

Decision 06-08-029 August 24, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Pacific Bell Telephone Company
d/b/a SBC California (U 1001 C) for Arbitration
of an Interconnection Agreement with MCI metro
Access Transmission Services LLC (U 5253 C)
Pursuant to Section 252(b) of the
Telecommunications Act of 1996.

Application 05-05-027
(Filed May 26, 2005)

**OPINION APPROVING ARBITRATED
INTERCONNECTION AGREEMENT AS AMENDED**

1. Summary

We affirm the results reached in the April 19, 2006 Final Arbitrator's Report (FAR) with two clarifications. The conformed Interconnection Agreement (ICA), filed on June 14, 2006 pursuant to the FAR, shall be amended to implement these clarifications. Pacific Bell Telephone Company d/b/a AT&T California (AT&T-CA) and MCI metro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services (Verizon Business)¹ shall each sign the

¹ When this application was filed, Pacific Bell Telephone Company was doing business in California as SBC California (SBC-CA). On November 21, 2005, SBC Communications, Inc. (the parent of Pacific Bell Telephone Company) and AT&T Corporation merged to form AT&T Inc. Pursuant to the merger, SBC-CA now does business as AT&T-CA. References in this proceeding to either SBC-CA or AT&T-CA are to the same company. Similarly, MCI, Inc. and Verizon Communications, Inc. merged on January 6, 2006. Following the merger, MCI metro Access Transmission Services LLC (MCI metro) began doing business as Verizon Business. References in this proceeding to either MCI metro or Verizon Business are to the same company.

amended conformed ICA, and shall jointly file the amended conformed ICA within 5 days of the date this decision is mailed. The amended conformed ICA shall become effective upon filing. This proceeding is closed.

2. Background

The current ICA between SBC-CA and MCIIm expired on September 24, 2004. Pursuant to provisions of the Telecommunications Act of 1996 (Act or TA 96), parties agreed to extend the window for negotiation and arbitration several times. The last extension was effective May 4, 2005, and provided, among other things, that the window for petitioning the Commission to arbitrate unresolved issues would be from May 1, 2005 through May 26, 2005.

On May 26, 2005, SBC-CA applied for Commission arbitration of 175 issues. On June 20, 2005, MCIIm responded, adding 19 issues.

An Initial Arbitration Meeting (IAM) was held on June 23, 2005. Parties agreed to a schedule which included arbitration hearings beginning on September 19, 2005.

On June 30, 2005, SBC-CA filed a motion to strike one of MCIIm's proposed additional issues. On July 12, 2005, MCIIm filed a response, and on August 1, 2005, SBC-CA filed a reply. By ruling dated August 18, 2005, SBC-CA's motion was granted.

A second IAM was held on September 6, 2005. Parties agreed to transfer several issues from this arbitration to Application (A.) 05-07-024 (the SBC-CA Triennial Review Order (TRO) and Triennial Review Remand Order (TRRO) consolidated arbitration proceeding). Parties also agreed to a schedule with a Commission decision in about mid-March or early April 2006.

Arbitration hearings were held from September 19, 2005, through September 30, 2005. Testimony was given by 13 witnesses, and 44 exhibits were

received as evidence. Parties agreed to transfer 31 issues to the SBC-CA TRO/TRRO proceeding. On September 29, 2005, MCIIm moved to transfer two additional issues from this arbitration to the TRO/TRRO proceeding. SBC-CA opposed the motion. On October 6, 2005, MCIIm's motion was granted.

Parties continued to negotiate, and resolved about 78 additional issues. On October 11, 2005, parties jointly filed a revised statement of unresolved issues identifying 82 issues left for arbitration. Opening briefs were filed on November 4, 2005. In opening briefs, parties reported settlement of two more issues. Reply briefs were filed on November 18, 2005, and the proceeding was submitted for decision on 80 issues.

On January 13, 2006, parties moved for deferral of issuance of the Draft Arbitrator's Report (DAR) for 60 days, with the remaining schedule similarly extended to allow for further negotiation. By ruling dated January 20, 2006, the joint motion was granted in part. The DAR was filed on January 20, 2006, and the schedule was extended as parties requested.

On March 30, 2006, comments on the DAR were filed by SBC-CA and MCIIm. On April 4, 2006, reply comments were filed by SBC-CA, MCIIm, and Joint Competitive Local Exchange Carriers (Joint CLECs, consisting of Pac-West Telecomm, Inc. (Pac-West); Level 3; O1 Communications, Inc.; XO Communication Services, Inc.; and Call America, Inc.). On April 19, 2006, the FAR was filed. The FAR directed that a conformed ICA be filed by April 26, 2006.

