Decision **DRAFT DECISION OF ALJ JONES** (Mailed 2/10/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996.	Application 05-07-024 (Filed July 28, 2005)

DECISION ADOPTING PROVISIONS RELATING TO ROUTINE NETWORK MODIFICATIONS IN EXISTING INTERCONNECTION AGREEMENTS

I. Summary

In this decision, we determine which Routine Network Modifications (RNMs) Pacific Bell Telephone Company d/b/a SBC California (SBC) must perform for Competitive Local Exchange Carriers (CLECs). Routine Network Modifications are the modifications that must be made to transform a DS0 voice-grade loop to an unbundled DS1, high-capacity loop. The FCC's rules require incumbent LECs to perform all those activities that incumbent LECs regularly undertake for their own customers, with the exception of construction of a new loop.

We have determined that SBC is not recovering the costs of two specific RNMs--repeaters and multiplexers--through its adopted UNE rates. Therefore, SBC is entitled to charge for those RNMs.

II. Background

SBC filed its application to initiate a generic proceeding to amend the existing interconnection agreements (ICAs) between SBC and various CLECs on July 28, 2005. In orders issued in 2003 and 2005, known, respectively as the *Triennial Review Order*[1] *(TRO)* and the *Triennial Review Remand Order*[2] *(TRRO),* the Federal Communications Commission (FCC) eliminated or restricted the unbundling obligations for numerous unbundled network elements (UNEs).

SBC initiated this consolidated arbitration proceeding to resolve any disputed issues relating to the change of law in the *TRO* and *TRRO* orders. On January 23, 2006, in Decision 06-01-043, the Commission resolved a number of issues that did not require hearings.

The assigned Administrative Law Judge (ALJ) determined that hearings were necessary to address issues relating to Routine Network Modifications. Arbitration Hearings were held from November 28 to December 1, 2005. Opening briefs were filed on January 9, 2006, and Reply Briefs, on January 25, 2006. This decision resolves those issues relating to RNMs.

The issue of Batch Hot Cuts was set on a separate briefing schedule and will be addressed in a separate decision.

---

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking,* 18 FCC Rcd. 16,978, FCC 03-36 (2003).

[2] *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand,* 20 FCC Rcd 2533, FCC 04-290 (rel. Feb. 4, 2005) (TRRO).

III. Disputed Issues

The parties brought five disputed issues relating to routine network modifications for the Commission to resolve in this decision.

A. Issue 40: Sections 8.1.1, 8.1.2, 8.1.3, 8.2.1, 8.2.2, 8.2.3 – What Routine Network Modifications does SBC undertake for its own customers?

B. Issue 42: Sections 8.1.1, 8.1.2, 8.1.3, 8.2.1, 8.2.2, 8.2.3 – What Routine Network Modifications should SBC be required to undertake for UNE local loops, UNE dedicated transport, and dark fiber?

In the *TRO*, the FCC makes clear that ILECs must perform as RNMs for UNEs "those activities that incumbent LECs regularly undertake for their own customers."[3] In Issues 40 and 42, the parties raise the issue of what RNMs SBC regularly undertakes for its own customers, and thus what activities SBC is required to undertake to provision UNE orders.

The parties have agreed on an illustrative list of the RNMs that SBC will undertake in connection with UNE orders. The language mimics Paragraph 634 of the *TRO* along with additional language to which SBC agreed at the request of the CLECS. The parties agree that such RNMs will:

> include, but are not limited to, rearranging or splicing of cable; adding an equipment case, adding a doubler or repeater; adding a smart jack; installing repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; replacing a defective cable; and attaching electronic and other equipment that SBC

[3] *TRO* ¶ 632.

> ordinarily attaches to activate such loops for its own customers.[4]

The parties have also agreed, in Sections 8.1.3 and 8.2.3, to language identifying activities that do *not* constitute RNMs and that SBC will not undertake in connection with UNE orders:

> Routine network modifications do not include the construction of an altogether new loop; installing new aerial or buried cable (with the exception of replacement of defective cable); securing rights-of-way; or constructing and/or placing new manholes, or conduits or installing new terminals.

The only language in dispute in these sections is whether the placement of "cable stubs" should be identified as an RNM that SBC is required to undertake in connection with UNE orders.

