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June 28, 2005

VIA HAND DELIVERY

Hon Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*
Docket No 04-00381

Dear Chairman Miller

On May 23, 2005, Cinergy filed a Motion for Clarification relying in part on a decision from the Public Utility Commission of Texas finding that SBC, the regional Bell Operating Company in Texas, should continue to provision UNE-P lines to the CLECs' embedded customer base [1]

This is to notify the Authority that on June 17, 2005, the Texas Commission revised its prior, interim decision on this issue The Texas Commission has now concluded that, " in accordance with the context provided under the TRO and TRRO, the term "embedded customer base" should be read to grandfather only the existing lines of existing customers, and to disallow the growth of UNE-P lines "[2] Fifteen copies of the June 17, 2005 Order are attached

A copy of this letter has been provided to counsel of record

Very truly yours,

Guy M. Hicks

GMH:nc

[1] See page 4 of Cinergy's Motion for Clarification

[2] See page 24 of Arbitration Award-Track 2 Issues, in PUC Docket No 28821 entered, June 17, 2005

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P.U.C. DOCKET NO. 28821

ARBITRATION OF NON-COSTING ISSUES FOR SUCCESSOR INTERCONNECTION AGREEMENTS TO THE TEXAS 271 AGREEMENT	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS

ARBITRATION AWARD—TRACK II ISSUES

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P.U.C. DOCKET NO. 28821

ARBITRATION OF NON-COSTING ISSUES FOR SUCCESSOR INTERCONNECTION AGREEMENTS TO THE TEXAS 271 AGREEMENT	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ARBITRATION AWARD—TRACK II ISSUES

This Arbitration Award for Track II issues establishes the terms and conditions for the successor interconnection agreements to the Texas 271 Agreement (T2A) originally adopted by the Public Utility Commission of Texas (Commission or PUC) in October 1999.[1] In this Track II Award, the Commissioners, acting as Arbitrators, address a number of issues, primarily related to the provisioning of unbundled network elements (UNEs).

Southwestern Bell Telephone Company, L.P. d/b/a SBC Texas (SBC Texas) and each competitive local exchange carrier (CLEC) that has requested arbitration in this proceeding pursuant to § 252 of the Federal Telecommunications Act of 1996[2] shall incorporate the decisions approved in this Award, including the Award matrix.

I. JURISDICTION

If an incumbent local exchange carrier (ILEC) and CLEC cannot successfully negotiate rates, terms, and conditions in an interconnection agreement (ICA), FTA § 252(b)(1) provides that either of the negotiating parties "may petition a State commission to arbitrate any open issues." The Commission is a state regulatory body responsible for arbitrating ICAs pursuant to the FTA. The Commission has determined that because the Federal Communications Commission (FCC) has "occupied the field" with respect to the issue of whether unbundled local

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[1] *See Investigation Into Southwestern Bell Telephone Company's Entry Into In-Region Interlata Service Under Section 271 of the Telecommunications Act of 1996*, Docket No. 16251, Order No 55 (Oct. 13, 1999).

[2] Telecommunications Act of 1996, Pub L No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U S C) (FTA)

switching is impaired on a national basis,[3] state law is no longer operative with respect to the issue of whether unbundled local switching will be made available at TELRIC rates. Accordingly, consistent with the Commission's discussion at the Open Meeting of February 24, 2005, arguments relating to unbundling obligations under state law were deemed outside the scope of Track II of this proceeding.[4]

II. PROCEDURAL HISTORY

At the October 23, 2003, Open Meeting, the Commission granted requests to sever the non-costing issues from Docket No. 28600[5] into another proceeding, thereby creating this docket.[6] Further, the Commission granted the request of certain CLECs[7] that issues regarding charges for suspend/restore orders remain on the same procedural schedule as the costing issues in Docket No. 28600.[8]

On January 23, 2004, pursuant to Order No. 1 in this proceeding, the following parties individually filed petitions for arbitration to actively participate in the non-costing phase: Denton Telecom Partners, I, L.P. d/b/a Advantex Communications (Advantex); Navigator Telecommunications, LLC (Navigator),[9] Birch Telecom of Texas, Ltd., LLP and ionex

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[3] *See generally Unbundled Access to Network Elements* and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-388 and CC Docket No. 01-388, Order on Remand, FCC 04-290 at paras. 187, 196, 199, 204, 209, 218, and 222 (Feb 4, 2005) (*Triennial Review Remand Order* or *TRRO*)

[4] Open Meeting Tr at 155 (Feb 24, 2005)

[5] *Arbitration of Phase I Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28600.

[6] *See Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 (pending).

[7] Competitive Communications Group consists of AccuTel of Texas, LP, BasicPhone, Inc ; BroadLink Telecom, LLC; Capital 4 Outsourcing, Inc ; Cutter Communications, Inc d/b/a GCEC Technologies; Cypress Telecommunications, Inc ; Express Telephone Services, Inc.; Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc d/b/a Get A Phone, Habla Communicaciones, Inc.; IQC, LLC; National Discount Telecom, LLC, Quick-Tel Communications, Inc.; Rosebud Telephone, LLC; PhoneCo, LP; Smartcom Telephone, LLC, and WesTex Communications, LLC d/b/a WTX Communications. With the addition of DPI Teleconnect, LLC and Tex-Link Communications, Inc., CCG is the same as CJP.

[8] Open Meeting Tr at 128-40, 193-95 (Oct. 23, 2003).

[9] Navigator Telecommunications, LLC consists of Stratos Telecom, Inc., Comcast Phone of Texas, LLC, Heritage Technologies, Ltd and FamilyTel of Texas, LLC

Communications South, Inc. (Birch/ionex); CLEC Joint Petitioners;[10] MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., Intermedia Communications, Inc., and Brooks Fiber Telecommunications of Texas, Inc. (collectively MCI); AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. (collectively AT&T); CLEC Coalition,[11] Sage Telecom of Texas, LP (Sage);[12] and SBC Texas.[13]

On February 23, 2005, the Commission issued the Arbitration Award for Track I issues in this docket. In the Track I Award, the Commissioners, acting as Arbitrators, addressed a number of issues including interconnection, reciprocal compensation, general terms and conditions, and performance measures. The procedural history for Track I issues is referenced here and detailed in the Track I Arbitration Award.[14] On February 25, 2005, the Commission issued Order No. 38, establishing a procedural schedule and scope of proceedings.

On February 25, 2005, in Order No. 39, the Commission issued an interim agreement amendment to govern parties' contractual relationships for the period of March 1 through July 31, 2005.[15] In issuing this interim agreement amendment, the Commission found this action

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[10] CLEC Joint Petitioners consists of AccuTel of Texas, LP, BasicPhone, Inc., BroadLink Telecom, LLC, Capital 4 Outsourcing, Inc., Cutter Communications, Inc. d/b/a GCEC Technologies, Cypress Telecommunications, Inc , DPI Teleconnect, LLC, Express Telephone Services Inc , Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc., d/b/a Get A Phone, Habla Comunicaciones, Inc., IQC, LLC, National Discount Telecom, LLC, Quick-Tel Communications, Inc., Rosebud Telephone, LLC, PhoneCo, LP, Smartcom Telephone, LLC, Tex-Link Communications, Inc., and WesTex Communications, LLC d/b/a WTX Communications.

[11] CLEC Coalition consists of AMA Communications, LLC d/b/a AMA*TechTel Communications, Cbeyond Communications of Texas, LP, ICG Telecom Group, Inc., KMC Telecom Holdings, Inc. on behalf of its certificated entities, KMC Telecom III, LLC, KMC Data, LLC and KMC Telcom V, Inc., d/b/a KMC Network Services, Inc., McLeodUSA Telecommunications Services, Inc., nii Communications Ltd., NTS Communications, Inc , Time Warner Telecom of Texas, LP, XO Texas, Inc., Xspedius Communications, Inc., and Z-Tel Communications, Inc , Carrera Communications, LP, Westel, Inc OnFiber Communications, Inc., Ypes Enterprise Services, Inc., WebFire Communications, Inc.

[12] On April 26, 2004, Sage filed a request to withdraw its petition. Order No. 14 granted Sage's petition to withdraw on May 18, 2004.

[13] SBC Texas filed an Omnibus Petition for Arbitration with all CLECs whose interconnection agreements expired on October 13, 2003 or would soon expire. SBC listed the applicable CLECs in an appendix to the petition *See* SBC Texas's Omnibus Petition for Arbitration, Appendix A at 15-20 (Jan. 23, 2004).

[14] *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Arbitration Award—Track 1 Issues (Feb 23, 2005)

[15] The July 31, 2005, deadline is the date under the current proposed procedural schedule by which parties expect to have completed this docket and executed replacement contracts

necessary to prevent a lapse in the parties' contracts that could affect telecommunications services to end-user customers pending the completion of this docket.

On March 7, 2005, Joint CLECs filed an emergency motion for resolution of disputes related to implementation of Order No. 39. AT&T and MCI filed companion requests that the Commission provide to them the same relief requested in CLECs' emergency motion for resolution of disputes. SBC responded on March 9, 2005, to CLECs' joint emergency motion concerning Order No. 39.

On March 16, 2005, the Commission issued an Order on Clarification regarding the Interim Agreement Amendment applicable to the T2A and T2A-based interconnection agreements between SBC Texas and CLECs. The Commission clarified its intent that, as used in sections 1.3.1 and 1.3.2 of the Interim Agreement Amendment,[16] "embedded base" or "embedded customer-base" refers to existing *customers*, rather than to existing *lines*. The Commission noted that Track II of this proceeding would address the conflicting interpretations of "embedded customer-base." However, the Commission required SBC Texas to provision new lines to existing customers and to move lines of existing customers until a final determination of this issue. The Commission also determined that Track II or a subsequent proceeding would address any price differences for which SBC Texas may seek true-up.

In accordance with the procedural schedule, as amended by Order Nos. 40 and 41, parties filed their direct testimony on March 28, 2005, with rebuttal testimony filed on April 11, 2005. On April 12-14, 2005, the parties filed their proposed Decision Point Lists (DPL). The Commissioners sat as arbitrators for the hearing on the merits on April 21-22, 2005. Parties filed initial post-hearing briefs filed on May 9, 2005 and reply briefs on May 16, 2005. On May 10, 2005, in Order No. 40, the Commission required the parties to file their resolved contract language

[16] Order No 39, Issuing Interim Agreement Amendment at 7 (Feb. 25, 2005)

III. Relevant State and Federal Proceedings

Relevant Commission Decisions

SWBT Mega-Arbitration Awards

The FTA became effective in February 1996. Soon thereafter, several proceedings—collectively referred to as the Mega-Arbitrations—were initiated and consolidated for the purpose of arbitrating the first interconnection agreements in Texas under the new federal statute. The first Mega-Arbitration Award, issued November 1996, in Docket No. 16189, established rates for interconnections, services, and network elements in accordance to the standards set forth in FTA § 252(d).[17] Interim rates were established and SBC Texas was ordered to revise its cost studies. The Second Mega-Arbitration Award, issued December 1997 in Docket No. 16189, approved cost studies and established permanent rates for local interconnection traffic.[18]

Texas 271 Agreement "T2A"

After a series of "collaborative work sessions" between SBC Texas and CLECs, the Commission approved the T2A on October 13, 1999. As a condition of receiving approval pursuant to FTA § 271 to provide long-distance services within the state, SBC Texas agreed to offer this standard interconnection agreement to all CLECs for a period of four years.[19] Among other things, the T2A established prices, terms and conditions for resale, interconnection, and the use of UNEs. The T2A retains the rates from the Mega-Arbitrations except for the collocation rates developed in a separate proceeding, Docket No. 21333.[20] Pursuant to FTA § 252(i), the majority of the CLECs in Texas subsequently opted into the T2A.