On April 21, 2006, parties moved for an extension to May 10, 2006 for the filing of the conformed ICA. The motion was granted. On May 9, 2006, each party requested leave to file a motion for addendum to the FAR, asking for resolution of an ICA conformance issue. The requests were granted. On May 17,

2006, each party filed a motion seeking an addendum to the FAR, or other relief. Parties waived the filing of responses to the motions. On June 2, 2006, the motion of AT&T-CA was granted, and the motion of Verizon Business was denied.

On June 14, 2006, parties jointly filed a conformed ICA. Each also filed a statement (a) identifying the criteria by which the negotiated and arbitrated portions of the conformed ICA must be tested for approval or rejection, (b) explaining whether the conformed ICA passes or fails each test, and (c) stating whether or not the conformed ICA should be approved or rejected by the Commission.

On July 10, 2006, Pac-West moved to intervene. On July 17, 2006, Pac-West's motion was denied. We affirm the July 17, 2006 Arbitrator's Ruling denying Pac-West's motion. We also note that Pac-West's motion included numerous arguments concerning the proper interpretation of federal law governing the application of access charges related to voice over internet protocol (VOIP) traffic. We clarify here that Pac-West's arguments will be fully considered in its pending dispute proceeding with AT&T involving this issue. That is, this arbitration decision, and the outcome in this proceeding, will not bind our decision in the pending Pac-West initiated dispute proceeding against AT&T in Rulemaking 95-04-043/Investigation 95-04-044. Rather, we will fully consider the facts and law in the Pac-West/AT&T dispute on their own merits.

3. Arbitrator's Findings

The Arbitrator resolved 80 disputed issues in 14 categories. The FAR finds for SBC-CA on 42 issues, finds for MCIIm on 33 issues, and adopts a compromise or other outcome on 5 issues. (See Attachment A for a summary of issues and outcomes.)

4. Negotiated Portions of Amendment to ICA

The Act provides that the Commission may reject an agreement (or portions thereof) arrived at by negotiation between the parties only if the Commission finds that (a) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement, or (b) implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. (TA 96, § 252(e).) The Commission may also reject an ICA (or portion thereof) if we find that it violates other requirements of the Commission, including, but not limited to, quality of service standards. (Commission Resolution ALJ-181, Rules 2.18 and 4.3.1.)

No party or member of the public alleges that any negotiated portion of the amendment should be rejected. We find nothing in any negotiated portion of the amendment which results in discrimination against a telecommunications carrier not a party to the agreement, nor which is inconsistent with the public interest, convenience and necessity.

5. Arbitrated Portions of Amendment to ICA

The Act permits rejection of the ICA (or portions thereof) adopted by arbitration only if the Commission finds that the ICA does not meet the requirements of Section 251 of the Act, including the regulations prescribed by the Federal Communications Commission (FCC) pursuant to Section 251, or the standards set forth in Section 252(d) of the Act.² The Commission may also reject an ICA (or portions thereof) if we find that it violates other requirements of the

² Section 251 describes the interconnection standards. Section 252(d) identifies pricing standards.

Commission, including, but not limited to, quality of service standards.

(Commission Resolution ALJ-181, Rule 4.2.3.)

In its June 14, 2006 statement filed with the conformed ICA, AT&T-CA contends that portions of the ICA fail the tests for arbitrated agreements. In particular, AT&T-CA asserts that the conformed ICA fails tests in 6 areas covering 18 issues. AT&T-CA also argues that the FAR correctly decides issues in other areas, particularly in its holding that entrance facilities are not available at total element long run incremental cost (TELRIC) rates.

In its June 14, 2006 statement, Verizon Business says the ICA does not meet the standards for approval and requests two forms of relief. First, Verizon Business seeks a Commission statement that the TRO/TRRO Amendment resulting from Decision (D.) 06-01-043 in A.05-07-024 (AT&T-CA's TRO/TRRO consolidated arbitration with MCIIm and other CLECs) governs the relationship under the conformed ICA adopted here. This would effectively reverse the Arbitrator's June 2, 2006 denial of Verizon Business's motion for addendum to the FAR. Second, Verizon Business asks that parties be directed to include in the conformed ICA here the interconnection rates for entrance facilities and Signaling System 7 (SS7) adopted by the Commission as part of TRO/TRRO Amendment in D.06-01-043.

We address each item in turn.

5.1 AT&T-CA

AT&T-CA seeks reversal of the FAR in 6 areas covering 18 issues.

