

XIV. Operations Support System ("OSS"):

1. Should the OSS Appendix include a separate indemnity and liability section?

MCI OSS Issue 1: *In the event of unauthorized access for use of SBC Missouri's OSS by MCI personnel, should SBC be required to demonstrate that it incurred damages caused by the unauthorized entry before MCI is obligated to indemnify SBC?*

SBC's Statement of the Issue: *To what extent should MCI be required to indemnify SBC Missouri in the event of unauthorized access for use of SBC Missouri's OSS by MCI personnel?*

Discussion:

SBC states that its OSS is a critical component to CLECs' access to services provided them under the parties' ICAs and sensitive information is housed in its databases.¹ While both parties' language speak to indemnity, only SBC's language speaks directly to the important matters of, first, "unauthorized entry or access into, or use or manipulation of" SBC's OSS "from MCIIm systems, workstations or terminals by MCIIm employees or agents," and second, access "through information and/or facilities obtained from or utilized by MCIIm." SBC states further that its proposed language ensures that MCI bears direct responsibility to control access to its entry points to SBC's OSS.² SBC's language puts MCI on notice that it must address these important access points for which MCI will be held responsible. MCI's own witness admitted that MCI is in the best position to ensure that its equipment and access to the OSS are not abused.³

¹ Christensen Rebuttal, p. 9.

² Christensen Direct, pp. 10-12;

³ Tr. 904.

MCI responds that SBC's proposed language is unreasonable since it requires MCI to indemnify SBC even in the absence of any underlying fault on MCI's part. Moreover, SBC's proposed language is unnecessary since the parties have agreed to comprehensive indemnity provisions of general applicability in the General Terms and Conditions (GT&C) section of the ICA.

When a particular topic is addressed in a comprehensive manner in the General Terms and Conditions, there is no reason to address it again in an individual appendix. The limitation of liability (Section 15), indemnity (Section 16), intervening law (Section 23) and breach of contract (Section 7.3) provisions contained in the GT&C are comprehensive and apply equally to each of the individual appendices. If included in the agreement, each of these provisions would supersede the corresponding provision of general application in the GT&C. (See GT&C Section 2.6.1 (Conflict in Provisions). Moreover, in each case, the fair and reasonable language in the GT&C "would be superseded by SBC's one-sided, self-serving provisions."⁴

Decision:

The Arbitrator agrees with MCI that SBC's proposed language is unnecessary since the parties have agreed to comprehensive indemnity provisions of general applicability in the General Terms and Conditions (GT&C) section of the ICA.

2. Should the ICA allow MCI to access the Pre-order OSS Interface as proposed by MCI?

MCI OSS Issue 2: May MCI view Customer Proprietary Network Information prior to obtaining authorization to become the End User's local service provider?

Discussion:

⁴ Collins Direct, p. 10.

SBC states that MCI must have authorization to become the end user's local service provider before it can electronically access pre-ordering information in SBC's OSS. Otherwise, it would be using SBC's OSS for marketing purposes, which is not appropriate.

MCI responds that it objects to SBC's proposal to include language in the ICA that would prohibit MCI from accessing certain Customer Proprietary Network Information ("CPNI") – specifically, customer service records ("CSR") -- until after the sale to the customer is completed and would prevent MCI from viewing the contract termination liability information that should be included in the CSR. SBC's proposal would slow down the process of customer conversion by requiring that MCI receive the information manually rather than electronically during the pre-order process.

MCI further states that SBC's language would significantly impair the way in which MCI presently does business. MCI's witness, Lichtenberg, testified:

MCI accesses CPNI in responding to customer inquiries during inbound or outgoing telemarketing calls. When a potential customer contacts MCI and requests information about subscribing to MCI services, MCI first obtains the customer's consent to view his customer service record and then accesses that customer's CSR in order to work with the customer to ensure that the services that the customer has and wishes to keep are available in the MCI product offering. MCI does not access CPNI information in bulk or prior to obtaining individual consent. MCI does not maintain this information in a database or use it for any purposes other than working with the customer to order and provision service.⁵

SBC replies that the FCC appears to limit CLEC unbundled access such that a CLEC must be "providing a qualifying service . . . to access the incumbent LEC's OSS to offer that service."⁶ SBC charges that MCI is attempting to confuse the issues of CPNI and information available through SBC's pre-order OSS interface. OSS is comprised of pre-

⁵ Lichtenberg Direct, p. 5.