The parties generally agree on the definition of a cable stub. SBC witness Silver testified that a cable stub is "simply a piece of cable typically 10-50 feet in length which is utilized in manholes or at a pole to connect two separate cables together."[5]

SBC asserts that because a "cable stub" is indisputably "cable," and because the FCC has made clear that cable placement is not an RNM, the placement of cable stubs is not required as an RNM.

SBC also states that it is equally clear that the RNMs required under the *TRO,* in contrast, involve the placement of electronics, *not* cable. The FCC

---

[4] Amendment §§ 8.1.2 and 8.2.2.

[5] Exh. 1, at 5 (Silver Direct for SBC).

characterized the obligations it imposed as "attaching routine electronics."[6] The CLECs rebut that allegation stating that the often-cited list of illustrative RNMs contained in ¶ 634 of the *TRO* explicitly includes "rearrangement or splicing of cable." Rearrangement or splicing of cable is *cable*, not *electronics*. Thus, the CLECs assert that SBC's attempt to narrow the list of required RNMs is defeated on that ground alone. Also, the list of modifications that SBC itself has already agreed constitute RNMs is not limited to electronics.

SBC states the FCC emphasized that placing new cable "demand[s] far more planning, engineering, and technical resources than the routine modifications discussed above."[7] The FCC stressed that ILECs are not required to place new cable as an RNM.

The CLECs note that the FCC stated that requests for altogether new transmission facilities that would require trenching or placing new cables do not qualify as RNMs.[8] According to the CLECs, this exception stands in contrast with SBC's obligation to modify or reconfigure an existing network facility.[9] In other words, the *TRO* obligates SBC to perform RNMs on transmission facilities that have already been constructed.[10]

The CLECs state that the FCC does not automatically disqualify any modification that would require construction from being an RNM. If SBC would generally undertake construction in the routine process of serving its retail

---

[6] *TRO* ¶ 635.

[7] *Id.* ¶ 636.

[8] 47 CFR § 51.319(a)(7)(ii) and *TRO* ¶ 636.

[9] *TRO* ¶¶ 632, 639.

[10] *Id.* ¶ 632.

customers (e.g., replacing a cable segment that has become defective to a point where it can no longer provide reliable service), it must undertake construction in the same manner on behalf of its CLEC customers (so long as the construction of an altogether new transmission facility is not required).

The CLECs assert that the primary criterion for determining whether an activity qualifies as an RNM is whether SBC performs the activity for its own customers. Any activity that SBC routinely undertakes for its own customers must be performed for CLECs as an RNM.

SBC acknowledges that it may, in certain circumstances, deploy a cable stub to fill a special access order, but asserts that does not mean that it is required to do so to fill UNE orders.[11] But SBC asserts it is required to undertake for UNEs only those activities that it *routinely* undertakes for its special access customers. As SBC's witness Kieren testified, placement of a cable stub is anything but "routine."[12]

However, according to the CLECs, it does not matter whether SBC considers a cable stub or any other RNM "routine," "a lot of work," or not—that is not the test. If SBC performs an RNM for its own customers, it must do so for CLECs ordering UNEs, with the exception of constructing an altogether new loop. The CLECs point out that installing repeaters and multiplexers and rearranging and splicing cable, and replacing defective cable spans are also "a lot of work," but SBC does not resist performing those RNMs on that basis.

---

[11] Initial Brief of SBC California Regarding RNM Issues at 12, January 9, 2006.

[12] 4 Tr. 614:12 -615:11 (Kieren for SBC).

The CLECs assert that installing 10 to 50 feet of cable to connect two existing cables together is not the type of cable placement the FCC had in mind when it stated that ILECs do not have to build a whole new loop in response to a CLEC UNE order. SBC agreed that replacing defective cable is a required RNM, and that wire out of limits (which involves running a cable pair or pairs from the normal terminal serving a customer premises to a different serving terminal because the normal serving terminal is full) is a required RNM. SBC also agreed that a line and station transfer (which involves running a new jumper cable pair or pairs in the serving area interface box because the assigned pair(s) are not working properly) is a required RNM.

The CLECs add that installing a cable stub is a glorified line and station transfer. Indeed, given that a cable stub is a merely 10-50 feet in length, it will actually be less work than replacing an entire defective span of outside plant cable.

We concur with the CLECs that a cable stub should be included in Sections 8.1.2 and 8.2.2 as a required RNM. The CLECs have shown that SBC's argument that RNMs all involve attaching electronics to a loop is without merit. A number of the agreed-upon RNMs involve cable, not electronics.