5.1.1 13-State Amendment (Issue Nos.: NIM 4, 8, 12; Reciprocal Compensation 2, 4, 5, 6, 8, 9, 16)

The FAR adopts MCIIm's position that these issues are not now ripe, or are moot, because they are currently governed by a 13-State Amendment through at

least July 1, 2007. SBC-CA does not disagree that the 13-State Amendment now controls, saying the 13-State Amendment “will supersede any inconsistent terms in the ICA currently being arbitrated.” (SBC-CA Opening Brief, page 139.)

Nonetheless, SBC-CA continues to argue in its June 14, 2006 statement that the FAR must be reversed because the issues will be in dispute after July 1, 2007, long before the termination of this replacement ICA (said by SBC-CA to be about mid-2009). We are not persuaded.

The FAR correctly finds for MCI. Parties have a history of extending this and other agreements when reasonable and appropriate. The outcome here will be affected by events over the next year, including a possible FCC order on intercarrier compensation. It is unnecessary, unwise and a poor use of resources for the Commission to decide issues not currently in dispute only because they might be in dispute at a future time. Further, to do so now might prejudice parties’ renegotiations and potential compromises over the course of the next several months or years.

Moreover, the FAR adopts a reasonable approach for Commission involvement in future dispute resolution, if needed. That is, the FAR notes parties may use the dispute resolution procedure in the ICA if they wish. The only requirement is that they notify the Commission and the service list of that choice.

Alternatively, if a dispute remains in 2007 (and parties have not agreed to extend the terms of the 13-State Amendment), SBC-CA is directed by April 1, 2007 to file an application for further arbitration limited to these 10 issues. If no new facts have emerged by April 1, 2007, parties may simply propose that the existing record in this matter (A.05-05-027) be used to resolve the disputes, including adoption of a proposed schedule in the FAR which provides the

opportunity for a timely Commission decision. If new disputed facts have emerged, however, that is precisely the reason why the Commission should not now decide these issues. Rather, the new facts should be considered before a decision is reached.

Thus, we affirm the outcome in the FAR.

5.1.2 Transit Traffic (Issue No.: NIM 26)

The FAR finds for MCIIm, concluding that transit traffic has been included in prior ICAs and should be so here, is an integral part of indirect interconnection, and is subject to the Act. SBC-CA seeks reversal of the FAR. We are not persuaded.

The Arbitrator's general approach was to continue results from the 2001 ICA unless new facts or law justify a change. (FAR, page 6.) This is consistent with the parties' views. For example, MCIIm says:

"parties' existing ICA, which was approved by the Commission, is prima facie evidence of just and reasonable rates, terms and conditions. Therefore, absent some compelling reason such as a change of law or material fact, the Commission should adopt the proposed language for disputed issues that most closely adheres to the provisions of the existing ICA." (MCIIm Opening Brief, page 9.)

SBC-CA agrees saying: "where one party proposes and the other opposes a departure from the existing ICA language, the arbitrator should defer to the existing ICA outcomes unless the facts or law justify a departure." (SBC-CA Opening Brief, page 7.) This approach is sound.

On this issue, the FAR adopts MCIIm's proposal, which was based on terms and conditions for transit traffic in the 2001 ICA. No party disputes that transiting was provided in the prior ICA. As found in the FAR, those provisions worked successfully, and no new facts or law justify a change. Further, as also

noted in the FAR, transit service is consistent with the pro-competitive goals of the Act. No evidence was presented here demonstrating that it was unworkable in the 2001 ICA, or will be during the life of the 2006 ICA. Therefore, it should continue.

Moreover, MCIIm shows that transit is an integral part of indirect interconnection and is subject to the Act. That is, each carrier has the duty to interconnect with other carriers directly or indirectly. (TA 96, §§ 251(a)(1) and 251(c) 2)(A).) The FAR explains that “when SBC-CA provides transit service it is providing indirect ‘interconnection with the local exchange carrier’s network for the transmission and routing of telephone exchange service and exchange access.’ (§ 251(c)(2)(A).)” (FAR, page 86.) The FCC recognizes the interrelationship between indirect interconnection and transit service saying:

“Shared transport between local tandem switches sometimes is used by competing carriers for ‘transiting’ - a means of indirectly interconnecting with other competing carriers for the purpose of terminating local and intraLATA traffic.” (TRO, ¶ 534, footnote 1640; emphasis added.)

Therefore, transit traffic is a method of indirect interconnection covered under §§ 251 and 252 of the Act.

