

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 Transmission Services, L.L.C., Arbitrated as a)
Successor Interconnection Agreement to the)
Missouri 271 Agreement ("M2A").)

Case No. TK-2006-0050

ORDER APPROVING ARBITRATED
INTERCONNECTION AGREEMENT

Issue Date: August 8, 2005

Effective Date: August 10, 2005

Procedural History:

On March 30, 2005, Southwestern Bell Telephone, L.P., doing business as SBC Missouri, filed its Petition for Arbitration with the Commission pursuant to Section 4.2 of the Missouri 271 Agreement ("M2A"), Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. SBC petitioned the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements between SBC and various competitive local exchange carriers ("CLECs") to replace the M2A, the generally-available interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the United States Federal Communications Commission ("FCC") that SBC be approved to provide in-region long

distance service in Missouri pursuant to Section 271 of the Act.¹ The Commission docketed SBC's Petition as Case No. TO-2005-0336.

The Commission appointed an Arbitrator and proceedings were held pursuant to Commission Rule 4 CSR 240-36.040, concerning Arbitrations under the Telecommunications Act of 1996. The Arbitrator issued his Final Arbitrator's Report on June 21, 2005. After receiving comments from the parties on June 24 and hearing oral argument on June 29 and 30, the Commission issued its Arbitration Order on July 11, 2005. Pursuant to the timeline established by the M2A and the procedural schedule adopted by the Arbitrator, the Commission directed the parties to file their conformed interconnection agreements by July 13. By order of July 14 and with the agreement of all of the parties, this deadline was extended to August 3. The order also amended by interlineation the existing interconnection agreements based on the M2A to extend their expiration from July 19 to August 10.

On August 2, in order to facilitate the adoption by other carriers of the several interconnection agreements resulting from the arbitration in Case No. TO-2005-0336, the Commission established nine spin-off dockets, numbered from TK-2006-0042 through TK-2006-0050. Each of these dockets will serve as the vehicle for further proceedings regarding one of the interconnection agreements arbitrated in Case No. TO-2005-0336.

The present case concerns the arbitrated interconnection agreement between SBC and the MCI Group, including MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, L.L.C. ("MCI"). The parties filed their conformed

¹In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, (Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001).

interconnection agreement on August 3. However, SBC and Navigator were unable to agree on the requirements of the Commission's Arbitration Order of July 11 with respect to three areas of the interconnection agreement. The parties request that the Commission specify the correct language and approve their interconnection agreement. In support of their positions on the disputed language, the parties filed memoranda on August 4.

The Staff of the Commission filed its Memorandum and Recommendation stating that the parties' interconnection agreement meets the requirements of § 251 of the Act, including the implementing regulations prescribed by the F.C.C., as well as the pricing standards in § 252(d), and recommending that the arbitrated interconnection agreement be approved. In addition, Staff reviewed the disputed language proposals and finds that either proposal conforms to the provisions of the Act. Staff also recommends that the Commission direct the parties to submit a serially- numbered copy of the agreement and to submit any future amendments to the Commission for approval.

Discussion:

A.

The Disputed Language

- 1. MCI RC Issues 11(a) and 11(b): Intercarrier Compensation for intra-switched UNE-P.**

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?

The Arbitrator considered this issue at Section VI, page 68, of his Final Arbitrator's Report. The Commission's Arbitration Order adopted this portion of the Report, without modification, as the decision of the Commission. The Arbitrator stated:

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.

Nonetheless, despite the substantive decision of the Arbitrator quoted above, the decision matrix indicated that "SBC's language is not consistent with the Arbitrator's Report."² SBC contends that this is a mere typographical error. MCI, on the other hand, opposes SBC's proposed language for subsections 4.11.2 and 4.11.3 of the Reciprocal Compensation Appendix, maintaining that "SBC is proposing new language than what they proposed in the arbitration."

MCI states that, "in the spirit of compromise," it will agree to SBC's new proposed language for these two subsections, with certain modifications, shown underlined below:

- 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 local switching from SBC MISSOURI on a wholesale basis such traffic is not subject to terminating compensation nor to wholesale local switching rates.
- 4.11.3 For Inter-Switch Section 251(b)(5) Traffic and ISP Bound Traffic exchanged between SBC MISSOURI and MCI when MCI purchases wholesale local switching from SBC MISSOURI on a wholesale basis such traffic is subject to the end office switching rate element and the tandem switching and transport rate elements to the same extent that SBC Missouri charges MCI for corresponding local wholesale tandem switching and transport rates 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

² Attachment VI.A Detailed Language Decision Matrix, p. 62 of 67.

minute of use basis at the rate set forth in Appendix Pricing as specified in Section 4.2.2.