Also, the FCC requires RNMs "where the requested transmission facility has already been constructed."[13] A cable stub fits that category. It is not an altogether new loop, but a short length of cable used to join two cables. We refer to ¶ 634 of the *TRO*, "…our operating principle is that incumbent LECs must perform all loop modification activities that it performs for its own

[13] *TRO* ¶ 632.

customers." Since SBC acknowledges that it sometimes deploys a cable stub as part of a special access order, it is appropriate that SBC perform that RNM for CLECs as well.

C. Issue 41: Sections 8.1.1, 8.1.2, 8.1.3, 8.2.1, 8.2.2, 8.2.3 – For each such Routine Network Modification, may SBC impose any additional nonrecurring and/or monthly recurring charges? If so, under what conditions and in what amounts?

D. Issue 43: Sections 8.1.4 and 8.2.4 -- For each such required Routine Network Modification, do the current Commission-approved nonrecurring and monthly recurring rates for the UNE local loop, UNE dedicated transport, or dark fiber recover the Total Element Long Run Incremental Costs (TELRIC) cost of the Routine Network Modification? If not, should SBC be allowed to impose any additional nonrecurring and/or monthly recurring charges, and if so, under what conditions and in what amounts?

The *TRO* has very specific guidelines for the recovery of costs related to RNMs:

> The Commission's [FCC's] pricing rules provide incumbent LECs with the opportunity to recover the cost of the routine network modifications we require here. State commissions have discretion as to whether these costs should be recovered through non-recurring charges or recurring charges. We note that the costs associated with these modifications often are reflected in the recurring rates that competitive LECs pay for loops…. The commission's rules

> make clear that there may not be any double recovery of these costs.[14]

The issue before us is whether SBC is already recovering the cost of RNMs in its recurring or nonrecurring UNE rates, and if not, should SBC be permitted to assess additional charges. SBC acknowledges that it has agreed to perform most of the RNMs specifically identified in Sections 8.1.2 and 8.2.2 without any additional charge to the CLEC.

SBC states that it has identified only two relatively uncommon scenarios where costs are not being recovered from existing rate elements, and where SBC accordingly seeks to recover those costs via a separate charge: first, where SBC must install a repeater[15] in order to provision DS1 service over a long copper loop (generally a copper loop that is more than 12,000 feet in length); and second, where SBC must install multiplexers[16] in order to provide DS1 or DS3 service.

SBC asserts that the costs are not already captured in SBC's existing UNE rates. According to SBC's witness Pearson, the HAI model used to set SBC's UNE loop rates assumed a maximum copper loop length of 12,000 feet.[17] Because repeaters are typically required to provision DS1 service only on copper loops that are longer than 12,000 feet, that assumption means that the HAI model

---

[14] *TRO* ¶ 640.

[15] A repeater boosts the signal so that acceptable signal quality can be achieved.

[16] A multiplexer is a piece of equipment that takes a high bandwidth optical signal, converts it to an electrical signal and splits up the high bandwidth signal into many lower bandwidth signals.

[17] Exh. 21 at 3 (Pearsons Direct for SBC).

did not include the costs of any repeaters.[18] Likewise, because multiplexers are used only in fiber configurations, and because the HAI model used to set SBC's rates did not model an end-to-end fiber configuration for the costing of DS1 loops, the costs for multiplexers were not included in the resulting rates.[19]

According to SBC, the CLECs concede that the costs of installing new repeaters and mutiplexers are not included in SBC's existing UNE rates. According to the CLECs, the installation of repeaters to support DS1-based services would not be required in the forward-looking local network configuration adopted by the Commission as the basis for the loop rates currently in effect. The CLECs state that in a forward-looking network, such as that designed by HM 5.3 as modified by the Commission, design criteria prevent the construction of copper loops that are so long that a repeater would be required. According to the CLECs, all relevant costs associated with design, construction and maintenance of a network that is able to offer DS1 services without the need to add repeaters are specifically incorporated into the UNE loop rates adopted by the Commission in D.04-09-063.

The CLECs assert that under TELRIC principles, the embedded SBC loop network is irrelevant for purposes of determining TELRIC-compliant costs and rates. The CLECs assert that the recently–established TELRIC-compliant UNE rates for SBC were based on a revision to the HM 5.3 TELRIC model that was explicitly made so that all loops could support DS1 service without further modifications. The CLECs ask us to ignore whether the costs of repeaters and

---

[18] *Id.*

[19] *Id.* at 3-4.

multiplexers are included in UNE rates, and focus on the overarching TELRIC principles mandated by the FCC. The CLECs assert that the Commission has obviated the need for repeaters and multiplexers by its modifications to HM 5.3.