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[17] *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc and Southwestern Bell Telephone Company,* Docket No 16189, *et al*, Award (Nov. 8, 1996) (*First Mega-Arbitration Award*)

[18] *Petition of MFS Communications Company, Inc for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No 16189, *et al.*, Award (Dec. 19, 1997) (*Second Mega-Arbitration Award*).

[19] Certain sections of the T2A expired October 13, 2001; others expired October 13, 2003

[20] *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*, Docket No. 21333, Order Approving Revised Arbitration Award (June 7, 2001).

Docket No. 21982

In Docket No. 21982,[21] the Commission sought to resolve reciprocal compensation issues involving the T2A. The Commission solicited participation by carriers that had T2A agreements expiring around January of 2000 or that had selected the first or third reciprocal compensation option of Attachment 12.[22] In Docket No. 21982, the Commission established the following bifurcated compensation rate for both local voice traffic and local ISP-bound traffic: $0.0010887 per call + $0.0010423 per minute.[23] In addition, the Commission found that reciprocal compensation arrangements applied to calls originating from and terminating to an end-user within a mandatory single or multi-exchange local calling area. However, the Commission did not resolve foreign-exchange (FX) issues.[24]

Docket No. 24015

In Docket No. 24015, the Commission considered FX issues and determined that the compensation method in the *ISP Remand Order*[25] applied to all traffic bound for ISPs.[26] In addition, the Commission clarified that while the *ISP Remand Order* established a $0.0007 per minute cap for compensation of ISP-bound traffic, the *ISP Remand Order* also contemplated that a state commission may have ordered LECs to exchange traffic on a bill and keep basis or may have otherwise not required payment of compensation (effectively bill and keep).[27] Given that the Commission had set a rate for only local ISP-bound traffic in Docket No. 21982, the Commission found that bill and keep applied to ISP-bound FX traffic.

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[21] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982.

[22] Docket No. 21982, Order No 1 Order Regarding Proceeding, Requesting Statements of Position at 1 (Jan. 14, 2000).

[23] Docket No 21982, Revised Arbitration Award at 53 (Nov. 15, 2000).

[24] *See* Docket No. 21982, Order Approving Revised Arbitration Award, as Modified, and Approving Implementing Language at 5 (Nov 15, 2000) and Revised Arbitration Award at 18 n 59 (Nov. 15, 2000).

[25] *Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (Apr 27, 2001) (*ISP Remand Order*).

[26] *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for "FX-Type" Traffic against Southwestern Bell Telephone Company,* Docket No 24015, Order on Reconsideration (Nov. 4, 2004).

[27] Docket No. 24015, Order on Clarification (Jan 5, 2005).

Docket No. 28821--Track I Issues

Single Point of Interconnection v. Multiple Points of Interconnection

In Docket No. 28821, Track I, the Commission found that a single point of interconnection (POI) should only be used as a market entry mechanism. The Commission previously ruled on this issue in Docket Nos. 21791 and 22441.[28] Consistent with prior Commission decisions, the Commission found that CLECs may establish a single point of interconnection within SBC Texas's network per LATA, but only as a market entry mechanism. The Commission further concluded that CLECs shall establish additional POIs when traffic exceeds 24 DS1s. On the issue of distant POI and expensive form of interconnection, the Commission found that each party must bear the costs of transporting their own originating traffic to whatever POI(s) that AT&T may select within a given LATA.[29]

Tandem Switching v. Direct End-Office Trunking

The Commission found that tandem exhaust, cost, network integrity and ability to serve multiple CLECs together suggest that CLECs should establish direct end office trunking (DEOT) once the parties exchange traffic in excess of one DS1.[30] Therefore, the Commission concluded that CLECs must establish DEOTs when a CLEC's traffic from a POI to an end office located in the same local calling area exceeds 24 DS0s (one DS1).

Points of Interconnection at Customer Premises and Outside Plant

The Commission concluded that the ILEC's network did not include entrance facilities (regardless of whether for interconnection or for unbundled access to network elements) and therefore TELRIC rates did not apply.

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[28] *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom Communications, Inc Pursuant to Section Section 251 (b)(1) of the Federal Telecommunications Act of 1996,* Docket No. 21791, Arbitration Award (May 26, 2000); Docket No. 21791, Order Approving Interconnection Agreement (Sept. 20, 2000), *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252 as amended by the Telecommunications Act of 1996, and PURA for rates, terms and conditions with Southwestern Bell Telephone Company*, Docket No 22441, Arbitration Award (Aug. 11, 2000).

[29] Docket No 28021, Arbitration Award (June 24, 2004)

[30] *See* Direct Testimony of Carl C. Albright, Jr, SBC Texas Ex. 1 at 34-35, Rebuttal Testimony of Carl C Albright, Jr, SBC Texas Ex 2 at 21-23, Rebuttal Testimony of Thomas Mark Neinast, SBC Texas Ex. 29 at 11.

Combining Traffic

The Commission found no changes in law or circumstance to support SBC Texas's proposed change to existing T2A provisions which allow multi-jurisdictional traffic on the same trunk. Further, the Commission recently addressed this issue in the context of 00/VAD calls in Docket No. 24306, where the Commission found that traffic combination was limited to local, intrastate intraLATA, and intrastate interLATA traffic.[31] Therefore, the Commission declined to modify existing T2A contract language on this issue.

One Way v. Two-Way Trunks

The Commission found that one-way trunks were less efficient than two-way trunk groups. The Commission noted that using two-way trunk groups reduced the total number of trunks required to carry a particular traffic load.[32] Furthermore, two-way trunk groups provided the maximum flexibility to carry calls placed in either direction.[33] Carriers must equitably share the cost of transport facilities in proportion to the originating carrier's traffic.[34] If parties negotiate to have a mid-span fiber meet, the parties shall also negotiate the cost of transport for two-way trunking.

Tandem Switching Rate

The Commission found that a CLEC employing a multiple-function switch is not entitled to the full tandem interconnection rate on every call terminated on its switch. The FCC's tandem rate rule requires a CLEC to demonstrate that it serves a geographic area comparable to the area served by an ILEC tandem before the CLEC may charge the full tandem interconnection rate.[35] The Commission further found that a CLEC employing a multiple function switch is adequately compensated by applying the blended transport rates determined in Docket No. 21982.

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[31] *Petition of Sprint Communications Company, L P dba Sprint for Arbitration with Verizon Southwest, Inc (f/k/a GTE Southwest, Inc) d/b/a Verizon Southwest and Verizon Advanced Data Inc., under the Telecommunications Act of 1996 for Rates, Terms, and Conditions and related arrangements for Interconnection,* Docket No 24306, Amended Final Order at 4 (May 14, 2004)

[32] *See* Direct Testimony of Thomas Mark Neinast (Track I), SBC Texas Ex. 28 at 37-38.

[33] *See* Direct Testimony of Thomas Mark Neinast (Track I), SBC Texas Ex. 28 at 38

[34] *See* 47 C F.R § 51 709(b).

[35] *Local Competition Order* at para 1090.

Moreover, the Commission found that it is appropriate to continue to apply this method for determining the T2A's current tandem interconnection rate.[36]

Bill and Keep Thresholds

The Commission found it appropriate to apply traffic balance thresholds for carriers that enter into a long-term bill and keep option for reciprocal compensation. The Commission further found the threshold SBC Texas had proposed, where traffic is considered to be out-of-balance when the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months, is reasonable and is comparable with to the thresholds contained in the existing ICA.[37] The Commission declined to adopt SBC Texas's proposal for an additional threshold based on the difference in minutes of use (MOU) between the carriers.

Compensation for FX Traffic

The Commission found bill and keep to be the appropriate method of inter carrier compensation for voice FX traffic. The Commission noted that it recently ruled that bill and keep is the appropriate method of inter carrier compensation for ISP-bound FX traffic in Docket No. 24015.[38] Therefore, a bill and keep inter carrier compensation scheme for voice FX-traffic will create a consistent inter carrier compensation method for both FX-ISP and FX-voice traffic.

Segregation of FX-Traffic

The Commission found that the use of ten-digit screening to track FX-like traffic at this time could prove uneconomical, considering that the FCC could implement inter carrier compensation rules that may obviate the need to track FX-type traffic. Accordingly, the Commission found that the agreement shall not mandate the use of 10-digit screening. Instead a PFX usage factor should apply, unless agreed otherwise.

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[36] Direct Testimony of Charles D. Land (Attachment 12. Compensation) (Track I), CLEC Joint Petitioners Ex 1 at 12-15.

[37] T2A Interconnection Agreement, Appendix 12A, Sec 1 6 1.

[38] Docket No 24015, Order on Clarification (Jan 5, 2005)

Resale

The Commission found that the TELRIC-based charge for the electronic processing of "resale service orders" and the application of the avoided-cost discount to underlying resold telecommunications services, such as suspension and restoral service, are distinctly separate matters and must be compensated according to applicable FCC rules and regulations. Consistent with the decision in Docket No. 24547, the Commission reaffirmed that the TELRIC-based $2.58 charge continued to apply to electronically-processed *service orders* for resold telecommunications services (as opposed to tariff service order charge(s) less the avoided-cost discount). However, this does not mean that TELRIC-based charges apply to the underlying, resold telecommunications services themselves. Instead, the 21.6% avoided-cost discount applies to all resold telecommunications services in SBC Texas's retail tariff and embodies the wholesale rate at which SBC Texas must offer suspension/restoral services for resale. The Commission further found that because the terms of SBC Texas's retail tariff only provide for a charge for the suspension/restoral service itself, and does not include a separate service order charge for suspension/restoral service, a service order charge did not apply to orders for suspension/restoral service.