SBC-CA states it will continue to provide transit service voluntarily, but cannot be ordered to do so as an obligation subject to compulsory arbitration under TA 96 § 252. SBC-CA is incorrect. Transiting is an obligation under § 251(c). In particular, § 251(c)(1) requires negotiation by the ILEC of all the duties in § 251(b) and (c). If unable to resolve by negotiation, the matter may be arbitrated. Pursuant to § 251(c)(2)(A), each ILEC is required to negotiate interconnection with any requesting CLEC for the transmission and routing of service and access. Any CLEC may interconnect directly or indirectly under

§ 251(a)(1). An indirect interconnection is a right given to each CLEC that the ILEC cannot by itself deny or vacate. The ILEC has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated.

Thus, we affirm the outcome in the FAR.

5.1.3 Transiting Price (Issue No.: Price Schedule 31)

This issue is the price corollary to NIM 26 (see above). The FAR adopts MCIIm's proposal to continue language and rates from the 2001 ICA. SBC-CA seeks reversal, claiming legal and factual error. We disagree.

SBC-CA claims the FAR commits legal error by finding that transit service is a component of indirect interconnection. According to SBC-CA, the FAR ignores extensive legal precedent cited by AT&T-CA. To the contrary, the FAR carefully explains the law (summarized above), and we find no error that requires reversal.

SBC-CA also claims the FAR commits a factual error by its conclusion that the matter was arbitrated in the 2001 ICA. To the contrary, on this issue the FAR states:

"As discussed above (see NIM 26 and Reciprocal Compensation 18), transit service is a fundamental component of indirect interconnection. The applicable price standard is TELRIC. MCIIm proposes the same transit service rates that were included in the 2001 ICA. SBC-CA does not oppose the transit rates themselves, only their inclusion in the 2006 ICA. No new facts or law, however, merit a change from the approach used in the 2001 ICA. MCIIm's proposed language and rates are identical to those in the 2001 ICA, and are adopted here."
(FAR, page 183.)

We find no factual error. Moreover, the approach employed by the Arbitrator of using the results in the 2001 ICA absent new facts or law is sound.

SBC-CA concludes that the parties must be allowed to address this matter by private commercial agreement or tariff and, at a minimum, the FAR should be reversed to hold that transiting, even if required, is not subject to TELRIC rates. For the reasons stated above, do not agree.

We affirm the outcome in the FAR.

5.1.4 Invoicing (Issue No.: Invoicing 3)

The issue here is the number of days after raising a billing dispute that the billed party has to provide the billing party with all information to support its claim. SBC-CA proposes 30 days, and MCIIm proposes 90 days. The FAR finds for MCIIm. SBC-CA seeks reversal, claiming factual error.

In particular, SBC-CA contends that the 2001 and 2006 ICAs differ on their treatment of billing disputes and the provision of supporting documentation. According to SBC-CA, the FAR's reliance on the rationale for, and number of days in, the 2001 ICA constitutes factual error.

To the contrary, the FAR comments on SBC-CA's contention here, saying:

"This is not entirely accurate. SBC-CA is correct that the time for filing a billing dispute is addressed elsewhere in the ICA (e.g., stake date in § 6.3). SBC-CA is also correct that the 2001 ICA specifically stated that failure to provide the required information and evidence within the required number of days '...shall constitute MCIIm's irrevocable and full waiver of its right to dispute the subject charges.' (2001 ICA, § 29.13.4.1.) That language is not in the 2006 ICA. Nonetheless, the 2006 ICA is silent on what happens after 30 or 90 days. It may or may not be that failure to file necessary supporting data constitutes a waiver of further pursuit of the claim. Rather than increase the likelihood of needless conflicts by adopting 30 days, it is more reasonable to continue the 90 days used in the 2001 ICA." (FAR, page 96.)

Thus, we are not convinced there is factual error.

Moreover, the FAR considers more than just the language in the 2001 ICA. For example, the FAR observes that some billing disputes require the query of a large number of records (e.g., reciprocal compensation over several months may require the extraction of millions of call detail records). In such cases, 90 days is reasonable.

Further, in response to SBC-CA's claim that 30 days will benefit both parties by expediting dispute resolution, the FAR correctly concludes that a shorter time has just as much potential for increasing disputes as expediting dispute resolution (e.g., in cases where data is not available in 30 days and an extension is sought by one side but opposed by the other). Both parties state they already do everything reasonably possible to resolve disputes in 30 days, or as little time as possible. Continuing the allowance of 90 days is reasonable given both parties' stated commitment to resolve matters earlier when feasible.

Finally, the FAR finds untrue SBC-CA's contention that giving CLEC's 90 days encourages improper behavior by giving CLECs an incentive to delay payment by disputing changes. Under the ICA, the disputing party must either (a) pay in full and dispute or (b) pay disputed charges to an escrow account. Moreover, interest and late payment charges apply, as appropriate. This provides adequate incentive against capricious billing disputes.

