VI. Intercarrier Compensation (ICR):

A. Definition of Section 251(b)(5) Traffic.

1. AT&T IC 1a
MCIm RC 2
WilTel IC 1
WilTel GT&C 2(a) and (b)

AT&T IC 1a: What is the proper definition and scope of Section 251(b)(5) Traffic?

MCIm RC 2: Do the words "originates and terminates within the same local calling area" depend upon the rating point of the originating and terminating NPA/NXX?

SBC MO RC 2: Is compensation for Section 251(b)(5) Traffic and ISP-Bound Traffic limited to traffic that originates and terminates within the same ILEC local calling area.

WilTel/SBC MO IC 1: What is the proper definition and scope of Section 251(b)(5) Traffic?

WilTel/SBC MO GT&C 2(a): Should the term "Local Calls" be defined as traffic that is intra-LATA when applied to intercarrier compensation?

WilTel/SBC MO GT&C 2(b): What is the proper definition and scope of Section 251(b)(5) Traffic?

Discussion:

The language at issue defines traffic subject to reciprocal compensation under section 251(b)(5) of the Telecommunications Act. The Parties disagree as to whether certain types of calls are included under the statutory classification of § 251(b)(5) traffic. Specifically, SBC objects to the inclusion of (1) ISP-Bound Traffic, (2), IP Enabled, (3) FX-like Traffic and (4) Feature Group A Traffic within the scope of 251(b)(5) traffic.

SBC contends that the Commission should adopt its proposed language that specifies the types of traffic that should be classified as Section 251(b)(5) Traffic, because it is consistent with federal law. Conversely, SBC contends that the language proposed by

AT&T, MCI and WilTel is not consistent with the law. SBC also contends that the Commission should employ SBC's definition of Section 251(b)(5) traffic in Appendix ITR. SBC has proposed inclusion of this definition in that Appendix to ensure consistency throughout its agreement. .

SBC proposes to define Section 251(b)(5) Traffic as telecommunications traffic exchanged between the parties where the originating and terminating end users are in the same local exchange or local calling area. While Section 251(b)(5) of the Act simply refers to "the transport and termination of telecommunications," the FCC's rules hold that this section does not apply to all "telecommunications" traffic. Rather, FCC Rule 701 states that the reciprocal compensation obligation of Section 251(b)(5) applies to "[t]elecommunications traffic exchanged between a LEC and a telecommunications carrier . . . except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access."[1]

In the *ISP Remand Order* (in which the FCC promulgated the current version of Rule 701), the FCC held that "Section 251(g) . . . excludes several enumerated categories of traffic [those enumerated in Section 251(g)] from the universe of 'telecommunications' referred to in Section 251(b)(5)."[2] Thus, Section 251(b)(5) "does not mandate reciprocal compensation for 'exchange access, information access, and exchange services for such access.'"[3] The FCC also described the types of traffic that are, and are not, subject to Section 251(b)(5) in geographic terms: "all traffic" "that travel[s] to points -- both interstate and intrastate -- beyond the local exchange" is not subject to reciprocal compensation

[1] 47 C.F.R. § 51.701(b)(1) (emphasis added).

[2] *Order on Remand and Report and Order, In re Intercarrier Compensation for ISP-Bound Traffic,* 16 FCC Rcd. 9151 (2001) ("*ISP Remand Order*"), ¶ 23.

[3] *Id*., ¶ 34.

under Section 251(b)(5), and instead Section 251(g) preserves both the interstate and intrastate "access regimes applicable to this traffic."[4]

In short, SBC contend that Section 251(b)(5) requires reciprocal compensation only for traffic between parties located in the same local exchange. SBC argues that its proposed contract language properly preserves this distinction between traffic "that travel[s] to points . . . beyond the local exchange" and traffic that does not travel beyond the local exchange, by defining Section 251(b)(5) Traffic to include only telecommunications traffic exchanged by the parties where the originating and terminating end users are located in the same local exchange.

AT&T argues that section 251(b)(5) requires that reciprocal compensation be applied to the transport and termination of all telecommunications traffic unless it is expressly excluded by section 251(g). Section 251(g) "carves out" certain types of traffic, such as information access and exchange access traffic, from reciprocal compensation (Section 251(b)(5)) obligations. The exceptions provided for under Section 251(g) only apply, however, to inter-carrier pricing regimes established *prior* to the passage of the 1996 Act. Moreover, the "carve out" exceptions are intended to be temporary in nature. The pre-Act pricing mechanisms should remain in place only until the appropriate regulatory body replaces the pre-Act pricing regime with reciprocal compensation (or other pricing mechanism).

MCI argues that its proposed language should be adopted because SBC's proposal unduly restricts the ability of MCI to provision service in Missouri. By requiring a "physically located" standard, SBC would effectively require MCI to "build out" to each and every

[4] *Id*., ¶ 37

exchange to which MCI desires to provide service. Under MCI's proposal, a call will originate and terminate within the same local calling area and MCI will be responsible for transport from that local termination point of the call. MCI contends that its proposal will not force additional costs onto SBC. MCI argues that SBC is employing a restrictive reading of paragraph 90 of the ISP Compensation Order when it states that "two parties in the same local calling area" requires a physical presence, instead of a phone number related to that local calling area. Moreover, MCI contends that its proposal rationalizes the jurisdiction determined for a call when placed by an end user and the jurisdiction of that same call for purposes of intercarrier compensation.

WilTel indicates that it reserves the right to argue that FX-type traffic should be considered Section 251(b)(5) traffic. WilTel also indicates that its proposed definition of "Local Calls" would permit both parties to exchange traffic subject to Section 251(b)(5) reciprocal compensation pricing on a LATA-wide basis. WilTel contends that this is a reasonable proposal and would benefit consumers in such LATA-wide calling areas by providing them with lower rates for calls originating and terminating in that area. Additionally, WilTel contends that its proposed definition would avoid many of the issues in relation to FX type calls.

In response to the arguments of the other parties, SBC contends that telecommunications traffic generally falls into one of two categories: local or interexchange. Local traffic is subject to reciprocal compensation (with the exception of local traffic bound to an ISP, which is subject to special compensation rules created by the *ISP Remand Order*), while interexchange traffic is subject to federal and state access charges. SBC contends that, via their proposed definitions of "251(b)(5) Traffic," AT&T, MCI and WilTel

seek to fundamentally restructure this existing intercarrier compensation regime. In particular, they propose to exempt from access charges entire categories of traffic currently subject to the access charge regime, and to shift them to the reciprocal compensation regime, so that, in their capacity as IXCs, they can cut their costs and boost profits.

SBC argues that AT&T, MCI and WilTel's proposals are improper and unlawful, for several reasons:

(1) AT&T's definition of 251(b)(5) Traffic includes ISP-Bound Traffic. That violates the core holding of the *ISP Remand Order*: "ISP-bound traffic is not subject to the reciprocal compensation requirement in section 251(b) because of the carve-out provision in section 251(g), which excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)."[5] Instead, the FCC held, ISP-bound traffic is subject to the FCC's *ISP Remand Order* compensation plan, which consists of a series of declining rate caps that ILECs may elect.[6]

(2) AT&T's definition of 251(b)(5) Traffic includes all "Information Services" traffic. That violates FCC Rule 701, which states that the reciprocal compensation obligation of section 251(b)(5) does not apply to "telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access."[7] As the FCC plainly stated, "Our intent was to apply these carrier's carrier charges to interexchange carriers, and to all resellers and enhanced service providers."[8] Thus, contrary to AT&T's proposal, interexchange information services traffic is not subject to reciprocal

[5] *ISP Remand Order,* ¶ 23.

[6] *Id*., ¶¶ 7-8.

[7] 47 C.F.R. § 51.701(b)(1).

[8] Memorandum Opinion and Order, MTR and WATS Market Structure, CC Docket No. 78-72, 97 FCC 2d 682 (1983) ("*MTS/WATS Market Structure Order*"), ¶ 76.

compensation under section 251(b)(5), and is instead subject to applicable federal and state access charges (unless the FCC's ESP exemption applies).

(3) AT&T's definition of 251(b)(5) Traffic includes interexchange "IP Enabled Service" traffic. That violates FCC Rule 701, which states that the reciprocal compensation obligation of section 251(b)(5) does not apply to "telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access."[9] As explained below, in Section VI(H), interexchange "IP Enabled Service" traffic is subject to applicable federal and state access charges, rather than reciprocal compensation under section 251(b)(5).

(4) AT&T's definition of 251(b)(5) Traffic includes Transit Traffic. Transiting, however, is not required by the 1996 Act, and thus the terms under which SBC will transit traffic for AT&T are not subject to arbitration. Moreover, even if transiting terms were subject to arbitration, SBC is not responsible for paying reciprocal compensation for traffic that SBC transits to or from AT&T, as AT&T proposes, because SBC does not originate or terminate that traffic.

(5) MCI proposes to define Section 251(b)(5) traffic in terms of the originating and terminating NPA/NXXs being part of the same rate center. NPA/NXXs, however, are not the appropriate criteria. Reciprocal compensation under Section 251(b)(5) applies only to calls that originate and terminate within the same ILEC local calling area -- without regard to the NPA/NXXs of the calling and called parties. Arrangements such as FX and virtual FX could allow the calling party and the called party to have the same NPA-NXX even if they were located in different local calling areas.

[9] 47 C.F.R. § 51.701(b)(1).

(6) WilTel, in its DPL position statement, merely stated that it "reserves the right to argue that FX-type traffic should be considered Section 251(b)(5) traffic." WilTel, however, has offered neither any legal authority nor any evidence to support such a position (if it indeed is doing so). Accordingly, its position and proposed language should be rejected out of hand. SBC has fully supported its position that FX-type traffic should be excluded from Section 251(b)95) traffic because the originating and terminating end user's are not in the same local exchange or calling area.[10]

SBC further argues that the *ISP Remand Order* and FCC Rule 701, which hold that Section 251(b)(5) does not apply to all telecommunications traffic, remain effective federal law. Indeed, the FCC recently confirmed that the *ISP Remand Order* remains the law. In the *Core Forbearance Order*, the FCC refused to lift its rate caps for ISP-bound traffic, or its mirroring rule. The FCC reaffirmed "the continuing validity of the public interest rationale" behind its *ISP Remand Order*, and found "that the rate caps and mirroring rule remain necessary to prevent regulatory arbitrage and promote efficient investment in telecommunications services and facilities."[11] While, as a result of the D.C. Circuit's remand, the FCC is currently reconsidering its intercarrier compensation rules, with an eye toward developing a unified intercarrier compensation regime, the Missouri Commission does not have independent authority to ignore the FCC's current rules and create its own new compensation regime, as AT&T, MCI and WilTel propose. Thus, SBC contends that AT&T, MCI and WilTel's proposed language must be rejected.

Decision:

[10] McPhee Direct, pp. 17-21; McPhee Rebuttal, pp. 6-9.

[11] *Order*, *Petition of Core Communications, Inc. for Forbearance*, WC Docket No. 03-171, 2004 WL 2341235, ¶¶ 18-19 (FCC rel. Oct. 18, 2004) ("*Core Forbearance Order*").

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is the more reasonable and should be adopted.

B. Definition of ISP-Bound Traffic.

1. CC IC 2 WilTel IC 2 AT&T IC 1g

CC/SBC IC 2: What is the proper definition and scope of "ISP-Bound Traffic" that is subject to the FCC's ISP Terminating compensation Plan?

WilTel/SBC IC 2: What is the proper definition and Scope of "ISP-Bound Traffic" that is subject to the FCC's ISP Terminating compensation Plan?

AT&T/SBC IC 1g: What is the correct definition of "ISP-Bound Traffic" that is subject to the FCC's ISP Terminating compensation Plan?