Definition of "End-User" and "End-User Customer"

The Commission found that the ICA should include a definition of "End User" or "End User Customer." The Commission found that the term "end user" is essential in defining the network element known as the local loop (or loop) defined by 47 C.F.R. § 51.319(a)(1) as "the transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point, at an end user premises, including inside wire owned by the incumbent LEC." The use of the term "end user" is critical for distinguishing UNE loops from other UNEs and other network elements that provide transmission paths between end points not associated with end users, such as interoffice transport. In addition, the FCC's *Supplemental Order Clarification* specifically used the term "end user" in defining the local use requirements for obtaining EELs.[39] However, nothing prohibits an IXC, CAP or

[39] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No 96-98, Supplemental Order Clarification, FCC 00-183 at para. 22 (June 2, 2000) (*Supplemental Order Clarification*)

CMRS provider or other carrier from being an end-user to the extent that such carrier is the ultimate retail consumer of the service (e.g., a CLEC provides local exchange service to an IXC at its administrative offices). In other words, a carrier is an end user when actually consuming the retail service, as opposed to using the service as an input to another communications service.

Remedy Plan

The Commission found that a performance remedy plan is essential to the successful implementation of performance measures. In particular, as outlined in the Order Addressing Threshold Issues[40] in this docket, the Commission found that it has the authority under FTA §§ 251 and 252 to arbitrate a self-executing performance remedy plan.

Relevant FCC Decisions

Local Competition Order

In the *Local Competition Order,*[41] the FCC implemented FTA §§ 251 and 252. The FCC identified UNEs that ILECs must make available to competitors and established minimum requirements for nondiscriminatory interconnection and collocation arrangements.

UNE Remand Order

In late 1999, the FCC issued the *UNE Remand Order* in response to the Supreme Court's January 1999 decision,[42] which directed the FCC to reevaluate the unbundling obligations established by FTA § 251.[43] The Court required the FCC to revisit its application of the "necessary" and "impair" standards in FTA § 251(d)(2).[44] In applying the "necessary" and "impair" standard to individual network elements, the FCC made certain critical determinations.

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[40] Order Addressing Threshold Issues (Apr. 16, 2004).

[41] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325 (Aug. 8, 1996) (*Local Competition Order*)

[42] *AT&T Corp. v Iowa Utilities Board,* 525 U.S 366 (1999) (*Iowa Utils Bd*).

[43] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (Nov. 5, 1999) (*UNE Remand Order*)

[44] *Id* at para. 1.

Among them, the FCC modified the definition of the loop network element to include all features, functions, and capabilities of the transmission facilities between an ILEC's central office and the loop demarcation point at the customer premises.[45]

ISP Remand Order

The *ISP Remand Order* established a $0.0007 per minute of use cap for compensation of ISP-bound traffic.[46] In conjunction with the $0.0007 cap, the FCC established the "mirroring rule," which requires incumbent LECs to pay the same rate for ISP-bound traffic that they receive for section 251(b)(5) traffic.[47] The *ISP Remand Order* also contemplated that a state commission may have ordered LECs to exchange traffic on a bill and keep basis or may have otherwise not required payment of compensation (effectively bill and keep). The FCC clarified that "because the rates set forth above are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic)."[48]

Virginia Arbitration Decision

In 2002, the FCC's Wireline Bureau, acting on delegated authority on behalf of the State of Virginia, issued a decision in a compulsory arbitration between Verizon and several CLECs. That decision addressed many key issues, including certain issues on interconnection and reciprocal compensation.[49] This Commission has recognized at least one decision in the *Virginia Arb* as on-point in a recent case. In that case, the Commission applied the *Virginia Arb's* holding

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[45] *UNE Remand Order* at n. 301, (revised definition retains the definition from the *Local Competition Order*, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions, and capabilities" of the loop).

[46] *ISP Remand Order* at paras 8 and 78.

[47] *Id* at paras. 8 and 89.

[48] *Id* at para. 80.

[49] *Petition of Worldcom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration,* CC Docket Nos. 00-218, 00-249, and 00-251, DA-02-1731 (July 17, 2002) (*Virginia Arb)*

to an issue involving reciprocal compensation costs for transporting traffic to the point of interconnection.[50]

In regard to several issues in this proceeding, the parties cited the *Virginia Arb* as precedent that the Commission should follow in making its decisions. The Commission recognizes that no party fully endorses complete deferral to the *Virginia Arb*, as parties have found distinguishing factors for reaching different conclusions than those in the *Virginia Arb*. In deciding the issues in the current proceeding, the Commission finds that the *Virginia Arb* is persuasive, but not binding, authority.[51] The FCC's Wireline Bureau (in place of the Virginia State Corporation Commission) arbitrated an interconnection agreement for parties in the state of Virginia in the same way that this Commission now arbitrates an interconnection agreement for parties in the state of Texas. Consequently, the Wireline Bureau played the role of a state commission in the *Virginia Arb*. In the more than two years since the issuance of the *Virginia Arb*, the industry has changed significantly. Therefore, because the parties have presented issues in this arbitration that this Commission has previously addressed, the Commission finds that following its own prior decisions in those instances better reflects circumstances specific to this state not otherwise considered in the *Virginia Arb*.

Triennial Review Order

In the *Triennial Review Order*, the FCC determined what elements ILECs must offer on an unbundled basis. The FCC required unbundled access to: mass market loops, certain subloops, network interface devices (NIDs), switching for mass market and OSS functions.[52] The FCC did not require unbundled access to: enterprise market loops, switching for enterprise

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[50] *See Southwestern Bell Tel Co v PUC*, 348 F 3d 482 (5th Cir. 2003), *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc Pursuant to Section 252(B)(1) of the Federal Telecommunications Act of 1996*, Docket No 22315, Order Approving Revised Arbitration Award (Mar. 14, 2002).

[51] The Commission notes that federal courts have held that arbitration awards do not constitute binding precedent For example, the Fourth Circuit stated that "arbitration awards have no precedential value." *Peoples Sec. Life Ins Co v Monumental Life Ins Co*, 991 F 2d 141, 147 (4th Cir. 1993). The Fifth Circuit noted that "Courts are not bound by arbitral rulings, nor are the arbitrators themselves obliged to follow the rule of *stare decisis*." *Smith v Kerrville Bus. Co.*, 709 F.2d 914, 918 n.2 (5th Cir.1983).

[52] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996,* and *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket Nos 01-388, 96-98, 98-147, Order, FCC 03-36 at para. 7 (Aug 21, 2003) (*Triennial Review Order* or *TRO*).

market, packet switching.[53] Under certain conditions, the FCC required unbundled access to: transport, signaling networks and call-related databases.[54] In addition, the FCC redefined the dedicated transport network element as those "transmission facilities that connect incumbent LEC switches or wire centers."[55] The FCC found that facilities outside of the ILEC's local network should not be considered part of the dedicated transport network element subject to unbundling.[56] Accordingly, the FCC observed that "[o]ur determination here effectively eliminates 'entrance facilities' as UNEs . . . ."[57] The FCC also noted that section 271(c)(2)(B) established an independent obligation for ILECs to provide access to loops, switching, transport, and signaling, regardless of any unbundling analysis under section 251.[58] The D.C. Circuit vacated and/or remanded portions of the *Triennial Review Order* in *USTA II.*[59]

Interim UNE Order

The FCC's *Interim UNE Order*[60] required ILECs, on an interim basis, to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under existing interconnection agreements as of June 15, 2004.[61] The FCC recognized that "by freezing in place carriers' obligations as they stood on June 15, 2004, we are in many ways preserving contract terms that *predate* the vacated rules."[62] These rates, terms, and conditions apply until the effective date of the FCC's final unbundling rules or March 13, 2005 (six months after Federal Register publication of the *Interim UNE Order*), except to the extent superseded by: (1) negotiated agreements, (2) an intervening FCC order, or (3) a state commission order raising the rates for UNEs.[63] After the initial six

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[53] *Triennial Review Order* at para. 7

[54] *Id* at para 7.

[55] *Id* at para. 7

[56] *Id* at para. 366

[57] *Id* at para. 366 n 1116

[58] *Id* at para. 7.

[59] *United States Telecom Ass'n v FCC*, 359 F 3d 554 (D C. Cir. 2004)

[60] *Unbundled Access to Network Elements*, WC Docket No 04-313, Order and Notice of Proposed Rulemaking, FCC 04-179 (Aug 20, 2004) (*Interim UNE Order*)

[61] *Interim UNE Order* at para 29

[62] *Id* at para. 23

[63] *Id* at para. 23

months, in the absence of the FCC subjecting particular UNEs to unbundling, those elements would still be made available to serve existing customers for a subsequent six-month period, but at higher rates.[64]

Triennial Review Remand Order

On February 4, 2005, the FCC issued the *Triennial Review Remand Order* in response to the remand of the *Triennial Review Order* from the D.C. Circuit. The *Triennial Review Remand Order* addressed the unbundling of network elements, including dedicated interoffice transport, high-capacity loops and mass market local circuit switching. The *Triennial Review Remand Order* also addressed the conversion of special access circuits to UNEs and the implementation of the unbundling determinations.

Relevant Court Decisions

Iowa Utilities Board v. FCC Cases (Iowa I and Iowa II)

In *Iowa I,* the Eighth Circuit Court of Appeals ruled that the FCC lacked jurisdiction to issue rules regarding the wholesale prices an ILEC could charge competitors to use its facilities to provision local telephone service.[65] The Supreme Court reversed the Eighth Circuit, holding that the FCC did have jurisdiction to design a pricing methodology.[66] On remand in *Iowa II*, the Eighth Circuit held, in relevant part, that FTA § 252(d)(1) does not permit costs to be based on a hypothetical network.[67] However, on appeal of *Iowa II*, the Supreme Court held that under section 252(d)(1) of the FTA, the FCC can require state utility commissions to set rates charged by ILECs for lease of network elements to CLECs on a forward-looking basis untied to historical or past investment.[68] In addition, the Supreme Court found that the total element long run incremental cost (TELRIC) methodology chosen by the FCC to set rates for lease of network elements to CLECs is not inconsistent with the FTA (TELRIC calculates the forward-looking

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[64] *Interim UNE Order* at para. 23.

[65] *Iowa Utils Bd v FCC*, 120 F 3d 753, 793-800 (8th Cir. 1997) (*Iowa I*)

[66] *AT&T Corp v Iowa Utils Bd*, 525 U.S 366, 385 (1999)

[67] *Iowa Utils Bd v. FCC*, 219 F.3d 744, 751-752 (8th Cir. 2000) (vacating 47 C.F.R § 51.505(b)(1)) (*Iowa II*)

[68] *Verizon Communications, Inc v. FCC*, 535 U.S 467, 498-501 (2002).

cost by reference to a hypothetical, most efficient element at existing wire-centers, not the actual network element being provided).[69]

USTA I

In *USTA I*,[70] the D.C. Circuit considered the *Line Sharing Order*[71] and the *Local Competition Order* and remanded both to the FCC for further review. The D.C. Circuit disagreed with the FCC's impairment standard for determination of UNEs under the *Local Competition Order*, holding that the FCC did not differentiate between cost disparities between new entrants and incumbents.[72] The D.C. Circuit also objected to broad unbundling standards in markets that did not track relevant market characteristics and capture significant variation between markets.[73] The D.C. Circuit also reversed the FCC's unbundling of the high-frequency portion of the loop under the *Line Sharing Order*, finding that the FCC had failed to adequately consider intermodal competition from cable providers.[74]

USTA II

In *USTA II*,[75] the follow-up case to *USTA I*, the D.C. Circuit addressed the *Triennial Review Order* and again, remanded a majority of that order to the FCC for further consideration. In large part, the D.C. Circuit found that the FCC lacked authority to subdelegate to the states the nationwide impairment determination. Thus, among other findings, the D.C. Circuit vacated the FCC's decision to order unbundling of mass market switches and its impairment findings with

[69] *Verizon Communications, Inc v FCC*, 535 U.S 467, 501 (2002).