Therefore, we find no factual error, and are convinced for the other reasons stated above to affirm the outcome in the FAR.

5.1.5 Purchase from Tariff or ICA (Issue Nos.: GT&C 10, UNE 7, Physical Collocation 1, Virtual Collocation 1)

These issues essentially involve the extent to which MCIIm may purchase a service from either an approved tariff or the ICA. The FAR finds for MCIIm. As such, MCIIm may purchase from either an approved tariff or the ICA. SBC-CA

submits that the ICA must be treated as a “package deal,” that “pick and choose” is not lawful under the rulings of the FCC, and that the FAR must be reversed on these four issues. We do not agree.

SBC-CA argues that the FCC’s policy determinations are controlling, and the Commission may not thwart the FCC by adopting contrary policy. In particular, SBC-CA asserts the holding in the FAR that MCIIm may “pick and choose” between the SBC-CA/MCIIm 2006 ICA and SBC-CA’s tariffs must be reversed because it obstructs the pro-competitive policy encouraging “give and take” in ICA negotiations that the FCC has held to be required to accomplish the purposes of the Act.

To the contrary, the FCC’s rejection of “pick and choose” was in the context of § 252(i) of the Act (sometimes called the “most favored nations” (MFN) provision). SBC-CA fails to show that this same policy applies with respect to generally available, approved tariffs.

Other points asserted in its June 14, 2006 statement were also raised in SBC-CA’s comments on the DAR. They are largely all part of the same general theme, but are succinctly addressed in the FAR as follows:

“...SBC-CA reargues [in comments on the DAR] that the FCC rejected pick and choose and the Commission must do so here. To the contrary, the FCC was considering the matter with respect to a CLEC selecting individual elements of an ICA versus the entire ICA. The matter here is between an item in an ICA and the same item in a generally available tariff.

“SBC-CA asserts that the FCC found its prior ‘erroneous conclusion’ (in favor of pick and choose) was based on ‘inaccurate presumptions.’ SBC-CA contends that the same ‘inaccurate presumptions’ are at issue here. To the contrary, SBC-CA fails to show that the FCC was considering the matter in the same context as here (i.e., having a choice between an item in an ICA and the same item in a generally available tariff).

Nor does SBC-CA show that the FCC intended its conclusion to apply to such case.

“SBC-CA contends that the FCC’s decision rejecting pick and choose must apply here since ‘*the only potential distinction is the number of choices available to the CLEC. This is a distinction without a difference.*’ (SBC-CA Comments, page 7, emphasis in original.) In further explanation, SBC-CA says the issue here, at least in theory, is a choice between two sources, while the matter before the FCC was a choice between many sources. SBC-CA argues that there is no relevant distinction because ‘in all cases, as a matter of law, the relevant choices have been found by the California Commission to be nondiscriminatory — this is true as to tariffs and it is true as to ICAs.’ (*Id.*)

“Even if accurate, SBC-CA’s contention is irrelevant. The determination that two or more choices are nondiscriminatory is no reason not to increase choice and competition when it is reasonable to do so, as it is here.

“SBC-CA repeats its argument that the decision here prevents SBC-CA from being able to enforce a negotiated compromise, thereby thwarting the FCC’s public policy determination that the pro-competitive purposes of TA 96 are best achieved by promoting rather than obstructing the ‘give and take’ in ICA negotiations. To the contrary, SBC-CA fails to cite to any authority to show that the ICA negotiation process automatically nullifies a party’s rights under generally available tariffs.

“Moreover, the public policy considerations of allowing a company to pick and choose individual elements within an otherwise fully negotiated ICA package are not comparable to those in allowing choice between an item in an ICA and a generally available tariff. Tariffs are, and should continue to be, available to all eligible customers. This is not true of individual elements of an ICA for the policy reasons found by the FCC.” (FAR, pages 36-37.)

Thus, we are not persuaded by SBC-CA to reverse the FAR. Rather, we affirm the outcomes in the FAR.

5.1.6 Definition of Lawful UNE (Issue No.: UNE 2)

Parties dispute the definition of Lawful UNE (Unbundled Network Elements (UNE) Appendix §§ 1.1.2 and 1.5). The FAR finds for MCIIm.

SBC-CA contends that MCIIm and the FAR address a subject different from the one actually at issue. According to SBC-CA, MCIIm and the FAR treat this issue as a “change of law” issue and one which addresses the “transition” process and time frames when a UNE is declassified in the future. SBC-CA says the issue is really which of two interpretations of the ICA controls:

“(1) Are the UNEs listed in the ICA required to be provided only so long as they are *mandatory under § 251(c)(3) of the Act* [hereinafter, ‘Interpretation 1’] or

“(2) Are UNEs listed in the ICA still required to be provided, as a matter of contract law, *even if they become no longer mandatory under § 251(c)(3)* [hereinafter, ‘Interpretation 2’].” (SBC-CA June 14, 2006 Statement, page 20.)

