

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Interconnection Agreement)
between Southwestern Bell Telephone, L.P.,)
d/b/a SBC Missouri and the CLEC Coalition, Including)
Big River Telephone Company, L.L.C., Birch Telecom)
Of Missouri, Inc., Ionex Communications, Inc.,)
NuVox Communications of Missouri, Inc., Socket) Case No. TK-2006-0049
Telecom, L.L.C., XO Communications Services, Inc.,)
XO Missouri, Inc., Arbitrated as a Successor)
Interconnection Agreement to the Missouri 271)
Agreement (“M2A”).)

**CLEC COALITION’S BRIEF ON
REMAINING DISPUTED LANGUAGE**

COME NOW Big River Telephone Company, LLC; Birch Telecom of Missouri, Inc. and ionex communications, Inc.; NuVox Communications of Missouri, Inc.; Socket Telecom, LLC; XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc.; and Xspedius Management Co. Switched Services, LLC, dba Xspedius Communications, LLC (collectively, the “CLEC Coalition” or “Coalition”) and file their Brief on the two remaining disputed language issues that have arisen in conforming the interconnection agreements of Coalition members to the Commission’s rulings in Docket No. TO-2005-0336.

**Issue: CLEC Coalition IC Issue 15a and 15b
Attachment 12, Section 13.3.**

The language in Attachment 12, Section 13.3 does nothing more than incorporate the Commission’s ruling on the IP-PSTN compensation issue in the July 11, 2005 Arbitration Order.

In the Arbitration Order, the Commission held as follows:

As asserted by the Coalition, the Arbitrator held with respect to MCI RC Issue 15 that “[t]he IP-PSTN traffic, on the other hand falls squarely within the ‘net

protocol change' portion of the FCC's multi-part enhanced service definition and is therefore charged at reciprocal compensation rates instead of switched access rates." The Commission agrees that this traffic should be treated consistently and the Final Arbitrator's Report is thus modified to provide that the Coalition's ICA will also provide that IP-PSTN traffic be charged under the reciprocal compensation regime rather than be subject to access charges.¹

To conform the Coalition ICA to the Commission's Order, the Coalition identified the contract language proposed by MCI to implement its position on MCI RC Issue 15 and proposed the following to SBC:

13.3 Notwithstanding any other provision of this Agreement, the Parties shall exchange enhanced/information services traffic, including without limitation Voice Over Internet Protocol ("VOIP") traffic and other enhanced services traffic (collectively, "IS Traffic"), in accordance with this section. IS Traffic is defined as traffic that undergoes a net protocol conversion, as defined by the FCC, between the calling and called parties, and/or traffic that features enhanced services that provide customers a capability for generating, acquiring storing, transforming, processing, retrieving, utilizing, or making available information. The Parties shall exchange IS Traffic over the same interconnection trunk groups used to exchange local traffic. In addition to other jurisdictional factors the Parties may report to one another under this Agreement, the Parties shall report a Percent Enhanced Usage ("PEU") factor on a statewide basis or as otherwise determined by CLEC at its sole discretion. The numerator of the PEU factor shall be the number of minutes of IS Traffic sent to the other Party for termination to such other Party's customers. The denominator of the PEU factor shall be the total combined number of minutes of traffic, including IS Traffic, sent over the same trunks as IS Traffic. Either Party may audit the other Party's PEU factors pursuant to the audit provisions of this Agreement. The Parties shall compensate each other for the exchange of IS Traffic applying the same rate elements used by the Parties for the exchange of ISP-bound traffic whose dialing patterns would otherwise indicate the traffic is local traffic. This compensation regime for IS Traffic shall apply regardless of the locations of the calling and called parties, and regardless of the originating and terminating NPA/NXXs.

This language was derived from MCI's Decision Point List filed prior to hearing in this proceeding. To ensure that there would be no question about the content of the language, the Coalition did not alter the language proposed by MCI at all. The language the Coalition added as

¹ Arbitration Order, at 35.

Section 13.3 of Attachment 12 is the same contract language proposed by MCI and approved by the Commission.

SBC has refused to agree to the inclusion of Section 13.3, in spite of the Commission's unambiguous determination quoted above that "the Coalition's ICA will also provide that IP-PSTN traffic be charged under the reciprocal compensation regime rather than be subject to access charges." The only explanation that the Coalition has received for SBC's refusal to incorporate this language is that SBC still disputes the matter in its motion for reconsideration.

The Coalition urges that its proposed Attachment 12, Section 13.3 be included in the Coalition ICA approved by the Commission. The Coalition has done nothing more with this language than attempt to implement the Commission's ruling in the Arbitration Order.

Issue: CLEC Coalition UNE Issue 4
Attachment 6, Section 2.1

The CLEC Coalition disagrees with SBC's position on the inclusion of certain language in Attachment UNE 6 of the Parties' interconnection agreement. That contract language would limit SBC's obligation to provide unbundled network elements to the SBC's incumbent local exchange areas. The Coalition objected to inclusion of this language in UNE DPL Issue # 4. It also objected to SBC's similar effort to geographically limit its obligations to provide UNEs and services to CLECs through the Out of Exchange (OE-LEC) Appendix. Finally, the Coalition objected to similar language in the General Terms and Conditions, section 1.7.