[70] *United States Telecom Ass'n v. FCC*, 290 F. 3d 415, (D C. Cir. 2002) (*USTA I*).

[71] *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No 98-147, Third Report and Order, FCC 99-355 (Dec. 9, 1999)

[72] *USTA I* at 428.

[73] *Id* at 423

[74] *Id* at 429

[75] *United States Telecom Ass'n v FCC*, 359 F 3d 554 (D.C Cir. 2004) (*USTA II*)

respect to dedicated transport elements.[76] The D.C. Circuit also remanded for further consideration the issue of whether entrance facilities are "network elements."[77]

IV. Discussion of Major Issues

This proceeding addresses the issues in the Joint DPL admitted as Joint Exhibits 1-16. The Commission's detailed decisions with respect to each of the DPL issues are attached to this Order, and incorporated herein. Below, the Commission provides an expanded discussion of its decisions on certain major issues presented at hearing or considered globally applicable to the entire ICA.

"Lawful" UNE

The Commission concludes that the term "251(c)(3) UNE" will be used in the ICA to distinguish such UNEs from "declassified" UNEs which are available pursuant to FTA § 271. SBC Texas had proposed the use of the term "Lawful UNEs" to describe situations where SBC Texas must offer "classified" unbundled network elements pursuant to FTA § 253(c)(3). However, the Commission finds that inserting qualifying language such as the term "lawful" causes significant confusion by implying that UNEs requested under a section of the FTA other than 251(c)(3) could be "illegal." As an example, the use of the term "lawful" could create unnecessary conflicts between the language of the ICA and subsequent proceedings undertaken pursuant to the ICA's change of law provision.

On a related issue, the Commission finds that SBC Texas's proposed references to "lawful and effective FCC rules and associated lawful and effective FCC and judicial orders" are similarly confusing. Therefore, the Commission concludes that the proposed language be modified to simply refer to "effective FCC rules and orders." The Commission seeks to avoid any party's unilateral attempts to disregard state and federal decisions or requirements a party may deem inconsistent with the FCC's rules or current law. The Commission will continue to address changed circumstances prospectively in accordance with the specified processes outlined

[76] *USTA II* at 571, 574

[77] *Id* at 586

in the ICA for declassification of UNEs under the *TRO* and *TRRO*, while addressing other potential declassifications pursuant to the ICA's change of law provision approved in Track I.[78]

FTA Section 271

The Commission declines to include terms and conditions for provisioning of UNEs under FTA §271 in this ICA The Commission finds that the FTA provides no specific authorization for the Commission to arbitrate section 271 issues; Section 271 only gives states a consulting role in the 271 application/approval process.[79] ILECs have no implied or express obligation to negotiate section 271 issues in contrast to section 251 issues [the duty to negotiate only applies to the obligations in section 251(b)(1)-(5) and (c)]. Section 251(c)(1) states as follows:

> (1) DUTY TO NEGOTIATE.—The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.[80]

The FTA expressly authorizes only the FCC to enforce section 271 obligations:

> (6) ENFORCEMENT OF CONDITIONS.—
>
> (A) COMMISSION AUTHORITY.—If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—
>
> (i) issue an order to such company to correct the deficiency;
>
> (ii) impose a penalty on such company pursuant to title V; or
>
> (iii) suspend or revoke such approval.
>
> (B) RECEIPT AND REVIEW OF COMPLAINTS.—The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph

[78] Arbitration Award—Track I, Award Matrix, General Terms and Conditions Decision Point List at 13

[79] 47 U S.C § 271(d)(2)(B)

[80] *Id* § 251(c)(1)

> (3). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.[81]

Furthermore, the FCC has held that section 271 elements are priced according to section 201 and 202.[82] The FCC has also stated that:

> "[w]hether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6)."[83]

The Commission notes that this language seems to limit review of section 271 pricing to proceedings at the FCC, as well.

The Supreme Court's decision in *Verizon v. Trinko* indicates that states possess continued oversight of section 271 commitments only when carriers agree to submit to such oversight.

> The FCC's § 271 authorization order for Verizon to provide long-distance service in New York discussed at great length Verizon's commitments to provide access to UNEs, including the provision of OSS. Those commitments are enforceable by the FCC through continuing oversight; a failure to meet an authorization condition can result in an order that the deficiency be corrected, in the imposition of penalties, or in the suspension or revocation of long-distance approval. Verizon also subjected itself to oversight by the PSC under a so-called "Performance Assurance Plan" (PAP). The PAP, which by its terms became binding upon FCC approval, provides specific financial penalties in the event of Verizon's failure to achieve detailed performance requirements. The FCC described Verizon's having entered into a PAP as a significant factor in its § 271 authorization, because that provided "a strong financial incentive for post-entry compliance with the section 271 checklist," and prevented "'backsliding.'"[84]

Based on the foregoing discussion, the Commission has determined that it does not have direct oversight over section 271 network elements. Section 271 network elements are network elements that are either declassified UNEs, or services the ILEC offers as wholesale services, e.g., access services. However, the Commission notes that not including section 271 network

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[81] 47 U S.C § 271(d)(6).

[82] *See Triennial Review Order* at paras 656, 663 and 664

[83] *Id* at para 663.

[84] *Verizon Communications, Inc v Law Offices of Curtis V Trinko, LLP*, 540 U.S. 398, 412-13 (2004) (emphasis added).

elements in the successor ICA in no way relieves the ILEC of its obligations under §251(c)(3) or §271. In particular, as noted below, the Commission has crafted language in the ICA that facilitates the ordering, provisioning and connecting of each part of the network required by a CLEC to provide services to its end user customers, notwithstanding each network element's status as either a section 251(c)(3) UNE or a section 271 network element.

Combining

The Commission emphasizes that SBC Texas must continue to provide UNE combinations. In the *TRO*, the FCC reaffirmed its rules regarding UNE combinations, § 51.315, which the Commission quotes here in its entirety:[85]

> § 51.315 Combination of unbundled network elements.
>
> (a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.
>
> (b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.
>
> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination:
>
> (1) Is technically feasible; and
>
> (2) Would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.
>
> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.
>
> (e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.
>
> (f) An incumbent LEC that denies a request to combine unbundled network elements pursuant to paragraph (c)(2) of this section must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.[86]

[85] See *Triennial Review Order* at para. 573

[86] 47 C.F.R. § 51.315

The Supreme Court upheld the FCC's rules quoted above and stated that these rules "reflect a reasonable reading of the statute, meant to remove practical barriers to competitive entry into local-exchange markets while avoiding serious interference with incumbent network operations."[87]

The *TRO* also obligates the ILEC, upon request, to "perform the functions necessary to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under section 251 (c) (3) of the Act."[88] Section 51.309 (f) states that: "[U]pon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC."

The Commission recognizes that the *TRO* declined to require BOCs to combine two FTA §271 elements.[89] Consistent with the above discussion, however, the Commission rules that SBC Texas shall follow §51.315 regarding combination of two §251 (c) (3) UNEs and also perform the functions to commingle §251 (c) (3) UNEs with other wholesale services consistent with §51.309 (f), as discussed in more detail below.

Commingling

In order to ensure that provisioning of 251(c)(3) UNEs continues smoothly, unimpeded by the price changes under the *TRRO*,[90] the Commission clarifies that SBC Texas must connect (i.e., do the work itself) any 251(c)(3) UNE to any non-251(c)(3) network element, including §271 network elements and any other wholesale facility or services, obtained from SBC Texas. SBC Texas has taken the position that commingling is not required between 251(c)(3) UNEs and declassified §271 network elements that are not subject to tariff or wholesale offerings.[91] On the

[87] *Verizon*, 535 U.S at 531-38

[88] *See Triennial Review Order* at para 579

[89] *See Triennial Review Order* at para 655 n.1989.

[90] *Triennial Review Remand Order* at paras 145, 198, and 228.

[91] *See* SBC Texas Initial Track 2 Post-Hearing Brief at 48 and 57 (May 9, 2005)

other hand, during the hearing on the merits, SBC Texas representative, Danny Ashby, made a commitment to include in the ICA the most common access services CLECs have identified as common commingling arrangements they will require.[92] The Commission accepts SBC Texas's commitment to list in the ICA those access services that were identified in the HOM as services eligible to be combined with 251(c)(3) UNEs, as consistent with the Commission's firm belief that the pricing changes under the *TRO* and *TRRO* did not relieve SBC Texas of its overarching UNE-provisioning obligations.

The Commission underscores this point by providing as much contractual certainty as possible on this issue. Commingling is the critical linchpin between 251(c)(3) UNEs and non-251(c)(3) network elements. As such, CLECs must have specific commingling rights under the ICA to ensure that implementation of vital commingling requirements will occur on a streamlined basis. Of particular concern to the Commission is that CLECs not be left with an ill-defined, open-ended "bona fide request" (BFR) or other process that hinders continued provisioning. Accordingly, the Commission approves specific commingling requirements.[93]

Cross-connects

The Commission concludes that CLECs are entitled to cross-connects at TELRIC rates. SBC Texas's has argued that cross-connect that connect section 251(c)(3)UNEs to non-UNE wholesale services must be at tariffed rates, i.e., the cross-connect rates contained in SBC Texas's Interstate Tariff 73. However, the FCC found that CLECs are entitled to cost-based rates for interconnection facilities.[94] As an example, if a 251(c)(3) DS1 UNE loop is cross-connected to a DS1 special access inter-office transport, that cross-connect will be provided at TELRIC-based price. This issue turns on where TELRIC pricing stops and tariff pricing begins. In Phase I of this proceeding, this Commission ruled that entrance-facility-related cross-connects must be provided at TELRIC-based prices.[95] The Commission continues this analysis and applies the same rationale to connections between section 251(c)(3) UNEs and any non-

[92] *See* Tr. at 380-382, 321, 340, and 359 (Apr 21, 2005) Mr Ashby confirmed statements made on the record by Nancy Dalton

[93] *See generally* Track II Joint UNE DPL at 9-21 (Apr 18, 2005)

[94] 47 C.F R §§ 51.501, 51 503 and 51.505.