SBC-CA claims that MCIIm seeks here to confuse UNEs that are mandatory under § 251(c)(3) with those that might be voluntarily agreed to by parties and subject to contract law. SBC-CA contends MCIIm wants to create this ambiguity for its benefit in future disputes, while SBC-CA seeks by its language to avoid such disputes. SBC-CA asserts a future decisionmaker needs a clear and specific contractual standard to apply in resolving such disagreement. SBC-CA contends its language is essential for that purpose.

SBC-CA’s concerns were addressed in the FAR:

“To the contrary, the adopted language [proposed by MCIIm] requires the UNE to be both (1) ‘described in this Agreement’ and (2) ‘required by Applicable Law.’ (UNE Appendix § 1.5.)

While ‘Applicable Law’ is defined broadly (see General Definitions Appendix, page 2), it is not credible that applicable law as it specifically relates to UNEs can be interpreted as broadly as SBC-CA claims. Rather, UNE is a specific term in TA 96, as well as implementing decisions and regulations. No credible dispute can be reasonably foreseen. SBC-CA does not identify any UNE which it believes may be subject to such dispute. Moreover, SBC-CA’s proposed language fails for other reasons as discussed above and, on balance, MCI’s proposal is superior.” (FAR, page 135.)

We agree with the statement in the FAR declaring it is not credible that applicable law, as it specifically relates to UNEs, can be interpreted as broadly as SBC-CA claims. We also agree with SBC-CA’s assertion the FAR (quoted above) provides clarity that Interpretation 1 is the intended meaning of the adopted ICA language. SBC-CA suggests replacing both parties’ proposed language at UNE Appendix § 1.1.2 with a paraphrase from the FAR to secure this point. SBC-CA proposes:

“UNEs required by this Agreement shall be limited to those required by the Telecommunications Act and such implementing decisions and regulations as at the time may be in effect.” (SBC-CA June 14, 2006 Statement, page 23.)

SBC-CA’s proposal adds further clarity consistent with the FAR. It eliminates any confusion about application of contract law compared to TA 96 along with implementing decisions and regulations. Therefore, the conformed ICA filed pursuant to this decision should replace the current language in UNE Appendix § 1.1.2 (which states “intentionally omitted”) with the sentence above.

5.2 Verizon Business

Verizon Business seeks reversal of the outcome in two areas.

5.2.1 Application of TRO/TRRO Amendment

MCIm seeks Commission confirmation that the TRO/TRRO Amendment resulting from D.06-01-043 in A.05-07-024 governs the parties' relationship under the conformed ICA approved here. MCIm asserts this clarification is needed to ensure that the ICA complies with the relevant standards for approval, including D.06-01-043 and the FCC's TRO and TRRO.

We decline to grant MCIm's request. MCIm does not identify the specific standards which MCIm believes may be violated. Nor does MCIm attempt to show the violation. Rather, we affirm the June 2, 2006 ruling of the Arbitrator. We do so because, upon directing SBC-CA to file an arbitration application to address TRRO implementation issues, we also ordered:

"The Assigned Commissioner and ALJ in any currently pending individual Section 252 arbitration proceeding, such as for MCI or XO, shall determine whether [to] continue to use the existing arbitration to resolve previously raised change-of-law issues, or whether any pending issues should be transferred to one of the consolidated arbitration dockets." (D.05-07-043, Ordering Paragraph 4.)

That is, we specifically recognized this arbitration proceeding, and directed that a determination be made regarding the transfer of pending issues to the consolidated proceeding. That was done. Parties identified and agreed to transfer 31 issues. Two issues were transferred upon the grant of an opposed motion. As a result, 33 issues were transferred. All other items (including negotiated language not in dispute and dueling clause language relative to issues subject to arbitration here) remained in this proceeding.

MCIm's request is overly broad and unreasonable. It does not recognize the division of issues between the two proceedings. It would likely lead to

confusion and dispute. It is untimely to now seek clarification regarding the issues transferred or not transferred to A.05-07-024.

Moreover, MCIIm does not identify which if any standards for review are potentially violated by failing to grant its request. We are aware of none.

