

**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 MCI Group, including MCI WorldCom)
Communications, Inc., and MCImetro Access) Case No. TK-2006-0050
Transmission Services, LLC; Arbitrated as a)
Successor Interconnection Agreement to the Missouri)
271 Agreement (“M2A”).)

**SBC MISSOURI’S POSITION ON CONFORMANCE ISSUES
WITH MCIMETRO ACCESS TRANSMISSION SERVICES LLC**

SBC Missouri¹ and MCImetro Access Transmission Services LLC (“MCIm”) have worked diligently to prepare a successor interconnection agreement to the Missouri 271 Agreement (“M2A”) that conforms to the Missouri Public Service Commission’s (“Commission’s”) July 11, 2005 Arbitration Order. While the parties have for the vast majority of issues been able to concur on conforming language,² four issues remain in dispute requiring Commission resolution. For the reasons set out below, SBC Missouri requests the Commission to direct the parties to insert SBC Missouri’s proposed contractual language into the ICA as the language that best conforms to the Commission’s July 11, 2005 Arbitration Order:

Two of the disputes with MCIm involve Reciprocal Compensation; one involves a Network issue; one concerns a UNE issue; and one pertains to Pricing. SBC Missouri has submitted proposed language with regard to each of these disputes and believes that its language is most consistent with the Arbitration Order and should be adopted.

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as “SBC Missouri” or “SBC.”

² The submission of this Agreement does not indicate voluntary agreement to contract provisions a party may have disputed before the Commission. The parties each reserve their rights, pursuant to 47 U.S.C. 252(e)(6), to contest determinations made by the Commission in this case.

Intercarrier Compensation

1. **MCI RC 11(a)**: Should intra-switched UNE-P calls be compensated differently than other traffic?

MCI RC 11(b): Should intra-switched UNE-P calls be exempted from requirements to pay reciprocal compensation?

From a substantive perspective, there is no dispute that the Arbitrator found in favor of SBC Missouri on this issue. The Arbitrator ruled:

MCI seems to be requesting compensation for switching that does not actually occur. No reason has been shown to change the existing practice. The Arbitrator finds in favor of SBC.³

Notwithstanding the substantive decision made by the Arbitrator, the decision matrix indicated that “SBC’s language is not consistent with the Arbitrator’s Report.”⁴ SBC Missouri believes that the ambiguity between the Final Arbitrator’s Report and the Decision Matrix is a result of a typographical error because the Decision Matrix shows this same language in another section as being “most consistent with the Arbitrator’s Report.”⁵ Nevertheless, SBC Missouri and MCI attempted to negotiate conforming language consistent with the Arbitrator’s substantive decision. Despite this effort, the parties were unable to resolve their differences on appropriate conforming language.

Currently, no reciprocal compensation is being exchanged between the parties on such intra-switch calls. The language SBC Missouri has proposed accurately reflects the existing practice:

4.11.2 For Intra-Switch Section 251(b)(5) Traffic and ISP Bound Traffic exchanged between SBC MISSOURI and MCI when MCI purchases wholesale switching from SBC Missouri on a wholesale basis such traffic is not subject to terminating compensation.

³ Final Arbitrator’s Report, Section VI, p. 68.

⁴ Attachment VI.A Detailed Language Decision Matrix, p. 62 of 67.

⁵ *Id.*, p. 65 of 67.

4.11.3 For Inter-Switch Section 251(b)(5) Traffic and ISP Bound Traffic exchanged between SBC MISSOURI and MCIIm when MCIIm purchases wholesale local switching from SBC Missouri on a wholesale basis such traffic is subject to the end office switching rate elements set forth in Appendix Pricing and as specified in Section 4.2.5.3.3 for Section 251(b)(5) Traffic, excluding ISP Bound Traffic and ISP Bound Traffic on a minute of use basis at the rate set forth in Appendix Pricing as specified in Section 4.2.2.

In addition, this language is consistent with the language used in the Charter, Navigator, CLEC Coalition, WilTel and Sprint Interconnection Agreements.

MCIIm, however, proposes that there be no language addressing intra-switched traffic (MCIIm proposes Section 4.11.2 and 4.11.3 state “Intentionally Omitted”). This proposal completely disregards the substantive ruling made by the Arbitrator on this issue and does not constitute conforming language.

The language SBC Missouri proposed in Section 4.11.2.1 is most consistent with the Arbitrator’s Report and, accordingly, should be made part of the interconnection agreement between MCIIm and SBC Missouri.

