guarantee specific parameters to its own customers, so it is not reasonable for AT&T to ask SBC Illinois to do so. Odle lines 238-241.

SBC Illinois notes that Sections 9.2.2.12.1.1 and 9.2.2.12.1.2 are not separately identified in the Disputed Issues List (“DPL”). The language simply defines the term “continuity” and “proof of continuity” and therefore is relevant to the rest of Schedule 9.2.2 and should be included. AT&T’s testimony did not express any opposition to this language.

**UNE:**

**ISSUE 20:** What language should apply to situations where the SBC personnel are on hold for 10 minutes in acceptance testing and cooperative testing situations?

Schedule 9.2.2, sections 9.2.2.13.2.1.6 and 9.2.2.13.2.3.4 (both of which are identical)

**SBC Illinois Testimony:** Chapman Direct, lines 306-497; Odle Direct, lines 364-702.

#### SBC ILLINOIS POSITION

Once SBC Illinois completes the installation and testing of a DSL-capable loop, the field technician is ready to turn the loop over to the CLEC and leave the job site. Many CLECs, however, want to perform their own acceptance test on the loop and they need the services of a field technician to do so. Rather than dispatch their own technician, they use the SBC Illinois technician because he or she is already at the job site. SBC Illinois agrees to make good faith efforts to contact the CLEC for 10 minutes, but if the CLEC cannot be reached, the SBC Illinois technician moves on to the next job.

The question presented is whether SBC Illinois must – free of charge – return to the job site to assist AT&T with its testing. SBC Illinois is willing to provide this service, but only at its standard, tariffed rates for field dispatch services. AT&T insists that this service be provided for free. More specifically, AT&T asks that the situation be treated under the “customer not ready” or “CNR” process – which has the same effect of requiring SBC Illinois to do it for free.

AT&T’s position should be rejected for three reasons. First, AT&T wants something for nothing; namely it wants SBC Illinois to incur the costs of an extra dispatch without the ability to charge for it. Second, SBC Illinois developed an industry-wide process for acceptance testing in 2000 based on collaboration and negotiations with the data CLEC industry. AT&T’s proposal is inconsistent with that industry-approved process. Finally AT&T’s proposal would force SBC Illinois to create and maintain two separate procedures for acceptance testing – a situation which is certain to lead to confusion, errors, and unnecessary duplication of effort.

#### DISCUSSION

The disputed language involves the following situation:

- An SBC Illinois technician in the field has installed a DSL capable loop for AT&T;
- The loop has been tested by SBC Illinois and the technician has completed the job;

- AT&T wants to do its own test of the loop for its own peace of mind;
- The test performed by AT&T can only be done if a technician is at the premises. In order to save AT&T the trouble of dispatching its own technician, the SBC Illinois technician is willing to stay at the end user location to assist AT&T;
- The SBC Illinois technician calls AT&T so that AT&T can perform its test, but is unable to reach anyone at AT&T after ten minutes of good faith effort.

AT&T's position is that the SBC Illinois technician can leave the premises but must return later on so that AT&T can try again to find someone available to perform its test. In AT&T's view, SBC Illinois must make this return visit at no charge.

It is SBC Illinois' position that once the field technician has made a good faith effort to reach AT&T for 10 minutes, he or she may close out the order and consider the job finished. If AT&T wants to do its own testing later on, it may submit a repair ticket and the technician will go back to the end user location. In this situation, however, AT&T will be charged the standard rate to cover the cost of a dispatch and the technician's time to make this extra trip. Chapman lines 334-345. Of course, if there is a problem on the line that was caused by SBC Illinois, AT&T has 24 hours to report such a problem and SBC Illinois will fix that problem without any charge. (This language is already agreed upon).

SBC Illinois' position should be adopted for at least three reasons. *First*, AT&T wants something for nothing; namely, it wants SBC Illinois to do extra work for free. Under AT&T's proposal, the SBC Illinois technician must take time out of his or her day to return to the end user location so that AT&T can perform its acceptance test. It is no easy feat for a technician to drive long distances, through congested traffic, spend time attempting to re-contact AT&T, and then wait while AT&T performs its test. All of this takes the technician away from time which is better spent improving service for all of SBC Illinois customers, both retail and wholesale. If

AT&T wants to take the technician off of his or her normal duties, it should certainly be required to pay the standard dispatch fee for doing so. Moreover, under AT&T's language, SBC Illinois is not compensated for the original 10 minutes the technician and Local Operations Center representative spend attempting to contact AT&T.

*Second*, SBC Illinois' proposal follows the industry-wide process developed in the CLEC User Forum and implemented in 2000 after collaboration and negotiation between SBC Illinois and data CLECs. Chapman lines 334-345; Odle lines 540-543. Once again, AT&T is attempting to reopen a settled issue and to impose its own view on an industry-wide process.

*Third*, AT&T's proposal would force SBC Illinois to create and maintain two separate procedures for acceptance testing. It would have to maintain the current process (which is contained in interconnection agreements of various CLECs). It would also have to create a second, inconsistent process. Chapman lines 410-424. To do this, SBC Illinois would need to train its personnel on the two different processes and regularly inform its field personnel of the CLECs that get the established process and the CLECs that get the new process. This is not only unnecessary and duplicative (because the existing process works well), it will also create confusion among SBC Illinois' technicians. It is ironic that AT&T so loudly complains when SBC Illinois' wholesale processes do not operate up to its expectations, yet at the same time urges SBC Illinois to develop and maintain a whole host of "AT&T-only" processes which are difficult to implement and which create unnecessary complexity for SBC Illinois' field technicians and service center personnel. That is exactly what is going on here.

AT&T's principle argument is that there is a separate process – the customer not ready ("CNR") process – that should apply here. The CNR process, however, was designed for the situation where SBC Illinois cannot complete the work necessary to provision a service because the requesting CLEC or the CLEC's end user is not ready. For example, the CNR process could

be used if SBC Illinois required physical access to the end user's home, but the end user missed the appointment. Chapman lines 382-393. Under these circumstances, the work will be rescheduled because it has to be – the work has never been completed in the first place. In contrast, in the acceptance testing situation, SBC Illinois has completed all of the work and the DSL-capable loop is ready to go. The CNR process simply does not apply. Odle lines 531-543; 565-604.

AT&T's objection to SBC Illinois' language reveals a double standard. When an AT&T DSL end user misses a scheduled appointment, AT&T charges a \$100 missed appointment fee. Odle lines 606-627. Yet AT&T objects when SBC Illinois proposes to charge AT&T for a return trip.

Finally, if AT&T's proposal is adopted, it would remove any incentive AT&T has to act within the 10 minute window provided under SBC Illinois' proposal. In other words, if AT&T can simply reschedule another SBC Illinois field dispatch without any charge whatsoever, it would have little incentive to manage its own process so that it responds to SBC Illinois within the 10 minute window. The result would be unnecessary delays for SBC Illinois field technicians, with inevitable impacts on service quality to all end users. Odle lines 644-653.

For all these reasons, the Commission should adopt the position of SBC Illinois for this issue and approve the SBC Illinois language for both contested provisions of schedule 9.2.2.

UNE:

ISSUE 21:           Should the basic metallic loop parameters or the  
                  specific loop parameters associated with the loop  
                  be verified during cooperative testing?

Section 9.2.2.13.2.3

SBC Illinois Testimony: Chapman Direct, lines 35-62, 498-516;  
                          Odle Direct, lines 48-362.

SBC ILLINOIS POSITION

This issue is substantially identical to UNE Issue 19. Accordingly, SBC Illinois refers the Commission to its discussion of that issue.

UNE:

ISSUE 22:           Should SBC be required to guarantee local loops will perform as ordered by AT&T beyond basic metallic loop parameters?

Section 9.2.2.14.7

SBC Illinois Testimony: Chapman Direct, lines 35-62, 517-562;  
Odle Direct, lines 48-362.

SBC ILLINOIS POSITION

The issue presented is whether the following SBC Illinois language should be included in the contract:

**9.2.2.14.7 SBC-Ameritech will not guarantee that the local loop(s) ordered will perform as desired by AT&T for xDSL-based or other advanced services, but will guarantee basic metallic loop parameters, including continuity. AT&T-requested tested by SBC-Ameritech beyond these parameters will be billed on time and material basis as set forth in the tariff rates listed above.**

This language would do three things: 1) include a guarantee by SBC Illinois that xDSL-capable loops will meet basic metallic loop parameters, including continuity; 2) disclaim any guarantee that loops will support any particular form of xDSL or other advanced services; and 3) make clear that any special testing requested by AT&T will be billed on a time and material basis at tariff-approved rates. AT&T has no proposed language on these topics.

Each aspect of this provision should be approved. *First*, SBC Illinois' guarantee that loops will meet basic metallic loop parameters, including continuity, is unobjectionable. Neither Staff nor AT&T complains about this guarantee.

*Second*, as for the disclaimer language, AT&T can hardly object to that because it is identical to language it has already agreed to in schedule 9.2.2, section 9.2.2.12.1. This agreed-to language provides that "SBC Ameritech will not guarantee that the local loop(s) ordered will perform as desired by AT&T for xDSL-based, HFPL, or other advanced services..." Moreover, for all the reasons explained in the brief for UNE issues 19 and 21, SBC Illinois cannot guarantee that a loop will perform as desired for DSL service because the factors that determine this (e.g., loop length, line conditioning and DSLAM equipment) are under AT&T's control, not SBC Illinois'.

*Third*, as for the payment language, there is nothing controversial about that. If AT&T orders services above and beyond the normal testing provided for in the Agreement, it should pay for those services at tariff rates. That is already expressly set out with respect to repair services in section 9.2.2.14.4.1. There, the Agreement explains that if AT&T opens a trouble ticket and the problem is

determined to be in AT&T's network, AT&T will "pay SBC-Ameritech the applicable commission-ordered tariff rate for trouble isolation...maintenance and repair upon closing the trouble ticket". The result should be no different if AT&T orders additional testing above and beyond that provided for in the Agreement.

For these reasons, SBC Illinois' proposed language for UNE Issue 22 should be adopted.

**DISCUSSION**

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

**UNE:**

**ISSUE 23:** Should AT&T be allowed to commingle local and toll OS/DA traffic on existing FG D trunks?

**ISSUE 24.a:** Should SBC Illinois be required to deploy custom routing for AT&T based on AT&T's proposed schedule or must AT&T order custom routing via the BFR process?

**ISSUE 24.b:** In what manner should SBC Illinois be required to provide customized routing associated with UNEs?

Sections 9.2.6.1.7 and 9.2.6.1.7.2 of Schedule 9.2.6

**SBC Illinois Testimony:** Novack Direct, lines 184-365.

#### SBC ILLINOIS POSITION

When AT&T purchases a UNE platform from SBC Illinois, it may at its option request a feature known as "custom routing" which will route "0" dialed calls to an AT&T operator. SBC Illinois provides two (2) forms of custom routing today, and AT&T demands that SBC Illinois develop a third type called "custom routing over Feature Group D". Issues 23, 24.a and 24.b involve slight different aspects of this dispute, so we deal with them together.

For Issue 23, AT&T proposes language that would require SBC Illinois to immediately provide custom routing over Feature Group D. This should be rejected for three reasons. First, the proposal is technically infeasible because current technology does not support it. Second, this Commission recently ruled in the 271 proceeding (Docket No. 01-0662) that SBC Illinois had no obligation to provide custom routing over Feature Group D. Third, AT&T has already agreed that it will use the BFR process to pursue custom routing over Feature Group D. See section 9.2.6.1.7. The BFR process is the appropriate mechanism to investigate the technical feasibility and expense of this proposal, and to allocate that expense to AT&T.

In Issue 24, SBC Illinois seeks confirmation that the BFR process should be used to assess AT&T's request for custom routing over Feature Group D. First, this proposal is not technically feasible now and even if technology could be developed by switch vendors to support it, the cost of such a massive conversion would be high. The BFR process establishes the framework within which the technical evaluation can take place and will clearly assign the costs to AT&T. In the BellSouth Louisiana 271 proceeding, the FCC ruled that a BFR-type process is the appropriate mechanism through which additional features of this nature should be investigated. And the BFR produces a fair outcome. Without it, SBC Illinois would be required to spend a great deal of time, effort and money to investigate and develop a new capability that may ultimately be impossible to deploy. Without the BFR process, SBC Illinois would be stuck with huge expenses with no assurance of recovery.

## DISCUSSION

### **A. Issue 23**

When an SBC Illinois customer dials a “0”, the switch must route that call onto shared facilities that will carry the call to an SBC Illinois operator served by an OS/DA Host switch. When AT&T purchases a UNE platform from SBC Illinois, the switch continues to route those “0”-dialed calls to an SBC Illinois operator. AT&T, at its option, may request a feature known as “custom routing” or “customized routing” – which will route those “0” dialed calls to an AT&T OS/DA Host over its dedicated facilities. There is no dispute that SBC Illinois provides custom routing of operator services (“OS”) and directory assistance (“DA”) calls to AT&T, as set forth in the agreed-upon language of schedule 9.2.6.1.6.2. In fact, SBC Illinois offers two kinds of custom routing – one which routes calls to AT&T’s operators through the use of line class codes, and another which routes calls to AT&T’s operators through use of the advanced intelligent network (“AIN”) capabilities of the network. The dispute in UNE Issues 23 and 24 concerns AT&T’s demand that SBC Illinois develop a third type that is called “custom routing over Feature Group D”. UNE Issues 23, 24(a) and 24(b) involve slightly different aspects of this dispute, so we deal with all three issues together.

For Issue 23 (customized routing over Feature Group D trunks) AT&T proposes the following language for 9.2.6.1.7:

SBC-Ameritech shall allow AT&T to commingle local and toll OS and/or DA traffic on existing OS and/or Feature Group D trunks.

SBC Illinois opposes this language and has no language of its own. The Commission should reject AT&T’s proposal for four reasons.

*First*, AT&T’s language would require SBC Illinois to “commingle” OS/DA traffic on existing Feature Group D trunks, but it is not now technically feasible to do so since SBC Illinois does not utilize Feature Group D signaling in Illinois (or in any other state) for signaling to

OS/DA Host switches. Another signaling protocol, Feature Group C (“FGC”), is the only signaling protocol used by the SBC incumbent carriers when interfacing with OS/DA Host switches. Novack lines 242-259. In short, AT&T’s proposed language cannot be implemented in SBC Illinois’ network today.

Second, the Commission just addresses this issue in the recently-completed 271 proceeding in Docket 01-0662, and found that SBC Illinois had no obligation to provide custom routing over Feature Group D. In that case, WorldCom argued that it was technically feasible for SBC Illinois to provide custom routing over Feature Group D and that SBC Illinois should develop this capability at its own expense, without any promise that it would be compensated for these efforts. The Commission rejected WorldCom’s arguments and found that SBC Illinois fully complied with federal requirement by offering custom routing via line class codes and AIN. Docket 01-0662, May 13, 2003 Order ¶¶ 1985-1986.

*Third*, AT&T has already agreed that it will use the BFR process to request custom routing over Feature Group D. In section 9.2.6.1.7, the agreed upon portion of that paragraph reads as follows: “SBC Ameritech will evaluate additional methods of customized routing of local and/or OS/DA traffic (including, but not limited to existing Feature Group D) trunks on a BFR basis”.

*Fourth*, the BFR process is the appropriate mechanism to request the development of this functionality (if indeed it is technically feasible at all). AT&T’s language would unconditionally obligate SBC Illinois to engage in a full-scale research and development effort to deploy this capability. SBC Illinois is willing to work with AT&T to develop a technically feasible solution, but AT&T should pay for this development work. Novack lines 211-222. This aspect of the BFR issue is discussed in more detail below.

**B. Issues 24a and 24b**

The competing language of AT&T and SBC Illinois is set out in the Joint Submission. AT&T proposes language that would require SBC Illinois to deploy customized routing (including customized routing over Feature Group D) within 10 days. SBC, on the other hand, proposes language that provides that orders for standard customized routing (*i.e.*, line class code and AIN) can be submitted through a standard questionnaire. The development of new capabilities, however, must be requested through the BFR process. In schedule 2.2 AT&T and SBC Illinois have agreed upon the BFR provisions that will govern.

Taken in conjunction with AT&T's proposed language in Issue 23, above, AT&T's proposed language here would require SBC Illinois to deploy custom routing over Feature Group D within ten (10) business days. SBC Illinois maintains that AT&T should submit a bona fide request pursuant to which AT&T would pay for the development of this capability, assuming that switch vendors can, in fact, make their switches work to support the concept. This is the commercially reasonable approach.

*First*, it is not at all clear that customized routing over Feature Group D is technically feasible. Based on discussions between AT&T and SBC Pacific Bell engineers and business managers, SBC experimented with switch software upgrades that would be necessary to use Feature Group D signaling for OS/DA on a state-wide basis. SBC informed AT&T that even if some switch models could eventually be made to work with Feature Group D customized routing, this effort will not provide a ubiquitous solution until all switch vendor types and models can be upgraded. This would include the multiple varieties manufactured by Lucent, Nortel, Siemens, and Ericsson, among others. And, even if technically feasible on a ubiquitous basis, the cost of such a massive conversion is not known. Novack lines 285-293.

*Second*, the FCC has found that a CLEC can be required to use a BFR process to request a new a switch capability (which this custom routing would be):

We recognize that, before offering a vertical feature for the first time, a BOC will want to ensure that the requested feature will not cause adverse network reliability effects. Furthermore, a BOC will need to modify its systems to accept orders for these new features, and develop maintenance routines to resolve problems. Therefore, we find that a BOC can require a requesting carrier to submit a request for such a vertical feature through a predetermined process that gives the BOC an opportunity to ensure that it is technically feasible and otherwise develop the necessary procedures for ordering those features. The process cannot be open ended and it should not be used to delay the availability of the vertical feature. A BOC must provide the requesting carrier with a response within a reasonable and definite amount of time. Furthermore, a BOC must demonstrate that the access it provides to competing carriers satisfies its duty of nondiscrimination.<sup>46</sup> (Emphasis added).

*Third*, it is the fair outcome. If AT&T wants SBC Illinois to spend a great deal of time, effort and money to investigate and develop a new capability (especially one of questionable feasibility), then it should agree up front to pay for those costs. By avoiding the BFR process, AT&T says that it is unwilling to do so. AT&T's position is fundamentally unfair. On the one hand, it says that SBC Illinois must develop and test a capability of questionable feasibility. At the same time, it is unwilling to commit to paying for those development activities by issuing a BFR, nor has it committed to buying the capability at a price and a quantity that would allow SBC Illinois to recoup its costs.

*Fourth*, AT&T must provide to SBC Illinois detailed engineering information that allows SBC Illinois to assess the request. Without such detailed information SBC Illinois cannot determine the viability of the request, and cannot estimate and provide costs associated with the request, if any. The BFR process is the only defined method that allows AT&T to communicate engineering and operational needs associated with the request, and that allows SBC Illinois to

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<sup>46</sup> *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, FCC 98-121, 13 F.C.C.R. 20599 (Oct. 13, 1998) ("Louisiana II"), at ¶ 220.

make the appropriate assumptions when it develops the new capability. Without proper communication, SBC Illinois would not know the *precise* functionality AT&T desired.

In short, the Commission should reject AT&T's proposed language (just one sentence) for schedule 9.2.6.1.7 (UNE Issue 23). Similarly, the Commission should reject AT&T's proposed language for schedule 9.2.6.1.7.2 and should adopt SBC Illinois' language instead (UNE Issues 24(a) and (b)).

**UNE:**

**ISSUE 25: Under what conditions should SBC provide Unbundled Shared Transport?**

**Schedule 9.2.7, Section 9.2.7.1.1.1**

**SBC Illinois Testimony: Niziolek Direct, lines 1087-1201; Novack Direct, lines 367-416; Novack Rebuttal, lines 17-32.**

**SBC ILLINOIS POSITION**

The question presented is whether the Agreement should discuss specific limitations on SBC Illinois' ability to provide unbundled shared transport. SBC Illinois and Staff propose the following language:

Notwithstanding anything in this agreement to the contrary, SBC-Ameritech provides access to unbundled shared transport only when purchased in conjunction with a ULS port.

AT&T proposes the following language:

SBC-Ameritech shall not impose any restrictions on AT&T regarding the use of the unbundled shared transport it purchases from SBC-Ameritech (other than as set forth in Article 9, Section 9.1.2) provided such use does not result in demonstrable harm to either SBC-Ameritech network or personnel.

The SBC Illinois/Staff proposal should be adopted for two reasons. First, at the June 18th Hearing AT&T counsel clarified that it is not AT&T's intent to use shared transport without an unbundled local switch port, so AT&T appears to have no objection to the SBC Illinois/Staff language which makes it clear that shared transport can only be used with unbundled local switching. Tr. 274-275. Second, to the extent AT&T once again proposes to address the subject of limitations on its use of unbundled network elements, that topic has already been fully addressed in agreed-upon language in Section 9.2.1, and it would be unnecessary, superfluous, and potentially inconsistent to address it elsewhere in the Agreement. (See discussion of UNE Issue 16 for the text of section 9.2.1).

**DISCUSSION**

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

UNE:

ISSUE 27:           Should the reciprocal compensation terms and conditions contained in Article 21 apply to ULS-ST reciprocal compensation?

Section 9.2.7.4.1-3

SBC Illinois Testimony: Pellerin Direct, lines 1749-1757.

SBC ILLINOIS POSITION

All agree that this issue is identical to Intercarrier Compensation Issue 1. *See* Rhinehart lines 572-573; Rhinehart Reply lines 177-189; Pellerin lines 1753-1757; Zolnierek lines 1190-1191. The issue should be resolved in favor of SBC Illinois for the reasons discussed above in connection with that issue. This is the resolution recommended by Staff. Zolnierek lines 1266-1267.

DISCUSSION

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

**UNE:**

**ISSUE 28:**       Should SBC Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC Illinois?

**Section 9.2.7.4.4**

**SBC Illinois Testimony:**   Pellerin Direct, lines 1758-1808.

**SBC ILLINOIS POSITION**

For the most part, the disputed language that is the subject of this issue is the same as the disputed language that is the subject of Comprehensive Billing Issue 4.a. To that extent, this issue should be resolved in favor of SBC Illinois for the same reasons as that one. The one SBC Illinois-proposed sentence that is part of this issue and that is not part of Comprehensive Billing Issue 4.a is plainly reasonable and should be included in the Agreement.

**DISCUSSION**

Each party's proposed language for UNE Issue 28 is identical to its proposed language for Comprehensive Billing Issue 4.a, except that SBC Illinois' proposed language for this issue includes a sentence that is not part of the SBC Illinois' proposed language for that issue. To the extent the proposals are identical, the resolution of UNE Issue 28 must of course be the same as the resolution of Comprehensive Billing Issue 4.a.

The only separate consideration that this issue requires concerns SBC Illinois' proposed additional sentence, which reads: "AT&T will be solely responsible for establishing compensation arrangements with all telecommunications carriers to which ULS-ST traffic is delivered or from which ULS-ST traffic is received, including all ULS-ST traffic carried by Shared Transport-Transit." SBC Illinois is not certain why AT&T opposes that sentence, but believes it is because AT&T believes the sentence is inconsistent with AT&T's position – on Comprehensive Billing Issue 4.b – that AT&T should be allowed to charge SBC Illinois reciprocal compensation on calls for which SBC Illinois does not give AT&T the originating carrier's OCN. If that is AT&T's concern, AT&T would presumably agree that if the

Commission resolves Comprehensive Billing 4.b in favor of SBC Illinois, then the proposed sentence that is the subject of UNE Issue 28 should be included in the Agreement.

Even if the Commission were to resolve Comprehensive Billing Issue 4.b in favor of AT&T, however, the additional sentence proposed by SBC Illinois on this issue should still be included in the Agreement. It is axiomatic that AT&T is responsible for establishing compensation arrangements with all third party carriers with which it will be exchanging compensation, and that would not be changed by a Commission determination that SBC Illinois should in some circumstances stand in the shoes of and pay the reciprocal compensation that would otherwise be owed by the third party carrier. In other words, even if the Commission were to allow AT&T (on Comprehensive Billing Issue 4.b) to bill SBC Illinois instead of the third party originating carrier in instances where SBC Illinois fails to give AT&T that carrier's OCN, it would still be AT&T's responsibility to have compensation arrangements in place with that carrier.

In sum: To the extent the competing language for this issue is identical to the competing language for Comprehensive Billing Issue 4.a, SBC Illinois' proposed language should be adopted for the reasons set forth above in SBC Illinois' discussion of that issue. The one sentence that is in dispute here and that is not in dispute on Comprehensive Billing Issue 4.a should – as AT&T would presumably agree – be included in the Agreement if Comprehensive Billing Issue 4.b is resolved in favor of SBC Illinois, which it should be for the reasons set forth above in SBC Illinois' discussion of that issue. And even in the unlikely event that the Commission resolves Comprehensive Billing Issue 4.b in favor of AT&T, the sentence in question should still be included in the Agreement, because that resolution would not relieve AT&T of its obligation to establish compensation arrangements with those carriers with which it will be exchanging compensation.

UNE:

ISSUE 29:           How should reciprocal compensation rate elements  
                  be structured?

Section 9.2.7.5

SBC Illinois Testimony: Pellerin Direct, lines 1809-1816.

SBC ILLINOIS POSITION

All agree that this issue is identical to Intercarrier Compensation Issue 1. *See* Rhinehart Reply lines 200-204; Pellerin lines 1809-1816; Zolnierek lines 1190-1191. The issue should be resolved in favor of SBC Illinois for the reasons discussed above in connection with that issue. This is the resolution recommended by Staff. Zolnierek lines 1266-1267.

DISCUSSION

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

**UNE:**

**ISSUE 30:           Should SBC be required to administer LIDB information provided by AT&T?**

**Section 9.2.8.19.1**

**SBC Illinois Testimony: Pellerin Direct, lines 1817-1894.**

**SBC ILLINOIS POSITION**

SBC Illinois' proposed LIDB-AS Appendix provides the necessary terms and conditions for administration of the LIDB data. AT&T's proposed language, on the other hand, is wholly inadequate.

**DISCUSSION**

Issue 30 relates to Issue 33, and the Commission's resolution of that issue should dictate its resolution of this one. As we explain in our discussion of Issue 33, AT&T proposes that the Commission exclude SBC Illinois' LIDB-AS Appendix – which sets forth all the applicable terms and conditions for the administration of LIDB data – and, instead, adopt the limited language AT&T proposes for UNE section 9.2.8.19.1. AT&T's proposed language is inadequate to address the parties' responsibilities regarding LIDB administration, and AT&T provides no reason that SBC Illinois' proposed appendix is inappropriate. SBC Illinois' proposed LIDB-AS Appendix provides necessary terms and conditions for the administration of LIDB data, and should be included in the Agreement. Pellerin lines 1844-1869.

AT&T suggests that SBC Illinois' position on this issue is inconsistent with its position in a Missouri arbitration with MCI (Noorani lines 1802-1814), but that assertion is irrelevant and wrong. It is irrelevant because that arbitration involved SWBT, not SBC Illinois, and there is no rule of law that says affiliated companies (or even the same company) must enter identical contract terms in different states. And it is wrong because SBC's language relative to the LSR process in Missouri was *in addition* to other LIDB terms and conditions – it was not (as AT&T's proposed language is here) the sole term relating to LIDB. Pellerin lines 1874-1876. Similar to the language proposed by SBC Illinois here, the language adopted in the MCI Missouri

arbitration made clear that use of the LSR process would be available *only* where the CLEC was providing service to end users using the ILEC's UNE local switch ports, and that the ILEC would make available unbundled interfaces to access LIDB-AS. Pellerin lines 1876-1889.

**UNE:**

**ISSUE 31:           What interfaces are used to administer data when AT&T resells data to a third party?**

**Sections 9.2.8.19.4 and 9.2.8.19.6**

**SBC Illinois Testimony: Pellerin Direct, lines 1895-1930.**

**SBC ILLINOIS POSITION**

When AT&T resells services to a third party, that record can no longer be administered by the LSR process. Instead, AT&T must utilize a direct access unbundled interface to create, modify, or delete its records in the LIDB database. AT&T's language must be rejected, because it could be interpreted to mean that the LSR process (in addition to the unbundled interfaces) could be used, and that is just not the case. The LSR process can not be used to update records of third parties to whom AT&T has resold services.

**DISCUSSION**

The disagreement with respect to Issue 31 relates to how AT&T will administer the LIDB records for services it resells to a third party. SBC Illinois proposes language that would require AT&T to administer those records through *direct unbundled interfaces*, as defined in Appendix LIDB-AS, while AT&T proposes language that would require AT&T to administer them through the use of the *Operator Services Marketing Order Processor* ("OSMOP") interfaces. In addition, SBC Illinois proposes language that would require SBC Illinois and AT&T to observe the rules and regulations that cover the administration of the *LIDB-AS and fraud monitoring*, while AT&T proposes language that would require it to follow the rules and regulations that cover the administration of *OSMOP service and the Sleuth System*. Pellerin lines 1899-1903; Noorani lines 1822-1828.

