Exhibit No.:

Issues:	Network Architecture Issues: 1 through 18, And Inter-carrier Compensation Issues: 1 And 3 through 7
Witness:	John D. Schell, Jr.
Sponsoring Party:	AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc., and TCG St., Louis, Inc.
Type of Exhibit:	Direct Testimony
Case No.:	TO-2005-0336

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., TCG KANSAS CITY INC., AND TCG ST. LOUIS, INC.

DIRECT TESTIMONY

OF

JOHN D. SCHELL, JR.

TO-2005-0336

May 9, 2005

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Schedules:

I. INTRODUCTION

Q. PLEASE STATE YOUR FULL NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A. My name is John D. Schell, Jr. I am a contract employee in the Local Services Access Management group in AT&T Network Services. My business address is 3033 Chain Bridge Road, Oakton, Virginia 22185.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I graduated from St. Louis University with a Bachelor of Science degree in Electrical Engineering in 1965.

Q. WHAT IS YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY?

A. I joined AT&T Long Lines in 1965 as a Senior Engineer in the Engineering Department in Kansas City, Missouri. After that, I held various line and staff positions in AT&T. For example, from February 1979 to April 1984, I was District Engineer - Transmission for the Eastern Region of AT&T. My district provided technical expertise and guidance for transmission design and maintenance for radio, cable and fiber transmission systems, for switching systems, and for special services. From May 1984 to September 1987, I was District Manager - Regulatory Support and provided technical expertise and guidance to Law and Government Affairs on issues related to AT&T's network. From October 1987 through August 1995, I was District Manager – Access Management. My group was responsible for development and implementation of

policies and strategies to improve AT&T's ability to compete and to achieve AT&T's access price objectives in the Atlantic States. From September 1995 through January 1998, when I retired from AT&T, I was District Manager - Connectivity Network Planning and my group was responsible for developing AT&T's local market infrastructure plans and managing AT&T's access arrangements with local exchange carriers and competitive access providers in the Atlantic States.

From March 1998 through May 2001, I was Manager of National Contracts with Teligent, Inc. and was responsible for developing and negotiating Teligent's Master Service Agreements with over 20 national/regional suppliers of local and intercity transport services, including dark fiber, and I managed Teligent's business relationships with such suppliers.

Q. MR. SCHELL, HAVE YOU APPEARED AS A WITNESS IN OTHER REGULATORY PROCEEDINGS?

A. Yes. From 1983 through 1993, I prepared and presented expert testimony on access charges and interconnection issues. I also provided support, analysis and testimony in connection with alternative regulation issues and was involved in negotiations and proceedings in all of the original Bell Atlantic states regarding the many issues associated with alternative regulation. In this context, I testified in cases in Virginia, West Virginia, Maryland, Pennsylvania, Delaware, New Jersey and New York.

Since becoming a contract employee for AT&T, I have appeared on behalf of AT&T in Docket No. 000075-TP in Florida, in PSC Docket No. 02-001 in Delaware (Verizon Delaware's Section 271 compliance proceeding), before the FCC's Wireline Competition Bureau in the Virginia Arbitration Proceeding, CC Docket No. 00-251, in the New Jersey and Maryland Arbitrations between AT&T and Verizon, New Jersey Docket No. TO00110893 and Maryland Case No. 8882, in Docket No. 24015 in Texas and in the Illinois, Texas, California, Indiana, Wisconsin, Kansas, and Oklahoma arbitrations between AT&T and SBC (Texas Docket 28821, Illinois Docket 03-0239, California Application 04-09-023, Indiana Cause Numbers 40571-INT04/40559-INT04, Wisconsin Docket No. 05-MA-136, Kansas Docket No. 05-AT&T-366-ARB, and Oklahoma Cause No. PUD 200400493), and in the Minnesota, Washington, Arizona, Oregon, Utah, Iowa and Nebraska Arbitrations between AT&T and Qwest (Minnesota Docket No. P-442, 421/IC-03-759, Washington Docket No. UT-033035, Arizona Docket Nos. T-024228A-03-0553/T-01051B-03-0553, Oregon Docket No. ARB-527, Utah Docket No. 04-049-09, Iowa Docket No. ARB-0-4-01 and Nebraska Docket No. C-3095).

II. PURPOSE AND SUMMARY OF TESTIMONY

Q. PLEASE DESCRIBE THE PURPOSE AND SCOPE OF YOUR TESTIMONY IN THIS PROCEEDING.

A. My testimony addresses all of the network architecture/interconnection and intercarrier compensation disputes as they pertain to Attachment 11: Network

Architecture and Attachment 12: Intercarrier Compensation except Intercarrier Compensation Issue 2, which my colleague, Mr. Guepe, addresses.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. I have organized my testimony numerically by issue number as the issues appear in the Master List of Issues.

Q. DO YOU HAVE A GENERAL OBSERVATION REGARDING THE ISSUES YOU ARE RESPONDING TO IN YOUR TESTIMONY?

A. Yes. In some cases, the Parties could not agree on the statement of the issue and therefore the DPL included both Parties' statements of the issue(s). In my testimony, I generally list the joint and AT&T statements of issues, but not the SBC statements. However, in those situations, my testimony addresses the entire issue and language proposals and for the reasons I describe, AT&T's entire proposal should be adopted for the issue. To the extent that I do not address SBC's version of the issue statement, it is because I believe SBC has mischaracterized the issue or their issue statement is based on a fundamental misconception, which I address in my testimony.

III. <u>DISPUTED ISSUES – ATTACHMENT 11: NETWORK ARCHITECTURE/ INTERCONNECTION</u>

Q. IS THERE A RECENT KANSAS ARBITRATOR FINDING ADDRESSING THE SAME NETWORK ARCHITECTURE ISSUES THAT THE PARTIES ARE ADDRESSING HERE?

A. Yes. On February 16, 2005, the Kansas Commission issued an "Arbitrator's Determination of Issues" presenting proposed findings on Phase 1 issues in the

pending AT&T (and other CLECs') ongoing arbitration against SBC. Network Architecture issues are part of Phase 1, and intercarrier compensation disputes are to be decided in Phase 2. I refer the Commission to this decision, since it presents a cogent discussion of many of the issues that are pending here.[1]

Issue 1: Should Attachment 11 include definitions of terms used in SBC MISSOURI'S proposed language? If so, are SBC MISSOURI'S proposed definitions appropriate?

Q. PLEASE EXPLAIN WHY AT&T OPPOSES SBC'S PROPOSED DEFINITIONS.

A. As I will explain, while AT&T does not disagree with every definition SBC proposes, some of SBC's proposed definitions are inaccurate, some are confusing and some are simply unnecessary. Moreover, the principle reason SBC is proposing many of its definitions is to lay the foundation for its inappropriate network architecture point-of-interconnection ("POI") and trunking proposals. SBC's proposed definitions are integral to SBC's POI and trunking proposals and are at the heart of the Parties' disputes on many of the Network Architecture issues. A review of SBC's network architecture proposals for the new interconnection agreement ("ICA") reveals that SBC's POI proposals conflict with the FCC's Rules governing the establishment of points of interconnection

[1] Obviously, this is not a final order, but nevertheless worthy of consideration. *See, In the Matter of the Petition of the CLEC Coalition for Arbitration against Southwestern Bell Telephone L.P. d/b/a SBC Kansas Under Section 252(b) of the Telecommunications Act of 1996 et al.,* Docket Nos. 05-BTKT-365-ARB, 05-BTKT-366-ARB, 05-BTKT-369-ARB, and 05-BTKT-370-ARB (Kansas Corporation Commission, February 16, 2005) (hereinafter referred to as "Kansas Arbitrator Decision"). When a final Kansas Commission decision is issued, AT&T will update this Commission's record with the order. I also note that the Oklahoma Commission is expected to issue its final order on or before June 24, 2005 in the AT&T and SBC arbitration. *See,* Corporation Commission of Oklahoma Cause No. PUD 200400493.

("POIs") and with a decision by the Fifth Circuit, which made it clear that AT&T has the statutory right under the Act to select the location of a technically feasible point of interconnection.[2] In addition, SBC's POI language inappropriately shifts the cost of providing interconnection facilities from SBC to the CLEC.

From the competitive local exchange carrier's ("CLEC's") perspective, the two most significant financial aspects of physically interconnecting networks are: (1) what rights does the CLEC have to select the point of interconnection to the incumbent local exchange carrier's ("ILEC's") network and (2) how will the costs of the network interconnection be borne by the two carriers given the designation of the POI. SBC's proposed definitions and POI language eviscerate AT&T's right to select the point or points of interconnection to SBC's network. Specifically, SBC proposes definitions and language that require AT&T to establish POIs at SBC-specified locations at SBC-specified thresholds within SBC-specified time frames, thereby usurping AT&T's rights to determine the location of its POI(s) and to interconnect at any technically point on SBC's network. Of course, this also increases AT&T's cost of entering into and continuing to compete in a market.

[2] *See Southwestern Bell Tele. Co. v. Pub. Util. Comm'n of Texas,* 348 F.3d 482, 487 (5th Cir. 2003). *See also MCIMetro Transmission Services, Inc. v. BellSouth Telecommunications, Inc.,* 352 F.3d 872 (4th Cir. 2003).

Q. CAN YOU PROVIDE SOME EXAMPLES OF DEFINITIONS THAT ARE INACCURATE AND THAT SBC HAS PROPOSED SIMPLY TO SUPPORT ITS INAPPROPRIATE NETWORK ARCHITECTURE PROPOSALS?

A. Yes. In Section 1.2 of Attachment 12, SBC defines 251(b)(5) Traffic and ISP-Bound Traffic in ways that are inconsistent with the FCC's definitions in the *ISP Remand Order*.[3] For example, SBC's proposed definitions limit these traffic types to only traffic that both originates and terminates in the same SBC-defined local calling area. In the *ISP Remand Order* the FCC imposed no such limitation on ISP-bound or 251(b)(5) traffic and, as I explain below in my reciprocal compensation testimony, the proper interpretation of that *Order* in light of the DC Circuit's decision on appeal is that all traffic is subject to 251(b)(5) unless carved out by 251(g). Limiting 251(b)(5) and ISP-bound traffic as SBC does is inconsistent with narrow scope of that carve out. SBC then imbeds those improper definitions of traffic in its definitions for "Local Interconnection Trunk Groups", "Local Only Trunk Groups" and "Local Only Tandem Switch" in Section 6.0 of Attachment 11, thereby incorrectly defining the traffic that can be exchanged over the local interconnection groups and through a local tandem switch. In addition, SBC's improper definitions also affect the compensation that AT&T pays SBC for terminating such traffic.

SBC's proposed definitions also support SBC's inappropriate trunking demands, which are the subject of Issues 10-13. As I will explain in my testimony on Issues

[3] In the Matter of Intercarrier Compensation for ISP-Bound Traffic, Order on Remand, FCC 01-131 (April 27, 2001) ("*ISP Remand Order*").

10-13, SBC's proposed trunking requirements not only interfere with AT&T's right to specify the method of interconnection, including tandem versus direct end office trunking, they also require AT&T to establish inefficient interconnection arrangements that are not cost effective.

Q. DO YOU HAVE ANOTHER EXAMPLE OF AN SBC DEFINITION THAT IS INACCURATE?

A. Yes, SBC's proposed definition for "Offers Service" is inaccurate. Under SBC's definition, AT&T does not offer service until it "opens an NPA/NXX, ports a number to serve an end user, or pools a block of numbers to serve end users." In fact, AT&T offers service in a LATA when AT&T has (1) deployed the necessary physical assets, specifically switching and network facilities; (2) established interconnection trunking with SBC, (3) obtained local routing numbers for its switch, and (4) been certified as a local exchange carrier and has the necessary tariffs on file with the Commission. With these capabilities, AT&T is able to offer service in a LATA, i.e., to port in and serve telephone numbers for customers located in the LATA. AT&T does not have to open an NPA-NXX code, or pool a block of numbers or have actually ported in the first telephone number before it offers service in an area. Obviously, AT&T will offer service in an area before it acquires its first customer in that area.

Q. ARE SOME OF SBC'S PROPOSED DEFINITIONS INAPPROPRIATE?

A. Yes. SBC is attempting to use its definitions for Local Interconnection Trunk Groups and Local Only Trunk Groups to mandate the use of two-way

interconnection trunking. SBC's proposed definitions for these terms state that such trunk groups are two-way trunk groups despite the fact that 47 C.F.R. § 51.305(f) gives the CLEC the right to determine whether it will use one-way or two-way interconnection trunk groups. Clearly, SBC's attempt to constrain AT&T's options in this regard through its proposed definitions is inappropriate.

Q. SHOULD THE COMMISSION REJECT THE PORTION OF SBC'S DEFINITIONS THAT DEFINE LOCAL INTERCONNECTION TRUNK GROUPS AND LOCAL ONLY TRUNK GROUPS AS TWO-WAY TRUNK GROUPS?

A. Yes. SBC's proposed definitions eliminate AT&T's existing right under 47 C.F.R. § 51.305(f) to determine whether it will use one-way or two-way interconnection trunk groups.

Q. ARE SOME OF SBC'S DEFINED TERMS CONFUSING?

A. Yes. SBC's use of the terms "End Office" and "End Office Switch" in the interconnection agreement is confusing because SBC does not distinguish between End Office Switches and Remote End Offices Switches in defining a CLEC's interconnection responsibilities even though SBC provides separate definitions for both terms. Differentiating between these types of offices is important in defining interconnection responsibilities because interconnecting carriers normally do not interconnect directly at the remote switch but at the host switch that provides support functions for the smaller remote switch.

According to the April 2005 LERG,[4] SBC has 272 end offices/end office switches in Missouri and 80 of these are remote end office switches. If the Commission were to adopt SBC's definition for, and use of, the terms "End Office"/"End Office Switch", which it should not do, SBC could use its definitions and contract language to require AT&T to establish trunk groups to remote end office locations instead of to the centrally located host end office that supports the remote switch, which is the normal interconnection trunking point for the remote end office switch.[5] SBC could also use its definitions and proposed language to require AT&T to establish POIs at remote end office switch locations when the traffic exchanged between the Parties to such offices "exceeds twenty-four (24) DS1s at peak over three (3) consecutive months,"[6] instead of establishing a POI at the centrally located host end office that supports the remote switch.

Q. ARE SOME SBC DEFINITIONS ACCEPTABLE TO AT&T, BUT UNNECESSARY IN AT&T'S VIEW?

A. Yes. For example, AT&T does not object to SBC's definitions of "Access Tandem Switch", or "Facility-Based Provider", or "Meet Point Trunk Group", however, AT&T believes these definitions are unnecessary as these are commonly used and understood terms within the industry. Finally, while AT&T does not object *per se* to SBC's proposed definition for "Remote End Office Switch", SBC's proposed definition for "End Office" or "End Office Switch"

[4] The Local Exchange Routing Guide ("LERG") is produced by Telcordia Technologies and contains routing data that supports the current local exchange network configuration within the North American Numbering Plan ("NANP") as well as identifying reported planned changes in the network.

[5] *See* SBC's proposed language in Attachment 11, Part C, Sections 1.3 and 1.4.

needs to be clarified to make it clear that the terms "End Office" and "End Office Switch" do not include remote end office switches but do include the host switches that support the remote end office switches.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THIS ISSUE?

A. Yes. At pages 98-99, the Arbitrator found for AT&T and rejected SBC's proposed definitions.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE.

A. SBC's inappropriate network architecture proposals are a dramatic departure from the FCC's Rules and how the Parties are operating today and should be rejected. Since the definitions proposed by SBC are either unnecessary or are specifically tailored to support SBC's inappropriate network architecture proposals, the Commission should reject SBC's proposed Definitions in Sections 6.0 through 6.19 of Attachment 11 and SBC's use of such defined terms in Sections 16.0 and 16.1.2 of Attachment 11, Part C.

Issue 2: Should the ICA preserve AT&T's right to interconnect with SBC MISSOURI in accordance with applicable law, rules and regulations?

Q. HAS AT&T WITHDRAWN ITS PROPOSED LANGUAGE FOR SECTION 1.8 OF ATTACHMENT 11 PART A?

A. Yes.

Q. DO THE PARTIES CONTINUE TO DISAGREE REGARDING THE LANGUAGE IN SECTION 1.1 OF ATTACHMENT 11, PART A?

A. Yes.

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[6] *See* SBC's proposed language in Attachment 11, Part A, Section 1.1.4.

Q. PLEASE DESCRIBE PARTIES' DISAGREEMENT REGARDING THE LANGUAGE IN SECTION 1.1 OF ATTACHMENT 11, PART A.

A. AT&T has proposed language in Section 1.1 in Attachment 11, Part A to make it clear that SBC's network includes its outside plant locations and customer premises locations and is not limited solely to SBC's tandem switch and end office locations as SBC would have it.

The Parties have agreed that AT&T has the right to interconnect with SBC[7] at *any technically feasible point on SBC's network* and the disputed language in Section 1.1 is part of a listing of technically feasible locations. AT&T is concerned that even though SBC has agreed that AT&T may establish a POI at any technically feasible point on SBC's network, SBC will claim, as it does in its preliminary position statement, that locations such as outside plant locations and customer premises locations are not part of its network and AT&T may not interconnect at such locations. In fact, SBC's position amounts to requiring that not only must the POI be on its network, it must be inside of a SBC building on that network. Thus, while SBC ostensibly agrees that AT&T has the right to select the POI, a right I will discuss in more detail in my testimony on Network Architecture/Interconnection Issues 4 and 5, SBC simultaneously seeks to limit that right by circumscribing the definition of its network to limit AT&T's choice of interconnection points to SBC's tandem switch and end office locations.

[7] That is the right to establish a point of interconnection or "POI" with SBC.

Q. DOES AT&T DISPUTE THAT IT MUST INTERCONNECT ON SBC'S NETWORK?

A. No, AT&T agrees that the POI it selects must be on SBC's network. What the Parties disagree on is the definition of SBC's network.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AT&T WOULD INTERCONNECT AT A SBC OUTSIDE PLANT LOCATION?

A. Yes. AT&T can choose to interconnect using a mid-span fiber optic meet arrangement. A mid-span meet arrangement could be constructed between an AT&T location and a SBC location and the fiber splice point could be at a SBC outside plant location.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AT&T WOULD INTERCONNECT AT A SBC CUSTOMER'S PREMISES?

A. Yes. SBC customer locations include carrier hotels[8] where SBC interconnects with Competitive Access Providers ("CAPs"), CLECs and interexchange carriers ("IXCs"). There is no dispute that it is technically feasible for AT&T to interconnect with SBC at a carrier hotel.

Q. ARE SBC'S OUTSIDE PLANT LOCATIONS AND CUSTOMER PREMISES LOCATIONS PART OF SBC'S NETWORK?

A. Yes. SBC's network includes not only its switch locations, but also other locations where SBC has deployed its own network facilities; for example, locations to which SBC has deployed synchronous optical network ("SONET") interoffice transmission facilities, e.g., OC-3, OC-12 or OC-48 network facilities,

[8] Newton's Telecom Dictionary, Seventeenth Edition, February 2001, defines a carrier hotel as "A term for a building that houses many local and long distance telephone companies."

which are the same facilities that comprise SBC's network between and among its tandem and end office switches. Thus, SBC's network consists of all of its switches, interoffice transmission facilities, and loop facilities that are offered to the public. SBC installs, operates, maintains, repairs, depreciates and generally exercises ownership prerogatives with respect to these facilities, which are part and parcel of SBC's plant-in-service and in SBC's rate base. In short, it is clear that SBC's outside plant facilities and network facilities that SBC has extended to customer locations including carrier hotels are perfectly legitimate points "on SBC's network." There is absolutely no technical basis for any SBC assertion that interconnection must only occur at its tandem and end office locations. SBC's argument that its outside plant network facilities and its facilities at customer premises such as carrier hotels are not part of its network should be seen for what it is: simply an attempt to restrict AT&T's right to designate the point of interconnection or POI on SBC's network.

The only limitation on AT&T's right to interconnect on SBC's network is that it be "technically feasible."[9] It is certainly technically feasible to interconnect in SBC's outside plant and customer premises. As a result, SBC's restrictions should be rejected.

[9] 47 U.S.C. § 251(c)(2)(B).

Q. CAN AN AT&T LOCATION ALSO BE AN INTERCONNECTION POINT ON SBC'S NETWORK?

A. Yes. For example, if SBC has deployed high-capacity fiber optic network facilities to an AT&T location, then that location is clearly on SBC's network and can be designated as an interconnection point or POI by AT&T.

Q. HAS THE FCC SPECIFICALLY ADDRESSED THIS ISSUE?

A. Yes. The FCC's Wireline Competition Bureau has. In the *Virginia Arbitration Order*[10] it stated:

> We disagree with Verizon's contention that AT&T's language allowing it to interconnect at any technically feasible point is too broad and vague. AT&T's proposed language restates its rights under the Act and the Commission's implementing rules, and lists several examples ("tandems, end offices, **outside plant and customer premises**") of what might constitute technically feasible points.[11] (emphasis added, footnotes omitted)

Q. DID THE FCC'S TRIENNIAL REVIEW ORDER LIMIT A CLEC'S CHOICE OF INTERCONNECTION POINTS?

A. No. The FCC's *Triennial Review Order*[12] in no way limits the locations on SBC's network at which AT&T is entitled to interconnect.

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[10] The Wireline Competition Bureau of the FCC preempted the jurisdiction of the Virginia State Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc. in a consolidated docket. *Petition of WorldCom, et al.*, *Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (rel. Jul. 17, 2002) ("*Virginia Arbitration Order*").

[11] *Id.* at ¶ 57.

[12] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order"* or *"TRO*").

In the *Triennial Review Order*, the FCC redefined unbundled dedicated transport as facilities "between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches."[13] In establishing this new definition, the FCC found that "entrance facilities" *as UNEs* could be eliminated.[14] The FCC clarified, however, that its new, more restrictive, definition of § 251(c)(3) unbundled dedicated transport in no way limits or modifies a carrier's right to obtain interconnection facilities, such as interconnection transport facilities and interconnection entrance facilities that are required under § 251(c)(2) of the Act. As the FCC stated at ¶366 of the *Triennial Review Order*:

> We note that, to the extent that the requesting carriers need facilities in order to "interconnect[] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and *we do not alter the Commission's interpretation of this obligation.*[15] (footnote included)

Thus, the FCC was very clear that it was addressing access to unbundled network elements as provided for in § 251(c)(3) of the Act, and was not addressing access to cost-based interconnection facilities, including entrance facilities, as provided for in §§ 251(c)(2) and 252(d)(1) of the Act. Therefore, SBC's attempt in its preliminary position to apply the FCC's *Triennial Review Order* regarding access to unbundled network elements under Section 251(c)(3) to SBC's obligations to

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13 47 C.F.R. § 51.319(e).

14 *Triennial Review Order* at n. 1116.

15 Section 251(c)(2) requires access to "the facilities and equipment" used by competing carriers for "interconnection with the local exchange carrier's *network* . . . for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2) (emphasis added).

interconnect with CLECs for the exchange of traffic under Section 251(c)(2) is baseless.

