

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Interconnection Agreement between)
Southwestern Bell Telephone, L.P., d/b/a SBC Missouri)
and the CLEC Coalition, Including Big River Company,)
L.L.C., Birch Telecom of Missouri, Inc., Ionex) Case No. TK-2006-0049
Communications, Inc., NuVox Communications of)
Missouri, Inc., Socket Telecom, L.L.C., XO)
Communications Services, Inc., XO Missouri, Inc.;)
Arbitrated as a Successor Interconnection Agreement)
to the Missouri 271 Agreement (“M2A”).)

**SBC MISSOURI’S POSITION ON CONFORMANCE ISSUES
WITH THE CLEC COALITION**

SBC Missouri¹ and the CLEC Coalition² have worked diligently to prepare successor Interconnection Agreements to the Missouri 271 Agreement (“M2A”) that conform to the Missouri Public Service Commission’s (“Commission’s”) July 11, 2005 Arbitration Order. While the parties have for the vast majority of issues been able to concur on conforming language,³ two issues remain in dispute requiring Commission resolution. For the reasons set out below, SBC Missouri requests the Commission to direct the parties to insert SBC Missouri’s proposed contractual language into the ICAs as the language that best conforms to the Commission’s July 11, 2005 Arbitration Order.

The first dispute involves Intercarrier Compensation Issues 15(a) and (b). The second pertains to UNE Issue 4. SBC Missouri has submitted proposed language with regard to each of

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC Missouri” or “SBC.”

² The CLEC Coalition consists of Big River Telephone Company; Birch Telecom of Missouri, Inc. and Ionex Communications, Inc.; NuVox Communications of Missouri, Inc.; Socket Telecom, LLC; XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc., and Xspedius Management Co. Switched Services, LLC, dba Xspedius Communications (“The CLEC Coalition”).

³ The submission of this Agreement does not indicate voluntary agreement to contract provisions a party may have disputed before the Commission. The parties each reserve their rights, pursuant to 47 U.S.C. 252(e)(6), to contest determinations made by the Commission in this case.

these disputes and believes that its language is most consistent with the Arbitration Order and should be adopted.

Intercarrier Compensation Issues

1. **CC/SBC MO IC 15(a)**: Should reciprocal compensation arrangements apply to information services traffic, including IP-enabled services traffic?

CC/SBC MO IC 15(b): What is the proper routing, treatment and compensation for switched access traffic, including without limitation, any PSTN-IP-PSTN traffic and IP-PSTN traffic?

This conformance issue⁴ arises from a conflict between an isolated ruling for MCIIm in the Final Arbitrator’s Report -- which was later extended to the CLEC Coalition purportedly for “consistency”⁵ -- and the substantive determination on the IP-PSTN issue contained in Section VI(H) of the Final Arbitrator’s Report, which unequivocally endorsed the core principle that all interexchange switched access traffic, including interexchange VoIP traffic, is subject to intrastate (and interstate) switched access charges and must be delivered over separate Feature Group trunks.

This core substantive determination, which was adopted by the Commission, applied to all CLECs, including MCIIm (MCIIm RC Issues 15 and 17, and MCIIm NIM Issue 28) and the CLEC Coalition.⁶ In fact, the issue of “what is the proper compensation treatment for VoIP traffic” (MCIIm RC Issue 17) was among the specific issues addressed in this section, and the Arbitrator

⁴ This issue is also a subject of SBC Missouri’s request for reconsideration.

⁵ While the Commission reversed the Arbitrator’s decision for the CLEC Coalition in an attempt to promote a consistent requirement for all carriers, see, Arbitration Order, p 36, that reversal had the opposite effect. The Arbitrator adopted SBC Missouri’s language on this core determination on approximately 13 issues involving 12 carriers (including SBC). See Final Arbitrator’s Report, pp. 3-50.