As discussed in Issue 33 below, SBC Illinois offers three interfaces to the LIDB SMS for data administration: LSR, Interactive Interface, and Service Order Entry Interface. Pellerin lines 1828-1832, 1905-1908. AT&T's proposal to administer line records for services that it resells to a third party through the OSMOP interfaces would inappropriately include the LSR process,

even though only direct unbundled access through the Interactive Interface or the Service Order Entry Interface – not the LSR process – is permitted for resold services. *Id* lines 1910-1914.

When AT&T resells to a third party, that record can no longer be administered by an LSR. *Id* lines 1911-1912. For security purposes, the LIDB Administrative System is partitioned based on Operating Company Number (“OCN”). *Id* lines 1917-1918. All LSRs for UNE switch ports generate service orders through SBC Illinois’ systems and reflect the OCN of the UNE switch port CLEC. When AT&T resells a UNE switch port service to a third party, there is no way to associate that UNE switch port with the actual local service provider (“LSP”). Pellerin lines 1918-1921. The LSR process was not designed to accommodate a third party provider. As a result, the LIDB would improperly place these end user records within AT&T’s security partition rather than that of the true LSP – which would be an unacceptable violation of the end user’s security expectations. Pellerin lines 1921-1924. In contrast to AT&T’s proposed language, SBC Illinois’ proposed language appropriately refers to its direct unbundled interfaces (and not the LSR process) as AT&T’s method of administering the LIDB records for resold services. *Id* lines 1927-1930.

For these reasons, the Commission should reject AT&T’s reference to the OSMOP interfaces in UNE sections 9.2.8.19.4 and 9.2.8.19.6, and adopt SBC Illinois’ proposed language.

UNE:

ISSUE 32.a: Should SBC be required to provide access to SBC designed AIN features, functions and services?

ISSUE 32.b: Should Access to AIN be provided pursuant to a BFR with all terms and conditions and pricing negotiated pursuant to that BFR?

Sections 9.2.6.1.3.4 of Schedule 9.2.6 (Issue 32.a) Section 9.2.8.21 of Schedule 9.2.8 (Issue 32.b)

SBC Illinois Testimony: Chapman Direct, lines 563-1126;  
Novack Direct, lines 478-684.

### SBC ILLINOIS POSITION

The question presented in Issue 32.a is whether AT&T is entitled to Privacy Manager® and all other AIN-bases proprietary services developed by SBC Illinois. The FCC has conclusively ruled in the *UNE Remand Order* that Privacy Manager® is not an unbundled network element available to CLECs. Moreover, FCC Rules 51.319(e)(2)(ii) and 51.317(a) state that LECs are not required to unbundle proprietary services created in the AIN platform. AT&T's proposed language seeks access to exactly those types of AIN-services, and should be rejected. It should also be rejected because SBC Illinois provides full access to its Service Creation Environment ("SCE") and its Service Management System ("SMS"), as it is required to do so by the FCC rules. Accordingly, AT&T may design and create proprietary services of its own, as envisioned by the FCC rules.

Issue 32.b asks the Commission to determine the proper method by which AT&T may access SBC Illinois' SCE and SMS to *design* and to *deploy* those services within SBC Illinois' network. This is a crucial issue because AT&T argues that its inability to access the SCE and SMS justifies its claim to the proprietary services developed by SBC Illinois. This argument should be rejected out of hand for the simple reason that the resolution of Issue 32.b will – by definition – establish the appropriate terms and conditions for AT&T's access to the SCE and SMS, so the drastic "penalty" AT&T seeks is groundless.

SBC proposes revised language to make it clear that AT&T can access its SCE and SMS without going through the bona fide request process. In fact, SBC Illinois proposes new language which is almost identical to language proposed by AT&T on this point. SBC Illinois clarifies, however, that before a new AT&T service can be *deployed* on SBC Illinois' network, it must be thoroughly investigated and tested. The established bona fide request process is the most suitable procedure to accomplish that task.

## DISCUSSION

The question presented in Issue 32.a is whether AT&T is entitled to Privacy Manager® and all other AIN-based proprietary services developed by SBC Illinois. The question presented in Issue 32.b is whether SBC Illinois makes available a reasonable process by which AT&T can do two things: (1) access the Service Creation Environment (“SCE”) and Service Management System (“SMS”); and (2) deploy AT&T-developed AIN services within SBC Illinois’ network.

Privacy Manager® is one of SBC Illinois’ proprietary AIN-based services that was designed, created and implemented by SBC and is covered by a valid United States patent. In a nutshell, Privacy Manager® is a retail service that intercepts all unidentified calls that are displayed as “anonymous,” “out of area,” “private,” or “unavailable” to end users who have caller identification (“Caller ID”) with the “name” feature and tells the caller that the number he or she has dialed does not accept calls from unidentified numbers. The incoming caller is asked to speak her/his name, which is recorded and then played to the end user, who may then accept the call, reject the call, or send a rejection on a real time basis.<sup>47</sup>

Privacy Manager® is not a “feature” of SBC Illinois’ advanced intelligent network (“AIN”). Rather, it is a discrete piece of service software which is loaded onto that network. The AIN architecture consists of the SCE, the SMS, and the software provided by an AIN vendor. Chapman lines 608-615. The SCE is an off-line computer component where SBC Illinois or AT&T can design and test new AIN-based services. The SMS houses the centralized intelligence of the AIN. Chapman lines 645-655.

As required by FCC rules, a CLEC has access to SBC Illinois’ SCE and SMS in order to design and deploy its own AIN-based services. SBC Illinois’ language distinguishes between

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<sup>47</sup> A description of the Privacy Manager® service is available at [http://www05.sbc.com/Products\\_Services/Residential/ProdInfo\\_1/1..175--9-3-14.00.html#7](http://www05.sbc.com/Products_Services/Residential/ProdInfo_1/1..175--9-3-14.00.html#7).

two steps in this process. First, CLECs have direct access to the SCE and the SMS in order to *design* their own AIN-based services. Tr. 156-157 (Novack). When CLECs are prepared to *deploy* such services within SBC Illinois' network, the established bona fide request ("BFR") process is used to coordinate the complicated tasks involved in such deployment.

The FCC recognizes that "software services such as Privacy Manager are new and innovative products used to differentiate the incumbent LECs' service offering."<sup>48</sup> The FCC also acknowledges that "excluding AIN service software, such as 'Privacy Manager,' from the unbundling requirements of section 251(d)(2), will protect incentives for the incumbent LEC to invest and deploy new and innovate services. We [the FCC] also believe that such protection, in conjunction with our decision to unbundle the AIN platform and architecture, will promote innovation and deployment of new services by requesting carriers."<sup>49</sup> Clearly, such innovation by both ILECs and CLECs is beneficial to end users and should be encouraged.

**A. Issue 32.a**

SBC Illinois' proposed language provides that AT&T may access the SBC Illinois SCE to design its own AIN-based services, as required by FCC rules:

AT&T may order and SBC-Ameritech shall provision features (switch based) that the switch is capable of providing. **Ameritech will provide AT&T with access to Ameritech's services creation environment to allow AT&T to design its own AIN-based services. AT&T will request such access using the process found in 9.2.8.21.5.**

AT&T, on the other hand, seeks direct access to all proprietary AIN services developed by SBC Illinois:

AT&T may order and SBC-Ameritech shall provision features (switch based **and AIN**) that the switch is capable of providing. AT&T is entitled to all features that

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<sup>48</sup> *UNE Remand Order* at ¶ 409.

<sup>49</sup> *UNE Remand Order* at ¶ 420.

**SBC-Ameritech transitions from switch-based to the AIN network on a customer specific basis.**

AT&T's proposed language should be rejected.

*First*, the FCC's rules clearly provide that CLECs do not have access to proprietary AIN-based services. Rule 51.319(e)(2)(ii) provides that:

Notwithstanding the incumbent LEC's general duty to unbundle call-related databases, an incumbent LEC shall not be required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment.

FCC Rule 51.317(a) provides that:

A network element shall be considered to be proprietary if an incumbent LEC can demonstrated that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law.

SBC Illinois' Privacy Manager® meets this requirement because it was developed at SBC Illinois' expense and is protected by a valid patent. Chapman lines 582-584.

*Second*, the FCC specifically ruled in the *UNE Remand Order* that Privacy Manager® is a proprietary service which need not be unbundled.

We agree with Ameritech that unbundling AIN services software such as Privacy Manager is not "necessary" within the meaning of the standard in section 251(d)(2)(A). In particular, a requesting carrier does not need to use an incumbent LEC's AIN service software to design, test, and implement a similar service of its own. Because we are unbundling the incumbent LECs' AIN databases, SCE, SMS, and STPs, requesting carriers that provision their own switches or purchase unbundled switching from the incumbent will be able to use these databases to create their own AIN software solutions to provide services similar to Ameritech's "Privacy Manager". They therefore would not be precluded from providing service without access to it. Thus, we agree with Ameritech and Bellsouth that AIN service software should not be unbundled.

*UNE Remand Order*, ¶ 419.

This should be the end of the inquiry for Issue 32.a. AT&T's proposed language would require SBC Illinois to provide access to all of its proprietary AIN-based services, including Privacy Manager®. The FCC rules specifically restrict access to those types of services and

AT&T witness Noorani does not dispute this. AT&T's proposed language is critically defective and this should resolve Issue 32.a in SBC Illinois' favor as a matter of law.

One more point must be addressed, however, because AT&T has created a unique theory to gain access to SBC Illinois' Privacy Manager® service. AT&T alleges that access to Privacy Manager® should be written into the Agreement as a penalty for its alleged inability to gain access to SBC Illinois' SCE and SMS in the past. Noorani lines 1384-1394. This position should be rejected out-of-hand. First, AT&T has not formally requested access to the SCE or SMS. Chapman lines 1091-1095. This calls into question whether AT&T really wants access to SCE or whether it is just looking for a pretext to demand access to Privacy Manager®. *Second*, AT&T's logic is deficient because Issue 32.b will be resolved to give AT&T the required access to the SCE and SMS. For purposes of the new Agreement, AT&T will – by definition – have the required access and its claim for Privacy Manager® must fail.

**B. Issue 32.b**

Issue 32.b asks the Commission to determine the proper method by which AT&T may access SBC Illinois' SCE and SMS to *design* services and to *deploy* those services within SBC Illinois' network.

AT&T's language for section 9.2.8.21 of Schedule 9.2.8 gives it wide-ranging access to SBC Illinois proprietary AIN-based services such as Privacy Manager®. To this extent, AT&T's proposed language for Issue 32.b suffers from the same defects as its proposed language for Issue 32.a, and should be rejected for the same reasons.

AT&T's language for section 9.2.8.21 also proposes the terms by which it may access SBC Illinois' SMS and SCE. See AT&T's proposed language beginning at section 9.2.8.21.4 ("SMS for AIN") and 9.2.8.21.5 ("Access to the SCE of the AIN database"). AT&T's language for this portion of Issue 32.a is quite general and only requires SBC Illinois to provide access to

the SCE and SMS on rates, terms and conditions upon which the parties can mutually agree. For example, section 9.2.8.21.6 says “the parties will mutually agree to the rates, terms and conditions applicable to [SCE] access.” SBC Illinois’ original proposal for Section 9.2.8.21 similarly required the parties to agree upon terms for access to the SCE and SMS, but SBC Illinois has now modified its proposal. Using the AT&T language for sections 9.2.8.21.4 and 9.2.8.21.5 as a starting point, SBC Illinois proposes the following:

9.2.8.21 Upon request by AT&T, and where technically feasible, SBC-AMERITECH will provide AT&T with access to SBC-AMERITECH’s Advanced Intelligent Network (AIN) platform, AIN Service Creation Environment (SCE) and AIN Service Management System (SMS) a set forth below:

9.2.8.21.1 Access to the Service Creation Environment (“SCE”) of the AIN Database

9.2.8.21.1.1 General Description and Specifications of the Unbundled Element

9.2.8.21.1.1.2 SBC-AMERITECH will provide AT&T access to SBC-AMERITECH’s AIN Service Creation Environment (“SCE”) for the creation and modification of AT&T AIN services. The Parties will mutually agree to the rates, terms, and conditions applicable to such access.

9.2.8.21.1.1.3 All AIN services to be deployed in SBC Ameritech’s network will require field testing and testing in SBC-AMERITECH’s AIN laboratory prior to deployment into the network. Testing will evaluate compatibility with SBC AMERITECH’s network, including proper integration with any needed support systems and appropriate interaction with non-AT&T end users and existing services. An AT&T AIN service shall not be deployed in SBC Illinois’ network if it does not successfully complete such lab and field testing. The Parties will mutually agree to the rates, terms, and conditions applicable to testing, design and deployment.

9.2.8.21.1.2 Form of Access. SBC-AMERITECH will provide to AT&T the following forms of access to SCE and any other forms of access mutually agreed upon:

9.2.8.21.1.2.1 Under Option 1, AT&T personnel will operate SBC-AMERITECH’s SCE terminals themselves.

9.2.8.21.1.2.2 Under Option 2, AT&T will develop service logic using an AT&T SCE platform that is compatible with SBC-AMERITECH's systems and will transfer the file to SBC-AMERITECH for testing and deployment.

9.2.8.21.1.3 Either party may initiate Alternate Dispute Resolution to resolve disputes regarding AIN.

9.2.8.21.2 Access to the Service Management System ("SMS") of the AIN Database

9.2.8.21.2.1 General Description and Specifications of the Unbundled Element. SMS for AIN will allow AT&T to update AT&T AIN customer data residing in SBC-AMERITECH's AIN network for use on AT&T lines.

9.2.8.21.4.2.1 Form of Access. SBC-AMERITECH will provide AT&T access to SBC-AMERITECH's AIN service management system ("SMS") for the purpose of administering AT&T's customer data associated with AT&T-developed AIN services residing on SBC-AMERITECH's SCP. SBC-AMERITECH will provide, at AT&T's request, electronic access to an AIN SMS system when available.

9.2.8.21.4.2.2 The Parties will mutually agree to the rates, terms and conditions for such access.

Much of this language is taken directly from AT&T's proposal. The key term involving SCE access is almost a direct quote from AT&T's proposed section 9.2.8.21.6 which provides:

SBC Ameritech will provide AT&T access to SBC-Ameritech's AIN Service Creation Environment ("SCE") for the creation and modification of AIN services. The parties will mutually agree to the rates, terms and conditions applicable to such access.

Comparing this with section 9.2.8.21.1.1.2 of SBC Illinois' new proposal, the only change made was to add "AT&T" near the end of the first sentence. Since SBC Illinois now agrees to this operative provision of AT&T's proposal for access to the SCE, AT&T can no longer claim that it does not have the sort of SCE access it desires.

SBC Illinois' new proposed section 9.2.8.21.1.1.3 describes a separate process for the *deployment* of an AT&T AIN service within the network. This deployment process must, by necessity, proceed under the BFR process. Each AT&T-developed service will have unique attributes and will interact differently with SBC Illinois' network. SBC Illinois will not know

the specific technical and network requirements for AT&T's desired service until after AT&T has initiated a BFR request. Chapman lines 1082-1090. This BFR process is spelled out in great detail in the "*CLECs Guide To Designing, Creating, Testing And Deploying Advanced Intelligent Network-based Services At A Service Management System Through A Service Creation Environment*", attached to Chapman's Direct as Sch. CAC-2. Any proposed deployment will require lab testing, field testing, integration with support systems and procedures to make sure that the new service does not impair any existing services within the network. None of these *deployment* activities can take place on a standardized process and the BFR process is the recognized, established process to do this job.

For all of these reasons, SBC Illinois' language is the most commercially reasonable. It builds upon AT&T's desired form of access to the SCE and SMS and adds in additional safeguards to make sure that the deployment of any AT&T AIN-based service does not jeopardize existing services within the public switch network. SBC Illinois urges the Commission to adopt this language.

**UNE:**  
**ISSUE 33:           Should the LIDB-AS schedule be part of the interconnection agreement?**

**Section 9.2.10**

**SBC Illinois Testimony: Pellerin Direct, lines 1931-1997.**

**SBC ILLINOIS POSITION**

The Agreement should set forth in detail the terms, conditions, and responsibilities of the parties with respect to LIDB. The LIDB-AS Appendix proposed by SBC Illinois sets forth the interface options available to AT&T and appropriately addresses the responsibilities of both parties regarding the administration of AT&T's end user information. AT&T's proposed language, on the other hand, does not go far enough in defining a working business relationship with respect to LIDB. Specifically, AT&T's language is lacking in the following areas: (1) administration of AT&T's LIDB records for its switch-based end users; (2) ability to request emergency updates; (3) audits; and (4) data migration. AT&T has not provided any reason why it objects to SBC Illinois' proposed LIDB-AS Appendix.

**DISCUSSION**

Line Information Database ("LIDB") is a database in which local exchange carriers store comprehensive and proprietary information about their end-users' accounts. Pellerin lines 1821-1823.<sup>50</sup> LIDB enables carriers to determine, at the time of call processing, whether the end user has decided in advance to accept alternately billed calls (*i.e.*, collect, third number and calling card). *Id.* lines 1824-1826. LIDB is connected directly to a Service Management System ("SMS") and a database editor that provide the capability of creating, modifying, changing, or deleting line records in LIDB. *Id.* lines 1828-1830. SBC Illinois offers three methods of access to the SMS, depending on how the local service is provided: (1) Local Service Request ("LSR"); (2) Interactive Interface; and (3) Service Order Entry Interface. *Id.* lines 1830-1832. All three of

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<sup>50</sup> Like many carriers, SBC Illinois does not own its own LIDB. Instead, SBC Illinois contracts with Southern New England Telephone Diversified Group ("SNET DG") to provide SBC Illinois with query access to LIDB. Pellerin line 1824, n.55.

these interfaces are described with relevant terms and conditions in SBC Illinois' LIDB-AS Appendix, and in SBC Illinois' testimony.

Issue 33 concerns AT&T's proposal that SBC Illinois' proposed LIDB-AS Appendix be excluded from the Agreement. Noorani lines 1815-1836. AT&T does not explain why the LIDB-AS Appendix should be excluded, other than to assert that some unidentified portions of it are "too vague" and others are "too restrictive." Noorani line 1835. To begin with, AT&T's solution that the entire appendix be excluded because certain, unidentified portions are vague (even assuming it had any basis, which it does not) is ironic given that AT&T's solution to eliminate the appendix altogether would result in virtually no written terms and conditions for LIDB data storage and administration.

More importantly, AT&T has never made any attempt to identify the purportedly "vague" and restrictive" portions of SBC Illinois' proposed LIBD-AS Appendix – which made it impossible for the parties to resolve any disagreement through negotiation. In fact, AT&T rejected SBC Illinois' proposed appendix without even proposing changes. Pellerin lines 1994-1995. AT&T has left SBC Illinois and the Commission in the dark regarding what purportedly is "vague" or "restrictive" in the appendix and, under those circumstances, the Commission cannot appropriately resolve this issue in favor of AT&T.

In lieu of Appendix LIDB-AS, AT&T proposes two sentences in UNE section 9.2.8.19.1 (see UNE Issue 30) to address administering LIDB data, but those two sentences do not go nearly far enough in defining a working business relationship with respect to LIDB. Pellerin lines 1941-1948. It is necessary for the parties to clearly define the terms and conditions associated with administration of AT&T's LIDB data – and the comprehensive language proposed by SBC Illinois does just that. *Id.* lines 1995-1997. More specifically, essential elements of administering LIDB that are covered by SBC Illinois' proposed appendix, and absent

from AT&T's limited proposal for UNE section 9.2.8.19.1, include: (1) administration of AT&T's LIDB records for its switch-based end users; (2) ability to request emergency updates; (3) audits; and (4) data migration. *Id.* lines 1949-1984. Of course, under AT&T's proposal, there would be no such terms and conditions – which is wholly inadequate.

For these reasons, the Commission should adopt SBC Illinois' proposed language for Appendix LIDB-AS, and reject AT&T's proposed language for UNE section 9.2.8.19.1.

UNE:

ISSUE 34:           Should this schedule have a separate indemnification section over and above the language found in the GTCs?

Section 22.6.2

SBC Illinois Testimony: Nations Direct, lines 25-94.

SBC ILLINOIS POSITION

SBC Illinois proposes that AT&T indemnify it against certain losses that SBC Illinois may incur as a result of SBC Illinois' provision of Operator Services and Directory Assistance to AT&T. SBC Illinois' proposed language is reasonable, and AT&T's witness did not suggest otherwise. Rather, AT&T's only objection appears to be that the proposed provision is unnecessary because the protection it provides is already provided by the general indemnification language that appears in the General Terms and Conditions portion of the Agreement. In reality, however, SBC Illinois' proposed language or the OS/DA article is unique to OS/DA and provides indemnification that is not provided in the General Terms and Conditions.

DISCUSSION

Article 22 of the Agreement concerns OS/DA – Operator Services and Directory Assistance. SBC Illinois proposes indemnity language for Article 22, section 22.6.2, that AT&T opposes, namely:

**AT&T also agrees to release, defend, indemnify, and hold harmless SBC-AMERITECH from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly, or indirectly, by SBC-AMERITECH employees and equipment associated with provision of the OS and DA Services, including but is not limited to suits arising from disclosure of the telephone number, address, or name associated with the telephone called or the telephone used to call Operator Services and Directory Assistance.**

That provision is eminently reasonable. This Commission has approved tariffs that limit SBC Illinois' liability to its customers in relation to OS/DA, and SBC Illinois' liability to AT&T in connection with the provision of OS/DA should be limited in the same fashion. Nations lines 42-44. The retail tariff provisions, and the analogous provisions SBC Illinois proposes here, protect consumers from the consequences that would flow from the excessive damage

claims to which SBC Illinois would otherwise be exposed — increased prices for OS and DA service. *Id.* lines 45-48.

It is common business practice to limit liability in this way. In fact, AT&T has limitations of liability language in its own tariffs. *Id.* lines 49-50. AT&T should not be allowed to have it both ways – low prices for OS and DA, contemplating no costs for liability to AT&T, and then subjecting SBC Illinois to such costs. SBC Illinois’ language is reasonable and should be adopted.

Indeed, AT&T has not claimed that SBC Illinois’ proposed language for section 22.6.2 is unreasonable. AT&T witness Noorani discusses this issue at page 83 of his testimony, and he says nothing that suggests there is anything unreasonable about the indemnity provision SBC Illinois is proposing.

The only basis for AT&T’s objection, according to Mr. Noorani, is that “a separate indemnification for Schedule OS/DA is unnecessary,” supposedly because “the indemnification provision of the General Terms and Conditions Article covers indemnification for the entire ICA.” Noorani lines 1841-1844. But that is incorrect – proposed section 22.6.2 does not duplicate the indemnification provision in the GT&C. Nations lines 66 *et seq.* On the contrary, section 22.6.2 is unique to the OS/DA context, and provides for indemnification that is not provided in the GT&C. For example: If an AT&T customer were to sue SBC Illinois based on SBC Illinois’ disclosure of the AT&T customer’s address in the course of the provision of DA service, section 22.6.2 would oblige AT&T to indemnify SBC Illinois against that claim. That is reasonable, because the lawsuit would only exist because SBC Illinois is providing OS/ DA to AT&T pursuant to this Agreement. (And again, AT&T does not seem to be saying it is unreasonable.) The indemnity provision in the General Terms and Conditions portion of the

Agreement does not provide for this same indemnification under the same circumstances. Thus, there is no duplication.

If AT&T were serious about its objection, Mr. Noorani would have quoted or paraphrased section 22.6.2 and then would have explained how the indemnity it provides already appears in the GT&C. He does not do that, however, and that is probably because section 22.6.2 is in fact unique to the OS/DA context. The Commission should therefore approve SBC Illinois' proposed language.

**COLLOCATION:**

**ISSUE 1:           Should AT&T have the right to access and maintain  
virtually collocated equipment?**

**Sections 12.2, 12.3.1 through 12.3.4**

**SBC Illinois Testimony: Bates Direct, lines 56-238; Niziolek  
Direct, lines 1207-1276.**

**SBC ILLINOIS POSITION**

The FCC has said, time and time again, that an ILEC is not required to provide a CLEC with access to virtual collocation arrangements. Rather, it is the ILEC, not the CLEC, that is responsible for the installation and maintenance of the virtually collocated equipment dedicated to the CLEC. This Commission, recognizing the FCC's rulings on this issue, has similarly held that a CLEC is not entitled to access to its virtual collocation arrangements. AT&T seeks the very access that the FCC and this Commission have concluded it may not have. SBC Illinois urges the Commission to reaffirm its previous ruling on this issue and adopt SBC Illinois' proposed language.

**DISCUSSION**

Mandating that CLECs have access to virtually collocated equipment conflicts with the FCC's current conclusions on this issue. In addition, the Commission agrees with Ameritech that the FCC intends for virtually collocated equipment to be maintained by the ILEC.

So said this Commission just last year as part of its comprehensive, industry-wide investigation into its Part 790 Rules. Order, Illinois Commerce Commission On its Own Motion: Revision of 83 Ill. Adm. Code 79-, Docket No. 99-0511, May 27, 2002, at page 93. Despite this clear (and recent) pronouncement by this Commission, AT&T is seeking access to virtual collocation in this arbitration.

AT&T observes that this Commission ruled in an arbitration between SBC Illinois and AT&T that AT&T could have certain access to its virtual collocation arrangements. However, that arbitration occurred in the first months following passage of the 1996 Act and, as the decision in Docket No. 96-0511 makes clear, the Commission has effectively overruled that

earlier arbitration decision. Furthermore, this more recent holding by the Illinois Commerce Commission is consistent with SBC Illinois' effective tariff language.<sup>51</sup>

The Commission's decision in Docket No. 99-0511 is correct. As the Commission noted, the FCC has concluded that CLECs are not entitled to access to virtual collocation. In fact, the FCC has made clear over and over that in a virtual collocation environment, the ILEC, not the collocating CLEC, is responsible for installation and maintenance of the virtually collocated equipment dedicated to the CLEC. For instance, in its *Local Competition Order* (§ 559), the FCC stated:

Under virtual collocation, interconnectors are allowed to designate central office transmission equipment dedicated to their use, as well as to monitor and control their circuits terminating in the LEC central office. Interconnectors, however, do not pay for the incumbent's floor space under virtual collocation arrangements and have no right to enter the LEC central office. Under our virtual collocation requirements, LECs must install, maintain, and repair interconnector-designated equipment . . .

Similarly, in its *706 Order*, the FCC stated:

In a virtual collocation arrangement, the competitor designates the equipment to be placed at the incumbent LEC's premises. The competing provider, however, does not have physical access to the incumbent's premises. Instead, the equipment is under the physical control of the incumbent LEC, and the incumbent is responsible for installing, maintaining, and repairing the competing provider's equipment.

*706 Order*, § 19, n.27; see also *Order on Reconsideration*, § 9 (same); *Virtual Collocation Order*, 9 F.C.C.R. 5154, 5158 at § 7 (1994).

Furthermore, the FCC's regulations define physical collocation as an "offering by an incumbent LEC that enables a requesting telecommunications carrier to . . . (3) enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment

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<sup>51</sup> Ill. C.C. No. 20, Part 23, Section 4, 1st Revised Sheet 38 provides "Requesting Carrier shall not have physical access to virtually collocated equipment." It further provides that "The Company shall . . . be responsible for maintaining and repairing the virtually collocated equipment."

necessary for interconnection or access to unbundled elements. . . .” 47 C.F.R. 51.5. The FCC’s definition of virtual collocation contains no such language. *Id.*

Finally, allowing CLECs to access and maintain their virtually collocated equipment would eliminate one of the critical distinctions between physical and virtual collocation, which the FCC has made clear it will not do. *Local Competition Order*, para. 607 (“Finally, we decline to require that incumbent LECs provide virtual collocation that is equal in all functional aspects to physical collocation.”)

This Commission’s decision in 99-0511 is in accord with several recent decisions by other state commissions in this region. In the most recent arbitration between SBC Wisconsin and AT&T, the Public Service Commission of Wisconsin held that AT&T is not entitled to access and maintain virtually collocated equipment. PSCW Docket 05-MA-120, 10/12/00, Issue 91. Similarly, the Michigan Public Service Commission recently overturned an arbitration panel recommendation on this same issue, stating “The Commission is persuaded that the arbitration panel’s determination on this issue should be reversed. It is the incumbent local exchange company (ILEC), not the collocating CLEC, who installs and maintains the virtually collocated equipment that is dedicated to the CLEC. This finding is consistent with the FCC precedent.” Opinion and Order, MPSC Case No. U-12465.

Moreover, if the legal precedents are not enough (which they are), providing access to CLECs to virtual collocation arrangements would be bad policy as well, because it is both unnecessary and needlessly risky. Virtual collocation allows the ILEC to accommodate the CLEC’s equipment in space that is not suitable for physical collocation, while protecting the ILEC’s own network. *Local Competition Order*, ¶ 602. Permitting a CLEC to assume responsibility for installation and maintenance of collocation equipment in a virtual arrangement would be inconsistent with an ILEC’s right to protect its own equipment. Providing CLEC

access to virtual collocation would also inhibit the ILEC's ability to protect the equipment of other virtually collocated CLECs. Bates lines 112-116.