[95] *See generally* Order on Clarification and Reconsideration at 3-4 (May 11, 2005)

251(c)(3) element, or wholesale facility or service, setting forth terms and conditions for the provisioning of cross-connects at TELRIC rates in this ICA

Temporary Rider

After review of all the competing contract variations, the Commission adopts the Embedded Base Temporary Rider proposed by AT&T and SBC Texas,[96] with modifications, and applies it to all CLECs. The Commission notes that the Temporary Rider has been modified to ensure that all of the requirements of the *TRO* and *TRRO* have been incorporated therein. The CLECs, except AT&T, had requested that the treatment of UNE-P arrangements during the transition period be included in detail in the body of the ICA as a transitional offering and thereafter, as a section 271 offering.[97] However, given its aforementioned decision regarding the treatment of § 271 network elements in this ICA, the Commission finds that ease of administration, both by the industry as a whole and by the agency, supports a format that clarifies the transitional nature of certain obligations. The Commission agrees that the finite and limited shelf-life of the declassified UNEs--i.e., March 11, 2006 for the preponderance;[98] and September 11, 2006 for Dark Fiber Loops[99]—reinforces the need to segregate the terms and conditions applicable to these short-term arrangements from those ongoing obligations included within the five-year ICA for all other §251(c)(3) UNEs.

Transitional UNEs—Loop/Transport Availability

The Commission does not agree with SBC Texas that each and every change to a UNE during the term of this five-year contract should be self-effectuating. The Commission will continue to address changed circumstances on a going-forward basis in accordance with the specified processes outlined in the ICA for declassifications of UNEs under the *TRO* and *TRRO*. On the other hand, the Commission will address other, future, potential declassifications

[96] *See generally* Track II Joint UNE DPL at 12-119 (Apr. 18, 2005).

[97] *See generally* Order on Clarification and Reconsideration at 3-4 (May 11, 2005).

[98] *Triennial Review Remand Order* para 199.

[99] *Triennial Review Remand Order* para 197

pursuant to the ICA's change of law provision approved in Track I.[100] The Commission recognizes that, in the future, Central Offices that were not originally classified as either Tier 1 or Tier 2 Central Offices may grow line counts or add additional collocation arrangements. Thus, on an ongoing basis, Central Offices may prospectively meet the *TRRO*'s declassification criteria.[101] SBC Texas has asserted that the associated declassification of UNEs, such as interoffice transport and loops, should be self-effectuating under the ICA. CLECs, on the other hand, generally assert change of law provisions should apply to this situation.

The Commission distinguishes declassification of Central Offices pursuant to the existing standards established under the *TRO* and *TRRO* from changes that the FCC or the courts may make in the future. In particular, the Commission finds that the *TRO* and *TRRO* already changed the law; the only question becomes whether or when a specific Central Office meets the established criteria. Therefore, the Commission finds no support for imposing an additional change of law process upon such situations. However, the Commission will continue to address other potential declassifications pursuant to the ICA's change of law provision approved in Track I.

Transitional UNEs—Embedded Customer Base

After consideration of the evidence and arguments put forward on this issue, the Commission concludes that, in accordance with the context provided under the *TRO* and *TRRO*, the term "embedded customer base" should be read to grandfather only the existing lines of existing customers, and to disallow the growth of UNE-P lines. In other words, the Commission agrees with defining the embedded customer base as customers for whom no new ports must be added, but for whom new features may be added or deleted upon request. Having had the benefit of all parties' positions on this issue, the Commission now revises its interim decision on this topic.[102] However, the Commission finds no basis for retroactively changing that decision or for providing true-up of rates. Also, in an effort to minimize customer impacts, the Commission does not recommend an immediate cut-off date; instead, the Commission finds that

[100] Arbitration Award—Track I, Award Matrix, General Terms and Conditions Decision Point List at 13 (Feb 23, 2005)

[101] *Triennial Review Remand Order* at n 466.

[102] Order 39 Issuing Interim Agreement Amendment (Feb 25, 2005)

implementation of this revised approach should become effective on October 1, 2005. The Commission believes that the FCC has signaled the need for CLECs to avail themselves of market alternatives to TELRIC-based UNE-P arrangements during the transition period. Consistent with this decision, the Commission endorses the FCC's transition by CLECs from UNE-P to other arrangements prior to the March 11, 2006 deadline.

Administrative Charges—Conversion Charges

The Commission determines that charges associated with converting UNEs to Access Service, including charges pursuant to the interstate access tariffs, should be disallowed. The *TRO* makes clear that CLECs do not have to pay such charges when they continue serving existing customers using the identical, in-place facilities already used to serve these customers.[103] Given that the only change associated with the conversion is a pricing change, the Commission finds no justification for imposing conversion charges in such situations. However, the Commission finds that the imposition of a nominal, record change charge that would recover the actual administrative costs incurred by SBC Texas for such conversions is appropriate.

Administrative Charges—Volume/Term Discounts

Unlike the example of charges for converting a declassified UNE to a different arrangement, which were disallowed above, the Commission finds that rate differences associated with a CLEC's conversion to a UNE arrangement are appropriate. The conversion *from* an access service to a UNE is the converse of the situation discussed above where the CLEC converts *to* an access service when a UNE is declassified. A critical difference between these two situations is that the first is involuntary, a product of changes in law outside the CLEC's control, whereas the latter is a voluntary change made by a CLEC seeking advantageous pricing differentials. Furthermore, in seeking a better price by converting to a UNE arrangement, the CLEC is abandoning a volume and term discount that, when entered into, was chosen to best suit their business plan. While the Commission agrees that the *TRO* allows CLECs to move to an arrangement more tailored to their business plan or financial considerations, the *TRO* does not exempt the CLEC from the terms of an existing arrangement e.g. penalties.

[103] *Triennial Review Order* at para. 587.

Therefore, the Commission finds that SBC Texas is not prohibited from recovering any charges appropriate under the provisions of the parties' access service agreement.

Batch Cuts

The Commission concludes that batch hot cut pricing shall be addressed in a new pricing docket,[104] and that Docket No. 29175 is unnecessary and should be closed. The Commission notes that all Docket No. 29175 parties are parties to Docket No. 28821.[105] With the exception of Covad and UTEX, those that are not in Docket No. 28821 are parties to Docket Nos. 29451 or 30459, the Verizon and SBC Texas change-of-law proceedings, respectively.

Reports

The Commission determines that SBC Texas shall continue to file monthly performance data on an aggregated basis to facilitate monitoring of SBC Texas's post-271 checklist compliance. The Commission finds that it is in the public interest to continue the monitoring. [106] The reports filed shall be in the same format as "DOJ report" filed at the FCC and at this Commission in Docket 20400, previously. Although the FCC does not require a state to monitor performance, it strongly encourages performance monitoring and post-entry enforcement at the state level.[107] The FCC stated that the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.[108]

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[104] *See* Track II Joint UNE DPL at 151-152(Apr. 18, 2005)

[105] *Development of State Implementation of the Federal Communications Commission's Triennial Review, Impairment Analysis for Dedicated Transport, Impairment Analysis of Enterprise Market Loop Facilities,* and *Proceeding to Determine Mass Market Hot Cut Process for State Implementation of Federal Communications Commission's Triennial Review,* Consolidated Docket Nos 27470, 28607, 28744, and 29175 Prehearing Conference Tr at 31 (May 12, 2005)

[106] The Commission has authority under FTA Section 252 (e)(3) to establish service quality or performance reporting requirement

[107] *Application by SBC 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,* Memorandum Opinion and Order, CC Docket No 00-65, FCC 00-238. para 420 (rel June 30, 2000) (*SBC 271 Order*)

[108] *SBC 271 Order* at para. 420

The Commission also notes that it is necessary to have SBC Texas file performance data to ensure compliance with PURA sections 60.161 and 60.001.

V. CONCLUSION

The Commission concludes that the decisions outlined in the Award and the Award matrices, as well as the conditions imposed on the parties by these decisions, meet the requirements of FTA §§ 251 and 252 and any applicable regulations prescribed by the FCC pursuant to FTA §§ 251 and 252.

SIGNED AT AUSTIN, TEXAS the 17th **day of** June **2005.**

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN

BARRY T. SMITHERMAN, COMMISSIONER

Staff Arbitration Team Members:
Larry Barnes, John Costello, Jingming Hicks, Andrew Kang, Liz Kayser, James Kelsaw, Randy Klaus, Stephen Mendoza, Diane Parker, Elango Rajagopal, Josh Robertson, David Smithson, Nara Srinivasa, Rick Talbot, Meena Thomas

REMAND ORDER EMBEDDED BASE TEMPORARY RIDER

This is a Temporary Rider (the "Rider") to the Interconnection Agreement by and between SBC TEXAS, ("SBC" or "SBC ILEC") and [~~AT&T Communications of the Southwest ("AT&T")~~][CLEC Name] (collectively referred to as "the Parties") ("Agreement") contemporaneously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "*Triennial Review Order*" or "*TRO*"), which became effective as of October 2, 2003; and

WHEREAS, by its *TRO*, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, SBC TEXAS was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law as further defined below ("TRO Declassified Elements"), and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C C* , 359 F3d 554 (D.C. Cir. 2004) ("*USTA II*") on March 2, 2004 and its associated mandate on June 16, 2004, and

WHEREAS, the *USTA II* decision vacated certain of the FCC rules and parts of the *TRO* requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act[~~, and therefore, SBC TEXAS was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law~~]; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules, [1] on February 4, 2005 ("*TRO Remand Order*"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DS0 capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS") or access to certain high-capacity loop and certain dedicated transport on an unbundled basis to CLECs ("TRRO Affected Elements"); and

WHEREAS, the FCC, in its *TRO Remand Order*, instituted transition periods and pricing to apply to CLEC's embedded base of the TRRO Affected elements; and

WHEREAS, as of the date the parties executed the Agreement to which this Temporary Rider is attached, CLEC is purchasing TRO Declassified Elements and/or has an embedded base of one or more of the TRRO Affected Elements, and the transition periods applicable to one or more of the elements had not yet expired.

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[1] Order on Remand, *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 released Feb 4, 2005)

NOW, THEREFORE, the Parties attach the following temporary terms and conditions to the Agreement as set forth below

1.0 TRO-Declassified Elements

1.1 Pursuant to the *TRO*, nothing in this Agreement requires SBC TEXAS to provide to CLEC any of the following items **on an unbundled basis pursuant to Section 251(c)(3) of the Act**[~~, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality~~]:

(i) entrance facilities[~~, defined as dedicated transport that does not connect a pair of SBC TEXAS wire centers which includes, but is not limited to, transmission facilities that connect CLEC's network with SBC TEXAS's network, regardless of the purpose of the facilities)~~];

(ii) [~~DSO or~~] OCn level dedicated transport;

(iii) "enterprise" market (DS1 and above) local circuit switching (defined as (a) all line-side and trunk-side facilities as defined in the *TRO*, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);

(iv) OCn loops;

(v) the feeder portion of the loop;

(vi) line sharing,

(vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;

(viii) shared transport and SS7 signaling to the extent not provided in conjunction with unbundled local switching;

(ix) packet switching, including routers and DSLAMs;

(x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR § 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; and

(xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51 319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that SBC TEXAS has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC TEXAS will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

The above-listed items are referred to in this Amendment as "TRO Declassified Elements." **Nothing in this section shall limit [CLEC Name] [~~AT&T~~]'s ability to commingle a facility or service previously acquired as a UNE with a UNE or combination of UNEs pursuant to Attachment 6, Section 2.11 of the Parties' ICA.**

1.2 Transition Provision of TRO Declassified Elements This Section sets forth the Notice and Transition Processes for TRO Declassified Elements.

