

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 an incumbent Local Exchange Carrier's (LECs) unbundled transmission facilities, including loops, transport and dark fiber, in order to provide the unbundled network elements (UNEs) requested by CLECs. The most common RNMs are those that are required in order to make a loop capable of supporting DS-1 service. The Federal Communications Commission's (FCC) 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 already recovering the relevant costs of all RNMs listed in Sections 8.1.2 and 8.2.2 of the Amendment adopted by this

decision, through the Total Element Long Run Incremental Costs (TELRIC)-compliant rates we recently adopted for SBC. Therefore, SBC is not entitled to impose any additional charges for the RNMs listed in Sections 8.1.2 and 8.2.2.

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 FCC eliminated or restricted the unbundling obligations for numerous 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

We concur with SBC that the FCC's rules state that ILECs are not required to trench or place new cables for a requesting carrier. As the FCC states:

Routine modifications, however, do not include the construction of new wires (i.e., installation of new aerial or buried cable) for a requesting carrier.¹³

Since a cable stub would clearly call for installation of new cable, it is covered by the FCC's prohibition and should not be considered an RNM. The

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

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

¹³ TRO ¶ 632.

CLECs' proposed language adding cable stubs to the list of required RNMs in Sections 8.1.2 and 8.2.2 is rejected.

- 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

¹⁴ *TRO* ¶ 640.

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 repeater¹⁵ 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 multiplexers¹⁶ 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 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

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).

¹⁸ *Id.*

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 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.

¹⁹ *Id.* at 3-4.

We concur with the CLECs' view of our adopted UNE rates in D.04-09-063, and with the CLECs' assertion that the methodology used to establish those UNE rates obviates the need to determine whether current rates recover the costs of repeaters or multiplexers, because repeaters and multiplexers are not required to make loops DS-1 capable in the network architecture we adopted as the basis for the TELRIC-compliant UNE rates we adopted.

The CLECs are correct that the rates for UNEs must be TELRIC-compliant. Moreover, as the CLECs point out, in A.01-02-024 we recently concluded a review of the rates for several of SBC's UNEs, including UNE loops, using a TELRIC approach. To set those rates, we modified HM 5.3, the model used to set our UNE rates, so that both the fiber/copper economic crossover point and the maximum copper loop/loop segment length were set at 12,000 feet. The result, as D.04-09-063 indicates, is a loop plant design that has both fiber and copper in the loop plant, but that limits copper loops and loop segments to 12,000 feet. The model thus allows loops that have a total length of 12,000 feet or less to be provisioned on all-copper facilities. For loops that are longer than 12,000 feet, the model specifies that such loops consist of a combination of copper and fiber facilities. According to the CLECs, this modification to HM 5.3 obviated the need to study and capture the costs of repeaters, because, as the record here and in A.01-02-024 makes clear, repeaters are not required to support DS-1 loops in a hybrid copper/fiber loop architecture when the copper portion of a loop is limited to 12,000 feet.

Moreover, as the CLECs point out in their comments on the DD, we did not model an end-to fiber configuration for loops, because we determined instead that the forward-looking, least cost loop architecture is a hybrid copper/fiber loop architecture, as discussed above. Because multiplexers are

only required in an end-to-end fiber loop configuration, they were not studied in determining the relevant costs of DS-1 loops, nor should they have been.

We used the costing approach discussed above in order to make sure that we modeled a network that can provide all the services SBC currently provides, including DS-1 capable loops. We agree with the CLECs that, in doing so, we set the prices for UNEs at a higher level than would have been the case if we had employed HM 5.3 without the modifications discussed above.

Under cross-examination, SBC's costing witness Pearsons was asked if he remembered that adjusting HM 5.3's 18,000-foot maximum copper length cutoff to 12,000 feet caused the cost of a DS0 UNE loop to increase by 14 percent or about \$1.80. He indicated that he did not remember the amount that the loop price increased. However, he did remember that the number was "significant."²⁰ In other words, if we had adopted the HM 5.3 model's 18,000-foot maximum copper length, the UNE loop price would have been significantly lower, and would have included the cost of repeaters.