Although it is true that the language SBC seeks to include in Attachment UNE 6 was approved in the Award Matrix², that approval which appears without discussion is inconsistent with the Arbitrator's reasoning and full explication of the issues in Section XV of the Arbitrator's Final Report in which he rejected SBC's Out of Exchange Attachment.

² See Attachment IIIA Part 1, Detailed Language Decision Matrix, page 72 ("SBC's language is most consistent with the Arbitrator's Report").

At pages 5-6 of Section XV of the Final Report, the Arbitrator ruled on the question of whether it was appropriate to include SBC's Out of Exchange (OE-LEC) Appendix in the parties' interconnection agreement. In resolving the issue in CLECs' favor and rejecting the Appendix, the Arbitrator concluded that an ILEC's obligation to provide access to UNEs and collocation is not restricted to its certificated local exchange territory. The Arbitrator's Report states as follows:

The Act, at § 251(c), imposes certain additional duties upon ILECs such as SBC. It is true, as SBC points out, that the Act at § 251(h)(1) defines "ILEC" as a LEC that has a particular relationship or function "with respect to an area." However, it does not follow that the ILEC's duties under § 251(c) are similarly limited to a geographical area. Such a limitation exists only if Congress so intended.

Section 251(c)(2)(B) requires SBC to interconnect with a requesting carrier "at any technically feasible point within the carrier's network." Nothing in this language refers explicitly to the ILEC's service area. An SBC tandem that is located outside of SBC's service area is nonetheless "within" its network and it follows that SBC is obligated to permit interconnection there. Likewise, § 251(c)(3) requires SBC to provide access to UNEs "at any technically feasible point." As in the case of interconnection, nothing in this language requires that this point be located within the area for which SBC is the ILEC. SBC must provide access to UNEs outside of its service area if it is technically feasible to do so. Feasibility, not geography, is the basis of the limitation that Congress placed on this duty. SBC's obligation to provide collocation under § 251(c)(6) is also not geographically limited to its service area. Referring to the example used above of a SBC tandem located outside of its service area, § 251(c)(6) requires SBC to provide collocation there to a requesting carrier.

* * * *

For these reasons, the Arbitrator determines that the Act requires, and the ICA should provide, for SBC's provision of UNEs, collocation and interconnection outside of its incumbent local exchange area.

Given that SBC's obligations to interconnect and to provide access to UNEs and collocation are not restricted to its incumbent area, SBC's obligation to carry traffic is also not geographically restricted. For this reason, the Arbitrator agrees with the CLECs that the Out-of-Exchange Traffic (OE-LEC) Appendix is unnecessary.

The Coalition contends that the Arbitrator's examination of the issues and detailed ruling based on his analysis should take precedence over the summary decision that appears in the Award Matrix. For that reason, the Coalition opposes the following disputed language (SBC's proposed language is shown in bold) in total:

2.1 This Attachment sets forth the terms and conditions pursuant to which SBC MISSOURI agrees to provide CLEC with access to Unbundled Network Elements under Section 251(c)(3) of the Act in SBC MISSOURI's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. **The Parties acknowledge and agree that SBC MISSOURI is only obligated to make available UNEs and access to UNEs to CLEC in SBC MISSOURI's incumbent local exchange areas. SBC MISSOURI has no obligation to provide such UNEs to CLEC _ for the purposes of CLEC providing and/or extending service outside of SBC MISSOURI's incumbent local exchange areas. In addition, SBC MISSOURI is not obligated to provision UNEs or to provide access to UNEs and is not otherwise bound by an 251(c) obligations in geographic areas other than SBC MISSOURI's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Attachment, and any associated provision set forth elsewhere in this Agreement (including but not limited to the rates set forth in this Agreement associated with Collocation, Interconnection and/or Resale), shall apply to the Parties and be available to CLEC in MISSOURI for provisioning Telecommunications Services within an SBC MISSOURI incumbent local exchange area(s) in the State in which this Agreement with SBC MISSOURI has been approved by the relevant state Commission and is in effect. Further, the Parties agree that SBC MISSOURI is not obligated to provision UNEs or to provide access to UNEs that have been Declassified or are subject to Declassification, as set forth in Section 1.2 above, and elsewhere in this Appendix.**

SBC willingly eliminated the following virtually identical language from Section 1.7 in the General Terms and Conditions attachment:

The Parties acknowledge and agree that SBC MISSOURI is only obligated to make available UNEs and access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC MISSOURI's incumbent local exchange areas. SBC MISSOURI has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC MISSOURI's incumbent local exchange areas. In addition, SBC MISSOURI is not obligated to provision UNEs or to provide access to UNEs

under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC MISSOURI's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Agreement, and any associated provisions set forth elsewhere in this Agreement (including but not limited to the rates set forth in this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within SBC MISSOURI's incumbent local exchange area(s) in Missouri when this Agreement has been approved by the Commission and is in effect.

The Coalition asserts that such decision by SBC to eliminate the GT&C language is consistent with the Arbitrator's ruling quoted above, while SBC's decision to include the same disputed language in UNE Section 2.1 is clearly contrary to the Arbitrator's ruling. The Coalition therefore requests the Commission order SBC to delete its language from Section 2.1 in the final conformed agreement.

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Leland B. Curtis

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**ATTORNEYS FOR THE
CLEC COALITION**

CERTIFICATE OF SERVICE

A true and correct copy of the forgoing was served this 4th day of August, 2005, by email or by placing same in the U.S. Mail postage paid, to the following persons.

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/s/ Leland B. Curtis

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