Discussion:

SBC contends that the Commission should adopt its proposed language, which defines "ISP-Bound Traffic" to include only traffic bound to an ISP located in the same local exchange in which the traffic originated, because it is consistent with, and properly implements, the FCC's *ISP Remand Order.* AT&T, the CLEC Coalition, and WilTel on the other hand, propose to define ISP-Bound Traffic to include (and thus would apply the *ISP Remand Order's* compensation plan to) all traffic bound to an ISP - including long distance calls to an ISP. SBC argues that their proposal is contrary to the *ISP Remand Order* and should be rejected.

SBC argues that in the *ISP Remand Order,* the FCC addressed only ISP-Bound Traffic that would otherwise be treated as if it were "local" traffic subject to reciprocal compensation -- i.e., traffic bound to an ISP located in the same local exchange in which the traffic originated, not traffic between end users and ISPs located in different local calling

areas. This is readily apparent from the question the FCC addressed there: "whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area."[12] Non-local calls to ISPs simply were not part of the problem the FCC was attempting to address: "market distortions" resulting from "CLEC reciprocal compensation billings . . . for ISP-bound traffic."[13] CLECs were, of course, billing reciprocal compensation only for "local" ISP-bound traffic, not long distance traffic destined to an ISP.

SBC further argues that, by contrast, when an end-user calls an ISP that is not within the same local calling area, there was never any question that that call was not, and still is not, subject to reciprocal compensation under Section 251(b)(5). Calls from Kansas City, Missouri to SBC's Sedalia Exchange, Citizens Telephone Company's Higginsville Exchange, or SBC's St. Louis Metropolitan Exchange are interexchange calls, whether the called party is a residential POTS customer or an ISP. The CLECs' claim that such calls, if made to an ISP, are now excused from traditional switched access charges and are instead subject to the *ISP Remand Order's* ISP-bound traffic compensation plan is wholly unsupported. Indeed, in its recent *Core Forbearance Order*, the FCC described its *ISP Remand Order* compensation plan as "an exception to the reciprocal compensation requirements of the Act for calls made to ISPs located within the caller's local calling area."[14]

The CLEC coalition argues that the definition of "ISP Traffic" has been a source of major controversy and dispute during the history of the M2A reciprocal compensation

[12] *ISP Remand Order,* ¶ 13 (emphasis added).

[13] ISP Remand Order, ¶ 5.

[14] *Core Forbearance Order*, n.25 (emphases added).

provisions. It is therefore critically important that the proper definition of the term – based on the applicable FCC precedent – be utilized in the successor contract. The CLEC Coalition argues that its language directly tracks the terms of the FCC's ISP Order regarding when ISP traffic is compensable. The SBC proposal goes further than the FCC decision, in an effort to exclude additional traffic from the applicable FCC compensation regime. SBC had voluntarily adopted the reciprocal compensation rates and terms provided for in the ISP Remand Order. The FCC provided that when an ILEC elects to follow those terms, it must follow *all of them*, not merely the ones the ILEC finds favorable. The SBC definition of "ISP-bound traffic" may be more favorable to SBC's interests, but it is inconsistent with the FCC's ISP Order and should not be included in the Parties' contract.

The CLEC Coalition also argues that the language proposed by SBC attempts to limit reciprocal compensation in Missouri in ways that are inconsistent with decision of the Missouri Public Service Commission. SBC is required to transport and terminate MCA traffic outside an SBC exchange. The language proposed by SBC ignores the specific facts in Missouri regarding MCA traffic.

The CLEC Coalition further argues that the SBC language seeks to include in the definition of "out of exchange traffic" several other types of traffic that SBC is required to transport and terminate under the FTA, including ISP-bound traffic and FX traffic.

SBC has used its "out of exchange" arguments to keep CLECs from operating in exchanges that border the calling areas of other LECs. SBC ties the process of opening new NPA-NXX codes to a CLEC agreeing to its position on "out of exchange LEC" issues. This is an inappropriate restriction on CLECs' ability to compete in areas on the border of other ILEC territories.

AT&T argues that ISP-Bound Traffic is Section 251(b)(5) traffic, is interstate traffic subject to the FCC's jurisdiction, and is traffic for which the FCC has established the compensation regime. AT&T contends that the FCC has expressly stated that *all* traffic is subject to Section 251(b)(5) reciprocal compensation unless is it exempted under Section 251(g) of the Act.[15] Although the FCC initially applied the 251(g) carve-out to ISP-bound traffic, the D.C. Circuit Court of Appeals rejected the FCC's rationale for exempting ISP-bound traffic from 251(b)(5) reciprocal compensation. Therefore, this traffic is subject to 251(b)(5.

Neither the FCC nor the D.C. Circuit Court of Appeals decisions distinguished between local and non-local ISP-Bound Traffic. Therefore, SBC has no basis for arguing that certain types of ISP-bound traffic should be subject to a pricing scheme different than that established by the FCC. Therefore, AT&T should not be required by the terms of its interconnection agreement to pay access on ISP-Bound Traffic as SBC has proposed.

SBC counters that the Commission should not be misled by the CLECs argument that the *ISP Remand Order* discarded the FCC's previous distinction between "local" and "non-local" traffic for compensation purposes, such a claim is misleading. While the FCC did reject the terminology "local," it affirmed its prior holdings that Section 251(b)(5) does not apply to all telecommunications traffic, as AT&T suggests, but instead contains a geographic limitation, as SBC proposes. Specifically, the FCC held that Section 251(b)(5) does not apply to the kinds of traffic listed in Section 251(g) ("exchange access, information access, and exchange services for such access").[16] The FCC also described this carve-out

[15] *ISP Remand Order,* at ¶¶ 32 & 46.

[16] *ISP Remand Order,* ¶ 34.

from Section 251(b)(5) in geographic terms, holding that this carve-out applies to "all traffic" "that travel[s] to points – both interstate and intrastate -- beyond the local exchange."[17] Thus, traffic bound to an ISP "beyond the local exchange" was never subject to reciprocal compensation, either before or after the *ISP Remand Order*, and simply was not the subject of that Order.

SBC contends that the parties' contracts should thus make clear that the FCC's interim intercarrier compensation plan is applicable only to ISP-Bound traffic from end users to ISPs physically located in the same local calling area. SBC contends that as only its proposed language properly reflects federal law, the Commission should adopt it.

Decision:

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

2. AT&T IC 1f
MCIm RC 6, 6(a) and 6(b)

AT&T/SBC IC 1f: What is the appropriate routing, treatment and compensation of ISP calls on an Inter-Exchange basis, either IntraLATA or InterLATA?

MCIM RC 6: Given that SBC's proposal for Reciprocal Comp., Sec. 2.11 does not carefully define categories of traffic that the parties will exchange with each other and how such traffic should be compensated, should SBC MISSOURI's additional terms and conditions for internet traffic set forth in section 2.11 et seq. be included in this Agreement?

SBC MO RC 6(a): What is the appropriate treatment and compensation of ISP Traffic exchanged between the Parties outside of the local calling scope?

SBC MO RC 6(b): What types of traffic should be excluded from the definition and scope of Section 251(b)(5) Traffic?

[17] *Id*., ¶ 37.

Discussion:

SBC contends that the Commission should adopt its proposed language, that recognizes that ISP calls (like voice calls) that originate and terminate outside the local mandatory calling area remain intraLATA and/or interLATA toll traffic subject to access tariffs, because the language it proposes is consistent with FCC rules.

SBC argues that not all calls to an ISP are "ISP-bound traffic" subject to the FCC *Remand Order* ISP-bound traffic compensation plan. To fall within the definition of ISP-bound traffic subject to the FCC plan, the calls must originate from an end user and be delivered to an ISP physically located within the same ILEC mandatory local calling area. If an end user makes a long distance call to an ISP, that end user would likely be assessed a toll charge by its long distance provider (or the call would apply toward its toll call minutes of use). In the *ISP Remand Order*, the FCC indicated that the same intercompany compensation for ISP-bound calls should be the same as applied to voice calls:

> Assuming that two calls have otherwise identical characteristics (e.g. - duration and time of day) a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP. We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms and conditions for local voice and ISP-bound traffic.[18]

ISP-bound calls (like voice calls) that originate and terminate outside the local mandatory calling areas therefore remain intraLATA and/or interLATA toll traffic subject to tariff access charges. SBC contends that as its proposed language correctly reflects the FCC's rules, it should be adopted.

[18] *ISP Remand Order,* ¶ 90.

AT&T argues that ISP-Bound Traffic is Section 251(b)(5) traffic, is interstate traffic subject to the FCC's jurisdiction, and is traffic for which the FCC has established the compensation regime. The FCC has expressly stated that *all* traffic is subject to Section 251(b)(5) reciprocal compensation unless is it exempted under Section 251(g) of the Act.[19] Although the FCC initially applied the 251(g) carve out to ISP-bound traffic, the D.C. Circuit Court of Appeals rejected the FCC's rationale for exempting ISP-bound traffic from 251(b)(5) reciprocal compensation. Therefore, this traffic is subject to 251(b)(5.

AT&T further argues that neither the FCC nor the D.C. Circuit Court of Appeals decisions distinguished between local and non-local ISP-Bound Traffic. Therefore, SBC has no basis for arguing that certain types of ISP-bound traffic should be subject to a pricing scheme different than that established by the FCC. Therefore, AT&T should not be required by the terms of its interconnection agreement to pay access on ISP-Bound Traffic as SBC has proposed.

MCI contends that SBC has proposed vague and confusing language regarding the "trading" of "ISP" and "internet" traffic but has never provided MCI with a clear explanation of what this language is intended to achieve. Since SBC has not provided clear and concise definition of many of the terms used in this language, its inclusion in the agreement can only lead to disputes between the parties. Moreover, the parties have, in other portions of the agreement, taken great pains to carefully define categories of traffic that they will exchange with each other and how such traffic should be compensated. SBC's proposed provision in this section 2.11 cannot be reconciled with these other portions of the contract.

Decision:

[19] *ISP Remand Order* at ¶¶ 32 and 46.

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

C. Definition of Mandatory Local Calling Area

1. Charter IC 1
Charter ITR 8

Charter IC 1: For Compensation Purposes, should the Definition of a mandatory local calling area be governed by SBC 13-State's Local Exchange Tariffs?

Charter ITR 8: For Compensation Purposes, should the Definition of a mandatory local calling area be governed by SBC 13-State's Local Exchange Tariffs?

Discussion:

SBC argues that the Commission should reject the language proposed by Charter, which would redefine the mandatory local calling area for purposes of intercarrier compensation based on the originating party's local calling scope, because Charter's proposal (1) is inconsistent with FCC precedent, which contemplates the designation of a common and uniformly-applicable geographic area as the local area for the purpose of applying reciprocal compensation obligations under Section 251(b)(5); (2) will result in a scheme for intercarrier compensation that will be impossible to administer for all carriers in the state; and (3) conflicts with prior orders of the Commission requiring terminating switched access charges to be paid on locally dialed expanded local calling plans.

SBC contends that focusing in isolation only on the Act's definitions of "telephone toll service" and "exchange access," Charter claims that it should be excused from paying other carriers' switched access charges on its customers' intercompany calls that cross one or more traditional exchange boundaries if it does not assess its customers a separate toll

charge. For example, if Charter did not charge its St. Louis customers a separate toll charge to call an SBC customer in Cape Girardeau or a Steelville Telephone customer in Steelville, Charter would not pay terminating assess charges to either SBC or Steelville Telephone (as is required today under Commission-approved access tariffs). Rather, those calls would be subject to bill and keep under its "reciprocal compensation" plan. And even though the compensation is purportedly "reciprocal," Charter's compensation plan is clearly imbalanced, because under its proposal, Charter would continue to impose its access charges on other carriers on calls going the other way (e.g., from an SBC customer in Cape Girardeau to a Charter customer in St. Louis).

SBC contends that Charter's proposed language is completely at odds with the FCC's *First Report and Order*, which contemplates the use of a single area within which all calls, regardless of direction, are to be subject to reciprocal compensation under Section 251(b)(5): "we conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area as defined in the following paragraph. . . ."[20] Contrary to Charter's claim, the FCC directed state commissions to identify a single geographic area as "the" applicable local area for the purpose of applying reciprocal compensation obligation under Section 251(b)(5), consistent with their establishment of traditional LEC exchange boundaries:

> With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic area should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commission's historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside the applicable local area would be subject to interstate and intrastate access charges.[21]

[20] *First Report and Order*, ¶. 1034 (emphasis added).

