IV. Pricing Appendix:

1. Cost-based rates for the AT&T/SBC ICA:

AT&T Pricing Issue 1: *What are the appropriate cost-based rates for the elements in dispute between the Parties?*

Discussion:

SBC's proposed prices are set forth in Attachment 30 Appendix-Pricing Schedule to its *Petition for Arbitration*. AT&T's proposed prices are set forth in Attachment 30 Pricing Schedule to its *Response to the Petition for Arbitration*. The shaded areas in the AT&T Pricing Schedule depict the portions of the Pricing Schedule which are in dispute, as is also shown in demonstrative Exhibit No. 210.[1] SBC states that its proposed prices generally follow those rates which were established by the Commission in prior arbitrations or were included in the M2A, with changes in three areas: (1) elements which were voluntarily offered in the M2A (outside of Section 251(c)(2)) were removed; (2) elements eliminated from the list of Section 251(c)(2) unbundled network elements by the FCC subsequent to the approval of the M2A were removed; and (3) a few elements which were not part of the M2A Appendix-Pricing were included as a result of negotiations between the parties. The Order refers to the line numbers on the AT&T Pricing Schedule as reflected in Exhibit 210 and AT&T's Attachment 30 to its *Response to SBC Missouri's Petition for Arbitration.*

a. DS3 Loops (Lines 22-25):

Discussion:

SBC states that DS3 Loops are not currently included in the M2A.[2] While DS3 Loops have been declassified in part under the FCC's *TRRO,* there may be situations

[1] Tr. 943 (Rhinehart).

[2] Tr. 946 (Rhinehart).

where AT&T will seek to order DS3 Loops under Section 251(c)(2). SBC states that, to date, neither AT&T nor any other CLEC in Missouri has requested DS3 Loops.[3]

SBC states that its proposed rates are appropriate, forward-looking, cost-based rates that should be adopted by the Commission. SBC's proposed DS3 Loop prices are based upon its internal cost studies. SBC states that AT&T's proposed loop rates are apparently based upon a cost study utilized in Texas; however, no cost study has been filed in this proceeding.[4] SBC contends that AT&T has not provided any evidence that the cost study utilized in Texas reflects Missouri costs or that any of the adjustments to that cost study ordered by the Texas PUC are appropriate in Missouri.[5] For these reasons, SBC asserts, it would be unlawful and unreasonable for the Commission to adopt AT&T's proposed DS3 Loop prices since they have not been shown to comply with the standards set forth in Section 251(d)(1) as applied by the FCC in its TELRIC standard.

SBC further states that, if the Commission does not choose to adopt SBC's proposed DS3 Loop prices, then the most reasonable approach to follow would be to require the parties to utilize the Bona Fide Request ("BFR") process to determine the appropriate rates in the event AT&T chooses to order DS3 Loops in the future. The BFR process is a part of the current M2A and is the appropriate process to follow where an unbundled network element under Section 251(c)(2) is requested and no rate has previously been established by the Commission.[6]

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[3] *Id.*

[4] Tr. 944-945 (Rhinehart).

[5] Tr. 947-948 (Rhinehart).

[6] Tr. 1035 (Ivanuska); Tr. 947 (Rhinehart).

AT&T responds that its proposed rates constitute appropriate, forward-looking, cost-based rates. AT&T proposes to use DS3 loop prices currently in use in the AT&T-SBC Texas ICA.[7] AT&T's witness, Rhinehart, testified that the Texas rates are cost-based and that, based on his personal knowledge of SBC's costs and processes, costs are similar in Texas and Missouri.[8] AT&T contends that SBC provided no support for its proposed DS3 loop rates. At hearing, SBC modified its proposal to set DS3 rates on an individual case basis ("ICB"), but AT&T states that this proposal is impractical because portions of the ICA expressly require SBC to provide DS3 loops on demand. AT&T warns the Commission that failure to adopt a price now could impede the use by CLECs of requested DS3 loops.[9]

Decision:

SBC's proposed prices are based on a cost-study not included in the record. AT&T's proposed prices are drawn from the parties' Texas ICA – approved by the Texas PUC – and supported by the testimony of a witness that costs are "similar" in Texas and Missouri. The Arbitrator concludes that AT&T's proposed prices are preferable in the circumstances, particularly since SBC could have filed its cost study herein but evidently elected not to do so.

b. <u>DSL and IDSL-Capable Loop Prices (Lines 28-62)</u>:

Discussion:

SBC states that its proposed DSL-capable loop prices are those established by the Commission in the AT&T/MCI Arbitration in Case No. TO-97-40. SBC further states

[7] Schedule of Prices, lines 22 to 25.

[8] Tr. at 944: 19-22; 947:23-948:3.

[9] Tr. at 984:2-14.

that AT&T's proposed prices for DSL-capable loops are found in the expired M2A. SBC explains that these M2A rates reflect voluntary reductions on the part of SBC to levels below the TELRIC cost-based rates as found by the Commission in Case No. TO-97-40.

SBC's witness, Silver, proposes that analog loops and comparable DSL-capable loops be priced the same within each zone.[10] AT&T's proposed rates reflect this proposal, while SBC's proposed rates do not conform to Silver's testimony.[11] Similar to DSL-capable loops, AT&T recommends that pricing for IDSL-capable loops match the pricing for comparable analog loops.[12] SBC agreed with AT&T's proposed recurring rates but did not match the non-recurring charges.

Decision:

AT&T did not rebut SBC's contention that the rates for these elements in the M2A "reflect voluntary reductions on the part of SBC to levels below the TELRIC cost-based rates." Therefore, the Arbitrator has no choice but to select SBC's proposed rates.

c. <u>Removal of Non-Excessive Bridge Tap (Lines 87-91)</u>:

Discussion:

SBC states that its proposed pricing is consistent with TELRIC standards and should be adopted. SBC further states that AT&T does not propose a price for non-excessive bridge tap removal, apparently on the basis that it will not seek to order that service. SBC contends that, if the Commission adopts AT&T's proposal to eliminate these

[10] Silver Direct, p. 69.

[11] Schedule of Prices, lines 28 to 55.

[12] Schedule of Prices, lines 59 to 62.

elements from the contract, AT&T would not be able to order the removal of non-excessive bridge tap except by utilizing the BFR process.[13]

The Commission adopted removal of bridged tap rates in Case No. TO-2001-439 and those approved rates are included in AT&T's proposed pricing.[14] To AT&T's knowledge, there are no Commission-approved rates that would replace the $0 rates in the present AT&T-SBC ICA Attachment 25 DSL for LST. At hearing, AT&T stipulated that it had not incorporated removal of all bridged tap as a part of the ICA.[15]

Decision:

SBC does not explain the source of its proposed rates, while AT&T's are drawn from a decision by this Commission. For this reason, the Arbitrator concludes that AT&T's proposed rates are preferable.

d. <u>Line Station Transfers (Lines 98-99)</u>:

Discussion:

SBC states that this service involves changing out a line after the loop has been initially provisioned.[16] SBC further states that its proposed prices are based upon internal cost studies which are compliant with the TELRIC methodology. SBC contends that, because AT&T proposes not to include any line station transfers in the ICA, if the AT&T proposal were adopted, AT&T would not be able to request this service. For this reason, SBC suggests that its proposed rates be adopted.