⁶ *TRO* ¶ 563.

order, order, provisioning, maintenance/repair, and billing. Use of OSS for marketing is not required nor intended by the FCC's interpretation of the Act. SBC provides CPNI, in compliance with § 222(c)(2) of the Act by mail, just as MCI provides such information to SBC when SBC requests a CSR from MCI. There are no requirements for a carrier to provide CPNI electronically.

Decision:

The Arbitrator agrees with MCI on this point. Verbal permission from the individual end user is sufficient to authorize MCI to access the Pre-order OSS interface.

3. Should the hours of operation of SBC's LSC MCPSC and the LOC be expanded to include Saturday?

Navigator OSS Issue 2: *Is the CMP (Change Management Process) the appropriate forum to address a change to the hours of operation for the LSC MCPSC and the LOC?*

Discussion:

SBC states that the Commission should approve SBC's proposed "Monday through Friday" language and reject Navigator's proposed "Saturday hours" language that would apply to SBC's Local Service Center ("LSC") and Local Operations Center ("LOC"). There is no reason to add Saturday hours because the FCC concluded long ago that the current arrangement provides nondiscriminatory access for the CLECs.⁷ Navigator's small order volumes do not support special treatment.⁸ Finally, such an operational change should be brought before the industry as a whole in the CLEC User Forum because the entire CLEC community might benefit from the discussion.⁹

⁷ Christensen Direct, pp. 18-19.

⁸ Christensen Direct, p. 19.

⁹ Christensen Direct, p. 20.

Navigator replies that SBC states that all users of its OSS may participate in the Change Management Process ("CMP") in order to insure that OSS changes are properly introduced and implemented. SBC has informed Navigator, however, that its request for SBC to expand its hours of operation in the LSC and LOC from Monday through Friday to include Saturday would need to be addressed in the CMP since it does not intend to adjust its contractual hours of operation just for Navigator.¹⁰ Since SBC explicitly includes the hours of operation in the ICA, there is no reason why the parties should not be able to negotiate the specifics -- particularly when it is apparent from SBC's initial response that it would not provide the requested hours of operation unless ordered by the Commission to do so on a CLEC-wide basis.

Navigator's proposal is simply a request that SBC extend the hours of operation for its LSC and LOC to match their retail office hours.¹¹ Presently, SBC does not allow Saturday due dates for orders not requiring field work. An order placed during the week flows through to completion on the day it is submitted, but orders from CLECs placed on the weekend do not flow through until the following business day, which would be the next Monday or the day following a holiday.¹² Navigator asserts that SBC's position is discriminatory and unnecessarily extends the due date of Navigator's service orders.

Navigator contends that the current disparity between retail and wholesale office hours is a competitive advantage for SBC.¹³ CLECs such as Navigator are competitively disadvantaged in turning up new customers, since they do not have the same access to

¹⁰ OSS Attachment 27, DPL Issue 2.

¹¹ LeDoux Direct, at 28.

¹² LeDoux Rebuttal, at 12-13.

¹³ LeDoux Direct, at 28.

OSS support needed to support a new customer. SBC's retail offices remain open to accept orders on Saturday for its own orders.¹⁴ SBC's practices are discriminatory, designed to inject delay in the CLEC ordering process, and should be rejected in favor of Navigator's proposal.

Navigator initially intended to negotiate a request for SBC to operate its wholesale order processing on Saturday. Other RBOCs around the country allow for the mechanized flow of orders during the weekend, but SBC does not.¹⁵ However, Navigator would settle for the ability to have its mechanized orders flow through SBC's systems and complete on Saturday where possible, without SBC automatically extending due dates for such orders to Monday. Navigator argues that it is unreasonable for SBC to implement manual process requirements to restrict the use of automatic processes. SBC should not be able to arbitrarily truncate automatic processes that do not require staffing and manual intervention. If SBC is not willing to mirror the staffing and services offered by other RBOCs and SBC Retail, it can at least allow automatic processes to function.

SBC replies that Navigator does not dispute SBC's evidence that Navigator can perform pre-ordering and ordering functions through the Electronic Data Interface ("EDI") and WebLEX systems between 5:00 a.m. and 10:59 p.m. on Saturdays.¹⁶ SBC's witness stated that SBC "manages its operating systems so that SBC Retail cannot process orders it takes, regardless of the hour, ahead of CLEC order processing opportunities."¹⁷ Whether

¹⁴ LeDoux Rebuttal, at 12.

¹⁵ *Id.* .

¹⁶ Christensen Direct, pp. 19-20.