[21] *First Report and Order,* ¶ 1035 (emphasis added).

In situations where competing carriers' local service areas are not the same, the FCC did not authorize the Commission to apply both reciprocal compensation and access charges, as Charter proposes, within the same geographic area depending on the direction of the traffic. Rather it specifically directed state commissions to determine whether to apply reciprocal compensation "or" interstate access charges:

> . . . We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different. This approach is consistent with a recently negotiated interconnection agreement between Ameritech and ICG that restricted reciprocal compensation arrangements to the local traffic area as defined by the state commission. . . .[22]

And that is exactly what the FCC itself did in defining the applicable local service area for intercompany compensation on traffic exchanged with wireless networks. Faced with the situation in which LECs and the various types of Commercial Mobile Radio Service ("CMRS") providers each maintained different retail local calling scopes, the FCC ordered the use of a single uniform geographic area (the MTA) for purposes of determining whether reciprocal compensation or access charges were owed:

> On the other hand, in light of this commission's exclusive authority to define the authorized licensed area of wireless carriers we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). Different types of wireless carriers have different FCC-authorized license territories, the largest of which is the "Major Trading Area" (MTA). Because the wireless license territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless licensed territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to

[22] *Id.*

> or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.[23]

The FCC's expectation that a uniform geographic area be selected by a State Commission as the applicable local area for applying Section 251(b)(5) for reciprocal compensation obligations can also be seen in the FCC's guidance concerning traffic exchanged between neighboring incumbent LECs: "We conclude that section 251(b)(5) obligations apply to all LECs in the same state defined local exchange service area, including neighboring incumbent LECs that fit within this description."[24] SBC argues that allowing Charter to impose an intercarrier compensation scheme excusing itself from paying tariffed access charges on it customers' calls that terminate in any other ILEC or CLEC exchange in the sate, while continuing to collect its own access charges from other carriers on calls going the other way, is exactly the type of "artificial distinction" the FCC sought to avoid.

In addition, SBC contends that Charter's proposed language would allow it to improperly over-ride the many determinations the FCC has made concerning how intercompany compensation should be handled on various types of traffic (e.g., ISP-bound, FX and interLATA toll calls).

SBC argues that, besides being bereft of a legal foundation, Charter's proposed language would result in an intercompany compensation scheme that would be impossible -- not only for SBC, but all carriers in the state -- to administer. All wireline interconnection agreements approved by the Commission since the 1996 Telecommunications Act went into effect have employed the incumbent LEC's Commission's-approved local calling scope as the uniformly defined geographic area for purposes of applying Section 251(b)(5)

[23] *First Report and Order*, ¶ 1036 (emphasis added).

[24] *First Report and Order*, ¶ 1037 (emphasis added).

reciprocal compensation obligations. If the Commission were now to allow each carrier's retail local calling scope to determine the type of intercarrier compensation owed, extremely serious intercompany recording and billing problems would arise due to the variety of and ever-changing retail calling scopes among carriers that operate in the State. Each time an intercarrier call is completed, the terminating carrier would somehow have to determine not only which carrier originated the call, but how that carrier, under its current retail tariffs, characterizes the call between the originating end user and the terminating end user. Carriers would no longer be able to rely on the relationship between an originating end user's NPA NXX and the terminating end user's NPA NXX in jurisdictionalizing a call for intercarrier compensation purposes. Rather, each and every intercarrier call would somehow have to be researched in order to determine its specific jurisdiction and compensation. Charter's proposal, which allows each carrier to dictate their own rules for determining how their calls should be rated for intercompany compensation purposes, will undoubtedly lead to increased intercompany disputes in the future.[25]

Finally, SBC contends that Charter's proposed language is inconsistent with prior orders of the Commission requiring the use of terminating access charges as the method of intercompany compensation on expanded local calling plans that allow the subscriber to call other companies' end users in other exchanges on a locally dialed basis.[26]

SBC does not oppose Charter setting its own retail calling scope in any manner it sees fit, but it contends that it is vitally important that there be a common basis for determining when wholesale compensation is owed and what is owed. SBC contends that

[25] McPhee Rebuttal, pp. 4-5.

[26] *In the Matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATAwide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan,* Case No. TT-98-351, (*Order,* issued September 17, 1998) at p. 39.

Charter's proposal, which no other carrier is seeking, is a radical and inappropriate departure from the established system of intercompany compensation that exists between all carriers in the State (as well as across the country) and should be rejected.

Charter replies that its language on this point is directly tied to and consistent with the applicable definitions in Section 153 of the Communications Act, 47 U.S.C. § 153. Switched Access Traffic as normally understood is a form of "exchange access," which is defined in 47 U.S.C. § 153(16). "Exchange Access" is defined as the use of local facilities to originate or terminate toll calls, or, in statutory terms, calls which constitute "telephone toll service." "Telephone toll service" is defined as a call between telephones ("stations" in the statute) in different exchange areas for which there is a separate charge to the end users beyond the normal local service charge. 47 U.S.C. § 153(48). As a result, if the end user making a call is not charged a toll for it, then the function of originating or terminating that call is not "access."

In practical terms this means that if two interconnected carriers choose to compete with each other by establishing different local calling areas (e.g., by establishing a large area, perhaps at a higher price, or by establishing smaller areas, but at a lower price), whether the function of originating and terminating a call meets the statutory definition of "access" depends on the local calling areas established by the originating party.

Charter contends that this definition makes economic as well as legal sense. In cases where the originating caller is being charged a toll, the carrier handling the toll call (which may be the originating LEC or may be a third party) will receive a toll payment which will provide the wherewithal to pay an "access" charge. However, where the originating caller is not being charged a toll, the only money available to pay the terminating carrier is

the caller's normal local service charge. In that case, payment of reciprocal compensation (or treatment as a bill-and-keep call) is appropriate.

Decision:

The Arbitrator concludes that Charter's plan is in conflict with applicable law and would be unworkable in practice. SBC's proposed language is adopted.

D. Intrastate Interexchange Traffic.

1. MCIm RC 15

MCIm RC 15: What terms and conditions should apply for switched access traffic?

Discussion:

SBC contends that the Commission should adopt SBC's proposed language because it appropriately reflects that intraLATA interexchange traffic is not subject to intercarrier compensation under Section 251(b)(5) of the 1996 Act.[27] Even if such traffic is bound for an ISP, it does not qualify for compensation under the FCC's rules for ISP-Bound Traffic, because the FCC limited those rules to traffic bound for an ISP that is located in the same local calling area as the originating end user.[28] Instead, the compensation for such traffic is governed by the respective carriers' access tariffs.

SBC argues that during the term of the agreement, the parties will be exchanging other types of traffic that are not included within the terms of Section 251(b)(5) traffic or

[27] *See*, Section VI(A), *supra.*

[28] *See*, Section VI(B), *supra.*.

ISP-bound traffic. The agreement should contain terms and conditions to address the treatment of that traffic, whether it is by specifically applying a different rate within the contract, or by reference to a state or federal tariff. SBC indicates that its proposed "Attachment 12-Compensation" attempts to contemplate all the various types of traffic that may be exchanged between the parties to the agreement.

MCI argues that its language should be adopted because it is consistent with the FCC's pronouncements on enhanced service traffic. MCI does not propose that "IP in the middle" traffic be counted as an enhanced service in that the traffic undergoes no net protocol change. The IP-PSTN traffic, on the other hand falls squarely within the "net-protocol change" portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates.

Decision:

The Arbitrator finds that the language proposed by MCI should be adopted.

E. Foreign Exchange ("FX") Traffic

1. AT&T IC 1h

AT&T IC 1h: Should the ICA include language Referencing SBC Missouri's access tariff for interLATA FX Traffic?

SBC MO 1h: What is the appropriate form of intercarrier compensation for interLATA FX traffic?

Discussion:

SBC contends that the Commission should adopt its proposed language, which states that interLATA FX traffic will be subject to applicable interstate or intrastate access

tariffs, because it is necessary to recognize the distinction the parties have agreed upon in how intraLATA FX and interLATA FX services should be handled for intercompany compensation purposes. SBC argues that AT&T does not dispute the appropriate compensation method for these two types of FX traffic, just the inclusion of a reference to interLATA FX traffic in the local interconnection agreement.[29] SBC urges the Commission to reject AT&T's proposal because the absence of contractual clarity could lead to future disputes between the parties on such traffic.

AT&T argues that a local interconnection agreement does not need to include compensation for interLATA FX traffic. AT&T's does not dispute what the compensation method should be, rather it argues that it should not be included in the parties' local interconnection agreement.

Decision:

The Arbitrator agrees with SBC. Inclusion of the language in this agreement may avoid future disputes between the parties.

2. MCIm RC 4

MCIm RC 4: What is the appropriate form of inter-carrier compensation for FX and FX-like traffic, including ISP FX traffic?

Discussion:

SBC contends that the Commission should adopt its proposed language that calls for FX traffic (ISP-Bound and Non-ISB Bound)[30] to be subject to bill and keep, with the

[29] Schell Direct, p. 124.

[30] Foreign Exchange or "FX" is the industry term for calls that originate in one local exchange and

exception of interLATA FX traffic which is to be billed at applicable interstate or intrastate interLATA access rates). Under the FCC's *First Report and Order*, such traffic is non-Section 251(b)(5) traffic and would not be subject to reciprocal compensation because it originates or terminates outside the applicable local calling area (and would ordinarily be subject to interstate or intrastate access charges).[31] Calls that appear to be local because of the NXX assigned, that are terminated to customers physically located outside of the originating party's local calling area should not be classified as local call subject to local reciprocal compensation. In order to avoid potential arbitrage and an imbalance in intercompany compensation that could result from FX-like and "services" SBC has proposed bill and keep for such calls made on an intraLATA basis.[32] SBC indicates that this arrangement has been agreed to by all other CLECs in this proceeding.[33]

SBC urges the Commission to reject MCI's proposal because MCI has provided no legal authority or provided an evidentiary basis to support its claim that FX traffic should be "compensated as either Section 251(b)(5) Traffic or ISP-Bound Traffic."

MCI contends 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

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terminate to another exchange that is not within the originating local calling scope, even though the originating end user dialed the number that looks like a local number. SBC provisions FX service via a dedicated circuit from the end office where the particular NPA NXX is actually assigned, to the FX subscriber's premise outside the service area of the end office to which the NPA NXX is actually assigned. When another end user calls the FX subscriber's telephone number, the call is routed to the proper resident end office switch and from there diverted over the dedicated circuit to the FX subscribers remote location. CLECs create "FX-type" arrangements by reassigning the telephone number to a switch miles away from the "home" central office switch where that NPA NXX was originally assigned as a local number.

[31] *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* 11 FCC Rcd. 15499, 16013, ¶ 1035 (1996).

[32] McPhee Direct, p. 20.

[33] McPhee Rebuttal, pp. 21-22.

through June, 2007. Accordingly, it is not necessary for the Commission to address this issue at this time.

SBC replies that such an agreement reached with MCI is only a two-year agreement and terms for the third year of the agreement being arbitrated here are needed. Moreover, SBC wants to incorporate consistent rules and regulations so that with respect to the base interconnection agreement, all carriers are treated similarly.

Decision:

While this issue may be covered in other agreements between SBC and MCI, this arbitration is attempting to formulate an agreement that will be available for adoption by many companies that are not subject to the agreement between SBC and MCI. Therefore, the Arbitrator will address this issue and in doing so finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

3. MCIm RC 5

MCIm RC 5: Should SBC's (segregating and tracking FX traffic) language be included in the Agreement?