[13] Tr. 955-956 (Bourianoff).

[14] Schedule of Prices, Lines 74 and 75.

[15] Tr. 955:10-12.

[16] Chapman Direct, pp. 29-30; Chapman Rebuttal, pp. 10-11.

AT&T responds that, consistent with its overall approach, AT&T recommends adoption of line and station transfer rates from the existing ICA.[17] AT&T asserts that SBC has provided no support for its proposed LST rates. As there are no approved rates for LST, none should be included in the successor ICA without a cost-showing demonstrating that SBC would not be double-recovering costs included elsewhere.[18]

Decision:

The Arbitrator agrees with AT&T. SBC's cost study has not been provided to the Arbitrator.

h. Cross Connects to DCS 4-Wire (Lines 117-118):

Discussion:

SBC does not propose to include these services in the contract as they are not Section 251(c)(3) elements. Under the FCC rules, DCS is not a UNE; instead it is a special access functionality which is available under the special access tariff to CLECs and IXCs on an equal basis as required by the FCC rules.

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

i. Voice Grade Dedicated Transport Cross Connects:[19]

Discussion:

[17] Schedule of Pricing, Lines 97 to 99.

[18] Rhinehart Direct, p. 74

[19] Lines 218-221.

SBC proposes no prices as the provision of these cross connects is not subject to Section 251(c)(3) as no finding of impairment has ever been made by the FCC on voice grade dedicated transport.

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

j. Dark Fiber Interoffice Transport (Lines 251-253):

Discussion:

SBC states that AT&T has proposed no prices for this service and thus would be unable to order it if its position is adopted.

AT&T states that it supports the adoption of the present ICA rates for dark fiber,[20] while SBC proposes the establishment of additional rates that may be duplicative of the per-foot prices already reflected in the price list. For this reason, AT&T asserts, SBC's additional dark fiber pricing elements should be rejected.

Decision:

The Arbitrator agrees with AT&T for the reasons stated above.

2. Charges for Routine Network Modifications:

AT&T Pricing Issue 2: ***Should routine network modifications be assessed an ICB rate, or, are the costs for routine network modifications already included within the UNE rates?***

AT&T UNE Issue 18: ***Is SBC entitled to charge AT&T for routine network modifications?***

CLEC Coalition UNE Issue 19(b): ***Charges: Is SBC entitled to charge CLEC any amounts for routine network modifications, or are the costs for those modifications already being recovered by the rates for the loops/transport circuits?***

MCI Pricing Issue 10: ***What are the appropriate rates for routine modifications?***

[20] Schedule of Prices, Lines 251 to 253.

WilTel UNE Issue 29: ***What charges should be applicable to routine network modifications, and how should they be determined?***

Discussion:

> AT&T and SBC have agreed in section 4.8.2 to the following basic definition of what constitutes a routine network modification:
> A routine network modification is an activity that SBC MISSOURI regularly undertakes for its own customers. Routine network modifications include, rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that SBC MISSOURI ordinarily attaches to activate such a loops to activate for its own retail customers under the same conditions and in the same manner that SBC MISSOURI does for its own retail customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. SBC MISSOURI will place drops in the same manner as it does for its own customers.

SBC states that the Commission should adopt its proposed language which allows SBC to recover the costs of performing a routine network modification because SBC's language is consistent with the *TRO*, in which the FCC determined that its "pricing rules provide incumbent LECs with the opportunity to recover the costs of the routine network modification" required by the FCC in its *TRO*.[21] Specifically, SBC's language would allow it to recover those costs that are not recovered in the current Missouri recurring and non-recurring rates, on an ICB basis and in no event would such recovery result in double recovery.[22]

SBC proposes to utilize ICB rates. SBC states that AT&T does not propose any rates nor has it provided any cost study establishing that all costs for routine network

[21] *TRO,* ¶ 640.

[22] Smith Rebuttal, pp. 7-11.

modifications are already recovered in other rates.[23] SBC points out that this Commission has never made such a finding.[24] SBC states that it presented evidence of certain routine network modification costs that are not currently recovered in UNE rates including, for example, adding equipment cases, repeaters and associated line cards, placement of repeater shelves, and splicing for dedicated transport and dark fiber transport.[25] Given that the FCC has unequivocally determined that routine network modifications performed at the request of a CLEC are subject to compensation,[26] SBC contends that its proposed price is the only viable alternative. If AT&T wishes to dispute a price on the basis that it is not compliant with the Act or otherwise not applicable under FCC rules, it may utilize the dispute resolution process for that purpose. On the other hand, under the AT&T proposal, there is simply no means by which SBC could recover its costs for routine network modifications such that the AT&T proposal is contrary to the FCC's directives.

AT&T states that it objects to SBC's proposed individual case basis ("ICB") pricing for routine network modifications.[27] AT&T asserts that SBC is not entitled to impose additional charges on AT&T to perform routine network modifications. According to AT&T, the FCC has noted that the costs of routine network modifications are most often already included in existing TELRIC rates:

> We note that the costs associated with these modifications often are reflected in the recurring rates that competitive LECs pay for loops. Specifically, equipment costs associated with modifications may be reflected in the carrier's investment in the network element,

[23] T. 957 (Rhinehart).

[24] T. 958 (Rhinehart).

[25] Smith Rebuttal, pp. 7-10.

[26] *TRO,* ¶ 640; Smith Direct, pp. 31-32.

[27] SBC's language to which AT&T objects is in sections 4.8.7, 8.5.7.6, and 15.12.6.

> and labor costs associated with modifications may be recovered as part of the expense associated with that investment (*e.g.*, through application of annual charge factors (ACFs)). The Commission's rules make clear that there may not be any double recovery of these costs (*i.e.*, if costs are recovered through recurring charges, the incumbent LEC may not also recover these costs through a NRC).[28]

According to AT&T, this means in most instances that existing non-recurring and recurring UNE rates have been set at levels that fully recover an ILEC's forward-looking cost of performing routine network modifications and, as a consequence, no further cost recovery would be justified. Certainly, no ILEC should be permitted to add these charges to an ICA without Commission review and approval of underlying cost studies. Accordingly, AT&T asserts, SBC's attempt to impose additional charges here, without benefit of a Commission cost proceeding, should be rejected and all SBC proposed language specifying extra charges for routine network modifications should be eliminated.

AT&T further states that its witness, Rhinehart, testified that, based on his review of cost studies that were used to establish SBC's UNE rates, he concluded that the costs of routine network modifications were already included in SBC's recurring and non-recurring UNE rates. Specifically, routine network modifications are the types of work that would be recorded on SBC's books as either maintenance or repair costs. Both of these types of costs were explicitly captured in SBC's recurring UNE rates and in its non-recurring rates. For this reason, Rhinehart testified that SBC should not be allowed to establish new separate charges for routine network modifications because such charges would represent a double recovery.[29]

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[28] *TRO*, ¶ 640.