2. **MCIIm RC 15**: What terms and conditions should apply for switched access traffic?

MCIIm RC 17: What is the proper compensation for Voice over Internet Protocol Traffic?

MCIIm NIM 28: Since the provision of the agreement specify in detail the appropriate treatment and compensation for all traffic type exchange pursuant to this agreement, is it necessary to include SBC Missouri’s additional circuit switched traffic language in the agreement?

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

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

This conformance issue⁶ arises from a conflict between an isolated ruling for MCIIm on MCIIm RC 15 in the Final Arbitrator’s Report and the substantive determination on the IP-PSTN issue contained in Section VI(H) of the Final Arbitrator’s Report, which unequivocally endorsed the core principle that all interexchange switched access traffic, including interexchange VoIP traffic, is subject to intrastate (and interstate) switched access charges and must be delivered over separate Feature Group trunks.

This core substantive determination, which was adopted by the Commission, applied to all CLECs, including MCIIm (MCIIm RC Issues 15 and 17, and MCIIm NIM Issue 28) and the CLEC Coalition.⁷ In fact, the issue of “what is the proper compensation treatment for VoIP traffic” (MCIIm RC Issue 17) was among the specific issues addressed in this section, and the Arbitrator rejected MCIIm’s claim that reciprocal compensation should apply to this traffic.⁸ On the same basis, the Arbitrator adopted SBC Missouri’s language with respect to AT&T;⁹ the CLEC Coalition,¹⁰ Navigator;¹¹ and WilTel.¹² And the Arbitrator in MCIIm NIM Issue 28 adopted the exact same SBC Missouri language that was struck under MCIIm RC Issue 15 in

⁶ This issue is also a subject of SBC Missouri’s request for reconsideration.

⁷ The Commission should also note that the Charter and Sprint ICAs contained these SBC-proposed provisions as agreed-upon language.⁷

⁸ In RC Issue 17, MCIIm proposed language that would allow it to combine interexchange VoIP traffic on local interconnection trunks; quantify the amount of such traffic using a “Percent Enhanced Usage” factor it would provide; and apply the same rates to this “enhanced/information services” traffic as the rates for ISP bound traffic. See, MCIIm/SBC Reciprocal Compensation Final DPL, Issue RC 17, pp. 31-32 of 34. The arbitrator rejected this language and found SBC Missouri’s proposed language “most consistent with the Arbitrator’s Report. See, Attachment VI.A, Detailed Language Decision Matrix, pp. 30-32.

⁹ Attachment VI.A, Detailed Language Decision Matrix, pp. 7-9.

¹⁰ Id., pp. 28-30.

¹¹ Id., pp. 36-37.

¹² Id., pp. 36-42.

Section VI(D).¹³ This core determination is consistent with current federal law and the position the Commission itself has taken before the FCC.¹⁴

The Arbitrator's ruling on MCI RC Issue 15 in Section VI(D), however, is completely at odds with the substantive determination with respect to VoIP traffic. In support of its position, MCI asserted that "[t]he IP-PSTN traffic . . . falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition," and that "reciprocal compensation rates instead of switched access rates" should apply.¹⁵ But this assertion, which was apparently accepted, directly conflicts with the law SBC Missouri cited and which the Arbitrator relied on in Section VI(H) to adopt SBC Missouri's position on this very issue with every other CLEC (and MCI itself):

- Existing FCC rules require that "[c]arriers' carrier [i.e., access] charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.¹⁶ Since IP-PSTN calls "use local exchange switching facilities," access charges apply to that traffic when it is interexchange in nature.¹⁷
- FCC rule 701(b)(1) provides that reciprocal compensation under Section 251(b)(5) does not apply to "traffic that is interstate or intrastate exchange access, information access or exchange services for such access." Instead, Section 251(g) of the Act preserves the "access regimes applicable to this traffic."¹⁸ If IP-PSTN traffic is indeed an information service, then it is

¹³ Attachment V, Part 1 Detailed Language Decision Matrix, pp. 97-104.

¹⁴ In the FCC's IP-Enabled NPAM, the Missouri Commission stated:

Any IP-enabled service that connects to the public switched network . . . should be treated similarly . . . To the extent an IP-enabled call connects with and utilizes the public switched network, the traffic should be subject to access charges absent further determination by the [FCC] in the Unified Carrier Compensation Regime docket.