SBC's proposed language is identical except that the language underlined above is omitted.

In reaching his decision, the Arbitrator stated:

On an intra-switched call when SBC's end user originates a call that terminates to an MCI end user (when MCI has purchased local switching from SBC) there is no switching function performed on the terminating end. Accordingly, MCI has not provided SBC any switching service that merits compensation. Under such calls exchanged under the M2A, SBC and MCI do not currently exchange reciprocal compensation for intra-switched calls. The successor ICA from this arbitration should continue to appropriately apply reciprocal compensation only in those instances where a carrier is providing a terminating switching function on behalf of another LEC.³

The Commission concludes that the parties should use the language proposed by SBC, without the modifications proposed by MCI. SBC states that currently, no reciprocal compensation is being exchanged between the parties on such intra-switch calls and that SBC's language accurately reflects the existing practice. Additionally, SBC states that this language is consistent with the language used in the Charter, Navigator, CLEC Coalition, WiTel and Sprint Interconnection Agreements. The Commission accepts these statements as accurate.

2. Other Inter-carrier compensation Issues.

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

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

MCI NIM 28: *Since the provisions of the agreement specify in detail the appropriate treatment and compensation for all traffic type*

³ Final Arbitrator's Report, Section VI, pages 67-68.

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-IPPSTN 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?

SBC states:

This conformance issue arises from a conflict between an isolated ruling for MCI on MCI 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.

MCI, on the other hand, contends that its proposed language for Section 16 of the Reciprocal Compensation Attachment is necessary "to give effect to the Commission ruling on the IP-PSTN traffic issue." MCI asserts that "SBC's language refuses to recognize the validity and effectiveness of the Commission's order."

In its Memorandum filed on August 4, SBC states:

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.⁴ 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):

⁴ Final Arbitrator's Report, Section VI, p. 22.

It appears that there is no real confusion as to what language the Commission's Order requires, but rather that SBC is arguing that the Commission erred. This is not the place for that contention; SBC may instead raise it in another forum, on appeal.

The parties will use the language proposed by MCI in their agreement.

3. Network Issues.

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?*

SBC states that "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." MCI agrees that "[t]his issue was not addressed in the Arbitrator's Report."

SBC states that the Commission should adopt its proposed language⁵ because it is most consistent with the Commission's 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.⁶

⁵ 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.

⁶ Final Arbitrator's Report, Section V, page 10; adopted by the Commission's Arbitration Order.

MCI responds that the F.C.C. has determined that where such trunks are two-way, an “interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send the terminating traffic to the providing carrier.”⁷ In compliance with this decision, MCI proposes the use of a relative use factor (“RUF”) to capture the proportion of two-way trunk capacity used to transport traffic. MCI contends that SBC’s objections to this proposal are based on its failure to recognize that (1) MCI is not proposing to use an RUF to bill for interconnection *facilities* (*i.e.*, the cable, fiber or other physical elements on which trunks ride); (ii) MCI is not proposing to use a RUF to bill for transport provided over one-way trunks; and (iii) MCI is not proposing to use a RUF to alter the rates applicable to two-way trunks. Rather, MCI explains, the RUF is merely a method by which to apportion the costs a party would otherwise incur based on its use of a two-way trunk to transport traffic originating on its network.

SBC replies that MCI's RUF proposal is intended to improperly shift costs to SBC. The 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. While the F.C.C. 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, SBC asserts that that language applies to facilities and not to trunking. In addition, SBC contends that the *Triennial Review Order* now limits dedicated transport to transmission facilities connecting the incumbent LEC switches and wire centers within a

⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 at ¶ 1062.

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.⁸

The Commission is of the opinion, for the reasons stated by SBC, that SBC's language is preferable and should be adopted.

4. UNE Issues.

MCI UNE Issue 2: Which parties' definition of Lawful UNE should be included in the Agreement?

SBC states that this issue involves the substitution of the phrase "Section 251(c)(3) UNE" for the phrase "lawful UNE." SBC contends that the Arbitrator "made clear that SBC Missouri's language would be accepted if SBC Missouri agreed to change the term 'lawful UNE' to 'Section 251(c)(3) UNE.'"⁹ SBC states that it has made that change. Nonetheless, SBC complains, MCI 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."