[29] Rhinehart Direct, at pp. 57-58.

AT&T urges the Commission to find that SBC's current recurring rates and non-recurring charges adequately compensate SBC for routine network modifications and to reject SBC's proposed language in sections 4.8.7, 8.5.7.6, and 15.12.6.

The CLEC Coalition states that routine network modifications are by definition "routine" and should not be priced on an ICB basis. Contrary to SBC witness Smith's contention,[30] CLECs do not object to SBC's ability to recover any costs associated with loop and transport circuit provisioning that are not currently recovered, provided that SBC demonstrates that such costs are not recovered in its existing rates today. AT&T witness Daniel Rhinehart testified that based on his personal knowledge of how SBC's cost studies were prepared, he is firm in his belief that the costs of routine network modifications generally are fully covered.[31] The CLEC Coalition remains concerned that SBC not be permitted to charge for an activity that is a routine network modification where the cost of performing that activity is already part of the recurring or non-recurring charges for the UNE. The very fact that these are *routine* network modifications means that SBC is performing these activities on a regular basis. That is, the activity may not be being performed all the time, but it is being performed much of the time the loop or transport is being provisioned.

The Coalition points out that there are no cost studies in evidence. SBC has not presented any cost information; rather it has simply asserted in language proposed in Smith's rebuttal testimony that certain items, such as repeaters, are not included in existing rates. No cost estimate is set out, no information provided, notwithstanding the fact that the

[30] Smith Rebuttal, at p. 7.

[31] Tr. at 956.

TRO and the accompanying routine network modification provisions have been known to SBC for some eighteen months. .

The Coalition suggests that SBC hopes that the CLECs will be driven to using SBC's special access services to obtain pricing certainty and provisioning commitments that will allow them to deliver service to their customers for a promised price on a promised date. SBC seeks this outcome, according to the Coalition, because of the much higher rates generally applicable to special access. The Coalition urges the Commission to consider that SBC is the only entity that possesses the cost information on which rates can be set and that SBC has the ability to present its cost studies at any time. The CLECs should not be subjected to ICB pricing when SBC chose not to produce substantive cost data. Moreover, the Coalition states, use of ICB pricing for routine network modifications would permit SBC to avoid its obligation to establish that its UNE prices comply with the mandatory TELRIC standard.

MCI states that this issue involves SBC's "historic practice" of seeking recovery of costs incurred in performing routine network modifications. MCI asserts that SBC's costs for this function are recovered indirectly rather than through an explicit charge.[32] For that reason, MCI proposes a rate for routine modifications of $0.00.

SBC witness Smith's selective citation to ¶ 640 of the *TRO* is not persuasive. Paragraph 640 in its entirety reads as follows:

> The Commission's [FCC's] pricing rules provide incumbent LECs with the opportunity to recover the cost of the routine network modifications we require here. State commissions have discretion as to whether these costs should be recovered through non-recurring charges or recurring charges. **We note that the costs associated with these modifications often are reflected in the recurring rates that**

[32] Price Direct, at 134-35.

> **competitive LECs pay for loops. Specifically, equipment costs associated with modifications may be reflected in the carrier's investment in the network element, and labor costs associated with modifications may be recovered as part of the expense associated with that investment (e.g., through application of annual charge factors (ACFs)). The Commission's rules make clear that there may not be any double recovery of these costs (i.e., if costs are recovered through recurring charges, the incumbent LEC may not also recover these costs through a NRC).** [33]

MCI states that the issue is whether SBC should be permitted to recover its costs twice.

WilTel states that SBC should not be permitted to *unilaterally* determine rates and charges for routine network modification work. SBC is only entitled to recover "directly-attributable forward-looking costs" associated with these modifications, and nothing more.[34] Such costs must be attributed to the modifications on a "cost-causative" basis.[35] Any proposed charges by SBC must be approved by the Commission and must be based upon substantial evidence in the record of this proceeding. Moreover, SBC is only entitled to charge WilTel for the costs of these modifications to the extent that such costs are not recovered through the pricing of UNEs under the ICA or by any other means. As noted by the FCC in the *TRO*, "the costs associated with these modifications often are reflected in the recurring rates that competitive LECs pay for loops."[36]

Only after SBC has provided evidence of the cost of doing such work should WilTel be required to pay for routine network modifications. In the event that SBC has not

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[33] *TRO,* ¶ 640; footnotes omitted; emphasis added.

[34] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98, 95-185, *First Report and Order,* 11 FCC Rcd 15499, 15847, ¶ 682 (1996) ("*Local Competition Order*"), aff'd in part and vacated in part.

[35] *Id*. at 15851, ¶ 691 ("Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them.")

[36] *TRO*, at ¶ 640.

provided substantial evidence to this Commission justifying the imposition of such charges, then WilTel's proposed language in this Section of the ICA will still enable SBC to recover costs it incurs, provided that it certifies to WilTel that such costs are justified. WilTel's proposed language, therefore, addresses both SBC's concern that it be reimbursed for the actual costs it incurs, and addresses WilTel's concern that it not be assessed charges that are not permitted under the Act.

SBC replies that it has proposed that rates for these services be determined on an ICB basis, while the CLECs have proposed a zero price. The FCC has made it abundantly clear that ILECs are permitted to recover costs incurred for routine network modifications to the extent existing rates do not recover those costs.[37] SBC states that it has identified several areas where costs of routine network modifications are not recovered in UNE rates including, for example, the placement of repeaters and associated line cards and splicing for dedicated transport and dark fiber transport.[38] SBC's proposed ICB rate permits it to recover costs under those circumstances. Accordingly, SBC's proposed rates should be adopted. This permits the CLEC to object to payment if it believes that the rates are inappropriately applied, but permits SBC recovery in appropriate circumstances in compliance with the FCC's *TRO*.

Decision:

The Arbitrator finds Rhinehart's testimony to be compelling and concludes that SBC's costs for routine network modifications are included in its recurring and non-recurring UNE rates. To the extent that SBC can demonstrate that they are not, then SBC must be

[37] *TRO*, at ¶ 640; Smith Direct, pp. 31-32.

[38] Smith Rebuttal, pp. 7-10.

allowed to recover its costs. However, SBC has not filed a cost study in this proceeding. For these reasons, the CLEC's language is preferable in each ICA.

3. DCS Rates:

AT&T Pricing Issue 3: *Should DCS rates be included in the ICA or should the ICA reference SBC's federal tariff for these rates?*

Discussion:

This issue involves Lines 226-238 of AT&T's Attachment 30 (Exhibit 210). SBC proposes no prices for these elements on the basis that they are not unbundled network elements under Section 251(c)(2) of the Act.[39] The FCC requires only that DCS be offered to CLECs on the same basis as to interexchange carriers,[40] an obligation SBC has met by making the service available in its special access tariff.[41]

AT&T responds that this issue is related to UNE Issue 20. If the Commission rules, as it should, that DCS should be provided by SBC, then pricing for DCS and related cross-connects should be included in the Schedule of Prices. As with other AT&T proposals, the suggested rates come directly from the existing AT&T-SBC ICA and should be adopted.[42]

Decision:

The Arbitrator notes that the *TRO* and *TRRO* limited dedicated transport to facilities between ILEC offices, so DCS need not be provided as part of that UNE but rather on a wholesale basis as SBC suggests.