We do not concur with the CLECs view of our adopted UNE rates in D.04-09-063. For both repeaters and multiplexers, we need to determine whether the costs of those items are included in the UNE rates actually adopted by the Commission. The answer is a resounding "no." We modified the HM 5.3 model so that the maximum loop modeled was 12,000 feet. That has nothing to do with SBC's actual network, which clearly has some loops longer than 12,000 feet. Therefore, to the extent that a repeater is needed to provision a DS1 on an 18,000-foot loop, that repeater would not have been included in the costs adopted, since no repeater is necessary for loop lengths up to 12,000 feet.

The same holds true for multiplexers. The model we adopted to set SBC's UNE rates did not model an end-to-end fiber configuration for the costing of DS1 loops, so the costs for multiplexers were not included in the resulting rates. Again, we are not dealing with the makeup of SBC's legacy network, or with a hypothetical TELRIC model. Instead, we are dealing with the specific modifications made to the TELRIC model used to set rates for SBC's UNEs. We are convinced that the adopted UNE loop rates do not include the costs of either repeaters or multiplexers. Therefore, we conclude that SBC is entitled to recover the costs of those components from CLECs.

The parties agree that the FCC's list of RNMs in the *TRO* is illustrative, and not intended to be an exhaustive list of RNMs. The CLECs point out that SBC's commitment not to impose additional charges applies to the RNMs specifically identified in Sections 8.1.2 and 8.2.2. The CLECs state that in footnote 34 of its Opening Brief, SBC states that it reserves the right to seek

recovery for the costs of yet-undefined equipment. The CLECs urge the Commission to make explicit findings in this proceeding on all RNMs, not just the ones specifically identified in Sections 8.1.2 an 8.2.2. Thus, the Commission should explicitly reject SBC's "reservation of rights" to later impose additional RNM charges for RNMs that SBC discovers in the future, saying they should not be imposed without explicit approval in advance from the Commission, and that SBC must provision the RNM in the meantime without additional charge.

SBC has asserted that of the RNMs listed in Sections 8.1.2 and 8.2.2, are all covered in existing UNE rates, with the exception of repeaters and multiplexers.[20] Therefore, there should be no charge for any of the other RNMs listed in Sections 8.1.2 and 8.2.2.

The CLECs dispute SBC's proposal to use "individual case basis" or "ICB" pricing for repeaters and multiplexers. However, SBC's witness Silver explains that SBC's ICB pricing proposal reflects a commonly accepted process for the circumstance where the costs of a product or service vary.[21] SBC points out that SBC's existing pricing schedule includes ICB pricing for various elements, and the Commission itself recently approved ICB pricing of RNMs in the XO arbitration.[22]

---

[20] In its Opening Brief, SBC states: "SBC California has identified only two relatively uncommon scenarios where costs are not being recovered from existing rate elements, and where SBC California accordingly seeks to recover those costs via a separate charge: first, where SBC California must install a repeater in order to provision DS1 service over a long copper loop (generally, a copper loop that is more than 12,000 feet in length); and, second, where SBC California must install multiplexers in order to provide DS1 or DS3 service."

[21] Exh. 1 at 15-16 (Silver Direct for SBC).

[22] *Id.* at 10,16 (Silver Direct).

We concur with SBC's conclusion that ICB pricing is appropriate for repeaters and multiplexers since the costs of provisioning them may vary.

For RNMs that CLECs request that are not listed in Sections 8.1.2 or 8.2.2 of the Amendment, the Commission needs to determine whether or not the costs of those items are covered in SBC's UNE rates. SBC cannot make that decision unilaterally. The FCC noted that the costs associated with RNMs are "often" reflected in recurring rates that CLECs pay for loops.[23] Therefore, we will establish a rebuttable presumption that new RNMs are covered in existing UNE rates, as are most of the RNMs listed in Sections 8.1.2 and 8.2.2. If a CLEC requests an RNM not on the illustrative list, SBC shall provision the RNM in the interim, at no charge, but subject to true-up. At the same time, SBC may file an application at the Commission for a determination as to whether the costs of that particular RNM are being recovered in existing UNE rates.