1.2.1 SBC TEXAS is not required to provide the TRO Declassified Element(s) on an unbundled basis [pursuant to 251(c)(3)][~~, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality not acquired as an unbundled element pursuant to Section 251(c)(3)~~] to CLEC under this Agreement, and the following notice and transition procedure shall apply:

1.2.2 SBC TEXAS will provide written notice to CLEC of the fact that the TRO Declassified Element[(]s[)] [~~and/or the combination or other arrangement in which the network element(s)~~] [that] had been previously provided on an unbundled basis is no longer required to be provided [pursuant to 251(c)(3)] During a transitional period of thirty (30) days from the date of such notice, SBC TEXAS agrees to continue providing such element(s) in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX],(Note, parties will agree to the bracket info) for the thirty (30) day transitional period

1.2.3 Upon receipt of such written notice, CLEC will cease new orders for such TRO Declassified Elements that are identified in the SBC TEXAS notice letter SBC TEXAS reserves the right to monitor, review, and/or reject CLEC orders transmitted to SBC TEXAS and, to the extent that the CLEC has submitted orders and such orders are provisioned after this thirty (30)day transitional period, such network elements are still subject to this Section 1.0, including the CLEC options set forth in Section 1.2.4 below, and SBC TEXAS's right of conversion in the event the CLEC options are not accomplished by the end of the 30-day transitional period.

1.2.4 During such thirty (30) day transitional period, the following options are available to CLEC with regard to the network element(s) identified in the SBC TEXAS notice, including the combination or other arrangement in which the network element(s) were previously provided·

(i) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the network element(s) [~~and/or the combination or other arrangement in which the element(s) were previously provided~~]; or

(ii) SBC TEXAS and CLEC may agree upon another service arrangement (e g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in this Agreement, including any amendments thereto, at the end of the thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 1.2.4(i), above, and if CLEC and SBC TEXAS have failed to reach agreement, under Section 1.2.4(ii), above, as to a substitute service arrangement or element, then SBC TEXAS will convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service or arrangement, if available, at rates applicable to such analogous service or arrangement[~~, including those rates available under the Parties' existing QPP or term and/or volume discount agreements~~].

2.0 TRO Remand-Declassified Loop-Transport Elements.

2 1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination.

(i) Dark Fiber Loops;

(ii) DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

(iii) DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

(iv) Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Loop-Transport Element(s)."

2.2 Transitional Provision of Embedded Base. As to each Affected Loop-Transport Element, after March 11, 2005, pursuant to Rules 51.319(a) and (e), as set forth in the TRO Remand Order, SBC TEXAS shall continue to provide access to CLEC's embedded base of Affected Loop-Transport Element(s) (i.e. only Affected Loop-Transport Elements ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms

and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of

(a) CLEC's disconnection or other discontinuance of use of one or more of the Affected Loop-Transport Element(s);

(b) CLEC's transition of an Affected Loop-Transport Element(s) to an alternative arrangement; or

(c) March 11, 2006 (for Affected DS1 and DS3 Loops and Transport) or September 11, 2006 (for Dark Fiber Loops and Affected Dark Fiber Transport. To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport in place on March 11, 2006, SBC TEXAS, without further notice or liability, will convert them to a **Special Access month-to-month** [~~Special Access service under the terms and rates available through the Parties' existing QPP or term and/or volume discount agreements~~] **service under the applicable access tariffs** [, unless otherwise instructed in writing by the CLEC].

SBC TEXAS's transitional provision of embedded base Affected Loop-Transport Element(s) under this Section 2.2 shall be on an "as is" basis. Upon the earlier of the above three events occurring, as applicable, SBC TEXAS may, without further notice or liability, cease providing the Affected Loop-Transport Element(s).

2.3 Transitional Pricing for Embedded Base. Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Affected Loop-Transport Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Loop-Transport Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Loop-Transport Element(s), *plus 15%* ("Transitional Pricing"). [~~If the state PUC established a rate for Unbundled Loops between June 16, 2004 and March 11, 2005, that increases some rate elements and decreases other rate elements, SBC TEXAS must either accept or reject all of the more recently established rates for purposes of establishing the transitional rate for Unbundled Loops and transport.~~]

2.3.1 Regardless of the execution or effective date of this Rider or the underlying Agreement, CLEC **will be liable** [~~agrees that the~~] **to pay the** Transitional Pricing for all Affected Loop-Transport Element(s), [~~shall apply~~] beginning March 11, 2005. [~~SBC TEXAS will not bill AT&T for such rates, nor shall the difference in the Transitional Prices be due, prior to the execution of this rider.~~]

2.3.2 CLEC shall be fully liable to SBC TEXAS to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

[~~2.3.3 Transitional Rate Billing – Any bills issued by SBC TEXAS that include either a transitional rate charge or a true up amount for Transitional Declassified Network Elements, shall specifically identify the time period for which such transitional rate or true~~

~~up applies; the applicable transitional rate or true up, and details that enable AT&T to identify the specific facilities to which the transitional rate or true up amounts apply.]~~

~~[2.3.4 The Conversion Process – For any Transitional Declassified Network Elements, AT&T shall request either disconnection, an analogous access service (including converting Transitional Declassified Network Elements to any special access volume discount offerings), or an alternative service arrangement (such as TSR) at any time after the effective date of this Agreement, and prior to the last day a Transition Rate applies to a Transitional Declassified Network Element. Unless AT&T specifically requests otherwise, the effective date of any such requested conversions shall not be any sooner than the day after the last day that the Transition Rate applies to a particular Transitional Declassified Network Element, and any recurring charges applicable to the requested alternative service arrangement shall apply as of that date and be reflected in the next billing cycle.]~~

2.3.[3][~~4.1~~] ~~[All conversions from Transitional Declassified Network Elements shall take place in a seamless manner without any customer disruption or adverse effects to service quality and notwithstanding other provisions herein, [shall] [and may] be done in accordance with a mutually agreed upon process.]~~ The Parties agree to work together to develop a mutually agreeable, conversion process that includes agreement on the conversion request formats and associated systems; as well as an agreement on what additional information is needed from SBC TEXAS to enable [CLEC Name] [~~AT&T~~] to identify the loop and transport Network Elements that need to be converted. ~~[Notwithstanding any other provisions herein, if the Parties fail to arrive at a mutually agreeable conversion process by the deadline for submissions of conversion requests set forth in Section 2.3.4 above, the deadline for such conversions shall be extended until mutual agreement is reached on the conversions process and a new time frame within which AT&T shall submit its conversion requests shall be agreed upon between the Parties. During this time period, SBC TEXAS shall continue to apply the transitional rates.]~~

~~[2.3.4.2 After the Parties agree to a conversion process, SBC TEXAS may assess a true up charge to collect the difference between the recurring charges for the selected alternative arrangements and the transitional charges for the time period between the end of the initially established transition period for the particular Transitional Declassified Network Element and the date the conversion requests are completed.]~~

2.3.4[~~.3~~] SBC TEXAS will not require physical rearrangements and will not physically disconnect, separate or alter or change the facilities being replaced, except at the request of [CLEC Name] [~~AT&T~~]. ~~[The effective date of conversion requests shall be as set forth in Section 2.3.4. If a physical rearrangement is requested by AT&T, the conversion request shall be deemed to be completed the day after the last day that the transition rate applies to a particular Transitional Declassified Network Element, unless AT&T requests an earlier date; and the recurring charges for the new arrangement shall apply as of that date and shall appear on the bill in the next billing cycle.]~~

2.3.4.[1][4] To avoid customer impact during the transition of UNE-P to alternative arrangements, SBC TEXAS commits to suppress line loss and related CARE notifications when the conversion requests are processed.

2.3.5 Conversion Charges - SBC TEXAS shall not impose any termination, re-connect or other non-recurring charges, except for a record change charge, associated with any conversion or any discontinuance of any Transitional Declassified Network Elements.

2.4 End of Transitional Period. CLEC will complete the transition of embedded base Affected Loop-Transport Elements to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (as set forth in Sections 2.4.1 and 2.4.2, below). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC TEXAS by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.

2.4.1 For Dark Fiber Loops and Affected Dark Fiber Transport, the transition period shall end on September 11, 2006.

2.4.2 For Affected DS1 and DS3 Loops and Transport, the transition period shall end on March 11, 2006

2.4.3 To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport in place on March 11, 2006, SBC TEXAS, without further notice or liability, will convert them to a **Special Access month-to-month** [~~**Special Access service under the terms and rates available through the Parties' existing QPP or term and/or volume discount agreements**~~] **service under the applicable access tariffs** [, unless otherwise instructed in writing by the CLEC].

3. TRO Remand-Declassified Switching and UNE-P.

3.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, whether alone, in combination (as in with "UNE-P"), or otherwise, **except as required by State Commission orders.** For purposes of this Section, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.)

3.2 Transitional Provision of Embedded Base. As to each Mass Market ULS or Mass Market UNE-P, after March 11, 2005, pursuant to Rules 51.319(d), as set forth in the TRO Remand Order, SBC TEXAS shall continue to i) provide access to CLEC's embedded base of Mass Market ULS Element or Mass Market UNE-P (i.e. only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC [on or] *before* [~~March 11~~][September 30], 2005), **[~~ii) provision additional UNE-P access lines to serve CLECs embedded customer base (Transitional UNE-P Access Lines)~~] and [i]ii) provision [CLEC Name] [~~AT&T~~] requests to add, change or delete features, record orders, and disconnect orders on UNE-P/ULS, as**

well as orders to reconfigure existing [CLEC Name] [~~AT&T~~] UNE-Ps to a UNE line-splitting arrangement to serve the same end-user or reconfigure to eliminate an existing line-splitting arrangement in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of:

(a) CLEC's disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;

(b) CLEC's transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or

(c) March 11, 2006.

SBC TEXAS's transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 3.2 shall be on an "as is" basis, except that CLEC may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market UNE-P, or may re-configure to permit or eliminate line splitting. Upon the earlier of the above three events occurring, as applicable, SBC TEXAS may, without further notice or liability, cease providing the Mass Market ULS Element(s) or Mass Market UNE-P.