4. Rates for Entrance Facilities:

[39] Silver Direct, pp. 124-125.

[40] 47 C.F.R. 51.319(d)(2)(iv).

[41] Silver Direct, pp. 124-125.

[42] Schedule of Prices, Lines 117 to 118 and 226 to 238.

AT&T Pricing Issue 4: ***Should rates for entrance facilities be included in the ICA?***

Discussion:

This issue involves Lines 160-178 of AT&T's Attachment 30 (Exhibit 210). SBC proposes no prices for entrance facilities since the FCC has clearly declassified entrance facilities under the *TRRO*.[43] Moreover, AT&T's proposed prices are not supported by any cost study nor have the expired prices been shown to be compliant with TELRIC nor otherwise subject to review and approval by the Commission. The rates proposed by AT&T are substantively below the rates currently contained in the M2A. Accordingly, there is no lawful basis on which to adopt AT&T's proposed pricing.

AT&T states that interconnection facilities are required to be provided based on Section 251(c)(2) of the Act under the same pricing terms as UNEs, that is, at TELRIC.[44] For this reason, AT&T proposes that entrance facilities used for interconnection between carriers must be included in the price list and the rates in the present AT&T-SBC ICA.[45]

Decision:

The Arbitrator concludes that AT&T is entitled to access to entrance facilities at TELRIC rates. AT&T's pricing is preferable.

5. Rates for VG/DS0 Transport:

AT&T Pricing Issue 5: ***Should rates for VG/DS0 transport be included in the ICA?***

[43] *TRRO*, ¶¶ 136-141.

[44] Rhinehart Direct, p. 76.

[45] Schedule of Prices, Lines 160 to 178.)

Discussion:

This issue involves Lines 181-195 of AT&T's Attachment 30 (Exhibit 210). SBC proposes no prices for this service because it has never been found to be an unbundled network element by the FCC under Section 251(c)(2). AT&T admits as much in its DPL Statement Of Position, but seeks to include rates for the service on the basis that there has been no showing of non-impairment. Under the statute, however, AT&T has it backwards. Pursuant to the provisions of Section 252(d)(2)(B), an item becomes subject to Section 251(c)(2) only when the FCC determines that "the failure to provide access to such network element[s] would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." The FCC has made no such impairment finding, nor has any evidence of impairment been presented here, even assuming this Commission had authority to make an impairment finding. Accordingly, the Commission may not adopt AT&T's proposed pricing.

AT&T responds that the FCC has not delisted DSO transport and SBC is still obligated to provide it as a UNE. Consistent with its overall approach to rates to be adopted in the successor ICA, AT&T proposes prices for VG/DS0 transport that are in the existing AT&T-SBC ICA. Because there has been no finding of non-impairment for DS0 transport in either the *TRO* or *TRRO*, VG/DS0 pricing should remain in the price list for the successor ICA.

Decision:

The Arbitrator agrees with AT&T for the reasons stated above.

6. Attachment 20:

AT&T Pricing Issue 6: *Should the ICA include Attachment 20 and its corresponding rates?*

Discussion:

This issue involves Lines 319-321, 323-325 and 336-341 of AT&T's Attachment 30 (Exhibit 210). SBC states that its proposed rates should be adopted as they are those currently listed in the M2A. AT&T proposes no prices for these services and AT&T would be unable to order them if its position were adopted. Accordingly, SBC's proposed position should be adopted.

AT&T responds that it opposes the inclusion of the rates proposed by SBC just as it opposes the inclusion of Attachment 20 in its entirety. If Attachment 20 is not a part of the ICA, it makes no sense to include rates associated with Attachment 20.

Decision:

The Arbitrator agrees with AT&T. This matter is discussed more fully under Billing.

7. UNE Rider Rates:

AT&T Pricing Issue 7: *Should the ICA include the UNE Rider rates?*

Discussion:

SBC proposes that the transitional rates for the elements which the FCC declassified in the *TRRO* but for which a transitional plan was adopted be included in a UNE Rider.[46] SBC states that it would not object to including these rates in the Pricing Schedule provided that the rates were stated on a separate worksheet that would be

[46] Silver Rebuttal, pp. 25-27.

removed when the transition period ended.[47] AT&T seeks to include those rates in the ICA Pricing Appendix.

SBC contends that its proposal should be adopted because it makes it clear to all parties that may choose to opt into the AT&T ICA that those elements subject to the FCC's transitional pricing plans are no longer available when that transitional plan terminates. SBC states that AT&T concedes that the rates will not be available as of the end of the transition period and that no further amendment of the contract need be made at that point.[48] Given that, SBC's proposal to include the rates for the transitional pricing elements in the UNE Rider better captures the intent of the parties and demonstrates to any others opting into the ICA the precise impact of the transitional pricing plan.

AT&T responds that, in rebuttal testimony, SBC witness Silver agreed with AT&T that UNE Rider rates should be reflected as a separate worksheet in Attachment 30 -- Pricing.[49] However, SBC made no showing of what should be included as transitional rates or exactly what should be included in the separate worksheet. AT&T states that it has proposed a specific list of elements and prices and filed the proposed transitional price list with the Pricing DPL in this case. Lacking an opposing showing by SBC, the price list proposed by AT&T should be adopted.

Decision:

The Arbitrator agrees with SBC's suggestion that the transitional rates be included in the pricing schedule on a separate, removable sheet.

[47] Silver Rebuttal, p. 26.

[48] Tr. 961-962 (Rhinehart).

[49] Silver Rebuttal, p. 26.

8. Rates for Collocation by SBC on AT&T's Premises:

AT&T Pricing Issue 8: *What rates should apply to SBC for its use of AT&T's Space?*

Discussion:

SBC proposes that AT&T's rates for the provision of space be comparable to what SBC itself charges for similar collocation arrangements. AT&T, in turn, proposes that it charge its tariffed rates for DS1 port termination as found in its Missouri Access Service Tariff. SBC's proposal better reflects the appropriate price and should be adopted.

AT&T responds that it proposes to use the rates found in its Missouri tariff for access service.[50] The rates in AT&T's tariff, which have been agreed to by SBC in a number of other states, are generally comparable to SBC's charges for the same capability. AT&T states that it has no obligation to make this type of collocation arrangement in AT&T's switching centers available to SBC. In the *Virginia Arbitration Order*, the FCC's Wireline Competition Bureau explicitly determined that non-incumbents do not have collocation obligations and characterized any such arrangements as "voluntary offer[s]." As a result, no particular pricing standard applies in this instance. Nevertheless, AT&T's proposed rates are comparable to those charged by SBC in its collocation tariff and collocation appendices for the same functionality and should be adopted by the Commission.