⁶ The Commission should also note that the Charter and Sprint ICAs contained these SBC-proposed provisions as agreed-upon language.⁶

rejected MCI's claim that reciprocal compensation should apply to this traffic.⁷ On the same basis, the Arbitrator adopted SBC Missouri's language with respect to AT&T;⁸ the CLEC Coalition,⁹ Navigator;¹⁰ and WilTel.¹¹ And in MCI NIM Issue 28 the Arbitrator adopted the exact same SBC Missouri language that was struck under MCI RC Issue 15 in Section VI(D).¹² This core determination is consistent with current federal law and the position the Commission itself has taken before the FCC.¹³

The Arbitrator's ruling on MCI RC Issue 15 in Section VI(D), however, which was extended to the CLEC Coalition in the Arbitration Order, is completely at odds with the substantive determination with respect to VoIP traffic. In support of its position on MCI RC Issue 15, MCI asserted that "[t]he IP-PSTN traffic . . . falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition," and that "reciprocal compensation rates instead of switched access rates" should apply.¹⁴ But this assertion, which was apparently accepted, directly conflicts with the law SBC Missouri cited and which the Arbitrator relied on in Section VI(H) to adopt SBC Missouri's position on this very issue with every other CLEC (and MCI itself):

⁷ In RC Issue 17, MCI proposed language that would allow it to combine interexchange VoIP traffic on local interconnection trunks; quantify the amount of such traffic using a "Percent Enhanced Usage" factor it would provide; and apply the same rates to this "enhanced/information services" traffic as the rates for ISP bound traffic. See, MCI/SBC Reciprocal Compensation Final DPL, Issue RC 17, pp. 31-32 of 34. The arbitrator rejected this language and found SBC Missouri's proposed language "most consistent with the Arbitrator's Report. See, Attachment VI.A, Detailed Language Decision Matrix, pp. 30-32.

⁸ Attachment VI.A, Detailed Language Decision Matrix, pp. 7-9.

⁹ Id., pp. 28-30.

¹⁰ Id., pp. 36-37.

¹¹ Id., pp. 36-42.

¹² Attachment V, Part 1 Detailed Language Decision Matrix, pp. 97-104.

¹³ In the FCC's IP-Enabled NPAM, the Missouri Commission stated:

Any IP-enabled service that connects to the public switched network . . . should be treated similarly . . . To the extent an IP-enabled call connects with and utilizes the public switched network, the traffic should be subject to access charges absent further determination by the [FCC] in the Unified Carrier Compensation Regime docket.

Comments of the Public Service Commission of the State of Missouri, IP-Enabled Services NPRM, W.C. Docket No. 04-36, filed May 2004, at pp. 8, 12.

¹⁴ Final Arbitrator's Report, Section VI, p. 22.

- Existing FCC rules require that “[c]arriers’ carrier [i.e., access] charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.¹⁵ Since IP-PSTN calls “use local exchange switching facilities,” access charges apply to that traffic when it is interexchange in nature.¹⁶
- FCC rule 701(b)(1) provides that reciprocal compensation under Section 251(b)(5) does not apply to “traffic that is interstate or intrastate exchange access, information access or exchange services for such access.” Instead, Section 251(g) of the Act preserves the “access regimes applicable to this traffic.”¹⁷ If IP-PSTN traffic is indeed an information service, then it is expressly excluded from the reciprocal compensation requirement of Section 251(b)(5).¹⁸
- The FCC’s rules exempting interexchange traffic from reciprocal compensation and applying access charges instead make no exception based on the type of transmission technology to deliver an interexchange call to the PSTN:

[a]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.¹⁹

- Even if a “net protocol change” occurs on a call to make it an information service under the FCC’s enhanced service definition, the ESP exemption applies only to an ESP’s use of the PSTN as a link between the ESP and its subscribers to obtain access to the ESP’s information service (e.g., for Internet access).²⁰ As the FCC subsequently described it, the ESP exemption carves ESPs out from the access charge obligation when they “use incumbent LEC networks to receive calls from their customers,”²¹ i.e., for ESP bound traffic.²² The interexchange IP-PSTN traffic at issue here, on the other hand,

¹⁵ 47 C.F.R. Section 69.5(b).

¹⁶ Final Arbitrator’s Report, Section VI, p. 38.

¹⁷ ISP Remand Order, para. 37.

¹⁸ Final Arbitrator’s Report, Section VI, p. 38.