Finally, MCIIm asserts D.06-01-043 applies to all carriers with an ICA with SBC, including MCIIm. MCIIm is only partly correct. In describing the purpose of the consolidated TRO/TRRO arbitration we said:

“We reiterate the September 23, 2005 Ruling by the Administrative Law Judge (ALJ) that any carrier with an interconnection agreement with SBC that has a dispute over the change-of-law provisions related to the FCC’s *TRO* and *TRRO* orders will be subject to the outcome of this proceeding. The Commission does not intend to conduct individual arbitrations to implement change-of-law provisions relating to the two FCC orders. SBC was required to send a copy of the Ruling to each carrier with whom it has an interconnection agreement so that any carrier that wanted to could take an active role in the proceeding.” (D.06-01-043, page 3.)

MCIIm overlooks that the Commission’s July 2005 order had already separated out pending individual § 252 arbitrations, specifically noting this proceeding with MCI. (See D.05-07-043, Ordering Paragraph 4, quoted above.) MCIIm also overlooks that the September 2005 ALJ ruling clearly states there are exceptions to the consolidated proceeding covering all carriers (specifically quoting Ordering Paragraph 4 of D.05-07-043, citing this arbitration with MCI as an exception). (September 23, 2005 ALJ Ruling, page 2, footnote 2.)

Moreover, the purpose of the ALJ ruling was to make a service list and notify carriers of the consolidated proceeding. In particular, the ruling says: “Carriers are not required to be parties to this proceeding, but they need to understand that they will be bound by the outcome of this proceeding.” (Ruling,

page 2.) That is, the focus of the ruling was making sure carriers without pending arbitrations were notified of the consolidated proceeding, clarifying that the Commission would not later entertain individual proceedings with each carrier on these general matters, alerting carriers that they would be subject to the outcome whether or not they actively participated, and giving carriers an opportunity to participate. The focus was not on limiting what could be heard in the individual pending arbitrations on TRO/TRRO matters. The ruling specifically noted there were exceptions to the consolidated proceeding, such as the arbitration here with MCIm.

Thus, we affirm the June 2, 2006 ruling of the Arbitrator, and deny MCIm's requested relief.

5.2.2 TELRIC rates for Entrance Facilities and SS7 (Price Schedule Issues 15 and 22)

MCIm asserts that two issues were transferred to A.05-07-024, and the outcome in D.06-01-043 must govern here. In particular, MCIm says Price Schedule Issues 15 and 22 were transferred. The first issue involves the rates applicable to entrance facilities used for interconnection (which MCIm says would be in the Pricing Appendix at Recurring Price List lines 302-309 and Non-Recurring Price List lines 62-94). The second issue involves rates applicable to SS7 (which MCIm says would be in the Pricing Appendix at Recurring Price List lines 362-367 and Non-Recurring Price List lines 253-255).

MCIm asks that the absence of rates in the conformed ICA on these issues not be approved, but that the rates in D.06-01-043 on these issues be inserted here. MCIm notes, however, that interconnection rates for entrance facilities and SS7 are subject to a pending application for rehearing of D.06-01-043. MCIm "emphasizes that it seeks only the ultimate results of AT&T's TRO/TRRO

arbitration [A.05-07-024] on those issues, whatever they may be...” (June 14, 2006 Statement, page 9.) MCIIm asserts that to find otherwise (allowing SBC-CA to treat MCIIm differently than other CLECs) would be contrary to the non-discrimination objectives of the Act and the Commission.

We adopt MCIIm’s recommendation. We affirm the Arbitrator’s ruling that SBC-CA and MCIIm are bound by the outcomes in A.05-07-024 with regard to issues that were specifically transferred, and are bound by the outcomes in this arbitration for issues addressed in this proceeding (including all agreed-to language that remained here and issues that were not transferred.) (June 2, 2006 Arbitrator’s Ruling, page 13.) Price Schedule Issues 15 and 22 were transferred to A.05-07-024 by mutual agreement of the parties. The outcome in D.06-01-043 controls on those two issues.

SBC-CA argued in its May 17, 2006 motion that Price Schedule Issues 15 and 22 were merely an immediate consequence of Issue NIM 13, which was decided here in favor of SBC-CA. As a result, Price Schedule Issues 15 and 22 must conform to the outcome here, not the ones reached in A.05-07-024, according to SBC-CA. To the contrary, these two issues were clearly transferred to A.05-07-024. The outcome in A.05-07-024 controls on these issues. SBC-CA and MCIIm both agree that inconsistencies in outcomes, if any, between Price Schedule Issues 15 and 22 and NIM 13 are now part of the application for rehearing of D.06-01-043. In its statement on the conformed ICA, MCIIm recognizes this, and “emphasizes that it seeks only the ultimate results of the AT&T’s TRO/TRRO arbitration on these issues.” (June 14, 2006 Statement, page 9.) We agree. We will harmonize the outcomes, to the extent reasonable and necessary, when we consider the applications for rehearing of D.06-01-043.