Decision:

The Arbitrator agrees with AT&T for the reasons stated above.

[50] Specifically, the rates are found in P.S.C. Mo. No. 20, AT&T Communications of the Southwest, Inc., Access Service Tariff, Price List, Original Pages 10 and 11 (December 26, 2002).

9. Cost-based rates for the CLEC Coalition/SBC ICA:

CLEC Coalition Pricing Issue A 1: ***What are the appropriate cost-based rates for the elements in dispute between the Parties?***

Discussion:

SBC states that its proposed prices for the CLEC Coalition are contained in Attachment 6, Appendix-Pricing, to its Petition for Arbitration. As reflected in that pricing schedule, SBC states that its proposed rates are generally those contained in prior arbitrations or the M2A, but have been modified to (1) eliminate certain voluntary offerings made in the M2A that are not required under the Act, (2) remove certain elements that have been declassified by the FCC in its *TRO* and *TRRO* decisions since the M2A was adopted and (3) add rates for certain services which were not part of the M2A but which were negotiated by the parties.

The CLEC Coalition's position is that current prices in the M2A should continue.[51] To the extent that SBC's new proposed prices are identical to current prices, there is no issue. However, where SBC proposes to change or drop rates, the Coalition is opposed.[52] The Coalition states that SBC's only testimony addressing any changes to existing CLEC Coalition rates was a "perfunctory overview."[53] Importantly, SBC presented no cost studies or other evidence to support any changes in rates.[54] Considering the absence of record

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[51] Tr. at 1031.

[52] *Id.* at 1031, 1032. The Coalition has now filed an errata to the Pricing Appendix which contains the current M2A rates to make clear the Coalition's stated position that it seeks only to have the current rates continued.

[53] Silver Direct, at pp. 68-69; Coalition's Brief at p. 198.

[54] SBC's attorney routinely attacked rates proposed by CLECs as unsupported where there were no cost studies presented. *See, e.g.,* Tr. at 1036 (noting the CLEC Coalition has provided no cost study to justify the adoption of rates); Tr. at 359-260 (noting that MCI has not provided a cost study to justify MCI's proposal; therefore the Commission does not have any basis to determine whether the proposed rates meet the relevant standard).

evidence supporting a change to the status quo, the Coalition contends that the Commission should not make any changes to current rates.

The Coalition reminds the Commission that it has routinely declined to make changes to rates in a § 252 arbitration even when cost studies *have* been presented because a thorough review of those studies is not possible under the time constraints imposed by the Act for arbitration. For example, in its resolution of an earlier SBC/AT&T arbitration, the Commission resolved the rate issue by directing the parties to adopt the existing M2A rates, noting that review of the cost studies in the record was not possible "because of the strict timeframe imposed by the Act."[55] The Commission also declined to change rates "based on the cost studies submitted in this case by SWBT, which have not been the subject of rigorous review by Staff, CLECs, and the Commission because of the strict time restraints on the arbitration case" in an arbitration between SBC and MCI.[56] Again, the Commission ordered that the M2A rates, with adjustments from a docket where additional rates had been thoroughly adjudicated, was the proper result. These precedents established the Commission's position that changes to existing rates should be addressed in a separate cost proceeding, not in a § 252 arbitration.

SBC replies that the CLEC Coalition's proposed prices are set forth in Attachment 6, Appendix-Pricing, to its Response to SBC Missouri's Petition for

[55] *In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company pursuant to Section 252(b) of the Telecommunications Act of 1996,* Case No. TO-2001-455 (*Arbitration Order,* issued June 7, 2001), at pp. 17-21.

[56] *In the Matter of the Petition of MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc., for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Case No. TO-2002-222 (*Arbitration Order,* issued Feb. 28, 2002), at pp. 39-40.

Arbitration.[57] The CLEC Coalition states that it disputes SBC's proposed rates in total, but fails to provide any proposed rates to be used in lieu of SBC's proposed rates. At the hearing, the CLEC Coalition claimed that it was seeking the M2A-approved rates.[58] To the extent those rates match those proposed by SBC Missouri, there is no controversy between the parties. To the extent that the CLEC Coalition seeks the M2A rates which were not proposed by SBC, however, the CLEC Coalition's proposal fails because (1) many of the rates contained in the M2A were voluntarily proposed by SBC and are not otherwise within the jurisdiction of the Commission in an arbitration proceeding, and (2) many of the rates proposed by the CLEC Coalition from the M2A are for elements which have been declassified by the FCC and are not subject to the Commission's jurisdiction under §§ 251-252 of the Act.

In its Response to SBC's Petition for Arbitration, the Coalition proposed rates for services that are not included in SBC's proposal.[59] However, the Coalition has provided no support for these rates. At the hearing, the Coalition conceded that these rates are not supported by any TELRIC studies and that the CLECs aren't even proposing that the Commission adopt them in this case.[60] For these reasons, SBC contends, there is no authority for the Commission to adopt these rates proposed by the CLEC Coalition.

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

10. Declassified Elements:

[57] A copy was marked as Exhibit 212.

[58] Tr. 1031 (Ivanuska).

[59] *See also,* Exhibit 212.

[60] Tr. 1035-1037 (Ivanuska, Magness).

CLEC Coalition Pricing Issue A 2: *Should those elements declassified by the FCC be contained in a 251 Pricing Schedule?*

Discussion:

SBC states that certain of the rates which have been declassified by the FCC in the *TRRO* pertain to elements which are not required under § 251(c)(3) but which SBC is nevertheless required to provide under § 271 of the Act. These elements are not subject to a § 251 arbitration, and the Commission does not have the authority to require their inclusion in an ICA.

SBC states that, pursuant to the provisions of the *TRO*, the FCC is the body with authority to review and approve prices for § 271 elements, and it has announced that it will employ the "just and reasonable" standard contained in § 201 of the Act.[61] The only state Commission role under § 271 is to recommend approval or disapproval of entry into the long distance market.[62] Beyond that, it is within the FCC's jurisdiction to enforce § 271 and to establish prices which are just and reasonable pursuant to § 201 of the federal Act. Section 271(d)(6) makes it abundantly clear that it is the FCC, and not this Commission, that has authority to enforce the provisions of § 271. Further, non-§ 251(b) and (c) items are not subject to arbitration unless both parties voluntarily consent to the negotiation and arbitration of such items.[63] SBC insists that it has not consented to negotiate or arbitrate any § 271 element rates in this proceeding. As the Kansas Corporation Commission recently noted:

> 47 U.S.C. § 271(d)(6) makes clear the enforcement of Section 271 obligations is reserved to the FCC. The Commission finds that it

[61] *TRO,* ¶ 656.

[62] 47 U.S.C. Section 271(d)(2)(B).

[63] *CoServe LLC v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) (*"CoServe"*).