As SBC Illinois witness Bates explained, it is important to restrict access to the ILEC's network infrastructure, in order to reduce the risk of incidents that could jeopardize the network. This is accomplished by minimizing foot-traffic within the Central Office equipment areas; it goes without saying that more people in a Central Offices means more Central Office foot-traffic and more opportunities for problems. While SBC Illinois makes no assertion that CLECs would intentionally damage or endanger an ILEC's equipment, contrary to Mr. Noorani's testimony (at lines 162-164), numerous security violations, by AT&T and other CLECs, have occurred. Such violations have included unauthorized access to restricted areas, performing unauthorized activities on SBC-owned equipment, working in SBC's premises without proper identification, and the unauthorized use of SBC portable equipment and property. Bates lines 126-149.

Moreover, maintaining the integrity and security of vital telecommunications services in this country is all the more important in light of the events of September 11, 2001, and the heightened state of alertness in all areas of life. Bates lines 91-100. Since September 11, 2001, the FCC has taken a variety of steps to ensure the reliability and security of the nation's communications infrastructure. SBC too has undertaken steps, in coordination with FCC mandates, to ensure the security of its facilities on behalf of all of its customers. *Id.* lines 93-96. Limiting to the greatest extent possible the number of persons with access to SBC Illinois' central office facilities is one such step. This Commission has embraced such enhanced security measures, and acknowledged, as we all have, that the post-September 11 world is a much different one. Phase I Interim Order in the Order, Docket No. 01-0662, Phase I Interim Order, para. 285 ("Presumably, [Ameritech Illinois] like many other companies, has reassessed and strengthened its security measures in recent times.")

In sum, there is no reason for the Commission to alter its most recent ruling on this issue. The 99-0511 docket was a comprehensive proceeding which solicited the views of both CLECs and ILECs, and as the Commission recognized, the outcome was compelled by the FCC's position on this issue. Moreover, it is a sound policy that protects both ILECs and CLECs, and their customers.

**COLLOCATION:**

**ISSUE 2.b:** Can AT&T locate equipment on its own side of a condo building to access UNEs by cabling to SBC, in place of a collocation?

Sections 12.3.5-12.3.5.7, Schedule 16.10, New Article 17 (SBC)

SBC Illinois Testimony: Bates Direct, lines 240-425.

**SBC ILLINOIS POSITION**

SBC Illinois addresses this issue in its discussion of Interconnection Issue 3.

**COLLOCATION:**

**ISSUE 3:** Should the ICA terms and conditions allow AT&T to have access between AT&T's collocation space and SBC's distribution frame to verify and test intra-office wiring?

Sections 12.3.6-12.3.6.4.4

**SBC Illinois Testimony:** Bates Direct, lines 427-704; Niziolek Direct, lines 1278-1386.

**SBC ILLINOIS POSITION**

AT&T seeks access to SBC Illinois' Main Distribution Frame, which is located at the heart of SBC Illinois' telecommunications network. SBC Illinois opposes granting AT&T, or any CLEC, access to this sensitive area. Such access not only would jeopardize network safety and reliability, but also is unnecessary and inconsistent with FCC and state commission decisions. Both the FCC and this Commission have addressed this issue and concluded that CLECs should not have access to the ILEC MDF. There is no reason for a contrary conclusion here.

**DISCUSSION**

Once again, a CLEC is trying to obtain access to SBC Illinois' main distribution frame ("MDF")<sup>52</sup> – the heart of an ILEC telecommunications network. This time AT&T is trying to get access to the MDF by claiming it needs it in order to perform certain line testing.<sup>53</sup> The rationale that AT&T presents this time around to justify its demand for access to the MDF is no more legitimate than the CLECs' previous failed attempts. It is SBC Illinois' position, and has always been, that SBC Illinois is not obligated to allow direct access to its network to any CLEC,

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<sup>52</sup> The Main Distribution Frame ("MDF") is the facility within SBC Illinois' central office on which every customer line, trunk and circuit is terminated as it enters the central office. The MDF is owned by SBC Illinois, is located in SBC Illinois' space in the central office, and constitutes the "heart" of the network. CLECs do not own the block(s) at which CLEC cable is terminated on at SBC's MDF. These lines, trunks and circuits are terminated at the blocks and then cross-connected to either SBC Illinois' switch (for switched services), an SBC Illinois interoffice facility (for dedicated services), or a facility which connects them to a CLEC's collocation equipment. The software assignment of each connection to the block at its termination is referred to as Connecting Facility Assignment ("CFA"). The CFA (sometimes referred to as the assignment) is documented and recorded in systems and used in ordering. Bates lines 446-457.

<sup>53</sup> By requesting access to the CFA, AT&T is in fact requesting direct access to the MDF because it is through the MDF that the associated connections for the CFA are made. Niziolek line 1292 and n.1.

and that security and network integrity considerations preclude such access. This Commission has sustained SBC Illinois' position in three contested proceedings, and it should do so again.

In the Covad/Rhythms arbitration with Ameritech Illinois, Covad/Rhythms argued that they should be allowed to "test the high frequency portion of the loop from the splitter data port back to the [main] distribution frame, through the cross-connect, and back to the DLSAM" in order to isolate points of failure in a circuit. (Arbitration Decision, Docket No. 00-0312/00-0313, adopted August 17, 2000, p. 22). The Commission denied the request and held, based on FCC precedent, that "Rhythms and Covad should not have access to Ameritech's MDF." (*Id.*, pp. 23-24). The CLECs renewed their request for access to the MDF in this Commission's generic line sharing proceeding and the Commission came to the same conclusion. Order in ICC Docket 00-0393, adopted March 14, 2001, p. 74. Although AT&T's request in this proceeding is not specific to line sharing, the principle is exactly the same.

Most recently, in the Phase I Interim Order in the SBC Illinois 271 proceeding, the CLECs, including AT&T and its witness Noorani, raised the very same arguments about CFA testing, access to MDF and approval of CLEC vendors that AT&T is raising here. Docket No. 01-0662, February 6, 2003, Phase I Interim Order, paras. 187-192, 210-218, 275-278. The Commission rejected these claims. First, the Commission recognized that legitimate security concerns support SBC Illinois' position that CLECs should not have access to SBC's MDF, particularly in light of September 11 and later events. Phase I Interim Order in the Order, Docket No. 01-0662, Phase I Interim Order, para. 285 ("Presumably, [Ameritech Illinois] like many other companies, has reassessed and strengthened its security measures in recent times.") Second, the Commission noted, "most important to our decision ... the FCC has not required BOCs to provide access to the MDF." *Id.* para. 286. In addition, the Commission noted that in the FCC's Texas 271 Order, the FCC found that SWBT's collocation tariff satisfied the

checklist, even though that tariff expressly prohibited CLEC access to the MDF. The Texas Commission has never allowed direct access to the MDF due to security reasons<sup>54</sup> via either tariff or arbitration.<sup>55</sup> Bates lines 514-515.

SBC Illinois also has effective tariff language that protects SBC Illinois premises and equipment, as well as other CLECs' equipment.

In no event may Requesting Carrier traverse such separation nor may Requesting Carrier access the Company's Main Distribution Frame, cross-connect frames or other equipment.<sup>56</sup>

Similar language protecting the ILEC's premises and MDF is included in language jointly agreed upon by the AT&T, other CLECs and SBC, in Wisconsin, Michigan, Missouri, Kansas, Oklahoma, Arkansas and Nevada. Bates lines 515-518.

AT&T presents nothing new to justify a change from the clear authority supporting SBC Illinois' position. As noted above, AT&T witness Noorani has trotted out the very same arguments here that the Commission already rejected in SBC Illinois' 271 docket. Those arguments still hold no water, as SBC Illinois witnesses Niziolek and Bates discuss at length. Niziolek lines 1356-1386; Bates lines 544-700.

Mr. Noorani, for instance, claims that using and maintaining CFAs is difficult and describes "a great disparity in the manner in which ILECs, including SBC Illinois, require MDF wiring block to be configured" (Noorani lines 476-478). While it is correct that ILECs differ in

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<sup>54</sup> Texas Physical Collocation tariff - Texas Tariff at § 20.13.1-4 – "The collocator will not be permitted access to the SWBT Main Distribution Frame."

<sup>55</sup> *Petition of Rhythms Links, Inc. Against Southwestern Bell Telephone Co. for Post Interconnection Dispute Resolution and Arbitration*, Tx. P.U.C. Docket No. 22469, Revised Arbitration Order ("Rhythms Links Order") at 53 (Sept. 21, 2001) ("The Texas Commission has never allowed direct access to the MDF due to security reasons"); *Petition of El Paso Networks, LLC, for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company*, Tx. PUC Docket No. 25188, Arbitration Order ("EPN Order") ("Arbitrators find that EPN is not allowed direct access to terminate its facilities on SWBT's MDF or FDF").

<sup>56</sup> Ill C.C. No. 20, Part 23, Section 4 -Collocation Services, Sheet No. 3.

the manner in which they configure their networks, Mr. Noorani's assumption that this "problem" may be eliminated by allowing AT&T or someone else access to the CFA is faulty; such a result would only exacerbate the situation. The more people have access to the network, the greater the chance of someone doing something incorrectly or inefficiently, and a greater chance of damaging the SBC network. Niziolek lines 1358-1366.

Mr. Noorani also raises concerns regarding software systems. Noorani lines 519-527. Rather than suggesting that SBC Illinois and AT&T work together to develop a means for accommodating both systems, Mr. Noorani suggests that SBC Illinois simply abandon the systems it has in place and adopt a whole new system that caters to AT&T's wants. This is neither an efficient nor an effective solution. Niziolek lines 1368-1372.

SBC Illinois has processes in place that provide direction and methodology for resolution of all of the concerns identified by Mr. Noorani. For instance, AT&T's concerns regarding provisioning and maintenance are addressed in an SBC Accessible Letter (CLECAM02-405, Schedule DFN-3), which was the result of discussions with various CLECs, including AT&T, at the CLEC Forum. These procedures for out of service, trouble and installation make clear that the CLECs are not afforded access to the MDF for problem resolution. Niziolek lines 1376-1382. Similarly, the processes for wiring problems are addressed through established policies and procedures for both installation and post-installation scenarios. Bates lines 544-563.

Mr. Noorani suggests that collocation-to-MDF testing is the key to resolving a majority of these problems. Noorani lines 532-534. AT&T's position on testing is based on a false premise regarding testing responsibility. AT&T technicians are responsible for testing AT&T's network; SBC Illinois is responsible for testing SBC Illinois' network. This issue boils down to a debate about appropriate test points or what may sometimes be referred to as test access points. AT&T has test points in its network and SBC Illinois has test points in its network. AT&T and

SBC Illinois work together daily, using systems and personnel to resolve trouble, with each company accessing its own test points. AT&T's attempt to gain access to SBC Illinois test points is not only unnecessary, it is unreasonable. Bates lines 460-466.

Moreover, if Mr. Noorani is correct that testing will solve AT&T's problems, then that testing can be done by AT&T on a planned, coordinated basis using AT&T's SBC Illinois-approved vendor. As documented on the CLEC Online Handbook and Accessible Letters, SBC Illinois makes available CFA reports that can be used by CLECs to verify and validate their CFA assignments and inventories against SBC Illinois' records. Resolution of CFA issues can be achieved without granting CLEC or AT&T technicians access to SBC Illinois' MDF. Bates lines 567-577.

Mr. Noorani further claims that AT&T has been unable to "perform testing necessary to resolve these CFA problems." Noorani lines 548-557. SBC Illinois employs a trouble resolution process to resolve issues without SBC allowing CLEC's access to SBC Illinois' MDF. SBC Illinois witness Bates details the trouble resolution process that SBC Illinois employs in her testimony at lines 587-600. In addition, SBC Illinois has worked extensively with AT&T and other CLECs discussing issues of circuit level trouble isolation and interconnection cabling between the CLEC and SBC Illinois (and CLECs' stated desire to access the MDF to resolve the trouble.) Bates lines 605-613. Ms. Bates explained those process at length as well. *Id.* lines 619-660.

Moreover, CFA-related issues also were addressed in a CLEC forum involving the CLECs' request for expedited CFA procedures. As a result of the forum, SBC Illinois has implemented a streamlined process for expedited CFA requests that was shared at the CLEC forum on May 15, 2002, and described and published May 9, 2002 in an accessible letter

(CLECAM02-189: “Update to Change of Connecting Facility Assignment (CFA) Expedite Process”), attached as Exhibit TMB-2. Bates lines 675-680.

In conclusion, this Commission should reject AT&T’s latest attempt to gain access to SBC Illinois’ MDF. The FCC and this Commission have held on numerous occasions that a CLEC is not entitled to access the ILEC’s MDF. Such access is not necessary and imposes an unreasonable risk, and AT&T has not presented any evidence to justify a contrary conclusion.

**LNP:**

**ISSUE 1:** Should the ICA contain Hot Cut language over and above that covered in the ICA's OSS Schedule 33.1?

**Section 13.4**

**SBC Illinois Testimony:** Chapman Direct, lines 1504-1600.

**SBC ILLINOIS POSITION**

SBC Illinois is entitled to receive compensation for the work associated with a coordinated hot cut. This is work undertaken on a special basis at AT&T's request in order to provide an even smoother than normal transition of a end users service from SBC Illinois to AT&T. Under this process, an SBC Illinois technician coordinates with the CLEC so that the end user's telephone remains activate in the SBC Illinois switch until the precise time that AT&T is ready to activate service in its witch. SBC Illinois is willing to provide this service to AT&T, however, AT&T should compensate SBC Illinois for the additional work required at SBC Illinois' federal access labor rates.

**DISCUSSION**

There are two areas of dispute for this issue. The major dispute is whether SBC Illinois is entitled to receive compensation for work associated with a coordinated hot cut ("CHC").

Obviously, when SBC Illinois performs special work requested by AT&T, SBC Illinois should receive fair compensation for the work it performs.

SBC Illinois' proposed language for section 13.4 is in the Joint Submission. AT&T does not appear to dispute the proposed section 13.4.1. The only section in dispute appears to be 13.4.2, which provides as follows:

When AT&T orders CHC service, SBC-Illinois shall charge and AT&T agrees to pay for CHC service at the "additional labor" rates set forth in the following applicable FCC Access Services Tariffs:

13.4.2.1 AMERITECH - FCC No. 2 Access Services Tariff, Section 13.2.6(c)

AT&T has no proposed language for this issue.

A coordinated hot cut is an optional service in which SBC Illinois technicians take extra time to make sure that both companies perform a service cutover at the same time. Chapman lines 1518-1522. SBC Illinois coordinates with the CLEC to make sure that SBC Illinois does

not remove the switch routing instructions from the donor switch until SBC Illinois has received the CLEC's verbal instructions to do so. In some cases, this coordination takes very little time. In other cases, it can take a great deal of time, for example when the CLEC is not ready at the originally requested time or if a large volume of orders are involved. Chapman lines 1527-1537. SBC Illinois is happy to perform this extra work at AT&T's request, however, AT&T should compensate SBC Illinois at standard labor rates set forth in the federal access tariff. Simply put, SBC Illinois seeks reimbursement for the extra time its technicians devote to handling AT&T orders on a special basis.

AT&T witness Finney makes two points. First, he argues that SBC Illinois will soon deploy an enhanced LNP process which will eliminate the need for AT&T to request coordinated hot cuts on simple standalone LNP orders. Finney lines 50-56. Mr. Finney appears to be saying that AT&T will not be ordering a coordinated hot cut services from SBC Illinois in the future. If this so, it should not object to a contract provision which permits SBC Illinois to recover its labor rates in the event that AT&T (or some other CLEC opting into this Agreement) does order CHC services. Second, Mr. Finney argues that an *ex parte* filed with the FCC touts the absence of an additional CHC charge in SBC Midwest. The *ex parte* attached to Mr. Finney's testimony does not prove that a coordinated hot cut charge in Illinois is inappropriate. To the contrary, it illustrates that SBC is compensated for this extra work in California and Texas, but not in Illinois.

The second issue is a rather minor one and concerns whether the coordinated hot cut language should be included in the OSS Schedule 33.1 or in the local number portability Article 13. Since the coordinated hot cut process, and the proposed charge, both involve local number portability, Article 13 is the appropriate home for this language. Chapman lines 1580-1591.

For all these reasons, the Commission should accept SBC Illinois language for section 13.4.

**LNP:**  
**ISSUE 2:           Must SBC Illinois include Enhanced LNP process language in the agreement.**

**Sections 13.5**

**SBC Illinois Testimony: Chapman Direct, lines 1601-1707; Chapman Rebuttal, lines 18-43.**

**SBC ILLINOIS POSITION**

The question presented is whether the contract should contain AT&T's very detailed language regarding a process that has not yet been developed called "Enhanced LNP". The process, which automates current safeguards associated with the LNP migration process, is scheduled to be deployed by SBC Illinois later this year. Since this process is still under development and does not yet exist, AT&T's proposal should be rejected.

SBC Illinois has been working through implementation issues for the Enhanced LNP process in the CLEC User Forum. Chapman lines 1624-1625. The development process is ongoing and basic questions of technical feasibility, timing and methodology remain open. Once this process is finalized and implemented, SBC Illinois will make it available to all CLECs on a nondiscriminatory basis. There is no need to address the process in the Agreement at all. Nonetheless, in order to address AT&T's concerns SBC Illinois is willing to negotiate terms and conditions in an amendment to the Agreement at the appropriate time. SBC Illinois' proposed language, set forth below, formalizes this compromise position:

13.5 Enhanced LNP process.

13.5.1 In the event that SBC-Illinois makes available new or enhanced LNP processes to CLECs that are not described in this Agreement, and AT&T desires to take advantage of such new or enhanced LNP processes, AT&T will notify SBC-Illinois in writing and the parties shall then negotiate appropriate terms and conditions to be embodied in an amendment to this Agreement.

This language serves as a placeholder and is the most the Agreement could possibly say about the Enhanced LNP process at this time.

AT&T's proposed language is completely unacceptable for a number of reasons. First, it reflects an early description of the enhanced LNP process that was rolled out in California, a process that was later revised as development continued. Second, there are differences between the systems in California and those in Illinois, so there is no reason to believe that the California language, even if correct for California, would work for Illinois in any event. Third, if the Enhanced LNP process is made available in Illinois, it will be a brand new process that will undoubtedly be modified and refined once CLECs actually begin

using it. This type of mutually beneficial modification would be hampered if the process details are set in concrete in the Agreement as AT&T proposes.

AT&T has clearly put the cart before the horse, and it attempts to justify this by arguing that its language will avoid the need to negotiate an amendment later on. Finney lines 175-176. This is malarkey. There is no justification for including language which is a flatly incorrect and there is no justification for attempting to describe a process which does not yet exist. When the language is ready to be incorporated in to the Agreement, it can be done so through an amendment. AT&T is well versed in that process and it poses no serious impediment to AT&T.

In summary, the Commission should adopt SBC Illinois' proposed language for Section 13.5.

#### **DISCUSSION**

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

**POLES DUCTS ROW:**

**ISSUE 1:           Should SBC Illinois permit AT&T to do its own make ready work?**

**Section 16.3; Appendix to Article 16 -  
Sections 1.6.17, 1.16.20, and 1.7.12**

**SBC Illinois Testimony: Stanek Direct, lines 13-110.**

**SBC ILLINOIS POSITION**

AT&T wants to perform a fundamental alteration to SBC Illinois' Poles, Ducts, and Conduits ("Structure") by installing higher poles, enlarging manholes and the like. SBC Illinois has no legal obligation to allow AT&T to perform this work, as made clear by an FCC bureau order *In Cavalier Telephone LLC v. Virginia Electric Power*, File No. PA 99-005 (rel. June 7, 2000). SBC Illinois is willing to perform this work for AT&T on a non-discriminatory basis. Equally important, AT&T's proposal would unreasonably interfere in the collective bargaining agreement between SBC Illinois and its Union, the IBEW. This collective bargaining agreement states that work can only be done by others if such work was customarily done by others under a previous collective bargaining agreement, which is not the case with the make ready work that is the subject of this issue. AT&T's proposal would put SBC Illinois in legal jeopardy and is commercially unreasonable.

**DISCUSSION**

The question presented by this issue is whether AT&T can perform "make ready work" (e.g., install higher poles, enlarge manholes, etc.) on SBC Illinois' fundamental network infrastructure. SBC Illinois acknowledges its responsibility to do this work for AT&T. The issue is whether AT&T may displace SBC Illinois' own workers to perform these functions.

The disputed language appears in four (4) places in the Agreement. The key disputed language is in section 16.3, which provides, in part, as follows:

SBC-Ameritech may permit AT&T to conduct Field Survey Work and **Make Ready Work** itself or through its own contractors in circumstances where SBC-Ameritech is unable to complete such work in a reasonable timeframe.

(Language proposed by AT&T and opposed by SBC Illinois is shown in bold underline).

AT&T wants to modify fundamental portions of SBC Illinois' network infrastructure on its own. SBC Illinois opposes this for two reasons.

*First*, SBC Illinois has no legal obligation to allow AT&T to perform this work on its poles, ducts and conduits (“Structure”). SBC Illinois, not AT&T, owns the Structure and AT&T has no right to modify SBC Illinois’ property. Of course AT&T is free to install and maintain its facilities placed in and on SBC Illinois’ Structure. It simply cannot *modify* the structure itself. This issue was addressed in an FCC bureau order, *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*, File No. PA 99-005 (rel. June 7, 2000). There, the FCC held that it was not prepared to order the Electric Company to permit the CLEC to use third-party contractors to perform make ready work on its Structure. “While we agree that the use of multi-party contractors is an efficient means to accomplish make ready work, and we encourage Respondent to consider that alternative, we are not ready to order Respondent to proceed with that method. (¶ 18). As this bureau order makes clear, CLECs do not have the right to perform make ready work through their own employees or through their own contractors. Rather, the owner of the Structure performs the make ready work necessary to accommodate the CLEC’s attachments. This is exactly what SBC Illinois does for AT&T and all other CLECs and it does so on a non-discriminatory basis. Stanek lines 50-52.

While it is true that the FCC vacated the June 7th Order cited above, this vacatur does not change the fact that the FCC was unwilling to require ILECs to permit CLECs to do their own make ready work. As paragraph 19 of the FCC’s vacatur Order states, “We wish to emphasize, however, that our decision to vacate the *June 7th Bureau Order* does not reflect any disagreement with or reconsideration of any findings or conclusions contained in the *June 7th Bureau Order* as well”. File No. PA 99-005, DA 02-3319 (rel. Dec. 3, 2002).

*Second*, AT&T’s proposal would unreasonably interfere in the collective bargaining arrangement between SBC Illinois and its union, the International Brotherhood of Electrical Workers (“IBEW”). This collective bargaining agreement states that work can only be done by

others (with some restrictions) if such work was customarily done by others under previous collective bargaining agreements. Make ready work on SBC Illinois' Structure has not been customarily done by others and therefore the IBEW may well challenge any situation where AT&T or its contractors perform this work. Certainly, the Commission should not place SBC Illinois in a position where, in order to honor its contract with AT&T, it must potentially breach its agreement with the IBEW. Such a result would be unreasonable, especially since there is a perfectly reasonable alternative; namely, that SBC Illinois continue to perform this work on behalf of AT&T.

Mr. Noorani claims that his proposal creates no problems under the SBC Illinois/IBEW collective bargaining agreement. It does not appear Mr. Noorani was seriously attempting to analyze this legal predicament and was merely attempting to brush aside SBC Illinois' serious concerns. Similarly, Mr. Noorani alleges that SBC Illinois' proposal would require AT&T to incur greater costs, but he provides absolutely no evidence that it would be less expensive for AT&T to do the make ready work itself rather than to have it done by SBC Illinois. In particular, there is no showing that the labor rates paid by AT&T are any lower than those paid by SBC Illinois.

In summary, AT&T's proposed language for section 16.3 creates unnecessary legal jeopardies for SBC Illinois which are not outweighed by any benefits for AT&T. SBC Illinois' proposed language is the most commercially reasonable outcome and should be adopted.

**INTERCARRIER COMPENSATION:**

**ISSUE 1:**           Should the terms of this article apply to traffic where AT&T is using ULS-ST provided by SBC Illinois?

**Section 21.1.1**

**SBC Illinois Testimony:** Pellerin Direct, lines 52-139; Pellerin Rebuttal, lines 16-48.

**SBC ILLINOIS POSITION**

The parties have now agreed that the terms of Article 21 apply to traffic the parties exchange when AT&T is using ULS-ST. The question is what reciprocal compensation rate will apply to that traffic. As Staff has explained, it should be the same reciprocal compensation rate as applies to all other traffic the parties exchange. There is no reason for ULS-ST traffic to bear a different rate, because there is no evidence that the cost of transporting or terminating ULS-ST traffic is different than the cost of transporting or terminating other traffic. Also, SBC Illinois' ULS-ST tariff expressly provides that the reciprocal compensation rate for ULS-ST traffic will be the same as for other traffic. AT&T claims that the tariff is "inappropriate," but that claim is both inaccurate (because, as Staff witness Zolnierек testified, it was perfectly appropriate for SBC Illinois to remove the ULS-ST reciprocal compensation rate from its tariff ) and irrelevant (because SBC Illinois' tariff must be taken as valid for purposes of this proceeding in any event).

**DISCUSSION**

The issue statement is no longer accurate, because AT&T no longer contends, as it did at the outset of this proceeding, that reciprocal compensation should not apply to traffic the parties exchange when AT&T is using unbundled local switching with shared transport ("ULS-ST"). Rather, the parties "have reached agreement that Article 21 [reciprocal compensation] will apply to ULS-ST traffic." Rhinehart Reply lines 33-34. The question is whether the reciprocal compensation rate for such traffic will be the same rate that applies to other traffic that is subject to reciprocal compensation, or whether it will be a different rate, proposed by AT&T. The Commission should answer, as Staff has, that the rate should be the same as for other traffic.

Though the testimony may make it appear a bit complicated, the issue is actually quite simple. The reciprocal compensation rate for traffic the parties exchange when AT&T is using

ULS-ST should be the same as the rate for non-ULS-ST traffic for two reasons. First, there is no reason for the rate for these calls to be different because, as Staff witness Zolnierек explained, “AT&T has provided no evidence that demonstrates that SBC’s costs of terminating traffic should be different or are different when AT&T uses ULS-ST versus when AT&T does not use ULS-ST. . . . Therefore, there is no evidence to indicate that SBC’s charges for transport and termination should vary according to whether or not AT&T uses ULS-ST to originate traffic.” Zolnierек lines 1256-1264.<sup>57</sup> Absent such evidence, and absent any principled reason for treating ULS-ST traffic differently, the traffic should be treated the same, as Dr. Zolnierек recommends.

Second, there is no lawful basis for the reciprocal compensation rate that AT&T proposes for ULS-ST traffic. AT&T contends it is a tariffed rate (Rhinehart Reply lines 164-167), but AT&T is wrong. SBC Illinois’ Tariff No. 20, Part 19, Section 21, Sheet 2 unambiguously states, “[W]hen the Company terminates a call to a Company subscriber that was originated using ULS-ST, the Company is entitled to charge a rate equal to the Commission approved reciprocal compensation rate for the termination” – precisely the result SBC Illinois urges here. There is, in other words, no special tariffed reciprocal compensation rate for ULS-ST-originated traffic.

AT&T contends that there *should be* a tariffed reciprocal compensation rate for ULS-ST originated traffic because there once was and, according to AT&T, SBC Illinois’ removal of the rate “was wholly inappropriate.” Rhinehart lines 139-141. AT&T’s contention fails, for two reasons. First, it makes no difference, for purposes of this proceeding, whether SBC Illinois’ current ULS-ST tariff is proper or improper. The inescapable fact of the matter is that the

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<sup>57</sup> Even though the reciprocal compensation rates that are the subject of this issue are the rates that will be charged both by SBC Illinois and by AT&T, Dr. Zolnierек speaks only of SBC Illinois’ transport and termination costs, and not AT&T’s transport and termination costs. The reason is that AT&T’s rates will be set equal to the rates charged by SBC Illinois. As a result, AT&T’s actual transport and termination costs are irrelevant.

current tariff is the current tariff, and it is legally binding unless and until it is set aside or changed in an appropriate proceeding. The Commission cannot properly accept AT&T's invitation to ignore the effective tariff and revert – for AT&T alone – to the terms of a tariff that is no longer in place. *See Pellerin* lines 99-108. Second, SBC Illinois' removal of the tariffed reciprocal compensation rate was, in any event, perfectly proper, as Staff witness Zolnierек explained:

In its Order in Docket No. 00-700 the Commission stated:

Based upon the record before us, we reject Ameritech's inclusion of reciprocal compensation terms in its ULS-ST tariff.

This directive is unambiguous and SBC was correct not to include reciprocal compensation terms in its ULS-ST tariff.

Zolnierек lines 1238-1243.