Q. WASN'T THE TRIENNIAL REVIEW ORDER'S REVISED DEFINITION OF DEDICATED TRANSPORT CHANGED IN A SUBSEQUENT FCC ORDER?

A. Yes. In the *Triennial Review Remand Order* (*TRRO*)[16] the FCC determined that the original definition of dedicated transport adopted in the *Local Competition Order* should be reinstated. This reinstated definition of dedicated transport now once again includes entrance facilities.[17] Specifically, as noted in the *TRRO*, the *Local Competition Order* defines dedicated transport as:

> "Incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers"[18]

Thus, SBC's attempt in its preliminary position statement to rely on the FCC's definition of a dedicated network transport facility in the *Triennial Review Order* to somehow support its network arguments regarding interconnection points and the scope of its network, is based on a definition that has now been summarily rejected by the FCC. The reinstated definition includes entrance facilities as part of the "incumbent LEC transmission facilities".

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16 Order on Remand, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, (rel. February 4, 2005) ("*Triennial Review Remand Order"* or "*TRRO*")

17 *TRRO*, para.136.

18 *Id*.

Q. IN ADDITION TO THE REINSTATEMENT OF THE DEDICATED TRANSPORT DEFINITION FROM THE *LOCAL COMPETITION ORDER,* ARE THERE OTHER REASONS WHY THE *TRRO* DOES NOT SUPPORT SBC'S POSITION?

A. Yes. The FCC clearly and unambiguously ruled that SBC's entrance facilities must remain available as an interconnection facility at TELRIC pursuant to Section 251(c)(2). In paragraph 140 of the *TRRO,* the FCC stated:

> We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.[19] Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network. (footnote included)

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THIS ISSUE?

A. Yes. At pages 99-100, the Arbitrator found for AT&T and rejected SBC's position because it did not comply with the law.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed "outside plant facilities, and customer premises" language for Section 1.1. AT&T's language conforms to § 251(c)(2) of the Act and to the FCC's implementing rule 47 C.F.R. § 51.305. The language makes clear that AT&T is not limited to SBC's tandem switch and end office locations when selecting a POI.

[19] *Triennial Review Order*, 18 FCC Rcd at 17204, para. 366.

Issue 3: Should the ICA include obligations for the provision of transit services?

Q. PLEASE DESCRIBE ISSUE 3.

A. The transiting services addressed in this issue relate to the provision of tandem switching and common transport provided by SBC for the exchange of local and intraLATA toll traffic between AT&T and LECs other than SBC, such as other CLECs, Independent Companies and CMRS carriers. While SBC currently provides transit services at TELRIC-compliant prices to AT&T, SBC now claims that it is not required to carry transit traffic pursuant to the Act or any FCC rules and it proposes that it provide transit services subject to a separate commercial agreement at "market-based" rates.

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

A. AT&T believes SBC is required, pursuant to §251(c) of the Act, to allow carriers that are not directly connected with one another to exchange traffic with one another via SBC's network.

SBC is required to allow transiting as a result of its Section 251(c)(2) interconnection obligations that mandate ILECs provide interconnection at any technically feasible point "for the transmission and routing of telephone exchange services and exchange access." This interconnection obligation imposed by the Act is not, as SBC suggests, limited to exchanging traffic between SBC's and AT&T's end users. Nothing in the statute imposes such a limitation. Rather, the statutory language is broad and without restriction and thus includes interconnection for the transmission and routing of traffic to third-party carriers

(i.e. transiting), as well as for the transmission and routing of traffic originating or terminating on SBC's network.

This interpretation of SBC's 251(c)(2) obligation is consistent with the terms of Section 251(a)(1) of the Act that requires carriers to accept indirect interconnection. The FCC acknowledged this in the *Local Competition Order,* ¶ 997 in which it found that the indirect interconnection requirement of Section 251(a)(1) could be satisfied by two non-incumbent LECs "interconnection with an incumbent LEC's network". In such a circumstance, the two non-incumbent LECs are indirectly interconnecting with each other pursuant to Section 251(a)(1), through the interconnections with the incumbent LEC's network at a technically feasible point pursuant to Section 251(c)(2).

Q. WHAT ABOUT STATE DECISIONS ON THIS ISSUE?

A. The Michigan and Ohio Commissions have found that SBC has an obligation to provide transit services to AT&T without limitation.[20]

[20] Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 20 (Oct. 18, 2000)(The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000 at 8); Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 84-85 (March 19, 2001). The North Carolina Commission recently found that Verizon is also required to provide transit service at TELRIC. *See, In the Matter of Petition of Verizon South, Inc. for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method,* Order Denying Petition, Docket No. P-19, SUB 454 (Sept. 22, 2003) at 6-7.

Q. WHY IS THE CONTINUED MANDATORY PROVISION BY SBC OF TRANSITING AT COST-BASED RATES IN THE PUBLIC INTEREST?

A. Transiting is in the public interest because it promotes an efficient use of network infrastructure. It is efficient from a traffic routing perspective because it takes advantage of SBC's existing interconnections with all carriers operating in the LATA and it provides a fair return to SBC for a service that it is uniquely situated to provide to its competitors as a result of its monopoly legacy. To my knowledge, there is no other carrier operating in Missouri that has existing interconnections with all other carriers in a LATA. SBC should not be able to utilize its unique position in the marketplace, a position it enjoys as a result of its monopoly legacy, to impose "market-based" rates (particularly in the absence of anything resembling a competitive market) for a service that requires its competitors to either pay such rates or provision inefficient direct interconnection to all carriers with which it exchanges low volumes of traffic.

The practice of indirect interconnection is also efficient from an administrative perspective. Today, it is common among the industry for parties that are indirectly interconnected to exchange transit traffic on a bill and keep basis without executing an interconnection agreement (ICA). When the traffic levels are relatively low, this practice clearly makes sense. However, when parties are forced to implement direct interconnection with one another at low levels of traffic, it introduces a variety of additional considerations, that have to be addressed in an interconnection agreement - such as: POI locations; one-way versus two-way trunking, billing and recording, signaling, and allocation of

interconnection expenses between the parties. All of these issues would have to be negotiated between the parties – a significant task that does not make sense for the exchange of low levels of traffic. The obvious outcome of this requirement would be an increase in ICA arbitrations between CLECs and Independent Telephone Companies that will place an additional burden on the parties themselves and on the already overworked state commissions. For the agreements between non-Independent Companies and CLECs, arbitration is not a clear option because it is not provided for in the Act. In those instances, the alternative to arbitration is to either concede to objectionable interconnection terms, or pay SBC its unregulated "market rate". In either case, AT&T would be forced into an unprofitable business plan to the detriment of the competitive market place.

Q. CAN YOU PROVIDE AN EXAMPLE DEMONSTRATING HOW THE PUBLIC INTEREST IS SERVED IF SBC IS REQUIRED TO PROVIDE TRANSIT SERVICE AT COST-BASED RATES?

A. Yes. Currently, according to the April 2005 LERG, there are 114 carriers operating in Missouri, including SBC and 35 CLECs, 47 Independent Companies, 26 wireless and 5 PCS carriers. If each of these carriers interconnected directly with each other in each LATA, it would take thousands of trunk groups and the related dedicated transport facilities that the trunk groups ride to accomplish the interconnections over most of which the carriers will exchange very little traffic.

For example, according to the LERG, there are 60 companies (including SBC and 19 CLECs, 21 Independent Companies, 16 wireless and 3 PCS carriers) operating

the Kansas City LATA 524. The number of trunk groups required to directly connect all of the carriers in the Kansas City LATA 524 would be 1,770 trunk groups, whereas if the carriers interconnect indirectly through SBC, only 59 trunk groups and related shared transport facilities are required to accomplish the interconnections among all carriers, and those trunk groups are already in place because all carriers interconnect with SBC.[21] Of course, this same interconnection arrangement would be required in each of the LATAs in which SBC operates in Missouri. There would be an enormous expense and effort required to implement all of the necessary trunk groups, and for no good reason, because in the end the resulting interconnection arrangement would be highly inefficient. Thus, SBC's proposal that AT&T pay "market-based rates" or establish direct interconnection is not just contrary to the FCC's Rules, it is also bad public policy. The result of SBC's language would be an inefficient interconnection arrangement between carriers that would significantly increase the industry's cost of providing service and consequently what consumers pay for local service.

Q. WHY SHOULD THE COMMISSION REJECT SBC'S PROPOSAL TO CHARGE A "MARKET" RATE FOR TRANSIT SERVICE?

A. First, as I testified above, SBC has an obligation to transit traffic pursuant to Section 251(c)(2) of the Act. Despite this obligation, SBC proposes that it

[21] SBC may have established additional trunk groups with some carriers beyond the tandem trunk groups, but the exchange of traffic could be accomplished with a minimum of one trunk group between SBC and each other carrier in the LATA, i.e., 59 trunk groups, whereas carriers would need a minimum of 1,770 trunk groups to interconnect directly with each other.

provide transit service at "market-based" rates. As I also testified above, there is no "market" for transit service - so market based rates cannot exist for transit service. A market rate is only reasonable if there are legitimate competitive alternatives to transit service. When there are legitimate competitive alternatives, the alternative carriers exert market pressure to keep the rates at a reasonable level. However, there are no competitive alternatives to transit service in Missouri and therefore a "market rate" has no relevance. That is, there is no effective market to constrain the rate levels and therefore SBC will have the ability to set and/or raise transit rates with impunity and AT&T will have no choice but to either pay those rates or establish uneconomic direct connections with third party carriers.

Second, since transit service is an obligation imposed on SBC pursuant to Section 251(c)(2) of the Act, the applicable pricing standard is TELRIC. The FCC pricing rules make clear that TELRIC pricing applies to interconnection.[22] Thus, SBC's proposal is both contrary to the Act and to the development of competition.

Q. HAS SBC BEEN WILLING TO NEGOTIATE TRANSIT TERMS, CONDITIONS AND RATES AS PART OF THE ICA NEGOTIATIONS?

A. No. SBC's position is that its transit service is outside its obligation to negotiate and arbitrate under Section 252 of the Act.

[22] 47 C.F.R. §§ 51.501and 51.503(b)(1).

Q. WOULD AT&T EVER AGREE TO DIRECT CONNECT WITH OTHER CARRIERS IF THE COMMISSION APPROVES THE AGREEMENT LANGUAGE PROPOSED BY AT&T?

A. Yes. AT&T traffic engineers evaluate various trunk routes using traffic volume measurements in order to determine when and where AT&T should establish direct connections. Thus, if AT&T exchanges substantial volumes of transit traffic with another carrier, at some point it would be more efficient for it to connect directly with that carrier. In those circumstances, AT&T would proceed to establish direct trunks.

Q. DOES AT&T'S TRANSIT PROPOSAL RESULT IN SBC INCURRING TERMINATION CHARGES FOR AT&T'S TRAFFIC?

A. No. AT&T has agreed that it will provide indemnification to SBC for unnecessary expenditures associated with wrongful billing on the part of third parties. Moreover, AT&T is willing to reimburse SBC for any bills it pays to third parties that should have been paid by AT&T. Thus, SBC is made whole and is not disadvantaged in any way by AT&T's proposal.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed language relating to transit service in Section 1.1 of Attachment 11, Part A and Section 1.2.2 of Attachment 11, Part B. Consistent with adopting AT&T's language, the Commission should also reject SBC's proposed language in Section 1.0 of Attachment 11, Part C that states "Local Interconnection Trunk Groups will be established for the transmission and routing of AT&T End Users' Section 251(b)(5)/IntraLATA Toll

Traffic and shall not be used for the transmission and routing of third party originated Section 251(b)(5)/IntraLATA Toll Traffic" and "Local Only Trunk Groups will be established for the transmission and routing of AT&T End Users' Section 251(b)(5) Traffic and ISP-Bound Traffic [and] shall not be used for the transmission and routing of third party originated Section 251(b)(5) Traffic and ISP-Bound Traffic."

Issue 4: Should SBC be permitted to limit AT&T's right to interconnect at any technically feasible point?

Q. PLEASE DESCRIBE ISSUE 4.

A. Issue 4 addresses how AT&T determines the location of its POIs. The underlying issue is: does AT&T have the right to establish its POI at any technically feasible point on SBC's network as provided in Section 251(c)(2)(B) of the Act[23] or can SBC require AT&T to establish POIs at SBC-specified locations at SBC-specified traffic thresholds, thereby usurping AT&T's right to determine the location of its POI(s) and to interconnect at any technically point on SBC's network as provided in the Act?

With its proposed language in Sections 1.1.0 through 1.1.5 of Attachment 11, Part A, SBC is attempting to mandate the establishment of POIs in SBC Tandem Serving Areas ("TSA") and at end office switches not served by an SBC 251(b)(5)/IntraLATA tandem switch when the traffic such TSAs or to such end offices exceeds 24 DS-1s.

[23] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Sate. 56 (the "Act").

In a nutshell, SBC believes the new agreement should strip AT&T of its right under Section 251(c)(2)(B) of the Act to interconnect with SBC at any technically feasible point on SBC's network, which is not a right accorded SBC under the law. Thus, SBC believes the agreement should give it rights well beyond those provided for it in the Act and the FCC's rules and seeks to secure those rights in the context of its two-party arbitration with AT&T. Of course, AT&T disagrees.

Q. WHAT POI LOCATIONS ARE AT&T AND SBC USING TODAY?

A. The Parties are using two-way trunking today and AT&T's POI is at SBC's tandem switch or end office switch location. In a two-way trunking architecture, once AT&T selects its POI, that POI is also SBC's POI[24] and each Party is financially responsible to bring its originating traffic to that POI and to compensate the terminating party for the transport (if any) and termination the terminating carrier provides on its side of the POI. In Section 1.8 of Attachment 12, the Parties agree to use one of two compensation options: Option 1, which specifies that the Parties exchange all ISP-bound and Section 251(b)(5) traffic at the FCC's Interim ISP Terminating Compensation Plan Rate, which is currently $0.0007 per minute of use, or Option 2, which specifies that the Parties exchange all ISP-bound and Section 251(b)(5) traffic on a Bill and Keep basis.

[24] When the Parties use two-way trunking, the POI selected by AT&T for its originating traffic is necessarily also SBC's POI for its originating traffic, since there is only a single point of interconnection between the Parties on a two-way trunk group. However, when the Parties use one-way trunking, AT&T's POI and SBC's POI are independent of each other and need not be at the same location.

Q. IN THIS ARBITRATION, IS SBC SEEKING TO CHANGE THE WAY THAT AT&T DETERMINES ITS POI?

A. Yes. SBC's POI proposal is a dramatic departure from how AT&T determines its POI today. AT&T has the right under § 251(c)(2)(B) of the Act to select the location of its POI at any technically feasible location on SBC's network. SBC's proposed language would contravene this right and require AT&T to establish POIs at SBC-specified locations at SBC-specified thresholds within SBC-specified time frames, thereby usurping AT&T's rights to determine the location of its POI(s) and to interconnect at any technically point on SBC's network.

Background

Q. PLEASE DESCRIBE AT&T'S AND SBC'S NETWORK ARCHITECTURES AND EXPLAIN HOW THOSE ARCHITECTURES IMPACT ISSUE 4.

A. AT&T and SBC have deployed substantially different network architectures to serve local exchange customers. SBC's network was deployed by its predecessor company SWBT over the past hundred years to provide ubiquitous service across its certificated territory. I would describe SBC's network as a multi-layer or tiered network. This hierarchical or layered network was deployed when there were significant distance limitations on local loop technology, resulting in many switches deployed in the neighborhoods. Therefore, SBC has many end office switches spread out over its service area and installed in the neighborhoods populated by its customers. These end office switches are interconnected by an overlaying network of tandem switches. When certain volume levels are achieved

and it is cost effective, SBC establishes high usage trunk groups that directly link end office switches (bypassing the tandems). SBC's network architecture is depicted in AT&T Schedule JS-1 to my testimony. As I understand it, SBC generally finds the use of its tandem switches to be the least costly method of interconnecting many end offices until certain traffic thresholds are achieved between two end offices, and only then is it more efficient for SBC to directly connect the two end offices.

Facilities-based CLECs, such as AT&T, which enter a market with few or no customers, are faced with the considerable challenge of how and where to profitably deploy transport facilities and switching systems, considering the relatively low density of customers and traffic volume forecasted over the planning period. One area of technological advancement that has made facilities-based market entry a possibility is the substantial decrease in the cost of high-capacity fiber-optic transport facility systems. In fact, some economists assert that distance has become an irrelevant factor in telephony markets and that this trend will also eventually affect local telephony.[25] Accordingly, AT&T's switches are deployed to take advantage of the efficiencies of today's transport technology. This allows AT&T to reduce somewhat the negative economics associated with deploying a network for an initially small customer base.

[25] See, e.g., Testimony of Lee L. Selwyn GA PSC Docket No. 13542-U.

Due to the very high initial cost of switching platforms as compared to the lower incremental cost of high-capacity facility systems, AT&T has chosen to deploy fewer switches and more transport on the end-user side of the switch. Even where AT&T has determined there is a need for multiple switches within a LATA, they are often collocated within the same building to reduce real estate costs and to rely upon centralized technical staff. AT&T's network architecture is depicted in AT&T Schedule JS-2 to my testimony.

Consistent with AT&T's architecture, there are certain LATAs in which AT&T has not deployed a switch physically within the LATA. AT&T has agreed that in such cases it will establish at least one physical point of presence (POP) and one POI within the LATA, and AT&T will provide all of the facilities (for both originating and terminating traffic) between its switch and the POP. Where AT&T has not deployed a switch within a LATA, the POP will be treated as if it were an AT&T switch (i.e., AT&T has virtually extended its switching functionality into the LATA to the POP). The AT&T architecture, therefore, provides a switch (or switching presence) in every SBC LATA in which AT&T offers local services.

Although AT&T's and SBC's networks are similar in the sense that the two networks cover comparable geographic areas, a key distinction between the two networks is that while SBC deploys tandems to interconnect multiple switches spread throughout a geographic area and then grows into dedicated high usage trunk groups between such switches, AT&T deploys a single switch combined

with long transport on the end-user side of the switch, because that combination is less costly than adding a new switch in each part of a market.

As I will explain in more detail below, SBC's point of interconnection proposal requires AT&T to adapt its network to SBC's legacy network design. This proposal would result in AT&T losing the benefits of its efficient network architecture and incurring substantially higher network costs.

Q. PLEASE EXPLAIN THE SIGNIFICANCE OF THE POI.

A. Each carrier is responsible for delivering its originating traffic to the POI. Between the originating customer and the POI, the costs of delivery are identified as the origination costs, and the facilities that bring the traffic to that point are the interconnection facilities.[26] From the POI to the terminating customer, the terminating carrier must assume operational responsibility to take that traffic to the designated end user and the originating carrier must pay the terminating carrier for the costs of that carriage. These costs associated with the terminating side of the POI are generally known as the termination costs. If the call is a "local" call, the originating carrier compensates the terminating carrier for that delivery pursuant to reciprocal compensation obligations which are set forth in Section 251(b)(5) of the Act.[27] If the call is a "toll" call, then access charges

[26] Interconnection facilities are the physical transmission channels that transport traffic between the AT&T and SBC switches that are used for local and intraLATA toll traffic.

[27] Reciprocal compensation is broken down into two parts – the transport portion which is transmission and any necessary tandem switching from the POI to the terminating carrier's end office switch that directly serves the called party; and the termination portion, which involves the switching of the traffic at the terminating carrier's end office switch or equivalent facility and delivery of that traffic to the called parties premises. See 47 C.F.R. §§ 51.701(c) and (d).

rather than reciprocal compensation charges apply. The issue I am discussing involves the carrier's obligations with respect to "local" calls.

By selecting a particular POI location, a carrier usually affects both the amount of reciprocal compensation it pays the other party and its own network costs for interconnection facilities. However, because the Parties have agreed to either exchange all ISP-bound and Section 251(b)(5) traffic at the FCC's Interim ISP Terminating Compensation Plan Rate, which is currently $0.0007 per minute of use, or on a Bill and Keep basis, the selection of the POI will not affect the reciprocal compensation paid by either Party. Therefore, by proposing language that requires AT&T to establish additional POIs, SBC is increasing AT&T's costs for interconnection facilities and minimizing its own costs for such facilities knowing that its proposed language will not increase the reciprocal compensation it pays to AT&T for terminating its traffic.

Determination of the POI

Q. HOW IS THE POI LOCATION SELECTED?

A. The Act and FCC orders provide that new entrants may interconnect at any technically feasible point. Specifically, § 251(c)(2) of the Act and FCC Rule 47 C.F.R. § 51.305(a)(2) obligates SBC to allow interconnection at any technically feasible point within its network. In its *Local Competition Order*, the FCC explained:

> The interconnection obligation of section 251(c)(2), discussed in this section, **allows competing carriers to choose** the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.[28] (emphasis added)

Q. HAS THE FCC PREVIOUSLY ADDRESSED HOW THE POI IS SELECTED?

A. Yes. The FCC has consistently applied the Act to prevent ILECs from increasing CLEC's costs by unnecessarily requiring multiple points of interconnection. In its order approving SBC's application for interLATA authority in Texas, the FCC stated that Section 251 of the Act gives competing local service providers the option to interconnect at as few as one technically feasible point within each LATA.[29] The FCC stated:

> New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination.

The FCC also stated:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option

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[28] *Local Competition Order* at ¶ 172 (emphasis added).

[29] Memorandum Report and Order, *Application by SBC Illinois Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC No. 00-65, ¶ 78 (rel. June 30, 2000) (hereinafter *"Texas 271 Order"*).

> to interconnect at only one technically feasible point in each LATA. (citing *Local Competition Order* ¶¶ 172, 209).[30]

In an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a competing carrier to "interconnect in the same local exchange in which it intends to provide local service."[31] The FCC's brief in that case stated:

> Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.[32]

The FCC based its argument on both statutory and policy grounds.

Q. WHAT IS THE POLICY BASIS FOR PERMITTING A CLEC TO CHOOSE A SINGLE POI?

A. Allowing CLECs to have a single switch presence per LATA enables new entrants to grow their business economically without having to duplicate the ILEC's existing network. This in turn enables competition by CLECs, which clearly serves the public interest.

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[30] The FCC made a similar pronouncement in a January 2001 Order granting in region interLATA authority to SBC for Kansas and Missouri. *Memorandum and Order*, FCC 01-29, Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-region, interLATA service in Kansas and Missouri, CC Docket No. 00-217 (January 22, 2001)("Kansas and Missouri Order").

[31] Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (No. CV 97-1575-JE) (D. Or. 1998).

[32] *Id.* at 20.

Q. HAS THE FCC SPECIFICALLY ADDRESSED A CLEC'S RIGHT TO SELECT THE POI?

A. Yes. The FCC addressed the principles relating to a CLEC's right to select the POI in a Section 251 arbitration case.[33] In that case, Verizon proposed language that required AT&T, in most instances, to deliver its traffic all the way to the Verizon end office - or to what Verizon described as "geographically relevant interconnection points" ("GRIPs") or "virtual geographically relevant interconnection points" ("VGRIPs"). In either case, Verizon's language required AT&T to establish multiple POIs within the LATA. If AT&T didn't establish such POIs, then Verizon proposed that AT&T pay Verizon for the transport costs that Verizon incurred to deliver its originating traffic from its originating switch to AT&T's switch or POI. AT&T's proposal, on the other hand, provided that AT&T has the right to designate a single POI per LATA at any technically feasible point, and that Verizon must be financially responsible for the transport of its traffic to that POI.