> cannot require inclusion of provisions in a Section 252 interconnection agreement, which it has no authority to enforce.[64]

Accordingly, SBC's position that such prices for § 271 elements do not belong in a § 251/252 ICA "must be adopted by this Commission."[65]

The Coalition responds that the ICA should include a schedule of prices for all of the unbundled network elements SBC will provide, including those elements that the FCC has determined are required to be unbundled under § 271. The non-arbitrability claim based on *CoServ* does not apply because SBC has voluntarily discussed and negotiated the disputed language at UNE DPL Issue No. 1 and UNE Sections 1.2.5 and 1.2.6. SBC clearly has knowledge of the disputed issues and freely and voluntarily negotiated them during the parties' negotiations. SBC has even provided alternative language to that proposed by the CLECs.

Decision:

The Arbitrator agrees that the ICA must include prices for § 271 UNEs. This issue is discussed in more detail under the UNE topic.

11. Rates for Section 271 UNEs:

CLEC Coalition Pricing Issue A 3: *Should the Pricing Schedule be limited to network elements classified as UNEs under Sections 251 and 252?*

Discussion and Decision:

The Arbitrator agrees that the ICA must include prices for § 271 UNEs. This issue is discussed in more detail under the UNE topic.

[64] Silver Rebuttal, p. 9.

[65] SBC's Brief at p. 287.

12. The Resale Discount Rate:

CLEC Coalition Pricing Issue A 4(1): ***What is the appropriate discount rate for all resale services?***

Discussion:

SBC states that the Coalition's position on this matter is unclear. In the DPL, the CLEC Coalition asserts that the resale discount is not addressed "in this phase of the arbitration," but conceded at hearing that there is no other arbitration phase scheduled.[66] Moreover, the Coalition does not propose any discount rate different than that proposed by SBC in its schedule of prices. Accordingly, there is nothing in evidence before this Commission which can be lawfully adopted other than the resale discount proposals offered by SBC. The SBC resale discount proposal tracks the current M2A. The Coalition has stated that it has no objection to the M2A resale discounts.[67]

The Coalition responds that it believes this issue is not being addressed in this phase of the arbitration. The Coalition further states that it is not seeking to increase the existing discount rate and opposes any proposed decreases.

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

13. The Pricing Appendix:

CLEC Coalition Pricing Issue A 4(2): ***Is it appropriate to have the Resale Price Schedule separate from the complete Appendix Pricing – Schedule of Prices which already contains the resale services and discounts?***

[66] Tr. 1044 (Ivanuska).

[67] Tr. 1044-1045 (Ivanuska).

Discussion:

SBC states that the Coalition apparently objects to stating the resale discount in the Appendix-Pricing, although it is unclear where the Coalition proposes to include the resale discount provisions. To the extent the Coalition proposes the inclusion of the resale discount provisions in any portion of the ICA other than the Appendix-Pricing, SBC asserts that the CLEC Coalition position should be rejected.

The CLEC Coalition responds that its members have objected to a single price schedule during all of the parties' negotiations. Although SBC claimed that other CLECs requested a unified document, the Coalition has steadfastly refused to agree to this. This is not a new position of the Coalition. The issue was arbitrated in Kansas and the Coalition's position was supported in the ALJ's Determination of the Issues. The Coalition states that the ICA should continue to include a separate pricing list for items available for resale. There are few ILEC ICAs where resale and UNE prices are combined in one Pricing Appendix. Further, the resale price list is so extensive that consolidating it with the UNE Pricing Appendix only makes it that much more unwieldy to look up UNE prices. For CLECs that do not utilize resale services, or any meaningful amount of them, the inclusion of resale prices in the UNE price schedule makes ICA management that much more complicated.

SBC replies that, during the negotiations, the Coalition acknowledged that it was more beneficial and resource efficient to consolidate all prices and elements into a single price schedule.

Decision:

The Arbitrator agrees with SBC that all prices, charges and rates should be located in one schedule.

14. Rates for Loop Qualification:

MCI Pricing Issue 5*: What are the appropriate rates for loop qualification for mechanized, manual and detailed manual? Should MCIm have electronic access to relevant loop qualification data via SBC Missouri's OSS at no cost?*

Discussion:

The proposed rates for these services are depicted on Lines 80-86 of the Pricing Schedule.

With regard to line 81 Loop Qualification Process Mechanized, SBC has determined that the rate proposed by MCI is that adopted by the Commission in Case No. TO-2001-439. Accordingly, while SBC believes a zero rate is inappropriate, it will accept MCI's proposed price.

With regard to line 83, Loop Qualification Process Manual, SBC has proposed a price that was established by the Commission in Case No. TO-2001-439, while MCI has proposed a zero price. SBC contends that it is inappropriate for the Commission to adopt a zero price for a manual loop qualification that requires significant effort on the part of SBC personnel to determine whether the loop is suitable for DSL services. SBC asserts that the Commission should adopt the rate proposed by SBC, which reflects the prior Commission decision in TO-2001-439.

With regard to line 85, Loop Qualification Process Detailed Manual, SBC has proposed a price to be determined by the Commission if requested by MCI in the future. MCI has proposed a zero price for this element. SBC contends that it is inappropriate to adopt a zero rate for a service that would require SBC personnel to expend significant time

to compile and provide the information requested by MCI. For this reason, SBC asserts that the Commission should adopt SBC's proposal, which would permit the Commission to determine an appropriate price in the future if MCI requests the service.

MCI responds that the rates it has proposed were set by the Commission in the Covad/SBC arbitration.[68] The "at no additional charge" phrase is taken verbatim from the Commission's Covad order.[69]

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

15. Line Station Transfer Rate:

MCI Pricing Issue 8*: Should there be a rate for line station transfer?*

Discussion:

SBC states that MCI apparently misunderstands the service being provided here. The line and station transfer ("LST") at issue here is performed in lieu of line conditioning after the loop has initially been provisioned.[70] Based on this misunderstanding, MCI incorrectly asserts that this cost is already included in the line connection rate.[71] Use of the LST can result in significant savings over the cost of post-provisioning conditioning and should be included in the ICA. Accordingly, SBC's proposed rate should be adopted.

MCI responds that the rate for line station transfers should be $0.00. This is not because MCI believes SBC should not recover the costs associated with these activities. Historically, SBC has not recovered the costs associated with line station transfers on a

[68] Case No. TO-2000-322 (issued March 23, 2000); *see also* Price Direct, at pp. 132-33.

[69] Price Rebuttal, at p. 63.

[70] Chapman Direct, pp. 29-30; Chapman Rebuttal, pp. 10-11.

[71] Chapman Rebuttal, pp. 10-11.

case-by-case basis. Instead, MCI explains, those costs are included on a averaged basis along with other labor functions as part of SBC's one-time charges for line connection. Allowing SBC to recover those costs via a direct charge would mean that SBC is recovering the same costs — and MCI paying the same costs — twice.[72] MCI asserts that SBC witness Chapman mischaracterizes this issue, claiming this is a "request" by MCI. The real issue is whether SBC is already recovering its costs. Furthermore, SBC has provided no cost study or other data supporting its proposed rate.

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

16. Rates for Loop Cross Connects:

MCI Pricing Issue 9: *What are the appropriate rates for Loop Cross Connects?*

Discussion:

The proposed prices for Loop Cross Connects are shown on Lines 118-141 of the SBC Missouri/MCIm Pricing Schedule.