Accordingly, the Commission should accept Staff's recommendation and reject AT&T's proposed language for Intercarrier Compensation section 21.1.1.<sup>58</sup>

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<sup>58</sup> Intercarrier Compensation section 21.1.1 is the only section of the Agreement that is the subject of Intercarrier Compensation Issue 1. However, the resolution of three other issues – Pricing Issue 4 and UNE Issues 27 and 29 – is driven by the resolution of this issue, and Dr. Zolnierек appropriately recommends that the disputed language that is the subject of those issues be resolved in SBC Illinois' favor as well. Zolnierек lines 1266-1272.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.a:** Can the terminating Party charge exchange access to the originating Party for traffic within the originating Party's local calling area?

Sections 2.1.2.7 and 21.2.8

**SBC Illinois Testimony:** Pellerin Direct, lines 140-764; Pellerin Rebuttal, lines 49-103.

**SBC ILLINOIS POSITION**

The question presented by this issue is whether the parties' intercarrier compensation obligations to each other will be determined by the *originating carrier's* local calling areas, as AT&T proposes, or by *SBC Illinois'* local calling areas, as SBC Illinois proposes. The Commission decided this issue in favor of SBC Illinois just one year ago, and, as Staff recommends, it should adhere to that precedent. AT&T's proposal, as Staff's and SBC Illinois' witnesses both explained, would cause such confusion as to be unworkable.

Staff, while endorsing SBC Illinois' proposed language for the most part, was concerned by one aspect of it, and proposed a modification. The modification proposed by Staff, however, would do damage to the central aim of the provision – the aim with which Staff agrees. Accordingly, SBC Illinois proposed a different modification to address Staff's concern, and the Commission should accept that modification instead.

**DISCUSSION**

The statement of the issue does not get at the core of the parties' disagreement. Pellerin lines 152-155. As always, the real issue is to be found in the competing contract language.

Here, AT&T has proposed language in section 21.2.7 that states, “**Local Calls, for purposes of intercarrier compensation, is traffic that originates and terminates within the originating Party's tariffed local calling area . . .**” In other words, AT&T proposes to base the parties' reciprocal compensation duties on the *originating carrier's* local calling areas. SBC Illinois opposes this language, because the law (particularly including this Commission's previous ruling on the same issue) is clear that the parties' reciprocal compensation duties are based on *SBC Illinois'* local calling areas. SBC Illinois' proposed section 21.2.7 reflects this by stating:

“**Local Calls, for purposes of intercarrier compensation under this Article, is traffic . . .**

**within the same or different *SBC-Illinois* Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commerce Commission.”**

AT&T, as SBC Illinois’ proposed language goes on to state, is free to define its local exchange areas however it likes for purposes of its dealings with its customers.<sup>59</sup> But one and only one carrier’s local exchange areas must determine which calls are “local” for purposes of intercarrier compensation. As Staff witness Zolnierrek notes, the Commission has already found “unworkable” (Zolnierrek lines 1337-1338) AT&T’s proposal to have AT&T’s local exchange areas control that determination for calls that originate on AT&T’s network and SBC Illinois’ local exchange areas control for calls that originate on SBC Illinois’ network. And, as this Commission also concluded, the one carrier whose local exchange areas determine what calls are “local” for purposes of reciprocal compensation is SBC Illinois.

SBC witness Pellerin explains why AT&T’s proposal is unworkable:

Under AT&T’s proposal, if you are an SBC Illinois customer living in Elgin and your brother is an AT&T customer living in Chicago, a call from your brother to you could be subject to reciprocal compensation (because it originates in an AT&T local exchange, and AT&T may have chosen to have a single, large exchange cover Chicago and Elgin), while a call from you to your brother would not be subject to reciprocal compensation (because it originates in an SBC Illinois exchange, and Elgin and Chicago are in different SBC Illinois exchanges). Obviously, it makes no sense for a call from point X to point Y to be subject to reciprocal compensation while a call from point Y to point X is not.

Pellerin lines 185-192. Dr. Zolnierrek agrees. Zolnierrek lines 1340-1357.

This Commission reached the same conclusion that Staff and SBC Illinois are advocating here just last year in the Global NAPs/Ameritech Illinois arbitration, Docket No. 01-0786, where the issue was “Should Ameritech-IL’s local calling area boundaries be imposed on Global, or

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<sup>59</sup> SBC Illinois’ proposed language for section 21.2.7 goes on to state, “The Parties agree that, notwithstanding the classification under this Article, either Party is free to define its own ‘local’ calling area(s) for purposes of its provision of telecommunications to its end users . . . .”

may Global broadly define its own local calling areas.” Arbitration Decision, Docket No. 01-0786 (May 14, 2002), at 9. The Commission held:

The Commission rejects Global’s request that it be allowed to define its own local calling area. At the present time, the Commission has approved one LCA in Illinois that is currently used by Ameritech. While there may be technological changes since the Commission last visited the LCA issue, it would be inappropriate to reconsider the issue in this docket. The Commission agrees with Ameritech and Staff that to recognize any other arrangement would be inappropriate in light of these factors, but would also cause confusion in the area of intercarrier compensation.

*Id.* at 12.

Six months later, in an arbitration between Global NAPs and Verizon North, the Commission was presented with the same issue, considered in depth whether it should reach a different conclusion, and concluded it should not. Order on Rehearing, Docket No. 02-0253, Nov. 7, 2002, at 13-14. There is no reason to arrive at a different conclusion in this arbitration. Pellerin lines 222-226.

Staff recommends that the Commission adopt SBC’s proposed language (Zolnierek lines 1354-1357), but with “one modification of SBC’s proposal.” *Id.* line 1360. As

Dr. Zolnierek testifies,

With respect to joint ILEC local calling areas, I recommend the Commission reject SBC’s position. If an ILEC local calling area approved by the Commission encompasses the exchanges of two or more ILECs then this local calling area should be preserved for reciprocal compensation purposes. If such a local calling area is not preserved for reciprocal compensation purposes then the parties will be creating varying local calling areas for reciprocal compensation purposes depending on who the interconnecting carriers are . . . ; thus creating just the type of confusion that makes AT&T’s plan unworkable.

Zolnierek lines 1360-1368.

SBC Illinois believes that Staff’s concern is a legitimate one in theory, but does not think its proposed language actually presents the problem that Dr. Zolnierek perceived. Pellerin Rebuttal lines 73-83. In addition, Dr. Zolnierek’s recommended modification includes the

deletion of SBC Illinois-proposed language that is important (*id.* lines 56-72), and the removal of which is not essential in order to meet Staff's concern in any event. To meet that concern without doing damage to the central aim of SBC Illinois' language (the aim with which Staff concurs), SBC Illinois has proposed a clarifying modification to its language. *Id.* lines 84-103. SBC Illinois believes this clarification will satisfy Staff's concern. If Staff indicates it does not, SBC Illinois will address the matter further in its reply brief.

Consistent with this Commission's decision in Docket No. 01-0786 and with Staff's recommendation in this case, the Commission should reject AT&T's proposed language and approve SBC Illinois' proposed language for Intercarrier Compensation sections 21.2.7 and 21.2.8, as modified.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.b:**      **How should ISP-bound, FX-like traffic be compensated pursuant to the rules established by the FCC in the ISP Remand Order?**

**Section 21.2.7**

**SBC ILLINOIS POSITION**

[NOTE: For ease of understanding, SBC Illinois suggests that the ALJs read and consider Intercarrier Compensation Issue 2.c before Intercarrier Compensation Issue 2.b]

SBC Illinois' position on this issue assumes the Commission will resolve Intercarrier Compensation Issue 2.c by reaffirming, as Staff recommends, its well-established rule that calls that terminate in a different local calling area than the local calling area where the calling party is located are not subject to reciprocal compensation even though they are "FX calls," *i.e.*, calls to a phone number that, because of its first three digits (NXX) appears to the network to be in the same local calling area as the calling party. Having so ruled on Issue 2.c, the Commission should reject AT&T's attempt to carve out, in Issue 2.b, an exception for calls to Internet Service Providers ("ISPs"). That is, the Commission should leave intact the current regime in Illinois, whereby reciprocal compensation does not apply to FX calls generally, *including* calls to ISPs with FX numbers.

AT&T's argument that the FCC's *ISP Remand Order* somehow entitles it to compensation for terminating ISP-bound FX calls fails for several reasons. First and foremost, the *ISP Remand Order* was not intended to create a compensation obligation where none previously existed. Quite the contrary, it ended a compensation obligation that previously existed – namely, the reciprocal compensation obligation that had previously applied to ISP-bound traffic. In order to avoid a sudden disruption to business plans that were based on the assumption that reciprocal compensation would continue to apply to ISP-bound traffic, the FCC established an interim regime that allows for compensation on such traffic. AT&T's attempt to leverage the FCC's interim regime into a rationale for imposing compensation on traffic that must otherwise be exchanged on a bill and keep basis under this Commission's rules must be rejected.

**DISCUSSION**

This issue concerns calls to Internet Service Providers ("ISPs") that have foreign exchange ("FX") numbers, *i.e.*, phone numbers the first three digits of which (the "NXX") make it appear to the network that the ISP is in the same local exchange area as the caller, even though the ISP is actually located in a different local exchange area, so that the caller can connect with

the ISP without having to pay toll charges. Such calls fall simultaneously into two categories, each of which has important implications for intercarrier compensation and each of which has therefore been the subject of extensive arbitration and litigation in this Commission and elsewhere: They are FX calls *and* they are ISP-bound calls. The following propositions are therefore pertinent:

- This Commission has held for years that calls terminated to FX numbers are not subject to reciprocal compensation, but instead are to be exchanged on a bill-and-keep basis. *See infra* Intercarrier Compensation Issue 2.c.
- The FCC, in order to bring an end to the arbitrage profits that CLECs were reaping from reciprocal compensation on ISP-bound traffic, ruled more than two years ago that ISP-bound traffic is no longer subject to section 251(b)(5) reciprocal compensation. Order on Remand and Report and Order (FCC 01-131), *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation on ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, rel. April 27, 2001 (“*ISP Remand Order*”), ¶¶ 2, 3 (“ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)”).
- Thus, there are two separate reasons that ISP-bound calls to ISPs with FX service should not be subject to reciprocal compensation, one stemming from the fact that the calls terminate to FX numbers and the other stemming from the fact that the calls are ISP-bound.
- In the *ISP Remand Order*, however, the FCC, while ruling that ISP-bound traffic is not subject to reciprocal compensation, chose to “avoid a ‘flash cut’ to a new compensation regime that would upset the legitimate business expectations of carriers and their customers.” *Id.* ¶ 77. In other words, the FCC decided not to suddenly cut off compensation payable for terminating traffic on which carriers had been receiving reciprocal compensation. Accordingly, the FCC established an interim regime pursuant to which ISP-bound traffic *that had theretofore been subject to reciprocal compensation* would remain subject to compensation, albeit not reciprocal compensation *per se* and (if incumbent carriers so elected) at lower rates.<sup>60</sup>

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<sup>60</sup> As further explained in the text below, the interim regime establishes rate caps for the termination of ISP-bound traffic which incumbent carriers can elect by offering to exchange 251(b)(5) traffic at the same rates. Unless

AT&T, in a profoundly cynical move, seeks to leverage the FCC’s interim regime, the purpose of which was to avoid sudden disruptions to business plans that were based on the assumption that reciprocal compensation would *continue* to apply to ISP-bound traffic, into an entitlement to charge compensation for terminating calls – FX calls – which this Commission has for years required to be terminated on a bill and keep basis.

As Staff recommends, AT&T’s request should be rejected. Zolnierak lines 1456-1457 (“I recommend that the Commission adopt SBC’s proposal to exchange ISP-bound FX or FX-like traffic on a bill and keep basis.”) This will not upset AT&T’s or anyone else’s business expectations, because all the Commission will be doing is ruling that traffic that *already* is not subject to reciprocal compensation, because it is FX traffic, will remain not subject to reciprocal compensation. *Id.* lines 1465-1467.

AT&T’s contention that the *ISP Remand Order* somehow allows it to charge SBC Illinois for terminating calls for which it otherwise would not be allowed to charge – despite the fact that the Order plainly was not intended to impose compensation on any traffic to which compensation did not previously apply – is refuted by other aspects of the *ISP Remand Order* as well. One such aspect is the “mirroring rule” set forth in paragraph 89 of the Order.

As explained above, the FCC, having ruled that ISP-bound traffic is not subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act, avoided a “flash cut” to zero compensation by establishing an interim mechanism for intercarrier compensation on ISP-bound traffic (“ISP Compensation Plan”). Under this plan, ILECs may elect, on a state-by-state basis, to exchange local ISP-bound traffic at the capped rates set by the FCC, but only if the ILEC offers to exchange traffic subject to Section 251(b)(5) at those same rates. ILECs that do not

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and until an incumbent carrier elects the capped rates, it must exchange ISP-bound traffic at the same state-approved rates as apply to Section 251(b)(5) traffic. *Id.* ¶ 89.

elect to invoke the ISP Compensation Plan must exchange ISP-bound traffic at the state-approved rates that apply to Section 251(b)(5) traffic. *ISP Remand Order* ¶ 89. This “mirroring” rule (*id.*) requires ISP-bound traffic to be compensated at the same rates as voice traffic, whether or not the incumbent elects the ISP Compensation Plan. As the FCC explained,

This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic. . . . We . . . are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic.

*Id.* ¶ 90. AT&T’s position, in contravention of the mirroring rule, would result in one regime for voice FX traffic (bill and keep) and a different regime for ISP-bound FX traffic (compensation). The mirroring rule requires that ISP-bound FX traffic be treated in the same manner as voice FX traffic, and since voice FX traffic is not subject to reciprocal compensation (*see infra* Intercarrier Compensation Issue 2.c), neither is ISP-bound FX traffic. *See* Pellerin lines 505-513.

That conclusion is further corroborated by paragraph 8 of the *ISP Remand Order*, which clearly provides that the interim compensation scheme the FCC established for ISP-bound traffic does *not* apply to traffic – like FX traffic in Illinois – that is already being exchanged on a bill-and-keep basis:

Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

Staff recommends that the Commission resolve Intercarrier Compensation Issue 2.b in favor of SBC Illinois for the reasons set forth in the testimony of Staff witness Zolnierrek, at lines 1456-1477. AT&T disputes those reasons, but ineffectively.

As Dr. Zolnierrek points out (at lines 1457-1462), the FCC stated in the *ISP Remand Order*, at ¶ 95, that

The regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a "flash cut" to bill and keep which might upset legitimate business expectations.

And since the Commission has consistently disallowed reciprocal compensation on FX traffic, *including ISP-bound FX traffic*, legitimate business expectations will not be upset by continuing that disallowance. Zolnierек lines 1464-1467. AT&T's answer to this is distinctly lame; it simply asserts that ¶ 95 is not "dispositive" (Finney-Schell-Talbott lines 337-339), and then switches to another portion of the *ISP Remand Order*, which it mischaracterizes by taking what the FCC gave as *examples* of ISP-bound traffic that is subject to bill and keep (*see* Finney-Schell-Talbott at lines 348-351) and treating them as if the FCC intended the examples to constitute an exhaustive list of traffic that is subject to bill and keep. What the FCC actually intended is what it said in no uncertain terms in paragraph 80 of the *ISP Remand Order* (and in paragraph 8, quoted above): "[B]ecause the rates [the FCC set] are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic)." (Underscore added.) In Illinois, the underscored language indisputably applies to ISP-bound FX traffic, and that means the FCC's interim compensation plan does not.

AT&T also asserts that the Commission is without jurisdiction to regulate ISP-bound traffic, because the FCC has asserted its jurisdiction over that traffic and thereby preempted the State commissions from doing so. That assertion goes nowhere. As Staff points out, the FCC's assertion of its jurisdiction to regulate ISP-bound traffic does not imply that this Commission cannot "ensure that FCC prescribed rules are followed within the context of an interconnection agreement." Zolnierек lines 1445-1447. Furthermore, the Agreement will, one way or another, address intercarrier compensation on ISP-bound FX traffic. AT&T has proposed language for

the Agreement that, by AT&T's lights, would impose reciprocal compensation on ISP-bound FX traffic. (See Finney-Schell-Talbott lines 2007-2011.) SBC Illinois, on the other hand, has proposed language that would make clear that reciprocal compensation does not apply to any FX traffic, including ISP-bound FX traffic. There is therefore no avoiding the question – and the Commission cannot, as a practical matter, leave the parties to their own devices or declare (for example) that neither party's language will be included in the Agreement, because that would leave a crucial gap in the portion of the Agreement that addresses traffic (including non-ISP-bound traffic) to which reciprocal compensation *does* apply. At the end of the day, that is why the Commission will not be running afoul of the FCC's assertion of its jurisdiction over ISP-bound traffic when it resolves this issue. The inescapable fact of the matter is that the Agreement is going to address reciprocal compensation. And in order to do that in a way that does not absolutely guarantee intractable problems in the future, the Agreement must identify the sorts of traffic to which reciprocal compensation applies and, *therefore*, the sorts of traffic to which reciprocal compensation does not apply. The Commission is not improperly regulating ISP-bound traffic when it requires the Agreement to make clear the categories of traffic to which the reciprocal compensation provisions of the Agreement do and do not apply under current law.

For all these reasons, the Commission should resolve Intercarrier Compensation Issue 2.b in favor of SBC Illinois, as Staff recommends.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.c:**      **Should Local Calls Be Defined As Calls That Must Originate and Terminate to End Users Physically Located within the same Common or Mandatory Local Calling Area?**

**Sections 21.2.1, 21.2.7, and 21.2.8**

**SBC ILLINOIS POSITION**

This Commission has repeatedly ruled that a call that originates in one local calling area and terminates in another is not subject to reciprocal compensation, even if the called party has FX service, which makes the call appear “local” to the network, based on the calling party’s and the called parties’ phone numbers. AT&T urges the Commission to overrule those precedents based on a supposed change in law effected by the FCC’s *ISP Remand Order*. But the Commission has reaffirmed that reciprocal compensation does not apply to FX traffic no less than three times since the FCC issued the *ISP Remand Order*, and has considered and rejected the same arguments that AT&T is making. The Commission should, as Staff recommends, reaffirm its established precedents on this issue one more time.

**DISCUSSION**

The question is one that this Commission has arbitrated repeatedly: Given that calls that are subject to reciprocal compensation are those calls that originate and terminate in the same local calling area, are the points of origin and termination determined by the actual location of the calling party and the called party, or by their phone numbers (*i.e.*, their NXXs)? Differently stated, is a call that passes from one local exchange to another but that appears “local” to the network because the called party has FX service subject to reciprocal compensation?

The Commission has ruled – repeatedly and recently – that the points of origin and termination of a call are determined by the physical locations of the calling party and the called party, *not* by their NXX’s, and, accordingly, has held – repeatedly and recently – that calls that pass from one local exchange area to another but that appear “local” to the network based on their NXX’s are *not* subject to reciprocal compensation. Because Commission precedent on this issue is so clear, and because AT&T says nothing the Commission has not previously considered, our discussion of this issue is relatively brief. To the extent the Commission may

desire more information SBC Illinois witness Pellerin discusses the issue in detail, as do the Commission precedents cited below and Staff witness Zolnierrek, who recommends that the Commission adhere to those precedents.

The issue arises because the parties may sell their customers so-called “FX” (foreign exchange) or FX-like service. Such service offers an end user a virtual local presence in a different calling area than the one in which the end user is actually located. As a result, callers may reach the FX customer by dialing a local telephone number, even though the call is transported and terminated at the FX customer’s location in a distant exchange. Pellerin lines 282-289

For example: Suppose a business that is physically located in Chicago wants to attract business from customers in Elgin. One way of doing this would be to obtain FX service with an Elgin telephone number. This business located in Chicago appears to prospective customers to be located in Elgin because it has been assigned an Elgin telephone number, and its Elgin customers can call it at that number without paying a toll charge. In reality, though, the call is transported from Elgin all the way to a distant local exchange area in Chicago.

Assume that the Chicago business described in the previous paragraph is an AT&T local exchange customer, obtaining FX service from AT&T, and that the Elgin customers who are calling the Chicago business are SBC Illinois local exchange customers. The question is whether AT&T may charge SBC Illinois reciprocal compensation for terminating these calls, as AT&T maintains, or not, as SBC Illinois maintains.

This Commission has ruled, over and over again, that reciprocal compensation does not apply so such calls. In the Level 3/Ameritech Illinois arbitration, Docket No. 00-0332, Issue 2.b was: “Whether an FX or NXX call that would not be local based on the distance it travels, is

subject to reciprocal compensation.” The Commission ruled, in its August 30, 2000, Arbitration Decision, at pages 9-10:

The reciprocal compensation portion of the issue is straightforward. The FCC’s regulations require reciprocal compensation only for the transport and termination of “local telecommunications traffic,” which is defined as traffic “that originates and terminates within a local service area established by the state commission.” 47 C.F.R. 51.701(a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as “virtual NXX,” which Level 3 uses, or as “FX,” which AI prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller’s perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. Moreover, we are not alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling area, they are not eligible for reciprocal compensation. *See*, Docket No. 21982, July 13, 2000. On the basis of the record, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

AT&T contends that the FCC’s April 27, 2001, *ISP Remand Order* should change that conclusion. But the Commission has reaffirmed that reciprocal compensation does not apply to FX traffic in at least three separate cases since the *ISP Remand Order* was issued:

(1) Arbitration Decision, Docket No. 01-0338 (Aug. 8, 2001) (TDS/Ameritech Illinois arbitration), at 48; (2) Arbitration Decision, Docket No. 01-0786 (May 14, 2002) (Global NAPs/Ameritech Illinois arbitration), at 15 (“Regarding FX or FX-like traffic, the Commission has previously reached this decision . . . and finds there is no compelling reason to change its decision that such traffic is not subject to reciprocal compensation”); (3) Order on Rehearing, Docket No. 02-0253 (Nov. 7, 2002) (Global NAPs/Verizon North arbitration), at 16 (“This Commission has repeatedly held that FX-like traffic is not subject to reciprocal compensation. . . . This record presents no reason to alter that policy . . .”). And in the last of

those decisions, the Commission expressly considered (at p. 17) the FCC's *ISP Remand Order*, and found nothing in it that called for a different conclusion.

Other State commissions have also determined that the *ISP Remand Order* does not alter their previous holdings that FX traffic is not subject to reciprocal compensation.<sup>61</sup> SBC Illinois' witness discusses one such determination at length. Pellerin lines 366-446. As she explains, the Connecticut commission ("DPUC"), shortly after the FCC issued the *ISP Remand Order*, reopened the record in a proceeding it was conducting in order to consider the effect, if any, of that Order on its previous determination that FX traffic is not subject to reciprocal compensation. *Id.* lines 416-417. Thus, when the DPUC issued its final decision, it had fully considered the *ISP Remand Order*, and it determined that it did not affect the conclusion that FX traffic is not subject to reciprocal compensation. *Id.* lines 440-446.

AT&T's argument to the contrary is based on the FCC's removal of the word "local" from its reciprocal compensation regulations, coupled with the view that FX traffic must now be subject to reciprocal compensation because it does not fall within the section 251(g) carve-out from section 251(b)(5) reciprocal compensation. This is precisely the argument that the Commission rejected just a few months ago in its Order on Rehearing in Docket No. 02-0253. The CLEC in that proceeding made the same argument that AT&T makes here – that the *ISP Remand Order* "rejected the past focus on 'local' traffic" (Initial Brief of the Petitioner Global NAPs Illinois, Inc. (July 22, 2002), at 3); that in the post-*ISP Remand Order* world, reciprocal compensation applies to all telecommunications other than those that are carved out by section 251(g) – exchange access, information access, and exchange service for such access (*id.* at 4); that FX traffic is none of these (*id.* at 6-8); and that FX traffic is therefore subject to

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<sup>61</sup> We use "FX traffic is not subject to reciprocal compensation," and similar phrases, as a slightly oversimplified shorthand. What is really meant, as the Commission understands, is that a call to an FX customer physically located in a different local calling area than the calling party is not subject to reciprocal compensation.

reciprocal compensation (*id.* at 19-20). The Commission rejected Global NAPs' argument in its Arbitration Decision, and then rejected it again in its Order on Rehearing, at 16:

Global relies on FCC rules 701-717, under which reciprocal compensation applies to any telecommunications traffic that is not exchange access (*i.e.* toll) traffic or information services traffic. . . . Global avers that FX-like traffic would not fall in either of these exempt categories. . . . In particular, Global insists that FX-like traffic is not toll traffic . . . because [the ILEC] does not impose a "separate [toll] charge" on it.

Global is bootstrapping. [The ILEC] presently places toll charges on the pertinent interexchange traffic and would continue to do so absent Global's effort to make such toll charges inapplicable. Moreover, the final destination of FX-like traffic is, by its very nature, beyond the caller's [local calling area], with virtual NXX being simply a device to relieve the caller of toll charges. . . . This Commission has repeatedly held that FX-like traffic is not subject to reciprocal compensation. [Citations omitted.] This record presents no reason to alter that policy . . . .

That remains true. There is no reason for the Commission to alter its well-established policy that reciprocal compensation does not apply to FX traffic. Accordingly, the Commission should, as Staff recommends, resolve Intercarrier Compensation Issue 2.c in favor of SBC Illinois.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.d: If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, are specific recording processes warranted for FX traffic?**

**Section 21.2.7**

**SBC ILLINOIS POSITION**

Because FX traffic is not subject to reciprocal compensation, the parties must have a method for keeping track of the FX traffic they terminate. SBC Illinois has proposed contract language that provides for a reasonable method to accurately track FX traffic, and AT&T, while opposing SBC Illinois' language, proposes no counter-language. The Commission should reject AT&T's contention that SBC's proposal is too costly, as the arbitrators in a proceeding on the same issue in Texas did, and approve SBC Illinois' proposed language, as Staff recommends.

**DISCUSSION**

Unless the Commission rejects Staff's recommendations on Intercarrier Compensation Issues 2.b and 2.c and revolutionizes its established treatment of FX traffic, the parties are going to have to track the calls they terminate to customers with FX or FX-like service so that they don't bill reciprocal compensation for them. In section 21.7 and its subsections, SBC Illinois proposes language that ensures that that will happen, and that the tracking is accurate. AT&T objects to SBC Illinois' language, but offers no competing language. Given that the parties must have some method of tracking FX traffic, that means that SBC Illinois' proposal should be approved unless it is patently unreasonable, which it is not.

SBC Illinois proposes that each Party maintain a list of its 10-digit telephone numbers that are used to provide FX or FX-like services. That list would serve as the basis upon which the terminating carrier would exclude calls to its customers with FX service from its reciprocal compensation charges to the originating carrier. An NXX level summary of usage to these FX numbers would be supplied to the originating carrier monthly, thus permitting the originating carrier to validate its bills. This method of segregation is appropriate and reasonable. Pellerin lines 587-593.

AT&T contends SBC Illinois' proposed method would be too costly. AT&T made the same contention in a proceeding in the Texas Public Utility Commission, Docket No. 24015, where Issue No. 3 is: "Is it appropriate to segregate and track FX-type traffic? If so, using what method?" AT&T argued in Texas that it was cost-prohibitive to require separate tracking of FX traffic. "Although it has not engaged in a detailed financial analysis for implementing a tracking system, AT&T testified that a ballpark estimate of the cost of this work would be in the nature of approximately \$3 to \$4 million dollars [sic] (one-time cost for development for systems)." Revised Arbitration Award, Texas PUC Docket No. 24015 (Aug. 28, 2002), at 59. Specifically, AT&T asserted that "the difficult and costly process of developing any *reasonably accurate* method of segregating and separately tracking FX-type traffic argues against discriminating against FX-type traffic for purposes of reciprocal compensation." *Id.* at 60 (emphasis added).

The Texas arbitrators rejected AT&T's position and concluded:

While parties need to address the appropriate method for segregation of traffic among themselves, the Arbitrators find that companies will need to agree upon a method to identify all FX numbers and suppress the billing for those minutes that originate outside of the local calling area. As terminating records already contain the necessary information for ten-digit screening, the Arbitrators find that inclusion of ten-digit screening in this segregation method would not be burdensome, but any mutually agreed-upon mechanism that would suppress the billing for those minutes would be acceptable.

*Id.* at 66. Thus, the Texas arbitrators concluded that carriers providing FX service are required to track FX usage based upon 10-digit screening unless the parties mutually agree otherwise – the same outcome SBC Illinois seeks here. Pellerin lines 594-632.

Ten-digit screening is the best method for tracking FX traffic because it provides the most accurate representation of a carrier's FX traffic and yields the most accurate and fair compensation between carriers. It should not be unduly burdensome for either party, especially since AT&T will have to implement it for Texas in any event. Retail FX service is a value-

added service. Carriers typically do not provision a telephone number with a non-local NPA-NXX unless the customer specifically requests such an arrangement, and it is difficult to imagine that AT&T does not keep track of telephone number assignments that do not align with the requesting customer's physical rate center. Even if it does not, it certainly can. Because both SBC Illinois and AT&T provision FX telephone numbers, both parties should have, or readily be able to produce, accurate records of these assignments. *Id.* lines 635-646.

SBC Illinois' language permits flexibility in the parties' arrangement for FX tracking. As an alternative to the specific 10-digit telephone number tracking that SBC Illinois recommends, SBC Illinois' language in sections 21.7.3 and 21.7.3.1 also allows for a factor mechanism that may be mutually agreed upon by the Parties. This mechanism would permit the parties to assign a Percentage of FX Usage ("PFX") to represent the estimated percentage of FX traffic in a given month. This factor can be calculated using traffic studies or other agreeable method and may be adjusted on a quarterly basis. *Id.* lines 651-658.