The FCC rejected Verizon's proposal and approved AT&T's language. It found that AT&T's language more closely conformed to the FCC rules and existing precedent than did Verizon's GRIP or VGRIP proposals. Specifically, the FCC found the AT&T proposal was more consistent with 47 C.F.R. § 51.703(b) prohibiting a LEC from charging a CLEC for traffic originating on the LECs

[33] The FCC's Wireline Competition Bureau preempted the jurisdiction of the Virginia State Corporation Commission to arbitrate disputes between Verizon Virginia, Inc. and WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia, Inc. in a consolidated docket. *Petition of WorldCom, et al.*, *Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (rel. Jul. 17, 2002) ("*Virginia Arbitration Order*"), ¶¶ 52-53.

network and 47 C.F.R. § 51.305(a)(2) allowing a CLEC to connect at any technically feasible point, including a single point of interconnection in a LATA (¶¶ 52 & 53).[34]

Q. DID THE FCC DELEGATE ITS AUTHORITY TO THE WIRELINE BUREAU TO DECIDE THE ISSUES PRESENTED IN THE VIRGINIA ARBITRATION?

A. Yes, the Wireline Competition Bureau ("WCB"), in making its arbitration decision for Virginia, was acting under express authority delegated to it by the FCC.[35] Thus, the Bureau's decision is entitled to significant deference because the people who interpreted the FCC's rules were the senior policy advisers of the agency whose rules they were interpreting and applying. In the absence of any affirmative indication by the FCC that contradicts the Bureau's interpretation, the Commission must accept the Bureau's interpretation. Moreover, under Section 153 of the Act, a decision of an FCC bureau made on delegated authority has the same legal force and effect as a decision of the FCC.

Q. WHAT HAVE OTHER STATE COMMISSIONS SAID CONCERNING THE ESTABLISHMENT OF POIS?

A. In its recent arbitration with AT&T in Illinois, SBC proposed language requiring AT&T to establish POIs in each local calling area or to compensate SBC if AT&T had not done so. Under SBC's proposal, if SBC Illinois was the originating party,

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[34] The Fifth Court of Appeals' decision followed the FCC's guidance in this regard when it reversed the Texas Commission's decision in Docket No. 22315 that required AT&T to shoulder certain originating transport obligations of SBC whenever the POI chosen by AT&T was located outside of SBC's local calling area. *Southwestern Bell Telephone Company v. Texas Public Utility Comm'n, et al.,* No. MO-01-CA-045, 2002 WL 32066469 at *1 (W. D. Tex. Dec. 26, 2002).

[35] *Virginia Arbitration Order* at ¶ 1.

and the POI or AT&T's switch was not in the local calling area where the call originated, then AT&T would be financially responsible for the transport between SBC's end office (for end office routed calls) or tandem office (for tandem routed calls) and the POI less 15 miles. The Illinois Commission rejected SBC's proposed language stating:

> We agree with AT&T that much of SBC's proposed language for Section 4.3 would violate AT&T's rights under current law and FCC rules to select POIs between the respective networks, and also would violate the corresponding principle that each carrier properly bears the financial responsibility of delivering its originating traffic to the point of interconnection. **We find that SBC's proposed language effectively and improperly negates AT&T's rights under TA96 to designate a single POI in each LATA** by requiring AT&T to pay SBC for transporting traffic as if AT&T were required to establish multiple POIs in each of SBC's local calling areas.[36] (emphasis added)

Although SBC proposes different requirements governing AT&T's establishment of its POIs here in Missouri then it did in Illinois, SBC's language would "negate AT&T's rights under TA96 to designate a single POI in each LATA" in Missouri just as it did in Illinois.

[36] *AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company (SBC Illinois) pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Decision, Docket 03-0239, at Page 28 (August 26, 2003) (AT&T - SBC Illinois Arbitration)

Q. HAVE THE COURTS FOUND THAT AT&T HAS THE RIGHT TO SELECT THE LOCATION OF THE POI AND TO INTERCONNECT AT A SINGLE POINT IN THE LATA?

A. Yes. In Texas Docket No. 22315, the Public Utility Commission of Texas required that AT&T, rather than SBC, pay the cost of delivering SBC's originating traffic to the POI whenever the transport distance exceeded 14 miles.

AT&T appealed the Commission's decision to the United States District Court for the Western District of Texas and in December 2002 the court found that:

> **AT&T has the statutory right under the Act to select the location of a technically feasible point of interconnection**, and that the regulations of the federal Communications Commission ('FCC"), including in particular 47 C.F.R. § 51-703(b) prohibits SWBT from imposing charges for delivering its "local" traffic originating on its network to the point of interconnection selected by AT&T even when that point is outside of a local calling area of SWBT.[37] (emphasis added)

Subsequently, SBC appealed the District Court's decision to the Fifth Circuit Court of Appeals, which upheld the District Court's decision and granted AT&T's Motion for Summary Judgment.

Q. HAS THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN RECENTLY ADDRESSED THE POI ISSUE?

A. Yes. In addressing the financial responsibility for interconnection, the Court stated:

> On the merits, it is improper for the agreement to require defendant [AT&T] to pay for facilities within plaintiff's [SBC] network.

[37] *Southwestern Bell Telephone Company v. Texas Public Utility Comm'n, et a, ,*No. MO-01-CA-045, 2002 WL 32066469 at *1 (W. D. Tex. Dec. 26, 2002) (emphasis added).

> **Pursuant to 47 U.S.C. § 251(c)(2)(B) plaintiff was entitled to designate a technically feasible POI, which could be a single point.** MCIMetro Access Transmission Services, Inc. v. Bellsouth Telecommunications, Inc., 352 F.3d 872, 877 (4th Cir. 2003). . . . By requiring defendant to 'be responsible for the costs of trunking and transport from its customers to Ameritech end offices' § 4.3.1 [of the Interconnection Agreement] effectively and improperly converts plaintiff's end office switches into involuntary POIs for defendant's network. . .[38]

Q. DOES SBC'S PROPOSED LANGUAGE ALLOW AT&T TO SELECT A SINGLE POI PER LATA?

A. SBC claims that it does, but SBC's proposed language also requires AT&T to establish additional POIs at SBC-designated locations when the traffic exchanged by the Parties through an existing POI to such locations exceeds 24 DS-1s.[39] Thus, the "right" to select a POI is a right that has been stripped of much of its significance. The end result under SBC's proposed language and definitions is that AT&T must either construct or lease network facilities between its switch and such SBC locations to carry not only its own traffic, but also SBC's traffic. AT&T does not derive the full benefit that the FCC's rules confer on it from its right to designate interconnection points unless they serve their intended purpose; that is, delineating the boundaries between the originating carrier's network and payment of reciprocal compensation to the terminating carrier for completing the call.

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[38] *Wisconsin Bell, Inc. v. AT&T*, No. 03-C-671-S, 2004 WL 2059549 at *12 (W. D. Wis. June 30, 2004) (emphasis added).

[39] *See* SBC's proposed language in Section 1.1.4 of Attachment 11, Part A.

Q. IS AT&T ENTITLED TO INTERCONNECT IN A MANNER THAT IS COST EFFECTIVE FOR AT&T?

A. Yes. The Act and FCC Rule 51.305(a)(2) obligate SBC to allow interconnection at any technically feasible point within its network. In its *Local Competition Order*, the FCC explained:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers *to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic*.[40]

Q. WHAT JUSTIFICATION DOES SBC OFFER TO SUPPORT ITS POSITION ON ISSUE 4?

A. The only justification SBC provides in its preliminary position statements is that (1) interconnection must occur on SBC's network, and (2) its opinion that AT&T should deploy additional POIs once traffic exceeds a 24 DS-1 threshold.

Q. PLEASE RESPOND TO SBC'S FIRST POINT.

A. As I explained in my testimony on Issue 2, SBC's network is not nearly as limited as SBC would have the Commission believe. SBC's network includes not only SBC's switch locations, but also other locations where SBC has deployed its own network facilities, for example, locations to which SBC has deployed synchronous optical network ("SONET") interoffice [optical] transmission facilities, e.g., OC-3, OC-12 or OC-48 network facilities. Thus, SBC's network consists of all of its switches, interoffice transmission facilities, and loop facilities

[40] *Local Competition Order* at ¶ 172 (emphasis added).

that are offered to the public. SBC installs, operates, maintains, repairs, depreciates and generally exercises ownership prerogatives with respect to these facilities, which are part and parcel of SBC's plant-in-service and in SBC's rate base.

Q. PLEASE COMMENT ON SBC'S OPINION THAT AT&T SHOULD ESTABLISH ADDITIONAL POIS AT THE 24 DS-1 THRESHOLD.

A. SBC has offered no justification for its opinion and cannot point to any provision in the Act or the FCC's Rules requiring a CLEC to establish additional POIs at a specified traffic threshold. The Act and the FCC's implementing Rules clearly provide that the CLEC has the right to establish its POI or POIs at its own volition at any technically feasible point within the ILEC's network

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS ISSUES 4 AND 16?

A. Yes. At pages 104-105, the Arbitrator found for AT&T and rejected SBC's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 4?

A. The Commission should rule that AT&T has the right to establish its POI at any technically feasible point on SBC's network. Consistent with this, the Commission should reject SBC's proposed language for Sections 1.1.0 through 1.1.5 in Attachment 11, Part A and adopt AT&T's proposed language in Section 1.2 of Attachment 11, Part A and Section 6.0 of Attachment 11, Part C. AT&T's proposed language conforms to the FCC's Rules whereas SBC's does not.

Issue 5: May AT&T establish one or more POIs anywhere in the LATA?

Q. PLEASE DESCRIBE ISSUE 5.

A. This issue addresses how the Parties would interconnect in the situation where SBC chooses to have its end office switch subtend the tandem switch of another incumbent local exchange carrier. SBC objects to AT&T's proposed language in Section 1.2 of Attachment 11, Part A, which gives AT&T the right to exchange traffic through the third party's tandem switch that SBC chooses to have its end office subtend and AT&T objects to SBC's proposed language in Section 1.1 of Attachment 11.

Today, according to the April 2005 LERG, six of SBC's end offices subtend a Sprint tandem switch in Missouri. AT&T believes it should have the choice to route local and intraLATA toll traffic originating on AT&T's network destined to such SBC end offices via the ILEC's tandem switch, which SBC chooses to have its end offices subtend. Likewise, SBC would deliver local and intraLATA toll traffic originating on its network that is destined to AT&T through the same ILEC tandem for delivery to AT&T.

AT&T's position is that AT&T may fulfill its obligation under §251(a)(1) of the Act by using indirect interconnection and the interconnecting carrier, AT&T in this case, may select the method of interconnection that it finds to be most efficient. SBC's position is that such indirect interconnection is not allowable. SBC's position would require AT&T to establish a trunk group to each such SBC end office even if there is a minimal volume of traffic that would not justify a

dedicated trunk group to that location (i.e., AT&T must use direct interconnection).

Q. WHAT IS AT&T'S INTERCONNECTION OBLIGATION?

A. Section 251(a) of the Act provides that

> Each telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers…

Q. WHAT IS THE DIFFERENCE BETWEEN DIRECT AND INDIRECT INTERCONNECTION?

A. Direct interconnection is the deployment of transmission facilities and trunks directly between the two networks being interconnected. Indirect interconnection is the exchange of traffic via the switch facilities (normally a tandem switch) of a third-party carrier. The switching of traffic between two carriers by a third carrier is referred to as transit service. Where SBC chooses to have an end office subtend a third carrier's tandem, AT&T is seeking to use that third carrier's transit service to exchange traffic with SBC.

Q. WHAT DOES "SUBTEND" MEAN?

A. Carriers deploy tandem switches to carry traffic between end office switches that exchange little traffic and to carry overflow volumes of traffic during peak periods when direct routes are full. Each end office switch is associated with a specific tandem for local and interexchange traffic. In this end office – tandem switch relationship, the end office switch is said to subtend the tandem. When a

carrier has traffic destined to the end office of another carrier, it may route such traffic though the tandem switch to the end office switch.

Q. DOES AT&T BELIEVE IT HAS FULFILLED ITS INTERCONNECTION OBLIGATION BY DELIVERING ITS TRAFFIC TO SBC VIA ANOTHER LEC'S TANDEM SWITCH?

A. Yes.

Q. HAS SBC FULFILLED ITS INTERCONNECTION OBLIGATION BY DELIVERING ITS TRAFFIC TO AT&T VIA ANOTHER LEC'S TANDEM SWITCH?

A. Yes, except that if AT&T requests direct interconnection with the SBC end office, SBC is required to provide such direct interconnection to AT&T.

Q. IF SBC CHOOSES TO HAVE ONE OR MORE OF ITS END OFFICES SUBTEND ANOTHER ILEC'S TANDEM SWITCH, WOULDN'T SBC HAVE A TANDEM TO WHICH AT&T MAY DELIVER ITS TRAFFIC?

A. No, not in the case where SBC elects to have its end office subtend another carrier's tandem switch. All LECs, including SBC and AT&T, must make network engineering decisions on how to deploy switching and transmission facilities. Included in these decisions is whether to deploy tandem switching or use another carrier's tandem switch.

Q. IS IT TECHNICALLY FEASIBLE FOR AT&T AND SBC TO EXCHANGE TRAFFIC VIA THE TANDEM SWITCH THAT SBC CHOOSES TO HAVE ITS END OFFICE SUBTEND?

A. Yes. In its Local Competition Order the FCC said,

> We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points.[41]

Today, AT&T uses indirect interconnection to exchange traffic with countless LECs and SBC is the transiting carrier for many of these indirect interconnection arrangements. Indirect interconnection between AT&T and SBC using another carrier's tandem switch is a substantially similar arrangement; only the roles of the parties differ. In cases where SBC subtends another carrier's tandem, AT&T is seeking to use that carrier's transit service to exchange traffic with SBC as compared to the situation where AT&T uses SBC's transit service to exchange traffic with another carrier. The technical feasibility of indirect interconnection between AT&T and SBC is without doubt.

Q. DOES THE FCC REQUIRE SBC TO PROVIDE INTERCONNECTION AT ANY TECHNICALLY FEASIBLE POINT USING ANY TECHNICALLY FEASIBLE METHOD?

A. Yes. In its Local Competition Order, the FCC said,

> We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose <u>any method of technically feasible interconnection</u> or access to unbundled elements at a particular point. <u>Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection</u> or access to unbundled elements.[42]

[41] *Local Competition Order at* ¶ 198. Also, *See* 47 C.F.R. § 51.305(c).
[42] *Id*. at ¶ 549 (emphasis provided).

The FCC has also specified that a new entrant should have the choice to interconnect to the incumbent network using methods that lower the new entrant's costs of interconnection.[43]

Q. MUST SBC ALLOW INDIRECT INTERCONNECTION UNDER ANY CIRCUMSTANCE?

A. No, but the circumstances under which SBC may be relieved of its duty are extremely limited. The FCC stated in its Local Competition Order:

> Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network. Thus, with regard to network reliability and security, *to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access*.[44]

In its preliminary position statements for Issue 5, SBC makes no assertion that "significant adverse impacts would result" from indirect interconnection with AT&T. In fact, SBC cannot make such a claim, because the very act of having a SBC end office subtending another LEC's tandem switch means that SBC accepts traffic from other carriers, e.g., IXCs, routed through the tandem switch it subtends. For example, all IXCs have the option to route their traffic to SBC via the other carrier's tandem switch, because SBC advertises that option in the LERG. For SBC to say that some carriers may use this option at their choice

[43] *Local Competition Order* at ¶ 172.
[44] *Id.* ¶ 203 (emphasis provided).

while refusing this option to other (competing) carriers is discriminatory. The Commission should reject SBC's proposed requirement.

Q. WHY DOES AT&T FAVOR INDIRECT INTERCONNECTION IN THIS CASE?

A. This is the most efficient method for AT&T and SBC to exchange small volumes of traffic. When the parties are exchanging a sufficient volume of traffic to warrant a direct group, AT&T and SBC can implement the direct group. However, the decision to implement a direct group should be based on an engineering analysis that looks at a number of parameters, including traffic volumes, to provide the most efficient solution, and should not be mandated or determined arbitrarily by SBC.

Q. WHY DOES AT&T OBJECT TO SBC'S PROPOSAL FOR DIRECT INTERCONNECTION?

A. SBC's proposal is arbitrary and in many cases may produce an inefficient, non-cost-effective interconnection arrangement. Further, AT&T's position on this issue does not preclude the Parties from directly interconnecting to the other for the delivery of its traffic where traffic volumes warrant direct interconnection.

Q. WHY DOES SBC OPPOSE AT&T'S PROPOSED LANGUAGE?

A. The reason that SBC gives in its preliminary position statement is that AT&T's language would give AT&T the right to interconnect with SBC outside SBC's franchise territory. However, I believe SBC's real reason underpinning its position is that it is trying to avoid the payment of transit fees to the tandem

provider for traffic originating on SBC's network.[45] It is exactly these transit fees that SBC would consider in determining whether to have its end office subtend its own tandem as opposed to another LEC's tandem. If SBC has determined that it is less costly to subtend another LEC's tandem than deploy its own tandem, SBC should not be permitted to foist the costs associated with that arrangement on to other carriers.

Q. DOES AT&T'S LANGUAGE PROVIDE AT&T INTERCONNECTION OUTSIDE SBC'S INCUMBENT LEC NETWORK?

A. No, indirect interconnection would not require SBC to provide AT&T the opportunity to interconnect at points outside SBC's network. Where SBC elects to subtend another incumbent LEC's tandem, SBC must be interconnected with that incumbent LEC's network and SBC must establish a point of interconnection between SBC and the incumbent LEC. Where AT&T and SBC interconnect indirectly, as AT&T proposes under this issue, AT&T and SBC would utilize the points of interconnection each has with the incumbent LEC providing the transiting service. In such a case, AT&T would not have a direct POI with SBC, because AT&T would not be interconnecting directly with SBC. Rather AT&T would exchange traffic with SBC utilizing the POI AT&T has established with the transiting carrier and the POI that the transiting carrier has with SBC *that lies within SBC's territory*. Accordingly, AT&T is not asking SBC to establish a POI or to accept AT&T's traffic outside of its incumbent LEC's territory. In fact, this is the same traffic exchange arrangement SBC uses with IXCs.

[45] AT&T would be responsible for transit fees for traffic originating on its network.

Q. DOES SBC HAVE AN OBLIGATION TO MAKE REASONABLE ACCOMMODATIONS FOR CLEC INTERCONNECTION?

A. Yes it does. SBC appears to take the position that the CLEC must accommodate SBC's network arrangements and/or preferences in interconnecting. However, as the FCC stated:

> If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.[46]

Q. WHAT SHOULD THE COMMISSION DO TO RESOLVE ISSUE 5?

A. The Commission should adopt AT&T's proposed language for Sections 1.2 in Attachment 11, Part A and should reject SBC's proposed language for Section 1.1 of Attachment 11, Part A. There are no Commission or FCC rules that prohibit indirect interconnection between SBC and AT&T, such arrangements are technically feasible, and AT&T as the new entrant has broad rights to elect efficient interconnection.

The Commission should not single out SBC end offices that subtend another LEC's tandems for special treatment. AT&T should be allowed to exchange traffic with SBC using another LEC's tandem switch when SBC elects to have its

[46] *Local Competition Order* at ¶ 202.

end office(s) subtend such carrier's tandem switch and when AT&T determines that such use is efficient and cost effective. When either Party is exchanging a sufficient volume of traffic to warrant a direct group, either Party should be free to implement the direct group. However, the decision to implement a direct group should be based on an engineering analysis that looks at a number of parameters, including traffic volumes, to provide the most efficient solution, and should not be determined by SBC's arbitrary refusal to exchange traffic through another carrier's tandem switch that SBC itself chooses to subtend for the exchange of traffic, e.g., with interexchange carriers.

Issue 6: How should the parties compensate each other for interconnection?

Q. IS AT&T WILLING TO ACCEPT SBC'S PROPOSED LANGUAGE FOR SECTION 1.3 IN ATTACHMENT 11, PART A, THEREBY RESOLVING THIS ISSUE?

A. Yes. Because the Parties have agreed to exchange all ISP-bound and Section 251(b)(5) traffic at the FCC's Interim ISP Terminating Compensation Plan Rate, which is currently $0.0007 per minute of use, or on a Bill and Keep basis, AT&T's proposed language in Sections 1.3 through 1.3.4 in Attachment 11, Part A is no longer necessary and AT&T withdraws its proposed language for those Sections and accepts SBC's proposed language for Section 1.3.

Issue 7: Should the Parties mutually agree to the method of obtaining interconnection or should AT&T be able to solely specify the method of interconnection?

Q. WHAT IS THE DISAGREEMENT ON ISSUE 7?

A. The Parties disagree on whether AT&T has the right to specify the method of interconnection. AT&T believes SBC has an obligation to provide any technically feasible method of interconnection requested by AT&T. SBC believes the parties must mutually agree to the method of interconnection, which, of course, gives SBC the right to deny AT&T's requested method of interconnection.

Q. PLEASE EXPLAIN AT&T'S POSITION.

A. The interconnection of two networks is a multi-dimensional task. There is the geographical aspect, i.e., selecting the *location* where the Parties will interconnect, i.e., the POI. Then there is the selection of the *method* of interconnection, which includes both a physical and a logical aspect. The *physical aspect* includes selecting the transmission facilities that a Party uses to bring its traffic to the POI, which includes self-provisioned or leased facilities, selecting how the Parties will interconnect at the POI, which includes, among other things, selecting the interface, including the transmission protocol (optical or electrical), the transmission speed (optical: OC3, OC12 or OC48 and electrical: DS-1 or DS-3) and the physical connection. The *logical aspect* includes determining how traffic will be routed under various load conditions, i.e., tandem versus direct end office trunking.

As I explained in my testimony on Issue 4, as an incumbent local exchange carrier SBC has the duty under the Act to provide interconnection for the facilities and equipment of any requesting CLEC at any technically feasible point. In the *Local Competition Order,* the FCC explained that this obligation includes not only the obligation to permit interconnection at any technically feasible point, but the *obligation to allow any technically feasible method of interconnection* as well.[47] Further, the FCC's regulations on interconnection confirm this. FCC Rule 47 C.F.R. § 51.321(a) states:

> Except as provided in paragraph (e) of this section [concerning collocation], an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, *any technically feasible method of obtaining interconnection* or access to unbundled network elements at a particular point upon a request by a telecommunications carrier. (emphasis added).

Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH SBC CAN DENY AT&T'S REQUESTED METHOD OF INTERCONNECTION?

A. Yes, but the circumstances under which SBC may do so are extremely limited and the burden is on SBC to prove on a case-by-case basis that such denial should be imposed. The FCC specifically addressed this issue in 47 C.F.R. § 51.321(d) which states:

> An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements

[47] The FCC stated, "We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled network elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled network elements." *Local Competition Order* at ¶ 549.

> on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

This technical feasibility standard sets the bar for denial very high. The FCC has stated that in order for an incumbent LEC to justify refusal to provide interconnection or access at a point requested by another carrier, it ". . . must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access."[48]

Q. COULD AT&T BE HARMED IF SBC'S LANGUAGE IS ADOPTED?

A. Yes. SBC could use the requirement to obtain its agreement on the method of interconnection to allow it to refuse to provide certain methods of interconnection altogether, e.g., mid-span fiber meets or Intra-building interconnection. Once SBC has the right to require mutual agreement on the method of interconnection, there is really no effective limit on SBC's ability to dictate the terms of interconnection. I believe the FCC understood this and established the Rules in 47 C.F.R. §§ 51.321(a) and 51.321(d) to prevent just this type of behavior by an incumbent LEC.

[48] *Local Competition Order*, ¶ 203.

Q. DOES SBC'S DEMAND THAT THE PARTIES MUTUALLY AGREE TO THE METHOD OF INTERCONNECTION HAVE ANY SUPPORT IN THE FCC RULES OR THE ACT?