With regard to Lines 119-121 concerning certain analog loop cross connects, SBC agreed at the hearing to utilize the MCI prices.[73] MCI agreed to that concession which should be incorporated into the agreement.[74] MCI also withdrew its position on Lines 136-141.[75]

The only items remaining at issue in this section are reflected on Lines 130-135. SBC has not proposed prices since DCS is not considered a UNE at all under the FCC's

[72] Price Direct, at pp. 133-34.

[73] Tr. 244 (Silver).

[74] Tr. 351 (Price).

[75] Tr. 339 (Price).

rules.[76] Under the FCC rules, SBC must offer this service to the same extent it is offered to interexchange carriers.[77] SBC offers loop cross connects in this situation under its special access tariff rates which are available to interexchange carriers and CLECs, thus meeting the FCC requirement. MCI concedes that if DCS is not considered a UNE then it should not be part of the contract.[78]

MCI agrees that the only rates still at issue are lines 130 to 135, relating to analog to digital cross-connect.[79] MCI's proposed rates are from the Commission's order in Case No. TO-2005-0037, which is the Commission's Order on remand from the U. S District Court.[80]

Decision:

The Arbitrator concludes that MCI is bound by the concession it made at hearing.

17. Rates for Blend Transport:

MCI Pricing Issue 17*: Should the price schedule include elements and rates for Blend Transport?*

SBC's Statement of the Issue*: Should the price schedule include charges for embedded base ULS-Tandem Switching, Blended Transport (per minute) and Common Transport (per minute)?*

Discussion:

[76] Silver Direct, pp. 124-125.

[77] Silver Direct, pp. 124-127.

[78] Tr. 352 (Price).

[79] Tr. 351 (Price).

[80] Price Direct, at 134.

This issue is partially resolved as a result of MCI's withdrawal of the proposed rates at Lines 487-488 and Lines 497-507 of the SBC Missouri/MCI Pricing Schedule. Only Lines 490-495 remain at issue.

SBC states that it appears that MCI is confused on this issue and that it should have withdrawn its proposal concerning Lines 490-495 as well. Blended transport rates are applicable to shared transport which is treated under the *TRO* as an adjunct to unbundled mass market local circuit switching – that is, blended transport is a rate element of unbundled shared transport, which is only available as a UNE to the extent the ILEC is required to provide unbundled mass market local circuit switching.[81] Since the FCC determined that unbundled mass market circuit switching is not a UNE in the *TRRO* and MCI has acknowledged it has no embedded base of ULS or UNE-P,[82] there is no need to include blended transport rates in the Pricing Schedule. Accordingly, it would not be lawful to include shared transport rates in the ICA, and certainly not at TELRIC rates.

MCI responds that the blended transport rates on lines 490-495 proposed by MCI are the rates in the current ICA between MCI and SBC. MCI further states that this issue is addressed and covered by the 13-state reciprocal compensation agreement between MCI and SBC. That agreement has a term which runs through June 2007. Accordingly, MCI states, it is not necessary for the Commission to address this issue at this time.

Decision:

The Arbitrator agrees with SBC for the reasons stated above.

[81] Silver Direct, p. 62; *TRO,* ¶ 12.

[82] Price Direct, p. 48.

18. Rates for Entrance Facilities:

MCI Pricing 18*: Is MCI entitled to obtain access to Entrance Facilities at cost-based rates for the purposes of interconnection?*

SBC's Statement of the Issue*: Should the price schedule include rates for any level of Entrance Facility?*

Discussion:

This issue involves Lines 509-545 of the SBC/MCI Pricing Schedule. SBC opposes the inclusion of any prices for the different types of entrance facilities depicted on Lines 509-545. In the *TRRO,* the FCC found that entrance facilities were not UNEs and accordingly declassified entrance facilities from § 251(c)(3) obligations.[83] Accordingly, there is no authority for the Commission to include entrance facilities in the ICA or to establish a price for entrance facilities. Entrance facilities are not § 271 elements even if this Commission had the authority to include those elements in an interconnection agreement and to determine the price for such elements. Accordingly, the Commission should not include entrance facilities in Lines 509-545 in the Pricing Schedule.

MCI attempts an end run around the FCC decision declassifying entrance facilities by claiming that SBC must still provide the same service under the name "interconnection facilities." But the interconnection obligation under § 251(c)(2) is to interconnect with "the facilities and equipment of any requesting telecommunications carrier," not to provide the facilities.[84] The FCC's determination that entrance facilities need not be provided rested in large part on the ability of CLECs to self-provision or acquire from other carriers, and MCI has those avenues available to it, along with tariffed special access service.

[83] *TRRO,* ¶ 136-141.

[84] Silver Rebuttal, p. 15.

MCI responds that the rates it has proposed are the same rates set by the Commission in Case No. TO-2005-0037. MCI's position is supported by the FCC's *TRRO*:[85]

> We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.

SBC's reading of the *TRRO* is unduly restrictive and would impose an unreasonable restriction on MCI that has no basis in the Act or the FCC's rules.[86] SBC witness Hamiter's testimony that SBC is not obligated to provide the entrance facilities is not supported by the actual text of the FCC's orders. MCI asserts that SBC is confusing its unbundling obligations under § 251(c)(3) with its interconnection obligations under § 251(c)(2). The FCC set out this distinction in ¶ 366:

> . . . We find that the more reasonable approach, and the one that is most consistent with the goals of section 251, is to not consider those facilities outside of the incumbent LEC's local network **as part of the dedicated transport network element that is subject to unbundling**. In reaching this determination we note that requesting carriers need facilities in order to "interconnect[] with the [incumbent LEC's] network," section 251(c)2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation.[87]

SBC's assertions that it is not required to unbundle this under the *TRO* are not supported by the FCC's order and should be rejected by the Commission.

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[85] *TRRO,* ¶ 140.

[86] Price Direct, at pp. 135-36.

[87] *TRO* ¶ 366; footnotes omitted; emphasis added.

Decision:

CLECs may still obtain entrance facilities when they are necessary for interconnection. Therefore, MCI's position is preferable.

19. Rates for Digital Cross Connects:

MCI Pricing Issue 20: *Should the price schedule include prices for Digital Cross Connect System (DCS)?*

Discussion:

This issue involves Lines 636-648 of the SBC/MCI Pricing Schedule. SBC states that these items are not appropriate for inclusion in an interconnection agreement since Digital Cross Connects are not subject to unbundling obligations.[88] DCS must only be offered "in the same manner that the incumbent LEC provides such functionality to interexchange carriers."[89] SBC meets this obligation by permitting MCI to acquire these cross connects, either pursuant to commercial agreements or pursuant to SBC's access tariffs. SBC notes that these items are not § 271 elements even if the Commission had authority under that section to require inclusion in the ICA or to set prices. Accordingly, SBC's position that these items should not be included in the ICA should be adopted.