We have modified Section 8.1.4 as follows to reflect our adopted language:

> The Parties agree that the routine network modifications for which SBC is recovering its relevant costs via existing non-recurring and monthly recurring charges include, but are not necessarily limited to, those described in Section 8.1.2, with the exception of repeaters and multiplexers. If, after the effective date of this Amendment, SBC believes that the relevant costs of a routine network modification is not recovered via existing non-recurring and monthly recurring charges, SBC may file an application with the Commission that requests approval to impose non-recurring and/or monthly recurring charges associated with a specific routine network modification. In any such proceeding, SBC shall

[23] *TRO* ¶ 640.

> bear the burden of proving that SBC is not recovering its relevant costs for the specific routine network modification via existing non-recurring and monthly recurring charges. During the period when the Commission is considering any such application, SBC will continue to undertake routine network modifications without delay and at no charge, subject to true-up once the Commission issues its decision as to whether SBC should be allowed to impose additional non-recurring and/or monthly recurring charges for specified routine network modification.

SBC states that Issue 41 is easily resolved. Whether SBC imposes non-recurring or recurring charges for modifications to its network necessary to provision special access orders is irrelevant. SBC cites the decision of the United States Court of Appeals for the Sixth Circuit in *Michigan Bell Telephone Co. v. Strand,* 305,F 3d 580 (6th Cir. 2002) in support of its position. There, Ameritech Michigan sought to recover the costs of loop conditioning, which is itself a form of routine network modification where such conditioning was necessary to provision UNE loops. The CLECs claimed that Ameritech did not bill its own retail customers for similar work and thus any attempt to bill the CLEC "constituted forbidden discrimination." (305 F. 3d at 585.) The Sixth Circuit categorically rejected this argument:

> [T]he absence of special charges on the retail side [wa]s neither surprising nor sinister, because retail customers do not lease pieces of the network but instead buy *services* provided by Ameritech over its own existing network.[24]

[24] *Id.* at 592.

We concur with SBC that any inquiry into how SBC recovers the costs of modifications to its network performed for its special access customers is irrelevant.

The CLECs urge the Commission to rule that SBC is required to undertake all RNMs that are or might be required to make UNE loops DS1 capable, in parity with the fact that SBC will make essentially any network modification that may be required to provision a special access DS1 loop, with the sole exception of the construction of an altogether new UNE loop.

We concur with the CLECs that it is consistent with the FCC's language that SBC perform "those activities that incumbent LECs regularly undertake for their own customers."[25] We believe that SBC must perform *all* RNMs that it performs for its own customers to make UNE loops DS1 capable, with the exception of the exclusions listed in Sections 8.1.3 and 8.2.3. We have adopted an illustrative list of RNMs in Sections 8.1.2 and 8.2.2, and have provided a process for CLECs to order any additional RNMs, not on the illustrative list. We have also established a process to determine if individual charges are warranted for those additional RNMs. This will ensure that the CLECs have access to any needed RNMs, and that SBC is compensated for those RNMs, if they are not already recovering the costs in their adopted UNE rates.

---

[25] *Id.* at 632.

E. Issue 44: Sections 8.1.5, 8.1.6, and 8.1.7 – What modifications to SBC's current preordering, ordering and provisioning systems and practices, including standard provisioning intervals, are required with respect to Routine Network Modifications?

In Section 8.1.5, the CLECs propose language that would require SBC to provision all UNE DS1 loop orders within 14 days of the original due date. In the event SBC does not meet that standard, the CLECs' language would require SBC to credit the CLEC on a daily basis an amount intended to capture the amount the CLEC would pay if it ordered DS1 special access service.

SBC urges the Commission to reject the language. First, SBC contends the Commission has made clear that any proposed performance standards and penalties are to be addressed in the Commission's ongoing performance measurements proceeding (R.97-10-016/I.97-10-017). In particular, in its decision modifying and clarifying its approval of SBC's performance incentives plan, the Commission "ma[de] clear that changes to [the plan] must be made only with our approval upon receiving a motion requesting changes."[26] Second, SBC asserts that the CLECs' proposed performance interval—14 days beyond the standard due date in all cases—is unrealistic. For reasons beyond its control, SBC may not be able to meet the standard interval. For example, in some cases, SBC may be required to obtain a permit in order to perform an RNM that is necessary to provision a particular UNE loop order. As SBC's witness Kieren

---

[26] Modification Clarifying Implementation Details of the Performance Incentive Plan for Pacific Bell Telephone Co. at 4, Re *Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems,* D.02-06-006 (June 6, 2002).

explained, the permitting process can take many months, depending on the circumstances.[27]

The CLECs respond saying that the instant proceeding represents a better venue to decide the performance measurements issue because of the complex and intertwined nature of all the RNM issues, and the urgency of the issue.