Comments of the Public Service Commission of the State of Missouri, IP-Enabled Services NPRM, W.C. Docket No. 04-36, filed May 2004, at pp. 8, 12.

¹⁵ Final Arbitrator's Report, Section VI, p. 22.

¹⁶ 47 C.F.R. Section 69.5(b).

¹⁷ Final Arbitrator's Report, Section VI, p. 38.

¹⁸ ISP Remand Order, para. 37.

expressly excluded from the reciprocal compensation requirement of Section 251(b)(5).¹⁹

- The FCC's rules exempting interexchange traffic from reciprocal compensation and applying access charges instead make no exception based on the type of transmission technology to deliver an interexchange call to the PSTN:

[a]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.²⁰

- Even if a “net protocol change” occurs on a call to make it an information service under the FCC's enhanced service definition, the ESP exemption applies only to an ESP's use of the PSTN as a link between the ESP and its subscribers to obtain access to the ESP's information service (e.g., for Internet access).²¹ Here, MCIIm is not acting as an Internet service provider, so the exemption does not apply. And as the FCC subsequently described it, the ESP exemption carves ESPs out from the access charge obligation when they “use incumbent LEC networks to receive calls from their customers,”²² i.e., for ESP bound traffic.²³ The interexchange IP-PSTN traffic at issue here, on the other hand, is not ESP bound. Rather, it is “PSTN bound,” just like a traditional long distance telephone call.²⁴ Thus, MCIIm's proposed language for Section 16.1, which states that IP-PSTN is “to be treated” as ISP-bound local traffic, is completely unsupported by the FCC authorities advanced by MCIIm.

The decision on MCIIm RC 15 is also contrary to the Records Exchange Rule in that it rejected the contractual provisions requiring separate trunks for IXC traffic even though such separate trunk groups are required by the Records Exchange Rule. Under the Arbitration Order's

¹⁹ Final Arbitrator's Report, Section VI, p. 38.

²⁰ IP-Enabled Services NPRM, para. 61; Final Arbitrator's Report, Section VI, p. 38.

²¹ The FCC exempted ESPs from access charges for such calls, where the calls are delivered from the ESP's subscribers to the ESP's “location in the exchange area.” Memorandum, Opinion and Order, MTS and WATS Market Structure, CC Docket 78-72, 97 FCC2nd 682 (1983) para 78.

²² First Report and Order, Access Charge Reform, CC Docket No. 96-262, 12 FCC Rcd. 15982, para. 343 (1997).

²³ IP-Enabled Services NPRM, para. 25.

²⁴ Constable Direct, pp. 14-17; Final Arbitrator's Report, Section VI, pp. 43-45.

ruling on this issue, the CLECs would be able to report traffic as “IP-originated” and avoid paying applicable switched access charges to both SBC Missouri and the small ILECs, which will jeopardize the affordability of local rates.²⁵

The language SBC Missouri has proposed for this issue most appropriately reflects the Commission’s substantive determination on IP-PSTN traffic and should be made part of the interconnection agreement between MCI and SBC Missouri.

Network Issues

3. **MCI NIM 17**: For two-way interconnection trunks, should the parties apportion costs by applying a “relative use factor?”

SBC NIM 17: Should each party be financially responsible for the facilities on its side of the POI?

This conformance dispute arises because the Arbitrator did not rule upon the parties’ competing language for this section, either in the text of the Final Arbitrator’s Report or in the Detailed Language Decision Matrix. The Commission, however, should adopt SBC Missouri’s proposed language²⁶ because it is most consistent with the Commission’s unequivocal ruling that each party should be financially responsible for the facilities on its side of the POI:

Each party is financially responsible for facilities on its side of the POI. A party that agrees to carry traffic that originated on or transited its network to the terminating carrier’s nearest tandem may require the other party to reciprocate. Any language pertaining to reciprocal compensation will be addressed in that portion of the agreement.²⁷

In an attempt to improperly shift costs to SBC Missouri, MCI has proposed a method allocating shared cost of usage on two-way trunks using a Relative Use Factor (“RUF”). The

²⁵ See, SBC Missouri’s Post-Hearing Brief, filed June 7, 2005, at pp. 391, 406; Constable Direct, pp. 5-21.

²⁶ SBC Missouri has proposed the following language for Section 8.6.1:
8.6.1 The financial responsibility described in this Appendix applies to the transport facility underlying the trunks to a MCI designated POI, without regard to the direction of the traffic on the trunks.