A. No, none at all. At bottom, SBC simply thinks it should be given an equal vote in selecting the method of interconnection, but that is not a right accorded SBC by the FCC or the Act. Of course, the Commission should not lose sight of SBC's obvious ability to engage in self-help when it disagrees about the technical feasibility of an AT&T-requested interconnection. If SBC does not want to permit an interconnection it will simply refuse the interconnection, which puts AT&T in the position of having to file a complaint at this Commission, where SBC will *eventually* have to justify its position. Even AT&T's proposed language will not prevent SBC from engaging in this sort of unilateral action, but AT&T's language will at least eliminate the "cover" of "mutual agreement" that SBC seeks in its language. In any interconnection dispute SBC's "mutual" language would, at least as an initial matter, permit SBC to refuse an interconnection simply because SBC does not agree to it, and that is inconsistent with the presumptions in the law regarding a CLEC's right to interconnect.

Q. IN YOUR OPINION, IS SBC SIMPLY TRYING TO ESCAPE ITS RESPONSIBILITY UNDER 47 C.F.R. § 51.321(D) TO JUSTIFY TO THIS COMMISSION ANY REFUSAL TO PROVIDE A REQUESTED INTERCONNECTION ARRANGEMENT?

A. Yes. SBC is attempting to avoid its clear responsibility under the FCC's Rules to either provide the interconnection arrangement requested by AT&T or explain to this Commission why it is not technically feasible to provide it. Rule 47 C.F.R.

§ 51.321(d) clearly serves the public interest by preventing the incumbent LEC from acting in an arbitrary or capricious manner to thwart competition.

Q. IS AT&T DENYING SBC THE RIGHT TO MANAGE AND PROTECT ITS NETWORK INTEGRITY AS SBC STATES IN ITS PRELIMINARY POSITION STATEMENT?

A. No. If SBC believes AT&T's requested method of interconnection somehow jeopardizes its ability to manage and protect its network, then it must present proof to this Commission that AT&T's requested method of interconnection is not feasible and the Commission makes the final determination. Of course, as an initial matter SBC should present its concerns to AT&T with the expectation that AT&T will try to accommodate any reasonable concerns. SBC's proposal, however, bypasses the safeguards that the FCC has built into the interconnection process to ensure that CLECs are not disadvantaged by inappropriate behavior on the part of the incumbent LEC.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THIS ISSUE?

A. Yes. At page 107, the Arbitrator found for AT&T.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 7?

A. The Commission should adopt AT&T's proposed language for Section 1.7 in Attachment 11, Part B which in accord with the Act and the FCC Rules implementing the Act. SBC's proposed contract language for Section 1.7 negates AT&T's right to choose the method of interconnection, a right granted to AT&T in FCC Rule 47 C.F.R. § 51.321(a). AT&T's language is in the public interest

because it enables the new entrant to select cost effective locations and methods of interconnecting with the incumbent LEC's ubiquitous network and prevents the incumbent LEC from requiring more expensive forms of interconnection and thereby limiting the new entrant's ability to compete.

Issue 8: a. May AT&T use Interconnection Dedicated Transport, at a TELRIC rate, for interconnection trunking?

b. May AT&T combine Interconnection Dedicated Transport with Special Access Facilities provided by SBC MISSOURI for the provision of Interconnection Trunking?

Q. PLEASE DESCRIBE ISSUE 8.

A. Where AT&T has not deployed its own network facilities, it may wish to lease facilities from SBC for network interconnection. These interconnection facilities would be used to provision local network interconnection trunks between AT&T's and SBC's switches for the exchange of traffic between the parties. CLECs are entitled to interconnect with and use the incumbent LEC's network at prices based upon the cost of providing interconnection, *i.e.,* TELRIC-based rates,[49] and SBC may not restrict AT&T's right to obtain interconnection facilities at TELRIC-based rates. Indeed, as described below, the FCC's rules make clear that the cost-based pricing for interconnection mandated under Sec. 252(d)(1) of the Act must be at TELRIC.

SBC, on the other hand, claims that it has no obligation to provide these kinds of interconnection facilities and, therefore, this issue is not arbitrable and AT&T

[49] 47 U.S.C. ¶ 252(d)(1).

must obtain such facilities from SBC's special access tariff. As I will explain, SBC's interpretation of the Act and the FCC's implementing rules is simply wrong.

Q. WHAT DO YOU MEAN BY INTERCONNECTION FACILITIES?

A. Each carrier is responsible for delivering its originating traffic to the POI and the facilities used for this purpose are called interconnection facilities. AT&T can implement such interconnection by either self-provisioning the interconnection facilities between its switch and the POI or by leasing portions of or all of the interconnection facilities from SBC or third parties.

When AT&T leases interconnection facilities from SBC, AT&T may choose to lease the entrance facility, which connects AT&T's switch location to the SBC wire center serving the AT&T location, or the interoffice facility, which connects the serving wire center to the POI at the distant SBC location, or the combination of the entrance facility and the interoffice facility. This issue involves the rates that AT&T should pay SBC if it leases the entrance facility or interoffice facility, either separately or in combination with each other, for use as an interconnection facility.

Q. DOES AT&T BELIEVE THAT THE ACT AND THE FCC'S RULES SUPPORT ITS POSITION?

A. Yes. AT&T's proposed language is consistent with the legal requirement that interconnection facilities be provided by the ILEC at cost-based rates. Section 252(d)(1) of the Act states:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 [i.e., network interconnection],… shall be based on the cost (determined without reference to a rate-of-return or other rate based proceeding) of providing the interconnection network element . .

Section 51.501(b) of the FCC's pricing Rules defines "element" as:

> As used in this [TELRIC Pricing] subpart, the term "element" includes network elements, *interconnection,* and *methods of obtaining interconnection* and access to unbundled elements.[50]

Therefore, the FCC's TELRIC pricing rules apply not only to unbundled network elements (UNEs), but also to interconnection facilities, or interconnection "elements" as described above. Accordingly, AT&T is within its rights to request that SBC provide interconnection facilities, including both entrance facilities and interoffice facilities, at TELRIC-based rates for AT&T's use as interconnection facilities for the exchange of traffic subject to Section 251(c)(2) of the Act.

Q. HAS THE FCC CLEARLY STATED THAT ENTRANCE FACILITIES SHOULD REMAIN AVAILABLE AT TELRIC AS INTERCONNECTION FACILITIES?

A. Yes. As I noted earlier in my testimony, in paragraph 140 of the *TRRO* the FCC stated:

> We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service.[51] Thus, competitive LECs

[50] 47 C.F.R. § 51.501(b).
[51] *Triennial Review Order*, 18 FCC Rcd at 17204, para. 366.

> will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network. (footnote included)

Thus, the FCC has confirmed in the *TRRO* that SBC still has an obligation to price its interconnection facilities consistent with the pricing obligations set forth in §252(d)(1).

Q. IS THERE A SIGNIFICANT PRICE DIFFERENTIAL BETWEEN TELRIC-BASED RATES AND ACCESS RATES?

A. Yes. The Act clearly specifies that CLECs can interconnect with and use the ILEC's network at prices based upon the cost of providing interconnection.[52] SBC nevertheless proposes to charge access rates that far exceed the economic cost of such interconnection facilities. The FCC has recognized that access charges are not based on forward looking economic cost, but are generally well above economic cost.[53]

The price differential between SBC's access rates and TELRIC-based rates for DS-1 and DS-3 facilities in Missouri is significant. A sample comparison of the access and TELRIC-based rates for DS-1 and DS-3 facilities is provided in AT&T Schedule JS-3.

Q. WHAT IS THE SIGNIFICANCE OF ISSUE 8(B)?

A. Issue 8(b) addresses AT&T's right to connect entrance facilities leased from SBC at TELRIC-based rates to interoffice facilities leased from SBC at special access

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[52] 47 U.S.C. ¶252(d)(1).
[53] *First Report and Order, Access Charge Reform,* 12 FCC Rcd 15982, ¶¶ 258-84. (1996).

rates, and vice versa, solely for purposes of interconnection under Section 251(c)(2) of the Act. Said another way, AT&T seeks the right to use facilities leased from SBC's special access tariff for interconnection when it makes economic sense for AT&T to do so.

For example, it may be necessary to augment an existing trunk group between AT&T's switch and a SBC tandem switch by adding a DS-1's worth of capacity. AT&T may have available capacity on a TELRIC-rated DS-3 level entrance facility and on a special access-rated DS-3 level interoffice facility between SBC's wire center serving the AT&T switch and the POI.[54] AT&T believes there are no legal bars to its assigning the additional DS-1 requirement to an available slot on the entrance facility and asking SBC to cross connect that DS-1 to a particular slot on the interoffice DS-3 special access facility in SBC's serving wire center. This arrangement may be more economical for AT&T than leasing a separate interoffice DS-1 from SBC, and SBC should not be allowed to refuse to provide the necessary cross connection in its central office. AT&T is not asking SBC to change in any way the pricing of the special access-rated DS-3 interoffice facility that AT&T chooses to use part of, or entirely, for interconnection. AT&T only seeks the right to connect entrance facilities leased from SBC at TELRIC-based rates to interoffice facilities leased from SBC at special access rates and to connect entrance facilities leased from SBC at special access rates to TELRIC-

[54] A DS-3 facility has a capacity of 28 DS-1 channels each of which has a capacity of 24 voice circuits or trunks.

rated interoffice facilities for the purpose of interconnection under Section 251(c)(2) of the Act.

Q. IS AT&T ALSO SEEKING THE RIGHT TO INTERCONNECT TELRIC-RATED ENTRANCE FACILITIES OBTAINED FROM SBC TO AT&T'S SELF-PROVISIONED FACILITIES AND FACILITIES LEASED FROM THIRD-PARTY CARRIERS?

A. Yes. AT&T believes there is no legal bar to doing so and SBC should not refuse to provide the necessary cross connections in its central office to accomplish this. To ensure that SBC does not refuse to provide the necessary cross connections because the interconnection agreement does not provide for the arrangement, AT&T seeks specific language covering the arrangement.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 8(A) AND (B)?

A. The Commission should find that AT&T has the right to obtain interconnection facilities at TELRIC-based rates, including entrance facilities used for purposes of interconnection, and should adopt AT&T's proposed language in Section 1.5 of Attachment 11, Part A, Sections 1.2 through 1.3 of Attachment 11, Part B and Section 2.1.3 of Attachment 11, Part C.

Issue 9: In central office buildings where both parties have a presence, may AT&T use intra-building cable for interconnection?

Q. WHAT IS INTRA-BUILDING INTERCONNECTION?

A. Intra-building interconnection is a method of interconnection when both parties have broadband facility terminals within a building and thus can interconnect in that building using intra-building cable. Such cable could be a DS-1 or DS-3

cable, a fiber optic cable or another technically feasible interface, but with respect to AT&T, the most frequently used intra-building cable is the DS-3 coaxial cable. Most frequently, intra-building interconnection would be accomplished where SBC and AT&T each have central office space within the same building. Although it would be technically feasible to have intra-building interconnection at some customer locations, such as carrier hotels, AT&T would not expect to make significant use of intra-building interconnection at such locations.

Q. PLEASE DESCRIBE ISSUE 9.

A. Resolution of this issue will determine if AT&T has a right to designate intra-building interconnection where it chooses and, if deployed, what terms would apply to the installation and use of the cable. It is AT&T's position that (1) because intra-building cable is a technically feasible method of interconnection, SBC is required to provide such interconnection, (2) AT&T should have sole use of the cable if it bears the full cost of the installation and maintenance of the cable, and (3) SBC may not assess additional charges, such as entrance facility charges, to AT&T for the function provided by the intra-building cable. SBC's position is that AT&T should not be able to self-provision intra-building interconnection.

Q. IS INTRA-BUILDING INTERCONNECTION SUPPORTED BY THE ACT?

A. Yes. The language AT&T proposes is consistent with its right to interconnect at any technically feasible point. The Act states that incumbent LECs have an

obligation to interconnect "at any technically feasible point within the carrier's network."[55] AT&T believes that interconnection at any technically feasible point is a fundamental right of the competitive LECs – it is not an "accommodation" provided at the discretion of SBC. Further, there is nothing in the Act that prohibits interconnection via a DS-1 cable, a DS-3 coaxial cable or a fiber optic cable. For this reason, AT&T's proposed contract language on interconnection via cable should be included in the ICA.

Q. IS INTRA-BUILDING CABLE TECHNICALLY FEASIBLE?

A. Yes. The FCC said in the *Local Competition Order* that the existence of a certain type of interconnection demonstrates that it is technically feasible. This arrangement exists between AT&T and SBC at a number of locations. In fact, intra-building cable is the same physical arrangement used by SBC to provide an entrance facility between AT&T space and SBC space when the two parties each have a wire center in the same building.

Q. HOW DID THE ILLINOIS COMMERCE COMMISSION RULE ON THIS ISSUE IN THE RECENT ARBITRATION BETWEEN AT&T AND SBC?

A. The Illinois Commission adopted AT&T's proposed language.[56]

Q. HAS THE FCC ADDRESSED THIS ISSUE?

A. Yes. In the *Virginia Arbitration*, Verizon took substantially the same position in that arbitration that SBC is taking in this arbitration – that intra-building

[55] 47 U.S.C. § 251(c)(2)(B).
[56] *AT&T - SBC Illinois Arbitration* at page 26.

interconnection would allow AT&T to gain an advantage over other CLECs. However, the Wireline Competition Bureau decided this issue in AT&T's favor. It said,

> We reject Verizon's arguments that AT&T's language allowing it to interconnect at any technically feasible point, including customer premises (*i.e.,* intra-building interconnection), discriminates against other carriers. Technically feasible interconnection is the right of every competitive entrant. The fact that AT&T in some instances, by the development of historical events, maintains wire centers on the same premises as Verizon hardly renders its proposed language discriminatory against other carriers.[57]

Q. WHAT IS THE FINANCIAL WINDFALL TO SBC IF AT&T'S USE OF INTRA-BUILDING INTERCONNECTION IS PROHIBITED?

A. Where intra-building interconnection is feasible, it permits AT&T to avoid the purchase of a SBC entrance facility, because AT&T would provide that functionality for itself. An entrance facility is the interconnection facility between the requesting carrier's location and SBC's wire center serving the carrier's location. Whereas most entrance facilities provided by SBC may be several miles in length, in the case where AT&T and SBC both have wire centers in the same building, the entrance facility is simply a connection between floors. Also, in this arbitration, SBC has taken the position that AT&T may not lease entrance facilities at TELRIC-based rates but must pay access rates for such facilities

[57] *Virginia Arbitration Order* at ¶ 57.

(Issue 8(a)). The cost of SBC's Interstate Switched Access DS-3 Entrance Facility in Missouri is $1,112.00 per month.[58]

I expect that SBC would much prefer to provide a short length of cable between floors and collect $1,112.00 each month than to have AT&T self-provision that functionality.

Q. SHOULD SBC BE PERMITTED TO ASSESS AN ENTRANCE FACILITY CHARGE WHERE AT&T INTERCONNECTS TO SBC USING INTRA-BUILDING CABLE?

A. No. AT&T's proposed contract terms specify that AT&T is solely responsible for the costs of the arrangement and that SBC bears no such costs. It would be completely unfair for AT&T to bear the cost of the arrangement and then compensate SBC as if SBC had borne the costs and provided the arrangement itself.

Q. SHOULD AT&T HAVE SOLE USE OF THE INTRA-BUILDING CABLE?

A. Yes. If AT&T, as it proposes in its contract language, bears the full cost to provide, install and maintain the intra-building cable arrangement, the cable should be dedicated to AT&T's use. Of course, if AT&T and SBC agreed to share the cost for a certain intra-building arrangement, then the parties should share the use of the cable. Such agreements can and should be made on an

[58] Southwestern Bell Telephone Company, Tariff F. C. C. NO. 73, Switched Access Service, Section 6.9.2(A)(4), 16th Revised Page 6-179.3, Effective July 2, 2002. DS-3 rate is from SBC's Interstate Switched Access Tariff because DS-3 rates in SBC's Intrastate Tariff are individual case basis (ICB).

individual case basis and should not prejudice AT&T's right to interconnect with SBC via intra-building cable at other times or at other locations.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THIS ISSUE?

A. Yes. At page 109, the Arbitrator found for AT&T and adopted AT&T's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9?

A. The question in Issue 9 is whether AT&T should be required to pay SBC thousands of dollars a year for a piece of cable that AT&T itself can provide. Clearly, SBC's position is unreasonable and should be rejected by the Commission. The Commission should adopt AT&T's proposed contract language for Sections 1.5 through 1.5.5 in Attachment 11, Part B.

Issue 10: Should interconnection trunks carry all 251(b)(5) traffic, including ISP bound and transit traffic, as well as intraLATA exchange traffic?

Q. PLEASE EXPLAIN THE DISAGREEMENT BETWEEN THE PARTIES ON ISSUE 10.

A. The Parties disagree on the traffic that can be delivered over the interconnection trunk groups. Consistent with positions it has taken on other issues, SBC's proposed language in Section 1.0 of Attachment 11, Part C, specifically excludes transit traffic, which SBC believes should be subject to a separate "commercial" agreement (Issue 3) and SBC's definition of Local Only Trunk Groups and Local Interconnection Trunk Groups would exclude other traffic that does not meet SBC's definition of Section 251(b)(5) Traffic and Section 251(b)(5)/IntraLATA

Traffic, respectively. As I explained in my testimony on Issue 3, AT&T believes SBC has a continuing obligation to provide transit service and that the public interest is clearly served by SBC's doing so. In my testimony on Intercarrier Compensation Issue 1a, I will address the definition of Section 251(b)(5) Traffic and explain why SBC's definition is incorrect and should not be adopted by the Commission.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. Even though the Parties disagree on the scope of what is included within 251(b)(5) and whether SBC has an obligation to provide transit service, the Commission should not allow these disagreements to cloud its judgment on how the Parties should exchange such traffic with respect to trunk groups. SBC seeks to require the Parties to have multiple interconnection trunk groups, e.g., one trunk group for traffic that fits its definitions of 251(b)(5) Traffic or 251(b)(5)/IntraLATA Traffic and another trunk group for transit traffic under a commercial agreement. This is clearly an unnecessary and inefficient use of both Parties' resources and should be rejected by the Commission irrespective of how the Commission decides any of the related interconnection issues.

Issue 11: Should AT&T be required to establish local interconnection trunks to every local calling area in which AT&T offers service?

Issue 12: Should AT&T be required to establish direct end office trunk groups if the traffic exchanged between the Parties to a SBC MISSOURI end office exceeds one DS-1 for a period of one month, with traffic adjusted for anomalies?

Issue 13: Should AT&T be required to establish a two-way IntraLATA toll trunk group to the SBC MISSOURI Access Tandem, when SBC MISSOURI has a separate Local tandem and Access Tandem in the same local exchange area?

Q. WHAT IS THE BASIC DISAGREEMENT ON ISSUES 14, 15 AND 18?

A. Issues 11, 12 and 13 address the same basic issue: who determines the interconnection trunking arrangement the Parties will use. As I explained in my testimony on Issue 7, the interconnection of two networks is a multi-dimensional task. There is the geographical aspect, i.e., selecting the *location* where the parties will interconnect, i.e., the POI (Issue 4). Then there is the selection of the *method* of interconnection, which includes both a *physical* and a *logical* aspect. The *physica*l aspect includes selecting the transmission facilities that a Party uses to bring its traffic to the POI, which includes self-provisioned or leased facilities, selecting how the Parties will interconnect at the POI, which includes, among other things, selecting the interface, including the transmission protocol (optical or electrical), the transmission speed (optical: OC3, OC12 or OC48 and electrical: DS-1 or DS-3) and the physical connection (Issue 7). The *logical* aspect includes determining how traffic will be routed under various load conditions, i.e., tandem versus direct end office trunking (Issues 11, 12 and 13). AT&T believes it has the right to specify the method of interconnection, including trunking, and that SBC's

proposed language infringes on AT&T's to specify the method of interconnection. SBC believes it can unilaterally mandate the trunking the Parties will use.

Q. IS SBC SEEKING TO CHANGE THE STATUS QUO IN REGARD TO INTERCONNECTION TRUNKING?

A. Yes. Like many of its network architecture proposals here, SBC's trunking proposals seek to dismantle the existing interconnection arrangements between the Parties and impose a new model. To my knowledge, the existing arrangement has worked well for years. Indeed, I am unaware of any SBC-generated complaint regarding the existing arrangement or any SBC-initiated attempt to amend the existing agreement.

Q. HOW DOES SBC'S PROPOSED LANGUAGE INFRINGE ON AT&T'S RIGHT TO SELECT THE METHOD OF INTERCONNECTION TO SBC'S NETWORK?

A. SBC's language (1) requires AT&T to establish trunk groups to <u>every</u> local exchange area in which AT&T offers service, (2) requires AT&T to establish trunk groups to multiple tandem switches in the same local exchange area when SBC has separate local and access tandem switches, and (3) establishes a trigger point at which AT&T must trunk to SBC's end offices. SBC's language not only interferes with AT&T's right to specify the method of interconnection, it requires AT&T to establish inefficient interconnection arrangements, which are not cost effective.

Q. HOW IS SBC'S PROPOSED LANGUAGE NOT COST EFFECTIVE?

A. SBC's proposed language requires AT&T and SBC to use many small inefficient trunk groups as opposed to fewer, larger, more efficient trunk groups.[59] The Commission should keep in mind that trunks ride over facilities and therefore facilities and switch ports must be in place to support the trunk groups. Therefore, AT&T and SBC will have to bear the cost of additional facilities as well as the cost of the additional switch ports that will be required to support the splintered, inefficient trunking arrangement required by SBC's proposed language. SBC's proposal is not only bad from an engineering perspective, it is bad from a public interest standpoint because it will unnecessarily drive up AT&T's cost of serving its customers.

Q. DOES AT&T HAVE THE RIGHT TO SELECT THE METHOD OF INTERCONNECTION, INCLUDING THE TRUNKING METHODS?

A. Yes. AT&T has the right pursuant to the Act, FCC regulations, and the *Local Competition Order* to require any technically feasible method of interconnection. As the incumbent local exchange carrier, SBC has the duty under the Act to provide interconnection for the facilities and equipment of any requesting telecommunications carrier at any technically feasible point.[60] In its *Local Competition Order*, the FCC stated,

> We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose <u>any method of technically feasible</u>

[59] SBC has numerous local exchange areas in Missouri, which are identified only in SBC Missouri's General Exchange Tariff and are not shown in the LERG, which CLECs routinely consult for interconnection matters.

[60] 47 U.S.C. § 251(c)(2)(B).

> interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled elements.[61]

Further, the FCC's Rules on interconnection confirm this. 47 C.F.R. § 51.321(a) specifically provides that:

> Except as provided in paragraph (e) of this section [concerning collocation], an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, *any technically feasible method of obtaining interconnection* or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.[62]

The FCC has specified that a new entrant should have the choice to interconnect to the incumbent network using methods that lower the new entrant's costs of interconnection and this includes the choice of trunking. In its order approving SBC's application for interLATA authority in Texas, the FCC stated:

> New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination.[63]

Q. DO THE ILEC'S INTERCONNECTION OBLIGATIONS REQUIRE IT TO MODIFY ITS NETWORK IF NECESSARY TO ACCOMMODATE INTERCONNECTION?

A. Yes. The FCC addressed this matter in its *Local Competition Order*, ¶ 202:

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[61] *Local Competition Order* at ¶ 549 (emphasis provided).
[62] 47 C.F.R. § 51.321(a) (emphasis added).
[63] *Texas 271 Order* at ¶ 78.