We disagree. We have established a proceeding (referenced above) for examination of all performance measurement issues. To the extent that RNMs have an impact on the loop provisioning metrics, that issue should be addressed in our performance measurement docket, or a successor docket. The CLECs' proposed language in Section 8.1.5 is rejected.

The CLECs and SBC agree that the CLECs have abandoned their proposed language in Section 8.1.6 that would necessitate changes to SBC's Operations Support Systems (OSS) interfaces to develop electronic preordering and ordering capabilities for DS1 UNE loops. Instead, the CLECs withdrew that language and seek a requirement that they be permitted to obtain information from the Local Service Center (LSC) and/or CLEC Account Teams regarding SBC's network deployment plans that they believe will assist them in using UNEs.

In their Opening Brief, the CLECs cite the Reply Testimony of their witness Starkey proposing in general terms language that would provide CLECs with an ability to work with SBC's provisioning agents, in combination with the automated OSS systems, in order to re-use facilities when they have submitted a

[27] Exh. 33 at 10-11 (Kieren Reply).

service order and a "no facilities available" jeopardy has been returned. The CLECs' witness Starkey suggests that the parties draft conforming language regarding the specifics later.[28] The CLECs request that the Commission's order in this proceeding adopt the principles cited in the paragraph quoted from Starkey's testimony.

SBC responds that the CLECs' proposal is procedurally improper. Under Section 252 of the 1996 Act, parties are required to negotiate contract language first, and then to arbitrate competing contract language before the Commission. On this issue, however, the CLECs still have not proposed contract language.

The CLECs rebut SBC's allegation saying that SBC would penalize the CLECs for their willingness to be flexible and change their position in response to new information. The CLECs urge the Commission to adopt Starkey's recommendations in his reply testimony. These recommendations remove the burden, delay and expense of modifying SBC's OSS, while still providing necessary information to the CLECs via a "human interface."

SBC also asserts that the CLECs' proposal is outside the scope of this proceeding, which is to implement changes in law stemming from the *TRO* and the *TRRO*. According to SBC, there has been no intervening event that has altered SBC's obligations to provision UNEs where there are no facilities available, or to provide information via the LSC and the Account Team.

According to SBC, the CLECs' proposal is unnecessary, because SBC already provides information to CLECs that addresses their needs. SBC's

---

[28] Exh. 30 at 29-30) (Starkey Reply for CLECs).

witness Kieren explains that SBC provides "to the degree possible and on an individual case basis…helpful information" to assist Arrival in its efforts to successfully order UNE DS1 loops.[29]

It is clear that the provisioning of DS1 loops has been a point of controversy between SBC and Arrival. The FCC made a number of changes relative to access to UNEs in the *TRO* and *TRRO*. Therefore, it is appropriate that we address the related issue of facilitating the ordering of high-capacity UNE loops. While the CLECs have not proposed specific contract language, they have made clear their intent, namely to have a person to talk to about the status of an order and what can be done to see that order to completion. SBC has been aware of the CLEC proposal since they reviewed Starkey's Reply Testimony.

We will adopt items (1) and (2) under Section 8.1.6, that require SBC to provide the CLEC with certain information when facilities are unavailable and/or cable placement is required. The CLEC is to receive detailed information concerning the basis for the jeopardy code and SBC must disclose any pending facilities relief plans. Those two pieces of information, that SBC has and the CLEC does not, provide the CLEC with information needed for planning how best to provide service to its customer.

In addition, we have crafted a third point to go under Section 8.1.6, based on Starkey's Reply Testimony. SBC shall be required to:

> (3) have provisioning agents work with the CLEC to re-use facilities when the CLEC has submitted a service order and a "no facilities available" jeopardy has been returned.

---

[29] Exh. 33 at 12-13 (Kieren Reply for SBC).

It is appropriate that the CLECs have a knowledgeable person available to discuss the reasons for a jeopardy notice, and to work with the CLEC to determine how to provide service to the CLEC's customer.