¹⁷ Christensen Rebuttal, p. 15.

SBC may have Saturday office hours for its retail operations to accept orders¹⁸ is beside the point because Navigator is likewise free to establish Saturday retail hours. Also beside the point is that non-field work orders placed on weekdays flow through to completion the same day, while such orders placed on Saturdays flow through to completion the next business day.¹⁹ This is because, as noted above, none of these orders are processed for SBC before they are processed for CLECs.

Decision:

The Arbitrator concludes that SBC's language is preferable.

4. Should the ICA allow SBC to charge MCI for inaccurate orders?

MCI OSS Issue 3: *Should MCI be responsible for cost incurred as a result of inaccurate ordering or usage of the OSS?*

Discussion:

SBC states that its language specifically addresses SBC's obtaining rightful compensation for any costs or expenses it may incur because of MCI employees' "inaccurate ordering or usage of "SBC Missouri's OSS."²⁰

MCI replies that SBC should not be permitted to charge MCI in the event there is an error in an order submitted to SBC by MCI. MCI has every incentive to submit accurate orders via SBC's OSS system. SBC's proposed language would require MCI to pay SBC for costs that are incidental to the operation of the OSS system. SBC's language is so vague as to encompass virtually anything.

¹⁸ LeDoux Rebuttal, p. 12.

¹⁹ LeDoux Rebuttal, pp. 12-13.

²⁰ Christensen Direct, p. 13.

SBC replies that this language is not “so vague as to encompass virtually anything.”²¹ SBC’s proposed language will be triggered only “if such costs are not already recovered through other charges assessed by [SBC] Missouri to MCI.” Thus, SBC’s proposed language, on its face, cures MCI’s “double recovery” concern because it will not apply to any costs of inaccurate orders that SBC already recovers.²² Finally, this language provides incentive for accurate ordering and usage. To the extent that MCI accurately orders and uses the OSS, it should have no concern about what will happen if it does not.

Decision:

The Arbitrator is persuaded by MCI that the language proposed by SBC is not desirable.

5. What should the ICA provide with respect to the OSS Change Management Process?

CLEC Coalition GT&C Issue 17: *Should the CLEC Coalition’s language be included in the Agreement?*

Discussion:

SBC states that there is no need to address Change Management in the GT&C section because Change Management is a process unique to OSS and is already addressed in agreed-upon language in the parties’ OSS Appendix.

The CLEC Coalition responds that its language is meant to preserve SBC’s obligation to continue the existing Change Management Process (“CMP”) by incorporating the obligation in the ICA. The Coalition believes SBC’s current commitment to CMP should be reflected in the parties’ agreement. Otherwise, SBC might argue that it does not have a

²¹ Lichtenberg Direct, p. 7.

²² Lichtenberg Rebuttal, pp. 6-7.

contractual obligation to continue the CMP. In addition, the Coalition has proposed language intended to prevent SBC from altering existing terms and obligations in the ICA through a forum where a given CLEC may not participate. The ICA is a contract and has a clause stating that it cannot be amended except by the consent of both parties. The CLECs' language is intended to make clear that any changes to the way the parties operate as reflected in the ICA must be accomplished through an amendment. The Coalition's language was recently approved by the Arbitrator in the O2A successor proceeding.

SBC replies that the Coalition's proposed language (Section 41.3.2) should be rejected. This language proposes that resolutions and processes established in the Industry User and Change Management collaborative forums would not be valid unless incorporated into the ICA or agreed upon by the parties.²³ CLECs were a driving force behind establishing these forums several years ago and the guidelines governing both forums were created collaboratively. The Coalition's proposed language would undermine these longstanding industry processes by conferring on the Coalition veto power over collaboratively arrived at process changes and enhancements -- processes which are incorporated in the OSS Appendix at Section 3.10.²⁴

The Commission should not allow the Coalition to "simply walk away from these forum's results,"²⁵ while other CLECs and SBC abide by them. To allow it to do so would subvert these forums' efforts to debate and reach closure on industry issues affecting the OSS.

²³ Christensen Direct, pp. 48-49; Christensen Rebuttal, pp. 17-19.

²⁴ Christensen Direct, p. 49.

²⁵ SBC's Brief at 488.

Decision:

The ICA is a binding contract between SBC on one side and a CLEC on the other. The ICA between SBC and a particular CLEC can only be changed with the consent of both parties, manifested in a document executed by the both parties. Therefore, the Arbitrator concludes that the Coalition's language is preferable.