> Thus, it is reasonable to interpret Congress's use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. *If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated.* For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements. [emphasis added]

Q. ARE THERE IMPLEMENTATION PROBLEMS WITH SBC'S PROPOSED LANGUAGE?

A. Yes. SBC's proposed language for Issue 11 would require AT&T to interconnect <u>in each local exchange area</u> where AT&T offers service and this presents two problems not addressed in SBC's language.

First, SBC has 272 end offices listed in the LERG, which includes 80 remote end office switches, the majority of which, if not all, serve separate local exchange areas. It is my understanding that most remote end office switches do not support direct interconnection by other carriers and carriers gain access to such remote end office switches by interconnecting to the host switch that supports the remote end office switch. Therefore, AT&T could not interconnect in the local exchange

area served by the remote end office switches even if it wanted to do so. On the other hand, if interconnection in such local exchange areas were possible, AT&T would have to establish potentially 80 separate trunk groups to comply with SBC's proposed language in Issue 11. As I explained earlier, this requires AT&T to use many small inefficient trunk groups as opposed to fewer, larger, more efficient trunk groups, which is very inefficient and costly.

Second, many local exchange areas may have multiple end offices and no local tandem switches within the local exchange area. Thus, SBC's proposed trunking language really requires AT&T to directly trunk to most end offices without regard to whether or not AT&T has a DS-1 level of traffic to such end offices (Issue 12). That is very inefficient and costly.

Q. IS THERE INHERENT HARM TO SBC'S NETWORK IF AT&T'S TRAFFIC TO AN END OFFICE IS AT OR ABOVE A DS-1 LEVEL OF TRAFFIC OR IF AT&T DOES NOT TRUNK TO EVERY LOCAL EXCHANGE AREA?

A. No. Indeed, if a sustained increase in traffic requires that a certain trunk group should be augmented, the agreement provides for the procedures to be followed by the parties to eliminate excessive call blocking.

Q. IS SBC'S REQUIREMENT TO DIRECT TRUNK TO LOCAL EXCHANGE AREAS AND TO END OFFICES WHEN THE TRAFFIC REACHES A DS-1 LEVEL NECESSARY TO ELIMINATE TANDEM EXHAUSTION?

A. No. Tandem exhaustion can be avoided by proper forecasting and deployment of additional tandem switching capacity. Even if SBC must bear the cost to deploy

additional tandem capacity in its network to accommodate interconnection at its tandem switches, that increased cost does not meet the "significant adverse impact" standard established by the FCC.

Q. ARE ANY COSTS SHIFTED TO SBC IF AT&T DOES NOT ESTABLISH A TRUNK GROUP TO EVERY SBC LOCAL EXCHANGE AREA?

A. No. SBC's assertion in its preliminary position statement on Issue 11 that if AT&T were to hand off its traffic at one switching location it would shift the burden of serving AT&T's customers in other calling areas to SBC is specious. Even if AT&T were to hand off all of its traffic in a LATA at a single POI, AT&T would still be financially responsible for all of the traffic originating on its network. SBC does not assume any of AT&T's financial responsibility for traffic that originated on AT&T's network.

Q. OTHER THAN TANDEM EXHAUST, IS THERE ANY OTHER VALID REASON FOR SBC TO REQUIRE AT&T TO DIRECT TRUNK TO A LOCAL EXCHANGE AREA AND TO AN SBC END OFFICE WHEN THE TRAFFIC REACHES A DS-1 LEVEL OF TRAFFIC?

A. No, a tandem exhaust situation is the only valid reason of which I am aware and even then it is a temporary situation that exists only until SBC deploys additional tandem capacity.

Q. ARE THERE OTHER PROBLEMS WITH SBC'S TRUNKING PROPOSALS?

A. Yes. SBC's proposals would unfairly discriminate against CLECs, unless IXCs and independent phone companies are all held to the same standard. In other words, SBC would need to require IXCs to have direct end office terminations for

access in all local exchange areas and in all end offices that reach a DS-1 level of traffic. SBC's exchange access tariff places no limitation on the volume of traffic that an exchange access customer may route through a SBC tandem and SBC has not required IXCs to have direct end office terminations for access in all local exchange areas and in all end offices that reach a DS-1 level of traffic.

Q. HAS THE FCC CONSIDERED SOMETHING SIMILAR TO SBC'S TRUNKING PROPOSAL?

A. Yes. The FCC's Wireline Competition Bureau considered this issue in the *Virginia Arbitration Proceeding*. There, the FCC rejected Verizon's proposed language to AT&T and Cox requiring the establishment of direct end office trunks when traffic to a particular Verizon end office exceeds a DS-1 level. The FCC stated:

> We reject Verizon's proposed language to AT&T and Cox requiring the establishment of direct end office trunks when traffic to a particular Verizon end office exceeds a DS-1 level. It appears that competitive LECs already have an incentive to move traffic off of tandem interconnection trunks onto direct end office trunks, as their traffic to a particular end office increases. By such direct trunking, a competitive LEC may avoid charges associated with Verizon's tandem switching. Indeed, it would appear that, just like Verizon does, competitive LECs have the incentive to move their traffic onto direct end office trunks when it will be more cost-effective than routing traffic through the Verizon tandems. The record indicates that competitive LECs already move their traffic onto direct end office trunks as their traffic volumes increase. Verizon has neither alleged nor established that this incentive is insufficient to alleviate its tandem exhaustion concerns.[64] (Two footnotes omitted.)

[64] *Virginia Arbitration Order* at ¶ 88.

Q. DOES AT&T REQUIRE A CONTRACTUAL OBLIGATION TO MAKE REASONABLE ENGINEERING DECISIONS AS TO WHEN A DIRECT END OFFICE TRUNKING SHOULD BE EMPLOYED?

A. No. Under current practices, AT&T traffic engineers evaluate various trunk routes to determine where AT&T may realize cost savings by establishing direct end office trunking.[65] In many cases, AT&T establishes direct end office trunking without a contractual obligation to so, simply because it is efficient for AT&T to do so. Clearly, AT&T does not need SBC's proposed language in its agreement to make reasonable engineering decisions.

Q. DOES THE FACT THAT SBC ESTABLISHES DIRECT TRUNKING TO AN END OFFICE UNDER SIMILAR DS-1 GUIDELINES MEAN IT IS COST EFFECTIVE FOR AT&T TO DO SO?

A. No, the two carriers are not similarly situated.

First, SBC has SONET rings linking its offices and can easily, and at low incremental cost, establish direct trunking between its end offices. CLECs such as AT&T have not deployed ubiquitous networks and do not have SONET rings linking their switches to all SBC's offices. Where the CLECs have not deployed their own facilities, SBC expects them to lease interconnection transport between their switch and the POI from SBC at tariff rates, since SBC is not proposing to provide such transport at TELRIC-based rates.[66] SBC's trunking proposals will use many more DS-1 ports on AT&T's switches leading to early exhaust of the

[65] This calculation is based on an "economic CCS threshold" that compares the cost of direct trunking against the avoided costs of tandem switching and common transport. This analysis considers such factors as offered load, distance, and leased facility rates.

[66] In some cases, the CLECs lease the facilities competitive access providers. However, the CLEC still pays a rate well above the ILEC's incremental cost for such facilities.

switches and will require AT&T to deploy many more transport facilities between its switches and the POIs to support the inefficient trunking arrangement required by SBC's proposed language.

Second, because of the economies of scale in the larger tandem trunk group, the simple fact that the Parties remove the Centi Call Seconds ("CCS") call carrying capacity of a DS-1 (24 DS-0s worth of traffic) from the tandem trunk group does not mean that the tandem group can be reduced by an equivalent DS-1 of capacity.[67] In fact it cannot. For example, if the trunk group between the AT&T switch and the SBC tandem switch has 240 trunks in it (10 DS-1 circuits, each with 24 trunks), that trunk group will carry a busy hour load of 7,460 CCS.[68] Since the busy hour capacity of the DS-1 that is being removed is 515 CCS, the resultant load on the tandem group is 6,945 CCS in the busy hour. Since the busy hour capacity of 216 trunks (the original 240 trunks less the 24 being removed) is only 6,656 CCS, 216 trunks will not carry the residual busy hour load of 6,945 CCS between AT&T's switch and the SBC's tandem switch and the tandem group will have to remain sized at 240 trunks. Thus, SBC's arbitrary one-size-fits-all end office trunking requirement increases AT&T's costs because AT&T must bear the cost of transporting an additional DS-1 between its switch and the POI and both AT&T and SBC must bear the cost of the additional switch ports used on the direct end office group. In SBC's case, the additional switch port is at

[67] SBC's proposed language in Issue 12 requires AT&T to establish a direct end office trunk group when the traffic to and end office exceeds the capacity of one DS-1 for one month.

[68] CCS capacities are from B.01L Neal Wilkinson Trunk Capacity Table with a 1.0 peakedness factor.

its end office, but in AT&T's case the additional switch port is on the same switch and simply accelerates the exhaust of AT&T's switch.

SBC's one-size-fits-all approach is not efficient, cost effective or in the public interest. It is much better to allow AT&T's traffic engineers to evaluate various trunk routes to determine where AT&T may realize cost savings by establishing direct end office trunking. The AT&T engineers base their calculation on an "economic CCS threshold" that compares the cost of direct trunking against the avoided costs of tandem switching and common transport and considers such factors as offered load, distance, and leased facility rates.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THESE ISSUES?

A. Yes. At page 105, the Arbitrator found for AT&T on Issues 14, 15 and 18[69] and rejected SBC's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 11, 12 AND 13?

A. The Commission should reject SBC's proposed language in Sections 1.0, 1.1, 1.2, 1.3 and 1.4 of Attachment 11, Part C. SBC's proposed language is contrary to the FCC's implementing rules and infringes on AT&T's right to choose the method of interconnection, e.g., the establishment of tandem trunks versus direct end office trunks. As I have explained, SBC's language would result in the Parties deploying a large number of trunk groups that are inefficient and are not cost

[69] Issues 11, 12 and 13 here in Missouri correspond to Issues 14, 15 and 18 in Kansas.

effective. AT&T has the right pursuant to the Act, FCC regulations, and the *Local Competition Order* to interconnect at any technically feasible point in SBC's network and to require any technically feasible method of interconnection.

Issue 14: a. Should the agreement contain terms and conditions for Feature Group B and D traffic?

b. Should SBC be required to provide transport between the AT&T switch and the SBC MISSOURI Access Tandem?

c. Should AT&T be solely responsible for the Meet Point Trunk Groups and the facilities used to carry them?

Q. PLEASE DESCRIBE ISSUE 14.

A. Issue 14 deals with the provision of Meet Point Trunk Groups and addresses whether the interconnection agreement should address terms and conditions for such trunk groups including how such trunk groups are provided. As I will explain, AT&T is somewhat puzzled by SBC's Issue and position statements for Issue 14a and is proposing a change to its language for Sections 2.1.2 and 2.1.3 in attempt to resolve issues 14b and c.

Q. WHY IS AT&T PUZZLED BY SBC'S POSITION ON ISSUE 14A?

A. In Issue 14a, SBC poses the question "Should the agreement contain terms and conditions for Feature Group B and D traffic?" SBC's preliminary position statement says no, however, SBC itself is proposing language in Sections 2.1 and 2.1.4 of Attachment 11, Part C, that addresses the transmission and routing of IXC Feature Group B and D traffic on Meet Point Trunk Groups between AT&T's switch and SBC's access tandem switch. SBC also proposes a definition

for Meet Point Trunk Groups in Section 6.14 of Attachment 11, Part A. Thus, SBC has proposed language in the agreement governing the transmission and routing of Feature Group B and D traffic but in its preliminary position statement claims "Feature Group B and D traffic is not relevant to this agreement." Therefore, AT&T does not understand the thrust of SBC's question 14a or its position statement. In any event, it is clearly appropriate to address the handling of meet point traffic in the Parties interconnection agreement since Meet Point Trunk Groups constitute the joint provision of switched exchange access services to IXCs by AT&T and SBC, both operating as LECs.

Q. PLEASE EXPLAIN AT&T'S CHANGE TO ITS PROPOSED LANGUAGE IN SECTIONS 2.1.2 AND 2.1.3.

A. In an effort to resolve issues 14b and c, AT&T will agree to forego its discretion to either provide the transport facility for the Meet Point Trunk Group between AT&T's switch and SBC's access tandem switch or to have SBC provide such transport and be financially compensated for doing so under the industry approved MECAB Guidelines.[70] AT&T proposes to substitute the following language for the language it previously proposed for Sections 2.1.2 and 2.1.3 in Attachment 11, Part C:

> 2.1.2 AT&T will provide local switching and transport between each AT&T Switch (or equivalent facility) and the applicable ILEC access tandem of Feature Group B and D calls.

[70] Multiple Exchange Carrier Access Billing ("MECAB") Guidelines. The MECAB document is copyrighted, printed and distributed by the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of the ATIS-sponsored Ordering and Billing Forum (OBF).

> 2.1.3 SBC MISSOURI will provide, tandem switching and transport between the ILEC access tandem and the IXC POP, if so requested by the IXC, of Feature Group B and D calls.

The language in 2.1.2 now specifies that AT&T will provide the facilities that carry the Meet Point Billing Trunk Group between AT&T's switch and SBC's access tandem switch and should resolve SBC's Issues 14b and c.

However, as pointed out in AT&T's proposed language for 2.1.5, AT&T may utilize the interconnection methods set forth in Attachment 11, Part B, except Fiber Meet Point, to establish the Meet Point Trunk Groups, including leasing the transport facility from SBC at TELRIC-based rates. This is true because the Meet Point Trunk Groups are subject to the interconnection requirement of 251(c)(2) and AT&T can obtain such transport from SBC at TELRIC-based rates. The FCC confirmed this in the Virginia Arbitration between Verizon and MCI (WorldCom Inc.). In the *Virginia Arbitration Order*, the FCC specifically stated that CLECs have a right to purchase such facilities at TELRIC-based rates:

> We agree with WorldCom that the services in question [Meet Point Trunking Arrangements] constitute the joint provision of switched exchange access services to IXCs by WorldCom and Verizon, both operating as LECs. Therefore, we agree with WorldCom that, when the parties jointly provide such exchange access, Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom. *We further agree with WorldCom that it has the right to purchase unbundled dedicated transport from Verizon to provide IXCs with access to WorldCom's local exchange network. Therefore, Verizon may not require WorldCom to purchase trunks out of Verizon's access tariffs in order for WorldCom to provide such exchange access.* Accordingly, we

> reject Verizon's proposed language, and we adopt WorldCom's proposed language.[71] (footnotes omitted, emphasis added)

Q. IS THERE A RELATIONSHIP BETWEEN ISSUE 14 AND ISSUE 18?

A Yes, I believe there is. In Issue 14, the Parties also disagree on wording in Section 2.1, which is related to Issue 18. SBC's proposed language would require AT&T to establish a Meet Point Trunk Group to <u>every</u> SBC access tandem in the LATA, whereas AT&T's proposed language would only obligate AT&T to establish a <u>single</u> Meet Point Trunk Group to the SBC access tandem that AT&T's switch subtends in the LERG. It is only necessary that AT&T's switch subtend a single access tandem in the LERG. That is all that is necessary to tell all IXCs how to route their access traffic to AT&T, i.e., through the SBC access tandem specified in the LERG.

However, with its proposed language Section 2.1 of Attachment 11, Part C, SBC is trying to fix an infrequent problem that arises when an IXC is routing a call to the carrier serving the called party and the IXC fails to perform a local number portability ("LNP") database query and routes the toll call to the Party that was serving the number before it was ported to the other Party. For example, if an SBC customer ports his number to AT&T and the SBC end office serving that customer subtended SBC access tandem A and the AT&T switch subtends SBC access tandem B, the IXC will route the call to SBC access tandem A instead of B and vice versa if the customer number was ported from AT&T to SBC. AT&T

[71] *Virginia Arbitration Order* at ¶ 177.

believes the Parties agree that that this is an infrequent occurrence and does not justify the expense of installing Meet Point Trunk Groups to every access tandem in the LATA. This is the very issue that the Parties are addressing in Issue 18 and AT&T believes the issue should be resolved by the language the Parties are adjudicating in Issue 18. SBC should not be attempting to apply a belt and suspenders approach to the same issue.

AT&T believes the Commission's decision on the language in Section 2.1 in Issue 14 should be conformed to the Commission's decision on Issue 18. If the Commission adopts AT&T's position on Issue 18, as it should, it should also adopt AT&T's proposed language in Section 2.1 in Issue 14.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS ISSUE 14?

A. Yes. At pages 111-112, the Arbitrator found for AT&T and rejected SBC's position.

Issue 15: a. May AT&T combine originating 251(b)(5) Traffic and intraLATA Exchange Access with interLATA Exchange Access Traffic on Feature Group D exchange access trunks AT&T obtains from SBC MISSOURI?

b. If AT&T is permitted to combine Section 251(b)(5) traffic, IntraLATA exchange access traffic and interLATA exchange access traffic, will the Parties utilize factors to determine proper billing?

Q. PLEASE EXPLAIN THE DISAGREEMENT BETWEEN THE PARTIES ON ISSUE 15.

A. AT&T has extensive IXC Feature Group D trunking in place between the two Parties' respective networks and it does not make good business sense or encourage competition to require AT&T to put in an all new set of trunks for the

exchange of 251(b)(5) traffic when the existing arrangement is more than adequate. AT&T is asking the Commission to allow it to continue to combine Section 251(5) traffic on its existing Feature Group D trunking and to provide a factor to SBC to determine proper billing. This is the arrangement that AT&T and SBC currently use in Missouri and that AT&T and SBC use in California, Connecticut, Texas, Oklahoma and Arkansas. SBC disagrees and believes AT&T should establish separate, duplicative trunk groups for each type of traffic.

Q. WHAT IS AT&T'S RATIONALE FOR ITS POSITION?

A. AT&T should be allowed to continue to route local interconnection and access traffic on its IXC Feature Group D trunks and the Parties should continue to apply factors as necessary for compensation purposes as AT&T and SBC have been doing here in Missouri for years. This arrangement is efficient and cost-effective for both parties. If the Commission does not rule that the Parties can do this, AT&T will be forced either to create numerous additional interconnection trunk groups requiring additional, unnecessary, duplicative facilities, trunks and trunk terminations, which simply serves to needlessly increase AT&T's and SBC's cost of providing interconnection facilities and trunking, or to compensate SBC at access rates for such local traffic.

Q. DOES AT&T BELIEVE IT IS ENTITLED TO COMBINE LOCAL, INTRALATA TOLL AND INTERLATA TOLL TRAFFIC ON FEATURE GROUP D TRUNKS?

A. Yes. A CLEC such as AT&T may interconnect at any technically feasible point within the incumbent's network and is permitted to choose the most efficient

interconnection arrangement. Section 251(c)(2) of the Act and FCC orders and rules provide that new entrants may interconnect at any technically feasible point using any technically feasible method. Specifically, C.F.R. 51.305(a)(2) obligates SBC to allow interconnection by a CLEC at any technically feasible point. In its *Local Competition Order*, the FCC stated:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows *competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs*, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.[72]

Further, CLECs may interconnect using any technically feasible method. In the *Local Competition Order*, the FCC stated:

> We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. *Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection* or access to unbundled elements.[73]

Finally, a CLEC such as AT&T may require an ILEC, such as SBC, to modify its network to accomplish interconnection. Again, in the *Local Competition Order*, the FCC stated:

> If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the

[72] *Local Competition Order* at ¶ 172 (emphasis added).
[73] *Id.* at ¶ 549 (emphasis added).

purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated.[74]

In summary, under the Act and the FCC's interconnection rules, AT&T may interconnect at any technically feasible point using any technically feasible method, and SBC is required to accommodate such interconnection. AT&T's request to continue to combine interLATA and intraLATA traffic on its IXC Feature Group-D trunks is technically feasible and commercially reasonable as evidenced by the fact that this arrangement is being used today here in Missouri and in other SBC states and in Verizon, BellSouth and Qwest territories, and in those situations, the parties are using Percent Local Usage ("PLU") factors to bill AT&T.

Q. WHY DOES SBC PROPOSE LANGUAGE PREVENTING AT&T FROM CARRYING 251(b)(5) AND INTRALATA TRAFFIC ON ITS FEATURE GROUP D TRUNK GROUPS?

A. In its preliminary position statement, SBC says, "To ensure that AT&T and SBC are properly compensated for local, intraLATA Exchange Access, and interLATA Exchange Access, these different traffic types must be separated onto different trunk groups in order to accurately record and bill. . ."

Q. DURING THE SIX-YEAR PERIOD THAT AT&T HAS BEEN COMBINING 251(B)(5) AND INTRALATA TRAFFIC ON ITS IXC FEATURE GROUP D TRUNK GROUPS IN MISSOURI, HAS SBC EVER DEMONSTRATED A PROBLEM OR BROUGHT ANY COMPLAINT TO A COMMISSION IN REGARD TO THIS ARRANGEMENT?

A. No, not to my knowledge.

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[74] *Id.* at ¶ 202.

Q. DOES AT&T PROVIDE SBC WITH A WAY TO VERIFY THE CORRECTNESS OF AT&T'S PERCENT LOCAL USAGE FACTOR?

A. Yes. AT&T populates the calling party number in the CPN parameter of the SS7 Initial Address Message setting up the local call. In those situations where the customer's equipment does not provide CPN, AT&T populates a local ANI (Automatic Number Identification) number representing the customer's physical location in the CPN Parameter. Thus, SBC will have information in the CPN Parameter field of the SS7 message for a local call 100% of the time to (1) verify the validity of the PLU factor that AT&T provides to SBC, (2) verify the true jurisdictional nature of the traffic, and (3) ensure there is no fraud.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS ISSUE 15?

A. Yes. At page 113, the Arbitrator found for AT&T and adopted AT&T's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 15?

A. The Commission should adopt AT&T's proposed language for Section 3.4 in Attachment 11, Part C. The combination of local, intraLATA and interLATA toll traffic on AT&T's Feature Group D trunks has been an effective means of conserving trunks and network expenses in Missouri while providing SBC all of the revenue to which it is entitled for such traffic.

Issue 16: When both Parties are providing service in a LATA, should the Parties be required to open each other's NPA-NXX codes, including NPA-NXX Codes from and to exchanges that are not within SBC MISSOURI'S incumbent local exchange area?

Q. PLEASE DESCRIBE ISSUE 16.

A. This dispute is related to SBC's position that none of its § 251(c) obligations apply in any form or fashion beyond the borders of SBC's ILEC service territory. SBC is wrong. AT&T's proposed language addresses the situation where SBC's tandem serves non-SBC territories in a particular LATA. There are numerous instances in Missouri where another ILEC's exchange, i.e., an Independent Company's, is served by an SBC tandem switch. In order for AT&T's customers in one of these exchanges to have the same calling scope as the incumbent's customers, and be reachable by SBC's customers, SBC must open AT&T's NPA-NXX codes in the SBC tandem serving the exchange in question. Indeed, unless SBC opens AT&T's NPA-NXX codes in its tandem, SBC's customers will not be able to call AT&T's customers in such exchanges. Considering the fact that AT&T's customers can be in a mandatory expanded local calling area, SBC would arguably be violating its retail tariffs if its does not allow its customers to reach AT&T's customers in such instances.