AT&T, in its testimony, proposes a sampling methodology to calculate the scope of FX traffic on its network through a Percent Voice FX ("PVFX"). Finney-Schell-Talbott line 2830 *et seq.* AT&T has proposed no language to make this methodology part of the Agreement, however, and it is late in the game, to say the least, for AT&T to do so now. In addition, SBC Illinois opposes the methodology described by AT&T's witnesses, both because it is overly complex and because it is inaccurate. AT&T's proposed methodology fails to recognize that some ISP traffic may also be exchanged on an FX basis. The Commission has previously determined that FX traffic is not subject to reciprocal compensation, but instead is to be exchanged on a bill and keep basis. Accordingly, any mechanism to develop a PFX factor would have to include ISP FX calls, and AT&T's proposed mechanism does not. *Id.* lines 662-670.

SBC Illinois' proposed language in section 21.7 and its subsections for segregating and tracking FX traffic is fair and presents a reasonable mechanism for accommodating the Commission's longstanding bill and keep regime for FX traffic, and should be adopted, as Staff recommends. Zolnierek lines 1704-1706.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.e:** If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, should there be specific audit provisions in Article Compensation for the tracking and exclusion of Foreign Exchange traffic?

**Section 21.2.7**

**SBC ILLINOIS POSITION**

As Staff recommends, the Commission should approve SBC Illinois' proposal for audits of the FX tracking data that is the subject of Intercarrier Compensation Issue 2.d. Some audit provision is clearly necessary, and SBC Illinois' proposal is reasonable in all respects.

**DISCUSSION**

In Intercarrier Compensation section 21.7.2 and its subsections, SBC Illinois proposes a procedure for auditing the FX tracking data that is the subject of the preceding issue. AT&T opposes this language, and offers no counter-language. Assuming the Commission resolves Issue 2.d in favor of SBC Illinois, it should also resolve Issue 2.e in favor of Illinois, in order to ensure that the bills that result from the Issue 2.d tracking method are accurate.

The audit provisions SBC Illinois proposes for section 21.7.2 appropriately recognize the unique nature of the data to be audited, separate from the PLU audit provisions contained within Article 1, General Terms and Conditions, Section 1.32.8. Most importantly, section 21.7.2 includes a provision for retroactive billing adjustment that is absent from GT&C section 1.32.8.

This retroactive billing adjustment for FX traffic is appropriate, even though a corresponding provision for PLU audits is not, for two reasons. First, the disparity between local reciprocal compensation rates and terminating access rates (which is the disparity for which a PLU audit corrects) pales compared to the disparity between bill and keep (a zero rate) and local reciprocal compensation rates (which is the disparity for which an FX audit corrects). Thus, a retroactive adjustment is more important after an FX audit than after a PLU audit because there are more dollars at stake.

Second, each carrier has some ability, based on its own usage records, to check the accuracy of the other carrier's application of PLU. In contrast, only one of the carriers holds the detailed data required to validate FX usage. And that carrier is the billing (terminating) carrier. In the event that FX traffic is either not adequately tracked or is misrepresented and therefore incorrectly billed as local, the originating carrier would have paid for reciprocal compensation on traffic that should not have been billed at all. Over a 24-month period (the period for which the parties have agreed bills can be corrected), that could represent significant overbilling. It is reasonable that the originating carrier be reimbursed for moneys expended due to the terminating carrier's FX billing error. In addition, contract language providing for a retroactive billing adjustment would provide both carriers with the proper incentive to accurately track and suppress billing of their FX end users' usage.

AT&T suggests that once SBC Illinois invokes the FCC's ISP Compensation Plan, there will be no need for audits, but that is not correct. The *ISP Remand Order* presumption that traffic out of balance in excess of a 3:1 ratio is ISP-bound traffic is a *rebuttable* one. *ISP Remand Order*. That means that carriers must be afforded the opportunity to rebut the presumption. The only way for a party to accomplish this would be through a detailed audit of the other carrier's records of the sort contemplated by SBC Illinois' proposal.

SBC Illinois' proposed audit provision is reasonable and should be adopted, as recommended by Staff. Zolnierек lines 1746-1754.

**INTERCARRIER COMPENSATION:**

**ISSUE 4: Should Information Access traffic and Exchange Services for such access be defined as traffic exempted from reciprocal compensation?**

**Section 21.2.4**

**SBC Illinois Testimony: Pellerin Direct, lines 765-886.**

**SBC ILLINOIS POSITION**

FCC Rule 701(b) explicitly exempts information access traffic from reciprocal compensation, and the Agreement should therefore do so as well. The Agreement should also exempt from reciprocal compensation certain traffic involving ported numbers, because such traffic is not exchanged between two carriers' networks, as traffic must be in order to be subject to reciprocal compensation. Finally, the Agreement should provide that any other category of traffic that this Commission or the FCC holds exempt from reciprocal compensation is exempt as between AT&T and SBC Illinois.

**DISCUSSION**

Each party proposes language for Intercarrier Compensation section 21.2.4 that the other party opposes. AT&T's language, however, is a counter, offered for the purpose of negating SBC Illinois' language. Accordingly, we first explain why SBC Illinois' proposed language should be included in the Agreement, and then explain why AT&T's proposed language should not.

Section 21.2.4 reads as follows, with the SBC Illinois-proposed language that AT&T opposes in bold:

**21.2.4 The compensation arrangements for Section 251(b)(5) traffic are not applicable to (i) Exchange Access traffic, Information Access traffic, or Exchange Services for such access (ii) traffic originated by one Party on a number ported to its own network that terminates to another number ported on that same Party's network or (iii) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission. All Exchange Access traffic shall continue to be governed by the terms and conditions of applicable state, federal and NECA tariffs.**

Thus, the question raised by SBC Illinois' language is whether section 251(b)(5) reciprocal compensation applies to (i) Information Access traffic; (ii) traffic originated by one party on a

number ported to its own network that terminates to another number ported on that same party's network; and (iii) any other type of traffic found to be exempt from reciprocal compensation by the FCC or this Commission. We discuss those three items separately.

### **Information Access traffic**

Section 251(b)(5) reciprocal compensation, by its terms, applies to

“telecommunications.”<sup>62</sup> FCC Rule 701(b), which implements section 251(b)(5), provides,

*Telecommunications traffic.* For purposes of this subpart [concerning reciprocal compensation], telecommunications traffic means:

- (1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier . . . except for telecommunications traffic that is interstate or intrastate exchange access, ***information access***, or exchange services for such access.

47 C.F.R. § 51.701(b) (bold emphasis added). The Rule could hardly be clearer. Information access is not telecommunications for purposes of section 251(b)(5), and is therefore not subject to reciprocal compensation under section 251(b)(5). That should be the end of that.

AT&T, however, has picked a fight where there should be none, by opposing the reference to Information Access traffic in Intercarrier Compensation section 21.2.4. AT&T's stated concern is that since ISP-bound traffic is information access traffic (which is correct), the inclusion of information access traffic in section 21.2.4 would allow SBC Illinois argue later that ISP-bound traffic is not subject to reciprocal compensation – a position that AT&T says SBC Illinois should not be able to take if the Commission subjects some ISP-bound traffic to reciprocal compensation by resolving Intercarrier Compensation Issue 2.b or 2.c in favor of AT&T. Finney-Schell-Talbott lines 3070-3090. AT&T's stated concern is easily disposed of: If the Commission resolves Issues 2.b and 2.c in favor of SBC Illinois, as Staff recommends, then

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<sup>62</sup> Section 251(b)(5) requires local exchange carriers to “establish reciprocal compensation arrangements for the transport and termination of *telecommunications*.” (Emphasis added.)

the basis for AT&T's concern disappears. And if the Commission resolves either of those Issues in favor of AT&T, the Commission can direct the parties to add language to section 21.2.4 to clarify that while reciprocal compensation does not apply to information access traffic generally, it does apply to whatever ISP-bound traffic the Commission holds is subject to reciprocal compensation. In no event should the Commission reject SBC Illinois' proposal to state in section 21.2.4 that information access traffic is not subject to reciprocal compensation, because (i) FCC Rule 701(b) squarely says that information access traffic is not subject to reciprocal compensation, and (ii) there is information access traffic that is *not* ISP-bound traffic, and that therefore is not subject to AT&T's stated concern. *See* Pellerin lines 788-791.<sup>63</sup>

### **Calls to ported numbers**

AT&T's testimony says nothing about why AT&T objects to SBC Illinois' language that states reciprocal compensation does not apply to "traffic originated by one Party on a number ported to its own network that terminates to another number ported on that same Party's network." SBC Illinois, on the other hand, has explained why the language should be included in section 21.2.4:

Reciprocal compensation applies only to calls exchanged between carriers' networks. *See, e.g.,* 47 U.S.C. § 252(d)(2)(A)(i) (reciprocal compensation provides for the "reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier"). When an end user's telephone number is ported from Carrier X's network to Carrier Y's network, it might appear to still reside with the Carrier X because the NPA-NXX associated with that end user is

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<sup>63</sup> Even though ISP-bound traffic is generally not subject to reciprocal compensation, it is subject to *intercarrier* compensation, either at the rate caps established in the FCC's *ISP Remand Order* (when SBC Illinois invokes the ISP Compensation Plan) or at the same rates as apply to 251(b)(5) traffic. SBC Illinois' proposed language is not intended, and cannot possibly be read, to relieve SBC Illinois of that obligation.

assigned to Carrier X. The purpose of SBC Illinois's language is to exclude from reciprocal compensation calls to ported telephone numbers that no longer reside with SBC Illinois. Pellerin lines 857-863. We illustrate with an example why the exclusion is appropriate:

Assume Smith is served by SBC Illinois and Jones is served by AT&T via UNE-P. Reciprocal compensation applies to calls between Smith and Jones, because they are served by different facilities-based carriers. Now assume that Smith's service is migrated from SBC Illinois to AT&T's switch, and Smith elects to retain his telephone number. The NPA-NXX is assigned to SBC Illinois in the Local Exchange Routing Guide ("LERG"), but the end user is not an SBC Illinois customer. *Id.* lines 865-871.

Because Smith and Jones are now both served by AT&T, reciprocal compensation no longer applies to calls between Smith and Jones. And this is so even though it appears from Smith's telephone number that Smith is still served by SBC Illinois. To avoid any uncertainty or confusion, the Agreement should specify that this call is excluded from reciprocal compensation. *Id.* lines 874-879.

Absent any cogent opposition from AT&T, SBC Illinois' proposed language concerning calls to ported numbers should be included in the agreement.

#### **Other traffic found exempt from reciprocal compensation**

If, during the term of the Agreement, the FCC or this Commission exempts from reciprocal compensation some new category of traffic that is currently subject to reciprocal compensation, then AT&T and SBC Illinois should cease paying each other reciprocal compensation on that traffic. AT&T protests that section 21.2.4 should not so provide, because such a regulatory change should instead be implemented as between the parties via the change of law provision in the Agreement. That position cannot be squared with AT&T's position on GT&C Issue 5, where AT&T vehemently insists that FCC- or Commission-mandated pricing

changes must go into effect immediately, without working their way through the change of law process. If an FCC- or Commission-mandated pricing change should go into effect immediately – and SBC Illinois agrees it should – so should an FCC or Commission decision that reduces to zero the price for terminating a category of traffic.

AT&T also opposes SBC Illinois' language on the ground that SBC Illinois would supposedly use it to import into this Agreement Commission holdings in two-party arbitrations (holdings to which AT&T says it should not be subject) exempting categories of traffic from reciprocal compensation – including, AT&T says, *prior* rulings. That is a red herring. In the first place, there are no such prior rulings, except the rulings on FX traffic that will already be reflected in this Agreement. In the second place, the obvious intent of SBC Illinois' language is to apply to this Agreement FCC or Commission *generic* exemptions of categories of traffic, not exemptions of categories of traffic that apply only as between SBC Illinois and a third party carrier. If the Commission believes SBC Illinois' proposed language needs to be modified to make that clear, SBC Illinois certainly would not object.

For the foregoing reasons, the language SBC Illinois has proposed for Inter-carrier Compensation section 21.2.4 should be approved. And for many of the same reasons, the language proposed by AT&T should be rejected. Section 21.2.4 reads as follows with the AT&T-proposed language that SBC Illinois opposes in bold underscore:

**21.2.4 ISP-bound traffic is not exempted from 251(b)(5) recip. comp. The only traffic exempted from recip. comp. is traffic which was subject to other forms of intercarrier compensation prior to the passage of the 1996 Act. These traffic types are:** Exchange Access traffic, certain types of Information Access traffic, or Exchange Services for such access. **ISP-bound traffic was not subject to another form of intercarrier compensation prior to the passage of the 1996 Act, and, therefore, is not exempted from Sec. 251(b)(5) reciprocal comp.** All Exchange Access traffic shall continue to be governed by the terms and conditions of applicable state, federal and NECA tariffs.

AT&T's language attempts to accomplish two things, both of which are contrary to law. First, it would provide that ISP-bound traffic is not exempted from 251(b)(5) reciprocal compensation. As a general proposition, that is of course inaccurate. The FCC has squarely ruled that "ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)" (*ISP Remand Order* ¶ 3), and any contention that that ruling did not survive the D.C. Circuit's review of the *ISP Remand Order* is frivolous. Indeed, the FCC's ISP Compensation Plan, described above, is predicated on the FCC's determination that section 251(b)(5) reciprocal compensation does not apply to ISP-bound traffic, and AT&T embraces the ISP Compensation Plan. *E.g.*, Finney-Schell-Talbott lines 1803-1807 ("In its *ISP Remand Order*, the FCC established an intercarrier compensation mechanism for the exchange of such traffic. Thus, it is ATTCI's position that ISP-bound traffic . . . is subject to the FCC's intercarrier compensation mechanism"). AT&T cannot acknowledge that the ISP Compensation Plan is in effect, which AT&T correctly does, and at the same time contend that reciprocal compensation still applies to ISP-bound traffic.

Second, AT&T's language would provide that only "certain types of" information access traffic are not subject to reciprocal compensation. Apart from the fact that that language is unacceptably vague because it does not say what types of information access traffic are not subject to reciprocal compensation, it is also inaccurate, because, as explained above, *all* information access traffic is exempt from reciprocal compensation. And in the unlikely event that the Commission, in its resolution of Issue 2.b or 2.c, rules that some ISP-bound traffic (namely, FX traffic) is subject to reciprocal compensation, then, as stated above, appropriate clarifying language can be added to SBC Illinois' proposed version of section 21.2.4.

Accordingly, the Commission should approve SBC Illinois' proposed language for Intercarrier Compensation section 21.2.4 and reject AT&T's.

**INTERCARRIER COMPENSATION:**

**ISSUE 7:** If the originating party passes CPN on less than 90% of its calls, should those calls passed without CPN be billed as intraLATA switched access or based on a percentage local usage (PLU)?

Sections 21.3.4-3.4.2

**SBC Illinois Testimony:** Pellerin Direct, lines 887-1023.

**SBC ILLINOIS POSITION**

Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their networks to the carriers that terminate the calls. This information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them. SBC Illinois proposes that both companies be held to a standard of providing CPN information for no less than 90% of the calls they deliver. If this standard is not met, the terminating carrier should have the option to bill the calls without CPN at its interstate switched exchange access service rate. This arrangement is reasonable, and ensures that a party cannot systematically strip CPN from the calls it delivers in order to reduce its financial obligation to the receiving carrier.

**DISCUSSION**

This issue concerns the billing of calls that one party passes to the other without customer party number ("CPN") information. CPN allows a receiving carrier to determine whether the call is local, and therefore subject to reciprocal compensation, or intraLATA, and therefore subject to access charges. Pellerin lines 892-895. SBC Illinois and AT&T recognize that each will deliver some traffic to the other that does not contain CPN, and they also agree on how they will compensate each other for such traffic so long as it constitutes less than 10% of the total traffic that one carrier delivers to the other; specifically, the parties agree that when 90% or more of the traffic either carrier delivers to the other contains CPN, the traffic without CPN will be billed as local or intraLATA toll in direct proportion to the PLU calculated in accordance with section 21.15.1.) The disagreement concerns how the parties will treat traffic passed without CPN if it constitutes 10% or more of the traffic delivered by either carrier.

SBC Illinois proposes that if 10% or more of the traffic either party delivers to the other lacks CPN, the delivering party would be allowed one month to correct the excessive amount of traffic without CPN. If the party fails to correct the excessive number of calls without CPN within one month, it will be charged terminating access rates for the traffic it continues to deliver without CPN. AT&T, on the other hand, proposes that in the event that a party exceeds the 10% threshold for delivery of traffic without CPN, the parties indefinitely bill that traffic without CPN as though it constituted less than 10% of the total traffic – in other words, in proportion to the PLU as described above. AT&T proposes that the parties enter a period of data exchange and correction to address the issue. AT&T does not propose any deadline for correction of traffic delivery without CPN constituting 10% or more of the delivered traffic.

SBC Illinois' approach is more reasonable than AT&T's because it is extremely unlikely that party a party will ever hit the 10% threshold unless it is intentionally stripping CPN from the traffic it is delivering in order to reduce its termination payments to the other carrier. In that scenario (which SBC Illinois does not believe will arise between these two parties, but which may arise with other carriers that adopt the AT&T/SBC Illinois Agreement), it is eminently appropriate to counter the stripping by requiring the carrier that is doing it to pay access rates on all the traffic it delivers without CPN.

The vast majority of all carriers' traffic is technically capable of passing CPN. Pellerin lines 903, 913-914. Calls carried without CPN are typically the result of occasional software errors, and even considering such errors, calls without CPN are unlikely to exceed 10%. *Id.* at 956-959. SBC Illinois proposes a 10% threshold for unidentified traffic in order to allow a carrier that in experiencing network errors that result in the delivery of traffic without CPN the opportunity to fix the error before being charged access rates. Given the technological capabilities of both parties' networks, it would be unusual for unidentified traffic to exceed 10%,

and SBC Illinois' proposed language provides a one-month window to correct any network problems before applying access charges in any event. *Id.* at 959-962. This threshold is especially reasonable given that a recent traffic study indicates that AT&T is delivering less than 5% of its calls to SBC Illinois without CPN. *Id.* at 968-969. Moreover, other state commissions have resolved this issue as SBC Illinois proposes that it be resolved here. *See e.g. AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon, Order Resolving Arbitration Issues* (issued July 30, 2001) (New York Commission AT&T Arbitration Order); *Sprint Order*, D.T.E. 00-54 (2000) (Massachusetts DTE Sprint Arbitration Order).

AT&T's proposed language would result in the continued billing of unidentified traffic using PLU. This proposal does not adequately address the issue of billing for calls without CPN. The PLU factor is calculated by examining traffic that can be identified as local or intraLATA toll and dividing the local minutes delivered for termination by the total minutes terminated. Pellerin lines 928-930. The result is a ratio that is then applied to the traffic that cannot be identified as local or intraLATA toll. *Id.* at 930-931. The problem with AT&T's approach is that it creates an incentive for carriers to strip CPN from calls that originate on their networks even though they have the information. *Id.* at 938-940. By stripping the CPN from their intraLATA toll calls, those carriers would be billed for those calls based on the proxy PLU, which would allow those carriers to pay reciprocal compensation on their intraLATA toll calls instead of the higher access rates that should apply. *Id.* at 940-943. Because of this potential to manipulate the PLU system, it should be used only for the relatively modest volume of traffic proposed by SBC Illinois.

Additionally, AT&T's proposed language fails to provide any incentive to a carrier to rectify the passage of traffic without CPN, because it continues the data analysis period indefinitely without any penalty for failing to resolve the passage of traffic without CPN. Until

the issue is resolved, the carrier passing traffic without CPN will use the PLU factor to bill for those calls. With no financial incentive to remedy the problem, the party receiving the calls without CPN has no effective recourse. *Id.* lines 982-983.

For these reasons, the Commission should adopt SBC Illinois' proposed language for section 21.3.4.

**INTERCARRIER COMPENSATION:**

**ISSUE 8.b:**       Should AT&T be entitled to a single rate element which includes the tandem rate element, even though the tandem may not be used?

**Section 21.4.5**

**SBC Illinois Testimony: Mindell Direct, lines 946-969.**

**SBC ILLINOIS POSITION**

Under FCC Rule 711(a)(3), AT&T is entitled to charge the tandem reciprocal compensation rate if and only if AT&T proves that its switch “serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch.” The issue centers on a legal question – the interpretation of that rule. AT&T and Staff contend that the rule requires AT&T to prove only that its switch *is capable of serving* a geographic area comparable to the area served by SBC Illinois’ tandem switch. SBC Illinois, on the other hand, contends that AT&T must prove that its switch is *actually, currently serving* an area comparable to the area served by an SBC Illinois tandem. The weight of the case law supports SBC Illinois’ position. That case law includes a decision by the United States District Court for the Northern District of Illinois, the court that will hear any appeal from the Commission’s decision in this arbitration. AT&T’s and Staff’s position is supported by an arbitration decision issued by the Wireline Competition Bureau. AT&T tries to endow the WCB decision with special significance by characterizing it as an FCC decision, but it is not. As the WCB itself made clear, its decision was the mere equivalent of a Virginia Public Utility Commission arbitration decision. This Commission is bound to follow the Northern District of Illinois decision and hold that a requesting carrier does not satisfy Rule 711(a)(3) by showing only the area its switch is capable of serving; rather, it must prove that its switch is actually serving a geographic area comparable to the area served by the incumbent’s tandem. AT&T has made no such showing, and therefore is not entitled to charge the tandem rate.

**DISCUSSION**

We begin by clarifying the issue. The parties and Staff agree that AT&T is entitled to charge the tandem reciprocal compensation rate only if AT&T’s switch – in the words of the controlling FCC rule – “serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch.” The parties and Staff also agree that AT&T has shown that its switch *is capable of serving* a geographic area comparable to the area served by SBC Illinois’ tandem switch. AT&T, supported by Staff, contends that that is enough to satisfy the FCC’s test. SBC Illinois disagrees. It contends, with considerable support in the case law, that the FCC’s test

cannot be satisfied by a mere showing of the area AT&T's switch *is capable of serving*. Rather, AT&T must prove that its switch is *actually, currently serving* an area comparable to the area served by an SBC Illinois tandem. Thus, the question presented is a legal one – the proper interpretation of the FCC's words “serves a geographic area.” And if the Commission agrees with SBC Illinois that “serves” means “serves,” rather than “is capable of serving,” it will hold that AT&T is not entitled to charge the tandem rate because AT&T has not shown that its switch in fact serves the requisite geographic area, but only that it is capable of doing so.

When SBC Illinois terminates on its network a telecommunication that originates on AT&T's network, AT&T, under section 251(b)(5) of the 1996 Act and under the Agreement, is required to pay SBC Illinois reciprocal compensation to compensate SBC Illinois for the cost it incurs to terminate the call. Consistent with the Act and the FCC's *Local Competition Order*, the rate AT&T pays depends on where AT&T hands off the call to SBC Illinois: If the hand-off is at the SBC Illinois end office switch that directly serves the SBC Illinois customer who is being called, then AT&T pays SBC Illinois the *end office rate*, which compensates SBC Illinois for the cost of end office switching alone. If the hand-off is at an SBC Illinois tandem switch (a hub that connects end office switches), then AT&T pays SBC Illinois the *tandem rate*, which compensates SBC Illinois for the tandem switching it performs to route the call to the end office switch that serves the called party, plus transport between the tandem switch and the end office switch, plus end office switching.<sup>64</sup>

Similarly, SBC Illinois pays AT&T reciprocal compensation for terminating calls that originate on SBC Illinois's network, and the rates SBC Illinois pays AT&T must mirror (or be

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<sup>64</sup> Section 252(d)(2)(A) of the Act provides that reciprocal compensation arrangements must “provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.” Paragraph 1090 of the FCC's *Local Competition Order* provides that reciprocal compensation rates may “vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch.”

symmetrical with) the rates SBC Illinois charges AT&T for calls in the opposite direction.

47 C.F.R. § 51.711(a). That is, the rate SBC Illinois pays AT&T for calls that originate on SBC Illinois's network and terminate on AT&T's network must be either SBC Illinois's end office rate or SBC Illinois's tandem rate. And the question whether AT&T is entitled to charge the tandem rate is governed by Rule 711(a)(3), which provides:

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

On its face, Rule 711(a)(3) provides that a competing LEC is entitled to charge the tandem rate only when its switch “serves a geographic area comparable to the area served by the incumbent LEC's tandem switch.” (Emphasis added.) The Rule makes no mention of the area the competing LEC's switch is *capable of serving*. Thus, the area that the CLEC's switch is capable of serving is irrelevant, as the federal district court recognized in *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.*, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999). That case arose out of this Commission's arbitration of an interconnection agreement between MCI and Ameritech Illinois, in which MCI, like AT&T here, contended it was entitled to the tandem rate because its switch was capable of serving an area comparable to the area served by an Ameritech Illinois tandem. This Commission rejected MCI's position, in part because MCI's evidence did not include any “discussion of the location of [MCI's] customers” – in other words, because MCI did not prove anything about the area its switch was actually serving, as opposed to the area it was capable of serving. Arbitration Decision, Docket No. 96-AB-006 (Dec. 17, 1996), at 12. MCI challenged the Commission's decision, but the federal district court rejected MCI's claim and affirmed the Commission's denial of the tandem rate, reasoning:

MCI offered no evidence as to the location of its customers within the Chicago area. . . . MCI's customers might have been concentrated in an area smaller than

that served by an SBC Illinois tandem switch. Or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. These are questions that MCI could have addressed, but did not.

*Id.* at \*22 (footnote omitted). Thus, the federal court went a step beyond what SBC Illinois is urging here and held that the competing LEC must show that the distribution of its customers is such as to warrant the tandem rate.<sup>65</sup> *Ipso facto*, it is not enough for the CLEC to show only the area its switch *could* serve; the CLEC must show that its switch is *servicing* customers in an area comparable to the area served by the ILEC's tandem switch.

*MCI Telecomms. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768 (E.D. Mich. 1999), *aff'd*, 37 Fed. Appx. 767 (6th Cir. 2002), is to the same effect. In that decision, the federal court rejected MCI's invitation that it look to the area that its switch would soon serve, rather than the area it currently served:

The FCC rule provides that where the competing carrier's switch serves a geographic area comparable to that served by the incumbent carrier's tandem switch, the rate to be charged is the tandem interconnection rate. *The rule focuses on the area currently being served by the competing carrier, not the area the competing carrier may in the future serve.* To interpret the rule in the manner that MCI proposes would require the state commission to speculate about the future capability of a competing carrier.

*Id.* at 791 (emphasis added).

Also instructive is the arbitration decision of the Public Utilities Commission of California, which rejected AT&T's claim to the tandem rate based on the same evidence AT&T offered here, for precisely the reasons SBC Illinois urges here:

AT&T presented no evidence of where its customers are located. [FCC] Rule 711(a)(3) states "Where the switch of a carrier other than an incumbent LEC

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<sup>65</sup> See also *MCI WorldCom Communications, Inc. v. Pacific Bell Tel. Co.*, 2002 WL 449662, at \*5 (N.D. Cal. March 15, 2002) (holding concentration and location of competing LEC's customers relevant to determination of actual service area of CLEC's switch for the purpose of deciding whether CLEC was entitled to tandem reciprocal compensation rate).

*serves* a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate." . . . This rule indicates that a CLEC must currently be serving a geographic area. Instead, AT&T simply relied upon the geographic area that its switches could serve. Indeed, AT&T's Witness Talbott states that "AT&T Communications has the *ability* to offer local exchange services across virtually all of the geographic area served by [the ILEC] using fewer switches than [the ILEC] uses tandems." "Moreover, in general, TCG is *able* to connect virtually any customer in a LATA to the TCG switch serving that LATA . . ." (Direct Testimony of David Talbott, pages 25 and 26, emphasis added). The ability to serve an area or plans for future customers does not satisfy this requirement.

Opinion, *Application of AT&T Communications of California, Inc., et al. (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, (Pub. Utils. Comm'n. Cal. Aug. 7, 2000), at 20 (emphases in original). *See also* Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Comm. of Wis., Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)* (No. 05-MA-120), (Pub. Serv. Comm. of Wis. Arbitration Panel Oct. 12, 2000), at 43 ("The Panel does agree that AT&T . . . and TCG can cover a geographic service area comparable to that of Ameritech in Wisconsin. The Panel agrees with Ameritech that this is not a sufficient showing").

These decisions are true to the purpose of Rule 711(a)(3). There are separate tandem and end office rates in the first place because the costs a carrier incurs when it terminates a call that originated on another carrier's network "are likely to vary depending on whether tandem switching is involved." *Local Competition Order* ¶ 1090. Given that, the FCC promulgated Rule 711(a)(3) because "where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id.* If the

interconnecting carrier's switch is merely capable of serving such an area, but is in fact (for example) serving only a small handful of customers located a short distance from the switch, then the incumbent LEC's tandem interconnection rate plainly is not "the appropriate proxy" for the interconnecting carrier's additional costs.