MCI responds that this dispute involves Section 1.1 of the UNE Attachment. MCI is proposing the underlined language in this section to give effect to the Commission's order regarding § 271 elements. Further, SBC's language on this issue is not consistent with the Arbitrator's Report with regard to this issue. The only change proposed by MCI for Section 1.1 is adding the underlined language referencing § 271 elements, which is consistent with, and gives effect to, the Commission's holding on that issue. MCI has

⁸ 28 McPhee Direct, pp. 60-61.

⁹ 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."

agreed to SBC's use of the term "Section 251(c)(3) UNEs," yet SBC refuses to agree to MCI's language that clarifies that there are additional obligations placed on SBC.

The Commission concurs with MCI that its language is more appropriate because, indeed, there *are* additional obligations placed on SBC. The parties shall incorporate MCI's language into their agreement.

5. Pricing Issues.

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

SBC's Statement of the Issue: *Should the price schedule include rates for any level of entrance facility?*

SBC states that the Final Arbitrator's Report shows that the only items involved here are from lines 509-545 of the SBC Missouri/MCI Pricing Schedule.¹⁰ The issue between the parties, however, involves lines 546-561 of the SBC Missouri/MCI Pricing Schedule which deal with voice grade transport. As SBC 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.¹¹

MCI responds that the rates at issue are for Dedicated Transport—Interoffice Transport, which are noted on lines 546-561 of the Pricing spreadsheet. MCI points out that the Final Arbitrator's Report did not specifically mention lines 546-561; however, these lines were noted in the joint DPL filed with the Commission. MCI's proposed rates for lines 546-561 (Dedicated Transport—Interoffice Transport) are found in Attachment 2 of the

¹⁰ Final Arbitrator's Report, Section IV, p. 33.

¹¹ SBC Missouri's Post-Hearing Brief, pp. 281-282.

Commission's Order in Case No. TO-2005-0037.¹² These particular rates are found on lines 216-231 of Attachment 2 of that order.

The Commission concurs with SBC. It is not appropriate to include these rates in the UNE Pricing Appendix.

B.

Approval of the Arbitrated Interconnection Agreement

Section 252(e) of the Telecommunications Act provides:

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject -

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that –

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant

¹² *In the Matter of the Determination of Prices, Terms, and Conditions of Certain Unbundled Network Elements: Consideration upon Remand from the United States District Court, Case No. TO-2005-0037 (December 28, 2004, eff. January 7, 2005).*

to section 251 of this title, or the standards set forth in subsection (d) of this section.¹³

Under § 252(e)(1) of the Act, every interconnection agreement must be submitted to the Commission for approval. The Commission may reject a negotiated agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity. The Commission may reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. In the present case, it is the latter standard that applies.

Findings of Fact:

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the conformed interconnection agreement, as modified herein by the Commission, and Staff's recommendation. Based upon that review, the Commission concludes that the parties' agreement conforms to the Commission's Arbitration Order of July 11. The Commission finds that approval of the agreement should be conditioned upon the parties submitting a serially-numbered copy of the agreement and submitting any amendments to the Commission for approval pursuant to the procedure set out below.

¹³ Subsection (d) contains pricing standards.

Amendment Procedure:

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.¹⁴ In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize amendments to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.¹⁵ This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.¹⁶

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all amendments, in the Commission's offices. Any proposed amendment must be submitted pursuant to Commission Rule 4 CSR 240-3.513(6).

Conclusions of Law:

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of § 252(e) of the Telecommunications Act of 1996,¹⁷ is required to review interconnection agreements. It may only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251

¹⁴ 47 U.S.C. § 252.

¹⁵ 47 U.S.C. § 252(h).

¹⁶ 4 CSR 240-3.545.

¹⁷ 47 U.S.C. § 252(e)(1).

of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. Based upon its review of the agreement between SBC and MCI, and Staff's Memorandum and Recommendation, the Commission concludes that the agreement meets the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations and the pricing standards at § 252(d) of the Act, and should therefore be approved.

IT IS THEREFORE ORDERED:

1. That the parties shall adopt the modifications to their interconnection agreement described above.

2. That the Interconnection Agreement of Southwestern Bell Telephone, L.P., doing business as SBC Missouri, MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, L.L.C. ("MCI"), filed on August 3, 2005, is approved as modified above.

3. That any changes or amendments to this Interconnection Agreement shall be submitted to the Commission for approval in compliance with Commission Rule 4 CSR 240-3.513(6).

4. That no later than noon, August 9, 2005, the parties shall submit a copy of the modified Interconnection Agreement to the Staff of the Missouri Public Service Commission, with the pages sequentially numbered. On the same date, the parties shall file a notice in the official case file advising the Commission that they have complied with this order.

5. That this order shall become effective on August 10, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to Section 386.240,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of August, 2005.