3.2.1 Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P pursuant to this Rider, and subject to this Section 3, and subject to the conditions set forth in Section 3.2 1.1 below, SBC TEXAS shall also continue to provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], **and only to the extent such items were already being provided,** [or ordered, on or] **before [~~March 11~~][September 30], 2005,** in conjunction with the embedded base Mass Market ULS or Mass Market UNE-P.

3 2 1.1 The [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] must contain the appropriate related terms and conditions, including pricing; and the features must be "loaded" and "activated" in the switch.

3 3 Transitional Pricing for Embedded Base Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Mass Market ULS or Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS/UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS/UNE-P, plus one dollar. **CLEC shall be fully liable to SBC TEXAS to pay such pricing under the Agreement, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement. [~~If the state PUC established a~~**

~~rate for unbundled switching and related Network Elements between June 16, 2004 and March 11, 2005, that increases some rate elements and decreases other rate elements, SBC TEXAS must either accept or reject all of the more recently established rates when establishing the transitional rate for mass market local switching.]~~

3.3.1 Regardless of the execution or effective date of this Rider or the underlying Agreement, CLEC **will be liable** [~~agrees~~] to pay the Transitional Pricing for Mass Market ULS Element(s) and Mass Market UNE-P, beginning March 11, 2005. [~~SBC TEXAS will not bill AT&T for such rates, nor shall the difference in the Transitional Prices be due, prior to the execution of this rider.~~]

3.3.2 CLEC shall be fully liable to SBC TEXAS to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

3.4 End of Transitional Period. CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (March 11, 2006).

3.4.1 To the extent that there are CLEC embedded base Mass Market ULS or UNE-P [and related items, such as those referenced in Section 3.2.1, above] in place on March 11, 2006, SBC TEXAS, without further notice or liability, will re-price such arrangements to **resale** [~~a market-based rate~~].

4. Sections 1, 2 and 3, above, apply and are operative regardless of whether CLEC is requesting the TRO Declassified Elements, Affected Loop-Transport Element(s), Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

5. In entering into this Rider, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Rider) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al* v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*") and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"); the FCC's 2003 Triennial Review Order and 2005 Triennial Review Remand Order; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

5. Except to the extent of the very limited purposes and time periods set forth in this Rider, this Rider does not, in any way, extend the rates, terms or conditions of the [NAME OF

PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] beyond its term

6 In all states other than Ohio, the Parties acknowledge and agree that this Rider shall be filed with, and is subject to approval by the applicable state commission and shall become effective ten (10) days following the date upon which such state commission approves this Rider under Section 252(e) of the Act or, absent such state commission approval, the date this Rider is deemed approved by operation of law. In the state of Ohio only, the Parties acknowledge and agree that this Rider shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio ("PUCO"). Based upon PUCO practice, this Rider shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

IN WITNESS WHEREOF, this Rider to the Agreement was exchanged in triplicate on this _____ day of _____, 2005, by the Parties, signing by and through their duly authorized representatives

[CLEC Name][~~AT&T Communications of the Southwest~~]	SBC Operations, Inc., authorized agent for SBC TEXAS
By:_____	By_____
Name: _____ (Print or Type)	Name: _____ (Print or Type)
Title: _____ (Print or Type)	Title: For/ Senior Vice President - Industry Markets and Diversified Businesses
Date. _____	Date: _____

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SBC Issue #	CLEC Name and Issue Number	SBC Overarching Issue Statement and CLEC Specific Issue Statement	Attachment and Sections	Commission Decision
1	[AT&T] 1 Pursuant to Letter dated April 20, 2005, CJP adopts the language and position of AT&T. Bates – 1	SBC Overarching To provide contractual clarity, should SBC TEXAS' unbundling obligations be tied to specific terms of the ICA and to the parameters of the unbundling obligations in the FTA? [AT&T] Should the ICA only include 251(c)(3) obligations or should it include all 251, 271, and state law obligations? SBC TEXAS's Issue Statement. Should the ICA obligate SBC TEXAS to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC TEXAS is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?	1 3	The Commission adopts the contract language proposed by SBC Texas However, the Commission has ruled that the use of the term "Lawful" as SBC Texas has applied it to unbundled network elements should be replaced with the term "251(c)(3)" The Commission agrees with SBC Texas that it is not obligated to provide access to unbundled network elements outside of SBC Texas' incumbent territory and thus SBC Texas has no obligation to provide UNEs, collocation and resale to AT&T outside SBC Texas' incumbent Local Exchange Territory. The Commission is persuaded that the language proposed by SBC Texas meets SBC Texas' obligations to provide unbundled network. The Commission is not persuaded, however, that the term "Lawful" simply restates what is indisputably true. [SBC Ex No. 31, Direct Testimony of Michael D Silver, at 11]. The Commission is concerned that the term "Lawful" implies other elements of the network which may be offered outside of 251(c)(3) unbundled network elements may be somehow considered to be "Unlawful" The Commission agrees that contract language is better when it is clear and specifically expresses the parties' intent [SBC Ex No. 31, Direct Testimony of Michael D. Silver at 12] The Commission believes the substitution of the term "251(c)(3)" in lieu of "Lawful" will accomplish this objective The Commission notes that AT&T indicates that the use of the term "Lawful UNEs" and "Statutory conditions" have the effect of short circuiting the law [AT&T Ex No 4, Direct Testimony of Daniel P Rhinehart at 52] The Commission believes the use of the term 251(c)(3) in describing UNEs serves to clarify which UNEs are at issue. Based on a review of the competing language for SBC Texas and AT&T for Attachment UNE-6, the Commission notes that SBC Texas' and AT&T's proposed language was apparently reversed in this DPL Therefore, the contract language adopted by the Commission is SBC Texas' proposed contract language that originally was in the column identified as CLEC name and language. The Commission adopts the following language with modifications, as indicated. Language that the Commission has deleted is indicated by brackets and strike through text; language the Commission has

SBC Issue #	CLEC Name and Issue Number	SBC Overarching Issue Statement and CLEC Specific Issue Statement	Attachment and Sections	Commission Decision
				added is underlined. ATTACHMENT 6 ~~[LAWFUL]~~ 251(C)(3) UNBUNDLED NETWORK ELEMENTS 1 7 ~~[Lawful]~~ **251(c)(3)** UNEs and Declassification. 1 7.1 This Agreement sets forth the terms and conditions pursuant to which SBC TEXAS will provide AT&T with access to unbundled network elements under Section 251(c)(3) of the Act in SBC TEXAS' incumbent local exchange areas for the provision of Telecommunications Services by AT&T, provided, however, that notwithstanding any other provision of the Agreement, SBC TEXAS shall be obligated to provide UNEs pursuant to this interconnection agreement only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders UNEs that SBC TEXAS is required to provide pursuant to Section 251(c)(3) of the Act, as determined ~~by lawful and effective~~ FCC rules and ~~associated lawful and effective FCC and judicial~~ orders shall be referred to in this Agreement as "~~[Lawful]~~ 251(c)(3)UNEs" Nothing contained in the aforementioned contract language is intended to limit AT&T's right to access to 271 Network Elements outside of this interconnection agreement. **The Commission adopts this same award language for CJP.**
1	[MCIm] 1/278 Bates – 7 -	What are the appropriate geographic limitations of SBC Texas' obligation to provide access to network elements?	1.1	The Commission adopts the contract language proposed by SBC Texas with the modifications noted. As previously noted, the Commission does not adopt the use the word "lawful" to identify those UNEs that are mandated to be provided pursuant to Section 251 of the Telecom Act. However, the Commission believes the contract language proposed by SBC Texas correctly identifies the areas in which SBC Texas is obligated to furnish MCI access to unbundled network elements According to MCI, the contact language MCI disputes "attempts to limit the geographic area to SBC Texas' local exchange areas" [MCI Ex.1, Direct Testimony Michael Starkey, at 7] The commission finds the limitation specified by the disputed language,

SBC Issue #	CLEC Name and Issue Number	SBC Overarching Issue Statement and CLEC Specific Issue Statement	Attachment and Sections	Commission Decision
				although it may be somewhat duplicative of language previously included in the Terms and Condition Appendix, is not incorrect and may serve to reduce disputes in the future Moreover, the Commission agrees with SBC Texas that Section 251(c) establishes additional obligations of "incumbent local exchange carriers," and Section 251(h)(1) defines an incumbent local exchange carrier by characteristics "with respect to an area." [SBC Ex 31, Direct Testimony of Michael D. Silver at 43] The Commission adopts the following contract language with modifications as indicated. 1 1 This Appendix [~~Lawful~~ 251(c)(3) Unbundled Network Elements (UNE) sets forth the terms and conditions pursuant to which SBC TEXAS agrees to furnish MCIm with access to ~~Lawful~~ unbundled Network Elements under Section 251(c)(3) of the Act in SBC TEXAS's incumbent local exchange areas for the provision of Telecommunications Services by MCIm. At MCIm's request, SBC TEXAS shall provide nondiscriminatory access to ~~Lawful~~ 251(c)(3) unbundled Network Elements at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory in accordance with the terms of this Appendix SBC TEXAS shall provide such ~~Lawful~~ 251(c)(3) unbundled Network Elements in a manner that allows MCIm to combine such elements in order to provide a Telecommunications Service.
1	[CLEC Coalition] 12 Bates - 8 -	Is SBC Texas obligated to provide access to UNEs in its entire certificated local exchange area without any other geographic restriction *Issue Statement by CLEC Coalition and Birch* Is SBC obligated to provide access to UNEs in its entire certificated local exchange area without any other geographic restriction?		The Commission adopts the contract language proposed by SBC Texas with modifications as indicated. With respect to the contract language proposed by the CLEC Coalition regarding 271 Issues, as previously noted the Commission has ruled it improper to address Section 271 network elements in this instant ICA beyond SBC Texas' obligation to connect unbundled network elements to 271 network elements (i e services SBC Texas offers for wholesale) and notes the language proposed by the CLEC Coalition goes beyond 251(c)(3) elements. The Commission strikes SBC Texas' contract language to the extent it uses the term "Lawful UNEs." As previously indicated the Commission agrees that Section 251(c) establishes additional obligations of "incumbent local exchange carrier," and Section 251(h)(1) defines an incumbent local exchange carrier by characteristics "with respect to an area." [SBC TX Ex 31, Direct Testimony of Michael D Silver at 43]