AT&T and Staff, however, take the position that it is sufficient for AT&T to establish only the area its switch is capable of serving. They base this position on an arbitration decision issued by the FCC's Wireline Competition Bureau ("WCB") in an arbitration concerning Virginia interconnection agreements. *Finney/Schell/Talbott line 3571 et seq.*; *Zolnierrek line1845 et seq.* AT&T and Staff are correct that the WCB found it was sufficient for the requesting carrier to show the area its switch is capable of serving, but they overstate the precedential significance of the decision, which is no greater than the precedential significance of any other State commission arbitration decision (including, for example, the California and Wisconsin decisions cited above), and which is significantly less than the precedential significance of the Northern District of Illinois decision and the other federal court decisions on which SBC Illinois relies.

AT&T characterizes the Virginia decision as an FCC decision. *Finney/Schell/Talbott lines 3571-3572; 3579.* AT&T should be ashamed of itself, because it knows very well that it was not an FCC decision. Rather, the decision was rendered by the Wireline Competition Bureau, which was standing in the shoes of the Virginia PUC under 47 U.S.C. § 252(e)(5) when it rendered the decision. As the WCB explained in paragraph 1 of its decision, "Under the 1996 Act's design, it has been largely the job of the state commissions to interpret and apply [the FCC's] rules through arbitration proceedings. In this proceeding, the [WCB], acting through authority expressly delegated from the [FCC], *stands in the stead of the Virginia State Corporation Commission.*" We expect that this order will provide a workable framework to

guide the commercial relationship between the [parties] *in Virginia.*” (Emphasis added.) This limiting reference to Virginia underscores the fact that the decision was not issued by the FCC, as AT&T states, but by a bureau of that agency whose function was merely to resolve a Virginia arbitration. Indeed, the Wireline Competition Bureau’s decisions, including this one, are subject to review and modification by the FCC on motion by a party.<sup>66</sup> The WBC arbitration decision cannot carry the same weight as an FCC Order when the FCC has authority to review and modify it.

Thus, the weight of authority supports SBC Illinois’ position – and that includes the decision in *MCI Telecomms. Corp. v. Illinois Bell Tel. Co.* by the court that will hear any appeal from the Commission’s decision in this proceeding. That court’s reasons for concluding that MCI was not entitled to the tandem rate apply equally here:

[AT&T] offered no evidence as to the location of its customers within the Chicago area. . . . [AT&T’s] customers might have been concentrated in an area smaller than that served by an SBC Illinois tandem switch. Or [AT&T’s] customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. These are questions that [AT&T] could have addressed, but did not.

1999 U.S. Dist. LEXIS 11418, \*22 (N.D. Ill. June 22, 1999). If the Commission determines, as it should, that a requesting carrier is entitled to charge the tandem reciprocal compensation rate only if it proves that its switch actually serves an area comparable to the area served by the incumbent’s tandem, it must then go on to hold that AT&T is not entitled to charge the tandem rate. For while there is considerable evidence in the record concerning the area AT&T’s

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<sup>66</sup> See 47 C.F.R. § 1.115(a).

switches have the capability of serving, there is no evidence concerning the area they are actually serving.<sup>67</sup>

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<sup>67</sup> Early in this proceeding, SBC Illinois proposed a test by means of which AT&T could make the showing concerning customer locations required by FCC Rule 711(a)(3) as interpreted by the Northern District of Illinois and other authorities. SBC Illinois is not asking the Commission to establish any such test in this proceeding, however. Whatever the test might be, AT&T has not passed it, because it offered no evidence whatsoever concerning where, or even whether, its switch serves customers in Illinois.

**INTERCARRIER COMPENSATION:**

**ISSUE 9:** Shall SBC Illinois be required to make available to AT&T comparable compensation arrangements as those between SBC and other incumbent local exchange carriers and competitive local exchange carriers?

**SBC Illinois Testimony:** Pellerin Direct, lines 1024-1088;  
Pellerin Rebuttal, lines 104-139.

**SBC ILLINOIS POSITION**

No, AT&T should not be permitted to opt into another carrier's intercarrier compensation arrangements – particularly on an end-user specific basis, which is what AT&T is seeking – after this Agreement is executed. The Commission should accept Staff's recommendation and reject AT&T's proposal, not only because it is substantively flawed (there is no legal support whatsoever for the AT&T's proposal), but also because AT&T's proposed language is unworkable in any event.

**DISCUSSION**

AT&T has proposed the following language for Intercarrier Compensation section 21.3.7:

**SBC will make available to AT&T a compensation arrangement for serving customers in any optional or mandatory, one way or two way EAS, including ELCS, area serviced by an ILEC or CLEC other than AT&T, that is similar to the corresponding arrangement that SBC-Illinois has with that other ILEC or CLEC for serving those customers when AT&T is similarly situated to the other ILEC or CLEC.**

The Commission should reject AT&T's proposed language, as Staff recommends, (Zolnerek lines 1892-1893), because (1) it would improperly permit AT&T to avail itself of another carrier's intercarrier compensation arrangements on an end user specific basis, subsequent to the execution of this agreement; and (2) it is fatally flawed because of its use of the impossibly vague phrase "similar to the corresponding arrangement."

AT&T and SBC Illinois have been negotiating this interconnection agreement under the terms of the 1996 Act since November, 2002. Pellerin lines 1042-1043. The result of this arbitration will be an executed agreement that will reflect all the issues raised between the parties, whether negotiated or arbitrated, including terms and conditions for intercarrier

compensation. AT&T proposes that it be permitted to take this Agreement and toss it to the winds if it obtains an end user from another carrier that has negotiated reciprocal compensation terms and conditions more to AT&T's liking. Moreover, AT&T's language suggests that it be permitted to do so on an end user specific basis. *Id.* lines 1044-1050.

AT&T apparently thinks it can opt into other carriers' reciprocal compensation arrangements willy-nilly under section 252(i) of the 1996 Act (*see* Finney-Schell-Talbott lines 3675-3681), but considered from the point of view of section 252(i), AT&T's proposal would clearly have to be rejected. Section 252(i) permits a requesting carrier to adopt from an approved interconnection agreement any interconnection, service or UNE on the same terms and conditions as those in the underlying agreement. As the FCC has declared, a carrier exercising its rights under Section 252(i) must take all "legitimately related" terms in the underlying agreement (*Local Competition Order*, ¶ 1315). AT&T, however is not requesting to opt into any interconnection, service or UNE in another carrier's agreement, including all legitimately related terms and conditions. Rather, AT&T seeks to have two (or more) sets of reciprocal compensation arrangements with SBC Illinois – the one the parties negotiated (and to some extent are now arbitrating) and, *for certain end users only*, another one, lifted, but only in part, from another agreement.. Pellerin lines 1053-1064.

As Staff points out, AT&T's language "is overly broad and would allow AT&T to do indirectly that which it cannot do directly." Zolnierrek lines 1884-1885. As an *example* (*id.* line 1885), Dr. Zolnierrek points out that AT&T's proposal would permit it to obtain intercarrier compensation rates above the FCC's caps, after SBC Illinois elects the ISP Compensation Plan, which the FCC has expressly prohibited. *Id.* lines 1885-1890. To try to salvage its proposal, AT&T offers to modify its language so as to limit AT&T's opt-in rights to *lower* compensation rates only. Finney-Schell-Talbott lines 891-908. That proposed fix would, to be sure, take care

of the single example Dr. Zolnierек gave, but it falls far short of curing the fundamental failings of AT&T's proposal.

Those failings go well beyond the inconsistency between AT&T's proposal and section 252(i). AT&T's language would permit it to adopt another carrier's reciprocal compensation terms and conditions *on an end user specific basis*. Thus, AT&T could have the contracted minute of use reciprocal compensation rates with SBC Illinois for the majority of its end users, while having a different rate for other end users, and even having a bill and keep arrangement for yet another set of end users. Clearly, this would be an absurd result — and a nightmare to administer. Furthermore, AT&T would improperly be permitted to select alternate reciprocal arrangements after the execution of this agreement. Pellerin Rebuttal lines 121-131.

Separate and apart from its substantive failings, AT&T's language is also defective because it contains key language that is absolutely guaranteed to lead to intractable disputes. Under AT&T's language, SBC Illinois must make available to AT&T a compensation arrangement for serving certain customers “that is *similar to* the corresponding arrangement that SBC Illinois has with that other ILEC or CLEC for serving those customers when AT&T is *similarly situated to* the other ILEC or CLEC.” (Emphasis added.) Conceivably, AT&T and SBC Illinois might agree once in a while that AT&T is “similarly situated to” the other ILEC or CLEC. But imagine the disputes about whether the arrangement SBC Illinois offers AT&T is or is not “similar to” the arrangement SBC Illinois has with that other ILEC or CLEC within the meaning of section 21.3.7.

The Commission should conclude, as did Staff, that AT&T's language is inconsistent with the FCC's *ISP Remand Order* in that it would permit AT&T to adopt another carrier's reciprocal compensation terms and conditions that pre-date the *ISP Remand Order*. In the event the Commission disagrees with Dr. Zolnierек's rationale on this issue, the Commission should

still reject AT&T's language because it would permit AT&T to pick and choose reciprocal compensation arrangements on an end user specific basis at any time during the term of the Parties' interconnection agreement and because it would be impossible to administer.

**INTERCARRIER COMPENSATION:**

**ISSUE 10.a:** Should 8YY traffic compensation be determined by the jurisdiction of the traffic?

**ISSUE 10.b:** Should the 8YY service provider be required to suppress billing of terminating charges to the originating carrier, and provide a report of the traffic suppressed?

Sections 21.9.1 and 21.9.3-21.9.4

**SBC Illinois Testimony:** Pellerin Direct, lines 1089-1227.

**SBC ILLINOIS POSITION**

8YY traffic is an optional Feature Group D service available to carriers from SBC Illinois' access tariffs. SBC Illinois modifies existing network architecture in order to support this service; in turn, carriers recover charges associated with 8YY service by billing the terminating end users whom have purchased the 800 retail service.

Current switching protocol does not allow SBC Illinois to identify terminating jurisdiction for an 800 call; it is not currently industry standard to separate jurisdiction on 800 traffic. The overwhelming majority of this traffic is indeed intraLATA or InterLATA toll with a *de minimis* amount terminating locally. 800 service is not used to stimulate - or even attract - local telephone traffic. The intent of 800 service is to stimulate traffic to a distant end user by eliminating the originating end users' toll charges.

**DISCUSSION**

Issue 10a concerns the appropriate intercarrier compensation method for 8YY traffic.

8YY refers to calls placed on a toll-free basis to 800 series NPAs. 8YY is commonly referred to as 800 service. Toll-free 800 service is an interexchange service that is accessed by callers seeking to legitimately avoid toll charges, permitting inward calling to the 800 customer without charge to the caller. Pellerin lines 1098-1100. The 800 service subscriber pays its service provider for all incoming usage based on the tariffed or contracted service. *Id.* lines 1100-1102. The industry standard for intercarrier compensation for 800 traffic is that the carrier that receives the revenue from its customer for handling a 800 call shares that revenue with another carrier that contributes to call processing. Thus, since the terminating carrier receives the revenue for

800 service, the terminating carrier reimburses the original carrier for its costs in handling the 800 call. It is industry practice to treat all 800 service as interexchange traffic regardless of the location of the calling and called parties, and therefore originating access charges typically apply. *Id.* at 1114-1116.

SBC Illinois' proposed language maintains the industry standard by providing for the treatment of 800 service as interexchange traffic regardless of the location of the calling and called parties. AT&T proposes to redefine intercarrier compensation arrangements for 800 calls by categorizing them as either local or toll calls based on geographic location.

The Commission should maintain the industry standard of compensating for 800 traffic based on access for three reasons:

First, SBC Illinois' proposed treatment of intercarrier compensation for 800 traffic is consistent with retail tariffs for called-party pays service, because in the Commission-approved retail tariffs for 800 service, 800 calls are billed based on volume of traffic received, regardless of whether the calls begin and end in the same geographical local calling area. ICC Tariff No. 20 Part 10. Since terminating carriers bill their 800 customers terminating usage based on volume rather than varying the rate by end user location, revenue should be shared between carriers on that basis. Pellerin lines 1128-1130.

Second, SBC Illinois' proposed language is consistent with established practice in Illinois. SBC Illinois' interconnection agreements provide for intercarrier compensation on 800 calls based on the jurisdiction of such calls as toll, consistent with the classification of 800 service as an interexchange service, and accordingly, originating access charges apply. *Id.* lines 1133-1135.

Third, the industry standard is consistent with the Commission's decision in the Ameritech Illinois/Global NAPs arbitration. Arbitration Decision, Docket No. 01-0786 (May 14,

2002). In that proceeding, Global NAPS, while not raising an issue specific to 800 traffic, proposed that reciprocal compensation be based on each carrier's local calling area. The Commission denied Global's request, reasoning that the imposition of different compensation mechanisms for intercarrier compensation would lead to confusion in the area of intercarrier compensation. *Id.* at 12. This concern is evident here as well – imposing different intercarrier compensation mechanisms for 800 calls would cause the same confusion. Pellerin lines 1155-1175.

Moreover, AT&T's proposed language fails to guard against unfair competition. When an 800 service is established, the service provider assigns a 10-digit POTS telephone number for routing purposes. Pellerin lines 1142-1143. If AT&T were allowed to jurisdictionalize 800 calls it receives as local or toll, AT&T could tag all of those calls as local by assigning each customer a POTS number from every local calling area. As calls are carried to an 800 number, they would be mapped as having come to the POTS number that corresponds to the local area from which the call came, therefore appearing to be local 800 service. *Id.* lines 1143-1149. This manipulation would allow AT&T to sell a business customer a single 800 number from which the customer could receive LATA-wide local calls, while AT&T would pay only local reciprocal compensation costs rather than access charges. The payment of only local reciprocal compensation costs would lead to lower intercarrier compensation costs, which would give AT&T an unfair competitive advantage over other service providers.

Issue 10b addresses whether an 8YY service provider should be required to suppress billing of termination charges to the originating carrier and provide a report of the traffic suppressed. AT&T's proposed language in Section 21.9.3 requires either suppression of terminating local or access billing for 800 calls, or, in the alternative, a credit to the originating

party for such charges. SBC Illinois objects to the inclusion of this language in the Agreement because it is unnecessary and redundant.

The language in section 21.9.4 encompasses the terminating party's obligation to compensate the originating carrier for 800 service usage. Additionally, the parties have agreed to an exchange of end user billing records in section 21.9.2 so that the terminating carrier is able to bill its 800 customers and compensate the originating carrier. AT&T's proposed language redundantly states that the terminating carrier will not bill the originating carrier to terminate the call. This language is nonsensical inasmuch as it requires the originating carrier and the terminating carrier to bill each other for the same usage. Pellerin lines 1206-1208. Moreover, AT&T's proposed language fails to address the situation in which the originating carrier fails to supply the required billing records to the terminating carrier. When this failure occurs, there is no way for the terminating carrier to recognize the call as an 800 call in order to suppress billing because a terminating 800 call that has been translated to a POTS number is delivered to the terminating carrier over the POTS interconnection trunks as a POTS call. *Id.* at 1213-1216. Unless the originating carrier supplies detailed call records to the terminating carrier, the terminating carrier has no knowledge that it has received an 800 call and cannot bill the customer appropriately.

AT&T's proposed language for section 21.9.3 not only fails to address the issues discussed above, but also is unnecessary. SBC Illinois, however, has proposed language for sections 21.9.1 and 21.9.4 that mirrors industry practice regarding intercarrier compensation for 800 service traffic and sufficiently addresses the concerns discussed above. Accordingly, the Commission should adopt SBC Illinois' proposed language for sections 21.9.1 and 21.9.4 and reject AT&T's proposed language for section 21.9.3.

**INTERCARRIER COMPENSATION:**

**ISSUE 11:** Should AT&T be able to charge an Access rate higher than the incumbent without a cost study?

**Section 21.12.1**

**SBC Illinois Testimony:** Pellerin Direct, lines 1228-1372.

**SBC ILLINOIS POSITION**

AT&T should not be permitted to charge terminating access rates that exceed SBC's tariffed terminating access rates. SBC's position is in accord both with this Commission's recent precedent and with FCC precepts set forth in the *Access Reform Order* (CC Docket No. 96-262). AT&T's contract language should be rejected because AT&T's access rates are not supported by any evidence, have never been approved by this Commission, and are changeable-at-will rates.

**DISCUSSION**

In the recent TDS/Ameritech Illinois arbitration, one of the issues was what rate TDS would charge Ameritech Illinois when TDS terminates intraLATA toll traffic that it receives from Ameritech Illinois acting in its capacity as a primary toll carrier. TDS contended that it should be permitted to charge its tariffed access rate. Arbitration Decision, Docket 01-0338 (Aug. 8, 2001), at 48-49. Ameritech Illinois, on the other hand, contended that TDS should not be able to charge Ameritech Illinois an access rate any higher than the access rate Ameritech Illinois would be charging TDS. *Id.* at 49. The Commission resolved the issue in favor of Ameritech Illinois, holding:

The Commission's decision is that TDS should charge Ameritech's tariffed rates for terminating access when Ameritech is the primary toll carrier until TDS is able to document its actual costs for terminating that toll traffic. TDS would be required to provide Ameritech with 30 days notice of a proposed change in its access tariffs and to provide Ameritech with the opportunity to have its cost experts to inspect the documentation used to justify its rates. If no record inspection is requested and performed, the rates go into effect. If Ameritech protests the rates after inspecting TDS's records, then the issue should be resolved through the dispute resolution process.

*Id.* at 50. The Commission based its decision on the FCC's *Access Reform Order (id.)*<sup>68</sup>, in which the FCC sought to ensure that CLEC access charges would be just and reasonable, and to bring an end to the arbitrage opportunities inherent in CLEC access charges, by capping those access charges (over time) at ILEC access charge rates. The Commission should follow here the precedent it set in Docket No. 01-0338.

SBC Illinois is required to file its switched access rates with supporting costs with the Commission. *Interim Order*, ICC Docket No. 02-0427 (Dec. 11, 2002), at 11. These rates are subject to Commission review. AT&T's switched rates are not subject to the same review and therefore are not required to bear any relationship to AT&T's actual costs, which suggests that AT&T can set access rates at any level it chooses and may change those rates at any time. Pellerin lines 1263-1265. Requiring SBC Illinois to pay AT&T access rates that are unsupported by any costs while requiring AT&T to pay access rates that are subject to Commission approval would be inequitable, especially considering that SBC Illinois has no choice but to deliver intraLATA toll calls to AT&T. Given the scrutiny that SBC Illinois' access rates receive prior to being adopted by the Commission, it is far more reasonable and fair to adopt SBC Illinois' access rates as a reasonable rate of service.

Moreover, the parties will be paying each other symmetrical reciprocal compensation rates. The rationale underlying symmetrical reciprocal compensation rates this Rule is that SBC Illinois' costs for transporting and terminating local traffic are a reasonable proxy for AT&T's costs for performing the same functions. If that is so, then SBC Illinois' tariffed switched access rates are a reasonable proxy for the rates that AT&T should charge SBC Illinois for performing the same service. Pellerin lines 1298-1301.

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<sup>68</sup> *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd. 9923 (April 27, 2001).

The Commission should adhere to the precedent it set in Docket No. 01-0338 and adopt SBC Illinois' proposed language for Intercarrier Compensation section 21.12.1.

**INTERCARRIER COMPENSATION:**

**ISSUE 12:** Should combined traffic on the Feature Group D trunks be jurisdictionally allocated for compensation purposes?

**Section 21.15.2**

**SBC Illinois Testimony:** Pellerin Direct, lines 1373-1695.

**SBC ILLINOIS POSITION**

AT&T's proposal to combine originating local and intraLATA toll traffic with interexchange access traffic on an IXC's Feature Group D exchange access trunks should be rejected, because, among other reasons, (1) the Commission has previously rejected it, in two arbitrations and in a generic proceeding in which AT&T participated; (2) it is in conflict with methods for exchanging local and intraLATA toll traffic to which AT&T and SBC Illinois have agreed in this Agreement; (3) it would improperly affect SBC Illinois' compensation arrangements with third party carriers – IXCs – that are not parties to this proceeding; (4) it would cause unnecessary billing disputes; and (5) it is unacceptably imprecise.

**DISCUSSION**

AT&T proposes an Intercarrier Compensation section 21.15.2 that would allow either party to combine originating local and intraLATA toll traffic with interexchange access traffic on an IXC's Feature Group D ("FG-D") exchange access trunks, and to report to the other party the factors necessary for proper billing of such combined traffic. SBC Illinois opposes AT&T's proposal in its entirety. Because of the length and technical detail of both parties' testimony on this issue, we begin by focusing the Commission's attention on three key points:

1. *The Commission has repeatedly resolved this issue in favor of SBC Illinois.* In its August 4, 1997, order in Docket No. 96-0404, Ameritech Illinois' 271 compliance proceeding, the Commission held that nonjurisdictional trunks and percentage factors – exactly what AT&T is proposing here – are not reasonable. In that order, the Commission concluded, at pages 23-24:

Ameritech provides interconnection to requesting carriers at all points required for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, in accordance with the applicable FCC Regulations. 47 C.F.R. § 51.305. . . . The Commission . . . finds that the trunking options Ameritech provides are consistent with its obligation to transmit and route exchange access

traffic. Ameritech provides one-way or two-way trunks for the purpose of integrating the end offices and/or tandem offices of carriers for the completion of local switched and interLATA toll traffic. As part of the options provided, Ameritech requires that CLECs use TCTs [Toll Connecting Trunks] to carry interLATA toll-switched traffic. We agree with Ameritech's contention that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volumes of each type of traffic that terminates over a single trunk group, which in turn would necessitate the use of estimated, percentage factors in lieu of actual measurements to create a bill. Such billing arrangements are not commercially reasonable or cost effective in the present market, as they would require extensive modifications to both Ameritech's billing systems for reciprocal compensation and its systems for billing IXC access charges. Ameritech's trunking options, in contrast, permit each carrier to bill the originating carrier for actual minutes of use and actual rates at the time the call was made. We so found in the MCI and Sprint arbitrations, noting that it was not possible to obtain accurate measurements over combined trunk groups and stating in the Sprint decision that "Sprint will not be unduly impeded from competing in the local market by the adoption of Ameritech's proposed solution." *Sprint Arbitration Decision*, 96-AB-008, at 6; *MCI Arbitration Decision*, 96-AB-006, at 14-15.

Nothing has changed since the Commission issued that decision, or the decisions in the Sprint and MCI arbitrations on which the Commission relied, that warrants a different conclusion today. Pellerin lines 1683-1684.

2. *It is AT&T's burden to persuade the Commission that its language should be included in the Agreement.* At issue is a provision that is proposed by AT&T and opposed by SBC Illinois; SBC Illinois offers no counter-proposal. AT&T's testimony does a distinctly unpersuasive job of explaining why adoption of AT&T's proposal is either compelled by the 1996 Act or otherwise so meritorious as to be imposed on the Agreement over SBC Illinois' objection and notwithstanding the Commission's previous decisions rejecting the position AT&T asserts here. If AT&T's briefs do not accomplish that either, the Commission should not adopt AT&T's proposal.

3. *AT&T's attempt to tie its proposal to the requirements of the 1996 Act fails.* Almost as an afterthought, AT&T's testimony tries to create the impression that AT&T's

proposal is somehow linked to FCC precepts concerning interconnection. *See* Finney/Schell/Talbott line 3812 *et seq.* But the precepts AT&T mentions – the CLEC’s right to interconnect at any technically feasible point; the CLEC’s right to interconnect using any technically feasible method; or the ILEC’s duty to adapt its facilities to interconnection – have nothing to do with the issue at hand. If they did, AT&T’s witnesses would not have saved them for the tail end of their discussion (one tends to discuss pertinent FCC rules first, not last), and AT&T would be able to explain *how* its proposal is tied to those precepts, which it utterly fails to do.

There are many additional reasons, beyond those three points, for rejecting AT&T’s proposal:

To begin, there is a confusing disconnect between the first thing AT&T’s witnesses say about AT&T’s proposal and what the proposal actually says. According to the testimony, “ATTCI proposes that the ICA include a methodology for jurisdictionalizing traffic *on ATTCI’s Feature Group D (“FG-D”) trunks.*” Finney-Schell-Talbott lines 3479-3480 (emphasis added). AT&T’s proposed language, however, begins, “For usage based charges associated with local traffic carried over *IXC FG-D* trunks, . . . .” (Emphasis added.) Whose trunks are we talking about, ATTCI’s (the local exchange carrier) or AT&T the long distance company? AT&T’s proposed contract language controls, so we proceed on the assumption that its witnesses’ reference to *ATTCI’s* FG-D trunks was a mistake.

Essentially, AT&T the local exchange carrier proposes to carry local and intraLATA toll traffic exchanged between the parties’ local exchange customers on the same trunk group as the intrastate and interstate access traffic of AT&T the long distance company. Under AT&T’s proposal, this traffic would be carried on FG-D trunks, and for billing purposes, would be identified as either local or intraLATA toll by means of usage factors (expressed in percentages)

provided by the party that originates the traffic. The party terminating the traffic would render a bill to the originating party. Pellerin lines 1405-1410.

To illustrate AT&T's proposed use of usage factors by analogy, it is as if the terminating party (SBC Illinois, in this instance) would make available multiple types of ice cream (e.g., regular, premium, and frozen yogurt) to the originating Party (AT&T). After consuming the ice cream, the originating party (AT&T) would tell the terminating party (SBC Illinois) how much of each type of ice cream it consumed. The interesting aspect of AT&T's language, continuing with this analogy, is that SBC Illinois does not have the capability within its current systems to determine what amount of each type of ice cream AT&T has consumed, and would therefore have to rely on AT&T to provide the billing factors that would be used to apply the appropriate rate for each type of ice cream consumed. *Id.* lines 1411-1419.

SBC Illinois objects to AT&T's proposal, because it (1) is in conflict with agreed methods for exchanging local and intraLATA toll traffic between the parties' end users; (2) would improperly affect SBC Illinois' arrangements with IXCs; (3) would cause unnecessary billing disputes; and (4) is a less accurate manner to account for the subject traffic than the method the parties are currently using.

AT&T claims that without AT&T's proposed methodology, AT&T will be "required to have separate trunk groups for interLATA and intraLATA traffic, which is not an efficient or cost-effective arrangement." Finney-Schell-Talbott lines 3751-3753. But that is precisely the arrangement AT&T has already agreed to in Articles 4 and 5 – separate trunks groups for intrastate and interstate traffic. AT&T seems to forget that this interconnection agreement is between SBC Illinois and AT&T the CLEC, not AT&T operating as an IXC. AT&T the IXC is a separate legal entity and is not a party to this interconnection agreement.

Currently, the traffic that SBC Illinois exchanges with AT&T (like the traffic that SBC Illinois exchanges with other CLECs) is separated in accordance with the provisions contained within the parties' interconnection agreement. This traffic is exchanged over various trunk groups, which allows for the proper routing, accounting and billing of all the traffic the parties exchange. Pellerin lines 1421-1424. Specifically, the three main categories of traffic exchanged between AT&T and SBC Illinois are:

*Local and intraLATA toll traffic.* This traffic is exchanged over one-way Plain Old Telephone Service ("POTS") trunks. SBC Illinois records traffic terminating to an SBC Illinois end user and, through a mechanized program, determines whether the traffic is local or intraLATA toll in nature. Once that determination is made, SBC Illinois renders a bill to AT&T. Likewise, when AT&T receives local and intraLATA toll traffic from SBC Illinois, AT&T renders a bill to SBC Illinois for traffic delivered by SBC Illinois that is terminated to an AT&T end user. *Id.* lines 1427-1435.

*Meet point billed traffic.* This traffic is exchanged between an IXC and an AT&T end user, with SBC Illinois acting as the interconnecting party for the call flow. To make this arrangement work, AT&T establishes one or more two-way Meet Point Billing trunk groups (FG-D) between itself and SBC Illinois. Thus, an IXC call destined to terminate to an AT&T end user, or an AT&T-originated call bound for an IXC, is delivered over the Meet Point Billing trunk group. Consequently, IXC traffic is routed through SBC Illinois' tandem in order that it may be exchanged between the IXC and AT&T. In this situation, records exchanged between SBC Illinois and AT&T allow both parties to bill the IXC for that portion of their respective networks used in this call. This traffic is billed to the IXC by both SBC Illinois and AT&T as either originating or terminating access. *Id.* lines 1436-1447.

*Third party transit traffic.* This traffic is originated by an AT&T Illinois end user for completion to an end user of a third party carrier, *i.e.*, another CLEC, a wireless provider or another LEC. SBC Illinois' network is used as the intermediary between the originating and terminating carriers' end users. AT&T delivers this traffic over its POTS interconnection trunks to SBC Illinois. SBC Illinois then delivers the AT&T-originated traffic to the third party carrier for termination to that carrier's end user. SBC Illinois records this traffic and bills AT&T for such service. AT&T and the third party carrier reconcile local reciprocal compensation and intraLATA access billing between themselves without SBC Illinois' involvement. *Id.* lines 1448-1458.