In Section 8.1.7, the CLECs propose language intended to address the circumstance in which SBC rejects a DS1 UNE loop order for "no facilities available," and the CLEC then purchases special access to serve the premises in question. Under the CLECs' proposal, a CLEC in that circumstance may withhold half of the special access monthly recurring rate while it disputes SBC's rejection of the UNE order.

SBC states that the CLECs' proposal is unsubstantiated. The CLECs rebut that, pointing to witness Mulkey's opening testimony at page 5. SBC points out that after rejecting a UNE order for lack of facilities, SBC might indeed provision a special access order without imposing additional special construction charges. As discussed above in connection with Issues 41 and 43, the presence or absence of specific charges on the special access side is irrelevant to determining the scope of SBC's UNE obligation.

The CLECs' proposed language in Section 8.1.7 is rejected. The CLECs are not entitled to withhold one-half of the tariffed special access charges while they dispute SBC's rejection of their UNE DS1 loop order. SBC has the right to construct a loop to serve a special access customer, if no loop is available. At the same time, SBC is *not* required to construct a new loop to serve a UNE customer. Therefore, it would be inappropriate to set up a punitive regime in those circumstances where SBC rejects a UNE loop order, and later provisions a loop under its special access tariff, once a new loop is constructed. There is no evidence in the record of this proceeding to conclude that SBC rejects UNE DS1 loop orders, when facilities actually *are* available. If that circumstance were to

occur, the affected CLEC could seek redress by filing a complaint with this Commission.

IV. Comments on Draft Decision

Pursuant to Pub. Util. Code § 311(g)(3), and Rule 77.7(f)(5), the Commission may reduce or waive the period for public review and comment for a decision under the state arbitration provisions of the federal Telecommunications Act of 1996. We reduce the comment period as follows: Opening comments must be filed on February 22, 2006, and reply comments must be filed on February 27, 2006.

V. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. A number of the agreed-upon RNMs involve cable, not electronics.
2. The FCC requires RNMs where the requested transmission facility has already been constructed. A cable stub fits that category.
3. SBC acknowledges that it sometimes deploys a cable stub as part of a special access order.
4. The UNE rates we adopted in D.04-09-063 do not include the costs of either repeaters or multiplexers.
5. SBC asserts that all of the RNMs listed in Sections 8.1.2 and 8.2.2 are covered in existing UNE rates, with the exception of repeaters and multiplexers.
6. ICB pricing is appropriate for repeaters and multiplexers since the costs of provisioning them may vary.

7. For any RNMs not listed in Sections 8.1.2 and 8.2.2 of the Amendment, the Commission needs to determine whether or not the costs of those items are covered in SBC's UNE rates.

8. The FCC notes that the costs associated with RNMs are "often" reflected in recurring rates that CLECs pay for loops.

9. Any inquiry into how SBC recovers the costs of modifications to its network performed for its special access customers is irrelevant.

10. It is appropriate that CLECs have a knowledgeable person available to discuss the reasons for a jeopardy notice and to work with the CLEC to determine how to provide service to the CLEC's customer.

11. SBC has the right to construct a loop to serve a special access customer, if no loop is available. At the same time, SBC is not required to construct a new loop to serve a UNE customer.

Conclusions of Law

1. Nothing about the result of this arbitration is inconsistent with governing federal law.

2. No arbitrated portion of the Amendment to the ICA fails to meet the requirements of Section 251 of the Act, including FCC regulations pursuant to Section 251, or the standards of Section 252(d) of the Act.

3. The arbitrated amendment should be approved.

4. There should be no charge for any of the RNMs listed in Sections 8.1.2 and 8.2.2, with the exception of repeaters and multiplexers.

5. SBC should perform all RNMs that it performs for its own customers, with the exception of the exclusions listed in Sections 8.1.3 and 8.2.3.

6. To the extent that RNMs have an impact on the loop provisioning metrics, that issue should be addressed in the Commission's performance measurement docket, or a successor docket.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Pursuant to the Telecommunications Act of 1996, the Amendment to the Interconnection Agreements between SBC California and various Competitive Local Exchange Carriers is adopted.

2. Within 14 days of the effective date of this order, the parties' shall file the final version of the amendment with the Telecommunications Division via Advice Letter. That filing shall include the names of all Competitive Local Exchange Carriers covered by the terms of this amendment.

3. The effective date for the amendments shall be the effective date of this order.

This order is effective today.

Dated _____, at San Francisco, California.