²⁷ Final Arbitrator’s Report, Section 5, p. 10.

RUF assumes that the traffic is in balance at 50/50 usage by both parties unless one party can demonstrate a different factor based on actual usage. MCIIm should not be permitted to specify the location of the POI and then require SBC Missouri to be responsible for bearing part of the cost of those facilities.

Nothing in the Act or the FCC's Orders provides for the application of a RUF to two-way trunks. While the FCC in paragraph 1062 of the First Report and Order states that what the interconnecting carrier pays for dedicated transport is to be proportional to its relative usage of the dedicated facility, that language applies to facilities and not trunking. In addition, the Triennial Review Order now limits dedicated transport to transmission facilities connecting the incumbent LEC switches and wire centers within a LATA. Thus, the dedicated transport referenced in the First Report and Order would not be available for interconnection facilities from the CLEC switch or POP to the point of interconnection.²⁸

The RUF is also contrary to MCIIm's own proposed language in Section 3.4, which will cause increased confusion as to how costs are to be apportioned. The RUF proposal should be rejected because it is unworkably vague in that it fails to specify the applicable rate, how trunks relate to trunk facilities, and how usage information is to be captured.

Accordingly, the Commission should order SBC Missouri's proposed contractual language for Section 8.6.1 be included as part of the Reciprocal Compensation Appendix.

UNE Issues

4. **MCIIm UNE 2**: Which parties' definition of Lawful UNE should be included in the Agreement?

This issue involves the substitution of the phrase "Section 251(c)(3) UNE" for the phrase "lawful UNE." In the Final Arbitrator's Report, the Arbitrator made clear that SBC Missouri's

²⁸ McPhee Direct, pp. 60-61.

language would be accepted if SBC Missouri agreed to change the term “lawful UNE” to “Section 251(c)(3) UNE.”²⁹ In compliance with the Final Arbitrator’s Report, SBC Missouri proposed to substitute the phrase “Section 251(c)(3) UNEs” for the phrase “lawful UNEs.” MCIIm, on the other hand, seeks to add additional language as follows: “and access to other network elements and services, including 271 elements as defined in Section 7.7 of this Appendix-UNE.”

SBC Missouri opposes the inclusion of MCIIm’s proposed language on the basis that it goes beyond the determination of the issue by the Commission as reflected in the adoption of the Final Arbitrator’s Report. Moreover, even if it were proper to attempt to insert new language at this time, MCIIm’s language is inappropriate since it is vague in its reference to “access to other network elements and services,” a concept which is not defined and not explained. To the extent MCIIm seeks to refer to Section 271 elements, that is unnecessary as the provisions concerning 271 elements have been otherwise incorporated into the Agreement pursuant to the Commission’s Arbitration Order. Accordingly, the Commission should direct the parties to utilize SBC Missouri’s language concerning MCIIm UNE Issue 2 as that language conforms to the Final Arbitrator’s Report which the Commission adopted.

Pricing Issues

5. **MCIIm Pricing 18**: Is MCI entitled to obtain access to entrance facilities at cost based rates for the purposes interconnection?

SBC MO: Should the price schedule include rates for any level of entrance facility?

²⁹ Final Arbitrator’s Report, Section III, p. 4, “SBC Missouri may refer to ‘Section 251(c)(3) UNEs’ in order to distinguish them from other kinds of UNEs, such as UNEs offered pursuant to agreements SBC Missouri made in order to obtain Section 271 authority.”

The Final Arbitrator's Report clearly reflects that the only items involved here are from lines 509-545 of the SBC Missouri/MCIm Pricing Schedule.³⁰ The issue between the parties, however, involves lines 546-561 of the SBC Missouri/MCIm Pricing Schedule which deal with voice grade transport. As SBC Missouri has explained, voice grade transport is not a UNE and it would be inappropriate to reflect rates for this service in the UNE Pricing Appendix.³¹

WHEREFORE, SBC Missouri respectfully requests the Commission to direct the parties to insert SBC Missouri's proposed contractual language into the ICA as the language that best conforms to the Commission's July 11, 2005 Arbitration Order

Respectfully submitted,

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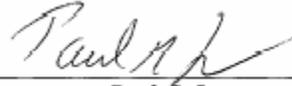
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³⁰ Final Arbitrator's Report, Section IV, p. 33.

³¹ SBC Missouri's Post-Hearing Brief, pp. 281-282.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on August 4, 2005.



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