SBC Issue #	CLEC Name and Issue Number	SBC Overarching Issue Statement and CLEC Specific Issue Statement	Attachment and Sections	Commission Decision
				The following contract language is adopted by the Commission 1 2 1 This Agreement sets forth the terms and conditions pursuant to which SBC TEXAS will provide CLEC with access to unbundled network elements under Section 251(c)(3) of the Act in SBC TEXAS' incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC TEXAS shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by ~~[lawful and effective]~~ FCC rules and associated ~~[lawful and effective]~~ FCC ~~and judicial~~ orders ~~and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC TEXAS is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "Lawful UNEs."~~] 2.1 This Attachment sets forth the terms and conditions pursuant to which SBC TEXAS agrees to provide CLEC with access to Unbundled Network Elements under Section 251(c)(3) of the Act in SBC TEXAS' incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC TEXAS is only obligated to make available UNEs and access to UNEs to CLECs in SBC TEXAS' incumbent local exchange areas. SBC TEXAS has no obligation to provide such UNEs to CLEC for the purposes of CLEC providing and/or extending service outside of SBC TEXAS' incumbent local exchange areas. In addition, SBC TEXAS is not obligated to provision UNEs or to provide access to UNEs and is not otherwise bound by 251(c) obligations in geographic areas other than SBC TEXAS' 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 TEXAS for provisioning Telecommunications Services within an SBC TEXAS

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				incumbent local exchange area(s) in the State in which this Agreement with SBC TEXAS has been approved by the relevant state Commission and is in effect ~~Further, the Parties agree that SBC TEXAS 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.~~
2	[AT&T] 2 Bates – 11 - Pursuant to Letter dated April 20, 2005, CJP adopts the language and position of AT&T for Sections 1.7.1.1.	SBC Texas Overarching Should the ICA contain clear, specific terms and conditions defining "Declassification," listing Declassified elements, and providing for a detailed transition process so that the parties have a clear understanding of how Declassification will be handled between them and can avoid additional disputes and protracted proceedings to resolve contract disagreements? [AT&T/SBC] Joint Issue Statements: 2(a) How should the parties reflect the declassificaiton of certain UNEs by the FCC in its TRO, as affirmed by the USTA II decision and TRRO? 2(b) Should the Agreement require SBC TEXAS to provide UNEs when they are not required under Section 251 of the Act (i.e., when they are arguably required under state law or Section 271)? SBC Issue Statements 2(c) Should SBC be required to follow the change of law process instead of unilaterally implementing future changes in UNEs that SBC is obligated to provide? 2(d) What is the appropriate process for handling Declassification of DS1/DS3/Dar Fiber Loops/Transport in certain wire centers (and associated routes and buildings) that meet the FCC's TRRO criteria for non-impairment? 2(e) How will non-impaired wire centers be determined and what procedures will apply for ordering and disputes?		The Commission adopts the contract language proposed by SBC Texas, with the exception that the Commission does not adopt the use of the word "Lawful" to describe 251(c)(3) UNEs Instead, in those places where SBC Texas proposed using the word "Lawful" to describe UNEs the Commission concludes the use of the term 251(c)(3) UNEs is a more appropriate description of the UNEs SWB Texas is obligated to provide pursuant to this interconnection agreement The Commission finds that FCC has identified certain unbundled network elements that become declassified when certain conditions are met. For such unbundled network elements the Commission finds it is appropriate for the ICA to have self-effectuating language that addresses declassification of such unbundled network elements when changed conditions cause such unbundled network elements to become declassified. However, for any 251(c)(3) unbundled network elements that have not already been identified by the FCC as either being or having the potential to become declassified, e.g. DSO loops, subloops, and NIDs, declassification of such elements will be governed by Section 3.0 Change of Law/Reservation of Rights Provisions of the ICA. Therefore, portions of SBC Texas' proposed contract language has been deleted to reflect that Commission finding. Further, the Commission finds the contract language proposed by SBC Texas appropriately addresses situations where 251(c)(3) unbundled network elements become "declassified," i.e appropriately included in this interconnection agreement but which are later declassified. The Commission agrees the network elements listed and the terms required for declassification declassified by SBC Texas is appropriate. The Commission agrees with SBC Texas that "declassified" or "declassification" is a term used to describe the situation where SBC Texas is not required, or is no longer required, to provide a network element pursuant to 251(c)(3) of the Act. [SBC

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				Tx. Ex 31, Direct Testimony of Michael D Silver at 9] 1 7 [~~[Lawful]~~] 251(c)(3)UNEs and Declassification 1 7.1 This Agreement sets forth the terms and conditions pursuant to which SBC TEXAS will provide AT&T with access to unbundled network elements under Section 251(c)(3) of the Act in SBC TEXAS' incumbent local exchange areas for the provision of Telecommunications Services by AT&T, provided, however, that notwithstanding any other provision of the Agreement, SBC TEXAS shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by ~~[lawful and effective]~~ FCC rules and associated ~~[lawful and effective]~~ FCC and ~~judicial~~ orders Future declassifications of unbundled network elements beyond those already identified by the FCC in the TRO and TRRO shall be governed by the "Section 3 0 Change of Law/Reservation of Rights" Provisions of the ICA. [~~, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC TEXAS is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as "[[Lawful]] 251(c)(3)UNEs."~~] 1.7 1 1 A network element, including a network element referred to as a [~~[Lawful]~~] 251(c)(3)UNE under this Agreement, will cease to be a [~~[Lawful]~~] 251(c)(3)UNE under this Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by ~~[lawful and effective]~~ FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a [~~[Lawful]~~] 251(c)(3)UNE that has ceased to be a [~~[Lawful]~~] 251(c)(3)UNE may also be referred to as "Declassified " ~~[1.7 1.2 Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified upon or by (a) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (b) the issuance of any valid law, order or rule by the Congress, FCC or a~~

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				~~judicial body stating that an incumbent LEC is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act, or (c) the absence, by vacatur or otherwise, of a legally effective FCC rule requiring the provision of the network element on an unbundled basis under Section 251(c)(3). By way of example only, a network element can cease to be a Lawful UNE or be Declassified generally, or on an element-specific, route-specific or geographically specific basis or on a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply.~~ ~~1.7.1.3 It is the Parties' intent that only Lawful UNE shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "[Lawful," the reference shall be deemed to be a reference to Lawful UNE (s) or Lawfulunbundling, as defined in this Section 1.7.1.2. If an element is not required to be provided under this Appendix Lawful 251(c)(3)UNE and/or not described in this Attachment Lawful 251(c)(3)UNE, it is the Parties' intent that the element is not available under this Agreement, notwithstanding any reference to the element elsewhere in the Agreement, including in any other Attachment, Schedule or in the Pricing Appendix~~ ~~1.7.1.4 By way of example only, if terms and conditions of this Agreement state that SBC-TEXAS is required to provide a Lawful UNE or Lawful UNE combination and that Lawful UNE or the involved Lawful UNE (if a combination) is Declassified or otherwise no longer constitutes a Lawful UNE, then SBC-TEXAS shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.~~ ~~1.7.5 Transition Procedure for Elements that are Declassified during the Term of the Agreement.~~ ~~1.7.5.1 The procedure set forth in Section 1.7.5.1 does not apply to the Declassification events described in Sections XXXXX and XXX, which set forth the consequences for Declassification of DS1 and DS3 Loops, DS1 and DS3 Transport and Dark Fiber Transport, where applicable "caps" are met, or where Declassification occurs because~~

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				~~wire centers/routes meet the criteria set forth in the FCC's TRO Remand Order.~~ ~~–~~ ~~1.7.5.2 SBC TEXAS shall only be obligated to provide Lawful UNEs under this Agreement. To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a Lawful UNE, such element is no longer required to be provided under this Agreement and AT&T shall cease ordering such element(s) under this Agreement, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC TEXAS will provide written notice to AT&T of the Declassification of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, SBC TEXAS agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, AT&T will cease ordering new elements that are identified as Declassified or as otherwise no longer being a Lawful UNE in the SBC TEXAS notice letter referenced in this Section 1.7.5. SBC TEXAS reserves the right to audit AT&T orders transmitted to SBC TEXAS and to the extent that AT&T has processed orders and such orders are provisioned after this 30 day transitional period, such elements are still subject to this Section 1.7.5, including the options set forth in (a) and (b) below, and SBC TEXAS' rights of discontinuance or conversion in the event the options are not accomplished. During such 30 day transitional period, the following options are available to AT&T with regard to the element(s) identified in the SBC TEXAS notice, including the combination or other arrangement in which the element(s) were previously provided:~~ ~~(a) AT&T may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or~~ ~~(b) SBC TEXAS and AT&T may agree upon another service arrangement or element (e.g. via a separate agreement at market-~~

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				based rates or resale), or may agree that an analogous access product or service may be substituted, if available Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless AT&T has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if AT&T and SBC TEXAS have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then SBC TEXAS may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available 1.7.5.3 The provisions set forth in this Section 1.7.5 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 1.7.5 "Transition Period" to be implemented or effective as provided above. Further, Section 1.7.5 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Agreement is Declassified or is otherwise no longer a Lawful UNE, even where the Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Section 1.7.5, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision. 1.7.5.4 Notwithstanding anything in this Agreement or in any Amendment, SBC TEXAS shall have no obligation to provide, and AT&T is not entitled to obtain (or continue with) access to any network element on an unbundled basis at rates set under Section 252(d)(1), whether provided alone, or in combination with other UNEs or otherwise, once such network element has been or is Declassified or is otherwise no longer a Lawful UNE. The preceding includes without limitation that SBC TEXAS shall not be obligated to provide combinations (whether considered new, pre-existing or existing) involving SBC TEXAS network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.]

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				4 4 Declassification Procedure [RELEVANT TO SPECIFIC ELEMENTS] 4.4.1 DS1 Subject to the cap described in Section 8.3.7.4 1, SBC TEXAS shall provide CLEC with access to a DS1 ~~[[Lawful]]~~ 251(c)(3)UNE Digital Loop, where available, to any building *not* served by a wire center with 60,000 or more business lines and four or more (4) fiber-based collocators Once a wire center exceeds these thresholds, no future DS1 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS1 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified and no longer available as ~~[[Lawful]]~~ 251(c)(3)UNEs under this Agreement Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 ~~[[Lawful]]~~ 251(c)(3)UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s). 4 4.2 DS3 Subject to the cap described in Section 4 3 7.4 1, SBC TEXAS shall provide CLEC with access to a DS3 ~~[[Lawful]]~~ 251(c)(3)UNE Digital Loop, where available, to any building *not* served by a wire center with at least 38,000 business lines and at least four (4) fiber-based collocators Once a wire center exceeds these thresholds, no future DS3 Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS3 Digital Loops in that wire center, or any buildings served by that wire center, shall be Declassified, and no longer available as ~~[[Lawful]]~~ 251(c)(3)UNEs under this Agreement. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 ~~[[Lawful]]~~ 251(c)(3)UNE Digital loops in such wire center(s), or any building served by such wire center(s). 4 4.3 Effect on Embedded Base Upon Declassification of DS1 Digital Loops or DS3 Digital Loops already purchased by CLEC as ~~[[Lawful]]~~ 251(c)(3)UNEs under this Agreement, SBC TEXAS will provide written notice to AT&T of the Declassification of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of sixty (60) days from the date of such notice, SBC TEXAS agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, AT&T will cease

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2005, a copy of the foregoing document was served on the following, via the method indicated

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