Thus, SBC's claim that its current UNE rates do not include the costs of either repeaters or multiplexers, while true, is irrelevant. SBC's current UNE rates recover all relevant costs associated with UNE loops, including the cost of repeaters and multiplexers.

For purposes of setting UNE rates and addressing RNM cost recovery, it is also irrelevant that SBC must deploy repeaters and/or multiplexers in order to make loops DS-1 capable on its embedded legacy network. The relevant standard to be applied in setting UNE rates is TELRIC, and we have done so. To

²⁰ 3TR at 444 (Pearsons for SBC).

allow SBC to impose additional charges for adding repeaters or multiplexers would violate both TELRIC and the FCC's prohibition on the double recovery of RNM costs. We therefore deny SBC's request to be allowed to impose additional charges on CLECs when repeaters or multiplexers are required in order to make a loop DS-1 capable.

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 and 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.²¹ We have determined that there should be no charge for repeaters

²¹ 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."

or multiplexers. Therefore, there should be no charge for any of the RNMs listed in Sections 8.1.2 and 8.2.2.

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.²² 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. 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 bear the burden of proving that SBC is not recovering its

²² TRO ¶ 640.

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.²³

²³ *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."²⁴ 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.

²⁴ *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.”²⁵ 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

²⁵ 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.²⁶

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

²⁶ 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.²⁷ 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

²⁷ 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.²⁸

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.

In its comments on the DD, SBC states that these sections are outside the scope of this proceeding since each of the CLECs’ proposals would apply only where SBC has rejected an order for lack of facilities. SBC states that it has never had to deploy new facilities in order to provision them as UNEs. We concur that SBC is not required to deploy new facilities to provide UNEs to CLECs. However, the proposed language does not require SBC to build new facilities to provide UNE service to CLECs. It merely provides CLECs with information they need to assess their network needs.

While the CLECs have not proposed specific contract language for Section 8.1.6(3), 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.

In its comments on the DD, SBC proposes alternate language for 8.1.6(1), saying that the language fails to specify either the precise information

²⁸ Exh. 33 at 12-13 (Kieren Reply for SBC).

that must be made available to CLECs, or how the CLECs may obtain that information. SBC proposes some modifications to the language, and the CLECs support those changes, so the following language will be adopted for Section 8.1.6(1):

Upon request by CLEC to the SBC local service center, provide CLEC with the specific cable placement requirement(s) that SBC's engineering personnel designated as supporting the jeopardy code.

SBC proposes modifications to Section 8.1.6(2) as well, and the CLECs support that change, except they assert that the words "without notice" should be removed. If SBC changes the expected loop plant relief dates, it should notify affected CLECs so they can adjust their plans accordingly. We agree. The following language will be adopted for Section 8.1.6(2):

Upon request by CLEC to the SBC local service center, disclose any pending construction jobs that would result in facilities relief plans associated with the portion of the loop plant in question, along with expected relief date(s). Such expected relief date(s) are subject to change without any liability to SBC. The CLEC shall be notified of any change in expected relief dates.

We have adopted modifications to 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.

SBC proposes a change to Section 8.1.6(3), which is unopposed by the CLECs. The following language will be adopted:

(3) have customer care representatives work with the CLEC to re-use facilities when the CLEC has submitted a local service request and a “no facilities available” jeopardy has been returned.

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

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(3), and Rule 77.7(f)(5) of the Commission's Rules of Practice and Procedure. Comments were filed on February 22, 2006 and Reply Comments, on February 27, 2006. Those comments have been taken into account, as appropriate, in finalizing this decision.

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. A cable stub requires the installation of cable and therefore, in accordance with the FCC's rules, it is not an RNM.
3. SBC acknowledges that it sometimes deploys a cable stub as part of a special access order.
4. Repeaters and multiplexers are not required to make loops DS-1 capable in the network architecture adopted in D.04-09-063.

5. SBC is already recovering the relevant costs of all RNMs in Sections 8.1.2 and 8.2.2 of the Amendment through the TELRIC-compliant rates adopted in D.04-09-063.

6. 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.

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

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

9. 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.

10. 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. Consistent with TELRIC principles applicable to the pricing of UNEs, there should be no charge for any of the RNMs listed in Sections 8.1.2 and 8.2.2.

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 21 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.