Discussion:

SBC contends that the Commission should adopt its language which provides a method for segregating and tracking FX traffic, because it will allow the parties to properly apply bill and keep to FX and FX-like calls that terminate to their respective FX end user customers. Because calls to FX customers look like a locally dialed call, it is the responsibility of each carrier providing FX service to ensure the traffic terminating to an FX customer is not included in the intercarrier compensation charges to the originating carrier. Although SBC believes its 10-digit method of tracking FX traffic

would be the most accurate, its contract language also allows, upon agreement of the parties, the use of a proxy percentage to estimate FX traffic in the absence of actual traffic recordings.

MCI argues that there is no need to segregate and track vFX traffic if it is compensated based on the same jurisdiction as that determined for the end user placing such calls.

Decision:

The Arbitrator has previously adopted SBC's position on virtual FX traffic. Therefore, SBC's position on this issue is also adopted.

F. 8YY Service

1. AT&T IC 5

AT&T IC 5: What is the proper treatment and form of Intercarrier compensation for intraLATA 8YY traffic?

Discussion:

SBC contends that the Commission should adopt its proposed language, which excludes 8YY traffic[34] from reciprocal compensation, because it is consistent with FCC orders characterizing such traffic as interexchange access traffic.[35]

AT&T argues that IntraLATA 8YY traffic - 8YY traffic that originates and terminates within the same LATA - should be subject to reciprocal compensation. It contends that

[34] The term "8YY" refers generically to toll-free numbers like the familiar "800" service. 8YY service is an optional Feature Group D service available from SBC Missouri' access tariffs, which enables calling parties to reach the 8YY subscriber (e.g., a national rental car company) without incurring toll charges.

[35] *In re Toll Free Service Access Codes, Fifth Report and Order*, 15 FCC Rcd. 11,939, ¶ 2 (2000) ("Toll free service is an interexchange service in which subscribers agree in advance to pay for all calls made to them using a predesignated toll free telephone number").

there is no technical or legal justification for compensating local 8YY traffic as exchange access. 8YY call records identify both the originating telephone number and the translated terminating POTS telephone number for the 8YY number. The pairing of originating and terminating telephone numbers determines the jurisdictional classification of a call. Thus, for all 8YY calls, the correct jurisdiction – whether local or intraLATA toll – is readily identifiable.

Moreover, AT&T contends that it performs the database dip from its originating switch on virtually all originating 8YY calls and presents to SBC the translated POTS telephone number associated with the 8YY subscriber for termination. SBC does the same on its originating 8YY traffic. It is a standard procedure to jurisdictionalize on non-8YY traffic by comparing the originating and terminating POTS numbers. AT&T argues that there is no reason why this same process cannot also be done for 8YY traffic.

SBC replies that the Commission should reject AT&T's proposed language because it is based on the assumption that "some" of the 8YY traffic could be local, and therefore subject to reciprocal compensation rather than access charges. SBC contends that not only is this position contrary to the FCC's views, it is also contrary to undisputed evidence as to how 8YY service is commonly used. Even AT&T's witness acknowledged that "residential and business subscribers purchase 8YY service from a provider so that distant family members or business clients may call the purchaser on a toll free basis."[36] As the overwhelming majority of traffic that goes to 8YY subscribers is toll traffic (as opposed to

[36] Schell Direct, pp. 32-33.

local traffic), 8YY traffic should be assessed access charges (and not reciprocal compensation).[37]

Decision:

The Arbitrator agrees with SBC. The overwhelming majority of 8YY traffic is likely to be toll traffic simply because of the nature of 8YY service. The mere fact that a small percentage of 8YY traffic may be local does not justify instituting the procedures advocated by AT&T. The arbitrator finds in favor of SBC on this issue.

G. Application Of Tandem Reciprocal Compensation Rates

1. CC IC 11
MCIm RC 8

CC/SBC IC 11: Based on the requirements of 47 C.F.R. 51-711(a)(3), and the application of the geographic comparability test, should CLEC only be entitled to the end office serving rates?

Discussion:

SBC argues that the Commission should adopt its proposed language which set outs eligibility criteria for the application of additional tandem interconnection charges to Section 251(b)(5) traffic that originates on SBC's network, because it is consistent with FCC rules. It argues that the CLEC Coalition's language should be rejected because it would allow them to impose additional tandem charges on every call when they are not entitled to do so.

[37] Douglas Direct, p. 23; Douglas Rebuttal, p. 8.

FCC Rule 711(a)(3) provides as follows:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.[38]

SBC argues that the FCC's rule uses the present tense verb "serves" rather than a passive, future tense verb such as "can serve" or "will serve." Based upon this FCC rule, carriers seeking to charge the tandem interconnection rate must have a switch currently and actively serving an area geographically comparable to SBC's tandem switch. In order to meet this condition, the carrier seeking the tandem rate must provide evidence of the actual serving area of the switch in order to demonstrate that it meets the criteria.[39] SBC argues that here, the CLEC Coalition has failed to even attempt to make such a showing.

Thus, SBC contends that the answer to the only question directly presented by the Issue Statement for CC Issue 11 is yes, each member of the CLEC Coalition is entitled to charge only the end office serving rate. However, if any member of the Coalition demonstrates in the future that its switch satisfies the FCC's geographic coverage test, that CLEC's interconnection agreement would be amended accordingly.

The CLEC Coalition argues that their language tracks the FCC's long-standing rule on when the tandem rate applies to traffic terminated by a switch "that is capable of serving a geographic area comparable to the area served" by an ILEC switch. It points out that the restrictive approach advocated by SBC has been criticized by the FCC as a misreading of

[38] 47 C.F.R. § 51.711(a)(3) (emphasis added.)

[39] A CLEC may demonstrate that a switch actually serves a geographic area comparable to the area served by SBC's tandem when that CLEC has: (i) deployed the switch to serve this area; (ii) obtained NPA/NXXs to serve the exchanges within this area; and (iii) demonstrated that it is serving this area through its own facilities or a combination of its own facilities and these facilities connected to its collocation arrangements in ILEC central offices.

its reciprocal compensation rules – the rules that are the basis for the contract language. In 2001, after Docket No. 21982, the FCC, in the *Intercarrier Compensation NPRM*, clarified that rulings like those in Texas Docket No. 21982 (which included a less restrictive regime than that proposed by SBC in this case) misapplied the rules regarding payment of the tandem rate. The FCC again emphasized the proper interpretation of its tandem rate rule in the arbitration award in the Virginia arbitration conducted by the FCC staff.[40]

The CLEC Coalition contends that its language recognizes that the tandem rate should be applied as appropriate under FCC rules. The SBC proposal inappropriately limits the tandem rate only to use of traditional tandem switches.

SBC replies that the CLEC Coalition claims a CLEC is entitled to charge the tandem rate if its switch "is capable of serving" a geographic area comparable to the area served by an SBC tandem switch. The FCC's rule, however, quoted above, permits a CLEC to charge the tandem rate if its switch "serves" such an area; it does not say "capable of serving." SBC argues that the language it has proposed faithfully reflects the FCC's language by providing that the CLEC is entitled to charge only the end office rate unless it has demonstrated "its switch serves a geographic area comparable to the area served by SBC's tandem switch."

SBC argues that separate tandem and end office rates exist because the costs a carrier incurs when it terminates a call that originated on another carrier's network "are likely to vary depending on whether tandem switching is involved."[41] Accordingly, the FCC promulgated Rule 711(a)(3) because "where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the

[40] *See* FCC Docket DA 02-1731, *Memorandum Opinion and Order* ¶ 309 (July 17, 2002).

[41] *Local Competition Order,* ¶ 1090.

appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate."[42] If the interconnecting carrier's switch is merely capable of serving such an area, but is in fact (for example) serving only a small handful of customers located a short distance from the switch, then the incumbent LEC's tandem interconnection rate plainly is not "the appropriate proxy" for the interconnecting carrier's additional costs.

SBC urges the Commission to reject the Coalition's "capable of serving" proposal and instead adopt SBC' proposed language, which sets forth an appropriate methodology for determining whether a CLEC's switch actually serves an area comparable to an SBC switch.

Decision:

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

2. MCIm RC 8

MCIm RC 8: What percent of the traffic should MCIm be permitted to charge at the tandem interconnection rate?

Discussion:

SBC argues that the Commission should adopt its proposed language, which establishes a method for determining the percent of Section 251(b)(5) traffic that should be subject to tandem switching rates, because it is consistent with FCC rules and supported by the evidence. SBC urges the Commission to should reject MCI's proposed language because MCI failed to provide any legal authorities or evidence to support its adoption by the Commission.

[42] *Id.*

SBC contends that once a CLEC switch becomes eligible for the tandem rate by meeting the geographic area test (discussed above), the symmetrical rate requirement of 47 C.F.R. 51.711(a)(1) requires a two-tiered rate to be established based on the terminating services the CLEC provides for a particular call, that are equivalent to the services provided by the SBC tandem.

SBC states that its proposed language establishes a rebuttal presumption that 30% of the CLEC Section 251(b)(5) terminating traffic is subject to the tandem switching compensation rate. This is based on an enterprise-wide study showing that SBC switches approximately 30% of carrier traffic via tandem switches, with the remaining 70% being sent directly to the appropriate end office. As SBC is typically only charging tandem rates on 30% of the traffic it terminates from CLECs, it is "symmetrical" for the CLEC to do the same when terminating SBC's traffic. SBC contends that as MCI has offered no evidence contesting the appropriateness of this approach, the Commission should adopt SBC's proposed language.

MCI argues that its proposal more accurately reflects the FCC's determination on this issue and is more closely in line with the FCC's decision in the Virginia MCI-Verizon arbitration on this very issue. SBC would ignore the plain meaning of the FCC's rules and the FCC's own interpretation of those rules in the Virginia arbitration.

Decision:

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

H. PSTN-IP-PSTN And IP-PSTN Issues.

1. AT&T NIA 18
AT&T IC 1a(i), 1b and 1c
CC ITR 5a
CC IC 15a and b
MCIm RC 15
MCIm RC 17
MCIm NIM 28 [can't find]
Navigator IC 1(a) and (b)
WilTel ITR 3 a and b
WilTel IC 5a and b

AT&T NIA 28: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

AT&T(SBC MO) IC 1a(i): Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Services Traffic?

AT&T IC 1b: What IP Enabled traffic should be excluded from Sec 251(b)(5) reciprocal compensation and subject to access charges in accordance with the FCC's Phone-to-Phone IP Telephony Order, FCC 04-97 (rel. April 21, 2004)?

AT&T IC 1c: Should IP Enabled traffic that does not meet the criteria set forth in the FCC's Phone-to-Phone IP Telephony Order, FCC 04-97, (rel. April 21, 2004), be addressed within the context of this arbitration?

SBC MO IC 1b and c: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

CC ITR 5a: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

CC/SBC MO IC 15a: Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Services Traffic?

CC/SBC MO IC 15b: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

MCIm RC 15: What terms and conditions should apply for switched access traffic?

SBC MO 15(a): What is the proper routing, treatment and compensation for Switched Access traffic including, without limitation, any PSTN-IP-PSTN traffic and IP-PSTN traffic?

SBC MO 15(b): Is it appropriate for the Parties to agree on procedures to handle Switched Access traffic that is delivered over local interconnection trunk groups so that the termination Party may receive proper compensation?

MCIm RC 17 What is the proper compensation for Voice Over Internet Protocol traffic?

SBC MO: *See*, SBC's Issue Statement in Reciprocal Compensation 15.

MCIm NIM 28: Since other provisions of the agreements specify in detail the appropriate treatment and compensation of all traffic type exchange pursuant to this agreement, is it necessary to include SBC Missouri's additional circuit switched traffic language in the agreement?

SBC MO: What is the proper routing treatment and compensation for switched access traffic including, without limitation, any PSTN-IP-PSTN traffic and IP-PSTN traffic?

Navigator/SBC MO IC 1(a): Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Services Traffic?

Navigator IC/SBC MO 1(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?

WilTel ITR 3a: What is the proper routing, treatment and compensation for switched access traffic including, without limitation, any PSTN-IP-PSTN traffic and IP-PSTN traffic?