SBC states further that MCI's position cannot be adopted since it proposes inclusion of elements which have never been classified as UNEs under § 251(c)(3). Moreover, MCI's rates are based on TELRIC principles which are not applicable to non-§ 251(c)(3) network elements. There is no authority for the Commission to require inclusion of these elements in the ICA or to set prices at TELRIC rates.

[88] Silver Direct, pp. 124-125.

[89] *Id*.

MCI responds that the rates the has proposed were set by the Commission in Case No. TO-2005-0037. MCI further explains that a DCS is a piece of equipment used for purposes of interconnection.[90] Thus, MCI's position must prevail for the same reason as in Issue 18, above.

Decision:

The Arbitrator agrees with MCI for the reasons stated above.

20. Rates for Optical Multiplexing:

MCI Pricing Issue 21*: Should the price schedule include prices for Optical (OCn) level Multiplexing?*

SBC's Statement of the Issues*: Should the price schedule include prices for Standalone Multiplexing?*

Discussion:

This issues involves Lines 658-665 of the SBC/MCI Pricing Schedule. SBC states that multiplexing for OCn is not available under the FCC rules since all OCn loops and dedicated transport have been declassified.[91] Accordingly, it is inappropriate, SBC contends, to include multiplexing of optical level multiplexing in this ICA and it is also inappropriate to require inclusion of optical multiplexing at TELRIC rates.

MCI responds that the rates it has proposed were set by the Commission in Case No. TO-2005-0037. While SBC has characterized multiplexing as a "standalone" service, in fact it is used in conjunction with unbundled dedicated transport.[92] If there were no rate for multiplexing, SBC would not receive compensation for the multiplexing service when it is providing unbundled dedicated transport. Furthermore, MCI asserts, if no rate for

[90] SBC witness Silver acknowledges this on page 124 of his Direct Testimony.

[91] Silver Rebuttal, p. 52.

[92] Price Direct, at p. 137.

multiplexing is included in the ICA, SBC may argue it is not obligated to provide multiplexing as part of such transport.

Decision:

For the reasons stated above, the Arbitrator agrees with MCI.

21. Rates for SS7 Signaling:

MCI Pricing Issue 22*: Should the price schedule include SS7 prices for physical SS7 links, STP ports, and SS&-Cross Connects?*

Discussion:

This issues involves Lines 667-678 and Lines 680-687 of the SBC/MCI Pricing Schedule.

SBC states that, under the *TRRO,* SS7 access is available only as a per call function of the embedded base ULS and UNE-P through March, 2006.[93] Neither MCI nor any other CLEC is permitted to order SS7 access outside of the limited transition period for the embedded base.[94] Accordingly, it is beyond the Commission's authority to require inclusion of SS7 access in an interconnection agreement or to set the prices at TELRIC rates. SBC notes that MCI may obtain access to SS7 under SBC's access service tariffs, or it may self-provision or obtain access from third-party providers. SBC asserts that it would be unlawful for the Commission to include these rates in the ICA.

MCI states that these rates are from the Commission's order in Case No. TO-2005-0037. For the same reasons explained above, the Commission should approve

[93] *TRRO,* fn. 627.

[94] Silver Rebuttal, p. 52; *TRO* ¶ 544.

MCI's proposed rates. SBC uses — indeed, wants — CLECs to use SS7 for purposes of interconnection, as stated by SBC witness Hamiter during his cross examination:[95]

> Q: Are we also agreed that it is SBC's practice and preference to interconnect with CLECs using SS7 signaling as compared to MF signaling or the other alternatives?
>
> A: Pretty much, yes, sir.
>
> Q: Okay. Would you have any objections to including language in the contract that literally says that the parties want to interconnect their networks on an SS7 basis?
>
> A: I thought it was in there somewhere, that we would interconnect with certain exceptions, like some of the operator services trunk groups. We're really talking about how the signaling is performed for a specific trunk group when we're talking about SS7.
>
> * * *
>
> JUDGE THOMPSON: Explain to me how the telephone networks get cratered.
>
> THE WITNESS [Hamiter]: Most of our network is — works over the SS7 — is an SS7 network. SS7 is a system where the signaling between switches is conducted off of the actual trunk group that a call will be carried over. And that is to speed up the connect time and just make things run a little smoother and more efficiently. If —and our network is designed to operate under what we determine to be a normal operating environment.[96]

MCI is entitled to use SS7 for purposes of interconnection under the current FCC rules. Operationally, SBC *wants* CLECs to use SS7 for purposes of interconnection, as stated by its own witness. Therefore, the Commission should adopt MCI's rates.

Decision:

For the reasons stated above, the Arbitrator agrees with MCI.

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[95] Tr. 415.

[96] Tr. 436-37.

22. Rates for Coordinated Hot Cuts:

MCI Pricing Issue 31*: (a) What are the appropriate rates for Coordinated Hot Cuts? (b) Should the price schedule include SBC's proposed prices for Batch Hot Cuts?*

SBC's Statement of the Issue*: Should the price schedule include prices for Coordinated Hot Cuts?*

Discussion:

This issue involves Lines 898-900 of the SBC/MCI Pricing Schedule. SBC states that its proposed prices are shown at Lines 883-895 and reflect the rates which are both included both in the current M2A today and are set forth in SBC's FCC Tariff, Chapter 73.[97] Those are the appropriate rates to be adopted because they are reflected in the M2A and applicable tariffs. MCI's proposed rates, on the other hand, are not supported by any cost study or other validation[98] and must be rejected.

This issue may be resolved. MCI will agree to use the rates proposed by SBC, which MCI understands to be the same M2A rates as in Price Schedule 30, *so long as* the PSC has ruled that these rates are applicable to Coordinated Hot Cuts.[99] In the absence of these M2A rates being applicable to Coordinated Hot Cuts, MCI urges the Commission to adopt MCI's position as set out in the direct testimony of MCI witness Price.[100]

Decision:

The Arbitrator concludes that SBC's language is preferable.

23. Describing ISP-bound Traffic:

MCI Pricing Issue 32*: What is the appropriate element description for ISP-bound traffic?*

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[97] Chapman Direct, pp. 82-89.

[98] Tr. 359-360 (Price).

[99] Tr. 359.

[100] Price Direct, at p. 139.

SBC's Statement of the Issue: ***Should the price schedule include a rate for presumed ISP-bound traffic as per FCC 01-131?***

Discussion:

This issue involves Line 1001 of the SBC/MCI proposed Pricing Schedule. According to MCIm's Final DPL, it does not disagree with the rate for the service, but only objects to the element description. The DPL does not include any reference to the appropriate description from MCI's perspective. Accordingly, the Commission should adopt SBC's proposed rate and the accompanying description of what the rate entails.

MCI agrees that it has no disagreement as to the rates. The dispute is over the appropriate element description. MCI contends that its proposed description matches the language used in the substantive portion of the ICA.[101] That matching language, rather than the mismatched language proposed by SBC, should be adopted by the Commission.

Decision:

The Arbitrator agrees with MCI because its proposed description matches the language used in the substantive portion of the ICA.

[101] Price Direct, at p. 140.