6. Reduction of Public Review and Comment

The Public Utilities Code and our Rules of Practice and Procedure generally require that draft decisions be circulated to the public for review and comment 30 days prior to the Commission's vote.³ On the other hand, the Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties.⁴ This establishes a conflict.

However, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." In this case, we reduced the comment period. On July 12, 2006, comments on the draft decision were filed and served by SBC-CA. On July 17, 2006, reply comments on the draft decision were filed and served by SBC-CA and MCIIm. We have carefully considered the comments and replies, along with the entire record, and make limited changes as necessary herein.

7. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner, and Burton W. Mattson is the assigned Administrative Law Judge and Arbitrator in this proceeding.

Findings of Fact

1. No party or member of the public alleges that any negotiated portion of the Amendment to the ICA is not in compliance with Section 252(e)(2)(A) of the Act.

³ See Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure.

⁴ 47 U.S.C. Section 252(e)(4).

2. No negotiated portion of the Amendment to the ICA results in discrimination against a telecommunications carrier not a party to the Agreement, or is inconsistent with the public interest, convenience and necessity.

3. Amended language for UNE Appendix § 1.1.2 will further clarify the finding in the FAR that it is not credible that applicable law as it specifically relates to UNEs can be interpreted as broadly as SBC-CA claims, but rather that UNE is a specific term in TA 96 as well as implementing decisions and regulations.

4. Price Schedule Issues 15 and 22 were transferred to A.05-07-024 by mutual agreement of the parties.

5. The arbitrated agreement, as clarified and amended herein, does not discriminate against a telecommunications carrier not a party to the agreement; is consistent with the public interest, convenience and necessity; satisfies tests for approval under TA 96; and meets other Commission rules, regulations, and orders, including service quality standards.

6. The Act requires that the Commission approve or reject an arbitrated interconnection agreement within 30 days after the agreement is filed. (47 U.S.C. Section 252(e)(4).)

7. A draft decision must be subjected to 30 days' public review and comment prior to the Commission's vote; however, Rule 77.7(f)(5) provides that the Commission may reduce or waive the period for public review and comment under Pub. Util. Code § 311(g)(1) for a decision under the state arbitration provisions of the Act.

8. This is a proceeding under the state arbitration provisions of the Act.

Conclusions of Law

1. Nothing about the result of this arbitration is inconsistent with governing federal or state law.
2. No arbitrated portion of the amended conformed 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 conformed ICA between SBC-CA and MCIIm should be amended as ordered herein to (a) clarify UNE Appendix § 1.1.2, and (b) apply the rates for Price Schedule Issues 15 and 22 as determined in D.06-01-043.
4. The arbitrated conformed ICA between SBC-CA and MCIIm, as further amended by this order, should be approved.
5. This order should be effective today because it is in the public interest to implement national telecommunications policy as accomplished through the ICA, and to make this ICA effective as soon as possible.

O R D E R

IT IS ORDERED that:

1. The conformed Interconnection Agreement (ICA) between Pacific Bell Telephone Company d/b/a AT&T California (AT&T-CA) and MCIImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services (Verizon Business) filed on June 14, 2006 shall be amended as follows:
 - a. The language adopted in the Final Arbitrator's Report (FAR) for UNE Appendix § 1.1.2 shall be replaced with the following:

“UNEs required by this Agreement shall be limited to those required by the Telecommunications Act and such implementing decisions and regulations as at the time may be in effect.”

b. The rates shall be changed to conform to the outcome reached in Decision 06-01-043 on Price Schedule Issues 15 and 22 (which were transferred from this proceeding to Application 05-07-024). The specific rates are on the following lines: (a) Pricing Appendix at Recurring Price List lines 302-309 and Non-Recurring Price List lines 62-94 (i.e., Price Schedule Issue 15), and (b) Pricing Appendix at Recurring Price List lines 362-367 and Non-Recurring Price List lines 253-255 (i.e., Price Schedule Issue 22).

2. Pursuant to the Telecommunications Act of 1996, and Commission Resolution ALJ-181, the conformed ICA, as amended in Ordering Paragraph 1, is approved.

3. AT&T-CA and Verizon Business shall each sign the approved conformed ICA, as amended above, and shall jointly file the signed ICA within 5 days of the date this order is mailed. The signed ICA will be effective on the date filed with the Commission.

4. Application 05-05-027 is closed.

This order is effective today.

Dated August 24, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

[D0608029 Attachment A](#)