

XVI. Coordinated Hot Cut Issues (“CHC”):**1. What should the ICA provide with respect to Coordinated Hot Cuts?****MCI Coordinated Hot Cut Issue 1: *What terms and conditions for coordinated cutovers should be included in the agreement?*****Discussion:**

SBC states that its proposed Coordinated Hot Cut Appendix sets out the necessary terms and conditions for SBC’s optional Coordinated Hot Cut service, while MCI’s proposed language, which is merely a brief reference in the Local Number Portability Appendix, contains no terms and conditions for Coordinated Hot Cuts; is confusing and contrary to current practices; and contains references to batch hot cuts, which are outside the scope of the Section 252 arbitration process.

MCI responds that its proposed language for coordinated cutovers is preferable because it is virtually identical to the language that SBC agreed to in Michigan and Texas. MCI further states that the additional language added by SBC attempts to limit SBC’s obligations to provide MCI with non-discriminatory service under the Act and attempts to permit SBC to unilaterally change mutually agreed-upon scheduling.

SBC replies that, while MCI claims that SBC is taking a different position in Missouri on this issue than it took in other states, the language SBC proposes here is essentially the same as the language it proposed in recent negotiations with MCI in Texas and other states.¹

SBC states that it developed the special Coordinated Hot Cut process to accommodate CLECs in their desire to effectuate the switch of an end user’s service with minimal downtime. When an end user switches service from SBC to a CLEC and retains

¹ Chapman Rebuttal, p. 52.

its existing telephone number, both SBC and the CLEC must make changes in their networks to physically switch the service. Under the basic process, the CLEC simply indicates the start time for the telephone number to be ported by specifying a Frame Due Time ("FDT") on the service order. When a CLEC uses this option, SBC does not contact the CLEC prior to beginning work, but simply switches the services during the specified window. This process, however, necessarily results in some downtime for the end user.

Under the optional Coordinated Hot Cut service, SBC's technicians take extra time to ensure that both companies perform this service cutover at the same time. Specifically, SBC's technicians coordinate with the CLEC's technicians and will not remove the translations from the SBC donor switch until SBC has received the CLEC's verbal instructions to begin. In some cases, this coordination effort may take very little time. In other cases, it can take a great deal of time – for example, when a CLEC is not ready at the originally requested time or if a large volume of orders are involved.² Due to the substantial technician time required to perform Coordinated Hot Cuts, SBC is entitled to recover its labor costs incurred in providing this service from the cost-causing CLEC. As the non-recurring charges associated with the provisioning of an unbundled loop do not include the cost of providing optional Hot Cut coordination to CLECs, SBC proposes to charge its tariff labor rates based on the actual time expended as it is currently doing today.³

SBC's Coordinated Hot Cut Appendix defines the Coordinated Hot Cuts service and describes how it is to be provided by SBC. SBC's language recognizes that regardless of whether SBC is performing work for itself, for MCI, or for another customer, the

² Chapman Direct, pp. 82-83.

³ The pricing issue associated with the coordinated hot cuts is covered separately under MCI Pricing Schedule Issue 1.

scheduling of any particular work activity is subject to workload constraints and that a mechanism must therefore be provided to ensure that Coordinated Hot Cut services are provided on a nondiscriminatory “first-come, first-served” basis. This gives SBC flexibility to manage the scheduling of its workload during unanticipated periods of high volume.

While MCI complains that SBC’s language gives it the right to “unilaterally change mutually agreed-upon scheduling,”⁴ SBC’s language is actually designed to ensure that it has the ability to reschedule cutovers in the event of unexpectedly high work levels, which could include work resulting from storm or fire damage. SBC notes that under the standard provisioning process in place today, SBC allows MCI to unilaterally change mutually agreed-upon scheduling for hot cuts requested by MCI, which allows MCI to simply reschedule the hot cut if MCI has an unexpected situation arise that impacts its ability to perform the hot cut at the originally agreed upon time.⁵

SBC further states not only is MCI’s proposed language lacking in a description of the service and how it is to be provided, MCI’s language includes processes for batch hot cuts that are no longer required to be provided under Sections 251 and 252.⁶ While the FCC originally established a requirement for incumbent LECs to either implement the batch hot cut process or make a showing that such a process is unnecessary,⁷ all Section 251 requirements to provide a batch hot cut process for migrating UNE-P services were vacated with USTA II. Since a batch hot cut process is not longer required under Section 251 of the

⁴ Lichtenberg Direct, p. 17.

⁵ Chapman Rebuttal, pp. 52-53.

⁶ The batch hot cut process is a process designed to convert large volumes of a CLEC’s UNE-P embedded base to stand-alone loops served by the CLEC’s own switch at a single time. (Chapman Direct, p. 84).

⁷ 47 C.F.R. § 51.319(b)(2)(ii).

Act, state commissions are no longer authorized to establish terms or conditions for such a process in a Section 252 arbitration.⁸ Although the FCC did discuss the progress that had been made in the area of batch hot cuts, the FCC did not reinstitute a batch hot cut requirements in its new unbundling rules.

SBC states that while it has no obligation under Section 251 to provide a batch hot cut process, SBC Missouri would note that it is willing, outside the Section 252 process, to make its batch hot cut offering available to CLECs. But in order to avoid any potential claims that the terms and conditions of its batch hot cut offering might be subject to negotiation and arbitration under Section 252 of the Act, SBC only negotiates revisions for its batch hot cut offerings in a business-to-business negotiation and not in connection with a Section 252 negotiation or arbitration.⁹ For this reason, SBC maintains that the Arbitrator must reject MCI's proposed language.

MCI responds that its language better suits the public interest by ensuring that the public continues to have access to telecommunications services if the parties cannot complete the cutover as planned. MCI claims that SBC's language would leave many more customers without service. For this reason, MCI urges the Arbitrator to adopt MCI's language in order to minimize the potential danger and inconvenience caused to customers when the parties cannot complete the cutover as planned. MCI further explains that SBC's new Coordinated Hot Cuts Appendix adds nothing useful and may be used as justification for overbilling MCI for such services. More importantly, the prices for coordinated cutovers

⁸ *Michigan Bell Telephone Company v. Lark*, Case No. O4-60128 (E.D. Mich. January 6, 2005) (holding that because of USTA II's elimination of the batch hot cut requirement, the Michigan Public Service Commission violated federal law by undertaking to impose batch hot cut requirements on SBC Michigan and that the state commission had no authority under state law to impose batch hot cut requirements).

⁹ Chapman Direct, p. 85.

should be included in the Pricing Appendix. Prices for all services provided pursuant to this ICA are set forth in the Pricing Appendix.

Decision:

The Arbitrator generally agrees with SBC on this point, except that the Arbitrator agrees with MCI that prices for Coordinated Hot Cuts should be specified in the Pricing Appendix. Elsewhere, SBC has argued that all prices, charges and rates should be placed in the Pricing Appendix.