¹⁹ IP-Enabled Services NPRM, para. 61; Final Arbitrator’s Report, Section VI, p. 39.

²⁰ The FCC exempted ESPs from access charges for such calls, where the calls are delivered from the ESP’s subscribers to the ESP’s “location in the exchange area.” Memorandum, Opinion and Order, MTS and WATS Market Structure, CC Docket 78-72, 97 FCC2nd 682 (1983) para 78.

²¹ First Report and Order, Access Charge Reform, CC Docket No. 96-262, 12 FCC Rcd. 15982, para. 343 (1997).

²² IP-Enabled Services NPRM, para. 25.

is not ESP bound. Rather, it is “PSTN bound,” just like a traditional long distance telephone call.²³

The decision on MCI RC 15 is also contrary to the Records Exchange Rule in that it rejected the contractual provisions requiring separate trunks for IXC traffic even though such separate trunk groups are required by the Records Exchange Rule. Under the Arbitration Order, the CLECs would be able to report traffic as “IP-originated” and avoid paying applicable switched access charges to both SBC Missouri and the small ILECs, which will jeopardize the affordability of local rates.²⁴ Moreover, as explained more fully in SBC Missouri’s request for rehearing on this issue, the Commission has no authority to award the CLEC Coalition the relief it now seeks, as it never sought reciprocal compensation for VoIP traffic in this proceeding.²⁵

Accordingly, the language SBC Missouri has proposed for this issue -- which the Arbitrator adopted for the CLEC Coalition²⁶ -- most appropriately reflects the Commission’s substantive determination on this issue.

UNE Issue

2. **CC UNE 4**: Is SBC obligated to provide access to UNEs in its entire certificated local exchange area without any other geographic restriction?

SBC MO: Must CLEC meet certain conditions in order to access and use any UNEs?

This issue involves UNE Issue 4 pertaining to Section 2.1 of the UNE Appendix. The specific contract language at issue involves a provision that makes it clear that SBC Missouri’s obligation to provide UNEs extends only to its certificated territory. Under SBC Missouri’s proposed language, there is no obligation to provide UNEs outside of its

²³ Constable Direct, pp. 14-17; Final Arbitrator’s Report, Section VI, pp. 43-45.

²⁴ See, SBC Missouri’s Post-Hearing Brief, filed June 7, 2005, at pp. 391, 406; Constable Direct, pp. 5-21.

²⁵ See, SBC Missouri’s Motion for Correction and Clarification and Application for Rehearing, pp. 7-9.

²⁶ See, Final Arbitrator’s Report, pp. 33-50; and Attachment VI.A Detailed Language Decision Matrix, pp. 28-30 of 67.

certificated local exchange area. The Arbitrator purported to deal with CC UNE Issue 4 in the Final Arbitrator's Report and, with regard to the issue raised by SBC Missouri, stated:

To the extent that SBC Missouri's language seeks to limit a CLEC's ability to use a UNE to provide non-qualifying services as well as qualifying services, such restrictions are contrary to the FCC's rules. To the extent that they limit access to UNEs to certificated telecommunications carriers, the language is proper.²⁷

In the Detailed Language Decision Matrix, the Arbitrator made clear that, with respect to Section 2.1 "SBC's language is most consistent with the Arbitrator's Report."²⁸ As SBC Missouri's proposed language was expressly approved by the Arbitrator, there is no justification for the CLEC Coalition's refusal to include that language in the party's Interconnection Agreement. Accordingly, the Commission should order that Section 2.1 be included as a part of the UNE Appendix.

WHEREFORE, SBC Missouri respectfully requests the Commission to direct the parties to insert SBC Missouri's proposed contractual language into the ICA as the language that best conforms to the Commission's July 11, 2005 Arbitration Order

Respectfully submitted,

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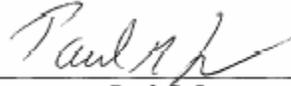
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²⁷ Final Arbitrator's Report, Section III, p. 8.

²⁸ Final Arbitrator's Report, Section III, Attachment III.A, Part 1, p. 73.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on August 4, 2005.



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