WilTel ITR 3b: Is it appropriate for the party's to agree on procedures to handle interexchange circuit switched traffic that is delivered

over local interconnection trunk groups so that the terminating party may receive proper compensation?

WilTel/SBC MO IC 5a: Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Services Traffic?

WilTel/SBC MO IC 5b: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

Discussion:

SBC argues that the Commission should adopt its proposed language, which provides that all interexchange switched access traffic, including interexchange PSTN-IP-PSTN[43] traffic or IP-PSTN[44] traffic is subject to intrastate (and interstate) switched access charges and must be delivered over Feature Group trunks. SBC contends that its proposed language is consistent with current federal law and ensures the consistent application of switched access rules and regulations to the interexchange traffic of all carriers, and ensures that SBC, other LECs, and their customers are protected from unlawful access charge avoiding schemes that could jeopardize the affordability of local rates.

[43] PSTN-IP-PSTN traffic is traffic that begins and ends on the public switched telephone network ("PSTN") just like a traditional telephone call, but is temporarily converted to the IP format for some portion of the transmission in between. (For this reason, PSTN-IP-PSTN traffic is sometimes called "IP in the middle" traffic.) For example, assume a BellSouth customer in Georgia who uses AT&T for long distance service calls an SBC customer in Missouri. The call originates on BellSouth's PSTN in the traditional time division multiplexing ("TDM") transmission format, and is then handed off to AT&T for long haul transport from Georgia to Missouri. AT&T might convert the call to the IP format for transport over some portion of its long distance network, and then re-convert the call to the TDM format before handing it off to SBC Missouri for termination on the PSTN, i.e., SBC's local network.

[44] IP-PSTN traffic is traffic that originates in the IP transmission format, and is later converted to the TDM format so it can be terminated on a local exchange carrier's PSTN. An example would be someone with a cable modem using an IP phone device, or IP phone software, to make phone calls through her computer. If that person makes a phone call to a person that does not use IP transmission technology but has an ordinary wireline telephone, the call is converted from the IP format into the circuit-switched TDM format used by local telephone networks for termination to the PSTN.

SBC argues that the Commission should reject AT&T's proposed language, under which all IP-PSTN traffic (and all but a narrow subset of PSTN-IP-PSTN traffic) would be treated like local traffic (even though e.g., it might travel from Georgia to Missouri) because it is inconsistent with federal law. The Commission should reject the CLEC Coalition's proposal to ignore IP-enabled traffic issues at this time because of pending FCC proceedings. SBC contends that the status of current federal law is clear: access charges, rather than reciprocal compensation, apply to all interexchange traffic, including IP-enabled traffic that is interexchange. If the FCC creates new intercarrier compensation rules for IP-enabled traffic in the future, the parties at that time can implement those new rules via amendments to their agreements. SBC urges the Commission to reject Navigator's and WilTel's positions as they have failed to support their positions.

SBC argues that, In accordance with federal law, its proposed language treats interexchange PSTN-IP-PSTN traffic like all other interexchange traffic, making clear that such traffic is subject to the same tariffed compensation (interstate and intrastate access charges) and routing mechanisms as all other interexchange traffic.[45]

SBC contends that he FCC has conclusively ruled that interexchange PSTN-IP-PSTN traffic is subject to the same switched access charges as traditional interexchange calls, holding that PSTN-IP-PSTN services are not an "enhanced" service but "a telecommunications service upon which interstate access charges may be assessed."[46] Among other things, the FCC concluded that if PSTN-IP-PSTN traffic were not subject to

[45] *See*, SBC Attachment 12, Sections 10.1 & 13.1 (defining Switched Access Traffic to include interexchange traffic that "terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology").

[46] *Order (*FCC 04-97), *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket No. 02-361, 19 F.C.C. Rcd. 7,457 (FCC rel. April 21, 2004) ("*IP Access Charge Order*").

access charges, "carriers would convert to IP networks merely to take advantage of the cost advantage afforded to voice traffic that is converted, no matter how briefly, to IP and exempted from access charges."[47] That would inappropriately "create artificial incentives for carriers to convert to IP networks," when "IP technology should be deployed based on its potential to create new services and network efficiencies, not solely as a means to avoid paying access charges."[48]

SBC contends that its proposed language is also consistent with the Comments the Commission filed with the FCC in its IP-Enabled NPRM proceeding. There, the Commission compared PSTN-IP-PSTN and IP-PSTN traffic with traditional PSTN traffic and concluded that:

> Any IP-Enable 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 Intercarrier Compensation Regime docket.[49]

Thus, consistent with the FCC's *IP Access Charge Order*, SBC argues that the parties' agreements should explicitly reflect that interstate and intrastate access charges apply to interexchange PSTN-IP-PSTN traffic just like all other interstate and intrastate interexchange traffic, and prohibit access charge avoidance, as SBC's proposed language provides. Similarly, the agreements should require the use of access trunk groups for interexchange PSTN-IP-PSTN traffic, rather than local interconnection trunks, so that SBC can identify, record and create the Category 11 Records required by the Commission's

[47] *Id*., ¶ 18.

[48] *Id*.

[49] 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.

Enhanced Records Exchange Rule for itself and the LECs and CLECs that subtend its tandems so that the appropriate interstate and intrastate access charges may be assessed.

SBC also points out that while the FCC is currently considering the adoption of new rules governing intercarrier compensation for IP-PSTN traffic in its IP-Enabled Services NPRM,[50] state commissions and carriers must adhere to the FCC's existing rules,[51] which require the application of access charges to all interexchange traffic, and make no exception for IP-PSTN traffic when that traffic is interexchange (i.e., originates and terminates in different local exchanges). SBC contends that its proposed treatment of IP-PSTN traffic is consistent with these requirements.[52]

The FCC's existing rules require that "[c]arrier's 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."[53] IP-PSTN phone calls "use local exchange switching facilities," and thus access charges apply to that traffic when it is interexchange in nature. Moreover, 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

[50] *Notice of Proposed Rulemaking* (FCC 04-28), *In the Matter of IP-Enabled Services*, WC Docket No. 04-36 (FCC rel. March 10, 2004) ("*IP-Enabled Services NPRM*").

[51] When new FCC rules issue, the parties can use the change-of-law process to amend their agreement accordingly.

[52] Conversely, when IP-PSTN traffic is local (i.e., remains within a local exchange), SBC Missouri proposes to treat the traffic like all other local traffic (i.e., subject to reciprocal compensation rather than access charges). AT&T thus mischaracterizes SBC's proposal when it asserts that SBC proposes to subject "all" IP-enabled traffic to access charges.

[53] 47 C.F.R. § 69.5(b).

traffic."[54] Thus, SBC argues that interexchange IP-PSTN traffic is subject to access charges, and not, as AT&T proposes, to reciprocal compensation.

SBC further contends that the FCC's rules exempting interexchange traffic from reciprocal compensation, and applying access charges instead, make no exemption based on the type of transmission technology used to deliver an interexchange call to the PSTN. Rather, those rules require access charges for interexchange carriers that "use local exchange switching facilities."[55] This rule applies whether the carrier delivering the interexchange traffic to the PSTN uses TDM, wireless, IP, or any other transmission technology.

> [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.[56]

SBC argues that that policy is applicable here. Interexchange IP-PSTN traffic may originate on an IP network, but it is sent to and terminated on the PSTN like any other interexchange traffic, and -- unless and until the FCC changes the rules -- it should be subject to the same compensation obligations as any other interexchange traffic. SBC points out that this is the exact same position taken by the Missouri Commission in its Comments to the FCC in that proceeding.[57]

SBC contends that it is critical that such interexchange traffic be routed over separate access trunks rather than local interconnection trunks so that SBC can identify,

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[54] *ISP Remand Order,* ¶ 37.

[55] 47 C.F.R. § 69.5(b).

[56] *IP-Enabled Services NPRM,* ¶ 61.

[57] 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.

record and create the Category 11 Records required by the Commission's Enhanced Records Exchange Rule for itself and the other LECs and CLECs that subtend its tandems so that the appropriate interstate and intrastate access charges may be assessed.

AT&T argues that IP Enabled Services Traffic is generally subject to Section 251(b)(5), save for the specific service described in the FCC's April 21, 2004 Order, which AT&T no longer provides. AT&T's IP Enabled Services Traffic is Information Services Traffic that falls within the scope of the Enhanced Services Exemption and can be routed over interconnection trunks, and is subject to reciprocal compensation arrangements like other types of 251(b)(5) traffic

AT&T points out that IP Enabled Service Traffic includes, but is not limited to, services and applications that rely on internet protocol for all or part of the transmission of a call. IP Enabled Services include the digital communications capabilities of increasingly higher speeds, which use a number of transmission network technologies, and which generally have in common the use of internet protocol. IP Enabled Services can be provided over broadband or narrow band facilities and can carry voice and/or data communications. Voice communications carried via an IP Enabled Service are often referred to as VoIP traffic.

AT&T argues that Information Services are services offered over common carrier transmission facilities, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Specifically, Section 3(20) of the Communications Act, 47 USC 153(20) provides that an information service is "the offering

of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications". A service is an information service as long as it "*offer*[s] [the] *capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications." The Act does not require that these activities be performed every time a subscriber uses the service – but only that the capabilities be *offered* to the subscriber.

AT&T argues that Information Services are also provided via telecommunications. Thus, the fact that an Information Service is provided in part over telecommunications facilities does not disqualify it as an Information Service.

AT&T contends that most IP Enabled Services are Information Services. However, an IP Enabled Service may not qualify as an Information Service if it does not offer any of the enhancements to the transmission that are set forth in the Act's definition. Generally speaking, if the service offers to provide anything more than pure transmission of the end user's communication by, for example, providing a net change in the protocol, the service is considered an Information Service.

AT&T points out that net protocol conversion is when the call originates in one protocol (e.g., IP, which is packet-switched protocol) and is completed to the end user in another protocol (e.g., time division multiplexing ("TDM"), which is a circuit-switched protocol). The FCC has consistently recognized that services that include net protocol conversion are Information Services. Computer-to-phone communications and phone-to-computer communications involve net protocol conversions. Phone-to-phone communications with IP in the middle, may not involve net protocol conversions, and a service that includes no

net protocol conversion would not be an Information Service unless it offers enhancements beyond pure transmission.

AT&T argues that all of its current IP Enabled Services offer the capability for net protocol conversion in addition to other enhancements beyond the simple transmission of the communication that places them clearly within the information services category.

AT&T contends that Information Services providers are entitled to the Enhanced Services Exemption that enables an enhanced service provider to be treated as an end user for purposes of the access charge rules. Moreover, because IP Enabled Services that are Information Services are offered via telecommunications, they fall squarely within the scope of section 251(b)(5), which applies broadly to the transport and termination of "telecommunications". Thus, if an IP Enabled Service is also an Information Service, then the IP Enabled Service provider could purchase an ISDN Primary Rate Interface (PRI) or other local business lines to connect to the PSTN and the LEC providing the PRI or business line would pay and receive reciprocal compensation pursuant to the rules in the applicable ICAs, even if a call otherwise, based on the originating and terminating end users' NPA-NXXs, would be an interstate call.

AT&T has proposed to treat IP Enabled Services Traffic that is also Information Services Traffic as 251(b)(5) Traffic, as long as the IP Enabled Services provider or "end user" is located or has a presence in the same LATA as the respective calling or called party. With respect to calls originating on the Internet (and terminating to the PSTN), the ESP must have a presence within and carry the call to the same LATA as the called party. With respect to calls originating on the PSTN (and terminating IP), the called party must have a telephone number within the same LATA as the calling party and the ESP must

have a presence within the same LATA as the calling party. AT&T argues that this proposal is consistent with the current state of the law in that it is enabling an Information Services provider to take advantage of the Enhanced Services Exemption and be treated as an end user for intercarrier compensation purposes.

AT&T asks the Commission to apply the Enhanced Services Exemption in the manner that AT&T contends the current law provides. Should the FCC, in the IP NPRM, expand the scope of the exemption – or narrow it – the Parties can deal with that change pursuant to the provisions in the ICA for change in law.