Q. WHY DO YOU BELIEVE SBC OPPOSES AT&T'S LANGUAGE?

A. Quite simply, SBC argues that because the traffic involved either originates or terminates outside of SBC's ILEC franchise territory, SBC has no obligation to provide interconnection for exchange of this traffic. This is tied to SBC's larger position, as I understand it, that SBC has no § 251(c) obligations related to

anything that does not solely involve its ILEC service territory. Therefore, SBC's proposed language requires AT&T to agree to a separate Appendix if it wants its NPA-NXX codes opened in SBC's tandems.

Q. WHAT SUPPORT DOES SBC PROVIDE FOR ITS POSITION?

A. The only rationale provided by SBC in its preliminary position statement is that "SBC' Missouri believes that its obligations to offer most 251/252 services is limited to those areas to which it is the incumbent local exchange carrier."

Q. DOES SBC'S EXPLANATION OF ITS POSITION WITHSTAND SCRUTINY, IN YOUR VIEW?

A. No. Certainly, SBC has a duty to provide interconnection on terms that are nondiscriminatory under Section 251(c)(2)(D) of the Act. Since SBC opens NPA-NXX codes in its switches all of the time so its customers can reach, and be reached by, other SBC and Independent company customers, it would be blatantly discriminatory and a violation of Section 251(c)(2)(D) for SBC to refuse to open an NPA-NXX code for AT&T. Thus, in my view opening codes is a critical function that SBC is obligated to provide under Section 251(c) of the Act.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS ISSUE 21?

A. Yes. At page 114, the Arbitrator found that SBC's interpretation of § 251(c)(2) is too restrictive and adopted AT&T's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 16?

A. The Commission should adopt AT&T's proposed language for Section 10.0 in Attachment 11, Part C, and reject SBC's Appendix Out of Exchange Traffic in its

entirety. SBC cannot possibly argue that its network should not accept out-of-area traffic, but by creating the fiction that this particular interconnection with SBC occurs outside of its obligations under the Act, for which there are no standards, SBC will lay the groundwork for imposing standards that will unnecessarily raise the CLECs' costs.

Issue 17: Should AT&T be required to establish a segregated trunk group for mass calling for less than 2500 access lines?

Q. PLEASE DESCRIBE ISSUE 17.

A. In this issue, the Commission is asked to decide whether AT&T will be required to establish choke trunks, even where no threat exists to either party's network. The dispute concerns what AT&T believes to be excessive engineering requirements by SBC that ignore reality and deny acceptable levels of flexibility in how to avoid call blocking. When local service is established in an exchange for even a single business customer, SBC requires installation of a separate trunk group with only two trunks activated to serve as a "choke group."[75] Requests for waivers of this requirement have consistently been denied by SBC.

AT&T believes this type of trunking is not warranted below a threshold at which no network threat exists. In an effort to seek a compromise on this issue, AT&T is willing to agree to a choke trunk requirement where AT&T has 2,500 or more access lines. Above this threshold, AT&T would adhere to the choke trunks

[75] The Parties install a 24-channel DS-1 facility between the AT&T switch and SBC's tandem switch and activate only two of the 24 channels available to serve as choke trunks.

schedule proposed by SBC. As I explain in my testimony, below this access line threshold there is no threat to either party's network.

Q. WHAT ARE CHOKE TRUNKS?

A. Choke trunks are distinct trunks that are used to limit the volume of traffic entering the network during a "mass calling" event. Choke trunks, in addition to other methods, such as call gapping, are employed to avoid a traffic overload and excessive call blocking during a "mass-calling" event. A radio station call-in promotion is the most often cited example of such an event.

Q. WHAT IS SBC'S POSITION?

A. SBC proposes that AT&T be required to install separate choke trunks even if AT&T sells just a single business line in a market.

Q. SHOULD AT&T ALWAYS BE REQUIRED TO ESTABLISH A SEGREGATED TRUNK GROUP FOR MASS CALLING?

A. No. Choke trunks add no benefit to the network where few access lines exist. It is not possible for small numbers of access lines to generate large volumes of traffic in mass calling events. Moreover, AT&T implements call gapping to manage network congestion, which is adequate to address most mass-calling events.

Each party is responsible for managing its outbound traffic to ensure that traffic is not blocked and the networks are not impaired. AT&T would be perfectly willing to put in choke trunks where they would do some good; unfortunately, SBC has

used this language in the past to force AT&T to install choke trunks where they will never be used. The trunks tie up terminations in both companies' switches and have served no purpose. Over the past several years, these trunks have sat idle with no traffic on them.

Q. CAN YOU PROVIDE AN EXAMPLE OF WHERE THESE TRUNKS HAVE SERVED NO PURPOSE?

A. Yes. In the case of AT&T Communications' interconnections for its AT&T Digital Link ("ADL") service. AT&T Communications' ADL service is sold only to business customers who use intelligent PBXs. Some of these business customers are the sole service location within the service area. If AT&T sells 24 PBX trunks to provide local exchange service to such a customer, SBC's proposal would require AT&T to install one DS-1 for local interconnection to SBC and a second DS-1 to SBC for a choke trunk group. AT&T's interconnection costs to SBC would be doubled, even though there is absolutely no threat to SBC's network from AT&T's interconnection.

Q. IS THE CHOKE-TRUNK THRESHOLD OF 2,500 ACCESS LINES AS PROPOSED BY AT&T A REASONABLE SOLUTION?

A. Yes, for these reasons.

First, AT&T's facilities-based network is limited almost exclusively to serving business customers. Here, choke trunks serve no useful purpose because mass calling events are almost always directed to elicit responses from residential

customers, i.e., mass marketing events almost always involve stimulating calls from residential customer's not business customers.

Second, the number of trunks between the ADL business customer's PBX and AT&T's switch automatically limits the number of calls that the business location can make to the number of trunks in place.

Third, AT&T's network is configured with call-gapping software, which is effective in addressing threats from mass-calling events.

Moreover, AT&T has every incentive to protect against blocking of calls from customers who are not participating in the mass-calling event due to call attempts by customers who are. SBC can confirm there has been no traffic on the choke trunk groups for AT&T's ADL customers.

Any sizable blocking on AT&T's trunk groups to SBC's tandem switch would negatively affect business customer service and AT&T has every incentive to avoid network problems that could hurt customer retention. If AT&T thought blocking could occur, AT&T would take steps to prevent it. But AT&T should not be required to implement inefficient and costly additional trunking as a mandatory precaution for every interconnection.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THIS ISSUE?

A. Yes. At page 116, the Arbitrator found for AT&T and adopted AT&T's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 17?

A. The Commission should adopt AT&T's proposed language for Section 12.0 in Attachment 11, Part C. AT&T's compromise language sets a reasonable threshold at which choke trunks would be established.

Issue18: Should parties be permitted to send 251(g) traffic delivered to [either party from] an IXC where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query over interconnection trunks?

Q. HAS SBC INCLUDED AN ISSUE IN NETWORK INTERCONNECTION ISSUE 18 THAT IS ALSO THE SUBJECT OF SBC'S INTERCARRIER COMPENSATION ISSUES 1B & 1C?

A. Yes, it has. SBC's issue statement for Network Architecture Issue 18a is exactly the same as its issue statement for Intercarrier Compensation Issues 1b & 1c, and AT&T will address that issue in its testimony on Intercarrier Compensation Issues 1b and 1c.

Q. PLEASE EXPLAIN THE DIFFERENCE BETWEEN THE PARTIES ON AT&T'S ISSUE 18 AND SBC'S ISSUE 18(B).

A. The disagreement between the Parties that I am addressing here deals with SBC's proposed language in Section 7.2 of Attachment 11, Part C, which addresses how the Parties handle IXC toll traffic that has been delivered to one of the Parties but should have been delivered to the other Party. This occurs when an IXC fails to perform the LNP database query to determine the carrier that is now serving the called telephone number and instead routes the call to the Party that was serving the number before it was ported to the other Party. AT&T believes the Parties agree that that this is an infrequent occurrence and AT&T does not agree with

SBC's draconian language requiring such calls to be blocked.[76] Further, AT&T does not want calls to its customers blocked, thereby creating the impression that AT&T's network or service is somehow inferior.

Q. DOES THIS PROBLEM OCCUR ON CALLS ORIGINATING ON ANOTHER CLEC'S NETWORK?

A. No, generally it does not. If the traffic originates on another CLEC's network, that CLEC, in almost every case, routes the traffic to AT&T through SBC's tandem switch. If the CLEC has not done the LNP database query, SBC, as the N-1[77] carrier, will do it and will route the call to the local exchange carrier serving the called telephone number. Thus, in this issue, the Parties are really addressing those infrequent calls where the IXC does not do the LNP database query and misroutes the call to the Party that was serving the number before it was ported to the other Party.[78]

Q. HOW IS SBC AFFECTED BY THE INFREQUENT CALLS THAT AN IXC MISROUTES TO AT&T?

A. In that infrequent instance where an IXC does not do the LNP database query and routes a call to AT&T that should have been routed to SBC, i.e., the number has been ported to SBC, AT&T will route the call to SBC on the exchange trunk group. However, in this rerouting process, the network intelligence regarding the

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[76] SBC's proposed language in Section 7.2 begins "In the limited circumstances….."

[77] N-1 is pronounced N minus one. This term is used in central office (also called exchange) switching. It refers to the central office switch just before the last one, i.e., the penultimate switch. Newton's Telecom Dictionary, 17th Update and Expanded Edition, February 2001.

[78] AT&T believes SBC's proposed language for Section 7.2 of Attachment 11, Part C, referring to a "third party competitive local exchange carrier" is in error. AT&T believes Section 7.2 should refer to an "IXC" and not a "third party competitive local exchange carrier."

IXC's identity and the Calling Party Number ("CPN") is lost and the call is treated for compensation purposes as a call without CPN under Section 8.3.1 of Attachment 12. Thus, AT&T will pay SBC for completing call.[79] Again, such calls do not represent a burden on SBC.

Q. HOW WOULD CARRIERS EXCHANGE MISROUTED IXC TRAFFIC IF THE COMMISSION ADOPTS SBC'S LANGUAGE?

A. SBC's language would require the Parties to work cooperatively to remove such traffic from the interconnection groups up to and including blocking such traffic. It seems to me that the only practical ways to implement SBC's language would be to block the calls or build separate trunk groups for such traffic, which is not practical given the *de minimus* nature of the traffic.[80]

Q. IS THERE A BETTER SOLUTION?

A. Yes. The misrouting of traffic occurs when an IXC fails to perform the LNP database query and routes the call to the wrong local exchange carrier for completion. However, SBC's curative language focuses on the local exchange carrier and not the IXC, which is the root cause of the problem. The local exchange carrier is simply trying to deal with the misrouted traffic in a way that serves the public interest. AT&T believes the focus should be on the IXC and the Parties should work with IXCs to ensure that they perform the LNP database

[79] Depending on which Party's language is adopted for Section 8.3.1in Attachment 12 (Intercarrier Compensation Issue 6a), and the percentage of traffic with CPN, calls without CPN will be billed as either 251(b)(5) traffic or intraLATA Toll Traffic in direct proportion of minutes of use exchanged with CPN or at Intrastate Switched Access rates.

[80] Returning the calls to the IXC is not technically viable option, as it would simply result in the call bouncing back and forth between the carriers.

query and route calls to the correct local exchange carrier. If either Party believes the IXC is doing something inappropriate, that Party can file a complaint with the Commission.

Q. DID THE KANSAS ARBITRATOR'S DECISION ADDRESS THIS ISSUE?

A. Yes. At page 118, the Arbitrator found for AT&T and rejected SBC's proposed language.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should reject SBC's proposed language for Section 7.2 of Attachment 11, Part C. AT&T believes the Parties agree that that the misrouting of calls addressed in SBC's language is an infrequent occurrence and AT&T does not believe blocking of such calls is in the public interest. AT&T believes SBC's curative language focuses inappropriately on the local exchange carrier and not the IXC, which is the root cause of the problem. AT&T believes the Parties should work with IXCs to ensure that they perform the LNP database query and route calls to the correct local exchange carrier and should not engage in blocking calls, which is contrary to the public interest.

IV. DISPUTED ISSUES – ATTACHMENT 12: INTERCARRIER COMPENSATION, INCLUDING RECIPROCAL COMPENSATION – POST USTA II

Q. PLEASE EXPLAIN THE RELEVANCE OF THE INTERCARRIER COMPENSATION ISSUES.

A. The Parties disagree on the types of traffic included within the definition of 251(b)(5) traffic and therefore do not agree on the types of traffic that are subject to reciprocal compensation as opposed to access charges.

Issue 1a: What is the proper definition and scope of § 251(b)(5) traffic?

Q. PLEASE DESCRIBE THIS ISSUE.

A. The Parties disagree 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.

Q. WHAT IS AT&T'S POSITION?

A. All telecommunications traffic is subject to Section 251(b)(5) of the Act unless it is expressly excluded by Section 251(g) of the Act. 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).

Q. WHAT IS SBC'S POSITION?

A. SBC's view is that Section 251(b)(5) Traffic consists only of traffic originating from an end user that is destined for another end user physically located within the same ILEC mandatory local calling area. According to SBC, it would not include ISP-Bound Traffic if the originating end user and the ISP are not located within the same ILEC mandatory local calling area. Thus, SBC asserts that only traffic in which the calling and called parties are both physically located within the same mandatory local calling area is subject to reciprocal compensation.

Q. HOW IS YOUR TESTIMONY ORGANIZED ON THIS ISSUE?

A. Issue 1a is highly inter-related to other sub-issues within Issue 1 and my testimony addresses each of these issues in detail within the appropriate sub-issue. The question of whether ISP-Bound Traffic is within the scope of 251(b)(5) traffic is addressed under Issue 1g. The question of whether Feature Group A Traffic is within the scope of 251(b)(5) traffic is addressed immediately below. The question of whether intrastate toll traffic that is also IP Enabled Traffic is within the scope of 251(b)(5) is addressed under (AT&T) Issues 1b and 1c.

Feature Group A traffic is not relevant to a local Interconnection Agreement

Q. WHAT IS FEATURE GROUP A SERVICE?

A. Feature Group A is an exchange access service that offers access to the local exchange carrier's network through a subscriber-type line-side connection rather than a trunk-side connection. Carriers using a Feature Group A arrangement pay the LEC's intrastate or interstate switched access charges for the traffic traversing the Feature Group A access arrangement. IXCs sometimes use the Feature Group A access arrangement to provide an interexchange FX service. In this application, the Feature Group A service is the "open end" of the FX from which the FX end user makes and receives calls to the FX telephone number.

Q. DOES AT&T, IN ANY OF ITS CLEC OPERATIONS, MAKE USE OF OR PROVIDE FEATURE GROUP A SERVICE?

A. No. As I said above, Feature Group A is an exchange access service used by IXCs. It is not used by any of AT&T's CLEC operations in the provision of local exchange services. In addition, AT&T's CLEC entities do not provide a Feature Group A service to other carriers. Accordingly, it is totally inappropriate and only confusing to include Feature Group A in a local interconnection agreement between SBC and AT&T that is subject to Section 252 of the Act.

Issue 1b: What IP Enabled Traffic should be excluded from Sec 251(b)(5) reciprocal compensation and subject to access in accordance with the FCC's Phone-to-Phone IP Telephony Order, FCC 04-97 (rel. April 21, 2004)?

Issue 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?

Q. WHICH SBC ISSUE STATEMENTS ARE YOU ADDRESSING IN THIS SECTION OF YOUR TESTIMONY?

A. In this section of my testimony I address SBC's Intercarrier Compensation Issue Statements 1a(i), 1b & 1c, and SBC's Network Architecture Issue Statement 18a, which is the same as SBC's Intercarrier Compensation Issue Statement 1b & 1c.

Q. IS THERE A COMMON THREAD BETWEEN THE NETWORK AND INTERCARRIER COMPENSATION DISPUTES ASSOCIATED WITH VOIP TRAFFIC?

A. Yes. Both the network and the intercarrier compensation issues in this case are primarily based on a fundamental disagreement between the Parties as to the appropriate regulatory classification and treatment for IP Enabled Service Traffic in the context of interconnection arrangements. SBC contends that all IP Enabled Traffic is nothing more than access traffic and should be treated as such for both routing and intercarrier compensation purposes.

It is AT&T's position 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.

Q. WHAT IS IP ENABLED SERVICE TRAFFIC?

A. As AT&T sets forth in Section 1.1 (ii) of Attachment 12, 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.

Q. WHAT ARE INFORMATION SERVICES?

A. 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".

There are a few important points about this definition in the Act that need to be understood. First, 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.

Second, Information Services are 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.

Q. ARE ALL IP ENABLED SERVICES INFORMATION SERVICES?

A. 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.

Q. WHAT IS PROTOCOL CONVERSION AND WHAT IS THE SIGNIFICANCE OF NET PROTOCOL CONVERSION IN DEFINING WHETHER A SERVICE IS AN INFORMATION SERVICE?

A. Protocol conversion is when a call originates in a particular protocol and is changed to a different protocol sometime during the transmission of the call. 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.[81] 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.

Most IP Enabled Services, including all of AT&T's 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.

[81] *Non-Accounting Safeguards Order* 11FCC Rcd. 21905, ¶ 104(1996); BOC *Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd. 13758, ¶ 51 (1995); *Computer III Phase II Order*, 2 FCC Rcd. 3071, ¶¶ 64-71 (1987).

Q. ARE AT&T'S IP OFFERINGS INFORMATION SERVICES?

A. Yes. AT&T's current residential and enterprise IP Enabled offerings are clearly Information Services within the meaning of Section 3(20) of the Act.

For example, AT&T's CallVantage Services require the customer to acquire the broadband transmission service on their own, and provide their own end user IP devices (their computers and telephone adaptors) to establish the connection via a preexisting connection to the Internet. The service provides connection to others who are connected to the Internet (computer to computer) and can also convert the customer's IP based communications to the TDM protocol used to provide plain old telephone service ("POTS") service (i.e., a net protocol conversion) in order to complete calls to end users served by the Public Switched Telephone Network ("PSTN") (computer-to-phone). Since the AT&T CallVantage connection is provided via the Internet, customers can make calls using their computer from any geographic location where they can establish a connection to the Internet.

AT&T's CallVantage service also provides numerous data storage features that allow end users to manage their communications. For example, the AT&T CallVantage Service provides a feature called Personal Call Manager that allows the subscriber to call in and manipulate a number of service features, allows customers to check their voice mail from their computer, and to make this information available to others by forwarding as a "talking e-mail".

Q. WHAT IS THE SIGNIFICANCE OF THE INFORMATION SERVICES CLASSIFICATION FOR THE DISPUTED IP ISSUES?

A. 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.[82] 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[83] from an ILEC or a CLEC 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 a long distance call.

Q. ARE INFORMATION SERVICES AND ENHANCED SERVICES THE SAME THING?

A. Basically, yes. Enhanced Services is a term that was adopted as part of the FCC's *Computer Inquiry Decisions*.[84] The Telecommunications Act, however, established a new term "Information Services." The FCC has specifically ruled that all Enhanced Services fall within the broader category of Information Services. The FCC's Enhanced Services rules provide that: any service "which

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82 47 C.F.R. § 69.2 (m)

83 Information Service Providers acting as end users are entitled to purchase local business lines pursuant to 47 C.F.R. § 69.5(a).

84 See, e.g., *Computer II*, 77 F.C.C.2d 384, ¶ 97 (1980).

employs computer processing applications that act on the format, content code, protocol or similar aspects of the subscribers transmitted information, provide the subscriber additional different or restructured information, . . . or involve subscriber interaction with stored information" is "enhanced" and therefore also an information service.[85] Also, the FCC in the *ISP Remand Order* acknowledged that the definitions were essentially the same.[86]

Q. DOES THE APPLICABILITY OF THE ENHANCED SERVICE PROVIDER EXEMPTION TO A PARTICULAR TYPE OF INFORMATION SERVICES TRAFFIC GUARANTEE THAT THERE WOULD NEVER BE ANY ACCESS CHARGES APPLICABLE TO THAT TRAFFIC?

A. Not exactly. If the information service provider takes advantage of the Enhanced Service Exemption and purchases an end user local service, the traffic over those facilities will be subject to the compensation rules for transport and termination of service set forth in the ICA.

While interLATA access charges will never be assessed on the traffic, sometimes intraLATA intrastate access charges may be imposed on the LEC providing the service. Thus, the information service provider would be treated as an end user of a local business service and the LEC providing such service would pay either reciprocal compensation or intrastate intraLATA access consistent with the ICA rules governing service transport and termination.

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[85] See *Non-Accounting Safeguards Order*, 11 FCC Rcd. 21905 ¶ 102 (1996).
[86] See *ISP Remand Order* at footnote 16.

Q. HOW DOES AT&T'S LANGUAGE PROPOSE TO TREAT IP ENABLED SERVICES TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION?

A. AT&T has proposed in Section 1.1 of Attachment 12 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.[87] 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.[88]

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.

Q. HOW DOES SBC'S LANGUAGE PROPOSE TO TREAT IP ENABLED SERVICES FOR PURPOSES OF RECIPROCAL COMPENSATION?

A. SBC simply proposes that all IP Enabled Traffic – regardless of whether it is Information Services Traffic – should be treated as switched access traffic subject

[87] Local exchange services, such as ISDN PRIs used to provide ESPs connectivity to the PSTN, are offered only within a LATA.

[88] If the dialed number is not within the same LATA as the calling party, then the calling party's pre-subscribed IXC would carry the call to the terminating LATA and, irrespective of any applicable Enhanced Service Exemption, exchange access charges would apply.

to access charges.[89] SBC's' position is inconsistent with the current state of the law.

Q. PLEASE EXPLAIN WHY YOU BELIEVE SBC POSITION IS INCONSISTENT WITH THE CURRENT STATE OF THE LAW.

A. SBC asserts that the ESP exemption allows for an exemption from access charges only where access services are used to provide the link between an information service provider and its subscribers. SBC claims all other uses of the PSTN by information service providers (like sending traffic to a LECs' local exchange subscriber served on the PSTN) are subject to access charges.

Given this broad and overreaching assertion, SBC doesn't even have to address when an IP Enabled Service is an Information Service for purposes of determining the applicability of the Enhanced Service Exemption. According to SBC, the Enhanced Service Exemption does not change the applicability of terminating access charges when an information service call of one party is terminated to an end user of another party. SBC claims that the compensation rules for such an information service call are no different than the rules for a telecommunications services call.

[89] SBC's definition of 251(b)(5) traffic in Attachment 12, Section 1.2 does not include any Information Services traffic. Section 10.1 in Attachment 12 defines switched access as including all IP Enabled Traffic**.** (Also Section 7.1 in Attachment 11, Part C defines switched access as including all IP Enabled Traffic.)

Q. IS THERE ANY BASIS FOR SBC'S CLAIM REGARDING THE LIMITED SCOPE OF THE ESP EXEMPTION?

A. None whatsoever. SBC's assertion that the ESP exemption only applies when an enhanced service provider is communicating with its own end users, (when a call is being *sent to* the ESP from the ESP's customer), is simply not supportable and has never been applied in such a narrow manner.

As noted above, enhanced service providers are defined as end users for purposes of access charge rules and end users are in turn entitled to purchase local business lines, such as ISDN PRIs. The FCC has never held that the ESP exemption is subject to any other limitations.

The fact is that in the *Access Reform Order* the FCC described the scope of the ESP exemption and stated without limitation that "[I]n [1983] the FCC decided that, although information service providers may use Incumbent LEC facilities to originate and *terminate* interstate calls, ISPs should not be required to pay interstate access charges."[90] If SBC's position were accurate, the FCC would not have referenced call termination in its description of the Enhanced Services Exemption.