AT&T and SBC Illinois have agreed, in Articles 4 and 5 of this Agreement, to these three categories of traffic and the definition of each. Specifically, sections 4.1 and 4.2 state:

4.1 Article 4 prescribes parameters for trunk groups (the "Local/IntraLATA trunks") to be effected over the Interconnections specified in Article 3 for the transmission and routing of Local Traffic and IntraLATA Toll Traffic between the parties' respective Telephone Exchange Service Customers.

4.2 No Party shall terminate Exchange Access traffic or originate untranslated 800/888 traffic over Local/IntraLATA Interconnection Trunks.

As for Meet Point Billing Traffic, the parties have agreed in section 5 that

5.1 Article 5 prescribes parameters for certain trunk groups ("Access Toll Connecting Trunks") to be established over the Interconnections specified in Article 3 for the transmission and routing of Exchange Access traffic and 8YY traffic between AT&T Telephone Exchange Service Customers and Interexchange Carriers.

5.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of (Feature Group B and D) Exchange Access and 800/888 traffic to allow each party's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to the other Party's access Tandem.

5.4.1 InterLATA traffic shall be transported between AT&T Switch Center and the SBC-AMERITECH Access or combined local / Access Tandem over a "meet point" trunk group separate from local and IntraLATA toll traffic. The InterLATA trunk group will be established for the transmission and routing of

exchange access traffic between AT&T's End Users and interexchange carriers via an AT&T switch or SBC-AMERITECH Access Tandem, as the case may be.

AT&T's proposed language requiring SBC Illinois to accept local traffic over an IXC's FG-D trunks and to apply a PLU factor is inconsistent with what the parties have agreed to above. Pellerin lines 1498-1500.

To fully understand why AT&T's proposal is unreasonable, one must understand how access traffic between SBC Illinois and IXCs is billed: The IXC purchases FG-D exchange access trunks out of SBC Illinois' access tariff so that the IXC can originate and terminate interexchange calls between its customers and end users of local exchange providers, including SBC Illinois. Traffic originated or received at either the SBC Illinois tandems or end offices is billed to the IXC as either originating or terminating switched access. The billing of this traffic is done through SBC Illinois' Carrier Access Billing System ("CABS"). CABS analyzes toll message records generated from IXC traffic that is sent over the FG-D trunks, and then generates a bill to the IXC for the appropriate access elements and usage for each call. CABS is able to differentiate between interstate and intrastate access based on the originating and terminating telephone numbers when CPN is provided, and thereby to bill the appropriate rates. For traffic delivered without CPN, the IXC provides SBC Illinois with a Percent Interstate Usage ("PIU") factor to calculate the amount of IXC-delivered traffic that is interstate. All of this is done pursuant to SBC Illinois' access tariff. Pellerin lines 1503-1522.

AT&T is proposing that the process described above for unidentified *access* traffic be used for *local* traffic delivered over FG-D trunks. In essence, the originating party (AT&T) would provide the billing party (SBC Illinois) two factors: one representing the percentage of interstate traffic and one representing the percentage of local traffic. These two factors would now be used in conjunction with actual measurements to calculate a bill from SBC Illinois to the

originating party, AT&T. In essence, AT&T as the originating party would tell SBC Illinois what percentage of its unidentified traffic was interstate toll (PIU) and what percentage was local (PLU), with the remainder being intrastate toll. In addition, AT&T would tell SBC Illinois what percentage of all intrastate traffic was local (PLU). Because CABS was never designed or built to jurisdictionalize this traffic and SBC Illinois has no way to separately identify it, SBC Illinois would be required to rely solely on AT&T for determining the level of compensation due SBC Illinois for services rendered to AT&T. SBC Illinois strongly objects to AT&T's proposed regime, because it is inconsistent with sound business principles and practices and because there is no need for it if AT&T will comply with agreed interconnection arrangements in the Agreement. Pellerin lines 1526-1546.

AT&T's language also fails to address the actual rendering of bills. For example, it does not address the following questions: To what entity would SBC Illinois bill the local usage received on an IXC's trunk groups – AT&T the CLEC or AT&T the IXC? And how would intrastate usage be managed? Some of it could be originated by customers of AT&T the CLEC under this agreement, while the remainder would be originated by the IXC's end users served by other local providers. The IXC has no obligation to compensate SBC Illinois for costs SBC Illinois would incur in terminating AT&T's end user calls. *Id.* lines 1555-1561.

Moreover, AT&T's proposal would turn the IXC billing regime on its head. Putting aside the fact that CABS cannot accommodate AT&T's proposed application of PIU and PLU to access minutes, AT&T's proposal would have SBC Illinois billing an IXC for traffic that is not access traffic generated by the IXC's customers. Adoption of AT&T's language would require SBC Illinois to modify its arrangements with IXCs. For this particular agreement, it would require SBC Illinois to modify its arrangements only with AT&T the IXC. But if AT&T's proposal were approved, any other CLEC opting into this Agreement could avail itself of the

same terms and conditions, and could therefore deliver its traffic over the FG-D trunks of any IXC it desired. As a result, SBC Illinois would have to modify its arrangements with all IXCs designated by those CLECs. This Commission should not impose on the AT&T/SBC Illinois interconnection agreement that could have the effect of trumping SBC Illinois' access tariff and requiring SBC Illinois to change its business arrangements with third parties – namely, the affected IXCs. Pellerin lines 1564-1577.

Furthermore, AT&T's proposal is inconsistent with SBC Illinois' access tariff. AT&T's proposed section 21.15.2 states, "**For usage based charges associated with local traffic carried over IXC FG-D trunks, the originating party will provide two factors, a Percent Interstate Usage (PIU) and a Percent Local Usage (PLU),**" and then goes on to describe how the originating party would calculate these factors. Since SBC Illinois will not be originating traffic to AT&T under such an arrangement, the "originating party" referenced in AT&T's language is AT&T the CLEC. So a CLEC would be providing SBC Illinois with the interstate usage factor to be applied in calculating a bill to be rendered to an IXC. *Id.* lines 1578-1590.

ICC Tariff No. 21, section 2.3.10C, however, provides the specific jurisdictional reporting requirements applicable to IXCs purchasing SBC Illinois' FG-D switched access services. These provisions clearly make it the IXC's responsibility to report PIU to SBC Illinois. A CLEC interconnection agreement cannot properly relieve an IXC of this obligation. Furthermore, AT&T's language does not deal with how SBC Illinois would reconcile differences between PIU factors supplied by AT&T and the IXC. With AT&T's proposal, SBC Illinois would be between the proverbial rock and a hard place – unable to meet its obligations under both the tariff and this interconnection agreement. Pellerin lines 1591-1598.

The parties have already agreed in Articles 4 and 5 on how traffic will be exchanged, and SBC Illinois has no obligation to accept CLEC local traffic from an IXC. AT&T's language

would result in confusion and disputes. *Id.* lines 1692-1695. As we detailed in point (1) at the beginning of this discussion, the Commission has previously ruled that non-jurisdictional trunks and percentage factors are unreasonable, and it should reaffirm that ruling here by rejecting AT&T's proposed section 21.15.2.

**COMPREHENSIVE BILLING:**

**ISSUE 1: Should CABS billing be used when the OBF has established guidelines for its use?**

**Sections 27.1.3 and 27.4.4.2**

**SBC Illinois Testimony: Smith Direct, lines 45-148; Smith Rebuttal, lines 8-52.**

**SBC ILLINOIS POSITION**

There is no legal basis for requiring SBC Illinois to use CABS billing merely because the Ordering and Billing Forum has established guidelines for its use. As Staff notes, OBF guidelines are non-binding, and it is within SBC Illinois' discretion whether or not to implement them. Aside from having no legal basis, AT&T's proposal is unreasonable because it is made without consideration of such pertinent factors as: (1) the cost of implementation; (2) whether the current billing system needs to be replaced; (3) the disruption that would be caused by the change; and (4) whether other CLECs, all of which would be affected, want SBC Illinois to make the switch that AT&T proposes.

**DISCUSSION**

SBC Illinois uses a billing system called "CABS" (Carrier Access Billing System) to bill AT&T and all other CLECs in Illinois for most UNEs, and uses a billing system called "RBS" (Resale Billing System) to bill AT&T and all other CLECs in Illinois for Operator Services and Directory Assistance ("OS/DA"). Smith lines 49-52. AT&T proposes language that would require SBC Illinois to use CABS to bill for all charges and services for which the Ordering and Billing Forum ("OBF") has developed guidelines – including OS/DA. Moore lines 206-209. SBC Illinois opposes AT&T's language, and originally proposed the following language:

Those billing items that are billed today in CABS will remain billed in CABS unless the FCC or State Commission rules that the billing item is no longer a UNE. At that point, SBC-Illinois would make a determination on whether the item would remain in CABS billing system. Any new elements billed in CABS will be in accordance to OBF guidelines where they have been developed.

Staff agrees with SBC Illinois that AT&T's proposal should be rejected (Weber line 146), but recommends that the Agreement include only the third sentence of SBC Illinois' proposed language ("Any new elements billed in CABS will be in accordance to OBF guidelines where

they have been developed”) (Weber lines 195-203). While SBC Illinois believes that inclusion of all three of its proposed sentences in the Agreement is appropriate, SBC Illinois will accept Staff’s proposal. Smith Rebuttal lines 46-52.

AT&T’s proposal – as Staff agrees – has no basis under the 1996 Act, FCC regulations, or Illinois law. The issue does not involve the nature or the quality of any UNE that SBC Illinois will be providing to AT&T, or any price SBC Illinois will be charging AT&T – all of which are governed by the 1996 Act, the FCC’s implementing regulations, and Illinois law. Smith lines 74-84. Rather, it involves AT&T’s unilateral desire for SBC Illinois to change from a billing system that is wholly adequate to a different billing system that AT&T says it would prefer. AT&T seeks to make mandatory that which is *not* mandatory – use of the CABS billing system and adherence to OBF guidelines. But, as Staff correctly notes, OBF guidelines and resolutions are “*non-binding*,” and it is “within [SBC Illinois’ *sole discretion* whether or not it will implement a resolution.” Weber lines 49-52 (emphasis added).

Aside from having no basis under the law, AT&T’s proposal is unreasonable. As SBC Illinois and Staff agree (Smith lines 97-133; Weber lines 89-98, 156-161, 165-170), AT&T’s proposal would make the use of CABS mandatory without considering, among other things: (1) the costs and effort to develop the functionality; (2) whether the current billing system is adequate – *i.e.*, provides accurate and timely bills; (3) the potential for disruption to the flow of accurate bills during a conversion; and (4) whether other CLECs want SBC Illinois to switch to a different billing system – and here there is no evidence that any CLEC other than AT&T wants SBC Illinois to switch to CABS for OS/DA (Smith lines 118-119). AT&T fails to explain why it would be appropriate for the Commission to require SBC Illinois automatically to convert to CABS for any service for which the OBF establishes CABS guidelines without considering these factors.

The unreasonableness of AT&T's proposal that the Commission require SBC Illinois to switch billing systems based solely on AT&T's individual preference is all the more patent when one considers that AT&T does not allege that SBC Illinois' current system is inadequate. All AT&T claims is that "[t]he use of multiple billing systems increases the difficulty of billing validation processes" and "increases the resources and time that [AT&T] must expend to validate a bill." Moore lines 260-262. But AT&T provides no evidence to substantiate that allegation. As Staff points out, AT&T "has not provided any quantitative analysis of the impact to its business if the billing for charges and services for which OBF guidelines have been developed are not moved to CABS." Weber lines 135-137. And "absent complaints that SBC Illinois' bills are inaccurate or untimely, it is not appropriate for the Commission to intervene in the method by which SBC Illinois renders its bills." Weber lines 167-170.

AT&T also suggests that its proposed language is appropriate because "[u]niformity in the industry is beneficial to all CLECs and promotes consistent application of the industry guidelines." Moore lines 271-272. But, again, there is no indication that any CLEC other than AT&T wants SBC Illinois to switch to CABS billing for OS/DA. Smith lines 118-119. Thus, the "uniformity" AT&T touts is illusory.

As for AT&T's assertion that SBC bills OS/DA out of CABS in the SBC Southwest Region (Moore lines 256-257), that is irrelevant. As AT&T knows, what is now SBC was, just a few years ago, four separate Regional Bell Operating Companies. And each of those companies had its own billing systems. It should not be surprising that SBC has not yet performed the massive conversions that would be necessary to have the same billing systems in all four regions. While SBC is striving to achieve uniformity, it is not yet there – and SBC should not be forced into uniformity on AT&T's schedule without regard to the costs involved or the need for changes. Smith lines 136-145. Nevertheless, consistent with SBC Illinois' current approach to

conversions, it will follow Staff's recommendation and "conduct an analysis of the cost and process involved if it were to move its OS and DA charges to CABS." Weber lines 243-244. But, as Staff agrees, SBC cannot reasonably be required to make that change if it proves imprudent.

For these reasons, the Commission should accept Staff's recommendation; reject AT&T's proposed language; and direct the parties to include in their Agreement the third of the three sentences originally proposed by SBC Illinois.

**COMPREHENSIVE BILLING:**

**ISSUE 2:** Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?

**Section 27.2.1.3**

**SBC Illinois Testimony: Smith Direct, lines 149-266.**

**SBC ILLINOIS POSITION**

SBC Illinois' systems cannot send electronic bills to separate addresses for different categories of products. Nor is there any legitimate reason for requiring SBC Illinois to develop an entirely new billing system with this capability just to satisfy AT&T's request. The Commission should adopt Staff's recommendation and resolve this issue in favor of SBC Illinois.

**DISCUSSION**

Under the parties' current interconnection agreement, SBC Illinois sends AT&T's monthly bills for all products and services to one address (with a single exception discussed below). Smith lines 153-155. Specifically, SBC Illinois sends AT&T electronic bills to the location indicated by AT&T's Access Customer Name Abbreviation (ACNA) number – a three digit alpha code assigned to carriers by Telcordia Technologies for identification purposes, ordering, circuit provisioning, billing, and bill verification. *Id.* lines 183-186. AT&T proposes language for section 27.2.1.3 that would require SBC Illinois to send different categories of bills to different addresses designated by AT&T. Moore lines 278-290. AT&T's proposed language should be rejected.

In CABS billing, the ACNA identifier has associated Billing Account Numbers (BANs) that correlate with classes of service (*e.g.*, UNE Loops, Directory Assistance, Collocation) that may be purchased by AT&T. Smith lines 186-189. And, for example, if the BANs for the classes of service purchased by AT&T are under AT&T's ACNA in Illinois, they will be billed to a single address – an address designated by AT&T when it completes its CLEC Account Profile for SBC Illinois. *Id.* lines 189-194. There are situations where AT&T may designate

billing *for one of its BANs* to a separate billing address, but that can be done only for bills in *paper* format. *Id.* lines 205-209. Of course, if AT&T wants certain BANs under an ACNA to go by paper to a separate billing address, SBC Illinois will do that – but that is not what AT&T proposes here. *Id.* lines 210-218. AT&T’s proposed language would require SBC Illinois to bundle different categories of products under each BAN and send those to different addresses. *Id.* lines 216-218. SBC Illinois’ systems, however, simply do not have that capability. *Id.* lines 216-218. Indeed, while SBC Illinois’ systems can separate bills on a *per BAN* level, they cannot do so per category of bills. *Id.* lines 205-218.

The only reason AT&T gives for its proposal is that “the payment process [would] be expedited.” Moore line 309. But AT&T provides no support for this claim; as Staff points out, “AT&T does not provide specifics for its proposal nor does it sufficiently quantify the impact to AT&T of SBC not complying with its request.” Weber lines 284-286. There is simply no reason to require SBC Illinois to develop an entirely new billing system – particularly a billing system that is *not* industry standard (Smith lines 257-258) – at AT&T’s whim.

The Commission should therefore accept Staff’s recommendation (Weber line 284) and reject AT&T’s proposed language for section 27.2.1.3.

**COMPREHENSIVE BILLING:**

**ISSUE 3:**       **Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?**

**Section 27.10.2**

**SBC Illinois Testimony: Read Direct, lines 141-251.**

**SBC ILLINOIS POSITION**

SBC Illinois has agreed to give AT&T a report that will identify for AT&T the originating carrier for each call that originates on the network of a third party carrier, transits SBC Illinois' network and is then terminated by AT&T's switch. The report will accomplish this by stating each originating carrier's unique Access Customer Name Abbreviation ("ACNA"). AT&T, however, requests that the Commission require SBC Illinois to modify the report so that it will instead (or also) identify each originating carrier by its Operating Company Number ("OCN"). The Commission should deny AT&T's request. AT&T has offered no explanation why the ACNAs that SBC Illinois has agreed to provide are not adequate for AT&T's purpose, and AT&T also has not offered to compensate SBC Illinois for the costs it would incur to modify the report to meet AT&T's demand. The Commission should not require SBC Illinois to incur costs to provide OCNs to AT&T when SBC Illinois has already agreed to provide AT&T with information – ACNAs – that will accomplish exactly the same purpose.

**DISCUSSION**

The question presented by this issue is whether the Commission will require a certain report that SBC Illinois will be providing to AT&T to include the Operating Company Numbers ("OCNs") of carriers that originate traffic that AT&T terminates on its network. Comprehensive Billing section 27.10.3 reads as follows, with language proposed by AT&T and opposed by SBC Illinois shown in bold underline:

Where AT&T, as a facilities based provider, is using terminating recordings produced within its network to bill reciprocal compensation, SBC-Illinois will provide a report to identify the UNE originating traffic, **including the OCN of the originating third party carrier**, and AT&T will bill the originating UNE Carrier for MOUs terminated on the AT&T network . . .

There is no disagreement about the following propositions:

1. Section 27.10.3 concerns calls that originate on the networks of third party carriers, transit SBC Illinois' network, and are then handed off by SBC Illinois to AT&T for termination by AT&T's switch and for which AT&T is entitled to charge the originating carriers reciprocal compensation. Read lines 157-161.

2. In order to charge the third party originating carriers reciprocal compensation, AT&T must know who those carriers are. *Id.* lines 165-168.

3. The terminating recordings that AT&T makes for these calls give AT&T the NPA-NXXs of the originating phone numbers, but NPA-NXXs are no longer uniquely tied to an individual carriers, as they once were. (The NPA-NXX is the first six digits of a ten-digit phone number.) *Id.* lines 172-181; 209.

4. Accordingly, in order to enable AT&T to properly bill the originating carriers, section 27.10.3 requires SBC Illinois to "provide a report to identify the UNE originating traffic."

5. The report that SBC Illinois will provide to AT&T will identify the originating carrier for each of the calls that are the subject of this issue by the originating carrier's Access Customer Name Abbreviation ("ACNA") (*id.* lines 202-206), which uniquely identifies the carrier to which it is assigned (*id.* lines 193-195).

The parties' disagreement arises out of AT&T's demand that that report include the originating carriers' OCNs, and the basis for that demand is AT&T's contention that, "Absent SBC Illinois providing the true originator's OCN, AT&T will have no way to identify the true originating company to bill." Moore lines 332-333. That contention, however, is wrong. The undisputed evidence establishes that the reports SBC Illinois will be giving AT&T will include the originating carriers' ACNAs, and that an ACNA uniquely identifies the carrier to which it is assigned. *Id.* lines 193-206. Indeed, AT&T witness Hammond acknowledged at hearing that

“by looking at . . . the ACNA on a customer record, one could determine which carrier is being provided that service.” Tr. 14-18. AT&T has offered no evidence that even tries to explain why the ACNA will not serve the purpose that AT&T is trying to achieve with its proposed language.

AT&T has stated that SBC Illinois has not explained why it will not voluntarily add OCNs to the report as provided under section 27.10.3 (Moore lines 347-350), but that is not correct. In order to add OCNs to the report, SBC Illinois would have to initiate a potentially time-consuming project, first to determine how best to accomplish that, and then to implement the change. The cost of such an undertaking is unknown, but would not be negligible. Read lines 224-234. It is because SBC Illinois should not have to bear the cost of an undertaking that is so clearly unnecessary that SBC Illinois contests AT&T’s proposal. In fact, SBC Illinois’ witness went so far as to say that SBC Illinois would not object to providing the OCNs as AT&T requests if AT&T were required to defray 100% of SBC Illinois’ costs. *Id.* lines 238-241.

The preferable resolution of this issue, however, is for the Commission to recognize that since SBC Illinois has already agreed to provide unique identifiers for the originating carrier of each call that is the subject of this issue, any development work to build another solution is unnecessary, no matter who pays for it, and to reject AT&T’s proposed language for Comprehensive Billing section 27.10.3.

**COMPREHENSIVE BILLING:**

**ISSUE 4.a:** Should SBC Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC Illinois?

Section 27.14.4; Schedule 9.2.7, Section 27.14.4

SBC Illinois Testimony: Read Direct, lines 252-331.

**SBC ILLINOIS POSITION**

Issue 4.a is not well framed, because SBC Illinois has agreed to provide AT&T the OCNs of third party originating carriers when AT&T terminates calls as a user of SBC Illinois-provided unbundled local switching. The only question is the limitations to which that obligation will be subject. The modest limitations in SBC Illinois' proposed language are reasonable and should be accepted. Those limitations are: (1) SBC Illinois will provide the OCNs only where "technically feasible," a limitation to which AT&T can articulate no objection; (2) SBC Illinois will start providing the OCNs after it has completed the project that is underway to enable it to do so – a limitation to which AT&T's witness objects but that also appears in the language that AT&T proposes for this issue; and (3) the OCNs will be provided only for calls that originate on the networks of carriers that that lease unbundled local switching from SBC Illinois – a patently reasonable limitation, because it is only for such carriers that SBC Illinois' switch will be recording the OCN.

**DISCUSSION**

This issue is similar to Comprehensive Billing Issue 3 in that both concern information SBC Illinois will provide to AT&T to identify the originating carrier for calls that originate on the network of a third party carrier, transit SBC Illinois' network, and are then terminated to an AT&T end user, so that AT&T can charge the originating carrier reciprocal compensation. The difference between the two is that the disputed language that is the subject of Issue 3 addresses the situation where AT&T is terminating traffic with its own switch, while the disputed language that is the subject of Issue 4.a addresses the situation where AT&T is terminating calls with SBC Illinois' switch which AT&T is leasing – in other words, where AT&T is operating as a UNE-based provider and uses an SBC unbundled local switching ("ULS") port to terminate the calls. Read lines 271-276.

For the calls that are the subject of Issue 4.a, SBC Illinois has agreed to include the OCN of the originating carrier in the usage records it provides to AT&T, but subject to certain limitations. AT&T opposes those limitations, but has given no cogent explanation for its objection.

The provision at issue reads as follows, with language proposed by SBC Illinois and opposed by AT&T shown in bold:

27.14.4 SBC-Illinois will include the OCN of the originating carrier in the usage records it provides for calls originated by 3rd party carriers **utilizing an SBC ULS Port that terminate to an AT&T ULS Port, where technically feasible. SBC-Illinois will begin providing this OCN after SBC-Illinois completes its ULS Port OCN project, which project is targeted for completion during 1Q2004.**

Thus, SBC Illinois has agreed to include the OCN of the originating carrier in the usage records it provides for calls originated by third party carriers utilizing an SBC ULS port that terminates to an AT&T ULS port, where technically feasible. SBC Illinois will begin providing the OCN after SBC Illinois completes its ULS port OCN project.

It is unclear to SBC Illinois what it is that AT&T wants that is not provided for in SBC Illinois' proposed language. *See* Read lines 298-316. In any event, though, the limitations in SBC Illinois' proposed language are reasonable – necessary, in fact – and should be included in the Agreement. There are three such limitations:

First, SBC Illinois' duty to provide OCN does not extend to circumstances where it would be technically infeasible. AT&T has articulated no objection to that limitation, and cannot reasonably have one.

Second, SBC Illinois' duty will commence when SBC Illinois has completed the work it needs to complete in order to provide the OCN information AT&T is requesting, which the proposed language indicates is targeted for the first quarter of 2004. Again, AT&T can have no

serious objection to that. SBC Illinois cannot provide the information until it can provide the information (Read lines 325-326), and this Agreement will not go into effect significantly before the first quarter of 2004 in any event. (AT&T witness Moore complains that SBC Illinois' language provides "only a guesstimate, rather than a fixed date" (Moore Additional lines 105-106), but AT&T's proposed language is exactly identical in this respect (*id.* lines 76-77).

Third, SBC Illinois' obligation to provide OCN applies only where the third party originating carrier is utilizing an SBC ULS port that terminates to an AT&T ULS port. That limitation is plainly reasonable, because UNE-P identification is a capability and part of the switch recording. Other third party traffic, of course, is not. Read lines 330-331. *See also id.* lines 295-297 (to the extent AT&T is asking for usage records to include OCNs for originating carriers other than carriers using an SBC Illinois ULS switch port, "AT&T is requesting more than the network can provide").

In sum, when a call originates on the network of a third party carrier that is leasing unbundled local switching from SBC Illinois, SBC Illinois will be able to capture the OCN of that carrier in the usage records that it will be providing to AT&T, so SBC Illinois has agreed to provide such carriers' OCNs to AT&T as soon as SBC Illinois has completed the project it has undertaken in order to provide this service. But SBC Illinois will not be capturing the OCNs of originating third party carriers that are not leasing ULS from SBC Illinois, and so cannot provide those carriers' OCNs to AT&T in the same fashion. And SBC Illinois' proposed language also accurately reflects the fact that SBC Illinois provides usage records to AT&T only when AT&T is terminating calls in its capacity as a lessee of SBC Illinois' unbundled local switching.<sup>69</sup>

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<sup>69</sup> When AT&T is terminating calls through its own switch, rather than through ULS it obtains from SBC Illinois, SBC Illinois does not provide AT&T usage records, but instead provides AT&T the reports that are the subject of Comp. Billing Issue 3.

Section 27.14.4, with SBC Illinois' proposed language, takes SBC Illinois to the absolute limit of its ability to provide OCNs to AT&T without undertaking some costly and undefined new project, for which AT&T has not offered to pay. *See supra* Discussion of Comp. Billing Issue 3. The Commission should therefore approve SBC Illinois' proposed language.

**COMPREHENSIVE BILLING:**

**ISSUE 4.b:**       Should SBC Illinois be billed on a default basis when it fails to provide the 3rd party originating carrier OCN to AT&T when AT&T is terminating calls as the unbundled switch user?

Section 27.14.4; Schedule 9.2.7, Section 27.14.4

**SBC Illinois Testimony:** Pellerin Direct, lines 1998-2054.

**SBC ILLINOIS POSITION**

AT&T's proposal to charge SBC Illinois "on a default basis" for calls for which SBC Illinois' usage reports do not include OCNs must be rejected. AT&T's proposed language cannot be included in the Agreement as a penalty, because penalty provisions in contracts are unlawful. Nor can it be included as a liquidated damages provision, because none of the conditions that the law requires for liquidated damages provisions pertains. Nor is there any theory under the 1996 Act that would somehow shift to SBC Illinois the originating carrier's duty to pay reciprocal compensation to AT&T; that duty remains with the originating carrier.

AT&T has given the Commission no reason to anticipate that SBC Illinois will breach any obligation to provide OCNs to AT&T, and there is no reason to include a special remedy provision in the Agreement to address the hypothetical situation where SBC Illinois does breach that obligation. The particular provision that AT&T has proposed is patently unlawful, and must be rejected. If SBC Illinois does ever breach an obligation to provide OCNs to AT&T under this Agreement, AT&T can resort to the breach of contract remedies allowed by law.

**DISCUSSION**

As explained above in connection with Comprehensive Billing Issues 3 and 4.a, the reason that SBC Illinois will provide information to AT&T that identifies the originating carrier for certain calls that terminate on AT&T's network is so that AT&T can charge the originating carrier reciprocal compensation as it is entitled to do under section 251(b)(5) of the 1996 Act. AT&T, however, proposes language for Comprehensive Billing section 27.14.4 that, if approved, would instead entitle AT&T to charge SBC Illinois reciprocal compensation for those calls. Specifically, AT&T proposes the following sentence: "**Any records received without the originating OCN will be treated as though originated by SBC-Illinois in accordance with the terms of Schedule 9.2.7 of this Agreement.**"

It goes without saying that that sentence should not apply to calls for which SBC Illinois has no obligation to provide OCN. *See supra* Discussion of Issue 4.a. But the sentence also must be rejected for calls for which SBC Illinois does have such an obligation. Assuming, in other words, that the Commission resolves Issue 4.a in favor of SBC Illinois, so that section 27.14.4 reads - -

SBC-Illinois will include the OCN of the originating carrier in the usage records it provides for calls originated by 3rd party carriers utilizing an SBC ULS Port that terminate to an AT&T ULS Port, where technically feasible. SBC-Illinois will begin providing this OCN after SBC-Illinois completes its ULS Port OCN project, which project is targeted for completion during 1Q2004.

- - the Commission should not tack AT&T's proposed sentence onto that provision.