SBC urges the Commission to reject AT&T's proposal. According to SBC, AT&T would subject IP-PSTN traffic to reciprocal compensation (and to exempt such traffic from access charges when it is interexchange in nature), based on AT&T's proposition that IP-PSTN traffic constitutes an "information service, which falls under the FCC's Enhanced Services Provider exemption ("ESP Exemption") from access charges.

SBC argues that AT&T is wrong, because (1) if IP-PSTN traffic is indeed an information service, then it is expressly excluded from the reciprocal compensation requirement of Section 251(b)(5), under the FCC's existing rules; (2) the FCC's ESP exemption does not apply to IP-PSTN traffic, or make that traffic subject to reciprocal compensation; and (3) its policy argument is backwards.

Even if interexchange "IP Enabled Services" are information services, SBC argues that AT&T's proposal to require reciprocal compensation for that traffic is inconsistent with federal law because the FCC's current rules that govern reciprocal compensation expressly

exclude "traffic that is interstate or intrastate exchange access, information access, or exchange services for such access" from reciprocal compensation.[58]

SBC also argues that AT&T incorrectly suggests that interexchange IP-PSTN traffic (and all other "IP Enabled Services" and "Information Services" traffic) is exempt from access charges under the FCC's "ESP exemption." First, even if it were correct that VoIP and all Information Services traffic were exempt from access charges under the ESP Exemption, that would not make them subject to reciprocal compensation. Once it is determined -- as the FCC has conclusively determined, at least for now, in Rule 701(b)(1) -- that traffic is not subject to reciprocal compensation for purposes of the 1996 Act, a separate determination that the ESP exemption frees that traffic from access charges does not bring the traffic back within the purview of reciprocal compensation. Rather, under the narrow ESP exemption, enhanced service providers are treated as end users for purposes of the FCC's access charge rules, and thus pay end user charges under FCC Rule 69.5(a). But AT&T is not an ESP.

Moreover, the FCC's 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). 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."[59] As the FCC subsequently described its ESP exemption, that exemption

[58] 47 C.F.R. § 701(b)(1) (emphasis added).

[59] *Memorandum Opinion and Order, MTS and WATS Market Structure,* CC Docket No. 78-72, 97 FCC 2d 682 (1983) ("*MTS/WATS Market Structure Order"*), ¶ 78.

carves ESPs out from the access charge obligation when they "use incumbent LEC networks to receive calls from their customers,."[60] i. e., for ESP-bound traffic."[61]

The interexchange IP-PSTN traffic at issue here, on the other hand, is not "ESP-bound." Rather, it is "PSTN-bound" in the exact same fashion as a traditional long distance telephone call. Similarly, a VoIP service provider does not merely "use incumbent LEC networks to receive calls from their customers,"[62] but uses the PSTN to terminate calls from their customers to non-customers in other exchanges (IP-PSTN traffic), or to receive calls from non-customers in other exchanges (PSTN-IP traffic), just like traditional long distance telephone calls.[63]

SBC further argues that AT&T attempts to make a "policy" argument claiming "SBC's proposal to apply access charges to all IP Enabled Traffic will impede the development of IP Enabled technology and services."[64] SBC contends that AT&T has the policy inquiry completely backwards. The proper inquiry would be whether there is any economic justification to treat IP-enabled interexchange services differently than other interexchange services. No such economic justification exists, however, nor has AT&T even attempted to provide any economic justification. Moreover, federal law currently requires access charges for interexchange traffic, and does not subject such traffic to reciprocal compensation under Section 251(b)(5). And federal law makes no distinction based on the

[60] *First Report and Order*, *Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd 15982, ¶ 343 (1997) ("*Access Charge Order*") (emphasis added).

[61] *IP-Enabled Services NPRM*, ¶ 25 (emphases added).

[62] *Access Charge Order,* ¶ 343.

[63] Constable Direct, pp. 14-17.

[64] Schell Direct, p. 114. Again, AT&T's repeated assertion that SBC Missouri proposes to apply access charges to "all" IP-enabled traffic is mistaken. SBC Missouri proposes to apply access charges to *interexchange* IP-PSTN traffic, not local IP-PSTN traffic.

technology used to deliver traffic to or from the PSTN. SBC contends that AT&T provides no proof to support its assertion that a level playing field, whereby all interexchange traffic (including interexchange VoIP traffic) is subject to the same access charge regime, would somehow "threaten the efficient deployment of emerging technology and the services it brings."[65] To the contrary, SBC contends that applying different compensation mechanisms based solely on the technology used before or after the traffic is routed over the PSTN would arbitrarily encourage the deployment of a particular technology based on artificial regulatory incentives (like access charge arbitrage) rather than on the "merits" of the technology. As the FCC stated, "IP technology should be deployed based on its potential to create new services and network efficiencies, not solely as a means to avoid paying access charges."[66]

Finally, SBC argues that the Commission does not have the discretion in this proceeding to rewrite Section 251(b)(5) of the 1996 Act or to create a new exemption from the FCC's existing access charge regime for VoIP interexchange traffic that terminates on the PSTN. Section 251(g) of the 1996 Act freezes the access charge rules for interexchange traffic that were in effect as of the enactment of the 1996 Act, "until such restrictions and obligations are explicitly superseded by regulations prescribed by the [FCC] after such date of enactment."[67] Those pre-existing FCC rules require the application of access charges to both PSTN-IP-PSTN and IP-PSTN traffic, and thus those rules must continue to apply until expressly superseded by the FCC. While the FCC is currently considering possible revisions to existing access charge obligations with respect to various

[65] Schell Direct, p. 114.

[66] *IP Access Charge Order,* ¶ 18.

[67] 47 U.S.C. § 251(g).

types of IP-based traffic in its IP-Enabled Services NPRM, until the FCC adopts such revisions, the parties' contracts must reflect the status quo.

The CLEC Coalition argues that there is no need to introduce SBC's policy language regarding the treatment of VOIP traffic. Until the FCC rules on the subject, the ICA should remain silent; afterwards, if necessary, it may be changed according to the Change of Law provisions in the General Terms and Conditions attachment to the ICA. Moreover, the CLEC Coalition contends that the language proposed by SBC goes far beyond any of the decisions reached by the FCC in any of its proceedings related to IP-enabled traffic or VOIP. There is no legal or policy justification for incorporating these provisions prior to the FCC's decisions addressing these issues. To include the language now will do nothing more than lead to disputes, and delay implementation of the FCC's decisions once the FCC acts on these critical issues.

SBC opposes the CLEC Coalition's position because it suggests that the ICA should remain silent on IP-PSTN and VoIP traffic until the FCC "provides more definitive guidance on the intercarrier compensation for IP-Enabled/VoIP traffic."[68] SBC concedes that while it is true that the FCC is currently considering the adoption of new rules regarding intercarrier compensation for IP-enabled (and all other) traffic, that is no reason to duck the issues presented in this arbitration. The issue before the Commission is the application of the FCC's existing intercarrier compensation regime to IP-enabled traffic; if those rules change in the future, the parties can amend their contracts accordingly. Moreover, the fact that the FCC's rules may change in the future does not mean it would be improper to apply the existing rules. If that were the case, then the parties' agreements would not contain any

[68] Krabill Direct, pp. 16-17.

prices or any intercarrier compensation terms at all, because the FCC is currently re-considering both its TELRIC pricing rules and all its intercarrier compensation rules.

MCI argues that its language should be adopted because it is consistent with the FCC's pronouncements on enhanced service traffic. MCI does not propose that "IP in the middle" traffic be counted as an enhanced service in that the traffic undergoes no net protocol change. The IP-PSTN traffic, on the other hand falls squarely within the "net-protocol change" portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates. Applicable FCC rules regarding ISP-bound traffic and termination of enhanced services traffic over local business lines entitle local exchange carriers that deliver ISP-outbound (i.e., information services) traffic to the public switched telephone network for "last mile" switched termination to terminate that traffic without payment of access charges. Therefore, the appropriate compensation for this traffic is the reciprocal compensation rate paid for local traffic.

SBC replies to MCI's position by indicating that MCI claims that all VoIP traffic is "enhanced/information services" traffic and that it should be permitted to route it over local trunk groups and to apply what it calls a "Percent Enhanced Usage ("PEU") factor" to determine reciprocal compensation. SBC argues that the Commission should reject MCI's proposal because it is contrary to FCC rules, which provide that reciprocal compensation under Section 251(b)(5) of the Act applies to telecommunications traffic "except for telecommunications traffic that is interstate or intrastate exchange access, information access or exchange services for such access."[69] Thus, information/enhanced services

[69] 47 C.F.R. § 701(b)(1).

traffic cannot be subject to reciprocal compensation, as MCI proposes, because any such interexchange traffic would be interstate or intrastate access or (under MCI's assumption) information access.

In addition, SBC argues that MCI seeks to improperly apply the same rates for ISP-bound traffic to its enhanced/information services traffic. The FCC has specifically limited the rules for ISP-bound traffic to ISP-bound, and not to the various forms of traffic, which each have their own separate rules and compensation mechanisms, which MCI would encompass in its overbroad and under defined definition of enhanced/information services traffic.

Navigator argues that if a call originates on a local number and terminates on a local number in the same exchange it is a local call and not subject to access. Further, if a call originates on a local number and terminates on a number in a different exchange it is a long distance call and is subject to access as currently defined in the parties' M2A. IntraLATA toll calls should not be subject to access charges, but should be treated as reciprocal compensation bill and keep. Any decisions by the FCC or other regulatory bodies finalized in the future may be incorporated through the change of law provisions of the contract.

SBC urges the Commission to reject Navigator's position because although Navigator has not proposed competing language, its position, as stated in the DPL, is contradictory. Navigator appears to agree that interexchange traffic is subject to access charges. However, Navigator then proposes that intraLATA toll calls should not be subject to access charges. SBC contends that this makes no sense as interexchange calls can be both interLATA or intraLATA in nature. Further, the FCC rules clearly state that

interexchange calls are subject to access charges, regardless of whether they are interLATA or intraLATA.[70]

WilTel agrees that the FCC must decide the issue of the proper regulatory treatment of IP-enabled traffic, but reserves the right to argue that IP-PSTN traffic should be subject to reciprocal compensation. At the very least, WilTel argues that \ it should be subject to nondiscriminatory rates, terms and conditions such that a rate available to one CLEC might be available to other CLECs. WilTel contends that it should be able to route such traffic over any facility that is reasonable in accordance with WilTel's business practices, provided that WilTel can identify such traffic and that PSTN-PSTN traffic would be subject to access charges.

SBC replies that while indicating that the FCC must decide the issue of the proper regulatory treatment of IP Enabled Traffic, WilTel claims to preserve the right to argue that IP-PSTN traffic should be subject to reciprocal compensation.[71] SBC contends that this approach does not comport with the FCC's current rules and must be rejected.[72]

Decision:

The Arbitrator finds that, for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

2. MCIm RC 9
CC IC 6

MCIm RC9: Should SBC's proposed true-up mechanism for ISP traffic be included in the agreement?

[70] McPhee Direct, p. 25.

[71] Porter Rebuttal, p. 24.

[72] Constable Direct, pp. 25-26.

SBC MO: (a) Should the rates be subject to a true-up upon the conclusion of state proceedings to rebut the 3:1 presumption?

(b) Should the date for retroactive true-up of any disputes relating to the rebuttable presumption be set as the date such disputing Party first thought to rebut the presumption at the Commission?

Discussion:

SBC argues that the Commission should adopt its proposed language, which sets a true-up back to the date a party seeks relief from the Commission, because it is most consistent with the intent of the FCC's *ISP Remand Order*. Recognizing that some carriers are unable to identify ISP-bound traffic, and in order to "limit disputes and avoid costly efforts to identify this traffic," the FCC "adopt[ed] a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceed a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in [the *ISP Remand Order*]."[73] The FCC made clear that the 3:1 ISP presumption may be rebutted in proceedings before the state commission and provided for a true-up.[74] The disagreement presented to the arbitrator concerns the appropriate true-up period.