[90] *Access Reform Order 12 FCC Rcd 21905 (1996)* paragraph 241 (emphasis added); see also *Amendment of Part 69 of the Commissions Rules relating to Enhanced Service Providers,* CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd. 4301, paragraph 2. (1987) (Commission had "initially intended to impose interstate access charges on enhanced service providers for the use of local exchange facilities to originate and *terminate* their interstate offerings" (emphasis added).

Q. HAS THE FCC RULED THAT SOME IP ENABLED TRAFFIC IS SUBJECT TO ACCESS CHARGES AND NOT SUBJECT TO THE ENHANCED SERVICES EXEMPTION?

A. Yes. The FCC, in an AT&T declaratory ruling order, found that a specific type of IP Enabled Service that is no longer offered by AT&T was a Telecommunications Service and not an Information Services, and therefore on a going forward basis would not qualify for the Enhanced Service Exemption.[91]

However, the FCC made it very clear in that decision that its findings were prospective only, addressed only interstate access charges, and were limited to those services that shared the same specific characteristics of the services that were the subject of AT&T's petition.[92]

Q. HAS AT&T TAKEN THIS DECISION INTO CONSIDERATION IN ITS ICA LANGUAGE?

A. Yes, in Section 2.1.1 of Attachment 12, AT&T specifically provides that IP Enabled Services that are the same as those services that were the subject of AT&T's petition are to be treated as exchange access traffic subject to 251(g) of the Act and subject to exchange access charges on a prospective basis.

The language provides that:

> Exchange access traffic that is subject to 251(g) of Act, also includes only the following category of IP Enabled Service: 1+ interLATA and 1+ intraLATA Exchange Access calls that: (1) use ordinary customer premises equipment (such as a traditional telephone) with no enhanced functionality; (2) originate and

[91] *Non-Accounting Safeguards Order,* 11 FCC Rcd. 21905 (1996).
[92] *Petition for Declaratory Ruling that AT&T's Phone to Phone IP Telephony Services are Exempt from Access Charges,* 119 FCC Rcd. 7457 (2004) ("*Phone to Phone IP Telephony Order*").

terminate on the public switched telephone network (PSTN); (3) undergo no net protocol conversion as defined in 2.1.1.1 below; and (4) provide no enhanced functionality to end users that result from the provider's use of IP technology.

The characteristics listed in AT&T's language match each of the service characteristics that the FCC identified as controlling in its decision on the prospective treatment for such traffic.

Q. IS AT&T ASKING THE COMMISSION TO CHANGE THE REGULATORY STATUS QUO BY PROPOSING THAT IP ENABLED TRAFFIC THAT IS ALSO INFORMATION SERVICES TRAFFIC SHOULD BE SUBJECT TO THE ENHANCED SERVICES EXEMPTION?

A. No, quite the opposite. AT&T is not proposing to change the regulatory status quo. As noted earlier in the testimony the Enhanced Service Exemption already exists and applies to all traffic that is Information Services Traffic. AT&T is simply proposing to maintain the regulatory status quo that gives IP Enabled Traffic that is within the rubric of Information Services Traffic the benefit of the Enhanced Service Exemption.

SBC, on the other hand, is proposing, without any legitimate legal, policy or factual basis, that the Commission should carve out all IP Enabled Traffic from the benefits provided by the Enhanced Service exemption so that SBC can receive access charges for this traffic. SBC asserts that AT&T's position is an attempt at access charge avoidance, but the reality is that SBC's position is an attempt to levy access charges on traffic that heretofore have been exempt from such charges by completely ignoring the existing state of the law. The Enhanced Services

Exemption has been in place now for two decades and it has never been interpreted in the manner suggested by SBC. Moreover, despite SBC's assertions to the contrary, the Enhanced Service Exemption is still applicable to Information Services traffic – including IP Enabled Traffic that falls within the Information Service definition.

Q. BUT SHOULDN'T STATE COMMISSIONS SIMPLY WAIT FOR THE FCC TO ACT IN THE VOIP NPRM BEFORE RULING ON THESE COMPENSATION ISSUES ASSOCIATED WITH VOIP TRAFFIC?

A. No. In fact, state commissions have an obligation to apply and implement the interconnection and reciprocal compensation provisions of Sections 251 and 252 of the Act in an ICA arbitration. Their exercise of this obligation includes the implementation of any existing FCC rules that may be applicable.

This situation is no different than when a state commission applies the FCC rules for compensation of ISP-Bound Traffic. ISP-Bound traffic is considered interstate traffic and the FCC has developed specific compensation rules associated with the termination of this traffic that states currently implement in the ICA arbitrations.

Likewise, AT&T is simply asking the Commission to apply the Enhanced Services Exemption in the manner that the current law provides. Should the FCC,

in the IP NPRM,[93] 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.

Q. FROM A POLICY STANDPOINT, WHAT ARE THE CONSEQUENCES OF SBC'S PROPOSAL TO NOT APPLY THE ENHANCED SERVICES EXEMPTION TO IP ENABLED TRAFFIC AND TO INSTEAD APPLY ACCESS CHARGES TO THAT TRAFFIC?

A. SBC's proposal to apply access charges to all IP Enabled Traffic will impede the development of IP Enabled technology and services. IP Enabled providers should not be burdened with the imposition of above-cost access charges. Such a proposal alters the economics of providing the services in a way that will threaten the efficient deployment of emerging technology and the services it brings.

Q. WHAT ARE THE CONSEQUENCES OF AT&T'S PROPOSAL TO APPLY THE ENHANCED SERVICES EXEMPTIONS TO IP ENABLED TRAFFIC?

A. AT&T's proposal ensures that IP Enabled Traffic receives the benefits of the Enhanced Service Exemption that was specifically adopted by the FCC to promote the development of the information services industry by not burdening it with above-cost access charges. As such, it will promote the development of innovative services and technology and provide an avenue for robust facilities-based competition and affordable service, to the benefit of all consumers in Missouri.

[93] *IP Enabled Services NPRM* , WC Docket No 04-36, 19 FCC Rcd. 4836 (2004).

Q. HOW SHOULD THE COMMISSION RESOLVE THE ISSUES ASSOCIATED WITH IP ENABLED TRAFFIC?

A. The Commission should adopt AT&T's proposed language in Sections 1.1, 2.1.1, and 2.1.1.1 of Attachment 12. AT&T's language provides for the application of the Enhanced Service Exemption for Information Service Traffic - including IP Enabled Traffic that is Information Service Traffic and accurately implements the FCC's *Phone to Phone IP Telephony Order.* SBC's language in Section 10 of Attachment 12, (along with its proposed corresponding language in Section 7 of Network Attachment 11, Part C) results in the imposition of access charges on all Information Services Traffic, is contrary to the law, and should be rejected.[94]

Issue 1d: (SBC) 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 terminating party may receive proper compensation?

Q. PLEASE DESCRIBE THIS ISSUE.

A. This issue is the same issue as SBC's Network Architecture Issue 18b, which I addressed in my testimony on AT&T Network Architecture 18.

Issue 1e: (Joint) What is the appropriate form of intercarrier compensation for IntraLATA Interexchange traffic?

Q. HAS THIS ISSUE BEEN SETTLED?

A. Yes. Since the arbitration petition was filed, the parties have settled this issue.

[94] SBC's inappropriate definition of Switched Access Traffic appears in Section 7 of Attachment 11, Part C and in Section 10 of Attachment 12.

Issue 1f: (SBC) What is the appropriate routing, treatment and compensation of ISP calls on an Inter-Exchange basis, either IntraLATA or InterLATA?

Issue 1g: (Joint) What is the correct definition of "ISP-Bound Traffic" that is subject to the FCC's ISP terminating compensation plan?

Q. PLEASE SUMMARIZE AT&T'S POSITION WITH RESPECT TO ISP-BOUND TRAFFIC.

A. 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.[95] 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). (The D.C. Court did not vacate the FCC's pricing scheme, and, therefore, the compensation mechanism that the FCC established for ISP-bound traffic currently remains in effect.) On remand, however, it is quite possible that the FCC will acknowledge its earlier statement that *all* telecommunications traffic (except 251(g) traffic) is subject to reciprocal compensation and, therefore, <u>all</u> ISP-Bound Traffic also is subject to reciprocal compensation.[96] Adopting SBC's proposal would lock AT&T into paying access charges on ISP-bound traffic that fits the definitions SBC has proposed in Section 1.2 of Attachment 12.

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

[96] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rule Making, CC *Docket No. 01-92,* FCC 01-132 (Rel. Apr.27, 2001) ("*Intercarrier Compensation NPRM*").

Next, 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. As a practical matter, AT&T pays access charges on some ISP-bound traffic, i.e., ISP-bound traffic exchanged over Feature Group D trunks. These practical limitations, however, should not be construed to mean that AT&T is *obligated by law* to pay access charges on ISP-bound traffic. 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 in Section 1.2 of Attachment 12.

Q. PLEASE EXPLAIN WHY AT&T BELIEVES ISP-BOUND TRAFFIC IS INTERSTATE TRAFFIC.

A. In its *ISP Remand Order*,[97] the FCC reaffirmed its previous conclusion[98] that traffic delivered to an ISP is predominantly interstate access traffic, subject to FCC jurisdiction under Section 201 of the Act. In that order the FCC also established an intercarrier compensation mechanism for the exchange of such traffic. In paragraph 82, the FCC spoke clearly and succinctly: "Because we now exercise our authority under section 201 to determine the appropriate compensation for ISP-bound traffic, however, state Commissions will *no longer*

[97] *ISP Remand Order* at ¶ 1.

[98] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling or Intercarrier Compensation NPRM*").

have authority to address this issue."[99] The FCC reaffirmed its position that "ISP-bound traffic is jurisdictionally interstate" in *In the Matter of Starpower Communications v. Verizon South, Inc. (Starpower II)*, File No. EB-00-MD-20, FCC 02-105 (2002).

Also, on April 7, 2003, this preemption was recognized and cited by the Ninth Circuit Court of Appeals in its Opinion in *Pacific Bell v. Pac-West Telecom, Inc.*, 325 F. 3d 1114 (9th Cir. 2003).

Thus, as a matter of law, ISP-bound traffic is interstate traffic and is subject to the FCC's intercarrier compensation mechanism.

Q. HAVE OTHER STATE COMMISSIONS RECOGNIZED THAT ISP-BOUND TRAFFIC IS SUBJECT TO THE FCC'S JURISDICTION?

A. Yes, for example, Connecticut, Illinois, New Hampshire, North Carolina, Ohio, Oregon and Wisconsin all determined that ISP-Bound Traffic is subject to the FCC's jurisdiction. See Schedule JS-4.

Q. HAS SBC RECOGNIZED THE FCC'S JURISDICTION OVER ISP-BOUND TRAFFIC?

A. Yes. In an ex parte filing with the FCC dated, September 13, 2004, SBC said, "As the Commission has repeatedly found, ISP-bound traffic is a form of interstate "information access" and is part and parcel of the interstate access regime, indeed, that is the premise of the *Commission's exercise of exclusive*

[99] *ISP Remand Order* at ¶ 82 (emphasis added).

jurisdiction over this traffic."[100] SBC cannot have it both ways: assert to the FCC that it has exclusive jurisdiction over ISP-Bound Traffic and assert to this Commission that it also has jurisdiction over ISP-Bound traffic.

Q. PLEASE EXPLAIN THE FCC'S INTERCARRIER COMPENSATION MECHANISM.

A. Using its authority under § 201 of the Act, the FCC developed an intercarrier compensation mechanism that provides for two payment options for ISP-bound traffic. An ILEC may offer to exchange both voice traffic subject to § 251(b)(5) and ISP-bound traffic at rate caps established for certain periods – *i.e.,* $.0015 per minute of use (MOU) from June 13, 2001 to December 13, 2001; $.0010 per MOU from December 14, 2001 to June 13, 2003; and $.0007 per MOU from June 14, 2003, until the Commission issues a further order on intercarrier compensation. If an ILEC chooses not to exchange both traffic subject to § 251(b)(5) and ISP-bound traffic under the FCC rate cap mechanism, then the FCC requires that the ILEC and CLEC exchange ISP-bound traffic at the state-adopted reciprocal compensation rate.

[100] Letter from Gary L. Phillips, General Attorney & Assistant General Counsel, SBC Telecommunications, Inc. to Ms. Marlene H. Dortch, Secretary, FCC, September 13, 2004

In addition, the FCC previously imposed a cap on the total ISP-bound minutes for which a local exchange carrier (LEC) may receive intercarrier compensation.[101]

Q. HAS SBC OFFERED TO EXCHANGE BOTH VOICE TRAFFIC AND ISP-BOUND TRAFFIC AT THE RATE CAPS ESTABLISHED BY THE FCC?

A. Yes and SBC's election is reflected in the language in Attachment 12, Section 1.7.1 of the interconnection agreement.

Q. WHY IS ISP-BOUND TRAFFIC NOT EXCLUDED FROM SECTION 251(B)(5) TRAFFIC?

A. The FCC expressly stated that *all* traffic is subject to reciprocal compensation, i.e., is § 251(b)(5) traffic, unless it falls within the exceptions set forth in § 251(g) of the Act ("§ 251(g) carve out").[102] The FCC believed that ISP-bound traffic fell within the carve-out because ISP-bound traffic was a form of "information access"[103] traffic subject to the § 251(g) carve out. The FCC then established an intercarrier compensation mechanism for the exchange of such traffic. On appeal, however, the D.C. Circuit Court of Appeals ruled that the FCC could not subject ISP-bound traffic to the § 251(g) carve out because that carve out was meant to preserve certain compensation mechanisms that were in effect when Congress implemented the Act*, i.e.*, access payments, and was not meant to create new

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[101] The FCC lifted the growth caps and new markets rule in its Order in Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the *ISP Remand Order*, WC Docket No. 03-171, FCC 04-241, rel. October 18, 2004, at ¶¶ 20 and 26. On January 5, 2005, AT&T notified SBC that it wishes to initiate change in law discussions for existing interconnection agreements. In order to efficiently address the issue, the parties are currently negotiating this issue as well for ongoing arbitrations in Missouri and other states.

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

[103] *ISP Remand Order* at ¶ 39.

classes of service within the meaning of the § 251(g) carve out.[104] The Court stated:

> [I]t seems uncontested--and the Commission declared in the Initial Order--that there had been *no* pre-Act obligation relating to intercarrier compensation for ISP-bound traffic. [105]

The Court went on to state:

> Indeed, the Commission does not even point to any pre-Act, federally created obligation for LECs to interconnect to each other for ISP-bound calls. And even if this hurdle were overcome, there would remain the fact that § 251(g) speaks only of services provided "to interexchange carriers and information service providers"; LEC's services to other LECs, even if en route to an ISP, are not "to" either an IXC or an ISP.[106]

The court declined to vacate the FCC's intercarrier compensation mechanism, however, giving the FCC the opportunity to readdress the issue, which the FCC intends to do in its NPRM *In the Matter of Developing a Unified Intercarrier Compensation Regime*.[107]

Q. WHAT IS THE LOGICAL RESULT OF THE D.C. CIRCUIT COURT OF APPEALS' DECISION THAT ISP-BOUND TRAFFIC IS NOT 251(G) TRAFFIC?

A. The FCC expressly stated that *all* traffic is subject to reciprocal compensation, i.e., is § 251(b)(5) traffic, unless it falls within the exceptions set forth in § 251(g)

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[104] *WorldCom, Inc. v. FCC*, 288 F. 3d 429 (D.C. Cir. 2002).
[105] *Id* at ¶ 4.
[106] *Id.*
[107] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rule Making, CC *Docket No. 01-92,* FCC 01-132 (Rel. Apr.27, 2001) ("*Intercarrier Compensation NPRM*").

of the Act ("§ 251(g) carve out"),[108] and the D.C. Circuit Court of Appeals held that the FCC could not subject ISP-bound traffic to the § 251(g) carve out. Therefore, ISP-Bound Traffic is § 251(b)(5) traffic.

Q. DID THE FCC USE A "LOCAL" DISTINCTION TO DEFINE ISP-BOUND TRAFFIC IN THE ISP REMAND ORDER?

A. No. In its *ISP Remand Order*, the FCC found that it had erred in attempting to distinguish between local and long distance traffic for the purpose of determining when reciprocal compensation should apply.[109] The FCC said, "the term 'local,' not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g)."[110] Specifically, in the *ISP Remand Order*, the FCC expressly stated that:

> "Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of all telecommunications traffic, -- i.e., whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:
>
> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and obligations are explicitly superceded by

[108] *ISP Remand Order* at ¶ 32.
[109] *ISP Remand Order at* ¶ 26.
[110] *Id*. at ¶ 34.

> regulations prescribed by the Commission after such date of enactment."[111] (Emphasis in original)

Thus, the FCC concluded that, under the Act, *all traffic* is subject to reciprocal compensation under Section 251(b)(5), unless it falls within the exemptions established in the Section 251(g) carve out.[112]

Q. SHOULD THE COMMISSION DETERMINE THAT ISP-BOUND TRAFFIC IS WITHIN THE SCOPE OF § 251(B)(5) OF THE ACT?

A. Yes. The Commission should confirm that ISP-bound traffic is § 251(b)(5) traffic and is subject to the FCC's jurisdiction and the intercarrier compensation mechanism set forth by the FCC in its *ISP Remand Order*. Thus, the Commission should approve AT&T's proposed language in Sections 1.1, 1.7.1, 1.8.2, 1.9.2.1, 1.9.3.1, 1.11.1, 1.11.6, 1.11.7, 1.12.1.1, 1.12.1.2 and 8.5 of Attachment 12, which conforms the parties' interconnection agreement to compensation framework established by the FCC.

Issue 1h: Should the ICA include language referencing SBC's access tariff for interLATA FX traffic?

Q. WOULD YOU PLEASE DESCRIBE THE ISSUE?

A. This issue has been settled with one exception. The exception concerns whether an interconnection agreement should include language regarding interLATA FX traffic.

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

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[111] *Id.* at ¶ 32 (footnote omitted).
[112] *Id.* at ¶ 46.

A. AT&T does not believe that a local interconnection agreement should address compensation for interLATA traffic of any kind, including FX traffic. Contrary to SBC's issue statement, AT&T's does not dispute the application of access charges to interLATA FX traffic; AT&T disputes the appropriateness of addressing interLATA compensation in the Parties' local interconnection agreement.

Reference to SBC's proposed language shows why it is unnecessary. SBC proposes that Attachment 12 contain the following language:

> 2.2.2 InterLATA FX traffic will be subject to SBC's access tariffs, interstate or intrastate, whichever is appropriate.

On its face, this language has no place in an interconnection agreement. Switched access services are not local interconnection services. If they were, then the ICA would address the entirety of AT&T's relationship with SBC, including AT&T's relationship as an IXC. Of course, the ICA does not address AT&T as an IXC because the IXC relationship is not a § 251/252 local interconnection relationship. Therefore, it has no place in a local interconnection agreement between local exchange carriers.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should reject SBC's proposed language in Section 2.2.2 of Attachment 12.

Issue 3a: What is the proper method of intercarrier compensation for Transit traffic?

Issue 3b: What other obligations exist between the Parties concerning transit traffic?

Q. ARE NETWORK ISSUE 3 AND INTERCARRIER COMPENSATION ISSUES 3A AND 3B INTEGRALLY RELATED?

A. Yes. SBC wants to offer transit service in a commercial agreement so that it can charge a "market-based" rate instead of a TELRIC-based rate. Thus, the question of how SBC offers transit service, i.e., whether SBC offers transit service through the Interconnection Agreement or through a separate commercial agreement, and the question of whether SBC charges a TELRIC-based or market-based rate for transit service are implicated in both Network Issue 3 and Intercarrier Compensation Issues 3a and b.

Q. PLEASE DESCRIBE ISSUES 3A AND 3B.

A. The transiting services addressed in this issue relate to the provision of tandem switching and common transport provided by SBC for the exchange of local and intraLATA toll traffic between AT&T and LECs other than SBC, such as other CLECs and Independent Companies. SBC claims that it is not required to carry transit traffic pursuant to the Act or any FCC rules and it proposes that it provide transit services subject to a separate commercial agreement at market-based rates. AT&T believes the Act and the public interest require SBC to provide transit service at TELRIC-based rates.

Q. PLEASE EXPLAIN AT&T'S AND SBC'S POSITION ON THESE ISSUES.

A. To avoid repetition of my detailed earlier testimony, I respectfully refer the Commission to the portion of my testimony above where I discuss Network Issue 3. That discussion offers an extensive critique of SBC's proposal to impose "market-based" transiting rates, which are the focus of Intercarrier Compensation Issues 3a and 3b.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 3A AND 3B?

A. The Commission should adopt AT&T's proposed language relating to transit service in Sections 3.0 and 3.1 and 3.4 through 3.6 in Attachment 12.

Issue 3c: Should the ICA include terms addressing AT&T as a transit provider?

Q. PLEASE DESCRIBE ISSUE 3C.

A. AT&T proposes that it should be afforded the opportunity to offer CLECs, CMRS providers and independent telephone companies transit services in Missouri in competition with transit services offered by SBC. Although the preponderance of traffic would be exchanged with carriers other than SBC, AT&T does not believe it would have a viable transit offering unless it could also deliver transit traffic to SBC for termination. SBC objects to being required to accept transit traffic from AT&T.

Q. WHAT WOULD AT&T'S PROPOSED LANGUAGE REQUIRE OF SBC?

A. AT&T's proposed language in Section 3.3 of Attachment 12 says,

> Each Party agrees that any third party (including without limitation an Affiliate of one Party) may make use of that Party's network to terminate traffic to the other Party.

There is nothing in this statement that obligates SBC to use (i.e., to purchase) AT&T transit service, if ever offered. AT&T's language simply requires SBC to accept traffic that AT&T's transit customer handed to AT&T for termination to a SBC subscriber.

Q. DOES AT&T'S PROPOSED LANGUAGE IN ANY WAY PROHIBIT SBC FROM DIRECTLY INTERCONNECTING WITH ANOTHER CARRIER FOR THE EXCHANGE OF TRAFFIC?

A. No. SBC is free to negotiate with any carrier for direct interconnection.

Q. WOULD AT&T'S PROPOSED LANGUAGE PROVIDE OTHER CARRIERS CHOICES FOR HOW THEY WOULD DELIVER THEIR TRAFFIC TO SBC?

A. Yes, the primary purpose of AT&T's offering competitive transit service would be to indirectly interconnect two non-SBC carriers. However, in order for this to be a viable service, those interconnecting carriers also must be able to have incidental amounts of traffic terminated to SBC.

Q. WHY IS IT IMPORTANT THAT CARRIERS HAVE CHOICES FOR TRANSIT SERVICE?

A. SBC is asserting in this proceeding that it has no obligation to provide transit service and is seeking to provide such service through separate commercial agreements. Therefore, if SBC prevails on providing transit service through a separate commercial agreement, then it would be free to price its transit services at market-based rates, in a market where no effective competition exists.

Q. WHAT SHOULD THE COMMISSION DO TO RESOLVE ISSUE 3C?

A. The Commission should reject SBC monopoly grip on transit services in Missouri and permit the emergence of competition for such services. Accordingly, the Commission should adopt AT&T's proposed language for Section 3.3 of Attachment 12.

Issue 3d: If either AT&T or SBC, as the transit provider, fails to transmit the necessary carrier identification for the terminating party to bill the originating carrier, may the terminating carrier bill the transit provider?