AT&T's witness on Issue 4.b says practically nothing to justify AT&T's proposal – only that, “Absent SBC Illinois providing the OCN, AT&T proposes to bill SBC Illinois on a default basis.” Moore Additional lines 118-119. If that is supposed to mean that SBC Illinois has somehow become liable for reciprocal compensation by default, it is nonsensical. Under section 251(b)(5) of the 1996 Act, the originating carrier and only the originating carrier is liable to pay reciprocal compensation, and SBC Illinois' (hypothetical) failure to give AT&T the originating carrier's OCN cannot change that. *See Pellerin* lines 2043-2049.

What AT&T really has in mind, presumably, is that if SBC Illinois breaches its contractual obligation to provide AT&T an OCN, SBC Illinois should be penalized in an amount equal to the reciprocal compensation that AT&T would have charged the originating third party if SBC Illinois had provided the OCN. That theory, however, is squarely at odds with fundamental principles of contract law – which is perhaps why AT&T's witness offered no justification for AT&T's proposal.

It is black letter law that contractual penalties are unlawful. *E.g., Weiss v. United States Fidelity & Guar. Co.*, 132 N.E. 749, 751 (Sup. Ct. Ill. 1921). A contract can, of course, provide

for liquidated damages, but only where (1) the actual damages caused by a breach would be “difficult to prove and uncertain in amount,” and (2) the liquidated damages amount is a reasonable approximation of the actual damages a breach would cause. *E.g., Curtin v. Ogborn*, 394 N.E.2d 593, 598 (Ill. App. 1979.)

AT&T will say that its language is appropriate because if SBC Illinois breaches its obligation to provide OCN, AT&T will be unable to bill the originating carrier reciprocal compensation and will suffer damages in an amount equal to the amount it would have billed if it could have. AT&T is wrong, for two reasons. First, a liquidated damages provision is lawful only when the actual damages caused by the breach would be “difficult to prove and uncertain in amount.” If AT&T’s simple-minded damages analysis were correct, the actual damages in the event of a breach would be easy to prove and absolutely certain in amount; a liquidated damages provision would therefore be unlawful; and AT&T’s remedy, in the event of a breach, would be to file a damages claim against SBC Illinois.

Second, the liquidated damages amount AT&T proposes bears no reasonable relationship to the damages AT&T would suffer. It is black letter law that “A party injured by a breach of contract is required to use all reasonable means to mitigate his damages.” *E.g., Pokora v. Warehouse Direct*, 751 N.E.2d 1204, 1213 (Ill. Ct. App. 2001). If SBC Illinois were to breach its obligation to include originating carriers’ OCNs in usage reports, there is a simple and obvious way for AT&T to mitigate its damages: Ask SBC Illinois for the OCNs! AT&T’s language, which would entitle AT&T automatically to bill SBC Illinois reciprocal compensation in consequence of a (hypothetical) breach of contract that may well have been accidental and easily

remedied, thus violates both common sense and the basic requirement that AT&T mitigate its damages.<sup>70</sup>

Whatever SBC Illinois' obligation to provide OCNs to AT&T under this Agreement may turn out to be, AT&T has given the Commission no reason to anticipate that SBC Illinois will breach it. There is therefore no particular reason to include a special remedy provision in the Agreement to address the hypothetical situation where SBC Illinois does breach that obligation, and the particular provision that AT&T has proposed is patently unlawful. AT&T's proposed sentence should be rejected, and if SBC Illinois does ever breach its obligation to provide OCNs to AT&T under this Agreement, AT&T can resort to the breach of contract remedies allowed by law.

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<sup>70</sup> AT&T's proposal yields other bizarre consequences as well. The originating carrier, of course, retains its obligation to pay AT&T reciprocal compensation, whether or not the SBC Illinois usage report includes the originating carrier's OCN. Under AT&T's proposal, therefore, AT&T could get a double recovery – the penalty or liquidated damages payment from SBC Illinois and the reciprocal compensation payment from the originating carrier, after AT&T determines from a source other than the usage report (*e.g.*, a phone call to SBC Illinois) who that carrier is.

OSS:

ISSUE 2:           Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate 'as is' on UNE-P migration orders through a standard indicator on the orders.

Section 33.5.14

SBC Illinois Testimony: McNeil Direct, lines 41-362; McNeil Rebuttal, lines 13-151.

SBC ILLINOIS POSITION

The question presented is whether SBC Illinois is required by section 13-801 of the Illinois Public Utilities Act to support "as is" ordering when a CLEC migrates a customer onto its service using the UNE platform. Illinois law clearly does not require "as is" ordering as AT&T requests. In Docket No. 01-0662 (SBC Illinois 271 Investigation) the Commission directly addressed this issue and ruled that section 13-801(d)(6) does not require the "as is" ordering that AT&T seeks. The issue was also addressed in Docket No. 01-0614, where the Commission approved SBC Illinois tariffs that define "as is" to simply mean that the CLEC may purchase a platform representing the unbundled network elements that make up the end users existing service without changing the service.

AT&T's position should be rejected for other reasons as well. *First*, the current "as specified" ordering process was developed in industry collaboratives initiated pursuant to both the Illinois Merger Order and the FCC Merger Order. In reliance on those industry processes, SBC Illinois devoted substantial time and effort to deploy the current ordering process. AT&T's request would require SBC Illinois to rework all of those procedures.

*Second*, AT&T has not demonstrated that whatever minor convenience it would gain from "as is" ordering sufficiently outweighs the expense and disruption to SBC Illinois and the CLEC industry. SBC Illinois would have to substantially redesign its OSS processes and systems at great expense. These changes would lead to manual handling for a substantial period of time and would thus prevent "flow through" of CLEC orders.

*Finally*, CLECs *should* specify the particular UNEs and features they wish to order. This business practice ensures that both CLECs and SBC Illinois know and understand exactly what has been ordered, thus avoiding disputes about whether the proper features are activated and whether SBC Illinois is billing for the right services.

DISCUSSION

The disputed language appears in section 33.5.14 and reads as follows, with language proposed by SBC Illinois in bold and language proposed by AT&T in bold and underlined:

SBC-Ameritech will utilize industry guidelines to develop and implement ordering requirements to allow AT&T to send a LSR utilizing LSOG 5 (and future LSOG releases) for **Unbundled Network Element Platform conversions (which includes unbundled switch port and unbundled loop)**. This will allow AT&T to design their network using ILEC facilities by ordering specific unbundled network elements by specifying the features or functionality on their order so that their customer when converted has the same functionality (or “as is”) as they did prior to the migration. For these conversions without specifying the features or functionality that was previously being provided by SBC-Ameritech, AT&T or any CLEC using SBC-Ameritech resale or UNE-P services (i.e., a UNE-P “as-is” LSR utilizing an ACT of “W”), as required by the Illinois Public Utilities Act, Section 13-801.

The question presented is whether SBC Illinois should be required to support “as is” ordering when CLECs migrate customers onto their service using the UNE-Platform.

In fact, as AT&T has framed the issue in its proposed language, the issue is whether “as is” ordering is “required by the Illinois Public Utilities Act, Section 13-801.” Since the law clearly *does not* require “as is” ordering, AT&T’s position should be rejected out of hand.

This issue has been addressed by the Commission twice in the last two years and on both occasions the Commission agreed with SBC Illinois that “as is” ordering is not required. In Docket No. 01-0614, the Commission reviewed tariffs filed by the SBC Illinois to implement Section 13-801 of the Illinois Public Utilities Act, including Section 13-801 (d)(6). The tariff language approved in that docket makes clear that “as is” simply means that the CLEC may purchase a platform representing the unbundled network elements that make up the end user’s existing service without changing the service. *See*, Ill. C.C. Tariff No. 20, Part 19, Section 15, Fourth Revised Sheet No. 2; McNiel Rebuttal Schedule LEM-1. Thus, Docket No. 01-0614 – a hotly contested proceeding – confirmed SBC Illinois view in this docket.

The issue was presented again in Docket No. 01-0662 (the SBC Illinois 271 Investigation), where AT&T argued that Section 13-801(d)(6) requires SBC Illinois to provide

an “as is” ordering process. SBC Illinois explained that Section 13-801(d)(6) does not mandate the use of any particular form of *ordering*. Rather, it requires the ILEC to *provide* the UNEs necessary for the CLEC to replicate an end users existing service. SBC Illinois also pointed out that the statute does not relieve the CLEC from its obligation to identify the particular UNEs and features it is ordering from SBC Illinois and that the SBC Illinois’ current “as specified” ordering process permits CLECs to obtain the UNE-P without changing any of the end users features and therefore fully complies with Section 13-801(d)(6). The Commission agreed:

We are not persuaded by AT&T assertions that, SBC Illinois is statutorily “required” to develop and implement new ordering and processing capabilities that would allow AT&T to check some type of “as is” box on a UNE-P migration form, without specifying the particular services and end user is receiving. On the evidence and arguments here made, we do not find a state compliance issue to have been shown.

Docket No. 01-0662, Order On Investigation, issued May 13, 2003, ¶ 3183<sup>71</sup>. Thus, the lynchpin of AT&T’s position – *i.e.*, that “as is” ordering is “required” by Illinois law – is wrong and AT&T’s position should be rejected for that reason alone. There are, of course, additional reasons why AT&T’s proposal should be rejected.

*First*, the current “as specified” ordering process was developed in industry collaboratives initiated pursuant to the Illinois Merger Order in Docket No. 99-0555. Similar discussions took place on a 13-state level in compliance with the FCC Merger Order in FCC Docket No. 98-141, which required SBC to conduct a Uniform & Enhanced Plan Of Record collaborative process. In reliance on these industry processes, SBC Illinois devoted substantial time and effort to deploy the current ordering process, as have all other CLECs on a 13-state basis, and should not be required to re-do all of this work. This is especially true because, as

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<sup>71</sup> Nor is there any *FCC* requirement to support “as is” ordering, as this Commission recognized in Docket No. 01-0662, ¶¶ 763-765. Indeed, if there were such a requirement, no SBC ILEC would have obtained 271 relief in California, Nevada, Texas, Missouri, Kansas, Oklahoma or Arkansas because “as is” ordering is not available in any of those states.

Mr. McNiel explained at the hearing on June 18, AT&T did not contest the development of the “as specified” ordering process during those industry collaboratives. Tr. 220-221; McNiel lines 148-157.

AT&T argues that SBC Illinois “unilaterally” stopped supporting “OBF activity type W orders” in October 2002. Webber Rebuttal line 60. In fact, this capability was supported only in the Local Service Ordering Guidelines (“LSOG”) Version 1, Issue 7, which was superseded by LSOG 4, LSOG 5 and – most recently – LSOG 6. Each of these subsequent LSOG releases was developed through industry collaborative processes on a uniform 13-state basis and were deployed to give CLECs better ordering process. As newer, better versions were created, the older, less useful versions were replaced. There was nothing “unilateral” about the retirement of LSOG 1, issue 7.

*Second*, AT&T has not demonstrated that whatever minor convenience it would gain from reverting to “as is” ordering outweighs the expense and disruption that SBC Illinois and the CLEC industry would incur. To begin with, SBC Illinois (and indeed all of SBC Midwest) would have to redesign its OSS processes and systems to modify two distinct components: order acceptance and order flow-through. McNiel lines 159-191. The modifications to the order acceptance system would be required to ensure that the front end (ordering) and back office (provisioning and billing) systems could accurately read, accept and process the new type of order. Changes to flow-through would be necessary to ensure that the service order could be mechanically generated in SBC Illinois’ systems (*i.e.*, no manual handling). These changes would be expensive and would take a great deal of time to implement. *Id.* lines 195-196. Moreover, the changes would be disruptive because SBC Illinois’ current ability to support flow-through is based upon “as specified” ordering. The change AT&T proposes would cause all orders to drop out of the system for manual handling. While AT&T witness Webber claims that

“as is” ordering will reduce the “potential for errors,” Mr. McNiel explains that, in reality, implementation of that proposal will – for a significant period of time while the changes are being made – actually *increase* the potential for errors because of the manual processes required. *Id.* lines 170-191. Without flow-through, the operations of all CLECs would likely be disrupted and some of the closely-watched SBC Illinois performance measures would be adversely impacted.

AT&T witness Webber offers two feeble reasons why none of this should matter. First, she argues that SBC Illinois supported “as is” ordering as recently as October 2002, and therefore should be able to promptly restore that capability without cost. Webber Rebuttal lines 55-56. This comment reveals a fundamental lack of understanding of the way in which old LSOG versions are retired so that new, more feature-rich versions can be made available. As the older versions are retired, they simply cannot be brought back, any more than General Motors could today build a 1998 Chevrolet. Next, Ms. Webber argues that if there are costs for SBC Illinois to bear, those costs should be of no concern to the Commission because SBC Illinois “unilaterally” withdrew this capability in 2002. There was no unilateral withdrawal, as AT&T well knows. This functionality was formally retired as part of the FCC Uniform Plan of Record and the Illinois Plan of Record.

AT&T’s proposal should be rejected for a third reason., *i.e.*, CLECs *should* specify the particular UNEs and features they wish to order. This business practice insures that both CLECs and SBC Illinois know and understand exactly what has been ordered, thus avoiding disputes about whether the proper features are activated and whether SBC Illinois is billing for the right services. McNiel lines 105-119; McNiel Rebuttal lines 104-112. It is good business practice for another reason. Certain end user services such as voice mail only work when the end user purchases switch-based features such as “call forward busy/no answer.” There are many

different voice mail platforms and, depending on the platform used by a CLEC, difference switch-based features are required. If a CLEC were to merely submit an “as is” order it may or may not be ordering the switch-based features needed to work with its voice mail system.

McNiel lines 121-130.

AT&T’s remaining justifications for its proposed language are unconvincing. For example, AT&T argues that it is “unnecessarily difficult” for it to submit orders under the current system. Webber line 127. This is belied, however, by the CLECs overwhelming success in providing local service using SBC Illinois’ UNE platform. Over 750,000 UNE-P lines were provided by CLECs in Illinois as of April 2003. McNiel lines 83-86. AT&T also argues that the SBC Illinois customer service records it relies upon under the current process are not always accurate. SBC Illinois explained, however, that it has a tremendous incentive to make those records as accurate as possible and, in fact, has instituted recent improvements in the process. McNiel lines 300-326. In any event, under the “as is” scenario AT&T proposes, these same customer services records would be used to populate an order, so AT&T’s point proves nothing. *Id.* lines 327-334. Finally, AT&T suggests that the existing agreement obligates SBC Illinois to provide “as is” ordering, Webber lines 49-382, but this too is mistaken. That language merely states that AT&T can order UNEs as a “UNE combination”, thus eliminating the need to enumerate *each and every* network element (e.g., loop, switch port, unbundled shared transport) that makes up that UNE combination. McNiel lines 347-362. AT&T’s contention is rebutted by the very language it cites, which makes it clear that “. . . AT&T shall specify on each order the type of service to be provided. . . .” *Id.* line 362.

As for Staff, it argues that if AT&T wants the “as is” ordering capability, it should be required to pay SBC Illinois’ costs to implement such a process. While SBC Illinois appreciates Staff’s understanding of the difficulties AT&T’s proposal creates, SBC Illinois does not believe

that AT&T should have the option of using the BFR process in this way. *First*, OSS capabilities are generally determined by industry collaboratives, not the desires of a single CLEC. Staff's proposal would have the unintended consequence of permitting AT&T to dictate ordering procedures for all CLECs. McNeil Rebuttal lines 44-47. As a general proposition, the BFR process is not appropriate for making changes to the OSS. *Id.* lines 41-43. Finally, if AT&T can order the development of an "as is" process, it would delay SBC Illinois' ability to deliver other enhancements that the CLEC industry has requested and agreed upon. *Id.* lines 65-79.

For all these reasons, SBC Illinois urges the Commission to once again reject AT&T's proposal and to adopt the SBC Illinois language for Section 33.5.14 of the Agreement.

**PRICING:**

**ISSUE 1:** Should AT&T's rates for SBC's use of Space License apply on a per trunk group or per switch basis?

Pricing Schedule Lines 781-782

SBC Illinois Testimony: Mindell Rebuttal, line 331-445; Silver Direct, lines 56-221; Silver Rebuttal, lines 13-116.

**SBC ILLINOIS POSITION**

The Commission should reject AT&T's proposal to artificially limit SBC Illinois' ability to take advantage of the volume discounts for space license. AT&T proposes to apply the discount schedule only to those DS1s within the same trunk group. This limitation makes no sense as a practical matter because there is no relationship between the costs which AT&T incurs to provide space on the one hand, and the number of *trunk groups* that SBC Illinois has, on the other hand. There *is* a relationship between AT&T's cost and the *number of DS1s* SBC Illinois has, and the Pricing Schedule appropriately reflects that relationship by causing SBC Illinois to pay on a per DS1 basis. The more DS1s SBC Illinois terminates to AT&T, the more SBC Illinois pays.

Under AT&T's proposal, SBC Illinois can never (or only rarely), enjoy *any* benefit of the promised volume discounts. SBC Illinois demonstrates that even in an AT&T office where hundreds and hundreds of SBC Illinois DS1s are terminated, it is charged less than the highest rate for only 14 of those DS1s. In short, AT&T's proposal allows it to give with one hand, and take away with the other.

Finally, AT&T offers no justification for the sharp rate increase this would cause. While AT&T attempts to justify its position by referencing a "former" access tariff, that tariff contradicts AT&T's own position because it the tariff *does not* apply volume discounts on a "per trunk group" basis. Rather, by its plain meaning it applies the volume discount on a single per DS1 basis as SBC Illinois proposes in this case.

**DISCUSSION**

The question presented by Pricing Issue 1 is whether AT&T can limit SBC Illinois' ability to take advantage of volume discounts for space license by artificially applying the discount schedule only to DS1s within the same trunk group and not to all DS1s that terminate to an AT&T central office. The language in dispute appears on page 12 of the pricing schedule.

SBC Illinois' proposal is:

“DS1 collocation termination charges per DS1.”

The language AT&T proposes is:

“DS1 collocation termination charges per DS1 (per trunk group).”

By including the words “per trunk group” AT&T guts the volume discount schedule. Its proposal should be rejected for at least three reasons.

*First*, AT&T’s proposal makes no sense because there is no relationship between the “per trunk group” requirement and the space used inside an AT&T central office. The space license fee compensates AT&T for the use of space inside an AT&T central office, Silver lines 105-106, but the amount of space required does not increase as the number of trunk groups increase. As Mr. Mindell explains, a trunk group is an organization of DS1s that is defined only in switches. By looking at a space license arrangement inside an AT&T central office, one would not know how many trunk groups were present because there is no relationship between the number of trunk groups and the amount of space used inside the AT&T office. Mindell Rebuttal lines 382-413. For example, if there were 100 DS1s between SBC Illinois and an AT&T central office, those one hundred DS1s could be organized into one trunk group consisting of 100 DS1s, or into ten trunk groups consisting of ten DS1s each. The amount of space used in the AT&T central office would be identical in each case. AT&T appears not to dispute this. In response to questioning by the ALJs, AT&T witness Rhinehart was unable to state with any conviction that AT&T incurred more space license costs as the number of trunk groups increases. The most he would say is that costs “could” increase – hardly the convincing proof needed to justify AT&T’s proposal. Tr. \_\_\_\_.

*Second*, AT&T’s proposal deprives SBC Illinois of the discount promised in the price schedule because it prevents SBC Illinois from counting all DS1s in a central office when calculating its volume discount. Rather, SBC Illinois must count separately for every trunk

group. Trunk groups can only be established between two offices, and if SBC Illinois takes traffic from 20 of its central offices to a particular AT&T switch then SBC Illinois must establish 20 separate trunk groups between its network and that AT&T central office. Mindell Rebuttal, lines 382-421. As AT&T well knows, by limiting the volume discount to a “per trunk group” basis, SBC Illinois can never obtain any meaningful volumes under the schedule. And for no good reason. It is, as Mr. Mindell explains, as if a garage offered a bulk discount rates on the number parking spaces a customer leased, and then claimed that the discount only applied for each color of car. Under this improbable scheme, rather than basing the discount on the total number of spaces leased, the garage owner calculates the volume discount based upon the number of spaces filled by yellow cars. A separate calculation is made for the volume discount available for green cars, red cars and so on. Mindell Rebuttal, lines 354-359.

Mr. Mindell demonstrates the absurdity of the AT&T proposal on a more fundamental level. As Mr. Mindell points out, AT&T’s purported “volume discount” schedule appears to give successively lower prices for each DS1 as volumes increase to 85, 113, 141, 169, etc. However, because of the physical limitation in the capacity of the Lucent switch (the switch manufactured by AT&T’s former manufacturing arm) only 81 DS1s can be organized into a single trunk group. Thus, under AT&T’s proposal SBC Illinois could never get beyond the third highest tier of the pricing schedule when it used a Lucent switch and could never take advantage of the lower rates promised in the volume discount arrangement. Mindell Rebuttal lines 402-407.

The unfairness of AT&T’s proposal is further demonstrated by Mr. Silver’s calculation of the space license charges due under the AT&T proposal verses the SBC Illinois proposal. Using actual DS1 volumes at an AT&T central office in the Chicago LATA, he shows that even with hundred and hundreds of DS1s terminating to that AT&T central office, SBC Illinois is charged

less than the highest rate for only 14 of those DS1s. Silver lines 169-173 and Sch. MDS-3. In other words, SBC Illinois can never, or only rarely, enjoy any benefit of the promised volume discounts under AT&T's proposal. AT&T, in short, gives with one hand, and takes away with the other.

*Third*, AT&T's proposal should be rejected because there is no justification for this sharp increase in rates. The cumulative effect of AT&T's proposal would cause SBC Illinois to pay 2 ½ times more for space license than it pays today. Not only is this a departure from the current arrangement (under which there is no artificial "per trunk group" limitation), there is absolutely no cost support for this increase. Under AT&T's proposal, SBC Illinois' costs for space license would increase from about \$536,000 to approximately \$1,255,000 per AT&T central office over the three-year term of this agreement. No explanation is offered for the increase. Equally astounding is the fact that while AT&T pays SBC Illinois the relatively modest sum of \$145,000 over a three-year period for a caged collocation arrangement, AT&T proposes to charge SBC Illinois approximately \$1,255,000 over a three-year period for a comparable arrangement – nine times the amount SBC Illinois charges. Silver lines 169-191.

AT&T justifies this position with two arguments, neither of them convincing. First, it argues that the "per trunk group" limitation is listed in a "former" access tariff. This argument fails in two respects. The Tariff Sheet offered by AT&T in support of this argument (Sheet No. 17 included as part of AT&T Exhibit 4.3) fails to show any "per trunk group" limitation at all. The *only* thing Sheet No. 17 shows is a volume discount which matches the discount in the proposed Interconnection Agreement and which applies on a "DS1 per port" basis. This is identical to the "per DS1" basis proposed SBC Illinois. Moreover, SBC Illinois does not even purchase space licenses under this "former" tariff at all. So, whatever is in the tariff is essentially irrelevant to the discussion here.

Second, AT&T alludes to the fact that the “per trunk group” limitation applies in other SBC Midwest states. (AT&T Ex. 4.0, lines 660-663). While it is true that AT&T outwitted SBC Midwest by inserting the three words “per trunk group” into the fine print of the pricing schedule in those states, it is equally true that SBC Midwest is disputing those charges. SBC has now caught onto the game and the situation in these other states in no way forecloses the arguments raised by SBC Illinois in this proceeding.

For all of these reasons, the most commercially reasonable resolution of this issue is to reject AT&T’s proposal and to permit the volume discount schedule for space licenses to include *all* DS1s terminated to an AT&T central office, as it does today.

**PRICING:  
ISSUE 4:**

**What is the proper rate for reciprocal  
compensation associated with ULS-ST?**

**See Pricing Schedule 485-487**

**SBC Illinois Testimony: Pellerin Direct, lines 2124-2133.**

**SBC ILLINOIS POSITION**

All agree that this issue is identical to Intercarrier Compensation Issue 1. *See* Rhinehart Reply lines 210-219; Pellerin lines 2124-2133; Zolnierek lines 1190-1191. The issue should be resolved in favor of SBC Illinois for the reasons discussed above in connection with that issue. This is the resolution recommended by Staff. Zolnierek lines 1267-1270.

**DISCUSSION**

The foregoing statement of SBC Illinois' position serves also as SBC Illinois' discussion of this issue.

**PRICING:**

**ISSUE 5.a:** How should LIDB queries be defined in the pricing schedule.

**ISSUE 5.b:** Should prices for unbundled operator services - LIDB validations be included in the pricing schedule?

Pricing Schedule, page 9

**SBC Illinois Testimony: Silver Direct, lines 224-378; Silver Rebuttal, lines 118-213.**

**SBC ILLINOIS POSITION**

There is no dispute that SBC Illinois will provide access to its line information database (“LIDB”) and that rates for such access will be included in the Agreement. The sole issue is whether the LIDB rates should be those reflected in SBC Illinois’ current LIDB tariff or whether the Agreement should reflect the updated rates and rate structure contained in a LIDB tariff filed June 6, 2003. The changes proposed by SBC Illinois in its LIDB tariff filing will *reduce* LIDB rates, *eliminate* other LIDB charges and *streamline* the offering to focus only on access to SBC Illinois’ LIDB information – not LIDB information of third-parties over which SBC Illinois has no control. These changes should be reflected in the Agreement regardless of the outcome of the tariff proceeding.

**DISCUSSION**

The Agreement will contain rates for access to SBC Illinois’ Line Information Database (“LIDB”). The sole issue is whether the rates will be those in the current tariff or the lower rates in the pending LIDB tariff.

The disputed language appears at page 9 of the Pricing Schedule. SBC Illinois proposes the following:

Item	Item Description	Proposed Rate Per Query
1	LIDB Validation Query	\$0.016151
2	LIDB Validation Transport	\$0.000020

AT&T proposes:

Item	Item Description	Proposed Rate Per Query
1	Interconnection at Regional STP – LIDB Validation	\$0.016151
2	Interconnection at Regional STP – LIDB Transport	\$0.000020
3	Interconnection at Local STP – LIDB Validation	\$0.016151
4	Interconnection at Local STP – LIDB Transport	\$0.000132
5	Interconnection at Local STP – Out of Region Query	\$0.061778
6	Unbundled Operator Services – LIDB Validation	\$0.016151
7	Unbundled Operator Services – LIDB Transport	\$0.000510
8	Unbundled Operator Services – Out of Region Query	\$0.062160

SBC Illinois’ language should be adopted because the current LIDB tariff is simply wrong and should not be perpetuated in this Agreement. SBC Illinois filed a revised LIDB tariff on June 6, 2003 to correct these defects and these changes should be reflected in the Agreement, regardless of the outcome of the tariff proceeding.

*First*, the Agreement should reflect the *reduced* rates in SBC Illinois’ tariff filing. This rate reduction comes about from eliminating the difference between “regional” and “local” LIDB queries. There is no practical difference between regional and local LIDB queries and it would be accurate to say in this context that a “query is a query”. Thus, SBC Illinois eliminates the distinction and creates a single LIDB query at the lower of the two existing rates.

*Second*, the Agreement should *eliminate* altogether the charge for the LIDB query performed in connection with an operator services or directory assistance service. This charge should be recovered in conjunction with the corresponding operator services charge and not as a standalone LIDB charge. SBC Illinois proposes to remove this charge from the LIDB section of the tariff and the same change should be made to this Agreement<sup>72</sup>.

*Third*, the Agreement should make clear that SBC Illinois is not obligated to provide access to non-SBC LIDB information. SBC Illinois’ sole obligation is to provide access to its

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<sup>72</sup> SBC Illinois is not at this time proposing any concurrent increase to the operator services rate and is not proposing such an increase in the Agreement.

own LIDB information – not the LIDB information of other providers such as Verizon, BellSouth and Qwest. The Commission can be assured that there will be little to no impact to AT&T if this clarification is made. To begin with, this clarification would not apply to any CLEC using SBC Illinois' UNE platform, or to any CLEC using SBC Illinois' operator services/directory assistances services. In situations where AT&T might need to access the LIDB of other providers on its own, it can do so on its own as it does today in support of its ubiquitous "C-A-L-L-A-T-T" service. In addition, the business of providing access to third-party LIDB databases has become quite competitive and there are several providers who aggressively offer that service, including Verisign and TSI. Mr. Silver identified these providers and submitted advertising material that explains their offerings. Silver Rebuttal lines 165-196 and Sch's MDS-6 to MDS-9. Under these circumstances, there is no practical reason why the Agreement should require SBC Illinois to provide access to third-party databases, and nor is there a legal basis for doing so. SBC Illinois urges the Commission to reflect these changes in the Agreement by adopting SBC Illinois' proposed LIDB rates for the Pricing Schedule.

**IV. CONCLUSION**

For the foregoing reasons, and the additional reasons set forth in SBC Illinois' testimony, SBC Illinois urges the Commission to resolve the open issues in favor of SBC Illinois and to direct the parties to include in their Agreement the contract language proposed and endorsed by SBC Illinois.

Dated: June 25, 2003

Respectfully submitted,

SBC ILLINOIS

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I certify that I caused copies of the foregoing SBC ILLINOIS' INITIAL POST-HEARING BRIEF to be served on this 25th day of June, 2003, on the following persons by e-mail, to be followed by hard copy, at the following addresses:

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