SBC argues that the parties should true-up compensation payments back to the date a party first sought appropriate relief from the Commission. In balancing the interests between the parties, the FCC in the *ISP Remand Order* required LECs to continue paying the presumptive rates, but specifically provided for a true-up:

> During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1

[73] *ISP Remand Order,* ¶ 79.

[74] *Id*.

> ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings. [75]

SBC argues that unless the true-up applies at least back to the date relief was first sought from the Commission, the required true-up would be meaningless. Moreover, SBC's proposed language provides the parties contractual certainty as to the date a true-up will apply. The timing of the true-up should be applied consistently to all carriers, regardless of which party rebuts the presumption. In addition, making the true-up coincide with the start of the dispute will minimize the subsidization of reciprocal compensation payments on ISP-Bound Traffic, in accordance with the ISP Remand Order's goal of reducing the economic distortions and arbitrage associated with the imposition of reciprocal compensation charges on ISP-Bound Traffic.

MCI argues that while a true-up for any disputes over compensation for ISP Bound traffic may be appropriate in some circumstances, MCI believes the appropriate true-up should be determined on a case-by-case basis by the Commission and not prejudged in this Agreement.

Decision:

The arbitrator agrees with SBC. The case-by-case basis proposed by MCI would merely introduce uncertainty into the process. The arbitrator will adopt the language proposed by SBC.

I. Transit Traffic -- *See* Section I(C).

[75] *ISP Remand Order*, ¶ 79 (emphasis added).

J. Traffic Exchanged Without CPN

1. AT&T IC 6a and b
MCIm RC 7
WilTel IC 3

AT&T/SBC MO IC 6a: What terms and conditions should govern the compensation of traffic that is exchanged without the CPN necessary to rate the traffic?

AT&T (SBC MO) IC 6b: Should CPN be sent with all categories of traffic, including Section 251(b)(5) Traffic, IntraLATA Toll Traffic, Switched Access Traffic, and wireless traffic?

MCIm RC 7: When CPN is unavailable, what processes should apply for assessing percent local usage to determine appropriate termination rates?

SBC MO: In the absence of CPN, what methods should the Parties use to jurisdictionalize the traffic for the purposes of compensation?

WilTel/SBC MO IC 3: What terms and conditions should govern the compensation of traffic that is exchanged without the CPN necessary to rate the traffic?

Discussion:

The parties recognize that some traffic may be exchanged that does not contain CPN (for instance, the small of amount of traffic originated off the SS7 network via a rural multi-frequency network may not contain CPN). In such situations, the parties have agreed on the appropriate treatment of unidentified traffic so long as that traffic constitutes less than 10% of all traffic delivered from one carrier to another. Such unidentified traffic will be billed on a Percent Local Usage ("PLU") basis using a PLU factor.[76] But the parties

[76] A PLU factor is determined by examining a carrier's identifiable traffic; for example, if 74% of a carrier's identifiable traffic (based on minutes) was local and 26% was intraLATA toll, any unidentifiable traffic from that carrier would be treated as 74% local and 26% intraLATA toll for billing purposes. Thus, when traffic does not contain CPN, the PLU factor attempts to estimate how that traffic would be treated and billed if it were identifiable.

disagree on the appropriate course of action when one carrier delivers more than 10% of its traffic without CPN.

SBC argues that the Commission should adopt its proposed language, which is the same language currently contained in the M2A, because it provides appropriate incentives for prompt resolution. It allows a party one month to correct the conditions causing it to send excessive levels of traffic without CPN. If the party fails to correct the problem after one month, that party is charged terminating access rates for the excess traffic it delivers without CPN. As long as no one is trying to game the system by intentionally stripping CPN from intraLATA toll calls that originate on it network, the percentage of traffic that does not contain CPN will rarely if ever exceed 10%.[77] A percentage greater than 10% indicates a serious problem that a carrier should quickly address.

AT&T argues that generally speaking, the parties agree on how the calls will be jurisdictionalized if the percentage of calls passed with CPN is 90% or greater, but disagree on what happens if the percentage of calls passed with CPN drops below 90%. As long as the percentage of calls passed with CPN is 90% or greater, calls passed without CPN will be billed as either local or intraLATA toll in direct proportion to the percent local usage ("PLU") factor. However, if the percentage of calls passed with CPN drops below 90%, SBC proposes that all calls passed without CPN be billed at intrastate access charges. On the other hand, AT&T proposes that if the percentage of calls passed without CPN drops below 90%, the terminating party will so inform the originating party and the parties will coordinate and exchange data as necessary to determine the cause of the failure and to assist in its correction. However, under AT&T's proposed language, calls passed without CPN would

[77] Due to the makeup of today's telephone network signaling systems (SS7), the minimal amount of traffic delivered without CPN mostly reflects software errors where CPN is not generated at call origination. (*Id.)*

continue to be billed as either local or intraLATA toll in direct proportion the percent local usage ("PLU") factor, whereas under SBC's proposed language, all calls without CPN would be billed at access charges. This is excessively punitive and presumes that fraud or arbitrage is taking place.

AT&T agrees CPN should be passed whenever possible where SS7 exists and AT&T has agreed to that necessity in contract language with SBC. All AT&T switches provide CPN on all calls where AT&T has control over provision of CPN. AT&T's business operations and processes rely on this information just as much as SBC's do. However, AT&T (and SBC) should not be punished for circumstances beyond their control.

AT&T indicates that AT&T and SBC have no control over the lack of CPN when business customers use older customer premise equipment ("CPE") that does not provide CPN. For example, older multi-line business customer premises equipment ("CPE") is unable to record CPN mechanically. Therefore, a new entrant such as AT&T that has a disproportionate share of business customers may be disproportionately affected by lack of CPN information through no fault of its own. Therefore, AT&T's proposed language states that the parties will coordinate and exchange data as necessary to determine the cause of the CPN failure (or shortfall) and to assist in its correction, but it does not require the originating carrier to pay access charges on all of the calls passed without CPN, which SBC's language would require. AT&T believes that in the absence of CPN information, the jurisdiction of the traffic should have a basis in fact, i.e., the PLU factor, rather than an arbitrary designation of all such calls as toll traffic subject to access charges.

AT&T points out that this issue was one of the issues addressed by the FCC in the *Virginia Arbitration*. In that proceeding, as in this proceeding, Verizon and WorldCom

agreed that they would exchange CPN data for at least 90% of the calls but disagreed on what should happen when a party passes CPN information on less than 90% of its originating calls. Verizon proposed to charge access charges for all traffic below the 90% CPN threshold, which is less onerous than SBC's proposal in this case, which is to charge access charges for all calls without CPN. On the other hand, WorldCom proposed that the parties use the PLU factors to jurisdictionalize the traffic below 90%. The Bureau adopted WorldCom's proposal.

MCI contends that while the parties agree that they should exchange CPN, SBC's proposal does not acknowledge the fact that CPN is not available in all circumstances. MCI's language proposes that, where CPN is not available, the parties should use any available equivalent signaling data that provides for accurate jurisdiction identification for calls. Both parties have proposed methodologies for identifying the type of traffic passed between networks that has no CPN. MCI's proposal, using a PIU or PLU based on the originating carrier's traffic measurements for the prior three months, is a much more accurate and fair means by which to identify this traffic. SBC's proposal provides a windfall for SBC by assessing access charges on all traffic without CPN when the level of traffic with CPN falls below 90%.

WilTel argues that CPN is not necessarily an accurate identifier of all types of traffic. Where jurisdiction of the call matters, the parties should adopt a fair and accurate mechanism to determine jurisdiction.

SBC replies that the Commission should reject AT&T and MCI's proposal because it would allow a carrier to continue to bill excessive traffic without CPN on a PLU basis, without any timeframe for correcting the problem. Faced with an uncooperative CLEC,

SBC's only recourse would be dispute resolution. Yet their proposed language has no provision for dispute resolution, nor does it give any indication as to when dispute resolution could be invoked.[78] Moreover, their proposed language improperly provides an incentive for carriers to deliberately pass traffic without CPN. By "stripping" the CPN from their intraLATA toll calls, such carriers would be billed for those call based on the proxy PLU. This would create an arbitrage opportunity by which carriers could game the compensation regime by paying reciprocal compensation on their intraLATA toll calls instead of the higher access rates that should apply.

Finally, AT&T's reliance on the Virginia Arbitration is misplaced because SBC' proposal here is not the same as Verizon's proposal was there, because SBC proposes to allow time to correct the problem that led to the missing CPN, while Verizon's proposal did not.

Decision:

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

K. Other Issues

1. AT&T IC 4

AT&T/SBC MO IC 4: Should AT&T be able to Charge an intrastate intraLATA access rate higher than the Incumbent?

Discussion:

[78] McPhee Direct, pp. 38-39.

SBC argues that the Commission should adopt its proposed language that caps CLEC intrastate switched access rates at those contained in SBC's intrastate switched access rates, because it is consistent with longstanding Commission Orders. In Case No. TO-99-596, the Commission determined on an interim basis that a CLEC's intrastate switched access charges may not be higher than the incumbent LEC's charges in each exchange, except under very specific circumstances. In Case No. TR-2001-65, the Commission made the cap permanent:

> . . . applications for certificates of service authority to provide basic local telecommunications service as a competitive company shall be granted only on condition that the applicant shall not charge rates except for exchange access service in excess of those charged by the incumbent local exchange carrier in each exchange within its service area, except as the Commission may otherwise authorize upon a showing that higher access rates are justified by costs.[79]

The Commission should reject AT&T's and MCI's proposed language because it is inconsistent with Commission requirements.

AT&T replies that the parties have agreed that AT&T's interstate access rates will be at parity with SBC interstate access rates, consistent with FCC 01-146 and FCC 04-110. This agreement is based on the federal mandate requiring such parity. However, there is no comparable obligation relating to intrastate intraLATA traffic. AT&T should be free to establish appropriate rates for intrastate intraLATA access, if access charges are applicable between the parties for this traffic.

AT&T contends that SBC seeks to require that AT&T's intrastate intraLATA access rates be no higher than SBC's comparable intrastate intraLATA access rates contained in

[79] *In the Matter of the Investigation of the Actual Costs Incurred in Providing Exchange Access and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri,* Case No. TR-2001-65 (*Report and Order,* issued August 26, 2003) at p. 21.

SBC's Missouri tariff. AT&T, on the other hand, proposes that each Party's respective tariffed rates will apply to intrastate intraLATA access rates.

AT&T argues that there is nothing in any regulation, the Act or any other law that requires AT&T, as part of an interconnection agreement, to cap its intrastate intraLATA access charges at the level of SBC's comparable rates contained in its Missouri tariff. AT&T follows the process for tariff filings in the state of Missouri and this state imposes no such requirement on AT&T or other CLECs. Section 251(c) of the Telecommunications Act of 1996 exclusively imposes on incumbents, such as SBC, certain obligations concerning the cost of services provided to CLECs. The Act does not contemplate limiting a CLEC's pricing flexibility when the incumbent proposes to purchase services from the CLEC. It would be especially inappropriate for the incumbent to specify the rates that a competitor can charge.

Finally, AT&T argues that this arbitration proceeding is not the place to address carrier's access rates. If the setting of CLECs' access rates were appropriate in this case, it would be equally appropriate for a CLEC to examine SBC's access rates. Instead, the Commission should allow the tariff approval process under state law to serve its purpose in establishing appropriate access rates.

Decision:

The arbitrator finds that the Commission has a long-held policy of capping a CLEC's access rates to match those charged by SBC in that exchange. Such a policy is needed because access service is not subject to competitive pressures. The arbitrator finds that the language proposed by SBC is more reasonable and is adopted.

2. MCIm RC 16

Navigator IC 2
Sprint IC 8

MCIm RC 16: Should the contract preserve the outcome of any order from the FCC affecting compensation for ISP traffic?

SBC MO: Is it appropriate to include a specific change in law provision to address the FCC's NPRM on inter-carrier compensation?