Q. DOES AT&T'S PROPOSAL IMPOSE AN UNREASONABLE BURDEN ON SBC TO BE A MIDDLEMAN FOR HANDLING THE TRAFFIC OF OTHER CARRIERS?

A. No. By its very nature the transiting obligation involves certain activities associated with the traffic of other carriers. AT&T is only proposing a minimum of obligations that are necessary to make transiting an effective way for third parties to exchange traffic. All AT&T is proposing is that SBC ensure that the information received from 3rd party carriers is passed through to AT&T so that AT&T can identify the originator of the traffic and implement the appropriate billing. AT&T, as the receiver of the transit traffic, has no ability to control the passage of this information. SBC, on the other hand, as the transit provider bills the originating carrier for the transiting function and therefore has the ability to ensure as a prerequisite of providing transit service that the necessary billing information is provided either by the transiting carriers or SBC. The imposition of this obligation is not a significant burden and is a reasonable requirement to

impose when compared to the benefits provided via the implementation of an effective transiting regime.

Q. CAN AT&T DETERMINE THE ORIGINATING CARRIER IF SBC DOES NOT PROVIDE THE NECESSARY INFORMATION ON CALLS IT HANDS OFF TO AT&T?

A. No. When AT&T receives traffic via its interconnection trunks from SBC without the necessary traffic identifiers, some traffic might be SBC traffic, while some might be transiting traffic. However, without the traffic identifiers, the traffic appears to be SBC's traffic and AT&T has no way of knowing it should not bill SBC. Therefore, given that SBC has the ability to identify the carriers for which it provides transit functionality and the leverage with such customers to ensure that the transit traffic is properly identified, AT&T's proposal reasonably assumes that the unidentified traffic is SBC's traffic. SBC has it within its control to avoid the imposition of billing for transiting traffic simply by ensuring that transit traffic is properly identified. If the Commission does not place this obligation on SBC, then AT&T is without any means of identifying the source of the traffic it receives via the interconnection trunks with the net result being that AT&T cannot properly bill for traffic termination.

Q. HAS SBC ACKNOWLEDGED THAT IT CAN IDENTIFY THE ORIGINATING CARRIER FOR WHICH IT PROVIDES TRANSIT SERVICE AND THEREFORE PROVIDE THAT INFORMATION TO AT&T?

A. Yes. In the Texas Arbitration in Docket No. 28821, in response to a question from Staff, Mr. Neinast stated that even in situations where SBC does not have the

calling party number ("CPN"), it can always identify the originating carrier based on the trunk group on which the traffic arrives.[113]

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 3D?

A. The Commission should adopt AT&T's proposed language in Section 3.2 of Attachment 12.

Issue 4: Should AT&T be able to charge an intrastate intraLATA Access rate higher than the incumbent?

Q. PLEASE DESCRIBE ISSUE 4?

A. 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 SBC's Missouri tariff. AT&T, on the other hand, proposes that each Party's respective tariffed rates apply to intrastate intraLATA access rates. Moreover, intrastate access tariff rates are handled in separate access tariff filings, not interconnection agreements. Otherwise, CLECs could be arbitrating a proposed reduction in SWBT's access rates. The Commission should rule accordingly and reject SWBT's attempt to regulate AT&T's access rates in this arbitration for an interconnection agreement.

Q. IS SBC'S PROPOSAL GOOD PUBLIC POLICY?

A. No. There is nothing in any regulation, the Act or any other law that requires AT&T to cap its intrastate intraLATA access charges at the level of SBC's

[113] *See* Schedule JS-5, Transcript of Proceedings Before the Public Utility Commission of Texas, Austin, Texas, *Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement*, Docket No. 28821, Wednesday, September 22, 2004 at pages 309-310.

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. There are no reciprocal pricing obligations that limit AT&T's charges for services, functions and facilities provided to SBC, for obvious reasons. It is SBC – not AT&T, not even all CLECs in the aggregate – that wield the dominant local exchange market power. Limitations on CLEC pricing flexibility are unnecessary because they are subject to market forces. It would be especially inappropriate for the incumbent to specify the rates that a competitor can charge.

Q. DOES AT&T CONTEND THAT IT IS PERMITTED TO CHARGE SBC A HIGHER RATE THAN SBC CHARGES AT&T FOR RECIPROCAL COMPENSATION?

A. No. Federal rule 47 C.F.R. § 51.711 requires that the rates that two interconnecting LECs charge each other for "transport and termination" be symmetrical, except were asymmetrical rates are permitted under subsections (b) & (c). AT&T agrees that its reciprocal compensation rates for transport and termination will be symmetrical to SBC's rates. However, SBC is not proposing to limit the comparable reciprocal compensation rates that AT&T may charge SBC for transport and termination of local exchange and EAS traffic. SBC is

proposing that AT&T's rates for intrastate intraLATA access be capped at SBC's Missouri rates. That demand is far beyond the symmetry required for reciprocal compensation by the FCC's rules.

Q. IS SBC'S INSISTENCE THAT PRICE CAPS BE IMPOSED IN AN ICA ON A NON-251/252 SERVICE LIKE SWITCHED ACCESS CONSISTENT WITH ITS POSITION ON OTHER ISSUES IN THIS ARBITRATION?

A. No. On the one hand, SBC seeks to eliminate from the ICA its current transit and entrance facilities offerings. Thus, SBC seeks to narrow the scope of the ICA, despite the fact that, today, entrance facilities are interconnection facilities and transiting is required at TELRIC under sections 251 and 252 of the Act. On the other hand, here and in Intercarrier Compensation Issue 1h, SBC takes the exact opposite position and wants to forcibly impose in an ICA rates, terms and conditions for switched access services, which all parties agree are not Section 251/252 offerings. I urge the Commission to recognize the blatantly self-serving nature of SBC's positions and to reject SBC's proposed language for Section 5.1 in Attachment 12.

Issue 5: What is the proper treatment and form of intercarrier compensation for intraLATA 8YY traffic?

Q. PLEASE DESCRIBE ISSUE 5.

A. The issue presented is whether it is appropriate to forcibly impose exchange access charges on calls that are local in nature. Toll free calling is now offered using a number of area codes including 800, 888, 877, etc., collectively referred to as 8YY services. 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. In most instances, 8YY calling is interexchange, originating in one calling area and terminating in another calling area, and is thus often subject to assessment of exchange access charges. However, some 8YY calls originate and terminate within the same mandatory local calling area. This issue will decide the compensation for such calls.

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

A. IntraLATA 8YY traffic that originates and terminates within the same mandatory local calling area should be subject to reciprocal compensation using the same analysis that is applied to the rating of local calls. For example, if the NPA-NXX of the translated POTS[114] telephone number associated with the 8YY number is within the originating party's local calling area as determined by the originating party's NPA-NXX, then the call should be rated as a local call for purposes of reciprocal compensation. There is no technical or legal justification for compensating local 8YY traffic as exchange access.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. SBC proposes to treat all intraLATA 8YY traffic, both local and intraLATA interexchange, as intraLATA toll traffic and to forcibly imposes exchange access charges on all such traffic.

[114] "Plain old telephone service"

Q. IS IT POSSIBLE TO DIFFERENTIATE 8YY CALLS THAT ORIGINATE AND TERMINATE WITHIN LOCAL CALLING AREAS FROM THOSE THAT DO NOT?

A. Yes. It is my understanding that 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 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. I understand that 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. There is no reason why this same process cannot also be done for 8YY traffic.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. Under current Federal rules, all telecommunications traffic, except traffic subject to §251(g) of the Act is subject to reciprocal compensation. Exchange access is one of the types of traffic that is "carved out" by §251(g) and is excluded from reciprocal compensation. Clearly traffic that originates and terminates within the same mandatory local calling area and is exchanged directly between two local exchange carriers cannot be considered exchange access. Therefore, local 8YY is

subject to § 251(b)(5) of the Act and reciprocal compensation applies to this traffic.

Q. WHAT IS THE BASIS FOR SBC'S POSITION?

A. In its preliminary position statement, SBC simply states that its position is that "IntraLATA 8YY traffic is always subject to switched access and is available to carriers from SBC's access tariffs."

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed language in Section 7.1 of Attachment 12.

Issue 6a: What terms and conditions should govern the compensation of traffic that is exchanged without the CPN necessary to rate the traffic?

Q. PLEASE DESCRIBE ISSUE 6(A).

A. AT&T and SBC disagree on how to determine the jurisdiction of traffic sent without calling party number ("CPN") information. AT&T and SBC use this information to ascertain whether calls are subject to access charges or reciprocal compensation. 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 determined in accordance with Section 9.0 of Attachment 12. That is, if 70% of the traffic with

CPN is local and 30% is toll, then 70% of the traffic without CPN will be billed as local and 30% of the traffic without CPN will be billed as toll. 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 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.

Q. DOES AT&T PROVIDE CPN ON ALL CALLS?

A. AT&T agrees that CPN should be passed wherever possible. 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.

Q. PLEASE EXPLAIN WHAT YOU MEAN BY CIRCUMSTANCES BEYOND A PARTY'S CONTROL.

A. 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.

Q. WHAT SUPPORT HAS SBC GIVEN FOR ITS LANGUAGE ON THIS ISSUE?

A. SBC claims that this provision will protect it against some unscrupulous CLEC overriding CPN so they can slip toll traffic in as local traffic and pay the lower reciprocal compensation rate instead of the applicable access charges. As I stated above, AT&T agrees that CPN should be passed wherever possible. All AT&T switches provide CPN on all calls where AT&T has control over provision of CPN, and AT&T's business operations and processes rely on this information just as much as SBC's do. AT&T should not be penalized for the actions that SBC fears some other CLEC might take.

Q. HAS THIS ISSUE BEEN ADDRESSED BY THE FCC?

A. Yes. This issue was one of WorldCom's issues addressed by the FCC in the *Virginia Arbitration*.[115] 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

> because it offers a reasonable solution to address those situations in which the parties are unable to pass CPN on 90% of their exchanged traffic. Other than indicating concern about unnamed competitive LECs 'stripping off' CPN to receive reciprocal compensation for a call subject to access charges, Verizon offers no real criticism of WorldCom's proposal. However sympathetic we may be to Verizon's concerns, we note that less drastic measures are available to it (i.e., filing a complaint with the Virginia Commission.) We decline to burden WorldCom merely because of the potential for unlawful behavior by other competitive LECs.[116]

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 6A?

A. The Commission should adopt AT&T's proposed language for Section 8.3.1.

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[115] *Virginia Arbitration Proceeding*, Issue IV-11, Usage Measurement, ¶¶ 186-191.
[116] *Virginia Arbitration Proceeding* at ¶190.

Issue 6b: (SBC) Should CPN be sent with all categories of traffic, including Section 251(b)(5) Traffic, IntraLATA Toll Traffic, Switched Access Traffic and Wireless Traffic?

Q. PLEASE DESCRIBE SBC ISSUE 6B.

A. There is no substantive disagreement between the Parties on this issue. The issue has arisen in part because AT&T and SBC disagree on what traffic falls within the scope of "251(b)(5) Traffic". That matter is addressed under Intercarrier Compensation Issues 1 and 7 and AT&T believes, for example, that intra-MCA wireless traffic clearly falls within the scope of "251(b)(5) Traffic" and that IP Enabled Traffic that is Information Service Traffic is not Switched Access Traffic. In any event, the language the Commission adopts in this section should be conformed to the Commission's decision on Intercarrier Compensation Issues 1 and 7.

Q. HOW SHOULD THE COMMISSION RESOLVE SBC ISSUE 6B?

A. The Commission should adopt AT&T's language for Section 8.1 of Attachment 12. In addition, the language the Commission adopts in Section 8 of Attachment 12 should be conformed to the Commission's decision on Intercarrier Compensation Issues 1 and 7.

Issue 6c: (SBC) Should a Party use commercially reasonable efforts to prohibit the use of its local exchange services for the purpose of delivering interexchange traffic?

Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN ISSUE 6C?

A. SBC has not identified the language in dispute associated with this issue and therefore AT&T is somewhat at a loss in identifying the dispute between the

Parties. In its preliminary position statement, SBC states its position on the issue as:

> 6c. SBC's position is that a party should use commercially reasonable efforts to prohibit the use of its local exchange services (including, but not limited to, PRI, ISDN and/or Smart Trunks) that such party sells to others to be used for the purpose of delivering Interexchange Traffic. Such prohibition ensures that a party terminating interexchange traffic receives appropriate switched access compensation.

If the issue is as stated in SBC's preliminary position statement, then there is no dispute between the Parties. For the record, AT&T states that it uses commercially reasonable efforts to prohibit the use of the local exchange services (including, but not limited to, PRI and ISDN services) it sells to others for delivery of traffic that is subject to access charges.

Issue 6d: (SBC) Should each party agree not to strip, alter, modify, add, delete, change or incorrectly assign any CPN, whether knowingly or inadvertently?

Q. HAVE THE PARTIES RESOLVED ISSUE 6D?

A. Yes.

Issue 6e: (SBC) Should Interconnection Trunk Groups only carry Section 251(b)(5)/IntraLATA and ISP bound Traffic?

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

A. AT&T agrees the local interconnection trunk groups should carry only Section 251(b)(5)/intraLATA and ISP-bound traffic. However, as discussed in my testimony on Network Architecture Issues 1 and 10 and Intercarrier Compensation Issues 1 and 7, the Parties disagree on whether certain types of

calls are included under the statutory classification of § 251(b)(5) traffic. Thus, the Commission decisions on these issues will determine the types of calls the Parties carry over the interconnection trunk groups.

Issue 7: When Enhanced and IP Enabled Traffic is commingled with other traffic should the parties rely on factors for billing purposes rather than CPN?[117]

Q. WHAT ARE THE NETWORK ROUTING ISSUES ASSOCIATED WITH IP ENABLED TRAFFIC?

A. As with the intercarrier compensation issues relating to IP Enabled Traffic, the network issues are also based on the underlying dispute regarding the appropriate regulatory classification and treatment of IP Enabled Traffic. SBC proposes that all IP Enabled Traffic – even IP Enabled Traffic that is Information Services - be treated as access traffic.

Therefore, from a network perspective, SBC proposes that such traffic be routed over exchange access trunks and not local interconnection trunks. AT&T, on the other hand, proposes that IP Enabled Traffic, that is Information Services Traffic and meets the requirements set forth in its language in Section 1.1 of Attachment 12, is 251(b)(5) Traffic and like all other 251(b)(5) Traffic, should be routed over local interconnection trunks.[118]

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[117] My testimony on Intercarrier Compensation Issue 7 also addresses the "routing" portion of SBC's Network Architecture Issue 18A.

[118] See AT&T's proposed language in Section 1.1 of Attachment 12, which defines IP-enabled Service. Note however that AT&T's proposed language for Section 2.1.1 in Attachment 12 creates a carve out from this definition consistent with the FCC's determination that "IP in the middle" IP-enabled services are not information services and are therefore subject to access charges.

As I explained in detail in my discussion of Intercarrier Compensation Issue 1, AT&T's position on treating this category of IP Enabled Traffic as 251(b)(5) Traffic is consistent with the Enhanced Services Exemption that provides for local treatment of such traffic. SBC's position completely ignores the state of the law on the Enhanced Services Exemption and proposes to change the status quo so that it can receive access charges on traffic that should be treated as local (*i.e.*, 251(b)(5) Traffic).

Q. IS SBC'S TRAFFIC ROUTING PROPOSAL EFFICIENT OR RATIONAL?

A. No, SBC's proposal is neither efficient nor rational. From an engineering perspective, larger trunk groups are more efficient than smaller trunk groups. That is, a larger trunk group can carry a greater amount of traffic on a channel-by-channel basis than a smaller trunk group. Because the parties today combine local and intraLATA toll traffic on local interconnection trunk groups, SBC's proposal would require that the parties establish unique ESP traffic trunk groups. Because ESP traffic volumes are relatively small, these groups would be highly inefficient[119] and would require additional trunk ports on both parties' switches. This should be troublesome to SBC, who has repeatedly complained about trunk port exhaustion on its tandem switches. I suspect that SBC can overlook such concerns where its hopes to increase its exchange access revenues.

[119] It would increase the volume of traffic routed through SBC's tandem switched, because this traffic would be removed from the end office groups it current uses and placed on tandem-trunked ESP trunk groups.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ROUTING ISSUE?

A. The Commission should reject SBC's language that requires all IP Enabled Traffic to be routed over exchange access trunks. Such a requirement is, as explained earlier in my testimony, contrary to the law that provides for different treatment for Information Services Traffic. AT&T's language classifies IP Enabled Traffic as 251(b)(5) Traffic or exchange access traffic in a manner consistent with the current state of the law and will ensure that such traffic is routed over interconnection or access trunks as appropriate.

Q. IN ADDITION TO THIS ROUTING ISSUE, AND THE PREVIOUSLY DISCUSSED INTERCARRIER COMPENSATION ISSUE, IS THERE ANOTHER ISSUE ASSOCIATED WITH IP TRAFFIC?

A. Yes. There is also a rating/billing issue associated with IP Enabled Traffic.

Q. HOW DOES AT&T PROPOSE TO ENSURE THAT IP ENABLED TRAFFIC IS PROPERLY BILLED FOR PURPOSES OF RECIPROCAL COMPENSATION?

A. AT&T proposes in Section 9 of Attachment 12 to use a factor to ensure accurate billing of IP Enabled Traffic. As set forth in that Section, the factor process will be based on a factor methodology that uses a statistically valid sample of call records or other relevant data. Moreover, the factor process is subject to a billing Party audit so that the Party who is relying on the factor can, if it so chooses, confirm the accuracy of the factor.

Q. IS FACTORING EVER USED FOR THE RATING OF TRAFFIC?

A. Yes. A factor approach is commonly used for determining the appropriate rating for billing when the traffic jurisdiction for telecommunications traffic is otherwise undeterminable – such as when a telecommunications call lacks CPN (Calling Party Number).

Q. DOESN'T CPN APPROPRIATELY IDENTIFY TRAFFIC JURISDICTION FOR IP ENABLED TRAFFIC?

A. No. CPN is inappropriate to identify the jurisdictional nature of Enhanced or IP Enabled Traffic that is that is Information Services traffic. Since IP Enabled Services originate from a preexisting connection to the Internet, customers can make calls from their computers at *any* geographic location where they establish a connection to the Internet. Thus, an originating customer's phone number (CPN) has no geographic significance at all in regard to the originating location. Moreover, since an IP originated call begins in IP protocol, the originating portion of the call begins on an IP network, not on the PSTN. The telecommunications portion of the call begins when the enhanced service provider converts the call from IP protocol to TDM protocol. The CPN of the calling party has no relationship to the location of the calling party or to the actual beginning of the telecommunications transmission associated with that call. Using CPN would make IP Enabled calls appear to be interexchange calls, even though they are local calls by virtue of the Enhanced Service Exemption. Thus, rating an IP Enabled call based on CPN is not an appropriate way to rate the calls.

For example, a IP end user could have an assigned phone number associated with a rate center in Missouri where that end user resides, but make a call on a cable broadband connection with that phone number from a location in Maine to a PSTN customer that has a phone number in Maine in the same local calling area as the location where the calling party is located. The calling party's IP Enabled Service Provider has a presence in Maine where it converts the call from IP to TDM and has obtained ISDN PRI local exchange service to exchange traffic with the PSTN. Based on the CPN, that call would register as an interstate call even though it originated and terminated in Maine within the same local calling area.

Q. HAS THE INDUSTRY RECOGNIZED THAT CPN IS NOT AN APPROPRIATE WAY TO JURISDICTIONALIZE AN IP ENABLED CALL FOR INTERCARRIER COMPENSATION PURPOSES?

A. Yes. The industry forum, Alliance for Telecommunications Industry Solutions ("ATIS"), has been examining this issue. An open issue statement that was accepted unchallenged by the OBF Billing Forum committee of ATIS for discussion and resolution in May 2004 reads as follows:

> Voice Over Inter Protocol (VoIP) traffic that originated on the IP network and terminates on the Public switched network (IP-PSTN) presents a connectivity billing challenge. The 10 digit Calling Party Number does not reveal the IP enabled nature of the originating caller and may provide inappropriate results when used for determining intercarrier compensation billing. Additional information is needed to support/explain the Local Interconnection Trunks for call delivery to the terminating LEC and to enable appropriate intercarrier billing treatment"[120]

[120] ATIS Committee/Forum – Issue Identification Form (Submission date May 19, 2004).

Thus, the industry has acknowledged the problem and is still examining the issue and discussing various signaling stream solutions to both assist in identifying the traffic as IP and in jurisdictionalizing the traffic.

However, until a signaling solution is developed, or until some other method to rate this traffic is developed, it is necessary to use something other than CPN to ensure that the IP Enabled Traffic is appropriately treated consistent with the current state of the law for intercarrier compensation. AT&T's proposal is reasonable, consistent with general industry practices when CPN is not useful, and provides the billing party with the ability to ensure that the factors are accurate via auditing rights.

Q. HOW DOES SBC PROPOSE TO IDENTIFY VOIP TRAFFIC FOR RATING AND BILLING PURPOSES?

A. As noted above, SBC asserts that all IP Enabled Traffic that terminates to the PSTN is switched access traffic and therefore it must be terminated on Feature Group-D trunks (see SBC Network Architecture Issue 18a and SBC's proposed language for Section 7.1 of Attachment 11, Part C). Also, SBC proposes to assess either intrastate or interstate access on this traffic based on the CPN (or other data set forth in its tariff) of the call.

SBC's proposal to rely on information (CPN), or other data as set forth in its tariff is a completely arbitrary approach that does nothing more than ensure that SBC unjustly receives access charges for termination of all Information Service calls.

CPN provides absolutely no useful information about either the actual nature of the VoIP call or where that call actually enters the PSTN network.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should approve AT&T's factor language set forth in Section 9 of Attachment 12 and reject SBC's language for imposing access charges on IP enabled traffic that is Information Services Traffic based on CPN. Because it is not possible to identify IP Traffic in the signaling stream, or to identify where the call originated, there is simply no current way to use signaling data to rate IP Enabled calls. Some other method must be used. AT&T's proposed factor method provides a reasonable and statistically valid method to rate traffic. SBC's proposal, on the other hand, is to use information that is completely irrelevant to the proper rating of the call. AT&T's method is far preferable to SBC's completely arbitrary approach.

Q. WHAT IF THE INDUSTRY DEVELOPS A SIGNALING SOLUTION DURING THE TERM OF THIS CONTRACT? WOULD AT&T AGREE TO RELY ON SIGNALING RATHER THAN ITS PROPOSED FACTOR APPROACH?

A. Yes. AT&T's language in Section 9.1 of Attachment 12 is meant to apply "when actual charge information is not determinable by- the billing party because the jurisdiction, origin or traffic type is unidentifiable based on the billing stream information." Thus, if a signaling solution is developed during the term of this agreement, and it is still necessary to uniquely identify IP Enabled Traffic from

telecommunications traffic for billing purposes given the current state of the law, AT&T's language will allow parties to use actual call information.

Q. IS THERE ANY OTHER WAY BESIDES FACTORING TO IDENTIFY IP TRAFFIC FOR BILLING PURPOSES?

A. There are other options that AT&T, as well as the industry are currently examining, but they are not fully developed. However, once these options are more fully developed, AT&T would agree to implement one of these options as an alternative to the factoring option, upon mutual agreement of the parties. Absent mutual agreement, however, the factoring method should remain in place, unless the Commission, in the context of dispute resolution, directs the parties otherwise.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.