Navigator/SBC MO IC 2: Is it appropriate to include a specific change in law provision to address the FCC's NPRM on Intercarrier Compensation?

Sprint/SBC MO IC 8: Is it appropriate to include a specific change in law provision in the Intercarrier Compensation Appendix to address the FCC's NPRM on Intercarrier Compensation?

Discussion:

SBC contends that the Commission should adopt its proposed language that includes additional change of law provisions to address the FCC's intercarrier compensation and NPRM, to ensure a smooth transition to whatever changes the FCC orders. The FCC clearly acknowledged that the compensation mechanism contained in its *ISP Remand Order* was meant to be interim, with more direction to follow as a result of the NPRM. By acknowledging that a change of law event is forthcoming upon release of the FCC's pending Intercarrier Compensation Order, parties to the ICA can continue to operate with contractual certainty as to when and how that order will be implements.[80]

MCI argues that the additional language proposed by SBC is unnecessary. In the event the FCC takes final action in its Interim ISP Compensation Order, the Intervening Law provisions of the interconnection agreement should control and govern the process in the event changes are necessary.

[80] McPhee Direct, pp. 43-45.

Navigator's position is that current Change of Law provisions are adequate and inclusion of this provision is unnecessary.

Sprint also argues that sufficient provisions exist in the General Terms and Conditions of the Agreement to take into account any future modifications necessary to implement changes in law, including any changes resulting from the adoption of an order in the FCC's Notice of Proposed Rulemaking for Intercarrier Compensation or legal action affecting the FCC's ISP Compensation Order. There is no additional need for SBC's language which is complicated, lengthy and in some cases seeks to allow unilateral changes to occur to the application of this agreement. SBC's terms discuss possible future outcomes and asks Sprint to make a decision on narrow issues without having the text of the legal decision to take a position, and ignoring the fact that issues such as the effective date could specifically be addressed. For example, in the recent Triennial Review Remand Order the FCC established a specific effective date and outlined a detailed transition schedule. These terms are an attempt to add levels of specificity and breadth to a contract which is already too large and complex and is a fruitless exercise. Further, Sprint insists that any change of law would be mutually agreed, discussed and negotiated under the Act. Therefore, all instances of additional change of law verbiage should be struck from this and all other Appendices as the Intervening Law provisions in the General Terms and Conditions section of the Agreement are sufficient to preserve both Parties rights and obligations under the law.

Decision:

While changes will certainly result when the FCC takes final action regarding Intercarrier and ISP compensation, SBC has not demonstrated the need for specific

procedures to deal with those decisions, aside from the change of law provisions existing elsewhere in the agreement. The language proposed by SBC shall not be included in the agreement.

3. AT&T IC 2b
MCIm 11
CC NIA 8
AT&T IC 2a and 2b

AT&T (SBC) IC 2b: Should AT&T have the sole obligation to enter into compensation arrangements with third party carriers that terminate traffic to AT&T when SBC MISSOURI is the ILEC entity providing the use of the end office switch (e.g., switching capacity) to such third party carrier, and if it does not enter into such arrangements, should it indemnify SBC when the third party carriers seek compensation from SBC?

MCIm RC 11 Should CLEC have the sole obligation to enter into compensation arrangements with third party carriers that terminate traffic to CLEC when SBC MISSOURI is the ILEC entity providing the use of the end office switch (e.g., switching capacity) to such third party carrier, and if it does not enter into such arrangements, should it indemnify SBC when the third party carriers seek compensation from SBC?

CC NIA 8: Should the interconnection agreement require SBC to interconnect with CLEC via a third party carrier and send traffic destined to CLEC through a third party transit provider?

AT&T IC 2a: Should SBC be permitted to dictate in this interconnection agreement a requirement that AT&T enter into agreements with third party carriers?

AT&T IC 2b: Should SBC be protected from liability when carriers depend on SBC for records with all relevant information needed to bill the correct party and to validate bills they receive?

AT&T IC 2a: Should SBC be permitted to dictate in this interconnection agreement a requirement that AT&T enter into agreements with third party carriers?

AT&T IC 2b: Should SBC be protected from liability when carriers depend on SBC for records with all relevant information needed to bill the correct party and to validate bills they receive?

SBC MO: Should AT&T have sole obligation to enter into compensation arrangement for third party carriers that terminate traffic to AT&T when SBC is the ILEC entity providing the use of the end office switch (e.g., switching capacity) to such third party carrier, and if it does not enter into such arrangements, should it indemnify SBC when the third party carriers seek compensation from SBC?

SBC MO 11 a: What is the appropriate compensation for wholesale local switching.

SBC MO 11b: Should MCIm have sole obligation to enter into compensation arrangement for third party carriers that terminate traffic to MCIm when SBC MISSOURI is the ILEC entity providing the use of the end office switch (e.g., switching capacity) to such third party carrier, and if it does not enter into such arrangements, should it indemnify SBC MISSOURI when the third party carrier seek compensation from SBC MISSOURI?

Discussion:

SBC argues that the Commission should adopt its language, which requires MCI to enter into compensation agreements with third party carriers with whom it exchanges traffic when that third party obtains end office switching capacity from SBC. The respective parties should seek compensation directly from the originating carrier, not SBC as the ILEC entity providing the use of the end office switch.

SBC contends that MCI's language should be rejected because it improperly gives it the right, on a default basis to bill SBC as the originating carrier when "call records information" is not provided (e.g., when the originating carrier is a CLEC working out of another ILEC's switch). MCI should not be permitted to distort the billing process by billing SBC when SBC is not the originating carrier. No only is such default billing inconsistent with MECAB guidelines, it is also directly contrary to the Commission's new Enhanced

Record Exchange Rule, which codifies the business relationship under which "the originating carrier, not the transiting carrier is responsible for payment of call termination."[81] Moreover, SBC should be indemnified from any form of compensation to the third party carrier as SBC should not be required to function as a billing intermediary or clearing house.

AT&T argues that SBC should not dictate agreements AT&T must reach with third parties. AT&T expects to appropriately bill (and be billed by) third party carriers, however, when the SBC switching element is used, AT&T needs appropriate records from SBC in order to properly bill. The issue has more to do with records SBC needs to provide, which is addressed in Attachment 28 of the agreement being arbitrated. SBC should not be protected from liability when it has the information a CLEC needs to correctly bill another carrier, and does not provide it.

AT&T does not propose language for this issue in the reciprocal compensation attachment. Rather, AT&T believes that this issue is already addressed in two places in the interconnection agreement being arbitrated. First, Attachment 28, Comprehensive Billing, contains detailed language regarding the obligation of SBC to provide records, which are necessary for AT&T as the purchaser of a UNE switching element to bill other carriers. In addition, when a third party carrier uses an SBC UNE switch to provide service, AT&T must have records from SBC in order to bill the proper carrier for call termination. These issues are addressed in Attachment 28. The second place where the SBC proposed Section 1.6.3 is already addressed is in the indemnification provisions in Section 7 of the General Terms and Conditions. The separate indemnification provided in SBC's proposed Section 1.6.3 is

[81] Read Rebuttal, pp. 4-5 quoting the MoPSC *Order of Rulemaking and Opting 4 CSR 240-29.040* at p. 5.

self-serving and misleading because SBC seeks indemnification here without being willing to accept the responsibilities associated with proving the record information AT&T needs to bill, as set forth in Attachment 28. For these reasons, AT&T respectfully requests that the Commission reject SBC's proposed Section 1.6.3 and require SBC to take on responsibility to provide records as proposed by AT&T in Attachment 28.

Decision:

The Arbitrator finds that the language proposed by MCI is unreasonable and must be rejected because there is no reasonable basis for allowing default billing against SBC in these circumstances. Nevertheless, SBC does have an obligation to provide appropriate and necessary billing information to the CLECs. The Arbitrator is persuaded to adopt the position advocated by AT&T, which holds that no separate language is required to handle this issue.

4. MCIm RC 1

MCIm RC 1: Which Party's description of local switching should be included in the agreement?

Discussion:

SBC argues that the Commission should reject MCI's proposed language, which characterizes local switching with the outdated nomenclature of "unbundled local switching," as inconsistent with federal law. In light of the *TRO* and *TRRO*, local circuit switching is no longer required to be provided on an unbundled basis. Therefore, the usage of "unbundled" no longer applies. SBC contends that its proposed language accurately characterizes the local switching as "wholesale local switching."

MCI argues that its language should be adopted because there may be instances where SBC is providing unbundled local switching. SBC's language contains the qualifier "to the extent that MCI's End Users are served by such unbundled Local Switching purchased from SBC Missouri." Given that language, even SBC anticipates there may be instances where it is providing unbundled local switching.

Decision:

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

5. MCIm RC 14

MCIm RC 14: Should the Parties follow MECAB guidelines for billing special access and meet point traffic?

SBC MO: Is it appropriate to include terms and conditions for special access as a dedicated private line service in the Reciprocal Compensation Appendix?

Discussion:

SBC argues that the Commission should reject MCI's proposed language, which provides that special access shall be on a meet point billing basis pursuant to MECAB guidelines, because MCI's language is incorrect. Special access (e.g., T1, DS1, DS3) is a dedicated private line service that provides a point-to-point connection between two parties, that does not use the public switched telephone network. As such, intercarrier compensation does not apply and such references to special access should not be included in the Reciprocal Compensation Appendix.

MCI contends that the parties should follow MECAB guidelines for calculating special access compensation.

Decision:

The Arbitrator finds that for the reasons offered by SBC, the language proposed by SBC is more reasonable and is adopted.

6. MCIm RC 11 a and b

MCIm RC 11a: Should intra-switch UNE-P calls be compensated differently than other traffic?

MCIm RC 11b: Should intra-switch UNE-P calls be exempted from requirements to pay reciprocal compensation:

Discussion:

SBC argues that the Commission should adopt its proposed language because traffic that originates or terminates to a telecommunications provider that has purchased SBC's local switching should be compensated the same as other traffic that originates or terminates via a facility-based provider.

SBC argues that MCI's proposed language should be rejected because it improperly asserts that it is entitled to terminating compensation on intra-switched traffic that originates from an SBC end user when MCI has purchased local switching from SBC on a wholesale basis. On an intra-switched call when SBC's end user originates a call that terminates to an MCI end user (when MCI has purchased local switching from SBC) there is no switching function performed on the terminating end. Accordingly, MCI has not provided SBC any switching service that merits compensation. Under such calls exchanged under the M2A, SBC and MCI do not currently exchange reciprocal compensation for intra-switched calls. The successor ICA from this arbitration should continue to appropriately apply reciprocal

compensation only in those instances where a carrier is providing a terminating switching function on behalf of another LEC.

MCI argues that its language should be adopted because there should be absolutely no distinction between calls placed on an interswitch and intraswitch basis. As long as MCI is providing for the cost of the local switch (by purchasing a wholesale local switching element from SBC), it should be free to collect a reciprocal compensation payment for all calls terminating to that number.

Decision:

MCI seems to be requesting compensation for switching that does not actually occur. No reason has been shown to change the existing practice. The Arbitrator finds in favor of SBC.

7. Charter NIM 2
Charter ITR 2b
Charter ITR 3b

Charter NIM 2: Should this Appendix NIM contain terms and conditions for reciprocal compensation?

Charter ITR 2b: Should this Appendix ITR contain terms and conditions for reciprocal compensation?

Charter ITR 3b: Should this Appendix ITR contain terms and conditions for reciprocal compensation?

Discussion:

SBC argues that the Commission should reject Charter's proposed language because issues related to compensation are addressed in the Reciprocal Compensation Appendix. All terms related to reciprocal compensation should be contained in that Appendix and not disbursed throughout the agreement.

Charter agrees that terms and conditions for payment for facilities and services should be dealt with in Appendix: Reciprocal Compensation. That is why Charter proposes to make clear, by explicit cross-reference, that any payment obligations that might exist for the specified activities is to be found in that Appendix.

Decision:

Charter is merely proposing a cross-reference that has no other effect other than to make the document more understandable. The language proposed by Charter is adopted.